

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

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CONFIRMATION HEARING ON KATHLEEN McGINTY  
SECRETARY, DEPARTMENT OF ENVIRONMENTAL PROTECTION

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Before: SENATOR MARY JO WHITE, CHAIRMAN  
SENATOR EDWIN B. ERICKSON, VICE CHAIR  
SENATOR RAPHAEL J. MUSTO, MINORITY CHAIR  
SENATOR MICHAEL W. BRUBAKER  
SENATOR STEWART J. GREENLEAF  
SENATOR JAMES J. RHOADES  
SENATOR DONALD WHITE  
SENATOR ANDREW E. DINNIMAN  
SENATOR BARRY J. STOUT

Date: March 27, 2007, 9:30 a.m.

Place: Room 8EB  
Capitol Building  
Harrisburg, Pennsylvania

By: Vicki L. Fox  
Registered Merit Reporter - Notary  
Public

APPEARANCES:

Kathleen A. McGinty, Secretary  
Department of Environmental Protection

ALSO PRESENT:

Patrick Henderson, Senator M.J. White's staff  
Richard Fox, Senator Musto's staff

1           CHAIRMAN WHITE: Good morning. We will call this  
2 meeting of the Senate Environmental Resources and Energy  
3 Committee. The purpose of the meeting this morning is  
4 the confirmation hearing for the Honorable Katharine A.  
5 McGinty, Secretary of the Department of Environmental  
6 Protection.

7           Good morning, Madame Secretary.

8           SECRETARY MCGINTY: Good morning, Madame Chair and  
9 members of the Committee.

10          CHAIRMAN WHITE: Would you stand and raise your  
11 right hand, please?

12          (Secretary McGinty was duly sworn.)

13          CHAIRMAN WHITE: Thank you. I see you have an  
14 opening statement. Did you wish to make opening  
15 comments?

16          SECRETARY MCGINTY: If that suits the Committee, I  
17 will. Thank you, Madame Chair, members of the Committee  
18 for the opportunity to appear before you today as the  
19 Governor's selection or recommendation for Secretary of  
20 the Department of Environmental Protection.

21          With no slight to the Governor, I would like to  
22 start by introducing my true bosses, my three little  
23 girls -- Tara Hausker, Alana Hausker and Allie Hausker  
24 -- and our savior, our nanny Amy Sharp.

25          CHAIRMAN WHITE: Welcome.

1           SECRETARY MCGINTY:  Madame Chair and members of  
2           the Committee, four years ago almost to the day when you  
3           gave me the honor to appear before you in the Governor's  
4           first term, I had said that Pennsylvania's prosperity,  
5           economic vitality is my top priority knowing that it is  
6           indeed your top priority.  And I said I would work to  
7           make our environmental challenges a further opportunity  
8           for economic growth.

9           The good news is that working together, I think we  
10          have accomplished just that.  The latest statistics in  
11          show Pennsylvania growing again at an unprecedented rate  
12          in the number of jobs that we have seen created in the  
13          state passing any previous records.

14          The interesting piece is that the environment has  
15          been an opportunity for further acceleration of that  
16          growth.

17          I wanted to highlight two ways in which we worked  
18          together to ensure that far from being a hindrance to  
19          job creation and economic development, that we have  
20          harnessed environmental challenges further to fuel  
21          economic vitality.

22          The first is in the bread and butter of the job  
23          that we do.  Understanding that time is money,  
24          understanding that if we are spending our time on  
25          paperwork and bureaucracy, we are missing opportunities

1 both to clean up the environment and create new jobs.  
2 So with that in mind, in every program in the  
3 Department, we have focused in trying to streamline  
4 permitting procedures and trying to accelerate the  
5 process from permit submission time to the time when we  
6 can see new things built in the Commonwealth.

7 Whether that is improving upon what was already a  
8 very successful Brownfields program in the Commonwealth  
9 so that now the Brownfields action team, we are  
10 literally cutting in half the amount of time it takes to  
11 have construction permits and redevelopment permits in  
12 hand.

13 Or in our air quality program, which can be very  
14 difficult to navigate for new development, we have  
15 ushered in a whole new series of general permits so that  
16 we are obviating the need for individualized review and  
17 very detailed technical review of permits. And in  
18 fifteen different areas now, general permits enable a  
19 yes or no from the Department within 30 calendar days.

20 Also, in the wastewater areas trying to bring some  
21 new innovation and creativity in the process, in water  
22 we have all worked very closely together. Senator  
23 Brubaker certainly has been part of this in his current  
24 capacity and previous capacity in trying to introduce  
25 nutrient trading to reduce the cost of meeting our

1 obligation to protect the Chesapeake Bay and clean up  
2 the Susquehanna and Potomac watersheds. That innovation  
3 is cutting the cost of meeting those water quality  
4 obligations and is now being copied in other Chesapeake  
5 Bay state jurisdictions.

6 In waste, too, we have had a show me attitude,  
7 prove it that a certain material is a waste and  
8 therefore needs to be encumbered by the special handling  
9 procedures that come with that label and instead show to  
10 the contrary that there could not be beneficial use of  
11 materials.

12 So, for example, in foundry sand, in asphalt and  
13 other very good construction materials, we have taken  
14 the Scarlet W away, if you will, and have encouraged and  
15 enabled beneficial reuse of those valuable materials.  
16 So in the bread and butter of our programs, we have  
17 tried to conduct ourselves more like a business. We  
18 have tried to accelerate our processes and become more  
19 efficient.

20 But I want to highlight one area that we talked  
21 about four years ago in foreshadowing where we might  
22 find economic sectors that if we focused on them would  
23 help us to prove the point that in smart environmental  
24 innovation lies new economic opportunity.

25 Four years ago, we focused specifically on energy

1 technologies. Today, we are indeed now a national  
2 leader in a full spectrum of advanced energy  
3 technologies. And beyond our national borders, we have  
4 gained international attention and indeed investment.

5 Advanced coal technologies, we have three new  
6 waste coal plants that have been permitted. We have the  
7 promise of the nation's first coal liquefaction plant to  
8 come online in Schuylkill County.

9 In renewable energy technologies with this  
10 Legislature having passed the Alternative Energy  
11 Portfolio Standard, we have been able to attract some of  
12 the biggest global renewable energy companies to invest  
13 in our economy -- Gamesa, wind energy, a hundred million  
14 dollar investment, a thousand manufacturing jobs;  
15 BioEnergy, a partnership with a Russian company. Their  
16 first plant is a \$250 million investment in our economy.  
17 And Conergy, a solar energy company, that Chairman White  
18 was very much instrumental in helping us to encourage  
19 them to Pennsylvania. They are the world's largest  
20 solar energy company, a hundred million dollar  
21 investment in our economy as well.

22 So we have focused and I think we have structured  
23 policies that have been strategic in advancing the  
24 environmental goal while growing our economy.

25 Looking forward, if I have the honor being

1 confirmed by this Legislature to serve in a second term,  
2 I would like to further the progress we have made in all  
3 of these areas focusing first on the Governor's energy  
4 independence strategy to cut electric bills, to  
5 stabilize those rates as we go forward, to further  
6 invest in our farming families and enable them to grow  
7 our energy; and in every instance to work with you so  
8 that we are both meeting our environmental obligations  
9 while we are furthering the economic vitality, the  
10 promise and opportunity of Pennsylvania.

11 Madame Chair, members of the Committee, thank you  
12 for your attention, and I look forward to your  
13 questions.

14 CHAIRMAN WHITE: Thank you, Madame Secretary. If  
15 confirmed, will you serve the full four years of your  
16 term?

17 SECRETARY MCGINTY: I have every intention to do  
18 so, yes.

19 CHAIRMAN WHITE: So you are not exploring any  
20 other employment opportunities?

21 SECRETARY MCGINTY: I do get approached with  
22 respect to various employment opportunities. I have  
23 declined those to date. I am not aware of any in the  
24 near future that I am attracted to. It is my intention  
25 to stay and to serve.

