HOUSE LABOR RELATIONS COMMITTEE
PUBLIC HEARING

HAZARDOUS MATERIAL EMERGENCY PLANNING
and RESPONSE ACT

Thursday, May 15, 2008

Philadelphia, Pennsylvania

COMMITTEE MEMBERS PRESENT:

REPRESENTATIVE MICHAEL McGEEHAN, Chairman

REPRESENTATIVE JOHN P. SABATINA

REPRESENTATIVE FRANK SHIMKUS

HELD AT: Holmesburg Recreation Center
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REPRESENTATIVE McGEEHAN: Good morning. I want to call this meeting of the public hearing of the House Labor Relations Committee to order. We remind people that they should turn off their cell phones.

I want to remind those persons present and those who plan to testify that these are official proceedings of the House Labor Relations Committee. This is an official public meeting and that a transcript is being taken down by our Court Reporter. We thank her for her attendance.

I want to ask each of the individuals here to introduce themselves.

MR. NELSON: Eric Nelson.

REPRESENTATIVE SABATINA: State Representative John Sabatina.

MS. MANGANELLO: I'm Joanne Manganello. I work for the House Labor Relations Committee.

REPRESENTATIVE McGEEHAN: Thank you.

I want to begin by thanking Chairman Belfanti for agreeing to hold this hearing

on this important issue. I also want to thank the Department of Recreation, and specifically Kathy Muller for availing themselves in this facility to accommodate the Committee and the testifiers and those present.

We'll begin testimony by hearing from the Department of Labor and Industry, and specifically, Robert O'Brien, who is the executive deputy secretary of the Department of Labor and Industry, and Tom Ward, director of the Bureau of PennSafe. As you begin your testimony, please state your name, enunciate it clearly for the Court Reporter, and the agency or interest that you're representing.

Secretary O'Brien?

SECRETARY O'BRIEN: Good morning, Representative McGeehan, Representative Sabatina. My name is Robert O'Brien. I'm the Executive Deputy Secretary, Department of Labor and Industry. Joining me today is Mr. Tom Ward, who is the director of the Bureau of PennSafe, and also, not sitting at the table, but immediately to Tom's right is Kelly Smith, the Office of Chief Counsel, Deputy Chief Counsel.

I'm pleased to be here today to discuss the proposed amendments to the Hazardous Material Emergency Planning and Response Act. Currently, the Department of Labor and Industry, through its Bureau of PennSafe, acts as the data collector for reports of hazardous materials used, produced and stored in work sites throughout the Commonwealth. Our current role requires us to be the repository of various reports indicating the presence of hazardous materials.

Under current law, we have no authority to verify the accuracy of any report filed. In spite of this, the data that we collect is relied upon in the event of an emergency. As the agency responsible for collecting this data, we believe that it is responsible for us to have the authority to conduct occasional random spot inspections to determine that the information reported to us regarding the presence of hazardous chemicals is accurate. These inspections would consist of reviewing the records maintained by the facility and matching those records with the reports filed by the facility. Allowing the Department to verify the reliability of our data

will serve to ensure the safety of first responders in the event of an emergency.

Based upon our past experience with emergencies involving hazardous materials, the information that is reported to our Department is critical in the event of a fire or other disaster. Incomplete or inaccurate information places emergency responders, employees and the general public at risk. An example of such an incident occurred in November, 2006 with a chemical fire in Fairview Township, York County, which forced the evacuation of 300 workers at the Fairview Township Industrial Park.

In that instance, the process of responding to and dealing with the fire was delayed because the company involved had not reported chemicals that were on site. The importance of complete and accurate reporting is reinforced with every such incident that occurs.

It should be clarified that the program contemplated by the Department would not require inspections to be formed at predetermined intervals. Rather, it is our hope that through inspections and response to complaints and random

spot inspections we will increase voluntary compliance with the reporting requirements of the Hazardous Materials Emergency Planning and Response Act. This is a small enforcement tool that the Department hopes will result in increased compliance with these very important reporting requirements.

