

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
REPUBLICAN POLICY COMMITTEE HEARING

EAST WHITELAND TOWNSHIP
MUNICIPAL BUILDING
FRAZER, PENNSYLVANIA

THURSDAY, DECEMBER 6, 2007, 10:15 A.M.

PRESENTATION ON
HAZARDOUS SITES CLEANUP FUND

BEFORE:

HONORABLE MIKE TURZAI, CHAIRMAN
HONORABLE BRIAN ELLIS
HONORABLE KATE HARPER
HONORABLE TIMOTHY F. HENNESSEY
HONORABLE SCOTT E. HUTCHINSON
HONORABLE DUANE MILNE
HONORABLE CHRIS ROSS
HONORABLE CAROLE A. RUBLEY

ALSO PRESENT:

REBECCA CORBIN
LINDA FILIPPONE

JEAN M. DAVIS, REPORTER
NOTARY PUBLIC

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1 CHAIRMAN TURZAI: Good morning, everybody.
2 It's my honor to have the Republican Policy Committee
3 here in East Whiteland Township at the East Whiteland
4 Township Municipal Building at the request of
5 Representative Duane Milne, and our topic today will
6 be dealing with the Hazardous Sites Cleanup Fund.

7 I'd like to tell you a little bit about
8 Representative Milne and the issue, and then turn it
9 over to him. He will be chairing our hearing today.
10 Representative Duane Milne is in his first term in the
11 State House, and as you well know, he is serving the
12 residents of 167th District.

13 Duane has a really outstanding background
14 with respect to coming to the State Legislature. He
15 has been an award-winning political science professor
16 at West Chester University and has been the
17 administrator in charge of one of the significant
18 master's degree programs there. He has also worked as
19 an organizational consultant and has gained
20 significant business experience both locally and
21 internationally.

22 He grew up in Willistown Township, and he
23 continues to reside there with his wife, Jean, and
24 their son. He is an honors graduate of the College of
25 William and Mary and holds a Ph.D. in political

1 science from the University of Delaware. Not only has
2 he been a county committee person for 14 years and a
3 State committee person for 10 years, he also continues
4 to serve as a captain in the Pennsylvania Military
5 Reserve, a civilian disaster organization.

6 Like me and my colleagues who are present
7 with me today on this panel, Duane has been a leader
8 in an environmentally friendly policy, a green policy,
9 and has been out front with respect to making sure
10 that we have adequate funding for the Hazardous Sites
11 Cleanup Fund. Every one of the individuals up here
12 has had specific interest in not only the overall
13 environmentally friendly policy, but they have been
14 specifically involved in making sure that we do not in
15 any way jeopardize the Hazardous Sites Cleanup Fund.

16 Representative Milne along with
17 Representative Kate Harper from Montgomery County put
18 together HB 2039. We are going to pass it around, a
19 copy of that bill, to all the members and to all the
20 testifiers today. Duane will in part talk about HB
21 2039 in his opening remarks.

22 Duane, I can't thank you enough for
23 organizing this event and asking us to bring the
24 Policy Committee down to East Whiteland Township.
25 That "down" phrase is part of a colloquialism, so

1 those of us out west also thank you.

2 REPRESENTATIVE MILNE: We will forgive you.

3 CHAIRMAN TURZAI: I myself am from the
4 suburbs of Pittsburgh, the north suburbs of Pittsburgh
5 in Allegheny County, but it is always an honor for me
6 to get down to Chester County and the surrounding
7 area.

8 With that, I would like to turn it over to
9 Representative Milne. He is going to have opening
10 comments, and he is going to make sure that each of
11 our members is introduced here today. Thank you,
12 Duane.

13 REPRESENTATIVE MILNE: Thank you, Mr.
14 Chairman.

15 I am glad to welcome everybody here to the
16 167th Legislative District, which I am very proud to
17 represent. I would also like to welcome you to East
18 Whiteland Township, and I do thank the township
19 supervisors and administration for graciously allowing
20 us to have this hearing here this morning, and it has
21 been most helpful in light of the fiscal range, which
22 they needed to have it here.

23 Although East Whiteland is not my township of
24 residence, I do consider it a home of sorts, because
25 my district office is here in East Whiteland Township.

1 As a matter of fact, it is just a few miles down the
2 street, and tours are available actually after the
3 hearing.

4 But also near my district office, literally
5 around the corner, is a site that is commonly referred
6 to as Bishop Tube, and this is a site that has
7 received dollars from a program that we know as the
8 Hazardous Sites Cleanup Fund. So it is something that
9 I am thinking about, because I do pass it almost every
10 day on the way to my district office.

11 The Hazardous Sites Cleanup Fund is commonly
12 referred to as HSCA, of course. In my mind, it is
13 probably the most critical issue that the Legislature
14 is dealing with right now in Harrisburg. I think it
15 adds far more weight and importance to our discussions
16 this morning and the information that we are trying to
17 gather for those of us who are taking this debate to
18 Harrisburg.

19 I would suggest that there are many reasons
20 why I personally support HSCA. There are a number of
21 different stakeholder groups that I have asked to join
22 us this morning and to illuminate some of those
23 reasons why HSCA deserves our support as a legislative
24 body. I would probably summarize them into three
25 broad categories, and then I will be asking our

1 presenters to help provide additional information.

2 First, I would suggest that HSCA funding is
3 simply right and it is a matter of principle. I think
4 all of us have an obligation as a citizen to be good
5 stewards of the environment. I think that actually is
6 a part of the social context between the citizens and
7 society, so all of us have citizenship obligations in
8 that regard.

9 I think those of us who are in the
10 Legislature have an obligation to be leaders in this
11 area to help protect one of our most finite and
12 precious resources, which is the environment.
13 Sometimes principle alone is simply an opportunity to
14 pursue a certain policy.

15 Now, beyond that, I would say that HSCA is a
16 good, sound public policy. I think that is important
17 to raise, become in a time when citizens may question
18 the wisdom of spending dollars in any number of
19 different government programs, HSCA is a program that
20 stands out, particularly the operational aspects. It
21 stands out as a program that is worthy of
22 public-sector investments. It is a program that tries
23 to help reclaim and remediate places and parcels of
24 land that otherwise would lay barren and go to waste.

25 I would suggest that it is worthwhile to

1 invest from the public sector in helping these
2 communities reclaim land to be challenged into more
3 productive uses. So at a time when there are many
4 competing demands in Harrisburg, limited dollars, HSCA
5 certainly has proven itself, including a track record
6 of continued public-sector investments.

7 And thirdly, I would suggest that HSCA is an
8 investment in smart developments for Chester County
9 and other counties in the State, because HSCA helps us
10 reuse land for more enlightened ways.

11 For example, if we could reclaim some of
12 these brownfield sites and put them into more
13 productive uses and put them back on the tax rolls, we
14 would benefit in a couple of ways. One, communities
15 would be able to put those parcels back on the tax
16 rolls and be able to help generate some cash revenue
17 that they need, and that perhaps will take some of the
18 pressure off certain property tax issues.

19 Secondly, if you think about how we can look
20 at development patterns in general, if we help reclaim
21 some of these areas and we challenge some of these
22 brownfields, that actually helps take pressure off
23 some of the surrounding greenfields in a larger
24 geographic area, and that in turn is one more tool in
25 trying to control some of the suburban sprawl that we

1 are trying to deal with also, particularly the more
2 developed areas of the State.

3 So I think if you look at it from that
4 perspective, the bottom line is that HSCA is a program
5 that the benefits far outweigh the minimal
6 public-sector investment. The benefits are certainly
7 worthy of our citizens and certainly help our citizens
8 in many ways.

9 Now, to get there and to make sure that HSCA
10 continues to be a key part of the quality of life we
11 are so fortunate in this area to enjoy, we have to
12 make sure that HSCA continues to get funded, both in
13 the short term to finish out this current fiscal year,
14 and more generally, in the longer term we need to make
15 sure that we develop a permanent funding solution for
16 HSCA.

17 In my mind, if HSCA is going to continue to
18 be a priority, then we need to develop a permanent
19 funding solution for it. Part of that, I believe, has
20 to be eventually appropriating a regular basis of
21 funds from the General Fund in order to set up a
22 funding source for HSCA, and that's in part what my
23 bill, 2039, does try to do.

24 So with those opening comments and then
25 hopefully setting the stage a little bit, I am

1 delighted to welcome two different groups of
2 stakeholders here, two general categories of
3 stakeholders. I am joined up here on the stage by
4 colleagues from across the State, which I think speaks
5 to the importance of how legislators feel about this
6 issue, and I would like to give a moment for my
7 colleagues to introduce themselves, and you will get a
8 sense of the breadth of folks that have joined us here
9 this morning.

10 We will be starting to my far right with
11 Representative Ellis.

12 REPRESENTATIVE ELLIS: Good morning, folks.
13 I am Representative Brian Ellis. I represent the 11th
14 District, which is in the western part of the State in
15 Butler County, and like Representative Milne said,
16 this is an issue that cuts through geographical
17 boundaries and everybody experiences it at one time or
18 another.

19 And it is admirable to see a freshman
20 legislator like Duane really come onto the scene and
21 take on this issue head on, and so it is certainly an
22 honor for me to be here today at the hearing. Thank
23 you.

24 REPRESENTATIVE HUTCHINSON: Good morning. I
25 am Representative Scott Hutchinson. I'm also from

1 western Pennsylvania, and I represent the 64th
2 District, which includes all of Venango County and a
3 small portion of Butler County, and I also am the
4 Republican Chairman of the House Environmental
5 Resources and Energy Committee.

6 REPRESENTATIVE HENNESSEY: Good morning. I'm
7 Tim Hennessey, and I represent the northern and
8 western portions of Chester County. We are all here,
9 so you have an idea that in fact we take good care of
10 our roads in Chester County, even the back roads,
11 because I had to travel a lot of back roads to get
12 here today.

13 Welcome. HSCA is an important issue. We
14 have got to find funding for it, and your testimony
15 will help us to point in that direction. Thank you,
16 and good morning.

17 REPRESENTATIVE ROSS: Hi. I'm Representative
18 Chris Ross from central and southern Chester County,
19 just a couple of districts over, a member of, along
20 with Chairman Hutchinson, of the Environmental
21 Resources and Energy Committee and a strong believer
22 that we need to fund HSCA fully and in an amount that
23 is sufficient to meet its purposes and to fund it
24 through a source that is not taking money from other
25 environmental programs.

1 REPRESENTATIVE HARPER: My name is Kate
2 Harper. I represent Montgomery County, and I'm here
3 also to note that I signed on to several bills,
4 including Representative Milne's bill, to fund HSCA
5 and actually work very hard to make sure that we did
6 not raid the Keystone Fund in order to fund HSCA. I
7 was very distressed that the budget was passed without
8 funding for HSCA this year, something that we still
9 need to correct.

10 REPRESENTATIVE RUBLEY: And I'm Carole
11 Rubley, representing the 157th District, just
12 immediately to the east of us in Chester County and a
13 small portion of Montgomery County. I also serve on
14 the Environmental Resources and Energy Committee, and
15 we have been working to find a solution to a permanent
16 funding source, dedicated money for HSCA. We can't
17 use any more short-term approaches, it has to be
18 permanent, because this is an ongoing issue that we
19 face. It can't be corrected in a year, so I commend
20 Duane for his leadership, and I am hopeful that we
21 will soon resolve this very important issue.

22 CHAIRMAN TURZAI: I also just wanted to point
23 out Becky and Linda. If you don't mind just standing
24 up, we would appreciate it. Becky works with
25 Representative Curt Schroder, who is from Chester

1 County, and Linda works with Representative Tom
2 Killion, who is from nearby Delaware County. Thank
3 you very much.

4 REPRESENTATIVE ROSS: And Chester, too.

5 CHAIRMAN TURZAI: Okay, and Chester, too.
6 I'm sorry. Thank you; I apologize. But we are very
7 appreciative of their attendance here, and with that,
8 let me return it over to my chairperson,
9 Representative Milne.

10 REPRESENTATIVE MILNE: Thank you,
11 Representative Turzai.

12 Just for the benefit of all assembled, let me
13 just take a moment to identify the testifiers who have
14 been invited to present here this morning. My goal is
15 really to take stakeholders that would have some
16 different perspectives and some different angles, I
17 hope, on the HSCA issue so we can try to construct the
18 model of where we are with the HSCA program,
19 particularly wherever we think we need to go in terms
20 of trying to think about the benefits so we can take
21 that back to our colleagues in Harrisburg, and also,
22 of course, think about some of the funding issues that
23 in many ways brought us all here together.

24 So I have the State level. We have from
25 Governor Rendell's administration Mr. Tom Fidler, who

1 is the Assistant Secretary of the Department of
2 Environmental Protection. Welcome, Mr. Secretary. We
3 are pleased to have you.

4 From the local government, as opposed to the
5 township, we have Ms. Virginia McMichael, who is a
6 township supervisor right here in East Whiteland, and
7 she isn't often used to sitting on this side of the
8 table. So we are very pleased to have local
9 government represented here.

10 From Montgomery County, we have Ms. Sharon
11 McCormick, who is going to share some comments from
12 the community perspective, I believe, about how HSCA
13 has impacted the community.

14 We have a couple of conservation groups.
15 First we have Ms. Sandy Moser, who represents the
16 Republicans for Environmental Protection. She happens
17 to live in the Downingtown area, but by coincidence,
18 she is the statewide President for the Pennsylvania
19 chapter of the Republicans for Environmental
20 Protection.

21 We also have with us from another statewide
22 conservation group Mr. David Masur, who is director of
23 PennEnvironment.

24 And we also have Mr. Richard Heany, who is
25 part of the company that is taking over the Bishop

1 Tube property. He is going to speak a little bit
2 about the business and economic development angle,
3 about how HSCA helped contribute to that particular
4 concern as well.

5 So with that, I'm delighted to welcome all of
6 our presenters. I certainly look forward to hearing
7 your testimony. I try to think outside the box, and
8 in a lot of hearings that I have been to, it has often
9 been the situation where one person goes, then a
10 number of questions are answered and asked, or asked
11 and answered, and then another person goes and so
12 forth, and certainly many of you have seen that
13 dynamic.

14 I like to think outside the box and try some
15 different things, and I ask that all the stakeholders
16 would present first, as a group, so we can try and get
17 a sense of the whole framework of this issue, the
18 whole model. And then we are going to do something a
19 little bit different. Instead of necessarily doing
20 questions one by one, we are going to try to open this
21 up a little bit and try to create some synergies among
22 the stakeholders, among the legislators, and see if we
23 can't really try to rely, we hope, on some really good
24 information and really good pieces of advice that we
25 can take back to Harrisburg. So it's an experiment,

1 but I certainly think it is a worthwhile concern.

2 Very good. If we could then lead off with
3 Secretary Fidler to maybe give us a sense of the
4 administration's perspective on this issue.

5 DEPUTY SECRETARY FIDLER: Thank you very
6 much, Representative Milne. I appreciate the
7 opportunity to be here with all of the committee
8 members this morning, and I would also like to thank
9 East Whiteland Township for hosting this hearing and
10 having it in this beautiful facility, a very nice
11 building.

