

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

\* \* \* \* \*

House Bill 1400  
The Conservation & Natural Resources Act

\* \* \* \* \*

House Environmental Resources & Energy Committee

Room 8E, East Wing  
Capitol Building  
Harrisburg, Pennsylvania

Thursday, April 27, 1995 - 9:30 a.m.

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BEFORE:

Honorable Robert Reber, Jr., Majority Chairman  
Honorable David G. Argall  
Honorable Brett Feese  
Honorable Arthur D. Hershey  
Honorable Albert Masland  
Honorable Eugene F. McGill  
Honorable Carole Rubley  
Honorable Samuel H. Smith  
Honorable Camille George, Minority Chairman  
Honorable Stanley J. Jarolin  
Honorable Herman Mihalich  
Honorable Greg Vitali

KEY REPORTERS

1300 Garrison Drive, York, PA 17404  
(717) 764-7801 | Fax (717) 764-6367

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ALSO PRESENT:

Frederick R. Taylor, Esquire  
Counsel to Committee

Paul Ganzzo  
Majority Research Analyst

Mark Brown  
Majority Research Analyst

Richard Thomas  
Minority Executive Director

Ed Haines  
Minority Research Analyst

Mark Fedorco  
Minority Research Analyst

Michael Manzo  
Minority Informational Specialist

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1                   CHAIRMAN REBER: Good morning. I  
2 would like to convene a public hearing of the  
3 House Environmental Resources and Energy  
4 Committee to consider testimony on House Bill  
5 1400. I think what I am going to first do is  
6 just go around the table and have the members  
7 introduce themselves, starting with my far right  
8 with Representative Vitali.

9                   REPRESENTATIVE VITALI: Greg Vitali,  
10 Delaware County.

11                  REPRESENTATIVE MASLAND: Al Masland,  
12 Cumberland County.

13                  REPRESENTATIVE RUBLEY: Carole Rubley,  
14 Chester County.

15                  REPRESENTATIVE HERSHEY: Art Hershey,  
16 Chester County.

17                  REPRESENTATIVE GEORGE: Bud George,  
18 Clearfield County.

19                  REPRESENTATIVE SMITH: Sam Smith,  
20 Jefferson County.

21                  REPRESENTATIVE MIHALICH: Herman  
22 Mihalich, Westmoreland County,

23                  REPRESENTATIVE FEESE: Brett Feese,

24

25

1 Lycoming County.

2 REPRESENTATIVE ARGALL: David Argall,  
3 Schuylkill County.

4 CHAIRMAN REBER: Thank you, and for  
5 the record I'm Chairman Bob Reber from  
6 Montgomery County. I would like to make a  
7 preliminary welcome. I understand that there  
8 are some children here that are taking part in  
9 the Take Your Child To Work Program. I'd like  
10 to welcome each and every one of you today. If  
11 you can replace your parents, we may be better  
12 off in some respects.

13 The record will be kept open for  
14 written testimony that anyone who has not been  
15 afforded the opportunity with the time  
16 constraints we have to testify today. The  
17 record will be kept open for 7 days. You can  
18 make that available to myself and we will  
19 distribute it to the committee and will be made  
20 part of the public record for this hearing.

21 I'd like to note for the record that  
22 CAC has already provided written remarks to be  
23 incorporated into the record, and the record  
24 should so note that, as well as written  
25 testimony from the Pennsylvania Association

1 Conservation Districts, Incorporated. That  
2 particular document also will be made part of  
3 the record and the record should so note the  
4 same.

5 ( Written testimony was submitted and  
6 attached hereto )

7 CHAIRMAN REBER: At this time I would  
8 like to call the first witness on our agenda. I  
9 would like to welcome the Secretary of the  
10 Department of Environment Resources, James Seif.  
11 Good morning, Mr. Secretary.

12 SECRETARY SEIF: Good morning, Mr.  
13 Chairman, Chairman George, members of the  
14 committee: I'm accompanied today by David Hess,  
15 the Executive Deputy Secretary of the department  
16 whom, I believe the committee has worked with  
17 over the years.

18 I appreciate this opportunity to speak  
19 in favor of House Bill 1400, the Conservation  
20 and Natural Resources Act. This will implement  
21 Governor Tom Ridge's proposal to split the  
22 Department of Environmental Resources into 2  
23 departments. I also want to thank Chairman  
24 Reber and Representative George, in particular,  
25 as well as the 70 other members of the House

1 that have already co-sponsored this measure.

2 The history of this issue goes back a  
3 long way, not merely before this committee began  
4 considering House Bill 1400, or not even before  
5 Tom Ridge came into office and not even before  
6 in June of 1993 when the Governor, as a  
7 candidate, proposed this restructuring of DER.  
8 This proposal goes back to the final years of  
9 the administration of Governor Ray Shaffer. At  
10 that time Pennsylvanians were discussing how to  
11 respond to their alarm over emerging  
12 environmental issues and to their continuing  
13 responsibilities for stewardship of the  
14 Commonwealth's natural resources.

15 This forum is not necessarily the  
16 place for a history or civics lessons, but I do  
17 think it's interesting that one of the  
18 Commonwealth's most respected environmental  
19 leaders, Doctor Maurice Goddard, has  
20 consistently supported separate agencies even as  
21 he ran the first combined agency and he has been  
22 consistent for 25 years ago and up to this  
23 morning.

24 I know that the public and this  
25 committee are looking forward to hearing him

1 since he is a far more eloquent and venerable  
2 proponent of this restructuring than I am. But  
3 please, allow me a few comments on the Ridge  
4 Administration position.

5 Pennsylvania's state parks, forests,  
6 recreational assets and tourism attractions are  
7 second to none in this nation. While it was  
8 thought at one time that it was possible for 2  
9 bureaus in a large agency, DER and a smaller  
10 bureau in the Department of Community Affairs to  
11 manage these resources, it seems clear now that  
12 they cannot. They need a secretary who can  
13 devote full time to protecting these valuable  
14 assets. They need a place at the cabinet table,  
15 a place before committees like this one and in  
16 the appropriations process. They need the bully  
17 pulpit that brings public understanding, input  
18 and resources to their missions.

19 Two years ago the Key 93 initiative to  
20 restore our parks and recreational  
21 infrastructure became necessary in part because  
22 of the fiscal and managerial neglect of our  
23 parks and forests. We can and must do better in  
24 giving our resources the attention they deserve,  
25 and making our bureaus of parks and forests and

1 recreation into a cabinet department is the best  
2 way to start doing so.

3 Pennsylvania's parks and forests are  
4 important to our economy as well. The forest  
5 products industry in Pennsylvania is  
6 Pennsylvania's fourth largest industry,  
7 employing more than 100,000 persons. The  
8 recreation and tourism industry contributes more  
9 than \$6 billion annually to our state's economy.  
10 We must be maintain and enhance the diversity of  
11 our natural resources, while continuing  
12 productive use of those resources. The  
13 Department of Conservation and Natural Resources  
14 will create that balance and sustain that focus.

15 Let me turn to the second major  
16 element of House Bill 1400 which is the  
17 Department of Environmental Protection. As you  
18 know, it takes 1400 employees to run our  
19 environmental protection programs, which are,  
20 believe me, tough to run. In a little more than  
21 3 months I have been here, I've certainly made  
22 that discovery.

23 The department now administers over a  
24 dozen major environmental protection statutes  
25 that affect millions of Pennsylvanians from

1 household recycling to mine reclamation. We  
2 work as well with the federal government's  
3 careful, and occasionally obtrusive oversight.

4 Beyond all this is the pressing need,  
5 as members of this committee are aware, to  
6 reform the department simply to make it work  
7 better. Pennsylvanians do support our mission  
8 which is protecting the environment, but after  
9 25 years DER has become a bit stagnant and set  
10 in its ways.

11 With the help of this committee and  
12 many others, we will be implementing a  
13 comprehensive series of statutory, regulatory  
14 and administrative changes to resturcture the  
15 department, not only administratively, but in  
16 terms of what they call in Philadelphia  
17 attitude.

18 Besides our efforts to split DER in  
19 this bill, our other immediate legislative  
20 priority is a set of bipartisan proposals for  
21 land recycling. Those are Senate Bills 1, 11  
22 and 12 which your committee just this week  
23 favorably considered. We believe a giant step  
24 to restoring public confidence in and bringing  
25 common sense to DER will be accomplished with

1 the successful implementation of the cleanup and  
2 reuse of industrial sites that have remained  
3 inactive, unattended and unproductive for too  
4 many years.

5 I especially appreciate, Mr. Chairman,  
6 and members of the committee, your work on this  
7 legislation.

8 Other steps we plan to take are also  
9 in process. Among them, promoting effective  
10 public input to decision making and access to  
11 information inside the agency. We have taken a  
12 step in this direction in our first reg-neg, or  
13 regulatory negotiation effort in revising the  
14 special protection water program.

15 A public hearing was held April 20,  
16 where over 50 persons representing government,  
17 regulated community, land users, environmental  
18 groups and the public testified. From these  
19 participants and other interested parties who  
20 have submitted comments, a balanced panel will  
21 be selected to work with an independent  
22 mediating firm to seek a consensus on changes.  
23 This process front-loaded this comment and  
24 criticism into the development of the  
25 regulations, instead of waiting until after they

1 are already drafted, at which point they are  
2 much harder to change.

3           Reevaluating the 11,000 pages of--  
4 that's not a misprint--11,000 pages of policies  
5 we have inside the department will make sure  
6 that each one has a regulatory reason for being  
7 and achieves a real environmental result. If  
8 they don't, we will dump them. We are not  
9 simply environmental cops. We are environmental  
10 regulators who have knowledge to share with  
11 those we regulate to show how they can best  
12 comply. We have much to learn from them as  
13 well.

14           Further, we are undertaking a review  
15 of policies and regulations to determine if they  
16 are more stringent than federal standards and  
17 eliminating those that do not have a specific  
18 state statutory requirement. We will ensure our  
19 regulations and policies are current,  
20 considerate of economic impact and based on  
21 sound technical and scientific basis using risk  
22 management concepts.

23           Promoting pollution prevention and  
24 compliance assistance through the development of  
25 a new office devoted to green technology and

1 market-based solutions to environmental problems  
2 will be another assignment that the DEP has.  
3 This office will not be a new bureaucracy. It  
4 will be just a few people with a lot of ideas  
5 whose charge will be to integrate those ideas  
6 into day-to-day policies of all our people in  
7 the field who deal with the public as they  
8 grapple with environmental problems.

9 We need to improve the timeliness of  
10 agency actions. Time and again, permit  
11 applicants and our citizens complain when they  
12 don't know when DER will make a decision. We  
13 will work to establish real deadlines that  
14 people can count on. We will make responses on  
15 permit applications a top priority, eliminating  
16 paperwork, but not at the expense of public  
17 comment and input.

18 We will strength problem solving and  
19 personal communication skills with the public by  
20 making these factors part of job performance.  
21 We will promote statewide consistency in  
22 implementing DEP policies and regulations and  
23 making management accountable for that  
24 consistency.

25 We will identify opportunities to

1 privatize functions or reassign functions now  
2 performed by DER.

3 The Environmental Quality Board's  
4 responsibilities are modified in this proposed  
5 act. The power to adopt rules and regulations  
6 would go to the Department of Environmental  
7 Protection and Conservation and Natural  
8 Resources. It would continue to be each  
9 agency's responsibility to ensure opportunities  
10 as now for significant public comment and  
11 involvement in the rule-making process, whether  
12 by reg-neg where appropriate, public hearings,  
13 advisory groups, comment periods, and the like,  
14 just as at present.

15 We foresee these changes as improving  
16 public input into environmental rule making,  
17 especially inasmuch as they shorten the  
18 protracted process that now often takes years  
19 instead of months. We are not proposing any  
20 changes in this committee's opportunities to  
21 review proposed and final regulations.

22 The emergence of the Independent  
23 Regulatory Review Commission in the 1980's  
24 provided all agencies, including DER, with a  
25 check and balance system on rule making. As a

1 result, the EQB has become an extra.  
2 time-consuming step in regulatory development  
3 one by which no other department utilizes.

4 Let me conclude on a personal note. I  
5 would personally very much enjoy working on the  
6 issues that parks and forests face and I would  
7 like to be able to tell my grandchildren someday  
8 that I helped to preserve them and had a role in  
9 their preservation, but the fact is that I  
10 can't. The Environmental Protection plate, as  
11 you know, is just too full. I want to make the  
12 new DEP the national leader in progressive and  
13 efficient environmental protection that Governor  
14 Ridge pledged that we will be. I want a  
15 Department of Conservation and Natural Resources  
16 secretary as a cabinet colleague who can  
17 concentrate on those important responsibilities  
18 for our parks and forests.

19 A number of people continue to contend  
20 that the holistic approach to environmental  
21 matters is somehow more effective. I do respect  
22 their point of view, and specifically, I respect  
23 the view of the one former DER Secretary, Art  
24 Davis, who does feel that way.

25 In fact, it's clear that government

1           itself should be treated holistically, but there  
2           is nonetheless a practical need for separate  
3           branches, separate departments, separate  
4           committees in the legislative process to grapple  
5           more effectively with the issues and clusters of  
6           problems that arise. Thirty-five states and the  
7           federal government have already decided that  
8           this 2-agency approach that House Bill 1400  
9           employs, Governor Ridge and I feel it makes  
10          sense for Pennsylvania as well. We are ready to  
11          work with you on perfecting it and then  
12          implementing it for the citizens of the  
13          Commonwealth.

14                        Mr. Chairman, thank you for this  
15          opportunity to appear before you.

16                        CHAIRMAN REBER: Thank you, Mr.  
17          Secretary. Mr. Secretary, I'm going to just ask  
18          you one question and I think that, hopefully,  
19          the development of the response to that question  
20          can lay to rest in the near future, if not  
21          immediately by your response, virtually the only  
22          type of concern that I have heard concerning the  
23          proposal contained in House Bill 1400.

24                        As you said, we were very happy that a  
25          leadership on both sides of the aisle has, in

1 fact, gone along with this concept. I think  
2 it's something that I know Chairman George has  
3 been working on for years as Chairman of this  
4 committee.

5 The one area that we want to make sure  
6 we don't cause any problem which relates to the  
7 EQB issue. I would be appreciative if you and  
8 Chief Counsel Bossert could take a look at the  
9 situation from the standpoint of making  
10 absolutely sure that as this project, as this  
11 proposal unfolds and becomes law, that we will  
12 in no way diminish what currently is the input  
13 that interest groups have, the citizenry has, as  
14 we currently know it under current regulations,  
15 statute review process that EQB provides.

16 I know that IRRC wasn't around when  
17 the EQB was established and that there is  
18 duplicity to a great extent, but I want to make  
19 sure that we just don't leave any stone  
20 unturned. And I would ask, 1, for your response  
21 to that concern because that was raised by some  
22 of the people that did co-sponsor the  
23 legislation and I assured them too that I had  
24 the same concern. We want to make absolutely  
25 clear that we don't leave anything fall through

1 the cracks, if you will.

2 As you are well aware, the EQB is  
3 going to continue to remain in force and effect  
4 for a number of areas, low-level hazardous  
5 waste, things of that nature. So, obviously, in  
6 my opinion, if there would be something that  
7 falls through the cracks with a concept as  
8 embodied in the bill, the Board is there to  
9 handle that type. We want to make before we do  
10 vote on this on the floor of the House that that  
11 door is closed. That those myths, or concerns,  
12 or however you want to characterize it, are  
13 appropriately addressed and answered.

14 One, I would graciously ask you for  
15 response to that concern. And then I would also  
16 ask you to doubly go back, meet with counsel,  
17 and if you could provide a written response to  
18 me, I will certainly disseminate it to all the  
19 members of the committees and also have it  
20 available for all members of the House before we  
21 do take a final vote on this on the floor,  
22 addressing that particular concern. Because, I  
23 know members of the committee on both sides of  
24 the aisle have just expressed a concern that --  
25 they like where this legislation is going, but

1 that just causes them a little bit of pause and  
2 we want to make them abundantly, absolutely,  
3 positively clear that we don't have a problem.  
4 I would elicit your response.

5 SECRETARY SEIF: Mr. Chairman, you are  
6 absolutely right. These are the concerns that  
7 have been expressed, and correct as well in  
8 noting that they are about the only major  
9 concerns that have been expressed. I will  
10 address it in writing those concerns with a  
11 review of present opportunities that do exist  
12 for citizen input and with a review of the act  
13 to show it does not diminish those opportunities  
14 in any respect.

15 Further, I might report to you that I  
16 have spoken now twice with the Conservation  
17 Network and continue to work with the Citizens  
18 Advisory Council and Chief Counsel inside to  
19 explore how we might improve because it is  
20 necessary to improve citizen input into this  
21 area.

22 We have already 33 advisory committees  
23 to the department. The issue isn't whether  
24 that's too many or too few. The issue is, are  
25 the right people on them and are they talking to

1 the right people inside the department and are  
2 the people inside the department listening at an  
3 early enough stage so that the input matters.  
4 We need to strengthen that process.

5 We need to be sure that individual  
6 regulatory actions are aired out early so that  
7 we don't have just arguments at the very end  
8 when they are already drafted, but genuine  
9 input. We need to do a lot of things that I  
10 think we could do and which the EQB has not  
11 done. The EQB has simply added months to the  
12 end of the process, rather than effective input  
13 where it really matters.

14 I might refer to you to the Q and A  
15 that the department has prepared on this bill  
16 dated March 28 available to the committee this  
17 morning and its guests, but we will certainly  
18 embellish that as you have requested in the  
19 specific area of your concern.

20 CHAIRMAN REBER: Thank you.  
21 Representative George.

22 REPRESENTATIVE GEORGE: Thank you, Mr.  
23 Chairman. First I want to thank Chairman Reber,  
24 who not only is my colleague, but in most cases  
25 my most avid supporter on those matters, and I



1 over the past couple weeks all the dialogue, are  
2 we now going to be more set and provincial for  
3 business, or are we still going to be very  
4 concerned about the environmental matters?  
5 That's the purpose of your committee.

6 As I read your presentation as you  
7 were deliberating there, you talk about reg-neg.  
8 I'm afraid if you're talking about that one big  
9 facet of the special gasoline, you will find  
10 that there has been a decision that blew up in  
11 our face so to speak. In fact, it blew up so  
12 bad that we are still not where we ought to be.

13 Mr. Reber most eloquently stated, and  
14 we all got a letter here a moment ago, that the  
15 Environmental Quality Board, as you and I had  
16 discussed just yesterday, is, in fact, a tool of  
17 the department and rightfully so. I have been  
18 here 22 years and I have watched many things  
19 transpire before IRRC and after IRRC. I have  
20 seen several governors want the abolition of  
21 IRRC. I'm a little confused about eliminating  
22 the best facility, the best organization for  
23 public input, which, if you will sir, as Mr.  
24 Reber suggested, the Environmental Quality  
25 Board, in which the members of that fine Board

1 are for legislators, several CAC members and the  
2 majority of which are appointed by his  
3 excellency, the Governor.

4 If the right thing isn't coming out  
5 from that Environmental Quality Board, if the  
6 tenor isn't right, then we ought to blame it on  
7 those of us who make up the Board. Just to  
8 abolish it, I'm getting a lot of mail, I'm  
9 getting a lot of concerns on it. Mr. Reber most  
10 eloquently proposed, and I won't carry it any  
11 further, that you deliver to him some kind of an  
12 assignment so that we can go forward on this  
13 matter.

14 In our discussion, if you will, Mr.  
15 Secretary, yesterday, just appointing new boards  
16 isn't going to satisfy me. You might have 30,  
17 you might have 40, that doesn't mean anything to  
18 me. I'm interested in the Board that deals most  
19 with the public. I'm not here this morning to  
20 put you in an awkward position. I intend to  
21 pursue my colleague the purpose of what we're  
22 after, but I want to remind you all what we are  
23 doing in this bill is dividing the department  
24 into 2 departments. What we will do for the  
25 people of Pennsylvania, Mr. Secretary, you are

1 going to have to do. I look forward to that.  
2 Thank you, Mr. Reber.

3 SECRETARY SEIF: If I may quickly  
4 comment, I'll recommit, Mr. George, to the  
5 document that the committee I hope will find  
6 useful on the subject of citizen participation.  
7 You made, perhaps, the most important point of  
8 the morning so far, which is, that the  
9 organizational arrangement of the people isn't  
10 the key to how the department acts.

11 I think we take an important step, as  
12 I said in my testimony, toward reforming both  
13 departments by making 2 departments. But, the  
14 real key is how do people out on the front lines  
15 act and are they truly responsive to the  
16 assignment of the department?

17 We will do that with the methods that  
18 I have mentioned in my testimony, some of the  
19 reforms, some of the new approaches, the new  
20 attitude, if you will, so that we cannot merely  
21 finish our job by creating 2 departments, but  
22 simply begin it this morning by creating 2  
23 departments.

24 I would say finally, if the EQB is the  
25 best tool there is for public input, then we

1 have a pretty sad situation because it is not of  
2 itself a very good tool. The good tool is when  
3 the right people inside the department listen to  
4 people during the process and get it right in  
5 the first place rather than arguing about it at  
6 EQB at the end of the process.

7 CHAIRMAN REBER: Any members to my  
8 left? Representative Smith.

9 REPRESENTATIVE SMITH: Thank you, Mr.  
10 Chairman. Mr. Secretary, I was pleased to hear  
11 your comments and especially in the dialogue of  
12 Representative George. Obviously, a lot of  
13 people when they see this bill, our constituents  
14 when they see this bill and hear about it in the  
15 news clips, they think that when it's signed  
16 into law, suddenly the world as we know it is  
17 going to have changed. You and I and everyone  
18 on this committee and most in the room know that  
19 that's not exactly true; that this is just a  
20 foundation for those changes. As you are  
21 talking about the attitude change, I think  
22 that's something that a lot of people out there  
23 really do focus on. I appreciate your  
24 acknowledgment of that simple fact of life.

25 Following up on this EQB discussion a

1 little bit, how is the department going to allow  
2 for or engage in this early-on public or  
3 industry input into the regulatory process,  
4 given that it's not something we are going to  
5 see in this legislation, I understand that. But  
6 how is your -- What are you envisioning doing to  
7 get that information into your regulatory  
8 writers early on?

9 SECRETARY SEIF: I might say that the  
10 first step in improving the regulatory process  
11 is to produce fewer regs, but that's a different  
12 issue altogether and that would be an objective,  
13 I think, of the administration in general.

14 More to the point, though, I might  
15 repeat, the particularly difficult problems we  
16 are having with the special protection waters'  
17 set of issues. We have already convened a group  
18 that doesn't have anything to do with EQB; is  
19 not presently known in the formal reg writing  
20 process, but will help us produce a new and  
21 effective reg in that area.

