

COMMONWEALTH OF PENNSYLVANIA
SENATE ENVIRONMENTAL RESOURCES & ENERGY COMMITTEE

Public Hearing on Hazardous Sites Cleanup Fund

Before: SENATOR MARY JO WHITE, Chair
SENATOR EDWIN B. ERICKSON, Vice Chair
SENATOR RAPHAEL J. MUSTO
SENATOR MICHAEL W. BRUBAKER
SENATOR ANDREW DINNIMAN
PATRICK HENDERSON, Executive Director
RICHARD FOX, Democratic Executive
Director

Date : September 24, 2007, 1:30 p.m.

Place : North Office Building
Hearing Room 1
Harrisburg, Pennsylvania

By : Susan L. Petrilla,
Registered Professional Reporter

1 SENATE CHAIR WHITE: Good afternoon. Today
2 is a very full day, so we'll try to begin this hearing
3 on time and make it as time efficient as possible.

4 Today's hearing of the Environmental
5 Resources & Energy Committee involves the Hazardous
6 Sites Cleanup Fund and its future. After the
7 agreement with the Governor to utilize the excess
8 Realty Transfer Tax revenues for HSCA, when it fell
9 through last July, I wrote a letter to the secretary
10 asking for certain information.

11 I was informed by the DEP office last week
12 that I would not be receiving a response to this
13 letter. Therefore, some of my questions are intended
14 to get those answers. In addition, I have a letter,
15 which is in the packet that the members all received,
16 from Majority Leader Pileggi asking that we resolve
17 certain issues before final funding decisions are made
18 this year on HSCA.

19 So, with that in mind, we have invited the
20 secretary, and she has graciously come over to clear

21 the air and get this on a stage where we can begin

22 moving forward on this very important program.

23 Senator Musto, did you have any comments

24 before the hearing begins?

25 SENATOR MUSTO: I have no comments at this

1 time.

2 SENATE CHAIR WHITE: Madam Secretary, did
3 you have a prepared statement or do you wish to go
4 right to the question?

5 SECRETARY MCGINTY: Just to thank the
6 committee again for your continued attention to the
7 HSCA program.

8 SENATE CHAIR WHITE: Thank you.

9 Well, your June 20th letter to Secretary
10 Masch, again, which members all have a copy of, June
11 20, states that, absent a funding source for HSCA, DEP
12 will begin shutting down the HSCA program in three
13 stages. One of those stages included an employee
14 furlough strategy for over 200 employees, which would
15 be developed in early July.

16 Was this furlough strategy ever developed?

17 SECRETARY MCGINTY: Well, the strategy
18 would be the same wherever and whenever we would face
19 a shutdown of the program, and it itself has three
20 stages. One is two weeks before you'd actually do a

21 furlough, you need to give notice to the employees in

22 question.

23 SENATE CHAIR WHITE: Was that notice ever

24 given?

25 SECRETARY MCGINTY: It was not. No formal

1 notice was delivered, no.

2 A month before the actual shutdown, you
3 would engage with the union. And because of the size
4 of the program, it would probably be the better part
5 of two months before a shutdown of the program where
6 we would have to start planning for that shutdown.

7 SENATE CHAIR WHITE: Well, I guess I'm
8 concerned because of the statement that one of the
9 stages included a furlough which would be developed in
10 early July, but early July came and went. And from
11 everything I can see, the fund -- we were told the
12 fund would be out of money by then and no furlough
13 strategy was ever developed or implemented.

14 SECRETARY MCGINTY: Well, what we had said
15 is that the fund under its current operating plan
16 would have been out of -- would have been out of
17 resources by September 30th. What we did after it
18 was -- Two things were obvious.

19 One was that the Legislature certainly was
20 serious in trying to find a funding solution to the

21 HSCA program. And the other was that that would not
22 be done, obviously, in the current fiscal year, so --
23 or before the end of the last fiscal year.

24 So what we did was to engage with the
25 Governor's Office and look at the operating plan to

1 see if there were changes that we could make to give
2 the Legislature some additional time. And that is
3 what we shared in the letter that was sent to the
4 leadership, which was intended, by the way, as a
5 response also to the letter that you had sent to the
6 department.

7 SENATE CHAIR WHITE: Well, in reading your
8 letter, the third phase to be implemented fully by
9 September 30, 2007 will entail a complete shutdown of
10 the program except for very limited resources.

11 So the September 20 date you gave was the
12 absolute shutdown date.

13 SECRETARY MCGINTY: That's correct.

14 SENATE CHAIR WHITE: My question was, since
15 there were three phases, why was the first phase never
16 initiated in early July?

17 SECRETARY MCGINTY: Because in consultation
18 again with the Governor's Office, we presented what
19 the operating plan assumptions were behind the
20 September 30th final close of the program, and it was

21 decided that since the Legislature obviously is moving
22 in aggressive fashion to try to solve the problem, if
23 there was a way to provide additional daylight to not
24 turn the lights off on September 30th, we should do
25 that.

