

MEMORANDUM

TO: CARL VAN HORN  
FROM: MICHAEL F. CATANIA *MFC*  
SUBJECT: DEP TRANSITION REPORT- EXECUTIVE SUMMARY  
DATE: JANUARY 18, 1990

I. OVERVIEW

In its 20 year history, DEP has grown incredibly fast, and has experienced a high degree of turnover in its upper management. During the Kean administration, some 50 laws were enacted which created major new DEP programs or imposed substantial responsibilities on the department.

These responsibilities have been handled with very mixed success. While New Jersey is regarded nationwide as a leader among states in the environmental area, and several DEP programs have received awards, the fact remains that DEP is also an agency with staggering management problems and severe public relations problems with the regulated community, environmentalists, the Legislature, local officials, and the general public.

This situation will not be changed overnight. However, Governor Florio and Commissioner Yaskin do have an excellent opportunity to turn things around. DEP detractors and supporters will closely watch how the new administration handles the first few major issues; accordingly, it is essential that you send the right signals to allow both the perception and actuality of progress to occur.

What follows is my best judgement on the principal issues which need to be addressed immediately, as well as in the first six months to a year, and some suggested courses of action to resolve these issues.

## A. IMMEDIATE ISSUES / PROBLEMS

### 1. EXTENSION OF DEP AUTHORITY TO INDEMNIFY HAZARDOUS WASTE CONTRACTORS

DEP's authority to indemnify its hazardous waste contractors expired on December 31, 1989. As a result, a very real threat exists that progress on the cleanup of many hazardous waste sites which was scheduled to occur in 1990 will be indefinitely delayed. Legislative approval of an extension of this authority was pocket-vetoed by Governor Kean after a provision requiring blanket, rather than limited, indemnification was included. Accordingly, quick legislative action to extend the expired authority for limited indemnification is necessary.

### 2. ESTABLISHMENT OF THE ENVIRONMENTAL PROSECUTOR

Given the attention focused on this issue during the campaign, it is crucial that the responsibilities of this new position be assigned as soon as possible. In order to provide for the aggressive enforcement of federal and state environmental laws and regulations, the environmental prosecutor should be a new assistant attorney general who directs both the criminal and civil environmental enforcement efforts in the Department of Law and Public Safety. Additional resources (deputy attorneys general) must be provided and dedicated to pro-actively representing the state as plaintiff by filing and pursuing lawsuits, rather than just defending the state when it is sued. In addition, the environmental prosecutor should chair a coordinating committee comprised of representatives of all state and local agencies with environmental enforcement responsibilities, as well as representatives of the relevant federal agencies. Further, recent efforts at DEP to better coordinate its administrative enforcement efforts should be given more time to demonstrate the improvement which has already begun. Responsibility for day-to-day administrative enforcement actions should remain with the various regulatory agencies, and the new prosecutor should focus on coordinating efforts within the Attorney General's Office, as well as interagency efforts, rather than being saddled with program responsibilities from other agencies.

### 3. IMPLEMENTING THE "PAUSE" CONCERNING RESOURCE RECOVERY FACILITIES

The "pause" in ongoing efforts to build resource recovery facilities must be designed and implemented immediately. The effort to do this should have a two-part focus: identifying

ways to increase the percentage of the solid waste stream which can be recycled, and identifying and arranging the necessary "marriages" for regional resource recovery facilities to handle the remaining portions of the waste stream. Both parts of this focus will be necessary in order to facilitate resolving this problem before a solid waste crisis hits New Jersey (which could easily happen if Pennsylvania succeeds in its recent efforts to ban out-of-state garbage). Legislation to give DEP additional statutory authority to manage solid waste from the state level should also be considered during the "pause."

## B. ISSUES/PROBLEMS -- SIX MONTHS TO ONE YEAR

### 1. MANAGEMENT OF HAZARDOUS WASTE CONTRACTORS

An experienced construction supervisor for the hazardous waste cleanup program should be recruited to serve as an upper level manager in the Division of Hazardous Site Mitigation as soon as possible. This position is necessary to avoid lengthy delays and cost overruns in what will soon be a massive construction effort.

### 2. EARTH DAY 1990

Coordination of the various events scheduled for the 20th anniversary of both the creation of DEP and the first Earth Day - April 22, 1970 - should be undertaken. These events represent excellent opportunities for the Governor and the Commissioner to announce new policies or further develop the themes of the campaign.

