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SENATE APPROPRIATIONS COMMITTEE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

TRANSCRIPT OF PROCEEDINGS
BUDGET HEARING

BEFORE: SENATOR NOAH W. WENGER, CHAIRMAN
SENATOR LISA BOSCOLA
SENATOR JAKE CORMAN
SENATOR EDWIN B. ERICKSON
SENATOR STEWART J. GREENLEAF
SENATOR JOHN C. RAFFERTY, JR.
SENATOR J. BARRY STOUT
SENATOR MICHAEL L. WAUGH
SENATOR MARY JO WHITE

DATE: MARCH 2, 2006, 2:45 P.M.

PLACE: SENATE MAJORITY CAUCUS ROOM
CAPITOL BUILDING
HARRISBURG, PENNSYLVANIA

PRESENT:
KATHLEEN A. MCGINTY, SECRETARY

DONNA J. FOX, REPORTER
NOTARY PUBLIC

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CHAIRMAN WENGER: We will bring the hearing
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2 back to order. The next and the final hearing for today will
3 be from the Department of Environmental Protection with
4 Secretary Katie McGinty.

5 It's not the first time you have been before
6 the committee, so you're familiar with the process.

7 We do have a few written questions that have
8 been distributed to us by members of the committee which may
9 not be posed here orally today, but we'll forward them on to
10 you and you can respond to the Chair and we'll distribute
11 them to the appropriate members and so forth.

12 The next thing we have to do is swear you in. So
13 if you will stand and raise your right hand.

14 Do you swear to tell the truth, the whole
15 truth and nothing but the truth?

16 MS. MCGINTY: I do.

17 CHAIRMAN WENGER: Thank you. You may be
18 seated. And if you have an opening statement, you may
19 proceed.

20 MS. MCGINTY: A mercifully short opening
21 statement.

22 Mr. Chairman and members of the committee,
23 thank you very much for the opportunity to present to you
24 formally today --

25 CHAIRMAN WENGER: Excuse me. Is your mike on?

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1 MS. MCGINTY: It's my pleasure to present to
2 you formally today the Governor's 2006-2007 request for the
3 Department of Environmental Protection. As you're aware, the
4 Governor's request is for \$667.6 million of spending

5 authority for the department.

6 Just briefly what I would like to do in that
7 context is quickly review some of our activities of the last
8 year, highlight for you briefly the changes in this budget
9 from last year's or the current fiscal year budget, and then
10 preview some challenges that we have ahead.

11 First, in terms of review of some of the
12 activities we've been involved with, I wanted to just
13 highlight, I guess, one theme. And that theme is one that
14 many of us have talked about, which is working to see in our
15 environmental challenges economic opportunities and to have
16 the Department of Environmental Protection acting as part of
17 and in concert with our larger economic development goals.

18 Just to highlight a few of what are some
19 important accomplishments, first, in the energy area, with
20 the support of this committee and the funds you have made
21 available to us to invest in advanced energy technologies and
22 also the support of the Legislature as a whole in putting in
23 place our advanced energy portfolio standard, we have been
24 able to contribute to bringing a thousand new jobs to the
25 state with the Gamesa Wind Energy Manufacturing Company.

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1 We hope shortly to have a positive
2 announcement with regard to a German solar power plant
3 manufacturing company, another hundred jobs that we are now
4 very much in the running to achieve because, again, of your
5 legislation, the work you have done.

6 We also recently won a national award as the
7 state that is making the most strides in capturing methane

8 from landfills and putting that to work to reduce the cost
9 and increase the competitiveness of our manufacturers.

10 We just announced a project that is a landmark
11 in the country. It's in the Lancaster area with the
12 Lanchester Landfill. There are four major manufacturers
13 staying and growing in the state because of that project.

14 Also, in the biofuels area, Mr. Chairman,
15 you've been very active there as have other members,
16 especially from rural parts of the state. With the proposals
17 that are now before us, by the end of this calendar year, we
18 could be one of the leading biofuels manufacturers in the
19 United States.

20 So I think as a combination of the legislation
21 and the appropriations you've made working in concert with
22 us, we are making great strides. And this piece of the
23 environmental agenda is becoming a significant driver of
24 economic development and growth.

25 The second area that I highlight there is a

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1 program that again this committee has supported, has had
2 bipartisan support, and that's in the brownfields area.

3 Some important milestones there: We have
4 recently passed the 2000 site remediation milestone and, in
5 fact, have probably passed 2,100 such sites remediated. With
6 our Brownfield Action Team process, we are literally cutting
7 in half the permitting times at those facilities and sites.
8 And we now have some 76,000 jobs created or retained as a
9 result of that Brownfield program.

10 That brings me to the third part of, I guess,
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11 this opening set of thoughts, which is permits. We are
12 seeing a doubling of the number of permits that are coming
13 into the department. If you can use permits as a proxy for
14 economic activity and development, that gives us a sign that
15 the economy is growing and we are moving forward. And I'm
16 also pleased to say within that that we have in some
17 instances increased by as much as 50 percent the rate at
18 which we are issuing and processing permits.

19 So that is some of the highlights,
20 Mr. Chairman and members of the committee, of our activities
21 over the last year.

22 I also wanted to then highlight related to
23 that some of the changes you will see in this budget. This
24 budget mostly continues our activities except for three
25 things that I would highlight.

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1 First, the budget asks for additional dollars
2 to support six positions that would handle process review,
3 some of our water quality permits, our NPDES permits.
4 Especially for those who are in the Lehigh/northeast area of
5 the state, you know that we have had a huge increase in the
6 number of NPDES permits that we are seeing. We are aiming
7 with these new staff resources further to increase the rate
8 at which we can review and approve those permits.

9 Similarly, you will see funds requested for
10 six additional positions in the oil and gas area. We've had
11 in just the last calendar year a 30-some percent increase in
12 the number of oil and gas permits that we have issued. That
13 is on top of a similar record in the 2004 calendar year.

14 Given that I think all of us assume oil and gas prices will
15 continue to go up, it's most reasonable to expect that that
16 number of permits that we will continue to see will also
17 continue to go up. So we request additional resources for
18 that purpose.

19 Finally, the last important change that I
20 wanted to highlight in our budget is the request for
21 resources to enable us to reclassify our mine inspector
22 positions such that we are able to better compete to hold
23 onto those mine safety inspectors, as there is now intense
24 competition for that personnel between ourselves, the federal
25 government and the private sector given the rapid growth in

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1 the mining and development of coal resources.

2 So those are the key highlights.

3 The last point, Mr. Chairman and members of
4 the committee, I wanted to just share, really, is a
5 foreshadowing of some of the issues we will need to address
6 with you next year.

7 First, as you know -- and I guess let me
8 correct that introductory statement. This first item I want
9 to highlight is the recycling program. And I don't mean to
10 suggest or put that off until next year given that you are
11 considering -- at least in the House, there is legislation
12 presented that would move the sunset for the recycling
13 program. That's important because this year would be the
14 last year we could issue recycling grants. So I wanted to
15 highlight that.

16 Also, the Hazardous Sites Cleanup program,
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17 with your support in Growing Greener II, we had two new years
18 of funding for HSCA. This is the second and last of those
19 two years of additional funding. So in next year's budget,
20 we will need to work with you for a permanent funding source
21 for HSCA.

22 The Underground Storage Tank Investment Fund,
23 the authorizing legislation for that program expires next
24 year. That's also important to our tank program.

25 Finally, at the federal level I wanted to

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1 highlight, in June of this year -- we need to again be
2 working together, remain vigilant. The extension on the
3 federal Abandoned Mine Program again sunsets in June of this
4 year. And we will need to hopefully ensure we get another
5 extension, if not the new legislation we would like to see
6 there.

7 Last, just to highlight in the water and air
8 programs and in flood protection, we are seeing very serious
9 reductions in funding from the federal level and that will
10 impact our programs as we go forward.

11 Mr. Chairman, members of the committee, thank
12 you for your attention. I look forward to your questions.

13 CHAIRMAN WENGER: Thank you, madam secretary.

14 I noticed that on your prepared statement, you
15 put a lot of words on two sheets of paper, everything on both
16 sides, fine print. So you must have been saving a tree here.

