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# Hearing on Toxic Contamination and Water Quality

Assembly Committee on Consumer Protection and Toxic Materials

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ASSEMBLY COMMITTEE ON CONSUMER PROTECTION AND TOXIC MATERIALS

HEARING ON

# TOXIC CONTAMINATION AND WATER QUALITY

SAN JOSE, CALIFORNIA  
DECEMBER 8, 1983



## MEMBERS

Assemblywoman Sally Tanner, Chairwoman

Assemblyman William Baker  
Assemblyman William Bradley  
Assemblyman Robert Campbell  
Assemblyman Gary Condit

Assemblyman Lloyd Connelly  
Assemblyman Tom Hayden  
Assemblywoman Lucy Killea  
Assemblyman Ernest Konnyu

Mary Vasos  
Committee Secretary

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no. 1

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- Assemblyman Ernest Konnyu

Salvador Barajas  
Consultant

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84-9-003

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**CONSUMER PROTECTION AND TOXIC MATERIALS**  
**San Jose, California**  
**December 8, 1983**

CHAIRWOMAN SALLY TANNER: Good morning. Welcome to a public hearing of the Assembly Committee on Consumer Protection and Toxic Materials. I am Assemblywoman Sally Tanner, I Chair the committee. To my right is Assemblyman Tom Hayden who is a member of the committee. The subject of today's hearing is toxic contamination and water quality.

As most of you know, during the past several years toxic chemicals have contaminated water supplies in many areas in California. These toxic chemicals are of many types. In the San Gabriel Valley where the district I represent is located, the underground aquifer, has dangerous levels of an organic industrial solvent, TCE. In the San Joaquin Valley, thousands of wells are tainted by the pesticide DBCP. Los Angeles water supplies have been found to contain different toxic substances. Here in Santa Clara County, groundwater has been polluted by the industrial solvent, TCA.

As these cases of drinking water contamination have been uncovered, we've begun to understand that contamination of water by toxic materials is a serious problem. It is not a localized problem. It occurs throughout the state and throughout the country, as a matter of fact. The sources of water contamination are varied. It occurs because of improper handling and disposal of hazardous waste, because of the ill-advised use of pesticide, and because of leaks from underground tanks used to store hazardous and toxic materials.

As a result of these findings, the Legislature enacted a series of bills to begin to control the problem. One of these bills, authored by Assemblyman Byron Sher, requires that underground tanks used to store chemicals and motor vehicle fuels be made safe and secure. A second bill, carried by Assemblyman Dominic Cortese, requires a statewide inventory of underground tanks. A third bill, by Assemblyman Lloyd Connelly, establishes a program for monitoring drinking water supplies for a large number of organic chemicals.

The purpose of the hearing today is to examine the planning for the implementation of these bills. We will try to determine what the time schedules are for putting the bills into effect and if sufficient funds are available or have been requested to insure that these new programs are administered effectively. We scheduled this hearing in San Jose because the Santa Clara County area has more experience in regulating underground storage tanks than any other area in the state. We at the State level want to learn from that experience.

I might mention that we also have asked the Auditor General to brief the committee on the most recent audit of the hazardous waste program. The Auditor General will give that briefing immediately after the lunch break. Before we ask Nanci.... Oh! I have already introduced Tom. But we expect additional members of the Committee and I am expecting Byron Sher to be here sometime today.

Our first witness today is, if I can find my agenda, is Nanci Ianni, who is a city council member here in San Jose and the chair of the Community Development Committee. Nanci.

And I want to thank you for the Committee for allowing us to use the chambers. It's very nice. Thank you.

COUNCILWOMAN NANCI IANNI: Thank you very much and good morning. On behalf of the Mayor of the City and all of the City Council, I would like to welcome you to the City of San Jose. We appreciate your committee's interest and willingness to address the critical issue of hazardous material storage.

We are here today to insure that legislation passed during the legislative session will provide for the prevention and clean-up of chemical leaks which threaten our drinking water supplies.

As you may already be aware, we in Silicon Valley have developed a comprehensive model ordinance for the safe storage of hazardous materials. The County model ordinance came about as a result of an underground leak of industrial solvents which contaminated a public well supplying drinking water to some 16,500 houses in South San Jose.

An investigation into the Fairchild incident lead to the conclusion that regulation of hazardous material storage is essential to insure the protection and safety of our public water supply. The investigation indicated that even with every agency carrying out its appointed responsibility, the leak nevertheless occurred. The City's role was one of routine issuing of a permit for the original installation of a tank that subsequently leaked. There were no agencies or regulations which would have prevented this incident from occurring. The responsible agencies at all levels were only delegated the responsibility for cleanup and abatement after the leak occurred. The potential severity and



the public outcry from the contamination in this incident dictated the necessity for local government in Santa Clara County to develop a solution.

We have since documented more than sixty additional leaks. A special task force was first established by the Santa Clara County Fire Chiefs to develop a proposed ordinance. The Task Force included representatives from local communities, industry, employee representatives, the environmental movement, state, regional, county, and city governments. The Model County Ordinance was developed after a nine month review and provided a regional systematic approach to protection of the public health from contamination of the public water supply. To date, eleven cities and the County of Santa Clara have adopted the ordinance. The Legislature approved this session, Assembly Bill 1362 (Sher) which was modeled after the Santa Clara County Ordinance. AB 1362 provides a program of minimum standards for the regulation and storage of hazardous materials in underground storage tanks. In combination with Assembly Bill 2013 (Cortese) which provides for an inventory of materials stored in such tanks, local government will have the vital information necessary to protect the public health.

The Legislature has responded to the serious need for a comprehensive program necessary to avoid further contamination of the public's drinking water supply. Under our local ordinance, implementation of the hazardous materials ordinance requires an analysis and estimation of the workload and staff requirements. An important factor is determination of the number of facilities which will be subject to the ordinance. This is critical in

estimating the workload and needed resources. The most important step to insure implementation of the hazardous material ordinance through each jurisdiction is to inform those who may be subject to regulation, providing a clear understanding of intent and requirements of the ordinance. For instance, in San Jose the ordinance provides essential prevention and emergency abatement information to the responding personnel from our Fire Departments. The permittee is required to develop a management plan to demonstrate how he will comply with the ordinance.

The major functions which must be performed for a City to grant a permit are:

- 1) notification to potential permittees
- 2) review of inventories submitted by the permittees
- 3) review of the hazardous materials management plan
- 4) review of the proposed monitoring plan
- 5) preliminary and final field inspections
- 6) overall program management.

In review of inventory statements, we learn the quantities, types of hazard, and classes of materials to be stored. In the review and approval of the management plan, we insure safe storage and see how the monitoring plan will detect a leak that has occurred.

Following the approval of the management and monitoring plans, a facility is inspected to determine whether the submitted data is in accord with the actual facility. Subsequent satisfactory installation of the proposed monitoring system results in the issuance of a 5-year permit.

CHAIRWOMAN TANNER: Could I ask who inspects?

COUNCILWOMAN IANNI: The inspections, I will refer all questions of a detailed nature to those members of our staff, if I may refer that question at the conclusion of my testimony.

CHAIRWOMAN TANNER: All right. Fine.

COUNCILWOMAN IANNI: Thank you.

Both AB 1362 and the San Jose ordinance provide performance standards rather than detailed construction specifications for installing secondary containment and monitoring systems. To assure uniform enforcement, recommended guidelines must be developed. Key elements which must be covered in such guidelines include:

- format for inventory submittal;
- format for facility maps and storage areas;
- installation of buried underground tanks;
- installation of tanks in open vaults;
- repair of underground tanks;
- reporting and clean-up of spills and leaks;
- selection of technical equipment such as devices for monitoring leaks, vapor detectors, and water removal pumps;
- a training manual for field personnel.

Assembly Bill 1362 and the San Jose Ordinance provided that regulatory agencies may develop a cost-recovery fee schedule to cover the cost of the enforcement program. Considerations commonly used in determining the permit fee include:

- Number of site owned by a company which stores hazardous materials;
- Number of storage locations within each site;

- Number of hazard classes of materials stored at each location;
- Quantities of each hazardous class of material.

The fees assessed can be based upon the foregoing factors and normalized to provide the required level of cost-recovery for the enforcement program.

The requirements for the reporting and clean-up of spills and leaks are intended to ensure clean-up without delay and with minimum threat to the environment and public health. Both AB 1362 and the San Jose Ordinance provide procedures for reporting leaks. The local ordinance grants the right but does not necessarily mandate local authorities the duty to initiate actual clean-up and abatement procedures. It must be noted that a number of state agencies, including the Regional Water Quality Control Board and the State Department of Health Services have continuing jurisdiction expertise in spill clean-up. It is clear that the San Jose Ordinance and AB 1362 will result in an increase in the number of spills and leaks detected, particularly with the requirement providing for installation of monitoring wells. At the present time, the role of local authorities when spills occur is to abate the immediate emergency and to define the extent of the spill or leak. When the immediate threat is contained, and the remaining problem is a non-emergency, the problem is the jurisdiction of the state agencies - the Regional Water Quality Control Board and the Department of Health Services - to manage clean-up activities. It is our belief that the current resources and staff in levels of the Regional Board and

the Department of Health Services are minimally adequate to meet the present work load. As the work load increases as anticipated, the problem will be even greater. Resources and staffing is vital to the success of both the State programs and our local programs in San Jose and Santa Clara County.

With the passage of Assembly Bill 1362 and Assembly Bill 2013, California has assumed an important leadership role in setting standards for other states to follow in their regulation of hazardous materials. The key elements of our San Jose ordinance, upon which AB 1362 is based, are the management plan, the inventory statement, and the construction standards. Our local ordinance goes much farther in the area of secondary containment for hazardous materials as it regulates underground, above ground and indoor storage.

Our experience in San Jose has shown that the most important factors in dealing with hazardous materials regulations are to be flexible and to not delay. Our involvement began with the incident at Fairchild. The realization of the immensity and complexity of the problem and the tremendous costs involved in cleaning up a spill required immediate action to prevent future problems. While the ordinance was being developed, we used local initiatives to encourage prevention through our General Plan and zoning process. We immediately began requiring secondary containment and monitoring for underground tank storage.

We must all realize that the issue of dealing with hazardous materials is a priority for elected officials as it is for our constituents. We cannot afford to delay implementation of AB 1362 while we wait for a detailed comprehensive plan and

regulations to be developed. Our experience has shown that by beginning with minimal regulations, and adding as the need arises, we have been able to move forward very quickly. When implementing the legislation, we must avoid becoming bogged down in the engineering and design standards, complex regulations and requirements. To do this is to discourage new technology and to cause unnecessary delays.

I urge you to look at this legislation as setting performance standards that industry can respond to with the development details as experience requires. Thus, local jurisdictions will be encouraged to work with industry in a cooperative effort. Over-regulation is clearly not the answer. The concept has been established and is working. On the local level, as requirements are made on containment, it can be left to the engineers to each specific instance to show that the performance standard has been met.

Examples locally of both industry cooperation and regulations that encourage new technology are flexible liners for underground petroleum tanks; double-wall fiberglass or fiberglass-clad underground tanks and a safe-cart for transporting toxic materials. If we had held to cumbersome regulations and engineering standards, these developments would not have occurred.

In conclusion, I would like to make these suggestions. The implementation of a hazardous materials law is urgently needed. State regulations must be realistic, flexible, workable and to begin, simple. Do not strive for perfection and incur further delay. Prevention is more cost effective for everyone.

As the state-of-the-art progresses, we will surely find better than we presently have available. But beginning now this is a giant step forward to ensuring protection of our vital, natural resource -- our drinking water supply.

With those comments, I would like to refer all questions to those people who have really been instrumental in putting this ordinance together and in working out implementation procedures. I would like to introduce several of those people to you.

CHAIRWOMAN TANNER: Before you do that, ..

COUNCILWOMAN IANNI: Yes.

CHAIRWOMAN TANNER: I would like to, and I am sure the rest of the Committee joins me, in commending you people for putting such an outstanding program together and responding to the emergency the way you did. Really, it was something that we in the state were delighted to be able to follow. You just did an outstanding job. I would also like to introduce Assemblyman Ernie Konnyu who represents part of Santa Clara County and the author of AB 1362 and a member who represents, what...San Jose, Santa Clara County, Northern, Byron Sher. Yes. Mr. Konnyu has a question.

ASSEMBLYMAN ERNEST KONNYU: Yes. Madam Chairwoman, it is not a question. I would just like to make a quick statement. First of all, I want to welcome the members of the Committee to our County on behalf of Byron Sher and myself. Second of all, I would like to tell the audience that as a lead Republican on this Committee, I have an unusual compliment to make the Chairperson, Chairwoman Sally Tanner, because the key element of the Governor's Toxic Waste Clean-up Package, AB 860 which I carried

was coauthored, well first of all the principal coauthor was the Chairwoman of this Committee and so it became a bipartisan bill and it went through both the Assembly and the Senate without a "no" vote and it was partly the work of Chairwoman Tanner and, of course, just for those who don't believe that we can cooperate with all elements of the Legislature, another coauthor was Tom Hayden. So it worked out that kind of cooperation is possible in Sacramento and that is the kind of Committee that you have sitting in front of you, a strong bipartisan committee that wants to make sure that toxic waste matters are cleaned up.

CHAIRWOMAN TANNER: Thank you very much. I would like to introduce Assemblyman Bill Baker who just arrived. How do you do. All right. Questions, members? Mr. Sher.

ASSEMBLYMAN BYRON SHER: I am sorry that I came in the middle of your presentation. I heard the end of your presentation and I was particularly taken by your reference to the bill that I authored, which you are quite correct. You quite correctly described as imposing performance standards, that is the laws contemplate that the tanks that are put in underground should not leak. Recently we obtained from the administration the document, I don't know if the Committee has this, but it is called the Budget Change Proposal which is a document that describes how the State Water Resources Control Board proposes to implement this law and the other laws that were passed in the past session dealing with this general subject and one feature of it indicates that the State Board proposes no performance standards in the regulations that they are about to look at but rather detailed design standards and as I understood your



remarks, that is the wrong approach. That is not what is intended. That is what you tried to avoid at the local level in trying to work with industry and that's the wrong approach. I happen to think that it is the wrong approach, too, and it is not what is called for by the bill. Would you agree with that?

COUNCILWOMAN IANNI: Ours is not to tell the state legislators what to do. Ours is to tell you what works.

ASSEMBLYMAN KONNYU: And what works is performance standards, right, with industry. Is that right?

COUNCILWOMAN IANNI: I do wish to express our thanks on behalf of the City of San Jose and Santa Clara for the leadership that this Committee has taken in making sure that at the state level...

ASSEMBLYMAN KONNYU: Well, I was just trying to underscore your statement, and I quote from your statement that we urge you to look at this legislation that is setting performance standards that the industry can respond to with the development details as experience requires. I want to say that I am in accord with that and if the State Water Board is thinking about coming up with design standards, that is the wrong approach. Indeed it is not what the legislation intended. But we can take that up with the witness from the Water Board. Thank you.

COUNCILWOMAN IANNI: We do appreciate from San Jose and Santa Clara County your remarks because that is what we have found works and works well.

CHAIRWOMAN TANNER: Are there any questions of the witness or the staff? Mr. Hayden.

ASSEMBLYMAN TOM HAYDEN: Thank you for your testimony.

I noted in your testimony that you had indicated the need for state assistance on page four, the last line, resources and staffing is vital to the success of both the state programs and our local programs in San Jose. I wonder if you can elaborate from where and to what magnitude of resources you need, particularly in light, I don't know if you have seen the staff report for this hearing which indicates that two million dollars were vetoed by the Governor from the 1983-84 Budget Trailer Bill which would have allowed some money to take the inventory of underground storage tanks and allow the State Water Board to have the capacity to investigate and to enforce the efforts because if we don't have an inventory capacity nor an enforcement capacity, this will of course be a lot of energy expended with little result. I wonder if you could comment on that and particularly on where you expect the resources and staff to come from.

COUNCILWOMAN IANNI: As we proceeded with the implementation of our ordinance in this city and this county, as I have testified we have identified a number of problem areas and one of those problem areas is where there are jurisdictions implementing the measures that are needed to insure that we do have a comprehensive program that do not necessarily conflict, but where they overlap and where we in the city are dependent upon another agency to carry forward the implementation. And my remarks on behalf of the city and state that we have gone so far in our implementation, now we see that the state and other agencies are going to be responsible for the implementation. I would like to call on Chief Delgado of our Fire Department to

Speak specifically as to where we are right now and exactly what the specifics of that interface are and any comments on what are the specifics of the requirements as I understand your question.

CHAIRWOMAN TANNER: Chief. Would you identify yourself.

CHIEF BOB DELGADO: Yes. My name is Chief Bob Delgado. I am the Fire Marshal for the City of San Jose. I would like to point out that present in the audience, we have several of the primary architects that put together our model ordinance. We have a mix of fire officials and water districts and chemists in the audience, and perhaps we can answer some of your questions.

Madam Chair, and members of the Committee. The issue we are trying to point out is that we see our role as one of preventive leaks from occurring but when a leak does occur we then see our role as initiating the original investigation of the clean-up to determine what was spilled, how much was spilled, who owns the property and any information necessary to implement the actual clean-up.

CHAIRWOMAN TANNER: Being who? The city, the county, or the fire...

ASSEMBLYMAN SHER: We who have passed the ordinance here see our role as initiating the original investigation. However, the final clean-up, the administering of a clean-up program, we don't see that as our role here at the local level. Our's is to prevent, investigate, and then report it to a state agency who then sees to the final clean-up. It is our information at this point that the workload they presently have, they're barely able to keep up with. And with the implementation of our ordinance in a growing number of cities and with the implementation with the

Sher bill throughout this state, we're certain that they are going to discover more areas of contamination and the workload will increase dramatically regarding clean-up.

CHAIRWOMAN TANNER: Any further questions? I will say that I spoke with Allan Zaremberg yesterday and Allan Zaremberg is the Deputy to the Governor and he asked me to report to the members and to the public that the Governor is planning on finding resources to implement Mr. Sher's bill.

CHIEF DELGADO: On that point, of course, there are two aspects to be responsive; one is to try to prevent leaks and to detect them and to report them early and that is, of course, what my bill and what the model ordinance in Santa Clara County does. Then there is under existing law and has been for a long time, the existing responsibilities of the state agencies to go after leaks when they are discovered and to clean them up. There was an attempt in last year's budget I think to add some large sums of money in which the Governor blue penciled. So while we are all concerned about implementing this new legislation designed to prevent leaks, we should also be concerned about sufficient monies to the appropriate state agencies to go after leaks when they have occurred and when they need to be cleaned up and we hope under this legislation to get on those earlier, discover them earlier. But it is going to take two components of the funding. Under my own bill, and I will want to pursue this with the State Water Resources Control Board witness, the funding is supposed to be self-financing through fees which are charged for permitting of underground tanks and I am concerned that we just don't focus on this new legislation and how we can get the

staffing for it and how it will be paid for, but we also look at the point that was just made and that is how are we going to pay for cleaning up these leaks after (inaudible #412) may occur, and that was a problem that existed long before this legislation.

CHAIRWOMAN TANNER: Mr. Zaremborg was speaking for the Governor. It's up to the Legislature to request a sufficient amount to, and for the various agencies to request sufficient...

ASSEMBLYMAN SHER: We will request it but this time we hope that the Governor won't blue pencil it.

