

COMMONWEALTH OF PENNSYLVANIA
SENATE OF PENNSYLVANIA
SENATE ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE

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PUBLIC HEARING ON
HAZARDOUS SITES CLEANUP FUND

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Before: SENATOR MARY JO WHITE, Chairman
SENATOR RAPHAEL J. MUSTO, Minority Chair
SENATOR ANDREW DINNIMAN

Date : October 16, 2006, 11:30 a.m.

Place : Room 8EB
Capitol Building
Harrisburg, Pennsylvania

By : Patricia M. Brown
Reporter - Notary Public

SPEAKERS:

Kathleen A. McGinty, Secretary
Department of Environmental Protection

1 SENATOR WHITE: Good morning. We'll call
2 this hearing to order. This is the hearing of the
3 Senate Environmental Resources and Energy
4 Committee for the purpose of reviewing the status
5 of the hazardous sites cleanup fund.

6 As you know, the funding, the stopgap funding
7 that is taking care of this program will expire
8 the end of June. It is my feeling that it's
9 probably not a real good idea to wait until we are
10 in the budget process and then at absolute crunch
11 time before we begin discussing ways of dealing
12 with this.

13 This formally was funded through the Capital
14 Stock and Franchise Act. That fee is being phased
15 out, so we need to be looking at some alternative
16 solutions because this is something we must do.

17 And that's the purpose of this hearing today,
18 to see what's on the table, to see what's being
19 discussed, to see if there are creative solutions
20 out there and where we might want to go with this
21 because if we can have as much work as possible
22 done on this issue before we get into overall
23 budget negotiations, I think it will be helpful to
24 all involved.

25 With that, Senator Musto, any comments?

1 SENATOR MUSTO: I have none.

2 SENATOR WHITE: This should be brief, but I
3 hope productive. We will call the first
4 testifier, the only testifier.

5 MR. HENDERSON: Our witness is the Honorable
6 Kathleen McGinty, secretary of the Department of
7 Environmental Protection.

8 MS. MCGINTY: Thank you. I didn't realize I
9 was the only one today. Thank you, Madam Chair,
10 Mr. Chairman, for a very timely hearing. And I
11 completely concur with your opening comments,
12 Madam Chair. I'm very, very happy that you've
13 taken the initiative and leadership to start
14 focusing on HSCA.

15 What I thought I would do by way of opening
16 comments is to touch on five themes quickly that
17 will bring us up to speed in terms of the HSCA
18 program and some of the initiatives that have
19 already been taken to try to shore it up
20 financially.

21 First, to remind the committee of the broad
22 array of activities that are funded through HSCA;
23 second, to talk about the earlier financial
24 situation; and third, to lay out, related to that,
25 what we did by way of emergency reform, spending

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1 reductions in the program; and then fourth, to

2 bring us up to speed where we are today in terms
3 of the financial condition of the fund; last, I
4 just wanted to share a few reflections in terms of
5 the importance of a dedicated source of funding
6 for HSCA, and that ties back to the first theme
7 which is what is the nature of the activities that
8 are funded through HSCA.

9 So to start there, as the committee is well
10 aware, the hazardous sites cleanup fund is the
11 state's primary tool for addressing remediation of
12 activities of toxic or hazardous materials,
13 especially where there is either no financially
14 viable party or there is not currently a known
15 responsible party capable of taking action.

16 But beyond that immediate set of activities
17 with which the committee is well aware, there are
18 other activities as well. HSCA provides emergency
19 funding for the department as well in a couple of
20 key areas.

21 So, for example, if a tanker truck turns over
22 on a highway and there's a chemical spill, HSCA is
23 the mechanism through which we respond to and
24 remediate that spill. Or on a very regular basis,
25 we are expending funds from HSCA because a drum or

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1 drums will be found abandoned that either are
2 known to have or suspected to have toxic or
3 hazardous materials in them.

4 Another part of the emergency situation, for
5 example, is floods, floods where drums or tanks
6 get loosed from their moorings. It is HSCA that
7 enables us to go in and recover those tanks and
8 then properly dispose of them.

9 So there is the toxic remediation, but also
10 this array of emergency activities that we do
11 through HSCA. Tire fires, for example. HSCA is
12 our action tool or the mechanism through which we
13 can fund response.

14 A third set of activities also in the
15 emergency area goes specifically to life
16 threatening or health threatening situations and
17 more specifically still to the need for clean
18 drinking water.

19 And so through HSCA, we will either act on an
20 emergency basis and provide bottled water or we
21 can act in a longer-term basis in two ways. One
22 is to help put in place a public water system to
23 replace a ground drinking water system or secondly
24 to pump and treat the contaminated water to remove
25 the contamination.

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1 So another area of HSCA activities is in the
2 realm of drinking water and our response
3 activities when there is contamination of drinking
4 water.

5 But there are a couple other key things that
6 HSCA is involved in too. Unfortunately, things
7 like methamphetamines have been in the news. DEP
8 is part of the criminal investigation team that
9 goes into situations where there is proven or
10 suspected illegal chemical or drug activities, and
11 it is through HSCA that we help to categorize what
12 some of those suspect substances might be. So
13 there is a criminal law enforcement aspect to HSCA
14 as well.

15 And finally, two other key things go to local
16 government and federal government. In the local
17 government side, it is through HSCA that we
18 support municipalities that host a variety of
19 hazardous waste facilities; and HSCA is a
20 reimbursement tool for their oversight activities
21 at those facilities.

22 Going from the local to the federal, it is
23 through HSCA that the Commonwealth meets its
24 federally legally binding obligations to support
25 ten percent of the cleanup costs under the federal

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1 superfund program.