22 On April 20, we gathered together  
23 about 50 representatives of a wide variety of  
24 groups to kick off a formal process. We will be  
25 doing that in a number of other areas and will

1 be making a very thorough review, part of which  
2 will be in my report to the Chairman on citizen  
3 input.

4 Of all of the 33 committees, 20 of  
5 which I believe are proposed to go to the  
6 Department of Conservation and Natural  
7 Resources, to assure ourselves that each of them  
8 has a full opportunity for its members, however  
9 they are selected and whoever they are, to  
10 interact with the department. Those processes  
11 will be improved.

12 REPRESENTATIVE SMITH: When you  
13 mention that possibly one of the solutions is  
14 fewer regulations, would that also involve an  
15 additional type of reform that would somewhat  
16 limit Pennsylvania's regulations to the federal  
17 limits so that we wouldn't have 2 sets of  
18 regulations that apply in some cases?

19 SECRETARY SEIF: Yes. I think it's  
20 important to note, and that doesn't relate at  
21 all to whether there's 1, 2, or any number of  
22 departments. It just has to do with the  
23 assignment of each new secretary, if we have 2  
24 departments, to take a look at the statutes, the  
25 regs and the internal policies and compare them

1 with federal requirements. And only where  
2 there's a legislative and mandated reason why a  
3 statute should be more stringent than a federal  
4 statute should we continue in that vein. I  
5 think this General Assembly has to have that  
6 decision in mind and not just somebody at the  
7 department.

8 REPRESENTATIVE SMITH: Thank you. I  
9 appreciate that. Additionally, along those same  
10 lines then, what about the evaluation of cost  
11 benefit of regulations, and perhaps, even one of  
12 my pet peeves with the department in the past  
13 has been the fact that they're the policies and  
14 the guidelines and such that the public doesn't  
15 really know a lot about. I'd like you to  
16 comment a little bit on how we might better  
17 utilize or make available to the general public,  
18 in particular to the regulated community, the  
19 policies and guidelines that the department uses  
20 to carry out the regulations?

21 SECRETARY SEIF: I mentioned to you  
22 that I have discovered, and this I commend Art  
23 Davis for. He collected it all in one place at  
24 great effort. It turns out 11,000 pages of  
25 internal policy and guidelines. I have said

1 before, other audiences don't take this  
2 seriously, but it's a good line. I'm going to  
3 throw away every other page and wait and hear  
4 and see who notices.

5 The fact is that we can go get along  
6 with a lot fewer of them. I think an  
7 organization that has 11,000 pages of internal  
8 instructions can't do much. We are already  
9 started looking through them, both for the  
10 stricter-than idea and for the making them  
11 current; making them publicly available free of  
12 charge; making sure each one has an actual  
13 regulation that it belongs with, rather than  
14 simply being out there with someone's good idea.  
15 It's been one of my pet peeves too in private  
16 practice that somebody would tell you what the  
17 policy was and then say, you can't see it. It's  
18 internal. That shouldn't happen.

19 REPRESENTATIVE SMITH: I hope your  
20 feet aren't feeling warm because that's one  
21 subject that I probably will try to keep your  
22 feet to the fire on anyways.

23 Just to change directions a little  
24 bit, and I realize this legislation doesn't go  
25 into these kind of details that there is so

1 much, perhaps, administrative, but because of an  
2 interest I have in the area I'd like to get your  
3 at least initial response and thoughts on it.

4 Do you have any feelings in terms of  
5 the way the district mining offices are  
6 operating? There is some interest in the mining  
7 offices; perhaps, not necessarily working under  
8 the Department of Field Operations, but under  
9 the mineral resources side of the Department of  
10 Environmental Protection; in that, they have to  
11 enforce the permits that are issued by that  
12 entity. I'm curious if you can give me a little  
13 feeling for your direction on the mining  
14 offices.

15 SECRETARY SEIF: Very shortly after  
16 his arrival in the department, I asked Deputy  
17 Secretary Bob Dolan to take a look at that.  
18 He's doing so and the proposal is in the works  
19 that I think maximizes the efficiencies that we  
20 need to bring to both field and mining  
21 deputates.

22 REPRESENTATIVE SMITH: I will be  
23 seeing him later today because I stay pretty  
24 active with the Ban and Mine Reclamation  
25 Advisory Board. Of course, he'll be due there

1           today, so I'm going to going over there later  
2           this afternoon.

3                   SECRETARY SEIF: You might get a more  
4           direct answer out of him. I can tell you that  
5           he was not able to make it in today and I'll be  
6           there. I'm going to head you off at the pass  
7           again. I think that's a good idea. It's under  
8           active consideration.

9                   REPRESENTATIVE SMITH: I look forward  
10          to the day that I'm a step ahead of you, Mr.  
11          Secretary. Thank you.

12                   SECRETARY SEIF: If you really wish to  
13          hold my feet to the fire on the 11,000 pages,  
14          let me reciprocate by inviting you over to look  
15          at the pile with me some day and try to figure  
16          out what to do with it.

17                   REPRESENTATIVE SMITH: Thank you, Mr.  
18          Secretary.

19                   CHAIRMAN REBER: Thank you. Thank you  
20          Mr. Smith. Representative Mihalich.

21                   REPRESENTATIVE MIHALICH: Mr.  
22          Secretary, you said a couple of things that  
23          intrigued me. One of them was that you were  
24          going to try to achieve statewide consistency.  
25          That is the thing that interests me and allow me

1 to make just a very short comment first before I  
2 ask my question.

3 Back in the middle '80's, the  
4 Pennsylvania Roundtable on their own and without  
5 state assistance did an evaluation of DER and  
6 its operations. I thought it was one of the  
7 best insightful studies made of the department.  
8 Among some of the things they made, I think what  
9 they highlighted was, and I can be fair in  
10 saying that their actual highlight was that  
11 there was inconsistency in the department. In  
12 fact, I think they might have said something  
13 like, there isn't one DER in Pennsylvania;  
14 there's 6. I have personal experience with  
15 that, what I call a deficiency in the  
16 department; the tail wagging the dog many times.  
17 You have 5 tails out there and the dog here in  
18 Harrisburg. I don't mean that as an analogy.

19 In any event, about a year or 2 ago  
20 the department commissioned a consultant to come  
21 in and study the department and proposed some  
22 recommendations. Their recommendation was 180  
23 degrees in concept from the Business Roundtable.  
24 They supported more autonomy to the district  
25 offices. I have a difficult time understanding

1 that. I know the department, they had to think  
2 it was very good because they spent well over a  
3 half million dollars for that study. I  
4 disagreed with it, of course, because of my  
5 personal experiences and seeing that many times  
6 the tail was wagging the dog. Therefore, I was  
7 very pleased to hear you say that you were going  
8 to try to achieve statewide consistency.

9 My question is, are you aware of those  
10 2 studies? In your effort to achieve statewide  
11 consistency based upon what the Business  
12 Roundtable and the past consultant for the DER  
13 had to say? Are you aware of that?

14 SECRETARY SEIF: Yes, I'm aware of the  
15 DER study, and as a private citizen and a former  
16 regional administrator of EPA was privileged to  
17 participate and talked with people while it was  
18 in progress.

19 I must respectfully disagree with you.  
20 I think that was a very good report,  
21 thoughtfully done, and implemented to the extent  
22 that it was implemented in the organizational  
23 sense in an appropriate way.

24 It did build in a safeguard that  
25 addresses the other report you mentioned, which

1 was the Business Roundtable report. I'm less  
2 familiar with it, but very familiar with the  
3 problem that you tell me it raised, which is the  
4 regional inconsistency issue.

5 During the transition process which  
6 was chaired by one of your witnesses this  
7 morning, John Oliver, after permanent review  
8 time, inconsistency among regions was the second  
9 most commonly expressed difficulty or complaint  
10 about the department. So, your experience is  
11 consistent with that of many other  
12 Pennsylvanians.

13 But, what the departmental  
14 reorganization of several years ago now did was  
15 to build in a deputy secretary for field  
16 operations whose only responsibility is to make  
17 sure that the 6 regions, and they are 6 very  
18 different regions in Pennsylvania, economically,  
19 industrially, culturally and so on, do apply  
20 consistently the rules and regulations and  
21 statutes of the department.

22 As Representative George has  
23 mentioned, the accountability issue, are the  
24 people out there doing what they are supposed to  
25 be doing is the most important issue in the

1 department. That means accountability from  
2 field to headquarters and vice versa as well as  
3 between programs. A number of the reforms,  
4 irrespective of the future organization of the  
5 1 or 2 departments that I'm undertaking and have  
6 discussed this morning, are designed to bring  
7 consistency of the sort that I think  
8 Pennsylvanians and you have requested.

9 REPRESENTATIVE MIHALICH: That's on  
10 that subject. I have 2 more comments I'd like  
11 to make. I share with our Chairman here, I  
12 share with them their concerns about the  
13 Environmental Quality Board, but I'm also  
14 confident, as our Chairman pointed out, that we  
15 will receive -- in due time we will receive  
16 proper assurances and proper explanations so I  
17 won't pursue that any further.

18 My Chairman is very good. Every time  
19 he makes a comment he usually follows through on  
20 it, and I'm take his commitment that he will.

21 Chairman George brought up something  
22 before about his concern that I share with him,  
23 and it comes under the category, maybe even the  
24 elimination of the Environmental Quality Board,  
25 about emphasis on citizen access versus

1 applicant access. In an area that needs  
2 development, I'm very sensitive to the needs of  
3 my business community, not only those that are  
4 in my district now but some people, some  
5 companies who are looking to come into my  
6 district. But, I don't want to increase  
7 accessibility or emphasis to the detriment of  
8 the citizens of my district, the ones who live  
9 there. I have seen in the past too often where  
10 the emphasis is on the applicant or on the  
11 permittees to the detriment of the citizens.  
12 That is not a system deficiency, in my opinion.

13 Related back to the earlier  
14 observation that I made on the lack of  
15 consistency, that might fall into that category.  
16 I have seen that and I am genuinely concerned  
17 about what I read in the papers and some of the  
18 speeches I hear about streamlining this for the  
19 applicants. Fine. Let's do some streamlining  
20 go for the citizens too. We don't want to do it  
21 by eliminating any formal access they have to  
22 the department. Thank you.

23 CHAIRMAN REBER: Thank you  
24 Representative Mihalich. Representative Rubley  
25 is recognized.

1                    REPRESENTATIVE RUBLEY: Thank you, Mr.  
2 Chairman. Good morning, Mr. Secretary. I  
3 appreciate your remarks. I think many of the  
4 objectives in this bill are certainly very  
5 commendable.

6                    I received correspondence from a  
7 constituent, Grover Emrich, who heads up the  
8 Pennsylvania Council of Professional Geologists.  
9 They are very pleased to have the geologic  
10 survey located in this proposed bill in the  
11 Conservation and Natural Resources Act. They do  
12 have a couple of changes they would like to see;  
13 one being in Section 305, a separation of the  
14 geologic services from the ecological services.  
15 They are afraid that they will not be able to  
16 maintain their integrity by combining these 2  
17 very dissimilar kinds of services.

18                    Their second request would be to  
19 establish, yet, another advisory committee. It  
20 would be the Geology Advisory Committee. I  
21 would like to forward you their comments. I  
22 also will make sure that you receive these  
23 comments so they can become part of the record.

24                    SECRETARY SEIF: We would be happy to  
25 consider those comments. I believe that we did



1 take a look at this split proposal and think  
2 about, what problem are we trying to solve with  
3 this split? It seems that what I hear, and I  
4 don't come from a rural community so I get a lot  
5 of this secondhand, but it seems like what I'm  
6 hearing from my colleagues is, unresponsiveness,  
7 too much time getting the permits, so forth and  
8 so on. A lot of that is traced to insufficient  
9 resources in the environmental regulation area,  
10 of course, to staff properly.

11 It seems like a conceptual argument  
12 you're making for having a cabinet level parks  
13 and forest person is, he will draw more  
14 resources away from the limited pie and more  
15 resources away from environmental regulation.  
16 It just seems like that's exactly -- that's  
17 going to exacerbate the problem.

18 What are we trying to solve here and  
19 how is this going to do that?

20 SECRETARY SEIF: I think your premise  
21 that insufficient resources are available in the  
22 regulation area is not one that I can share.  
23 Certainly, the proposed budget that you are  
24 considering now was proposed on March 7th by the  
25 Governor. It doesn't reflect increased

1 resources and I requested it not. We ought to  
2 get a lot more efficient about the way we do use  
3 our resources.

4 The problem we are trying to solve is  
5 that, a single secretary of both departments,  
6 and you will hear from a better expert than I in  
7 the persons of Doctor Goddard and former  
8 Secretary DeBenedictis, is always watching the  
9 urgent driveout the important. The urgent  
10 always tends to be the citing issue, the  
11 regulatory issue, the enforcement action, the  
12 permit deadline, and so on. The resource  
13 issues, the trees out there, don't seem to get  
14 the attention.

15 A single department taking a look at  
16 from the deep dark forest all the way to a  
17 municipal park, a whole range of the land and  
8 resource assets that the Commonwealth can give  
18 it that day-to-day attention, can be the cabinet  
19 level advocate for those concerns and the  
20 cabinet level referee among citizens' concerns  
21 about the use of those resources that the  
22 present Secretary cannot be.

24 REPRESENTATIVE VITALI: But that's not  
25 the problem that we are describing. You seem to

1 be saying this split will deal with the problem  
2 of parks and forest. You seem to be saying that  
3 presently right now the Secretary is only  
4 dealing with environmental issues. That's not  
5 really the problem.

6 My statistics show that over the past  
7 5 years, parks and forest have gotten an  
8 increase in 20 percent in funding. It seems to  
9 me that if you are dealing with funding issues,  
10 that's a function of how much the Governor and  
11 the legislature want to give.

12 I still don't get how this split is  
13 going to deal with the problems we are hearing  
14 in the legislature about slow permitting, so  
15 forth and so on.

16 SECRETARY SEIF: With respect to your  
17 statistics about 20 percent increase--I don't  
18 know 20 percent increase from what--but it  
19 certainly became necessary and the citizens  
20 agreed with the Key 93 proposal to bring some  
21 infrastructure repair to the sewage treatment  
22 plants and roads and pavilions that were falling  
23 apart for lack of management, or whatever, or  
24 maybe lack of resources as I would see it.

25 You are right that a number of things

1 that people have had problems with in the  
2 department, whether it's regional inconsistency,  
3 as Representative Mihalich has mentioned, or  
4 variety of other things, are not directly  
5 addressed by the splitting up of the department.  
6 They are, as I testified, the appropriate first  
7 step to give the Secretary of Environmental  
8 Protection, as the remaining regulatory  
9 functions, the opportunity to do the list and  
10 many other items that I have mentioned this  
11 morning that need to be done without comprising  
12 the parks and forest functions; that is, while  
13 giving them the cabinet level representation  
14 that they need while these other things go on.

15 REPRESENTATIVE VITALI: Let me touch  
16 on another point. With regard to your statement  
17 that the plate is too full for you to handle, I  
18 don't say that factiously. You are selling  
19 yourself short. For example, Governor Ridge  
20 handles all of these agencies and he does it by  
21 delegating. It seems to me the argument made  
22 here that you can't handle both sides of this is  
23 incorrect, in that, it's just done by  
24 delegation. The person who would want to devote  
25 his complete attention to parks and forests

1 would be the Deputy Secretary of DER and the  
2 appropriate person should be put there. It  
3 seems the value of having the unified system is  
4 that coordination.

5 Our parks and forests, as I  
6 understand, are the biggest landowner in the  
7 state. Like any other landowner, we have  
8 pollution problems and so forth. That  
9 coordination between the regulation -- The  
10 interrelationship between this massive land we  
11 own and this environmental regulation is an  
12 important one. It's very important for there to  
13 be communication so the one hand knows what the  
14 other one does in government functions more  
15 efficiently.

16 SECRETARY SEIF: Well, the President  
17 delegates too, but at some point you want to  
18 have a scope of functions that is handleable  
19 both in the conceptual sense and in terms of the  
20 number of tasks. The Governor in 35 other  
21 states have delegated 2 cabinet officials  
22 separately these 2 functions.

23 I might add that under Pennsylvania  
24 law, although the Governor can delegate a lot,  
25 the Secretary has not and cannot until there are

1           2 secretaries as mentioned, and you will see in  
2           the bill the delegations that are listed.

3                       Further, I would say that there are  
4           delegates in the state that have as few as a  
5           hundred persons in them and there are  
6           departments that have thousands of more people  
7           than I do. The issue isn't how many people, but  
8           what are the logical spans of attention and  
9           nature of the functions. We have concluded, as  
10          have every past Secretary, say one, that this  
11          bill makes sense given those kinds of  
12          circumstances.

13                      REPRESENTATIVE VITALI: Why can't an  
14          assistant secretary handle environmental  
15          regulation and/or several, and another one or  
16          several handle one, say he handles parks and  
17          forests? I just don't understand this from an  
18          organizational --

19                      SECRETARY SEIF: I suppose he or she  
20          could do that. In fact, in the person of Deputy  
21          Secretary for Parks and Forest, pat sir loan in  
22          a, we have someone who is doing their first-rate  
23          job at that.

24                      REPRESENTATIVE VITALI: Where's the  
25          problem?

1           SECRETARY SEIF: The problem is that  
2 if Pat were able to be here this morning he  
3 would be testifying that that department and  
4 those functions would be a lot better off, and  
5 he was a proponent from the beginning with a  
6 cabinet secretary sitting here advocating for  
7 the functions that he, only by delegation from a  
8 Secretary, is dealing with.

9           REPRESENTATIVE VITALI: This is my  
10 problem. We do a lot of pandering. DER bashing  
11 is very popular, and we do it for political  
12 reasons. I'm concerned here that we are  
13 needlessly increasing costs and not dealing with  
14 the problem just for political reasons.

15           I want to deal with the issue of  
16 increased expenses. We were just dealing with  
17 the bill, I think 1177, or some bill that was a  
18 Republican initiative last week. The idea was  
19 to consolidate Health and Welfare, 2 big  
20 agencies, too big-in-size agencies, and the goal  
21 is consolidation, would it save us money? That  
22 was the thing, consolidate to save money.

23           Now, I discussed this idea to split up  
24 DER with a former deputy secretary, and the  
25 whole issue of this saving or not costing us

1 more money, her response was baloney. There is  
2 going to be increased overhead, increased  
3 administrative costs, increased purchasing,  
4 training, and budget. You are just doubling a  
5 lot of functions. How do you respond to that  
6 and why are we doing this?

7 SECRETARY SEIF: I don't know how to  
8 respond to it because I'm being asked to respond  
9 to the remarks of someone who doesn't know what  
10 she's talking about.

11 REPRESENTATIVE VITALI: No, no; just  
12 the concept; just the concept of when you split  
13 an agency in half you -- I know myself if I  
14 open 2 district offices that's going to cost  
15 more than double -- It's going to cost more  
16 money because you have 2 sets of overhead, 2  
17 typewriters and all the rest.

18 SECRETARY SEIF: Not correct,  
19 Representative; just not correct. Your analogy  
20 is faulty to begin with. We are going to be in  
21 one building which, by the way, is something we  
22 were trying to do for a long time. The Rachel  
23 Carson State Office Building will house both  
24 departments. We'll utilize all the same  
25 facilities that we now have.

1                   We contemplate, if you will take a  
2 review of the March 7 budget submission, no  
3 increase in money. We are going to share the  
4 training facilities, the physical facilities,  
5 legal services and a variety of other things  
6 under the plan that a present deputy secretary,  
7 someone who actually knows what's going on, is  
8 working on.

9                   The Governor has pledged and I will  
10 make good on his pledge that we are not going to  
11 waste money to do this. We are doing this to  
12 get better government, and you're going to get  
13 better government when you pass this bill.

14                   REPRESENTATIVE VITALI: You're not  
15 going to have separate functions for  
16 administration and financial planning and  
17 training?

18                   SECRETARY SEIF: Yes, but not more  
19 people.

20                   REPRESENTATIVE VITALI: There's the  
21 concern because, if you have more time spent on  
22 doing this, you are taking resources a way from  
23 the mission of the parks and forests which is to  
24 maintain and acquire these parks. If you spend  
25 more money on overhead without more people, I

1 see that as a problem.

2 Can a unified agency be just as  
3 effective here?

4 SECRETARY SEIF: On paper it could. I  
5 have yet to see it become so.

6 REPRESENTATIVE VITALI: Do we know who  
7 is going to be the new head of Conservation and  
8 Natural Resources?

9 SECRETARY SEIF: We have only one  
10 Governor at a time and I'm not it.

11 REPRESENTATIVE VITALI: But I'm sure  
12 you talk.

13 SECRETARY SEIF: If and when this bill  
14 passes, the Governor will have among his  
15 assignments in implementing the selection of an  
16 appropriate person to be the cabinet secretary  
17 for D.C.N.R.

18 REPRESENTATIVE VITALI: Thank you, Mr.  
19 Secretary.

20 CHAIRMAN REBER: Thank you, Mr.  
21 Secretary, and it's the shame we in the House  
22 don't get to share that review process. The  
23 Senate gets the opportunity; always did.

24 I think that is all the questions and  
25 I deeply appreciate you taking your time, and I

1 look forward to the response that you have  
2 promised. Thank you very much.

3 SECRETARY SEIF: Thank you again for  
4 having me this morning.

5 CHAIRMAN REBER: At this time our next  
6 witness is Doctor Maurice Goddard, former  
7 Secretary of the Department of Environmental  
8 Resources. I might say for the record it has  
9 been a number of years that I served on this  
10 committee with Chairman George, and there have  
11 been numerous times where Doctor Goddard has  
12 been before us providing his expertise and  
13 knowledge on various issues that the committee  
14 was deliberating upon at those times. I think I  
15 would be remiss in saying that each and every  
16 time he did appear before the committee there  
17 was a slight bit of discussion, if not a lot of  
18 discussion, concerning this particular topic  
19 that we are now deliberating over today.

20 I thank Doctor Goddard very much for  
21 freeing up time to avail his expertise and  
22 knowledge on the issue to the committee that's  
23 before us here on House Bill 1400. Doctor  
24 Goddard, good morning.

25 DOCTOR GODDARD: Good morning,

1 Representative and Mr. Chairman, Mr. Vice  
2 Chairman and members of the Environmental and  
3 Energy Commission: It's an honor and a  
4 privilege to be here this morning.

5 I told a couple other of my friends  
6 here this morning I made my best testimony at  
7 2 o'clock this morning. I was awake most of the  
8 night thinking about this subject.

9 I'd like to start very briefly with a  
10 little bit of historical background about  
11 forestry if I may, because this is one of the  
12 big items I think in the discussion. It's to be  
13 recalled the Forestry Association of  
14 Pennsylvania was founded in 1886. In the Forum  
15 of the Capitol there's a great plaque honoring  
16 Doctor Rothrock for his service in dealing with  
17 forestry.