CHAIRWOMAN TANNER: I was given his assurance that he will be responsive. I certainly hope so. I would like to introduce Assemblyman Lloyd Connelly. Thank you for being here, Lloyd. Mr. Connelly is from Sacramento. Yes.

COUNCILWOMAN IANNI: We would, of course, be happy to respond to any other questions but I did want to follow up to the comments that were made about the funding levels. Number one, we have found that it is very important at the local level to identify the appropriate staffing and to have a program manager. We do have Dr. Jones with us who is on our staff. We also have technical experts in the other cities in Santa Clara County staffing levels, and funding problems. And I want to assure you on behalf of the City of Santa Jose that the state level is where you need to go and get support from local government for funding proposals to make sure that there is an adequate fund to make sure these implementation measures take place, that you will have the support of the City of San Jose.

CHAIRWOMAN TANNER: Thank you very much. And if the members have any

questions, is Gail Gable here. If you do. Otherwise, there may be questions as we go along, so I would hope that you stay.

COUNCILWOMAN IANNI: Thank you to all the members of the Committee for holding the hearings here in San Jose and for providing us this opportunity to speak to you.

CHAIRWOMAN TANNER: Thank you. Our next witness is Warren Noteware, who is a member of the State Water Resources Control Board. Would you identify yourself for the record.?

MR. WARREN NOTEWARE: I am Warren Noteware, the Vice Chairman of the State Water Resources Control Board, and I have brought along a little help today, too. This is Ed Anton. He is Division Chief of our Division of Technical Services and I have a couple of others, too, in case we need them.

I certainly want to thank you for the opportunity to present what we on the State Water Resources Control Board are doing to solve these problems that we are talking about. I am especially glad for the chance to publicly state here how much we appreciate the tenacity Assemblyman Sher had in going through all the convolutions he did in getting his bill through and certainly with the help and persistence you had because we see these two bills that we are going to be talking about, Mr. Sher's and Mr. Cortese's, as being the very necessary tools that we needed, as was pointed out, to prevent so many of the problems that have become so much more costly to correct than they are to be run in the first place.

As this Committee well knows, the problem of leaking underground tanks was virtually unthought about until a couple of years ago. In fact, I think that it was just two years ago this

December when the first problem started to surface in Santa Clara County. Over the last two years it seems that almost everywhere we look we find problems. An alarming number of tanks leaking hazardous substances have already been discovered and we know that there are bound to be a lot more out there.

CHAIRWOMAN TANNER: About how many?

MR. NOTEWARE: In the...

CHAIRWOMAN TANNER: Do you have an estimate?

MR. NOTEWARE: I am going to point out in a few minutes where we anticipate that there could be problems as much as 75% of the anticipated problem tanks have proven to have been leaking in the hot spot areas, for instance in the Los Angeles region an inventory has been taken and we find that there are certain older tanks and because of what they contain and the type of material the tanks are made out of, we anticipate they could be leaking, and sure enough they have been. There it is just a matter of degree and also it is a matter of whether or not there is a usable aquifer underneath you know for the groundwater and what beneficial uses it is put to as to the intensity of clean-up effort that has gone into it. Again, it is sort of a matter of priorities.

But our fear here or at the State Board is that what we've found to be the case in Santa Clara County and in Los Angeles is probably going to be the case throughout the whole state. We really have no idea of the number of underground tanks that there are in this state. We certainly estimate that there are at least a hundred thousand and it could be several hundred thousand

Then of the high risk sites that I mentioned, which were surveyed in Santa Clara Valley, 75% of the sites have been identified to contain leaking sites. I don't want to mislead you. That is the high risk sites that we have tried to identify. If this high percentage of leaking ...

CHAIRWOMAN TANNER: Would you define high risk sites for me?

MR. NOTEWARE: Again, it's where, in the opinion of the people at the Regional Board, there's a potential for a leaking tank because of the age of the tank and the type of material that it has. They have been able to sit back and analyze and say, "this is a potentially high risk tank. This is one that we should look at." Then if monitoring walls are installed or there is a method of determining whether or not it could be leaking, those are the ones we would consider high risk.

Prior to the enactment of Assembly Bill 2013 which is Assemblyman Cortese's and bill 1362 authored by Assemblyman Sher, the only real authority under which the State and Regional Water Boards could address this issue was the Porter-Cologne Water Quality Control Act which is California's basic water quality law. The law requires that the Regional Water Boards issue permits for anyone proposing to discharge waste into the waters of the State. Through this permit process, the Regional Board can insure that high water quality is maintained. The State Water Board sets water quality policies and then acts as an appellate body on decisions rendered by the Regional Water Boards that may be challenged by the people that are affected.



The State and Regional Boards also have the authority to take enforcement action when they discover an unauthorized discharge to the water or even a threatened discharge of material into the water. It is pursuant to this authority to remedy unauthorized discharges or threatened discharges that the State and Regional Water Boards have addressed the leaking underground tank problem. And these threatened discharges are hard to identify when they relate to underground aquifers. You know, it is pretty easy to tell if a surface body of water is being contaminated because you can see dead fish or as in the case down at Casterson, one legged mud hens or whatever, is an indication that something has got to be wrong. But unless the water starts to taste funny or there is some other clue that could be pretty apparent it's kind of a sinister thing and the other really really horrible part of it is that once an underground water supply is contaminated, it's contaminated. Because whereas surface water moves at the rate of feet per second, it's feet per year in an underground aquifer and sometimes it is just virtually impossible to clean one. Some of them are relatively not impossible but some of them are almost a case of writing them off for any future beneficial uses.

I will say no more about what has been done in the Santa Clara Valley by the San Francisco Bay Area Regional Water Quality Control Board because Mr. Hal Singer, who is representing the Regional Water Board, is here to describe their efforts. But in other areas of California there have been similar discoveries concerning leaking underground tanks. The appropriate Regional Water Boards have been responding to those problems as they've

been discovered. As I am sure that you people are aware, the regional boards are the water quality arm of the State Board and there are nine different regions, primarily what we call our Region Two of the San Francisco Bay area region, the one that is concerned here and Regional Four, the Los Angeles region, are the ones who had the most experience so far in addressing the problems under the Porter-Cologne Authority. But the Central Valley Region, we anticipate that throughout the Central Valley and places like Sacramento, Stockton, Bakersfield, we're bound to discover problems in wells throughout the entire state certainly.

In 1980 there were 59 public wells in Los Angeles County that were closed by the Department of Health Services due to the presence of excessive levels of trichloroethylene (TCE) and since groundwater provides over 60% of the water used in the Los Angeles Basin, this problem is critical for the Los Angeles area.

The lesson which was learned, both in the Santa Clara Valley and in the Los Angeles area, shows how extremely difficult it is to find out who owns tanks and where such tanks are located.

As you can well imagine, finding leaking underground tanks is certainly not an easy thing to do. In cooperation with, and with the assistance of Fire Sanitation and Building Departments of the City of Alhambra, the Los Angeles Regional Board was able to make some initial estimates of the number of tanks containing hazardous materials in their location. Since none of this data is currently stored in computers, the information had to be extracted by hand, a very expensive undertaking.

Based on the work to date, the Los Angeles Regional Board has sent out 3,000 questionnaires, mostly throughout the San Fernando Valley area. These were sent to persons who were believed to have underground tanks containing hazardous materials. These 3,000 questionnaires represent approximately only 6% of the total estimated underground tanks believed to be within the Los Angeles Basin. Of the 3,000 questionnaires which have been sent out, approximately 75% have been completed and returned to the Regional Board and this procedure is very different than the procedure that we will now be able to use thanks to the Cortese bill.

The Regional Board has made an initial review to find older tanks which would pose a higher risk of leaking, and have discovered 43 sites at which leak detection systems should be installed immediately because of the high probability of a leak at that site. Letters requesting installation of such leak detection systems have already gone out. If a person is ordered to install a leak detection program and fails to comply, the Regional Board may issue a Cleanup and Abatement Order demanding a leak detection program. Failure to comply with such an order can result in civil penalties of \$6,000 for each day in which the order is violated. And again, this is our authority under our original Porter-Cologne Act.

The process of acquiring information about each of the 3,000 tanks for which questionnaires were mailed, amounted to about a 4-5 month effort and was very costly. To do the additional 45,000 tanks would require a substantial increase in the amount of staffing available. As you can see, Regional Board

efforts to solve the leaking underground tank problem pursuant to Porter-Cologne authority is remedial in nature and very staff intensive.

CHAIRWOMAN TANNER: Are you asking for more staff?

MR. NOTEWARE: I think not. I am going to cover that in a few minutes, Mrs. Tanner. Certainly we would like to have more staff and, in fact, do you mean more staff than we have asked for in our budget change proposals that have been approved by the Department of Finance?

CHAIRWOMAN TANNER: Well, you could describe that.

MR. NOTEWARE: I will get into that in a little more detail. I am sure that like any other agency, if we had more people, we would certainly feel like we could solve the problem faster and easier.

CHAIRWOMAN TANNER: Well, you make this point about it requiring a great number of people on your staff to implement.

MR. NOTEWARE: Right. Although the point I am making here is that prior to the enactment of the Cortese bill which provides for a different means of inventorying the tanks, what we had to do before and what we have had to do and I am sure what Mr. Singer is going to be explaining, has been much more staff intensive than we anticipate will be necessary now in inventorying them and in the way that we feel we can go. We think that we are going to get a lot of cooperation actually because it has already been demonstrated and voiced.

Up to now the State and Regional Boards have no authority to regulate these tanks unless there is a threatened discharge from the tank. Thus the need existed for new legislation which was preventative rather than remedial.

CHAIRWOMAN TANNER: A question from Mr. Sher.

ASSEMBLYMAN SHER: I want to hold my question, but on the point that you just raised, I have the document that the State Water Board has presented to the administration on the budget change proposal for 1984-85 budget and it does request, I believe, some 52 new positions for the State Board to implement the new legislation and to properly carry out existing responsibilities under existing law. So as I understand it, the committee really ought to have a copy of this budget change proposal that was made available to me and I guess it is now more or less a public document, but it does call for I think 52 new positions, 18 of those positions are attributable to AB 1362 but, as I said earlier, AB 1362 has a fee structure that will actually be self-financing for most of those positions although there may be a need for some up front money but then it will be repaid. Most of the positions will be needed to implement the existing responsibility of the State Board and the Regional Board, I guess to deal with these leaks as they are detected. But as I said earlier, there was a two and one half million dollars put into last year's budget for this purpose by the Legislature which was deleted by the Governor. So there is a question whether the administration, and as you said Mrs. Tanner, that you have assurances that they are going to provide the funds that are necessary, not only to implement the new laws I hope but also to pay for the existing responsibility of the State Board.

MR. NOTEWARE: You are exactly right, Mr. Sher. Those 52 staff years that we have asked for that have been approved by the Department of Finance at least, are both for the

implementation. And not only your bill but also in Cortese's. We anticipate that as those questionnaires go out, we're going to have to have someone sitting at a telephone answering lots of questions as well as people taking this information, getting it into a computer program, sending it out to the counties, explaining to the counties what they are to do about it and all of these various other things that eventually the fees that are provided for both in your bill and in the Cortese bill will catch up. But as you suggest there is a certain amount of lag time and the front money will be necessary to staff what we have to do.

ASSEMBLYMAN SHER: I think that it is important that the Board clearly delineate whether these positions are necessitated by the new legislation and will be self financing, is one category, and then which positions are being requested to carry out the existing responsibilities under the existing legislation so that we are clear and I think that it is important for the Board and I would want it to be clear that the new legislation and the new responsibilities are not being used in any way to justify a request for staff to carry out the old responsibilities and I think it is important to be clear about that.

CHAIRWOMAN TANNER: All right, continue.

MR. NOTEWARE: Thank you.

Assemblymen Sher and Cortese authored two bills, AB 1362 and 2013, respectively, which together will create an effective and efficient program to eliminate leaking underground storage tanks. When I emphasize eliminate, we think that this will put an end to it. I will first discuss Assembly Bill 2013 because the results of this bill are intended to occur more quickly than

AB 1362. AB 2013 is the inventory bill which will provide the State Water Board with a complete listing of all underground tanks containing hazardous materials within California. The bill requires that all tank owners file a statement with the Board by July 1, 1984.

The statement which is currently being designed by our Board will include the location of the underground tank; the name and a 24-hour phone number of a contact person in the event of an emergency involved with the tank; description of the tank including the type of construction, name of manufacture and age, if available; a list of hazardous substances stored in each tank; the capacity of each tank; and a description of the leak detection system currently used for each tank.

Tank owners must include a \$10 fee for each tank; however, tanks located on service stations shall only include a fee of \$5 for each tank. The deadline for submitting a statement with the Board is July 1, 1984.

To date, many of the industry trade associations and major oil companies have agreed to assist in educating their members of this new law so that everyone is aware of the legal obligation of the filing date.

There are civil penalties from \$500 to \$5,000 per day for each day that the statement has not been received by the Water Board. These penalties are substantial but they are not imposed until after January 1, 1985. In other words, there's a 6-month grace period between the final filing date for statements (July 1, 1984) and the date on which civil penalties begin to occur (January 1, 1985).

Tank owners which submit false information are civilly liable in an amount of between \$2,000 and \$20,000 per day for each day the false information goes uncorrected.

CHAIRWOMAN TANNER: Mr. Sher has a question.

ASSEMBLYMAN SHER: Won't fees pay for the State Board's cost in administering this new law? Those fees, not the clean-up, but the law is designed to produce an inventory of underground tanks so that we know how many there are in this state and as you just described there, it's \$10 for a retail, a service station \$5 fee. Will those fees pay the State Board's costs in administering that particular bill that is to create the inventory?

MR. NOTEWARE: I will have to state that I really don't know. We just don't have enough experience in how long it will take, how these questionnaires will come in. We have budgeted 8 1/2 staff years for this inventory and procedure which would be seventeen people working for six months or 34 people working for a three-month period as they come in.

ASSEMBLYMAN SHER: Presumably the fees will pay all or a large part of the costs although there might be some up front costs, although there might be some up front costs that will be repaid by the fees as they are collected.

MR. NOTEWARE: My feeling is that most of the underground tanks are going to be service station tanks and agricultural tanks. The \$10 tanks I don't think are that plentiful and we just don't know honestly whether or not we will have to shift some resources in order to cover this.



ASSEMBLYMAN SHER: I don't know as much about Assemblyman Cortese's bill but the fees in AB 1362 were set in consultation with the State Board and were designed to cover the costs as we got them from the State Board, so these bills are supposed to be self-financing.

CHAIRWOMAN TANNER: Mr. Connelly has a question, but before he asks his question, I would like to remind the Committee members that what we are attempting to do here is to find out how the state plans on implementing and, of course, fees and financing is an important part of it. But the actual implementation of these bills is what we are interested in. There will be some budget session that we can discuss budgetary matters. I would prefer that we really concentrate on the bills and implementation of the bills. If you wouldn't mind. Mr. Connelly.

ASSEMBLYMAN LLOYD CONNELLY: Thank you, Mrs. Tanner. I thought that 2013 exempted agricultural tanks and you indicated that it extended to the survey of agricultural tanks. Am I correct? Would you chat with me about that a little bit?

MR. NOTEWARE: Yes. Assembly Bill 2013 does definitely include the inventory of agricultural tanks. The requirements are somewhat different in that we are required to spend the first six months of 1984 attempting through fuel suppliers, agricultural commissioners, various other sources, to find on our own where the tanks are -- that is up until July 1. Then from July 1 to October 1, it's the farmer's responsibility or the tank owners responsibility of these agricultural tanks, to file the statements, just as others have been required to do up until July

1. So there is a three-month delay period and then January 1, 1985, the agricultural tanks fall under the same category as all other tanks.

ASSEMBLYMAN CONNELLY: Is there any activity your folks are going to engage in to identify abandoned tanks or identify those folks who are not reporting in good faith that minority of ten or fifteen percent, whatever it is.

MR. NOTEWARE: Yes. But that won't be done as a part of the Cortese bill because there are no provisions for inventorying abandoned tanks but certainly we recognize that abandoned tanks can be a real problem out there.

ASSEMBLYMAN CONNELLY: Is there a legislative mandate existing for that or a time frame for the performance of that task?

MR. NOTEWARE: No. It is not addressed.

ASSEMBLYMAN CONNELLY: Is there any qualification of what percentage of the tanks are abandoned or how many there are? Is there any ball park? I understand it is a chicken egg kind of question but...

MR. NOTEWARE: Not to my knowledge. I think in a year's time we will be in a lot better position to answer that as well as some of these other questions about whether or not the fees are adequate.

This is all so new that all we are able to do at this point is try to anticipate what the problems will be and what we will expect to find.

ASSEMBLYMAN CONNELLY: Let me make an observation and have you respond to it. The observation would be that those

people who had the most dangerous tanks, that were the oldest, that were the most likely to have leak problems, would be the same people who would be least likely to report and so if you have a 75% response to your questionnaires, we may be inventorying and identifying the problems that are not problems and not identifying those tanks that are problems.

Is that over simplistic and incorrect?

MR. NOTEWARE: It is, in this regard. I see abandoned tanks as having the potential for contamination only with what they might have had in them. The tanks that aren't abandoned, that are still in use are, I think, the real potential hazards. If you have a ten thousand gallon tank, the most that could come out of it after it has been abandoned would be ten thousand gallons, whereas a tank that is in continual use, it's still old, poses a much greater threat.

The abandoned tanks, too, it's hard to determine, real difficult to determine, where the ownership responsibility is. Obviously, if you by a piece of property that has got a tank in it and you don't have any need for the tank, you own the tank but are you going to want to fill out a questionnaire and pay a fee and maybe be faced with having to abandon it according to the regulations or would you just sort of say I don't own this tank, let's forget it. You know. That is the type of thing that we anticipate that we are going to be finding.

CHAIRWOMAN TANNER: To whom did you send these questionnaires, these 3,000 questionnaires?

MR. NOTEWARE: They were sent to the people in the Los Angeles region determined would be the probable owners of tanks in primarily the...

CHAIRWOMAN TANNER: I see. Because you don't have an inventory of the tanks so it's by guess and by golly.

MR. NOTEWARE: Exactly. They went through all sorts of potential ways to find out; chambers of commerce, the telephone directory; fuel and chemical suppliers; any potential source that they could come up with.

CHAIRWOMAN TANNER: There were no permits required for tanks?

MR. NOTEWARE: Yes. But in some areas, but not in every case. That is where they started obviously was with the building departments or whoever would be issuing permits. But the records were difficult to follow up on and time consuming.

CHAIRWOMAN TANNER: Yes. I am sure that it is. All right. You may continue.

MR. NOTEWARE: The good thing about Assembly Bill 2013 is that it places kind of an affirmative obligation on the tank owners to contact the State Water Board to get the appropriate form and to file with the Board by July 1, 1984. This will allow the State of California to find out where underground tanks are located and get a picture of the condition of the tanks, the material stored in the tanks and other relevant information without having to spend hundreds of thousands of dollars in staff time going through the records of the old building departments, yellow pages and so forth. The State and Regional Boards in the past have certainly spent a lot of time doing this.

Underground storage tanks on farms are treated differently than the other underground tanks under this bill. The State Board is required to work with fuel distributors,

county extension officers, county agricultural commissioners, tax assessors and other governmental agencies from January 1 to July 1, 1984, to try to obtain the essential information on these tanks. Then on July 1, 1984, the owners of the underground tanks on farms shall be required to file the same statement required of all other tanks if the State Water Board has not otherwise received essential information for that tank. The filing for underground farm storage tanks is October 1, 1984. Civil penalties for failure to file the statements are effective on January 1, 1985.