Of course, Labor and Industry employees would have to be qualified in accordance with Section 211(e) of the Hazardous Materials Emergency Planning and Response Act. We anticipate the cooperation of the Pennsylvania Emergency Management Council in developing the training necessary for our employees to be legally qualified to conduct spot checks to verify the data reported to us.

While the Department wholeheartedly supports the goal of the draft legislation proposed by Representative McGeehan, I do want to express our concern about one proposed amendment to the existing law. Section 303 of the Hazardous Materials Emergency Planning and Response Act currently vests discretion in the Office of Attorney General, the office of General Counsel, a

county or municipality to pursue civil action against anyone who fails to comply with the Act.

As drafted, the proposed legislation would amend this provision to require that a civil action be instituted for violations. This would open the Commonwealth up for frivolous litigation in the form of an action in mandamus whenever it declines to pursue a civil action for any reason. The current Act recognizes that there may be circumstances in which a civil action is not a prudent or a beneficial cause of action.

Alternatively, the Department proposes that Section 303 be amended to provide for criminal penalties in the form of a summary conviction and a fine for violations of the Act. Any fines collected for violations of the Act could then be used to fund enforcement activities.

I would like to end my testimony by emphasizing that the safe storage and handling of hazardous materials are a significant concern to the Department and that we are committed to doing our part to ensure that complete and accurate information is available in the event of an emergency. The safety of emergency responders,

workers and those in the community is significantly impacted by the availability of such information.

At this time, we will be happy to answer any questions that the distinguished members of the Committee may have.

REPRESENTATIVE McGEEHAN: Thank you very much, Mr. Secretary.

Can everyone hear clearly? There's a bit of -- the acoustics in this room aren't ideal.

Representative Sabatina?

REPRESENTATIVE SABATINA: Thank you, Representative.

I have a question in regards to the chemical fire in Fairview Township.

Because they did not report the chemicals that were on site, did they receive any sort of penalty, or fine, or reprimand, or anything to that effect?

MR. WARD: Not to my knowledge. The Department right now, at this time, we have no mechanism to do that.

REPRESENTATIVE SABATINA: Who does have the mechanism to do that?

MR. WARD: I believe the PEMA and the LEPC in that area.

REPRESENTATIVE SABATINA: Does your Department coordinate efforts or collaborate information with those departments?

MR. WARD: Yeah. We work hand in hand with the Pennsylvania Emergency Management Agency. And we will also work hand in hand with the LEPCs in the counties.

REPRESENTATIVE SABATINA: The other thing that I thought -- regarding to the criminal penalties for a summary conviction, just from my brief background in the Philadelphia DA's Office, a summary conviction, I think the maximum financial penalty for a summary conviction is $300, if I'm not mistaken. So I don't know how effective that would be on a corporation. I don't know what deterrent $300 would pose to someone who is noncompliant.

SECRETARY O'BRIEN: It is a maximum of $300. But on the other hand, we thought it was a more workable way of doing it.

REPRESENTATIVE SABATINA: Thank you.

REPRESENTATIVE McGEEHAN: Thank you, Representative Sabatina.

Mr. Secretary, if I'm correct in reading your testimony, currently you have no authority to verify or investigate safety complaints of the nature that Representative Sabatina talked about and others that have been widely reported in the press.

SECRETARY O'BRIEN: That is correct, Representative.

REPRESENTATIVE McGEEHAN: Now, if a complaint is received to your Department, and it's logical to me, being a longtime member of the House and of the Labor Relations Committee, that I would look to the Department of Labor because, obviously, there's workers in danger at these facilities if reports aren't being done correctly; that I would turn to the Department of Labor to investigate those complaints.

If you get a complaint, what do you do with it?

SECRETARY O'BRIEN: Well, right now, because we don't have the authority, the jurisdiction, we would pass that complaint on to

PEMA or the proper authority.