18 They argued for some state government  
19 agency to handle forestry. They were successful  
20 in getting the General Assembly to create a  
21 Department of Agriculture in 1895, and they also  
22 argued for a structure within the department to  
23 represent forestry, so a division was created in  
24 that old department to handle forestry.

25 But, by 1901, the people that were

1 interested in forestry, including Doctor  
2 Rothrock, were unhappy with the progress that  
3 was being given to forestry. They came to the  
4 General Assembly, just as I am here today, to  
5 argue that forestry should be given greater  
6 stature. The last time the General Assembly  
7 created a Commissioner of Forestry that reported  
8 directly to the Governor pretty much as a  
9 cabinet member does today. That was started in  
10 1901 and gave greater recognition to forestry,  
11 they created a nursery system, fire patrol  
12 system, and so forth, after that.

13 It's of interest, I think, to note  
14 that in 1920, Gifford Pinchot was the  
15 Commissioner of Forestry for this state. He  
16 held that position for 2 years. In 1922, as you  
17 know, he resigned to run for Governor of the  
18 Commonwealth and was elected in November of 1922  
19 to be Governor. When he became Governor in  
20 1923, one of the first things he did was to  
21 create the Department of Forests and Waters.

22 What he did, he took forestry and he  
23 combined that with the Water and Power Resources  
24 Board which was created in 1911 as a result of  
25 the Johnstown flood and the great flood on

1 Sinnemahoning Creek. It's amazing that even the  
2 General Assembly couldn't get a dam permitting  
3 bill after the 1899 flood of Johnstown, and it  
4 took another great flood in Sinnemahoning Creek  
5 in 1911 to trigger a Water and Power Resources  
6 Board.

7 That Board functioned as a part of  
8 Forests and Waters until the new DER was  
9 created. Forest and Waters operated as a  
10 separate cabinet level department, emphasizing  
11 forestry, parks and water resources until DER  
12 was created by law in 1970. As you know, became  
13 functional in 1971, the start of the Shapp  
14 Administration.

15 I'd like to point out that I opposed  
16 that department just as I do today, because I  
17 didn't want to combine management and regulatory  
18 things in the same department, so on and so on.  
19 They wanted to take too much time. Why did I  
20 become the Secretary?

21 The Governor obviously didn't offer me  
22 the position. He offered it to Stewart Udall,  
23 who had been the Secretary of the Interior in  
24 the Kennedy and Johnson's Administration. He  
25 told, and it was well-publicized in all of the

1 major papers in the state, and he told the  
2 Governor he didn't degree with the concept of  
3 DER as structured. Because of that, the  
4 Governor talked to me and this is how I became  
5 Secretary of DER.

6 I don't think that Secretary Udall had  
7 intervened. I didn't talk to him about this.  
8 He did it on his own. It was a diplomatic way,  
9 frankly, for the Secretary to get out of the  
10 job. I don't think he had come in any event to  
11 be very candid about it because he had been a  
12 Secretary of the Interior, earning 2 or \$300,000  
13 at that time in other activities, but it was a  
14 diplomatic way. But, I still became Secretary  
15 and I tried hard to make it work.

16 Now, getting back to forestry, I have  
17 passed out and I'd like to refer to it first  
18 this paper entitled "Position Statement: The  
19 Creation of a Department of State Parks and  
20 Forestry and a Department of Environmental  
21 Protection", by the Pennsylvania Forestry  
22 Association dated 9/29/93.

23 In a sense, they are intervening again  
24 as they did in 1901. We always say that history  
25 repeats of itself, and this is a little bit of a

1 proof that it is. They're coming back as they  
2 did almost 95 years ago to argue to get forestry  
3 out of a major department and to increase its  
4 stature.

5 I'm not going to read this whole  
6 document but the first part talks about the  
7 background, gives some of the reasons why -- The  
8 economy of forestry, I'm going to give you some  
9 literature on that. They give you some of the  
10 economy of parks. Then they talk about its  
11 status, how most of the resources in the new  
12 department have gone to environmental  
13 protection. There are fewer people in parks and  
14 forestry than when I was Secretary, and so on.

15 But, I'd like to read part of the  
16 summary. This is the Forestry Association  
17 talking; of course, not me.

18 1. Public service is diminished  
19 through curtailed goods and services, and  
20 natural resources suffer when resource  
21 management functions are only a minor part of a  
22 large regulatory oversight department.

23 A. The programs of environmental  
24 protection and resource management are  
25 distinctly different.

1           B. In competition between human  
2 health concerns and resource management, it is  
3 inevitable that resource management is  
4 secondary, and we don't argue with that.

5           2. The current DER organization has  
6 not functioned as intended, particularly in  
7 regards to forestry and state parks.

8           A. Environmental protection has  
9 dramatically expanded while forestry and state  
10 parks has substantially declined.

11           B. The possibility of achieving  
12 needed funding increases for resource management  
13 is precluded as long as these functions remain  
14 in a department whose major focus is a higher  
15 profile public health and environmental  
16 protection.

17           In that regard I'd like to refer to  
18 the last paragraph just above the summary. A  
19 recent study by the University of Minnesota  
20 shows that resource management invariably  
21 suffers financially when combined with  
22 environmental protection.

23           Summary 3. State Parks and Forestry  
24 have a great economic and environmental impact  
25 on the entire Commonwealth and programs of this

1 magnitude deserve cabinet-level department  
2 status.

3 Two separate departments would  
4 rebuild, improve and enhance Pennsylvania's  
5 natural resources activities while strengthening  
6 vital environmental programs.

7 This statement was adopted by the  
8 Pennsylvania Forestry Association Board of  
9 Directors on September 29, 1993.

10 It's my understanding that this was  
11 reaffirmed on March the 16th of this year, and  
12 that the president of the association, Doctor  
13 John Peters, as soon as he gets a copy of the  
14 bill from the Reference Bureau is going to write  
15 to the chairman of the committee endorsing this  
16 bill. I think it's sort of an interesting note  
17 that the forestry group has gone full cycle.

18 I have given to the members of the  
19 committee, and this can be an addendum or  
20 something, not to your record, but this explains  
21 to me why forestry is important in Pennsylvania.  
22 This was published by the Forestry Association  
23 again in 1994. It includes the resurvey of  
24 forest industry and the development of forest in  
25 this state by the United States Forest Service

1 in 1993. The figures and the data that you see  
2 in this report are 1993 data. They will not be  
3 redone, I'm sure, for about another 10 years;  
4 maybe longer. It was 11 years since the last  
5 time this was done, but it shows the trend and  
6 shows how important in my mind forestry is.

7           Seventeen million acres of the state  
8 is wooded. It's a billion dollar enterprise. I  
9 looked at the grants given out by the Casey  
10 Administration in past years, and most of it, a  
11 good bit of the PETA money and all this other  
12 money has gone to new forest product industries.  
13 So, it's a big industry.

14           I want to also give to the Chairman of  
15 the committee and for the committee's use, 3  
16 documents that deal with the importance of parks  
17 on forestry economy. This is a report called  
18 "Impact of State Parks on Pennsylvania's  
19 Economy". It was done by the Pennsylvania State  
20 University in July of 1990. It proves that it  
21 generates well over \$500 million a year.

22           The second report is entitled  
23 "Economic Impact of Travel and Tourism in  
24 Southwestern Pennsylvania". This was done in  
25 1993. It was done by the Southwestern

1 Pennsylvania Historical Preservation Commission.  
2 It goes to Holidaysburg.

3 The last report is the "Economic  
4 Impact of Travel and Tourism in Southwestern  
5 Pennsylvania, The Impact of State Forest as a  
6 Recreational Resource". This was given to the  
7 department in January 10th of this year, '95.

8 I have also given to the staff a copy  
9 of the recent Pennsylvania Forest magazine.  
10 This is Volume 86, so it shows that the  
11 association is not something that's new. It's  
12 not a fly-by-night organization. I think it  
13 deserves some recognition.

14 Let me say the types of organizational  
15 structures for environmental and natural  
16 resource's activities as recommended by House  
17 Bill 1400 is not anything new or radical. It is  
18 similar, as the Secretary just said, to the  
19 structure of the federal government where  
20 environmental regulatory functions under the  
21 Environmental Protection Agency are separate  
22 from natural resource management functions which  
23 are predominately under the Department of  
24 Interior and the Department of Agriculture.

25 Now I'd like to review very briefly

1 some of the early history of the federal  
2 environmental program. As some of you well  
3 know, it started under health as it did in  
4 Pennsylvania. Pennsylvania started with a Clean  
5 Water Act of 1905, and Section 3 of that act  
6 created the Department of Health to oversee it.  
7 So, all the original pollution activities were  
8 health organized.

9 In the federal government it's a  
10 little bit the same way. The first  
11 environmental water quality activity was housed  
12 in the Department of Health, Welfare and  
13 Education under Secretary Gardner. At that time  
14 he worked in the Kennedy-Johnson's  
15 Administration. He was was in charge of what  
16 amounted to the early environmental functions.  
17 It was a health issue. Then as the  
18 environmental issues turned over into fisheries  
19 and other types of recreational uses, it was  
20 transferred from that department to Interior and  
21 overseen by Secretary Stewart Udall.

22 What happened? In the Nixon  
23 Administration, President Nixon by executive  
24 order created the Environmental Protection  
25 Agency. I think it's significant to point out

1 that that agency was created by an executive  
2 order and not by the action of the Congress.  
3 It's still that way today.

4 Now, many of us, including the  
5 National Wildlife Federation, the Sierra Club,  
6 the Audibon Society, in the last year the Bush  
7 Administration asked that this be raised to a  
8 cabinet structure. We failed. The last term of  
9 the Clinton Administration we had legislation to  
10 bring it up to a cabinet level. Again, we  
11 failed. Frankly, I don't know that it will be  
12 even introduced in this session of the Congress.  
13 We would like to get that up to a cabinet level.

14  
15 Now, you see, in the federal  
16 government we went sort of the reverse of what  
17 we are trying to do here. We went from Health  
18 and now we're trying to get it out of another  
19 agency. When you had this in Interior, why was  
20 it lost in Interior? You've got the National  
21 Park Service, the Bureau of Land Management.  
22 Goodness sakes. You've got so many other  
23 things.

24 U.S. Geological Service, it was lost,  
25 so it gave it greater statute by putting it in

1 the EPA. That's exactly why it was done. It  
2 raised it into a greater statute. Right now we  
3 are sort of lost over here in DER when we're  
4 talking about forestry type of things.

5 Now, and as the Secretary has already  
6 said, this type of split is very common in most  
7 other states. This type of organization was  
8 recommended in the only detailed study of State  
9 Environmental Natural Resources by the title,  
10 quote, State Environmental Management by Haskel  
11 and Price. As I recall, this study and book was  
12 sponsored by the Ford Foundation. They  
13 recommended against the Environmental Super  
14 Agency and for the type of grouping of 2  
15 separate cabinet-level departments as  
16 recommended by House Bill 1400.

17 Haskel and Price pointed out:

18 1. In environmental super agencies  
19 there's a point of counterproductivity that is  
20 reached when too many programs are mixed within  
21 one operational department.

22 Secondly, in a super agency, it is  
23 likely that one program will dominate another.  
24 That's exactly, that's exactly what has happened  
25 in DER. Why can I say that?

1                   Well, if you look at some of the data  
2                   in this little document, if you look at the data  
3                   in the department, environmental protections  
4                   increased by thousands of employees. Forestry  
5                   and Parks have a lot fewer employees than when I  
6                   was Secretary, a lot fewer. You talked about  
7                   money. They said, well, we make DER in 1970 we  
8                   are going to save money. I said that's  
9                   ridiculous; ridiculous. They saved a little  
10                  money on my salary. I did this work for 3  
11                  secretaries and still only got \$25,000.

12                  When I left the department it was  
13                  costing about \$125 million. What is the budget  
14                  for DER today? 588 million. If you look at the  
15                  combined request here, it will be over 600  
16                  million. So, organizational structure isn't  
17                  what makes the department cost money. When you  
18                  pass a tank act; when you pass a recycling act;  
19                  when you pass a nuclear management act; when you  
20                  go down this list and there's lots of them,  
21                  that's when you create cost to the government of  
22                  Pennsylvania. It's not in a few secretaries.  
23                  That's what increases the costs. I'm getting  
24                  off my subject a little bit here.

25                  That is the main issue as I see it.

1 You have got all these new programs, increased  
2 all the effort and it's a much more complex job  
3 than when I was Secretary. You delegate as much  
4 as you can, but you can't delegate when you go  
5 to the Governor and argue for your budget. He  
6 says to you, Mr. Secretary, what are your  
7 problems? Well, you say, I've got to get this  
8 low-level radiation site. That's Number 1. I'm  
9 not going to meet the law now. I'm a couple of  
10 years behind already.

11 We need a hazardous waste site in this  
12 state. The Governor made a big fuss about  
13 bringing garbage into the state, but, hell, we  
14 are 360,000 tons of hazardous waste out of the  
15 state every year. We've got to have a hazardous  
16 waste site. We have to resolve this gas  
17 omission problem. When you go down the list  
18 does he say anything about finishing Swatara  
19 State Park out here to the east of Harrisburg?  
20 Of course not. They aren't the biggest issues  
21 the Secretary faces, not by a long shot. I  
22 agree with that. I agree with that. But, that  
23 doesn't mean that Forestry and Parks are not  
24 important, not by a long shot. They are  
25 important.

1           Well, I'll skip a lot of that (looking  
2           at notes). It's important I think to point out,  
3           I said that earlier, we should not group  
4           management activities with regulatory  
5           activities. That was the point, I think, that  
6           Secretary Udall made earlier on when he talked  
7           with Governor Shapp.

8           All permitting and regulatory  
9           activities should be in one department.  
10          Therefore, there's no need to change the  
11          operational structure of DER other than that  
12          recommended in House Bill 1400. Some people  
13          said, well, we've got to have a Department of  
14          Energy. We've got to split the mining office.  
15          You need permits to mine. So, anything that  
16          needs a permit must remain in the Environmental  
17          Protection Department. I was committed to that  
18          when they made DER in the first place. I said,  
19          well, we'll take dams out of Forests and Waters.  
20          We'll take encroachments out of Forests and  
21          Waters. We'll allow that to go over into  
22          Environmental Protection, Environmental  
23          Regulatory Agency, but we ought to have  
24          something like natural resources.

25          Of course, the creation of separate

1 cabinet-level departments for Environmental  
2 Protection and Natural Resources will encourage  
3 but cannot guarantee effective policies and more  
4 equitable funding. That point was raised by one  
5 of the committee. The vergence of Natural  
6 Resource Management will at least be eliminated.  
7 Ultimately success in turning the corner will  
8 depend on the quality of a new Department of  
9 Conservation and Natural Resources. No question  
10 about that.

11 The quality of the department staff,  
12 the law is passed by you, the General Assembly,  
13 and funding decisions arrived at through the  
14 political and budgetary process. But, at least  
15 there will be a voice in the cabinet which we  
16 don't have at the present time. I think that  
17 the Secretary made a very good presentation on  
18 the question and answer part that he had given  
19 with his testimony today. I don't know how I  
20 could improve on that. I would endorse it  
21 completely.

22 I enthusiastically support the passage  
23 of House Bill 1400, and I predict it will be  
24 highlighted in the historical development of  
25 environmental protection and resource management

1 in Pennsylvania in the future years. I'll be  
2 glad, Mr. Chairman, to try to answer any  
3 questions that the committee might have.

4 CHAIRMAN REBER: Thank you very much,  
5 Doctor Goddard, and your remarks were very  
6 enlightening. I learned a long time ago from my  
7 professor in trial advocacy and procedure course  
8 that when you hear everything you want to hear  
9 from a witness you certainly don't go back and  
10 open it up for any additional questions. So, I  
11 have no questions of you.

12 I thank you very much for taking the  
13 time. Do any gentlemen to my left have any  
14 questions of Doctor Goddard; ladies and  
15 gentlemen, or gentlemen to my right?  
16 Representative Hershey is recognized.

17 REPRESENTATIVE HERSHEY: I don't have  
18 any questions. I like to listen to people who  
19 lived longer than I did and share with some of  
20 the ups and downs. I enjoyed that dialogue. I  
21 appreciate it and I respectfully thank you.

22 DOCTOR GODDARD: Thank you, sir.

23 CHAIRMAN REBER: Chairman George.

24 REPRESENTATIVE GEORGE: Doctor  
25 Goddard, you and I have been debating this issue

1 for 20 years. I remember 20 years ago you  
2 insisted that the department was too big. I can  
3 remember when you sent Beecher Chamber  
4 (phonetic) back to State College didn't have a  
5 job, Department of Mines.

6 DOCTOR GODDARD: We had a good job at  
7 Penn State.

8 REPRESENTATIVE GEORGE: You insisted  
9 that it was too big. I'm asking you one  
10 question. What useful purpose does migrant  
11 workers have in the Department of Environmental  
12 Resources?

13 DOCTOR GODDARD: It should not be  
14 there.

15 REPRESENTATIVE GEORGE: What useful  
16 purpose does the Department of Community  
17 Facilities have in the Department of Resources?

18 DOCTOR GODDARD: Well, if you are  
19 talking about on-lot sewage and that type of it,  
20 I think --

21 REPRESENTATIVE GEORGE: I'm talking  
22 about, Mr. Secretary, if I can call you that,  
23 investigating the shrouds and the cooking  
24 shrouds and eateries and barrooms. What  
25 purpose, useful purpose?

1 DOCTOR GODDARD: No good. I agree  
2 with your action of the General Assembly to take  
3 food inspection out of DER last year and move it  
4 to Agriculture. Some of these things do not  
5 belong in DER.

6 REPRESENTATIVE GEORGE: What purpose,  
7 Mr. Secretary, do we put forth to good use when  
8 we remove specific entities and facilities into  
9 a department that knows nothing about them, such  
10 as some years ago when they created the  
11 department under your tenure, the -- out of the  
12 Department of Labor, they took blasting and  
13 things of that nature and put it into your  
14 department?

15 DOCTOR GODDARD: I think there's some  
16 logic, Representative, to that because it was a  
17 permit. They had to have a permit. I think the  
18 premise that everything that needs a permit that  
19 deals with the environment ought to be in one  
20 agency like Environmental Protection is a good  
21 one. I would endorse that.

22 REPRESENTATIVE GEORGE: There's  
23 permits that are still being utilized in the  
24 other departments. The point I'm trying to make  
25 is, when they combine the Department of

1 Environmental Resources, they disband and done  
2 away with the Department of Mines. What we are  
3 doing here I'm glad you are in favor, but we are  
4 not transferring any departments that should be  
5 transferred, like the ones we mentioned, isn't  
6 that true?

7 DOCTOR GODDARD: I wouldn't call those  
8 things like vector control or those things  
9 departments, they are functions --

10 REPRESENTATIVE GEORGE: I'm talking  
11 about migrant workers. I'm talking about --

12 DOCTOR GODDARD: Well, I think they  
13 can be moved.

14 REPRESENTATIVE GEORGE: Shouldn't they  
15 be back in the Department of Health whence they  
16 came?

17 DOCTOR GODDARD: I would agree with  
18 that --

19 REPRESENTATIVE GEORGE: I thank you,  
20 Mr. Secretary.

21 DOCTOR GODDARD: -- a hundred percent.  
22 I argued against and I think they belong back  
23 there now. They don't have anything really to  
24 do with the total environmental problem of the  
25 state. Thank you.

1           CHAIRMAN REBER: Thank you, Chairman  
2           George. Representative Rubley.

3           REPRESENTATIVE RUBLEY: Doctor  
4           Goddard, I'd like to ask you how you feel about  
5           removing the powers of the Environmental Quality  
6           Board to promulgate rules and regulations?

7           DOCTOR GODDARD: I supported the  
8           Environmental Quality Board when I was  
9           Secretary. Now after I left the job they  
10          created this Environmental, what's it called,  
11          Regulatory Commission. Isn't that the name of  
12          it?

13          CHAIRMAN REBER: The Independent --

14          DOCTOR GODDARD: Independent  
15          Regulatory Review Commission, which I think is a  
16          duplication of effort. I really do. When there  
17          was debate several years ago trying to eliminate  
18          it, I worked hard to try to have that agency  
19          abolished.

20                 When I was Secretary--I hate to refer  
21                 to myself--but Governor Shapp used to get upset  
22                 when we couldn't get a regulation changed in 120  
23                 days, 4 months. I remember going to a Citizens  
24                 Advisory Council meeting when Mark McClellan was  
25                 the Executive Director. He brought a large

1 chart. You know how long it took them in that  
2 time in the Thornburgh years to change a rule or  
3 regulation? Some of them 33 months, almost 3  
4 years. That's what started to bring people down  
5 on DER. So, as long as you have an Independent  
6 Regulatory Review Commission, I really can't  
7 quarrel too much about not having an EQB. You  
8 have to have one for the other, but I don't see  
9 why you need to have both. But, that's not a  
10 big issue with me. I want to get Forestry and  
11 Parks out of DER.

12 CHAIRMAN REBER: Any further  
13 questions?

14 DOCTOR GODDARD: From some discussion  
15 before about the input of the citizenry, don't  
16 forget they have a very fine Citizens Advisory  
17 Council. That's one thing I endorse in the new  
18 department is the Citizens Advisory Council.

19 I'll take credit for one thing when we  
20 talked about DER in '70. The Environmental  
21 Citizen Advisory Council could have been all of  
22 one political party. The Governor appoints 6  
23 people, the Senator Pro Tem appoints 6 people, 6  
24 people appointed by the Speaker of the House.  
25 It was conceivably they could all be Republicans

1 or they could all be Democrats. That would be  
2 bad, I think.

3 I did lobby in the General Assembly in  
4 '70 and got them to split it 3, 3, politically  
5 all the way along. I think one reason the CAC  
6 has been very good in DER has been that mix of  
7 people. I see they recommend that in House Bill  
8 1400.

9 I think you don't forget, especially  
10 the Citizens Advisory Group by law to the  
11 department will be a Citizens Advisory Group to  
12 the new department head by law. I think that's  
13 a good idea, but I think it's important to split  
14 them. Not that I have anything against  
15 Republicans or anything against Democrats. I  
16 like them both.

17 CHAIRMAN REBER: Representative  
18 Vitali.

19 REPRESENTATIVE VITALI: Thank you. I  
20 note in passing it's my information that Mark  
21 McClellan wanted to be here today and testify on  
22 behalf of the unified DER, but was not allowed  
23 to testify.

24 DOCTOR GODDARD: Mark McClellan?

25 REPRESENTATIVE VITALI: Correct.

1 DOCTOR GODDARD: That has nothing to  
2 do with the rules and regulations.

3 REPRESENTATIVE VITALI: I understand.  
4 I do want to say I have a great respect and  
5 admiration for you and support the goals.

