PUBLIC COMMENTS SUBMITTED AT HIGHLANDS
COUNCIL MEETING ON JUNE 19, 2014

(1) My name is Hank Klumpp. I own 150 acres of land in the Highlands Preservation Area.

My property qualifies to be in the farm tax bracket. The Farmland Assessment Bill, passed in 1964, gave me the ability to keep my farmland because real estate tax on 150 acres in Tewksbury would have been more than the farm could support. I have always carefully met all the requirements to qualify for farmland assessment. Now, my 150 acres have been forceably put into the Highlands Preservation against my will and with no money changing hands. This is my question – Should my 150 acres still be based on Tewksbury real estate tax value

(2)

when the land is unbuildable?
I am getting too old to farm by myself. I want to know what kind of taxes I will be asked to pay if my farmland no longer qualifies for farmland assessment. I have gone several times to the Tewksbury Tax office and the Lebanon tax office to ask this question. Both offices told me they did not know. Those I spoke with shook their heads and told me they have no answers for me and that legislation is needed. Nothing has been clearly spelled out concerning the land affected by the Highlands Act. People trapped in the

(3)

Highlands Act continue to be slammed. It was bad enough to have the Act passed with no compensation in place for stolen property values but, now, 10 years later, nothing is in place for my stolen property values.

If anyone on this council has answers for me concerning my land taxes, I would really appreciate hearing from you. If I am standing here again next month with no answers, I'll know that you are as uninformed as the people in the Lebanon and Tewksbury tax offices.

(4)

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REGULATORY REFORM

Lessons from New Jersey

What are the effects of "administrative procedures" regulatory reform?

| *Rutgers University*

Over the past two decades, the regulatory process in New Jersey has (on the surface) become increasingly complex. State agencies are now required to conduct numerous analyses of their regulations, in the name of greater accountability and transparency. Legislative oversight has been strengthened. Negotiated rulemaking is required in certain circumstances. All of this comes on top of the "notice-and-comment" process that is common to rulemaking in most states and at the federal level.

Have these procedural changes resulted in "better" regulations? Or have they made the regulatory process so cumbersome that agencies have turned to alternative forms of policymaking? Answers to these questions are important for New Jersey lawmakers and agency officials because they could lead to reforms of the state's administrative process. They are important to officials in other states because they can provide guidance about the wisdom of procedural reforms to the regulatory process (particularly in the wake of a new Model States Administrative Procedure Act issued by the National Conference of Commissioners on Uniform State Laws in 2010). Finally, these questions, which have been debated regarding the federal administrative process, have hardly ever been examined at the state level. A better understanding of state rulemaking may facilitate understanding of the federal rulemaking process.

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For this article, we examined 1,707 regulations in New Jersey from the time periods of 1998–1999 and 2006–2007. We collected data on a number of variables capturing the administrative process in New Jersey. Those data include the number of comments received from the public, the length of the rule, agency response to comments, and reproposals triggered by substantive changes. We also did a more detailed examination of the impact analyses of the most controversial rules issued in those four years.

We found that agencies are largely immune to the procedural requirements of the regulatory process in New Jersey. Substantive changes to agency proposals as a result of comments are rare. Impact analyses are pro forma at best. Legislative review has not been used by the New Jersey state legislature to invalidate an executive branch regulation since 1996. The volume of rulemaking is largely unchanged over the past decade despite changes in administration and the addition of procedural requirements.

Studies of the Rulemaking Process

The regulatory process has been the subject of much research over the past few decades. This research has appeared in both law reviews and political science journals. Much of the research has focused on the proceduralization of the rulemaking process.

The requirement that agencies follow a notice-and-comment process when engaging in rulemaking can be seen as the oldest of these procedures. Participation by interested parties in rulemaking predates the federal notice-and-comment process adopted in the federal Administrative Procedure Act, passed in 1946. Many

states have since adopted their own versions of this law.

At the federal level, many subsequent procedures have been added to the regulatory process. In 1981, President Ronald Reagan issued Executive Order 12291, requiring both that agencies conduct cost-benefit analyses of certain regulations and that the Office of Information and Regulatory Affairs review proposed and final regulations from agencies on behalf of the president prior to their issuance. The Unfunded Mandates Reform Act, passed in 1995, requires consideration of state and local views in regulatory decisions, and the Small Business Regulatory Enforcement Fairness Act requires the Environmental Protection Agency and the Occupational Safety and Health Administration to convene panels of small business representatives to review rules so that they do not unfairly burden small businesses. Many of these procedures have been replicated on the state level, but this varies from state to state.

The role of these procedures is the subject of considerable academic debate. Matthew McCubbins, Roger Noll, and Barry Weingast (often referred to as "McNollgast") highlighted the role of procedures in political control of bureaucrats more than 20 years ago. According to the theory articulated by McNollgast, when Congress creates or empowers a bureaucratic agency, it creates a certain procedural environment. This environment, Congress hopes, will ensure that the interests represented by the enacting coalition remain in a favorable position with respect to agency decisions. Congress creates these procedures to attempt to insure against coalitional drift (changes in political power) and agency drift (bureaucrat preferences that differ from those of political principals).

The hope among enacting coalitions — the political actors creating the procedural control — is that this "deck stacking" ensures that the bureaucracy implementing a statute faces the same environment as the coalition enacting the statute. Therefore the bureaucracy will make future decisions according to the preferences of the enacting coalition.

The notion that procedural controls severely constrain the decisions of bureaucrats and future politicians has received a fair amount of criticism. Notably, Murray Horn and Kenneth Shepsle argue that those implementing procedural controls ignore the tradeoff between coalitional and bureaucratic drift. A control that will successfully stifle bureaucratic discretion will be unable to prevent changes in policy by a new legislative coalition, and vice versa. In other words, enacting coalitions may be able to control bureaucrats, but the mechanisms that these coalitions create to do so will be in the hands of future political coalitions who may be hostile to the aims of those who created the procedures.

Others have argued that procedural controls were likely to have a uniformly deleterious effect on regulatory decision making. Thomas McGarity coined the term "ossification of the regulatory process" to refer to the purported impact of judicial review and analysis requirements (two procedural controls), which in turn would make writing regulations so difficult that agencies would turn away from the regulatory process. According to McGarity and others, once an agency has written a rule, the agency is, as a result of procedural requirements, unlikely to change it, and in some cases the new requirements may deter agencies altogether from using rulemaking as a policy device. They worry that the costs of rulemaking have increased to the point where it may no longer be worthwhile for bureaucrats to undertake the effort associated with rulemaking. This argument has entered the political lexicon, often described as "paralysis by analysis."

Recently there has been more work on state regulatory processes, but still much less examination than on the federal level. Jim Rossi has called for greater attention to administrative law on the state level. Richard Whisnant and Diane De Cherry examined the use of cost-benefit analysis in North Carolina. Several articles rely on surveys of agency officials that asked about their perceptions of influence from the political branches of government and interest groups. In a 2004 article, Neal Woods found that agency officials perceived gubernatorial oversight as more effective than legislative oversight. Woods also used the survey data to conclude that provisions broadening access and notification to the rulemaking process increased the perception of influence of outside actors, particularly the courts and interest groups.

A number of articles have focused on legislative review on the state level (perhaps because such a procedure is absent at the federal level). The literature shows mixed results for the effect of legislative review. An article in the *Harvard Law Review* examined legislative review in Connecticut and Alaska and showed that it did result in changes of agency regulations. Marcus Ethridge examined legislative review in three states and found that stricter rules were more likely to be reviewed. Finally, Robert Hahn examined both economic analysis and legislative review and found many requirements, but little evidence that the requirements had improved regulatory outcomes.

From the literature on both the federal and state rulemaking processes, the evidence that procedures make a difference in substantive outcomes is limited. Some scholars see public comment as being important, but others do not. Few have found that legislative review and economic analysis make a substantive difference. Yet these procedures continue to be implemented at the federal and state levels. The evidence that procedures have led agencies away from rulemaking is also very limited.

What role do procedures play in the rulemaking process? If they had a substantive effect, we would expect to see some of that effect. Procedures that encourage participation should lead to more participation and perhaps more acceptance of the suggestions made by participants. Procedures that require analysis should lead to analyses being conducted and rules that are less costly. Procedures for legislative or executive review should lead to rules that reflect the preferences of those political branches and occasional vetoes of the rules that do not. If, instead, the procedures deterred agencies from engaging in rulemaking, then we would expect fewer rules.

The analysis here is best read as a case study of the history and effects of regulatory reform in a single state. We feel that New Jersey is an excellent case study because of the sheer volume of regulatory reforms that the state has undertaken over the past few decades. By doing a detailed examination of rulemaking in New Jersey, we hope to shed light on the role of procedural controls.

By highlighting the impact of procedures (or lack of impact) in one state, we hope to clarify questions about procedural controls in other states and in the federal government.

As we will describe, we collected a large set of data on rulemaking in New Jersey and interviewed several knowledgeable participants in the New Jersey regulatory process. Together, this information largely supports the empirical work on the federal level that has cast significant doubt on the idea that procedural controls play a major role in regulatory decision making.

Recent History of Rulemaking in New Jersey

Since the New Jersey Administrative Procedure Act was enacted 40 years ago, the state's regulatory process has received intermittent attention by public policymakers. The lion's share of the procedural reforms has been added over the last 20 years. Overall, the modifications that have occurred cannot be traced to partisan leadership. While four of the initiatives were signed into law by Republican governors, half the measures were advanced during sessions led by legislative leaders of the opposition party. The reforms also evolved through fits and starts rather than through broad mandates or public support.

The rulemaking changes made in the 1980s and 1990s attempted to minimize the effect of regulations on small businesses, farmers, the job market, and the economy in general. Adding to existing proposed rule requirements (social and economic impact statements) was the inclusion of a Jobs Impact Statement, which quantifies the number of jobs lost or created by a proposed rule. Moreover, for rules affecting businesses with fewer than 100 employees, a Regulatory Flexibility Analysis is required that describes any methods utilized to minimize the adverse economic impact on small businesses from recordkeeping, reporting, or compliance requirements. Another provision calls for a Federal Standards Statement that requires an agency to address whether a proposed rule exceeds federal standards. In the case when a federal standard will be exceeded, the agency must include a cost/benefit analysis supporting its decision.

At the same time that these analysis requirements were being put in place, attempts to establish enhanced oversight of regulatory agencies were also taking place. The legislative branch in New Jersey enjoys strong constitutional powers; however, legislative veto authority over regulations was not included in the revisions made at the state's 1947 constitutional convention. The combination of two branches with strong constitutional powers, along with a partisan divided government from the period of 1981–1992, set the stage for a rulemaking turf battle.

The 1981 bipartisan passage and subsequent override of then-governor Thomas Kean's veto of a measure that authorized the legislature to approve or disapprove all rule proposals during his first term was short-lived. By the summer of the following year, the state Supreme Court struck down the New Jersey Legislative Oversight Act as unconstitutional because it violated the separation of powers under the state constitution. The legislature kept working to gain power in regulatory oversight. Ultimately, a second ballot question granting legislative veto authority was again presented to the voters for approval in 1992 and passed by a wide margin.

The regulatory process in New Jersey was substantially revised in 2001. Among the key components was increased transparency, including the publication of all agencies fees, penalties, deadlines, and processing times, as well as a more widely disseminated public notice requirement and required agency compliance to a quarterly rulemaking calendar. The changes also broadened public hearing requirements and allowed extensions to the comment period when sufficient public interest warrants. The law enhanced the petition process by setting strict deadlines for agencies to respond, limiting agency discretion in the manner it responded, and providing intervention by the Office of Administrative Law in the event the agency failed to comply. Since the 2001 law was enacted, no new changes to the regulatory process have been adopted.

Our Data

In order to provide a contextual view of rulemaking activity over the past decade, we gathered aggregate data from 1998 through 2007. The data included all rulemaking activity subject to the New Jersey APA from a notice of pre-proposal, notice of proposal, and notice of adoption. We also collected data on a number of rule adoption variables for the years 1998–1999 and 2006–2007. The variables measured included the type of rulemaking activity, agency, whether full text was published, page length of rule, public comment entered into the record, total number of individuals who submitted written comments or signed a petition (if individually recorded by the agency), whether a public hearing was held as part of the public comment period, and if a hearing was held, the number of individuals who attended. Finally, total public participation was calculated and the agency response was recorded. We also did a more detailed examination of the impact analyses of the most controversial rules issued in these four years.

The four years for which we gathered longitudinal data represented a two-year period during a Republican-led administration (Christine Todd Whitman) and a Democrat-led administration (Jon Corzine). For each of the cycles, the legislative leaders in both chambers shared the same party affiliation as the governor. The years studied occurred closely before and after the enactment of the substantial procedural reforms adopted in 2001. We hoped this would help us assess the effect, if any, that changes to the procedural requirements have had on the regulatory process in New Jersey.

In our analysis, we include only those rules that make a change to policy. Finally, to improve the depth of our understanding of New Jersey rulemaking and the role of procedures, we conducted six interviews with frequent participants in the regulatory process. These included individuals with experience in agencies as well as in outside groups with an interest in regulatory issues (and some of the individuals had both inside and outside experience with rulemaking). After asking the interview subjects about the history of their involvement with rulemaking, we went though the procedures we were interested in (notice-and-comment,

New Jersey Rulemaking Activity
1998-2007

Year	All Rulemaking Activity	Rule Adoptions	Rule Proposals
1998	1,502	640	613
1999	1,259	508	521
2000	1,223	572	478
2001	1,396	543	529
2002	1,290	466	490
2003	1,430	587	551
2004	1,432	593	528
2005	1,397	549	537
2006	1,345	563	475
2007	1,230	480	431
10-year average	1,350	550	529

NOTE: "Rulemaking Activity" includes temporary rules and various public notices related to the rulemaking process in addition to adoptions and proposals. The number of adoptions differs from the number of proposals because rules may be adopted in a different calendar year than they were proposed.

analysis, legislative review, and regulatory negotiation) to obtain their experiences and perceptions.

Our Findings

A historical overview of the 10 years of our study reveals that the volume of rulemaking activity has remained relatively steady in New Jersey. On average, annual rulemaking activity over the period is 1,350 rules per year. It is difficult to distinguish any party preference for regulations based upon the summary data, shown in Table 1. The average number of rules proposed and adopted under a Republican administration (1998–2001) closely track that of two Democratic administrations (2002–2007). Although rule adoptions appear to have spiked in 1998, that number results from a high proportion of new rules that were triggered by expired regulations and one-time processes such as traffic control signalizations and drug formulary additions and deletions.

As discussed above, we looked at four calendar years in greater detail. We chose 1998–1999 and 2006–2007 in order to examine two years when New Jersey was under Republican leadership and two years when it was under Democratic leadership. We then culled the dataset to include only those final rules that made substantive changes to public policy (eliminating many of the routine rules issued by state agencies that are not related to policy changes). The number of rules we ultimately examined is shown in Table 2.

Substantive Rules Adopted in New Jersey
1998–1999 and 2006–2007

Year	Number of Rules
1998	550
1999	405
2006	399
2007	353
Total	1,707

As discussed above, there was a greater number of rules in 1998 because two departments had increased new-rule adoption activity and adopted amendments, namely the state's Department of Transportation and the Department of Health and Senior Services. The spike in 1998 is particularly due to the number of adopted amendments for those two departments: Transportation had 60 and Health and Senior Services had 40. Many of the Transportation rules dealt with traffic signalizations and many of the Health and Senior Services rules covered drug formularies. This type of rulemaking — traffic operations and drug utilization reviews — were not found in any significant number in the 2006 and 2007 years, further explaining the atypical volume in 1998.

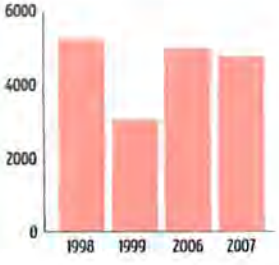
Once this anomaly is corrected, we see a slight decrease in rulemaking between 1998–1999 and 2006–2007. This raises the question, if the volume of rulemaking did not change much, did the procedural reforms have other effects?