### 3. IDENTIFYING AND CORRECTING COMBINED STORM AND SANITARY SEWERS

DEP has been criticized for delaying the adoption of necessary regulations to establish eligibility criteria and procedures for distributing grant funds to municipalities to identify and correct the problem of combined sewer overflows. Some \$31.5 million in funds for these purposes from FY '89 remain unspent, as does the \$50 million in bond funds just approved by the voters in November of 1989. Given the high profile of this issue during the campaign, and the contribution which combined sewers make to beach closures and poor water quality, it is very important to make progress on this issue before the beginning of the 1990 summer season.

### 4. DEP'S ROLE IN THE STATE DEVELOPMENT AND REDEVELOPMENT PLANNING PROCESS

DEP is key agency for the adoption and implementation of an adequate state plan. Dozens of major policy issues are connected to this planning process, and to DEP's regulatory authority to implement the plan. In order to insure a good balancing of these issues, the relationship between DEP and the State Planning Commission must be strengthened, and a top level DEP manager designated to serve as liaison to the Commission. Improved DEP participation in the "cross-acceptance" process which is now underway must be insured if the adopted plan has any chance of being successfully implemented.

## 5. MANAGEMENT/EFFICIENCY OF DEP ACTIVITIES

DEP is widely perceived to be slow, arrogant and inefficient in managing its responsibilities. Management improvements must be made, and efforts to improve the image of the agency are essential. In particular, it would be appropriate to further consolidate regulatory responsibilities for development approvals, and provide "one-stop shopping" for builders and developers. Recent moves in this direction in the Division of Coastal Resources should be continued and expanded. Both Governor Florio and Commissioner Yaskin should look for opportunities to talk publicly about DEP success stories and the management improvements which are initiated.

## 6. PLUGGING THE LOOPHOLES IN CAFRA

A Florio alternative to the Coastal Partnership Commission, which the Governor opposed during the campaign, could involve a lowering of the regulatory thresholds for the requirement of a CAFRA permit adjacent to water and other environmentally sensitive areas, and a raising of that threshold in less sensitive areas. Such an approach would also obviate the need for the controversial new waterfront development regulations, which were overturned by the Appellate Division last summer. The Supreme Court is likely to agree in the near future that DEP exceeded its statutory authority in adopting these rules, which will throw this issue back into the legislative arena just before the next summer season. Thus, the time is ripe for a new coastal initiative in the first few months of the Florio administration.

## 7. THE CLEAN WATER ENFORCEMENT ACT

This legislation was endorsed by the Governor during the campaign. DEP, however, had opposed the bill, which died in the General Assembly, for several reasons. Senator Van Wagner and Assemblyman Smith have already reintroduced identical versions of this measure, which is likely to be the first major legislative issue in the new session. It is imperative that a compromise be worked out which fulfills the Florio commitment to clean water, but also provides DEP adequate time and resources to implement new mandated responsibilities without causing a major embarrassment early in the new administration. The handling of this issue will also set the tone between the Florio administration and the major players in the environmental policy arena, thus affecting future environmental initiatives. It is essential that several areas of compromise be identified, and that the bill be amended and passed quickly, without the rancor that developed on this issue last session.

## 8. POLLUTION PREVENTION

This issue, which is the subject of a major legislative initiative by Senator Dalton, is likely to be the next item on the legislative environmental agenda after the Clean Water Enforcement Act. The Dalton bill provides a sound basis for the development of a workable program for this essential need. Care must be taken, however, that the specifics of the bill do not impose financial or technical responsibilities which are beyond DEP's ability to implement. If handled properly, this bill can be an early achievement for the Florio administration which will be noticed nationwide, and do much to restore the credibility of DEP in the minds of the public. Accordingly, both the substance of this legislation and the process used to consider the issues it involves, must be carefully considered.

## 9. SEWAGE SLUDGE DISPOSAL

Under state law, the six remaining New Jersey sewage authorities which dispose of their sludge at the 106 mile dump site must cease that practice by March 17, 1991. A similar federal law bans such dumping after December 31, 1991. In order to meet this deadline, DEP has strongly encouraged the six authorities to construct incinerators, and five of the authorities currently intend to construct four incinerators. Some possibility exists for the construction of a regional sludge incinerator being built in Bayonne, which would obviate the need for perhaps three other incinerators.