REPRESENTATIVE McGEEHAN: I know that PEMA is here and we'll be hearing from them, but I have some questions about the manpower and their investigative abilities.

But, obviously, you know, and I shared with you in the past my frustration that the power isn't seated in the Department of Labor and Industry to do these investigations.

Do you interface with OSHA in any of these dealings, and do they share incidents of complaints and their knowledge of particular chemical storage and use and other like things in the Commonwealth?

SECRETARY O'BRIEN: We requested that -- in 2007 we requested that OSHA look into the complaints that we have received. OSHA responded to us by saying that they had done a study in 2004 and they advised us that they received the complaint regarding Rohm and Haas in January, 2004. And at that time they reviewed the summary of the epidemiology study conducted by the company and it did not believe there was any need for any additional on-site investigation.

So yes, we did follow it up with OSHA, the complaints that we received in '07.

REPRESENTATIVE McGEEHAN: In your expertise as a longtime executive at the Department of Labor and Industry, has the incidence of these complaints gone up or down, and do you have any knowledge about OSHA's -- the frequency of these inspections and the like? My understanding is in Labor and Industry the local companies report to you about the hazardous materials that they have on-site.

How is that reported to you, and then what do you do with that information?

SECRETARY O'BRIEN: I will defer to Mr. Ward on that.

MR. WARD: Every facility, by law, is required to report the information and the storage locations and give us a map. We put that information on our Tier II Systemic Report electronically. We share that information with Pennsylvania Emergency Management Agency and with the BEIF (phonetic), if they need it.

We have no way of verifying the information, unless -- we do do a reconciliation

with the counties, but we have no other way of verifying that the information that is submitted to us are the chemicals that are exactly there. And we're not saying they're not, but what we want to do, our goal is to help employers, if they're not in compliance, to get in compliance. But also, we want to protect the first responders in the event that there's an emergency.

REPRESENTATIVE McGEEHAN: Does your Department currently have the ability to do investigative work? Now, I know, under your jurisdiction, you have prevailing wage investigations and most of them are complaint driven, obviously, by individuals.

Do you currently have an investigative capacity at Labor and Industry?

SECRETARY O'BRIEN: We have the ability to do this. We don't have the ability -- we don't have the jurisdiction and the authority right now to do it. But we believe in the Bureau of PennSafe that we have people that are trained that could conduct these -- could follow up on these complaints and could conduct these on-site spot checks. And also, if we were to discover

something, to do a proper investigation to get to the bottom of it and to find out why it was not reported and to see that it does get reported.

REPRESENTATIVE McGEEHAN: I'm not just talking about reporting requirements. I'm talking about specific complaints of the nature of the Rohm and Haas case in Spring House and the rest -- if a complaint came in to your Department and we gave you the authority to do that investigation, do you have the ability at this point to do that?

SECRETARY O'BRIEN: Yes. We believe we do.

REPRESENTATIVE McGEEHAN: Okay.

REPRESENTATIVE SABATINA: In regard to the spot checks, spot checks are not something that you have the authority to do; is that correct?

SECRETARY O'BRIEN: That is correct.

REPRESENTATIVE SABATINA: If you were to have the ability to do spot checks and you did catch someone storing something that they weren't supposed to, you do not have the penalty to

find -- do you have the power to penalize them?

SECRETARY O'BRIEN: Right now we have no authority or jurisdiction to do anything. That's why we believe that this is a good piece of the puzzle and a good additional tool in our toolbox to help us with the enforcement.

REPRESENTATIVE SABATINA: Thank you.

REPRESENTATIVE McGEEHAN: And I have an additional follow-up.

Bob, how many complaints do you get a year?

I mean, do you keep a record?

SECRETARY O'BRIEN: Concerning this type of thing?

REPRESENTATIVE McGEEHAN: Yes.

MR. WARD: Most of the complaints we get are from counties looking for our assistance. But as we said, we have no mechanism to assist them because we have no enforcement capabilities.