Public input | At the very center of all rulemaking activity is the public participation process. Yet, the volume of input and output as measured by public participation during the comment period and by agency changes made after a rule proposal suggests only a modest impact on the overall process. To begin, half of the 1,707 rules adopted (51 percent) received public comments during the study period. For 1998, 49 percent of adopted rules were commented on by the public, 50 percent in 1999, and 52 percent in both 2006 and 2007. The number of comments for any given rule ranged from 1 to 1,624; about half of the rules that received comments (53 percent) received two comments or fewer. The mean number of comments received per rule was 20.06; however, this average is misleading because of a skewed distribution — the median is 2.25. Thirty rules received over 100 comments, which amounted to 68 percent of the total comments submitted (11,809). If you adjust for this skew by eliminating those 30 rules that received 100 or more comments, the average number of comments received on the most significant rules adopted was just 3.34; the median was 0. This difference between the mean and median also occurs at the federal level and reflects the tendency of a few rules to generate most of the comments from the public.

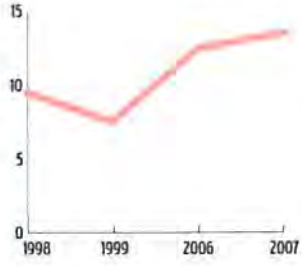
Did participation increase after the procedural reforms of July 2001? Recall, the key components included a more widely disseminated public notice requirement, agency compliance to a regular quarterly rulemaking calendar, extended public comment periods, and a public hearing requirement when and if sufficient public interest warranted, as well as the maintenance of a verbatim record of the public hearing.

The number of rules that received comments was nearly identical in the four years. It appears that participation, as measured by the number of comments either written or oral, actually declined slightly between 1998 (5,228) and 2007 (4,762) of the study period, as displayed in Figure 1. Still, if this number is divided by the number of rules adopted, the resulting quotient increased from 9.51 in 1998 to 13.49 in 2007, as shown in Figure 2. No change in

Total Public Comment
New Jersey, selected years



Public Comments per Rule
New Jersey, selected years



format submission has occurred to explain the percentage increase; all comments must still be submitted to the regulating agency in writing rather than electronically. What changed is the publication and distribution of the rulemaking calendar.

The 2001 reforms may be responsible for the increase in the number of comments per rule. It is also possible that because of the proliferation of email, interest groups have become more capable in terms of organizing their membership during the public participation process. Additionally, while the mean number of comments has increased, the median remains 1 for all study years, as shown in Table 3. This indicates that the increased participation per rule is the result of large participation in a small number of rules. Because our ability to examine the affiliation of commenters is limited, we cannot determine the extent to which the increase in comments is due to increased interest group mobilization.

Responsiveness to public input | We also assessed the end of the rule-adoption process to determine the effect public participation had on rules. As noted earlier, all rules have to be adopted within a year of the proposal publication; if not, the proposed rule would expire. Additionally, if substantive changes are proposed, the rule needs to be reproposed. We examined the number of notices of reproposal for the entire 10-year period. We found less than two percent of all rule proposals were substantively changed, requiring a reproposal. The mean for the 10-year period was 8.3 rules and the median was 8, with a range of 5 to 16. Once again, the data indicate a limited impact for public comments and a limited change over the time examined.

One agency official explained this to us:

> We consult with stakeholders as we draft regulations and many changes are made in draft rules before we formally propose a rule amendment. Therefore we don't often need to make substantive changes once a rule has been officially proposed.

This agrees with William West's observation that many rulemaking decisions are set before a proposed rule is even issued.

Still, changes can be made to a rule without a reproposal if the changes do not "effectively enlarge or curtail the original proposal, change its effect, or those who will be affected." Of the 1,707 rules we examined, only 477 (28 percent) were changed by the agency after the rule was proposed. By comparison, there was also a slight decrease in the percentage of agency changes made in the latter study years, despite the procedural changes implemented in 2001 to broaden public participation. Twenty-nine percent were made in 1998 and 30 percent in 1999, as compared to 25 percent in 2006 and 27 percent in 2007. We have no hypotheses explaining this decrease, but it is interesting that after the changes to broaden participation in 2001, agencies changed rules less frequently.

Given the small percentage of changes made following the public participation period, we examined the agency responses to comments in the most controversial rules issued in the four years we studied closely. In the 30 rules in these four years on which agencies received 100 or more comments, there were only three rules on which agencies seemed to make meaningful changes. This small percentage further indicates that the effect of public comments is limited.

Finally, a number of our interview subjects specifically voiced frustration with agency responsiveness. "While the agency generally wanted to be responsive to public comments, there was a strong incentive to adopt rules without substantive changes, as republication of the revised rule was required under the APA," said one. Another said, "In my history, I remember few if any actual changes of substance made in response to comments." The reproposal requirement clearly acts as a disincentive for agencies to make changes in response to public comments. One respondent suggested modifying the APA to allow agencies to make changes without wholesale reproposal.

Impact statements | In New Jersey, agencies have been required to conduct some form of impact analysis on their rules since 1981. As with our analysis of agency changes to rules, we examined the impact statements of those rules with at least 100 comments. We believed that those rules with the most comments were likely to be the ones with the largest economic impacts. Of the 30 rules with more than 100 comments, only four had impact statements that contained actual numbers to describe the economic effect of the regulation. Two of the rules were

Public Comment Participation
New Jersey, select years

	Total	1998	1999	2006	2007
Total rules	1,707	550	405	399	353
Rules receiving comments	893	288	211	208	186
Total participation	18,042	5,228	3,067	4,985	4,762
Mean comments per rule	10.57	9.52	7.57	12.49	13.49
Median	1	1	1	1	1
Minimum	0	0	0	0	0
Maximum	1,624	1,152	417	1,624	1,103

issued by the New Jersey Department of Environmental Protection. One on protecting highlands water had a detailed analysis of the economic impact. A second rule protecting horseshoe crabs had information on fish catches and the tourism industry, but did not have a conclusion about the economic impact. A third rule on a surcharge on goods sold in prisons described the total revenue that the agency expected to generate (not an impact per se). Finally, a rule on Medicaid reimbursements for nursing homes similarly totaled the expected budgetary effects without a meaningful assessment of economic impacts.

The remaining rules either had a brief qualitative discussion of economic impacts or simply asserted that there would be no impact. An example of a qualitative discussion could be found in a rule prohibiting certain trucks from certain state roads:

> Double-trailer truck combinations and 102-inch wide standard trucks not doing business in New Jersey will be prohibited from using state highways and county roads as through routes or short cuts. This may have a negative impact on those truckers and shippers since it may take longer to arrive at their destinations, thus making it more costly, or it could cost more in tolls compared to some parallel routes.

With such cursory attention given to economic impacts, it is hard to argue that the requirement for an impact analysis has had much of an effect in New Jersey. This impression was reinforced by the interview subjects who uniformly minimized the role of analysis, with one saying, "I would have to say that the required analyses played a relatively small role." Instead, the pattern seems to be an even starker example of what some scholars have said occurs at the federal level: impact analyses seem to be written after the rule is formulated, to justify the rule, rather than used to influence the regulatory decision being made.

Legislative oversight | The procedural change with the potential to have the greatest impact on rulemaking emanates from the state's constitutional provision that grants legislative oversight. Although the legislature has had veto authority over rules for the past 16 years, it has rarely exercised the power. On occasion, concurrent resolutions have been sponsored by members of the legislature, but the number introduced has averaged around 13 per session over the last 12 years. During that timeframe, three concurrent resolutions were passed by both chambers, which served 30 days' notice on the agency to amend or withdraw the existing or proposed rule or regulation. In each case, a second concurrent resolution invalidating or prohibiting the rule or regulation did not follow.

Discussion

The data on the New Jersey rulemaking process reinforce the theme of consistency through procedural and political changes. Agencies march on, writing regulations regardless of their political or procedural environment. Political changes in the governor's office and the state legislature seem to have little effect on the pace of regulation, though there may have been substantive effects (e.g., regulations may have been deregulatory under Republican administrations).

For administrative law scholars, the limited effect of regulatory procedures may be of even greater interest. Most notable are the limited circumstances in which agencies change their proposals as a result of public comments. Fewer than two percent of all rules are reproposed, the most significant category of changes. Of the remaining rules, very few have anything but the most minor changes. This is true even for those rules receiving more than 100 comments.

Requirements for various types of analysis also appear to be epiphenomenal. Of the analyses examined in this dataset, very few had actual numbers, and even fewer (one, by the estimation of these authors) measured true economic impact. The impact of economic analysis requirements appears to be even more limited than similar requirements at the federal level. In fact, the impact analyses appear to be little more than superficial window dressing in the regulatory preamble.

Other regulatory procedures are similarly limited. Legislative review has resulted in only three rules being challenged over the last 12 years. The one procedural change that may have had an impact is the 2001 efforts to increase public participation, but even that change had large effects only on the most controversial rules and may be due to more effective interest group mobilization rather than the change in regulatory procedures.

Regulatory reformers at the state and federal levels should take note: procedural control of bureaucratic agencies is unlikely to be particularly effective, if the New Jersey example is representative. Indeed, political control of agencies may even be particularly challenging. Delegations of rulemaking authority to unelected officials, once given, are hard to rescind or control afterward.

52 Experiments with Regulatory Review: The Political and Economic Inputs into State Rulemaking, by Jason Schwartz. Institute for Policy Integrity, 2010.

"Administrative Procedures as Instruments of Political Control," by Matthew McCubbins, Roger Noll, and Barry Weingast. *Journal of Law, Economics, and Organization*, Vol. 3 (1987).

"Consequences of Legislative Review of Agency Regulations in Three States," by Marcus Ethridge. *Legislative Studies Quarterly*, Vol. 9 (1984).

"Cost Benefit Analysis: Legal, Economic, and Philosophical Perspectives: State and Federal Regulatory Reform: A Comparative Analysis," by Robert Hahn. *Journal of Legal Studies*, Vol. 29 (2000).

"Economic Analysis of Rules: Devolution, Evolution, and Realism," by Richard Whisnant and Diane De Cherry. *Wake Forest Law Review*; Vol. 31 (1996).

"Formal Procedures, Informal Processes, Accountability, and Responsiveness in Bureaucratic Policy Making: An Institutional Policy Analysis," by William West. *Public Administration Review*, Vol. 64 (2004).

"Overcoming Parochialism: State Administrative Procedure and Institutional Design," by Jim Rossi. *Administrative Law Review*, Vol. 53 (2001).

"Political Influence on Agency Rule Making: Examining the Effects of Legislative and Gubernatorial Rule Review Powers," by Neal Woods. *State and Local Government Review*, Vol. 36 (2004).

"Promoting Participation? An Explanation of Rulemaking Notification and Access Procedures," by Neal Woods. *Public Administration Review*, Vol. 69 (2009).

"Some Thoughts on Deossifying the Rulemaking Process," by Thomas McGarity. *Duke Law Journal*, Vol. 41 (1992).

v. United States, 248 U.S. 37, 39 S.Ct. 42, 43, 63 L.Ed. 112. See also **Invention; Patent.**

Inventio /invénsh(iy)ow/. In the civil law, finding; one of the modes of acquiring title to property by occupancy.

In old English law, a thing found; as goods or treasure-trove. The plural, *"inventiones,"* is also used.

Invention. In patent law, the act or operation of finding out something new; the process of contriving and producing something not previously known or existing, by the exercise of independent investigation and experiment. Also the article or contrivance or composition so invented. Smith v. Nichols, 88 U.S. (21 Wall.) 112, 22 L.Ed. 566; Hollister v. Mfg. Co., 113 U.S. 59, 5 S.Ct. 717, 28 L.Ed. 901.

Invention is a concept; a thing involved in the mind; it is not a revelation of something which exists and was unknown, but is creation of something which did not exist before, possessing elements of novelty and utility in kind and measure different from and greater than what the art might expect from skilled workers. Pursche v. Atlas Scraper & Engineering Co., C.A.Cal., 300 F.2d 467, 472. The finding out—the contriving, the creating of something which did not exist, and was not known before, and which can be made useful and advantageous in the pursuits of life, or which can add to the enjoyment of mankind. Not every improvement is invention; but to entitle a thing to protection it must be the product of some exercise of the inventive faculties and it must involve something more than what is obvious to persons skilled in the art to which it relates. Mere adaptation of known process to clearly analogous use is not invention. Firestone Tire and Rubber Co. v. U. S. Rubber Co., C.C.A.Ohio, 79 F.2d 948, 952, 953.

Inventive skill has been defined as that intuitive faculty of the mind put forth in the search for new results, or new methods, creating what had not before existed, or bringing to light what lay hidden from vision; it differs from a suggestion of that common experience which arose spontaneously and by a necessity of human reasoning in the minds of those who had become acquainted with the circumstances with which they had to deal. Hollister v. Mfg. Co., 113 U.S. 59, 5 S.Ct. 717, 28 L.Ed. 901. Invention, in the nature of improvements, is the double mental act of discerning, in existing machines, processes or articles, some deficiency, and pointing out the means of overcoming it.

For "Examination of invention", see **Examination.** See also **Patent.**

Inventiones /invènshiyówniyz/. See **Inventio.**

Inventor. One who invents or has invented. One who finds out or contrives some new thing; one who devises some new art, manufacture, mechanical appliance, or process; one who invents a patentable contrivance. See **Invention.**

Inventory. A detailed list of articles of property; a list or schedule of property, containing a designation or description of each specific article; quantity of goods or materials on hand or in stock; an itemized list of the various articles constituting a collection, estate, stock in trade, etc., with their estimated or actual values. In law, the term is often applied to such a list made by an executor, administrator, or assignee in bankruptcy.

Goods held for sale or lease or furnished under contracts of service; also, raw materials, work in process or materials used or consumed in a business. U.C.C. § 9–109(4). Also, written schedule of such goods.

In ventre sa mere /in véntriy sà mér/. L. Fr. In his mother's womb; spoken of an unborn child.

Inventus /invéntəs/. Lat. Found. *Thesaurus inventus,* treasure-trove. *Non est inventus,* [he] is not found.

In veram quantitatem fidejussor teneatur, nisi pro certa quantitate accessit /in víram kwòntətéydəm fàydiyjásər tèniyéydər, náysay pròw sárdə kwòntətéydiy əksésət/. Let the surety be holden for the true quantity, unless he agree for a certain quantity.

In verbis, non verba, sed res et ratio, quærenda est /in várbəs nòn várbə, sèd ríyz èt réysh(iy)ow, kwəréndə èst/. In the construction of words, not the mere words, but the thing and the meaning, are to be inquired after.

Inveritare /invèhrətériy/. To make proof of a thing.

Inverse condemnation. A cause of action against a government agency to recover the value of property taken by the agency, though no formal exercise of the power of eminent domain has been completed. Lincoln Loan Co. v. State, By and Through State Highway Commission, Or.App., 536 P.2d 450, 451.

Inverse order of alienation doctrine. Under this doctrine, mortgage or other lienor, where land subject to lien has been aliened in separate parcels successively, shall satisfy his lien out of land remaining in grantor or original owner if possible, and, if that be insufficient, he shall resort to parcels aliened in inverse order of their alienation. Fidelity & Casualty Co. of New York v. Massachusetts Mut. Life Ins. Co., C.C.A. N.C., 74 F.2d 881, 884.

Invest. See **Investment.**

Investigate. To follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry. See also **Discovery; Inspection.**

Investigatory powers. Authority conferred on governmental agencies to inspect and compel disclosure of facts germane to the investigation. See also **Inquest; Inspection laws; Search-warrant; Subpoena.**

Investitive fact /invésdədəv fækt/. The fact by means of which a right comes into existence; *e.g.,* a grant of a monopoly; the death of one's ancestor.

Investiture /invéstəchər/. A ceremony which accompanied the grant of lands in the feudal ages, and consisted in the open and notorious delivery of possession in the presence of the other vassals, which perpetuated among them the *æra* of their new acquisition at the time when the art of writing was very little known; and thus the evidence of the property was reposed in

My name is Deborah Post, Chester Township Preservation Area property owner.

Today, I will speak on an important compensation subject where this Council might indeed be able to play a constructive role.