17 MS. MCGINTY: It's recycled paper.

18 THE CHAIRMAN: I appreciate that.

19 The first question goes to Senator White.

20 SENATOR WHITE: Thank you, Mr. Chairman.
21 Madam secretary, good afternoon. Just to set
22 the record straight, your testimony and recent press release
23 that you put out indicated that Governor Rendell's \$625
24 million voter-approved Growing Greener initiative was the
25 single largest environmental investment in Pennsylvania's

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1 history.

2 That is not correct. Act 90 of -- well, let's
3 go to the first one. Act 68 of 1999 was \$645 million. Act
4 90 of 2002 was \$655 million on top of that investment. So
5 actually this one comes in third; win, place or show. I
6 mean, show is not bad. Just keep it accurate.

7 I noticed that overall, can you tell me,
8 putting aside the Environmental Stewardship Fund, is your
9 operating budget for the Department of Environmental
10 Protection larger or smaller than it was last year?

11 MS. MCGINTY: It's pretty well flat. Our
12 general government operations line item is up about
13 one-and-a-half percent, our environmental program management
14 line item is down half a percent and our environmental
15 protection operations line item is up 1.8 percent. So it's
16 fairly flat.

17 SENATOR WHITE: I notice that deleted from
18 those are some things that were in there last year, such as
19 the Susquehanna River Basin Commission's money for the water
20 resource planning under our historic water legislation.
21 Also, I think the Senior Environmental Corps is not funded,
22 nor the Center for Environmental Education. Do those fit

23 under the categories that lawmakers are supposed to buy back
24 in the environmental process?

25 MS. MCGINTY: Legislative initiatives money or

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1 WAMs --

2 SENATOR WHITE: How are those WAMs?

3 MS. MCGINTY: Let me use the phrase
4 legislative initiative dollars. Not only those, but others,
5 yes, are eliminated from the budget, as is traditionally the
6 case.

7 SENATOR WHITE: Unless the Governor set aside
8 some contingency funds so that in the negotiation process
9 these are put back into the budget, he is either prepared to
10 take out something that he has put in or does he have some
11 reserve of money to pay for these?

12 MS. MCGINTY: Secretary Masch maybe could
13 answer that better.

14 But let me also say in terms of some of those
15 line items, it's important to realize there are appreciable
16 balances in those programs. So the safe water line item, for
17 example, we also don't fund that but there is \$20 million
18 accumulated in that line item. Or the cleanup of scrap tires
19 money, similarly we don't request additional funds in that
20 line item but there is more than \$8 million accumulated
21 there. So there is tradition and there is also substantive
22 reasons why the budget funds some programs and doesn't fund
23 others.

24 SENATOR WHITE: The ones that I mentioned do
25 not have any reserves to the best of my knowledge.

1 MS. MCGINTY: Name them again. I would be
2 happy to respond more precisely.

3 SENATOR WHITE: You make reference to the
4 Hazardous Sites Cleanup Act, HSCA. No, we cannot put money
5 out of the Environmental Stream Act fund to fund that
6 temporarily with the idea that we were going to look for ways
7 to fund it.

8 Why are we waiting until next year? The only
9 programs that we have seen so far from the administration
10 call for increased taxes and fees. And we've indicated that
11 the toxic release inventory and others were simply not
12 acceptable. Are there any other plans on the table, or are
13 we simply waiting until after the election to come up with
14 tax increases?

15 MS. MCGINTY: I'm not aware of any increase in
16 taxes or fees that the Governor has proposed. His budget, as
17 you know, includes substantial business tax reductions.

18 As it relates to the Hazardous Sites Cleanup
19 Fund that I highlighted in my opening remarks, we were
20 afforded by the Legislature through Growing Greener II two
21 fiscal years of money for that program. This would be the --
22 the 2006-07 would be the second year. And we have provided
23 for that in the budget that we presented.

24 SENATOR WHITE: With regard to the Chesapeake
25 Bay Tributary Strategy, which is an agreement we have entered

1 into apparently with some other states and organizations, the
2 actual cost estimate -- the original cost estimate was for
3 120 sewage treatment plants to be upgraded at a cost of \$376
4 million.

5 In your testimony last fall, you stated that
6 the number of plants now required to do upgrades was 190 and
7 that the cost to upgrade all of those plants would only be
8 \$190 million, which works out to roughly a million dollars
9 per plant. But other persons testifying at our hearing
10 disputed those figures and put the estimates well over \$500
11 million for just the original 124 plants.

12 How can your estimated costs drop so low even
13 as you have added 61 plants?

14 MS. MCGINTY: First of all, in terms of the
15 cost figures that you pointed to, those are EPA numbers.
16 Some of those numbers derive from a study that EPA funded,
17 done not at all specific to the conditions in Pennsylvania.

18 For example, those studies include all the
19 costs of fixing all of the combined sewage overflow problems
20 or include all of the costs related to separate stormwater
21 management requirements that municipalities face. So those
22 numbers are not accurate to the actual situation with regard
23 to our Chesapeake Bay obligations.

24 The 190 number is the number of facilities
25 that would be required to control nitrogen and phosphorous

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1 as a result of the obligations we have under the Chesapeake
2 Bay program. And our mean average for the cost of achieving

3 those upgrades -- assuming nothing in terms of nutrient
4 trading, assuming nothing there, our mean average was \$193 or
5 \$195 million.

6 SENATOR WHITE: So you're sticking by those
7 numbers?

8 MS. MCGINTY: Yes, I'm sticking by those
9 numbers.

10 SENATOR WHITE: We don't have our nutrient
11 trading program in place, do we?

12 MS. MCGINTY: An interim final policy is in
13 place.

14 SENATOR WHITE: Interim final? Sort of final?

15 MS. MCGINTY: No. What that means is the
16 state of Pennsylvania proudly has a nutrient trading program,
17 one of the first states in the nation to have such a program.
18 We are also working with the sewage treatment authorities as
19 well as the farmers with some additions to the program
20 through our Chesapeake Bay Steering Committee process.

21 But even as we speak, not only is it
22 theoretically possible but we have a variety of entities
23 knocking on the door with trades in hand and we are working
24 to put the numbers to those trades and enable them to enact
25 and exact those transactions.

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1 SENATOR WHITE: Some recent press releases and
2 statements from your office implied that there is money
3 available from Growing Greener II to cover these Chesapeake
4 Bay costs. However, it's my understanding from Growing
5 Greener II that there's no funding available specifically

6 dedicated for sewage treatment plants and that the money is
7 for other water quality projects, such as watershed
8 improvements.

9 MS. MCGINTY: Under the language in the
10 Growing Greener II program -- to step back for a second,
11 first of all, there is water and sewage money in the Growing
12 Greener program. Actually, from its inception there has been
13 a 10-percent set-aside, which you have highlighted several
14 times, for innovative technologies in water and sewage and
15 drinking water upgrades. And we do maintain that, and that
16 is the Growing Greener program.

17 In addition to that, the Growing Greener II
18 legislation broadens the universe of projects that can
19 qualify for Growing Greener dollars and specifically
20 identifies any watershed priority or any project that would
21 be a priority. The water quality in a particular watershed
22 is eligible for funding under Growing Greener.

23 The one caveat on that which you're aware of,
24 since this is bond money, that typically would have to go
25 into capital type investments. But, of course, that's what

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1 we're talking about with regard to sewerage facilities.

2 SENATOR WHITE: Is this going to essentially
3 eat up all of the water money throughout the state to handle
4 the problem with the Chesapeake Bay?

5 MS. MCGINTY: I don't believe it will. We'll
6 see what the applications are that come in. But we intend to
7 have a grant round that would reflect the diversity of
8 priorities that we have traditionally funded, including, for

9 example, abandoned mine reclamation, including oil and gas,
10 well plugging, including farm-based watershed improvement
11 projects and a variety of programs we have traditionally
12 funded.

13 SENATOR WHITE: Thank you, Mr. Chairman. I'll
14 save the rest for the next round.

15 CHAIRMAN WENGER: Thank you.
16 Senator Erickson.

17 SENATOR ERICKSON: Thank you, Mr. Chairman.
18 Good afternoon.

19 MS. MCGINTY: Good afternoon.

20 SENATOR ERICKSON: I am very pleased to hear
21 you talk about brownfields in southeastern Pennsylvania. Of
22 course, this is a problem. And recycling these sites really
23 is something that does promote a strong economy, sustainable
24 environment and all of those good things.