There are two major benefits that will accrue to our state from the Cortese Bill. First, the State Water Board is going to develop a computer program which will identify high risk underground storage tanks based on their age, type of construction, manufacture, the kind of hazardous substances stored within the container, and the hydrogeological conditions surrounding the tank. As the data from these statements which are filed with the Water Board is entered into the computer, the computer program will be able to identify for the State Water Board tanks which are suspected of posing the highest risk of leaking also the highest risk of contaminating a usable source of water. This will allow the State Water Board to contact these owners to determine whether there are leaks and what kind of corrective action is appropriate.

The approach will be substantially less costly than the current efforts that are being undertaken by the Regional Boards where we have little idea about the age, condition, etc., of a tank until a tank owner provides the Board with the appropriate

information. This allows the Regional Boards to act in the near future to remedy leaking tanks, rather than waiting several years when the permitting process under AB 1362, the Sher Bill, will begin to have some effect upon the tank owners.

The other major benefit associated with the Cortese bill is that these statement received by the State Board shall be transmitted to the appropriate Regional Boards, cities and counties by January 1, 1985. This will facilitate cities and counties in implementing their underground tank programs. Cities and counties will have a complete list of tanks within their jurisdiction for which an application must be mailed out, and it will save them substantial money in trying to identify who must comply with the provisions of the Sher bill. Assembly Bill 1362 creates a major new permitting program designed to implement leaking underground tanks from California. The bill sets up a partnership between state and local government for implementing this permitting process, recognizing that substantial expertise for the area of groundwater hydrogeology and water quality control rests at the State level with the State Water Board. At the same time, the bill recognizes that cities and counties are the most appropriate level at which the day-to-day oversight and specific controls upon the tank may be imposed because of their direct interest in the quality of groundwater and their work with the industrial firms.

I will briefly describe an overview of how this bill will work and then go back and discuss each step in more detail. The bill contains broad specifying secondary containment for all new tanks and the installation of detection systems for all

existing tanks. The State Water Board is required to adopt regulations making these broad standards more specific. These regulations are to be adopted by January 1, 1985. Counties and all cities which choose to develop their own program may then submit permit applications to the tank owners. Tanks must be inspected at least once every three years in compliance with the design and construction standards of the bill and the monitoring program.

If any tank owner does not believe that his tank should be required to meet the conditions specified by the city or county issuing the permit, he may apply to the Regional Board to seek a variance from those conditions or he may apply to the State Board to seek a categorical variance on behalf of a number of tanks at different locations. In either case, the tank owner must demonstrate that whatever changes he proposes from the permitting agency will provide at least the same level of protection to groundwater as conditions which would be imposed by the permitting agency. Likewise a permitting city or county may apply to the State Water Board for authority to implement design and construction standards more stringent than those in the bill or those set forth in Water Board regulations if that permitting local government can demonstrate more stringent standards are required to protect groundwater resources within the jurisdiction. Thus, the bill provides great flexibility to make allowances for local needs and varying hydrogeological conditions.

Owners of underground storage tanks shall be civilly liable in the amount of not less than \$500 or more than \$5,000

per day for failing to obtain a permit, for failing to repair an underground tank as required by the terms of AB 1362, by abandoning or improperly closing an underground tank, or for failing to take reasonable steps to ensure that a tank operator complies with this law.

Tank operators are also civilly liable for the same penalty for operating an underground tank which has no permit, failing to conduct monitoring of the tank as required by the permit, failing to maintain records required by law, failing to report an unauthorized leak, or failing to properly close an underground tank. Any person who falsifies monitoring records required by this chapter or fails to report a leak shall be criminally liable of a fine of not less than \$5,000 nor more than \$10,000 or imprisonment for one year or both.

Even with the enactment of the Cortese and Sher bills, the State Water Board's responsibilities in the area of underground tanks requires substantial staffing. Prior to the 1983/84 fiscal year, the State and Regional Boards did not budget for the regulation of leaking underground tanks. However, in the first six months of 1983, the State Water Board redirected approximately 5.5 staff years statewide from other activities to work on the control of underground tanks. Without the assistance of the Sher and Cortese programs, this 5.5 staff years spread thinly across the entire state has not been adequate to keep up with the problem.

By contrast, the State Water Board hopes to be able to devote 64 staff years over the next 18 months to the problem of leaking underground tanks. Of these 64 positions, 12 will be



made available through continued redirection of money from other programs and possible federal supplemental funds during the remaining six months of the 1983/84 fiscal year. For the 1984/85 fiscal year the Water Board is requesting 52 positions be assigned to these activities related to the control of leaking underground tanks. We hope that the Chair of this Committee and all members of the Legislature support the funding for these 52 positions in the budget.

As each of the Regional Boards get further along in their efforts to find leaking tanks, we may discover that the necessary staffing levels to take enforcement actions against leaking tanks and assist in the development of leak detection systems will increase substantially over that which we are currently requesting in the budget for 1984/85. However, it is too soon to say for certain that such substantially higher staffing levels are required. The State Water Board believes it is premature to make any major changes in the provisions of the Sher bill. It is necessary to get further along with the implementation of this bill before we can know whether it is working efficiently or not.

CHAIRWOMAN TANNER: A question.

ASSEMBLYMAN SHER: Sally, I am going to abide by your gentle suggestion that we stay away from these points that are being discussed about the positions and how they are funded but I do want to go back to the point you made about how the implementation by the State Board of AB 1362, you mentioned regulations, that the State Board, under the bill is supposed to issue within the period of a year.

The first question I have relates to the expertise on the State Board staff to issue these regulations, of these eighteen positions that you have requested to do it. Unfortunately, in my view, they don't include, they look mostly like bureaucrats to me if I may use that word. There's no provision for a chemical engineer, or a hydrogeologist. The people... When the suggestion was made that we needed an administrative agency, the State Board to issue regulations, to flush out the standards that are specified in the bill in order to provide local agencies that are going to have to implement the bill and issue the permits with technical expertise that they didn't have, we were told the reason for that was that the technical expertise would be provided at the state level in these regulations and yet when we see the positions that are specified and are being requested to implement it, you don't see any of these technical people who understand the effect of chemicals when they are mixed in a tank or the hydrogeologist, the leaks, how it spreads through the ground and affects the water. So that is a point of concern. I wonder if you would respond to that concern or some of the people that you have brought, whether those kinds of people are contemplated to write these regulations.

MR. NOTEWARE: All right. Let me take a stab at this. In our agency we have the expertise to know what is necessary but not in detail to what should be specified and what should be done. You will see in the budget change proposals, a request for \$50,000 that we anticipate will be used to contract out to firms like Woodward Clyde or Klinefelter, for certain hydrogeological

studies, possibly tank manufacture people, maybe universities, whatever to contract for the expertise for some of the items that are necessary.

ASSEMBLYMAN SHER: Well, let me just say, there is really a detailed breakdown of these staff years that are being requested to implement AB 1362. The categories are Environmental Program Manager One, Environmental Program Manager Two, Senior Engineer, Associate Engineer, Associate Engineer, Environmental Specialist Secretary, Temporary Help Associate Programmer, some 19.2 staff years but none of the technical people that you would expect the State Board would want new people to write what is supposed to be performance standards to help give guidance to the local governments in issuing these permits and what kind of monitoring systems would be required and how the performance standard of product type tanks would be insisted on in these new tanks and so forth. So it just seems to me that these are all kind of affiliated or associated positions, but the people who really have the expertise to write the regulations are not being requested and the total amount for these positions is something, nearly \$500,000. Then you say that there is another item of \$50,000 that you are going to contract out for expertise. That's the point that is troublesome to me as far as implementation of the bill and I think that it needs to be addressed.

MR. NOTEWARE: Again, it is our opinion that we are going to have to go outside of our own agency to get the expertise in some areas but we will want to contract for this service. The engineers, the environmental specialists, and the people who are mentioned in there will be working with

contractors who will be providing us with the expertise. They will also be working with the counties, with the local agencies, with the regional boards, etc., as is necessary.

CHAIRWOMAN TANNER: It is my understanding that the regional boards are planning on providing expertise. Isn't that correct, to the state?

MR. NOTEWARE: Yes. We are going to use them wherever we can also.

ASSEMBLYMAN SHER: I didn't understand that for the purpose of writing these regulations. Mrs. Tanner, you have to remember that one of the big items that was disputed during the whole course of the enactment of AB 1362 was this relationship as you point out between the local governments and the state agency and whether it was sufficient to set the standards in the bill, give the responsibility to the local agencies and then let them implement it. And one of the arguments against that which I resisted for some time was that the local agencies and counties didn't have the technical expertise to say what would be sufficient performance standard for a double contained tank and what would be sufficient monitoring to insure that we detect these leaks at an early point. And the argument for introducing the state agency and giving them the responsibility for writing regulations that would then guide the local government in issuing these permits was that the expertise could be provided at the state level and that was the view that was finally taken. It is going to cost money. But the thing that is a little bit disturbing to me is the recognition is going to cost money, a budget change proposal for 1984-85 by the State Water Resources

Board asking for some \$500,000 in new positions but not asking for that technical expertise that was, I mean really, the basic argument for doing this in the first place and that is the point that I am trying to make. I think that it is something that both of us have to just watch, and I think that we are going to have to look further at who these people are that are being put on to help write these regulations.

CHAIRWOMAN TANNER: Yes. I think. Staff member, would you like to respond to that? Identify yourself, please.

MR. ED ANTON: I am Ed Anton. I am the Chief of the Division of Technical Services at the State Board. I do want to point out that of those 19.2 persons that we have asked for in the implementation of the bill, the largest part of those positions are technical persons. Environmental program manager, and environmental specialist are all scientists that usually have masters degrees or more in the life sciences areas. There are five engineers involved in this...

ASSEMBLYMAN SHER: Would those be chemical engineers?

MR. ANTON: In our normal chain of hiring, we hire what is called Water Quality Control Engineers. A Water Quality Control Engineer normally has either a chemical engineering background or civil engineering background in sanitation. We recognize that that is an area that we don't have expertise in right now, is the chemical reaction of the products in the tank and we hope to get more expertise in that area. But these engineers are not specified...

ASSEMBLYMAN SHER: Then you are telling me that these positions will be used to get that kind of expertise?

MR. ANTON: We want to get, partly, that kind of expertise on our own staff. We are also concerned, perhaps, with needing to use a consultant to provide some of the expertise in areas like structural and corrosion so that we pick up that ability.

ASSEMBLYMAN SHER: See that is what it is all about isn't it? We are storing these toxic materials underground that react when they are mixed together, they have an effect on the tanks that contain them. So if we are going to adopt regulations that say what kind of tanks are required and what kind of monitoring systems are required, and that is why, of course, I say this is why we need this hydrogeologist. It seems to me that that is the kind of expertise that you ought to be requesting to write these regulations.

MR. ANTON: You also, will know, that we do have one engineering geologist, that is the civil service class that we use for hydrogeologist in that bill.

ASSEMBLYMAN SHER: The hydrogeologist uncomforted.

MR. ANTON: That is a hydrogeologist. Also, in the same BCP, in part of the bill having to do with where we get involved in helping cleanup, when a county has discovered a problem, it is in this package.

ASSEMBLYMAN SHER: See. That is the point that I am resisting. The clean-up part is not the part that implements AB 1362. The responsibilities of the State Board under AB 1362 are three. First, to write these regulations. It has to be done in a period of a year. Second, to do a study on the surface impoundments and things that were not regulated under this bill

and to report back to the Legislature about whether further regulation was needed. Third, the only other responsibility under AB 1362 is to handle applications for variances that you've pointed out, either by industry or by local government that wants to go further than the specifications in the bill. All I am saying is when you talk about nineteen positions to implement AB 1362, you ought not to be talking about cleaning up leaks. That is existing responsibility. Those nineteen positions have to be justified and I want enough positions to carry out those three responsibilities but you have got to not use your other responsibilities to justify these positions or conversely to use these positions to carry out those other responsibilities.

MR. ANTON: No. I understand that. We do expect that the 19.2, about 12 of those or 13 of those are technical persons, however, which we expect to be able to utilize to implement that program.

CHAIRWOMAN TANNER: Thank you. All right, you may continue.

MR. NOTEWARE: We feel that it is necessary to get a little further along with the implementation of this bill before we can know whether it is working efficiently or not in all regards. However, one shortcoming of the bill which has already been brought to our attention is the fact that although the State Water Board is under a strict time limit of January 1, 1985, to develop regulations implementing portions of the bill, there is no time limit at all upon local governments to implement those regulations and send out applications to tank owners.

Thus, a county could take several years before implementing the provisions of the bill and not be in violation of the law. The only parties who would be at risk in such a situation would be the tank owners, given that they had a legal obligation to meet the standards as of January 1, 1985. Our state board suggested a time limit could be placed on counties and cities implementing a permitting program of between six to nine months following the January 1, 1985, time limit imposed on the board. Additionally, there is some ambiguity in the language which is intended to exempt specific tanks containing motor vehicle fuel from the requirement of secondary containment. This language could be clarified so as to remove any ambiguity from this exemption. Again, I want to thank the Chairwoman and the Committee for this opportunity to present this testimony and if there is any one feeling I want to convey, certainly along with the Legislature and the Administration that we are very committed to making these things work. I have copies of this which I want to distribute to you and we can get more copies of our budget change proposals, too. It's certainly no secret what's in them.

CHAIRWOMAN TANNER: Fine. Are there any more questions? Another question, here.

ASSEMBLYMAN SHER: I am sorry to monopolize, particularly since I am not a member of the Committee.

CHAIRWOMAN TANNER: It's your bill that we are discussing.

ASSEMBLYMAN SHER: I am an alumnus with the Committee, though, having served with it. I want to go to one of the three responsibilities that AB 1362 gives to the state board and that



is the study that you refer to about the exempted structures and that was, if you will recall, a provision in the bill that says that surface impoundment and reservoirs, lagoons, and so forth of hazardous waste are exempted but the state board is given the charge within a year's time to look at the existing regulations on that to see whether they are adequate and to report back. In this budget change proposal, however, the time line that is drawn, shows that that study won't begin until January of 1985. That is when it is supposed to be complete. The regulations on your time line, it shows that some things will be done in 1984, but the review existing regulatory authority over exempted structures, that shows that that will begin in January of 1985, the report is supposed to be made to the Legislature by January of 1985. I wonder if you could explain that or one of your staff people. This is Item 14 on page 5 of your budget change proposal.

MR. NOTEWARE: Mr. Sher. We certainly have intended to jump in with both feet on that immediately. That time line is January 1, 1984, not 1985.

ASSEMBLYMAN SHER: Fiscal year 1984/85 it shows October, November, December '84, and then you start January, February, March of '85, and I think that the bill says that this work is to be done by January 1, 1985. So any work after January 1, 1985, is beyond the time.

MR. NOTEWARE: I am sorry, that is July through December. That "J" is not January, it is July. You see July, August, September.

ASSEMBLYMAN SHER: Yes. That is under Item 13, then look at Item 14.

MR. NOTEWARE: Oh! Okay. I see.

CHAIRWOMAN TANNER: Perhaps you can talk to some of the people at the Board.

ASSEMBLYMAN SHER: I want to talk to them. The hearing, as I understood it, is to talk about the implementation of the bill. I think that it is a point that is directly involved.

CHAIRWOMAN TANNER: It is. We have a number of witnesses.

ASSEMBLYMAN SHER: Okay. Well, that is a point that I think needs to be looked at.

MR. NOTEWARE: Well, that is existing regulatory authority over the exempted structures but certainly the intent is not to start on reviewing this portion of it in January of 1985. It is, as I say, we intend to get going on this immediately on the exempted structures.

ASSEMBLYMAN SHER: I promise you, Madam Chairwoman, I have only one more question that I just want to clarify a statement to make, and I think that your staff member may want to stand by it. The regulations that you are supposed to do during the calendar year 1984, and we have been talking about the staffing for that. In this document, you suggest that the regulations at the local level will not begin until the state issues these regulations. That is just wrong and I need it to be clarified. The bill specifically provides that until the regulations are issued, the local agencies are nonetheless to start on January 1, 1984, with the permitting process even in the

absence of the regulations to require double containment of the new tanks to require a permit for every underground tank and to specify the monitoring, to detect the leaks, so I just want to point out that with the statement on page 4 of your budget change proposal, that the local programs will not begin until late in the fiscal year 1984/85 is wrong. They will begin on January 1, 1984, even in the absence of the regulations but that does indicate why it is important if we are going to get this uniformity that people think is desirable, that the State Board has got to move as fast as possible to get its regulations out.

MR. NOTEWARE: This is only if they haven't adopted a local program. Actually, some of them have already as the bill provides, if they have a program in place by this coming January 1...

ASSEMBLYMAN SHER: That's right. The cities in Santa Clara County are already doing that under their ordinance but as of January 1, 1984, when the state law becomes effective, every county in the state is mandated to embark upon a permitting process for underground tanks, even though there are no state regulations. It is specifically provided that with the absence of state regulations, will not hold up this permitting process. So I am going to just call to your attention the statement that under the State law, the local agencies will not do anything until these regulations come out is just wrong and you should recognize that point. I am trying to underscore the importance of getting going on those regulations and getting them out to provide the kind of uniformity that the people who wanted the regulations suggested is needed.

MR. NOTEWARE: I understand that and we stand corrected.

CHAIRWOMAN TANNER: Mr. Konnyu has a question. No. You pass?

ASSEMBLYMAN KONNYU: Assemblyman Sher, I think, clarified the exact point, which is that I thought that the local government had to act in any case and that is clear.

CHAIRWOMAN TANNER: It is important that the Board understand that. Thank you very much.

Would you identify yourself.

MR. RANDY KANOUSE: Excuse me, I am Randy Kanouse with the State Water Board. We believe that on page 17, the bill provides that until the Board adopts regulations, any city, county, or city and county, may implement the provisions of Section 284 with regards to permits and we don't find language that says any city, county, or city and county, must, shall adopt a program on January 1, 1984.

ASSEMBLYMAN SHER: In any event, the authority is there to go forward without the regulations.

MR. KANOUSE: You are quite correct. We have been contacted by cities and counties that have some, have either adopted ordinances or are contemplating it, saying if we do so, what do we do at this point. And we say, well, you are in the same boat as us. Develop a program, develop some standards, and march ahead. But we can't give them the assistance that they are looking for now until we are a little further along with the development of standards and regs.

CHAIRWOMAN TANNER: A question.

ASSEMBLYMAN KONNYU: Madam Chairwoman. Councilwoman Nanci Ianni, would you be kind enough to come up to the microphone and join Mr. Noteware? With respect to this last question which essentially says, Mr. Noteware, and I quote from his presentation, "There is no time limit upon local governments to implement these regulations and send out applications to tank owners."

What is your assessment? I know what San Jose and most of our local governments are going to do in this county. But what is your best assessment as to a local government's reaction to these new laws that go into effect, of course, January 1, of next year?

COUNCILWOMAN IANNI: In Santa Clara County, the reaction has been very positive, very cooperative, and a very good one. The message that we have from all the other cities that are coming into this is indeed, these measure work, that you will have a great deal of cooperation. If you go into it with the right attitude, with the industry, all of the people that are affected, that it is not a problem. If you want some specifics, I would be very happy as to how these applications and how this all works, to have Chief Delgado execute the actual experience we will be having as we go into the implementation of it.