Section 6n of the Highlands Act list of this Council's duties includes "recognizing the need to provided just compensation to the owners of those lands when appropriate, whether through acquisition, transfer of development rights programs, or other means or strategies." That's NJSA 13:20-6. The other means and strategies includes farmland preservation via the Garden State Preservation Trust monies.

The Highlands Act also instructed the State Agricultural Development Board to consult with this Council within three months of its first meeting to address strategies and plans concerning the establishment of methodologies for prioritizing farmland preservation in the Highlands Preservation Area. It also clearly instructed that farmland preservation of properties in the Highlands Planning Area must recognize the need for TDR receiving areas. That's NJSA 13:8C-39

None of this direction has happened. Indeed the opposite has happened. Highlands Preservation Area properties are given no priority and are offered lowball easement prices. The SADC has the attitude that, because we have already been burned and have no alternative options, that's its just fine to burn us again. Crawl, beg and accept a crumb.

Simultaneously, Highlands Planning Area properties have been purchased at very high prices when they are colored yellow, densely developable and tdr receiving zone designated. That the Master Plan yellow zoning has been used to allow what I call Highlands Act Winners to receive excessive compensation when harmed Preservation Area landowners sit here uncompensated is an outrage.

What can this Council do? I have three recommendations:

1. The formula for valuing easement sales includes that the municipal average of the value of development potential established by this Council in connection with the Highlands tdr program may be used in determining the value of the development easements in sending zones, here the Highlands Preservation Area. That's NJSA 4:1C-31.
   The SADC refuses to use the Highlands municipal averages, adamantly refuses. I ask this Council to insure that its Highland municipal averages contained in the TDR Technical Report be used in farmland preservation transactions if the landowner so requests. This very simple requirement will provide much protection against the undervaluation of harmed Highlanders properties.

2. This Council might appoint an advocate to assist harmed Highland landowners in navigating the unlevel playing field of the preservation process where landowner input is not allowed. This Council's data base also has information that could be helpful, and that data should be available to a landowner if they choose to use it. For example, my

property is surveyed at 65 acres, your allocator tool shows 63.6 acres, and yet my county wants to use GIS data, an approximation at best, showing only 61 acres. To me, this is just another ploy to undercompensate me by 4 acres which is 10% of my application acres. And I am helpless in the process.

3. This Council must implement NJSA 13:8C-39 by setting up a process with the SADC that has some teeth in it and some fairness to Highlands landowners. Having attended Highlands Bank meetings, I am aware that this Council's relation with the SADC is hardly even cordial. Don't make that the problem of the harmed landowners. Get out there and stick up for us. Please.

acquired prior to the adoption of the rules and regulations.

i. (1) The committee, within three months after the date of the first meeting of the Highland Water Protection and Planning Council established pursuant to section 4 of P.L.2004, c. 120 (C.13:20–4), shall consult with and solicit recommendations from the council concerning farmland preservation strategies and acquisition plans in the Highlands Region as defined in section 3 of P.L.2004, c. 120 (C.13:20–3).

The council's recommendations shall also address strategies and plans concerning establishment by the committee of a methodology for prioritizing the acquisition of development easements and fee simple titles to farmland in the Highlands preservation area, as defined in section 3 of P.L.2004, c. 120 (C.13:20–3), for farmland preservation purposes using moneys from the Garden State Farmland Preservation Trust Fund, especially with respect to farmland that has declined substantially in value due to the implementation of the "Highlands Water Protection and Planning Act," P.L. 2004, c. 120 (C.13:20–1 et al.). The recommendations may also include a listing of specific parcels in the Highlands preservation area that the council is aware of that have experienced a substantial decline in value and for that reason should be considered by the committee as a priority for acquisition, but any such list shall remain confidential notwithstanding any provision of P.L.1963, c. 73 (C.47:1A–1 et seq.) or any other law to the contrary.

(2) In prioritizing applications for funding submitted by local government units in the Highlands planning area, as defined in section 3 of P.L.2004, c. 120 (C.13:20–3), to acquire development easements on farmland in the Highlands planning area using moneys from the Garden State Farmland Preservation Trust Fund, the committee shall accord a higher weight to any application submitted by a local government unit to preserve farmland in a municipality in the Highlands planning area that has amended its development regulations in accordance with section 13 of P.L.2004, c. 120 (C.13:20–13) to establish one or more receiving zones for the transfer of development potential from the Highlands preservation area, as defined in section 3 of P.L.2004, c. 120 (C.13:20–3), than that which is accorded to comparable applications submitted by other local government units to preserve farmland in municipalities in the Highlands planning area that have not made such amendments to their development regulations.

m. Notwithstanding any provision of P.L.1999, c. 152 (C.13:8C–1 et seq.) to the contrary, for State fiscal years 2005 through 2009, the sum spent by the committee in each of those fiscal years for the acquisition by the committee of development easements and fee simple titles to farmland for farmland preservation purposes using moneys from the Garden State Farmland Preservation Trust Fund in each county of the State shall be not less, and may be greater if additional sums become available, than the average annual sum spent by the department therefor in each such county, respectively, for State fiscal years 2002 through 2004, provided there is sufficient and appropriate farmland within the county to be so acquired by the committee for such purposes.

L.1999, c. 152, § 38, eff. June 30, 1999. Amended by L.2001, c. 315, § 2, eff. Jan. 3, 2002; L.2002, c. 76, § 6, eff. Aug. 29, 2002; L.2004, c. 120, § 54, eff. Aug. 10, 2004.

13:8C–39. Grants to qualifying organizations; development easements on farmlands

a. The committee may provide a grant to a qualifying tax exempt nonprofit organization for up to 50% of the cost of acquisition of (1) a development easement on farmland, provided that the terms of any such development easement shall be approved by the committee, or (2) fee simple title to farmland, which shall be offered for resale or lease with an agricultural deed restriction, as determined by the committee, and any proceeds received from a resale shall be dedicated for farmland preservation purposes and the State's pro rata share of any such proceeds shall be deposited in the Garden State Farmland Preservation Trust Fund to be used for the purposes of that fund.

b. The value of a development easement or fee simple title shall be established by two appraisals conducted on each parcel and certified by the committee. The appraisals shall be conducted by independent professional appraisers selected by the qualifying tax exempt nonprofit organization and approved by the committee from among members of recognized organizations of real estate appraisers.

c. The appraisals shall determine the fair market value of the fee simple title to the parcel, as well as the fair market value of the parcel for agricultural purposes. The difference between the two values shall represent an appraisal of the value of the parcel for nonagricultural purposes, which shall be the value of the development easement.

d. Any grant provided to a qualifying tax exempt nonprofit organization pursuant to this section shall not exceed 50% of the appraised value of the development easement, or of the fee simple title in the case of fee simple acquisitions, plus up to 50% of any costs incurred including but not limited to the costs of surveys, appraisals, and title insurance.

e. The appraisals conducted pursuant to this section or the fair market value of land restricted to agricultural use shall not be used to increase the assessment and taxation of agricultural land pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c. 48 (C.54:4–23.1 et seq.).

f. To qualify to receive a grant pursuant to this section, the applicant shall:

(1) demonstrate that it has the resources to match the grant requested; and

d. Nothing in this section shall be construed to preclude the reformation of a municipally approved program, as initially created pursuant to the provisions of this act.

e. Any landowner not included in a municipally approved program may request inclusion at any time during the review conducted pursuant to subsection a. of this section. If the board and the municipal governing body find that this inclusion would promote agricultural production, the inclusion shall be approved.

L.1983, c. 32, § 22, eff. Jan. 26, 1983, operative Jan. 26, 1983.

1 N.J.S.A. § 4:1C–24.

4:1C–30. Withdrawal of land; taxation

a. Withdrawal of land from the municipally approved program or other farmland preservation program prior to its termination date may occur in the case of death or incapacitating illness of the owner or other serious hardship or bankruptcy, following a public hearing conducted pursuant to the "Open Public Meetings Act," P.L. 1975, c. 231 (C. 10:4–6 et seq.) and approval by the board and in the case of a municipally approved program, the municipal governing body, at a regular or special meeting thereof. The approval shall be documented by the filing with the county clerk and county planning board, by the board and municipal governing body, of a resolution or ordinance, as appropriate, therefor. The local tax assessor shall also be notified by the board of this withdrawal.

b. Following approval to withdraw from the municipally approved program, the affected landowner shall pay to the municipality, with interest at the rate imposed by the municipality for nonpayment of taxes pursuant to R.S. 54:4–67, any taxes not paid as a result of qualifying for the property tax exemption for new farm structures or improvements in the municipally approved program, as authorized and provided in the Constitution, and shall repay, on a pro rata basis as determined by the local soil conservation district, to the board or the committee, or both, as the case may be, any remaining funds from grants for soil and water conservation projects provided pursuant to the provisions of this act, except in the case of bankruptcy, death or incapacitating illness of the owner, where no such payback of taxes or grants shall be required.

L.1983, c. 32, § 23, eff. Jan. 26, 1983, operative Jan. 26, 1983.

4:1C–31. Offer to sell developmental easement; price; evaluation of suitability of land; appraisal

a. Any landowner applying to the board to sell a development easement pursuant to section 17 of P.L. 1983, c. 32 (C.4:1C–24) shall offer to sell the development easement at a price which, in the opinion of the landowner, represents a fair value of the development potential of the land for nonagricultural purposes, as determined in accordance with the provisions of P.L. 1983, c. 32.

b. Any offer shall be reviewed and evaluated by the board and the committee in order to determine the suitability of the land for development easement purchase. Decisions regarding suitability shall be based on the following criteria:

(1) Priority consideration shall be given, in any one county, to offers with higher numerical values obtained by applying the following formula:

$$\frac{\text{nonagricultural developmental value} - \text{agricultural value} - \text{landowner's asking price}}{\text{nonagricultural development value} - \text{agricultural value}}$$

(2) The degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture; and

(3) The degree of imminence of change of the land from productive agriculture to nonagricultural use.

The board and the committee shall reject any offer for the sale of development easements which is unsuitable according to the above criteria and which has not been approved by the board and the municipality.

c. Two independent appraisals paid for by the board shall be conducted for each parcel of land so offered and deemed suitable. The appraisals shall be conducted by independent, professional appraisers selected by the board and the committee from among members of recognized organizations of real estate appraisers. The appraisals shall determine the current overall value of the parcel for nonagricultural purposes, as well as the current market value of the parcel for agricultural purposes. The difference between the two values shall represent an appraisal of the value of the development easement. If Burlington County or a municipality therein has established a development transfer bank pursuant to the provisions of P.L.1989, c. 86 (C.40:55D–113 et seq.) or if any county or any municipality in any county has established a development transfer bank pursuant to section 22 of P.L.2004, c. 2 (C.40:55D–158) or the Highlands Water Protection and Planning Council has established a development transfer bank pursuant to section 13 of P.L.2004, c. 120 (C.13:20–13), the municipal average of the value of the development potential of property in a sending zone established by the bank may be the value used by the board in determining the value of the development easement. If a development easement is purchased using moneys appropriated from the fund, the State shall provide no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the cost of the appraisals conducted pursuant to this section.

d. Upon receiving the results of the appraisals, or in Burlington county or a municipality therein or elsewhere where a municipal average has been established under subsection c. of this section, upon receiving an

j. To appoint advisory boards, commissions, councils, or panels to assist in its activities, including but not limited to a municipal advisory council consisting of mayors, municipal council members, or other representatives of municipalities located in the Highlands Region;

k. To solicit and consider public input and comment on the council's activities, the regional master plan, and other issues and matters of importance in the Highlands Region by periodically holding public hearings or conferences and providing other opportunities for such input and comment by interested parties;

l. To conduct examinations and investigations, to hear testimony, taken under oath at public or private hearings, on any material matter, and to require attendance of witnesses and the production of books and papers;

m. To prepare and transmit to the Commissioner of Environmental Protection such recommendations for water quality and water supply standards for surface and ground waters in the Highlands Region, or in tributaries and watersheds thereof, and for other environmental protection standards pertaining to the lands and natural resources of the Highlands Region, as the council deems appropriate;

n. To identify and designate in the regional master plan special areas in the preservation area within which development shall not occur in order to protect water resources and environmentally sensitive lands while recognizing the need to provide just compensation to the owners of those lands when appropriate, whether through acquisition, transfer of development rights programs, or other means or strategies;

o. To identify any lands in which the public acquisition of a fee simple or lesser interest therein is necessary or desirable in order to ensure the preservation thereof, or to provide sites for public recreation, as well as any lands the beneficial use of which are so adversely affected by the restrictions imposed pursuant to this act as to require a guarantee of just compensation therefor, and to transmit a list of those lands to the Commissioner of Environmental Protection, affected local government units, and appropriate federal agencies;

p. To develop model land use ordinances and other development regulations, for consideration and possible adoption by municipalities in the planning area, that would help protect the environment, including, but not limited to, ordinances and other development regulations pertaining to steep slopes, forest cover, wellhead and water supply protection, water conservation, impervious surface, and clustering; and to provide guidance and technical assistance in connection therewith to those municipalities;

q. To identify and designate, and accept petitions from municipalities to designate, special critical environmental areas in high resource value lands in the planning area, and develop voluntary standards and guidelines for protection of such special areas fc possible implementation by those municipalities;

r. To comment upon any application for develo ment before a local government unit, on the adoption c any master plan, development regulation, or oth regulation by a local government unit, or on th enforcement by a local government unit of any develo ment regulation or other regulation, which power sha be in addition to any other review, oversight, c intervention powers of the council prescribed by th act;

s. To work with interested municipalities to ent into agreements to establish, where appropriate, capac ty-based development densities, including, but not limi ed to, appropriate higher densities to support trans villages or in centers designated by the State Develo ment and Redevelopment Plan and endorsed by th State Planning Commission;

t. To establish and implement a road signage pr gram in cooperation with the Department of Transpo tation and local government units to identify significar natural and historic resources and landmarks in th Highlands Region;

u. To promote, in conjunction with the Departme of Environmental Protection and the Department c Agriculture, conservation of water resources both in th Highlands Region and in areas outside of the Highlanc Region for which the Highlands is a source of drinkin water;

v. To promote brownfield remediation and redeve opment in the Highlands Region;

w. To work with the State Agriculture Developme Committee and the Garden State Preservation Trust t establish incentives for any landowner in the Highlanc Region seeking to preserve land under the farmlan preservation program that would be provided in e change for the landowner agreeing to permanentl restrict the amount of impervious surface and agricu tural impervious cover on the farm to a maximum c five percent of the total land area of the farm;

x. To establish and charge, in accordance with a fe schedule to be set forth by rule or regulation adopte pursuant to the "Administrative Procedure Act," P.I 1968, c. 410 (C.52:14B–1 et seq.), reasonable fees fc services performed relating to the review of applicatio for development and other applications filed with c otherwise brought before the council, or for oth services, as may be required by this act or the region master plan; and

y. To prepare, adopt, amend, or repeal, pursuant t the provisions of the "Administrative Procedure Act P.L.1968, c. 410 (C.52:14B–1 et seq.), such rules an regulations as may be necessary in order to exercise i powers and perform its duties and responsibilities und the provisions of this act.

L.2004, c. 120, § 6, eff. Aug. 10, 2004.

Lakeview Medical Associates
125 Route 46
Budd Lake, NJ 07828
(973)691-1111 *Fax (973)691-1198

May 23, 2014

Re: [redacted]
Date of birth: 10/04/1948

Mr. [redacted] has been a patient in my family practice medical office since 2005. His medical history is significant for: congestive heart failure, diabetes, asthma, hypertension, fibromyalgia, hypothyroidism, hyperlipidemia, and hypogonadism. Since 2010 he has reported having increased physical complaints related to the Fenimore Landfill, located in Roxbury, New Jersey. He has consistently complained about respiratory issues related to environmental exposure. He has had excessive rhinorrhea, shortness of breath, exacerbated asthma symptoms, headaches, and itchy watery eyes. He has been consistently reporting these symptoms at all recent office visits.