1 That is the plan we're operating under,
2 but, you know, there's no free lunch. So the plan
3 that we're operating under now has entailed our
4 withdrawal of our previous reserve of funds that we
5 would usually set aside to meet our federal legally
6 binding obligations under Superfund and RCRA. It also
7 means that we curtailed to just the current fiscal
8 year our emergency response funds.

9 Now, those are decisions we don't take
10 lightly, and they are not decisions that we had made
11 prior to the end of the budget process this year.

12 SENATE CHAIR WHITE: Did Secretary Masch
13 ever reply to your June 20th letter?

14 SECRETARY MCGINTY: I don't know if I have
15 a written reply, but certainly it has been an ongoing
16 focus of the Governor's Office to try to solve this
17 problem.

18 SENATE CHAIR WHITE: Well, wouldn't it have
19 been helpful to both you and the General Assembly if
20 Secretary Masch had simply said in writing or orally

21 in response to your letter that there's actually
22 plenty of money to fund HSCA through December '07 and
23 no furloughs will be required over the summer?

24 SECRETARY MCGINTY: I don't believe that
25 would have been an accurate statement, not under the

1 traditional and normal operating procedures under
2 HSCA.

3 What we've done is an extraordinary
4 deviation from our normal operations, and it is not
5 something that has not been noticed at the federal
6 level. To reiterate, we are under legally binding
7 obligation to pay for Superfund work and RCRA work
8 that is done in the state.

9 Upon our announcement that we were going to
10 limit the availability of funds under HSCA for those
11 purposes to this fiscal year, among other things, we
12 have an announcement by EPA of taking over one of the
13 biggest HSCA sites in the state. Now, that hopefully
14 will proceed well, but it has involved already some
15 relooking at a cleanup plan that had been articulated
16 and executed over a very long period of time, and, you
17 know, it involves delay for a community that was
18 hoping to see that cleanup happen in realtime.

19 SENATE CHAIR WHITE: So where precisely did
20 this \$19.3 million come from, where we went, you know,

21 in 11 days from June 20th to July 1, this money

22 somehow appeared?

23 SECRETARY MCGINTY: No, the \$19.3 million,

24 actually, the overall sums available to the fund right

25 now are on the order of about \$24 million, and they

1 represent several things. They represent the
2 remaining dollars that we have under Growing Greener
3 II, and they also represent several contracts executed
4 under the Growing Greener II dollars or with those
5 dollars having not expended as quickly as could have
6 happened under those contracts.

7 SENATE CHAIR WHITE: Well, why didn't we
8 take those steps before June 20 so that we didn't have
9 to alert the Legislature that we were going to have to
10 lay off all those people?

11 SECRETARY MCGINTY: Well, but it is those
12 very dollars that we were counting on in order to
13 anticipate a possible September 30 close-out date. So
14 those dollars didn't magically appear. We have been
15 for four years now very carefully managing the program
16 to try to extend dollars as best we can. The
17 September 30th date depended on having those dollars
18 available as well.

19 SENATE CHAIR WHITE: We've received
20 conflicting reports as to how much money you actually

21 need for HSCA, and I'm perplexed -- meaning not
22 troubled -- but perplexed that money seems to be held
23 in reserve that can be redirected at will, suddenly
24 found, refund, redirected.
25 How much do you actually need to finance

1 each year and how much money does the Department need
2 for a full fiscal year? And I'd like to see how much
3 of this is to meet personnel costs compared to
4 emergency response or site remediation.

5 SECRETARY MCGINTY: Sure.

6 SENATE CHAIR WHITE: Could you provide the
7 committee with that information?

8 SECRETARY MCGINTY: Well, let me just say
9 that that is really a policy decision. I mean, there
10 are certain building blocks of the HSCA program, some
11 of which we've been talking about, which are not
12 discretionary. Like, for example, our legal
13 obligations to the federal government. Now, that runs
14 on the order of about \$6.3 million. That, plus about
15 \$500,000, that we have typically expended in a given
16 year on emergency response activities under the
17 hazardous sites program.

18 Beyond that, it is a discussion about how
19 quickly the Commonwealth wants to invest in and
20 resolve the outstanding some 150 properties currently

21 on the list of sites we know of that are contaminated.

22 So, for example, in the -- throughout a good portion

23 of the Hazardous Sites Cleanup Program, we were

24 looking at expenditures on the order of 30 to \$40

25 million just in contract costs. So those would be the

1 projects that were executed on an annual basis in
2 remediation.

3 Now, we are well down below those numbers
4 now. And while I'm looking for those numbers, let me
5 also speak to the personnel costs that you raised.

6 Since we've been in office, we have both
7 frozen positions and moved personnel off the HSCA
8 complement to the effect that we have about 25 percent
9 fewer positions in the HSCA program today than in
10 1992. That means, for example, where in 2001, that
11 fiscal year, we had the better part of \$19 million in
12 personnel costs, and this year, we have about \$12
13 million in personnel costs.