12 I've been associated with the HSCA program
13 for quite a long time, which was pointed out. I was
14 appointed about 4 years ago but prior to that spent
15 about 9 years managing all the remediation programs
16 for DEP across the Commonwealth. That included HSCA
17 and land recycling, storage tank cleanups, and so
18 forth.

19 So clearly this issue is very near and dear
20 to my heart, and I appreciate the supportive remarks
21 and comments that many of you have made with respect
22 to the support issue, and I would particularly like to
23 thank all of the Representatives who have dedicated
24 some time and engaged themselves in this pretty
25 critical issue.

1 Just by way of background, I thought I would
2 just speak a bit about the background of the HSCA
3 program, talk a little bit about accomplishments, and
4 that might add further clarity to the value of this
5 issue.

6 HSCA, or the Hazardous Sites Cleanup Act, was
7 passed in 1988. It was designed to streamline the
8 Federal Superfund Program, which many of us realize
9 became precariously bogged down in all sorts of
10 bureaucracy and red tape and getting a cleanup
11 completed. HSCA did in fact accomplish that. There
12 has been about 600 sites remediated or renewable
13 actions taken since 1988 under this program.

14 In 1995, the Land Recycling Program -- Acts
15 2, 3, and 4 -- was enacted under the Ridge
16 administration. Under that program, it set the stage
17 for voluntary cleanups to occur rather than just
18 government-funded cleanups, and that has been a wildly
19 successful program. And as I mentioned, I was deeply
20 involved in managing that initiative.

21 Since that program became available to
22 voluntary remediators, there has been about 2,500
23 sites remediated under that program. Unfortunately,
24 when Act 2 was passed, there was not money set aside
25 to manage that program. HSCA became the sponsor for

1 the Land Recycling Program, and I'm not sure that very
2 many people truly realize that. So the moneys
3 available from the Hazardous Sites Cleanup Fund is
4 really the driver for the Land Recycling Program and
5 the initiatives that that program has created within
6 the Commonwealth.

7 In addition to that, the emergency response
8 efforts that our staff and county personnel respond to
9 -- releases along our roadways, releases from
10 industries and so forth -- it may involve evacuations,
11 quick response. Those activities are funded also by
12 HSCA, and over the last many years that we have been
13 receiving dollars at a State level to oversee our
14 solid waste management activities -- inspecting our
15 landfills, inspecting waste management activities at
16 industrial complexes -- the dollars we get from the
17 Federal EPA are matched by dollars made available
18 through HSCA. We receive about \$4 1/2 million a year
19 from the Federal Government to conduct these
20 activities, \$1 1/2 million set aside each year in our
21 HSCA spending plan to match those Federal dollars.

22 We are at a very critical juncture at this
23 point, as I'm sure at least the folks up front
24 realize, and I do appreciate the time that you have
25 dedicated to this issue. But before I came into the

1 building this morning, I was reading an e-mail from
2 Secretary McGinty to all of our staff within the
3 agency indicating that there are very few session days
4 left, and we have been involved in furlough planning
5 within this program for a number of weeks now. We
6 have already met with AFSME to identify the issues
7 surrounding a furlough like this. There could be
8 about 146 individuals affected by this furlough.

9 HSCA is a very interesting program. It's not
10 like many programs within State Government where
11 positions are fully funded by a specific funding
12 source. Because of the nature of the individuals that
13 work in this program and the nature of cleanup
14 activities at sites across the Commonwealth, there are
15 actually over 400 staff within the agency that code
16 part or all their time to HSCA, but actually only 146
17 that dedicate a significant amount of their time to
18 HSCA.

19 So this program touches the lives of many,
20 many staff within the agency, and that's where we are
21 at this point in time. Basically, we are prepared to
22 furlough staff if in fact we can't seek a resolution
23 of this issue by the end of the year. We do plan to
24 continue to meet our Federal obligations, in other
25 words, providing the staff, in-kind services to match

1 our Federal dollars from the Federal EPA till the end
2 of this fiscal year, and to meet our match
3 requirements for sites currently being remediated
4 under CERCLA, or the Federal Superfund Program.

5 For those of you who may not know,
6 Pennsylvania provides a 10-percent share of costs for
7 all cleanups that occur from the Federal level under
8 the Superfund Program. We also continue to dedicate
9 10 percent of the costs of operating and maintaining
10 ongoing treatment systems in place as a follow on to
11 ensure that the cleanup had occurred and the Federal
12 Superfund site is maintained.

13 After 10 years of owning and operation, the
14 State is mandated by Federal law to undertake 100
15 percent of those costs. So we estimate about a \$3.2
16 million ongoing obligation that could rise to close to
17 \$5 million in 5 years for just ongoing operations and
18 maintenance activities at Federal Superfund sites
19 within the Commonwealth.

20 I guess I'll just stop there and then just be
21 available for questions. I could probably go on with
22 the value of this program and what has been
23 accomplished, but I would like to thank you all for
24 the opportunity here this morning to share some of
25 these thoughts.

1 REPRESENTATIVE MILNE: Thank you, Mr.
2 Secretary.

3 Next we are pleased to have Supervisor
4 McMichael, and as I mentioned, from right here in East
5 Whiteland Township.

6 MS. McMICHAEL: Thank you, Representative
7 Milne.

8 I'm Virginia McMichael. I have been on the
9 board of supervisors here in East Whiteland Township
10 since 2000. I'm in my second term, and I have the
11 distinction of being a Democrat, which I think puts me
12 in a significant minority in this room. But in a
13 spirit of bipartisanship, I was delighted to accept
14 Representative Milne's invitation to come here today
15 to speak to this group about this legislation and its
16 impact on East Whiteland Township and why it is of
17 such importance to us here in East Whiteland.

18 East Whiteland, as some of you who are in our
19 area know, is a suburban township, but it was not
20 always a suburban township. My husband grew up here
21 in the 1960s, and when we moved here in the early
22 nineties, we were moving to the country, because in
23 the 1960s, this was the country. It was rural, but it
24 was also industrial.

25 As you can tell, we have major roads -- Route

1 30, Routes 202 and 401. A lot of main arteries from
2 Chester County come through East Whiteland, so it has
3 always been an attractive location for industry. That
4 was wonderful 40 years ago, but hindsight is showing
5 us that we are left now with the effects of all that
6 industry from many years ago, and as a result, we have
7 not just one or two or three but about five sites here
8 in East Whiteland Township that are in the process of
9 being cleaned up.

10 We have, as Representative Milne mentioned,
11 the Bishop Tube site. Bishop Tube, as I will discuss
12 in just a minute, is obviously of great importance to
13 us. But we also have Foote Mineral site, which is an
14 EPA Superfund site; the ChemClean site; the
15 Worthington site, which is also under development by
16 the O'Neill Corporation; the Knickerbocker land.

17 So this is an area, environmental cleanup is
18 something that is very, very important to us here in
19 East Whiteland. It is very important to our
20 residents. So what we are finding is that the old
21 uses that helped with our tax base over the years, and
22 they are now industrial sites that have been
23 abandoned, have created a lot of problems for us.

24 Bishop Tube, which Representative Milne
25 mentioned, is an abandoned industrial site that is

1 distinguished by groundwater contamination from TCE,
2 and the extent of that, we don't know precisely. I'm
3 not the scientist here, but we do know that wells not
4 too far from the Bishop Tube site at Routes 401 and
5 30, a homeowner's well about one-quarter mile
6 downgradient from the site, tested 6,000 parts per
7 billion for TCE, when the permitted pollution is 5
8 parts per billion. So that gives you some sense of
9 the extent of the contamination. This is a bad site.

10 East Whiteland Township is committed to the
11 cleanup of the Bishop Tube site and the other sites.
12 We have spent a lot of time at township meetings
13 discussing the progress of the cleanup, are
14 negotiating with EPA and DEP oversight of these
15 cleanups, and we are very much on top of what is going
16 on.

17 And it has been a real roller-coaster as far
18 as the funding for the Bishop Tube cleanup, and it is
19 something that has been of great concern to us because
20 we have the O'Neill Corporation that is ready,
21 willing, and able to take over the cleanup. As I'm
22 sure many of you are aware, we have sites all over
23 Pennsylvania that are in need of cleanup, but there is
24 nobody willing to take it on.

25 Here we have an opportunity. We have a

1 private entity that is willing to say, okay, this
2 property, because of its location here at the
3 crossroads of all these major roads, can be developed,
4 can be made profitable for the developer, and also put
5 something back on the tax rolls at the same time we
6 clean it up. From my view, that's a win-win for
7 everybody.

8 To give an example and as evidence of our
9 township's commitment to the cleanup of the Bishop
10 Tube site, back a number of years ago, back in 2002,
11 we as a township along with the county and the school
12 district forgave property taxes, and we didn't do it
13 just because we are nice guys, but we did it because
14 the property was going up for sheriff's sale for
15 unpaid taxes. We had an opportunity to get this over
16 into the hands of somebody who was going to clean up
17 the site, but we had to forgive the property taxes to
18 make that happen, and since 2002, local taxes in the
19 amount of \$353,000 were forgiven in order to prevent
20 this property from going to sheriff's sale and so that
21 it could go over to O'Neill or some other bidder for
22 the property to get it cleaned up. That's real money
23 to us and the school district and the county, and it
24 shows the extent of our commitment to our residents to
25 get this property cleaned up.

1 In my view, the property that we are dealing
2 with at Bishop Tube and these other properties were
3 because back when these were productive industrial
4 sites, we didn't foresee what was going to happen, and
5 perhaps Legislatures back then could have had more
6 stringent requirements for discharge from these areas'
7 plants, but they didn't, and now we are paying the
8 price for that.

9 And we have also seen that the costs of these
10 cleanups go up every year, and the opportunities
11 sometimes to clean them up, like we have now at Bishop
12 Tube, can sometimes disappear. We have that
13 opportunity now. It is not going to get cheaper, and
14 please, please, find a funding source, and let's all
15 work together to make this happen. Thank you.

16 REPRESENTATIVE MILNE: Thank you, Madam
17 Supervisor, and thank you for your continued
18 leadership on this issue in East Whiteland.

19 We are also pleased to be joined from
20 Montgomery County by Ms. Sharon McCormick, who is part
21 of a group called Citizens for a Better Ambler, and
22 she also will relay some personal experience that her
23 community has confronted in terms of this issue.

24 MS. McCORMICK: Thank you, Representative
25 Milne.

1 I would also like to thank Representative
2 Kate Harper for inviting me today to address this
3 panel. I wouldn't be here if she didn't call me and
4 invite me, so I would like to thank her for that.

5 REPRESENTATIVE MILNE: That is how these
6 things happen.

7 MS. McCORMICK: My name is Sharon McCormick.
8 I have been asked to address this committee today to
9 express the citizen's opinion of the immediate need
10 and importance of dedicated funding from the State
11 budget to support the HSCA Fund.

12 HSCA was established by past legislators as a
13 State Superfund to fund the cleanup of toxic waste
14 left behind by industries of the past. Most of the
15 sites supported by HSCA in the past were abandoned,
16 with the polluter long gone along with the industrial
17 finances to clean up the leftover pollution. Having
18 the HSCA money in place supplied communities with the
19 financial source to tap into to assure cleanup of the
20 most egregious of these sites and to ensure a quality
21 of life which all of us desire and deserve.

22 How the lack of HSCA funding directly affects
23 me is quite an interesting story and one that I would
24 briefly like to share with this committee.

25 I live in the borough of Ambler. It's a

1 small, quaint, suburban town located 5 miles outside
2 the city limits of Philadelphia. Ambler is home to
3 the largest asbestos piles in the United States.

4 Keasbey and Mattison began manufacturing
5 asbestos and related products at the turn of the
6 century. This company became the largest asbestos
7 manufacturer in the country by World War II. Nicolet
8 Industries bought the company in 1960 and continued
9 the manufacturing until the EPA shut them down in
10 1980.

11 The waste left behind by both Keasbey and
12 Mattison and Nicolet Industries measures over 2
13 million cubic yards and spans over 65 acres. Because
14 these industries created and supported the town, the
15 small, 1-mile-square town was built up around the
16 factory. Today, a good portion of the residential
17 area is situated within close proximity to the factory
18 and the large waste piles. Some of us live within 30
19 feet of the fence. I live three blocks away from it.

20 In 1972, the EPA descended on this little
21 town due to complaints that the large, uncovered piles
22 were blowing all over the place, for at this time,
23 asbestos was deemed a carcinogen by the U.S. Surgeon
24 General. The EPA took an emergency action after
25 finding significant dust on playground equipment and

1 ordered the manufacturing and dumping stopped and the
2 piles to be covered and vegetated immediately. Of
3 course, lawsuits from all sides ensued, tying up the
4 process. Overall, a full investigation and
5 remediation occurred under the Federal Superfund
6 Program, and the EPA signed off this site in 1993.

7 In December 2004, a small local developer
8 bought what seemed to be an abandoned dump site, a
9 6-acre lot located at the corner of the borough, and
10 petitioned to build a 17-story high-rise condominium.
11 This got the residents here all upset due to the
12 enormity of the building itself, and we organized into
13 this group called Citizens for a Better Ambler and
14 worked very hard in gathering petitions and
15 information against this particular development. In
16 our zeal, we uncovered startling evidence that this
17 site was the corner of a 38-acre asbestos dump site
18 that the EPA never addressed in their investigation 20
19 years prior.

20 Since that time, I along with several other
21 citizens have amassed huge files of Pennsylvania DEP
22 and EPA documentation of this unremediated 38 acres of
23 asbestos waste. According to these documents, the EPA
24 found these remaining piles to be just as hazardous as
25 the 28 acres of asbestos waste directly across the

1 street, which received Federal Superfund status in the
2 1980s. This remaining unremediated asbestos acreage
3 makes up the bank of a major water source for the city
4 of Philadelphia called the Wissahickon Creek and is
5 flanked on the other side by a major railway to the
6 city, the SEPTA R5, not even 100 feet from this site.
7 I'm including the pictures, which I think you all
8 have, to see for yourself, and according to a recent
9 report of 2001, this site contains only 5-percent
10 soil.

11 The EPA's very costly and extremely thorough
12 test results conducted in 1988 explains that the
13 markers for asbestos fibers in the air, water, and
14 soil yielded the highest results near this
15 unremediated site and not the Superfund site. The air
16 test alone yielded asbestos fibers 50 times higher
17 than the OSHA standard. The only action this
18 remaining pile of asbestos received was the
19 installation of a cyclone fence in the summer of 1984
20 and posted signs on this fence of this hazard. The
21 fence, however, does not encircle the entire waste
22 dump; it only encases it on two sides, making for easy
23 public access from the creek side and the adjoining
24 hiking trail.

25 The Pennsylvania DEP has been monitoring this

1 site yearly since 1984. They have written yearly
2 inspection reports, citing inadequate covering of the
3 pile. Ms. Francine Carlini writes in her December 29,
4 1992, report, "Issue a NOV...contact HSCA and EPA
5 about site remediation." There are 47 Notices of
6 Violation to date, yet what disturbs me the most is
7 that after all this documentation supplying the proof
8 that the asbestos fibers have been blowing around and
9 may be in the creek from time to time, recreational
10 use of the Wissahickon Creek at this location is still
11 allowed. There are also residences and businesses
12 within 30 feet of the fence who have not been informed
13 of the potential health risk, one of which is a
14 McDonald's with a play land.