[redacted] has multiple chronic medical conditions that are adversely affected by his environmental exposure to the landfill. He has been actively trying to reduce his exposure but is unable to. He doesn't feel that any public authorities have been addressing his complaints and the complaints of other local residents.

Sincerely,

Nicholas J. Leggiero, D.O.

May 30, 2014

Re: [redacted]
[redacted]
Ledgewood, NJ 07852

To Whom It May Concern:

[redacted] has been a patient of mine for many years. In December 2012 [redacted] started having more frequent asthma attacks and her medication had to be increased.

I believe that living near the Fenimore Landfill in Ledgewood has contributed to the exacerbation of her asthma.

Rajiv J Pathak, M.D.

Medical Assoc. of Mt. Olive
Rajiv J. Pathak, M.D.
230 Route 206 #207
Flanders, NJ 07836

ANIMAL CARE CENTERS

Kristen Casulli, V.M.D.
Chris Hallihan, V.M.D.
Victor Villari, D.V.M.
Jamie DeSpirito, D.V.M.

FLANDERS OFFICE:
96 Bartley Road
Flanders, NJ 07836
(973) 584-4455

LANDING OFFICE:
175 Lakeside Blvd., Suite 5
Landing, NJ 07850
(973) 398-4111

May 19, 2014

To Whom It May Concern:

[redacted] is a 4 year old female spayed canine pug mix owned by [redacted] Ledgewood, NJ. [redacted] has been a patient at our veterinary hospital since she was 2 months old. [redacted] had no significant health issues until approximately one year ago.

On May 8, 2013 [redacted] contacted us because [redacted] had been vomiting for 2 days – we prescribed bland diet and stomach protectants and [redacted] symptoms resolved. However, since that time [redacted] has had chronic intermittent vomiting as well as episodes of severe pruritus, especially around her hind quarters. [redacted] brought [redacted] into our clinic with the complaint of chronic lethargy and vomiting on November 11, 2013. Blood work was run, which was normal, and fecal tests done earlier that summer due to the chronic vomiting also were negative. Skin tests done in September of 2013 to attempt to find a cause for [redacted] itchiness were also negative. Since this time, [redacted] has continued to show intermittent signs of lethargy and intermittent vomiting which does partially respond to treatment, but always recurs.

It should be noted that the [redacted] live in an area that has been affected by the odor and gases emanating from the nearby Roxbury landfill which the health department is investigating. In our veterinary hospital, we have seen several patients, both dogs and cats, whose families live in the area of the landfill with similar health issues. I personally feel that the gases and chemicals from this landfill are having adverse health effects on these animals, and in many instances I have seen a patient who has been removed from the environment improve, only to have the patients symptoms return when reintroduced to the home.

Please don't hesitate to call with any questions or concerns.

Sincerely,

Chris Hallihan, VMD

June 19, 2014

Dear Highlands Council Members,

Thank you for giving us this opportunity to express our concerns, our fears, and our wishes for our community, wishes based on the trials we have experienced in the last 2 years or so, and based on incredible amounts of research we have done all along the way. There are far too many aspects to this that could be focused on. It is a situation that has more intertwining lines than a spider web. But for now my biggest concerns, since I am a registered nurse, and have a son living in my home with a chronic medical condition, are the many health impacts from whatever was dumped at the landfill, both known and unknown. My son takes medication to keep his immune system suppressed so he does not reject his transplanted kidney, and he is also still immunosuppressed from the chemotherapy he received a few years ago for lymphoma.

We have been given fact sheets on various things, especially hydrogen sulfide and sulfur dioxide via a webpage, so only residents who think to go to the Roxbury township website for some reason would see that there are links to Fenimore Landfill issues, and only those familiar with what Fenimore means would know they should explore that section of the website. No other formal notification of residents has been done. Some fact sheets are helpful and informative, and some are not. Links to studies on hydrogen sulfide were helpful for adults until the one year mark passed about nine months ago since there are no studies that go beyond one year, and there are no studies on the effects on children. A link to a study touting the harmless effects of hydrogen sulfide on the nasal lining of rats has absolutely nothing to do with what it does to human pulmonary function; rats can live for generations in sewers where there is an abundance of hydrogen sulfide. But the most egregious and negligent perpetrations on our residents are the legal gymnastics being done to prevent any kind of testing on soil, air, or water at the site. Despite the NJDEP notifying Senator Bucco in an answer to one of his forty plus questions in January 2012 that materials of concern would be dumped at the Fenimore site that included contaminated dredgings that would need frequent testing for many years, they have tested nothing. Despite a known felon with known ties to organized crime being allowed to operate the project, and then be noncompliant with NJDEP rules, no testing has been done. Despite the NJDEP finding asbestos in one of the hundreds of truckloads destined for the Fenimore site in the fall of 2012 that they chose to intercept and test, that received its contents from a NJDEP approved site, evidence entered in the Environment and Energy Commission hearing in May 2013 by SEP attorney Matthew Fredericks, no site testing has been done. Despite numerous issues with the equipment functioning properly at the Fenimore site, no testing has been one. Despite hundreds of residents' complaints specifically related to health issues reported to a NJDEP phone number for Fenimore, no testing has been done. Despite the existence of arsenic, lead, methane, and several other dangerous substances found in a variety of places and reports along the way, no testing has been done. Despite the Agency for Toxic Substance and Disease Registry reviewing a resident's submissions and agreeing to do a survey of the residents' health in Roxbury, no testing has been done. Despite two NJ politicians calling for the Governor to instruct the Attorney General to have the NJDEP investigated, no testing has been done.

I could continue, but I'm sure you understand that it is thoroughly negligent to not find out what is going into the soil, air, and water, not just from the scrubber/thermal oxidizer that is burning who knows what, but from what is seeping into soil and water from rainwater and underground streams, and from

what is being released into the air each time the ground there is disturbed for any reason. Our residents need to know so they can notify their physicians if they have pre-existing medical conditions, so all residents can find out how to protect themselves, so our town expert can determine if the system designed to mitigate this atrocity is sufficient, or needs revision, or if it is more beneficial to have what was dumped there excavated to a facility that is capable of handling it. The materials dumped in our rural, residential neighborhoods and backyards should never have been dumped there. Despite a lack of transparency from the very beginnings of this project, I doubt many residents would be opposed to having the sight leveled with clean dirt for the purpose of a solar panel facility. That is what your council had approved, not the toxic monstrosity this has become. Many residents have put many hours into researching and learning, and into writing letters and attending many different meetings and hearings in an effort to get someone to listen to how our health and environment have been affected. REACT has amassed a plethora of hours digging through documents available through approved OPRA requests and created both a 49 page summary and a 1370 page report of failures and violations contributing to this fiasco. Many times we are met with blank stares, or no one knows the answer, or broken promises to find answers to our questions, or in a few cases, outright lies. Residents have been diligently trying to save their homes, their environment, and to treat their ailments for almost 3 years now, and we desperately need your help. It seems abusive and criminal that human beings are allowed to be treated this way. It is my fervent hope and prayer that you can allow yourselves to hear the truth, that you can allow yourselves to be convicted by the facts, and that you can allow yourselves to be courageous to those convictions. Please act to stop the madness of what has transpired here, to back up and review the facts, and to proceed in the best interest of our children and future generations. Thank you for any assistance you can give us.

Respectfully submitted,

Donna Zimmer

Donna Zimmer
17 Alward Lane
Succasunna, NJ 07876
973 927 3244

Roxbury Environmental Action CoaliTion

P.O. Box 244
Ledgewood, N.J. 07852
Website: www.reactnj.org
Email: info@reactnj.org

REPORT:

NJ DEP FAILURES AT FENIMORE LANDFILL

ROXBURY TOWNSHIP, NJ

May 21, 2014

Revision 0

Full Summary

For Full Report - www.fenimorelandfill.com
Click News, scroll down to report.

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Introduction

This report was prepared for Senator Smith and Assemblywoman Spencer, in response to and in support of their May 14, 2014 letter to Governor Christie requesting an investigation of the NJ Department of Environmental Protection (DEP) regarding the potential mismanagement of the Fenimore Landfill Solar Project, and subsequent cleanup in Roxbury Township, Morris County, NJ. The information contained herein was assembled by the Roxbury Environmental Action Coalition (R.E.A.C.T.) from documents that are publicly available. Due to limitations of outreach and data gathering, this report is a small sample of available information and should only be used as a starting point for the investigation. It is further requested that a formal public hearing be held to obtain additional discovery. Please note that, due to time limitations, additional content will be provided via a revision at a later date.

Executive Summary

Part 1 - Overview

For the past two years, the Residents and Township of Roxbury have suffered irreparable harm to their health, quality of life, town reputation, and property values from the mismanagement of the Brownfield to Solar Project at the former Fenimore Landfill in Roxbury Township, Morris County, NJ. This project was negotiated, approved, and carried out under the exclusive oversight of the DEP. Documents and records obtained for this report show that the Fenimore project was troubled from the beginning. Almost as soon as the work began, various problems arose, yet the DEP failed to step in and take control. The DEP's lack of initial regulatory rigor and unwillingness to effectively respond to the failing project in a timely manner allowed the Fenimore Landfill project to spiral into the disaster that it has become.

Evidence in this report suggests that:

- The DEP knowingly approved a convicted felon to operate this project.
- The Brownfield designation of the Fenimore Landfill was questionable.
- The possible detrimental impacts on the Roxbury community were not given consideration.
- The project was approved despite known deficiencies in design plans, permitting issues and serious concerns from stakeholders.
- The DEP knowingly approved C&D fines, material that has been well-known for decades to cause difficult-to-control H2S emissions, to be dumped on a dormant site with no environmental controls in place and no plans for such controls.
- The DEP failed to notify residents of toxic gas releases, and failed to release environmental test results that were not favorable.
- The DEP publicly discounted residents' health impacts, refused help from the EPA, and failed to involve the CDC/ATSDR.
- The DEP shut down the gas mitigation system on holidays without public notice.

- The DEP failed to include on-going operating and maintenance costs in its side by side budget of remediation options, and exaggerated the costs and hazards of excavation, which raises the suspicion of bias.
- The DEP secretly used fear mongering tactics to lobby neighboring towns to support its capping plan. The DEP's gas dispersion model used is suspected to be exaggerated by a factor of 1,000.
- The DEP-proposed remediation plan has an insufficient design basis and ignores leachate control, potential well-water contamination and other contaminants that may be present in the material that was accepted.
- The DEP-proposed remediation plan has no regard for community impact and ongoing quality of life.
- The DEP-proposed remediation is governed by the Emergency Order signed into law by Governor Christie in June 2013 and allows for no oversight and minimal permit requirements. The remediation is not consistent with N.J.A.C. 7:26E or the NJ Highlands Act Regional Master Plan.

Part 2 - Community Impact

Approximately 950 school children live within one mile of the Fenimore Landfill site and hundreds of residents live within a few hundred feet. The site has, and, will continue to have for many years to come, the potential to emit H2S (hydrogen sulfide) concentrations in excess of acute and chronic health standards set by the EPA and the Agency of Toxic Substances and Disease Registry (ATSDR). The site is adjacent to residential backyards and is not fenced in from the public. Also, area schools have been affected with exposures that have triggered health-based alert levels, and have caused cancellation and rescheduling or relocation of outdoor activities including township sports leagues. According to the Roxbury Township Superintendent of Schools, exposure has also affected students taking NJ standardized tests.

Many residents and children in the community are experiencing health issues such as headaches, nausea, nosebleeds, anxiety, insomnia, respiratory problems, and increased asthma attacks since the H2S problem started. Health effects from long-term exposure to H2S are unknown, especially with regards to children. Despite the claims of the DEP,

the Department of Health (DOH), and Governor Christie, the ATSDR has declared the site a public health hazard.

The rotten-egg odors which are the tell-tale sign of elevated H2S levels have resulted in a large impact to quality of life, enjoyment of property, town reputation, and property devaluation. In 2011, Roxbury was named one of the top 100 communities for young people by America's Promise Alliance. Now, many residents are leaving the community because of personal impacts and the deteriorating reputation of the township. A report from the NJ Association of Realtors shows a decline in property values for Roxbury compared to neighboring towns and the rest of Morris County.

The environmental effects of the Fenimore Landfill are concerning. Groundwater breakthrough and leachate on the site have been tested by the NJDEP and were found to contain levels of arsenic, aluminum, and lead in excess of NJDEP ground and surface water standards. Hundreds of residents living adjacent to the site depend on well water. Some residents have lost the use of their residential wells due to infiltration of sulfur compounds which caused an odor unbearable to even shower with. Other wells in the area are starting to present problems with contamination, casing failures, and dry out, all suspected from recent site activity.

The site is located in a sensitive geologic area that is protected by the NJ Highlands, adjacent to the Morris Canal, and also contains two first-order tributaries classified as Category One, Trout Production waters. These streams ultimately flow into Ledgewood Pond/Drakes Brook which, in turn ,flow into waterways that provide drinking water for millions of NJ residents. No protective liner exists underneath the newly deposited material at the landfill, allowing a potential pathway into the groundwater.

This site and its effects on the community is now far worse than it was before this "capping" project started. The DEP-proposed remediation forces the residents to live with large stacks continuously spewing smoke in the middle of their community. It also results in the likely potential for future unhealthy residential toxic gas exposure should the mitigation equipment need maintenance or repair, which has happened several times already.

The site has no ability to generate revenue so no owner will ever have the motivation or ability to keep the cap and the gas mitigation system maintained and operating in perpetuity. Since the DEP doesn't own the site, they can't guarantee they will have control of it for the foreseeable future. These potential future problems and risks have

destroyed Roxbury's reputation as a safe, peaceful, and rural community to live and raise a family.

Part 3 - Why Investigation is warranted?

The DEP has failed to address and abate odors and gas emissions for 11 months, as evidenced by the ongoing odor complaints to the DEP call hotline. The DEP has allowed a nuisance and health threat to continue since their takeover of the site in June 2013, with no end in sight. In addition, there are no guarantees as to the effectiveness of the proposed mitigation/capping design.

The DEP continues to focus their efforts on taking this failed project out of the public light and convincing politicians they are making positive progress. The DEP has taken half-measures and trial-and-error solutions for the cleanup with the potential of making a bad situation worse. The DEP refuses to perform an environmental assessment of the site including core sampling, which is necessary in order to determine and engineer the best remediation option. The DEP is currently in litigation with the landfill owner which may be preventing them from conducting necessary additional environmental testing and may be biasing their remediation approach to one that doesn't best suit the application or the community.

The DEP has ignored comments and concerns from residents, the Township, and various environmental groups in the past and present. The DEP appears to lack the motivation to properly remediate this site and maintain transparency with the stakeholders and the public.

Under the circumstances stated above, and given the DEP's past and continuing failure to protect the environment and public health, an investigation should be conducted on an expedited basis to prevent any further harm to the environment and the public. Any debate on whether or not this investigation is granted should favor in light of the public welfare, public health, and preservation of the environment. In addition, immediate oversight of the DEP is necessary and demanded by the residents.

Section 00: Community Impact

00.1 Senate Hearing Testimony – May 30, 2013: Written testimony from residents, township officials including police chief, school superintendent, health officer, mayor, and township manager stating the impacts this failed project has had on the community since 2012.

Section 1: The NJ DEP knowingly allowed a convicted felon to purchase and operate Fenimore Landfill

The DEP failed to properly vet SEP or Richard Bernardi, thus allowing a convicted felon to operate Fenimore Landfill in contravention of New Jersey state law. Mr. Bernardi was convicted of conspiracy to bribe in 1996 relating to his ownership of a sanitation equipment company that had leased sanitation equipment to Newark's Sanitation Division. N.J.A.C. 7:26 created the A-901 licensing program, which requires background checks for any party seeking to enter and operate in the waste disposal industry in the state. No documentation has been discovered that shows that the DEP or the State's Attorney General's office conducted any investigation into Mr. Bernardi's criminal background.