1           CHAIRMAN WHITE: Thank you. I am going to start  
2 with Senator Stout since he needs to leave for another  
3 appointment.

4           SENATOR STOUT: Thank you, Madame Chair. I do  
5 have to excuse myself to go to a meeting with Senator  
6 Madigan on an issue that is very important, the gross  
7 profits tax on the gas industry in Pennsylvania.

8           Madame Secretary, I know there has been a two to  
9 three fold increase in the number of permits for natural  
10 gas well drilling in Appalachia from the West Virginia  
11 line to New York. Now how is the Department going to  
12 handle this two or three time increase in the permits?  
13 How are you addressing that, please?

14           SECRETARY MCGINTY: Thank you, Senator. And the  
15 numbers that you cite relate not only to natural gas,  
16 but it oil and gas activity. So that in 2006, for  
17 example, we issued almost 7,300 oil and gas permits.  
18 That is a 21 percent increase over the 2005 numbers  
19 which itself was about a 34 percent increase in the year  
20 before.

21           We have handled that increased volume in two ways.  
22 First, in fact in one of the first initiatives that I  
23 took as Secretary working with the Oil and Gas  
24 Association, we did streamline the permitting process  
25 for oil and gas applications and followed a business

1 model that is more true to the way that those wells are  
2 sited and developed. That has helped us.

3 But the other piece of the equation that is going  
4 to be very important to us is that the Governor had  
5 asked for and the Legislature approved an additional six  
6 positions for the Department to help to further handle  
7 that level of activity. We are in the process now of  
8 hiring those additional six.

9 I would say that we have been doing a very  
10 effective job. In fact, there has been no bottleneck,  
11 if you will, in processing any of those permits. We  
12 need to be equally vigilant, however, out there on the  
13 landscape making sure the wells are being drilled and  
14 maintained properly. And I think that's where we need  
15 to step up our activity.

16 SENATOR STOUT: The other question that I have  
17 affects southwestern Pennsylvania that I represent.  
18 Allegheny Power is proposing building a new 500 KV power  
19 transmission line to serve the eastern seaboard of  
20 Virginia and Maryland. Now with their exporting of  
21 power, do we have sufficient power being generated in  
22 Pennsylvania to supply that demand on the East Coast  
23 without building another coal fired generating plant in  
24 southwestern Pennsylvania?

25 SECRETARY MCGINTY: Thank you, Senator.

1 Pennsylvania has the capacity to generate 40,000  
2 megawatts of electrical power. We currently export  
3 about 35 percent of all the electricity we do generate.

4 So specific to your answer, we do have adequate  
5 power to meet our own needs and to have the economic  
6 benefit of being able to sell that power outside of our  
7 borders as well.

8 SENATOR STOUT: There's a concern in my District  
9 about the effects of such a high volume line going  
10 through their communities, both for the environment and  
11 for health reasons. What type of requirements were you  
12 going to have if Allegheny Power files an application  
13 with the PUC to review the environmental impact?

14 SECRETARY MCGINTY: Let me answer the question  
15 with two hats on -- one in the energy policy hat that I  
16 wear, and one with the environmental regulatory hat that  
17 I wear as well.

18 On the energy side, one of the things that we have  
19 been concerned about and actually have intervened at the  
20 federal level to express concern is that at least some  
21 of the new high voltage power lines, transmission lines  
22 that have been proposed would bypass where we have the  
23 greatest opportunity to build, for example, the next  
24 generation of coal fired power plant, to build a coal  
25 gasification plant, for example, in trying to come

1           around the southwest part of our state and then be able  
2           to benefit from the economic growth and population  
3           growth in the eastern part of our state, as well as into  
4           New York and New Jersey. So we have expressed concern  
5           about that.

6                     We would prefer to see better transmission  
7           interconnectivity from the western part of our state  
8           clear across so that we can serve the growing markets in  
9           the eastern part of our state, and in New York and New  
10          Jersey. We are concerned that some of those lines might  
11          circumvent that.

12                    With respect to the regulatory hat, you are quite  
13          right. The primary jurisdiction here lies at the Public  
14          Utility Commission who will be reviewing a proposal if  
15          it is formally submitted. Our regulatory jurisdiction  
16          is quite limited. We would be involved in a high  
17          tension transmission line only to the extent and only  
18          from the perspective that there is some modicum of  
19          construction that is involved in siting and building  
20          those transmission lines.

21                    So for our erosion and sedimentation programs, for  
22          example, or if the lines would need to cross any rivers  
23          and streams, then we would have permitting in that  
24          regard. But it would be limited to erosion and  
25          sedimentation and to any water obstruction that would be

1 involved in the siting and actual construction of the  
2 lines themselves.

3 SENATOR STOUT: Thank you, Madame Secretary.  
4 Thank you, Madame Chair.

5 CHAIRMAN WHITE: Madame Secretary, with your  
6 indulgence, we have a new system that is supposed to not  
7 have committee meetings overlapping, but I think the  
8 wheels have come off. I know that several people have  
9 other commitments and will have to cover those.

10 What I would like to do at this point is have  
11 Patrick call the roll to establish the presence of a  
12 quorum.

13 (At this time, Mr. Henderson called the role.)

14 CHAIRMAN WHITE: Thank you. The presence of a  
15 quorum has been established. Thank you. I appreciate  
16 your indulgence.

17 Senator Don White also has to leave for another  
18 hearing so we will take his comments now.

19 SENATOR WHITE: Thank you, Madame Chairman.  
20 Good morning, Secretary McGinty.

21 SECRETARY MCGINTY: Good morning, Senator.

22 SENATOR WHITE: My question -- and Senator Stout  
23 sort of touched on it, and you have mentioned it in your  
24 written testimony -- while you and I agree to disagree  
25 on the mercury emission issue, one thing I know we do

1 agree on is this Congressional appropriation that will  
2 definitely help with the AMD and water situation in the  
3 area that I represent.

4 SECRETARY MCGINTY: Yes.

5 SENATOR WHITE: I am just curious as to where you  
6 are in the process of implementing that Federal  
7 Abandoned Mines funding we are about to receive. And  
8 also is there anything the Legislature can do to make  
9 your job easier to enhance those efforts?

10 SECRETARY MCGINTY: Thank you very much. I  
11 appreciate the attention you have paid to this in making  
12 yourself available as we have been thinking through some  
13 of those questions.

14 First and foremost is to underscore what the  
15 Senator says. We are very happily in receipt of finally  
16 passed federal legislation that extends the critical  
17 dollars that we need to address abandoned mine land  
18 properties. The schedule for those new federal dollars  
19 however to be realized I think in a good way gives us  
20 some time to reflect about the priorities and choices  
21 that we want to make in implementing that program.

22 Specifically, the new dollars should kick in in  
23 October in the new federal fiscal year. At that time,  
24 we will begin to see a ram up of the dollars that we  
25 realize from the federal program. This year, we

1           actually are going to see a little bit less from the  
2           federal program than we typically have seen, probably on  
3           the order of about \$20 million.

4           Looking post October, we believe we will start to  
5           see dollars in the mid \$20 million range and then  
6           growing over the course of 15 years.

7           To your question about what are the choices we  
8           might begin to prioritize, we would like to engage with  
9           the Legislature on questions such as how much of the  
10          dollars we receive should be dedicated to mine water  
11          reclamation as compared to mine land reclamation.

12          The dollars that we will receive from the federal  
13          government have been calculated on the basis of  
14          addressing the land based problems. They have not taken  
15          into account and they do not take into account the  
16          dollars needed for abandoned mine water reclamation. So  
17          we have some priorities to set there and some choices to  
18          make.

19          And last I would just say specifically to your  
20          question about where a partnership and a legislative  
21          initiative may be helpful is for whatever portion of  
22          those dollars it is believed to be important to put into  
23          abandoned mine water reclamation, perhaps some vehicle  
24          could be legislated to enable a growing of those  
25          dollars. As you know, those dollars are needed

1           literally for the perpetual treatment of any  
2           treatments -- perpetual operation of any treatment  
3           system we may install.