15 After reading these documents, I personally
16 called the EPA every week for 6 months to get the
17 agency to come back out here to look at this site
18 again. Finally, with great painstaking efforts by a
19 handful of citizens, the EPA and the Pennsylvania DEP
20 have been investigating this site for the last year.
21 Unfortunately, I'm not hopeful that the USEPA will
22 clean this site up under the Federal Superfund
23 Program, for that program as well as HSCA is short
24 funds. It seems the Federal Government is
25 experiencing the same problem as our great State -- a

1 significant lack of dedicated funding for
2 environmental cleanup. They are actually going
3 through the exact same thing that this is going
4 through. This leaves Ambler in quite a predicament.
5 If there is no State or Federal Superfund money, which
6 almost every politician has been telling me, then
7 where are we to turn for cleanup money? Leaving the
8 waste the way it sits now is neither a safe option nor
9 a healthy one and it must be cleaned up, but the
10 polluter is long gone, so we can't get money there,
11 along with his money.

12 There has been some discussion of a
13 Pennsylvania DEP Act 2 cleanup with Growing Greener
14 funds for the site, but this allows the grounds to be
15 developed, and such an action on asbestos waste of
16 this magnitude has never been done in the United
17 States and most likely will require some very costly
18 research. It also runs the risk of some very costly
19 litigations since there are no documented examples of
20 anything remotely similar, developing on asbestos.
21 Allowing development under the Act 2 program would set
22 a new precedent for asbestos waste dumps, and under
23 this type of funding, we would have to rely on
24 developers to come up with solutions to remediate this
25 ground, yet accept that health and safety issues to

1 the community could not be proven if such actions were
2 approved. This type of remedial process under the Act
3 2 would become a gigantic experiment.

4 Again, this leaves Ambler with quite a
5 problem. Turning to the HSCA program here would make
6 the best sense and most likely would be the fastest
7 way to get this egregious asbestos waste remediated
8 without sacrificing health and safety issues.
9 However, we are told the well is dry.

10 Dedicated funding to the HSCA program for the
11 State of Pennsylvania is greatly needed in situations
12 that my little community is experiencing so that it
13 does not arise again. It would be a terrific comfort
14 to all of us to know that our great State has a money
15 source that can take care of such an egregious waste
16 dump as is in Ambler, and I am before you today to ask
17 that you approve such dedicated funding from the
18 State's budget in order to assure the citizens of this
19 State that the State itself is equipped financially to
20 handle the most egregious toxic waste sites left to us
21 by our past.

22 Industry has helped to form this great State,
23 ignorant 100 years ago to its lethal legacy. I'm
24 certain that there are more toxic waste dumps out
25 there yet to be discovered, and we have an obligation

1 to ourselves and to future generations to empower our
2 State Government into ways and means to make our
3 little towns and big cities safe and happy for all.
4 You have this power and authority to do just that, and
5 dedicated long-term funding to the HSCA program will
6 reassure communities throughout this State that money
7 is available if a serious problem like that in Ambler
8 is discovered, thus ensuring those citizens that they
9 will not have to fight in 3 years to get the toxins
10 cleaned up.

11 Let's learn from our mistakes. Dedicated
12 funding is necessary, dedicated funding is the right
13 thing, and dedicated funding of the HSCA program is up
14 to you.

15 REPRESENTATIVE MILNE: Thank you,
16 Ms. McCormick. You have my commitment that you are
17 going to get your quality of life to the level that
18 you want it to be.

19 MS. McCORMICK: Well, thank you so much.

20 REPRESENTATIVE MILNE: Following in the
21 footsteps of great Republican conservationists such as
22 Theodore Roosevelt and, believe it or not, Richard
23 Nixon for developing and starting the EPA, we are
24 joined by Ms. Sandy Moser, who is President of the
25 Pennsylvania chapter for Republicans for Environmental

1 Protection, and she is here to let us know that
2 Republicans and environmental protection is not an
3 oxymoron.

4 MS. MOSER: Good morning.

5 Thank you very much for asking me to
6 participate in this this morning, Duane. I'm glad to
7 see that you looked at our Web site and came through
8 with President Nixon and so forth.

9 I am the President of the Pennsylvania
10 chapter of Republicans for Environmental Protection.
11 We have been established here in Pennsylvania for 3
12 years now, and we were very involved. We have been
13 involved with the HSCA program as well as the Keystone
14 Program over the last year.

15 I am speaking up today to respectfully insist
16 that the State maintain the commitments to the
17 citizens whom it serves. We strongly support
18 dedicated, stable funding for the Hazardous Sites
19 Cleanup Act.

20 As Mr. Fidler explained earlier, he gave you
21 details on what the Hazardous Sites Cleanup Act passed
22 in 1988 covers. Very briefly, it's charged with
23 responding to accidental spills and other releases of
24 toxic chemicals. It authorizes DEP to investigate
25 potential instances of toxic contamination. It

1 provides some funding for brownfield redevelopment,
2 and it provides matching funds for the Federal
3 Superfund Program.

4 HSCA is an important public safety program.
5 It protects people -- you, me, our children, and our
6 grandchildren -- from exposure to toxic chemicals and
7 the responsibility to clean up hazards to public
8 health, and most importantly, it protects our water
9 sources, our water supplies. Remediation of hazardous
10 waste sites and restoring them to productive use
11 protects families, it supports local economies, and it
12 helps maintain property values. Great things can
13 happen in Pennsylvania when the leaders of both
14 parties get behind an idea and push it through to
15 completion.

16 This is certainly not a partisan issue. HSCA
17 provides essential services that are necessary for
18 protecting public health and the Pennsylvania economy
19 and building strong communities. There are various
20 HSCA proposals under consideration, and they
21 illustrate that there is bipartisan support on these
22 issues. There is Representative Milne's and Kate
23 Harper's bill, No. 2039, and Representative Steil's
24 bill, 1974.

25 Republicans for Environmental Protection are

1 true conservatives and believe that we must take
2 responsibility for cleaning up after ourselves. We
3 must avoid doing harm by failing to remediate these
4 waste sites. Nevertheless, we do not support raiding
5 the Keystone Fund to support HSCA. The Keystone Fund
6 is a partnership between the State and the citizens it
7 serves. Diverting Keystone Fund money for other
8 purposes, as worthwhile as they may be, breaks faith
9 with the voters. Such actions exacerbate voter
10 mistrust of government and politicians.

11 By the same token, we would not support
12 diverting HSCA money to the Keystone Fund. Both the
13 Keystone Fund and HSCA should be supported with
14 dedicated and sustainable funding sources. This is a
15 matter of ensuring that elected officials enhance
16 Pennsylvania's economy and quality of life, that they
17 are accountable for carrying out their commitments to
18 the voters, and that they are responsible stewards of
19 the public's money.

20 Both Republicans and Democrats can find
21 common ground on ensuring long-term support for both
22 of these worthwhile programs. With bipartisan
23 cooperation on environmental issues, Pennsylvania will
24 be the better for it. More importantly, future
25 Pennsylvanians will thank our generation for being a

1 responsible voice for theirs.

2 Again, thank you very much for inviting me to
3 participate in this hearing.

4 REPRESENTATIVE MILNE: Thank you, Ms. Moser.
5 Thank you for taking some time to join us this
6 morning.

7 Next we have a gentleman I have had the
8 pleasure of getting to know in Harrisburg since
9 getting elected, and that is Mr. David Masur, who is
10 the Director of PennEnvironment, and I think he will
11 share with us, among other things, that this is an
12 issue that, as Sandy points out, is bipartisan and you
13 will probably assert nonpartisan.

14 MR. MASUR: Absolutely.

15 Good morning, and thank you for inviting me
16 here today. My name is David Masur. I am the
17 Director for PennEnvironment, and PennEnvironment is a
18 statewide citizen-based environmental advocacy group.

19 I would like to start out by thanking
20 Representative Milne and the members of the House
21 Republican Policy Committee for inviting me to speak
22 about HSCA today. I will keep my remarks fairly
23 brief. I think all the previous speakers have done a
24 very good job discussing the need for a strong HSCA
25 program.

1 But to reiterate quickly, our Commonwealth's
2 history of industry, unfortunately, has left a legacy
3 of pollution, as we have heard. The sites that are
4 left across the Commonwealth have different pollutants
5 that we know cause cancer, birth defects, and other
6 health problems such as the Ambler asbestos site, and
7 over the years, HSCA has really been the cornerstone
8 program for toxic cleanup in Pennsylvania.

9 Tom went over the different aspects of the
10 HSCA program, from helping pay the State portion of
11 Superfund, cleaning up sites, helping to run the
12 brownfields program, hazmat response. I would like to
13 add one point to Tom's testimony, which is, not only
14 does it fund the State's portion of Superfund; it's
15 important to note that the Commonwealth has the second
16 highest number of Superfund sites in the nation, and
17 these are the worst of the worst toxic dump sites, and
18 Pennsylvania is only behind New Jersey for the number
19 of Superfund sites found within our borders.

20 I would like to talk more about the policy
21 and recommendations that PennEnvironment has for
22 addressing the current crisis facing HSCA.
23 PennEnvironment supports really a two-tiered solution
24 to the problem. The first is the most urgent, which
25 is making sure that HSCA does not run out of money

1 when the year ends and making sure that we can
2 essentially just do the triage necessary to keep the
3 program running and not furlough staff. The last
4 thing we would want to do is have the cleanup of sites
5 slow down or come to a complete halt because we didn't
6 take the necessary steps to protect the HSCA program.

7 The second step, I think, is the more
8 complicated of the two, and that's coming up with a
9 dedicated and long-term and sustainable funding source
10 for the Hazardous Sites Cleanup Fund. I think we can
11 all agree on the importance of HSCA, but
12 unfortunately, not everyone can agree on, how do you
13 pay for this program and should it even have a
14 long-term and dedicated funding source?

15 PennEnvironment thinks the program should
16 have a long-term and dedicated funding source, and
17 furthermore, we believe that the funding system should
18 be based on the traditional, what is referred to as
19 the polluter-pays program. This is a concept that
20 originally funded the Federal Superfund Program and
21 essentially requires the industrial sectors that
22 engage in the business of producing and transporting
23 and distributing toxic chemicals and hazardous
24 materials through our communities and in the
25 Commonwealth to fund the legacy or potential legacy of

1 accidents and dump sites that their industrial sectors
2 leave in the Commonwealth. Polluters, not the
3 taxpayers of Pennsylvania, should foot the bill for
4 the cleanup under this program, and it should be an
5 accepted expense of doing this type of business in
6 Pennsylvania.

7 Polling has shown that the voters in
8 Pennsylvania and Pennsylvania broadly and in a
9 bipartisan way support the polluter-pays mechanism for
10 HSCA and toxic cleanup. An independent poll done
11 during 2005, during the Growing Greener II discussion,
12 showed what nearly 80 percent of Pennsylvanians
13 supported policies and increasing taxes for businesses
14 that pollute in the Commonwealth and having these
15 industrial sectors pay for the cleanup and legacy of
16 toxic pollution that unfortunately plagued so many
17 corners of the Commonwealth.

18 So in closing, again I would like to thank
19 the Representative for inviting me here today and
20 thank the Representative for his leadership in
21 introducing his legislation and all the legislators
22 here, not only for fighting for HSCA but making sure
23 that we are protecting programs like the Keystone Fund
24 and coming up with a dedicated funding source for the
25 Hazardous Sites Cleanup Program. Thank you.

1 REPRESENTATIVE MILNE: Thank you, and thank
2 you for making the drive down to Harrisburg this
3 morning. It certainly shows your continuing and
4 dedicated interest in this area. We do appreciate
5 that.

6 MR. MASUR: Thank you.

7 REPRESENTATIVE MILNE: In my opening
8 comments, I did reference that there actually are some
9 economic development benefits that do derive from the
10 HSCA program. As somebody who considers himself
11 pro-business and pro-environment, I am delighted to
12 have Richard Heany here, who can perhaps shed some
13 light on this particular angle on the HSCA program and
14 how it does help private businesses help communities
15 redevelop some of these sites.

16 MR. HEANY: Hi. I'm Richard Heany. I'm
17 Executive Vice President of the O'Neill Properties,
18 and thank you for inviting me today to speak a little
19 bit here.

20 I just want to reiterate a couple of
21 comments, Representative Milne, that you made earlier
22 today. We think HSCA funding is right as a matter of
23 principle. It is good public policy, and it
24 encourages smart development. Those are three things
25 that nobody can argue, in our opinion. And when you

1 talk about, where do you get the money from to fund
2 this? I say, how do you not get the money, because
3 there's no negative; there's no downside to this.

4 To give you a background on our company, we
5 have invested over \$1 billion of private dollars into
6 brownfields developments in Bucks County and Chester
7 County and in Montgomery County, and we were able to
8 do that through the Act 2 program. We were developing
9 brownfield sites before there was Act 2, and the
10 ability to get dollars from lenders, from equity
11 partners, to develop these sites was very, very
12 difficult, because the safeguards and indemnities
13 weren't in place at that time for people to invest,
14 specifically banks.

15 So when you start to talk about HSCA funding
16 being stopped, a lot of people don't realize the
17 negative impact it has on Act 2, and when you start
18 hearing about people either being terminated,
19 furloughed, who process and have companies like ours
20 that gives them the ability to develop these
21 brownfield sites, and brownfield sites are almost a
22 good way to describing what these sites really are.
23 They are blighted, they are impacting, and they damage
24 the community. So brownfields kind of makes it almost
25 sound acceptable to what is really happening.

1 Here in East Whiteland, two of the projects
2 that we are working on are these blighted-type
3 facilities. One is the Bishop Tube facility, and the
4 other is the Worthington steel plant. First I'll
5 touch base on what our experience through these
6 programs has been on the Bishop Tube facility.

7 To make it very simple so people can
8 understand, that facility had been going through
9 decades of environmental impact -- people mulling
10 around not knowing what to do with it; community
11 members, neighbors, wondering what was going on over
12 there, how does this impact me and am I in danger? We
13 entered into an agreement, the first of its kind with
14 the PaDEP, to in a joint venture remediate that site.
15 To put it in simple terms, O'Neill Properties is, with
16 DEP, designing, implementing, and operating the soil
17 remediation program at that site as we speak. It's
18 the first step in getting this site back on the radar.

19 After we go through an initial test-up phase,
20 PaDEP will be responsible for the operation of that
21 remediation program. If HSCA is not funded, they
22 can't do that, and it puts the redevelopment of that
23 site, the remediation of that site, in question,
24 things that I think are unacceptable.

25 With respect to our site here at the

1 Worthington steel plant, by taking it through the Act
2 2 process and working with East Whiteland Township, we
3 were able to take the blighted, environmentally
4 contaminated site, and with community involvement and
5 township involvement, create a development that the
6 community needs. It is something the community needs
7 and takes the blight away, and the impact of the
8 environmental issues are handled by private dollars.
9 So it's just not that HSCA funding has direct
10 investment into environmentally impaired sites, but it
11 also, through Act 2, allows developers and
12 institutions to put private dollars to take these
13 blighted sites off the rolls and put them on the tax
14 rolls.