However, it is evident that the DEP was aware of and dismissed this criminal history, despite state law requirements. During the November 14, 2011 public information meeting held in Roxbury regarding the proposed closure plan, a member of the public inquired as to Mr. Bernardi's criminal past. According to the DEP's meeting minutes of that meeting, Robert Confer, the Bureau Chief of the Bureau of Landfill and Hazardous Waste Permitting, and Cindy Randazzo, the Director of the Office of Local Government Assistance, stated that background checks were not required. Further, in a November 2011 e-mail exchange, Mr. Bernardi sent Ms. Randazzo, a link to a New York Times article detailing his conviction. Ms. Randazzo replied that she didn't "pay attention to anything but the facts."

In December 2011, the NJ Commission of Investigation released a report titled "Industrious Subversion: Circumvention of Oversight in Solid Waste and Recycling in New Jersey." The report summarizes the lack of proper investigation and oversight by

the agencies charged with ensuring that the A-901 process is followed. The report clearly states that the DEP is charged with investigating those is the waste disposal industry, including those managing a landfill. There is no evidence available that the DEP asked Mr. Bernardi to submit to the A-901 process or sought to vet him or SEP despite his own admission to the DEP.

Documentation:

1.1 NY Times article dated October 30, 2001 and titled "After Prison, Former Contractor Disputes Case."

1.2 DEP Fenimore Landfill Public Information Meeting Minutes dated November 14, 2011.

1.3 E-mail exchange between Richard Bernardi and Cindy Randazzo dated November 18-21, 2011.

See also:
http://www.nj.gov/dep/dshw/resource/26sch16.pdf N.J.A.C. 7:26 Solid Waste Regulations
http://www.state.nj.us/sci/pdf/Solid%20Waste%20Report.pdf NJ Commission of Investigation report titled "Industrious Subversion: Circumvention of Oversight in Solid Waste and Recycling in New Jersey."

Section 2: The designation of the Fenimore Landfill as a Brownfield was questionable

The DEP's handling of the Brownfield designation for the Fenimore Landfill site illustrates a pattern of the agency's lack of knowledge of its regulatory duties and its willingness to cut corners in order to aid Mr. Bernardi in his scheme. In 2005, and in prior years, site assessments were conducted on the Fenimore Landfill, which included visual inspections as well as lab testing of soil and water samples. In the 2005 "Immediate Environmental Concern Assessment Report" prepared by The Louis Berger Group and Sadat Associates on Fenimore, the conclusion was that the site did not pose a public health threat and did not require an immediate remediation. Between 2005 and 2011, no further dumping or other use was done on Fenimore.

Despite this existing analysis, the DEP granted the Fenimore Landfill site a Brownfield designation on August 18, 2011. The designation was based on an assessment study conducted by Matrix New World Engineering, Inc., the same company which Mr. Bernardi employed throughout the process of reopening and operating the Fenimore Landfill. The Matrix study was dated July 27, 2011, and updated the day before the designation was granted, meaning the DEP took only three weeks in reviewing this important matter.

A review of DEP communications shows a pattern that the DEP intended to assist Mr. Bernardi in any way necessary to attain Brownfield status and the Highlands Waiver. Ruth Foster of the DEP Office of Permit Coordination and Environmental Review e-mailed Mr. Bernardi in February 2010 stating that "[DEP] is trying to figure out where it can/if we can waive present rules that we have." Also in February 2010, Robert Confer of the DEP sent a letter to Mr. Bernardi stating simply that he believed that Fenimore qualified as a Brownfield. Mr. Confer then e-mailed Chris Ross of the Highlands Council in May 2010 asking if that letter was sufficient for Mr. Bernardi to attain the necessary Highlands Redevelopment Waiver. A further May 2010 e-mail from Ruth Foster illustrates that those at the DEP involved with this project were unaware of their own agency's processes. This bungling is also evident in the e-mail and attachments to Mr. Bernardi's June 2011 e-mail to Cindy Randazzo of the DEP. Mr. Confer of the DEP even

went so far as to ask Mr. Bernardi his advice on how to the Brownfield rules could have been improved to facilitate his application process.
Once Matrix submitted the July 2011 report on behalf of SEP, the DEP approved the Brownfield designation overnight. In his August 2011 e-mail, Richard Reilly of the DEP went so far as to provide revision points to Matrix's report to limit issues to which the Highlands Council could possibly object, such as "highlands open water boundaries, buffers, stream relocation." Despite the questionable history of the Fenimore site, including prior assessments that the site was not an immediate concern, the DEP seemingly rubber-stamped SEP's request for Brownfield designation so that the project could be exempted from the environmental protections of the Highlands Act.

Documentation:

2.1 The Immediate Environmental Concern Assessment Report on the Fenimore Sanitary Landfill dated November 2005 prepared by The Louis Berger Group, Inc. and Sadat Associates, Inc.

2.1.1. Conclusions and Recommendations section of the Immediate Environmental Concern Assessment Report.

2.2 August 18, 2011 letter from Richard C. Reilly, Manager of the Bureau of Inland Regulation of the DEP to Richard Bernardi, stating that the DEP had designated the Fenimore Landfill as a Brownfield.

2.3 February 17, 2010 e-mail from Ruth Foster (DEP) to Richard Bernardi.

2.4 May 12, 2010 e-mail from Robert Confer (DEP) to Chris Ross (Highlands Council).

2.5 May 20, 2010 e-mail from Ruth Foster (DEP) to Chris Ross (Highlands Council).

2.6 February 17, 2011 e-mail from Robert Confer (DEP) to Richard Bernardi.

2.7 June 6, 2011 e-mail from Richard Bernardi to Cindy Randazzo (DEP).

2.7.1. March 5, 2010 letter from Ruth Foster (DEP) to Richard Bernardi clarifying the Brownfield designation process.

2.7.2. February 11, 2010 e-mail from Robert Confer (DEP) to Richard Bernardi stating that Fenimore could be designated a Brownfield.

2.8 August 18, 2011 e-mail from Richard Reilly (DEP) to Richard Bernardi and various DEP staff regarding the designation of Fenimore as a Brownfield.

Section 3: Project Approval: Deficient Plans and Failure to Address Concerns

The Fenimore Landfill project has been suspect from its inception considering the lack of due diligence by the DEP and summary SEP planning and reaction in all facets. An untried private sector company run by a known felon was drafted to complete a complex state regulated landfill remediation because of potential reduced public costs and new executive policy. The DEP ignored the initial and developing facts presented to it by allowing the project to proceed when it was based on poor financials that relied on volatile-price landfill material and crashing solar markets in order to provide SEP revenue to complete the capping operation. Over the objections and questions from many municipal agencies, public officials, and Roxbury residents, the project was allowed to continue by the DEP and court system even after multiple non-compliances, funding problems, and lack of transparency with the public.

Documentation:

3.1 2001 H2M Report containing Fenimore Landfill detailed history and complete planning for publicly funded closure

3.2 Letter returning Fenimore jurisdiction from the Division of Remediation Management & Response to the Division of Solid & Hazardous Waste due to lack of immediate environmental concern

3.3 Berger Group 2005 Immediate Environmental Concern Assessment showing Fenimore was not an immediate concern despite major historical contamination

3.4 Email from Gary Sondermeyer of the DEP to Richard Bernardi of SEP suggesting he find the "Environmental Transition Team" Report prepared for Governor Christie and his Executive Order #2 (Red Tape Task Force) in order to pursue a "different way" of future permitting to provide incentives for "green projects"

3.5 Email from Ruth Foster of the DEP to Richard Bernardi of SEP and Robert Confer of the DEP showing confusion over Highlands Act remediation jurisdiction and waivers for redevelopment. (Exemption #15 vs. Part 81k)

3.6 Email from Ruth Foster of the DEP to Richard Bernardi of SEP discussing pending legislation regarding solar projects on impervious ground such as capped landfills

3.7 Email from Gary Sondermeyer of the DEP to Richard Bernardi of SEP after complaints of delays and being behind schedule. Sondermeyer says he will help with the "logjam" and suggests Bob Martin as the new Commissioner of the DEP is a "strong manager" supportive of renewable energy projects, "the likes of which we never had"

3.8 Email from Robert Confer of the DEP to Richard Bernardi of SEP stating a cursory Brownfield designation for the Fenimore site

3.9 Email from Robert Confer of the DEP to Richard Bernardi of SEP stating there are no specific rules for pre-1982 closed landfills. He states post- 1982 rules are normally applied but draft regulations to standardize closures are past SEP's timeline.

3.10 Morris County Soil Conservation District non-compliance letter from Joe Dunn to SEP

3.11 Email from Richard Bernardi of SEP to Vincent Mazzei of the DEP complaining about the need to remediate Fenimore's leachate catch basin and due to cost overruns needs to keep the cost down because the remediation is privately funded by SEP

3.12 Email from Richard Bernardi of SEP to Robert Confer of the DEP complaining about the following post-1982 technical requirements that require delineation of the landfill boundary due to considerable depth of historic fill. SEP would like drilling depth delineation waived.

3.13 Morris County Soil Conservation denial of soil erosion plan

3.14 Email from Roxbury Mayor Jim Rilee to Cindy Randazzo of the DEP regarding lack of communication with the township

3.15 Email from Cindy Randazzo of the DEP to Roxbury Mayor Jim Rilee copying Morris County Soil Conservation District issues with the execution and planning of the Fenimore project

3.16 Email from Richard Bernardi of SEP to Cindy Randazzo of the DEP illustrating the collapse of the solar market and his inability to find a solar contractor for the project

3.17 Email from Richard Bernardi of SEP to Joe Dunn of Morris County Soil Conservation district regarding incomplete application for a soil permit

3.18 Email from Richard Bernardi of SEP to Robert Confer of the DEP suggesting he needs a material friendly ACO like Malanka Landfill in order to finance the project

3.19 Email from Richard Bernardi of SEP to Robert Confer of the DEP saying design delays are delaying the project with the crashing fill and solar markets

3.20 Email from Roxbury Mayor Jim Rilee to Cindy Randazzo of the DEP regarding closure plan deficiencies

3.21 Robert Confer DEP deficiency letter

3.22 2011 email from Richard Bernardi of SEP to Robert Confer of the DEP expressing the need to approve the Fenimore closure plan or a solar contractor cannot be signed and the project will have no revenue stream for funding with the solar market crashing

3.23 Highlands Council review and public comments questioning the viability of the Fenimore project

3.24 Email from Richard Bernardi of SEP to Cindy Randazzo of the DEP complaining that Joe Dunn of Morris County Soil Conservation District is being unfair with regulations

3.25 Roxbury Township 2011 letter with questions about the Fenimore project and stating the inadequacies of the DEP public meeting

3.26 2011 Email from Ruth Foster of the DEP to Richard Bernardi of SEP with Fenimore project questions from Senator Anthony Bucco

3.27 2011 Fenimore project questions from Senator Anthony Bucco

3.28 Email from Bashar Assadi of Birdsall to Richard Bernardi of SEP and Ruth Foster of the DEP with draft answers to Fenimore project questions from Senator Anthony Bucco

3.29 Bashar Assadi of Birdsall draft answers to Fenimore project questions from Senator Anthony Bucco

3.30 2011 email from concerned Roxbury resident to the DEP

3.31 2011 letter from concerned Roxbury resident to the DEP

3.32 Email from Ruth Foster of the DEP to Richard Bernardi of SEP with questions from a Roxbury resident

3.33 Email from Dawn Funk of the DEP to Robert Confer of the DEP with a request from Richard Bernardi to waive the solar contract requirement of the ACO due to crashing markets even though it is SEP's planned projected source of revenue to fund the Fenimore closure

3.34 Letter from Bashar Assadi of Birdsall requesting waiving the solar contract requirement of the ACO

3.35 Email from Thomas Bruinooge representing SEP asking for waving of the escrow requirement of the ACO

3.36 Letter from Thomas Bruinooge representing SEP asking for waving of the escrow requirement of the ACO because it restricts SEP operations

3.37 Email from Richard Bernardi of SEP regarding again waiving the solar contract requirement of the ACO

3.38 Letter from Bashar Assadi of Birdsall requesting waiving the solar contract requirement of the ACO

3.39 Email from Bashar Assadi of Birdsall to Robert Confer of the DEP explaining the difficulty with closing a solar contract.

3.40 Letter from Bashar Assadi of Birdsall explaining the difficulty with closing a solar contract and SEP's failing efforts

3.41 Email from Ruth Foster of the DEP to other DEP members forwarding the project planning and viability concerns of Richard Bernardi of SEP

3.42 Email from Ruth Foster of the DEP to Jane Kozinski of the DEP forwarding Richard Bernardi of SEP's concerns that the DEP is reserving certain fill materials for landfills other than Fenimore

3.43 Email from Bashar Assadi of Birdsall to Robert Confer of the DEP stating that SEP cannot obtain a loan to cover the cost of closure and material management unless the ACO is revised to remove the escrow requirement

3.44 Email from MaryAnne Goldman of the DEP to Richard Bernardi of SEP regarding methane presence at Fenimore and accepting water treatment plant residuals with higher than allowable levels of arsenic

3.45 Letter from Robert Confer of the DEP regarding ongoing issues with SEP and denying their request to accept of arsenic laden water treatment plant residuals

3.46 Email from MaryAnne Goldman of the DEP to Richard Bernardi of SEP regarding a modified financial plan due to poor planning

3.47 2012 Letter from Robert Confer of the DEP regarding the revised SEP financial plan deficiencies and lack of addressing Fenimore project viability concerns

3.48 Letter from Roxbury Township citing SEP planning deficiencies

3.49 Email from Jane Kozinski of the DEP to Richard Bernardi of SEP discussing viability of the Fenimore project and scheduled meeting with the Governor's office

3.50 2012 email from Jane Kozinski of the DEP to Richard Bernardi of SEP terminating the ACO and closure plan

3.51 Letter from Jane Kozinski of the DEP to Richard Bernardi of SEP stating the intent to terminate the closure plan due to SEP financial plan non-compliance

3.52 Ruling from Jane Kozinski of the DEP to Richard Bernardi of SEP stating the intent to terminate the ACO and closure plan due to SEP financial plan non-compliance

3.53 Letter from Jane Kozinski of the DEP to Richard Bernardi of SEP stating the intent to terminate the ACO due to SEP financial plan non-compliance

3.54 Letter from Roxbury Manager Chris Raths to Robert Confer of the DEP asking the department to not extend the ACO with SEP

3.55 Email from Christofer Kaufhold of the Northern Bureau of Water Compliance & Enforcement to Bashar Assadi of Birdsall regarding the lack of leachate control at Fenimore until the project Phase II which was delayed

3.56 Email from Robert Confer of the DEP to various recipients discussing slope grading issues at Fenimore and the ongoing hydrogen sulfide gas emissions and mitigation

3.57 Email from Robert Confer of the DEP to Richard Bernardi of SEP regarding ongoing questions and concerns with SEP's Fenimore Phase I remediation

3.58 Letter from Roxbury Township to Robert Confer of the DEP regarding ongoing questions and concerns with SEP's Fenimore Phase I remediation

3.59 Email from Richard Bernardi of Sep to Sarah Gentile of the DEP regarding Green Acres solar incentive to fund the Fenimore project

3.60 2013 letter from Stephen Pearlman representing SEP asking that the Fenimore project be put into a Green Acres queue for review regarding any grants, incentives, or benefits that the SEP Fenimore project could use to fund remediation even with the project's solar aspect being unfeasible

3.61 Email from Richard Bernardi of SEP to Catherine Tormey of the DEP confirming the recusal of Deputy Commissioner Irene Kropp to to conflicts of interest and return of SEP escrow funds.

3.62 Letter from Catherine Tormey of the DEP to Richard Bernardi of the DEP confirming recusal of Deputy Commissioner Irene Kropp

3.63 Letter from Richard Bernardi of SEP to Deputy Commissioner Irene Kropp of the DEP requesting termination of the escrow requirements in the closure plan documents and return of all currently held SEP escrow funds. The reason being unfair unfair DEP treatment and that the requirement is detrimental to his cash flow needed for operation and closure activities

Section 4: Allowance of C&D Material

The recent disposal of ground up construction and demolition debris (C&D fines) containing wallboard has resulted in odors and toxic gas emissions from the Fenimore Landfill.

