

1 DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

2 OF THE STATE OF DELAWARE

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5 RE: City of Rehoboth Beach)
6 Wastewater Projects)

7

8 Rehoboth Beach Elementary School
9 500 Stockley Street
Rehoboth Beach, Delaware 19971

10 Tuesday, November 15, 2016
11 6:00 p.m.

12

13 BEFORE: Robert P. Haynes, Esquire
14 Senior Hearing Officer

15

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18 -- Transcript of Proceedings --

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1 MR. HAYNES: Good evening. Please be
2 seated. We are going to get started. I will try
3 this new technology here.

4 Good evening. My name is Robert
5 Haynes. I have been assigned to preside over this
6 public hearing and to assist in the preparation of a
7 record for the Secretary of the Department, David
8 Small.

9 UNIDENTIFIED SPEAKER: We can't hear
10 you.

11 MR. HAYNES: Okay. How is that?

12 UNIDENTIFIED SPEAKER: Much better.

13 MR. HAYNES: Okay. I will start
14 over. My name is Robert Haynes. I have been
15 assigned to preside over this public hearing and to
16 prepare a record for the Secretary of the
17 Department, David Small, who will be making the
18 final decision.

19 I guess that's the wrong button to
20 push.

21 A couple rules for tonight's hearing.
22 If you have an electronic device -- like I do, and I
23 probably forgot to do it -- please put it on silent.
24 If you do receive a phone call, please leave the

1 hearing room before speaking. That's so that you
2 don't disrupt the hearing, particularly the court
3 reporter to my right who will be taking down a
4 verbatim transcript of tonight's hearing.

5 More rules: The Department was not
6 sure how many people would be speaking tonight. And
7 the public notice did impose a five-minute time
8 limit, which, based on my experience, usually is
9 adequate for most public comments.

10 Given the amount of pre-registered
11 public speakers, we may allow some people to go --
12 allow you to go over slightly. So please recognize
13 that.

14 Following the preregistered speakers,
15 we will be taking the speakers who signed in at the
16 sign-in sheets. Again, the public comments will be
17 taken in the order. And I ask that you do not
18 interrupt the public speakers, and provide them the
19 courtesy that they deserve.

20 Please keep the comments on the
21 subject matter on the hearing, which is on the six
22 City of Rehoboth applications for regulatory
23 approval for the construction and operation of its
24 wastewater treatment transmission disposal

1 facilities. If you are here for anything else, you
2 are in the wrong place.

3 This is the -- probably the primary
4 driver of tonight's hearing is the National
5 Pollutant Discharge Elimination System permit, known
6 as NPDES. That's one of the many acronyms you will
7 be hearing tonight.

8 Briefly, a review of this process.
9 NPDES permits are subject to five-year renewals, and
10 the City of Rehoboth Beach timely filed an
11 application to renew. That application has been
12 under the Department's review. As part of the NPDES
13 permit review process, the Department, unlike many
14 of its other inherent permits, has to go out with a
15 draft permit and public notice, which was done.

16 The NPDES draft permit -- and I'm
17 getting into areas of a technical area that I am
18 really not qualified to say anything about, but I am
19 relying upon the Department staff, who are here
20 tonight -- limits of pollutants discharged into
21 tentatively accepted request of change of the
22 discharge location from the Lewes/Rehoboth Canal to
23 the Ocean Outfall. Effluent limitations based on
24 the most restrictive applicable standards,

1 regulations, and guidelines.

2 The Department did hold a public
3 workshop approximately a month ago. That was well
4 attended. And the technical staff did present
5 detailed positions on their applications that lasted
6 about two and a half hours. It was very educational
7 for me, and I hope many of you attended it.

8 The draft permit is based on DNREC's
9 regulations, as is listed in this slide. And the
10 one that was the subject of the most questions at
11 the public workshop and the written comments
12 received was the change in the discharge location
13 from the Lewes/Rehoboth Canal to the Ocean Outfall.
14 Rehoboth Beach selected the Ocean Outfall location
15 after conducting the required full environmental
16 assessment, which DNREC accepted in a final
17 decision.

18 The decision was on an application to
19 obtain public financing for the construction of
20 improvements. The assessment included the possible
21 use of land application.

22 The second permit application is the
23 Subaqueous Lands Act permit. That's for using the
24 underwater lands for the outfall.

1 The third permit is the Wastewater
2 Facilities construction permit. And this is the
3 engineering plans for what they propose to build.

4 The fourth is a Beach Preservation
5 Act permit, Coastal Construction permit, and that's
6 to store equipment and supplies and use the beach
7 area during the construction period.

8 Water Quality Certification: This is
9 a federal-mandated permit that's been delegated to
10 the Department and is based on the other permitting
11 activities, as is the sixth regulatory approval,
12 which is triggered by the Coastal Zone Management
13 Act, which is a federal act, and it's delegated to
14 the Department's Coastal Management Program, which
15 applies its policies.

16 With that, I don't believe the
17 applicant has anything to say; is that correct?
18 Seeing no response. There are representatives of
19 the applicant here. Representatives of the
20 Department's technical staff are here. And I will
21 have them -- why don't we -- who wants to go first?
22 We will have John Schneider is the maitre' de.

23 MR. SCHNEIDER: Good evening.

24 MR. HAYNES: Who wants to be from

1 Subaqueous Lands?

2 MR. CHACONAS: Jim Chaconas from the
3 Subaqueous Lands Section, Division of Water.

4 MR. HAYNES: And Surface Water
5 Discharge?

6 MR. HUMMEL: Tony Hummel, Surface
7 Water Discharges Section, Division of Water.

8 MR. HAYNES: And Beach Preservation?

9 MS. LUOMA: Jennifer Luoma, Beach
10 Preservation, Division of Watershed Stewardship.

11 MR. HAYNES: And Trish?

12 MS. ARNDT: Trish Arndt from Coastal
13 Programs.

14 MR. HAYNES: And I think that's it.
15 Did I miss someone? Oh, right. I'm sorry.

16 MR. POPE: Greg Pope, Wastewater
17 Construction Permitting, Environmental Finance
18 Section, Office of the Secretary.

19 MR. HAYNES: And this is the order of
20 the preregistered speakers. And I understand that
21 some people have indicated that they cannot be here.
22 But, with that, I ask you to use a microphone and
23 either here or at one of the aisles and provide your
24 public comments.

1 MR. WEBER: Thanks. My name is John
2 Weber. I work for the Surfrider Foundation. You
3 are going to be hearing more from our local chapter
4 volunteers this evening, I'm sure.

5 But I'm here to give a broad
6 perspective as a staff person and give some history
7 that goes back about 18 years or so. So, no
8 mistake, we are against this outfall pipe, and we
9 have been against it from the beginning.

10 But I'm going to dedicate part of my
11 testimony to showing how Surfrider Foundation has
12 been on the right side of this issue from the
13 beginning, and DNREC and other parties have been on
14 the wrong side also from the beginning.

15 One of Surfrider Foundation's
16 signature programs is called Blue Water Task Force.
17 It's a volunteer-led water quality testing program.
18 We began testing recreational bathing beaches in the
19 Atlantic and in Rehoboth Bay back in the late 1990s.

20 It was in the course of this water
21 quality testing that Surfrider Foundation volunteers
22 noted several fishkills and notified DNREC
23 officials.

24 So it was precisely due to our

1 regular water quality testing that we had water
2 samples before and after some of these large
3 fishkill events. And after one of these such
4 events, DNREC was attributing the fishkills to low
5 levels of dissolved oxygen. And I have got the Cape
6 Gazette story saying that that's what DNREC was
7 attributing these fishkills to.

8 But Surfrider volunteers, we had
9 taken samples, and we had sent these samples to a
10 lab in Wilmington, North Carolina. And the lab
11 confirmed the presence of a harmful phytoplankton
12 called Chattonella. Now, this harmful algae was
13 producing what's called brevetoxins, and these are
14 hazardous to human health.

15 And DNREC continued to attribute
16 these fishkills to low levels of dissolved oxygen,
17 but the evidence was mounting against that. DNREC
18 officials actually spoke to our volunteers on the
19 phone and asked them to stop testing.

20 I'm going to repeat that. DNREC
21 officials called our volunteers on the phone and
22 asked them to stop testing in Rehoboth Bay. Our
23 volunteers responded appropriately by demanding that
24 signs are posted around the bay warning bathers of

1 the health risks and contacting this water.

2 Thus, our volunteers demonstrated
3 that their main concern was the presence of this
4 harmful phytoplasm and brevetoxins and their impact
5 on human health, while DNREC seemed to be concerned
6 with covering this information up.

7 So the lesson here to me is that
8 DNREC tried to tell us we were wrong, but we were
9 right. DNREC tried to make us go away, but we
10 wouldn't. DNREC tried to sweep things under the
11 rug, but we wouldn't let them.

12 We stood up for human health. We
13 stood up for the health of these water bodies. And
14 that's what we are doing now. And that is what we
15 are going to continue to do, and history is going to
16 prove us right.

17 And I cannot wait for the day when
18 this wastewater is applied to land somewhere in
19 Delaware thanks to our vision, our foresight, and
20 our commitment to the environment. Thank you very
21 much.

22 (Applause)

23 MR. HAYNES: The next person on the
24 list, Mr. Rosner.

1 MR. ROSNER: Thank you for the
2 opportunity to speak. I'm Gregg Rosner. I have a
3 simple ask for this evening: That the ocean habitat
4 in Delaware be conserved in compliance with state
5 and federal laws. Both are mutually symbiotic and
6 connected.

7 If the laws are upheld, then the
8 proposed outfall permits must be denied. DNREC has
9 failed for ten years in the presentation of the
10 following specific regulatory facts or concerns,
11 (federal and state), related to the proposed ocean
12 outfall project EIS, or any other publicly
13 disseminated paperwork or meetings.

14 The EIS lacks a discussion of either
15 federal or state laws, as directed by the National
16 Environmental Protection Act, NEPA, which requires
17 the agencies to discuss project alignment with other
18 environmental laws.

19 For the U.S. Army Corps of Engineers
20 required permit, this NEPA process in its totality
21 is a federal standard and a best-practice policy for
22 the interest of the public.

23 Specifically, 40 C.F.R. 1506.2(b)
24 Federal agencies shall cooperate with states, they

1 shall have joint planning processes, joint
2 environmental research and studies, joint
3 environmental assessments. None of this was done.

4 The provision also indicates EIS
5 shall discuss any inconsistencies of a proposed
6 action with any approved state or local plan and
7 laws to better integrate environmental impact
8 statements, the state or local planning processes.
9 This was not done in the EIS. No one here tonight
10 knows how our state laws integrate with the project
11 design.

12 The merits of this public hearing, by
13 Delaware law, is based upon the standard of proof
14 that each finding of fact is by a preponderance of
15 the evidence. This regulatory discussion is
16 prohibitively proprietary under the directive of
17 DNREC. All concerned citizens lack information to
18 properly address regulatory and subsequent
19 environmental integration of the project.