14 SENATE CHAIR WHITE: Does that represent
15 the actual bodies, because I know that a great many of
16 these people have a portion of their pay --

17 SECRETARY MCGINTY: Exactly.

18 SENATE CHAIR WHITE: -- funded by HSCA?

19 SECRETARY MCGINTY: Yes, it's FTEs. It's
20 equivalents, and it's done on the basis of hours for

21 those personnel who code their time to HSCA work, yes.

22 SENATE CHAIR WHITE: So has there actually
23 been a reduction in the number of employees working on
24 the HSCA program?

25 SECRETARY MCGINTY: Yes, there has been.

1 As I was saying, in 1992, we were at 329, I believe,
2 and today we're at 285, I believe.

3 SENATE CHAIR WHITE: I'm sorry, what was
4 that number, 285, compared to?

5 SECRETARY MCGINTY: Actually, 327 in 1992,
6 and we're at 285 today.

7 SENATE CHAIR WHITE: And that 285 is
8 sufficient to continue the HSCA activities, in your
9 opinion, going forward?

10 SECRETARY MCGINTY: I believe so. Since
11 we've had the Growing Greener II dollars, we did fill
12 several critical positions, whereas previous to having
13 the Growing Greener II dollars, as I had said, we had
14 frozen any hiring in the program. But, again, it
15 comes back to the level of activity that the
16 Commonwealth wants to see under this program.

17 And, just to remind you, the activity that
18 we have in mind here is twofold. It's a hazardous
19 sites program, but it's also the Land Recycling
20 Program is funded, the staff's part for that program

21 is funded out of HSCA as well.

22 SENATE CHAIR WHITE: Do you think that's

23 appropriate? I've always wondered why we fund the

24 brownfield sites remediation when it's not of the

25 emergency type situation that most of the HSCA

1 activities are.

2 Would you oppose or support a breaking out
3 of the brownfields funding from the Hazardous Sites
4 Cleanup Act?

5 SECRETARY MCGINTY: Well, I think the
6 distinction you make is a distinction that can be
7 made. If there is a similarity, it's a similarity in
8 skill set, because, in both instances, you're talking
9 about chemical contaminants of various kinds and how
10 those contaminants need to be remediated.

11 The Hazardous Sites Cleanup Program, I
12 think as you're suggesting, does support emergency
13 types of situations where we're reacting in an
14 emergency fashion. But with a list of 150 or so
15 properties, the work there is very similar to the work
16 in the brownfield program in the sense that there's a
17 property, it's been affected by spills or releases,
18 it's contaminated, and a remediation strategy and plan
19 needs to be put together.

20 So the skill sets are similar, but it is

21 another drain on the HSCA resources.

22 SENATE CHAIR WHITE: The 150 sites you have

23 referenced, could you give us some breakdown over the

24 past -- I don't know, pick whatever number of years --

25 five, ten --

1 SECRETARY MCGINTY: Sure.

2 SENATE CHAIR WHITE: -- of how many have
3 been added and how many have been remediated?

4 SECRETARY MCGINTY: Yes, I would be happy
5 to. There is a constant inflow and -- we hope -- and
6 we've been able to, since we've had the Growing
7 Greener II dollars, to move sites off the list as well
8 as they are completed. Typically runs on the order of
9 10 to 20 sites are added to the list every year.

10 SENATE CHAIR WHITE: And how many are
11 typically completed?

12 SECRETARY MCGINTY: We have --

13 SENATE CHAIR WHITE: It doesn't have to be
14 an exact number.

15 SECRETARY MCGINTY: I'll just give you a
16 sense.

17 SENATE CHAIR WHITE: Sorry. Not an exact
18 number, just an idea.

19 SECRETARY MCGINTY: Well, in the two years
20 that we've had the Growing Greener II dollars, we've

21 initiated actions at 33 sites and completed 14 sites.
22 Now, that's probably lower, because when we did not
23 have the dollars leading up to the Growing Greener II
24 support, we actually had to suspend -- actually cancel
25 the HSCA -- the contractor contracts, if you will,

1 that we previously had.

2 Now, we were able to support them in the
3 interim with the Solid Waste Abatement Fund, but we
4 had a slowdown in those contracts. Some of that work
5 needed to be completely restarted. So that 14 is
6 probably a bit low, but that's what we did in the last
7 two years.

8 SENATE CHAIR WHITE: Can you provide the
9 committee with a listing of exactly what Growing
10 Greener II dollars have been devoted toward HSCA
11 cleanups?

12 SECRETARY MCGINTY: Sure, yes.

13 SENATE CHAIR WHITE: When was the HSCA fund
14 last audited, if you know?

15 SECRETARY MCGINTY: I don't know the answer
16 to that question. Does anyone?

17 AUDIENCE MEMBER: I'm not aware of an audit
18 ever being....

19 SENATE CHAIR WHITE: Would you have any
20 objection to an audit of the fund by the Auditor

21 General so that we can --

22 SECRETARY MCGINTY: Not at all, not at all.

23 SENATE CHAIR WHITE: -- compare reserves

24 and make sure we're on the right track here for future

25 funding?