6 DOCTOR GODDARD: That's mutual. I  
7 respect you, sir.

8 REPRESENTATIVE VITALI: Thank you. I  
9 just want to double check my figures because I  
10 asked people from Democratic Research to try to  
11 quantify the effect of the budget on Parks and  
12 Forests. They tell me that in fiscal year  
13 1990-1991 there was 57.6 million in Parks and  
14 Forests. That increased for fiscal year 1994-95  
15 to 62.2 million, or a 20 percent increase in the  
16 funds -- 20.5 percent increase for the funds of  
17 Parks and Forests. It sounds like they are  
18 getting an increase in funding.

19 I think the total department's budget  
20 increased about 27 percent over that period.  
21 But, it sounds like, and I'm reading this paper  
22 from the Parks and Forestry that says there's  
23 been a decline in Parks and Forests. I'm just  
24 trying to reconcile that information.

25 DOCTOR GODDARD: I don't have enough

1 data to debate it, Mr. Representative.

2 REPRESENTATIVE VITALI: I understand.

3 DOCTOR GODDARD: But, in total dollars  
4 it hasn't worked that way, not at all.

5 I have a paper that I wrote with  
6 Senator Keller in March of 1988. When we wrote  
7 a concept paper proposing the same thing,  
8 unfortunately, Senator Keller got defeated so my  
9 sponsor wasn't here to help me.

10 If you read that document, I think  
11 it's about the fiscal year '86-87, the continued  
12 imbalance within DER is evident in the fact that  
13 out of the 66 million in additional spending  
14 proposed for the department this year, almost 63  
15 million will go to environmental protection  
16 activities and only 3 million will go to  
17 resource management activities.

18 That 3 million didn't even carry the  
19 complement forward. It didn't even increase the  
20 amount of money you needed for Social Security,  
21 retirement money and all the rest of it. They  
22 had to lose personnel. I agree with you. I  
23 don't understand where this conflict is in these  
24 figures.

25 I think another important point we

1 must make, Mr. Representative, that part of the  
2 Department Forestry budget has had to be made up  
3 by augmentation. That bothers me. They are  
4 getting about \$10 million a year now from  
5 stumpage sales. Frankly, I think there ought to  
6 be appropriated by the General Assembly.

7 I'm not a strong advocate of  
8 earmarking monies. I think all monies collected  
9 by agencies ought to go into the Treasury, and  
10 then Treasury budget them back out again. But,  
11 that was the only way forestry was saved was  
12 getting the permission to roll over some of  
13 their timber sale money. I'm sure a good bit of  
14 that money you're maybe talking about, this  
15 augmentation money; not appropriation money, but  
16 I can't be sure of it.

17 REPRESENTATIVE VITALI: I'm relatively  
18 new to the whole budgetary process. It appears  
19 what's really key in determining how much  
20 Environmental Protection in general, Parks and  
21 Forests in particular are getting, it seems like  
22 the Governor and the 4 caucus leaders and a few  
23 others just meet in this room, may or whenever,  
24 and they decide these things. I'm wondering if  
25 that's really what's going to decide whether

1 Parks and Forests get their fair share as  
2 opposed to this proposed bifurcation.

3 DOCTOR GODDARD: When you have a  
4 cabinet member that goes and talks to the  
5 Governor, he also goes and talks to the  
6 important legislative leaders. He also can come  
7 and have a budget hearing just as the Secretary  
8 for Environmental Protection. You have a better  
9 chance, obviously. If you don't have a voice at  
10 the high level, you've lost out. Even if you  
11 have an assistant that does, you know, parks and  
12 regulation, that's not the same as having a boss  
13 there talking about parks and forest, so, you  
14 lose.

15 Exactly the same way it happened in  
16 federal government. When Environmental  
17 Protection was submerged down in the Department  
18 of Health, Education and Welfare, they were  
19 submerged in the Department of Interior, you  
20 didn't hear very much about it, did you? You  
21 didn't hear about it until you got an  
22 Environmental Protection Agency. So, it had a  
23 better image. It had a better public focus.

24 You can't deny the fact that when you  
25 have a department headed by a secretary, it will

1 have a lot more input in the budgetary process  
2 of the Secretary of the budget, with the  
3 Governor, and also with the legislature. I'm  
4 convinced of that. I'm convinced of that.

5 REPRESENTATIVE VITALI: But nothing  
6 under the current setup prevents Ridge from  
7 pushing for more monies for Parks and Forests?

8 DOCTOR GODDARD: That's right, but he  
9 doesn't have anybody over there hounding on his  
10 desk. That other Secretary admitted that.

11 REPRESENTATIVE VITALI: Hopefully you  
12 can do something.

13 DOCTOR GODDARD: He won't talk to me.  
14 I'm not a cabinet member. I can't go up to the  
15 mansion and talk. That's the way the system  
16 works. You've got to have a voice at the level.

17 They tell people, well, you ought to  
18 combine the Game and Fish Commission. I oppose  
19 that because, once you do that, then you are  
20 going to have a deputy one for game, one for  
21 fish. If one guy isn't interested in the other,  
22 you lose out. When the system works good, you  
23 don't tinker with it. You've got to have a  
24 voice. You have a voice when you have a  
25 structure that you represent.

1                    REPRESENTATIVE VITALI:  Someone like  
2                    Art Davis, someone made the point that he made  
3                    the point of visiting every state park during  
4                    his tenure and very concerned with those issues.

5

6                    DOCTOR GODDARD:  Commissioner Forrey  
7                    who is going to testify did that too, better  
8                    than I did.

9                    REPRESENTATIVE VITALI:  Yeah.  He had  
10                    a good concern about those issues.  In fact, it  
11                    seems, if these figures are correct, the budget  
12                    went up 20 percent in the past 5 years.  I mean,  
13                    don't you agree if you have a secretary  
14                    committed to those issues that you can -- like  
15                    Secretary Davis was, that you could get funding,  
16                    appropriate monies.

17                    DOCTOR GODDARD:  I don't know how -- I  
18                    don't want to get into criticizing people in the  
19                    past, but I worked very, very hard when I was a  
20                    Secretary of the department and I didn't have as  
21                    many activities as the department has today.  I  
22                    talked about the new tank act, the new recycling  
23                    act, new nuclear management act, the radon  
24                    program.

25                    For 8 years I never took a vacation.

1 I was never away a day except for a detached  
2 retina operation. Even with that kind of level,  
3 I didn't have very much time for my old forestry  
4 activities, my old park activities. I spent  
5 most of it on environmental protection. I ran  
6 all the public hearings. I can tell you right  
7 now, the last Secretary didn't run very many  
8 public hearings. I went to public hearings that  
9 the deputies didn't even run to testify.

10 I think if that happens you are losing  
11 something from the level of the administration  
12 of the department. You send somebody else to  
13 run the hearing, he tells the Secretary what he  
14 wants to tell them. If you want to hear what  
15 goes on out there, you better damn well be out  
16 there yourself. When you have too many things  
17 to do you can't do the job, Mr. Representative.  
18 I'm convinced of it. You can delegate all you  
19 want, but it doesn't work. You've got to have  
20 more hands-on. You've got to have more hands-on  
21 operation.

22 REPRESENTATIVE VITALI: We've heard  
23 some discussion, I think one of the big problems  
24 that we are dealing with in the legislature is  
25 district perceived unresponsiveness of the DER,

1 delays in permitting, delays in public relation,  
2 lack of friendliness and user friendliness from  
3 the DER personnel, lack of coordination of the 6  
4 DERs. Will elevating Parks and Forests to  
5 cabinet-level post effect that at all?

6 DOCTOR GODDARD: It would mean that  
7 the Secretary of Environmental Protection  
8 doesn't have to worry about Parks and Recreation  
9 at all. They admit they spend maybe 10 percent  
10 of their time on it now; maybe 15 percent. If  
11 they don't have Parks and Recreation to concern  
12 themselves about, they can take that other 15  
13 percent and put it in Environmental Protection,  
14 because that's a full-time job. I'm convinced  
15 of that, more so today than when I ran. It  
16 should help. That's the only thing he's going  
17 to do. If you are the head of Environmental  
18 Protection Agency and that's the only thing you  
19 have to do, you can do a better job than if you  
20 put the National Park Service under EPA. You  
21 wouldn't think of that for a minute.

22 REPRESENTATIVE VITALI: But, aren't you  
23 saying that one reason for getting Parks and  
24 Forests to a cabinet-level post, and one of the  
25 current problems is, that the Environmental

1 Protection area is drawing off resources from  
2 Parks and Forests; in other words, you have some  
3 at the top--the last administration was Art  
4 Davis--and he, given a limited size of the pie,  
5 had to make decisions and prioritize versus  
6 enforcing certain environmental laws versus  
7 monies for Parks and Forests. I mean, won't  
8 something like this, perhaps, draw money away  
9 from Environmental Protection?

10 DOCTOR GODDARD: As I said earlier, I  
11 don't think the organizational structure has  
12 anything to do with the amount of money. When I  
13 left DER was only costing the state 125 million.  
14 Today DER cost 588 million this year's budget.  
15 Look at that increase. That had nothing to do  
16 with organizational structure at all. It all  
17 had to do with the new laws that were passed,  
18 the new programs that the General Assembly  
19 initiated. That's where the costs come from.

20 It might cost a little more, it might  
21 cost a little less, but at least it has a voice.  
22 It has a man that goes out around the state and  
23 lectures on parks and forestry. When the  
24 Secretary of DER goes out and talk, what does he  
25 talk about? He doesn't talk about finishing

1 Swatara Park. He talks about a better  
2 regulatory program. You heard that today.

16

3 He talks about, what's this commission  
4 for the 21st Century? He's not going to talk  
5 about some other things that deal with  
6 increasing the timber sale program. That's just  
7 human nature. I don't quarrel with that, but  
8 that's human nature. He's going to talk about  
9 the things that draw the public interest.

10 When you had the problem at Three Mile  
11 Island, that's going to draw their attention.  
12 It just draws the strength away from resource  
13 management. There's no question about it. As I  
14 said in my little paper, obviously, what happens  
15 depends on the leadership; what you people do as  
16 legislators, what you do with the budget for the  
17 department, of course, but at least it isn't  
18 submerged, lost in a major monolithic, super  
19 agency. That's the point I'm trying to make.

20 REPRESENTATIVE VITALI: Thank you.

21 CHAIRMAN REBER: Thank you,  
22 Representative Vitali. Any questions?

23 ( No response )

24 CHAIRMAN REBER: Thank you very much,  
25 Doctor Goddard. I appreciate your testimony,

1 and let the record reflect that the documents  
2 you offered to the committee will be made part  
3 of the record and staff will take possession of  
4 the same for the informatior use of the  
5 committee members.

6 DOCTOR GODDARD: I appreciate being  
7 here. I hope I didn't ramble around too much,  
8 but I'm enthusiastic. I lost a little bit of  
9 the technique of this because I've been out of  
10 practice.

11 CHAIRMAN REBER: No. You did as well  
12 as you've always done when I've heard you in the  
13 past. Thank you.

14 The next person to testify is John  
15 Oliver, President of Western Pennsylvania  
16 Conservancy.

17 MR. OLIVER: Mr. Chairman, members of  
18 House Environmental Resources and Energy  
19 Committee: I think you'll have to admit I have  
20 a tough act to follow, but I'll try.

21 Thank you very much for this  
22 opportunity. On behalf of the Conservancy, I'm  
23 delighted to be here today to express our strong  
24 support for House Bill 1400. This legislation  
25 as you heard would create the DCNR, change the

1 name DER to DEP, is an idea whose time has come  
2 and deserves your careful consideration.

3 The primary focus of this measure as  
4 we have heard already is the 2.3 million acres  
5 of our magnificent state parks and forests which  
6 contains some of America's finest lands and  
7 waters. Only Alaska and California have more  
8 state parks, and Pennsylvania's 2 million acres  
9 of state forest land is one of the largest east  
10 of the Mississippi.

11 Our public lands generate significant  
12 economic benefits to the Commonwealth. Visitors  
13 to state parks spend over \$563 million annually,  
14 and state forest lands are an integral part of  
15 Pennsylvania's four and a half billion dollar  
16 forest products industry. For too long they  
17 have been on the side lines in DER.

18 It's now time to showcase their  
19 greatness and to enhance their contributions to  
20 Pennsylvania's \$8.5 billion tourism industry.  
21 Our parks and forests will find a new home in  
22 DCNR whose secretary, as Doctor Goddard very  
23 eloquently stated, will be their spokesperson at  
24 the highest levels of government.

25 The legislation also transfers from

1 the Department of Community Affairs the Bureau  
2 of Recreation and Conservation into this new  
3 department. Again, not enough is known about  
4 this very fine bureau's land conservation  
5 activities. The bureau primarily addresses  
6 community open space needs, which are vital to  
7 the quality of life in cities and towns across  
8 Pennsylvania. DCNR will be better able to  
9 promote their work as well as to aggressively  
10 pursue new opportunities through Key 93 bond  
11 monies for rivers, greenways and rails-to-trails  
12 projects, to name a few.

13 As we have heard, environmental  
14 protection in DER has been a subject of fast and  
15 furious action over the last 25 years. Governor  
16 Ridge and Secretary Seif are committed to making  
17 serious reforms in environmental regulation in  
18 the new Department of Environmental Protection.  
19 The extensive use of command and control will be  
20 replaced with cooperation, assistance, and more  
21 streamlined permit reviews.

22 Our free market economy will be asked  
23 to play a much larger role in solving air, water  
24 and waste problems. Good science, sound  
25 economics and technological innovation will be

1 the keystone elements in departmental decision  
2 making. Two entirely new entities, the Office  
3 of Pollution Prevention and Compliance  
4 Assistance, and the 21st Century and  
5 Environmental Commission are creative new ideas  
6 in state government and will demand considerable  
7 attention.

8 Two aspects of this legislation has  
9 raised concern. The EQB question is one. The  
10 EQB will be charged with specific functions,  
11 while the Secretary will have the sole  
12 responsibility for developing regulations. We  
13 believe this is a positive move that will  
14 simplify the regulatory process, and allow the  
15 opportunity to try new, more open ways for  
16 public participation.

17 For example, Secretary Seif mentioned  
18 the regulation, negotiated rule making, or  
19 reg-neg, that has proved to be successful at the  
20 federal level. That's because parties dealing  
21 with a particular issue are involved in the  
22 early stages of regulation drafting. This  
23 allows all sides to be fully presented before  
24 legislation is considered. Secretary Seif said  
25 he's trying it on the Special Protection Waters

1 Program, and if it works here, it has great  
2 potential.

3 DER is also determining how to make  
4 better use of the 33 advisory groups presently  
5 associated with DER programs. As a member of  
6 DER's Citizens Advisory Council for 12 years, I  
7 am proud of their contribution. The process  
8 works, and if properly, utilized advisory groups  
9 can make meaningful contributions to the  
10 Commonwealth's environmental programs. I'm  
11 delighted to see that there's a similar advisory  
12 council created for DCNR.

13 The separation of DER and the 2  
14 agencies, aforementioned agencies, can take  
15 place without creating any bureaucracy or cost.  
16 The 2 departments can co-exist peacefully in the  
17 same building. They can share staff and  
18 equipment through memorandums of understanding.  
19 If a scalpel is used rather than a butcher  
20 knife, the separation can take place with a  
21 minimum of disturbance. As time goes on, I  
22 would even expect cost savings to materialize as  
23 more programs are critically evaluated.

24 In conclusion, the Western  
25 Pennsylvania Conservancy views House Bill 1400

1 as a win-win situation. The new DEP, under the  
2 leadership of Secretary Seif, will be able to  
3 concentrate on advancing change and innovation  
4 in the way we conduct the business of environ-  
5 mental regulation. They need our support, and  
6 this committee can get that off to a good start  
7 by establishing the DEP.

8 A cabinet level Department of  
9 Conservation of Natural Resources will be able  
10 to accentuate our public lands and deliver high  
11 quality recreation services to our  
12 Commonwealth's citizens and neighbors. We will  
13 be able to fully appreciate the value and true  
14 worth of our state parks, forests, local  
15 greenways and natural areas to the quality of  
16 our lives.

17 House Bill 1400 presents an exciting  
18 opportunity during the 25th anniversary of Earth  
19 Day. We respectfully urge you to pass this  
20 legislation as a fitting tribute to a new day of  
21 environmental protection and resource management  
22 in Pennsylvania. Thank you very much.

23 CHAIRMAN REBER: Thank you, Mr.  
24 Oliver. Any questions to my left?  
25 Representative Mihalich.

1                   REPRESENTATIVE MIHALICH: I have a  
2 comment then; perhaps, a question. I have a lot  
3 of respect for your organization. I have  
4 watched many of the things that they have done  
5 and they are really one of the out in the  
6 forefront in this area of conservation and  
7 forestry. I'm aware of some of the interests  
8 that the organization took in purchasing land,  
9 protecting it, and conveying it to the proper  
10 parties.

11                   However, I want to, perhaps we'll just  
12 chalk this up to your own experience. I think  
13 you were a little far ranging and perhaps  
14 commenting on things in which Conservancy  
15 doesn't have an interest or should not have an  
16 interest in some things that might be a little  
17 controversial.

18                   One of the things that you allotted to  
19 here in your remarks was permit review. I don't  
20 know what that has to do with why you are here  
21 today or why we are here today. But, it  
22 certainly is not an idea whose time has come to  
23 put that into that category now. I don't want  
24 to get into a debate on it here because that's  
25 not the reason we are here today. I don't think

1           you should use that as saying well, this is just  
2           another reason why we should adopt 1400. I just  
3           wanted to make that comment. I don't care if  
4           you reply or not. I thought it was  
5           inappropriate.

6                     If the Chairman here wants to go into  
7           another session and we'll talk about permit  
8           review again, we certainly can do that, but this  
9           is not the day for that; nor are other sensitive  
10          matters dealing with DER should be brought into  
11          this discussion today. Thank you.

12                    CHAIRMAN REBER: All right. Thank you  
13          very much, Mr. Oliver. I appreciate your  
14          testimony. In honor of Secretary's Week, we are  
15          going to call the third Secretary, or the former  
16          Secretary to the witness stand next--the former  
17          Secretary of the Pennsylvania Department of  
18          Environmental Resources, Nicholas DeBenedictis.  
19          Good morning.

20                    MR. DeBENEDICTIS: Thank you very  
21          much. I feel privileged to be able to talk on  
22          House Bill 1400. It was a very far-ranging  
23          proposal -- it's the first big push correction  
24          ever to the Department of Environmental  
25          Resources which is a very dramatic step that the

1 Commonwealth took back in the early '70's before  
2 most states, before EPA was even formed. We  
3 have always been a forerunner, I think, in  
4 structure as to support the environmental  
5 movement.

6 First of all, I'll paraphrase my  
7 statement rather than reading it. Basically,  
8 I'm here also to support the idea of the  
9 separation of the current Department of  
10 Environmental Resources into the 2 departments.  
11 Not to digress, but I'm excited about some of  
12 the ideas that now can be focused on the new  
13 department, which would be things like the 21st  
14 Century thinking, long range rather than short  
15 range which, unfortunately, happens in  
16 government because crises are here today and you  
17 have to handle them. But, it's always good idea  
18 to have some focus where you want to be in 5,  
19 10, 20 years.

20 Some of the ideas, again, of  
21 mid-course directions and some of the massive  
22 amounts of permitting, permit reviews, and so  
23 on, keep growing and growing each year. It's  
24 time to step back and focus on how to handle  
25 them in new and more efficient ways.

1 I think that the cornerstone of the  
2 proposal to do these things, obviously is to get  
3 more focus in each department. It's not a new  
4 idea because I remember Doctor Goddard coming to  
5 me when I was Secretary and talking about the  
6 merits and so on, because at that point we  
7 thought the department had grown to an almost  
8 unmanageable level.

9 I can say from personal experience,  
10 there's only been, I think 6, including  
11 Secretary Seif, 6 cabinet secretaries who have  
12 headed the Department of Environmental  
13 Resources. It has been a job that's had some  
14 longevity. Of course, this a fairly new  
15 department in the history of government. It's  
16 one where it's not a maintenance job. It's one  
17 of increasing complexities.

18 When the doctor was talking earlier  
19 about all the programs that were consuming his  
20 time, most of them probably were in the water  
21 resource area, the wastewater area, because in  
22 the early '70's the sewage plants and the dam  
23 projects were taking up a lot of time. Not any  
24 less controversial than the things that I was  
25 involved in which were the radons, TMI cleanups

1 and so on; just different topics, but the same  
2 concerned public and the same need for the top  
3 official of government in that area to be seen  
4 and heard.

5 I don't think you can delegate that to  
6 bureau directors, and so on. They want to know  
7 that the Governor's representative hears them,  
8 and it's an immense importance, and believe me,  
9 you do learn by going to these hearings. It's  
10 not always the most pleasant experience when you  
11 are a DER Secretary because you usually don't  
12 get carried out on their shoulders, but it's  
13 important, and I did learn a lot at those  
14 meetings. That did change some of the funding  
15 in our budget requests and also some of the  
16 policy direction we had to take.

17 My statement says when I retired.  
18 Actually, when I was retired in 1986, after the  
19 end of the Thornburgh Administration and  
20 prepared to pass the mantel to a good friend,  
21 Art Davis, who is becoming the next Secretary,  
22 we basically recollected and I talked about when  
23 I first took over which was only 4 short years  
24 prior, the programs that were in place that I  
25 had to draw up a 4-year plan to implement,

1 budgeting-wise and also from a standpoint of  
2 personnel, new directions, new regulations, new  
3 legislation needed.

4           Then I ticked off the programs that  
5 had been adopted either because of legislative  
6 initiative, federal initiative, which then the  
7 legislature had to react to, or just a straight  
8 Pennsylvania crisis where we basically took the  
9 lead for the nation. They were all added on the  
10 programs that I inherited from Secretary Duncan  
11 and Jones. These were new things that Art Davis  
12 had to carry on. I'm sure if Art were here  
13 today he would tell you about the 4 or 5 things  
14 that were added during his 8 years, and so on.  
15 I just want to tick off a couple because these  
16 were all added just during the period of '81  
17 through '86.

18           We began the state's toxic waste  
19 clean-up program, our own State Super Fund  
20 Program. We had started a whole new solid waste  
21 program which has been amended again in Act 101,  
22 but we had the landfill crisis when they were  
23 being shut down because of leaking landfills.  
24 We started the initial hazardous waste  
25 facilities plan and started searching for the

1 yet to be found hazardous waste site for the  
2 Commonwealth.