20 The environmental analysis of NEPA is
21 not conducted in a mutual factual manner. This EIS
22 contains extensive bias and prejudice for the ocean
23 outfall.

24 The applicable statutory and

1 regulatory directives are as follows: Both the
2 proposed EIS and the Record of Decision conclude
3 that all remaining species will avoid habitat of the
4 proposed outfall.

5 This clearly violates the Marine
6 Mammal Protection Act, Level B Harassment from 1994,
7 which states marine mammal stock in the wild, you
8 cannot cause behavioral pattern disruptions,
9 migration, breathing, nursing, breeding, feeding,
10 shelter, you cannot cause these with the marine
11 mammals.

12 Endangered Species Act, Title 16,
13 1531(5) states that federal assistance with a system
14 of other incentives is there for the states to
15 preserve our nation's heritage in fish and wildlife
16 and plants. This concurs with the Delaware Wildlife
17 Plan, whose implementation and federal funding
18 occurs under Endangered Species Act, Section 6
19 monies.

20 I question the DNREC expenditure on a
21 program that is deficient in conservation measures.
22 The State of Delaware regulations under Section 7
23 environmental, which are in direct conflict with the
24 Coastal Zone Management Federal Consistency and

1 NPDES Permit, 5.3.1.3, "The coastal water resources
2 of the state shall be protected and conserved to
3 assure continued availability and conservation of
4 aquatic life and wildlife."

5 5.3.1.4: "It is the policy of DNREC
6 to maintain within its jurisdiction waters of the
7 State for the propagation and protection of fish and
8 aquatic life and other beneficial uses."

9 5.3.1.11 from 2004: Regulatory
10 mixing zones shall not impinge on areas of special
11 importance, including but not limited to drinking
12 water supplies."

13 Included in this rather large law,
14 "Zones shall not be located in a manner as to
15 interfere with the passages of fish or other
16 organisms." If we uphold this law, all permits must
17 be denied.

18 We need to remind that the proposed
19 diffuser is only 40 feet deep in one mile, one mile
20 at 40 feet. So turbidity alone will constrict
21 important habitat from many species. Included in
22 that is the negative olfactory stimulus of the
23 effluent plume which has never been properly
24 addressed in the EIS.

1 My concern here is for the endangered
2 species Atlantic Sturgeon population which find
3 their way back into the Delaware Bay from this
4 location. The recent studies from 2006 confirm the
5 majority of the population of Atlantic Sturgeon
6 reside in this area in the lower Delaware Bay.

7 5.11.3.2: "Rare endangered species
8 are in need of active, protective management to
9 preserve and enhance such species."

10 Under Delaware Code 702, 7201,
11 included in the NPDES permit is a statement that the
12 issuance of the permit does not convey any property
13 rights in either real or personal property of any
14 exclusive privileges, nor does it authorize any
15 injury to private property or invasion of personal
16 rights, nor any infringement of state, federal,
17 local laws or regulations.

18 If you issue a NPDES permit, that
19 means all other laws, federal and state, must be
20 complied with.

21 This regulation alone should be of
22 grave concern to DNREC and any outfall supporters
23 and disavow the NPDES permit on such matters.

24 The recommended approval of any

1 permit would be a concurrence by this hearing
2 officer of these described inaccuracies of the final
3 environmental impact statement.

4 The burden is on the applicant this
5 evening to demonstrate that he has complied and
6 fulfilled all programmatic and other requirements to
7 be considered for the permit or license, and that
8 the applicant should be granted the permit or
9 license, consistent with sound public policy and
10 applicable statutory and regulatory directives,
11 including without limitation -- and there's a number
12 of different things.

13 As these are the qualified permits, I
14 formally request denial to the applicant, the City
15 of Rehoboth Beach, on all permits and any and all
16 future consideration of permit compliance regarding
17 the Ocean Outfall.

18 Failure by the DNREC Secretary to
19 deny permits subjects the City of Rehoboth Beach to
20 litigation under these federal and state statutes in
21 perpetuity.

22 Conclusively, I submit these
23 considerations to the DNREC hearing officer with
24 objective factual and legal concerns presently.

1 Thank you for letting me go over.

2 (Applause)

3 MR. HAYNES: Would you like to submit
4 your comments in writing?

5 MR. ROSNER: These are my spoken
6 comments for this evening. I do have written
7 comments in more detail. What would you like? I do
8 have a copy.

9 MR. HAYNES: Well, the court reporter
10 would probably like those tonight. She can get them
11 back to you.

12 MR. ROSNER: I have an extra copy.

13 MR. HAYNES: Okay. I won't mark
14 them. I will wait for you to send a written copy.

15 Mr. Weber, did you want written
16 comments submitted tonight, or did you want to wait?

17 MR. WEBER: I want to wait. Thanks.

18 MR. HAYNES: Do you want to give them
19 to her tonight so she can get the -- I know there
20 will be some words that will be difficult to spell,
21 so if you want to submit for the court reporter --

22 MR. WEBER: I will get them to you.

23 MR. HAYNES: Okay. Thank you.

24 Before you begin, I'm going to do a little

1 housekeeping. I should have done that earlier.

2 The Department staff provided copies
3 of the application. DNREC Exhibit 1 is the NPDES
4 permit application.

5 DNREC Exhibit 2 is the Subaqueous
6 Lands permit application.

7 DNREC Exhibit 3 is the construction
8 application.

9 And DNREC Exhibit 4 is the beach
10 area, Beach Preservation Act construction permit
11 application.

12 DNREC Exhibit 5 is the Coastal Zone
13 Management Acts application for Federal Consistency
14 Determination. And the water quality certification
15 is essentially automatically triggered by the filing
16 of the federal actions.

17 With that, I'm sorry, Mr. McGlone, to
18 interrupt you.

19 And these applications are up here if
20 anybody would like to see them to assist with their
21 comments.

22 MR. MCGLONE: Good evening. My name
23 is Tom McGlone. I'm a full-time resident of
24 Rehoboth Beach with my family. We have lived here

1 for about 12 years.

2 I am here tonight to speak against
3 the Ocean Outfall. And I'm here to speak not only
4 for myself and my family, but during the course of
5 the referendum I voted on behalf of my neighbors and
6 fellow citizens in the town of Rehoboth, 150 proxies
7 against the Ocean Outfall. So I'm here on behalf of
8 my family and also the 150 people whose votes I cast
9 during the course of the referendum.

10 I would like to talk a little bit
11 about the history. I'm not an attorney. I'm not a
12 scientist. So I just want to speak in terms of
13 common sense relative to this project.

14 As I understand it, in 2003 the City
15 of Rehoboth Beach determined that there was no land
16 available for street spray irrigation of its treated
17 wastewater. And so primarily, with that, also
18 involved in the cost of the project, they opted to
19 go for Ocean Outfall.

20 I also understand that in January of
21 2007, DNREC granted a company a conditional use
22 permit for land outside of Milton that was beyond
23 the Inland Bays watershed for the specific use of
24 wastewater treatment. And although that land was

1 approved and provided a conditional use by DNREC,
2 the land has not been used and basically has been
3 sitting, because at this point there hasn't been a
4 business purpose for basically opening the land up.

5 In addition, in October of 2013,
6 DNREC issued a construction permit for that same
7 site, a permit that would last for five years. And
8 still the land sits vacant. And the land is large
9 enough to be able to handle the capacity that
10 Rehoboth would produce in terms of its treated
11 wastewater.

12 And yet, at the same time, that land,
13 even though it's been approved multiple times by
14 DNREC for this purpose, outside of the Inland Bays
15 watershed, which is my understanding is the primary
16 concern here in terms of getting it outside of the
17 canal, the land still sits unused at this point.

18 I also understand that DNREC has
19 incurred spray irrigation at multiple sites across
20 the state, and that that seems to be the preferred
21 approach relative to getting rid of treated
22 wastewater with the exception of Rehoboth Beach.

23 In January of 2015, DNREC issued its
24 record of decision approving Ocean Outfall. And I

1 guess I would like to ask a few questions. And the
2 questions I would ask would be:

3 Why would DNREC, who has stated that
4 its preferred approach is spray irrigation, approve
5 Ocean Outfall, knowing it had approved the site that
6 could handle the capacity of Rehoboth Beach outside
7 the Inland Bays watershed?

8 My second question: Why would the
9 City of Rehoboth Beach march on with Ocean Outfall,
10 knowing that, although land did not exist in 2003,
11 in January of 2007 DNREC issued a conditional use
12 permit for this land that now existed and could
13 handle the capacity?

14 With the cost of Ocean Outfall -- and
15 we still don't know what that is, because we have
16 been hearing from our elected officials in the City
17 of Rehoboth quoting old cost estimates, so we still
18 don't know what the actual cost of this project is
19 going to be -- but I would argue that the cost of
20 the project 13 years after Rehoboth Beach decided
21 that there was no land available is probably equal
22 to the cost of the spray irrigation at this point.

23 In addition to that, more permits are
24 needed in order to make this happen. You know, and

1 in addition to that, we have the risk of the spill
2 that happened in the summer, this summer in the
3 canal, that could easily happen in the ocean as a
4 result of this project, that this project was
5 putting this treated wastewater into the ocean
6 through the outfall.

7 And, lastly, we are wasting valuable
8 water. So my family, we joke around at home. When
9 we flush the toilet an extra time or we let the
10 shower run, we joke around, and we say, "Well, you
11 know what? Our city officials say there is plenty
12 of water. It doesn't matter whether we waste it or
13 not." So we just do it. I mean, we act
14 irresponsibly relative to that, because our City
15 officials have told us we have plenty of water,
16 there is no reason, we can dump a million gallons of
17 water a day into the ocean.

18 DNREC should have required Rehoboth
19 Beach to use this site in January of 2007 when they
20 approved the site for treated wastewater. Had they
21 done that, treated wastewater would have been
22 removed from the bay seven years ago with minimum
23 permitting. And it still would require minimum
24 permitting for a site that's already been approved

1 twice and ready to go in terms of DNREC in terms of
2 permits.

3 Lastly, we, as a community whose main
4 industry is tourism and ocean, need to hold DNREC
5 accountable to its mission. This entire issue needs
6 fresh eyes. And I would urge DNREC to require
7 Rehoboth Beach to use the site and get this project
8 done and, at a minimum, require Rehoboth Beach to
9 provide current cost estimates of the Ocean Outfall
10 project. Thank you very much. (Applause)

11 MR. HAYNES: Thank you. As part of
12 this process, the Department does make an attempt to
13 answer the questions that are raised as part of my
14 role in the preparation of a report for the
15 Secretary and also seeking advice from the
16 Department's technical staff. And will DNREC answer
17 your questions? I think I was the hearing officer
18 at that site you are talking about. I know there is
19 nobody here from the Department's State Irrigation
20 Program to answer that question. But we will look
21 at the transcripts and try to get back to you on
22 that.

23 MR. MCGLONE: Okay.

24 MR. HAYNES: The next person is Laura

1 Hansen Reynolds.

2 MS. HANSEN REYNOLDS: My name is
3 Laura Hansen Reynolds. And I'm a concerned citizen
4 who loves Rehoboth Beach after growing up and
5 enjoying the beaches in South Florida.