1 SECRETARY MCGINTY: That sounds fine.

2 SENATE CHAIR WHITE: Senator Musto?

3 MR. MUSTO: I have no questions.

4 SENATE CHAIR WHITE: Oh, Senator Brubaker,

5 I didn't even look on my right. Senator Erickson, any

6 questions?

7 SENATOR ERICKSON: No.

8 SENATE CHAIR WHITE: Senator Brubaker?

9 SENATOR BRUBAKER: Good afternoon, Madam

10 Secretary.

11 SECRETARY MCGINTY: Good afternoon.

12 SENATOR BRUBAKER: Great to be with you.

13 SECRETARY MCGINTY: Thanks.

14 SENATOR BRUBAKER: When you undertake a

15 hazardous site cleanup, no doubt it gets on the list

16 because you have quantifiable data that there's an

17 environmental hazard. Is that correct?

18 SECRETARY MCGINTY: We actually have a

19 hazardous ranking system that's done in each region

20 and points are assigned depending on how close the

21 property is to population centers and the degree of

22 toxicity of the property.

23 SENATOR BRUBAKER: So you have this

24 quantifiable data that shows the site indeed

25 environmentally needs to be cleaned up, either for the

1 environment and/or human health?

2 SECRETARY MCGINTY: That's correct.

3 SENATOR BRUBAKER: And then there's a

4 process by which the site is cleaned up. Is there

5 quantifiable data post site cleanup that could give

6 somebody an accurate report on what the human and/or

7 environmental liability was pre and how it was

8 mitigated post?

9 SECRETARY MCGINTY: Sure.

10 SENATOR BRUBAKER: What those -- Probably

11 you have some residual. In some cases, you don't

12 mitigate down to zero in every case. Probably the

13 technology does not allow you to do that.

14 SECRETARY MCGINTY: That's correct. And,

15 in some cases -- for example, when groundwater is

16 impacted -- that becomes a very lengthy and very

17 expensive process. And often -- I was going to say

18 more often than not -- at least I can say often, we

19 decide that instead of embarking on that multi-decade

20 process, we extend public water lines so that the

21 groundwater is no longer used as a drinking water

22 resource.

23 SENATOR BRUBAKER: I can only begin to

24 imagine that these on-site cleanups are difficult and

25 beyond complete ability to understand all the

1 potential variables that would be in place. When you
2 start a cleanup, you're not -- probably you're not
3 sure of what that ultimate cost is going to be. Is
4 that accurate?

5 SECRETARY MCGINTY: That can happen, but,
6 generally, if we're not in an emergency situation, we
7 do a pretty thorough site assessment before the work
8 is begun. Then there are questions as to how quickly
9 the contractor can work due to the price of the
10 materials and equipment increase, decrease, so, sure,
11 there are things that can change during the course of
12 a project.

13 SENATOR BRUBAKER: But it is your customary
14 procedure to do a post cleanup analysis, and then do
15 you go back so many months and/or years later to do
16 another post cleanup analysis?

17 SECRETARY MCGINTY: Well, we do, but let me
18 be clear in terms of what the nature of that analysis
19 usually is. In some instances, it may be actual
20 numbers in terms of this is the amount of a particular

21 chemical that might still be there.

22 In other cases, the work plan, if you will,

23 is different. It's about putting the hardware in. In

24 the instance of a public water line being put in, we

25 would not have expected the chemical parameters in the

1 groundwater to have changed, we have just obviated
2 that as a human exposure pathway by putting a pipeline
3 in.

4 SENATOR BRUBAKER: Okay, thank you.

5 SENATE CHAIR WHITE: Madam Secretary,
6 excuse me, you made reference to public water lines.
7 Was there ever an instance where HSCA funding was used
8 to actually pay for a public water supply?

9 SECRETARY MCGINTY: Yes, we use it to pay
10 for water mains. We do not use it to pay for the
11 laterals, though, that connect individual residences.

12 You'll see that as we have been sharing
13 with the committee and other members of the
14 Legislature on a pretty regular basis the updated list
15 of the properties on the HSCA -- on the HSCA list, and
16 you'll see there where water lines are being put in.
17 Each project has a descriptive that summarizes the
18 work that's underway at that property.

19 SENATE CHAIR WHITE: And that is paid for
20 with HSCA money, not PennVest money?

21 SECRETARY MCGINTY: That's correct.

22 SENATE CHAIR WHITE: Going forward, Senator

23 Pileggi and I have a bill that would come up with yet

24 another plan for trying to fund this very important

25 program. I'm sure you're familiar with it. Is that

1 something you can support?

2 SECRETARY MCGINTY: This is the plan that
3 would dedicate \$15 million in this fiscal year and
4 then look to the Capital Stock and Franchise Tax?