REPRESENTATIVE McGEEHAN: Let me ask you a loaded question, then.

Would you welcome the authority

to investigate these kind of complaints, if the Legislature saw fit to give you that authority?

SECRETARY O'BRIEN: Yes, we would.

REPRESENTATIVE McGEEHAN: Well, it's my estimation, editorially, and I have read extensively on this subject and looking at the incidents of OSHA investigations, and they have gone down precipitously during this administration, my concern is that you folks in the Pennsylvania Department of Labor and Industry have a much better handle on what is going on in our own backyards then the federal agency would. And I certainly would advocate to my colleagues that we give you that authority to do those type of investigations. And I'm glad that you and the Department welcome that authority.

SECRETARY O'BRIEN: Yes, we will.

REPRESENTATIVE McGEEHAN: Thanks very much.

Are there any other questions? Thank you, Mr. Secretary. Thank you, Mr. Ward.

SECRETARY O'BRIEN: Thank you.

REPRESENTATIVE McGEEHAN: Next,

may we have Henry Tamanini? He is the technological hazards supervisor, Pennsylvania Emergency Management Agency, PEMA.

Would you state your name and your title for the Court Reporter?

MR. HUDOCK: It's Vincent Hudock, H-U-D-O-C-K, and I'm with PEMA, also. I'm the legislative liaison.

MR. TAMANINI: My name is Henry Tamanini, T-A-M-A-N-I-N-I. And Representative McGeehan, Representative Sabatina, the House Labor Relations Committee, as mentioned, my name is Henry Tamanini and I am the Technological Hazards Supervisor for the Pennsylvania Emergency Management Agency. Hereinafter we'll refer to that as PEMA. On behalf of PEMA director, Robert P. French, and deputy director, Richard Flinn, I welcome this opportunity to discuss the Commonwealth's hazardous materials safety program with you.

The state-wide hazardous materials safety program was established by the passage of Act 1990-165 and then amended by Act 2000-121. This legislation is commonly referred to

as the Hazardous Material Emergency Planning and Response Act or Act 165. The purpose of the Hazardous Materials Planning and Response Act is to create and foster a strong working relationship and partnership between business and industry and the Commonwealth and its municipalities in order to protect and safeguard the citizens of the Commonwealth from health hazards and other risks of harm resulting from use, storage, distribution and transportation of hazardous substances.

The Pennsylvania Emergency Management Council is designated and serves as the Commonwealth's emergency response commission to carry out these responsibilities as assigned by the Superfund Amendments Reauthorization Act, commonly referred to as SARA Title III; also to develop overall policy and direction for the state-wide hazardous materials safety program and to supervise and coordinate the responsibilities of the Local Emergency Planning Committees, often referred to as LEPCs.

The Council has assigned primarily responsibility, as previously stated, to the Department of Labor and Industry for receiving,

processing and managing hazardous chemical information forms and data, trade secrets and public information requests under the Act and in coordination with the Worker and Community Right-to-Know Act. The Council has also assigned responsibility to the Department of Environmental Protection and the Department of Health for providing technical assistance and advice with regard to alleviation of public health and environmental hazards associated with hazardous materials releases or threatened releases of hazardous materials, including the dispatch of emergency response personnel to accident sites during emergency situations when so requested by PEMA.

The Act also stipulates that at least one Local Emergency Planning Committee, LEPC, is to be established in each county. The composition of each LEPC is detailed within the Hazardous Materials Emergency Planning and Response Act. The LEPC is subject to the supervision of the Emergency Management Council and cooperates with the county emergency management agency and the SARA facilities to prepare the required off site

emergency response plans. Members of the LEPC are appointed by the Emergency Management Council from nominees submitted by the governing body of the county. LEPCs have been established in each of the 67 counties of this Commonwealth.

Whenever the LEPC suspects that a facility or a vehicle owner or operator has failed to comply with the provisions of SARA Title III and Act 165, the LEPC is authorized, by Section 211 of Act 165, to send one or more qualified representative to the facility or vehicle to obtain any information which may be necessary for emergency planning response purposes.