6 When I heard that Rehoboth was
7 considering an Ocean Outfall, I was appalled,
8 knowing that Florida banned ocean outfalls years
9 ago.

10 Delaware's environmental agency,
11 DNREC, clearly states that the preferred method of
12 disposing of treated effluent is land-based
13 application. So I challenge the DNREC decision to
14 concur with the City of Rehoboth Beach's
15 determination that the Ocean Outfall is the only
16 alternative to assure 100 percent of nutrients from
17 the Rehoboth treatment plant are eliminated from the
18 Inland Bay Watershed.

19 Rehoboth's determination was based on
20 the 2005 study that narrowed options to the Ocean
21 Outfall or a land application of effluent. Land
22 application was studied with a two-month
23 unsuccessful search for land to acquire in 2009.
24 Based on this, the 2011 environmental impact

1 statement for EIS was drafted and then finalized in
2 2013.

3 So now, in 2016, DNREC is being asked
4 to issue permits for the Ocean Outfall based on
5 information that is seven to eleven years old.
6 During the 2005 to 2014 time frame, then State
7 Environmental Secretary, Collin O'Mara, had concerns
8 about the City's EIS, refusing to sign off, because
9 he felt a land-based spray application makes more
10 sense in the long term, both environmentally and
11 economically.

12 He updated his opinion saying that he
13 continues to have concerns. And the outfall, he
14 said, isn't worth the risk to Rehoboth's stature as
15 a tourism destination.

16 Two private companies approached
17 Rehoboth with land application solutions, neither of
18 which were evaluated in the EIS. Tidewater
19 Utilities and Artesian Resources offer land-based
20 spray disposal options that cost less and do not
21 send nutrients into the watershed for the Rehoboth
22 Bay. The EIS is not complete without a careful
23 study of these options.

24 We can all agree that putting waste

1 into the Inland Bays is pollution. So if it's
2 pollution in the Rehoboth Bay, it's pollution when
3 we put it in the ocean.

4 The state of Florida, in 2008, banned
5 ocean outfalls and is eliminating its existing
6 outfalls over ten years. Why? Because, according
7 to a research professor at FAU's Oceanographic
8 Institute, there is a lot of other stuff in this
9 effluent, other than nitrogen and phosphorous.

10 There is viruses, heavy metals,
11 bacteria, personal care products, pharmaceuticals,
12 hormones, plasticizers, house care products,
13 thousands of chemicals that don't get monitored.
14 Traces of high blood pressure medicines and Viagra
15 have been especially prevalent in Florida's local
16 effluent, destructing the reproductive cycle of
17 marine life.

18 In October's workshop four or so
19 weeks ago, Watershed Manager John Schneider said the
20 situation in Florida differs from that in Delaware
21 because the concern about drinking water supplies
22 impacts on coral reefs and the quality of the
23 discharge going into the ocean.

24 In terms of water supplies in

1 Delaware, two of the last five years have seen major
2 field crop loss due to drought. Treating effluent
3 for irrigation would be a valuable resource to
4 Sussex County farmers.

5 And Delaware has reefs. Since 1995,
6 the Delaware Reef Program has established 14
7 artificial reefs, two of which are in the area of
8 Rehoboth's proposed Ocean Outfall.

9 Blue muscle communities have
10 developed on these reefs, which are hundreds of
11 times richer than the adjacent ocean bottom,
12 providing food and physical protection for reef and
13 game fish.

14 The outfall's dispersal area also
15 includes the Hen and Chicken Shoal, a shallow spot
16 where fish, particularly young fish, congregate.
17 This shoal is also breeding grounds for the Atlantic
18 Sturgeon, a prehistoric fish listed as an endangered
19 species in Delaware in 2012, after the 2011 draft of
20 the EIS.

21 The proposed discharge effluent is
22 only being monitored for one bacteria, enterococcus,
23 and nitrogen and phosphorous. No cleansing or
24 measurement of viruses, heavy metals, other

1 bacteria, all the lots of other stuff. How can our
2 state permit the ocean discharge of effluent that
3 the State of Florida rejects? And it's not just the
4 State of Florida. The National Oceanic and
5 Atmospheric Administration states that the project
6 will have an adverse effect on essential fish
7 habitat because the effluent contains
8 pharmaceuticals and many intracranial inhibitors
9 which can accumulate in fish, modifying their
10 growth, their reproduction, and their resistance to
11 disease and parasites.

12 If DNREC grants permits for this
13 ocean outfall, it permits a decades-long,
14 \$31 million commitment to pumping treated effluent
15 into the ocean just off our beaches, a decision
16 based on incomplete data that is seven to eleven
17 years old. Yet, for this same or less investment,
18 the City could use a land application solution which
19 would protect our ocean waterways and leave
20 flexibility to adapt to emerging technologies in
21 coming years. Sending 3 million gallons of treated
22 effluent into the ocean every day is a huge waste of
23 a precious natural resource.

24 Weeks ago, the Washington Post

1 reported that in Hampton Roads, Virginia, a
2 wastewater ejection system is being designed to be
3 in full operation between 2020 and 2030. So another
4 option rejected out of hand in 2005 has become
5 viable with new research and technology.

6 So I respectfully request that DNREC
7 not approve these permit applications and, instead,
8 require an updated EIS with current 2016 cost
9 estimates for all alternatives, including impacts on
10 endangered species and Delaware's artificial reefs.

11 There are also new technology
12 upgrades, such as electrocoagulation for Rehoboth's
13 effluent treatment plant. For this project, DNREC
14 owes the citizens of Delaware its best decision
15 based on a comprehensive, current EIS rather than
16 outdated, incomplete information. Thank you.

17 (Applause)

18 MR. HAYNES: Next speaker,
19 Mr. Doerfler.

20 MR. DOERFLER: I'm John (inaudible)
21 certified (inaudible), but other than that. I'm the
22 chair of the Surfriders here in Delaware.

23 This may very well be the last time
24 beach enthusiasts have an opportunity to remind

1 DNREC, the City of Rehoboth, our state legislators,
2 and Governor Elect John Carney that you are asking
3 us for permission to change the ecology and health
4 of Delaware's most-prized asset, its ocean health.

5 This may very well be the last time
6 we can say on record that our answer is a resounding
7 no, you do not have our permission. Our answer was
8 no in 2009 during the first hearing for the Rehoboth
9 Beach Outfall. Seven years later, our answer is
10 still no.

11 We do not give you permission to
12 alter our ocean. We do not give you permission to
13 risk the health of our beaches. We do not give you
14 permission to jeopardize the very thing that gives
15 so many people in this community, neighboring
16 communities, and Delaware's sense of pride joy and
17 wellbeing. Our answer is a collective no.

18 The City of Rehoboth and DNREC have
19 not done their due diligence in exploring effective
20 alternatives, including spray irrigation.

21 Instead, they made consequential
22 decisions based on outdated and unexplained
23 information, opting to dismiss meetings behind
24 closed doors with Tidewater and Artesian because the

1 information didn't fit into the predefined square
2 hole.

3 We all understand the importance of
4 our children doing their homework thoroughly and
5 correctly. We expect nothing less from our
6 governing bodies.

7 Surfrider is asking the hearing
8 officer to take into consideration the polarized
9 emotions this project has conjured up in the
10 community. Whether or not DNREC thinks it has all
11 the information it needs, it's very apparent that
12 the public has some very mixed emotions about this
13 project.

14 The fact that so many Delawareans are
15 uncertain about the long-term effects of this
16 outfall should signal that this is a bad idea.

17 This is a bad idea for the ocean.
18 This is a bad idea for Delaware.

19 This may be the last chance Surfrider
20 and beach enthusiasts up and down the coast get a
21 chance to voice our opposition against a project
22 with too many uncertainties that may affect too many
23 people and ocean critters.

24 Our answer is no. DNREC, the Army

1 Corps of Engineers, Delaware Legislatures, and
2 Governor Elect Carney, their decision needs to
3 reflect the same. Thank you.

4 (Applause)

5 MR. HAYNES: Could you give the court
6 reporter your paper tonight? Do you want to submit
7 written comments, or do you want this marked for
8 your comments.

9 MR. DOERFLER: I will submit
10 additional comments, but this tonight.

11 THE REPORTER: Thank you.

12 (Applause)

13 MR. HAYNES: Hans Medlarz?

14 MR. MEDLARZ: I'm Hans Medlarz,
15 Sussex County Engineers, speaking on behalf of
16 Sussex County on the NPDES permit as well as the
17 Beach Preservation Act.

18 UNIDENTIFIED SPEAKER: I don't think
19 the mic is turned on.

20 UNIDENTIFIED SPEAKER: We can't hear
21 you.

22 UNIDENTIFIED SPEAKER: There you go.

23 MR. MEDLARZ: Okay. Starting over.
24 Hans Medlarz, County Engineers, speaking on behalf

1 of Sussex County. I'll offer the following comments
2 on the NPDES permit as well as the Beach
3 Preservation Act permit.

4 Starting with the construction
5 limitations they have associated with directionally
6 drilling an outfall, Sussex County supports the
7 selection of the two potential disposal areas east
8 of Deauville Beach as the only viable offshore
9 locations, and hence further researching these
10 locations.

11 We've had an opportunity to review
12 the record, and Sussex County reviewed the specific
13 calibration data used in the modeling approach and
14 finds the use of acoustic Doppler current profilers
15 and the fixed conductivity, temperature, density
16 buoys the most appropriate selection.

17 We also considered the two stage near
18 field and far field finite element ocean modeling
19 the best available technology. And we believe the
20 calibrated model runs correctly reflect the
21 anticipated plume dispersions.

22 After careful review, Sussex County
23 is satisfied that even under the highly unlikely
24 worst-case scenario with a failed disinfection

1 system -- I'd like to repeat this -- this is a
2 worst-case scenario in a failed disinfection system
3 for extremely short duration, the required dilution
4 for enterococcus bacteria can be achieved within the
5 initial mixing zone near the point of discharge.
6 This is an extremely worst-case scenario.

7 So, in summary, Sussex County concurs
8 with the conclusion that the EIS Alternative 6 Ocean
9 Outfall is the only environmentally and economically
10 feasible alternative, eliminating 100 percent of the
11 nutrients from the Inland Bays watershed and
12 providing the most protection of human health as
13 well as the environment under all conditions
14 evaluated. And the County, hence, supports the
15 NPDES permit issuance and the Beach Preservation Act
16 promulgations.

17 MR. HAYNES: Thank you. The next
18 person is Frank Monteferrante.

19 MR. MONTEFERRANTE: Thank you for the
20 opportunity to speak. My name is Frank
21 Monteferrante. I'm speaking on behalf of myself.

22 I'm not a local, but I have property
23 here in Sussex County. So we all know how special
24 the beaches are in Rehoboth and the national

1 recognition they have received. At issue is the
2 selection process and the guiding principles that
3 have steered selection to the most cost-effective,
4 in the short-term, solution of an ocean sewage
5 outfall.