5 SENATE CHAIR WHITE: That's correct. It
6 takes us through the next three years.

7 SECRETARY MCGINTY: Right. Well, first of
8 all, I just want to again say that the department and
9 the administration are grateful for your continued
10 attention and effort to find a funding plan.

11 I think that the Governor's Office would
12 likely, though, have a question as to if we are to
13 take the 40 million from the Capital Stock and
14 Franchise Tax, how will the budget more broadly be
15 made whole and how will that \$40 million hole in the
16 general fund be made up?

17 SENATE CHAIR WHITE: Well, Madam Secretary,
18 with all respect, I mean, there are priorities and
19 there are priorities. If we can come up with \$40
20 million for film tax credits, it seems to me we can

21 come up with \$40 million to fund the Hazardous Sites

22 Cleanup Act.

23 SECRETARY MCGINTY: Was that only 40

24 million?

25 SENATOR MUSTO: 75.

1 SENATE CHAIR WHITE: 75, I stand corrected.

2 Maybe we can make a movie about HSCA.

3 SECRETARY MCGINTY: It certainly has been

4 an ongoing drama. I agree with you, there are

5 priorities that need to be attended to, and I think

6 that, you know, if the direction is going to be one in

7 which we are taking those \$40 million that otherwise

8 would currently go into the general fund, if that's

9 going to be the solution, then, obviously, it's going

10 to be a matter of sitting down and rolling up sleeves

11 and finding where that 40 million otherwise comes from

12 in the general fund and what doesn't get funded.

13 SENATE CHAIR WHITE: Well, you would agree

14 that this should be a top priority going forward?

15 SECRETARY MCGINTY: I have agreed. I've

16 been singing that song for four years.

17 SENATE CHAIR WHITE: Thank you. Any other

18 questions from the panel?

19 SENATOR DINNIMAN: Yes.

20 SENATE CHAIR WHITE: Senator Dinniman.

21 SENATOR DINNIMAN: I just want to affirm
22 the importance of going forward with this. Whatever
23 the source of funding comes about, whether it's
24 Senator White and Senator Pileggi's plan, whether it's
25 Senator McIlhinney's plan, it's crucial that this be

1 done.

2 My question is, you know, we all have
3 hazardous waste sites within our district. The
4 population, the citizens of the district, want this
5 cleaned up as quickly as possible.

6 Now, I noticed that you said that 6.3
7 million is our federal obligations, and you said that
8 the speed determines basically it's related to how
9 much funding you have.

10 SECRETARY MCGINTY: Sure.

11 SENATOR DINNIMAN: In order to clean these
12 up at what the citizens would expect -- and what the
13 citizens expect is when it comes to hazardous waste,
14 we're going full steam ahead -- what is the amount of
15 money that you need? Is this -- You know, we talk of
16 30 to 40 million, sometimes 50 million. What exactly
17 is the requirement to -- so the citizens know we're
18 doing the best that we can on this high priority?

19 SECRETARY MCGINTY: Well, it's an excellent
20 question, and I guess in furtherance of the points

21 you're making -- and, Senator, to respond to a
22 question you had asked earlier -- just looking at a
23 representative two sets of years. So the '95-96
24 fiscal year, we did the better part of \$36 million of
25 contract work for actual cleanup, and this year we

1 have about 9.2 or \$9.3 million invested in the actual
2 cleanup.

3 I think the answer to your question is one
4 where the program historically had been at the 50 to
5 \$60 million range. That enabled us to move dollars
6 into communities and be able to have again a level of
7 close to 36 or so million dollars of activity
8 underway. But I do think it's a balancing act.

9 It's a -- Here's the properties. They get
10 added to on an annual basis, and how much can we
11 afford to put into the program. If I could suggest a
12 number, however, that we would at a minimum like to
13 see, it would be in the 40 to \$45 million range to
14 enable us to sustain a good level of activity across
15 the program priorities that are included in the HSCA
16 program.

17 SENATOR DINNIMAN: Now, with the \$15
18 million that would be put into the remainder of this
19 year, realistically, I mean, how much money is there
20 now? Would we get up to 40, 45 million in total?

21 SECRETARY MCGINTY: Yes. We have about \$24
22 million roughly in the program today, so if we had 15
23 more, that would be 40.

24 SENATOR DINNIMAN: Got it.

25 SECRETARY MCGINTY: Doing the math. And

1 so, yes, that would enable us to sustain a good level
2 of activity through the fiscal year.

3 SENATOR DINNIMAN: At the lower end of that
4 40, 45. But when we go into the next fiscal year, as
5 expenses increase, but hazardous -- the number of
6 hazardous waste sites might not be increase -- might
7 not decrease, since we discover new sites every year,
8 would we be aiming more towards the 40 or \$45 million
9 range?

10 SECRETARY MCGINTY: Well, obviously, the
11 department would like to see as much investment in
12 this critical area as possible, but we also are
13 appreciative of many demands before the Legislature.