2 And through that set of obligations, the
3 Commonwealth has invested about fifteen million
4 dollars, but that has leveraged a hundred and
5 forty million dollars in federal cleanup dollars
6 into Pennsylvania.

7 Similarly, HSCA is our tool to meet our
8 federal obligation to provide twenty-five percent
9 of our participation costs in the federal resource
10 conservation and recycling program.

11 So those two federal legal obligations are
12 currently carried through HSCA. And they are just
13 that, Madam Chair. They are federally legally
14 enforceable obligations that we are bound through
15 statute and through contract with the federal
16 government.

17 So that's a reprise of what has HSCA does.
18 To reprise the financial situation of HSCA similar
19 as you alluded to, in 2002 when the state was in a
20 position of seeing a growing budget deficit, there
21 were a variety of tough choices that were made and
22 decisions put in place to try to address that
23 budget deficit, one of which was to turn off what
24 was an automatic transfer of funds from the
25 Capital Stock and Franchise Tax to about thirty

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1 million dollars a year into the HSCA sites cleanup
2 fund. That was one of the things that were turned
3 off in order to build funds to begin to address
4 the budget situation.

5 The law did include a five million dollar
6 trigger. Maybe in question and answer we can go
7 into the benefits but also the less than perfect

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8 solution that has proven to be to date for the
9 funding situation in HSCA.

10 The trigger essentially said that should the
11 HSCA fund dip down below five million, that the
12 budget secretary was then authorized to redirect
13 capital stock and franchise dollars or general
14 fund dollars back into HSCA, so we can talk about
15 the pluses and minuses of that.

16 By the time Governor Rendell came to office
17 in 2003, in two ways I became apprised of what was
18 then a diminishing and increasingly perilous
19 condition for HSCA. One was through the
20 comptroller who had issued a report indicating
21 that HSCA would be completely out of money within
22 about two years, so in the 2004/2005 fiscal year.
23 And the second was through a series of roundtables
24 that, Senator, your staff participated in, they
25 were very helpful, with the community involved in

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1 brownfields remediation where we ultimately put
2 together our brownfields enhancement package that
3 reforms the brownfields program.

4 But it was in those conversations where some
5 of those private sector contractors said, You
6 realize that we are running out of money to do
7 brownfields remediation. It was news to me at
8 that point, but it reinforced then a later report
9 that I had gotten from the comptroller.

10 So what did we do? We immediately step up at
11 the governor's direction and put in place some
12 short-term measures in order to enable the
13 governor and the legislature to come up with some
14 solution.

15 Those measures included an immediate hiring
16 freeze that I instituted in the program. I also
17 instituted an immediate freeze on any new starts
18 in terms of new cleanup projects.

19 To give you a sense of that, we have as we
20 gather today probably on the order of eighty to a
21 hundred active remediation projects underway. So
22 it put an immediate freeze on any new starts.

23 Third, I also ordered as the situation got
24 worse, a triage effort, if you will, where not
25 only were we not starting new projects but also

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1 reeling projects back in to where our technical
2 staff said that we would be doing the minimum
3 level of effort necessary to protect public
4 health.

5 So what that meant, for example, if we had a
6 project where we were supposed to be building a
7 water line, we stopped short of that and just
8 delivered bottled water in the interim. Or if we
9 had a project where it was not a drinking water
10 situation but there was a toxic spill that was

11 being remediated, instead of continuing the
12 remediation, we put up a chain link fence.

13 So it's that type of triage activities we
14 engaged as well, again, to spend the dollars
15 available to the hazardous sites cleanup program.

16 Last, we stopped the transfers out of the
17 hazardous sites cleanup program that had been
18 underway for several years, for example, through
19 growing greener, through the environmental
20 stewardship fund. There had been an automatic
21 transfer out of HSCA, and we were not able to do
22 that anymore.

23 And similarly, there had been on the order of
24 ten million dollars a year we were transferring
25 out of HSCA to the department of community and

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1 economic development for their participation in
2 the brownfields remediation program.

3 So those were some of the triage measures, if
4 you will, or short-term measures we put in place
5 to extend the viability of the program.

6 On the hiring freeze, I should say we have
7 mostly -- well, just to give you the numbers,
8 we're looking at about a twenty-four percent
9 reduction now in the number of employees on the
10 HSCA complement as compared to the initiation of
11 the program in 1992. So we have very dramatically
12 reduced the personnel piece of that equation.

13 The long-term funding situation -- that
14 bought us time to enable the governor to propose a
15 formal resolution of the issue in his Growing
16 Greener II proposal.

17 Just to reprise, that proposal had two
18 elements as it related to the funding situation
19 for the hazardous sites cleanup program. It
20 imposed or proposed to impose a fifteen cent a
21 pound fee on toxic releases as they are reported
22 under the federal toxic release inventory. In
23 2004, that would have amounted to about 20.4
24 million dollars.

25 On top of that, the governor's proposal would

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1 have taken off the top every year of Growing
2 Greener II on the order of about twenty-nine
3 million dollars.

4 And so the permanent combined funding sources
5 in the governor's proposal for HSCA amounted to
6 forty-nine million dollars a year which was pretty
7 much in keeping with what had been a fifty to
8 sixty million dollar a year program prior to his
9 proposal.

10 As you know, the legislature did not support
11 the fees that the governor had proposed. And
12 instead, as you rightly say, Madam Chair, in a
13 stopgap initiative and I think in a very helpful

14 initiative, Growing Greener II ultimately provided
15 fifty million dollars over two years for HSCA,
16 which two years end in the end of June of 2007.