6 By that, I am referring to the
7 outdated concept of "Dilution is the solution to
8 pollution" which was prevalent in the 1960s and 70s
9 when the Ocean City outfall was built, and is
10 mentioned in various ways throughout the current
11 Final Environmental Impact Statement.

12 No consideration has been given to
13 long-term consequences of such an obsolete way of
14 thinking. Is Rehoboth about to receive a permit to
15 implement an outdated 1970's technology for a 2016
16 problem? There are many better ways of doing this.

17 What seems to be missing is a
18 commitment to the long-term future and health of the
19 ocean and how it relates to the health and economy
20 of the Cape region.

21 When it comes to the annual sand and
22 beach replenishment efforts, there is hardly ever a
23 question as to the funding of this work to keep the
24 beaches in prime condition for the tourist season.

1 Millions of dollars are spent each
2 year replenishing the constantly eroding beaches in
3 order to attract vacationers. The same efforts
4 should be put towards preserving the quality of the
5 ocean water for all of us to enjoy. So costs should
6 not be the deciding factor in this case.

7 I see no evidence of adherence to the
8 comprehensive planning document for Sussex County,
9 which recommends the use of rapid infiltration basin
10 systems.

11 And further in the Record of Decision
12 in the FEIS, DNREC clearly states that the preferred
13 method of wastewater effluent disposal is spray
14 irrigation land application. That's in the record
15 of decision.

16 The State-authored Final
17 Environmental Impact Statement, or FEIS, dated
18 December 2012, and the Record of Decision dated
19 January 2015 are inadequate, outdated, and need to
20 be revised for a number of reasons related to recent
21 events.

22 This document is not an EIS that
23 meets federal standards for the National
24 Environmental Policy Act, a/k/a NEPA, which the

1 Corps of Engineers must adhere to in order to issue
2 their 404 permit.

3 The Army Corps should completely
4 revise or complete a new EIS in accordance with the
5 National Environmental Policy Act, as required for
6 all federal actions before any permit can be issued.

7 The reasons the FEIS requires
8 additional work are as follows:

9 Public controversy: There is
10 significant public controversy over this proposed
11 project with an almost even vote for and against the
12 referendum to fund the project. There is much
13 disagreement in the community as to the construction
14 of this project, so further analysis of alternatives
15 is needed.

16 Secondly, climate change: I recently
17 read a letter in Cape Gazette which said essentially
18 let's build the outfall and, instead, let's move on
19 to do what's needed to address climate change.

20 Climate change analysis is now
21 recommended for all federal agencies while
22 conducting their NEPA analysis. And this is
23 according to guidance that was just recently issued
24 by the President's Council on Environmental Quality

1 on August 1, 2016.

2 Federal agencies now should consider
3 alternatives that would make actions and affected
4 communities more resilient to the effects of climate
5 change. The FEIS does not take into account the
6 effects of climate change on the proposed -- the
7 proposed updated wastewater treatment plant.

8 A wastewater treatment plant on the
9 coast warrants significant analysis for climate
10 change issues.

11 Thirdly, Public Health: The
12 potential for and consequences of uncontrolled
13 releases on health and safety are not addressed in
14 the current FEIS. Overflows of the wastewater
15 treatment plant will impact human health and safety
16 if malfunctions continue to occur due to faulty
17 maintenance and especially when combined with heavy
18 rain events.

19 Most recently, a notice of violation
20 occurred on July 26, this summer. If the outfall
21 had been in operation, the discharge of brown sludge
22 and solids would have happened in front of Rehoboth
23 bathing beaches during the height of tourist season.

24 Number four: The Alternatives

1 Analysis in the EIS does not reflect current
2 thinking and innovative technologies proven to be
3 successful elsewhere.

4 An ecosystem approach would show that
5 neither discharging into the canal or into the ocean
6 are acceptable and that a more sustainable, less
7 environmentally adverse solution should be selected.

8 Land application needs to be
9 seriously considered in the FEIS, especially when
10 compared to the adverse effects that an ocean
11 outfall can have on tourism and public health.

12 There have been proposals offered for
13 land application, but it's my understanding they
14 were rejected based on cost.

15 In the Record of Decision, again,
16 DNREC clearly states that the preferred method of
17 wastewater effluent disposal is spray irrigation
18 land application.

19 In addition, again, the Sussex County
20 plan recommends the use of rapid infiltration basin
21 systems. Neither of these methods were selected in
22 the FEIS.

23 In addition, various closed-loop
24 technologies for recycling and reusing wastewater

1 were not addressed in the EIS. There are currently
2 426 reuse systems being implemented in Florida. Two
3 prime examples of reuse systems include Disney
4 World's 15 million-gallon-a-day wastewater treatment
5 plant. And also in Cary, North Carolina, there is a
6 12-million-gallon-a-day wastewater treatment plant
7 in operation.

8 These systems result in nearly zero
9 output through the reuse of wastewater from
10 irrigation, rapid filter basins, and other design
11 techniques.

12 And, finally, cumulative impacts in
13 EIS: The analysis of cumulative impacts are an
14 integral part of the NEPA EIS. The discussion of
15 impacts to the near-shore ecosystem and public
16 health in the current EIS is inaccurate or
17 non-existent. This needs to be corrected in the EIS
18 before the permit can be issued.

19 For these reasons, the EIS needs to
20 be revised according to applicable federal standards
21 of the National Environmental Policy Act before a
22 decision to issue a permit can be made. Thank you.

23 (Applause)

24 MR. HAYNES: Thank you. The next

1 speaker is William Moore.

2 MR. MOORE: Mr. Haynes, would you
3 give me the courtesy of speaking from the podium? I
4 have got some papers.

5 MR. HAYNES: Oh, yeah. You may, yes.

6 MR. MOORE: I am more used to
7 speaking from a podium, because if I speak from a
8 microphone, I'll end up droppings all the papers on
9 the floor, so -- My name is William Moore.

10 MR. HAYNES: I have got the
11 microphone.

12 MR. MOORE: Yeah. Mr. Haynes and
13 members of the DNREC officials here, and ladies and
14 gentlemen, my name is William E. Moore.

15 My people have been in this town, for
16 what it's worth, since before it was a town, with
17 property from Maryland Avenue through to Baltimore
18 Avenue.

19 So, ancestrally speaking, we have had
20 a long association with the town, for what that's
21 worth.

22 I came here tonight basically
23 desiring to ask questions. And I wasn't familiar
24 with the formality. So I will try to keep track of

1 my time here.

2 And I had come basically to ask
3 questions, hoping that the DNREC officials would
4 answer them, and I would get a better appreciation
5 of where we are on this particular issue.

6 Let me first speak and ask if DNREC
7 is aware that the Hens and Chickens Shoal area,
8 which runs from northwest to southeast and actually
9 ends up right off of the south end of Dewey Beach,
10 is a designated marine sanctuary?

11 I believe the answer to that question
12 is yes, it is, just like Rehoboth Bay is a
13 designated marine sanctuary. And if that's so,
14 because of the interchange of waters with Delaware
15 Bay and the ocean, which leads to high productivity
16 of marine life there, we are not just talking here,
17 it seems to me -- and I ask the folks from DNREC
18 this question -- about pollution that would affect
19 human beings, the issues that were spoken to, but
20 we're also speaking about pollution like nitrogen
21 and phosphorous and so on and so forth that would
22 basically ruin the sanctuary and nature of Rehoboth
23 Bay in the Hens and Chicken Shoal area with an
24 outfall that goes up to the backside to the west

1 side of Hens and Chicken Shoal, and a basin that, on
2 the lip of it, is six feet to eight feet deep, and
3 it gets gradually there.

4 So the ability to exchange the waters
5 there and the view, I think -- and this is the
6 question that I have -- is limited. It is basically
7 confined.

8 The nature of this: I sail. I have
9 sailed off of there out of the Roosevelt Inlet.
10 Some of my guests that have sailed in this
11 rinky-dink sailboat that I have are simply amazed at
12 the number of porpoises that are out there, so on
13 and so forth. And they ask me how come that's so.
14 And, being a bit sarcastic, I said, "Well, look, I
15 call it Porpoise Central, and the variety here is
16 just for your benefit."

17 Actually, the real answer to that is
18 that this is a heavily populated area of marine
19 life; hence, that's the reason it is a marine
20 sanctuary. Many species of fish -- sturgeon --
21 everyone thinks sturgeon is up in the Delaware Bay.
22 No. It's all along this coast.

23 My grandfather's boyhood friend, John
24 Townsend (inaudible), he was a sturgeon fisherman --

1 most people don't realize this -- off of Fenwick
2 Island all the way up the east coast, way back when
3 in the 1800s.

4 The height deterioration issue is
5 already facing the City of Rehoboth Beach relative
6 to the drainage off its streets. It's right in the
7 news this morning, WBOC. Eat the lunch; watch the
8 news.

9 And so enormous expense is going to
10 be entailed just to drain the pollution off of
11 Maryland Avenue -- that's where I live -- to repair
12 that. What do you think is going to be the cost and
13 expense to repair a deteriorating outfall inside the
14 Hens and Chickens Shoal? And the taxpayers of
15 Rehoboth Beach are going to have to pay for that.

16 I don't think it's wise, from a
17 financial point of view, to encounter that type of
18 expense when, if you have Artesian -- and I'm fond
19 of these people, and so on and so forth. But with
20 their system, it's theirs. They have to maintain
21 it.

22 I wrote to the editor about this back
23 when and pointed that out, that I don't think the
24 financial burden of the infrastructure that is being

1 accomplished here is really something that is
2 appropriate.

3 Now, here some will say that I'm
4 comparing apples and oranges. I really don't think
5 it is. What I am about to say, it's like comparing
6 Macintosh apples with Golden Delicious, I think, not
7 oranges. And I speak to the question in all due
8 respect, gentlemen and ladies: DNREC's record of
9 enforcement.

10 And I'm pointing to the most recent
11 issue of the Cape Gazette relative to -- and this is
12 the apples and oranges, which I don't think is
13 apples and oranges -- to its record of enforcement
14 at the Allen Harim plant in Harbeson.

15 Now, I go look at that plant every
16 day. As old as I am, I used to bicycle to work
17 until I got knocked off the bike, but be that as it
18 may. And you could smell it. They have signs
19 there, you know, if you smell it, report it to
20 DNREC.

21 And here is what is in the
22 November 11th issue of the Cape Gazette. I will
23 read it quickly.

24 On one day in the summer of 2013, the

1 plant discharged wastewater that contained 1.7
2 million colonies of enterococcus bacteria per 100
3 milliliters of water, more than 9,000 times the
4 permit allowance of 185 colonies. Documents from an
5 open records request shared with the Cape Gazette
6 earlier this year showed correspondence about the
7 discharge between Allen Harim and the Department of
8 Natural Resources and Environmental Control -- you
9 folks here -- but the agency issued no citation for
10 the violation until November 4, three years after it
11 occurred.