14 I think that we can make a very solid
15 investment anywhere within that range, with the
16 critical piece being that we also keep in reserve, as
17 we have until this new operating plan that we're
18 operating under now, dollars necessary for that
19 emergency response so that there's no question, in the
20 event of an emergency, we are there and able to

21 protect lives.

22 SENATOR DINNIMAN: Are you saying that at
23 this moment there's no money in reserve for emergency?

24 SECRETARY MCGINTY: No, the 6.3 million
25 represents both our federal obligations as well as a

1 level under HSCA of about \$500,000 a year that we
2 typically do in emergency response.

3 Up until the current operating plan, we had
4 always held several years in reserve. In other words,
5 we had at least three years' worth of monies
6 encumbered in order to meet the Commonwealth's federal
7 obligations and similarly in order to meet our
8 emergency response obligations.

9 In order to sustain the program through
10 December 30th, we do not have that running room
11 anymore. We have reserved the dollars to meet this
12 year's federal obligations and to have \$500,000 for
13 this year's potential emergency response activities,
14 but that's it.

15 SENATOR DINNIMAN: Well, I mean, that's a
16 concern. And maybe then if we fund this through
17 Senator White's bill, then maybe Senator McIlhinney's
18 rainy day fund, some of that money be placed in
19 reserve for emergency. Maybe there's a combination of
20 the two. Because what you're saying is that if we

21 have an emergency, there is no immediate funding there

22 to answer it. Now, we're --

23 SECRETARY MCGINTY: Beyond this fiscal

24 year.

25 SENATOR DINNIMAN: Beyond this fiscal year.

1 Now, we're going to have to deal with whatever comes.

2 I mean, you can't ignore it. The most fundamental
3 purpose of government is public protection, and so we
4 need to have a mechanism then in place.

5 So there's really two goals. One is to get
6 to the 40 million in expenditure, and number two is to
7 have some formal process, whether it be the rainy day
8 fund, that you can get immediate access, because the
9 Senate can't come back and convene and have a long
10 discussion while people are endangered by a chemical
11 spill or some other -- something else of serious
12 nature.

13 SECRETARY MCGINTY: Well, it is obviously
14 one of the priority purposes of the HSCA program.

15 SENATOR DINNIMAN: Thank you. Thank you,
16 Madam Chair.

17 SENATE CHAIR WHITE: Just one last point of
18 clarification. Your point is well taken that policy
19 decisions can speed up or slow down. You have some
20 control over the flow of the money out of this program

21 and how quickly it goes, and at tight times you can
22 narrow the gauge, but I'm still a little puzzled about
23 the reserves.

24 You maintain that you reserve 6 million for
25 federal obligation?

1 SECRETARY MCGINTY: It was about 6.3
2 million, which encompassed three things; the federal
3 Superfund program, the federal Resource Conservation
4 and Recovery Program, and our hazardous -- or
5 emergency response money.

6 SENATE CHAIR WHITE: 500,000 in emergency
7 response money.

8 SECRETARY MCGINTY: Right.

9 SENATE CHAIR WHITE: Now, my understanding
10 from your testimony earlier, though, was that that was
11 all part of the annual \$40 million amount. Is that
12 correct?

13 SECRETARY MCGINTY: We would -- If the
14 program is funded at 40 million and assuming -- This
15 is not dissimilar to your question about brownfields.
16 The federal obligation is a Commonwealth obligation.
17 Tradition has had it that the Commonwealth met that
18 obligation through HSCA funds.

19 Now, if the program is funded at \$40
20 million going forward, that could be done with a

21 directive that that federal obligation continue to be
22 met out of the Hazardous Sites Cleanup Program -- and
23 I will say that's our assumption -- or it could be
24 done with a directive that the general fund will pick
25 up that obligation.

1 SENATE CHAIR WHITE: Of course, we're going
2 back to the same kind of shuffling act we were in
3 before. I mean, whether it comes out of the general
4 fund or whether it comes out of HSCA, it's money that
5 has to be spent. And once you decide it's a priority
6 amount, then it seems to me that it comes off the top
7 of the budget before everything else is funded.

8 SECRETARY MCGINTY: Well, that may well be
9 a decision made. That's not been the history of the
10 HSCA program to date.

11 SENATE CHAIR WHITE: Well, of course, the
12 history was that it had a dedicated source of funding.

13 SECRETARY MCGINTY: That's right. That's
14 right, and as I think you're kind of probing, this is
15 obviously the time when not only new funding sources,
16 but potentially new directions for the program should
17 be considered.

18 But I do want to say that it obviously has
19 been a priority for the Commonwealth generally to make
20 it clear to the federal government that Pennsylvania

21 doesn't renege on its legal obligations, and I think
22 that's probably part of the reason why when there was
23 a dedicated funding source to show that that legally
24 binding obligation was a priority within that mix.
25 SENATE CHAIR WHITE: Well, it's only

1 legally binding to the extent that the Legislature
2 doesn't change it. Right?