4                    SENATOR WHITE: Thank you. I am glad that you are  
5           looking into it. The AMD part of the project is of most  
6           concern to me. And when we are talking about potential  
7           health problems and hazards, that in my opinion from the  
8           District I represent, we are like the poster child for  
9           that. We have a lot of water waste that needs  
10          attention.

11                   Lastly, there is a lot of talk in my District  
12          about what is known as the IGCC power plant  
13          possibilities. And what can you tell me about those  
14          types of facilities? Is their technology theory sound?

15                    SECRETARY MCGINTY: There is no question that coal  
16          gasification to generate electricity is a technology  
17          that is proven and works. In fact, it has been fully  
18          commercialized. In Florida, Tampa Electric has run a  
19          coal gasifier for many a year.

20                    Here is the tricky part. The tricky part is when  
21          you add to that an objective to pull out of the gas  
22          stream -- once you gasify the coal to pull the carbon  
23          out of the gas stream and then to sequester or otherwise  
24          capture that carbon so it does not present a climate  
25          change issue.

1           There's two things that are tricky about that.  
2           First, the turbine that is attached to the machine that  
3           gasifies the coal has not been optimized and is proving  
4           to have some challenges in operating on a hydrogen rich  
5           gas stream, a gas stream from which the carbon has been  
6           taken out. So there's some engineering that needs to be  
7           done on the turbine if it is to be able to work  
8           efficiently in a hydrogen rich atmosphere.

9           The second trick is the degree to which we have  
10          figured out where, how and at what expense the carbon  
11          can be captured either in geologic seams or otherwise  
12          sequestered in perpetuity. And there, yes, I think it  
13          is technically feasible, but it has not been  
14          commercially applied to date.

15          SENATOR WHITE: Well, Madame Secretary, I was  
16          hoping to stump you there, and I didn't accomplish that.  
17          I have to leave. I have to host a Banking Insurance  
18          Committee hearing for Senator Brown.

19          Once again, thanks for your service. I appreciate  
20          the dialogue and openness you have had with me and my  
21          office.

22          SECRETARY MCGINTY: Thank you very much.

23          CHAIRMAN WHITE: It is my understanding that  
24          Senator Brubaker also has a conflicting meeting. Trust  
25          me, folks, there is a lot going on today. I will

1 recognize him for the next round of questions.

2 SECRETARY MCGINTY: Madame Chair, you will  
3 appreciate why it makes me happy that I am not the  
4 hottest ticket in town today.

5 SENATOR BRUBAKER: Thank you, Madame Chair.  
6 Secretary McGinty, it is a pleasure to be with you.

7 SECRETARY MCGINTY: Thank you, Senator.

8 SENATOR BRUBAKER: Thank you for your service to  
9 the Commonwealth.

10 SECRETARY MCGINTY: Thank you.

11 SENATOR BRUBAKER: I have three questions. I will  
12 be very brief in my questions. I am looking for a brief  
13 response if I may.

14 We have a 2010 deadline to meet in the nitrogen,  
15 phosphorus and sediment reduction in the Chesapeake Bay.  
16 You and I have met to discuss these initiatives that  
17 will hopefully allow us to meet that goal. But it does  
18 appear that the best technology put on the ground today  
19 will not allow us to get there.

20 There is an alternative, that is that we can agree  
21 on putting the best management practices on the ground  
22 that ultimately will yield to the right kind of water  
23 quality in the Bay.

24 Do I have your commitment to support the best  
25 management practices on the ground so that in the longer

1 term, we can meet that 2010 goal?

2 SECRETARY MCGINTY: When I was Chair of the  
3 Chesapeake Bay Executive Committee Staff, which was just  
4 last year, we had worked out and had an agreement with  
5 EPA that what the 2010 obligation was was to have in  
6 place all of the policies and measures that would lead  
7 to (d) listing of the Bay from the Clean Water 303(d)  
8 list.

9 SENATOR BRUBAKER: Thank you for your brevity and  
10 your directness. I do appreciate that. You said in  
11 your testimony that a portion of your permits are being  
12 completed within 30 days.

13 SECRETARY MCGINTY: Yes.

14 SENATOR BRUBAKER: Can you estimate what portion  
15 of the total DEP permits are completed within 30 days?

16 SECRETARY MCGINTY: I would need to get back to  
17 you. The 30 days typically relates to where we have  
18 instituted general permits as opposed to the need for  
19 individualized permits. I can provide you a full list  
20 of the new and the existing general permit opportunities  
21 that we have across our programs.

22 SENATOR BRUBAKER: Thank you. I would like that.

23 CHAIRMAN WHITE: You will provide that to the  
24 Chair?

25 SECRETARY MCGINTY: I would be happy to.

1           SENATOR BRUBAKER: Thank you. Do you agree that  
2 occasionally a permit through your agency takes too  
3 long?

4           SECRETARY MCGINTY: Indeed I do.

5           SENATOR BRUBAKER: Thank you for that. I did hear  
6 you say that you are making every effort possible to  
7 shorten those timelines; is that accurate?

8           SECRETARY MCGINTY: We are in every program -- air  
9 land, water and waste.

10          SENATOR BRUBAKER: Occasionally -- and I have one  
11 in my District right now that I am aware of, and I have  
12 shared this with you as well, that it has going on well  
13 in excess of one year and maybe several years. We still  
14 have some issues unfortunately.

15                 Is there a way that we can -- the Legislature can  
16 work cooperatively with you when we identify these  
17 issues that are just simply taking entirely too long?  
18 Even if the answer is no, a no answer is better than no  
19 answer at all as far as I am concerned.

20                 We have some quality initiatives and build outs  
21 that we are look to. We are not getting approvals, and  
22 we are just at stalemate. I personally find that to be  
23 unacceptable.

24                 SECRETARY MCGINTY: I would be happy to. I think  
25 we have a model in our newly revised storm water

1 management permitting procedures which we put together  
2 both with the involvement of many legislators and the  
3 home builders and the housing and construction  
4 community.

5 SENATOR BRUBAKER: One final question, Madame  
6 Chair, if I may. That is we hear -- and it was in your  
7 testimony -- about ethanol. We hear about it every day  
8 that the number of ethanol plants in the United States  
9 will double in a very short period of time. With that  
10 comes new pressure on the corn and soybean prices. We  
11 already see them going through the roof.

12 Do you believe that the next evolution is /SEPL  
13 /AOU /HROES particular, and are you prepared to move  
14 Pennsylvania in that direction in as short a period of  
15 time as possible?

16 SECRETARY MCGINTY: Yes. In fact, the first major  
17 ethanol plant that we announced to be proposed in  
18 Pennsylvania, the Commonwealth's involvement came with a  
19 commitment from the developer that upon the construction  
20 of the plant there be an immediate build out of  
21 cellulostic capability there.

22 I would like to invite the Legislature in  
23 reviewing and considering the Governor's Energy  
24 Independent Strategy to see in the PennSecurity Fuels  
25 Initiative, part of that strategy. If we could further

1           incentivize cellulosic ethanol in the formula, if you  
2           will, that we propose in that legislation, we have put  
3           some incentive there. I think that in dialogue we might  
4           find ways further to boost our leadership in cellulosic  
5           capability.

6                     SENATOR BRUBAKER: Thank you, Secretary McGinty.  
7           I have given my proxy to the Chairman for a positive  
8           affirmation of your position. Thank you.

9                     SECRETARY MCGINTY: Thank you very much, Senator.

10                    CHAIRMAN WHITE: Senator Erickson?

11                    SENATOR ERICKSON: Thank you, Madame Chairman.  
12           Good morning, Secretary.

13                    SECRETARY MCGINTY: Good morning.

14                    SENATOR ERICKSON: I have a couple of questions  
15           that relate to the promulgation of regulations. I want  
16           to quote a couple of things here and then ask you a  
17           question.

18                    On October 18, 2006, This committee voted  
19           unanimously to extend its review of the final mercury  
20           regulations by an additional 14 days. The General  
21           Assembly adjourned prior to conclusion of those 14 days  
22           as you know.