25 Having said that, there are some states that

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1 have programs in place that have developed an insurance
2 product that would help to treat some of these brownfields.
3 Do you see that as a viable approach here in the
4 Commonwealth?

5 MS. MCGINTY: Yes, senator. And I appreciate
6 your attention and your investigation of that. I think it's
7 very important for two reasons. One is, given the price of
8 fuel and the price of commodities around the globe, a lot of
9 uncertainty is -- I think there is uncertainty around what
10 the actual cleanup costs might be. And what we have learned
11 from developers is that if there was an ability to have an

12 insurance product that could insure against unexpected spikes
13 in remediation costs, that that could be very important in
14 increasing their interest; similarly, with regard to if there
15 was unexpected pollution found, that there would be liability
16 protection insurance that also would be helpful.

17 I think those are very important initiatives
18 and we would be very interested in seeing something like that
19 come to the floor of Pennsylvania at well.

20 SENATOR ERICKSON: Let's pursue it.

21 MS. MCGINTY: Okay, it's a deal.

22 SENATOR ERICKSON: The other issue then I
23 wanted to touch on is the mercury emissions issue. And I
24 understand that DEP is proposing regulations that will go
25 before the EQB soon. Is that correct?

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1 MS. MCGINTY: Yes. Probably in the May time
2 frame. It will go before our Air Quality Technical Advisory
3 Committee even next week, but formally in the middle of
4 March.

5 SENATOR ERICKSON: Have the regulations been
6 based on a risk assessment?

7 MS. MCGINTY: What we would propose as
8 regulations to the EQB in May are based on two major
9 considerations; first, that the federal rule is damaging to
10 the development, the mining and the economic possibilities of
11 bituminous coal in Pennsylvania. And I can explain why if
12 you're interested in that point. But the federal rule
13 prejudiced against the market share for Pennsylvania coal.
14 So our rule would aim to turn that around or blunt the impact

15 of that as best we can.

16 And, second, it is premised on the
17 neurotoxicity of mercury and the science that shows that
18 especially oxidized mercury, which is what happens to mercury
19 and bituminous coal, falls out locally and creates hot spots
20 near the place where it is generated. Our rule would aim to
21 ameliorate those two negatives that the federal rule
22 otherwise presents to us.

23 SENATOR ERICKSON: So it is based on a risk
24 assessment or not?

25 MS. MCGINTY: It is based on a risk assessment

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1 as relates to the toxicity, the newer toxicity of mercury.

2 SENATOR ERICKSON: Those levels then relate to
3 those that are actually found in people?

4 MS. MCGINTY: No. I guess I would state it
5 differently. Really, as you know, the federal Clean Air Act
6 works in one of two ways. It works either on the basis of
7 setting a health standard and then directing that that
8 standard be met however, whenever, wherever it may be able to
9 be met. The second way it works is on the basis of
10 technology. And the idea is whatever the best available
11 technology is, that's the level of remediation we'll achieve.
12 The numbers that we will propose in our mercury rule follow
13 the latter, not the former formula.

14 SENATOR ERICKSON: So it follows back then?

15 MS. MCGINTY: It follows a MACTF, Maximum
16 Achievable Controlled Technology Formula, yes.

17 SENATOR ERICKSON: Does that exist to control

18 to the levels that we want to control it?

19 MS. MCGINTY: Yes, sir, in part because we
20 also are proposing a rule that does not require the new
21 mercury specific technology. So the rule that we will
22 propose depends on the co-benefits from the technology that
23 is primarily designed for sulfur, nitrogen and particulate
24 removal.

25 SENATOR ERICKSON: My understanding is that

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1 you're looking at getting the emissions trading program and
2 the gaming map; is that correct?

3 MS. MCGINTY: We would not have trading of
4 mercury, that's correct.

5 SENATOR ERICKSON: So you will proudly have a
6 nutrient trading program; you don't want to proudly have a
7 mercury program?

8 MS. MCGINTY: Those two things are very
9 consistent statements for those that have worked hard for the
10 market mechanisms and things like trading into the
11 environmental arena. It's very important that trading be
12 used where it is proper to be used and not be used where, for
13 example, you're dealing with a toxic substance, where you're
14 dealing with something like mercury that presents a real and
15 immediate danger to public health and well-being. That's
16 actually how it's laid out in the Clean Air Act as well.
17 Mercury trading is actually unlawful under the federal Clean
18 Air Act.

19 SENATOR ERICKSON: I would very much
20 appreciate having you submit to the Chairman so he can share

21 with us some data that relates to the risk of the mercury
22 proposal, particularly to, as you put it, to the spot
23 deposition and the impacts then of that and any relationship
24 of that to levels in human beings.

25 MS. MCGINTY: Sure.

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1 SENATOR ERICKSON: Fine. Thank you.

2 MS. MCGINTY: Thank you very much.

3 CHAIRMAN WENGER: Thank you.

4 Senator Corman.

5 SENATOR CORMAN: Thank you, Mr. Chairman.

6 Madam secretary, timing is everything in life.

7 And unfortunately for you, you get to be sitting in front of
8 me about an hour after I found out from a reporter that the
9 Governor has canceled his plans to move the contaminated soil
10 from the I-99 spot in Centre County to Indiana County. And
11 getting past the fact that I found out from a reporter, but I
12 do need to get a few things straight from you if I can. And
13 I apologize. This is supposed to be about a budget, but this
14 is an important issue in addition that I need to discuss with
15 you.

16 I've been told by local PennDOT people that it
17 has been the position of the Department of Environmental
18 Protection that because these soil piles are movable, that it
19 is your opinion that they must be moved and that no on-site
20 treatment of this contamination will do, essentially; and
21 that it is the opinion of the department that it must be
22 moved off the Skytop Mountain. Is that correct?

23 MS. MCGINTY: First of all, in terms of the

24 premise of your question, the Governor has spoken to this
25 issue. I am aware that PennDOT has decided in light of the

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1 questions that have been raised and the concerns expressed by
2 citizens that they would review the transportation route
3 issues and review the current plan that they have proposed to
4 the department for our permitting review. So that is what
5 the statement has been.

6 To the substance of your question, though,
7 there are, as you know, some parts of the hyritic materials,
8 there's some part of the hyritic materials that will be
9 maintained on site. Those are, for example, the areas that
10 have already been structurally incorporated into the support
11 areas for the highway development. There are others, though,
12 that are literally just stockpiled there on site.

13 After much testing and experimentation, yes,
14 PennDOT has come to the conclusion -- we think they are
15 right -- that with regard to those piles, they do not emit of
16 adequate containment on the site. And there's lots of
17 reasons for that. Including to neutralize material like the
18 kind of material we have there, you need very specific
19 combinations and mixtures of neutralizing agents to be in
20 contact with the hot material.

21 Now, with those mountains there, it really is
22 not possible to shake on limestone, for example, and expect
23 it to do the job it needs to do to neutralize the material.
24 And so it does need to be moved to a facility, a site, where
25 that precise mixture can be made and where it can be

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1 adequately maintained.

2 SENATOR CORMAN: I guess the press release
3 that came out today is that they put it on hold for now, the
4 plan. Is that correct?

5 MS. MCGINTY: Yes.

6 SENATOR CORMAN: I guess Chuck Harter from the
7 Rendell administration, the Governor's Office, made this
8 release out today.

9 My frustration is -- and it's not with you by
10 any stretch of the imagination. The frustration is it's kind
11 of like we're in the bad movie Ground Hog Day; that every
12 time we think we're making progress in the report, the next
13 day we wake up and we're back to where we started.

14 It is my belief that PennDOT is no longer --
15 not that they ever were -- are incapable of dealing with the
16 situation. They are incapable of disseminating the
17 information to the public in a manner that is respectful that
18 they can understand what's going on and why things have been
19 ruled in, why things have been ruled out. They're incapable
20 of getting public trust of what they know what they're doing
21 anymore.

22 This is why it's really been an environmental
23 issue. It's no longer a highway issue. It's an
24 environmental issue.