When a facility is suspected of failing to comply with the reporting requirements, the county LEPC utilizes routine procedures for obtaining information from the facility. If necessary, the LEPC will send a certified letter to the facility owner or operator requesting a meeting to discuss the facility's suspected noncompliance.

If the second attempt fails to produce results or if a meeting is held but the information is not provided by the facility owner/operator to, say, satisfy the requirements of

Act 165, then the LEPC should instruct the LEPC inspector to conduct an inspection of the facility.

Under Act 165, PEMA is responsible for providing guidance to the LEPCs and for establishing the training standards certification program for the hazardous materials response teams. To this end, PEMA has issued directives and circulars related to the Hazardous Material Emergency Planning and Response Act. Some of these include directive 2000-5, which establishes the standards and prescribes procedures for the conduct of facility and vehicle hazardous material inspections as authorized by Section 211 of the Hazardous Material Emergency Planning and Response Act.

Directive 2004-1 addresses the Hazardous Material Team Certification Process, including training requirements, personal protective equipment, medical surveillance program for the team members and the drill and exercise program.

Directive 2001-2 prescribes procedures for the preparation and review of the county chemical emergency off-site response plans,

including both initial and annual reviews and the maintenance of the state SARA facility data base.

Circular 2000-4 provides guidance and enforcement of the Hazardous Material Emergency Planning and Response Act.

Act 165 also established two funds related to the hazardous materials program. The first resides at the county level and is known as the Hazardous Material Emergency Response Account. The second fund resides at the state level and is known as the Hazardous Material Response Fund. The county fund consists of chemical and planning fees paid by the facility to the county. The dollar value is set by county ordinance. In 2006, the counties collected a total of 2.9 million dollars through this process.

The state Hazardous Material Response Fund is a restricted account used to carry out the purposes, goals and objectives of SARA Title III and the Commonwealth's hazardous materials safety program. It consists of a $10 fee for each chemical on the Tier II reports paid by the owners and operators of chemical facilities to the state by March 1st of each year, plus a $250

fee for each toxic chemical which is required by Section 313 of SARA Title III.

The state-level fund also receives revenue generated by civil penalties and fines, along with any funds appropriated by the General Assembly. The state fund is used for costs related to training, public and facility owner education, information and preparation programs, general administration and operational expenses of the Act. It also provides supplements to local programs.

The Pennsylvania Department of Labor and Industry, the Bureau of PennSafe, is the recipient of the Tier II reports and the facility fees submitted to the state Hazardous Materials Response Fund. Monies in the fund, with accumulated interest, are appropriated annually to PEMA for disbursement. The Act directs PEMA to administer and allocate monies to the state's program as follows: Up to 10 percent may be expended for training programs. Up to 10 percent may be expended for public and facility owner education. Ten percent may be expended for general administration and operational expenses of the

Act. And the remaining 70 percent is used as grants to support the activities at the county level under this Act. On an annual basis, the grants to the counties total $824,000. In 2006 we understand that Labor and Industry collected approximately one point five million dollars from the Tier II process.

Each county is required to submit an annual report of its hazardous material emergency response and preparedness to PEMA. The report is based upon the requirements of Act 165 and includes an evaluation of the hazardous material threat to the county from both fixed and transportation sources, along with an assessment of the county's ability and capability to respond to hazardous materials incidents.

The county also addresses the short and long-term administrative and financial plan to maintain and improve the chemical safety program and the response capabilities and unmet needs of the hazardous materials program. The individual county reports and the grant applications are reviewed by PEMA as the primary agent of the Emergency Management Council.

In December, 2006 the Department of Labor and Industry implemented a new web-based system, which allows facilities to electronically submit or update their annual Tier II reports, submit five day initial reports and upload supplemental files, such as site plans and material safety data sheets. The data is accessible by the facility and also by PEMA in order to have information for emergency responders on a 24-hour per day period. PEMA and the Department of Labor and Industry have discussed potential funding for enhancements to this system.