3 We expanded the Safe Drinking Water  
4 Act and took primacy from the federal government  
5 on that program. We started the Chesapeake Bay  
6 initiative, which has consumed a lot of dollars  
7 and time, but it really became very successful  
8 in the 4-state initiative. We initiated the  
9 Low-Level Radioactive Waste Act which was no  
10 small feat because we had to get 4 states  
11 agreeing, and then we had to agree to be the  
12 repository for the radioactive low-level waste  
13 sites and set up the compact, and that all took  
14 legislative initiative. Let me commend many of  
15 the people in this room who had to vote for  
16 that. It was not an easy thing to vote for, but  
17 it was the right thing to do.

18 We started the Water Facilities Loan  
19 Board, Stan Art (phonetic) and Governor Casey  
20 expanded into PennVest. I didn't see any when I  
21 came up here, but if I remember we had the black  
22 flies which no one knew how to solve along with  
23 the Fish Commission. Even though they didn't  
24 like it at first, we started the spraying  
25 program which has resolved that.

1           They were the things that were started  
2           and had to be continued and improved upon by the  
3           next administration.

4           Probably the greatest fear of DER  
5           Secretary has is the things that they can't even  
6           estimate that are coming; that even if you are  
7           planning your focus, something could come up one  
8           day and which it can consume your time for maybe  
9           a week or maybe a month. I'll give you a couple  
10          of examples of that.

11          First of all, we were the only state  
12          that I know of that had a massive underground  
13          mine fire that had national attention. The  
14          Secretary of Interior actually visited the  
15          Centralia mine fire. The Governor used to kid  
16          me that I got on Nightline more than he did.  
17          Well, that's because of the controversial issues  
18          that usually get the national news were  
19          basically environmental issues. Centralia mine  
20          fire being a good example.

21          The one day that I was told, it was  
22          the day before Christmas, that our radiation  
23          protection people felt we should ask a family to  
24          move out of their home right before Christmas  
25          Eve because we thought that they were

1 contaminated by something called radon, which  
2 nobody had ever heard of before. That was the  
3 Reading problem. We discovered it here in  
4 Pennsylvania. It then became a national program  
5 and we've taken the leadership role.

6 That was a situation where the Health  
7 Secretary and myself had to set standards  
8 immediately because there were no CDC standards.  
9 There were no EPA standards or no DOE standards.  
10 They are the kind of things that you can't plan  
11 for. They are vivid memories, but they are  
12 probably something Art never had to address  
13 because they were one-time situation. Believe  
14 me, there will be something that comes up in  
15 government, as you all realize, that will  
16 consume some time. You just can't put it aside  
17 and wait until the next day because we look for  
18 government executives to handle them.

19 I reviewed the take of time I was  
20 putting in. I've never shied away from work. I  
21 don't think any Secretary does. I think Doctor  
22 Goddard is probably accurate in over 20 years he  
23 served the Commonwealth you could probably count  
24 the number of days he actually took off. Even  
25 regardless of that, if you think you can get

1 away with 8 to 10 hour a day, that's probably a  
2 half day. The thing that bothered me the most  
3 was not the length of the days. It was the fact  
4 that I knew when I left there was some undone  
5 work on the desk. I think a lot of the  
6 bureaucrats feel that way in state government,  
7 throughout state government. Probably many of  
8 the legislators, without a doubt too, there's  
9 unsolved problems.

10 But, the environmental issues you  
11 don't know which is the ticking time bomb that  
12 you are leaving on your desk, that either is a  
13 political ticking time bomb or a substantive  
14 environmental ticking time bomb and you have to  
15 try and juggle those as DER Secretary to make  
16 sure that the ship stays straight.

17 The one thing that always worked  
18 during the 5 years I was at DER was the Parks  
19 and Forestry. That was probably my vacation;  
20 getting a trip for a day up to Denton Hill or  
21 something and getting a little skiing in, or  
22 going up to the environmental education centers  
23 that we have set up in some of the parks, and  
24 white-water rafting a little bit on the  
25 Ohiopyle. It really does bring back why we have

1 such a great state park system; that we're so  
2 fortunate for people like Doc and others to buy  
3 the land when the land was available and when we  
4 had the federal programs to afford them and  
5 preserve so much of our land site.

6 It's not for a lack of wanting to or  
7 trying or commitment. It's just simply an  
8 impossibility because of the priority setting  
9 that has to go on in your head as DER Secretary.  
10 I'm sure today probably Jim Seif is looking at  
11 it the same way. I depended and knew that the  
12 parks and forestry were in the capable hands of  
13 people like Dick Thorpe, who is now retired, and  
14 Bill Forrey who is here today, and professionals  
15 like Deputy Secretary Solano who just brought  
16 very few problems to you. They just made it  
17 right, you did the budget and you made sure that  
18 some of the general policies were synergistic  
19 with the other DER policies on environmental  
20 protection. He just made sure it worked.

21 I think, though, after 2 decades, and  
22 that's basically what it has been--maybe even 25  
23 years--of asking the Parks and Forestry to  
24 basically run themselves, then it's time to give  
25 our state Parks and Forests what they deserve.

1 That's a singular focus to ensure that proper  
2 stewardship, future management, future planning,  
3 future budgetary set asides are made to protect  
4 one of Pennsylvania's most precious natural  
5 resources.

6 You've heard the facts before so we  
7 won't go over them. We have one of the largest  
8 state parks system, third in the country. It  
9 adds about four and a half billion to our  
10 economy. Our tourism is our second largest  
11 industry now and, obviously, our state park  
12 systems.

13 Our big key part of that and I can say  
14 firsthand that one of the biggest decisions that  
15 the DER Secretary is to make is, who gets the  
16 boat slips on certain of the lakes and the  
17 rental cabins. That's when you really know the  
18 importance of the parks for tourism.

19 Thirty-five other states have already  
20 separated the department. I was a proponent of  
21 putting them together back in the '70's when I  
22 was in EPA, because from an EPA perspective, a  
23 federal perspective, we wanted everything in a  
24 neat pile. When I was DER Secretary here, I  
25 found some advantages in a sense that I could go

1 down to Washington and take 4 stops when I went  
2 down and visited the 4 various heads in  
3 Washington that used to have their lines into  
4 the Pennsylvania Department. But, that's a  
5 minimal advantage compared to the great  
6 advantage of having more attention at the top  
7 for singular management of our parks and  
8 forestry.

9 I estimated in my statement that it  
10 was probably 10 to 20 percent of my time, and I  
11 think having heard the other speakers, it sounds  
12 like everybody feels that's about the same  
13 range. It was difficult to pick. I really  
14 believe that the management protection of our  
15 natural resources can no longer afford a  
16 stepchild status for this important entity of  
17 state government.

18 One that will allow Jim Seif to move  
19 ahead with some of the ideas he has to better  
20 not only the substance but the reputation of the  
21 DER which is important to all of us in this  
22 room. But on the other hand, it will let us pay  
23 some attention, budgetary attention to Parks and  
24 Forestry. In this case, I think it's really  
25 true that the sum of the parks will be greater

1 than the whole. In that case, I think it's the  
2 wise thing for the legislature to look at in a  
3 positive light.

4 Thank you very much for allowing me to  
5 give my opinion. I'll answer any questions you  
6 may have.

7 CHAIRMAN REBER: Thank you very much,  
8 Mr. DeBenedictis. Any questions?  
9 Representative Rubley.

10 MR. DeBENEDICTIS: I want to comment  
11 that this is the first time Herm give me a free  
12 ride. That's pretty good.

13 CHAIRMAN REBER: It's getting close to  
14 lunch.

15 REPRESENTATIVE MIHALICH: I do want to  
16 thank Nick for coming here today. It's always  
17 enjoyable to hear him. He is always very, very  
18 well-focused and he knows what he's talking  
19 about. You do us honor by coming to our  
20 committee.

21 MR. DeBENEDICTIS: Thank you very  
22 much.

23 REPRESENTATIVE RUBLEY: Thank you for  
24 your comments this morning. I would like to get  
25 some input from you.

20

1           One of the most controversial, I think  
2 probably the only controversial aspect of this  
3 bill is the proposal to relieve the  
4 Environmental Quality Board of its rule-making  
5 responsibilities. Those of us involved in the  
6 environmental field know how complicated and  
7 technical the environmental issues are. This  
8 Environmental Quality Board is composed of  
9 people that do have experience and diversified  
10 interest; and yet, have the knowledge that's  
11 needed to review regulations. Plus, the  
12 requirements call for considerable amount of  
13 public input from industry as well as citizens.

14           We know we need to refine the permit  
15 review process, but what is your opinion on  
16 doing it in this manner?

17           MR. DeBENEDICTIS: I was fortunate  
18 enough to have the new administration ask for my  
19 input on that thought process. I looked at the  
20 EQB. I mean, basically this is the Board of  
21 Directors for the Administration. I looked at  
22 the EQB as the Board of Directors for the  
23 Secretary of the Department of Environmental  
24 Resources. I'll use an analogy, Carole, and  
25 then get into the substance of your question.

1                   Very few times does a board get  
2 involved in line 23 of page 14 of this  
3 regulation. When 14 other people haven't even  
4 read the stack that's that thick and this person  
5 is asking that, what are you supposed to say?  
6 In all honesty, the pragmatic response is that  
7 those EQB meetings, usually somebody has  
8 something they want to bring up. They have done  
9 their homework on that page and it's a, how you  
10 can influence through your presentation whether  
11 it goes or doesn't go.

12                   It may undermine a year's worth of  
13 work by various groups, including advisory  
14 groups--DER has more advisory groups than any  
15 other state government--in building those  
16 regulations when it gets into more of a media  
17 focus/attention on one issue. That used to  
18 bother me, very honestly.

19                   A Board of Directors, I would say, has  
20 to look at the big picture and make sure that,  
21 in this case DER in a corporate world, the  
22 company is going in the right direction with its  
23 mission. If you look at the things that EQB  
24 will still have the responsibility for, that is  
25 the big picture that I think they should be

1 addressing and using the talents of the people  
2 on both their administration officials and Game  
3 and Fish and PUC, and 5 members of the Citizens  
4 Advisory Board.

5 Issues like the final adoption of a  
6 Hazardous Waste Facilities Plan, we need an  
7 answer on that in the state for our industry.  
8 Answers like making a decision on the final 3  
9 sites down to 1 of the low-level waste site in  
10 compliance with an act that we passed 15 years  
11 ago, to get it cited.

12 Answers like, the state implementation  
13 plan which I believe they will still have final  
14 authority on. There is nothing more  
15 controversial for each of the members around  
16 this table or the average citizen is when EPA  
17 says this is the new Clean Air Act and then the  
18 state has to make up rules on how to implement  
19 it, and then it hits the common person and they  
20 say, well, who made this rule up? Example:  
21 Employee trip production, as an example, INN,  
22 some things I know aren't too controversial in  
23 Harrisburg, but are very controversial in the  
24 Philadelphia area.

25 I would say there is no lack of things

1 of importance for the EQB to still do. As a  
2 matter of fact, probably more important from a  
3 standpoint of public policy in this Common-  
4 wealth; whereas, relieving them of some of the  
5 specific duties of trying to read every month  
6 stack of regulations like that which are drafted  
7 by the bureaucracy, implemented by the  
8 bureaucracy, and it tends to become an issue of  
9 one member of the EQB who may have an issue with  
10 one issue in one of those regulations that  
11 becomes the telltale.

12 We still have the Independent  
13 Regulatory Review Commission, in which the  
14 legislature has the right. If someone has  
15 aggrieved regulation, I guarantee you not only  
16 will the Cabinet Secretary hear it, but so will  
17 every member of the legislature. I think  
18 there's plenty of safety valves to capture  
19 anything that anybody thinks is lost with the  
20 changes in the EQB. I'm hoping that it's  
21 actually a strengthening because people in that  
22 committee will now have time to work on what  
23 I'll call the real big issues and have more time  
24 to think about those before they come into the  
25 session.

1 REPRESENTATIVE RUBLEY: Thank you.

2 CHAIRMAN REBER: Representative  
3 Vitali.

4 REPRESENTATIVE VITALI: How do Parks  
5 and Forests fair under your --

6 MR. DeBENEDICTIS: Their budgets --  
7 Actually, I'm going to probably have to ask Bill  
8 some of this. The complement did not go up, I  
9 remember that, but the budgets actually did.  
10 But, I'll tell you they did it, we cut a lot  
11 more trees down. We started doing some  
12 augmenting of fees and things; not charging, but  
13 every chance we could get we figured out what  
14 should be paid for at our parks and get the fees  
15 in line with the private sector. I thought that  
16 was the right thing to do anyhow. If you had a  
17 ski resort on a park, they shouldn't be  
18 subsidized by the state law. An independent ski  
19 operator a couple of miles away had to charge a  
20 different fee, things of that sort. They didn't  
21 get a big flush of dollars.

22 Representative Manderino and Senator  
23 Loeper worked together on a major program where  
24 we got some well-needed dollars to build cabins  
25 all around the state, things of that sort. They

1 were exciting and we were able to complement  
2 those with other activities of the Department of  
3 Labor for training of people in starter jobs as  
4 they built the cabins, things of that sort.

5 Unlike the Goddard era, we didn't have  
6 massive amounts of money to buy new lands. I  
7 think we're going to look in 10 years to 20  
8 years into major maintenance expenditures on the  
9 parks. Remember, we built a lot of lakes. I  
10 guess we have a hundred lakes or parks. We have  
11 83 lakes. Lakes fill in because of silt.

12 Sooner or later there is going to be dredging  
13 issues, environmental issues. They don't last  
14 just in natural state forever. There is going  
15 to be some major costs that we are going to do  
16 just to keep up what we have, let alone looking  
17 for lands and new ways to develop the existing  
18 112 state parks.

19 We did had one major park we developed  
20 during the 5 years I was at DER. That was a  
21 major donation from DuPont down in Delaware,  
22 White Clay Creek Preserve. I'm using this as an  
23 example. Because of budgetary issues, we didn't  
24 even consider turning that into what we would  
25 call a park. We called it a preserve so that we

1           could have passive recreation, preserve the  
2           land, preserve the water shed for Wilmington,  
3           but not every think we're going to tax the  
4           already-taxed resources of the park.

5                        REPRESENTATIVE VITALI: I guess what  
6           I'm getting at is, you seem to be saying that  
7           Doctor Goddard -- there was a lot of acquisition  
8           under -- and he worked in the unified DER, and  
9           then there was --

10                      MR. DeBENEDICTIS: No, no. This was  
11           prior to '70. Most of --

12                      DOCTOR GODDARD: Project 70 and '63  
13           and the bond issue in '68.

14                      REPRESENTATIVE VITALI: What do you  
15           think -- and you mentioned discussions with  
16           Representative Manderino. What do you think it  
17           is that resolves an increased expenditures for  
18           Parks and Forests?

19                      MR. DeBENEDICTIS: What we will need  
20           in the future, you mean?

21                      REPRESENTATIVE VITALI: No. We're  
22           trying to deal with the problem or the stated  
23           problem of lack of resources for parks and  
24           forests. I think we are trying to do it  
25           organizationally. I mean, what is the

1 difference? Why, and for example, in the past 5  
2 years there was 20 percent? I'm trying to get  
3 at --

4 MR. DeBENEDICTIS: I would say this;  
5 will this be done so that more resources will be  
6 requested? I don't think the reality is there  
7 for that. But, as in any organization, the  
8 budget drives policy and whether it's one-year  
9 policy, 5-year policy, or 10-year policy,  
10 depends on what the president, Chairman,  
11 whatever, along with the Board decides where to  
12 go with that direction. Then the efficient  
13 manager makes sure it happens.

14 In this case, with only 5 to 10  
15 percent of the top management focus is put on  
16 something for 25 years, it becomes a maintenance  
17 organization. Really what I'm characterizing  
18 Parks and Forests has been, has been a  
19 maintenance organization with some fine tuning  
20 at the edges with things like cabins once in  
21 awhile when the legislature has an initiative.

22 I think, necessarily, if Secretary  
23 Seif, unless he decides he's going to put a lot  
24 of the management attention needed for the  
25 environmental protection aside and say, I'm

1 going to focus on long-range planning for parks  
2 and forests, it's just not going to happen. I  
3 don't know that it absolutely demands more  
4 dollars in the future. It may. That will be a  
5 decision that has to be weighed along with  
6 welfare, highways and DER.

7 REPRESENTATIVE VITALI: But the  
8 decision to commit resources to Parks and  
9 Forests, the change in organization at least --

10 MR. DeBENEDICTIS: Yes, because what's  
11 going to happen is, you will have a more focused  
12 look at what's needed and that will come to you  
13 as a request, but you will have to judge  
14 priority or not; whereas, in fairness because  
15 you are only spending 5, 10 percent of your time  
16 and it works -- If it ain't broke, don't fix it.

17 Well, if the Cabinet Secretary DER  
18 would come to you in a budget process or in a  
19 policy-setting process, he is going to come to  
20 you 90 percent of the time that they are being  
21 driven by the environmental protection, and the  
22 EPA, and the new programs, and crises that you  
23 all hear about in your region versus the  
24 maintenance type work that's at the parks. The  
25 new Secretary may never come before you except

1 at budget time. There may be nothing needed;  
2 who knows. I doubt it.

3 REPRESENTATIVE VITALI: Did you ever  
4 have any trouble talking with Governor  
5 Thornburgh about Parks and Forests?

6 MR. DeBENEDICTIS: No, but I never  
7 did, because the Governor's attention is, here  
8 is how much time you have. Get your highest  
9 priority. I had to call him about telling the  
10 radon situation, TMI cleanup, Centralia, and  
11 then what was I going to tell him. He knew  
12 about DuPont wanting to donate the land to us.  
13 I had to get that cleared through the Governor's  
14 office, obviously, because it was a major  
15 addition.

16 But, I probably talked about Parks and  
17 Forestry more with Mike Fisher and Bud George  
18 and so on when they were Chairman of their  
19 respective committees; making sure where the  
20 things were going. I think the DER Secretary is  
21 very independent when it comes to Parks and  
22 Forestry.

23 REPRESENTATIVE VITALI: For example,  
24 in the past 5 years there was a 20 percent  
25 increase in Parks and Forests. Do you think it

1 depends on what the priority of the Governor is,  
2 what he wants to do as opposed to structure?

3 MR. DeBENEDICTIS: I would have to  
4 analyze what that 20 percent was and whether it  
5 was general fund money or forestry money that  
6 was generated by cutting timber, and then I  
7 could comment on it directly, Greg. I think  
8 they were driven by Art Davis if they were --  
9 some new initiative more than Governor Casey, I  
10 would think.

11 I think the initiatives comes from the  
12 department as they are the natural advocates for  
13 the various constituencies; whereas,  
14 environmental initiatives sometimes are driven  
15 by outside influences that you can't judge and  
16 that usually takes precedent, like the auto  
17 emission issue that came up last year before you  
18 and the SIT (phonetic) plan and to the Clean Air  
19 Act. They are driven by the federal government  
20 and put down. I think they're going to always  
21 continue to box out the DER secretaries if it  
22 stays the same, time and effort to bring those  
23 up to the legislature and the Governor.

24 It's a call. It's an organizational  
25 call. Could it work together? Yes. Would it

1 be better together? I don't think so at this  
2 point.

3 REPRESENTATIVE VITALI: That seems to  
4 be the issue, because you see rises, significant  
5 rises under a uniform system. Then you see  
6 flattening out under a unified system. Maybe  
7 it's not the system that is determinant of the  
8 resources. That's what I'm trying to get at  
9 here. Is it really just the agenda of the CEO  
10 as opposed to the organizational chart that CEO  
11 disrupts?

12 MR. DeBENEDICTIS: I think yes. You  
13 and I are saying the same thing. It is the  
14 agenda, the CEO's. You sort of defined the CEO  
15 as the Governor/Secretary. I basically say it's  
16 more the Secretary/Legislature/Governor for  
17 Parks, Forestry and Environmental, with a lot of  
18 more outside influences influencing the  
19 environmental side than the park side. I'm  
20 saying if you put 2 CEO's, separate their  
21 functions, you probably get more focus, and then  
22 you will have to set the priorities who gets the  
23 attention and the money between the 2  
24 secretaries.

25 If you are going to let the one CEO



1 do this under a unified system.

2 MR. DeBENEDICTIS: Yes, sure, but you  
3 asked me a very specific question.

4 REPRESENTATIVE VITALI: That's my  
5 point.

6 MR. DeBENEDICTIS: You surely can do  
7 it under a unified system. However, you asked  
8 me a question which is a little more direct, on  
9 whose is calling the initial shots? I think if  
10 you are going to have a well-run government and  
11 you're going to pick cabinet secretaries, you  
12 should delegate authority to them to help deal  
13 with their constituents to make the  
14 recommendations.

15 REPRESENTATIVE VITALI: Is it the  
16 Secretary or the Governor who is calling the  
17 shots as far as --

18 MR. DeBENEDICTIS: Eventually, the  
19 Governor calls all the shots. But if you think  
20 a Governor can run every program in state  
21 government it's not going to be a very well-run  
22 state government.

23 REPRESENTATIVE VITALI: The Governor  
24 has put a priority with this initiative on  
25 forests, it seems to me. If the Governor wants

1 to listen with regard to forests, it seems to me  
2 he could do that under a unified system,  
3 couldn't he?

4 MR. DeBENEDICTIS: He could do it  
5 under either. I think he could do it better  
6 having 2 cabinet secretaries with the cabinet  
7 secretaries better focused, better briefed;  
8 therefore, giving a more concise and not  
9 filtering out before it gets to him or her. If  
10 you are going to expect one executive to run  
11 both, you're going to have to assume that  
12 executive is going to make some priorities  
13 before they address it to the legislature or to  
14 the top executive.

15 Now, if the top executive, I mean the  
16 Governor wants to micro manage --

17 REPRESENTATIVE VITALI: (Interrupting  
18 exchange)

19 CHAIRMAN REBER: Representative  
20 Vitali, I'm going to play Judge Ito. Wait until  
21 the witness is done answering so the  
22 stenographer doesn't get her fingers all  
23 discombobulated.

24 MR. DeBENEDICTIS: I don't think this  
25 is a cost-saving necessarily. Although I think

1 with more focus there could be more efficiencies  
2 found because people are going to spend a  
3 hundred percent of their time looking for it  
4 versus 10 percent. I don't think the cost of an  
5 extra cabinet secretary could probably be made  
6 up by the cost savings of efficiency just by  
7 focus.

8 I think the real issue is whether the  
9 state wants to look at somebody in a position of  
10 importance of four and a half billion dollars  
11 worth of economic impact to the Commonwealth to  
12 have a 5, 10-year focus and have the time to do  
13 it so that they are addressing the legislature  
14 and the Governor in a long-range plan. I think  
15 that's really where it comes down to. I don't  
16 think it's not a dollar savings.

17 Whether or not it's an initiative to  
18 get more money for Forestry and Parks, I  
19 guarantee you the new Forestry and Parks  
20 Secretary will probably come in with needs, and  
21 that will be a judgment factor you'll have to  
22 make. At least you'll make it based on what  
23 you're hearing versus having the cabinet  
24 secretary who has both make it internally before  
25 it comes to you.