25 I never thought I would be asking the DEP

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1 secretary to take over. But what I'm asking you, if you're

2 willing to do so, in light of the Governor, is that you take
3 over this project.

4 We had a meeting last week where citizens at
5 the NPO were questioning upon questions about what was going
6 on. PennDOT was there and they sat on their hands, and I
7 know they knew the answers because they told me the answers.

8 You know my involvement in this. I have not
9 grandstanded on this issue. I have tried to be supportive of
10 the agencies that are working to solve this problem. But the
11 problem has gotten out of hand. The public faith in state
12 government to solve this problem is waning dramatically, and
13 I think PennDOT is incapable of solving this problem.

14 So I'm going to ask the Governor today and I'm
15 asking you as the head regulator of the Environmental
16 Protection to take over this project, come up with the
17 safest, whether we stay there and treat it or stay in Centre
18 County and treat it, but to go wherever. We need a scientist
19 to now make this decision, not the transportation people but
20 the environmental people. And I'm asking you to step up --
21 and I know it's not something you probably want to do -- but
22 to take over this project because it's gotten completely out
23 of hand.

24 MS. MCGINTY: Senator, I would be happy to
25 talk through that with you. The only caveat I would have is

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1 the following, which is citizens are going to demand wherever
2 the facility ultimately is located that there has been an
3 arm's length objective review of the design, structure and
4 performance capabilities of that site so the public's

5 well-being is not at all in question or the well-being of the
6 natural resources of the area.

7 So we have maintained that role so that when
8 application comes to us, there is no question but that we
9 objectively can review it. And so with that in mind, myself
10 and Secretary Beihler would be happy to talk it all through
11 further with you.

12 SENATOR CORMAN: When we started this, we all
13 met and decided where we were going to go. And we certainly
14 had to -- PennDOT certainly should have understood the
15 outrage that was going to happen in Indiana County and along
16 the road. And then when they underestimated the truck
17 traffic by half, they certainly put us all behind, those of
18 us who tried to give them support. That resulted in a bad
19 position because they appear they don't know what they're
20 doing.

21 This is an environmental issue, and I just
22 think that they have shown that they can't handle this. And
23 I really think that your agency needs to take charge, and I
24 hope that you can do that. I'll be, of course, conversing
25 with the Governor as well.

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1 MS. MCGINTY: Thank you, senator.

2 CHAIRMAN WENGER: Senator Rafferty.

3 SENATOR RAFFERTY: Thank you.

4 Good afternoon, madam secretary.

5 MS. MCGINTY: Good afternoon.

6 SENATOR RAFFERTY: Recently the federal
7 government has been talking about exploring alternative

8 methods/means to energy and discussed has been nuclear power,
9 which brings me to my question.

10 Realizing that the NRC regulates much of the
11 nuclear power industry, what's the status of the nuclear
12 power industry here in the Commonwealth of Pennsylvania?

13 I'm trying to recollect. Most of our plants
14 are 25 years or at least older. Are we doing anything to
15 encourage the upgrade of the plants and is there any
16 continuation to their lifeline in Pennsylvania?

17 MS. MCGINTY: Thank you.

18 First of all, in terms of the status of
19 nuclear power, nuclear power plants provide about 20,
20 25 percent of our electricity in the state of Pennsylvania.
21 In terms of their performance capabilities, et cetera, Exelon
22 has filed for an extension of the permit and the life of the
23 Three Mile Island plant. I'm not aware of any other
24 application made to the federal government for that purpose
25 yet. What that means is that the other plants have some

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1 substantial amount of running room left in their operating
2 permits or else they would also have started and initiated
3 the process.

4 I am also not aware, though, senator, of any
5 reason or issue that currently would present a question as to
6 a time when those plants would not be in a position to
7 continue to generate electricity. I haven't seen any issue
8 like that raised. I don't have any reason to believe that
9 there is a shelf life approaching, for example, for those
10 plants.

11 SENATOR RAFFERTY: I'm not assuming there was.
12 I thought I would ask you if there's any plans out there to
13 elongate the timeline or the time life of these.

14 MS. McGINTY: The only one I know, again, is
15 the one that has been submitted by Exelon.

16 SENATOR RAFFERTY: One other question, if I
17 may, in regards to the methane gas for landfills.

18 MS. McGINTY: Yes.

19 SENATOR RAFFERTY: There's often the burn
20 technology versus the non-burn technology that is called for
21 burning off some of the excess. There's been a big push, at
22 least in my area, for the non-burn technology. But I think
23 the requirement favors the burn technology over it. Am I
24 correct?

25 MS. McGINTY: We don't favor burning the

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1 methane gas itself in terms of flaring the gas at its
2 facility. I think what you're referring to is the best way
3 to remove the impurities out of the process.

4 SENATOR RAFFERTY: Yes.

5 MS. McGINTY: We have looked at the specific
6 proposal that has been made by some of the groups watching
7 the process with regard to the Conestoga landfill. I don't
8 know that we have made a final determination. I think it's
9 fair to say that we think that the burn design purification
10 technologies are better tested and better proven.

11 SENATOR RAFFERTY: My only concern is if
12 they're burning off impurities, isn't there a possibility for
13 those impurities to get off into the air?

14 MS. MCGINTY: They're deconstructed when
15 they -- and that is not an uncommon process for a variety of
16 chemical types that they are burned. And when they burn,
17 they essentially turn into carbon dioxide and water.

18 SENATOR RAFFERTY: Thank you, madam secretary.
19 Thank you, Mr. Chairman.

20 CHAIRMAN WENGER: Senator Boscola.

21 SENATOR BOSCOLA: Thank you.

22 Hi, Katie. How are you going?

23 MS. MCGINTY: Very well, thank you.

24 SENATOR BOSCOLA: Good.

25 First of all, I wanted to tell you that huge

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1 stump fire at Stine's barn years ago, that is still not
2 cleaned up. If it wasn't for your help, there's court order
3 after court order after court order dealing with this guy.
4 He's finally getting there. And I wanted you to come up and
5 waive that last truck good-bye.

6 MS. MCGINTY: Okay.

7 SENATOR BOSCOLA: Anyway, I want to commend
8 you with all of your efforts, especially with Growing Greener
9 II and make sure we invest that Growing Greener II wisely and
10 protecting our environment. I know your values are strong
11 when it comes to protecting this state and also for our
12 children. And I care about it, too, because I think we're
13 God's tenants on this earth. We have that, and we should be
14 protective of and make sure we have clean air and clean water
15 and a good environment for future generations.

16 With that being said, I want to know, because
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17 this is one of my biggest pet peeves, how we're importing
18 out-of-state trash. I was wondering, is it -- the \$4, is
19 that the tipping fee? Is it \$4?

20 MS. MCGINTY: There is a \$4.25 tipping fee,
21 yes.

22 SENATOR BOSCOLA: Has that slowed down the
23 amount of waste coming into this state, or are we still
24 number one when it comes to importer of out-of-state trash in
25 the stations?

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1 MS. MCGINTY: I believe that last statistic is
2 still accurate. We had seen in the last couple of years some
3 decline in the amount of trash that's coming into the state
4 from out of state. I wouldn't say it was a huge change from
5 earlier trends, but it's probably not related to the tipping
6 fee because it's still substantially or at least it is still
7 cheaper to landfill trash in Pennsylvania than it is in
8 neighboring states. But the difference is probably
9 attributable to the increase in fuel costs and the increase
10 then in the cost of transporting the waste.

11 SENATOR BOSCOLA: Interesting. I didn't even
12 think about it.

13 If you can help in any way, even legislatively
14 if you can think of something we can do to stop the
15 out-of-state trash. And it's not just because of
16 out-of-state trash. Our landfills are getting filled up with
17 out-of-state trash and we won't have a place for Pennsylvania
18 residents to put their trash, and it will cost them more when
19 we don't have our landfills when they fill up like they are.

20 There's something. And I know it's a federal
21 issue with what we have to do here. But I would be willing
22 to take it for the next 10, 20 years. If I'm still in the
23 Senate 10 or 20 years from now, that's one of the issues I
24 want to work on. Thanks.

25 MS. MCGINTY: Thank you.

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1 CHAIRMAN WENGER: Senator Stout.