In closing, the purpose of the Hazardous Materials Planning and Response Act is to create and foster strong working relationship and partnership between business and industry and the Commonwealth and its municipalities in order to protect and safeguard the citizens of the Commonwealth from health hazards and other risks of harm resulting from the use, storage and distribution and transportation of hazardous substances.

December, 2006 marked the thirteenth anniversary of no responder deaths

attributed to off-site releases of hazardous materials in Pennsylvania. This is a significant achievement, considering the high threat of this in the Commonwealth. The success we feel is due to industry and responder awareness and preparedness attributable to planning and training at the local and state levels.

At this point PEMA does not have any reason to believe, nor evidence to indicate, that the vast majority of chemical owners and operators have been intentionally violating the provisions of the hazardous materials safety program and law. PEMA has requested information from the Local Emergency Planning Committees, the LEPCs, with regard to the number of inspections conducted. We understand that where violations have occurred, most have been due to a lack of education or information regarding the reporting requirements.

As of May 1st, 2008, a total of 3,246 plans are required state-wide. The LEPCs have received and have reviewed 3,217 of those to date.

Thank you for the opportunity to

provide this testimony.

REPRESENTATIVE McGEEHAN:

Representative Sabatina?

REPRESENTATIVE SABATINA: Thank you.

Thank you for your testimony and for your appearance today. A couple of questions I have regarding the Department of Labor and Industry, the first testifier, is Deputy Secretary said he refers complaints to PEMA.

How many complaints do you receive, and what do you do with the complaints, as far as investigation?

MR. HUDOCK: Yes, sir. I would like to preface my response by saying that I have been in this current position for approximately two years. To the best of my knowledge, I have not received any complaints in this regard. I have received an item that asked for comment from our State Fire Commissioner's Office and I have responded to that.

REPRESENTATIVE SABATINA: I guess my question next would be the policy of PEMA regarding any tips or complaints, how do they react

to a tip or a complaint?

MR. HUDOCK: Yes, sir. We would refer that down to the Local Emergency Planning Committee. And conversely, if the Local Emergency Planning Committee would come to us, then we would talk with Labor and Industry, the Department of Environmental Protection. And the one directive that I mentioned spells out the process for actually conducting that inspection, and it requires responsibility and knowledgeable individuals to make that inspection. And we would specifically ask a representative of Labor and Industry, and also a representative of the Department of Environmental Protection to be involved in that process.

REPRESENTATIVE SABATINA: If you were to come across a tip that was substantiated by evidence of wrongdoing, or wrongful storage, or something of that effect, what penalties or what -- I guess what deterrents does PEMA have available to it to deter that company from doing such in the future?

MR. HUDOCK: Yes, sir. In accordance with the law, we would be involved in

the investigation and then provide the information to the Office of the Attorney General for appropriate process.

REPRESENTATIVE SABATINA: So PEMA, itself, does not have any enforcement powers?

MR. HUDOCK: We are currently going through a rewrite of Title 35, which is the Emergency Management Services Code. We do not have an enforcement section at this point in time. Depending on passage of that bill, that's something that we are looking at. But presently, we don't have an enforcement section.

REPRESENTATIVE SABATINA: Thank you.

On page four of your testimony there are fees assessed for chemicals on Tier II and a $250 fee for each toxic chemical.

My question is: When were these fees established, I guess in year basis, and when is the last time they were adjusted, if you know?

MR. HUDOCK: I believe these were a part of Act 165, 1990 and then the amendment in 2000. But to the best of my recollection, the 2000 amendment made some changes, not to fees, but to

language dealing with the Department of Environmental Protection when it was separated into two separate entities.

REPRESENTATIVE SABATINA: So, basically, these fees were established in 1990 and haven't been adjusted for inflation?

MR. HUDOCK: That is my understanding. I can further research that and get back to you, sir.