3 SECRETARY MCGINTY: No. No, this is
4 federal law.

5 SENATE CHAIR WHITE: No, but I mean the
6 commitment that it's coming from that source.

7 SECRETARY MCGINTY: That's correct. We can
8 fund it however we like. It's not discretionary,
9 though, whether we pay those bills, we have to pay the
10 bills.

11 SENATE CHAIR WHITE: Well, I admit I was
12 disappointed at the lack of leadership, shall I say,
13 from your department to support the agreement we had
14 reached with the Governor to provide a dedicated
15 source of funding from the Key 93 money. Again, that
16 was only through '07-08 and '08-09, but I thought that
17 plan made sense.

18 That money has doubled since it was founded
19 in '03. And whenever you give people dedicated
20 sources of funding, it is their belief that they own

21 that money and that their use of it is the absolute
22 top priority in the world, whether it's parks, open
23 spaces, university buildings -- all good causes, all
24 very good causes.

25 But once you identify something as the

1 number one environmental need, it seems to me that
2 diverting a portion of that money to pay for the
3 Hazardous Sites Cleanup Act when, as we were led to
4 believe, it was out of money on June 20th -- and we
5 did not hear anything different for quite some time --
6 I really would have expected your department to back
7 the Governor on that commitment. And I saw no
8 indication that any contact was made with any
9 legislative members, that any letters were written,
10 that there was any advocacy at all on behalf of you
11 and your department.

12 SECRETARY MCGINTY: Well, I would say two
13 things. First of all, you never heard from us that
14 the program would be out of money on June 20th or June
15 30th. September 30th.

16 SENATE CHAIR WHITE: Okay.

17 SECRETARY MCGINTY: And, second, nor were
18 we drawn into a process when the legislation was being
19 developed, hearings. Yeah, at the last minute, we
20 learned about it, but we had not been part of the

21 thought process in having identified that as a
22 potential funding source from the start. We'd have
23 been happy to have been brought into that discussion
24 earlier.

25 SENATE CHAIR WHITE: Well, okay, I want to

1 correct the record on one point. I have before me
2 your testimony of October 16, 2006 before the Senate
3 Environmental Resources & Energy Committee where you
4 state in writing: As it stands right now, the fund
5 will run out of money at the end of the 2006-07 fiscal
6 year.

7 SECRETARY MCGINTY: That's fine. That is
8 reflective of the Growing Greener II legislation where
9 we were afforded dollars until June 30th of this year.

10 SENATE CHAIR WHITE: Well, it says "the
11 fund" and the hearing was on the Hazardous Sites
12 Cleanup Fund, so I had to assume that the fund you
13 were referring to that was going to be out of money at
14 the end of the fiscal year was the Hazardous Sites
15 Cleanup Fund. So if there's any confusion, Madam
16 Secretary, I certainly believe that we were led to
17 believe by your testimony that that fund was, in fact,
18 going to be out of money on July 1.

19 SECRETARY MCGINTY: That's right, in
20 October of 2006, that was the accurate testimony. If

21 you look back, you'll find testimony from me the year
22 before probably anticipating a bankruptcy of the
23 program even earlier than that date. And if you look
24 at testimony from me the year before that, you will
25 find an even earlier date. The bottom line --

1 SENATE CHAIR WHITE: Well, the later one,
2 June 20th.

3 SECRETARY MCGINTY: The bottom line here is
4 that the department has worked extremely hard,
5 certainly from the moment that I walked in the door,
6 in being very conservative in the management of the
7 program; freezing staff, removing people from the HSCA
8 complement, no new starts under the program,
9 discontinuing major projects that would provide a
10 substitute water source, for example, and only
11 stopping and offering bottled water where the water
12 was contaminated, stopping transfers to DCED for their
13 brownfields program.

14 At every step, I have very carefully
15 managed this program in order to finally enable us to
16 come to grips with the fact that we need a dedicated
17 funding source. So I don't think that there's any
18 fair room for criticism in terms of how we've tried to
19 manage the program and I've repeated in treaties to
20 the Legislature that we are in the waning days of an

21 essential program.

22 SENATE CHAIR WHITE: Well, I think the only

23 thing -- I do not take issue with your stewardship of

24 the program, Madam Secretary. What I do take issue

25 with is the representations and way in which they were

1 made. And I suggest that they were made in order to
2 get a new tax. Once the new tax was off the table,
3 then all of these things became moot. Once -- And,
4 you know, a dedicated source is a dedicated source.
5 We tried to get one from an existing source of
6 revenue, and I saw no assistance coming from your
7 office to have that happen.