ASSEMBLYMAN KONNYU: All right, you have been one of the key leaders in this area and, therefore, you must have heard some recalcitrance on the part of some groups. Do you see that continuing in here and in other parts of the state that would negatively affect the implementation?

COUNCILWOMAN IANNI: I personally do not. And I would like to really have, what actually happened here, spoken to, so it wouldn't just be my personal opinion. We have been implementing the ordinance and we do have some documentation of what has actually been the effect.

ASSEMBLYMAN KONNYU: So you don't think the "opposition" will be defective absenting this deadline on local governments effective in pushing local government to hold up or to hold back the implementation?

COUNCILWOMAN IANNI: It has not been our experience.

CHAIRWOMAN TANNER: Russ Selix is here. He is going to be testifying. I am not going to call you now Russ, but he is going to be testifying and I am sure that the League of California Cities has looked at that question and you probably have something to say about it. When you do testify will you respond to that particular question?

ASSEMBLYMAN KONNYU: Thank you.

CHAIRWOMAN TANNER: Thank you, gentlemen. Our next witness is Harold Singer who is the Chief of the Toxic Division for the Bay Area Regional Water Quality Control Board. Mr. Singer.

MR. HAROLD SINGER: Good morning. I am Harold Singer. I am with the San Francisco Bay Regional Water Quality Control Board staff. I do have a written presentation and it might be helpful if you at least had it in front of you because I might be referring to the tables. I have given it to the Sergeant here.

It may be very coincidental that you are having this hearing here today, since it was exactly two years ago today that the San

Francisco Bay Regional Board confirmed the fact that a leak from a waste solvent tank at a semiconductor plant in South San Jose contaminated a municipal water supply well. This incident has triggered numerous studies and investigations on the part of industry; a major underground tank program by the San Francisco Bay Regional Board; the development and adoption of ordinances by cities and counties, mainly in Santa Clara Valley, state legislation, and nationwide attention to the problem of handling and storage of hazardous materials and waste. My presentation today will focus on similarities between the Regional Board's underground tank program and state legislation contained in AB 1362 and AB 2013. We believe that our two years of experience in this field gives us the most useful insights into the likely results and impacts of implementation of these two bills on State and local government and the regulated community.

The easiest way to discuss the interrelationships between the Regional Board's program and the two bills is by reviewing specific activities that have been or are being required. I have attached a table to copies of this presentation. It is the second to the last page which will help you follow this through.

The Inventory Program. Obviously the first piece of information that the regulatory community needs is an inventory of the site subject to regulation. The Regional Board's program in this area involves sending a questionnaire to over 2,000 industrial sites located in three most heavily used groundwater basins within our Region. That would be in the Santa Clara Valley, the Southern Alameda County and the Livermore Valley.

The questionnaires asked the facility whether they had used or previously used underground tanks and if so some basic information about those tanks. We received very good cooperation from industry in responding to our questionnaire in that 82% of those that were delivered responded. Based on the results, we determined that there were 480 facilities within the study area that had one or more underground tanks.

As shown on the table, this phase of the Board's program is very similar to the AB 2013 provision requiring the submittal of a statement and AB 1362 requiring submittal of the permit applications. We believe that these requirements will provide a good inventory of underground tanks statewide; however, we believe these requirements will provide a good inventory of underground tanks statewide; however, we have a few concerns regarding the implementation of these provisions. First, no record is required for tanks which have been taken out of service prior to the enactment of this legislation. These tanks may have leaked significant quantities of hazardous materials during their useful life and may present presently or in the future a threat to groundwaters of the state. The legislation as presented does not address these issues. The Regional Board's program did include the inventory of abandoned facilities and we have found problems that these facilities have caused.

Secondly, the development of the permit application forms pursuant to AB 1362 by the State Water Resources Control Board is critical since some agencies have already implemented, as in Santa Clara County, a permit program. A significant delay in the form development will cause duplication of effort on the



part of the regulated community due to the need for a uniform statewide inventory system. Form development pursuant to AB 2013 is also critical for a similar reason. Just to give you an example, the major reason for this is that the counties have already developed application forms that they are using in their permitting process. If the State Board develops forms that are somewhat different from that, industries will be required to fill out a separate form, submitting the same type of information.

CHAIRWOMAN TANNER: Are you working with the State Board to try to get those problems worked out?

MR. SINGER: They have asked us to provide some assistance to them in developing these forms.

CHAIRWOMAN TANNER: Oh.

MR. SINGER: Third, AB 1362 legislation provides for the collection of a surcharge for each tank permitted by the local agency for use by the State Water Resources Control Board in implementing the legislation. However, the legislation appears to be unclear as to if this surcharge is applicable in localities which are exempt from the legislation; that is, those localities that have adopted an ordinance prior to January 1, 1984. We believe this surcharge should be applicable statewide since the State Board is required to maintain Statewide oversight and maintain a data management program for all statewide tanks.

The fourth area of concern is that the Department of Health Services is required pursuant to AB 1362 to compile a list of hazardous substances which if stored in underground tanks would subject those tanks to a permit process. The list will be the basis for reporting by the regulated community and assuring

that local agencies are regulating the appropriate sites. Early development of this list is essential.

The permit program. The Regional Board has not been involved in a permit program to date. However, we were part of the technical task force in Santa Clara County that helped them to develop the ordinance and the standards that went along with that. In addition, we have recently participated in the development of the monitoring regulations which support the Santa Clara County ordinances. Our major concern with AB 1362 in this area is that there are no provisions for the State to take any action against a local agency for failure to adequately implement the provisions of the legislation. The other critical aspect of the permitting provisions of AB 1362 is the development of containment regulations by the State Board. Again, this needs to be addressed quite rapidly from our point of view. Prompt development of the regulations is essential since AB 1362 allows local agencies to issue permits for tanks which may not provide double containment until the Board adopts its applicable requirements, that is the subject at the end of the last speaker. We feel that this situation could allow for an increase in the number of single containment tanks in the state before adequate regulations are adopted.

Monitoring/Notification. We believe that this is the key provision of both the Regional Board's program and AB 1362 since it is this activity which will detect if existing facilities have been or are leaking. The Board's program in this area involved prioritizing the 480 sites that had tanks to be prioritized based on the type and age of tanks and substances

contained in the tank. A summary of the program is attached which is the last page of the presentation. Of the eighty results that have been submitted, that is the 80 sites where we have asked them to go in and prove to us that their tanks are not leaking, 80% of those sites came up with leaking tanks. At the time of the Regional Board's leak detection program phase, we already had twenty known sites. So if you include those 20 sites which we probably would have asked because they fit into the high risk category, into the 64 sites that we already had, you have almost an 85% failure rate among the high risk tanks that we evaluated.

AB 1362 requires monitoring of existing tanks that, in concept, would be equivalent to that required by the Regional Board in the leak detection program. However, the State Board is required to develop the regulations which would specify the type of monitoring required. We believe this is a critical aspect of the implementation of AB 1362 for the following reasons:

(1) we don't think that local government has the expertise to develop these monitoring regulations and we have been asked to participate in the Santa Clara County development of the regulations for monitoring of existing facilities;

(2) statewide regulations would provide a uniform statewide pattern which has been one of the primary aspects of this bill;

(3) the development and implementation of adequate monitoring is essential if existing leaking tanks are to be identified at an early date to minimize their possible impact on groundwater resources.

As was the case for the permitting program, our other concern is that the State does not have any power to take action against a local or county agency that does not adequately implement the monitoring provisions or other provisions of the bill. Not to go much beyond that, but we have had experience in the past where existing localities have the authority to do certain things, such as to keep inventory control over gas stations. Yet, when we find a leak at a gas station and we go back to that situation, there are no inventory records. So there are cases where local government does not adequately implement provisions.

Problem Identification/Remedial Action. Once a leak from an underground tank is discovered, the Regional Board has authority, as was discussed by Mr. Noteware earlier, under the California Water Code to require that the situation be thoroughly investigated and appropriate remedial action be taken. We are currently involved in almost eighty cases involving the leakage of materials from one or more tanks at each site. This is a very staff intensive program which involves working very closely with the site owner/operator and his engineering consultant. The intent of the investigation which we require be conducted by the owner/operator, it is the responsible party who caused the problem, is to identify the extent of the subsurface contamination zone, or known as plume, as it is called, and in a lateral and vertical extent, and to determine its actual or potential impact on the groundwater resources of the state. This investigation is usually done in phases with the Regional Board staff involved in the review and approval of the investigation

proposals and reviewing the report results. The results of the investigation will be the basis for a remedial action plan which again is developed by the responsible party and submitted to the Regional Boards. The proposal if acceptable would be reviewed by the Regional Board at a public hearing and approved. So then the company has a clear cut indication as to what the appropriate remedial action is in this situation.

Based on our experience with the eighty companies we are dealing with at this point, these companies are taking a very responsible position in performing these investigations and clean-up without our need to push them with formal enforcement actions. However, as stated previously, this effort has been a significant staff drain on the Regional Board's resources. Since this was an unexpected and unbudgeted issue that came up to the Regional Board within the last two years, we have had to redirect resources from other programs in order to handle this problem. This has resulted in the inability of the Board to carry out other mandated functions that we have.

AB 1362 provides that local government may request the Regional Board to utilize its authority to remedy the effects of a tank leakage. And I think, as discussed earlier, local government will be looking to the state agencies to develop remedial action programs and approve those programs. We have already met with the people in Santa Clara County and they have indicated that they would be looking towards us to do this type of work. They believe that we have the statutory authority and the technical expertise to address these situations. This pinpoints what we believe is the major limitation in the

legislation that has been considered and adopted to date on this very issue. Nowhere is there a provision to augment the staff levels of Regional Boards so such problems as these can be adequately addressed. Many cities within Santa Clara County are already proceeding to issue permits which require monitoring systems to be installed by the first of 1984. Based on our experience, we know they will detect leaks and that they will be referring those leaks to the Regional Board for resolution. If we are unable to react to these problems in a timely manner the credibility of the entire program may be jeopardized. The public will be aware of these cases and the fact that responsible agencies are not responding to them in a timely manner. The regulated community will be faced with an environmental problem that they are willing to address and yet they cannot receive approval from the appropriate responsible agencies on the nature and method of remedial action.

We are not prepared at this time to recommend specific statewide staffing levels or funding sources. However, in the past we have requested some local staffing augmentations to our own Regional Boards to handle the programs that we have already identified. We do want you to be aware of this situation and be supportive of those requests when they are developed.

In summary, we believe there are three areas that we believe you should focus your attention on in order to assure prompt, uniform, and effective implementation of the program to control the storage of hazardous material in underground tanks. First, regulation development needs to be funded immediately and started very rapidly using the expertise available to the State

agencies. The San Francisco Bay Regional Board has offered our expertise to the State Water Resources Control Board in developing some of these regulations. This is based on our experience in working with Santa Clara County.

Secondly the State must have the ability to require local government to implement the existing legislation effectively and uniformly throughout the state.

Third, the Legislature and Administration should acknowledge that numerous leaks are going to be found and that the State has the authority, responsibility, and expertise to address the problems. However, the funding mechanism to provide the resources, which will probably peak over the next three to five years, is not in place. These resource needs could be met by hiring personnel on a contract basis for a three-to-five year period as opposed to increasing permanent positions statewide which I know is a great concern to the current administration. Without this resource commitment, we believe that the intent of the Legislature to solve the problems associated with leaking tanks would be only partially solved.

The most significant aspect, that is a clean-up of those leaking tanks, will not be completed and will lead to consternation on the part of the public, the regulated community, and eventually the State elected officials. Thank you.

CHAIRWOMAN TANNER: Thank you, very much. I will point out, and I am sure that you recognize, Mr. Singer, that a bill as comprehensive as AB 1362 will obviously... There has to be clean-up and there have to be some additions and some changes and corrections. It was a very comprehensive bill and I know that

the author recognizes that there will have to be additional legislation and it is important for us to know what weaknesses and strengths the bill does have.

MR. SINGER: We have been in discussion with the author about that.

CHAIRWOMAN TANNER: Thank you, very much. All right. Our next witness is Russell Selix and Russ is representing the League of California Cities. How are you people going... When are you people going to move on it?

MR. RUSSELL SELIX: First, Russell Selix, League of California Cities. First I want to state that I considered today the start of a continuing dialogue on local implementation. I probably know one tenth today of what we will know six months from now, to answer these kinds of questions and I hope that you don't expect me to crystal ball every problem that is going to come up for local government to implement these laws at this point because we just don't really know.

CHAIRWOMAN TANNER: Yes, we do expect you to. (Laughter)

MR. SELIX: We really just don't know at this point all of those things. At this point what we know is that we consider this legislation to be a critical turning point in how local government deals with leaks. The way that we have been dealing with them over the past is simply to respond. Once a leak occurs, then to try to clean it up. We know that that is a very inefficient and extremely costly and sometimes impossible way to proceed, not even to mention the liability problems for local agencies which we do encounter in this area. So it is obvious that what is necessary is before the leaks occur is to identify



the areas where leaks might occur where there already are problems and to avoid them being spread and to develop a preventive system which is what AB 1362 addresses and what studies perhaps will be needed in other areas as well. But I think that we can agree that this is the way to go and so as the first answer to Assemblyman Konnyu's question, although he is not here, there is clearly local government support for the concept that this type of legislation and this type of program is the best way to deal with what we all recognize is a major problem. So that there is no question that you will get new unanimous support for this, at least within the urban areas. Now the area where there may likely be local resistance to the whole subject is in the rural areas where they tend to react saying this is an urban issue. We don't have this problem. There are no county supervisors here from some of those rural areas but there may be an issue that the State Water Board in developing its regulations will have to get you to deal with those. Parts of the states, cities, and counties where a number of the problems that occur in urban areas don't exist and to tailor the their regulatory program so that they don't wind up imposing a complicated process in areas where they don't need it. I don't know how much of a state that is, but it is a common problem. The immediate concerns are as follows.

First, there are a number of cities, more than I thought there would be but not a lot that are seeking to adopt their own ordinances prior to January 1, 1984. We did not think that there were going to be any outside of Santa Clara County since it took them a year and we figured that it was going to take everyone a

lot but we have heard from at least a half a dozen that are intending to adopt an ordinance right now to more or less model the Santa Clara ordinance to have an ordinance in place before AB 1362. Essentially these are communities that don't want to wait to find out what the Water Board is going to say. They want to deal with the problem right now and they don't want to wait. I think that Sacramento is one of those communities. There are some cities in your area, Mr. Baker, as well.

ASSEMBLYMAN CONNELLY: Their motive is to preserve their own jurisdictional authority. Some of them tend to adopt ordinances and not do anything with them, simply to have their thumb in the pie.

MR. SELIX: That's right. Essentially, the advantage is simply being able to act on their own without waiting to see what the Water Board might do and without being subject to the Water Board's approval.

ASSEMBLYMAN CONNELLY: I wouldn't want you to convey the impression that they are all enthusiastic and acting in good faith to deal with this serious problem more expeditiously than the State, because I am not sure, but I think if they were, they would have moved prior to the window of time between the date of the adoption of this law and January 1, of 1984.

MR. SELIX: I think that you are right, but for the adoption of this law, I don't think that we would have any of these ordinances being adopted at this time. The law did create a time period up to January 1, where if you did have an adopted ordinance and the process of having to comply with State Water Board regulations and seeking mere approval to make changes to

your program would not apply to you. And there are some that want to do that, notwithstanding their city attorneys telling them they are risking a liability and problems by doing so. But we expect, probably, there will be about a dozen central ordinances by January 1 and I don't see that that raises any additional problems. It is simply something that everyone will just have to take cognizance of and deal with in those areas. I don't think that they will be... The ones that I have seen so far simply parrot the provisions of the statute in the Santa Clara ordinance. There is nothing really new and different that's being done at this point in time.

The next area of concern is that the law now requires that people get permits immediately after January 1, even though the standards for the permits don't become applicable for existing tanks for a year and for new tanks until the Water Board adopts regulations or local government establishes its own provisions. On the other hand, the permit provisions that do apply immediately now may be clarified in the clean-up legislation as to do you have to get a permit in the absence of a state or local program spelling out that criteria. But some clear guidance on that point and some clean-up legislation is needed very quickly and what the Water Board position on that is, is something that local government needs to do right away on that point. What do you do if somebody comes to you on January 3, 1984, and says I want a permit? What do you do? That's a question.

CHAIRWOMAN TANNER: Very difficult.

MR. SELIX: It's a question that they cannot answer and perhaps the answer is that the law will be changed so that you don't need a permit until there is a state or local program. But that isn't what the law says now and so everyone is in effect in violation of law come January 1. While that affects the operators because of the compliance that they have to do, it also affects local government and we believe there are substantial liability problems for local agencies if they do not enforce the requirements immediately if there does turn out to be a leak somewhere.

The other things that we need to figure out is who is going to implement the law locally. The way the statute reads, it states it is a county unless a city chooses to assume enforcement. Now almost all of the affected facilities will be within cities. Most of them are in industrial areas or in urban areas at the very least and are mostly within incorporated cities and for the most part they are the types of facilities that are already subject to local fire marshal regulations and inspections and permits of the sort so it may well be that the logical agency throughout much of the state will be cities and so it is going to require cities within each county to coordinate with the county and find out how best to implement the program. You can't very well do that unless you have some idea what are the monitoring requirements going to be, what are you expected to do for inspections, and some guidance. Now there are two ways of going about preparing this guidance from the State. Probably until we actually have Water Board regulations, the best way is for everyone to sit down together, city officials, county officials,

State Fire Marshal, State Health Department, State Water Board, representatives of legislators, and industrial groups and try and provide some unofficial informal documents that we can send out to all of the cities and counties telling them what kind of things they might do, largely borrowing on the Santa Clara County experience. We can't wait for the Water Board Regs because everything has to be done immediately. It'll take, once local government begins to figure out how to implement it, it's going to take some time to get things in place. So people are talking about it taking a year for the State Water Board to adopt its regulations. Well once those regulations are out, it's going to take another period of time before local government, if they haven't done anything before that date, is going to be able to implement those regulations. So there needs to be something right away to get local governments started now if we expect the program to work immediately.

CHAIRWOMAN TANNER: You mean legislation to require...?

MR. SELIX: No, I don't think legislation is really necessary. I think it is more information and whatever the Water Board could put out immediately would be most helpful but I would suspect that they wouldn't be willing to put anything out immediately since they don't have the regulations together and it may well be something that all of us in this room really need to do together; sit down in Sacramento with a number of city fire department officials from around the state, county health departments, and city attorneys and county councils and find out what information we are going to need and talk to the Santa Clara people and put something together. Perhaps the Legislature might

be the vehicle through which it comes out, saying we passed this law last year. You are going to implement. Here is some information, sort of an interim as to what you might do to help make these decisions. Often when laws are implemented locally, we take it on ourselves to put this out but this one is too complicated for us to do just on our own at the League.

One of the other things that Mr. Konnyu asked is will there be local resistance to these new responsibilities. The ability of the State to get out clear information and make it a process that people can follow and integrate with their existing processes is probably the most critical thing for the local agencies. I hope that the Water Board in doing its regulatory program will be in constant consultation with the local officials who have to implement it so that you don't wind up with a lot of duplicative and unnecessary programs. That's a major, probably the most critical point from the local standpoint in terms of the procedures and making it workable. If the fire department has one method of inspecting and the Water Board comes out with a regulation, it should be consistent with that.