1                   REPRESENTATIVE VITALI: You mentioned  
2 Governor Thornburgh had a good handle on all the  
3 parks and details, and so forth. Again, he did  
4 that under a unified system. He was able to  
5 devote, educate himself through you or others  
6 about this. Deputy Secretary Solano, he had a  
7 good handle on the park system?

8                   MR. DeBENEDICTIS: Yes.

9                   REPRESENTATIVE VITALI: He was able to  
10 brief his secretary about that. Presumably, the  
11 secretary was able to brief Governor Casey.  
12 That's my only point.

13                   MR. DeBENEDICTIS: Absolutely. It's  
14 not impossible to keep them together. That's a  
15 management call that the legislature and the  
16 Governor has to make as to which way will it be  
17 better. It's not a clear-cut answer, but in my  
18 mind after having served 4 years, 5 years in the  
19 job, I'm convinced that environmental protection  
20 is going to dominate any Secretary's time. If  
21 you think that's acceptable, then I wouldn't  
22 make any changes.

23                   If you think you don't want it that  
24 way, I'd say, I would go ahead with the  
25 Governor's recommendation to make the changes,

1 and I'm for it. I think it is time to do it  
2 because the programs have just grown and grown  
3 and grown. I don't know what Secretary Seif  
4 will pass on. Who knows what's going to come up  
5 in the next 3 years.

6 REPRESENTATIVE VITALI: Thank you.

7 CHAIRMAN REBER: Chairman George.

8 REPRESENTATIVE GEORGE: It's good to  
9 see you again. I have had you in the cross  
10 hairs many times. I'm still trying to find out  
11 whether I was a bad shot or whether you were  
12 just real fast.

13 CHAIRMAN REBER: A little bit of both.

14  
15 REPRESENTATIVE GEORGE: The truth of  
16 the matter is, that the people in Pennsylvania,  
17 ever since DER was consolidated into one huge  
18 conglomerate, things just haven't been as they  
19 should be in the matter of being user friendly.  
20 You'll agree to that?

21 MR. DeBENEDICTIS: Yes. There's a  
22 real public --

23 REPRESENTATIVE GEORGE: In fact, you  
24 can say now you agree with me. When you were  
25 the Secretary you didn't agree with me, and I

1 understand that.

2 MR. DeBENEDICTIS: Only when you  
3 subpoenaed me did I not agree with you.

4 REPRESENTATIVE GEORGE: But the truth  
5 of the matter is, we can say that it's going to  
6 help the Department of Forestry; it's going to  
7 help this; it's going to help that. What it's  
8 going to do in reality, the one important  
9 function, is that we are dividing enforcement  
10 from reclamation. We are placing on board a  
11 department where there will be remediation, and  
12 the truth of the matter is, the State of  
13 Pennsylvania for too many years have lost too  
14 many viable acres, too many good things, too  
15 much water. There's been too much degradation  
16 and it's about time we start to bring it back,  
17 don't you agree?

18 MR. DeBENEDICTIS: Yes, absolutely.

19 REPRESENTATIVE GEORGE: I thank you  
20 for your friendship.

21 CHAIRMAN REBER: Thank you very much,  
22 Mr. DeBenedictis. We are about 5 minutes ahead  
23 of schedule, so we are going to take a luncheon  
24 break and a break for the court reporter. We  
25 will reconvene at 12:30 sharp.

1 ( Short recess occurred for lunch )

2 \* \* \* \*

3

4 AFTERNOON SESSION

5 CHAIRMAN REBER: Public hearing of the  
6 Environmental Committee of Pennsylvania House of  
7 Representatives on House Bill 1400 will  
8 reconvene.

9 At this time we have Fred Sembach of  
10 the Pennsylvania Chamber of Business and  
11 Industry. Fred, would you please extend the  
12 committee's condolences to Pete Snyder on the  
13 death of his father. I understand he was to  
14 testify today.

15 MR. SEMBACH: Yes.

16 CHAIRMAN REBER: Please extend those  
17 condolences on behalf of the committee. You may  
18 proceed.

19 MR. SEMBACH: Good afternoon. My name  
20 is Fred Sembach. I'm the Vice President of  
21 Government Affairs for the Pennsylvania Chamber  
22 of Business and Industry. This afternoon it's  
23 my pleasure to appear before the committee and  
24 share our thoughts on House Bill 1400 on behalf  
25 of our 4,000 members.

1           The Pennsylvania Chamber of Business  
2           and Industry strongly supports the legislation  
3           to reorganize the Administration of Pennsylvania  
4           environmental programs by creating a new  
5           Department of Conservation and Natural Resources  
6           (DCNR) and a new Department of Environmental  
7           Protection (DEP). In order to most effectively  
8           move forward with other comprehensive efforts to  
9           improve the management of environmental  
10          programs, the Chamber supports the enactment of  
11          reorganization legislation.

12           Industry of itself has done much  
13          re-engineering in recent years and has learned  
14          that much value can be derived from analyzing  
15          and revamping service delivery mechanisms. The  
16          Chamber supports government's attempts to look  
17          critically at itself and to re-organize in a  
18          manner that benefits taxpayers. But, let me  
19          make it very clear, that the Chamber views the  
20          structural reorganization of DER's hierachy and  
21          reporting lines as only a down payment on true  
22          reform of the agency and its functions.

23           More important than structural changes  
24          are the core values and philosophy of the  
25          management team and key personnel of the new

1 DEP. The senior management of the agency must  
2 articulate a vision of the new culture that  
3 emphasizes a customer orientation, helping the  
4 regulated community to comply with realistic  
5 risk-based performance standards. DEP must hire  
6 technically competent people whose personal  
7 value system match the new culture. And, DEP  
8 should institute cross-training programs for its  
9 personnel to effectively prepare the staff to  
10 implement and work within the new customer-  
11 oriented culture. We would not want  
12 reorganization to be the end point of the Ridge  
13 Administration's environmental work.  
14 Reorganization should be a tool to reach the  
15 proper balance between economic competitiveness  
16 and environmental protection.

17 Let me briefly elaborate on what we  
18 view as the critical elements of complete DER  
19 reform and improvement.

20 The current DER uses a traditional  
21 command and control style of environmental  
22 policy-making. DER rule-makings are replete  
23 with shalls and musts. It is not uncommon for  
24 DER to specify equipment, procedures and  
25 operating rules required for permittees. This

1 is a failed and outdated strategy. The greatest  
2 shortcoming of command and control is its lack  
3 of operational flexibility. An objective-based  
4 regulation system allows the business community  
5 to do what it does best; find the most cost-  
6 effective way to achieve desired goals.

7 As a bonus, an objective based  
8 regulatory system will reduce DEP paperwork and  
9 man-hours, resulting in more efficient and less  
10 costly government. Best of all, the environment  
11 is better served.

12 A focus on compliance assistance  
13 rather than enforcement actions. DEP should  
14 undertake public outreach programs to improve  
15 compliance. In the very near future, DER and  
16 the Chamber will jointly sponsor pollution  
17 prevention roundtables. We view this type of  
18 outreach as tremendously positive and we  
19 encourage the new DEP to undertake similar  
20 outreach efforts to develop consensus for policy  
21 reform process, and we are very pleased to be  
22 co-sponsoring them with the department.

23 Consistency and compatibility with  
24 federal law and rules. Pennsylvania has  
25 frequently adopted rules that differ

1 significantly from federal rules. The most  
2 notable examples are the Title V rule, storage  
3 tank program, residual waste rule, and the  
4 infamous PK-4 hazardous waste rule.  
5 Historically, DER has also taken license in its  
6 interpretation of state statutes so that policy  
7 is implemented in a manner unique to  
8 Pennsylvania. No more stringent than federal  
9 has become the battle cry of the regulated  
10 community as a result. But, stringency is only  
11 half of the issue. Conformity and consistency  
12 with federal rules are critical.

13 For example, the PK-4 definitions of  
14 waste, by-product and co-product require the  
15 very costly regulation of substances that are  
16 exempt from federal regulation. Pennsylvania's  
17 residual waste rule represents the Subtitle D,  
18 Non-Hazardous Industrial Waste portion of the  
19 federal rule that has not yet been promulgated  
20 by EPA. Will the Pennsylvania rule be  
21 re-written to conform to the coming federal  
22 rule? Or, will it be repealed and the federal  
23 rule adopted by reference?

24 Risk assessment and comparative risk  
25 analysis to set policy priorities. The use of

1 scientific risk assessment as an analytical tool  
2 and comparative risk analysis to compare and  
3 contrast policy alternatives should be hallmarks  
4 of the Ridge Administration. State government  
5 and Pennsylvania businesses work in environments  
6 of scarce resources. The use of risk assessment  
7 and cost-benefit analysis should become part of  
8 the everyday DEP functions and decision making.  
9 This step is part and parcel of the structural  
10 overhaul; an overhaul of the thought process.  
11 If proposed regulations are accompanied by a  
12 comparative risk analysis, and a cost-benefit  
13 analysis, the Administration and the legislature  
14 could compare and contrast programs.

15 An amendment to the Administrative  
16 Code, or IRRC law, requiring such analysis would  
17 transcend the current administration. Such an  
18 analytical framework would make Pennsylvania  
19 more competitive by introducing rationality into  
20 the Commonwealth's regulatory scheme.

21 Central office policy making, minimal  
22 district office interpretation. Policies should  
23 be made by the DEP central office with little  
24 room for interpretation and strong guidance to  
25 the district offices. There must be consistency

1 across district offices in the application and  
2 enforcement of rules. This is not to say that  
3 district personnel should not be consulted in  
4 the development of DEP policy. Field people can  
5 offer valuable insight. However, there cannot  
6 be wide variations among regions on the content  
7 of policies and procedures, or on their  
8 application.

9 Clear legislative objectives--minimal  
10 DEP flexibility in policy making. Throughout  
11 the course of the administration, many  
12 environmental bills will be written by the  
13 department, and all will undergo agency review.  
14 There is always a tension between political  
15 appointees whose job it is to make policy, and  
16 the career bureaucrats whose job it is to carry  
17 out these policies.

18 Moreover, you as legislators, and  
19 especially as members of this committee, have  
20 the ultimate say in policy making. It is no  
21 coincidence that the legislature is addressed  
22 prior to the Executive Branch in the state's  
23 Constitution. The Chamber hopes that you will  
24 clearly articulate your policy goals in the  
25 bills that come before this committee, and that

1 you will work with the regulated community to  
2 see that the goals are carried out by the  
3 bureaucracy.

4 Customer-oriented, prompt turn around  
5 on applications/inquiries. This is a key goal  
6 of the reorganization plan as described in  
7 campaign documents. We encourage the Ridge  
8 Administration to do everything in its power to  
9 make this a part of the new DEP culture. The  
10 Chamber knows that your committee can do much to  
11 inspire and foster this goal. It would be  
12 useful to incorporate into DEP, a commitment to  
13 total quality management where a customer focus  
14 is at the heart of the service process.

15 Thank you for your time and attention.  
16 Let me just repeat that the Chamber views the  
17 structural reorganization of DER as only a down  
18 payment on true reform of the agency and its  
19 functions. The Chamber looks forward to working  
20 with your committee to ensure that our goals for  
21 true reform are met. In fact, we would  
22 appreciate the opportunity to, at some point in  
23 the future, offer our views on the DEP's  
24 progress and policy reform. I'll be happy to  
25 take any questions you may have.

1                   CHAIRMAN REBER: Thank you, Fred. I  
2 am going to direct staff to forward a copy of  
3 this to Secretary Seif because I think the major  
4 input of your remarks relate to DEP if and when  
5 it comes on board following enactment of this  
6 proposed legislation. I think it's more of a  
7 policy statement than it is legislative  
8 pronouncement that we would get involved with  
9 specifically as 1400 is constituted. But, I  
10 think it's something from, obviously, your  
11 perspective the Secretary should be directly  
12 aware of these remarks having been generated by  
13 this hearing. I would ask staff to make sure  
14 that that is transmitted to him for that  
15 purpose.

16                   MR. SEMBACH: Thank you.

17                   CHAIRMAN REBER: Representative  
18 Mihalich.

19                   REPRESENTATIVE MIHALICH: I have a  
20 comment, and perhaps, you might interpret it as  
21 a question. I agree with the Chairman that the  
22 testimony this morning is not focused on House  
23 Bill 1400. It's wide ranging and it contains a  
24 lot of things in here that many of us might  
25 agree with and many of us might not agree with.

1           If you might, you referred to  
2 customers several times. Let me point out who  
3 the real customers are as far as I think this  
4 committee is concerned. And they are outlined  
5 in the amendment to the Pennsylvania  
6 Constitution. But, when we look at customers,  
7 we look at more than just people filing for  
8 permits, although that's important too because  
9 business requires establishing a way for people  
10 to make a living in this state.

11           When we talk about customers, please  
12 let's be focused on who the real customers are.  
13 They are the citizens of the Commonwealth of  
14 Pennsylvania, et cetera, et cetera, in the  
15 appropriate section of the Constitution which  
16 I'm sure you are familiar with. I hope that  
17 that would take in a lot of other things that I  
18 want to comment on that you said, but as I said,  
19 it's not appropriate at this particular meeting.  
20 Thank you, Mr. Chairman, for the opportunity To  
21 make those comments.

22           CHAIRMAN REBER: Chair thanks the  
23 gentleman and always appreciates the brevity  
24 with which he handles his comments. The Chair  
25 thanks the Chamber for the testimony, and the

1 gentleman is excused.

2 The next witness, William C. Forrey,  
3 former State Park Director of the Pennsylvania  
4 State Parks Systems. Good afternoon, Bill.

5 MR. FORREY: Good afternoon. I'm  
6 William C. Forrey, the former Director of State  
7 Parks in DER. I retired from DER in 1992 and am  
8 now the assistant to the president of the RBA  
9 Group, an engineering, architectural, planning  
10 and consulting company.

11 I'd like to thank the committee for  
12 inviting me to discuss the restructuring of DER.  
13 First of all, I want to say that I endorse  
14 wholeheartedly House Bill 1400.

15 Also, I'm representing the views of  
16 the Pennsylvania Recreation and Park Society on  
17 the restructuring of DER. The Society is a  
18 statewide, non-profit membership association of  
19 1470 members who are municipal recreation and  
20 park directors, state park managers, state and  
21 federal officials, members of local recreation  
22 and park boards, therapeutic recreation  
23 specialists, activity coordinators and college  
24 students.

25 The primary focus of the Society is on

1 education, training and support services for  
2 local and state park and recreation agencies.  
3 We feel that park and recreation agencies are  
4 vitally important to the Commonwealth because of  
5 the many benefits that are provided by  
6 recreation and park agencies through their  
7 programs, facilities and park areas.

8 A branch of this organization is the  
9 Pennsylvania State Park Society. The  
10 Pennsylvania State Park Society has among its  
11 membership state park managers, park maintenance  
12 managers, administrative assistants,  
13 environmental education specialists, engineers,  
14 and planners. This society and the parent  
15 society both support the restructuring of DER  
16 into a natural resource department and a  
17 regulatory department.

18 The important thing here is that,  
19 these men and women throughout the Commonwealth  
20 at the state, county and local levels whose  
21 livelihood is involved with recreation and  
22 parks, they support the creation of the new  
23 department.

24 Personally speaking, I work for 32  
25 years for the Bureau of State Parks, from 1960

1 to 1992, which included both the Departments of  
2 Forests and Waters and Environmental Resources.  
3 I served in the 2 departments during the terms  
4 of Secretaries Goddard, Jones, Duncan,  
5 DeBenedictis and Davis.

6 Having had the experience of serving  
7 in 2 vastly different-sized departments, I can  
8 say without hesitation that the smaller  
9 Department of Forests and Waters was a much  
10 better way to manage and protect our natural  
11 resources. DER became so large that the  
12 Secretary did not have time to devote his  
13 attention to some units of the department.  
14 Because the environmental issues, because they  
15 became so sensitive, most of his time was  
16 consumed by them. As a result, state parks and  
17 forests were not given the attention they  
18 needed.

19 I want to point out earlier today,  
20 Former Secretary DeBenedictis commented he used  
21 to take vacation in order to visit parks.  
22 Secretary Davis did the same because the press  
23 of business was so great from the environmental  
24 issues that they did not have, you might say,  
25 business time.

1                   Secretary Goddard was different  
2 because he worked 7 days a week and was always  
3 out visiting parks in any case.

4                   I want to point out that I am not  
5 criticizing the secretaries. All of them had a  
6 tremendous interest in state parks and forestry,  
7 but the environmental issues were so over-  
8 whelming that they could not devote sufficient  
9 time to the natural resources bureaus.

10                  The new Department of Conservation and  
11 Natural Resources will bring together many  
12 related programs which focus on conservation,  
13 recreation, parks and forestry. This will  
14 enhance cooperation, coordination and  
15 communications, so as to better utilize existing  
16 resources.

17                  I firmly believe that the  
18 incorporation of the Bureau of Conservation and  
19 Recreation from DCA into the new department is a  
20 logical move. It will bring the major units of  
21 state government involved in recreation parks  
22 and forestry under one roof. Other states have  
23 such an arrangement and it has proven to be a  
24 wise decision.

25                  I want to commend you for including in

1 House Bill 1400 a number of other important  
2 changes which will make the management of state  
3 parks and forestry more efficient. For example,  
4 providing for police power for both park and  
5 forest rangers on park and forest lands will be  
6 advantageous for the security of the state parks  
7 and forests districts.

8 For example, at the moment a state  
9 park ranger leaves the state park and goes into  
10 forest lands does not have his police power.  
11 The point I want to make here is that, this bill  
12 is able to improve some other areas other than  
13 creating the new department.

14 The inclusion of DCA's Bureau of  
15 Conservation and Recreation will bring together  
16 the grant programs for local government and the  
17 recently authorized trail grants in DER. This  
18 consolidation of grant programs will improve the  
19 delivery system of support to local governments  
20 throughout the Commonwealth.

21 In terms of the cost of having 2  
22 departments rather than 1, it is my under-  
23 standing that new positions will not be created  
24 in the process of implementing this change. It  
25 is important to note, however, that regardless

1 of the location of the state park and forest  
2 bureaus, the number of staff positions in the  
3 field units are understaffed in many areas. Any  
4 future requests for additional positions in the  
5 forest districts and state parks should not be  
6 related to the restructuring.

7 I just want to point out that I called  
8 State Parks this morning and they gave me a  
9 figure of 553 salaried positions. It's  
10 interesting to note that it was 25 years ago  
11 that there were 568 positions. In these 25  
12 years, there have been many new state parks  
13 purchased and constructed, many, many new  
14 facilities.

15 For example, there are 35 parks that  
16 have full sewage systems, which makes the state  
17 park system the largest operator of sewage  
18 plants in Pennsylvania. To have the same number  
19 of positions as there were 25 years ago is  
20 really injustice to getting the job done in  
21 state parks.

22 I have several suggestions relative to  
23 some programs that will enhance the natural  
24 resource protection within the new department.  
25 For example, the Pennsylvania Conservation Corp

1 program was moved from DER to the Department of  
2 Labor and Industry several years ago. If that  
3 program is to be continued, I believe it should  
4 be returned to the new department for  
5 administration.

6 Another case where the administration  
7 is kind of lost in the shuffle and is not being  
8 administered as well, in my opinion, as it had  
9 been previously.

10 Also, statewide greenways program  
11 should be initiated as soon as possible. I am  
12 pleased that Governor Ridge has pledged to hold  
13 a Governor's Conference on greenways next year.  
14 This is a program that Pennsylvania should get  
15 involved with quickly. In fact, in terms of  
16 rail-to-trail conversions, Pennsylvania ranks  
17 second in the nation as it is. It is important,  
18 however, that the Commonwealth help to guide the  
19 program with its grants and statewide planning  
20 efforts.

21 In the overall organization of  
22 government at the state level, I endorse the  
23 concepts which are included in House Bill 1400,  
24 and I commend the committee for its foresight in  
25 moving to implement the creation of the

1 Departments of Conservation and Natural  
2 Resources and Environmental Protection.

3 I will be happy to answer any  
4 questions, Mr. Chairman.

5 CHAIRMAN REBER: Thank you, Mr.  
6 Forrey. Representative Rubley.

7 REPRESENTATIVE RUBLEY: No questions.

8 CHAIRMAN REBER: Just from my own  
9 perspective, I sort of consider myself a fly  
10 fishing advocate and spend quite a bit of time  
11 at Mud Run up in Hickory Run State Park. I just  
12 can't help but be amazed at the job that the few  
13 personnel that are available in the facilities  
14 do. I spend quite a bit of time walking and  
15 talking with them when I have the opportunity to  
16 run across them. It just amazes me that there  
17 could be anyone that would be even remotely  
18 concerned about the bifurcation concept  
19 considered in this bill, when what we would  
20 really be doing in my mind, and what we are  
21 doing in my mind is creating 2 advocates for the  
22 environment as opposed to one. You don't have  
23 to be a rocket scientist to figure that out.

24 I know for one, as Chairman of this  
25 committee, and with the voluminous amount of

1 work that this session has brought upon the  
2 committee, I certainly wish to some extent some  
3 days that some of the things would also be spun  
4 off. I can appreciate what the secretaries have  
5 said and what you have further testified to as a  
6 result of your long-term experience on the  
7 jugular issue that we are talking about here.

8 I find it very compelling to hear your  
9 testimony, and from the experiences I have had  
10 with a lot of the outdoors, things that I sort  
11 of spend a lot of time when I do have that  
12 little bit of free time. I too like the  
13 secretaries take my vacations dovetailed around  
14 state type of issues.

15 I just am absolutely aghast and amazed  
16 when someone would say that you look at the  
17 federal level and you have an advocate for the  
18 Interior and you have an advocate for the  
19 environmental protection side. Why or how the  
20 political arena treats things the way they do?  
21 It boggles my mind. Nonetheless, I do  
22 appreciate your testimony and I thank you very  
23 much.

24 MR. FORREY: I think agreeing with  
25 what you just said is that, the people at the

1 state, county and local levels in park and  
2 recreation agencies all agree to it. They are  
3 the ones that would be affected greatly. I  
4 think that does speak to that.

5 CHAIRMAN REBER: When you talk to the  
6 people -- I lost my train of thought there with  
7 my usual porosity. I talk to those people and  
8 it's amazing how good they feel about what they  
9 do considering the fact that they know they are  
10 on the back burner of the department. They  
11 recognize it, they understand the realities of  
12 the situation, but they don't let that drag them  
13 down. They still go out and do an admirable  
14 job. I have high hopes that if and when this  
15 ever happens and we get up and climb, it could  
16 be a whole new age.