23                    The Act provides that the final regulation had to  
24           be resubmitted to the Standing Committees in a new  
25           session for final review. You were made aware of this

1 in two letters, one from Senator White, another from  
2 Senator Jubelier.

3 Despite this on December 29th, you submitted the  
4 final regulation to the Legislative Reference Bureau for  
5 publication. The Reference Bureau, of course, refused  
6 to publish the regulation.

7 Under the Regulatory Review Act, you are expressly  
8 prohibited from promulgating a regulation until  
9 completion of the review period. Why then should we  
10 consider your December 29, 2006 submission as a  
11 violation? Why should we not consider that as a  
12 submission in violation of the regulatory review act?

13 SECRETARY MCGINTY: We have a differing legal  
14 interpretation of the signed guiding proceedings of the  
15 Independent Regulatory Review Committee Act.

16 Our interpretation is that the additional fourteen  
17 days have tolled on November 30th.

18 SENATOR ERICKSON: That is fine. Sometimes we, of  
19 course, have difference of opinion. We believe that we  
20 are correct in this, but I want to go on with this  
21 situation.

22 Your spokesperson Kurt Knaus apparently said the  
23 following -- it becomes clear, however, that the  
24 Committee's leadership may have reverted to back room  
25 deals and procedural tricks during lame duck session to

1 help them accomplish that that they could not do in the  
2 light of day. The sudden and surprising action is  
3 breathtaking in its audacity to undermine the public  
4 will.

5 We are here talking today as many of us in terms  
6 of cooperating with you, but yet somebody from your  
7 Department would make a comment like that, I find that  
8 to be reprehensible. I therefore question the ability  
9 of your Department to promulgate regulations within the  
10 framework of the Regulatory Review Commission and, of  
11 course, in a cooperative way with this Committee.

12 I want to go on then and ask you: Is there  
13 inhouse scientific expertise to make sure that  
14 regulations are founded in science? I have a firm  
15 belief that anything we do must be founded in good  
16 scientific data.

17 Does DEP employ scientists in sufficient numbers  
18 and with the proper expertise to address issues that  
19 come before your agency?

20 SECRETARY MCGINTY: Yes. We do have some of the  
21 most competent and capable scientists across the subject  
22 areas that we regulate. We always invite and welcome  
23 additional and outside scientific perspective into our  
24 rule making processes. That is always very helpful to  
25 us.

1           Where we definitely would like to see more  
2 participation and greater ability to bring -- or add to  
3 our rank in the Department is in the engineering  
4 sciences. It is very difficult for us to compete in the  
5 marketplace, if you will, to bring engineers into the  
6 Department. And there we are ever in need of new talent  
7 and new opportunities to enhance our engineering ranks.

8           SENATOR ERICKSON: Thank you. I would make an  
9 observation that I do not believe that DEP adhered to  
10 the body of knowledge when it promulgated the mercury  
11 regulations.

12           We heard testimony in this room from a number of  
13 experts who simply did not interpret things the way your  
14 Department did. And I think again, to apparently pick  
15 and choose the data that you want to use to get to your  
16 end goal is not something that is in the spirit of using  
17 scientific data to further the regulatory position.

18           SECRETARY MCGINTY: I completely agree with your  
19 point. But I would disagree to the extent there's an  
20 implication that we did in fact pick and choose.

21           I think we have a very open and thorough two and a  
22 half year process in reviewing and developing the rule  
23 that is now final.

24           SENATOR ERICKSON: We can discuss the details of  
25 that at some future date. I don't think this is the

1 place to do it. I would disagree with you on that.

2 CHAIRMAN WHITE: Thank you, Senator. As the  
3 followup, the comments by your Press Secretary, did you  
4 authorize those comments?

5 SECRETARY MCGINTY: I don't know that I authorized  
6 the express statement. But I would say that it  
7 certainly was a time where there were plenty of comments  
8 going back and forth that maybe all of us together upon  
9 reflection might have shaped or said or phrased  
10 differently.

11 CHAIRMAN WHITE: Well, in light of the fact that  
12 this Committee voted unanimously in an open sunshine  
13 meeting to extend the review comments, I really question  
14 how this could be characterized as back room deals and  
15 procedural tricks.

16 SECRETARY MCGINTY: I think at that time when that  
17 comment was made, it was in the context of the last days  
18 of the legislative session, not with respect to the  
19 legislation that passed out of this committee.

20 And at that time, as you may recall, there was a  
21 meeting that was scheduled to discuss in open session  
22 whether or not the mercury rule making should be opposed  
23 by the Legislature or not.

24 And when I requested to be able to appear before  
25 the Committee to present a different view about that,

1           that meeting was cancelled. And there was not then  
2           further public discussion of the merits as to whether or  
3           not the rules should be maintained or overridden.

4                   CHAIRMAN WHITE: Let's move on. At the Senate  
5           Appropriations Committee on March 8th, I asked you to  
6           follow up regarding contracts DEP awarded to a group  
7           called Tata Consultancy Services. I haven't seen any  
8           followup. I was hoping to have your comments from the  
9           appropriations hearing submissions of responses so that  
10          we could have had them for today.

11                   Have any of those responses been submitted to the  
12          Appropriations Committee?

13                   SECRETARY MCGINTY: I can submit them for you  
14          today. They are in fact sitting on my desk, and I just  
15          did not have the chance to finalize them before coming  
16          over this morning.

17                   CHAIRMAN WHITE: Perhaps to amplify that, I would  
18          like a copy of the contracts --

19                   SECRETARY MCGINTY: Sure.

20                   CHAIRMAN WHITE: -- entered into with Tata, as  
21          well as the explanation of the work performed.

22                   SECRETARY MCGINTY: Fine. What I have learned is  
23          that Tata is an information technology consulting  
24          company and has been working with the Department in  
25          various capacities since the late 1990's. I am happy to

1 share that with you.

2 CHAIRMAN WHITE: Thank you. Who is next? Senator  
3 Dinniman?

4 SENATOR DINNIMAN: Thank you, Madame Chairman.  
5 Madame Secretary, a couple of questions related to the  
6 issue of TCE --

7 SECRETARY MCGINTY: Yes.

8 SENATOR DINNIMAN: -- in the northern part of my  
9 District in Montgomery and Upper Providence and Trappe  
10 Township. As you know in that part of Montgomery  
11 Township, we have the highest rate of TCE in the  
12 Commonwealth and the second highest rate in the United  
13 States. It is caused by two companies. And I wondered  
14 whether -- several questions -- whether a memorandum of  
15 understanding has been finally reached with those two  
16 companies on reductions and whether I might -- I should  
17 say the Committee, as well as myself, get a copy of that  
18 memorandum of understanding; and whether in your view  
19 the enforcement provisions in there are adequate enough.

20 SECRETARY MCGINTY: Well, on your first point, we  
21 are working in collaboration with the companies that do  
22 emit TCE, and they are voluntarily coming to the table  
23 to propose reductions in those emissions.

24 When we do have a final agreement with the  
25 companies, I would be very happy to share that with you

1 and members of the Committee.

2 On your second point about the enforceability of  
3 those undertakings, remember that the companies are not  
4 operating in violation of their permits. And so while  
5 we would hope that there would be -- and we fully expect  
6 there will be -- a very earnest effort by those  
7 companies to reduce their emissions and that we will be  
8 able to check and monitor what the level of emissions  
9 are, we wouldn't be in an enforcement mode per se since  
10 there has not been a violation of what the standards  
11 require.

12 SENATOR DINNIMAN: So your approach then is to try  
13 to reach an understanding, and the companies have stated  
14 they are willing to reduce TCE into the environment, but  
15 the difficulty is, if I understand it right, is that  
16 their permits allow them to do that release?

17 SECRETARY MCGINTY: That's right, Senator. They  
18 are not in violation of their permits.

19 SENATOR DINNIMAN: So is there a particular  
20 legislation that you suggest on the state level that  
21 will prevent this? We are talking about increased risk  
22 of cancer. I believe the Montgomery Health Department  
23 is now involved in cancer study data that has been asked  
24 requested by the citizens and the elected  
25 representatives of that area.