We would like to recommend that the Water Board also consider some form of interim regulations prior to the final ones that may take them a while to come out. We would expect, with a program of this complexity, that there is going to be a few points that may not be resolvable within the time deadline of January 1, 1985. Easily they could get hung up on a very major point that might take some time to resolve. We would hope that they wouldn't wait until every point is resolved before coming out with the regulations. We ought to get those out as soon as

possible, as soon as they have a basic framework that looks like it covers everything, get that out as soon as possible. We would recommend that rather than having to reinvent the wheel on each point, why don't they take the Santa Clara program which seems to be working well and just let that be their base and then develop changes to the extent that is necessary, or to the extent of course that the statute indicates a number of things that are supposed to be different from what is done in Santa Clara and they would have to follow that. But try to do that and really try to beat the one-year deadline by six months if they could, get something out within six months. The other areas of the legislation are the studies and these, of course, talk about what's not covered by the bill really, by AB 1362, and talk about the other tanks that might be regulated, the other types of storage facilities and this really ties into the whole scheme of local concerns of a comprehensive program to be sure that whenever our water supplies or possible fires or anything else is threatened, there is a method of dealing with it. This is also, of course, important to local government because as the other speakers have stated, we do for the most part, lack the resources and technical capabilities to do these studies ourselves. We tend to respond. We tend, once there has been an incident, then everybody jumps. But until there is a major incident in your community, you don't tend to spend a lot of your resources going out and figuring where the problems are so we are greatly appreciative of these studies and will be anxious to see them being implemented.

Those are really the only points that I would make at this point other than to indicate that we will know a lot more in a few months and to want things to happen as soon as possible, unless anyone has any questions.

CHAIRWOMAN TANNER: Are there any questions? I am sure that we will be working together.

MR. SELIX: Yes.

CHAIRWOMAN TANNER: There will be more hearings. There will be more... We will give the Water Board another opportunity to tell us what they are doing and hopefully some of your recommendations will be accepted.

MR. SELIX: Good. And thank you. We do appreciate this.

CHAIRWOMAN TANNER: Thank you. Our final witness before lunch will be Glenn Affleck and Mr. Affleck is from Hewlett-Packard Corporation. He's the Technical Regulations Manager.

MR. GLENN AFFLECK: Good morning.

CHAIRWOMAN TANNER: Good morning. Would you identify yourself please?

MR. AFFLECK: Yes. My name is Glenn Affleck and I am the Technical Regulations Manager at Hewlett-Packard Company. Hewlett-Packard Company has manufacturing facilities in six of the cities in Santa Clara County and all six have adopted hazardous material storage ordinances.

I was invited to comment to your Committee today on the feasibility and workability of the Santa Clara County Hazardous Material Storage Ordinance. These comments are intended to be



helpful to you as you review similar state legislation enacted last year and its planned implementation.

Let me start out by saying that the development of the Santa Clara County Ordinance drew together technical and legal people from State and local government, from industry and from the environmental community in a cooperative endeavor. None of the participants in this effort had all the answers needed both to prevent future contamination of groundwater and to provide adequate fire protection to personnel, property and firefighters. But working together turned out to be an excellent way of reaching this common objective.

The Santa Clara County Ordinance, and AB 1362, set performance standards that were deemed necessary to prevent significant future problems for storage of hazardous materials. Comprehensive specifications for engineering systems and equipment to meet these performance standards were not specified and were purposely left open-ended in order to encourage creative new solutions.

The chief question I would like to raise is, "Have these engineered solutions been forthcoming and satisfactory?" Answering this question provides a perspective on how successful the legislation has been in solving the target problems. And let me point out that only a small part of the ordinance has been implemented, chemical inventories and new construction standards, and we only have experience so far with that small part.

Of all of the construction standards legislated, those for non-flammables the double containment and visual inspection standards - have been fairly easy to implement with currently available designs and equipment.

However, the standards for storage of flammable liquids have presented several unforeseen engineering problems. Let me give you some specifics involving one of our new installations of a flammable solvent tank. We built a vault for the tank similar to examples shown in the ordinance guidelines and coated it with a solvent-resistant material. For adequate fire protection the fire inspector suggested that we backfill the vault to essentially bury the tank with a pea gravel inside the vault. The ordinance calls for monitoring the space between the tank and the secondary containment. We could not find what we considered an adequate, reliable system to monitor for leaks through the pea gravel. We chose not to backfill with pea gravel and to use visual inspection which we felt was much more reliable given the present state of monitoring technology. Also, we did not know an easy way to clean-up a leak or a spill in a vault filled with pea gravel.

But leaving the vault unfilled opened new areas of concern. The open vault around the flammable container created new fire protection requirements. Combustible gas detectors, heat detectors, a ventilation system and a halon fire suppression system were required by the fire department. All of these additional requirements may not be appropriate for the degree of risk posed by the mix of solvents involved. I might point out that the way the fire department looks at a mix of solvents, they look at the one that is the worst and if you can't tell them exactly what the mix is going to be, they will use that one to set the requirements for.

The ordinance also requires analysis of storm water in a secondary container before discharge. To avoid the nuisance and high costs of frequent storm water analyses, we chose to build a roof to prevent rain from entering the open vault.

The total cost of this installation was about \$140,000, or 7 times the cost of a simple buried tank, not twice the cost as was originally estimated during the ordinance development. I cite this example to emphasize that writing performance standards is much easier than engineering workable solutions. There may be many unforeseen hurdles between the performance standards and the final engineered solutions. What is needed are technical developments of a better monitoring system, double containment systems and fire protection systems that all parties can feel comfortable with that are appropriate for the risk and are still affordable even by small companies. To encourage these developments we need an open dialogue between equipment companies, fire protection officials, regulatory staffs and regulated industries. Additional legislation should not be required to encourage this dialogue.

While I am discussing needed technical developments, let me mention a few others that beg to be solved. Vapor monitoring is specified in the ordinance as a method of monitoring for a leak. This method to our knowledge has never been tested, nor proven in practice, to a point where its reliability has been demonstrated. If you detect a vapor, do you have a leak? Not necessarily. Evaporation during transfer to a smaller container of a solvent with vapors heavier than air can cause vapors to collect in a vault and trigger a monitor. So we need to find

better technical solutions for this sort of situation, and we need to examine the wisdom of specifying untried technologies in our legislation.

Another needed development involves groundwater monitoring. If the closest groundwater is 150 to 200 feet deep, and in Cupertino and Santa Clara this is a common phenomenon, samples of this water do not tell us anything meaningful about a buried tank near the surface. On the other hand, many areas in Santa Clara County have shallow groundwater that is contaminated which makes it impossible to distinguish between a leak and background contamination. One industry gasoline tank is just across a fence from a retail gasoline station where the practice for many years has been to hose down any spills to eliminate a fire hazard. Shallow groundwater samples contain gasoline but there is no other indication of a tank leak. The recently announced EPA study may be a place where a mechanism for resolving this type of issue could begin to be addressed.

The last technical problem I'll mention is probably the most difficult and the one that needs the most attention. Where a hazardous material discharge to the ground has occurred, and clean-up actions are taken, is there a degree of clean-up that once achieved, is acceptable as a stopping point so that resources from industry and government can be utilized on higher priority problems? If the answer is yes, should this level vary depending upon the use of the groundwater, the presence of a protective clay layer, distance to drinking water aquifers and other factors? This will require a lot of careful, value balancing study, i.e., standards vs., engineering feasibility,

clean-up costs vs. risks, resource availability vs. project priority, large vs. small company resources, etc.

In closing let me emphasize how important we feel it is for continued cooperation among government, industry, environmental organizations and the public. If we expect to successfully prevent future hazardous material discharges the past example of a cooperative relationship certainly must continue. We have laws and regulations in place to begin attacking the problems. Companies are now doing a better job of inventorying and properly storing their hazardous materials. Cities are sharing construction standards and making it easier for companies with facilities in several cities to engineer their systems. And tank and equipment companies are designing new innovative systems to fill this new market. All of these are steps in the right direction and show every sign of continuing toward positive results.

Much of the ordinance has not taken effect. We will learn a lot more as monitoring of existing facilities, hazardous materials management plans, inspections and issuance of permits continue or are implemented. Let's look at our current status as being on the low end of a learning curve where we will continue to improve as we learn and share ideas, successes and failures.

Let's keep working together!

CHAIRWOMAN TANNER: Thank you, very much. Any questions? It's clear that there are many many problems but, of course, the most serious problem is the problem of the underground tank which does leak and I am wondering would this kind of legislation encourage business and industry to not use

underground tanks and to store in another way. Do you think that that is what will be happening?

MR. AFFLECK: Yes. I think so. When you say underground, you mean buried?

CHAIRWOMAN TANNER: Buried.

MR. AFFLECK: Yes. I think it will definitely discourage companies wherever possible to not use buried tanks.

CHAIRWOMAN TANNER: Well, that's a step forward in itself, I would say.

MR. AFFLECK: But we have to solve the fire protection problem and that's the big one.

CHAIRWOMAN TANNER: Thank you, very much. Yes, Mr. Baker.

ASSEMBLYMAN WILLIAM BAKER: Is there anything in the legislation that would require economic impacts on some of our decisions? He has brought up several good points. One is the feasibility, but secondly, is the cost. Do we have any mechanism in Mr. Sher's bill to review how this affects the smaller people?

CHAIRWOMAN TANNER: I don't know.

ASSEMBLYMAN BAKER: Not just the corner gas station. There is one way to get rid of the problem and that is to go back to an agricultural economy and eliminate industry in California and I don't think that is our intent.

CHAIRWOMAN TANNER: Let's have a staff person. Randy, could you respond to that.

MR. KANOUSE: The Sher bill does not contain any specific requirement to do that although legislation enacted last year requires all agencies, before they promulgate regulations,

to make that kind of assessment. So we will be looking at the impact, the economic impact of the proposed regulations in the rule making process.

ASSEMBLYMAN BAKER: In your opinion, as we have doubled bottom tanks and other new tanks come on line, will this be a problem that eliminates itself or will this be a continuing problem?

MR. KANOUSE: Between the monitoring requirements for tanks that are already in the ground and the secondary containment for new tanks, we're hoping that somewhere down the line there will be no problem. As the useful life of the tank expires and is replaced with a new tank that has secondary containment that over time there will simply be an insignificant number of leaking tanks. The bill is intended to provide fail-safe measures to achieve just that.

ASSEMBLYMAN BAKER: Then with the exception of the more expensive facilities that we are going to be mandating, this problem may just be a ten-year problem in the industry.

MR. KANOUSE: That is true and I might add that the cost of cleaning up the groundwater after the fact is typically much more expensive than installing the equipment before the fact, particularly when there has been a substantial leak over some period of time before it's found.

ASSEMBLYMAN BAKER: As we are writing the regulations can we keep in mind that people have to continue to stay in business, especially the smaller people? It is very easy to say what the effects are on Hewlett-Packard because we all know how wealthy they are but when you are talking about a gas station or

a small independent business man who has to use some chemicals in his business, we can't be that sanctimonious.

MR. KANOUSE: It's more difficult to do that, to be more candid, because the parties that participated in the drafting and taking an active part in the role are typically those with the resources to have somebody in Sacramento full time but we will make every effort to consider the impact on independent businessmen, small businessmen who simply can't afford to make an investment of thousands of dollars without any assurance that there are some benefits to be reaped.

ASSEMBLYMAN BAKER: I think the importance of his testimony is that there are many ways in which we can skin this cat and he's found one that only costs seven times as much as a new tank. Well, he's willing to do that and can afford that, but many people aren't. So we have to find the best possible alternatives and eliminate the most hazardous of our tank sites without driving people out of business because that is the sure solution.

MR. KANOUSE: I think our Board members and our staff are sensitive to that issue.

ASSEMBLYMAN BAKER: Thank you.

CHAIRWOMAN TANNER: Thank you. We will break for lunch now. Let's try to get back at 1:40.

CHAIRWOMAN TANNER: Thank you for coming back. As I mentioned earlier, our first witness this afternoon will be Tom Hayes who is the Auditor General for the State of California and Mr. Hayes will give us sort of an overview or summary of the recent audit that his offices did regarding hazardous waste. Thank you very much for being here, Tom.



MR. TOM HAYES: Madam Chair and members, my name is Tom Hayes, California Auditor General. I have with me Mike Edmunds of my staff who did most of the field work on this particular report so if you ask detailed questions, he will be available as well.

On November 30 of this year, I issued a report dealing with the State of California's Hazardous Waste Management Program and what I concluded overall is that substantial improvement is needed in both controlling the flow of hazardous waste and cleaning up the existing sites before the public will be protected from its harmful effects.

As you know, I testified in front of this Committee nearly two years ago on the same issue and issued a report in 1981. The specific findings that we have reached basically are the same as they were in 1981. There has been some progress but not much. The first issue deals with the State and its ability to issue permits which are required by law for all the handlers of hazardous waste and we found that there has been limited progress. In 1981, I reported to you that only 18 hazardous waste sites or hazardous waste facilities in the State had licenses out of between 600 and 1100 that were required to have them by law. Nobody knows exactly how many. At this point the Department has issued only another 45 more. So there are only 63 facilities in the State that are licensed to operate as of October 1 of this year and that is again out of the 600-1100 that are required to have licenses.

The slowness of the State in licensing these facilities is potentially going to cost the State in the neighborhood of

\$500,000 in federal funds. We reached an agreement with the federal government last year for a \$500,000 grant or \$5,000 advance to issue 110 permits during the last fiscal year. Since we did not meet that goal, we issued 45, we're in danger of losing that \$500,000. I think that the primary cause of this slowness has been a lack of priority and a commitment from an organization on the part of the State Executive Branch to move forward. I have seen some changes in the last few months. The bulk of the progress that has been made since 1981 has been made, in fact, within the last six months. Forty four of the forty five permits that have been issued by us since 1981 have been issued in just the last few months.

The second issue deals with enforcement. In 1981 I reported to you that the State had no systematic method of going outside and reviewing the handlers of hazardous waste to see if they are doing it properly. I can report to you now that they have made progress in this area and, in fact, last year, reviewed over 800 on-site inspections to review the operations of these facilities. The problem is that their follow-up on the violations that are detected is not as good as it could be. As of October 1 of this year, there were still 170 violations outstanding which had not been followed up on and these can be things like leaking tanks that you dealt with this morning. So it is important. We have...

CHAIRWOMAN TANNER: You mean they are inspected and...?

MR. HAYES: They are inspected. They are cited. No one goes back to see if something is corrected. Now there is an example in the report. I forget what page it is on but basically

it points out in one instance where a citation was given, nobody went back for six months. They went back six months later, the same condition, leaking containers with a highly toxic substance still leaking stuff into the ground, leaking waste into the ground. So it is important, not only in this particular program. Historically we've seen, whether it's nursing homes, hazardous waste, whatever oversight function the government has, if you are going to issue citations you have to go back and follow-up on them at some point or the operators are reluctant to make the correction unless there is some basically good enforcement process. This ties right into the next issue.

In 1981, I reported to you that there have been very few sanctions against people who have violated the law or who have violated the regulations in handling toxic waste and the same conditions exist now. Since 1981 only 14 violators have been taken to court and these have resulted in only three fines for a total of \$155,000 and there was one jail sentence in there. The Department will tell you the reason they don't take violators to the court is because it is very expensive and time consuming. But on the other hand without making some follow-up effort there is, I think, little deterrent, or little downside to the violations.

Now one thing that the Department of Health Services is doing now which should help, they are mandating some type of enforcement action being taken on every violator. This is a newly implemented program. We will see how it works. At this time I can't report to you on how well it works but it is another thing that I think that this Committee ought to...

CHAIRWOMAN TANNER: When was this program begun?

MR. HAYES: September of this year.

The third issue in the report deals with the transportation of hazardous waste. In 1981 I reported to you that the Department or the State hadn't adopted any regulations for guiding what type of vehicles can transport hazardous waste, what type of inspections they should go through, what they could be cited for in terms of violation. At this point, the Department still has not done that. That puts the Highway Patrol on a very bad position because they don't have any criteria for citing people then in essence are transporting hazardous waste in unsafe vehicles and this is something that I think should be corrected very quickly.

The fourth area dealt with the Superfund program which I am sure you are familiar with and out of the \$9.45 million last year that was available, the Department only spent \$5.56 million and had \$3.89 million surplus. Because of the way that the program was set up at that time, it affects the fees for next year and what that ultimately means is lost services for the State.

Now the \$3.89 million isn't a lot when it comes to doing any type of clean-up. But when you match that up to 90% federal reimbursement, it becomes a lot more significant. They've taken steps to plan this year much better. I don't think that they will run into the same situation and it won't have the same downside anyway because of recent legislation but I think that they are better organized this year than they were last year in terms of their ability to spend the money.

I think overall if what is needed is basically three things: the Administration, the Executive Branch, has to give a very high priority to this area and any government program unless it is given a high priority, it tends not to get the attention it deserves and over the last ten years, this area doesn't look like it was given a high enough priority.

The next, some type of structure needs to be put in place in terms of goals. How many people we are going to license a year?. How many times are we going to make inspections? What are we going to do when we find something is wrong, a structure?

The third thing is dollars. Right now, in my judgement the dollars aren't there to make a meaningful effort at administering the program. There is a large backlog as I said in permitting and while the Department is not well organized or was not well organized and how they were going to approach that problem, even when they get organized they are going to need more people. In January of this year they devoted another 19 people to the permitting process. It's just not enough. What I have recommended to the Department is that they come up with some staffing standards; some goals, and make a proposal to the Legislature; here's what we are going to do and here is how many it is going to take. I think that they plan on doing this but at the time that we completed our review they had not. I am available to answer whatever questions that you might have.

CHAIRWOMAN TANNER: Question from Mr. Connelly.

ASSEMBLYMAN CONNELLY: With regard to the permitting procedures, are there time schedules now in place that indicate that they intend to get it done in the three-year period or

something of that nature? I know that in the report, if they go at the same rate, it will take six years to get everybody licensed. Is there an implementation or work program now in existence?

MR. HAYES: At the time we completed our review, no. They have been working on the program. They have devoted a lot of effort in the last two months, our field workers completed in September or October. So they may well have come up with a schedule at this point. But at the time we completed our review, we know that they had not.

ASSEMBLYMAN CONNELLY: The response to your report, your written report is very anemic but on this one, this is from the Department, on this one point for example, are they required under state law or do they as a matter of custom come back to the Auditor General and say we have taken care of it and here is the work program at some point in time in the future?

MR. HAYES: As a matter of custom, not as a matter of law, they respond to me 60 days after the report, 6 months after the report, and 1 year after the report and all of those are forwarded to the members of the Audit Committee of the Legislature and to any members who are interested and if you would like to follow-up on that, I can make sure that you get those responses.

ASSEMBLYMAN CONNELLY: The written response at the back of this report, is this the 60 day response?

MR. HAYES: No. That was given to them at the completion of field work before the report went public.

ASSEMBLYMAN CONNELLY: But we haven't received the 60 day report until January?

MR. HAYES: That is correct.

ASSEMBLYMAN CONNELLY: It was my understanding that the EPA money was lost effective September 30, 1983. That is, we didn't have 110 permits issued and that is \$500,000 that we threw away but in your oral comments it sounds like there is still a chance to save that.

MR. HAYES: Well, in my dealings with the federal government, there have been very few black and white issues. I would say that while we are in serious danger of losing that, that through negotiation, there might be a chance that they pick up at least a portion of it. True we did not live up to our end of the bargain.