2 SENATOR STOUT: Thank you, Mr. Chairman.

3 Good afternoon, madam secretary.

4 MS. MCGINTY: Good afternoon.

5 SENATOR STOUT: I appreciate that recently you
6 appeared before the senate Environmental Resources Committee
7 advocating for Governor Rendell's support for improvements in
8 the coal mine underground, coal mine safety legislation.
9 That hadn't been reviewed for a number of years. Where do we
10 stand on that moving forward legislatively on that?

11 MS. MCGINTY: Thank you, senator.

12 We have two pieces of legislation I think that
13 are before the committees for consideration. One is the
14 piece of legislation that derives from our experience in the
15 Queue Creek situation that would represent the first
16 comprehensive overhaul of our mine safety statute really in a
17 century, but at the very least since 1961, the last time that
18 statute was looked at.

19 The second piece adds to those fundamental
20 reforms, some of the insights that derive from the tragic
21 situation in West Virginia. It's our hope that the committee
22 will consider those pieces of legislation together.

23 We understand and appreciate the need to act
24 in the face of the tragedy in West Virginia, but I think we
25 all agree too that it's especially incumbent upon

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1 Pennsylvania's not to forget the lessons of Queue Creek. So
2 as I understand it, we have those pieces of legislation under
3 consideration in the committee and hopefully we will move
4 those pieces in the near future.

5 SENATOR STOUT: Thank you.

6 One of the issues brought up at the committee
7 hearing was the availability of new technologies in the
8 communication and location of underground miners. Have you
9 had any success in determining when that new technology will
10 be available?

11 MS. McGINTY: Yes. Thank you, senator. And I
12 think it's very important the way you phrase your question.
13 I think it's imperative and the Administration's position on
14 this has been, that we do have a directive that that
15 communications technology should be required.

16 But I think it's also important that we do
17 that through the Mine Safety Board type of structure that we
18 have discussed and the Governor's legislation would propose
19 to create because, while there are aspects of that technology
20 that function perfectly, there are issues -- for example,
21 even a wireless device depends on some cabling and networking
22 underground. It depends on some power source underground.

23 Now, those limitations can be overcome but
24 only with thinking about what happens if the entire mine is
25 on fire or if there's been an explosion.

1 So we think it is very important that the
2 director be there but that we do it through a process that
3 can enable us to review all of the different technology
4 options that are available.

5 SENATOR STOUT: Thank you.

6 I know of your interests in the active
7 underground mining issue. How do we stand on the waste coal?
8 Using it for generation of power in this Commonwealth, where
9 do we stand on that becoming viable?

10 MS. MCGINTY: First of all, in discussing
11 mercury and other challenging environmental issues before us,
12 our waste coal power plants are producing electricity for us
13 at a rate that is important to our economy. But the
14 environmental performance is unparalleled. As it relates to
15 conventional pollutants to mercury and now even to conserving
16 water, those plants perform very, very well.

17 We have a whole fleet of waste coal plants
18 that are operating, and we are very happy that with your
19 support and help that we've been able to permit three new
20 waste coal power plants and are looking forward to those
21 coming online as well.

22 SENATOR STOUT: Good.

23 In earlier hearings today, I brought out the
24 question of the breaching of the Ryerson State Park, that dam
25 in Greene County.

1 MS. MCGINTY: Yes.

2 SENATOR STOUT: I'm really dam challenged in
3 the 46th District because I also have the Dutch Fork Dam in
4 western Washington County that has been operated by the Fish
5 Commission but closed down as a result of the Hurricane Ivan
6 that damaged it.

7 Now, the problem I'm running into, the FEMA on
8 the Hurricane Ivan funding will only fund 300 some thousand
9 dollars to replace the spillway. The problem I'm having is
10 that DEP standards have changed so much from when the dam was
11 built in the early fifties that it would cost about \$3
12 million to restore the dam. And I met with people out there.

13 Is there some way to compromise between DEP
14 and FEMA in order to have this project restored without any
15 further delay?

16 MS. MCGINTY: I'm very happy to do a complete
17 design review and see if the costs have been optimized and to
18 see if there is any way to reduce the costs associated with
19 restoring the structure. We have been active in doing that
20 in several other dam reconstruction projects across the
21 Commonwealth.

22 SENATOR STOUT: That's good. I look forward
23 to working with your department. It's been very good support
24 for projects in the southwestern portion of the Commonwealth.

25 Thank you.

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1 MS. MCGINTY: Thank you, senator.

2 CHAIRMAN WENGER: Senator Waugh.

3 SENATOR WAUGH: Thank you, Mr. Chairman.

4 Good afternoon. It's good to see you.

5 MS. McGINTY: Good to see you.

6 SENATOR WAUGH: I have just a few questions,
7 first of all, on the noble Agricultural Energy Council.

8 MS. McGINTY: Yes.

9 SENATOR WAUGH: And the question is not so
10 much budgetary -- I apologize, Mr. Chairman. That seems like
11 the direction we're going through today as it is, I think,
12 practically or procedurally.

13 And along with this, I would like to offer my
14 commendations to you, as I did to Secretary Wolfe yesterday,
15 for your work on ACRE and the results of ACRE. But along
16 those lines, we are now faced with -- some of these
17 agriculturally derived energy refineries that are faced with
18 some of the same challenges that Ag businesses were faced
19 with in production of animals; that is, folks in a particular
20 area where a plant is being proposed either don't understand
21 or don't choose to be well-informed about the benefits of the
22 technical plant.

23 My question is, do you believe that the energy
24 council chaired by you and Secretary Wolfe should be more
25 proactive on behalf of the resources because, after all, all

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1 of us like to talk about the benefits of Ag-derived diesel
2 fuel and methane or ethinyl, rather; yet at the same time, I
3 believe we should. I'm asking you today if we should be more
4 proactive in helping to educate and encourage these types of
5 facilities.

6 MS. MCGINTY: I think it's a very, very good
7 suggestion. In fact, from a couple of different directions
8 at the last meeting at that council, I think there was
9 similar sentiment expressed and a work group is forming under
10 the council to really look at how that can be moved forward
11 and I think in an aggressive and ambitious way, yes.

12 SENATOR WAUGH: Good. I appreciate your help
13 with that.

14 MS. MCGINTY: Sure.

15 SENATOR WAUGH: Secondly, the look at
16 conservation districts. I'm sure you have heard quite a bit
17 about this because on the Ag budget and also on your budget,
18 it seems to be one of the highlights in terms of question
19 marks, whether or not there's going to be enough available,
20 especially in light of the fact that in many cases -- I'm not
21 going to name the laundry list. But there are an awful lot
22 of programs coming out in process, regulations or otherwise,
23 that are going to require more field work, more assistance be
24 provided to not just farmers but businesses in general in
25 putting these practices in place out in the field, so to

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1 speak. And our conservation districts really are the front
2 line in helping to do that.

3 I mean, unless I'm missing something, what
4 we're seeing is that the budget's really proposed to be
5 reduced in the case of conservation districts. And I'm just
6 curious as to how we're going to be able to meet those
7 challenges.

8 MS. MCGINTY: Sure. First of all, in terms of

9 overall funding for the conservation districts, which as you
10 know is derived in part from our budget and part from the
11 Agriculture's budget, but if taken together, it's in the
12 order of \$30 million of proposed funding for the conservation
13 districts, which actually doesn't represent a cut.

14 In our budget anyway, just speaking of our
15 budget, we are pretty much flat funded for the conservation
16 districts with the exception, as per Senator White's question
17 at the outset, not asking for the additional \$450,000 that
18 was put into the budget at the end of the last appropriations
19 process. So with the exception of that \$450,000, I think
20 it's fair to say we're flat funded as it relates to the
21 conservation districts.

22 But I do want to support the premise of your
23 question, which is, one, that the conservation districts do
24 excellent work; and, second, that the need for their services
25 is certainly strong and will only increase as we go forward.

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1 SENATOR WAUGH: Thank you for recognizing
2 that.

3 Secondly, I'm not going to get into a long
4 discussion on the Chesapeake Bay Trib strategy issue. I
5 think we all know it rather well and we know what's ongoing.
6 But I did hear you say earlier, with great confidence, that
7 we are the first state to have a nutrient trading program.
8 And you can say that, but what I'm hearing is there's still a
9 lot of work to be done --

10 MS. MCGINTY: Sure, there is.

11 SENATOR WAUGH: -- a lot of work to be done on

12 getting the details worked out, including as recently as
13 yesterday.