1           TCE has its dangers. Let me further state that at  
2           least in the inquiry, these two companies have made it  
3           clear that they do not expect to meet the federal  
4           standards when they come into effect on the date they  
5           come into effect. They say there is no way to do so.

6           SECRETARY MCGINTY: I would need to look at those  
7           comments, but you are putting your finger on the issue,  
8           which is these standards are promulgated at the federal  
9           level, and they are health and risk based standards.  
10          Then we institute those in our various permitting  
11          requirements.

12          Where we are right now is at a place where the  
13          levels as you say of TCE that we are detecting are  
14          higher and significantly higher than any that we have  
15          detected anywhere else in the Commonwealth. That  
16          enhanced level does translate into some increase in the  
17          possibility of cancer over a lifetime exposure.

18          If and when we are successful in our conversations  
19          with the companies to achieve the levels of reductions  
20          that we have been discussing with them, we are also  
21          confident that we will bring those numbers of emissions  
22          down to where there would not be that elevated risk of  
23          the possibility of cancer.

24          SENATOR DINNIMAN: Well, we should thank the DEP  
25          for putting in monitoring devices in the State Park and

1 in the Borough of Trappe so that we at least know the  
2 rates have increased.

3 As you know, this is not just a problem here for  
4 years. There has been discussion about increased cancer  
5 rates in the Pottstown as a result of the chemical  
6 company Limerick -- you know, that conjecture, and the  
7 landfill.

8 What I would be interested in knowing is in this  
9 whole area around this group, and some of those are  
10 represented by myself, and some by Senator Rafferty,  
11 what on an ongoing basis are we now doing to monitor --  
12 one thing that was good was these field devices -- to  
13 monitor and to begin to develop a policy to bring some  
14 of this situation under control? To be second highest  
15 in the nation is not a good thing.

16 SECRETARY MCGINTY: Exactly. A couple of things.  
17 We do have the air quality monitors that we station at  
18 various parts of the Commonwealth. There actually are  
19 one or two places in your District where we have been  
20 able recently to remove the monitors because we have had  
21 very good results that have come in over a consistent  
22 period of time.

23 But the other thing that is very important in this  
24 respect is the extension of the life of the Hazardous  
25 Sites CleanUp Program. Now that we have the instance of

1           some of the chemicals being detected in water resources,  
2           we have been able to act using our HSCA dollars to go in  
3           and both assess the situation and begin to provide  
4           bottled water where needed, etc.

5           That is similar in all the other cases that have  
6           been in the news of late.  Susquehanna University, for  
7           example, it is HSCA dollars that enables us to go in and  
8           do the investigation we are doing there.  Muhlenberg, we  
9           are similarly active there now.

10           So I would say the second thing that is vitally  
11           important, as you know, the Governor does have a  
12           proposal in his budget to fund and provide a dedicated  
13           source of funding for HSCA.  And I would invite your  
14           consideration of that as part of the equation in making  
15           sure we understand and can protect citizens against  
16           adverse exposure to toxic substances.

17           SENATOR DINNIMAN:  I think that's excellent.  What  
18           would be helpful is if one of your -- either the  
19           Regional Offices -- Joe Feola is an excellent person and  
20           has been there for a long time.  And your interest in  
21           this matter is deeply appreciated.  And I thank you for  
22           that.

23           We have to respond to the citizens a little better  
24           because despite the public hearing where over five  
25           hundred showed up, people are concerned.  They are a bit

1           frightened, and one can understand that.

2                       So if there can be made available to myself and  
3           Senator Rafferty and the State Representatives in that  
4           area at least a statement as to what DEP is doing on a  
5           long term basis related to potential health hazards in  
6           that area, and what they are doing on a short term basis  
7           of TCE -- and the question that I also ask --- and,  
8           again, maybe I misread the Inquirer that was pointed out  
9           to me, but what will happen when these federal standards  
10          go into effect, and are these companies able to meet  
11          those federal standards on the date? And if not, then  
12          what will the actions of DEP be?

13                      Because the citizens are asking me that question.  
14          And I am asking you to help me and Senator Rafferty  
15          provide them with an answer.

16                      SECRETARY MCGINTY: First, I want to thank you and  
17          Senator Rafferty and the Representatives who have been  
18          involved. These are always very difficult situations,  
19          and you want to provide as much information as possible  
20          to the citizens who very understandably are concerned.

21                      At the same time, you want to be able to provide  
22          the information as clearly as possible to avoid any  
23          unnecessary concern.

24                      On your specific question, I would be very happy  
25          to work with you, and I will get back to you right away

1 as to whether or not there is an impending change in  
2 federal standards and what our assessment is of the  
3 availability of the technology to meet it.

4 SENATOR DINNIMAN: I appreciate that. Thank you,  
5 Secretary.

6 CHAIRMAN WHITE: Madame Secretary, just as a  
7 followup to Senator Erickson's question, Patrick  
8 reminded me of the circumstances surrounding the  
9 cancellation of the last meeting.

10 The meeting was not cancelled because you had  
11 requested an opportunity to speak to us. In fact, the  
12 meeting had been sunshined and was scheduled in order  
13 for this Committee to approve a disapproval resolution.

14 SECRETARY MCGINTY: Right.

15 CHAIRMAN WHITE: We were informed by counsel that  
16 a disapproval resolution would not carry over into the  
17 new session. And that was why the meeting was  
18 cancelled. In fact, for the record, you did testify  
19 twice before this Committee on the mercury regulation.

20 That raises the question --

21 SECRETARY MCGINTY: Just on that point, Madame  
22 Chair, a disapproval resolution would not have had to  
23 continue over into the next session because had it  
24 successfully passed and then successfully passed in the  
25 House, it would have in fact stopped the regulation.

1           CHAIRMAN WHITE:  There wasn't time for it to go  
2 through the process in both houses.  That was why we  
3 cancelled it.

4           SECRETARY MCGINTY:  Had there not been early sine  
5 die, there would have been time.  I think the issue was  
6 that from the beginning of the legislative process, it  
7 was clear that the House had a different substantive  
8 view on this and was not in agreement that the  
9 regulation should be overturned.  In fact, agreed that  
10 the federal standard was not sufficient --

11           CHAIRMAN WHITE:  I don't want to be rewriting  
12 history here.  I just wanted the record to reflect that  
13 there was not time in the opinion of this Committee for  
14 a disapproval resolution to have made it through both  
15 the House and the Senate in the time remaining in that  
16 session.

17           But that being said, the Department has  
18 significant leeway when it delivers a proposed or final  
19 regulation to the standing Committee to review for  
20 approval.

21           For example, it took approximately three months  
22 for DEP to deliver the California car regulation to the  
23 Committee after EQB approval, but the mercury regulation  
24 came over here the same day that it was approved by the  
25 EQB.

1           So it is possible for DEP to manipulate that  
2 process and control the amount of time that a Committee  
3 has to review a regulation. In other words, you can  
4 hold it until we recess for the summer or until we are  
5 approaching the end of the session.

6           And given its potential, I am asking you to pledge  
7 to this Committee that whenever practical, you will  
8 ensure that regulations -- especially final regulations  
9 are delivered to the standing Committees -- and  
10 particularly this Committee, at a time when we are in  
11 session and when the process will not be manipulated so  
12 as to shorten our review time.

13           SECRETARY MCGINTY: Sure, and I appreciate your  
14 formulation in terms of whenever practical. Whenever it  
15 is practical for us to do that, I will be very happy to  
16 deliver those regulations when it is maximally at your  
17 disposal to have the time to review them.

18           CHAIRMAN WHITE: Thank you. Senator Rhoades?

19           SENATOR RHOADES: Thank you, Madame Chairman.  
20 Good morning, Madame Secretary.

21           SECRETARY MCGINTY: Good morning.

22           SENATOR RHOADES: One of the programs I really  
23 like is the Illegal Dumping COAL Program. I think Steve  
24 Bartos has done an excellent job on that. We have  
25 industry that is participating in it.