ASSEMBLYMAN CONNELLY: To your knowledge, is there anything going on to resolve that end of the bargain and secure those funds?

MR. MIKE EDMUNDS: Mr. Mike Edmunds. I did the audit work on this particular job. Currently EPA has been evaluating the Department's program and is planning on making a decision on that money in the near future.

ASSEMBLYMAN CONNELLY: Is there some written correspondence that you have on that specific issue from the Department of Health Services and EPA?

MR. EDMUNDS: We have some correspondence on the earlier agreements but we don't have any correspondence since the end of the fiscal year.

CHAIRWOMAN TANNER: Let me say that the Department is here so that we will be able to ask them questions.

ASSEMBLYMAN CONNELLY: You mentioned that there has been improvement in the permitting area. Has there been improvement in the area of follow-up? For example, the incident you mentioned with the fifty drums where you don't go back out? My impression is that this was horribly administered during the Brown Administration. There have been some new people there who were trying to get a hold of it. They have made some improvements in the permitting area and having made improvements in these other two areas specifically at the...

MR. HAYES: There wasn't anything to judge it against. In 1981 there were no inspections on site.

ASSEMBLYMAN CONNELLY: Are there any standard statutory regulations that require them to go back after they make an initial identification of a problem?

MR. HAYES: No.

ASSEMBLYMAN CONNELLY: Would that be helpful from your perspective?

MR. HAYES: I would think so.

ASSEMBLYMAN CONNELLY: In regards to the penalty aspect or the sanctions, the same question. Have there been any improvements with regard to the sanctions? You mentioned this new rule that goes in...

MR. HAYES: It went in effect in September.

ASSEMBLYMAN CONNELLY: Right.

MR. HAYES: The problems that were apparent in 1981, those sanctions still existed in 1983. I think that the new



policies allow for more administrative discretion in rendering sanctions against the violators or the alleged violators.

ASSEMBLYMAN CONNELLY: Is that going to be helpful?

MR. HAYES: I think that will be helpful. The Department has a good point in the length of time that it takes to get things through the courts. If we can avoid going to court, I think everybody is better served.

ASSEMBLYMAN CONNELLY: Is there any benefit to the idea of vesting the Department with the same kind of authority that OSHA has so that there isn't an independent court review but rather the Department itself can impose a sanction or fine of some type. Then the person who receives that fine has some appeal authority.

MR. HAYES: I would think that that should be an alternative that should be considered. As far as from an audit perspective, all I care about is that there is some teeth in it and whether that is done through the courts or done through an administrative procedure. I wouldn't have an objection to that. What we have seen in other cases, let's take for example nursing homes where we have the ability to fine people for violators that the violation administratively virtually everyone of them is appealed and it takes years to resolve anyway, so if we do with some kind of mechanism, I would like to see a short term solution built into that so that it is resolved one way or the other on the short term.

ASSEMBLYMAN CONNELLY: On the transportation regulations, have they set forth a specific time now by which they are going to get those promulgated?

MR. HAYES: They have not given us a specific date. They have promised to move forth quickly.

ASSEMBLYMAN CONNELLY: Have they passed the statutory deadline for that already?

MR. HAYES: I don't believe that there is a statutory deadline on that.

ASSEMBLYMAN CONNELLY: What is the origin of the regulation in this area?

MR. HAYES: We made the recommendation a few years ago that they...

ASSEMBLYMAN CONNELLY: Is that the 1981 report?

MR. HAYES: That is the 1981.

ASSEMBLYMAN CONNELLY: In their comments on a Superfund issue, they say the reason they haven't spent money is because they weren't getting an accurate accounting from the Board of Equalization. Is there any merit to that assertion?

MR. HAYES: I don't think so. They unspent almost half of the funds that they had available to them. They knew that it was going to be in the neighborhood of \$10 million by statute.

CHAIRWOMAN TANNER: Assemblyman Hayden.

ASSEMBLYMAN HAYDEN: Several quick questions. On the issue of the unspent Superfund money, can you summarize for us how much money we lost when we calculate in the federal portion that we would have attracted?

MR. HAYES: Assuming that we got a 90% reimbursement, it would have been somewhere in the neighborhood of \$40 million.

ASSEMBLYMAN HAYDEN: So we lost in the neighborhood of \$40 million that could have gone to clean-up toxic waste dumps in

the State of California due to simply administrative malfunctioning or tardiness. Do you know how much we have spent in the last couple of years on toxic clean-up by comparison? How much did we spend last year?

MR. HAYES: We spent out of the Superfund, we spent \$5.56 million last year and there is some federal match. I don't know that off the top of my head but I could get it for you if you would like.

ASSEMBLYMAN HAYDEN: Okay. Secondly, I don't know if this comes under your mandate as an auditor so correct me but it has to do with the structure here and perhaps it relates to auditing in the sense of wanting the most efficient cost effective structure. Do you have a judgement or recommendation on whether we should have an independent agency, an independent Department of Toxic Waste as opposed to having it within the framework of the Department of Health Services?

MR. HAYES: I don't believe -- I am going to hedge on that a little bit and I will tell you up front. If the proper emphasis is given to it, I don't think it makes much difference where it is. If it takes elevating it to a departmental level for the State of California to give it the proper emphasis, I would be in support of that. However, if they could do that through a division in the Department of Health Services, I think that you could achieve the same thing. I would generally view that as administrative discretion. If the Governor thinks that he could be more effective, and we have looked at it in general terms and don't see that the cost differences should be significantly different, I don't have a position one way or another.

ASSEMBLYMAN HAYDEN: A third question. On the ineffective enforcement of the law, you state that there are 170 violations or citations that have not been followed up on and that in the past two years minus a month, there have been only three fines and one jail sentence.

MR. HAYES: Correct.

ASSEMBLYMAN HAYDEN: What if you have an opinion, what would be your opinion about a number of fines or jail sentences that would reflect a more productive, effective agency here?

MR. HAYES: Personally, I believe, when there is any serious violation, it should result in some punishment by a fine or I guess in the severe cases, some type of jail sentence. Only fourteen cases have been taken to court out of the 370.

ASSEMBLYMAN HAYDEN: What is the 370?

MR. HAYES: 370 facilities were in violation during that fiscal year, the last fiscal year.

ASSEMBLYMAN HAYDEN: I am sorry. What I am reading is 170.

MR. HAYES: 170 where there is no follow-up action. 370 citations for violations and 170 cases the Department had not been back to check to see if the violation had been corrected.

ASSEMBLYMAN HAYDEN: I assume that you think that three fines is a fairly paltry number.

MR. HAYES: I think that that is very low.

ASSEMBLYMAN HAYDEN: What would be your sense of a productive, an indicator that there was a productive job of enforcing the law here?

MR. HAYES: I would think near 100%. When we have a traffic violation, virtually we get fined whether it is for speeding, running a stop sign, and we are looking at near a hundred percent in that case and I think that we could look for the same as a violation of the law in this case as well.

ASSEMBLYMAN HAYDEN: All right. Just one last question. I can't quite tell here from the carefully formulated title of your report, but just for the audience and for those of us who have simple minds, are you optimistic or pessimistic about our progress in this area. You say some improvement but more needs to be done. Which part of that...

MR. HAYES: In the summary of the report I will read you a sentence that I think sums it up. The State's hazardous waste program does not adequately protect the public environment from the harmful effects of hazardous waste. We've got a long way to go. The progress that we have seen in the last six or nine months is more than we have seen cumulative to date over the last several years so that gives some opportunity for optimism but we still have a long long way to go.

CHAIRWOMAN TANNER: Mr. Konnyu.

ASSEMBLYMAN KONNYU: Mr. Hayes, what is the underlying resistance to the Brown Administration first and if that resistance still exists now, you say that it has improved under this administration, what is the real underlying resistance to getting really aggressive in these areas whether it is licensing, to license more, when there are violations, to create more fines? What is going on? Is it because of a new area and people are treading carefully or it's not enough political backing for it?

In our Committee we have raised hell every year, whether it was a Democratic or a Republican administration. So what is the underlying problem here?

MR. HAYES: It is basically a commitment and a commitment of resources on the part of the Executive Branch. As I said earlier, you need in my judgement, three things. You need to give it a high priority, you need to set the structure in place. Before September of this year, there were no workload standards, no goals, no objectives, no regulations on how the Department itself was going to administer the program even though it had the responsibility. So I have to do that as a lack of a commitment. It just wasn't given enough of a high priority by the people who were administering it. We have those things now. Now the key is to see that they work.

ASSEMBLYMAN KONNYU: Madam Chairwoman, What plans do you have to focus on this issue this coming year and try to create an even stronger effort on the part of the current administration?

CHAIRWOMAN TANNER: I will say, and I am a Democrat and I was extremely unhappy with the Brown Administration and the way that they performed regarding hazardous waste. That is the reason I asked the Auditor General to do an audit on performance. When he did, I found and everyone else found, it was a very devastating but factual report. We knew that the Department had not been concerned apparently with the problems of hazardous waste. I am noticing there is some improvement but there is an attitude that is in the present, it seems strange for me to say this with the present administration, an attitude of wanting to do a job. I have a feeling right now of optimism of what the

Department is going to be doing and what the Department is doing. It's unbelievable that all of those years, and we weren't talking about 18 permits in one year, we were talking about 18 permits over a long period of time. I see a dramatic change with 45 permits in the last few months as opposed to 18 permits in an "x" number of years.

I feel that it is important that this Committee watch that the administration, the Department performs as they should. I feel that certainly follow-up to inspection and citing of violations is absolutely necessary and important. There is no reason in the world why a violator wouldn't continue to violate if there is no penalty, if there is no problem. But I must say that even though the numbers are small, the improvements are great because the numbers weren't even there prior to the new administration. So I am... When I think about the money that was lost, flittered away in the Superfund, and I think of it when I see some people from the Stringfellow area, see those people who have been fighting for a clean-up for years, of this horrible situation and we have just tossed away something like \$40 million. Not only does it make one angry, it is irresponsible. I think that the State should answer to that. But I do believe that there is improvement. I am hoping that that improvement increases and I think that it is our Committee's responsibility to see to it that it does.

ASSEMBLYMAN CONNELLY: Mrs. Tanner.

CHAIRWOMAN TANNER: Mr. Connelly.

ASSEMBLYMAN CONNELLY: A thought that I had, and maybe you can help me on it, that maybe through you as Chair, make a

ormal request of the Department to present within a 60-day time frame which I guess we are going to respond to the Auditor General's Report anyway, some timetables and criteria for performance. Things that could be quantified.

CHAIRWOMAN TANNER: Perhaps we can get some today.

ASSEMBLYMAN CONNELLY: Maybe we can get them today and by July 1, they will have "x" number of permits issued, "x" amount of monies spent and so forth and so on so that we have a yardstick to measure their performance because otherwise we won't see another Auditor General review for two years. You get a little action now because everyone is grumbling and looking at him and then in two years it...

CHAIRWOMAN TANNER: That's a good idea. Any other questions?

Thank you very much. I think it is very important the work that you people have done and it certainly has managed to change things.

MR. HAYES: Thank you very much.

CHAIRWOMAN TANNER: Following the Auditor General, we have Richard Wilcoxon who will probably respond to some of those questions. Mr. Wilcoxon is the Chief of the Toxic Substance Control Division for the Department of Health Services.

MR. RICHARD WILCOXON: Thank you.

CHAIRWOMAN TANNER: You heard some of the questions. Do you think you could respond, you know, transportation, enforcement, permitting?

MR. WILCOXON: Yes, I did, Ms. Chairperson. My name is Rich Wilcoxon and I am Chief of the Toxic Substance Control



Division and I would like to thank the Committee for the opportunity to testify here today on our program.

You've just heard the Auditor General's report that covered the basically two-year period from October of 1981 until September 1 of this year. It is our judgement that it is unfortunate in a sense that the period of the report is so long in the sense that mostly what he says is true if you take the time frame of two years. In April of this year, at the request of the Legislature and at our own management priorities, we prepared a workplan which we presented to the Legislature in May and said in essence, this is our commitment to achieving specific goals during this fiscal year, 1983-1984. I have a copy of that workplan which I'd like to give to you and a copy of our first quarterly status report on our accomplishments. These documents have been previously supplied to the Legislature and to this Committee, but in case you don't have them, I would like to make a copy available for you.

In our comments to the Auditor General's Report, we thanked him for the recognition he gave for the improvements we made in the program and indicated that we would supply his office with a copy of our first quarterly report. At the time the audit was finished we hadn't completed the report as their cutoff date was September 1. The report covers the periods, July, August and September of this year and I would like to go through, just briefly a summary of our significant accomplishments, and those are listed on pages four through nine of the report.

The first thing that we have accomplished is we've implemented a new enforcement policy and guidelines and

established a new position of enforcement coordinator. We felt fortunate in being able to secure the services of Gil Jensen from the Alameda County Prosecuting Office in the District Attorney's Office there and he has been on board and he has been acting as enforcement coordinator. Basically, our new enforcement coordinating guidelines and procedures require that every violation we take enforcement action on and make sure that the enforcement violations are corrected. We are also imposing penalties where we find violations and assuring that corrective action is taken. Essentially, doing this through a procedure whereby every violation is referred to the enforcement coordinator and that will take the responsibility off of our field staff who are conducting the inspections and doing the surveillance from also having to perform the enforcement actions.

CHAIRWOMAN TANNER: Do you think a mechanism to a bill, a law, to allow you to collect fines would be reasonable rather than court litigation? Do you think that some other method would be an advantage?

MR. WILCOXON: Depending on the seriousness of the violations, Sally. I would say that the Department would prefer and Gil Jensen would also recommend that we not go to court on every violation. That is a long lengthy process as you are well aware of. Rather we think that we can secure compliance, that is get violations corrected through the use of settlement letters whereby we notify the facility that has violated the law of their violations, recommend courses of corrective action, and then ask for a penalty provision. That mechanism seems to be working very well rather than going for litigation. Of course, if a violator

refuses or turns down the settlement offer, we will refer the violation to court either through the local district attorney's office or through the Attorney General. In this regard, the Department has sent nine settlement letters to companies who have violated the hazardous waste laws. We have issued 41 noncompliance letters to operators who are not in compliance with underground water monitoring requirements. We've also issued 38 final hazardous waste facility permits. We've issued two high technology cyanide treatment facility permits which in the long run I think is where the State wants to go and that is away from landfill to treatment of these hazardous wastes. We've issued a number of permits for the mobile treatment of PCB's, a very dangerous hazardous waste. We've entered into memorandums of agreement with some nine counties whereby their environmental health counterparts in the county will do the generator inspections on the small generators, whereas we will concentrate our efforts on the inspection surveillance and permitting of TSDC facilities.

CHAIRWOMAN TANNER: Sergeant, would you close the door please?

MR. WILCOXON: I might add the Department is committed, I am personally committed, to establishing as many MOU's with counties as possible. I think in the long run that the only effective way to have a good program is to have counties and the state together with EPA when necessary, do the hazardous waste management enforcement. We've registered some 273 hazardous waste haulers. We've cleaned up the Llano barrel Superfund site and today in cooperation with EPA are beginning work on the Hoopa

Indian reservation in Sawtelle in Mendocino County and hopefully, weather permitting, will have that site cleaned up at the end of this month. There are numerous other activities that we have accomplished in this report and pages 10-72 give the details of what we've been able to accomplish. I am proud of our staff and the effort that they have done. I think that the Legislature should also be proud of the program in California. For example, the 43 permits that we have issued here in California are more than all of the states combined. That is not saying that we are satisfied that 43 permits is a good job, but it is on its way to being a good job and in our workplan, we have made commitments to issue some 95 permits this fiscal year. I think that we will achieve and perhaps exceed that amount. In that regard, I would like to state that we would appreciate the Legislature's support and this Committee's support for additional legislative proposals that are now being developed. We will be offering probably four major pieces of legislation to help us in our enforcement efforts. Peace officer status for selected individuals in the department, more enforcement penalties, pass through with some penalties to local prosecutors so that we can encourage local district attorneys to take more hazardous waste cases, and provisions for stricter liability. We will also be making some proposals for the continued recycling and treatment of hazardous waste. I think all of you on the Committee and the Department are committed in the long run to getting away from the landfilling of hazardous waste. I think that we all recognize that is going to pose potential problems in the future. We will be proposing and developing legislation to provide for on site

recycling for additional resource recovery, for changing the definition of recycled material to allow more of it to be recycled, and to expedite the land disposal phase out as soon as possible. We will also be requesting this Committee as well as the other members of the Legislature for support of additional resources for the program. That will be submitted in the Governor's Budget in early January. There will be a substantial request for augmentation of our program. With us working together not only with the Legislature but with local county governments, I think we can have a strong viable good management program for hazardous materials that will be the envy of any state in the nation and in the world. I would be happy to answer any questions that you have.

CHAIRWOMAN TANNER: Could you give us a report on Stringfellow?

MR. WILCOXON: At Stringfellow, we've entered into a cooperative agreement with the federal government as you well know and have instituted legal action against the responsible parties. We are in the process, together with the Environmental Protection Agency, of taking additional remedial action at that site and have taken some in the immediate past. We have gone there with EPA, put in additional drainage channels along both sides of the site itself and dug trenches behind the site to prevent the water from the hills running down and through the site causing further pollution of the underground water there. At this moment, we are pumping groundwater and taking it away from the site and disposing of it at appropriate Class I disposal facilities. By January we hope to have in place a groundwater

treatment facility so we can treat the water on site and not have to incur the expense of hauling all the water to another Class I dumpsite. That will significantly reduce the amount of hazardous waste that is leaving the site basically on a daily basis at the present time.

I might just make a comment that as far as Superfund sites are concerned, I wish that we could clean them all up yesterday. They are a problem that will be with us for some period of time. Our first concern on cleaning up Superfund sites is essentially to do a feasibility study to determine the most appropriate way to clean-up the site that will not impair public health. We don't want to cause a health problem rather than prevent it. These studies, unfortunately, in one aspect, take a long time to do to make sure that we don't cause any further harm. Once that is done, then we basically low-bid on the clean-up methodology and award the bid to the lowest bidder whether that be the excavation, encapsulation or on site treatment or a combination. Stringfellow will probably be all of those and more. It is a very difficult site and the clean-up of that site will take some time. I don't want the Committee to think that in a year from now, Stringfellow will be cleaned up. We will be cleaning it up, however.

CHAIRWOMAN TANNER: All right. For questions. Mr. Konnyu.

ASSEMBLYMAN KONNYU: The Auditor General pointed out there were some 350 cases of violations identified and only 3 fines. What's going on?

MR. WILCOXON: In the time period he was speaking of, that was correct. Right now, with our new enforcement policy, we'll be asking for fines and penalties if you will on all violations and we will be following up on all violations. We are doing that now.

ASSEMBLYMAN KONNYU: So when did you start doing that in every case?

MR. WILCOXON: September 1.

ASSEMBLYMAN KONNYU: September 1. So that is a guaranteed positive change.

MR. WILCOXON: Yes, it is. That is our commitment. We have that policy. If we find that field inspectors are not following it and are conducting inspections and not referring the violations for enforcement, we will take disciplinary action on such individuals.

ASSEMBLYMAN KONNYU: All right.

CHAIRWOMAN TANNER: Mr. Connelly.

ASSEMBLYMAN CONNELLY: Could you bring us up to date on the EPA money and the permit issuance, 110 standards which was not met September 30? Whether or not we are going to lose that half million dollars.