15 And as part of our development that we are
16 doing at Worthington, we are also reopening a stream
17 that had been closed for over 40 years, and when I say
18 closed, it was once a running stream, the trout went
19 through, and the former operators of the steel plant
20 piped it, macadamed over it, and made it into a---
21 It's not a stream anymore; it is just a conduit where
22 water runs through. We are investing \$7 million in
23 development to reopen that so that trout and other
24 types of wildlife can meander through it like it did
25 50 years ago.

1 So in closing, not only is it good public
2 policy, but it allows developers to also--- The word
3 "developer" in environmental protection is also not an
4 oxymoron, and that these are things that you can
5 really point to. You can go to Bishop Tube and point
6 that it is working. You can go to Worthington steel
7 and point that this is working.

8 In Bucks County, we had the Horizon Corporate
9 Center, which was the old Eastern State Hospital
10 facility. It's working in Bucks County. In
11 Montgomery County, we have our Conshohocken sites and
12 our sites in Gulf Mills that were EPA Superfund sites.
13 But these programs, these funding dollars, are
14 working, and they have to stay in place.

15 Thank you.

16 REPRESENTATIVE MILNE: Thank you, Mr. Heany.
17 We really appreciate you being here this morning.
18 Your testimony has triggered a number of questions
19 from my colleagues. I can tell by all the kicks that
20 I'm getting under the table.

21 First, I would like to call on a gentleman
22 who has been a real support to me since I have come to
23 Harrisburg, and that is Representative Chris Ross.

24 REPRESENTATIVE ROSS: Thank you very much,
25 and I have enjoyed working with you, too, Duane, and I

1 think we are making some real progress on a lot of
2 issues here.

3 I agree with nearly everything that all the
4 presenters have put forward here today. I really
5 sense the urgency, and I think the members of the
6 panel do as well, that it is long past time to settle
7 this. I'm sorry it was not settled last June; I'm
8 sorry it wasn't settled previous to that. Some of us
9 have been pushing on this for a long time. Sometimes
10 I think the time for debate, though, is over and it is
11 time to really pass something, and I'm hoping we are
12 not going to merely pass simply the triage piece of
13 this. I'm hoping we are actually going to deal with
14 the total package. I really see no reason to limit it
15 to what is needed to get between us and the end of the
16 year, the fiscal year. In fact, doing that is just
17 going to mean we are going to have another debate in
18 April, May, and June, which we are not going to learn
19 anything new at that point that we don't know today.

20 The one place where I did have some reaction,
21 I have to say, is the discussion that Mr. Masur had
22 about the funding source, and I want to emphasize the
23 importance of any industry that has done pollution to
24 be responsible and any business that has failed in its
25 responsibility to the environment and the public that

1 surround that to be responsible for the cleanup to the
2 full extent that they have any resources available to
3 them. That is priority number one, and we should, and
4 I think do, attempt to recover off of businesses that
5 have failed in protecting the neighborhood and the
6 environment.

7 The question that I really have is that we
8 have legacy issues here and we have new environmental
9 protection concerns about the potential pollutants in
10 the future. If we, as I think we should, require new
11 businesses that come in to be careful, thorough, and
12 meet industrial and environmental standards, perhaps
13 even to the point of bonding them so that if something
14 does go really wrong, that we have moneys to recover
15 off of them for the pollution that they make, why
16 should I, if I am a new chemical company that is
17 meeting all the environmental standards, that is
18 perhaps bonded, that is taking care of all the costs
19 associated with being responsible citizens, that is
20 producing, I don't know what chemical, be suddenly
21 singled out to pay for legacy -- for example, asbestos
22 which is not being made any longer -- why is that
23 cleanup, which is a legacy cleanup that affects all of
24 us, not being more broadly paid for out of taxes
25 generally? Why should we single out a few businesses

1 and force them to carry the responsibility which I
2 would so view society's part?

3 MR. MASUR: Thank you, Representative.

4 I have a couple of parts to the answer, if
5 that is all right. I think first and foremost, like I
6 said, I think when you are dealing with chemicals or
7 products that have the potential to leave a legacy, if
8 it was 50 years ago or 50 years from now on the
9 Commonwealth, you should be responsible and we should
10 be creating a system to clean it up. Either private
11 entities, like companies, or the taxpayers will pay
12 for the cleanup.

13 As a taxpayer in Pennsylvania, there are
14 other legacy issues, I am sure, that my taxes go to
15 fund every day. I don't think it is outrageous or
16 irresponsible to ask companies to pay a small portion.
17 As you know, the discussion of HSCA on very minimal
18 amounts of payment from most companies in the
19 Commonwealth, if a system like this were created to
20 fund for the cleanup and prepare for future accidents
21 and cleanups, I think it's common sense. I think if
22 we don't do that, it's one more item that you are
23 going to burden the taxpayers and constituents with.

24 So if we are going to come up with the money
25 one place or the other, I think it helps incentivize

1 doing business better in the Commonwealth and helps
2 cover the costs that we have already seen in place or
3 will have in the future.

4 REPRESENTATIVE ROSS: But you were singling
5 out chemical companies that have some form of toxic in
6 their production screen to be the payers of this as
7 opposed to other businesses?

8 MR. MASUR: Well, let me clarify, because I
9 think we can do it a number of different ways. I had
10 mentioned companies that deal with the hazardous
11 materials that have left this legacy. Obviously, we
12 have a bill in the State House right now,
13 Representative Dan Surra's bill, which increases the
14 tipping fee. There has been concern over that
15 proposal because that is unfairly going after that
16 industry to pay the costs. There's probably some
17 happy medium, because I don't believe, if you look at
18 the list of sites, and hopefully Tom could verify
19 this, the sites that we have aren't just chemical
20 sites, they are not just manufacturing sites, they are
21 not cleaners, they are not--- You know, they run the
22 gamut, and so I think you could look at the
23 traditional, responsible economic sectors that over
24 the past 50 or 100 years have created this legacy and
25 make it part of the cost instead of burdening the

1 taxpayers.

2 So hypothetically, you could end up having
3 the tipping fee increase to have the trash haulers pay
4 all of it; they could pay their percentage. There are
5 probably more than a dozen sites on the list right now
6 of 150 active sites that are landfills. We heard some
7 mentioned here today. You could share the costs for
8 those economic sectors.

9 So I think there are a lot of ways to do it,
10 but my bottom line point is, there are associated
11 costs. If you are a citizen in the Commonwealth or a
12 business, we pay those every day. Some we get to take
13 advantage of, some we don't, but this, in my mind,
14 seems like a commonsense way to help avoid the problem
15 and pay for the cleanup in future or past legacy
16 problems that exist.

17 REPRESENTATIVE ROSS: Well, I'll let this go
18 with a brief comment.

19 One of the difficulties we have had is
20 getting a funding source approved, and the best way
21 for us to do that is to make it broad and simple and
22 uncomplicated. The fact that we don't have too many
23 asbestos manufacturers left in the State is a good
24 example of why this is going to get a little bit
25 complicated in implementing your version. The

1 disputes between the different companies, whether or
2 not they truly are a potential similar company, I
3 think would be complicated, and by and large I think
4 we should probably not get bogged down in a time of
5 complexity as you are suggesting and simply go with a
6 more simple tax source that is readily available with
7 a broad base. Thank you.

8 REPRESENTATIVE MILNE: Would anybody else
9 like to comment for this questioner?

10 We can keep this open-ended, so if people
11 feel the need to jump in, please do.

12 DEPUTY SECRETARY FIDLER: I would just like
13 to mention that the true benefit of the
14 administration's original proposal of increasing the
15 tipping fee is really to obtain and establish a
16 dedicated funding source. The capital stock and
17 franchise tax for some time provided that. When that
18 funding source was phased out and diverted into the
19 General Fund, that's when problems began developing
20 with the HSCA program and the other associated
21 programs that rely on that source of funding.

22 These remedial sites are very complicated,
23 and they take multiple years to plan, study, and
24 execute. Relying on the General Fund, and it goes
25 through the budget review process every year and could

1 potentially change pretty readily, could in fact be a
2 problem, just by the very nature of how the program is
3 managed and basically how it is executed. Having a
4 dedicated source that can be relied upon, can in fact
5 be lapsed from one year to the next to ensure that
6 projects that get started can be finished, I think
7 that is apparent.

8 REPRESENTATIVE MILNE: Ms. McCormick.

9 MS. MCCORMICK: I just wanted to point out
10 that half of my frustration with my case is that
11 asbestos is no longer manufactured in this country,
12 and if we do this as a polluter base, what business is
13 going to want to take on the responsibility for an
14 80-year-old dump that has been long--- I mean, that
15 money is long gone. Trust me, if there was a money
16 source here, EPA would be all over this. But because
17 there is no money source here, this one is an
18 interesting case in just that point, because there is
19 no money source to clean this up independently, so
20 this is why we have to rely on the State dedicated
21 funding program.

22 I, for one, don't mind my tax dollars going
23 to pollution in my community to clean up, but Ambler
24 can't clean this up, it's a little, tiny town, so if
25 we can rely on a State dedicated citizen- or

1 individual-based tax to go to this, I don't think
2 anybody would mind since almost every neighborhood in
3 this State has at least some kind of pollution, at
4 least something. It's very rare that they don't,
5 because it is such an industry-based State to begin
6 with.

7 REPRESENTATIVE MILNE: Next we have--- I
8 wasn't sure you were going to speak, Virginia.

9 MS. McMICHAEL: Well, I was debating whether
10 I was going to add to this.

11 I guess the one thing that I would say is if
12 you roll the clock back to the time when East
13 Whiteland had these active industrial sites -- Foote
14 Mineral and the Bishop Tube site and the Worthington
15 steel site -- they were doing their thing
16 industrially. If we can have the benefit we do now of
17 knowing the repercussions of those industries, what
18 could the Legislature have done then to fund the
19 cleanup costs that would come down the road? I mean,
20 if you were in the Legislature 40 years ago, would it
21 be a bonding? Would it be a tax then for these sort
22 of unknown consequences of that industry? I mean,
23 where we are now is, we may be getting new industries
24 coming on that we don't know what kinds of pollutions
25 are going to result from them. I mean, we have all

1 kinds of biopharma going on in East Whiteland Township
2 right now. There are lots of things happening, and we
3 don't always know what the consequences of that are
4 going to be.

5 So having some sort of fee, tax, on those
6 industries that either historically have polluted or
7 we believe have a very strong likelihood of causing
8 environmental hazards in the future, I think that
9 there is a real logic to imposing some costs now so
10 that we can preserve it and that the burden does not
11 fall on the general public to clean those things up.

12 REPRESENTATIVE MILNE: Our next question
13 comes from a Representative who has earned a
14 reputation as being a statewide leader on conservation
15 matters. That is Kate Harper from Montgomery County.

16 REPRESENTATIVE HARPER: Thanks.

17 I actually have a comment that I think there
18 is a synergy here among the groups that we have gotten
19 together. I want to point out a couple of things.

20 First of all, a fair amount of gratitude for
21 developers like O'Neill Properties, which actively
22 combats suburban sprawl by making our brownfields
23 developable again. Thank you.

24 I think one of the keys to control suburban
25 sprawl in Pennsylvania -- I know we are all familiar

1 with it here in Chester County anyway -- is we don't
2 need to create new neo-traditional villages at the
3 level of farm fields in Chester County. What we need
4 to do is make sure that Ambler is livable and
5 Conshohocken is livable and the places that we have
6 used before can be remediated. So the good news is
7 that by combining HSCA funding and Act 2 brownfield
8 certification, that allows a level of comfort for
9 lenders and developers that they can clean up a site
10 on a standard that works for their particular
11 development and not be sued for that. You know, we
12 can work these things together and reuse our older
13 industrial sites in a new way and avoid messing up our
14 agricultural lands or our forests and things like
15 that. So I think this panel actually sees that in its
16 variation.

17 Now, as Virginia pointed out, and Sharon,
18 there are some sites that are not suitable for
19 redevelopment unless they get a little help at the
20 front end on cleanup, and I think that's why we need
21 to find money for HSCA. As Tom pointed out, these
22 HSCA projects take a long time, and as Sharon had
23 said, if they were all on time and if we let the
24 funding run out every year, it's a problem.

25 I have actually cosponsored any number of

1 bills that would fund HSCA and a likely solution that
2 gives us some kind of dedicated funding for 5 years
3 and out, because I think that we need to get these
4 things to work together. I think there is a
5 romanticism about the idea that the polluter should
6 pay for the cleanup, but as Virginia and Sharon both
7 pointed out, they are gone.

8 The GAO did a study of the Federal Superfund
9 and discovered that the polluters or potentially
10 responsible parties, the PRPs, spend more money
11 fighting over who was responsible for what percentage
12 of the mess than they did on cleaning up the mess. It
13 was just not effective--- You know, it's a good idea
14 to make a polluter pay -- we can fine him if he has
15 got the money -- but it is not the best and most
16 effective way to get these sites cleaned up quickly.

17 I'm open to any ideas, but I think that we
18 need a dedicated funding source for HSCA other than
19 taking it from the Keystone Fund or some other really
20 good fund, and I think we need it now. And I think we
21 need to do it because it's really good for principle,
22 and also, as Richard knows well from his business,
23 it's good for the economy, it's good for business. So
24 I don't know if any of you have thoughts on that. You
25 know, that's where I'm coming down, unless we get a

1 fund somewhere to get it done.

2 DEPUTY SECRETARY FIDLER: Just real quickly,
3 I would echo what Representative Harper had indicated.
4 In the HSCA program, we have been involved in a number
5 of mixed funding-type agreements, just as was
6 negotiated with O'Neill Properties at the Bishop Tube
7 site where a private entity basically assumed some of
8 the costs and then the government funds, you know,
9 under HSCA, assumed another part of the cost. There
10 has also been any number of projects where in fact
11 HSCA dollars were done to investigate a property to
12 kind of fund the mysteries associated with that
13 property and then kind of open the door for a private
14 investor to basically do the rest of the cleanup,
15 knowing the potential costs, and redevelop the
16 property.

17 The Act 2 program, basically when it was
18 enacted, required \$17 million in transfers from HSCA
19 to the Department of Commerce at the time. Actually,
20 I'm not sure at this point right now, but that
21 transfer continued for a number of years. I typically
22 transferred up to \$10 million a year to DCED to
23 basically do the investigations to simulate
24 redevelopment to the point where about \$67 million was
25 transferred to DCED over a number of years. That \$67

1 million leverage probably puts like \$400 million in
2 private funds, and, you know, we just typically did
3 that as part of the HSCA program, transfer funds, and
4 as you rightly pointed out, that is the way to
5 simulate private investment in properties that are
6 part-owned by communities.

7 By way of annual sites, typically we do title
8 chases on the sites before we invest dollars, and
9 normally we recover anywhere from \$2 to \$2 1/2 million
10 a year for site work that is done under HSCA from
11 private entities that have the financial resources to
12 dedicate to the overall projects.

13 MS. McMICHAEL: This issue is an important
14 one. What we see here in East Whiteland is we have
15 all these sites, and we currently have two developers
16 that are willing to take these things on, because face
17 it, it's a lot of hassle to get an abandoned
18 industrial site remediated, worked through the EPA and
19 the DEP, and to get these things going. It seems to
20 take longer than they anticipate, and there are not a
21 lot of people out there doing it.