1           Do we have an understanding or a commitment that  
2           that program is going to maintain itself, and that you  
3           are going to be able to fund that over the coming years  
4           with the amount of shall we say local monies and  
5           legislation money that will be put into the program?

6           SECRETARY MCGINTY: As you point out, there has  
7           been a lot of inspiration and human capital that the  
8           Department has committed to the program. As you rightly  
9           point out, Steve Bartos as being the inspiration for the  
10          program, we have had very limited actual financial  
11          capital, however, that we have put in the program. So  
12          far, that seems not to be a hindrance to it. And in  
13          fact, it has invited, as you were also referring, to  
14          other parties to come to the table and to contribute  
15          assets, either cash or in kind to the effort.

16          It is one of my top priority programs. In my  
17          testimony, you see I even highlighted it as one of the  
18          things I am most proud of in terms of real innovation  
19          that is delivering terrific results on the ground and  
20          spreading a tremendous sense of pride and commitment by  
21          students and senior citizens and everyone in between.

22          I very much appreciate your support for the coal  
23          initiative.

24          SENATOR RHOADES: Another thing I am after, one  
25          thing I would like to get rid of -- and I think you

1 understand this very well. I have got a sludge problem.  
2 I've got a biosolids problem because we have pits back  
3 in the coal region, and everyone wants to fill it up  
4 with their waste.

5 Delaware River, they want to drop materials in.  
6 Hudson River, they want to drop materials in. Where do  
7 you stand on this?

8 SECRETARY MCGINTY: There is a couple of pieces to  
9 your question, but probably the answer is the same  
10 across the board.

11 With respect to biosolids, regulate the  
12 development, the production, the use and the application  
13 of biosolids very precisely. It is the standards that  
14 are there ensure that those materials are to the  
15 well-being of the soil and to the community and  
16 certainly not a detriment.

17 So my answer is that we will continue to have the  
18 kind of standards in place, and the oversight and  
19 enforcement of those standards to lend confidence that  
20 those materials are safe and healthy and appropriate to  
21 be used.

22 While the materials are different, the answer is  
23 pretty much the same with respect to dredge materials  
24 and dredged soils. There, too, we have some very  
25 demanding standards that we have put in place where

1           those materials if they are going to be used, for  
2           example, on abandoned mine land reclamation or in a  
3           construction project, where they are very vigorously  
4           tested. Some of the standards are among the most  
5           exacting that we have in the Department.

6                     And so it is with a very high level of confidence  
7           I can say that any material, whether it is biosolids or  
8           dredge, if it is properly being used in keeping with our  
9           regulation, it is material that will be of benefit in  
10          its application -- in its proper application and  
11          certainly not a harm.

12                    SENATOR RHOADES: Are you open to looking at new  
13          technologies or new processes which can modify both the  
14          biosolids in term of making it inert and even the sludge  
15          and taking the heavy metals and PCB out of it?

16                    SECRETARY MCGINTY: Absolutely. I would like to.

17                    SENATOR RHOADES: Because I am going to ask you to  
18          come in for a demonstration.

19                    SECRETARY MCGINTY: I would like to do so. On  
20          biosolids, just one thing I would ask you to keep in  
21          mind. You used the word inert.

22                    If the biosolids really are boiled and sterilized  
23          literally to the point where they are inert, they lose  
24          their value in terms of being an enrichment and  
25          enhancement to the soil. And so there are natural

1           nutrients, if you will, in that material that are  
2           enhancing of soil quality and that are lost if the  
3           processing is excessive.

4                    SENATOR RHOADES:  If I take it out what I am going  
5           to say is the pathogens, which I can do, and I leave the  
6           other bacteria in, it is only a matter of hours before  
7           the bacteria -- or when the biosolids applies to the  
8           ground, and the bacteria in the ground gets into that  
9           material and just modifies it and changes it again.

10                   The other thing I do have problems with is like I  
11           said coming out of the Hudson River, there's PCB's in  
12           there.  People don't even want to disturb it because  
13           they are afraid they are going to turn everything up,  
14           and it is going to get into the fish and the plant life  
15           that is already in the river.  It's to the point if  
16           somebody else has got a problem and they created it, I  
17           don't want it dumped in my backyard.

18                   I don't mind being called a NIMBY on this case.  
19           If they can clear it up and there isn't any hazard in  
20           there, fine.  But if I got to worry about the hazard and  
21           what should come afterwards, I have got a problem with  
22           that.

23                    SECRETARY MCGINTY:  I think that is exactly right.

24                    SENATOR RHOADES:  That is it.

25                    CHAIRMAN WHITE:  Thank you.  I do incidentally

1 agree with you on the biosolids issue.

2 Just a followup on the waste question, not  
3 necessarily biosolids, during your confirmation process  
4 in 2003, you expressed your opposition to a landfill  
5 permit moratorium. And since that time, the State  
6 Courts have upheld the Department's harms versus  
7 benefits test for new or expanded permits.

8 Given this, do you see any current benefit to a  
9 landfill permit moratorium, or do you believe that there  
10 are sufficient tools at your disposal currently to make  
11 appropriate decisions for expansion or siting?

12 SECRETARY MCGINTY: I do think we have all of the  
13 appropriate tools, and we have used the harms/benefit  
14 analysis in cases where we have wound up denying an  
15 application and finding that the harms outweigh the  
16 benefits, and in other instance, where we find the  
17 benefits clearly outweigh the harms.

18 I also think that we get into the area of  
19 constitutional questions getting raised if you are  
20 talking at least about bans on the importation of waste.  
21 But our obligation I believe is effectively and safely  
22 to manage the waste materials that we have to manage in  
23 the Commonwealth. And I do believe that we are  
24 accomplishing that and have the tools to accomplish  
25 that.

1                   CHAIRMAN WHITE: Thank you. Senator Greenleaf?

2                   SENATOR GREENLEAF: Good morning.

3                   SECRETARY MCGINTY: Good morning.

4                   SECRETARY GREENLEAF: I have a question and some  
5                   comments. First of all, Montgomery County, I want to  
6                   toot the horn for Montgomery County. It produces a lot  
7                   of tax revenue for the Commonwealth, a substantial  
8                   amount. The last figure I heard was about 30 percent.

9                   SENATOR DINNIMAN: Yes.

10                  SECRETARY GREENLEAF: Most people don't realize  
11                  that. I think it is important for us to tell you that.

12                  And why is because there's some very substantial  
13                  companies and businesses there. I know that you when we  
14                  have had these conversations are sensitive to that and  
15                  want to encourage commercial and business opportunities  
16                  and activity in the Commonwealth within the regulatory  
17                  framework that we have. And I know the Governor also  
18                  takes that position, as we do in Montgomery County, or  
19                  they wouldn't be there. They wouldn't be continuing to  
20                  produce and be successful.

21                  I have two companies I want to talk to you about.  
22                  Maybe you can help to alleviate the problems that they  
23                  are experiencing.

24                  The first one is the Clemens Corporation which is  
25                  in my District. I have talked to the Department of --

1           and the Secretary of Agriculture in regard to this. One  
2           of the things that he says is the high point and the  
3           target that they want to encourage is agricultural  
4           processing of our products.

5                     We know that agriculture is one of the number one  
6           leading industries in the State of the Pennsylvania.  
7           But also an important part of that industry is the  
8           processing of those products.

9                     And he has told me that that is the highest  
10          priority for him, to encourage that. Clemens  
11          Corporation does do that. They are a 112-year-old  
12          company. They have plants all over the Commonwealth.  
13          They have over 2,000 workers. Just in their feed, for  
14          feed costs, they spend \$135 million on just that alone.

15                    But also they support local farmers. Because what  
16          they do is that's where their source of livestock is.  
17          They go to small farms, and they grow and raise  
18          livestock. It helps agriculture that way. But then  
19          they also process those livestock in Pennsylvania and  
20          Montgomery County.

21                    What has happened is that they have had difficulty  
22          in obtaining permits. These are small farms. It takes  
23          them up to three years and thousands of dollars to  
24          complete the regulatory framework that is less  
25          cumbersome than they say in New York and Indiana.