MR. WILCOXON: Yes, I think the Auditor General and the Department have a difference of opinion about that money. Basically, what transpired back in 1981-82 where by the Department at that time made a commitment to issue some 110 permits as part of the EPA grant. In the middle of the year, the Department went back and said give us some additional money and we will issue 150 permits. When I came to the program in April,

we I guess for a lack of a better term took a hard look at what the commitments were, developed some, I think, well defined workload standards for permit issuance.

ASSEMBLYMAN CONNELLY: Are we going to get the money from that or not?

MR. WILCOXON: Yes. And those were made available to the Auditor General and we met with EPA and told them in essence, with these workload standards, one, do you agree with them. They said yes. We said, therefore, we will not be able to issue 150 nor 110 permits. EPA at that time agreed that they would give us the money providing that we could show that we had devoted the resources to the issuance of the permits. We have supplied EPA with that information, but the resources were devoted to the issuance of the permits that at that time did not result in 110 or 150 and we are in the process right now of waiting the release of the money. I am not a hundred percent confident of any action the federal government might take but I am quite confident that matter will be resolved and we will get the money from the EPA for our grant.

ASSEMBLYMAN CONNELLY: Do you have any timeframe, just so we can keep an eye on it?

MR. WILCOXON: I talked with EPA last week and I would expect or at least hope that issue would be resolved this month some time.

ASSEMBLYMAN CONNELLY: On the date for the issuance of the transportation regulations, I haven't had a chance to review your work program but is there a date for performance identified in that document?



MR. WILCOXON: Yes, there is. We've written those standards and have submitted them for a public hearing. I believe the hearing on the workplan is scheduled to take place in February of 1984 which would allow enough time for publication notification in the hearing.

ASSEMBLYMAN CONNELLY: Same thing with regard to Superfund money in terms of the tax for this fiscal year. Will you spend the entire \$10 million?

MR. WILCOXON: I agree with the Auditor General that we have developed a much better procedure for allocating the Superfund monies and barring any unforeseen emergency, I would say yes, we will spend all of the Superfund money on site clean-up.

ASSEMBLYMAN CONNELLY: Is there a capital improvement program that you departments put together identifying how those funds are to be spent?

MR. WILCOXON: It isn't a part of capital outlay in the budget, but there is a plan for the expenditure of that money based on the relative ranking of the Superfund sites.

ASSEMBLYMAN CONNELLY: Is that just the ranking of the sites or is that a specific project per site with a quantification of the cost.

MR. WILCOXON: It is project by site.

ASSEMBLYMAN CONNELLY: Is that in this work performance document or are those identified so that we can see it as those move forward?

MR. WILCOXON: I don't believe that level of detail is in the plan.

ASSEMBLYMAN CONNELLY: Maybe you could provide, at least I would like to see, and maybe some of the other Committee members, how you propose to spend the \$10 million?

MR. WILCOXON: We've indicated in our workplan, I believe the eleven sites where we propose to spend money, but I don't think that we have broken it down specifically on exactly what type of mitigation or studies will be done at each site.

ASSEMBLYMAN CONNELLY: You can do this? There is no problem making it available?

MR. WILCOXON: No. That's...

CHAIRWOMAN TANNER: Is it possible for you to know until you have studied those?

ASSEMBLYMAN CONNELLY: Maybe we are asking something that is impossible.

MR. WILCOXON: One of the problems with using a Superfund list is precisely this: if we looked on that Superfund list, I believe right now Aerojet is number one on the list. If we decided to use all Superfund money, which we are not proposing to do because we think we will get a responsible party, Aerojet, to pay for the clean-up but if we did, we could spend all \$10 million at Aerojet and not do anything at any other site. We can make a list, Mr. Connelly. That's not the problem, but if responsible parties come in and saw we will now pay for the clean-up, then we would reallocate the money to other sites.

ASSEMBLYMAN CONNELLY: That makes a lot of sense but there ought to be at least an initial plan or reference point of priorities keyed to specific projects that you want to do. I assume you have that.

MR. WILCOXON: Yes.

ASSEMBLYMAN CONNELLY: I would like to see that at least. In Byron's bill, AB 1362, the Department put together a comprehensive master list on hazardous substances and that is supposed to be done by June 30, 1984, and that is a key element in the implementation of the bill. Are you going to make that deadline?

MR. WILCOXON: We don't foresee, at this point, any problems with that comprehensive list of hazardous substances. However, it is different than a list of hazardous waste. There will be some items on that list that won't appear on the hazardous waste list.

ASSEMBLYMAN CONNELLY: At this point, at least, you believe that you will make that?

MR. WILCOXON: We will make that.

ASSEMBLYMAN CONNELLY: Is that deadline included in your work performance thing that you have been submitting to the Ways and Means Committee?

MR. WILCOXON: I think when we prepared that workplan, that was done prior to the passage of the Sher bill and this will be done outside of the workplan.

ASSEMBLYMAN CONNELLY: When is the next update on the performance of that workplan to be Ways and Means?

MR. WILCOXON: We will submit a second report. It will be due to the Legislature, I believe it is February 28, for the second quarters performance.

ASSEMBLYMAN CONNELLY: Will that report pick up the new statutory requirements, not just of AB 1362 but 2013 and 1803 and the others that passed this last year and were signed into law?

MR. WILCOXON: We will include in that report any activities or objectives that we have achieved for any new legislation, also will be included.

ASSEMBLYMAN CONNELLY: Let me just give you a broad question on 1803, the water monitoring. There is a 90 day kick in after the first of the year in terms of pulling together data about the potential decontaminations that might be found in different water sources and then directing local entities to monitor for that. Are you going to make that 90 day time period as work beginning on that? Could you just chat with me for a minute to persuade me that you are doing something?

MR. WILCOXON: I really can't answer that question, Mr. Connelly. That is our Sanitary Engineering Branch.

ASSEMBLYMAN CONNELLY: Is there anybody here who can?

MR. WILCOXON: They will be testifying later in the agenda on that so I will beg off that question.

ASSEMBLYMAN CONNELLY: I am probably not going to be here later because I am going back to Sacramento and so whoever that mysterious person is, maybe he could contact my office. I would like you to have him contact my office. I would like to chat with him.

MR. WILCOXON: He's here.

CHAIRWOMAN TANNER: He's really not mysterious at all.

ASSEMBLYMAN CONNELLY: He's really not mysterious, whoever he is.

CHAIRWOMAN TANNER: The question that Mr. Hayden raised earlier to the Auditor General about reorganization or a new division or a new department. Is there some plan? Is there a plan to make some changes?

MR. WILCOXON: I think that the administration is giving consideration to the appropriate organizational placement of the toxics program. What decisions have been made, I am unaware if any have been made. I could argue either side of the fence on that as to where our program organizationally should or should not be placed. I am more concerned, Sally, with getting the job done, no matter where we are placed, rather than organizational placement. That's my commitment and our staff's commitment.

CHAIRWOMAN TANNER: Are you going to ask for what you think would be a sufficient number of staff members to do the enforcing and to do all of the things that are required to manage hazardous materials?

MR. WILCOXON: Yes. We are going to be making requests for a substantial increase.

CHAIRWOMAN TANNER: Do you feel that the Governor will cooperate?

MR. WILCOXON: My feeling is that the administration from the Secretary straight on through to the Governor's Office is very interested, supportive, and concerned about toxic materials and I think as indicated in the Governor's budget, last year, has given it top support.

CHAIRWOMAN TANNER: I think that the Legislature certainly will cooperate. So it all sounds pretty rosy.

ASSEMBLYMAN CONNELLY: Thank you, sir.

CHAIRWOMAN TANNER: Oh! I am sorry. Mr. Hayden has a question.

ASSEMBLYMAN HAYDEN: I have a couple of questions. I think that your testimony and your projected goals are very

refreshing and I can understand why you would want to distance yourself from previous regimes. However, some ghost are passed from regime to regime and I want to tell you that a test for me, probably some other members of the Committee, is what happened at Stringfellow. It's all well and good that Rita Lavelle has been convicted. A lot of people can claim with some degree of accuracy that previous administrations did that but I was a little confused by your statement that on the one hand you would be working away towards a solution there but that it wouldn't be complete and the open-endedness of that answer concerned me a little bit and it leads me to this question: I would like to know in your words what your philosophy is towards the issue of citizen participation because in many of these cases, it has been citizens who have brought this to our attention long before elected or appointed officials have and it has been a source of some controversy and frustration that the citizen groups were the only ones who had an immediate stake in a health oriented solution, are often prevented from getting information, and are often put off by just the behavior or the personalities of some of the people in the Department. And so in Mr. Konnyu's bill, we included some language that I hope that you can cite verbatim that requires you to take into account after due process, after having hearings, after appropriate notice, citizens, if they make a recommendation like get it out of here, excavate it as opposed to treat it, or whatever the recommendation is, you are at least required to give a recommendation to why you didn't follow that citizen advice. Are you are aware of that language?

MR. WILCOXON: Yes, I am.

ASSEMBLYMAN HAYDEN: Can you give us your philosophical observations on this?

ASSEMBLYMAN KONNYU: Tom worked very hard on that particular amendment. I call it a Hayden amendment. By the way Tom, I thought that it was an excellent idea and I am glad that we were able to get together.

ASSEMBLYMAN HAYDEN: Good. I am sorry that you didn't include the whole proposal which was to grant some money for citizens to hire their own experts to go after the experts on the other side. But we can get that in next year with the additional money.

What is your philosophical view? Don't let our partisan bickering interfere.

MR. WILCOXON: Let me give you an example. Number one I am very supportive of citizen participation by practice. We did that at McColl and I think that it has worked very well. We informed the citizens, went door-to-door, when we did the test excavation there to see if excavation would work as a practical solution to the problem in McColl. I handed out packages of material in cooperation with the local city government there on excavation and emergency excavation if necessary if something went wrong or was unforeseen. We meet with the people at McColl on a regular interim basis and I think both us and the people around that site are better off for it. We have a better plan and I think they have more confidence and assurance in our plan. I only wish, Mr. Hayden, that we had done the same thing at the start of Stringfellow.

I don't think that we would have a number of the problems that we currently do there in building people's trust although we have within the past six to seven months, met with the people at Stringfellow and told them exactly what we are doing, what we are going to do, and we will continue to meet with them until that problem is resolved. I am a strong supporter of citizen public participation around these sites and I think, whether it was in the law or not, I would still want to do it. I hope that answers your question.

CHAIRWOMAN TANNER: Another question?

ASSEMBLYMAN CONNELLY: In that regard, Mr. Wilcoxon, would you be kind enough to respond to citizen inquiries I have about the Aerojet site?

MR. WILCOXON: I would, Mr. Connelly, except we are in sort of a peculiar situation there in that that is in litigation under settlement but as long as the Attorney General would not object to me releasing information.

ASSEMBLYMAN CONNELLY: What you do, sir, with all due respect, is you say that you are willing to do in good faith and at least in the incidence of Aerojet in response to the simplest question, everything is asserted as being secret and within the text and negotiations between Aerojet and the State of California. Lawsuits were pending for four years and nothing's happened. So good faith assertions, just to be very blunt with you and I have some positive reactions about the administrative changes that you implemented, the good faith assertions are to open up the process. In an oral setting like this to this Committee, and then privately responding negatively to oral inquiries from citizens I find very very discouraging.



MR. WILCOXON: Let me answer your questions this way. If we are not advised by legal counsel not to release information we...

ASSEMBLYMAN CONNELLY: You are legal counsel. Joe Moskowitz is the attorney in that lawsuit and he works in your Department. They do what he says for them to do. You guys can play ping pong all day but the bottom line is on your side of the table.

MR. WILCOXON: Let me present a scenario I hope that we will work out with the citizens around Aerojet and Rancho Cordova primarily. I would hope that we would achieve settlement shortly with Aerojet. That is my hope. But I am not handling the case. Once we do, we will meet with the community people and tell them through a series of public meetings face to face, brochures, whatever, exactly what we plan to do there on the timetable and ask for their comments and opinions on it.

ASSEMBLYMAN CONNELLY: And you will prior to signing off on the settlement provide the citizens that opportunity?

MR. WILCOXON: My understanding, and I am sorry I am not an expert in that area, but my understanding is that the Attorney General agreed that prior to executing a settlement with Aerojet, he would make the terms of the settlement available to the public prior to signing the settlement. I think that is still his commitment.

ASSEMBLYMAN CONNELLY: In that same regard, will you make available to the public documents, expert evaluations, the studies so we can evaluate whether or not the settlement is proper?

MR. WILCOXON: I am afraid, Mr. Connelly -- I don't have any problem with that, believe me. I just don't know how to answer you without legal counsel.

ASSEMBLYMAN CONNELLY: Well, let me tell you. The counsel works for you, the lawsuit is a fiction. You know that it is a fiction. If you don't know it is a fiction, get Joe Moskowitz in a bar with a couple of beers, he will tell you it is a fiction. It hasn't gone anyplace in four years. There hasn't even been an answer filed in the lawsuit which is supposed to be filed within the first 30 days. I would like if I can, with regards to Aerojet which is the worst in the State of California, maybe in the country, that Mr. Wilcoxon respond back to this committee specifically what mechanism he intends to provide or the Department intends to provide for public review of that agreement prior to it being executed so that the ambiguities and personally what I would like to do are set aside and what will really happen can be put forward.

CHAIRWOMAN TANNER: The Committee could write you a letter and request that information. We will do that.

MR. WILCOXON: I don't have any problem with that, Sally. I would just... My feeling is that question is more appropriately addressed to the Attorney General.

CHAIRWOMAN TANNER: We could write to the Department and to the Attorney General. Any further questions? Thank you very much.

MR. WILCOXON: Thank you.

CHAIRWOMAN TANNER: Our next witness will be Ted Smith, a member of the Silicon Valley Toxic Coalition.

Thank you very much for being here.

MR. TED SMITH: My name is Ted Smith. I am the chair of the Silicon Valley Toxic Coalition. I want to thank you folks for all coming to San Jose. We formed as a coalition a couple of years ago when we realized that there was a very significant problem with our water contamination here due to leaking underground tanks, largely from the electronics industry. As you know, our work helped to bring about the local model ordinance that was discussed this morning as well as we spent a good deal of time working on 1362. I have to say that our work on the model ordinance was certainly more satisfactory than the work on 1362 as you may recall. It made me think that any time you can work locally rather than in Sacramento, you are a lot better off.

A lot of our friends out here in the audience, the Sacramento oil lobbyist and the manufacturing lobbyist, etc., did a very good job I will have to say at watering down AB 1362. Nevertheless, at least it did get through and hopefully it will help. I heard an awful lot of rosy comments today about how helpful industry is being and how great the state agencies are doing. I guess my job is to tell you from the community perspective, at least from this community, things are not at all rosy. As Harold Singer mentioned here this morning, there were almost 80 chemical leaks in this one county alone. We have over 80 chemicals that have been detected in our groundwater.

CHAIRWOMAN TANNER: Mr. Smith, I don't think that anyone on this Committee thinks that things are all rosy. I think that the people on this Committee have worked very hard to change the serious problems and correct many of the serious problems.

Perhaps locally much can be done. I applaud you for having done it. We are attempting, have been attempting to reverse the problems caused by hazardous materials.

MR. SMITH: I appreciate that.

CHAIRWOMAN TANNER: It is a very difficult kind of job and it is a very large job. It is not rosy but at least it isn't as devastating as it was a few years ago.

MR. SMITH: I think that the problem is that a lot of the damage has already been done. I think that the value of AB 1362 in the model ordinances, that they are designed as preventive measures. I think the same can be said about 1803 and 2013. Hopefully we may be able to minimize further damage. But I wanted to spend a little bit of time talking about just how great the existing problem is because I do think that the enabling legislation that has recently been passed, whereas it is a step forward, certainly isn't going to be sufficient to deal with the overwhelming extent of the problem that we have.

I saw just last night a new consultant' report on the extent of the clean-up at Fairchild. As you may know, something like \$12 million has already been spent trying to actually clean up that aquifer there. They are actually taking the water out of the aquifer and running it through a carbon filter and putting it back down in. According to the consultants report, very, very little progress has been done on that. I understand over in the Central Valley they are not even attempting to clean up the aquifer, it's so bad over there. So I think that the key really, rather than simply look at the language and legislation, is to look at what is going to be done to implement that legislation

and what kinds of resources are going to be brought to bear to bring about that implementation, mainly, what kinds of moneys are going to be made available and what kind of staffing that will allow for. I am deeply concerned that in implementing all three of the bills, that we have been talking about here today, that the level of resources, the level of staffing, and the fees that are being or will be charged are really tremendously insignificant and tremendously underrepresentative of what is really going to be necessary. For instance, the leak down at IBM in South San Jose has spread out over two miles in the aquifer. They are still testing to find out the extent of that leak. There is to my amazement and chagrin, I recently learned that there is very very little monitoring of drinking water going on. I always assumed that the Regional Board of the Santa Clara Water District, or somebody like that was certainly monitoring the water particularly after we learned about all of these spills. It turns out that there is very little of that. So then I was thinking well hopefully Lloyd Connelly's bill is going to be the solution to that and started checking into how that bill is going to be implemented. I found out that the Department of Health Services, Engineering Branch, has two people to presently monitor the entire South Bay going down to Monterey County. There are hundreds of wells, drinking water wells in this area. They only have two people to look at them. There are no present requirements to test for any kind of chemical contamination, organic chemical contamination, and I am told that in implementing 1803 the Health Department is only going to look at something like 32 chemicals. As I say we have over 80 in our

groundwater now that we know about and there are no present plans in the implementation in 1803 to even look at half of those.

As I understand it there is no additional monies that are to be provided for implementing that bill. As we know the Governor did veto money that had been allocated to implement that.

I wanted to also pick up a little bit on Harold Singer's comments. He did not tell you that there has been a significant problem with noncompliance with the Regional Board Monitoring Program. Whereas I think that they have done largely a very good job with what they have had in terms of resources, there are still 351 facilities that haven't even returned the initial questionnaires and there are 391 facilities that have not completed subsurface investigations that the Regional Board feels is necessary. Again, they don't have the staff resources to do that. They are suggesting in a recent report that they won't be able to do that and they want to turn it over to the locals. The locals as you know have additional significant problems. I don't know if anybody from San Jose is still left here but I do know that the Fire Department here has requested five additional staff positions. They haven't been able to get those. It means more money. It means additional fees. Industry is resisting the fees and we are right back into the same problem.

I also want to point out that it seems that there is a significant lack of sufficient communication between the Department of Health Services and the Water Boards. I recently received a printout of the facilities that the Department of Health Services has listed as the hazardous waste sites in this

county. There are, I believe, 131 of those. There are a number of sites that the Regional Board is presently helping to clean up that aren't even listed on their printout. Alternatively, there are a number of sites on the DOHS list that were not listed on the Regional Board list of companies that they sent questionnaires to. I don't know procedurally or administratively if your Committee is able to help to get those two different departments communicating but it seems to me that they ought to.

CHAIRWOMAN TANNER: I think so. We have been attempting to do that.

MR. SMITH: Let me see if I... I think I would..

CHAIRWOMAN TANNER: Question. Mr. Konnyu.

ASSEMBLYMAN KONNYU: Madam Chairman, on that particular point, I think that it has been clear in testimony in our Committee on a number of cases that the organizational problem that he refers to where the responsibility and therefore the accountability or the administration of these programs is so diffuse that there needs to be some real thought given as to how we can better organize the whole state. Exactly is that the right answer? There are a lot of smart folks around who can indeed come up with some suggestions in a comprehensive way answer the organizational structural problem that is inherent and maybe we ought to pay much closer attention to that and devote some staff time from your committee to that question of organization because if we can organize things better, there can be a whole lot better accountability and once you have accountability, then you can go hang some folks when they don't do a job.