14 So I'm hopeful that the group that's working
15 on that will be available to come to some conclusion. But,
16 frankly, I'm not ready to go out and say that we have it
17 nailed down and it's in place.

18 MS. MCGINTY: No, which is why I used the
19 word, I believe, interim final trading policy. It is final
20 in the sense that two days we sit here, as you know. You can
21 propose to us a nutrient trade. And it can be executed, it
22 can be approved, and associated credits can be ascribed to
23 your activities. So it is here, it is operational and it
24 will count in a legal way towards your compliance obligation.

25 It is interim from the sense, as I referred

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1 to, through the steering committee process, we are expanding
2 it, changing it, refining it, enabling those who are going to
3 be most active in it to help shape what the full-blown
4 program will look like as we move forward.

5 SENATOR WAUGH: On a budgetary note with
6 regard to the final strategy -- and I didn't get into a lot
7 of research on what your budget shows. But, here again, this
8 is an area, I believe, where anything less than some sort of
9 an increase is not going to be good enough because this is
10 something that's going to be -- and I'm talking about funding
11 for the point source folks -- I mean, that's where we get a
12 lot of resistance -- and also the Ag community and putting
13 these practices in place.

14 So I'm hopeful that the department, as you've

15 prepared the budget and as we work through this process, we
16 give an awful lot of attention to what the future holds if we
17 are to hold to the commitments that we have made and put
18 these policies and practices in place.

19 I have a few more, Mr. Chairman. Do you want
20 me to wait until you come around again?

21 CHAIRMAN WENGER: Yes. We will do a second
22 round.

23 Senator Greenleaf.

24 SENATOR GREENLEAF: Thank you, Mr. Chairman.

25 Good afternoon.

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1 MS. MCGINTY: Good afternoon.

2 SENATOR GREENLEAF: First of all, I have the
3 opportunity to publicly thank you for your work on the
4 nitrous oxide emission regulations and how they have affected
5 Montgomery County. So I thank you publicly for that, for
6 your efforts. Thank you.

7 My question deals with the southeast and a
8 peculiar problem, and that is flood and stormwater drainage
9 problems. Probably one of the most common complaints that I
10 received in my district over the years has been stormwater
11 drainage problems. And now, in the most recent years,
12 flooding problems is a serious problem, so serious that we
13 have had people lose their lives in two of the last floods in
14 the last several years. These are just streams that
15 overflow; but they overflow seriously and they overflow
16 suddenly and they overflow 10, 15 feet above level. There's
17 intersections that have been under water, 10 feet under

18 water, in my district. And so we need help.

19 I looked through your budget. There are
20 projects, flood projects, and stormwater grants.

21 MS. MCGINTY: Yes.

22 SENATOR GREENLEAF: Could you tell us what
23 they are and how they could help the southeast particularly
24 and whether you would be willing to specifically look at the
25 southeast generally, not just in my district but generally,

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1 and see how you can be of assistance to us.

2 MS. MCGINTY: Sure. There are four major
3 sources of funding that I point to -- some of these are sort
4 of general categories -- but that go to the question of
5 taking on flood-related challenges.

6 First, there is a line item in our budget that
7 is for flood protection projects. And those projects are
8 typically of the order of more of the smaller-scale projects
9 or maintenance of projects that have already been built.

10 That leads to the second area of where funding
11 can be had for flood projects, which is through the capital
12 budget. And typically those dollars would be for projects
13 that are new and larger in scale.

14 The third area that can be looked at for
15 funding for flood-related concerns is at the federal level,
16 and specifically through the U.S. Army Corps of Engineers.
17 There, you see that highlighted in my written testimony.
18 We're very, very concerned that at least for just about every
19 major flood control project I can think about that we've been
20 active with the Corps in the state, there has been some

21 either reduction or in some cases complete elimination of
22 federal funding for those projects.

23 We just announced, I think earlier this week,
24 that we would put state dollars into six projects because of
25 their urgency that we're supposed to receive money from the

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1 U. S. Army Corps of Engineers.

2 But the fourth and final program area is
3 through the Growing Greener program. And here there would be
4 opportunity for direct investment where it is a
5 flood-controlled structure itself either through the general
6 environmental project money in Growing Greener or through the
7 county initiative money that is provided, if it's a county
8 priority.

9 But the final area under Growing Greener that
10 I think is very important is to recognize the connection
11 between, for example, open-space preservation or between
12 streamside projects, like planting trees along streams, that
13 reduce that kind of flash flooding that you're talking about.

14 At any rate, those are four different areas
15 where support can be had for flood-related problems.

16 SENATOR GREENLEAF: Could I ask that you make
17 an effort to work with me and other legislators to develop
18 plans in all of our communities to avoid -- there's been a
19 number of them and they're the major locations in my district
20 and in other districts adjacent to mine where we know of
21 floods and if there's a danger of flooding again. And we
22 need your help.

23 MS. MCGINTY: I would be very happy to do

24 that.

25 And without taking up too much time, I'll just

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1 tell you that in the southwest, recently we've been
2 approached -- Senator Ori e has been involved and other
3 legislators. And there are a series of communities coming
4 together across jurisdictional lines, literally forming -- I
5 wouldn't say an authority -- but a whole new communication
6 and organization structure specifically to take on those
7 flood-related problems that individual communities just can't
8 handle.

9 SENATOR GREENLEAF: Actually, in my district
10 as well, we have a group of communities who have gotten
11 together to deal with those types of problems. So we have
12 the infrastructure there. We need the help of the state and
13 financial resources as well.

14 MS. McGINTY: Okay.

15 SENATOR GREENLEAF: Thank you.

16 MS. McGINTY: Thank you.

17 CHAIRMAN WENGER: Senator White.

18 SENATOR WHITE: Thank you, Mr. Chairman.

19 Madam secretary, the government intervened in
20 the PUC or Public Utility Commission's proceeding looking
21 into the proposed merger between Exelon and PSEG. And it's
22 my understanding that you were the Governor's point person in
23 that endeavor.

24 Part of the price for you to bless this merger
25 was the requirement that Exelon pay \$12 million into the

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1 Pennsylvania Energy Development Authority, which is housed in
2 the DEP and which I understand you have considerable say over
3 where that money goes.

4 MS. MCGINTY: I chair that authority, but
5 there is a board that has to approve every investment.

6 SENATOR WHITE: What does the payment of this
7 \$12 million have to do with ensuring that this merger is a
8 good pay for the rate payers?

9 MS. MCGINTY: Actually, it's \$20 million, 12
10 in one line item and 8 in another. Those investments are
11 part of -- every merger of this nature needs to demonstrate
12 that it is in the service of the public interest, that the
13 public will be a beneficiary from the merger. And that has
14 several different kinds of component parts. The question of
15 what's the overall employment impact of a merger has been a
16 consideration before the PUC would approve mergers like this.

17 In the merger just prior to the one you're
18 focused on, also involving the Exelon Corporation, the PUC
19 also looked at that dimension of the public interest that
20 relates to, as I mentioned, quality. So in addition to jobs
21 being the focus, investing in renewable energy is a focus;
22 and, finally, a third area where there is usually requirement
23 for investment is in the area of low-income energy
24 assistance, for example.

25 And you'll see in our settlement all of those

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1 elements are reflected as well.

2 SENATOR WHITE: So the \$12 million went to
3 Pennsylvania Energy Development Authority. Where did the \$8
4 million go?

5 MS. MCGINTY: Similarly, to be managed through
6 the Pennsylvania Energy Development Authority and they are
7 investments that are in energy-related projects that are of
8 benefit to the PECO service territory.

9 SENATOR WHITE: Has that money been spent?

10 MS. MCGINTY: It has not because the merger
11 has not finally been executed. As you may know, approval is
12 required not only by the State of Pennsylvania but also by
13 the State of Indiana and the State of New Jersey.