1           In fact, they are now looking at expanding up  
2           along the Route 80 corridor, which needs economic  
3           development. But they are also looking at Indiana and  
4           New York which is much less burdensome. It takes a lot  
5           less time to process those applications.

6           I am not saying they shouldn't be regulated and  
7           looked at, but the time and the money is causing them to  
8           look outside of Pennsylvania for the first time. And so  
9           I would appreciate it if you would take the time to  
10          maybe look into this personally and see what could be  
11          done to help to at least cut the red tape and help them  
12          to navigate through this regulatory process in a more  
13          expeditious way.

14          SECRETARY MCGINTY: I would be very happy to. I  
15          am not familiar with the company. I would like to  
16          become familiar with them. I would be very happy to  
17          work with you on the particulars.

18          SECRETARY GREENLEAF: The other one is also a well  
19          known company. It is located in Montgomery County. It  
20          is Rohm and Haas. Of course, they have offices in  
21          Philadelphia and Montgomery County and are known  
22          internationally and nationally. As well as the Clemens  
23          Family Corporation. They are known nationally and  
24          internationally.

25          They have recently been dealing with a problem

1 with regard to purifying bio diesel fuels. So they have  
2 been having some conversations with your Department I  
3 believe in regard to that. I would just ask that you  
4 try to work with them and see what you can do to  
5 expedite that issue. They want to accomplish what you  
6 want to accomplish. Just take a look at that as well.

7 SECRETARY MCGINTY: We couldn't be more thrilled  
8 than we are with the innovation they hopefully have  
9 brought to the fore. The early tests of it look  
10 promising. We in fact have encouraged and invited them  
11 to provide us with an application that we might review  
12 and try to support under our Pennsylvania Energy  
13 Development Authority for example.

14 Without saying too much because some of the  
15 details are proprietary, I would say that there is a  
16 chance that their technology could be a substantial  
17 breakthrough in changing the cost equation as it relates  
18 especially to bio diesel.

19 It is a very exciting innovation, and we are  
20 thrilled to be in conversation with them.

21 SECRETARY GREENLEAF: I appreciate your working  
22 with them. Thank you very much.

23 SECRETARY MCGINTY: Thank you.

24 CHAIRMAN WHITE: Madame Secretary, are employees of  
25 DEP eligible to apply for grants or contract work with

1 DEP?

2 SECRETARY MCGINTY: I don't believe so. No.  
3 Employes -- current full time employes, I don't believe  
4 so.

5 CHAIRMAN WHITE: What about employes from other  
6 state agencies?

7 SECRETARY MCGINTY: I don't believe so.

8 CHAIRMAN WHITE: Did you suggest to Governor  
9 Rendell or anyone else in the administration that  
10 Wendell Holland should be replaced as the Chairman of  
11 the Public Utility Commission, or removed, or not  
12 reappointed?

13 SECRETARY MCGINTY: Well, I will not now second  
14 guess the Governor on personnel situations. I will say  
15 that I certainly very closely both follow and propose  
16 for his consideration policy that is relevant to the  
17 workings of the Public Utility Commission.

18 CHAIRMAN WHITE: That wasn't the question. The  
19 question was: Did you suggest to the Governor someone  
20 else in the administration that he not be continued?

21 SECRETARY MCGINTY: I think that the Governor is  
22 entitled to have the benefit of confidential advice on  
23 these matters. I would prefer to be able to ask his  
24 latitude to respond directly to the question as to who  
25 gives him what type of information, specifically on

1 personnel matters. I feel very uncomfortable in this  
2 forum speaking on a matter of that nature.

3 CHAIRMAN WHITE: So you will not answer that  
4 question?

5 SECRETARY MCGINTY: I have answered it. I would  
6 like to discuss that with the Governor before publicly  
7 articulating advice that he either does or does not get  
8 especially, with respect to personnel matters.

9 CHAIRMAN WHITE: Well, personnel matters, I mean  
10 this is an independent agency. This isn't someone  
11 within your Department that you are discussing a  
12 personnel matter. This is a Chairman of an independent  
13 regulatory other body, and I am simply --

14 SECRETARY MCGINTY: Personnel decisions are the  
15 Governor's. The members of the PUC, as members of the  
16 Executive Branch and other Commissions as well,  
17 independent commissions, are appointees often by the  
18 Governor. And those personnel decisions are his. The  
19 Governor --

20 CHAIRMAN WHITE: I am not questioning whose  
21 decision it is. I am asking whether you personally  
22 because of Chairman Holland's public statements about  
23 the mercury rule asked the Governor or someone in the  
24 administration or suggested that he be removed as Chair?

25 SECRETARY MCGINTY: Chairman Holland voted both at

1 the preliminary and the final stages in favor of the  
2 mercury rulemaking.

3 CHAIRMAN WHITE: Well, again, that doesn't answer  
4 the question. We will move on. I think we are at a  
5 stalemate.

6 You talked about waste coal plants being built in  
7 Pennsylvania and the permitting process. As you know,  
8 there are proposals such as TXU out of Texas to build  
9 new coal fired power plants in Pennsylvania.

10 Assuming these plants meet all applicable  
11 requirements, would you welcome these new plants and  
12 will you be proactive in helping to bring new clean coal  
13 plants to Pennsylvania?

14 SECRETARY MCGINTY: And we have been. We have  
15 been proactive both in providing now regulatory  
16 incentives in our Pennsylvania initiative, for example,  
17 and in our financing incentives through the Pennsylvania  
18 Energy Development Authority.

19 It seems, by the way however, that the TXU  
20 proposals seem to be cancelled as a result of the  
21 pending buyout of TXU by the investment firms that was  
22 introduced two months ago.

23 CHAIRMAN WHITE: As a matter of policy, would you  
24 support and advocate the permitting of new nuclear power  
25 plants in Pennsylvania?

1           SECRETARY MCGINTY:  If they met all of our  
2 requirements, absolutely.

3           CHAIRMAN WHITE:  When my staff was briefed on the  
4 morning of February 1st, the Governor's Independent  
5 Energy Strategy, we were told that nothing was available  
6 in writing from your office.  Later we were told that  
7 talking points would not be available until after  
8 five o'clock that day.

9           Yet Penn Future put out an op. ed. praising the  
10 Governor and containing detailed information on the  
11 proposal almost immediately after the press conference.  
12 In fact, a draft of their press release was dated  
13 December 18th, 2006, nearly six weeks earlier.

14           Now my question is:  Why are public advocacy  
15 groups getting the details on these proposals before the  
16 Legislature despite our specific request for them?

17           SECRETARY MCGINTY:  I have no knowledge of where  
18 Penn Future may have derived information of the specific  
19 drafts that you are referring to.

20           But what I do know is that we reached out, and I  
21 was very grateful to you that I was able to come and do  
22 a personal briefing for you together with Secretary  
23 Yablonsky, and we followed up as soon as we could, which  
24 was just within a few days of actual detailed  
25 legislative language on the initiatives.

1           CHAIRMAN WHITE:  So Penn Future's having this  
2 information in December, that did not come from your  
3 office?

4           SECRETARY MCGINTY:  I have no idea of what Penn  
5 Future may or may have not said in December or of the  
6 draft that you are referring to.

7           CHAIRMAN WHITE:  So it did not come from your  
8 Office?  Whatever detailed information they had to  
9 permit them to put out the press release that same day  
10 did not come from your Office?

11          SECRETARY MCGINTY:  I do not know what they may or  
12 may not have put out in December.  I will say this  
13 however:  You and I have had many discussions over at  
14 least a year about the concerns that we have with  
15 respect to, for example, the prohibition of long term  
16 contracts and the dramatic increase in electricity rates  
17 that have resulted from that kind of decision making.

18          I similarly had many meetings with businesses  
19 affected by the PUC's decisions in that regard.  So the  
20 sum and the substance of what is in the Energy  
21 Independence Strategy has been a matter of public  
22 conversation before a ribbon was wrapped around it in  
23 the Governor's proposal for at least a year and actually  
24 on the long term contracts for two to two and a half  
25 years.