MR. SMITH: A couple of last things. I understand that the Department of Health Services anticipates that in implementing 1803, they will try their best to test the significant wells once every three years. They are concerned that they don't even have the resources to do that. I understand, and as I say that the testing that they are talking about would involve only about 32 chemicals. I am also informed that there may in fact not even be enough labs within the Department or outside in consultant labs to do the detailed kind of analysis that I really think that we need to have done to be able to assure people either that their water is safe or to warn people when it is not. I would ask that you spend some time investigating the implementation of that program. I am particularly concerned about that. I had always assumed that a lot of this was already being done and it seems like it just isn't. You can test today and find perhaps no contamination and tomorrow there will be some there or next week there will be or next month and if we are not even doing that testing except once every three years, maybe I just don't see how we can with any assurance tell people in our communities that the water is safe which I really think is the bottom line.

CHAIRWOMAN TANNER: I think it was in 1980 that I introduced a bill to monitor water. Can you believe? There was \$50,000 in the bill and I couldn't get the \$50,000. I just had to remove that. So there wasn't real awareness, not only in public awareness but in the Legislature of how serious, of the many problems we have and how serious those problems are. Hopefully, we will begin to really monitor our drinking water as



new compounds, as new chemicals are being developed. You know, how can, if they put 20 on the list or 30 on the list, or 50 on the list, tomorrow there may be 70. It is a difficult thing but if Mr. Wilcoxon is correct and if they are requesting a large number of people from the Governor, additional people, and if the Legislature supports that, hopefully we can do a better job. We certainly have done a dismal job to this point. Questions?

I would like to introduce our good friend Assemblyman Rusty Areias. Glad to see you here.

ASSEMBLYMAN RUSTY AREIAS: Thank you.

CHAIRWOMAN TANNER: Our last witness and perhaps he, Mr. Smith, our last witness may be able to answer some of your questions. He is not listening. Mr. Smith. Is Peter Rogers, and he is the Chief Sanitary, of the Sanitary Engineering Branch of the State Department of Health Services and maybe he will be able to answer some of your questions. Pete.

MR. PETER ROGERS: Thank you, Madam Chairwoman, and members of the Committee. I'm Pete Rogers, Chief of the Sanitary Engineering Branch of the Department of Health Services, and our role is the regulation of domestic drinking water supplies in the State of California. I have with me Dr. David Spatt who will help me if we get into any technical questions.

As part of my presentation today, I was asked to cover several aspects of groundwater contamination, including what is the Sanitary Engineering Branch's role in that what is the general status of contamination and monitoring throughout the state and what is the status of implementation of AB 1803 and I will cover those three aspects. As was pointed out earlier, the

State and Regional Boards have the primary responsibility for regulating groundwater contamination and groundwaters in generally. The Department of Health Services is primarily a technical support agency in that respect and there are several things that we do in the area of groundwater.

First of all, we provide the state and Regional Boards with health related recommendations and technical assistance when they set water quality objectives and in establishing waste discharge requirements. We also recommend and develop levels of contamination which would in our opinion be detrimental to public health and we have developed some approximately 40 action levels for different types of chemicals as examples there. We also issue permits for certain type of point sources, such as hazardous wastes disposal sites which was covered by Mr. Wilcoxon, and we establish standards for drinking water which is used for domestic purposes. Obviously when drinking water is derived from groundwaters, we do have a very direct interest in the quality of those waters, but you have to understand that our regulatory control is limited to the water systems themselves and the Department issues permits for all large domestic water systems in the state and those permits generally contain treatment and monitoring requirements. We conduct inspections and surveillance of those systems. In some cases, we do conduct special monitoring programs when we have uncovered a particular area of contamination. For example, when we discovered ethylene dibromide in the Kern County area last year, a very intensive and coordinated sampling program was done to determine the extent of that and the severity of that problem. So that's kind of

generally what our role is in this area of groundwater contamination. I thought it would be helpful to give an overall summary if you will of the status of groundwater contamination in California , because I think it verifies what you included in your handout, press hand out that it is in fact widespread and statewide. For example, groundwater contamination in California is almost always or at least generally derived from one of two sources, either from industrial solvents or agricultural pesticides, and when we're talking here strictly, of course, of organic chemical contamination and it's pointed out by Mr. Noteware this morning, industrial solvents have contaminated large areas in the San Gabriel and San Fernando Valleys in the Los Angeles area and usually industrial contamination of that type is generally fairly localized whereas contamination by pesticides tend to be more widespread in nature. Now in the valleys down in Los Angeles area more than 100 wells were effected and well over 50 had to be shut down. To a lesser extent, industrial solvents also contaminated groundwater in the Santa Clara Valley and the Sacramento area and in Tulare County and in each of those situations, the department conducted the initial monitoring of the drinking water wells and the ongoing monitoring is now being carried out by the water utilities in consultation with the department. Some of the examples again as the Aerojet was certainly well mentioned and is well known and the Occidental Chemical Company in Lathrop is well known, but our most recent incident deals with the Beckman Instrument Company where a mixture of solvents down in Tulare County contaminated some 183 private wells and 52 of those had to be shut down and

that was just recent within the last 6 months. In this case, Beckman had to or did supply bottled water to all those people and is cooperating with the department in additional monitoring. The agricultural chemicals have affected the most number of wells in California and certainly the San Joaquin Valley with the soil fumigant, dibromochloropropane or DBCP contaminated something in the order of two thousand wells and most of which had to be shut down. We have monitored over seven thousand wells for DBCP and are continuing to monitor those kinds of supplies for DBCP and about two thousand per year. I wanted to mention several other pesticides which have come up fairly recently to cause problems. There are two other soil fumigants, 1,2-diochloropropane or 1,2-D and ethylene dibromide both of which have been detected in public and private wells in several area in the state within the past year or two. We found the 1,2-D up along the Smith River in Del Norte County, in Bakersfield, in Kern County and in Merced County. Ethylene dibromide has been found in the last year in five valley counties and several public water supplies have been contaminated and a number of wells have had to be shut down, all within the past six months.

CHAIRWOMAN TANNER: Have you found any sources?

MR. ROGERS: The sources for these are agricultural pesticides.

CHAIRWOMAN TANNER: But have you found any direct sources?

MR. ROGERS: Well, we say direct, I'm not sure what you mean...

CHAIRWOMAN TANNER: Have you found whoever is causing...?

MR. ROGERS: Oh, you mean individual farmers for example? No, we have not done that. If it's widespread enough that I think it's difficult to pinpoint, I think it's the kind of thing that where we have to deal with the use of a pesticide in general and in the ethylene dibromide situation, the Department of Food and Agriculture has prohibited the use of that chemical within the last three months as a result of these kinds of findings. And, of course, the problem with those kinds of things is in fact, with any contaminated groundwater is once you find it and once it's contaminated, it's too late. It's very difficult, it's very expensive and almost impossible in many cases to clean up that groundwater, so you're dealt with finding a new source.

Aldicarb, is another recent find and that's a pesticide that's used to control worms in the root zone and we discovered that just recently or fairly recently in the Smith River area of Del Norte County where it's used for protection of bulbs, and we're in the process now of checking other areas in the state where that chemical has been used to see if similar wells are being affected.

As a quick run down and I didn't want to get into a lot of detail and bore you with that, I have given you copies of the presentation. The third part of our presentation which we were asked to cover is, and I'm sorry Mr. Connelly had to leave, is the status of implementation of AB 1803. As far as the underground storage tank bills, we're not particularly involved with that. That's a primary with the Regional Boards, we do and

will continue to provide them advise and assistance, and we will provide them, I think the law requires that by June we give them a list of hazardous substances which they must include in their regulatory process and we will be doing that. AB 1803, on the other hand, is primarily our responsibility of the Sanitary Engineering Branch and, as you're aware, this bill would require the initiation of a statewide sampling program to detect the presence of organic chemicals in water systems that use groundwater. And then this initial screening program or sampling program would be followed by a more systematic ongoing monitoring program after that, and that's where we would address the problem of the three years which is an old regulation. That dates back to 1976. That is being changed by EPA and certainly will be changed as a result of 1803. This bill takes effect in January and there are some very short time frames in the bill as was pointed out. We have 90 days to begin the evaluation notifications and then there is time limits for responding to that and what have you. We commenced work on the implementation of this bill as soon as it was signed and it's been a couple months now intensively on getting ready for that. I'm pleased to say that we are right on schedule. There will be no delays in implementing that bill. In fact, we will be implementing at the head of the April 1st schedule. It requires, however, to do that effectively, it does require a lot of technical interpretations and guidelines. There is a lot of room for discretion there within that bill and in order to achieve some usable results from the monitoring, we need to make sure first of all if the right kind of samples are taken, we need to make sure they're taken

from the right places, we need to make sure that proper sampling and analytical procedures, laboratory procedures are used, and we have to make sure the results are valid, and that does require a lot of technical guidance. So to do that we have put together informal task forces both internally and externally a very knowledgeable people. We've had several meetings. We have a draft of the guidelines and the implementation plan completed. We have our final meeting next Friday to do any final polishing that's needed on that so we will have an implementation plan finished by the middle of this month and that will be sent to all water utilities the first week in January.

CHAIRWOMAN TANNER: Will we get copies of that?

MR. ROGERS: I would be most happy to send the Committee copies of that.

CHAIRWOMAN TANNER: All right, we'd appreciate that.

MR. ROGERS: And so that will be sent out the first week in January and the individual evaluation of water systems will begin January 1.

One of the significant problems that we ran into and which AB 1803 recognizes is the problems of the small water systems. By that we mean systems that have less than 200 service connections. There is about 1300 large systems in the state, and about 15,000 small systems in the state. The problem with the small systems are is that they are going to find it extremely difficult to comply with those standards and those requirements because of the lack of both technical and financial resources. AB 1803 does not apply to small systems until January 1, 1986, and they've asked us to look at those and develop an analysis of

the impacts and the cost and come back to the Legislature by January 1 of 85 with some recommendations as to how those could be funded, what alternatives might be available and how the small systems should be dealt with. We have put together the structure for that already. We have a steering committee in effect made up of local agencies, primarily local health departments that have the responsibility for the small systems, and so that is underway and starting, but that is going to be a significant problem for these small systems and I would say and I think all of us recognize that simple monitoring by itself is not sufficient and we know that and we know that 1803 is only the first step towards logical control of those kind of substances. What always comes up when you do monitoring because we know that we're going to find some things, the question always comes up what's the safe level for drinking water and in many cases we do not know because simply the toxicological epidemiological data is not available and has to be developed. To do that is extremely expensive, extremely time consuming, do all the animal testing that's required and so forth. Both EPA and ourselves are embarked on that program, but it is going to be awhile before some of those standards, regulatory standards can in fact be developed, simply because data just is not there. However, in a lot of cases, we are going to wait for EPA to go through that because they have the resources to do that, but in some cases we're not going to wait for them. As in DBCP, for example, we've already started the regulatory process of changing that action level to a regulatory standard and we are embarked on that and there are probably one or two others that will be moving on ahead of EPA.



In conclusion, I would just say as has been pretty well recognized that groundwater contamination is widespread. It's found throughout both urbanized and rural areas. Monitoring is very important, but equally important is to be able to develop the knowledge regarding the human effects and the development of adequate standards for these types of things. We can treat some of these waters to remove some of these substances and we will be doing that. In a number of cases, our permits are going to be revised to include new treatment standards and new treatment requirements to remove some of these things, but in some cases that's not feasible and in some cases it is extremely expensive. So in the long run, I think the only way we are going to in fact maintain our groundwaters as safe sources of drinking water supplies for human consumption is a prevention program such as the underground storage tank bills are doing, and I think that kind of concept probable needs to be expanded. The impacts of coming up with standards is very important both in terms of human health, prevention, and economic impact and we can wipe out agriculture in California through not using judicious scientific data, we can have tremendous cost impacts on local government in our water systems and that all has to be weighed against what in fact are appropriate levels to protect human health. So it's a long road. We've started on it and I think 1803 and these other two bills are significant measures which are going to help us immensely in getting started in that area. It does give us a little bit of new authority and I probably shouldn't mention that. We don't at the present time have the legal authority to require a water company to monitor for chemicals for which there

is no regulatory standard. 1803, however, does give us that authority and that I think is going to be a major help.

Thank you.

CHAIRWOMAN TANNER: Mr. Konnyu has a question.

ASSEMBLYMAN KONNYU: Yes, in describing your department's role in regulating groundwaters, to what extent is your department's duties redundant or complementary to the State Water Resources Control Board?

MR. ROGERS: I think it's primarily complementary in that we don't regulate it per se. When they're establishing groundwater objectives or water quality objectives, obviously much of that objective has to be based on health effects and we provide on that basis. We're advisory to them in that respect as far as however enforcement on discharges or points sources. Again we don't do that and I do not think there is a great deal of redundancy. There is some and I won't deny that, but it's reasonably minor and mostly it's a complementary type rule.

ASSEMBLYMAN KONNYU: Should your department or organization be changed so that you report to the Water Resources Control Board or should they be joined together with your department so that there is one ahead of water?

MR. ROGERS: Well, those arguments have been debated over the past ten years or more. I don't have a good answer for that, Mr. Konnyu. Obviously, there is not a good mechanism for coordinating policy regarding groundwater management and to be effective in managing groundwaters, you're really talking about land use practices. You're talking about fertilizer and agricultural practices. You're talking about erosion control and

what have you. So you're really getting into some significant policy areas of groundwater pumping and what have you. I think a better mechanism could be designed in the state to effectuate better policy development and coordination regarding groundwaters, but I'm not able at this time to tell you what that should be or whether it should be over there or over here or what have you.

ASSEMBLYMAN KONNYU: You've mentioned one interface problem. What will be two others that are of significant nature?

MR. ROGERS: In terms of the roles?

ASSEMBLYMAN KONNYU: Yes.

MR. ROGERS: Well, I think, well okay. We think, I guess I shouldn't say I think, that the department perhaps needs to play a little stronger role in the protection of the sources of drinking water supply. We don't have that role. We only deal with it after it enters the domestic water supply and we rely upon the Water Quality Control Board to protect that source before it gets there. That's one area of overlap and probably one that could be looked at, and it's a certain interface area, a major interface area. In the area of waste disposal, I don't think, well let me give a different example. The other areas are waste water reclamation. There is an interface area there between us and the Water Board in that the Water Board is looking at waste water as a source of additional water supply. We however, do not have as a departmental objective the conservation of water or the promotion of new water supplies. That's the

Department of water Resources and the Water Boards. Our objective is to protect drinking water and we frequently get into policy conflict in that area because our requirements for a waste water reclamation, for example, are sometimes looked upon by others as being an obstacle to more waste water reclamation and that avenue or that realm right there would be I think another example...

ASSEMBLYMAN KONNYU: It would be an example of replacing of treated water into the ground and you would have some problems with that perhaps, perhaps not...

MR. ROGERS: Yes.

ASSEMBLYMAN KONNYU: ...whereas they would want that.

MR. ROGERS: Yes.

ASSEMBLYMAN KONNYU: Okay.

MR. ROGERS: Precisely.

CHAIRWOMAN TANNER: Thank you very much.

MR. ROGERS: Thank you.

CHAIRWOMAN TANNER: If anyone in the audience would like to speak, I will hear testimony for another ten minutes. Please come forward. Would you please identify yourself, sir, in the microphone.

MR. CONRAD PAVELLAS: Thank you, Madam Chairman, members of the panel. I'm Conrad Pavellas, a citizen of San Jose living in San Jose and I have some written presentation here which was written before I knew about these laws, but I will pass them out at any rate.

CHAIRWOMAN TANNER: Sergeant, would you take them?

MR. PAVELLAS: That is simply like my introduction.

I've been very concerned about water quality since coming to San Jose and I took a seminar with a Mr. John Tilman, a biochemist, at San Jose City College. We visited the Water Treatment Plant and found that they treat only the water from the South. I'm using San Jose as an example to be used for other areas, because I think it is sort of representative. The Water Treatment Plant, as I say, only treats one segment of the water. The other part is treated from the wells and the well water is where the principal danger lies I believe, because I investigated and I found what I fear from these three wells, but there will be only paper implementation like there is at the present time as I had discovered. In other words, the wells are tested in groups of three once every three years so each well could be tested for these pollutants if they aren't tested for that once in nine years.

The test results are sent to the California Water Company Laboratory and the reports are then sent to Berkeley to the local water or the Advisory Board Agency, Cliff Bowen, and he told me that he accepts these reports. I said, "do you do any field checks, spot checks, anything like that?" He said, "well, there has to be some sort of trust and confidence down the line." All very well. Now the same thing applies with the testing of the tanks. We read in the papers that 351 had not even sent in their questionnaires this year and yet I imagine that they accept

their reports on the questionnaires for that on each spot check. To my mind, the only tanks that had been discovered in default are those discovered by accident like the Fairchild plant. A tank was discovered the other day because some PG & E workers happened to be digging the ground and smelled it. Now I imagine there are certain ethical businesses like Hewlett-Packard that do monitor and do a careful job. I don't want to denigrate anyone, but I am alarmed that the public does not know at this time, what the level of contamination is in the water supply. I have tried to find out. I was told by a member of the treatment plant staff that it varied between 80 and 90 parts per billion, and 100 parts per billion is the danger point. But, I assumed that he was only guessing because I've been told other amounts at other places and Mr. Bowen at Berkeley said that there was no law that compels them right now to test the toxicities in the water. So, how would anyone know if we're drinking toxic water or not?

I think the public has a right to know if it is beyond our control, and if it is, it's only fair that we should know that we can use our own filtration systems and that we can thereupon rise up as a public group and influence legislation because that is where the legislation really starts, from the public itself. The pressure on the Governor perhaps I'm sure would be welcomed. So, I feel that this is needed because I personally want to know. Right now I'm borrowing my water and the fumes go upward because I've been told by the chemist that the fumes going up will take off the poisons that are in the

water and they will be carried off and very little will remain. So, I'm doing that. My neighbor is doing that. This thing is something that we do out of desperation. I think the public should be informed and I'm wondering about 1803. I think, Madam Chairman, that was your bill?

CHAIRWOMAN TANNER: No.

MR. PAVELLAS: I'm just hoping...

CHAIRWOMAN TANNER: Mr. Connelly's bill.

MR. PAVELLAS: ...that it will include regular monitoring for the public information because I think that is vital. As to the other bills, there were several points here for retrofitting. I don't know if there was any requirement for retrofitting. Of all these tanks that are at present as it were sleeping in peace without anyone knowing, how would the public or anyone know if the forms involved are right there answer their own questionnaires. And a lot has been said here which I haven't heard entirely about funds for experts to go in monitoring the field. I think that's very important, but here we have standards for future construction, but I don't see anything about retrofitting which means going back and causing them to improve the tanks that they have now to the point that they will be safer. Now...

CHAIRWOMAN TANNER: That is in the bill.

MR. PAVELLAS: ...I'm very happy about that. As I say, I would love to be contradicted any step along the line here. Thank you very much.

CHAIRWOMAN TANNER: One of the reasons we're having this public hearing today is so that the public can be informed. Thank you very much, Mr. Pavellas. Is there anyone else who would like to be heard? If not, we will be adjourned.

Thank you.

END OF HEARING