REPRESENTATIVE SABATINA: Okay.

My final question is: The same page, page four, at the second paragraph towards the bottom. PEMA administers and allocates monies to the state's HMRF. The last sentence says that the remaining 70 percent is used as grants to support the activities of the counties under the Act.

Could you elaborate on that and be more specific as to what that money goes to do?

MR. HUDOCK: Yes, sir. Each county is given an opportunity to apply for a grant via Pennsylvania Emergency Management Agency, and those grants are used specifically for the hazardous materials program. Many of the counties

use those to assist with the operation of their hazardous materials response teams or with other elements of the hazardous program in their county.

I believe that not as a part of the testimony but as handout material the 2006 annual report had been provided, and on page 40, four, zero, you will find a table. It's printed horizontally, the sixth column from the left, it's called a match grant for 2006. And I'm sorry, that begins on page 39, my apologies, 39 and 40, and that delineates the amount of grant monies that have been actually allocated to the counties based on that request. The grant formula is based upon population, amount of threat in the county and other similar elements.

We also reviewed the grant application and make sure that the items that are being requested are, indeed, appropriate for the program. It is also possible for a county to, shall we say, escrow some of those monies for extra time periods in order to make a large purchase. Such a purchase would be a hazardous materials response vehicle that may cost many thousands of dollars.

REPRESENTATIVE SABATINA: Thank you very much.

REPRESENTATIVE McGEEHAN: Thank you, Representative Sabatina. I want to acknowledge the presence of Representative Shimkus from Lackawanna County. In case anyone doesn't know, that's by Scranton. He's come a long way. And thank you for your attendance, Representative, for this important hearing.

Good morning, gentlemen. I have a few questions to follow up to Representative Sabatina's inquiries.

You had said, Mr. Tamanini, that there has been no complaints received in the two years that you have been at the Agency; is that correct?

MR. HUDOCK: Yes, sir.

REPRESENTATIVE McGEEHAN: Is your investigative experience based on complaints, or are you actively doing inspections of chemical -- those that use chemicals throughout the Commonwealth?

MR. HUDOCK: The Pennsylvania Emergency Management Agency is not actively doing

the inspections; however, the Local Emergency Planning Committees are. And I have talked personally with a variety of those LEPCs, and it does vary from LEPC to LEPC, but they do an annual review of the required site plans, and some of the counties are bringing the reporting agencies or chemical operators into a meeting and they review the plan, top to bottom, on an annual basis.

I am awaiting information from some of the other LEPCs as to actual investigations. But I do have some data. In Western Pennsylvania, for instance, I know that in 2007 they have conducted on-site site assistance visits, inspections at a number of their facilities. Also, the same has happened in Eastern Pennsylvania.

REPRESENTATIVE McGEEHAN: Were they complaint driven?

MR. HUDOCK: I do not know that they are complaint driven. I do not have that answer. I will get back to you.

REPRESENTATIVE McGEEHAN: I know that PEMA -- and you've enunciated your responsibilities under the law. And I'm wondering

about your capacity to investigate complaints that come into the Agency, if they do, and whether you, then, inform the locals to do the investigation.

Do you do the investigations yourself, or are you dependent on local Fire Department or others to do the investigation in that particular locality?

MR. HUDOCK: Yes, sir. We would notify the Local Emergency Planning Committee to go through their process, which is driven by our directive, in order to do that investigation. If they would be reluctant, reticent or feel uncomfortable in doing so, they would tell us and then we would formulate a committee under the auspices of the Emergency Management Council under PEMA to go ahead and conduct that investigation.

REPRESENTATIVE McGEEHAN: What expertise do these investigators have?

Are there specific investigators that PEMA has and they are -- what kind of background do these investigators have in chemical exposure and the like to adequately conduct a thorough investigation?

MR. HUDOCK: Yes, sir. Those who

are considered to be qualified include an LEPC member who has an extensive educational background, training and/or experience.