17 The last thing then I wanted to touch upon is
18 why it is important to have not stopgap or
19 annually unpredictable but dedicated and
20 predictable funding for this program. The two or
21 three things I would just mention which relate
22 back to those essential functions I had identified
23 that HSCA is involved in, first, the hazardous
24 sites cleanup program in its emergency functions
25 relies on standby contractors, private sector

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1 contractors who need to be available to us
2 twenty-four, seven whenever we pick up the phone,
3 whenever that tanker truck turns over on the
4 Turnpike, and immediately have resources available
5 to be dispatched.

6 Now, the only way a private sector contractor
7 can make that investment of capital and put it on
8 reserve and on call for us is if we have some
9 ability to give that company assurance that there
10 is money there for the long haul for them.

11 A second reason that long-term dedicated
12 money is important is that the remediation
13 activity funded by HSCA almost -- I shouldn't say
14 that -- often and probably almost always span
15 beyond a single fiscal year. Not the emergency

16 activities, but the remediation activities.

17 And indeed, if we're talking about the
18 activities that not only bypass contaminated
19 ground water but seek to treat it, those could be
20 thirty-year commitments that we need to be able to
21 make.

22 The last two things I would mention as
23 leading in the direction of advising a dedicated
24 source of funding for HSCA, remember that HSCA is
25 currently our source of funding to meet our

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1 federal legal obligation to participate in
2 superfund and RCRA.

3 So to the extent that HSCA is not a dedicated
4 funding source, some other dedicated source needs
5 to be there since we are again legally obliged by
6 the federal government to pay those bills.

7 And last, because HSCA literally is our
8 source of funding to save lives, if the funding
9 has any vagaries to it -- and I guess I'll put
10 this forward as a personal statement because a
11 different manager could draw a different
12 conclusion. The conclusion I drew when the
13 funding was in jeopardy was to draw back anything
14 that was not immediately needed to save somebody's
15 life or health.

16 I have to believe that that would not be an

17 usual instinct for a manager to have. If the
18 money had some vagaries to it, you would feel your
19 first and foremost obligation is the short-term
20 save people's lives part of the HSCA
21 responsibilities.

22 What that means is the other cleanup
23 activities that are critically important but maybe
24 not the difference between somebody being able to
25 stay in their home or not would I think at least

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1 suffer if not permanently be put on a back burner
2 in the interest of ensuring that the funds are
3 there for life and health.

4 So, Madam Chair, Mr. Chairman, members of the
5 committee, thank you for the opportunity to lay
6 this out and again for your timely attention to a
7 very, very important program.

8 SENATOR WHITE: Thank you, Madam Secretary.
9 Do we have a waiting list of projects?

10 MS. MCGINTY: We do. The way that ranking
11 happens, it is on the basis of immediacy of
12 exposure to the public or to the environment. We
13 have a tiering system, A, B, and C, that our
14 regions put together and the proposed projects of
15 which fall into those categories, again, according
16 to the immediacy of public health or environmental
17 threat.

18 SENATOR WHITE: How many projects are on

19 that?

20 MS. McGINTY: We have about eighty-some
21 underway. Karen, do you know how many would be in
22 the universe, not currently active?

23 MR. BASSETT: No, I don't know.

24 MS. McGINTY: We'd have to respond for the
25 record.

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1 SENATOR WHITE: I appreciate you summarizing
2 your testimony. That was very helpful. But in
3 the history, there's just one point I would like
4 to take issue with. I suppose it's minor, but I
5 want to be sure we're working from the same page.

6 MS. McGINTY: Okay.

7 SENATOR WHITE: That is on Page 3 where you
8 state, The legislature rejected these revenue
9 sources, instead proposing to finance the
10 hazardous sites cleanup fund as well as growing
11 greener by redirecting money from the state's
12 recycling fund.

13 I never saw any proposal like that. In fact,
14 the proposal which I sponsored was Senate Bill 149
15 which was the proposal to put the stopgap in place
16 where the fund dips below a certain level, the
17 governor or the budget secretary had the authority
18 to release general fund money from the Capital
19 Stock and Franchise Act fee.

20 I never saw a proposal come out of the
21 legislature. I checked with the House
22 environmental resources committee, and I was told
23 that no portion of their green PA plan was
24 redirected.
25 MS. MCGINTY: The green PA plan would have

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1 very definitely be directed, yes.

2 SENATOR WHITE: My recollection is the
3 governor during negotiations for growing greener
4 put the recycling fee in play.

5 MS. MCGINTY: No. The green PA. And the
6 governor was clear from the outset. In fact, all
7 of our testimony was to the effect that we didn't
8 think it was good idea to take funds out of a
9 critical program like recycling to fund another
10 critical program like HSCA.

11 SENATOR WHITE: I'm not sure. While
12 recycling is a desirable program, I don't really
13 think it rises to the level of HSCA. I think
14 hazardous sites cleanup and recycling are totally
15 different planets.

16 MS. MCGINTY: Well, they are very different,
17 obviously. But when you have a program that
18 supports eighteen thousand jobs and generates
19 eighteen billion dollars of economic activities in
20 the commonwealth, eighty-one thousand jobs and
21 eighteen billion dollars of activities as

22 recycling does, that has been a big winner for us
23 in economic development opportunities.

24 SENATOR WHITE: I'd love to see an analysis.
25 We'll save this for another day. Those are very

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1 highly subsidized jobs. I think we need to take a
2 look at this.

3 Here's the other piece. You say, also on
4 Page 3, Ultimately the legislature passed and the
5 governor enacted a six hundred twenty-five million
6 dollar voter-approved bond initiative that among
7 other things included at least fifty million
8 dollars for the hazardous sites cleanup fund over
9 two years.