1           The Penn Security Fuels Initiative, which is fully  
2           a third of the Energy Independence Strategy, has been a  
3           matter of public conversation since May of 2006 when the  
4           Governor announced it, and then we have a full  
5           stakeholder process in developing the details of it.

6           So the details of the Energy Independence Strategy  
7           have been a matter of public discourse for at least a  
8           year or more preceding the Governor's formal  
9           announcement of the initiative.

10           CHAIRMAN WHITE: Perhaps we are quibbling in  
11           semantics here as to what details really mean. As  
12           advertised, the centerpiece of the Governor's energy  
13           proposal is an \$850 million bond financed by about  
14           \$75 million in revenue from a new tax on electric bills.

15           The Governor's proposal advertises how the money  
16           will be spent. For example, he says two hundred million  
17           plus for solar. But the draft language given to us by  
18           the Governor places no limit on borrowing, and it fails  
19           to actually allocate any funds to specific programs.

20           Does that mean we are simply being asked to pass a  
21           trust me piece of legislation, or is that actually going  
22           to be provided?

23           SECRETARY MCGINTY: I think that is something that  
24           we would be happy to work out with you in the  
25           deliberations over the legislation. The Governor has

1           laid out in detail -- although you're quite right, not  
2           in the legislative language in terms of exactly how he  
3           would propose every dollar be spent, but we have made  
4           those recommendations quite clear that 200 million for  
5           solar, 44 for the appliance rebates, etcetera.

6                     But many members have had suggestions. For  
7           example, Senator Connie Williams has said that she would  
8           like to see school districts be able to participate in  
9           and apply for the solar rebates. We had not initially  
10          thought of that. And the proposal as we have drafted it  
11          has in mind homeowners and small businesses. But we  
12          would like to have those recommendations and work out  
13          those details with you.

14                    So, yes, we have laid out publicly what we think  
15          is a good strategy, but I think in the deliberations and  
16          the negotiations over the actual legislative language  
17          that those details can be written into law if the  
18          Legislature would prefer.

19                    CHAIRMAN WHITE: I understand that the Governor is  
20          going to be making his global warming or climate change,  
21          whichever term fits the bill, proposals on May 2nd.  
22          Will he be proposing legislation?

23                    SECRETARY MCGINTY: I don't know what the  
24          substance will be. My guess is that there would be a  
25          legislative component to it.

1           What I am certain of though is that it will start  
2           by recognizing the building blocks that are already in  
3           place that meaningfully begin to address the climate  
4           change issue. Like, for example, the portfolio  
5           standard. Like, for example, the Pennsylvania Clean  
6           Vehicles Program. Like the investments we have made in  
7           agriculture and open space, etcetera.

8           CHAIRMAN WHITE: Is it your intent to seek  
9           mandatory caps on carbon dioxide emission?

10          SECRETARY MCGINTY: As I said, the proposal is  
11          still under discussion. We have not made any final  
12          decisions.

13          As I indicated in an e-mail to you a week or two  
14          ago, I would love to come in and sit down and begin to  
15          get some of your ideas as to what direction we might  
16          take in any proposals that we would present.

17          CHAIRMAN WHITE: Regardless, whatever direction  
18          you decide, is it your intent to do that through  
19          regulation or through legislation?

20          SECRETARY MCGINTY: No. I would imagine if there  
21          was a piece of the strategy that involved mandatory caps  
22          on the emission of green house gasses, that that would  
23          be a legislative proposal.

24          CHAIRMAN WHITE: Does the Governor or the  
25          Department anticipate hiring any outside contractors or

1 consultants to assist in whatever plan is laid out?

2 SECRETARY MCGINTY: The Department of  
3 Environmental Protection has not hired any outside  
4 consultants on the climate change issue.

5 CHAIRMAN WHITE: Do you anticipate doing so?

6 SECRETARY MCGINTY: I do not anticipate doing so,  
7 no.

8 CHAIRMAN WHITE: I think that is all. Senator  
9 Musto?

10 SENATOR MUSTO: Thank you, Madame Chair. Good  
11 morning, Madame Secretary.

12 SECRETARY MCGINTY: Good morning, Mr. Chairman.

13 SECRETARY MUSTO: We have participated in several  
14 meetings regarding mine safety legislation. And  
15 earlier, the coal industry and the Mineworkers Union  
16 presented an extensive legislative proposal to the  
17 Bureau of Mine Safety.

18 Can you tell us exactly where that is at the  
19 present time?

20 SECRETARY MCGINTY: Yes. We have been reviewing  
21 the proposal that they have now come together and  
22 presented for all of our consideration. We are probably  
23 a couple of weeks out from finalizing our review. And  
24 in fact, my staff had been over visiting with the  
25 committee staff yesterday to suggest a time frame of

1           about April 13th when we might all meet again to review  
2           those particulars.

3                     SENATOR MUSTO: I really appreciate your  
4           participation in this very important issue. Hopefully,  
5           we can get it behind us.

6                     SECRETARY MCGINTY: I couldn't agree more. The  
7           good news is that we continue to have a very solid Mine  
8           Safety Program. That is reflective of and a tribute to  
9           the professionals both in the government, federal and  
10          state, as well as the workers and the corporate  
11          officials who attend the safety considerations.

12                    Having said that, as we agree, it is past time for  
13          us to update what is on paper. And this is a historic  
14          opportunity I think that we do have to modernize those  
15          mine safety laws that have not been substantially  
16          touched in many, many decades.

17                    SENATOR MUSTO: I certainly do agree with the  
18          approach that there is a dialogue between all parties,  
19          and it is very helpful to us.

20                    I did not see in your testimony regarding water  
21          resources planning. I know we are approaching the  
22          statutory deadline for development of a State Water  
23          Plan. I also know your Department and you have been  
24          working with advisory committees to complete the plan.

25                    I understand the deadline is in early 2008?

1           SECRETARY MCGINTY: March, I believe, yes.

2           SENATOR MUSTO: March. Is a plan going to be  
3 submitted in a very short period of time?

4           SECRETARY MCGINTY: Here, too, I would welcome the  
5 opportunity to sit down and visit with the Committee --  
6 certainly, the Chairs -- for two reasons.

7           One is in detail to apprise you of the tremendous  
8 amount of work that has been accomplished over the last  
9 four years now. It is a significant investment that the  
10 Commonwealth has made in the Act 220 process to develop  
11 a water resources plan for the Commonwealth.

12           This year, for example, we may invest on the order  
13 of about \$3 million in the further development of the  
14 plan. That has involved everything from enabling a  
15 tremendously broad array of stakeholders to participate  
16 to developing some of the most sophisticated, hydrologic  
17 and information technology tools so that we can have a  
18 better sense of the quantity, the quality of our water  
19 resource.

20           What I would like to suggest though second is  
21 while there is a tremendous amount of work to be proud  
22 of, having not been here at the time the Legislature  
23 passed Act 220, the vision that should surround that  
24 water resources plan, the objective of it, the reason  
25 why it is important to the Commonwealth, it is timely

1           for the Legislature to reengage and to see what has been  
2           developed so far and what direction it should be steered  
3           in in these next critical months as it is finalized.

4                     SENATOR MUSTO:  When the plan is submitted to the  
5           Legislature, it certainly will not be automatic.  So we  
6           do need time certainly to review it.  Thank you very  
7           much.

8                     Madame Chairman, at this time, I move that we  
9           report to the full Senate the nomination of Kathleen  
10          McGinty as Secretary of the Department of Environmental  
11          Resources.

12                    CHAIRMAN WHITE:  There is a motion to report.  Is  
13          there a second?

14                    SENATOR DINNIMAN:  I will second.

15                    (AT this time, the roll was taken by Mr.  
16          Henderson, and the vote was unanimous.)

17                    CHAIRMAN WHITE:  Thank you very much.

18                    SECRETARY MCGINTY:  Thank you very much.

19                    (The hearing was concluded at 10:50 am.)

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

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