Gypsum wallboard is made from calcium sulfate. When the wallboard becomes wet, the sulfate dissolves and can be converted to H2S through anaerobic (in the absence of oxygen) digestion. Ground gypsum board, which is commonly found in C&D

screenings/fines, creates more surface area from which the sulfate can dissolve, which results in a greater generation rate of H2S than whole pieces of wallboard.

Documentation:

4.1 Material Acceptance Protocol: The DEP explicitly allowed C&D fines to be dumped at Fenimore Landfill as part of the Administrative Consent Order (ACO) and Material Acceptance Protocol (MAP). C&D fines have been known for years to cause impossible to control H2S emissions and odors, and the USEPA and Agency of Toxic Substances and Disease Registry (ATSDR) have been involved in many cleanups and superfund sites due to this very issue.

4.2 Report: Odor Control Issues at Fenimore Landfill: This report was created by the DEP in response to a request by the Superior Court, Morris County, NJ. Section 3 indicates that the DEP is well aware of the problematic nature of C&D fines due to their involvement in the remediation of Warren County Landfill from 2007-2011. The Warren County Landfill accepted large quantities of C&D material and experienced similar problems with H2S emissions and odors.

4.3 C&D came from DEP approved Recycling Centers: Received volume reports immedately prior to the first odor complaints in November, 2012, show that the source of the C&D material was DEP approved recycling centers.

4.4 thru 4.7 Sulfur Content Test Reports, as required, for some of the C&D material

The DEP knowingly allowed C&D fines to be dumped near a residential area on an abandoned site with no environmental controls in place. The DEP approved the project with no finished design plans in place for a gas mitigation system, and no requirements for a system of the complexity of what is currently required to abate the odors. Even if SEP contributed the required amount to the escrow account, it would not of been enough to fund the current cleanup.

Documentation:

4.8 DEP asks SEP to accept different materials - C&D materials were problematic

4.9 Letter from Attorney General approves C&D fines to be accepted

4.10 DEP response to Senator Bucco, 1/13/2012: Response to question #3 states that the materials that will be accepted are not hazardous and will not further

contaminate the landfill. Residents and public officials expressed concerns, but the DEP responded with false assurances.

4.11 **NJ Landfill Liner Requirements**: This document summarizes NJ landfill liner requirements. If the C&D material dumped at Fenimore was taken to a grass roots facility, a liner would be required. Special requirements also pertain to environmentally sensitive areas like flood fringe areas, wetland buffer areas, and watershed areas for high quality streams. The Fenimore site qualifies for all of these.

Section 5: The EPA and Sandy Material

On December 20, 2011, approximately one month after the first complaints were called into the NJDEP complaint hotline, the NJDEP called EPA Region 2 and requested help with air monitoring at the Fenimore Landfill. By December 24, 2011 Roxbury Township had requested air monitoring from the NJDEP. Numerous e-mails and phone calls were made from numerous departments at the EPA between December 20, 2011 and January 9, 2012. On December 28, 2011 Luis Lim from the NJDEP e-mailed Chris Raths, Roxbury Township Manager, stating that no monitors would be on-site in the foreseeable future due to paperwork. On January 9, 2012 NJDEP Senior management, for unknown reasons, decided not to pursue help for monitoring from the EPA. No additional follow-up communication was found.

Hurricane Sandy material at the Fenimore Landfill was acknowledged from various people including Wolfgang Satchel, the DEP signatory on the ACO between DEP and SEP.

Documentation:

5.1 E-mail concerning DEP's placement of air monitors

5.2 DEP communication to Roxbury Township dated December 30, 2011

5.3 EPA Sandy-related material e-mails

5.4 EPA Fenimore e-mails

5.5 Roxbury Township request for air monitors dated December 24, 2011

Section 6: DEP Odor Complaint Investigations in 2013

Beginning in late 2012 and throughout 2013, Roxbury residents were directed to call the DEP's odor complaint hotline (1-877-WARN-DEP) whenever they detected the H2S odors characterized by a rotten-egg smell. Given the large number of calls, the DEP instituted a protocol of sending out investigators carrying hand-held H2S monitors. When a resident called, and the DEP responded, the investigators would only take a reading if the individual investigator smelled the H2S odor inside the caller's home. Only if the investigator subjectively smelled the odor would a reading be taken with the hand-held monitor and then an official complaint would be written out only if the monitor detected certain levels of H2S. Despite occasions where the H2S odors were pervasive in a neighborhood, readings were not taken because the investigator subjectively did not smell the odor. Suddenly and without explanation, the DEP changed its protocol and investigators were allowed to take readings only if the odors were detected outside a property, and again, only if the investigator subjectively smelled the odor. Under either protocol, there were repeated instances where DEP investigators arrived at callers' homes without the monitoring equipment necessary to take readings and write official reports.

Once the DEP took control of the Fenimore Landfill under the Emergency Order of June 26, 2013, the DEP discontinued its protocol. Although residents continued to smell the H2S and continued to call in complaints, the DEP stopped responding and sending investigators to take readings. Since, the DEP has taken over, residents have continued to call the DEP hotline but the DEP has not carried through with its protocols.

In February 2014, H2S odors were strong and prevalent. Despite the fact that the H2S monitors that have been installed in Roxbury were taking high readings, the DEP has continued to deny that H2S smells and their corresponding health effects are a continuing and dangerous problem for Roxbury residents. Larry Ragonese, the DEP Press Director, has stated that these high readings are "glitches" though residents have reported smelling the H2S odors at times corresponding to these high readings. Since the DEP took over the Fenimore site, no investigations into the continuing harmful emissions of H2S have occurred.

Documentation:
6.1 July 16, 2013 e-mail discussing DEP protocols

6.2 Resident e-mail regarding in-house odor dated December 18, 2012

6.3 Resident e-mail regarding DEP inaction dated January 12, 2013

6.4 Resident complaint e-mail dated March 19, 2013

6.5 DEP response to complaint dated December 30, 2012

6.6 NJ.com article dated February 11, 2014 regarding

Section 7: Methane Gas: Problems Hidden

Methane landfill gas (LFG) has always been and will continue to be a dangerous problem at the Fenimore site. It has been lost in the more recent issue of hydrogen sulfide gas emissions due to C&D materials, gypsum wallboard, and Hurricane Sandy waste, but is no less of a concern. Methane is given off as organic wastes naturally decay within landfills and ranges from combustible to highly explosive at various concentrations. The DEP emergency order to remediate hydrogen sulfide does nothing to mitigate present and future methane gas. A different type of LFG collection system is and will always be necessary even if the recently added SEP materials are removed alleviating the need for an industrial sulfur removing thermal oxidizing scrubber.

Large volumes of methane were detected at old and new gas collection wells and venting flares in 2012 at levels well above combustible limits. The nearby residents were not warned of high levels of methane present and the associated dangers. Methane gas can seep into basements and if concentrated can explode from sources such as the pilot light of a home furnace. Since the emergency order allowing the DEP to take over the Fenimore site, they, SEP, and Roxbury Township have not communicated the dangers of methane for fear of public backlash or designed a public emergency response plan for the community should fire or explosion occur at Fenimore.

Once initially encountered, proper remediation of methane should have been a focus but was ignored by the DEP because SEP required C&D materials and other contaminated soils to continue re-grading operations intended for the supposed solar project that can now never be implemented. These suspect materials have led to the hydrogen sulfide issue which further complicates LFG mitigation. Due to insufficient DEP actions, residents' well being has been put at risk without their knowing. Highlands redevelopment and private remediation of a legacy landfill that is the State's ultimate responsibility took precedence over the DEP's, SEP's, and Roxbury Township's responsibilities to the community.

Documentation:

7.1. June 2010 Email from Robert Confer of the DEP to Richard Bernardi of SEP stating the early need for delineation of LFG

7.2. June 2010 Email from Robert Confer of the DEP to Richard Bernardi of SEP stating atmospheric variables during LFG testing and ATSDR requirements

7.3. Email from Robert Confer of the DEP to Bashar Assadi of Birdsall requesting the physical location of a well will high methane levels and requesting an immediate retest

7.4. Bashar Assadi of Birdsall response to Robert Confer of the DEP stating that gas well with high methane is isolated and poses no danger

7.5. May 25th 2012 Fenimore LFG well maps

7.6. Email from Robert Confer of the DEP to Bashar Assadi of Birdsall requesting the addition of two new wells near the well with high levels of methane. Comments that the landfill is producing large amounts of LFG and questions if a methane gas system will be installed in Phase I of the project.

7.7. Bashar Assadi of Birdsall response to Robert Confer of the DEP stating that the high levels of methane gas are a concern and that testing should be done at the site boundary near residents' homes.

7.8. Email (truncated) from Robert Confer of the DEP to Bashar Assadi of Birdsall asking for urgent additional LFG site testing, testing at "the top of the hill" near the residents' homes, and on residents' private properties if able. DEP authorizes Saturday work due to potential dangers. Requests SEP stop work within a 200-foot radius of the area with high methane levels due to present danger.

7.9. Email (truncated) from Robert Confer of the DEP to Bashar Assadi of Birdsall stating the levels of methane now being found at the property boundary near homes are significant and corrective measures are needed immediately. Requests methane testing for the entire Poet's Peak neighborhood. Requests permanent in ground monitoring wells and a LFG migration study. Requests immediate installation of LFG collection system on the Phase I area.

7.10. DEP proposed gas monitoring well design schematic

7.11. Email from Robert Confer of the DEP to Richard Bernardi of SEP setting a meeting to discuss methane testing in the Poet's Peak neighborhood

7.12. Email from Deputy Attorney General Robert Kinney to the DEP, SEP, and Roxbury

Township to discuss the methane issue along with asbestos presence. Residents were never notified of these issues and their potential danger

7.13. Agenda for 8/1/12 Kinney-DEP-SEP-Roxbury Township meeting

7.14. Email (truncated) from Bashar Assadi of Birdsall to Elias Art of Keller & Kirkpatrick engineering with methane test results.

7.15. Test results showing methane present at combustible levels

7.16. Fenimore site map showing test locations, none taken in Poet's Peak neighborhood as DEP requested

7.17. Test results showing methane present at combustible levels

7.18. Email from Robert Confer of the DEP to Richard Bernardi of SEP with direction to develop an Operational and Environmental Action Plan regarding the presence of methane and asbestos.

7.19. DEP proposed gas monitoring well design schematic

7.20. Letter from Robert Confer of the DEP to Richard Bernardi of the SEP with detailed instructions for action regarding the presence of methane and asbestos at Fenimore.

7.21. List of residents living near landfill area of concern with maps of the Fenimore site and surrounding community. Roxbury Township provided 39 parcels to be tested for methane presence, the results of which are unknown. DEP in conjunction with Roxbury Township and the DOH requests SEP submit a proposal for Residential Confined Space Testing, subslab methane testing, and volatile organic compound analysis testing, the results of which are unknown. DEP orders methane migration testing and permanent LFG monitoring wells in the Poet's Peak neighborhood, the outcome of which are unknown.

7.22. Letter from Matthew Fredericks of Kessler & Associates representing SEP to Judge Diane Wilson asking the DEP, SEP, and Roxbury Township to engage in a settlement conference and for sanctions against the DEP for not cooperating with SEP. Contains previous meeting minutes.

7.23. Email from Richard Bernardi of SEP to Gina Conti and Mary Siller of the DEP stating that he is the only person that makes decisions regarding what is done at the landfill.

7.24. Previously attached Kessler & Associates letter with additional correspondence and Birdsall Services Group methane mitigation plan.

7.25. Email from Richard Bernardi of SEP to Robert Confer of the DEP asking for addresses of residents in the community and full backing of DEP regarding DEP ordered off-site testing. The email addresses methane only and no mention of possible risks to surrounding residents.

7.26. Email from Robert Confer of the DEP to SEP and DEP project stakeholders regarding a future Fenimore site visit and recent conference all. A DEP approved LFG collection system was agreed upon 8/6/11 before the hydrogen sulfide appeared. A Professional Engineer needed to review the system to assure adequacy of the original system for both collection and treatment of methane and hydrogen sulfide. Revision of the system was possibly needed with additional collection wells near Poet's Peak. The LFG treatment system design was incomplete as of 3/26/13 pending LFG qualitative and quantitative analysis. The outcome of these efforts are unknown due to litigation and the emergency order for hydrogen sulfide mitigation preventing on site testing by Roxbury Township or SEP.

Section 8: Asbestos: Problems Not Addressed

Asbestos was found at Fenimore in July 2012. The material's current disposition is unknown or if it made it permanently into the landfill. Asbestos can be deposited as small pieces or finely ground up and contained in contaminated fill soil. The proper handling of asbestos material conflicts with hydrogen sulfide gas mitigation. Asbestos contaminated material and soil should be kept wet to deter airborne dust while hydrogen sulfide producing gypsum wallboard should be kept dry to avoid the anaerobic bacteria that produce the gas. This makes proper remediation of Fenimore a questionable issue in the future. Since it is not know if asbestos was present prior to SEP activities and the DEP will not allow core or soil testing of the Fenimore site, it is impossible to know exactly how much asbestos may be on the site and the best way to remediated any asbestos contamination alongside the hydrogen sulfide mitigation.

Residents were never notified by responsible parties of these issues.

Documentation:

8.1 Report showing the presence of asbestos tile from a DEP regulated facility and the subsequent improper handling by SEP

8.2 Email from Bashar Assadi of Birdsall to Richard Bernardi of SEP in response to asbestos presence in material from a DEP regulated recycling center

8.3 Email from Deputy Attorney General Robert Kinney to the DEP, SEP, and Roxbury Township to discuss the asbestos issue along with methane presence. Residents were never notified of these issues and their potential danger.

8.4 Agenda for 8/1/12 Kinney-DEP-SEP-Roxbury Township meeting

8.5 Email from Robert Confer of the DEP to Richard Bernardi of SEP outlining an action plan in response to the presence

8.6 Letter from Robert Confer of the DEP to Richard Bernardi of SEP outlining the asbestos response plan including material handling, methods to protect workers, and control dust that could escape into the surrounding community

8.7 List of residents living near landfill area of concern with maps of the Fenimore site and surrounding community

8.8 Letter from Matthew Fredericks of Kessler & Associates representing SEP to Judge Diane Wilson asking the DEP, SEP, and Roxbury Township to engage in a settlement conference and for sanctions against the DEP for not cooperating with SEP. Contains previous meeting minutes.

8.9 Email from Richard Bernardi of SEP to Gina Conti and Mary Siller of the DEP stating that he is the only person that makes decisions regarding what is done at the landfill.

8.10 Previously attached Kessler & Associates letter with additional correspondence and Birdsall Services Group asbestos mitigation plan.

8.11 Email from Robert Confer of the DEP to Richard Bernardi of SEP requesting follow

up of the asbestos issue.

8.12 Email from Richard Bernardi of SEP to Robert Confer of the DEP asking for addresses of residents in the community and full backing of DEP regarding DEP ordered off-site testing. The email addresses methane only with no mention of asbestos or possible risks to surrounding residents.

Section 9: Contaminated Soil Dumped

Materials brought to Fenimore were known to industry professionals to be toxic or raise nuisance concerns yet the DEP ACO allowed them to be dumped in the middle of a residential community. It was the DEP's responsibility to regulate the recycling centers and providers of the soil fill material accepted by SEP. The deficient ACO allowed water treatment plant residuals and processed dredge material that have been shown even after decontamination to be toxic to the environment and ground water. Many of these materials were allowed to come from "Areas of Concern" which include sites and rivers contaminated with hazardous waste and other pollutants (NJAC 7:26E-1.8 Definitions).

Materials accepted at or to be delivered to Fenimore have been found to exceed the limit for arsenic, lead, and possibly other toxic substances. Eagle Recycling of North Bergen, NJ and Allocco Recycling of Brooklyn, NY (Both DEP regulated facilities) have been known to have issues with providing materials that exceed legal contamination limits and have been frequent suppliers to SEP. Since the DEP will not currently allow core or soil testing of the Fenimore site, it is impossible to know exactly what material SEP accepted and how contaminated the site and its soil really are.

Documentation:

- 3/17/11 DEP and Roxbury Township Meeting minutes discussing closure standards are not as restrictive for a pre-1982 landfill. Robert Confer was named as DEP representative responsible for reviewing all aspects of the SEP closure plan.