10 MS. MCGINTY: Right.

11 SENATOR WHITE: I was told during the bond
12 issue negotiations that bond issue money cannot be
13 used for programs.

14 On May 20, 2005, I wrote the governor's
15 office to ask for clarification on the TRI fee and
16 the HSCA funding. I finally received a reply.
17 Guess when? Last Friday, sixteen months later.
18 And the letter substantiates that none of the bond
19 money went to HSCA.

20 MS. MCGINTY: I missed part of the premise of
21 the question. I'm sorry. The bottom line,
22 Growing Greener II dollars as prescribed in the

23 legislation are going to the hazardous sites
24 cleanup fund. Again, fifty million dollars over
25 two years.

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1 SENATOR WHITE: You might want to talk to
2 Secretary March about that because I was assured
3 that bond money cannot be spent for programs. It
4 is limited in how it can be spent. Isn't it true
5 that that fifteen million dollars actually came
6 from redirecting a portion of the four twenty-five
7 ton tipping fee?

8 MS. MCGINTY: Oh, that is correct, yes. The
9 bond money --

10 SENATOR WHITE: That's not bond money.

11 MS. MCGINTY: That is correct. But bond
12 money as a general rule, as I think you know,
13 can't be used for any kind of personnel or
14 administrative expenses. It can only be used for
15 bricks and mortar and capital investments.

16 SENATOR WHITE: Well, I would like a
17 clarification on that because I think what you're
18 telling me is at odds with what I was told in the
19 letter which I received -- was it last week,
20 Patrick?

21 MR. HENDERSON: Friday.

22 SENATOR WHITE: Friday. I think we need to
23 get that straight.

24 MS. MCGINTY: Okay. I will do that and

25 double check in terms of the flow and the source

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1 of dollars. The overall numbers though are as you
2 stated. The fifty million dollars, that was over
3 the '05/06 fiscal year plus the '06/07 fiscal
4 year, which means then terminating then in June of
5 '07.

6 SENATOR WHITE: Senator Musto, did you have
7 questions? I have more, but I'd ask you.

8 SENATOR MUSTO: Thank you, Madam Chairman.
9 Good morning.

10 MS. McGINTY: Good morning.

11 SENATOR MUSTO: How much of the HSCA fund is
12 spent on brownfield remediation?

13 MS. McGINTY: Well, it used to be the source
14 of funding for brownfield remediation on the order
15 of about ten million dollars a year in terms of
16 actual cleanup dollars which were invested through
17 department of community and economic development.
18 Then there also would be the support of the DEP
19 personnel that participate in the brownfields
20 program, also coming from the hazardous sites and
21 cleanup program.

22 Since the economic stimulus package had been
23 put in place and with Growing Greener II, the
24 hazardous sites cleanup program is not the source
25 of the dollars for the actual remediation. Those

1 dollars come from either the business in our sites
2 program or under Growing Greener II. DEP's
3 authorized to put up to five million dollars a
4 year in brownfield remediation. Those are now the
5 two capital sources of dollars. HSCA still is
6 supportive of the program and administration and
7 the technical staff that implement the brownfields
8 program.

9 SENATOR MUSTO: Are there any projects
10 underway now for brownfield remediation?

11 MS. MCGINTY: Yes, there are. In fact, under
12 the business in our sites program, DEP can give
13 you the latest up-to-date accounting. It was my
14 understanding that most if not all of that three
15 hundred million is invested and active in
16 brownfields sites out there. We are now in our
17 second chunk, if you will, of growing greener
18 dollars for brownfields. We have five million
19 dollars already invested and a second five now
20 underway to be invested in brownfield remediation
21 activities.

22 SENATOR MUSTO: How many sites have been
23 cleaned up to date?

24 MS. MCGINTY: We have cleaned up on the order
25 of about twenty-two hundred properties across the

1 Commonwealth in the eleven-year history of the
2 program. And I'm proud to say in the last four
3 years, forty percent of those have gotten done.

4 SENATOR MUSTO: Very successful program?

5 MS. MCGINTY: It's hugely successful and on
6 so many levels. Tens of thousands of jobs have
7 either been created or retained in the
8 Commonwealth because of that program. I think all
9 of you have been involved in attracting investing
10 into the commonwealth. And the same thing you
11 hear time and again is time is money. If we have
12 properties that are ready to be invested in, that
13 are cleaned up, that have infrastructure, that are
14 ready to go, the Commonwealth can compete and win.
15 And if we don't, people aren't going to sit around
16 waiting for us to do that or dig into their
17 pockets to pay for the pollution somebody else
18 left behind. So it's been a very, very important
19 piece of our competitive strategy.

20 SENATOR MUSTO: Are we successful in cost
21 recovery from responsible parties?

22 MS. MCGINTY: We are. For example, one of
23 our biggest efforts to recover costs was in
24 Petrolia. Otherwise, you've heard it referred to
25 as the Beazer chemical site. There we recovered

1 eighteen million dollars, I believe, from the
2 responsible parties. Now, we are still active in
3 recovering against other responsible parties; but
4 they are of a lesser nature in terms of both their
5 responsibilities and what we can hope to recover.

6 But it's important to know that those dollars
7 that we recovered are dedicated to that specific
8 remediation problem. And while the eighteen
9 million dollars for Beazer, for example, has paid
10 for the lion's share of putting in the new water
11 system to bypass the contaminated ground water, it
12 has not fully paid those expenses; and we probably
13 have put in an additional three to four million
14 dollars to make that project whole.

15 SENATOR MUSTO: Madam Secretary, are HSCA
16 funds being used for grayfield cleanups?

17 MS. MCGINTY: They are. We are able to --
18 we've been able to broaden the reach, if you will,
19 into the parts of our state as you have led the
20 way in being able to rebuild those sites as well;
21 and so we've seen a lot of activity there.