12 So my question to DNREC is, that
13 seems to be your record of enforcement. What is it
14 going to be with the Ocean Outfall where you are not
15 going to smell it? And how are you going to test
16 it? And how are you going to report it? And is it
17 going to take three years for you all to enforce
18 environmental and health standards that are required
19 in the permitting process?

20 It goes on, the article. It's worth
21 reading. And in the interest of full disclosure, I
22 will indicate that I, way back when, represented Bob
23 Lawson and the Harbeson Improvement Association when
24 it was Allen's. Similar issue. Policing of the

1 Beaver Dam Creek. DNREC didn't enforce it then,
2 either. Way before this applicant, Allen Harim,
3 came in, they did not enforce it.

4 So you have got two major industries.
5 God bless them. My wife's family was in the
6 beginning of the establishment of the poultry
7 industry in this country down in Ocean View. But
8 she sold, and the team, (inaudible) it's a great
9 industry. We depend upon it. We also depend upon
10 the resort industry.

11 MR. HAYNES: We are getting beyond
12 the five minutes allowed.

13 MR. MOORE: I'm doing what?

14 MR. HAYNES: You're going beyond the
15 five-minute limit. You're actually --

16 MR. MOORE: Can I have a little more
17 time?

18 MR. HAYNES: You're at eight and a
19 half.

20 MR. MOORE: All right. Let me have a
21 little more time. I won't be long. I'm known for
22 not being a man of few words.

23 It seems to me that this industry
24 needs to be protected. But in protecting them,

1 there has to be enforcement of the law that applies
2 to them relevant to environmental degradation.

3 Very interesting: I had the fortune
4 to witness this conversation, a discussion about
5 this with a county official. I was interested in
6 hearing from the county. And this was back in
7 Georgetown, Delaware.

8 And the discussion was with David
9 Baker, who used to be -- he was a very good, in my
10 opinion, at least, county administrator. And we
11 were discussing Ocean Outfall. And he told me and
12 my companion that, "Look, we had all of the leases,
13 all of the fields repaired. The County had four
14 spray irrigation systems. We presented that to
15 Mr. Mayor. This is what he told us."

16 I presented it to you. And you said,
17 quite sometime ago, according to him, to his
18 amazement, "The City of Rehoboth Beach is not going
19 to do it that way." And it seems to me that's been
20 consistent throughout in regard to the approach.
21 And its approach which the State of Delaware and
22 DNREC has gone along with it, even though your prior
23 chief, Collin O'Mara, delayed and delayed and
24 delayed and delayed and eventually came out and

1 said, "It's not worth the risk. I opposed it." So
2 now Smalls is in charge with the Markell
3 administration, and suddenly it's all okay, it seems
4 to be. That is a problem.

5 MR. HAYNES: Please wrap it up.

6 MR. MOORE: Okay. So, oh, one other
7 issue: The Lewes/Rehoboth Canal is silting in. I
8 have always been somewhat amused by the black, you
9 know, tarps they put up on as far as the
10 construction sites and keeping things from being,
11 you know, filled in.

12 Rehoboth/Lewes Canal from Lewes --
13 it's in the news -- all the way down, I can tell
14 you, you know, to the Glade Creek, to the Rehoboth
15 Drawbridge -- a lot of money spent on that -- to the
16 Route 1 bridge, it's silting in.

17 Now, tell me how, and how do you
18 coordinate with the Corps of Engineers whose
19 responsibility is to do what? Maintain the
20 navigable waterway.

21 MR. HAYNES: Is this getting to the
22 permits?

23 MR. MOORE: It is.

24 MR. HAYNES: Okay.

1 MR. MOORE: It is. I looked today at
2 your engineering drawings here, or the City's
3 engineering drawings. That pipeline is going to run
4 some 10,000 feet from the sewer plant down into the
5 canal. You are going to have to dig into that.

6 It is, I think, not being an
7 engineer, it's going to cause the canal to further
8 silt. Have you -- and this is my question --
9 coordinated for dredging out that canal after such a
10 construction? Are you going to pay for it? Are you
11 going to require the Corps of Engineers and the
12 federal government to pay for it, as short of cash
13 as it is, or is the City of Rehoboth going to pay
14 for the effects of that construction?

15 So I appreciate the time you have
16 allowed me. I had some more points and questions to
17 ask. I would like to ask questions.

18 MR. HAYNES: You can submit written
19 comments.

20 MR. MOORE: Do you want a record?
21 No. You don't want my hand scribbles on this,
22 because I have a hard time reading it myself. I
23 will have the rest with the court reporter. Thank
24 you very much.

1 MR. HAYNES: Okay. Thank you.

2 (Applause)

3 MR. HAYNES: Walter Brittingham?

4 MR. BRITTINGHAM: Good evening. I
5 promised myself I wouldn't speak, but I'm breaking
6 it. Walter Brittingham. We moved from Lewes to
7 Rehoboth in 1956.

8 We have seen this worked on for so
9 many years. We have seen the research that's been
10 done. We very much appreciate the workshop that you
11 gave us. I was impressed with the engineering
12 studies.

13 I want to thank you, the Department,
14 for the work you have put into it. It's been very,
15 very thorough.

16 I think the due diligence has been
17 done. I think recently we have learned a little bit
18 about Wolfe Neck. I commend the County for working
19 with Lewes to try to resolve some of those problems.
20 But Wolfe Neck is an example of some of the problems
21 with spray irrigation.

22 There is people that have died while
23 this is going on here. Her name is Frances Wolfe.
24 She has passed. But you have a logical plan, due

1 diligence has been done, and it's time to proceed.

2 Thank you.

3 MR. HAYNES: Thank you. Susan Gay.

4 MS. GAY: I would like to start off
5 by thanking DNREC officials, the outside
6 consultants, engineers, the City of Rehoboth Beach,
7 mayor and commissioners and staff, and my fellow
8 citizens who might be concerned about the
9 environment throughout this entire process, because
10 they have asked some very, very important questions,
11 including all the questions that have been asked
12 here tonight. And they have all been answered.

13 It's been seven years since the first
14 public hearing on the wastewater discharge
15 alternatives. And in that time, since that time,
16 scientists and engineers have studied every aspect
17 of every alternative and created voluminous
18 documentation that's available for anyone to read on
19 the DNREC website and on the City of Rehoboth Beach
20 website.

21 I'm a homeowner and part-time
22 resident in the city. And my knowledge tonight
23 comes from studying the Record of Decision and
24 supporting documentation and following the

1 proceedings over the last several years.

2 And during that time, three main
3 issues came into my mind as a concern. One was the
4 essential beach habitat we have heard so much about
5 tonight.

6 Short-term effects of the
7 construction, while there are some, those are
8 mitigated by both the time of year of the
9 construction and by the process and techniques of
10 the construction. And those are covered in the
11 permits. I'm pleased that those mitigations are in
12 place.

13 Long term, more importantly, the
14 water quality standards are exceeded with the Ocean
15 Outfall. All fish species are migratory. The
16 essential fish habitat extends far beyond the
17 outfall site. And the rapid dilution of the outfall
18 renders the effluent to undetectable levels. And
19 that data, for me, means that the long term -- that
20 there won't be a long-term effect on this fish
21 habitat.

22 My second concern was
23 pharmaceuticals. We have heard some about that
24 tonight. And what I have learned is that there are

1 no federal and state criteria. That's an emerging
2 science, an emerging regulatory area. And I think
3 once information becomes known, and it should work
4 its way into the process, and you should follow
5 permits in that regard.

6 But in the meantime -- and I'm going
7 to get back to pharmaceuticals in something I want
8 to say at the end. But in the meantime, again, the
9 dilution is such that I don't think it's an issue.

10 And the last issue we have heard so
11 much about, tourism and the economy, obviously very
12 important here.

13 We have a good test case right down
14 the road in Bethany that have had an outfall for
15 more than 35 years. No adverse impact on tourism
16 and the economy. Same approach.

17 And, frankly, I feel like our tourist
18 are blissfully unaware that any of this is even
19 going on. And I believe that that evidence is quite
20 strong based on tourism, as well.

21 So the bottom line for me is that the
22 highly treated effluent, the low levels of
23 contaminants, and the evidence and experience of
24 nearby outfalls convince me that the project is

1 environmentally sound.

2 If it weren't for these factors, I
3 would be singing a different tune. If I were in
4 Florida, I may be singing a different tune. But I'm
5 here in Delaware, and we have to do what's right for
6 our state, our environment, our ocean, and our land.

7 And, besides that, we are beyond the
8 decision. The decision was made to ocean outfall.
9 We are in the permitting process.

10 So the bottom line is the ocean
11 outfall is the only alternative that ensures
12 100 percent of the nutrients from the effluent be
13 eliminated from the bays. Thus, it is the only
14 alternative that allows the city to fully comply
15 with the NPDES discharge permit.

16 The NPDES requires maintenance of
17 equipment to maintain the current treatment. It has
18 limitations on the amount of discharge and has
19 monitoring and reporting requirements, all of which
20 are checks and balances to assure protection.

21 In closing, I would like to call
22 attention to the elephant in the room, which is all
23 of us. There was a preliminary stormwater report
24 done that is a requirement in the Record of

1 Decision. And that had a section on it, "Good
2 Management Practices and Public Outreach."

3 All of those -- I'm not going to get
4 into it beyond the permitting process -- but that
5 report was required by the Record of Decision.
6 Those were all things that we can control.

7 And I can't say enough about public
8 education and public outreach to help the citizens
9 and the tourists know what they can do to protect
10 our ocean.

11 The Rehoboth Beach Homeowners
12 Association did a Q and A before the outfall run
13 last year. And we had many, many people thank us
14 for the information we put together. It was fairly
15 brief, but it had the main issues there. People
16 appreciate having that information and being able to
17 make decisions based on that.

18 Wastewater is a natural by-product of
19 human life. But what we put down our toilets and
20 drains otherwise is controllable.

21 Pharmaceuticals, yes. I told you I
22 would get back to that. So don't flush them. You
23 shouldn't be doing that. No one should.

24 And as a community, you need to

1 control development. Because the wastewater
2 treatment plant does not have (inaudible) capacity.
3 Just make sure we don't exceed that capacity.

4 So, in closing, I want to say I
5 support the permits for this project so that we can
6 move on to other areas that are, frankly, more of a
7 concern and more immediate. And our behaviors are
8 not subject to permits. And we can protect our
9 oceans. Thank you.

10 (Applause)

11 MR. HAYNES: Thank you. Ed O'Connor.

12 MR. O'CONNOR: Thank you. My name is
13 Ed O'Connor. I live in Rehoboth Beach just outside
14 of town. My tax dollars and county are going to
15 this project, as well, although I didn't get a vote
16 on it.

17 Are we good? Test one, two.

18 (Referring to microphone)

19 I am opposed to the Rehoboth Beach
20 outfall pipe for the following reasons: The
21 previous Secretary of DNREC stated that he did not
22 think this outfall pipe is a good idea. He said it
23 repeatedly. When this application was submitted
24 during his tenure, he did not sign off on it.