22 So what we at the local level would like to
23 see is to have the right incentives in place so that
24 maybe more developers get in the act of developing
25 sites so we can leverage the tax dollars to really get

1 these properties fixed up and back on the tax rolls.
2 It can work in East Whiteland, because basically they
3 have high property values; they are going to get a
4 good return on their investment. They are placed all
5 over the Commonwealth where there are not the same
6 incentives, you know, that they don't have the
7 thriving economy that we have here in Chester County
8 that makes it worthwhile and they can give the
9 developer the incentive to take that risk. So if you
10 can come up with a way that--- I think the dedicated
11 funding is one piece of it, because if I'm a developer
12 -- I'm not -- I would want to know that that piece I'm
13 counting on from the Commonwealth is going to be
14 there, not just this year but 4 years down the road
15 when I'm still working on it. That's a piece of it,
16 but if there are other kinds of incentives, you know,
17 tax abatement programs, whatever it is to get these
18 things turned around and turned around quickly and get
19 them back on the property tax rolls, that will benefit
20 local communities, it will put money into our school
21 districts, it will help our counties, it will employ
22 people. It really will work, but we need to have that
23 seed money from HSCA and other things to get more
24 people seeing that this is a really viable business
25 offer that they can do and it will work. Thank you.

1 MR. HEANY: Being the developer here, I'd
2 like to comment on a couple of comments Representative
3 Harper made.

4 What is important, you know, dedicated
5 funding sources, obviously, is the theme of what we
6 need here, but as a developer, why that's important,
7 going through the Act 2 process allows us to make a
8 business decision on whether we should invest in this
9 site and have development on this site, and what I
10 mean by that, it allows us, working with DEP, to find
11 out what the problem is, to come up with what the
12 solution is, cost out the solution, and if it makes
13 sense -- and 9 times out of 10 it has made sense for
14 our company -- address the issue, and have smart
15 development.

16 With respect to lawyers getting involved and
17 fighting on behalf of their clients when it comes to
18 -- no offense to the lawyers up there -- on behalf of
19 addressing environmentally impacted areas, I will give
20 you some of our experience. We are buying a property
21 in Gulf Mills which was part of the Crater Resources
22 Superfund site, and we dealt with all the PRPs, and
23 actually became a PRP because they are difficult to
24 deal with. You had at least five or six PRPs who
25 spent, amongst them, I would say tens of millions of

1 dollars on legal expenses to fight what the
2 remediation was going to be there. It got so bad, and
3 this is over the course of 7 to 10 years, that the
4 PRPs won't even talk to each other. We got them in a
5 room, and we are buying a piece of property that was
6 impacted by their former uses, and the way we got them
7 in a room was to say, well, we will sit there and be a
8 PRP at this particular site, and what they had to do
9 was, they had a trust fund of \$17 million of which
10 about \$5 million of it was spent on legal fees to
11 date, and we would take a portion of that, quantify
12 the risk and take a portion of that, those dollars,
13 and they would be off the books for that piece of
14 property. We did that and we developed a 120,000
15 square-foot building, which is our corporate
16 headquarters, and we are now in the process of
17 remediating the rest of the site and getting it ready
18 for two new developments. My point is, as a
19 developer, we need to have a path that we can go down
20 to get to development and make a good business
21 decision. Act 2 is important. I think we need to
22 keep it simple, because if you try, I think, at times
23 to point fingers at somebody or penalize people for
24 coming into our community to invest dollars for
25 business, I don't think that is a smart thing. And if

1 you leave it to the polluters at all times, which, I
2 mean, you have to, they typically spend more dollars,
3 legal dollars, that if they spent it and put it into
4 the problem, a lot of this stuff wouldn't be here
5 today.

6 REPRESENTATIVE MILNE: Ms. McCormick.

7 MS. McCORMICK: I just want to point out also
8 to this committee, the Act 2 DEP program is really a
9 great program, but my specific problem here in Ambler
10 is unique. This site itself may or may not be
11 developable, for profit, because it needs extensive
12 research. Like Ambler's site, asbestos has a unique
13 property to it, because once you dig a shovel into it
14 or once you start to move it, airborne asbestos is the
15 problem, and keeping these fibers from becoming
16 airborne as you are shoveling them around in order to
17 get development is specifically hairy here. So not
18 that I am against development, but I think that in
19 proposing this kind of HSCA fund, you have to make
20 sure that it--- This one is this old and this
21 problematic because it has fallen through almost every
22 crack there is. So when they come in, and they have
23 already come in to look at this one for development,
24 which actually opened this can of worms in the first
25 place, but I think if we have to look at these

1 particular problems, then I'm sure that something like
2 this is going to come up again where it's a little bit
3 hairy because the actual development of this
4 particular ground is going to become much more
5 problematic and argumentative than the actual dump
6 itself. So we do have to keep these things in
7 perspective.

8 I'm from the city; I'm not against
9 development at all. I've been accused that I am. I
10 do support the Act 2 program; I just don't support it
11 yet in this spot. Yet, I say, because I think that it
12 needs research. I think that there is something out
13 there that can actually be addressed to make this site
14 developable, but it's just not here yet. So HSCA has
15 to keep that in mind as well, that it can't all just
16 go through the Act 2 program, because some of these
17 sites won't go through that.

18 REPRESENTATIVE MILNE: Sure. Thank you.

19 Our next question comes from a gentleman with
20 whom I serve on the Aging and Older Adult Committee.
21 They put me on that for some reason. He actually is
22 the minority chair of that committee, and Tim, perhaps
23 one of the uses of some of these redeveloped sites
24 could be to put assisted-living facilities, to
25 accommodate some growing senior citizen populations in

1 Pennsylvania, to adequately embrace it as we try to
2 address this.

3 REPRESENTATIVE HENNESSEY: I haven't seen
4 that proposal yet, but if it has been circulated, let
5 me know.

6 Actually, I have two quick questions, or at
7 least I think they are quick answers. The first one
8 is to Secretary Fidler.

9 Could you tell us, right now, as people are
10 probably aware, HSCA is in a bit of disarray. We
11 didn't get a whole lot done yesterday, and with
12 limited legislative days scheduled, what is really at
13 risk here if we don't get it done before the House has
14 adjourned for the end of the year? I mean, are
15 furloughs going to happen beginning in January for
16 State workers? You know, we have a million and a half
17 dollars, for instance, that we put into the Superfund
18 site and then we match, we draw down \$4 1/2 million
19 from the Feds by doing that. Are there other State
20 infusions of money that result in matching dollars to
21 the Feds? Do we put those at risk? And if it comes
22 to pass and we don't get it done before the House is
23 adjourned, can we fix that up in January and February
24 and March?

25 DEPUTY SECRETARY FIDLER: A very good

1 question here, and I tried to touch on that in my
2 opening remarks but I think I need some clarification
3 on this.

4 First of all, the matching requirements that
5 HSCA fulfills are for two programs, and I will answer
6 the latter part of your question first. It's for
7 RCRA, which is basically the Federal hazardous waste
8 management program. We match the \$4 1/2 million that
9 we get in from the Federal EPA on a yearly basis with
10 a million and a half HSCA dollars. That covers costs
11 associated with small generators of hazardous waste
12 materials to oversight of the significant landfill
13 facilities that we have in the Commonwealth. Our
14 inspectors are funded by that or are supported by that
15 funding source, and a lot of the work that we do in
16 permitting landfills is done by that same funding
17 source.

18 Secondly, we are required, every time a
19 Superfund project is undertaken in the Commonwealth,
20 there's an agreement negotiated between the State and
21 the Federal Government. The Federal Government foots
22 90 percent of the costs for cleaning up the site, the
23 State is required to foot 10 percent of the costs.
24 That 10 percent comes from HSCA. Once that cleanup is
25 completed, there may be some ongoing obligations.

1 What I mean by that, if there is a cap of an area,
2 that cap needs to be maintained to ensure that water
3 does not infiltrate through the cap or the cap is not
4 breached by new development that they may be unaware
5 that it is there. All of that ongoing cleanup is
6 supported at a 90-percent level by the Feds, 10
7 percent by the State, for the first 10 years. After
8 that first 10-year period, then the State is obligated
9 to 100 percent of its ongoing operations and
10 maintenance costs.

11 Basically where we are right now, we do have
12 some funding left, but not nearly enough to cover both
13 staff resources and project work that is currently
14 ongoing. What we have been trying to do is button up
15 active, ongoing sites at a point where the public will
16 be protected. Clearly, the project has not been
17 completed and the cleanup has not been completed, but
18 we are trying to get them to a point where in fact the
19 risk is controlled, either through access control or
20 through covering of material that may in fact present
21 an exposure risk.

22 It makes little sense to maintain staff if
23 they are not working on projects, so as I said, we
24 have a little bit of money left, but we cannot support
25 staff and do projects. We could support staff and do

1 no projects, but that makes no sense. So yes, we have
2 made a decision and the furlough plan is in place.
3 Staff are scheduled to be notified next week, next
4 Friday, December 14, that they will in fact be
5 furloughed if in fact there is not an answer to this
6 question by the end of this session.

7 REPRESENTATIVE HENNESSEY: Thank you very
8 much. Just a quick followup.

9 Any of the cleanups that are going on and
10 might continue once we do resolve this question of
11 HSCA funding, do any of those matches, nine-to-one
12 matches, go away by the Federal Government if we don't
13 keep them continuing?

14 DEPUTY SECRETARY FIDLER: We have basically a
15 lot of the dollars that are left in the HSCA Fund to
16 continue our Federal commitments, you know, RCRA and
17 CERCLA, through the fiscal year.

18 REPRESENTATIVE HENNESSEY: Okay. Thank you
19 very much.

20 The second question I have, I guess I can
21 direct this to Mr. Heany and Ginny, the question.
22 Ginny, as you described the roller-coaster history in
23 terms of the cleanup of Bishop Tube, what is the
24 roller-coaster that you are talking about, people
25 saying yes at the State level and then turning around

1 and qualifying it and saying no? Or maybe is it
2 dealing with private developers? Is it the PRPs? By
3 the way, what does the PRP acronym stand for?

4 MS. McMICHAEL: Potentially responsible
5 parties.

6 REPRESENTATIVE HENNESSEY: Potentially
7 responsible parties; okay. Is it people like that
8 that are saying, yes, they are interested and then
9 they back out? What is the roller-coaster that has
10 been going on, because apparently it has been going on
11 for quite some time.

12 MS. McMICHAEL: Well, this property has been
13 up in the air, so to speak, for awhile now. It was
14 that the facility had been abandoned many, many years
15 ago, and the entity was a foreign entity that is not
16 in operation. So like the asbestos situation, we do
17 not have a potentially responsible party to point to
18 to facilitate the cleanup. It was going to sheriff's
19 sale for unpaid taxes, and the Industrial Development
20 Authority got involved, and that was about the time
21 that we forgave the local taxes.

22 And I went to the site -- it was a day like
23 this; it was snow -- and traipsed around, 6 years ago
24 probably, and there were a number of developers who
25 were interested in the property, and at the end of the

1 day it was the O'Neill company that said, look, we
2 have--- You know, they were the successful party
3 through that process and had the ability and the
4 knowledge to clean it up, and that's where part of the
5 difficulty lies. There were other developers who were
6 very respected, responsible, accomplished developers
7 but who are not as sophisticated, probably, in this
8 kind of cleanup area.

9 So where we are now is we have the O'Neill
10 company that is interested in taking this on, working
11 with the township to come up with a viable plan, and
12 it is a problematic property, not just because of the
13 cleanup but because of its location. You have to go
14 through a very small railroad underpass to get to it,
15 and it is across from a Sunoco tank storage. So we
16 have concerns as township supervisors about
17 residential use for that property because of its
18 location.

19 But last spring we had Kathy McGinty here
20 about this issue of funding, and Senator Dinniman was
21 there and I was there at a local event at the Bishop
22 Tube site, and it was trying to encourage the funding
23 and the Governor's agenda for funding this. But from
24 our perspective, it has sort of been this on again,
25 off again. You know, we had this problem, not just

1 with this project but with other transportation
2 issues, as another example, where we run into these
3 things, we think something is going to get done, and
4 then the rug gets pulled out. At the local level, it
5 is very difficult to plan when you are counting on
6 State and Federal money and it does not come through.

7 REPRESENTATIVE HENNESSEY: And it sounds like
8 you are describing uncertainties in the marketplace,
9 not uncertainties or changes in attitude at the State
10 level agencies. We can help there by contacting these
11 State agencies and trying to get some direct answers,
12 but if you are talking about just changes or
13 fluctuations in the marketplace, we really have no
14 control over that.

15 MS. McMICHAEL: Well, I think this recent
16 crisis of the HSCA funding was pretty upsetting for us
17 at the township level. I mean, we had the feeling,
18 okay, we have got another one on the rolls that we are
19 getting cleaned up, and then to hear that the funding
20 for that is in jeopardy and, you know, the people that
21 are responsible for that at the State level might get
22 furloughed, this is of grave concern to us.

23 REPRESENTATIVE HENNESSEY: Thank you.

24 MR. HEANY: And I think that when you use the
25 term "roller-coaster," these sites are tainted. They

1 have a long history. People don't understand what is
2 going on, developers don't want to go near them, and
3 it's a big hole in the community. We have invested to
4 date about three-quarters of a million dollars on
5 implementing the remediation system at that site.
6 Part of that is the commitment that we have from the
7 State for ongoing operations after we hand it over to
8 them. They have already stuck the million dollars
9 investigating this site. So, you know, it is almost
10 \$2 million worth of investigation and implementation
11 of a recovery system at that site. We come to the end
12 of the year here and the dollars on an ongoing basis
13 could be withdrawn or not available, that is what the
14 roller-coaster means.

15 We took it on believing wholeheartedly that
16 this is good policy; it's the right thing to do, and
17 even though the dollars do not have stabilized or a
18 constant source, that would get figured out, and I
19 guess part of why we are here is to figure out items
20 like this and it is important, and when we are talking
21 about a roller-coaster, I think that is what we are
22 talking about.

23 REPRESENTATIVE HENNESSEY: Okay. Thank you.

24 I think, you know, certainly in my opinion, I
25 think it is quite important that we fund and continue

1 to fund HSCA, and I think probably most of my
2 colleagues feel the same way, but we have got to find
3 the money and we have got to find time in the
4 Legislature to do it. Like I said, there have been
5 some disruptions lately in the House, and we have got
6 to get past those before we can get around to taking
7 actual votes on the bills that will fund or create the
8 funding for HSCA.

9 Thank you, Mr. Chairman.

10 REPRESENTATIVE MILNE: Thank you,
11 Representative Hennessey.

12 It has been noted that HSCA is certainly not
13 an issue that has confined itself east. We do have a
14 couple of gentlemen with us from the western part of
15 the State, one of whom I do want to recognize. All
16 the way from Venango County, the Republican Chair of
17 the Environmental Resources and Energy Committee, Mr.
18 Scott Hutchinson.

19 REPRESENTATIVE HUTCHINSON: Thank you. It's
20 a pleasure to be here, and I want to thank
21 Representative Milne for having us down on such an
22 important issue.