22 But we also are able for grayfields to be
23 able on occasion to partner a redevelopment
24 project with some of our state and federal
25 activities in remediating abandoned mine sites

1 that pose a public health or safety threat, more
2 precisely a public safety threat. And so
3 there have been other sources of dollars that
4 we've been able to rely upon there as well.

5 SENATOR MUSTO: On that issue, beyond health
6 and safety, how about for economic development?

7 MS. MCGINTY: Well, we can't use our federal
8 dollars. Let's assume for a second that there was
9 an abandoned mine property that just posed
10 absolutely no threat to the public and that also
11 had no contaminated water associated with it.
12 Then it is very, very unlikely that we could use
13 that mainstay of mine dollars that we have, which
14 is the federal Title 4 dollars, for a purely
15 economic development purpose.

16 We are very careful. Every abandoned mine
17 reclamation project we do with federal dollars
18 associated with it has to be also signed off by
19 the federal office of surface mining. They check
20 against what are recognized, and we have to
21 identify as Priority 1 and Priority 2 sites under
22 federal law, which definitions are anchored in
23 threat to public safety. So if there is no
24 threat, there is no anchor; and it would be a
25 stretch I think to say that the federal dollars

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1 could cover that.

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SENATOR MUSTO: Thank you.

SENATOR WHITE: But we have growing greener money.

MS. MCGINTY: I was just going to say, yes, under Growing Greener II, another provision schedule provided for was up to sixty million dollars a year that we could dedicate over six years to abandoned mine reclamation activities. So we have used growing greener dollars for that purpose.

SENATOR MUSTO: Would mine subsidence meet that definition?

SENATOR WHITE: You mean the federal definition?

SENATOR MUSTO: Well, any definition.

MS. MCGINTY: I suppose if we were talking about a situation where it was abandoned mine workings that were then subsidizing, that that could count. If it were a situation where it was an active mining activity with subsidence, I do not believe we could use our federal dollars in that instance.

SENATOR MUSTO: Thank you, Madam Chair.

SENATOR WHITE: You don't think that would be

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a safety issue?

MS. MCGINTY: Well, presumably. I guess if -- let's say it was a situation where it was

4 active mining but the company was also bankrupt.
5 Maybe we could consider it. The federal fund is
6 dedicated to abandoned mining features, so that's
7 why I would think in any active mining context it
8 would probably not be able to be used.

9 SENATOR WHITE: Madam Secretary, the
10 authorization for the growing greener funds
11 expires the end of June of 2007. Is the
12 administration willing to support extending the
13 use of these funds for HSCA?

14 MS. MCGINTY: I suppose we'd have to look at
15 the whole structure of growing greener in that
16 context because, again, the overall slicing of the
17 pie, if you will, was such that fifty million,
18 again, dedicated for HSCA and the rest dedicated
19 to the other environment priorities that are
20 outlined in Growing Greener II.

21 So I suppose the answer to your question is
22 yes. But what you would want to do also is to see
23 how does that intersect with the other activities
24 that are expected to be funded under the six
25 twenty-five total for Growing Greener II.

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1 SENATOR WHITE: That's fair. In January '05,
2 I met with you and Steve Crawford, the governor's
3 legislative secretary. And I was told then that
4 because no funding for HSCA was assured after the

5 following June, that you were obligated to
6 formally begin a phase-out of the program and
7 begin notification of your employees. Is that the
8 case again?

9 MS. MCGINTY: Yes, it is, which again is
10 another reason why we welcome the hearing and the
11 timely focus. We are only now really back up to
12 full form, if you will, with a program that is
13 operating as it traditionally had operated, in
14 part because, as I referenced, the contractors
15 that we work with, for example, and all of the
16 moth balling of the projects, it takes a long time
17 to bring those contracts back on, et cetera.

18 As it relates to personnel, as I indicated,
19 the personnel supported by the hazardous sites
20 cleanup program is now twenty-four percent less
21 than it was in 1992 as a result of our hiring
22 freezes and not refilling positions in the
23 hazardous sites cleanup program. But it still
24 supports on the order of two hundred and forty or
25 so positions. And I need to check the exact

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1 number, but it's of that magnitude.

2 Those are positions that have, as we refer
3 to, bumping rights such that if there is any need
4 for furloughs, those are positions that have the
5 right to at least thirty days' notice and I think
6 it's even longer and then have the right to look

7 not only across DEP but across the entire
8 Commonwealth government in order to take a
9 position from someone of lesser seniority.

10 And so when you're talking about that number
11 of positions, the rights of the holders of those
12 positions have to notice and be able to look
13 around. That is an exercise that needs to start
14 many months before the end of June in order to be
15 accomplished.

16 SENATOR WHITE: Did those furlough notices go
17 out in '05?

18 MS. MCGINTY: We did not furlough anyone. We
19 did send out notices to everyone that we had to
20 start the planning exercises related to the
21 possibility of a furlough. Yes, we did do that.
22 In fact, I think we started to do that through the
23 programs even in Christmastime, even in December
24 of '05 before we were back in for the January and
25 February time frame.

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1 SENATOR WHITE: Since we have no funding
2 mechanism in place after June of '07, do you
3 anticipate that you're going to have to send out
4 notices this year?

5 MS. MCGINTY: Well, we internally are
6 beginning to have those wheels turn. I have not
7 sent formal letters as described in '05, but we

8 have put program managers on notice. We have not
9 been refilling positions. We have maintained a
10 very conservative approach to this program,
11 although what we have restarted again is the
12 cleanup activities that I've been discussing.

13 SENATOR WHITE: It seems to me if you have a
14 union that requires furlough notices or these
15 letters, either they are legally required or they
16 aren't. Because I'll be honest with you. Last
17 year when this was all going on, it was my
18 impression that this was a scare tactic.