1 The current secretary approved this
2 project within months of coming into office when
3 publicly noting that it was the best solution to
4 Rehoboth's wastewater issue.

5 I would like to know what new
6 information may have come to light during this time
7 between Secretary O'Mara and Secretary Small's
8 approval to move forward. Were there any changes to
9 the EIS? Were there any conversations or
10 communications between interested parties that were
11 brought to light for this new, good news we are
12 supposed to be believing?

13 I would also like to know how
14 Secretary Small can come to a complete opposite
15 conclusion than his predecessor did.

16 I would like to point out that the
17 design engineer that made the presentation at City
18 Hall for this project was asked which is better for
19 the environment. His answer was not outfall; it was
20 land application.

21 I would also like to point out that
22 DNREC has also said publicly about how another
23 project is the best option -- the Allen Harim
24 outfall pipe, who recently was cited by DNREC for

1 violations going back years, years, while they are
2 telling us this is the best option.

3 They are doubling their output, other
4 wastewater, before they even do the improvements,
5 knowing full well that they were already in
6 noncompliance. And finally, they got cited for
7 violations.

8 Delaware Code states, "The coastal
9 water resources of the state shall be protected and
10 conserved to assure continued availability for
11 public recreational purposes and for the
12 conservation of aquatic life and wildlife."

13 I fail to see how putting the outfall
14 pipe into the ocean can be legal under this code.
15 "Water resources of the state shall be protected and
16 conserved." Adding pollutants to a valuable
17 resource is not protecting or conserving.

18 When it comes to pharmaceuticals,
19 it's not the problem of dumping them down the toilet
20 when you are done with the prescription. The
21 problem is some prescriptions and hormones do not
22 get fully absorbed into the body, and they get
23 filtered out through your kidneys.

24 So this is not a let's be proactive

1 and this proper disposal of your pharmaceutical
2 drugs, which I fully support that, but it's not just
3 that one level.

4 And, while it's true we have yet to
5 have laws on that, you know, it should be a
6 consideration. This is the 21st industry. It
7 should be forward thinking.

8 Deauville Beach was purchased by the
9 state in the sixties with federal grants for states
10 to buy land for recreational purposes. It is
11 currently leased to the city. I would like to know
12 how closing the park for nearly a year to use it as
13 a staging area and permanently constructing a pump
14 -- not a pump house, but a whatever the permanent
15 structure on that site, along with the underground
16 pipe, which has nothing to do with recreational
17 purposes meets the criteria by which this land was
18 purchased.

19 Decades ago DNREC and the City of
20 Rehoboth felt an outfall pipe going into the
21 Rehoboth Canal was a good idea, possibly, they said,
22 the best idea or the best option.

23 The City of Rehoboth felt that this
24 pipe was such a great idea going into the bay that

1 they sued to keep the pipe in the bay and lost.
2 Let's not make the same mistake with the ocean. If
3 dilution is your solution, it is still pollution, no
4 matter what the rate.

5 At a public meeting a few months ago,
6 the mayor stated that this project was over budget.
7 He wouldn't say how much, when asked repeatedly, how
8 much it was over budget, but that it was in
9 acceptable limits. We do not know what those
10 acceptable limits are, because we do not know what
11 the budget is on current numbers.

12 I don't know how old the numbers are.
13 I think they are ten years old or eight years old.
14 But we are dealing with new numbers -- at least we
15 should be -- just like we were dealing with new
16 numbers with city hall that came in higher, too.

17 In 2012 there was a ribbon cutting
18 for Millsboro's wastewater treatment plant. DNREC
19 approved the spray irrigation plan and wastewater
20 treatment plan upgrades.

21 Grant money and low-interest loans
22 supplied the tens of millions of dollars for this
23 project. This project is the reason why I find
24 Secretary Small's claim that we can't have land

1 application here due to water contaminants seeping
2 into the water table and affecting the inland bays,
3 this is the reason why I find that claim to be
4 specious. Millsboro is in the Inland Bays
5 watershed. So we are doing land application over
6 there in the watershed in Millsboro, but we are
7 doing the ocean outfall here in Rehoboth.

8 At the last workshop meeting, it was
9 mentioned by DNREC or the engineering company -- I'm
10 not sure which -- that there are studies of both
11 Bethany and Ocean City outfall pipes and that
12 everything is fine.

13 I would like to know where these
14 studies are and why these studies are not included
15 in the EIS. If they are in the EIS and I missed
16 them, I apologize. Instead of reporting on an
17 outfall pipe in California that goes out 240 feet
18 into the offshore and into deeper water, we should
19 also realize that in Bethany and Ocean City not all
20 outfall pipes are created equal. Pipes that are
21 different lengths going out into different depths of
22 water, different currents, different studies. But
23 using Bethany and Ocean City would be a far better
24 indicator of what's going on with our water quality

1 at the pipe than referencing a project out in
2 California.

3 I would like to know who is really
4 ultimately responsible for the information in the
5 EIS. Is it the city? Is it DNREC? Is it the
6 engineer? We should seek a higher standard and the
7 best science in making our decisions in this EIS.
8 And, to my knowledge, it has not been updated or had
9 any information added.

10 Since the studies on Bethany and
11 Ocean City, if they exist, are not in the Record of
12 Decision or the EIS, they do not exist for the
13 purposes of this project. And we cannot claim that
14 anything, that everything is fine down there or not,
15 because they are not in the submission for the
16 document in submission for this project.

17 In closing, based on the above and
18 other reasons, I believe this project is a mistake,
19 wrong headed, probably not permissible by Delaware
20 Code. But if we do proceed with this project, DNREC
21 should attach a requirement that the City of
22 Rehoboth move forward on a stormwater runoff plan
23 with benchmarks and deadlines as a condition of its
24 permit. The mayor was quoted in the Cape Gazette as

1 saying the bigger problem is stormwater runoff. I'm
2 paraphrasing there, but that's similar to what he
3 said.

4 The City was required to submit a
5 report on stormwater runoff as a condition to move
6 forward on this wastewater project. Let's make sure
7 that million-dollar report is put to good use and
8 actually leads to action for the second water
9 quality issue that the Rehoboth area is suffering
10 right now in addition to this inland water bay
11 problem. Thank you for your time.

12 (Applause)

13 MR. HAYNES: Thank you. Do you want
14 this marked for the record now, or do you want to
15 send written comments in?

16 MR. O'CONNOR: You can read those
17 into the record, but I'll be submitting comments
18 before December 2. Is that right?

19 MR. HAYNES: Okay. So we will mark
20 that as your exhibit, which will be O'Connor
21 Exhibit 1. The next person to preregister, Suzanne
22 Thurman.

23 MS. THURMAN: I'm not as tall as the
24 last speaker. Thank you. I'm Suzanne Thurman. I'm

1 the Executive Director of Marine Education, Research
2 and Rehabilitation Institute, locally known as
3 MERR -- (microphone being adjusted) Thank you.
4 Thank you -- and our primary function is to provide
5 rescue and response for stranded marine mammals and
6 sea turtles, as well as contributing to research on
7 ocean health and offering education on these topics
8 to students and the public.

9 Our organization has been providing
10 researched comments on the ocean outfall proposal
11 since 2009, in which we have provided to the City,
12 to DNREC, and the Army Corps of Engineers.

13 We maintain that an outfall is the
14 most environmentally harmful method of treatment due
15 to its ultimate impacts on ocean and marine mammal
16 health. And we have asked the City to fully
17 investigate other methods of wastewater treatment,
18 all of which could be more environmentally and
19 economically sound.

20 Delaware waters serve as essential
21 foraging ground and migratory pathway for over 32
22 species of marine mammals and sea turtles. These
23 animals already face threats to their survival from
24 many origins, including environmental toxins.

1 The long-term health effects from
2 exposure to toxins from the effluent plume, combined
3 with prey and habitat loss for these endangered and
4 protected species of marine animals constitutes
5 level B harassment under the Marine Mammal
6 Protection Act, the federal law protecting these
7 species. NOAA, itself, the federal entity that
8 oversees marine mammal protection determined that
9 this type of toxic intrusion into the oceans over an
10 extended period of time would be detrimental to a
11 variety of marine organisms, including fish,
12 mammals, and turtles.

13 Our organization fully acknowledges
14 the need to improve the current wastewater treatment
15 process to benefit the Inland Bays, which are part
16 of the marine ecosystem, but not at the expense of
17 the ocean. We are concerned that the treated
18 effluent is being portrayed as harmless to the
19 marine ecosystem, and we could not disagree more.

20 Our greatest concerns pertain to the
21 fact that traditional wastewater treatment methods
22 do not eliminate certain toxins, such as heavy
23 metals, pharmaceuticals, caffeine, endocrine
24 inhibitors, and other toxic substances from the

1 effluent plume. These toxins are known to have
2 adverse impacts on marine mammal health, and this
3 correlates to human health.

4 High concentrations of chlorine will
5 be contained within the effluent plume as part of
6 this treatment process. And this is known to
7 destroy plankton, the basis of the marine food web,
8 including fisheries species. This will also effect
9 benthic organisms in the same way.

10 The placement of the outfall is in
11 close proximity to the Hens and Chicken Shoals,
12 which has been identified as essential fish habitat.
13 The long shore current in this area runs northward,
14 conducting the plume along the Hens and Chicken
15 Shoals and up to the mouth of the Delaware Bay,
16 which is one of the richest nursery and feeding
17 areas in this vicinity.

18 This precious ecosystem provides
19 habitat and prey source for numerous species,
20 including the severely endangered North Atlantic
21 Right whale, of which there are only 350 remaining
22 individuals in the world, and the Humpback whale.

23 Our data confirms their presence in
24 these waters. Adult females historically take their

1 calves back to the same feeding and foraging area
2 where they, themselves, were taught to feed. The
3 Delaware Bay is one of these identified areas and,
4 therefore, critical to the continued survival of
5 these species.

6 The installation of an outfall will
7 create an out-of-sight, out-of-mind solution to
8 manage the City's wastewater. But it is not out of
9 sight for our team of rescuers who tend to these
10 ailing and suffering animals.

11 We see the impacts of marine toxins
12 and other harmful human behaviors with every animal
13 that strands, with over 90 percent of these
14 strandings being attributable to human impacts.

15 These animals tragically succumb to
16 horrific injuries and illnesses as they simply try
17 to survive in their natural habitat. We
18 consistently see animals that have slowly starved to
19 death because they were too ill and debilitated to
20 eat, animals that are riddled with tumors and lungs
21 that can't breathe due to pneumonia and other
22 respiratory illnesses, all attributable to exposure
23 to marine toxins.

24 We identify the need to do everything

1 that can be done to lessen the harmful impact we
2 have on the ocean that we all love and revere.

3 Since the time of this project was
4 first proposed many years ago, new and more prudent
5 technologies have become available. We strongly
6 recommend that the City continue to update the EIS
7 and fully investigate other technologies such as
8 those that we have previously recommended.

9 These include constructed wetlands
10 and electrocoagulation, both of which are
11 environmentally and economically beneficial systems.