23 I guess, well, my question, my first question
24 I have is in regards to HB 2039 that Representative
25 Milne has introduced, and in a way I guess I am going

1 to be talking to Mr. Fidler, I think, for the most
2 part. But that bill talks about administrative
3 expenses, and I am thinking most people in the general
4 public would especially support funding for projects.
5 They want to see things happening for, you know, for
6 the tax dollars that are being used to clean up sites.
7 This legislation before us has a number in there. It
8 says 2.5 percent of the money is the limitation that
9 can be spent on administrative expenses. I guess I
10 was just wondering if, given that limitation, if you
11 had a 2.5-percent limitation on administrative
12 expenses, how that would carry over. Could that
13 support 146 employees which you say are in jeopardy of
14 being laid off? Maybe if you could comment on that.

15 DEPUTY SECRETARY FIDLER: Representative
16 Hutchinson, without some careful analysis, I really
17 can't and I'm not prepared to respond. But HSCA has
18 taken some significant criticism because of the
19 administrative costs associated with the program, and
20 unlike funding for PENNDOT projects where, you know,
21 much of the money goes to project work and there's a
22 percentage of staff dedicated to overseeing that work,
23 I have tried to emphasize that the funding under HSCA
24 is not only dedicated to oversight of funded cleanups
25 but that it is also dedicated to some very important

1 programs, like brownfields or the Land Recycling
2 Program, which basically that is just a staff-driven
3 program. When voluntary cleanup reports come into the
4 agency, staff is charged with reviewing them within a
5 fairly short period of time. So it is very difficult
6 to draw--- You know, we might be looking at a third
7 of the cost of the program for staff resources and
8 two-thirds for project work -- in some cases it might
9 even be closer to 50/50 -- and that seems very stilted
10 from what we normally consider to be a program where
11 you have project officers overseeing projects. But
12 the ways in which the HSCA funding has been utilized,
13 it is not just for oversight projects that are funded
14 by State funds; it's also utilized to support staff to
15 review voluntary cleanup reports and so forth,
16 matching for the State solid waste oversight
17 activities, and that sort of thing.

18 So the reasons why we have what seem to be a
19 larger number of staff, if I said this is going to
20 touch potentially--- There's like 400 staff that
21 dedicate part or all of their time. Someone might be
22 an attorney that is seeking cost recovery on a site
23 where we have dedicated State dollars. He might
24 spend, you know, 3 weeks at a time out of the year
25 doing that. That's not 400 staff dedicated to the

1 program; it's 400 staff dedicating part of their time
2 during the course of a year. We have got highly
3 technical people -- hydrogeologists, chemists, soil
4 scientists, and so forth -- working on this program,
5 and it's almost like billable hours, like if you hire
6 a consultant or pay for an attorney, time spent on the
7 programs charged to the fund. If they are doing other
8 work in another program, that program is picking up
9 the costs. I want to say 146 people basically are
10 affected. They are the core staff generally dedicated
11 to managing the program.

12 REPRESENTATIVE HUTCHINSON: Just to make a
13 comment and then sort of a followup. I think you are
14 correct that there is a concern among and within the
15 General Assembly about the amount of administration or
16 staff salary and who should be billed to HSCA and who
17 isn't, and that has made it difficult to move forward,
18 and that leads to the second part of my questioning
19 which regards the furloughs.

20 You know, there seems to be a moving target,
21 the date of when those furloughs were necessary. I
22 mean, early on we said we are going to bill that
23 funding in July, then we are going to send out
24 furlough notices for September, and now here we are
25 and I understand we are going to send out--- I think

1 the bottom line just for all of this is that that is
2 one of the arguments for saying that this program in a
3 line-item budget, that goes through the budgetary
4 process each year, and I think we could have a better
5 handle on how it is being administered, you know, how
6 to handle the administration of it year in and year
7 out. That's not to say they wouldn't get their
8 funding. I think most line items in the budget get
9 funded year in and year out, and it is adjusted for
10 the needs they need that year. But there seems to be
11 a big question mark on this because they had a
12 dedicated funding source and nobody was asking those
13 tough questions about how many people were getting
14 paid through that, how much of their time, all those
15 kinds of things. But if you can just address the
16 moving target of furloughs---

17 DEPUTY SECRETARY FIDLER: I'll try.

18 REPRESENTATIVE HUTCHINSON: Please.

19 DEPUTY SECRETARY FIDLER: I'll try. Let us
20 think a little bit about the human factor, I think,
21 associated with this. We put together a budget for
22 this program and spending plan for it over a number of
23 years and then revisit it on a single-year basis,
24 frequently based upon the scheduled projects that are
25 working, for the staff dedicated to land recycling and

1 other aspects of the program.

2 With respect to this program over this past
3 year and the moving target, as staff left, and staff
4 have left the program -- when vacancies come up in
5 other programs, staff have left the HSCA program and
6 gone to other programs -- those vacancies have not
7 been filled. Those vacancies have been frozen.

8 In addition, staff clearly are attracting
9 legislative action to further the HSCA program, and
10 even though our managers in the field are doing the
11 best job they can to keep projects on track, there was
12 a slowdown in project work to try to maintain funding
13 in the program. We did not foresee that until it came
14 to a point of the end of the fiscal year and we found
15 out that there was actually more money in the project
16 cleanup part of the program fund than we had
17 projected.

18 So I'm not sure it's a good answer. It is
19 the answer. I mean, there's a human factor associated
20 with this program, and staff have been concerned about
21 security, and part of it is our point of basically not
22 refilling positions when they have been vacated by
23 staff, and the other part of it is some project
24 managers just did not move projects as quickly as we
25 had anticipated in trying to preserve money in the

1 program.

2 MR. MASUR: Can I add to that?

3 REPRESENTATIVE MILNE: Yes, please, David.

4 MR. MASUR: Thank you.

5 I would like to add, as a taxpayer and
6 someone who has lobbied on this issue for a long time,
7 I don't think a line item in the budget every year
8 invalidating the need for this program and cleanups
9 that take years, if not decades, is the best use of
10 the Legislature's time of the process, and the reality
11 is, these sites aren't going away. When the worst
12 sites, the EPA cleans them up, the State has an
13 obligation and a price tag to deal with that. I think
14 it is better to come up with a dedicated funding
15 source to guarantee the money is in place in tighter
16 or better budget years, and then the Legislature can
17 move on to tackle many of the other important
18 pressing issues that face the Commonwealth. So, you
19 know, that is why I think you need to come up with a
20 dedicated funding source and move on to the next
21 important issue, be it an environmental issue or
22 another issue.

23 And I have taken kind of the tack that
24 Representative Harper has taken. We obviously first
25 and foremost support this concept of polluters paying.

1 That being said, we have supported many of the other
2 bills in the Legislature, and there are bills that
3 taxpayers foot the bill. There's a bill in the House
4 right now, HB 1102, Representative Surra's increase in
5 the tipping fee, which is what the DEP supported. I
6 think we all know that if we raise the tipping fee to
7 pay for HSCA, (A) 40 percent of the money comes from
8 people out of the State, and (B) the companies will
9 just trickle down the money to us regular folks in the
10 Commonwealth that have our trash picked up. But we
11 also know that the waste-hauler industry is very
12 powerful in the Legislature and to date have been able
13 to bottle up proposals like that, and there hasn't
14 been bipartisan support.

15 So as I said in the beginning, it's a complex
16 issue. While we all agree on HSCA, there are
17 proposals that you could have industry pay for it,
18 there are proposals you could have taxpayers pay for
19 it. None of those seem to be getting traction beyond
20 the triage piece, you know, and I think we need to now
21 look at the triage but not revisit this every year in
22 the budget cycle or ideally every 24 months in a
23 budget cycle. It should be a long-term fix.

24 REPRESENTATIVE HUTCHINSON. Thank you very
25 much.

1 REPRESENTATIVE MILNE: A woman I proudly call
2 my Chair on the Children and Youth Committee and long
3 recognize as a leader on environmental issues in the
4 Legislature, Carole Rubley, from Tredyffrin Township.

5 REPRESENTATIVE RUBLEY: Thank you very much.
6 I appreciate being here, and I appreciate all of you
7 taking the time to talk about this important topic,
8 and I have a couple of comments and a quick question,
9 I think for Tom Fidler then.

10 First of all, I would like to thank O'Neill
11 Properties for having the courage and the foresight,
12 and it took courage to go in and do what you are
13 doing. You also have a site in part of my district in
14 Montgomery County, and you are doing a great job there
15 cleaning up that site. But I wish we had a lot more
16 of you around. We have a lot of sites that need to be
17 cleaned up and put back to the proper use.

18 MR. HEANY: Thank you.

19 REPRESENTATIVE RUBLEY: And in terms of, we
20 all agree on the importance of HSCA. No one is
21 disagreeing with that. Where we are suddenly is how
22 we are going to fund this and find a good debt-aided
23 source of money, and I caution people on trying to
24 take an easy route out. You know, some of the bills
25 proposed say, well, let's take some of this money from

1 our budget, and we have a yearly budget, but we don't
2 always have a surplus, and I've been in the
3 Legislature long enough to know that there have been
4 years where we do not have a surplus, so then what is
5 going to happen to HSCA? So we have to find something
6 that truly is going to resolve this problem. Any
7 thoughts that you have down the line, if you can share
8 them back with us -- quickly -- and hopefully we are
9 going to do this next week, but any of your input
10 would be appreciated.

11 And then in terms of, Virginia, your comments
12 on, you know, 30, 40 years ago what we have done, we
13 will bear, but, you know, at that time people had no
14 idea that it was a problem to put things in the ground
15 and cover it up. I mean, we were just ignorant about
16 this. We didn't have the Federal laws, we didn't have
17 the State laws in place. In fact, I really got my
18 start in policy and public life and in my political
19 life through the Knickerbocker landfill, and it took a
20 group of, just groups. I was representing the League
21 of Women Voters, but we got together with other groups
22 and we ended up suing the owner of the Knickerbocker
23 landfill and then DER because they weren't doing
24 anything about it, and there were reports of the worst
25 of the worst chemicals going into a landfill with no

1 lining over a limestone base. So fortunately, that is
2 cleaned up, well, it's capped, and they quickly closed
3 after our lawsuit, so that was one good thing that
4 happened.

5 A quick question for you, Tom, and I know you
6 are doing a terrific job, and I worked with you on
7 other issues, too, but with this furloughing, you
8 know, HSCA is used to clean up spills, and you can't
9 predict when spills are going to happen. It seems
10 that almost every week in this area you have a
11 tractor-trailer or something overturning or a fuel
12 spill or some other kind of chemical. DEP has to be
13 ready to get out there immediately, because we can't
14 wait around; we have to get those materials cleaned up
15 before they are released into the stream. Can we be
16 assured that if a furlough occurs, that there will be
17 money to take care of a sudden emergency like that?

18 DEPUTY SECRETARY FIDLER: That's a very good
19 question. We do plan to continue our Federal
20 obligations; I mentioned that. There may be a few
21 sites that we cannot get to a point of safe closure,
22 at a milestone point, and there may be just a handful
23 of sites that we will continue to work beyond January
24 1, and we have set aside about a half a million
25 dollars for emergency response activities through the

1 end of the fiscal year.

2 REPRESENTATIVE RUBLEY: Thank you very much.

3 REPRESENTATIVE MILNE: Thank you, Carole.

4 Swinging back to the other side of the State,
5 from Butler County we have Brian Ellis, who is a brave
6 man, who is well known as probably the number one
7 Steelers fan in the State Legislature. He has bravely
8 come to Eagles country.

9 REPRESENTATIVE ELLIS: Well, thank you,
10 Representative Milne, and actually I lived out in this
11 neighborhood for about 3 years after college and
12 maintain my faith.

13 First of all, I would like to say that, you
14 know, working under Chairman Turzai and the Republican
15 Policy Committee this year has truly been a great
16 opportunity for our caucus, and we have addressed a
17 lot of issues and we have heard from a lot of
18 different panels, but the group we have today, I think
19 there is a uniformity of purpose with you guys that we
20 may not have seen anything like this summer. You are
21 very focused on what we need to do and really take
22 care of this HSCA situation.

23 That being said, I do have a couple of
24 comments. I'll keep them as brief as I can. In fact,
25 let me start with a question: Deputy Secretary, do we

1 have knowledge of what the furlough letter is going to
2 say as far as when our folks will no longer be
3 employed?

4 DEPUTY SECRETARY FIDLER: I have not seen the
5 draft of the furlough letter, but I am told that it
6 will indicate that at the end of the year, the staff
7 identified, the 146 positions, will be furloughed.

8 As many of you know and understand the civil
9 service rules within the State Commonwealth system,
10 this is going to ripple throughout the agency,
11 prompting privileges. So you might think that you are
12 simply losing opportunities for support of work under
13 HSCA, but there could be a hydrogeologist that is
14 sitting in a HSCA position right now, a senior
15 employee, a hydro-geologist that may be in the mining
16 program, and that person has rights to that position.
17 So it is going to be a mess.

18 REPRESENTATIVE ELLIS: But, I mean,
19 essentially the letter can indicate that if
20 furloughed, it is going to take place and happen as
21 early as January 1?

22 DEPUTY SECRETARY FIDLER: Right; yes.

23 REPRESENTATIVE ELLIS: I asked this, because,
24 you know, this is a question we brought up in the
25 Appropriations Committee on the Republican side, and

1 our numbers indicate that we probably have enough
2 money to fund projects and staff through the end of
3 February, or as you described earlier, projects and no
4 staff or staff and no projects, which, you know,
5 either one of those are problematic. I just wanted to
6 clear that up.

7 The other thing, too, and David, you had
8 mentioned over and over again that we are looking for
9 bipartisan support, maybe a two-tiered succession.
10 Obviously, you guys are aware that we passed Senate
11 Bill 1100 from the Senate. It came over to
12 Appropriations, directly to Appropriations, which
13 usurped the committee process. It didn't go to
14 Chairman Hutchinson's committee; it went right there,
15 and it was amended.

16 Now, in my estimation, not in a very
17 bipartisan way it changed some things, but the
18 band-aid approach to fixing it, I think, is agreed to.
19 I mean, in both the amended version and the original
20 version that came over from the Senate and whatever we
21 may finish up on the floor, I think you are going to
22 see us using legislative surpluses to get through
23 until the end of June. So as far as the scare of a
24 furlough, I don't know that it actually is really
25 realistic as it is being portrayed.

1 That being said, and anybody else, if you are
2 aware of the issue you can certainly chime in, but do
3 you favor either one of those two proposals? Does the
4 Governor oppose using the capital stock and franchise
5 tax? Do you oppose taking a 2-year fix versus the
6 dedicated funding source? Maybe you can comment on
7 this.

8 REPRESENTATIVE MILNE: Just before we start
9 to get some amenable answers to that question, one of
10 the challenges you quickly learn as a Legislator is
11 just how many times events are all at once, and a
12 couple of my colleagues do need to go on to some other
13 responsibilities, so I would like to give them a
14 chance to have a closing comment.

15 REPRESENTATIVE ROSS: I just want to thank
16 you all for coming. I know that others are going to
17 be committed to fixing this, not only on a short-term
18 basis but on a long-term basis. We are looking
19 forward to taking some action on this and try and
20 close it up quicker rather than later, next week, and
21 do it in a way that this will have a funding source
22 for the future as well.