19 MS. MCGINTY: Well, I'll tell you, Senator,
20 that two hundred and fifty people were very
21 scared. Two hundred and fifty people who have to
22 support homes and families and pay tuition bills
23 were very scared.

24 SENATOR WHITE: They all got letters telling
25 them --

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1 MS. MCGINTY: They ultimately got letters and
2 e-mail notices, et cetera, that we were beginning
3 the activities preparatory to furloughs, yes.

4 SENATOR WHITE: So we will have to do that
5 again this year?

6 MS. MCGINTY: Well, if we don't have a new
7 funding source in line, we'll have to do that.

8 Now, what we had also done in the last
9 go-round of this and in managing our dollars in

10 this go-round as well is to hold onto enough money
11 to buy us an additional couple of months beyond
12 June 30th in order to enable a smooth transition
13 if that's where we wind up going. But obviously
14 it's our hope that we find a solution that works
15 for the program.

16 SENATOR WHITE: One relatively obscure
17 position of the budget package this past June was
18 the governor's reduction of revenue going to the
19 keystone fund, the Key 93. Instead of the usual
20 fifteen percent of the realty transfer tax going
21 to Key 93, only two percent is going in this year.

22 This was called an accounting maneuver that
23 freed up approximately seventy-five to eighty
24 million dollars for the general fund. So it was
25 new money. And I'm curious as to why none of that

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1 new money was dedicated for HSCA. I'd like to
2 know how it was spent. And are there any other
3 accounting maneuvers out there that could free up
4 money for HSCA?

5 MS. MCGINTY: Well, that fund is a DCNR
6 program, so I really can't speak to it at all as
7 to how it was handled in Growing Greener II or
8 beyond.

9 SENATOR WHITE: But you're pretty sure none
10 of it or you know none of it went to HSCA?

11 MS. McGINTY: No, I don't believe it went to
12 HSCA, no. Although I don't know how it figured
13 into the overall package that became Growing
14 Greener II. I have no knowledge of the keystone
15 program at all.

16 SENATOR WHITE: I assume you're in the
17 process of preparing your budget proposal for the
18 governor's office for the next round?

19 MS. McGINTY: Indeed.

20 SENATOR WHITE: Will you be requesting that
21 the governor, assuming he's reelected, include an
22 appropriation in that budget for HSCA?

23 MS. McGINTY: It is very much on the radar
24 screen with the governor and the governor's
25 office, and we have been in conversation with them

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1 about the program and the need for a dedicated
2 source of funds.

3 SENATOR WHITE: When you say a dedicated
4 source, we have to fund.

5 MS. McGINTY: That's true.

6 SENATOR WHITE: I think where it comes from
7 is --

8 MS. McGINTY: I say --

9 SENATOR WHITE: Do you mean committed as
10 opposed to dedicated where it comes from a
11 particular source?

12 MS. McGINTY: Yes. Well, I mean two things.

13 I mean a fund that is not dependant on annual
14 appropriation cycles. In other words, of course,
15 everything is dependant on that. But what I mean
16 is similar to the Capital Stock and Franchise Act
17 I laid out in law that every year there will be a
18 transfer in X mills from that tax into the fund to
19 give it predictability and reliability.

20 The other thing related to that that I intend
21 when I say dedicated fund as opposed to an
22 insecure source of funding is that it would be
23 non-lapsing. So that if there are funds that
24 remain after a given fiscal year because there's a
25 project ongoing, that those funds would remain in

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1 the HSCA fund and able to continue to fund ongoing
2 activity.

3 SENATOR WHITE: A dedicated fund is not
4 carved in stone either as we can see from what
5 happened to the Capital Stock and Franchise Act.
6 We can repeal a tax. We can repeal a fee. And,
7 you know, then you're back to ground zero.

8 I don't understand why it is so important
9 that it be tied to a particular source if in fact
10 the commitment is there from the legislature to
11 fund it every year and it becomes a budget
12 priority that we have to fund the way we have to
13 fund schools or prisons or medical assistance.

14 MS. MCGINTY: Well, I think that there's
15 probably a variety of different ways formulating
16 or shaping how that funding is put together. But
17 I think what you're saying is exactly what I
18 intend to communicate, which is that there needs
19 to be stability in the program related to a
20 funding source, whether it's the general fund or
21 some new fee or whatever it is, but that has the
22 earmark of it, if you will, that this is the money
23 that will be there for the hazardous sites cleanup
24 fund and pursuant to which these long-term
25 obligations can and will be funded.

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1 SENATOR WHITE: But are you saying that there
2 will never be down the road any variations in the
3 amount of money needed for the hazardous sites
4 cleanup fund?

5 I mean, our brownfields, I'm sure there are
6 very many sites out there. But ultimately that
7 should start to reduce. If you are fixing a fund
8 at a particular amount of money -- and this is my
9 beef, quite honestly, when you promise something
10 because they are guaranteed a pot of money which
11 may be much larger than their needs down the road.

12 And yet when you try to use that money for
13 another purpose, divert it such as the governor
14 wanted to do with the Hazardous Sites Cleanup Act,
15 there was a huge outcry because, That was our

16 money. I'm saying, I don't think that's good
17 financial public policy.

18 MS. MCGINTY: Yes. Well, a couple things.
19 First of all, I'm not recalling the governor
20 diverting money out of recycling. However, I
21 agree with you that I would very much like to see
22 some changes and reform in the recycling program.

23 For example, we have duplication of
24 infrastructure at municipality level and county
25 level and that there could be an aggregation of

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1 programs that could be minimizing of that huge
2 capital outlay for the equipment that runs the
3 recycling program.