12 The highlights of constructed
13 wetlands include cost effective thanks to wetlands
14 mitigation credits system.

15 It's an environmental responsible
16 system that creates habitat, neutralizes heavy
17 metals and pharmaceuticals, and successfully has
18 been utilized for municipal and industrial
19 wastewater treatment nationwide.

20 It also creates positive public
21 perception.

22 And we would ask -- we were informed
23 that this was looked into and that the numbers could
24 not be evaluated to come out as they needed to be.

1 But we would ask that this be evaluated by
2 accredited and experienced wetlands engineers to
3 factor the output numbers correctly.

4 And the second option that we highly
5 recommend is the electrocoagulation, which is a
6 closed-loop system using electricity to drive
7 chemical reactions in wastewater to remove
8 contaminants with 99.9 percent effectiveness.

9 Systems can treat up to
10 15 million gallons per day.

11 It neutralizes bacteria, mold, and
12 algae.

13 And clean, neutralized water can be
14 reused in a variety of applications.

15 This type of system increases the
16 capacity of traditional wastewater treatment
17 facilities strained by increases in population and
18 aging infrastructure.

19 In light of the immense environmental
20 cost and the controversial nature of an ocean
21 outfall, which has served as a divisive force in
22 this community, we urge and support a thorough
23 investigation of these other options while that
24 still can happen.

1 And we also offer that in our state
2 and community we have numerous environmental
3 organizations which could serve as a valuable
4 advisory resource in this and future projects. And
5 I, myself, would be more than happy to assist in any
6 way possible, because we look forward to a more
7 dignified process in the future.

8 So thank you very much for your time.
9 Thank you for your consideration.

10 (Applause)

11 MR. HAYNES: You want to submit these
12 as --

13 MS. THURMAN: Now, these are
14 abbreviated. I was trying to fit them in.

15 MR. HAYNES: We will mark that as
16 MERR Exhibit 1.

17 The next person signed in to speak is
18 Elisabeth Stoner. Are you here?

19 UNIDENTIFIED SPEAKER: I don't think
20 she is here.

21 MR. HAYNES: And Pete Basile signed
22 up to speak but marked not speaking because he
23 couldn't attend, I understand.

24 Charlie Garlow, going from the -- I

1 believe we are going from the sign-in sheets now.

2 MR. GARLOW: Thank you. My name is
3 Charlie Garlow. I am a representative of the
4 Citizens Climate Lobby, Delaware Chapter. And I'm a
5 homeowner. My wife and I are homeowners in Rehoboth
6 Beach, Delaware.

7 I have been following this issue for
8 awhile. The speakers who have been tonight, those
9 who are the opponents have been very persuasive;
10 those who have been the proponents have been very
11 few but also not persuasive at all.

12 Concludory comments on the parts of
13 those that have been in favor of the proposal have
14 not been persuasive, and I hope that DNREC would
15 consider the same conclusion that I have come to in
16 considering the testimony tonight.

17 Specifically, I would like to rebut,
18 if I may, the suggestion that has been made by one
19 of the proponents that this permit is already done
20 and so we may as well not object. That's not true.

21 This permit on the federal level has
22 not been issued yet, so any construction that might
23 begin in this process would be construction without
24 a permit, which would be a violation of NPDES and a

1 violation of the Federal Clean Water Act.

2 So that comment, I urge you not to
3 take into consideration because it is flatly false.
4 This is not a done deal, and our testimony has
5 value.

6 I would also suggest that it would be
7 good to have a monitoring system if this project
8 were to be built, a monitoring system which monitors
9 for the presence of pharmaceuticals so that we may
10 determine when they are -- or other pollutants, for
11 that matter -- when they have reached the levels
12 that are not permitted by the permit.

13 When it comes to pharmaceuticals, one
14 of the reasons we don't have regulations for
15 pharmaceuticals is because the federal government,
16 the EPA and FDA, have been having a hard time
17 figuring out what to do about it. But most of the
18 scientific literature that I have seen, or the
19 news articles say that pharmaceuticals and endocrine
20 disruptors is a serious problem which will not be
21 addressed by just dumping it into the ocean.

22 So until such time as we know more
23 about pharmaceuticals so we can make a reasonable
24 determination to say that that would be acceptable

1 as putting it in the ocean, that we should use
2 alternative means of disposing this wastewater
3 containing these pharmaceuticals and endocrine
4 disruptors by doing land application.

5 So I urge you to reject the permit
6 application and until such time as a better process
7 for handling this solution is determined. Thank
8 you.

9 (Applause)

10 MR. HAYNES: Thank you. The next
11 person, going from the same list, is Jacqueline Reed
12 followed by Frank Cooper.

13 MS. REED: My name is Jacqueline Reed
14 from Sussex County, and I do oppose this permit.
15 And actually find it very disgusting that I have to
16 stand here and tell you that I oppose it. Speaking
17 on behalf of the wildlife, they don't have a voice.
18 They cannot speak for themselves.

19 But my personal life experience is my
20 father served in Vietnam and was exposed to toxins
21 from Agent Orange. He passed away from his lungs
22 collapsing at the age of 37.

23 So I think we all really need to take
24 into account our elected officials and hold them to

1 task for what they are doing to our environment and
2 to our wildlife and to our bodies. So my firm
3 expression is to oppose the permit.

4 (Applause)

5 MR. HAYNES: Mr. Cooper?

6 MR. COOPER: Yes. I'm speaking in
7 favor of the --

8 MR. HAYNES: It may have to be turned
9 on again.

10 MR. COOPER: Oh.

11 MR. HAYNES: My name is Frank Cooper.
12 I'm speaking in favor of approving the permit. I
13 have heard a lot of valid arguments on behalf of
14 wildlife and not dumping our effluent into the
15 ocean. What I have not heard is the alternative.

16 And when this was studied, there
17 seemed to be an equal or worse effect on
18 groundwater. And all of the horrible pollutants
19 that are imagined or real that might be dumped into
20 the water are going to be dumped into the
21 groundwater. And many people actually use that
22 groundwater for drinking and irrigation and other
23 things.

24 Overall, there is no perfect solution

1 here. This is a lesser of evils that we produce a
2 lot of nasty chemicals, and we have very limited
3 ways of getting rid of them.

4 This has been a very long process.
5 We have looked at a lot of different alternatives.
6 I fear that the worst alternative is to scuttle this
7 one and go on to another decade of haggling over
8 what to do while the infrastructure is clearly
9 deteriorating and while pollutants are continuing to
10 be dumped into the bay.

11 So while it's not a perfect solution,
12 it is the best available solution, and it is the
13 most expedient solution. So I would urge not only
14 that we approve this permit but continue to work
15 together as a community to look for better ways of
16 dealing with pollutants, both known and the ones
17 that we really have not got a handle on yet like
18 pharmaceuticals and heavy metals and things.

19 This is not the end of this process;
20 it's just a step along the way. It's the best one
21 that's available now. And it really needs to be
22 done. This has been over a decade that we have been
23 seriously polluting the bay. And anything to delay
24 fixing that, to me, is ludicrous at this point.

1 Thank you.

2 MR. HAYNES: Thank you. And the next
3 person that signed up was Chris Bason. If you did
4 not indicate yes or no, I'm assuming no, just in
5 case you wonder why you haven't been called and you
6 thought you signed up. But, as time may allow, we
7 will get you in.

8 MR. BASON: Hi. My name is Chris
9 Bason. I'm the Executive Director with the Delaware
10 Center for the Inland Bays. The Center is a
11 private, non-profit organization that's responsible
12 for facilitating a long-term approach to the wise
13 use and enhancement of Delaware's inland bays.

14 And we do that through the
15 implementation of the Inland Bays Comprehensive
16 Conservation Management Plan.

17 The inland bays have long suffered
18 from pollution by excess nutrients, and that's
19 resulted in nearly a complete loss of bay grass
20 habitat in the environment, low dissolved oxygen
21 levels that harm fish and shellfish, and waters that
22 were once clear are now murky, and they are
23 dominated by algae, such that they don't allow light
24 to reach the bottom of the bays to allow the bay

1 grasses to grow.

2 Today the Center released its 2016
3 State of the Bays Report to look at five years of
4 new data on the health of the bays. And we were
5 very encouraged.

6 We saw both short and long-term
7 reductions in pollution concentrations and algae
8 levels in the bays. And this encouraging news is a
9 result of a great deal of cooperation and sacrifice
10 by the communities of this watershed.

11 But there remains a lot of work to be
12 done to restore the bays to health, particularly, to
13 reduce the nitrogen loads from non-point sources
14 that are coming from the land of the watershed. And
15 these include land-based wastewater application,
16 agricultural and residential fertilizers like lawn
17 fertilizers, as well as stormwater runoff to the
18 bays.

19 The Center supports the City's permit
20 applications to construct and operate an ocean
21 outfall to dispose of the City's treated wastewater.
22 The removal of the discharge to the canal, which
23 flows into the bay, will be the next-to-the-last
24 point source discharge of an original 13 discharges

1 to the inland bays.

2 The elimination of the discharge is
3 required by the State's 1998 Total Maximum Daily
4 Loads Regulations and the 2008 Pollution Control
5 Strategy for the Inland Bays. And it is consistent
6 with the Inland Bays Comprehensive Conservation
7 Management Plan.

8 Once removed, it's going to eliminate
9 17,000 pounds a year of nitrogen and over 1,000
10 pounds a year of phosphorous to what is naturally a
11 very slowly flushed and very shallow estuary.

12 Rehoboth Bay has a very long flushing
13 time -- ninety days, by some calculations -- for
14 a particle of water that enters the bay to be
15 flushed out, which means that the pollutants that
16 enter the bay, they stay there for a long time, and
17 they impact water quality. And for this reason,
18 Rehoboth Bay is naturally very sensitive to direct
19 inputs of pollution and to inputs of pollution onto
20 the land.

21 Rehoboth is also heavily used for
22 recreation by residents and tourists. They go
23 boating there. They are fishing. They are
24 swimming. They are kayaking. The best crabbing is

1 in the bay, Rehoboth Bay. And some might say the
2 best clamming of the bay is in Rehoboth Bay.

3 Eliminating the City's discharge will
4 remove about a third of the total phosphorous load
5 to Rehoboth bay.

6 City and Department of Natural
7 Resources have done their due diligence in looking
8 at the environmental impacts of the outfall. Some
9 important points to consider from their studies and
10 other information: The nutrient loads of the flow
11 of the Delaware Bay, the water coming out of the
12 Delaware Bay, the nutrients in there are between
13 15,000 to 22,000 times the nutrient loads of the
14 effluent in the proposed outfall.

15 Levels of indicator bacteria measured
16 in the Rehoboth Treatment Plan Outfall from 2007 to
17 2009 were often zero. These are indicators of back
18 viruses, parasites, and harmful bacteria. They were
19 almost zero and were well below the permitted limit
20 for bacteria on average.

21 Heavy metals in the treatment plant
22 effluent were found to be below detection limits or
23 present in concentrations substantially below state
24 water quality standards. With the exception of

1 copper, all of the detections were less than the
2 applicable water quality criteria for the protection
3 of wildlife.