The Clean Sludge Coalition has raised the concern that the construction of all of these incinerators will preclude the consideration of other land disposal alternatives, and argue that New Jersey should focus more on the pretreatment of sewage, which would make composting and other forms of land application more viable.

DEP must quickly identify and evaluate all land-based alternatives to ocean dumping, and insure that the statutory deadline is met in such a way that the better long term environmental solutions are not precluded. In any event, more aggressive pretreatment programs are essential for either incineration or land application.

## 10. REVISION OF THE "A-901" SOLID AND HAZARDOUS WASTE LICENSING LAW

Legislative efforts to pass a bill to fully fund this program, which was never fully implemented, failed when legislation died in the General Assembly in the waning moments of the last session. The bill, A-3101, had been conditionally vetoed by Governor Kean; the Senate concurred with the changes recommended in that veto, which added explicit language authorizing corporate rehabilitation. This issue, if unresolved, may affect one of the resource recovery facilities which have already been permitted, as well as the so-called "brown fields" site at the GAF plant in Linden, which

the Hazardous Waste Siting Commission is currently considering. Legislation identical to A-3103 ACS, as conditionally vetoed by Governor Kean, should be considered and passed as soon as possible in the new session.

#### 11. WATERSHED PROPERTY PROTECTION

Under a 1988 law, an 18 month moratorium is in effect on the conveyance of property used for the protection of a public water supply. This moratorium expires on May 16, 1990. DEP has recently recommended that it be given the authority to impose buffers around watershed protection lands, and that this moratorium be extended beyond May 16, 1990. Developers and municipalities which own large tracts of watershed properties will oppose these actions, which will be strongly endorsed by environmentalists. A policy decision on how best to balance these competing interests will have to be made by the new administration. This decision should be made after consultation with all affected parties.

#### 12. THE "HAZARD ELIMINATION THROUGH LOCAL PARTICIPATION ACT" (HELP) INITIATIVE

This "son of Right to Know" issue would establish a procedure under which would local residents could participate in the inspection and monitoring of facilities where hazards may be present or may be released into the environment. HELP is premised on the belief that DEP and other regulatory agencies cannot or do not conduct the number of inspections which are required to insure that industrial facilities are operated in an environmentally sound manner. This bill will raise many of the same issues which were raised by the Clean Water Enforcement Act, and will pit industry and the DEP against citizen's groups if not handled properly. It is essential that the Governor's Office and DEP develop a detailed and workable position on this issue as early as possible in the new session.

#### 13. LOW LEVEL RADIOACTIVE WASTE

The New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board was created by statute to comply with federal mandates that each state be responsible for providing capacity for the proper disposal of low-level radioactive waste generated within its borders.

Pub.L. 96-573, as amended by Pub.L. 99-240, established a series of milestones, incentives, and penalties designed to assure that states and regional compacts make timely progress toward development of facilities. States that do not meet the milestones will not be eligible for rebates of any part of the surcharges currently being imposed on their generators, and may suffer denial of access to currently operating disposal sites.

New Jersey has just reached one such milestone--submittal of a Certification Plan to the NRC for providing for the

storage, disposal, or management of any low-level radioactive waste generated within the State from January 1, 1993 until the availability of disposal capacity in New Jersey (projected for 4/95). Selection of a proposed site is to be made by mid-1990, pursuant to P L. 1987 c. 333.

If New Jersey's Certification Plan is accepted by the NRC (the states currently accepting waste have review authority), the next milestone will be the selection of a proposed site. If not, the Plan will have to be amended.

Other matters require attention, however. First, the Siting Board projects a need for a \$15+ million appropriation, reflective in part of the accelerated schedule that will require simultaneous activities in order to continue to meet federal milestones and accomplish ultimate construction.

Also, the Florio administration should aggressively support S-1817 (Bennett) and A-2821 (R. Smith/Ogden), counterpart measures that, by modifying the definition of "solid waste facility," relieve the siting commission of a crippling limitation on the availability of sites from which to choose.

New Jersey must select an alternate commissioner to the Compact, to replace Ralph Izzo, from Policy and Planning, who is leaving. The Commissioner is Richard Sullivan. The alternate should probably be from the Governor's Policy Office, rather than DEP, since DEP is the regulator.

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