- 1/13/12 Email from DEP's Lucille Santitoro to Richard Bernardi containing DEP responses to Senator Bucco's Fenimore questions.

- DEP responses to Senator Bucco's Fenimore questions showing allowance of questionable materials

- 2/21/12 Email from Bashar Assadi of Birdsall to DEP's Robert Confer with one of SEP's many requests to modify the ACO.

- Test results from on Fenimore site showing arsenic limits exceeded in water treatment plant residuals

- Letter from Bashar Assadi requesting the DEP allow water treatment plant residuals exceeding the limits for arsenic.

- Arsenic test results table

- 7/3/12 test report showing contaminated soil dumped at Fenimore exceeded the limits for lead

Section 10: DEP Water Tests: Never Released

The DEP conducted testing in and around the Leachate Pond in January and July, 2013. Both times, test results showed levels of Lead, Arsenic, and Aluminum that exceed NJ DEP surface and ground water standards. These tests results were not released to the public and were obtained via an OPRA request.

Documentation:

10.1 DEP Leachate testing 1/2013: Lab test results

10.2 Site Map – Leachate Pond: Note the location of the leachate pond. It overflows during heavy rains and runs into Ledgewood Pond / Drakes Brook which, in turn, flow into water ways that provide drinking water for millions of NJ residents. In addition, no liner exists underneath the newly deposited material, allowing a potential pathway into the groundwater and area private residential wells. Many residents living adjacent to the site depend on well water, and some residents are starting to have problems with contamination, casing failures, and dryout, that

are believed to be due to recent activity on the site.

A DEP factsheet issued on August 16, 2013 stated that sampling of leachate and the leachate pond found some pollutants above surface water quality standards, however downstream surface water sampling did not demonstrate any off-site impacts. However, the overflow of leachate downstream is highly dependent on rainfall. An accurate assessment of water quality cannot be predicted unless testing is done frequently, which it has not.

Section 11: Formaldehyde Levels: Ignored by the DEP

React performed independent air testing on 10/1/2013. One of the tests was EPA Method TO-11A for Formaldehyde.

Formaldehyde is an intermediate product in the decomposition process of C&D material. Exposure effects include nose bleeds, which have been well documented within the community, and it is a known carcinogen.

Documentation:

11.1 Air Testing Results 10/1/2013: Lab results show formaldehyde concentrations were detected approximately 100 times the DEP long term health benchmark and in excess of other rural municipalities. DEP has not tested for formaldehyde or responded to these test results.

11.2 C&D Material Generates Formaldehyde: DEP January 7, 2013 report shows how formaldehyde is generated from decomposing C&D material.

Section 12: Fiscal Presentation by Bob Martin: Misinforms Senate Budget Committee

Please listen to Bob Martin's short presentation on Fenimore Landfill to the Senate Budget Committee 4/29 @ 2PM

http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=SBAB&SESSION=2014

Senator Bucco asks Martin for a landfill update @ 35:25 in the senate hearing and the response lasts about 5 minutes.

Martin informs them of the following:

1. Plans exist to transform the site into a community park for a benefit to the residents.

This is not feasible not possible because:

- The DEP doesn't own the land and is only authorized to mitigate the gas emissions under the emergency order for the phase 1 area which accounts for under 20 acres (less than a third) of the entire original landfill
- The remainder of the site consisting of the old landfill (50 acres +) needs attention/capping before any public use could even be considered, and to date, no plans exist to remediate that area
- Due to the delicate nature of the geomembrane liner the DEP has proposed using for the cap (instead of hard clay), the land can't be redeveloped in any way.
- If the land is even under consideration for any future public use, shouldn't the material be sampled to identify the contamination that is present so proper remediation could be implemented? This is something the DEP is and has been unwilling to do.

2. Martin further informs the Senate Committee that the DEP gas dispersion model shows that excavating would potentially endanger 30 adjoining communities. He states that money was not the deciding factor in selecting a remediation option, it was the safety of the community.

It appears that the DEP is ignoring Mr. Masi's analysis of their gas dispersion model (See Section 23) which shows they overstated H2S emissions during excavation by a factor of at least 1,000. If this model is corrected, it may actually show that excavating is the best option. If safe excavation is possible, it undisputedly eliminates future risks of well water contamination, toxic air emissions should the mitigation equipment fail, need repair, or go down due to a power outage, and also restores quality of life and property values due to the absence of smoke stacks and smoke plumes in residential areas, and negates the need for residents and schools and community sports to be at the mercy of air quality monitors for the foreseeable future. It also limits the total cost to the upfront excavation itself.

3. Bob Martin failed to disclose at the Senate Hearing that, in addition to the capital cost of the capping option the DEP is moving forward, the operation and maintenance will cost up to 4.5 million dollars per year for the foreseeable future. In the long run, capping may cost more than excavation and could greatly exceed it if there are future problems with the site that will require further remediation or modification of the gas mitigation system. Since the land has no ability to generate revenue, no one would ever want to own it, leaving operation and maintenance of the cap and gas mitigation system the sole responsibility of the State, indefinately. Another problem is that the State doesn't own the site, so can't guarantee they will maintain control.

The Township's environmental expert prepared a report that summarizes operating and maintenance costs of the DEP proposed capping plan. These are the costs that the DEP failed to disclose in their presentation of remediation options at the public meeting.

Documentation:

12.1 Estimated O&M Costs – A summary of O&M costs for the DEP proposed remediation. This remediation not only forces the safety of the residents to be at the mercy of man-made machinery, but may end up costing more than excavation in the long run.

In addition, according to the Township's expert, the scrubber will require up to 60,000 gallons of water per day out of the municipal supply (~22 million gallons per year), and four large "16 wheeler" tanker trucks per day to remove wastewater from the facility that will need to drive on narrow residential roads, some with no sidewalks among playing children.

The report goes on to address reliability issues with the DEP installed mitigation system.

It appears that Bob Martin has misinformed the Senate Committee of the true facts regarding the cleanup.

Documentation:

12.2 Email from a resident: Email to Senator Bucco regarding Bob Martins false claims to the Senate Committee

Section 13: DEP Public Meeting: Failure, 3/11/2014

The DEP held a public meeting on March 11, 2014 to present their proposed Remediation plan. The DEP made firm decisions without listening to concerns and comments from the public and township, and without incorporating any community involvement. The DEP presentation appeared to be biased toward their proposed plan. In addition, the DEP failed to address serious deficiencies that were asked during the public comment period.

There are still many unanswered questions and serious concerns with the DEP proposed remediation plan. The Emergency Order the DEP is operating under is allowing them to proceed with no oversight, no required testing, no transparency, and no input from all stakeholders. If this remediation followed NJ7:26E – Technical Requirements for Landfill Remediation or was consistent with protocols of USEPA superfund remediations, community involvement, transparent environmental testing, and assurance that the remediation option selected would be beneficial to the community would all be part of the process.

Documentation:

13.1 Roxbury Mayor and Council call NJ DEP landfill remediation plan inadequate: Press release from Roxbury Township

13.2 Senator Bucco: Residents Deserve More from NJ DEP: Press release from Senator Bucco expressing disappointment that the DEP made decisions and finalized plan without listening to the public's comments or incorporating community involvement.

13.3 Roxbury Township Resolution dated September 10, 2013: Implores Governor Christie to support their request to hold a public meeting with the DEP and DOH.

13.4 Smelly Roxbury Landfill: Senator, township, owner, residents all fuming over done-deal plan

13.5 State: We're not delaying plan to cover smelly Roxbury Landfill: DEP states they are not delaying plan despite concerns from residents and the Township.

13.6 Residents Questions to the DEP: A residents unanswered questions and concerns

as a result of the DEP public meeting.

13.7 **Governor misleading the public**: Governor's comments at a town hall meeting regarding Fenimore Landfill were inaccurate. A resident demands answers.

13.8 **Outstanding Questions from a Resident**: A resident's questions and concerns to the DEP as far back as October 2013 are still unanswered. DEP has not responded to the last email dated 3/31/2014

13.9 **DEP Bullyies media after they expose DEP deficiencies regarding Fenimore Landfill**

Section 14: DEP Air Dispersion Map / Fear Mongering

Documentation:

14.1 **DEP Air Dispersion Model**: The DEP created this air dispersion map to demonstrate the potential hazards of excavating to over 30 municipalities surrounding Roxbury Township. Ironically, this map was not shared with Roxbury Township/Residents. The DEP met secretly with neighboring municipalities to lobby and fear-monger them into supporting the DEP capping plan.

14.2 **On Incompetence, Flagrant, Dishonesty NJDEP:** This report was prepared by a resident engineer/scientist and shows that the DEP air dispersion model that was shared with neighboring communities has exaggerated H2S emissions by a factor of at least 1,000. It also shows the email chain and refusal of DEP to address these deficiencies or correct them.

14.3 **Letter to Mayor Rilee and Township Councilpersons**: The author of the report summarized the situation to Township Officials, asking for support. The Township has demanded the DEP provide a response. The gross errors in this air dispersion model suggest the DEP has a biased agenda regarding the remediation and may not be selecting the best option for the community. The DEP is also using this model to exaggerate the hazards of the excavation option.

14.4 Residents email to DEP: This email to the DEP demands a response on why the DEP is secretly meeting with these neighboring townships when they won't even come to Roxbury to address resident's concerns.

14.5 Roxbury Redoubt: Christie's DEP Has Become A Haven For Incompetent Hacks: Editorial on the subject

14.6 The State DEP is Trying to Silence Critics, NJ Sierra Club: Letter outlining Christie's/DEP's agenda to bully and intimidate people whenever someone disagrees with them or what they want to do.

This information further supports that the DEP remediation plan, starting back from evaluating possible remediation options, their effectiveness, costs, and potential long term impacts and risks to the community must be reviewed in its entirety, with all documentation, studies, measurements, etc., by an independent, qualified professional organization, not previously involved with Fenimore and not currently under any contract with the State of NJ. This organization must be enlisted to provide a complete review of ALL Fenimore data and remediation options. This organization shall provide input on individual plan merits and deficiencies as well as relative merits of plausible alternative solutions; The NJDEP must not be allowed to continue work on Fenimore until such input is received, approved by all stakeholders, and adequately incorporated into the final remediation plan. Also, the NJDEP should not be allowed to continue work on any revised plan without significant oversight, preferable from the USEPA.

Section 15: Denial of Soil Testing

The NJ DEP claims that they've done no soil testing on the landfill property. They claim that, according to the emergency order that gave the DEP control of the site, their only task is to abate H2S odors. The DEP has refused to allow soil testing by Roxbury Township's independent contractors even though the emergency order states the following:

"The Township of Roxbury and its contractors shall have full access to the Landfill to monitor all hydrogen sulfide control measures and to obtain test samples for the purpose of environmental monitoring."

On March 31, 2014 Roxbury Township filed legal action in State Superior Court seeking an order to show cause after the DEP denied the township's request to perform independent testing of soil samples. Soil samples would be drawn from new gas-extraction wells being dug on the site by the DEP.

As part of the DEP arguments, Deputy Attorney General Robert Kinney suggested that obtaining soil samples would be dangerous and would cause delays with the completion of the new wells because of issues with necessary protective gear (clothing and equipment).

Superior Court Judge Robert J. Brennan decided that soil sampling would disrupt the installation of the wells and could delay the project. On April 2nd, he denied Roxbury's request to obtain the samples and set a follow-up hearing for April 21st. Township officials chose not to pursue the matter on April 21st, and no protective measures were observed on the site during the actual digging of the wells.

Since it remains unknown what was actually dumped at the site, how can a closure plan and proper remediation be implemented?

Documentation

15.1 Email exchange between Kerry Pflugh and Roxbury's Mayor and Town Council dated August 9, 2011.

15.2 State of New Jersey Department of Environmental Protection Emergency Order dated June 26, 2013.

15.3 NJ.com. "Roxbury takes legal action against DEP to test soil from new wells at Fenimore Landfill." March 31, 2014.

15.4 Daily Record. "Roxbury sues for Fenimore soil samples." April 2, 2014.

15.5 NJ.com. "Judge denies Roxbury's bid to test soil from DEP's wells at landfill." April 2, 2014.

15.6 Daily Record. "Roxbury denied Fenimore request to test soil samples." April 3, 2014.

15.7 New Jersey Hills. "Roxbury to request dump soil sample data from State: OPRA request to be filed." April 9, 2014.

See also:

http://roxburynj.us/ArchiveCenter/ViewFile/Item/2484, Roxbury Township press release titled "Roxbury Township files legal action to force the N.J. DEP to allow soil testing at the Fenimore Landfill." March 31, 2014

Section 16: DEP failed to alert public when equipment wasn't operating on holidays and also when SO2 releases exceeded EPA standards due to equipment failure

Documentation:

16.1 **DEP Fact Sheet – SO2 Health Standards**: The DEP installed gas mitigation system uses a thermal oxidizer to burn H2S which in turn generates sulfur dioxide, or SO2. Every pound of H2S destroyed generates about two pounds of SO2. SO2 is a toxic gas that poses similar health effects and threats as H2S. SO2 is also federally regulated by the USEPA under the Clean Air Act. The EPA has set a health standard to be protective of public health of 75 ppb over 60 minutes. The ATSDR has set an acute minimum risk limit of 10 ppb for SO2. See page two of the DEP factsheet for further reference.

16.2 **SO2 Monitor Reading 4/7/2014**: On 4/7/14 the scrubber malfunctioned resulting in SO2 emissions into the community in excess of the health standards outlined above. Monitor 13 is located in a residential community. The DEP never alerted the public.

16.3 **SO2 Monitor Reading 4/2/2014**: Another scrubber malfunction on 4/2/2014 resulting in elevated SO2 emissions into the community. Monitor 6 is located in a residential community. The DEP never alerted the public.

16.4 **NJ.COM article titled "System meant to protect Roxbury from toxic gas releases different toxic gas."**: Summarizes events and lack of DEP action and response despite resident's concerns and toxic exposures.

16.5 Email from a resident to DEP: Resident asks the DEP why the community was not alerted of the scrubber failure and resulting potentially harmful SO2 emissions..

16.6 Email from a resident to DEP: Resident can't get answers from the DEP

16.7 Email from a resident to DEP: Resident demands to know why the DEP is not operating or staffing the mitigation system on holidays, and not alerting the public that it will be down.

Section 17: Governor Christie's Public Statements

The public statements Gov. Christie has made regarding the Fenimore Landfill situation create a pattern that suggests that Gov. Christie has been willfully misinformed by the DEP and DOH. At a town hall meeting in Long Hill, NJ on February 26, 2014, a Roxbury resident questioned Gov. Christie about the DEP's actions with respect to Fenimore. Gov. Christie stated that he was kept up-to-date on the situation by the DEP and DOH. Gov. Christie insisted that there were no health hazards caused by the landfill. However, a February 4, 2014 letter from the DOH to Roxbury Township detailed the health hazards to residents chronically exposed to high levels of H2s. According to DEP testing, the average levels of H2S far exceeded the standards set by the EPA and ATSDR for chronic exposure. At the town hall meeting, Gov. Christie also stated that the DEP was in constant communication with the Township and residents. However, at that point the DEP was not in communication with either the Township or residents despite frequent letters and calls.

At the April 9, 2014 town hall meeting in Fairfield, NJ, Gov. Christie made statements to the effect that residents' calls to truck out the toxic substances that were brought in by SEP over the past two years were actually requests to truck out all the fill at Fenimore, which had accumulated since the 1950s. Gov. Christie also stated that removing the SEP material would expose a wide range of communities to toxic substances. As Section 14 of this Report explains, the DEP's models purporting to show the possible endangerment of nearby communities grossly misinterprets data and is based on inaccurate modeling.

Privately, the Township has directly appealed to Gov. Christie for assistance, including asking that the DEP direct federal Hurricane Sandy relief funds to clear out the Sandy-

related materials that were brought into the landfill by SEP. No response has ever been received.

Documentation:

17.1 August 10, 2013 from Roxbury Township Mayor Fred Hall to Gov. Christie requesting assistance with alleviating the H2S from Fenimore Landfill.