14 SENATOR WHITE: What criteria would be applied
15 to the applications of this funding?

16 MS. MCGINTY: The criteria as outlined there,
17 the project needs to be within the purview of the
18 Pennsylvania Energy Development Authority, which has a
19 legislative set of things that it can and cannot invest in.
20 It also needs to be approved by the Board of the Pennsylvania
21 Energy Development Authority. And pursuant to the terms of
22 the merger settlement agreement, it would need to have
23 demonstrated a positive impact, if you will, on the service
24 territory of PECO in the southeast part of the state.

25 SENATOR WHITE: Will you be providing anyone a

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1 list of these grants when they are announced?

2 MS. MCGINTY: Yes. In fact, all of the
3 investments made by the Pennsylvania Energy Development
4 Authority are publicly available. They are approved only in

5 public session, and we put out a press release after every
6 meeting of PEDA to announce what actions and determinations
7 the Authority has taken.

8 SENATOR WHITE: Did DEP require Exelon to
9 endorse unrelated legislation raising the fees that your
10 department collects from nuclear facilities in exchange for
11 approval of the merger?

12 MS. MCGINTY: That is one of the issues that
13 was discussed as part of the merger. We absolutely take it
14 as an article of faith that one of our most substantial
15 responsibilities is to ensure the safe operation of those
16 nuclear facilities. And, yes, we were insistent that Exelon
17 demonstrate to us that the safe operation of those facilities
18 would in no way be compromised through this merger.

19 SENATOR WHITE: So you're equating fees with
20 safe operation of the facility?

21 MS. MCGINTY: No, I was not. That was not the
22 point that I had made. The point that I made was that we
23 were concerned about and ensuring that there would be
24 continued investment in all of the safe procedures that are
25 required for our confidence that those facilities are

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1 properly being managed and operated.

2 SENATOR WHITE: I must say I think it creates
3 an appearance -- and perhaps there wasn't any actual intent.
4 But it creates an appearance of impropriety when to get
5 approval for a merger, you require a company to back
6 legislation unrelated to the merger that raises fees for DEP.

7 MS. MCGINTY: The issue of the safe operation
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8 of nuclear facilities and the safe transport of radioactive
9 materials to and from those facilities is very much at the
10 heart of whether or not the merger of this corporation with
11 another one is in the public interest, because the public --
12 especially in a corporation that then would be designed very
13 substantially around the operation of nuclear power plants.
14 That really was the heart of the question presented in the
15 merger.

16 SENATOR WHITE: I want to follow up on a
17 question of Senator Stout's just briefly. He was talking
18 about the increase in the mining budget, which is a very good
19 thing to do. I heard you say at one point that one of the
20 challenges was going to be to have certified and qualified
21 mining inspectors because we're in competition with other
22 people and there aren't a lot of them.

23 In another hearing that subject came up, and
24 it was suggested that the department make contact with the
25 various community colleges and in the state-system

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1 universities to encourage them to develop such a program and
2 to offer it for Pennsylvania residents to increase your
3 supply of such inspectors and to keep some of it in
4 Pennsylvania.

5 MS. MCGINTY: Yes. And those programs have
6 been underway. I think we also have announced with the --
7 some of the parts of the state school system, we have
8 partnerships with those schools and we do have miner training
9 programs. We have increased some of those programs just
10 recently.

11 In addition to that, the United Mine Workers
12 has come forward with a proposal to start, I think, a new
13 effort aimed at training mining personnel. And we have been
14 working closely with them on that.

15 SENATOR WHITE: When you say you have the
16 programs, do you fund them?

17 MS. MCGINTY: We do fund them. We also
18 receive federal funds for that purpose. And this year I
19 think we received in the order of about \$493,000.

20 SENATOR WHITE: Could you let me know what
21 schools you have a relationship with in that regard?

22 MS. MCGINTY: Yes, I will.

23 SENATOR WHITE: Thank you.

24 MS. MCGINTY: Sure.

25 CHAIRMAN WENGER: Senator Corman.

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1 SENATOR CORMAN: Madam secretary, last year
2 the Penn State Center for Dirt and Gravel Roads was given a
3 grant to do a demonstration project using shredded tires for
4 road fill.

5 MS. MCGINTY: Yes.

6 SENATOR CORMAN: I guess the demonstration
7 project was in Columbia County because it was near an area
8 where we could get some shredded tires, but the problem was
9 we were unable to find a company that would shred the tires
10 to go ahead with the demonstration project. At least that's
11 my understanding. So the center has come up with an
12 alternative dealing with tire bales instead of tire shreds.
13 And don't ask me to tell you the difference. I'm sure you

14 know. They're waiting on your decision. I'm just wondering
15 if you have taken a look at it yet and if you know when a
16 decision will be coming forward.

17 MS. MCGINTY: Yes. We had chosen the Penn
18 State project as among those that we would invest in through
19 the start tire pile funding that the Legislature has made
20 available and that we had also secured through litigation
21 around that situation.

22 We recently have been working with Penn State
23 to increase the scope and the investment we will make into
24 that program. So that work is underway. They are further
25 fleshing out what the terms of reference will be for the

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1 project. So it's well underway as far as I'm aware.

2 SENATOR CORMAN: It seems like there's an
3 issue between -- the ideal was to use tire shreds. And they
4 apparently were unable to come up with the tire shreds to do
5 the project and they seem to be on hold looking for an
6 alternative.

7 MS. MCGINTY: The problem arose, one of the
8 other grantees -- just to be very frank about it, one of the
9 other grantees has probably one of the largest, if not the
10 largest, set of capabilities to shred tires in the
11 Commonwealth. They, however, were in substantial
12 noncompliance with the law and have been less than speedy in
13 coming into compliance to the point where we have not been
14 able to award them the grant monies. And that's why we have
15 gone back and essentially doubled the amount of money we're
16 going to invest with Penn State; and, therefore, we will

17 build a different or an alternative tire process and
18 capability.

19 SENATOR CORMAN: Thank you very much. I think
20 it's a good project. And I thank you for your foresight.

21 MS. McGINTY: Thank you.

22 CHAIRMAN WENGER: Senator Waugh.

23 SENATOR WAUGH: Thank you, Mr. Chairman.

24 The CREP program, just some really quick
25 questions. First of all, we have started to limit the number

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1 of practices that are available in that. I would like to get
2 a sense from you of why we're doing that.

3 MS. McGINTY: Sure.

4 SENATOR WAUGH: Secondly, one of the things
5 I've heard from participants in the program is that there's
6 -- the federal money normally comes through rather quickly.
7 But for some reason, ours comes through not so quickly; and
8 some have said that's because there's not enough funds in the
9 account to make those payments in a timely manner.

10 MS. McGINTY: I think I'll take the last one
11 first.

12 I think that was true. I think now we are
13 keeping pace. Especially now with Growing Greener II in
14 place, we do have the funds to be able in real time to make
15 those investments. But I do know our first year in office, I
16 thought I was going to announce all of these investments and,
17 instead, became aware that we had a backlog of checks that
18 still needed to be cut. But I think we have caught up.

19 In terms of the variety of practices, all of
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20 the universal practices that previously were allowed under
21 the Conservation Reserve Enhancement Program are still
22 allowed. And the combination of dollars would still be --
23 the combination of federal and state dollars would still mean
24 that there are dollars available for that university
25 practices.

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1 However, we have made the change where a farm
2 has a stream on it and where there is an ability to do a
3 streamside investment, to do a riparian buffer, for example,
4 we are putting the state dollars into those projects. And
5 there's a variety of reasons for that, including especially
6 that on the one hand, those are harder and more expensive
7 projects for farmers to do. So we want to show support where
8 there is that extra effort required. And then on the
9 secondhand, as you know, those projects much more appreciably
10 reduce runoff directly into the stream and so we get a bigger
11 bang for our buck in terms of water quality.

12 SENATOR WAUGH: Speaking of stream runoff, on
13 another subject, you're familiar with the legacy sediment
14 theory, relatively new.

15 MS. MCGINTY: Yes.

16 SENATOR WAUGH: And extremely significant, if
17 what the professors claim could actually be realized, it
18 would be 60, 70 percent reductions in sediment.

19 I'm wondering if there's any funding available
20 in the budget to pursue those types of projects either on a
21 limited piloted basis or in some way to help continue the
22 research that's been done to see if, in fact, working towards

23 ways to reduce legacy sediments will work.