7  
17 What's going on out there in society,  
18 we need to look to the conservation and natural  
19 resources aspects of this new department and  
20 take advantage of it because it's only going to  
21 becoming more and more usable by a large segment  
22 of our society with the cost of recreation going  
23 out of sight; \$50 for a ticket to a Fliers game.  
24 It's just absurd. You're going to see a  
25 tremendous amount of reverting back, if you

1 will, to our roots on recreational things. I  
2 think the time is now to be ready to take  
3 advantage and be in position to build on that.

4 MR. FORREY: If I might comment,  
5 there's a great deal of discussion this morning  
6 on the EQB and its effect on the regulatory  
7 side. I just want to make a point in terms of  
8 Parks and Forestry.

9 In my 19 years as director, everything  
10 that state parks presented to the EQB had been  
11 approved exactly as presented. They made one  
12 change in those 19 years when I suggested that  
13 camping be given at half price for senior  
14 citizens which would have saved \$3.00. EQB  
15 changed it to \$2.00. I think EQB not being  
16 there on the Parks and Forestry side certainly  
17 would not be missed.

18 CHAIRMAN REBER: Must have been an  
19 election year too when that vote was taken.  
20 Thank you very much. I appreciate that.

21 Our next witness, Jeff Schmidt of the  
22 Sierra Club.

23 MR. SCHMIDT: Thank you, Mr. Chairman,  
24 and thank you members of the committee for  
25 listening to our concerns.

1           Proposals to restructure our state's  
2           enviromental agency have the potential to have  
3           profound impacts on our citizens' health, our  
4           environment and our public lands. These are not  
5           new proposals. Proposals similar to House Bill  
6           1400 have been voted in the General Assembly  
7           over the years. The Sierra Club has not rushed  
8           to judgment on this issue. We've evaluated this  
9           over the years and have decided we do not  
10          support the physical change of structure  
11          proposed in House Bill 1400. I'll explain why.

12                 We don't think that changing an  
13          organizational chart structure will result in  
14          improvements that the public desires. We do  
15          believe that much can be done, however, to  
16          improve DER's effectiveness. We are the last to  
17          agree that status quo is acceptable.

18                 Reasonable people can differ on how to  
19          structure our environmental agency, how our  
20          natural resources should be protected and  
21          managed. But, the structural changes alone are  
22          only cosmetic. We must look to the specific  
23          management objectives to determine more  
24          accurately the true goals of those proposing the  
25          changes.

1           As you know, in 1892 the Sierra Club  
2 was formed by naturalist John Muir and other  
3 outdoors people who were concerned about  
4 protecting some of the nation's most spectacular  
5 wild areas such as Yosemite, the redwoods,  
6 Canyon Lands National Park, places that we owe  
7 these legacies that we now have to these forward  
8 thinking people. Muir once said, anytime you  
9 pick something up, you find it is hitched to  
10 everything else in the universe. He was talking  
11 about the interconnectedness of our world; how a  
12 change in one part of an ecosystem could have a  
13 profound effect on its other parts.

14           The current structure of DER, to a  
15 earth point reflects this interconnectedness of  
16 natural and enviromental resources which require  
17 an integrated administration. No matter what  
18 changes might be made in administrtion, the need  
19 to bring these interconnected resources together  
20 in a unified context will remain. We would  
21 contend that devices should be explored to  
22 further integrate DER's various functions; not  
23 create additional artificial barriers.

24           A few months back I was debating the.  
25

1 DER split with Dick Thorpe, former State  
2 Forester. He contended, and this was a quote  
3 from him at this meeting, if we would just split  
4 up the agency, the environmental protection  
5 folks could worry about the environment and we  
6 could focus on land management. With all  
7 respect to my friend Mr. Thorpe, I submit that  
8 statement is an indication of the major problem  
9 in the agency, which is specialization.

10 In my role before I came to work for  
11 the Sierra Club, I worked as systems analyst in  
12 industry. One of my responsibilities was  
13 evaluating people in the workplace and  
14 determining whether or not they were functioning  
15 in the larger interest of the corporation as  
16 opposed to creating small empires and  
17 specializations that they would focus on to the  
18 exclusion of the best interest of the  
19 organization. The specialization tendency does  
20 in any bureaucracy, whether it's corporate or  
21 government, result in a desire to empire-build,  
22 if you will, and that may not be in the best  
23 interest of the larger public, or in this case,  
24 the environment.

25 Land, air and water are interrelated.

1 Pollution that is emitted even if from a coal-  
2 fired power plant can and is killing streams in  
3 our parks and forests. Decisions on timber  
4 cutting in our parks and forests or oil and gas  
5 drilling on forest land can affect drinking  
6 water quality for people 50 miles away.

7 A mining permit issued could result in a  
8 loss of fishing opportunity downstream in a park  
9 that is critical to the tourism industry to a  
10 rural county. Moving these functions into a  
11 completely separate cabinet-level agencies will  
12 create additional barriers to communication and  
13 fully-informed decision making.

14 There may be those whose goals are  
15 just that: To remove the influence of water  
16 quality concerns from the decisions on timber  
17 cutting; or, perhaps, make it even more  
18 difficult to link a decline in our forest health  
19 to acid rain. Certainly, we are hearing from  
20 those who believe our forests should be managed  
21 as tree farms at the expense of water quality,  
22 biodiversity, recreation and wildlife habitat,  
23 all functions of our forests.

24 Another concern related to the  
25 separation of these functions is that of

1 enforcement. We would expect that the  
2 Department of Environmental Protection will  
3 become more enmeshed in interdepartmental turf  
4 battles over pollution problems created by DCNR  
5 decisions related to erosion and sedimentation,  
6 point source pollution, waste management, et  
7 cetera, just as DER had similar problems with  
8 PennDOT and General Services today.

9           Again, in the creating of additional  
10 funding for the agency, we believe that by  
11 creating a cabinet-level advocate as described  
12 here, that does not automatically mean that  
13 advocate will be successful in convincing the  
14 Governor of the need for additional resources  
15 for the agency.

16           In fact, I think it was demonstrated  
17 earlier today that you can have someone such as  
18 Secretary Davis advocate and receive additional  
19 funding for state forests and state parks when  
20 his predecessor was unsuccessful in convincing  
21 that Governor of the need for that. It's not  
22 just the cabinet-level advocate. It's a  
23 commitment of the Governor himself and the  
24 budget decisions made by the General Assembly  
25 that really makes those decisions.

1                   Separate from the serious  
2                   philosophical disagreement we have with those  
3                   who propose to create artificial barriers  
4                   between the various environmental resource  
5                   functions of DER, we have specific concerns  
6                   related to language contained in House Bill  
7                   1400.

8                   First and foremost, because it's  
9                   described extensively in earlier discussion, I'd  
10                  like to focus on the environmental rule-making  
11                  process in Pennsylvania.

12                  Within the last decade a significant  
13                  impediment to the regulatory process was  
14                  created. The Independent Regulatory Review  
15                  Commission has created a substantial delay in  
16                  almost every important environmental rule in the  
17                  state. I agree with Doctor Goddard that it was  
18                  bad to create that agency for the purposes of  
19                  reviewing environmental regulations. In fact,  
20                  the time delays created by the Independent  
21                  Regulatory Review Commission in the promulgation  
22                  of environmental regulations has varied from 5  
23                  to 6 months up to years.

24                  It is not the Environmental Quality  
25                  Board that results in serious delays. It is the

1 Independent Regulatory Review Commission. For  
2 those that are concerned about delays, they  
3 should be focusing their attention on the true  
4 culprit on the delay of development of important  
5 environmental rule.

6 We were shocked to find that the  
7 administration had decided to further erode  
8 public participation by eliminating the  
9 Environmental Quality Board from the rule-making  
10 process, claiming that it added unnecessary  
11 delays to rule development. The EQB currently  
12 is the only real avenue for public  
13 participation. Because the Board is made up of  
14 a broad cross-section of interests, it is more  
15 accessible to the public.

16 The EQB can force DER to allow more  
17 field hearings, something that IRRC never does.  
18 It can also force DER to make changes to  
19 regulations in response to public comments,  
20 something that IRRC does not necessarily do  
21 While the EQB process is not perfect, it is  
22 preferable to IRRC, which is both redundant and  
23 unresponsive to the public.

24 It's a Harrisburg insider's way of  
25 dealing with regulations. They do not post

1 notices of their proposed hearing or their  
2 proposed rules statewide. I think the most  
3 accurate criticism of the Environmental Quality  
4 Board is that, it has too many administration  
5 representatives. A reasonable alternative to  
6 eliminating the EQB would be to limit  
7 administration participants to 4 or 5  
8 representatives, which would put it on an even  
9 footing with legislative representatives.

10 Another supposed alternative to EQB is  
11 regulatory negotiation, or reg-neg. We have  
12 heard discussion about that earlier. Reg-neg,  
13 formal or otherwise, allows a handful of people  
14 to decide the future of a regulation, freezing  
15 out the average citizen from having input.  
16 While it may be a useful exercise in a very  
17 limited number of cases, it should not be used  
18 as a replacement for citizen participation,  
19 public hearings, comment-response documents  
20 which are part of our tradition of openness. In  
21 those instances where reg-neg is used, it must  
22 carefully be balanced to ensure that private  
23 economic interests and the public interest are  
24 evenly represented.

25 Two weeks ago we saw an article in the

1 DER update newsletter where Secretary Seif  
2 hailed the development of the nutrient  
3 management guidelines by the Nutrient Management  
4 Advisory Board is an excellent example of  
5 reg-neg in action. While this was not a formal  
6 reg-neg, we look at the makeup of the Nutrient  
7 Management Advisory Board and determined that it  
8 was heavily stacked in favor of economic  
9 interest and only a handful of citizen interest  
10 were represented there. The public interest was  
11 at a disadvantage against economic interest. If  
12 this is an example of the kind of reg-neg  
13 process that DER is planning to institute  
14 formally in Pennsylvania, we are quite troubled  
15 by the lack of concern about balance.

16 In the past, DER has used an informal  
17 process of roundtables to bring together diverse  
18 interests to discuss a specific environmental  
19 issue. Oftentimes these roundtables are  
20 convened prior to the promulgation of a  
21 regulation, prior to the Environmental Quality  
22 Board process. We believe a greater use of  
23 these informal roundtables would help to resolve  
24 many regulatory debates by narrowing the areas  
25 of disagreement. This could occur without

1 eliminating the Environmental Quality Board or  
2 by creating a formal reg-neg process.

3 We have suggested this to the  
4 administration previously. We have not heard  
5 about a discussion about that. It is true that  
6 DER has numerous advisory councils representing  
7 various interests, advising its various  
8 programs. According to an evaluation done by  
9 the Independent Citizens Advisory Council, they  
10 found that the one advisory council to DER that  
11 was most effective was the Solid Waste Advisory  
12 Council, which I know Representative Rubley has  
13 previously participated in. That is one of  
14 those that is established statutorily and  
15 mandated to be balanced. We think that that  
16 kind of balance is important in any kind of  
17 advisory committee process.

18 We do believe that the advisory  
19 committee process as envisioned for the new  
20 resource agency, which I'm going to get into in  
21 a minute, does present that kind of balance.

22 Oversight of environmental and  
23 national resource programs, while we disagree  
24 with the proposal to split DER into a DEP and  
25 DCNR, we believe that if in your wisdom you and

1 the General Assembly choose to split the agency,  
2 you should not split the oversight committee as  
3 is currently envisioned in the bill.

4 The Citizens Advisory Council to DER  
5 has done an excellent job of overseeing and  
6 advising DER over the last 2 decades, as  
7 numerous witnesses earlier today have said. We  
8 believe that it is important that at least one  
9 entity, if not the actual environmental agency,  
10 be approaching these matter in a holistic  
11 fashion, that the oversight committee ought to  
12 have some holistic approach and ought to be  
13 looking at both agencies. One CAC instead of 2  
14 separate CAC's at least could monitor the  
15 effectiveness of the artificial division between  
16 natural resources created by House Bill 1400.

17 I'd like to refer to a couple specific  
18 provisions in the bill as proposed in support of  
19 some and raising concerns about others. Section  
20 302 which is forests, and 303 which is parks, of  
21 House Bill 1400, both contain loopholes that we  
22 believe could allow inappropriate activity in  
23 our parks and forests. These provisions allow  
24 development on state public lands by private  
25 entities. DER, in the development of its State

1 Parks 2,000 Plan, held hearings and surveyed the  
2 public on this issue. The majority of the  
3 public, the Citizens Advisory Council,  
4 Federation of Sportsmens Clubs, Sierra Club and  
5 numerous other organizations opposed private  
6 development on public lands.

7 The recent public furor against the  
8 proposal to build a \$3 million lodge in Cook  
9 Forest State Park is an excellent example of the  
10 problem with this loophole. We believe that  
11 these sections should be deleted from the bill.

12 A provision that we believe is a  
13 useful proposal has to do with law enforcement  
14 in parks and forests. One of the most common  
15 complaints we hear from those who spend time in  
16 our public lands is the failure of the  
17 department to be able to enforce its rules and  
18 regulations. Off-road vehicle enthusiasts often  
19 ignore the rules and ruin the outdoor experience  
20 for others or, even worse, do serious  
21 environmental damage with their machines. DER  
22 consistently says they do not have enough staff  
23 to monitor these problems. Stream pollution,  
24 illegal destruction of trees and plants,  
25 vandalism, graffiti, and other criminal

1 activities are growing problems on our public  
2 lands.

3 We support the proposal to give parks  
4 and forests staff reciprocal law enforcement  
5 authority. We urge the administration to  
6 provide adequate funding to allow for staff to  
7 be available on high usage days, such as  
8 weekends, when the above-mentioned problems are  
9 the greatest.

10 Section 319 of the bill has to do with  
11 the forestry regeneration account. It allocates  
12 a minimum of 10 percent of the previous years'  
13 Forestry Stumpage Sales Restricted Receipts  
14 Account to a Forestry Regeneration Restricted  
15 Revenue Account. This touches on a critical  
16 issue in forest management in Pennsylvania.

17 As you know, forests are more than  
18 trees. A healthy forest is a diverse ecosystem,  
19 rich in a variety of species of wildlife,  
20 plants, insects, et cetera. We believe that if  
21 a regeneration account is established, we  
22 believe the language should be modified to make  
23 it clear that the management goals is to provide  
24 regeneration of a healthy forest ecosystem.

25 The two-way split versus further

1 splitting. As you know, we respectfully  
2 disagree with those who promote this artificial  
3 division between the management of our air,  
4 water and lands. We have even greater concern  
5 about proposals to further carve up DER into  
6 smaller components.

7 In the past, such proposals have  
8 included creating a separate Department of  
9 Energy. These proposals would have the same  
10 agency that regulates the extraction of mineral  
11 resources such as coal, oil and gas, also be  
12 responsible for the promotion of the use of  
13 these energy sources. These are fundamentally  
14 contradictory responsibilities that would result  
15 in what we would call the fox guarding the hen  
16 house.

17 We support the administration's  
18 decision to maintain mineral resource extraction  
19 regulation within the Environmental Protection  
20 Agency.

21 In summary, the Sierra Club urges you  
22 not to support efforts to dismantle DER such as  
23 House Bill 1400. However, if you do decide to  
24 support this proposal, we hope you will work to  
25 ensure that the final version ends up protecting

1 the public and the environment. This also means  
2 making sure sufficient funding is available to  
3 do the job.

4 I'd just like to comment briefly on a  
5 couple of statements made earlier by the  
6 Secretary of Environmental Resources, Jim Seif,  
7 concerning a couple of points in his testimony.

8 There is a concern amongst many  
9 environmentalists about the proposal to create a  
10 separate pollution prevention and compliance  
11 assistant bureau within DER. While we strongly  
12 support pollution prevention as a fundamental  
13 way of dealing with environmental matters in  
14 trying to eliminate air emissions, waste  
15 generation and water discharges, our concern is  
16 that there may be an attempt to prevent  
17 enforcement of the law by basically focusing on  
18 bogus pollution prevention definitions that  
19 allow for inappropriate activity under the guise  
20 of pollution prevention.

21 We would encourage the state to look  
22 very closely at the definition of pollution  
23 prevention already in place in the State of New  
24 Jersey which carefully limits pollution  
25 prevention activities to primarily source

1 reduction activities as the top priority and not  
2 to allow for out-of-process recycling and other  
3 activities which could result in release to the  
4 environment.

5 We are not opposed to the creation of  
6 a pollution prevention bureau. However, we are  
7 very concerned about proposals to prevent the  
8 implementation of any new programs in DER until  
9 the pollution prevention and compliance  
10 assistance program has been fully established.  
11 We believe that it may be necessary to go  
12 forward with additional proposals and we do not  
13 want to see this become a defacto moratorium on  
14 regulations, if you will.

15 We have additional concerns about the  
16 bill. We would like to share them with the  
17 committee within the next week. We understand  
18 that's the length the record will be open. We  
19 look forward to working cooperatively with you  
20 on this and other issues.

21 CHAIRMAN REBER: Thank you, Jeff. We  
22 appreciate you getting anything in within that  
23 period of time, but you well know my office is  
24 always open even after the record closes. We're  
25 open for robust discussions. So, if the typist

1 is out of town, don't be too concerned.

2 Let me say that I tend to agree with  
3 you on that one CAC as opposed to two CAC's. We  
4 have been talking about that since the initial  
5 draft was introduced. I think that's one, to  
6 some extent, that I think we are going to come  
7 to some closure on possibly.

8 Let me just say this. From my own  
9 experience from having been on the EQB, in the  
10 real world -- I think that's a word you always  
11 hear from me a lot. I like to operate in the  
12 real world and not in hypotheticals, when, in  
13 fact, we learn more from real-life scenarios.

14 The votes are virtually 17 to 4, or 12  
15 to 9 on that board with the administration's  
16 position of being carried when the EQB operates.  
17 I think on top of that, the other thing is  
18 always amazing to me is that, the Secretary of  
19 DER is the one that I always get a copy of the  
20 correspondence that went to him anyway. The  
21 world knows how to get to him and does seem to  
22 get to him under the current structure.

23 But, notwithstanding having said that,  
24 I don't know if you were here at the outset of  
25 the testimony of Secretary Seif, but I asked him

1 and he will be presenting to the committee an  
2 analysis both in the department and by counsel  
3 certifying to us that that concern is, in fact,  
4 addressed; that where there is a citizen  
5 involvement now, that it shall continue in the  
6 future so there is no artificial barrier put up  
7 if, in fact, that particular aspect of proposal  
8 goes forward. I think that really will go a  
9 long way to hopefully alleviating that  
10 particular fear that is there.

11 That's the reason why that was the  
12 initial question that I posed to the Secretary  
13 at the very outset of this issue to lie that to  
14 rest. And before we go to final vote on the  
15 floor, that, hopefully, that matter will be  
16 concluded so there is no diminution in what is  
17 going on at the current time.

18 On the language that you developed  
19 relative to the parks and forests concerns in  
20 302 (b) and 303 (a) that is existing law, as I  
21 understand it, of the way that is drafted and  
22 where it was taken from and is being  
23 regurgitated, if you will, virtually verbatim in  
24 House Bill 1400. So, I guess to some extent the  
25 allowance of development of state lands, that's

1           been an issue that's been around and a concern  
2           that's been around and the discussions has been  
3           fostered and battered about at least the 15  
4           years I have been here in Harrisburg. I guess,  
5           unless we take those 2 sections out, that  
6           theoretically is never going to go away. It's  
7           not as if there's some artful drafting and  
8           crafting to facilitate something other than  
9           what's already been there in statute and the  
10          potentiality of taking place.

11                        It's my understanding that there may  
12          very well be some serious studies done on that  
13          anyway from some of the other committees in the  
14          House. I've heard some discussions of members  
15          and chairmen of some of the other committees  
16          taking a look into that as well.

17                        I just have that as a comment to those  
18          because I'd like to really hear the concerns and  
19          the criticisms that you have and where, in fact,  
20          I think some of them can be dispelled or they  
21          can be distinguished, I'd like to do it.

22                        MR. SCHMIDT: Mr. Chairman, I would  
23          like to just respond. We understand that that  
24          was not a language that was inserted into this  
25          bill as a new proposal. It was a lift from the

1 existing language. But, we felt that because  
2 many of our organizations have a long-standing  
3 opposition to this, and we believe the public is  
4 not supportive of this kind of development, that  
5 it would make sense at the time where we're  
6 establishing the new agencies to wrestle with  
7 this issue. Of course, there has not yet been  
8 any kind of commercial resort type development  
9 in our state park system, even though this  
10 language is in there.

11 There's been constant pressure that  
12 continues to be growing pressure to take our  
13 public lands and turn them into a private  
14 for-profit ventures, if you will. We think that  
15 it is highly appropriate to do it on private  
16 property and even near our public lands, but not  
17 turn our public resources into a place for  
18 private profit-making opportunities.

19 CHAIRMAN REBER: My only response was,  
20 I didn't want someone to think that there was an  
21 artful drafting change. That's the reason for  
22 the record I brought it up. I can't prevent --  
23 The discussion has gone on from time of memorial  
24 relative to that, but by the same token I didn't  
25 want it to appear that there was some attempt to

1 back door some language that would exacerbate  
2 the concerns that already have been talked  
3 about.

4 Representative Masland.

5 REPRESENTATIVE MASLAND: Since  
6 Representative Vitali is not here to ask you  
7 questions, I thought maybe I'd ask them.

8 CHAIRMAN REBER: You have 30 seconds.

9 REPRESENTATIVE MASLAND: You keep  
10 talking about the artificial division. That  
11 artificial division exists in numerous other  
12 states. They seem to be doing okay. Any  
13 comments on that?

14 MR. SCHMIDT: I'm not aware of any  
15 study that's been done to justify the value  
16 that's being used to support this proposal that  
17 has evaluated the effectiveness of those  
18 arrangements in other states. I know that the  
19 Citizens Advisory Council to DER done an  
20 extensive study of other states and had found at  
21 that time they didn't see a justification for  
22 the combining of the agencies -- for the  
23 separation of the agencies based on their study  
24 of other states. It's very hard to quantify  
25 that sort of thing.

1           It's our belief, however, that because  
2           air and water interact with the land, you can't  
3           make good management decisions by creating  
4           separate management hierarchies; in that, if you  
5           end up having a vigorous difference of opinion  
6           between the Bureau of Water Quality on the one  
7           hand and the forestry folks on the other hand  
8           over a proposed clear-cut, right now you can  
9           resolve it within the agency. In the future,  
10          you will have to take it up, the fight, all the  
11          way to cabinet secretaries who will then have to  
12          fight it out. It will end up, if it gets to  
13          that level, to be resolved.

14                 We think that having-- And frankly,  
15                 right now, communications could be improved  
16                 within DER's various bureaus. We just see this  
17                 creating a more cumbersome and problematic  
18                 situation than the current situation. We want  
19                 to improve those conditions.