4 I would also like to see innovations like
5 it's happening in the Philadelphia area where you
6 have a private sector company that is magnifying
7 the state's recycling dollars that you've probably
8 seen and heard.

9 SENATOR WHITE: I think I was recently at a
10 meeting where that was described in Philadelphia.

11 MS. MCGINTY: Yes. It's very creative in
12 bringing some ingenuity to the program, so I very
13 much agree with you there.

14 On your fundamental point, could we see a
15 change in the funding needs of the program? I
16 think the answer to that is yes. Now, over what

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17 time horizon could we expect that trajectory to be
18 down as opposed to up, I don't know.

19 Right now, for example, there are parts that
20 are in the northerly direction. Like, for
21 example, our superfund operation of maintenance
22 commitments have been on the order of about a
23 million, a million one. We suspect that's going
24 up to a million three or so.

25 SENATOR WHITE: Have we seen a site taken off

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1 the initial priority list in Pennsylvania in your
2 tenure?

3 MS. MCGINTY: In my tenure?

4 SENATOR WHITE: I don't think in my lifetime
5 I've seen one. You probably watch it more closer
6 than me.

7 MS. MCGINTY: I am not immediately familiar
8 with a site coming off. And I don't mean because
9 we have endless remediation at some of these
10 sites. Some of them are done and we're in the
11 operation of maintenance mode.

12 On the other hand, in terms of sites being
13 added, I can immediately think only of one that is
14 proposed in the short term to be added; and that
15 is the safety light site which is a nuclear site.

16 SENATOR WHITE: Is there any possibility, and
17 I'm talking pure theory there, that at some point
18 we can persuade the federal government to turn the

19 cleanups over to us to do our brownfields program
20 or something similar?

21 MS. McGINTY: Well, I think that actually
22 there has been some --

23 SENATOR WHITE: Since their's is such a flop.

24 MS. McGINTY: There has been some interest in
25 that in the federal level too. But where the

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1 states have been reluctant is, Okay, We'll take it
2 but it needs to come with a kitty of cash so that
3 we can effect the cleanup.

4 And the federal superfund fund has not been
5 funded now in six years. That's why states have
6 been, We can do it more efficiently and
7 effectively, We'd like to have it but you can't
8 give us a multi billion dollar problem without the
9 funds adequate to finish the job.

10 SENATOR WHITE: Right. Absolutely. I'm
11 meant for the funding to come with it. I suspect,
12 as you say you do too, that we could do it much
13 more efficiently. If nothing else, keeping our
14 twenty-five percent RCRA money or --

15 MS. McGINTY: Ten percent.

16 SENATOR WHITE: Or our ten percent superfund
17 money.

18 MS. McGINTY: Sure.

19 SENATOR WHITE: And that would add up as

20 well. I digress. But in a way, it isn't. I'm
21 wondering if we wouldn't be better if somehow the
22 state had their arms around the entire hazardous
23 sites program without the federal government
24 taking a piece of it and not doing it very well.
25 MS. MCGINTY: And I think we have certainly

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1 seen that. We have seen it even in our abandoned
2 mine program where the Bureau of Land and Mine
3 Reclamation has directly undertaken some of the
4 remediation and reclamation activities and done a
5 very efficient and effective job of it. So I
6 think we would be able to achieve similar
7 economies in other cleanup programs, but we need
8 that corpus of cash to get the job done.

9 SENATOR WHITE: Senator?

10 SENATOR DINNIMAN: Yes. I have a couple
11 questions.

12 I don't think anyone disagrees that in the
13 public health issue which the failure to clean up
14 the site would be that we have to respond. But if
15 it's not going to come through the regular budget
16 process, the kind of funding you need on a regular
17 basis and in terms of growing greener, there are
18 so many other particular needs that have to be
19 resolved. In my end of the state, the funding we
20 want is for open space or preservation.

21 Does the administration have a particular

22 source of funding that they want us to think
23 about? For example, use the illustration,
24 rethinking the emissions fee for hazardous
25 emissions. In other words, there's only -- I

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1 mean, if we all accept the fact that this is a
2 hazard and has to be cleaned up, there's only two
3 ways to do it or three way at this point. It's
4 either through making sure it's in the general
5 fund when the governor's budget appropriations
6 comes early next year, using growing greener funds
7 which then create a difficulty for other
8 priorities, or a particular source of funding. I
9 was wondering if your office or the administration
10 had thoughts on this.

11 MS. MCGINTY: Well, I would just say,
12 Senator, that I was authorized to put back -- to
13 articulate again what the governor had proposed
14 previously, which was the toxic release inventory
15 fee, and secondly to say that more generally the
16 program is certainly on the governor's radar
17 screen and his staff and we are in conversations
18 there. I don't have today a new idea or source of
19 funding to put on the table and suggest.

20 The only other thing I would say as a
21 recommendation, in terms of the structure of the
22 funding and what do we mean by dedicated funds or

23 what degree of confidence are needed around those
24 funds, one of the things that the committee might
25 do, and maybe you have this in mind for future

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1 hearings as well, is to hear from some of the
2 contractors that we work with as to what does it
3 take for them to have their various kinds of
4 equipment, their various kinds of professionals
5 literally on call for us and/or what does it take
6 for them to undertake with us a multi-year
7 remediation project in terms of what level of
8 confidence, what vehicle, what kind of funding
9 vehicles would they need to see to feel that it is
10 sufficiently robust that it enables them to make
11 the investment with us that we need them to make,
12 either for the emergency or the long-term
13 remediation efforts.

14 SENATOR DINNIMAN: On the emergency
15 remediations, each county has its Hazmat teams
16 which we invest tremendous amounts of money both
17 from the state and in fact federal funds now and
18 county funds.