24 MS. MCGINTY: Yes. In fact, we have been
25 working in partnership with Franklin & Marshall College. As

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1 you know, they have a considerable amount of expertise there.

2 But at the risk of being irreverent about the
3 need for the study, et cetera, for me, I think we ought to
4 move full bore into completely including the legacy sediment
5 possibilities right into the heart of our strategy. If
6 somebody wants to pull a backhoe up and scoop up a bunch of
7 that sediment and then go and measure it and say it's got X
8 amount of nitrogen and we're taking it out of the watershed,
9 to me we ought to give them credit for that and not study it
10 for 20 years.

11 But I would like to talk to you about this
12 because my big concern, actually, is that there will be a
13 temptation to make this a wonderful universe of Ph.D.
14 projects while we're not getting credit for taking that
15 legacy sediments out of the streams. So that's kind of the
16 by-push on this.

17 SENATOR WAUGH: Frankly, I like your idea much
18 better. I'm glad to hear you say that.

19 Finally -- and this has to do with the
20 budgetary item -- the Susquehanna River Basin Commission is
21 championing an effort to secure like \$6.1 million for the
22 Barns Tucker project, I believe it is. You're familiar with
23 it?

24 MS. MCGINTY: Yes.

25 SENATOR WAUGH: Are you supportive of that

1 effort and is there money available to do that and proceed?

2 MS. MCGINTY: I know that the River Basin
3 Commission has been presenting the idea I think recently to
4 the members of the Legislature, and I was briefed shortly
5 just a few weeks ago on it as well.

6 I think it's very, very creative thinking,
7 probably one of the best approaches to ensuring that makeup
8 water -- and I guess all you need to do is look at the other
9 options that the SRBC had considered in terms of building a
10 dam to hold back water and be able to use that for
11 consumptive-use offset at a price tag of \$45 to \$50 million,
12 and here we're approaching a price tag of six.

13 So we are very supportive. I think it's a
14 very creative concept. I think it achieves a variety of good
15 environmental objectives, again, in a cost-competitive or
16 cost-efficient way.

17 SENATOR WAUGH: Just to add to that, it's a
18 mine reclamation project that supposedly will work for some
19 25 miles, I believe. Two, just as importantly, it would help
20 alleviate the concerns that our Ag community has about where
21 SRBC is going with the question of their withdrawal. So we
22 would appreciate your help.

23 MS. MCGINTY: Thank you.

24 CHAIRMAN WENGER: I think we pretty well made
25 the rounds except that I might have a question or so myself.

1 You mentioned I think in your opening
2 statement about the issue of biofuels.

3 MS. MCGINTY: Yes.

4 CHAIRMAN WENGER: We're both aware that this
5 has been a partnership thing that you have done with the
6 private sector, that we actually have trucks being run on
7 bio-diesel with a percentage of maybe 5 or 10 percent of
8 soybean oil mixed with diesel fuel and with fossil fuel, also
9 using that as heating oil, that same kind of a mix.

10 MS. MCGINTY: Yes.

11 CHAIRMAN WENGER: The private investment into
12 that has been considerable. And I know that the DEP has been
13 assisting with that. It's been a good partnership. It is
14 working. I think it's kind of a certain plateau, and I think
15 the potential to go beyond that plateau is great.

16 Could you comment as to your sentiment? Is
17 the potential there to move forward with that, which could
18 really make a big difference in the amount of alternative
19 fuel that could be utilized? What do you see happening
20 there?

21 MS. MCGINTY: I can tell you very specifically
22 that we have presented before us on the order of hundreds of
23 millions of gallons of manufacturing capability that is under
24 design or proposal in various parts of the state and where
25 the proprietors of the proposed facilities have come forward

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1 to tell us of their plans. In terms of what I think the next
2 steps are on this, I think a variety of things would be

3 useful .

4 First of all, further showcasing, I think as
5 Senator Waugh has suggested, what an asset these facilities
6 are in a community; second, through our Alternative Fuels
7 Incentive Grant Program to be able to do two things. One is
8 to invest in the manufacturing facilities themselves. Now,
9 this Legislature has recently given us the authority to use
10 those AFIG dollars that way and so we now have the
11 opportunity to move forward and do that.

12 The second thing we can do is to make some of
13 those dollars available to defray any increase in cost that a
14 business or municipality may face in converting or deciding
15 to use a soy-based fuel for their fleets. The only reason I
16 hesitate a little on highlighting that is that the really
17 good news is that the soy-based fuels have been trading
18 cheaper than the hundred-percent petroleum product.

19 Today on the NYMEX, diesel fuel is probably on
20 the order \$2.60 or so. B20 would probably be on the order of
21 \$2.50 a gallon. So it is coming in actually cheaper than the
22 pure petroleum product.

23 I think the last thing I would just say is, as
24 I think you're aware, some states are looking at this in a
25 way that would take a page out of the book of the alternative

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1 energy portfolio standard that the state has now put in place
2 for electricity and are pursuing pieces of legislation or
3 initiatives that would say maybe we should similarly have a
4 fuels standard where we would be looking to X percent of the
5 fuels consumed in the state to come from biofuels, where I

6 think we have the opportunity in Pennsylvania, not only
7 biofuels but coal-liquid fraction as another option here.

8 Those are the things I see going around the
9 county, putting money into it and putting these types of
10 policies and programs together that would create demand for
11 the product.

12 CHAIRMAN WENGER: Thank you.

13 The other one also I was going to mention was
14 mentioned previously, and that's the nutrient trading.

15 MS. MCGINTY: Yes.

16 CHAIRMAN WENGER: I know it is in place to a
17 certain extent; yet, there's still a lot of confusion out
18 there, especially in the agricultural community, where there
19 might be a lot of potential for nutrient trading. And I know
20 I discussed it with one of your deputies that work on that
21 and I know you're working on it. But I would also urge that
22 we try to clear up some of the misunderstandings or lack of
23 understanding, more lack understanding, misunderstanding, on
24 the whole subject, because the potential may be there to do a
25 lot of nutrient reduction going into our water supply.

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1 MS. MCGINTY: I agree, Mr. Chairman. It's
2 part of the reason I'm insistent on -- and maybe overly so.
3 And I apologize -- is the fact we have the policy, we have
4 the program. You can trade today in Pennsylvania if it meets
5 your business objectives to do so, because I think there is a
6 question do we have a program, do we not. We do.

7 Is it the case that we can further refine it,
8 build it out so that it is more accommodating to the

9 interests that are out there and need to be served by the
10 trading program? That's absolutely the case. And through
11 the process, the steering committee process that you're
12 referring to, there's a tremendous amount of work being done.
13 And I just thank the farm bureau and Penn Ag industries and
14 Pennsylvania Municipal Authorities Association who are
15 spending hours with us making sure that this is optimally
16 effective from their point of view.

17 CHAIRMAN WENGER: Finally, the legacy sediment
18 practice, remedial practice, does it qualify for cost share?

19 MS. MCGINTY: For cost share? I imagine if we
20 had a proposal. We have not received a proposal. Do you
21 mean under the Growing Greener program?

22 CHAIRMAN WENGER: There are certain
23 best-management practices on agricultural operations that
24 qualify for cost share, a legacy sediment approach. Could
25 that qualify for cost share under those programs?

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1 MS. MCGINTY: I think, as Senator Waugh said,
2 since this is relatively new on the radar screen, my guess is
3 it's probably an untested question yet. In other words,
4 under the federal Farm Bill programs, could you get monies
5 for those types of projects? I think it's probably not asked
6 yet.

7 What we've been focused on is making sure we
8 get nutrient reduction credit from USEPA if we do have a
9 legacy sediment removal effort. And USEPA has been at the
10 table with us and we're working towards that end.

11 I would be happy to explore the question of

12 how the funding programs might also help.

13 CHAIRMAN WENGER: Thank you.

14 Anything else?

15 Thank you, madam secretary.

16 MS. MCGINTY: Thank you very much.

17 CHAIRMAN WENGER: That will conclude our
18 hearing for today. We will be starting at 9:30 a.m. on
19 Monday of next week. We will recess until Monday at 9:30
20 a.m.

21 (The proceeding was concluded at 4:00 p.m.)

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

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Donna J. Fox, Reporter
Notary Public

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