20                         REPRESENTATIVE MASLAND: When you talk  
21                         about these situations, you can talk about  
22                         hypotheticals and conceivably there could be a  
23                         situation as you raised. I think, though, you  
24                         have to look at the economy as a scale and look  
25                         at the size of DER as it is right now, and the

1 difficulty of dealing with a super agency of  
2 that magnitude with maybe one over-all holistic  
3 mission, just as we as legislators have a  
4 holistic mission trying to do our best for the  
5 people of the Commonwealth. But, within that  
6 holistic approach, you have separate avenues of  
7 and separate focuses that the 2 departments  
8 could take and probably should take.

9 I cannot say this as eloquently as  
10 Doctor Goddard. I think he made his points  
11 eminently clear for most of us sitting up here,  
12 at least, with the exception of Mr. Vitali. I  
13 think most of us understood what he was saying.  
14 I think when he says you need to separate  
15 management from regulation, that it makes sense.

16  
17 Mr. Vitali talked about the proposal  
18 to combine health and welfare. We didn't vote  
19 on that this past week. I don't know whether we  
20 will vote on that because there were a lot of  
21 people that, when that was raised said this  
22 really doesn't make sense. A lot of people  
23 looked at it was a perspective of what we are  
24 doing with DER. It does not make sense to  
25 combine those 2 agencies and have a super

1 agency.

2 You could say, well, they have one  
3 mission--health and welfare; pretty similar. I  
4 mean, certainly it relates every bit as much as  
5 air, water, land quality, all those various  
6 things that are in DER. But, there's still a  
7 separate mission. It's not going to solve any  
8 immediate problem.

9 When the question is asked, what  
10 problem is this going to solve, as if we are  
11 going to solve some problem tomorrow. That's  
12 ridiculous. We are not going to do that. What  
13 we are going to do, though, I think, is set up a  
14 format so that 20, 30 years from now you will  
15 have a chance to work through this process and  
16 see that by separating the focus, by allowing  
17 these departments to go their separate ways and  
18 still work together, that you will benefit all  
19 of the Pennsylvanians. You are not going to, as  
20 you say, have a profound impact on our citizens  
21 negatively. I think that we can have a profound  
22 impact positively. That's my little speech for  
23 the day.

24 MR. SCHMIDT: I have known Doc Goddard  
25 for 15 years now. I have an enormous amount of

1           respect for him and his judgement. On this  
2           issue we respectfully disagree.

3                     But, Doctor Goddard is a specialist,  
4           and his specialty was land management and  
5           forestry. From my days in industry, I remember  
6           the specialists out there trying to further  
7           specialize and not taking a bigger picture  
8           approach.

9                     Our concern here is, air and water and  
10          land are all part of Pennsylvania's natural  
11          resources. To create a Department of DCNR, if  
12          you will, and then all of a sudden water and air  
13          aren't part of the natural resources that are  
14          going to be managed in a holistic manner, it  
15          makes for what we believe poor environmental  
16          decision making.

17                    Now, how they are going to resolve  
18          differences of opinion about clear-cutting; for  
19          instance, the State of Pennsylvania allows much  
20          bigger clear-cutting on its tracks of land than  
21          the national forest does on Pennsylvania's  
22          national forest land. That's a water quality  
23          concern. Are we going to see that exacerbated  
24          by a timber industry who will attempt to  
25          influence a much smaller agency whose mission is

1 not environmental protection? That's a concern  
2 of ours; that a timber industry, which is a  
3 powerful industry in Pennsylvania, can more  
4 easily dominate a much smaller agency who is not  
5 also concerned about environmental protection.  
6 That is part of our concern. When you do this,  
7 you open that door.

8 REPRESENTATIVE MASLAND: We are going  
9 to have to agree to disagree. I think your  
10 concern about changing an organizational chart I  
11 think misses the mark. By everybody's testimony  
12 today, it's not just changing an organizational  
13 chart. Secretary Seif said that's not really  
14 what we are talking about. Doctor Goddard said  
15 that it's really the attitude that we are  
16 getting at. To the extent you can separate  
17 these 2 functions and allow each one to move  
18 forward with their more refined focus and with a  
19 more refined attitude, I think will benefit  
20 everybody. We'll have to agree to disagree.

21 CHAIRMAN REBER: Thank you very much,  
22 Jeff.

23 Our next witness is Mr. Thomas Sexton,  
24 Director of Pennsylvania Rails to Trails. Good  
25 afternoon.

1                   MR. SEXTON: Good afternoon. Thank  
2 you for the invitation to testify on House Bill  
3 1400 which seeks to create the Department of  
4 Conservation and Natural Resources and  
5 Department of Environmental Protection from the  
6 present Department of Environmental Resources.  
7 As a member of Governor Ridge's Environmental  
8 Transition Team and Co-Chair of the Governor's  
9 Conference on Greenways and Trails, I hope my  
10 input today will be helpful.

11                   The Rails-to-Trails Conservancy is the  
12 largest membership-based trail building  
13 organization in the nation with nearly 62,000  
14 members. Established in 1986 and headquartered  
15 in Washington, D.C., RTC has 35 staff and 5  
16 state offices, of which Pennsylvania is the  
17 largest with nearly 7,000 members. RTC's  
18 mission is to enhance America's communities and  
19 countrysides by converting thousands of miles of  
20 abandoned rail corridors, and connecting open  
21 space, into a nationwide network of public  
22 pathways.

23                   Today, 681 trails totaling 7,865 miles  
24 of abandoned railroad corridors have been  
25 secured in 48 states, and an additional 900

1 rail-trail projects are in the works in all 50  
2 states. Pennsylvania is a leading state with 56  
3 rail-trails totaling nearly 600 miles; plus, 70  
4 projects in various stages of development.  
5 Although difficult to predict, at least a few  
6 thousand more miles of rail corridor are  
7 eligible for conversion in Pennsylvania.

8 While rail-trails are most often  
9 thought of as recreation resources, recently  
10 they have gained considerable attention because  
11 of their transportation use. This is especially  
12 true in urban and suburban areas where these  
13 pathways also provide a safe and convenient  
14 environment for commuting pedestrians and  
15 bicyclists.

16 In fact, Pennsylvania has committed  
17 more funding to rail-trails through the new  
18 Intermodal Surface Transportation Efficiency Act  
19 than any other state. Current funding  
20 commitments total over \$35 million for  
21 51 different rail-trail projects in the  
22 Commonwealth.

23 In more specific regards to the  
24 committee's expertise, I can cite many projects  
25 in the Commonwealth where municipalities and

1 local trail volunteer councils have joined in  
2 partnership to create enormous recreation  
3 opportunities. Some communities hope to develop  
4 their rail corridors for use by local residents,  
5 while others see rail-trails as an economic  
6 boost via tourism. Users young and old are  
7 enjoying time on these trails as they walk,  
8 bicycle, cross-country ski, horseback ride, and  
9 in-line skate. Recent studies from Penn State  
10 and National Park Service has illustrated this  
11 fact, and it is not uncommon to see real estate  
12 listings include rail-trails as an amenity when  
13 listing homes for sale.

14 Increasingly, these rail corridors are  
15 also under various forms of joint use.  
16 Utilities best suited for rail-trails are those  
17 that can be installed underground, such as  
18 water, sewer, natural gas, buried electric  
19 cable, and fiber optic lines. However,  
20 above-ground utilities such as telephone, cable,  
21 television and over-head electric lines may also  
22 share a corridor with the rail-trails. Even  
23 rails with trails where active rail lines run  
24 parallel to existing trails are gaining wider  
25 acceptance. Always very popular in Europe, we

1 even have a few examples in Pennsylvania.

2 Except for one important issue, RTC  
3 supports House Bill 1400 for many of the reasons  
4 you have heard today. However, instead of  
5 covering the same ground, let me concentrate on  
6 a program within this legislation that may not  
7 have received as much attention today: heritage  
8 corridors, rivers, rail-trails, and other type  
9 pathways, generally categorized as greenways.

10 While our parks and forests are the  
11 core of Pennsylvania's natural resource base and  
12 are in desperate need of additional resources  
13 and priority attention, by far the largest  
14 growth area for America's natural resource  
15 development and management in the next century  
16 will be in the area of greenways.

17 Pennsylvania is uniquely blessed with  
18 a landscape of rivers and streams, which, by  
19 necessity, brought about the construction of  
20 railroads and related infrastructures that in  
21 large part shaped the culture of the  
22 Commonwealth. Starting today we need to seize  
23 the opportunity to both preserve and utilize  
24 these natural and cultural resources.

25 The most important first step is to

1 designate a champion of this cause, the new  
2 Secretary of the Department of Conservation and  
3 Natural Resources. The combined tasks the  
4 current position of Secretary of the Department  
5 of Environmental Resources is expected to  
6 administer is an impossible job that will leave  
7 little time for what will be the new frontier in  
8 natural resource development and conservation.

13  
9 While DER provided the early impetus  
10 for rail-trails in Pennsylvania with such jewels  
11 as the Youghiogheny River Trail, Lehigh Gorge  
12 State Park Trail, and the soon-to-be developed  
13 Pine Creek Trail, most rail-trails, and  
14 especially the majority of greenways will be  
15 developed outside the boundaries of state park  
16 and forest lands. Thus, new perspectives and  
17 tools will be required for DCNR to work closer  
18 with local communities to build and manage this  
19 very different type of recreation resource.

20 That is why RTC wholeheartedly  
21 supports the transfer of the Department of  
22 Community Affairs' Bureau of Conservation and  
23 Recreation into the new DCNR. This bureau of  
24 DCA has been involved with all aspects of  
25 greenway development within a community context.

1 Not only does this involve working with many  
2 more stakeholders than traditional park  
3 development, it also means the ability to  
4 provide technical assistance of a different kind  
5 and through different methods, all, of which,  
6 ultimately requires building local support  
7 through a very grassroots, bottoms-up type  
8 approach. In addition, this transfer will bring  
9 about a consolidation of funding programs that  
10 are identical. At present, greenway applicants  
11 seeking assistance have to work through DER and  
12 DCA for the same type requests.

13 In order for Pennsylvania to reach the  
14 potential it possesses for rail-trail  
15 development and make the leap from traditional  
16 park development, the new Secretary must  
17 implement our state Rails-to-Trails Law, Act 188  
18 of 1990. Because this act authorizes DER to  
19 develop a program outside of its traditional  
20 scope of operation, it is, of course, a  
21 challenge. However, it is a challenge the  
22 citizens of Pennsylvania do clearly want our  
23 leadership to meet as is evidenced by the number  
24 of rail-trail projects underway.

25 To date, rules, relations and program

1 standards for key provisions of the  
2 Rails-to-Trails Act have not been promulgated by  
3 DER. More fundamental is the fact that in order  
4 for the act to work it requires coordination  
5 among DER and other state agencies: The Public  
6 Utilities Commission, Department of  
7 Transportation, and the Historical and Museum  
8 Commission. None of these agencies have wanted  
9 to take a leadership role, to even call for  
10 cooperation, let alone work out the details.  
11 Instead, the agencies attempt to build legal  
12 walls around their programs to protect their  
13 interests and prevent their operation from  
14 changing.

15 A good specific example of this type  
16 of bureaucratic foot-dragging, and the number 1  
17 issue facing rail-trails today in Pennsylvania,  
18 is found in Section 208(e) of House Bill 1400.  
19 We strongly oppose this section which reads:  
20 Quote, nothing in this act shall be construed to  
21 be grounds for the imposition of the responsi-  
22 bility by the Public Utility Commission for the  
23 maintenance or costs of any railroad crossing or  
24 abandoned railroad crossings under Chapter 27 of  
25 the Public Utility Code, 66 Pa. Consolidated

1 Statute 2701-2706, unquote.

2 Central to the development of rail-  
3 trails is the preservation of rail bridges and  
4 tunnels which are referred to in Sub-Section (e)  
5 as crossings. Without these structures, trails  
6 will be cut into many segments, creating a  
7 safety hazard for the user and the motoring  
8 public. In addition, the heritage value of many  
9 corridors are being devalued because many  
10 historic structures are being demolished, even  
11 old stone arch structures which state engineers  
12 have found structurally sound.

13 This type of legal maneuver is not  
14 consistent with the spirit of the House Bill  
15 1400 and pushes us farther away from remedies.  
16 It is a means of protecting turf and is a result  
17 of the agencies tossing the issue of  
18 responsibility for these structures amongst each  
19 other for the last 5 years. Because of their  
20 inability to cooperate, DER and the PUC recently  
21 debated this issue in Commonwealth Court.  
22 However, this is not the forum which will yield  
23 results. Demolition is occurring all over the  
24 Commonwealth, and millions of dollars and dozens  
25 of trail projects are in jeopardy because of the

1           unwillingness of state agencies to sit down and  
2           cooperate and become problem solvers.

3                       We, therefore, recommend the deletion  
4           of Section 208 (e) as presently written, and  
5           instead request the addition of language that  
6           recommends the creation of an interagency task  
7           force composed of the before-mentioned agencies  
8           to solve this problem, and a moratorium be  
9           imposed on further demolition until an  
10          appropriate program is designed.

11                      Further, I would like to mention a  
12          related issue, while not specifically contained  
13          in House Bill 1400, it is of critical importance  
14          to environmental groups and, unfortunately, runs  
15          counter to House Bill 1400, to give greater  
16          significance to our natural resources. This  
17          issue is the Office of Administration's recent  
18          decision to exclude charitable giving to  
19          environmental and natural resource causes  
20          through the State Employees Combined Appeal  
21          because this work, quote, does not provide  
22          direct health and human services to people. I  
23          hope both the new DCNR and DEP will work to  
24          reverse this ridiculous ruling which demeans the  
25          work of their employees, and reflect poorly on

1 the Ridge Administration.

2 In closing, without the cabinet level  
3 support provided in House Bill 1400, the  
4 greenway potential Pennsylvania possesses will  
5 never be realized. Additionally, while there  
6 may be a relatively small increase in costs by  
7 creating 2 new departments, as an  
8 environmentalist I think it is money well spent  
9 and will yield tremendous return on the  
10 investment to the economy of Pennsylvania.

11 Thank you for your time and  
12 consideration, and I would be happy to meet with  
13 you at anytime to further discuss these issues.

14 CHAIRMAN REBER: Thank you, Mr.  
15 Sexton. Just for clarification of the record,  
16 you referenced Section 208 (e). That's supposed  
17 to be 308 (e), I believe.

18 MR. SEXTON: 308?

19 CHAIRMAN REBER: Yeah, 308 (e), in the  
20 bill. It's on page 45 of the bill, line 9.  
21 Section 308 is the trails-to-rail section.

22 MR. SEXTON: I apologize.

23 CHAIRMAN REBER: That's all right. I  
24 just wanted to make sure that was correct.

25 Now, following up on that and we have

1           been here trying to analyze it and read it, from  
2           my reading, the inclusion of this language does  
3           nothing to change the current state of the law  
4           as I read it. I think what this language is  
5           simply suggesting, that by this new act and all  
6           the other sections contained in Section 308, or  
7           for that matter any other sections of this act  
8           in general, we don't want anything in here to be  
9           construed to be changing the current state of  
10          the law under PUC law; or, otherwise, as it  
11          might relate to the maintenance and costs of  
12          railroad crossings or abandoned railroad lines.  
13          Did you agree with that? Isn't that really what  
14          that says? I don't see where this is taking  
15          away a right that already exists.

16                        I think all this is doing is  
17                        suggesting that we're not trying to carve out  
18                        any new conceptual nitch, if you will, in the  
19                        area of PUC laws or it might relate to  
20                        maintenance and costs of railroad crossings by  
21                        this act. I look at it as being a rather  
22                        neutral provision or a protective provision to  
23                        keep neutrality as that issue might exist. So,  
24                        at least this bill isn't doing anything to  
25                        enhance or decrease, or whatever, however you

1 want to characterize it. Is that a fair  
2 statement?

3 MR. SEXTON: Our orientation on that  
4 is that, the present program is broken. By  
5 including this in House Bill 1400, the  
6 department is just giving more validity to a  
7 program that's not working.

8 CHAIRMAN REBER: Okay. Whether it's  
9 working or not, if it was working, I don't want  
10 to hurt it. If it's not working, today I don't  
11 want to try and fix it either. I mean, that's  
12 where I'm coming from. I just want to make sure  
13 that we are not doing something that changes the  
14 current state of the law. In my reading of it,  
15 I don't think that's the case and in counsel's  
16 reading of it.

17 I understand what you're saying, but  
18 I'm a stickler for intellectual honesty in  
19 statutory structure. I just want to make sure  
20 that we aren't doing something here to  
21 exacerbate a problem, but by the same token on  
22 this particular issue right this very minute,  
23 I'm not interested on solving that particular  
24 problem either. But, I want to make sure that  
25 we are not doing any exacerbating. As I read

1 your testimony, it appeared that we were and  
2 that's why wanted to --

3 MR. SEXTON: I think it will  
4 exacerbate the problem. It is going to make it  
5 much more difficult for the rail-trail  
6 communities and the greenway community to bring  
7 the various departments together and solve the  
8 issue. I talked about building up walls around  
9 their programs. The PUC and Department of  
10 Transportation have been doing that. I think  
11 this is being used as a vehicle. I'd rather  
12 just leave it out. It's just redundant. It's  
13 just stating the law again.

14 CHAIRMAN REBER: I'm asking you the  
15 question because we -- Believe it or not, I hold  
16 these hearings to find out these things.

17 MR. SEXTON: I can give you much more  
18 information on this to more detail because it is  
19 a new issue. It's a real tragedy going on.

20 CHAIRMAN REBER: I'm familiar with  
21 what you're talking about. That's what I said.  
22 I've got enough problems right now between  
23 Senate Bills 1, 11 and 12 and this and  
24 everything else. I don't need to take a new  
25 one this week. See me in about a month and I

1 might have the energy restored to do it.

2 I just wanted to make sure we were on  
3 the same wavelength, and I sort of think we are,  
4 but we're coming at, I think, from different  
5 directions. We'll take a look at it and not  
6 create any additional barriers, artificial, or  
7 otherwise.

8 MR. SEXTON: I would appreciate that.

9 CHAIRMAN REBER: One last question  
10 too. Speaking of Senate Bill 1, from the  
11 perspective of your interest, Senate Bill 1 is a  
12 sites remediation industrial standards piece of  
13 legislation. Have you been running into any  
14 problem where there are contaminants in the rail  
15 lines? In your opinion, will you be able to  
16 derive some of the benefits that are contained  
17 in Senate Bill 1 if you are familiar with it and  
18 if you're not?

19 MR. SEXTON: Just in a general sense,  
20 I have often thought about what that act will do  
21 for the development of rail-trails. I think you  
22 are right. Because so many of these corridors  
23 are industrial in nature, there may be some  
24 relief that we could get. Because, quite often,  
25 again, rail-trails we're not building homes or

1 buildings on top of these things. Nobody is  
2 going to be living on top of these corridors.  
3 They are passing through maybe over contaminated  
4 soil if it's a reclaimed industrial spur or  
5 something like that. It has to be a reasonable  
6 point where you contain that contaminated soil  
7 so it does not run off or come in contact with  
8 the trail user.

9 Because this is a new program, we have  
10 been running into difficulty and many of the  
11 trail projects have had to spend tens of  
12 thousands of dollars to do what I think is  
13 unnecessary environmental background studies,  
14 core sampling, and so forth. These are  
15 industrial corridors. Quite often we are  
16 spending more money to do the environmental test  
17 than it is to lay down a surface and open a  
18 trail, and that's unfortunate.

19 CHAIRMAN REBER: It seems to me that  
20 in my reading of it, the other day I had this  
21 conversation with Representative Geist, the  
22 Chairman of Transportation Committee. He had  
23 the similar concern and very eloquently  
24 advocated it to me that he thought there might  
25 be some relief affordable to you and to your

1 interest as a result of this legislation. We  
2 went back and looked at it, we sort of thought  
3 there was too. I was just curious.

4 Representative Masland.

5 REPRESENTATIVE MASLAND: Thank you.  
6 Thank you, Mr. Chairman. Mr. Chairman, I  
7 realize you have a lot of crusades; probably a  
8 couple more than I have. I would be happy to  
9 talk to Mr. Sexton about Section 308 (e) and  
10 work with counsel and with the committee and see  
11 what we might be able to do.

12 I'm very interested in this subject.  
13 We have a Cumberland Valley Rails-to-Trails. We  
14 have had some problems with some old structures  
15 between Newville and Carlisle in terms of trying  
16 to keep the bridges up there so that the line is  
17 intact. I would be happy to work with you on  
18 that to see what we might be able to do. It may  
19 not be something we can do in context of this  
20 bill, but it certainly is something that I would  
21 be happy to try to address.

22 Just one other comment. I think your  
23 testimony regarding the failure of DER to  
24 promulgate rules in this setting is a perfect  
25 example of why we need to divide the focus,

1 divide the responsibilities. As Secretary Seif  
2 said, it's a question of the urgent being  
3 addressed to the detriment of the important. If  
4 you have those environmental protection issues  
5 up there, they are going to be on the front  
6 burner. Well, these rules, we'll get to them  
7 later as far as rails-to-trails, people  
8 can ride someplace else. We'll just worry about  
9 that at a later date.

10 I think that's a good example. I  
11 appreciate your testimony and I would be happy  
12 to look into that situation with you.

13 MR. SEXTON: I look forward to talking  
14 with you, especially in the circumstances  
15 surrounding the 8 structures that were  
16 demolished in January between Shippensburg and  
17 Carlisle; 3 of those which were beautiful old  
18 stone-arched bridges that were structurally  
19 sound. There was no accident history on those.  
20 They weren't well-traveled roads, but now they  
21 are gone. Pennsylvania Historical Museum  
22 Commission did not have the clout to preserve  
23 those structures.

24 Now we have a very dangerous  
25 situation. That trail which is going to be

1           successful has been devalued greatly. It's only  
2           a matter of time till someone asks them to go  
3           back to the state and ask for money to rebuild  
4           the same bridges that they took away, which is  
5           not thinking in the long term.

6                         REPRESENTATIVE MASLAND: I agree.

7           Thank you, Mr. Chairman.

8                         CHAIRMAN REBER: The Chair thanks the  
9           Subcommittee Chairman on rails-to-trails. Thank  
10          you very much.

11                        The record will be held open for 7  
12          days as previously announced for anyone that  
13          would like to offer any written testimony to the  
14          committee on House Bill 1400. This public  
15          hearing is hereby adjourned.

16                        ( At or about 1:50 p.m. the hearing  
17          concluded )

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I, Karen J. Meister, Reporter, Notary Public, duly commissioned and qualified in and for the County of York, Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript of my stenotype notes taken by me and subsequently reduced to computer printout under my supervision, and that this copy is a correct record of the same.

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Dated this 13th day of May, 1995.



Karen J. Meister - Reporter  
Notary Public

My commission  
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