4 Of 54 semi-volatile organic compounds
5 analyzed in the effluent, there was only a single
6 detection, and that was for BEHP, which is a
7 plastic.

8 The concentration of total PCBs in
9 the effluent was 425 picograms per liter, which is
10 well below DNREC's marine (inaudible) aquatic life
11 criteria of 30,000 picograms per liter.

12 The effluent would be rapidly diluted
13 into the ocean. The models calculated a dilution of
14 100 to one at 415 feet down current. And this would
15 occur in five weeks.

16 There is two other nearby ocean
17 outfalls at Bethany Beach and Ocean City, and they
18 have a lower level of treatment than what is being
19 proposed for Rehoboth Beach. And they have had
20 minimal impact on the environment there.

21 And the EPA study looked at those
22 outfalls and found that they did not have an affect
23 on the fish populations in the area.

24 So, in summary, the treated

1 wastewater from the plant receives a high level of
2 treatment and will have a minimal impact on the
3 ocean environment limited to a few hundred feet near
4 the outfall. Its removal from the relatively very
5 sensitive, very polluted, and slowly flushed
6 Rehoboth Bay will have instantaneous and substantial
7 water quality benefits. Thank you.

8 MR. HAYNES: How would you like that
9 marked? As the Center for Inland Bays Exhibit 1.

10 MR. BASON: Correct.

11 MR. HAYNES: It's so marked. The
12 next person is Diane Scobey? Diane Scobey?
13 S-C-O-B-E-Y. Not here? Okay. The next person
14 is -- this is interesting. He signed up yes and no.
15 So Jim Myers.

16 MR. MYERS: Tim Myers.

17 MR. HAYNES: Oh, Tim Myers. Okay.
18 That's why I like preregistration. I can read the
19 handwriting most of the time.

20 MR. MYERS: I wasn't going to do it,
21 but then --

22 MR. HAYNES: Well, you don't have to.

23 MR. MYERS: I have just a small thing
24 to say.

1 MR. HAYNES: Okay.

2 MR. MYERS: My concern more is with
3 the plan. Nobody has addressed the plant. We
4 haven't heard anything about the plant. There is
5 going to be upgrades to the plant. How about the
6 people working in the plant? Are they all -- I hate
7 to, you know, downgrade somebody, but are they
8 all -- are these engineers? Do they know that what
9 they are doing?

10 There are a million people that come
11 to the beach in the summertime. And if somebody
12 messes up -- I heard the guy from Sussex County
13 says, "Oh, it's covered." Well, is it covered? We
14 haven't heard how it's covered. They already had
15 two citations in the summertime -- one this summer
16 and one last summer. This could happen again. The
17 plant is only as good as the operator.

18 Hey, the two citations, the roof
19 caves in. Does DNREC, do they monitor this plant?
20 I hear bells and whistles. Okay? This 24-hour
21 bells -- it should be 24-hour bells and whistles.

22 I'm not assured. Nobody is
23 reassuring me. Hey, I live in Deauville Beach since
24 '63. I mean, I live right outside of the Town of

1 Rehoboth. I'm there. I ride my bike every day in
2 the summer. And I'm concerned.

3 I, you know, it may not wash back in
4 or may not bring it in. But nobody is reassuring us
5 that the plant is a viable place. And something
6 more has to be done to this plant other than putting
7 a new -- let's call it electrical equipment --
8 that's going to push the stuff through the bay.
9 It's not a flow; it's a push.

10 And if there is something in the
11 parking lot, hey, again that belongs to the State.
12 Rehoboth rents it.

13 So, then again, I'm just concerned
14 with the plant. And I would like to be reassured.
15 And I hope DNREC has looked into -- that they have
16 looked into the plant and they are positive there
17 can be no screw-ups coming out of that plant. Thank
18 you. (Applause)

19 MR. HAYNES: Thank you. All right.
20 I mean, you raise good points, and some of the other
21 comments about the enforcement side. That is part
22 of the environmental regulation, and it is something
23 that the Department takes very seriously. So,
24 although some of the enforcement action is taken

1 after -- it could be years of negotiation. And the
2 applicant will be required to continue to file the
3 discharge monitoring reports monthly, and that is
4 part of the overall department review of the
5 operations.

6 The next person that signed up to
7 speak is -- it's either -- I think it's Rick Kanar?
8 Kanore?

9 MR. KING: No. Rich King.

10 MR. HAYNES: Oh, okay. Why don't you
11 spell that for the court reporter.

12 MR. KING: K-I-N-G.

13 MR. HAYNES: Okay.

14 (Laughter in audience)

15 MR. KING: R-I-C-H is the first.

16 MR. HAYNES: Okay.

17 MR. KING: It's the year 2016. We're
18 still using outdated water treatment processes.
19 It's actually kind of mind boggling.

20 Four years ago, this thing didn't
21 exist, this little SmartPhone I have. I don't
22 understand why we don't have better technology, why
23 we are not forced to have better technology to make
24 cleaner water.

1 You can take something out of the
2 Army, and you shove it in a swamp, and they kill the
3 vile (inaudible).

4 But we don't do that with our own
5 outfall water. We just want to pump it out into the
6 ocean and forget about it. And we can't do that.
7 You need to pump it onto land and let those people
8 work on that. We need better technology to clean
9 it.

10 There is an outfall in Bethany Beach.
11 I run one of the largest fishing sites in Delaware,
12 probably on the east coast, with over 600,000,
13 readers. I haven't had one person on there tell me
14 there is a hot bite at the Bethany Outfall. And I
15 can guarantee you there never will be, unless you
16 use (inaudible)

17 So I just -- I'm 100 percent against
18 this without a doubt. I have written more letters
19 till my fingers are numb and my head is numb
20 pounding on the wall talking to everybody about
21 this, Rehoboth, DNREC, everybody.

22 I have got a question for the
23 audience. How many people in here fish? (Some
24 people raising hands) How many people in here who

1 fish don't want to see this outfall? (Some people
2 raising hands)

3 There is 325,000 fishermen who bought
4 licenses in the State of Delaware last year. There
5 is seven of you here. That's mind boggling.

6 How many Rehoboth business owners are
7 in here that are against this outfall? I don't see
8 one hand. That's a problem. You guys have a large
9 project that you need a lot of money to take, and
10 there are a lot of us out there that don't want this
11 to happen.

12 And the one way to fight this is to
13 fight it in the pocket, because I don't know any
14 other way to do it. We have written letters. We
15 have screamed. We have yelled. If this happens, we
16 will fight it in the pocket. That's all I have got
17 to say. Thanks.

18 (Applause)

19 MR. HAYNES: Thank you. The next
20 person signed up to speak is Donna Mabrey.

21 MS. MABREY: Hi. Thank you. I'm
22 Donna Mabrey, and I live full time in Rehoboth
23 Beach.

24 And I am confused by the argument

1 against the outfall. On the one hand, I hear that
2 the water quality is such that it would be harmful
3 to breeding animals; and, yet, then the idea is we
4 can spray that water on land where it would then be
5 a risk, I would think, to the humans and to food
6 stock.

7 So I guess that's what I am confused.
8 If it's not safe for the marine animals, how is it
9 safe for humans and for livestock?

10 Then, on the other hand, I also hear
11 argument that this is good water that shouldn't be
12 wasted, and that we are just wasting it by putting
13 it out in the ocean, that somehow this is good water
14 that can be used.

15 So that's confusing. It doesn't fit
16 the idea that it's dangerous to the marine.

17 And in looking at this and trying to
18 understand it, I sort of come to the realization
19 that the water going into the treatment plant is
20 sewage water, but it gets treated to a high degree,
21 and then it's essentially reclaimed water when it
22 comes out, and that most of the problems are
23 removed, and so, therefore, that it is safe for
24 either the ocean or the land application. So I

1 think that's the status of things.

2 And I think just because Rehoboth
3 happens to be close to the ocean, it just makes more
4 sense for us to discharge the water into the ocean
5 and that all efforts need to be made to try to do
6 this so that it will blend in with the existing
7 ocean environment.

8 And also my other concern with land
9 application is if it's applied on the land, it will
10 eventually get to the bay and eventually get to the
11 ocean. So putting it on the land doesn't stop it
12 from getting to the ocean, or it also runs the risk
13 that what doesn't go to the ocean gets into our
14 aquifers that are used for the water.

15 And I guess the other thing that I
16 hear is okay, new things have come out since this
17 was originally studied. And so I'm also hearing it
18 will be studied again, and while that study is going
19 on, there is always the risk there is new scientific
20 information.

21 So it seems to me there will be study
22 after study after study that will go on ad
23 infinitum. And at some point we have to say this is
24 enough, this is the best, this is safe enough to go

1 with it, and we go with it.

2 Otherwise, this goes on indefinitely.

3 And we are already dated by this going on so many
4 years already. And here we have the taxpayers who
5 have approved it, ready to pay for it. And it is
6 the Rehoboth taxpayers who are paying for it,
7 as well as those other communities whose water will
8 be processed by Rehoboth.

9 And I don't think, from what I have
10 heard here, that it's really a risk to us, that it's
11 treated well enough, and it's really not a risk to
12 us.

13 And, lastly, it seems like this water
14 has to go one of three places: It either goes in
15 the bay, the land, or the ocean. And it just seems
16 at this point that the ocean is just far better to
17 deal with this kind of material. It's far less
18 gradual than either the bay or the water getting
19 into causing a risk to humans and for livestock.
20 Thank you very much.

21 MR. HAYNES: Thank you. And that
22 concludes the persons who indicated they would like
23 to speak. And I know we have time restrictions on
24 this room, and we will have to vacate it.

1 But I do have on screen the public
2 comment period will remain open -- I have that
3 right -- December 2nd. And Mr. Schneider's e-mail,
4 contact for mailing, and preferable is his e-mail
5 address that's up there. So I urge you to take
6 advantage of that.

7 I thank you all for coming. A couple
8 comments I will address tonight concerning the
9 former DNREC secretary: He may have made comments,
10 but he did not make any decision. And he could have
11 made a decision. So, essentially, the Department
12 acts through its secretaries making a written
13 decision, and none was ever made by Secretary
14 O'Mara.

15 So thank you all for coming. And I
16 appreciate hearing your comments, and they will be
17 included in the record. Thank you.

18 (Concluded at 7:55 p.m.)

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1 CERTIFICATE

2 I, Lorena J. Hartnett, a Notary Public and
3 Registered Professional Reporter, do hereby certify
4 that the foregoing is an accurate and complete
5 transcription of the proceeding held at the time and
6 place stated herein, and that the said proceeding was
7 recorded by me and then reduced to typewriting under my
8 direction, and constitutes a true record of the
9 testimony given by said witnesses.

10 I further certify that I am not a relative,
11 employee, or attorney of any of the parties or a
12 relative or employee of either counsel, and that I am
13 in no way interested directly or indirectly in this
14 action.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my seal of office on this 28th day of
17 November 2016.

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Lorena J. Hartnett
Registered Professional Reporter