19 Are you saying that the Hazmat teams are not
20 capable of relief on emergency responding and
21 taking care of the situation?

22 MS. MCGINTY: Well, I can only tell you that
23 on a very, very regular basis, if there's a
24 chemical spill, if there are drums that either are

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known or suspected to have chemical or hazardous

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1 materials, we are directly expending dollars to
2 remediate those problems.

3 Do we work in partnership with the county,
4 first responders, and the Hazmat teams? We do,
5 but there are certain of these activities where we
6 are typically in the lead in terms of putting the
7 money forward to address them.

8 The one category of activities you don't hear
9 me mentioning in this context, and this is just
10 one little footnote; but if it's an oil spill,
11 then it doesn't come out of the hazardous sites
12 and cleanup fund. It comes out of oil-related
13 programs that we have.

14 But when it's chemicals, when it's hazardous
15 materials, when it is again suspect types of
16 barrels or drums and that kind of thing, we are
17 expending those dollars in order to clean up the
18 project.

19 SENATOR WHITE: Madam Secretary, would you
20 let us know how much of the dollars of the fund
21 were actually spent on those types of activities
22 in the last couple years?

23 MS. MCGINTY: Sure.

24 SENATOR WHITE: Senator, I apologize.

25 SENATOR DINNIMAN: No. That's fine. Good

1 question, Madam Chairman.

2 My last question, you mentioned these host
3 facilities on the county level for hazardous
4 waste. I just wanted to clarify. Are these the
5 programs where the counties come together and set
6 up their centers to receive the hazardous waste,
7 or is that through a different program?

8 MS. MCGINTY: Well, this really just goes to
9 some of the basic administrative activities that
10 counties are involved when related to any kind of
11 facility that is licensed to handle or otherwise
12 have hazardous materials.

13 And it goes from inspections and oversights
14 and licensing and that type of activities where
15 the municipalities are very actively involved in
16 interacting with the owners and operators of the
17 facility.

18 SENATOR DINNIMAN: So it's not the hazardous
19 waste collection points that operate that?

20 MS. MCGINTY: I think that might be within
21 the universe of sites that's in this category, but
22 it's not limited just to those facilities. It
23 might be.

24 For example, your reference to county
25 emergency responder Hazmat officials. There's

1 some part of their activities that involves
2 interacting, familiarizing themselves with, or
3 providing some degree of oversight with the
4 handling of hazardous materials in active
5 industrial sites, for example. The local
6 government received funding and support through
7 HSCA to help finance those activities.

8 SENATOR DINNIMAN: Thank you.

9 SENATOR WHITE: Are we talking about
10 hazardous materials or hazardous waste?

11 MS. MCGINTY: Both in the sense of the
12 handling of hazardous materials, maybe just as a
13 feed stock in a normal industrial activity.

14 SENATOR WHITE: HSCA is involved with that
15 kind of funding?

16 MS. MCGINTY: It is involved in supporting
17 municipalities in their interactions with some of
18 those facilities, yes, either through support of
19 some of their emergency response and Hazmat people
20 or through some of the administrative work that
21 they do in licensing and oversight and that
22 universe of activities that they're active in.

23 SENATOR DINNIMAN: The one point I was trying
24 to make is that in terms of your hazardous
25 collections program which I want to see if it was

1 funded by this program, it's an extremely popular
2 program and a very necessary one.

3 People line up down the roads on the four
4 times a year that I know; and suburban counties do
5 this together, suburban Philadelphia counties.
6 They line up the road to bring in all the
7 household hazardous waste. And I just wanted to
8 see if that was part of this, and it is.

9 MS. MCGINTY: Oh, that's exactly right.
10 That's also part of this, yes.

11 SENATOR DINNIMAN: It's astounding. And for
12 years, groups like the League of Voters and other
13 environmental and non-environmental people had
14 asked for this. And it is in operation. So that
15 would be threatened then too under this?

16 MS. MCGINTY: That's right. It is HSCA that
17 pays for those household hazardous waste
18 collection activities. And if anything, we would
19 really like to see that universe of activities get
20 on a more sustainable basis. They are episodic
21 right now. Sometimes they are held only once a
22 year, for example.

23 I guess if people's garages and basements
24 look like mine, maybe they are holding onto this
25 stuff for an entire year. But I think other

1 people are more inclined to just put it out with
2 the trash.

3 On a more serious note, about a year and a
4 half ago, we did have a trash collector lose his
5 life on account of an aerosol can having been put
6 into the regular trash, which can when the jaws of
7 trash truck came down, it was positioned just such
8 that it exploded. I wouldn't say the force of
9 that explosion but the fright of it had him fall
10 off the back of the truck, and he was killed. So
11 it's serious business.

12 I think it is increasingly serious business
13 as we have something on the order of a hundred and
14 ninety-three million TV's thrown out now every
15 year and something on the order of a hundred
16 million cell phones. Each of those products
17 contains metals and other substances that are
18 toxic or a problem in nature.

19 So yes, you are exactly right. That program
20 has been supported through HSCA, and we certainly
21 would like to see it not only continue but expand.

22 SENATOR DINNIMAN: Thank you, Madam Chairman.

23 SENATOR WHITE: Thank you, Senator. And
24 again, I would like to see the dollar amount spent
25 on household hazardous waste as well as the

1 senator's other question. If you can get that to

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us and any other information we had asked, I'd
appreciate it.

Thank you. If there are no other questions,
the hearing is adjourned. Thank you, Madam
Secretary.

MS. McGINTY: Thank you very much.
(The proceeding concluded at 12:30 p.m.)

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evidence are contained fully and accurately in the
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4 that this copy is a correct transcript of the
5 same.

6 Dated at Wormleysburg, Pennsylvania, this
7 14th day November 2006.

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