23 Thank you for coming. Thank you for
24 testifying. I apologize for having to leave.

25 REPRESENTATIVE HARPER: Me, too.

1 CHAIRMAN TURZAI: Thank you very much, Chris
2 and Kate. We appreciate you being here.

3 REPRESENTATIVE MILNE: Thank you.

4 Mr. Secretary.

5 DEPUTY SECRETARY FIDLER: Could you repeat
6 the question again, please?

7 REPRESENTATIVE ELLIS: My question is
8 actually, Senate Bill 1100 as it stood from the
9 Senate, whereas amended in the Appropriations
10 Committee, is there any indication that either
11 PennEnvironment or the Governor's Office is supportive
12 of the direction that we are heading in either one of
13 those?

14 DEPUTY SECRETARY FIDLER: Let me be as clear
15 as I can be. This furlough planning process is
16 just--- I mean, this development of the amendment to
17 1100 happened in the last couple of days. I mean, we
18 cannot wait that long to undertake a very
19 comprehensive exercise like we are undertaking to plan
20 for this furlough. So this has been in the process
21 probably since mid-October, just to basically
22 understand what employees may be affected, who has
23 bumping rights. All of that has to be figured out,
24 and that doesn't happen overnight.

25 So we are just basically going through the

1 step-by-step-by-step process that we must go through
2 without any assurance that there is a, you know,
3 ongoing funding source for the program. And on the
4 tick list, December 14 was the date that employees
5 need to have adequate notice, according to the rules
6 that we live by, as part of the process. So just note
7 that, please.

8 And as far as what I'm hearing about the
9 amendments to Senate Bill 1100, basically we are, I
10 guess, up to \$18 million that may be set aside to take
11 us through the end of the fiscal year, and to provide
12 more time after January to work through a more
13 sustained, dedicated funding source I think is welcome
14 news. I mean, however, I can tell you that as you
15 well know, the Governor has been very staunch and
16 steadfast in his pursuit of a dedicated, long-term
17 funding source for the program. I think clearly this
18 is just a stopgap with the commitment being made to
19 seek that long-term dedicated funding source next
20 year.

21 So at this point, we are at a point where
22 something needs to happen, and, you know, this sounds
23 like a fix that will at least delay the furlough
24 process, if it actually happens.

25 REPRESENTATIVE ELLIS: Okay. You said the

1 Governor's Office, the position is they like the
2 amended version versus the Senate Bill 1100 itself
3 that took us 2 years into the future with the capital
4 stock and franchise tax.

5 DEPUTY SECRETARY FIDLER: I can't really
6 answer that.

7 REPRESENTATIVE ELLIS: Okay. That is fair
8 enough.

9 CHAIRMAN TURZAI: That was a great question.

10 MR. MASUR: At PennEnvironment, we are
11 supportive of the amended 1100 that came out of the
12 Appropriations Committee. I like I would like to
13 second what Tom said, that obviously there are not a
14 lot of legislative days left, so to do the triage
15 piece, particularly I think the House side has to
16 happen fairly quickly. So we will support 1100 and
17 hope there is bipartisan support for that.

18 Again, it's only the band-aid fix, and so I
19 think very quickly we have to come back in a new year
20 and come up with the dedicated funding source to
21 tackle HSCA. So I think that is, you know, again,
22 that's the harder part of this I think, because until
23 there is consensus in both chambers and bipartisan
24 consensus about how you fund that and where that money
25 comes from in a dedicated way year in and year out,

1 that is where this gets log-jammed. But for the time
2 being, I think 1100, Senate Bill 1100 as amended, is
3 the best way to tackle this program and make sure we
4 are not furloughing staff who work on the HSCA
5 program.

6 REPRESENTATIVE ELLIS: I just want to again
7 thank you for coming to testify today, and thank you,
8 Representative Milne, for putting this all together.

9 REPRESENTATIVE MILNE: Thank you,
10 Representative Ellis, and that was quite a trip you
11 made and it shows your interest in the issue. We do
12 appreciate that.

13 Our next questions will come from
14 Representative Turzai.

15 CHAIRMAN TURZAI: Duane, thanks.
16 Representative Milne, thank you very, very much for
17 your leadership.

18 I want to make a few comments. I am sorry --
19 we are a little over time -- that Representative Ross
20 and Representative Harper are not personally here to
21 hear my comments. But in the Legislature,
22 particularly within our caucus, there are --
23 obviously, you all know this -- there are a variety of
24 legislative issues that are on the plate, and cleaning
25 up the environment is a significant issue, but not all

1 of us, and I would count myself as one of these, are
2 experts in every issue. What you do in the
3 legislative body is you count on folks who you respect
4 and have credibility to sort of make a lot of the
5 policy, investigative work and analysis, and then you
6 look for their direction. The individuals who have
7 been here at this table today, I want to extol because
8 this is absolutely true, are people that I have in the
9 past and today looked to for direction.

10 Chairperson Rubley, Carole, has just been
11 outstanding in this area, and Carole, I have not ever
12 heard the story, although I do know of your
13 qualifications, I have never heard the story as to how
14 you actually got into policy and politics, but I loved
15 hearing it.

16 And Kate Harper has been one of the most
17 outstanding advocates on the floor when we had the
18 budget debates, which were very humorous this year on
19 the floor, that Representative Harper actually had
20 some very, very articulate floor speeches with respect
21 to the lack of HSCA funding and the attempt to shift
22 Keystone moneys to handle HSCA.

23 Chris, as many of you know, has been a leader
24 on alternative energy with Carole, and Tim Hennessey
25 has always been really, I think, one of the leading

1 voices on how we balance good environmental policies
2 with good economic development policies, which is
3 close to my heart.

4 Duane has stepped right in. You can tell
5 from his limited remarks he is very, very articulate
6 -- Representative Milne, I really mean that -- and
7 when we get to some debate on this, hopefully, again,
8 within the week, I'll be looking to their direction as
9 to where we should head for our caucus, and I'm very,
10 very appreciative of that lead.

11 I can honestly tell you, I know the political
12 process quite well these days, all of us do, and with
13 this Governor you have to be on top of it. That's no
14 disrespect to the Deputy Secretary, but we would not
15 have had, I think, some of the recent reaction to HSCA
16 if we were not here today pushing this hearing and if
17 Representative Milne wouldn't have insisted on it and
18 also made it a public issue. I firmly believe that.

19 I would like to second the notion that I
20 think Representative Ellis brought up. You know, we
21 had in the budgetary process this summer a budget of,
22 what, almost \$27 billion and an increase in spending
23 of somewhere over or close to 5 1/2 percent over last
24 year's budget. We have increased spending somewhere
25 close to 34, 35 percent under this administration, and

1 just this year you can add on another 5, 5 1/2
2 percent.

3 In addition to borrowing under Growing
4 Greener II, I think somewhere close to \$800 million,
5 there is plenty of money that is available for this
6 issue, and I think that it is absolutely imperative
7 that this should not have been subject to this sort of
8 last-minute hijacking as opposed to getting it done in
9 June and July when everybody wanted to resolve the
10 issue, and I think the fact that we are now here in
11 December doing it had larger political gamesmanship at
12 play.

13 Also from a philosophical perspective, I
14 just, and I do think it's a bipartisan issue, but I
15 appreciate what Ms. Moser and her organization have
16 done on a number of fronts. You know, Governor Ridge
17 was the founder, father, initiator of growing green.
18 Growing Greener is Governor Ridge's plan. Governor
19 Ridge always demanded pay-as-you-go, not stabbing the
20 future generations with paying, but pay-as-you-go. I
21 myself was willing to extend funding for Growing
22 Greener when Governor Schweiker, involving Governor
23 Ridge's program, asked for tipping fees. I was for
24 those tipping fees, and I was willing to pay for them
25 then to continue Growing Greener. I am not --

1 personally I am not speaking for any of my colleagues
2 -- I'm not a fan of borrowing and stabbing the future
3 generations with respect to our responsibilities
4 today.

5 I can tell that you I am willing, and
6 particularly thanks to this hearing, because that is
7 part of what hearings are designed to do, to take
8 opinionators within your caucus and educate them, and
9 Duane wanted to do that with respect to a number of us
10 here today to make sure that we understood on a very
11 tangible basis why HSCA funding is important and why
12 we have to come to a solution, and I will be looking
13 to his and to Kate Harper's and to Carole Rubley's and
14 Chris Ross's and Tim Hennessey's lead in resolving
15 this issue, and I'm very proud to do that.

16 The one question that I do want to ask folks
17 at the table is just -- and I thought Kate was very
18 articulate about this -- about how litigation in and
19 of itself has not been a solution to the problem and
20 that what we need to do is to create these
21 public-private partnerships to move the cleanup along,
22 and I have a question for Secretary Fidler first.

23 Secretary Fidler, just talk about the
24 voluntary program versus the, we have about 600 sites
25 under the Governor, but when you talk about this

1 voluntary program, and we have about 2,500 sites, I
2 would like to know a little bit more about that. I
3 would like to know a little bit more about that. Why
4 was that so successful, and how do we continue to make
5 that so successful?

6 And then my second question is, and it is
7 directed to Mr. Heany, Mr. Heany, and I just want to
8 get him on the record and then I will listen, what
9 more, in addition to making sure that we fund HSCA,
10 what more for front-line folks like you that are
11 willing to get into this game and remediate and
12 develop with really positive development, what more
13 can we do to incent you and folks like you to continue
14 to get into the game even bigger, both you and others
15 like you who have not yet got into the game?

16 Secretary Fidler, let me turn it to you
17 first, and then I will turn it to Mr. Heany.

18 DEPUTY SECRETARY FIDLER: Okay. Thank you
19 for the question.

20 The Voluntary Cleanup Program has been wildly
21 successful, but I think it works in tandem with the
22 Hazardous Sites Cleanup Program. The Hazardous Sites
23 Cleanup Program provides the department with the
24 authority to require cleanup of contaminated
25 properties.

1 In some cases, I think it has been shared
2 with the panel today or by comments made by the panel
3 today, there are some properties that are just not
4 worth a private investor investing money in that site
5 but that still represents a public health threat to a
6 community. That's the role of HSCA. Where in fact
7 HSCA can level some of the perceived liability
8 associated with the property and entice private
9 investment in the site, that's another role for HSCA,
10 but that's where the Voluntary Cleanup Program then
11 takes over. And many times what has been accomplished
12 under the Voluntary Cleanup Program is often
13 remediation of a site can occur as the site is
14 redeveloped, okay? What the Voluntary Cleanup Program
15 provides for is containment, not necessarily in all
16 cases absolute cleanup of contamination, so as long as
17 the material is properly contained. We contain the
18 material on site, and soil, by building a building or
19 a parking area or that sort of thing.

20 So prior to Act 2, often a site needed to
21 undergo remediation before development could actually
22 start on the site. What Act 2 has provided for is the
23 opportunity to do both at the same time.

24 I will just turn it over to Mr. Heany.

25 MR. HEANY: Obviously, the Voluntary Cleanup

1 Program is critically important, but to answer your
2 question about what would incent or what is helpful to
3 developers?

4 CHAIRMAN TURZAI: Yeah.

5 MR. HEANY: Streamlining the program, and
6 what I mean by that is, you know, when you hear people
7 being furloughed--- I guess that means people being
8 fired? Is what that means? I just want to make sure
9 we are all on the same page; it is a lot different and
10 a harsher word. Our experience is that when you talk
11 about administration, that none of these folks in the
12 Act 2 program are underutilized, for lack of a better
13 term. In fact, they are inundated, and I think it's
14 important that that part of the program has more
15 people so that you can get to development quickly.

16 Why that is important is you see cycles in
17 the economy, and more specifically the housing sector.
18 Three years ago the housing sector was in a boom. If
19 you are going through a Voluntary Cleanup Program that
20 was going to be for housing and it takes you an
21 inordinate amount of time to get there, you have just
22 missed the market, and from our perspective,
23 streamlining the program and personnel is very, very
24 important.

25 CHAIRMAN TURZAI: Excellent.

1 My last set of questions goes to
2 Ms. McCormick and to probably Secretary Fidler. You
3 might want to jump in this, too.

4 For the sites like Ms. McCormick's which are
5 not, and she admitted -- and I thought her testimony
6 was right on; I completely get what you are defining
7 -- you know, who knows if that is underdeveloped,
8 right? Is that--- Ms. McCormick, that's my question
9 to you, is if you know, if you know this from your
10 experiences: Has anybody quantified the cost of that
11 cleanup? Has anybody ever done that?

12 MS. McCORMICK: \$30 million.

13 CHAIRMAN TURZAI: \$30 million; okay.

14 MS. McCORMICK: Roughly.

15 CHAIRMAN TURZAI: And who used that last?
16 When did you last hear that particular number?

17 MS. McCORMICK: I heard that number from an
18 EPA source about 6 months ago.

19 CHAIRMAN TURZAI: Okay. So today, that's a
20 fresh number.

21 MS. McCORMICK: And that is just for cap and
22 containment.

23 CHAIRMAN TURZAI: Yeah. That would be a huge
24 step, and I know that it doesn't take it as far as we
25 want, but that is a huge step in and of itself.

1 MS. McCORMICK: Yes.

2 CHAIRMAN TURZAI: How does that work in terms
3 of HSCA with, like, working in conjunction with the
4 Federal dollars, how would that work with respect to
5 that particular site? I mean, you just used that site
6 as an example in how that could get it done. Or not
7 get it done.

8 DEPUTY SECRETARY FIDLER: I think one of the
9 reasons that site is being undertaken by the Federal
10 agency is because we just didn't have the wherewithal
11 at the State level to address it. Interestingly, if
12 in fact the Federal Government would do a removal
13 action -- which is highly unlikely; it is probably
14 going to be a containment remedy on that site -- but
15 if they would simply do a removal action and not list
16 the site on the National Priorities List, in other
17 words, designate it as a Federal Superfund site, we
18 would not have any share. There would not necessarily
19 need to be an agreement with the State. However, if
20 they list the site, the State must concur, must
21 negotiate a State Superfund agreement, and pick up \$3
22 million. If they give us \$30 million, we would be
23 paying \$3 million.

24 CHAIRMAN TURZAI: Removal action, the Federal
25 removal action, they do it.

1 DEPUTY SECRETARY FIDLER: Correct.

2 CHAIRMAN TURZAI: Completely.

3 DEPUTY SECRETARY FIDLER: Correct.

4 CHAIRMAN TURZAI: And if it is contained?

5 DEPUTY SECRETARY FIDLER: If it is a listed
6 site and if there is actually a remedial response, a
7 cleanup done at the site, that would be through a
8 negotiated agreement in collaboration with the State,
9 and we would pay that 10 percent in costs.

10 CHAIRMAN TURZAI: Can you respond--- I know
11 you don't speak for the Federal Government; I just
12 mean your interaction with respect to that site, your
13 knowledge with respect to that site. Why has not a
14 removal action been put into place? I mean, I think
15 you told me it has been since the seventies, right?

16 MS. McCORMICK: I believe, yes, it has been
17 since the seventies. Actually, the EPA signed off
18 these grounds in 1993, so we have to go by where they
19 actually signed off.

20 I think that this one just fell through the
21 cracks. I mean, this was another 38 acres that they
22 weren't even focusing on that came up in the middle of
23 their investigation. So---

24 DEPUTY SECRETARY FIDLER: There was a removal
25 action done at that site, early, correct?

1 MS. McCORMICK: It says 1966 it was closed
2 inadequately, because there were no laws against
3 asbestos and asbestos dumps at the time. So they had
4 just kind of closed the site because it wasn't being
5 in active use, but there was some debate on whether
6 there was really any kind of dirt thrown or--- I
7 can't find any evidence of that.