17.2 Roxbury Township Resolution 2013-295 calling on the DEP to obtain federal Hurricane Sandy relief funds to resolve the Fenimore Landfill problem.

Section 18: DEP's public response to criticism avoids the real issues

In a published letter to the Roxbury Register on April 17, 2014, Jeff Tittel of the NJ Sierra Club criticized the DEP for its handling of the Fenimore Landfill project and resulting problems, and its proposed solution of capping the site. Mr. Tittel described at length the issues with the DEP's proposed capping. The DEP Press Director Larry Ragonese's response letter continued to obfuscate the facts of how the DEP has been presenting its dispersion map to nearby towns and how the proposed geomembrane liner will work. Unbiased, accurate research has shown that the DEP's presentations to nearby towns are exaggerated and not based on scientific data, as explained in Section 14 of this Report. Further, the DEP's proposed capping is inappropriate for a site such as Fenimore, where naturally occurring streams will thwart the proposed liner's ability to maintain the SEP materials dry in order to abate the release of H2S. SEP's continued public show undermines attempts to properly deal with the problems at the Fenimore Landfill.

Documentation:

18.1 Letter to the Roxbury Register by Jeff Tittel dated April 17, 2014.

18.2 Letter to the Roxbury Register by Roxbury resident Kathy Hart dated May 2, 2014.

18.3 Letter to the Roxbury Register by Larry Ragonese (DEP) dated April 25, 2014.

Section 19: Excavate vs Capping

There has been much debate regarding the remediation options the DEP has proposed: Cap the material in place and install a gas mitigation system or fully excavate the H2S generating material that was dumped post 2011. The DEP's reports are undoubtedly biased toward capping. The experts hired by Roxbury Township claim that not enough information is available to make a sound recommendation. What truly is the best option?

Importance of Environmental Testing and Sampling

To insure success for any site remediation, environmental testing is warranted to obtain a proper design basis, set cleanup goals, and benchmark/trend future conditions. In the case of Fenimore, there is a critical missing piece of information that may be the deciding factor between remediation options: *sulfur content.*

The average sulfur, or sulfate content of the material is of great importance because it determines how much gas has the potential to be generated and for how long. Approximately every 100 tons of landfilled sulfate has the potential of producing 35 tons of H2S. In every report issued and every calculation performed to date, sulfate content has been an assumed estimate.

Sulfur or sulfate content would be obtained by core sampling in different locations in a grid pattern at different depths to create a 3D "map" of where concentrations of wallboard are within the pile. This data would help determine the "worst offending" areas of the site with regards to H2S generation and also areas that perhaps are not generating much H2S at all. This information, along with flowrate and concentration data gathered from the test wells, would help model the H2S generation more accurately which would result in the following:

- A better assessment of how long the gas mitigation / smoke stacks would need to be in place.
- A better estimate of the year to year operational cost to run the gas mitigation system
- The worst case community impact should the gas mitigation equipment fail catastrophically

- The "real" potential hazards should the material be excavated
- The true excavation cost considering a significant portion of the material may be inert "dirt."

Even though there are additional factors that are necessary for H2S generation, such as moisture and proper pH, knowing the amount of sulfate present would satisfy one variable in the equation and result in a more accurate calcuations.

Unfortunately, the DEP has rejected such testing for reasons that are unknown.

Capping in Place

Capping in place is the current DEP proposed solution. It involves a gas mitigation system consisting of collection wells, piping, and a blower that route the gases to a thermal oxidizer where the H2S is combusted and converted into SO2. Then, an industrial scrubber removes the SO2 from the gas effluent that exits into the atmosphere via a smoke stack. Once this system is fully installed, the DEP states that the remainder of the site will be covered with a geomembrane "tarp-like" liner to keep rainwater out and attempt to slowly dry the material, which will reduce the gas generation over time. The liner/cap will be covered with soil and a vegetative layer to prevent erosion. Storm water management and leachate treatment/control will also have to also be addressed. It's unknown if the DEP will or can address these items with the remediation authority the Emergency Order allows.

Pro's to Capping in Place

- Smaller upfront (capital) cost. Roxbury Township expert report estimates $13,855,000 initial cost.
- Less truck traffic compared to excavating. DEP report estimates that up to 6300 truck trips may be required to import the soil for re-grading and final cover.
- The material will not be disturbed
- Other C&D Landfill Facilities have been successfully capped.

Con's to Capping in Place

- Annual Operating & Maintenance costs exist for an indeterminate amount of time. The cap will have to be maintained, inspected, and repaired, if needed,

indefinitely. Roxbury Township expert report estimates the first year operating cost will be $4,505,000 and will decrease as the gas generation is reduced.

- Reliability issues, repairs, natural disasters, etc, may cause downtime of the equipment which could expose the public to recurring toxic gas emissions.
- Modifications and upgrades may be required to the system due to changing influent landfill gas flow to ensure effective treatment. This will cost additional money.
- Air and water monitoring will be required for years to come.
- Potential for groundwater / well contamination if the cap is damaged allowing rainwater in, or if contaminants leach from beneath the pile into the water table or debated streams that run through the site since no underliner exists.
- The scrubber is estimated to require up to 50,000 gallons of water per day out of the municipal supply and several tanker trucks per day of waste water removal off the site for the foreseeable future.
- This site is not an operating C&D Landfill so doesn't have the ability to generate revenue. It will be difficult to find an property owner so O&M will have to be paid by others.
- The state doesn't currently own the landfill. Future control of the site will be determined by litigation
- Smoke stacks near residential communities and the existence of air quality monitors and environmental protocols in schools, as long as the site has the potential to generate H2S gas, may affect property values.
- Stress and anxiety of living at the "mercy" of the equipment operating to keep the public safe.
- Future funding of the site may be dependant on State budgets and financial strength of the next administration.
- Future redevelopment not possible with a geomembrane liner.

Excavation

Excavation would essentially involve "staged" removal of the material and transport it to a facility that already has environmental controls in place to handle such material. The current gas mitigation system would be operational during the staged removal effort and would be taken down once the operation was complete.

Once all the material is removed, the site would most likely still need to be capped with clean soil and a vegetative layer. A basic methane venting system may also be required.

There has been much debate over the potential hazards that this operation may pose to the public. Without knowing the sulfate content of the material, it is impossible to determine the magnitude or potential absence of such hazards as all calculations and air models are currently assumption based and anecdotal.

Excavation logistics would require it's own thorough, independant study and professional report, which hasn't yet been commissioned by any party. The material would most likely be transported in closed container trucks and only a small portion of the site would be opened up at time to minimize emissions. Consistent with advice from the Township's expert report, this activity would be best suited during the fall, winter, and spring months, when temperatures are lower and result in low H2S gas generation.

Pro's to Excavation

- Permanent solution, not dependant on future funding, owership of the site, or operating/maintaining industrial equipment or a cap.
- One time, upfront cost
- Eliminates the potential for unhealthy toxic gas exposure to the community
- Reduces the potential for groundwater / well contamination
- Ongoing air monitoring not required
- Completely restores Roxbury to pre-2011 peaceful, safe, and uncontaminated state.
- Eliminates the potential for future DEP operational mistakes
- Has the best potential to restore property values
- Future redevelopment possible for something to benefit the community

Con's to Excavation

- Cost. The DEP estimated excavation would cost approximately $38,000,000. *Note this estimate was dissected and challenged by residents and is still an unresolved item. Assumptions made by the DEP need to be further investigated.*
- Increased truck traffic. The DEP estimated it would take 3 times as many truck trips to excavate vs cap.
- Potential hazards due to the operation and disturbance of the material
- Potential complications due to unknown content that was brought in

- It may take longer if operations are limited to cooler months or complications arise.

What is the Best Solution?

The best long term solution is the one that not only remediates the site's potential to harm to the environment and public health, but is also addresses what is best for the community. The best long term solution will guarantee the safety and welfare of the residents, and virtually eliminates the potential for unhealthy gas exposure and other pollution. The best solution will involve a full environmental investigation, along with community involvement with all stakeholders, to determine the best path forward. The best solution will involve full transparency and the willingness to share information to all parties. The best solution will protect the NJ watershed, private wells, and preserve wetland areas. The best solution will follow remediation guidelines from the USEPA, N.J.A.C. 7.26E – Technical Requirements For Site Remediation, and conform to the Highlands Act Regional Master Plan.

By definition, such a solution would restore the quality of life, property values, and reputation of Roxbury, as well as eliminate the potential for future threats to the environment or public health. This IS the best solution, the solution that Roxbury deserves.

Section 20: Property Value Devaluation: Landfill Closure Contingency Fund

Documentation:

20.1 Roxbury Real Estate Health: A market analysis was performed by a NJ Licensed Appraiser using data from the NJ Association of Realtors'.

Results show that:

- Over the past 12 months, the median sales price of single family homes in Roxbury has declined 2.1%.

- Over the same time period, the median sales price of single family homes in all of Morris County has increased 4.3%.

- Over the same time period, the median sales price of single family homes in neighboring towns, Mount Olive, Mt. Arlington, Wharton, Mine Hill, Randolph, Jefferson, increased 1.9% - 10.4%

  In addition, Realtor's have indicated that homes near the landfill have been extremely difficult sell. Some homes have lost contracts multiple times once buyers have further investigated the landfill problem. Residents continue to suffer from severe financial impacts due to property devaluation, with no end in sight.

The DEP has failed to inform the residents of the *Landfill Closure Contingency Fund*, a fund designed to provide compensation for damages resulting from the improper operation or closure of landfill facilities. One resident submitted an application and was told by the DEP that the fund was bankrupt for years to come.

Documentation:

20.2 Family's Leaving Roxbury: An email from a resident stating how families are leaving Roxbury due to fear of health issues and DEP actions are giving them little faith the site will be ever be remediated properly.

20.3 Landfill Closure Contingency Fund is Bankrupt: Email from a resident inquiring about the Landfill Closure Contingency Fund and was told it's bankrupt.

Section 21: ATSDR Petition from REACT: Public Health Threat

The Agency of Toxic Substances and Disease Registry or ATSDR is the principal federal public health agency involved with hazardous waste issues

- Advises federal and state agencies, community members, and other interested parties on the health impacts of Superfund sites and other petitioned sites.
- Determines the level of public health hazard posed by a site.

- Recommends actions that need to be taken to safeguard people's health.
- Conducts health studies in some communities that are located near Superfund sites or in locations where people have been exposed to toxic materials.
- Anyone may request or "petition" that ATSDR to do a health consultation. Most requests for health consultations come from EPA and state and local agencies.

Documentation:

21.1 ATSDR petition acceptance for a health consultation of Fenimore Landfill: The DOH and DEP did not petition the ATSDR for help, despite the magnitude of toxic gas exposure and health issues present in the community. The petition was submitted by a resident on behalf of the Roxbury Environmental Action Coalition. ***The ATSDR preliminary assessment declared the site a public health hazard.***

21.2 Letter to Joe Eldridge, NJDOH, 9/5/2013: Since January, 2013, there have been hundreds, if not thousands of documented emails and phone calls from the residents to the NJDOH asking for help and guidance. To date, Mr. Joe Eldridge and Commissioner Mary O'Dowd have not personally returned any of the resident's phone calls or emails. These emails have been documented and can be produced upon request. Instead, the NJDOH issued a terse, one page fact sheet to the Township. REACT wrote a letter in response to the technical deficiencies of the information contained in the fact sheet and did not receive a response.

21.3 Letter from Rutger's Toxicology Expert to NJDOH/DEP, 10/2/2013: This letter, a result of a site visit and review of monitor data, warns the DOH of potential health threats and also hints that excavation may be the only viable permanent solution.

21.4 Letter from Mt Sinai, Center for Children's Environmental Health, to Senator Bucco, 11/12/2013: This letter summarizes health questions that residents have asked the hospital to address. It also communicates the serious impacts on s community health and quality of life as a result of H2S exposure. The letter states that excavation and transport may be necessary if H2S levels can't immediately be reduced.

21.5 DEP ignored emails begging for assistance: Seven consecutive unanswered emails were sent to the DEP by a resident asking, and then begging, for an update regarding possible relocation programs or air purifier supply to residents due to ongoing poor air quality in the community. The township also demanded the DEP respond. Hundreds of similar emails were sent to the DEP by residents and many remain unaddressed or unanswered. These can be produced upon request.

Section 22: Odor Complaints and Toxic Gas Exposure: Still Present

Despite DEP claims, hydrogen sulfide odors and exposure in the community continue through present day, even when the gas mitigation system is operating.

Documentation:

22.1 NJDEP Hotline Odor Complaints from 3/16/2014 to 5/16/2014: Over 70 pages of odor complaints from Roxbury residents from the past 2 months to the NJ DEP Hotline.

22.2 Article from May 16, 2014 titled, "*Official warned Christie would 'take a bath' in election if Roxbury landfill operation continued.*" Larry Ragonese says, "...we have had the odors at this site under control for many months, and have continued to monitor the site for emissions."

22.3 Email from sports league president on 4/24/14: Informs coaches to cancel games and practices due to poor air quality readings

22.4 Honeywell alert to school parents on 4/25/14: Informs and warns school parents of potential school closures due to elevated H2S levels that were recently experienced.

22.5 Roxbury Public School H2S protocols and action levels: This site poses a potential health threat and ongoing nuisance and disruption to public education. These protocols will be required for years to come, as long as the potential for toxic exposure exists.

22.6 Ballfield Protocols and Action Levels: kids are dependant on monitor readings to determine if it's safe to play outdoor sports. Any failure or shutdown of the gas mitigation system will result in additional impact to the community.

22.7 Children at local daycares and nursery schools are at risk: These facilities were not notified by the DEP about the H2S monitors in the township and health-based action level protocols that have been developed for children. The attachment is a Facebook post from a director at a Roxbury Daycare.

To: Margaret Nordstrom, Acting Executive Director
c/o Annette Tagliarini
NJ Highlands Water Protection and Planning Council

From: Wilma Frey, Senior Policy Manager, New Jersey Conservation Foundation

Re: June 19, 2014 – Highlands Council Meeting
Approval of Plan Conformance Committee Meeting Minutes of June 12, 2014:
Sparta Township – Checklist Ordinance approach

As per the discussion at the last Council meeting on June 19, I am submitting in writing, as requested, the following comments I delivered orally at that time. Please include these comments with the minutes of the June 19 Highlands Council meeting. Thank you.

The Plan Conformance Committee met on June 12, 2014, and according to its minutes, the staff's recommendations for the use of the Checklist Ordinance approach for Sparta Township was "the extremely limited development potential" of the town. The minutes indicate that Sparta Township development potential [in the Preservation Area] is confined to "1 parcel/213 acres."

We are concerned about inappropriate use of the Checklist Ordinance approach in Sparta Township. The Checklist Ordinance Approach memo for Sparta Township notes that 5,046 acres of land are preserved in the Township's Preservation Area; however, *more than half* of the Preservation Area – 56 %, *some 6,422 acres*, is not preserved land. Furthermore, a quick and incomplete review of the Highlands interactive map for Sparta Township revealed a number of additional larger parcels that could be subject to development. See the list below. In our opinion, the checklist approach should be reserved for situations with genuinely limited development potential.

Block 7, Lot 86: 441.5 acres, Hawthorne Park Club

Block 19, Lot 6: 118 acres, 583 Houses Corner Road, S. Tilton, Address in Upper Montclair

Block 19, Lot 110: 115.77 acres, Mountain Ridge Estates, Inc., address Dover, NJ

Block 19, Lot 66: 90.81 acres, 429 Lafayette Road, Sparta Evangelical Free Church

Block 6, Lot 110: 88.1 acres, 272 Glen Road, Newton Water Commission

Block 7, Lot 5: 72.9 acres, includes Green Ridge Lake; 64 Ridge Road, Michael Nestico

Block 7, Lot 70.01: 52.98 acres, GAD Solomon family Partnership, NYC address

Block 7, Lot 69: 48.15 acres, William and Janet McGovern, Lafayette, NJ

Block 3, Lot 69: 23.96 acres, 83 Ridge Road