8 SECRETARY MCGINTY: Well, Madam Chair, I
9 was unawares of the effort until was already passed
10 into the law -- into law, and it was in the waning
11 moments of the legislative session. Having said that,
12 it obviously was not the Governor's first choice on
13 how to fund the program, but as you rightly say --

14 SENATE CHAIR WHITE: Neither was it mine
15 either, Madam Secretary.

16 SECRETARY MCGINTY: -- in those waning days
17 he did support and I did join in the one meeting that
18 I was aware of that was called on this issue bringing
19 together some of the Democratic caucus in the House to
20 urge upon them a positive consideration of the

21 proposal. That was the one opportunity I was aware
22 of. The legislation was introduced and passed before
23 I had even been aware of it at all.

24 SENATE CHAIR WHITE: Passed the Senate you
25 mean?

1 SECRETARY MCGINTY: That's what I mean,

2 yes.

3 SENATE CHAIR WHITE: Any other questions?

4 Senator Brubaker.

5 SENATOR DINNIMAN: I have one, Madam

6 Secretary. I'm sorry, am I --

7 SENATE CHAIR WHITE: Is this a follow-up to

8 my question?

9 SENATOR DINNIMAN: Yes.

10 SENATE CHAIR WHITE: Go ahead then.

11 SENATOR DINNIMAN: Just to follow up on the

12 question. The issue now is we're all dedicated, we're

13 all sitting here wanting to fund HSCA. Our chairman

14 is trying to find a good solution for us. What's

15 happened in the past is over. You were surprised

16 by -- you know, by the legislation that passed the

17 Senate. The House rejected that legislation. And so

18 now we're in a new stage, but I think the key thing in

19 the hearing today is that we came to some realization

20 of what the amounts of money are that are needed, and

21 we all have to find a dedicated source of funding.

22 And our chairman has one good solution to it, so we're

23 going to see if we can all work together to do that.

24 Thank you, Madam Chair.

25 SENATE CHAIR WHITE: Thank you, Senator.

1 Senator Brubaker.

2 SENATOR BRUBAKER: Madam Secretary, I have
3 a letter from you to Leader Pileggi dated September
4 12. The second paragraph of that letter states, the
5 \$24 million is sufficient to pay our federally
6 mandated cleanup costs for the remainder of the
7 current fiscal year and maintain program staffing
8 through January 1, '08.

9 Is that consistent with your statement that
10 the federal obligation for HSCA is 6.3 million?

11 SECRETARY MCGINTY: Yes, that would be
12 inclusive of that and it's also inclusive of \$500,000
13 of emergency response activity.

14 SENATOR BRUBAKER: Thank you. And my final
15 question is back on this priority. You have 150 sites
16 in waiting.

17 SECRETARY MCGINTY: Currently.

18 SENATOR BRUBAKER: In waiting that have not
19 been activated.

20 SECRETARY MCGINTY: Some of them are in

21 various stages. Those are both in waiting and some
22 are active with some degree of work happening at them.

23 SENATOR BRUBAKER: Okay. And I think I
24 heard you say earlier that your department puts a
25 prioritization process to each one and you activate

1 them based on that prioritization scale. Is that
2 correct?

3 SECRETARY MCGINTY: That's correct.

4 SENATOR BRUBAKER: And does the committee
5 have access to the matrix by which those decisions are
6 made?

7 SECRETARY MCGINTY: I'm not aware, but I'd
8 be happy to provide it.

9 SENATOR BRUBAKER: Thank you.

10 SECRETARY MCGINTY: Thanks.

11 SENATE CHAIR WHITE: Just one last

12 question. In my letter to you of July 30, I reference
13 that "Your June 20th letter states that DEP is working
14 to establish a statewide list of HSCA sites that
15 should receive priority status for continuation,
16 should the new fiscal year start without funding."

17 Was that priority list developed?

18 SECRETARY MCGINTY: That would be the list
19 that we have shared on a regular basis.

20 SENATE CHAIR WHITE: Okay, so it is not a

21 different list?

22 SECRETARY MCGINTY: It's the same list.

23 Again, it's a list that is developed on the basis of

24 potential hazardous exposure to the public.

25 SENATE CHAIR WHITE: So it is prioritized?

1 SECRETARY MCGINTY: It is. And also you'll
2 see in the annotations, it's prioritized in terms of
3 where we would draw a line in terms of where the work
4 at the property could be stopped where it's not
5 completed, but we feel that the potential public
6 exposure has been addressed. And, again, the easy
7 example of that is where we just continue to provide
8 the bottled water as compared to you put the water
9 line in.

10 SENATE CHAIR WHITE: Thank you, Madam
11 Secretary. Any further questions?

12 Thank you, and I look forward to working
13 with you on this issue.

14 SECRETARY MCGINTY: Thank you. I
15 appreciate it, Madam Chair, and members of the
16 committee.

17 SENATOR DINNIMAN: Thank you.

18 SECRETARY MCGINTY: Thanks.

19 (Whereupon, the hearing was adjourned at
20 2:11 p.m.)

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CERTIFICATION

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

Dated in New Cumberland, Pennsylvania this 2nd day of October, 2007.

Susan L. Petrilla, Notary Public
Registered Professional Reporter

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