8 DEPUTY SECRETARY FIDLER: Okay.

9 MS. McCORMICK: But that's the reason. There
10 wasn't any wrongdoing here; it's just that it is old
11 and it is going under antiquated business rules here.

12 DEPUTY SECRETARY FIDLER: Okay.

13 MS. McCORMICK: But just to elaborate a
14 little bit; I'm going to let you in. The EPA has
15 proposed to us through a community advisory group of a
16 small action that they are going to be doing. We are
17 hoping the site gets listed. I'm actually running a
18 petition to get this site listed, because there is
19 some discrepancy on whether if they do this cover of
20 these exposed portions, then the site won't list.

21 So I'm kind of in a hairy thing. We have to
22 accept covering this, even if it's just a band-aid
23 that they are putting on something that needs surgery,
24 but we have to accept that, but we don't want it to
25 not list because of it.

1 So I had asked the EPA if there are other
2 ways to getting it to list without just looking at it
3 mechanically, so that's in the process. But the
4 proposal is up, but they are calling it a "removeal."
5 It's not removable and it's not a remediation, it's
6 coming somewhat in between. So it's very--- It is
7 Politics 101, and I'm not good at it. Trust me. So
8 all I know is that I'm on the receiving end going,
9 okay, and now where are we with this? So---

10 CHAIRMAN TURZAI: Well, let me tell you, I
11 just want to say, and your presentation was excellent.

12 MS. McCORMICK: Thank you.

13 CHAIRMAN TURZAI: It seems to me, and I know
14 we have a general policy overview, but any available
15 funds or any available pressure, my God, I hope to the
16 extent that you can, Mr. Secretary, along with
17 Representative Harper and Representative Milne, let us
18 move on that particular site. I mean, that's asbestos
19 with a bunch of kids. It just seems like a no-brainer
20 to me.

21 MS. McCORMICK: They sit there every summer.
22 They sit on it. I'm like, dear God, please don't let
23 them sit on it this summer.

24 CHAIRMAN TURZAI: Someone has got to give
25 some attention on that, I mean the executive branch,

1 and, you know, you want to bring everybody down to,
2 you know, go and touching it.

3 MS. McCORMICK: We are it.

4 CHAIRMAN TURZAI: But we aren't hurrying in,
5 necessarily.

6 MS. McCORMICK: It wouldn't be the first
7 time.

8 CHAIRMAN TURZAI: That thing has got to be
9 done.

10 MS. McCORMICK: Thank you very much.

11 CHAIRMAN TURZAI: Thank you very, very much.

12 MS. McCORMICK: This went to the U.S. Senate
13 floor as well---

14 CHAIRMAN TURZAI: It did?

15 MS. McCORMICK: ---in a hearing just like
16 this to get Federal money.

17 CHAIRMAN TURZAI: Yeah.

18 MS. McCORMICK: It is listed as one of the
19 top four worst in the country.

20 CHAIRMAN TURZAI: Is that right?

21 MS. McCORMICK: It's the worst for asbestos.

22 CHAIRMAN TURZAI: Sharon, thank you so
23 much---

24 MS. McCORMICK: You are welcome.

25 CHAIRMAN TURZAI: ---for your really graphic

1 detail. It was great.

2 MS. McCORMICK: Thank you.

3 CHAIRMAN TURZAI: Mr. Masur.

4 MR. MASUR: Yes. If I could add to that
5 quickly, and Sharon talked about this. We have two
6 problems at sites like the Ambler asbestos site, which
7 is not only our programs at the State level like HSCA
8 under the gun, but the Federal program, the Superfund
9 Program, has had the same types of problems.

10 The funding mechanisms have changed
11 dramatically over the years. The amount of money in
12 the program has dropped, and the cleanups have slowed
13 down dramatically. And so on a number of sites in
14 Pennsylvania and across the country, part of the
15 problem, you could argue, is within the Commonwealth
16 and the rapid response of the State. But the reality
17 is, in an expensive site like this, when the Federal
18 Government is essentially reneging on its agreement to
19 clean up the site and put the money for it, and it is
20 not just Ambler; there are sites like this on the
21 Superfund list, you know, that the State has almost
22 100 Superfund sites in the Commonwealth and across the
23 country that are dealing with the same financial
24 constraints, because on the one hand the States have
25 problems of their own, but really it is the Federal

1 program which funds us, and there are no responsible
2 parties to go after. If that money is not there, you
3 are really stuck.

4 MS. McMICHAEL: If I may.

5 CHAIRMAN TURZAI: Please.

6 MS. McMICHAEL: We do have a success story or
7 a success story in process in East Whiteland apropos
8 of this, and that is the Foote Mineral site, which is
9 a Federal Superfund site. It is right down the road
10 here, and it is currently being remediated.

11 We at the township have been very involved in
12 working with the EPA through this whole process.
13 There is a developer which is working with the EPA and
14 the township to get the property cleaned up. It
15 involves Nc2 soil stabilization, so there again they
16 are going to cap the tainted soil, and what they are
17 doing instead is mixing it up with, for lack of a
18 better word, concrete so that it doesn't leach into
19 the groundwater and then cap it, and it is being
20 redeveloped into a retirement community. And we will
21 also have---

22 REPRESENTATIVE MILNE: See, I told you, Tim.

23 MS. McMICHAEL: So here we go. I mean, the
24 developer has recognized that there is a need in our
25 community for these very nice retirement communities,

1 which this will be one of, and we had at our meetings
2 and we often have people at our meetings who put their
3 comments down, and they want this thing built right
4 now.

5 REPRESENTATIVE MILNE: My parents are on that
6 list.

7 MS. McMICHAEL: My mother-in-law is looking
8 at one of the places.

9 But, I mean, there are projects certainly
10 that have, you know, been abandoned that aren't moving
11 forward, but we do have some success stories. The
12 ChemClean site here in East Whiteland has been getting
13 cleaned up. You know, it never moves as fast as you
14 would like, and what we see, though, is when you have
15 an independent private-sector developer to push it
16 along and who has an economic investment in the
17 project, it does move faster, and that is why whatever
18 the Legislature can do to create that seed money so
19 that we get more O'Neills out here and their
20 equivalent to bring these properties back into
21 fruition and get them back on the tax rolls. We are
22 all better off for it.

23 REPRESENTATIVE MILNE: Thank you.

24 Ms. McCormick, if it makes you feel any
25 better, in reference to your comments about Politics

1 101, I have a Ph.D. in political science and I have
2 never heard that term before, so I learned something
3 new today.

4 Let me do two things at this point. We had
5 suggested that we were going to have members of the
6 public be able to offer some comments. Normally we do
7 not have that kind of public-comment section at these
8 kinds of hearings, but again, as I referenced, I try
9 to look at things differently. I try to see if we can
10 approach different problems and new perspectives.

11 So Chairman Turzai was kind enough to agree
12 to allow some local residents to offer public
13 comments. So again, I am trying to see if we can
14 apply some new methodologies and basically new
15 approaches when you think about business in
16 Harrisburg.

17 Before I do that, let me do this. I do
18 recognize that we have some very accomplished, busy
19 professionals who have been our testifiers this
20 morning, so I do want to take a moment to thank you
21 for your testimony. I know myself that I certainly
22 learned some very valuable information, and I'm sure
23 my colleagues did as well. We certainly appreciate
24 your time for making the effort to come here today and
25 share your thoughts and your expertise with us. That

1 shows your commitment to good public policy for
2 Pennsylvania.

3 So I do want to thank you, and certainly if
4 people do need to move on to other responsibilities,
5 we certainly do understand.

6 CHAIRMAN TURZAI: Thank you so much. Thank
7 you, everybody.

8 REPRESENTATIVE MILNE: And we are going to
9 continue to hold the record open so that we can take
10 public comments. Just be aware that this is being
11 recorded by an official court stenographer, so
12 anything you say is public record, and our intention
13 is to take this back to Harrisburg with us to add to
14 the debate that we hope will start to take place next
15 week in Harrisburg.

16 So if there are members of the public who
17 would like to offer comments, we would certainly
18 appreciate that, and I see someone from the township.

19 MR. HARTMAN: Thank you for the chance to
20 come here and speak today.

21 I'm in a unique situation. I'm a resident of
22 General Warren Villas, which borders the Bishop Tube
23 property. I worked for the Bishop Tube Company for
24 over 16 years and was laid off from there when they
25 closed the doors.

1 I have come and helped industrial developers
2 and the EPA and the parties to identify where the
3 problems were on the sites, and I've been with
4 Representative Milne and talked to him at great
5 length, and that's why this is all coming about.

6 Funding is definitely needed. My concern is,
7 please, do not let the furlough happen, because if the
8 furlough happens, former union workers and all,
9 understand what is going to happen is, we may not get
10 the same people who worked on the project, and it
11 might take new people coming on time to regroup and
12 figure out, and that slows the process. So think
13 about that aspect of it.

14 There are some things that we need to do as
15 far as, you addressed administration things. This
16 process that I have been involved in with having
17 investigators come to my home and do questioning, it
18 has been over 5 or 6 years that they came, and they
19 are doing a lot of this stuff again that has already
20 been done, this same kind of screening and
21 investigators following up stuff and all.

22 I think we need to have a better meeting of
23 the minds to understand what is going on, and that is
24 why I went to Duane and said, please, here is the
25 situation; if you need, we will go out and take a look

1 at the Bishop site that you will better understand it;
2 that will help the process.

3 The Bishop Tube Company was owned, when I was
4 let go, by an Italian concern, and there is a great
5 weave of deception as far as how their corporate
6 structure was set up. I can show you on paper; we
7 have the paperwork and stuff, myself and the former
8 president of the union. I was the financial secretary
9 of the local union and Dave Worst was the president.
10 We have papers and books and literature and stuff that
11 we found on the site that could prove where they are
12 saying they didn't have certain things at the time
13 that they did and stuff. Lauren Rosen is trying to
14 get with us, but she needs to come out and actually
15 visit us, not us go to her.

16 REPRESENTATIVE MILNE: Sir, sorry to
17 interrupt you. You and I have had some lengthy
18 conversations, of course, about Bishop Tube---

19 MR. HARTMAN: Yes.

20 REPRESENTATIVE MILNE: ---but I think it
21 might be edifying for some of my colleagues if you
22 could maybe share with them what Bishop Tube made and
23 what kinds of contents there are in the soil over
24 there.

25 MR. HARTMAN: The Bishop Tube Company was a

1 stainless steel manufacturer. We manufactured both
2 seamless and welded tubing. Welded tubing comes in
3 the form of a strip on a coil, and it is roll-formed
4 on a machine and then they weld where those two ends
5 come together.

6 Worthington actually made the strip. They
7 did the strip and then did the cleaning and the
8 plating and stuff like that. That is what Worthington
9 steel did, so we worked hand in hand. We did tubing
10 for aircraft, nuclear reactors, combustion
11 engineering, you know, big corporate companies like
12 that.

13 Bishop Tube has been owned by different
14 people over the years. It has been owned by a company
15 called Johnson Matthey and before that was J. Bishop,
16 which originated in Malvern, Jochlin Bishop, and they
17 worked with platinum metals and stuff. They broke off
18 in the early sixties and are now Johnson Matthey.

19 Then Bishop Tube was bought up by the
20 Whittaker Corporation, and that is when I started, in
21 like 1973, and then Whittaker Corporation sold out
22 after some years to another corporation, Electralloy,
23 and on and on. And then during this period when these
24 last few owners after Whittaker owned it, the actual
25 building or the site was owned by a corporation called

1 Christiana Metals, and Christiana Metals was--- It
2 wasn't real clear who Christiana Metals were, and that
3 is why they are having problems trying to go after
4 Christiana Metals to get recovery from them. Well,
5 they already had jobs from Matthey, Whittaker, and the
6 different companies coming to the table, Electralloy
7 and stuff, to do their part, but they are still
8 working on the other one.

9 We have some information. They need to come
10 and see us and we will show them, and maybe it will
11 help. But they have been working steadily on that. I
12 think a lot of time was wasted by them and we not
13 getting our heads together sooner. I mean, when I
14 went to the site and when Dustin Armstrong originally
15 started doing test wells and stuff, I said, "Dustin,
16 you're not exactly right where the degreaser was," and
17 then when we showed him and then they did new testing,
18 he said, "Wow," he said, "You're right." He said,
19 "It's a different site," and he didn't understand.
20 Well, see, that's the beauty of having employees and
21 people that live nearby that can help you.

22 Plus as a resident, I want to see the place
23 effectively cleaned up for future generations, and I
24 don't like seeing this empty lot. Mr. O'Neill and his
25 team got a great potential there of making something

1 positive out of that site and putting it back on the
2 tax rolls.

3 I do have some questions then.

4 REPRESENTATIVE MILNE: I'm sorry. Actually,
5 we are just going to take testimony---

6 MR. HARTMAN: Okay.

7 REPRESENTATIVE MILNE: ---from you and any
8 other members of the public.

9 MR. HARTMAN: Okay, but there is just no way,
10 the underground tanks for storage of waste and stuff,
11 gasoline and stuff, and I understand that fund has
12 been raided in the past and it has not been paid back,
13 but having previously owned an auto repair facility
14 myself, we used to have cradle-to-grave
15 responsibility. Whatever we generated, we were
16 responsible for it.

17 My thought is, why can't you get businesses?
18 You have Handy and Harmon, which is a tube company in
19 Bridgeport. You have Tube Methods that is over there.
20 You have Superior Tube, which has another trichlor
21 problem in Colledgeville.

22 It is not necessarily just the tube business,
23 but, you know, Lukens is in Coatesville and in
24 Conshohocken, and I'm sure they do some kind of
25 pickling in their process, except when there is some

1 hazardous stuff. I think you need to put some kind of
2 an impact fee or bonding or something on those
3 companies that will go forward.

4 HSCA is the immediate thing we need help for
5 like this, and what the future is, it really shouldn't
6 be just, quote, "taxpayers" of Pennsylvania taking
7 care of it; it should be the actual generators of the
8 potential hazards, and, you know, even the unknown, so
9 now we can put some kind of fee on them that they have
10 to pay for that going forward.

11 Thank you for your time.

12 REPRESENTATIVE MILNE: Thank you very much,
13 Keith, and certainly the residents of the General
14 Warren Villas have no bigger advocate on this issue
15 than Keith Hartman.

16 MR. HARTMAN: Thank you. I can help at any
17 time.

18 REPRESENTATIVE MILNE: Thank you, Keith.

19 Would anybody else like to offer comments?
20 We invite members of the public to offer comments.

21 Very good. We thank everybody for being
22 here, and we certainly look forward to the lively
23 debate on the floor next week, and I certainly am
24 personally dedicated to getting this done on behalf of
25 Pennsylvania.

1 CHAIRMAN TURZAI: Duane, thank you.

2 Thank you very much, everybody. I appreciate
3 our members being here. Take care.

4

5 (The hearing concluded at 12:45 p.m.)

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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the
3 notes taken by me on the within proceedings and that
4 this is a correct transcript of the same.

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Jean M. Davis, Reporter
Notary Public

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