REPRESENTATIVE McGEEHAN: LEPC are local people, not PEMA?

MR. HUDOCK: That is correct.

REPRESENTATIVE McGEEHAN: They're not PEMA employees?

MR. HUDOCK: That is correct.

REPRESENTATIVE McGEEHAN: You have no investigators in PEMA?

MR. HUDOCK: That is correct, at the current time.

REPRESENTATIVE McGEEHAN: L & I is telling us that it falls within your jurisdiction, yet you don't have any investigator to carry out investigations if we gave it to you.

MR. HUDOCK: Correct. We do not have any investigators at this time.

REPRESENTATIVE McGEEHAN: That's troubling. I know that you have the authority to investigate, and again, that's a word that we're going to hear a lot, I guess, today, relates to storage to reporting and threats to the general

public. God forbid there's an explosion, there's a fire -- local fire departments and emergency responders need to know what chemicals are in a particular facility at any given time.

How often are they updated?

MR. HUDOCK: On an annual basis.

REPRESENTATIVE McGEEHAN: Are there break outs for different chemicals?

Say there are known cancer-causing agents, are they broken out?

Are there specific categories of chemicals that you put into different classifications?

MR. HUDOCK: Sir, my understanding is if it is a reportable chemical under Tier II, that it is reported on that list. I'm not aware of it being --

REPRESENTATIVE McGEEHAN: I don't understand Tier II. I'm a layman.

What are Tier II classifications?

MR. HUDOCK: The Environmental Protection Agency has established a list of extremely hazardous substances and chemicals that require the reporting process. There are

approximately 200 -- slightly less than 200 chemicals, as I understand it, that are on that list.

REPRESENTATIVE McGEEHAN: If a complaint of the nature of what has been widely reported in the press of the Rohm and Haas Spring House case, you have the authority, again, to investigate the storage, reporting and threats to general public.

Do you have the authority to investigate threats to individuals' health or who are handling any particular chemical anywhere in the Commonwealth?

MR. HUDOCK: Sir, my understanding is that with the emergency planning item it is the off-site area, in other words, the responders and those who are outside. The inside of the facility would, in my understanding, come under the community and worker right-to-know perspective.

REPRESENTATIVE McGEEHAN: Within the Department of Labor and Industry?

MR. HUDOCK: That is correct.

REPRESENTATIVE McGEEHAN: Well,

Labor and Industry is telling me it's your job. You're telling me it's Labor and Industry's job.

MR. HUDOCK: If we would receive a report or an item regarding a chemical as possibly not being reported or something along those lines, as I mentioned earlier, we would talk with Labor and Industry. And in terms of specific health effects, we would turn to the Department of Environmental Protection for environmental aspects and also to the Department of Health for health-related items and epidemiology.

REPRESENTATIVE McGEEHAN: Well, we're going to hear from the Department of Environmental Protection, and hopefully, they may shed some light on this.

The specific changes you're looking to add authority to your agency under Title 35, do they, in any way, enhance your ability to investigate county-wide problems, and in this particular instance, these specific problems to individuals?

What kind of change are you looking to Title 35, and how can we, as a committee and the House, help you address the kind of things

that are being raised today?

MR. HUDOCK: Well, at this point, with regards to rewrite of Title 35, obviously, it's in the initial stages so it may take some time until that legislation passed. That said, with regards to PEMA's programs, they all tend to be driven at a local level, as far as first responders, things of that sort. So we work in more of a coordination role with them, oftentimes. But, obviously, our charge with certain responsibilities, looking at the additional add-ons in Title 35 and doing a comprehensive review of the Agency to see whether enforcement section makes sense, it probably does, and then target particular areas of oversight that we need to address.

REPRESENTATIVE McGEEHAN: Well, I'm frustrated, and I think I speak for my colleagues, that so far we haven't found any agency in the State that has the ability to investigate the kind of problems that have been enunciated in press reports, and that's frustrating to me. And I understand your jurisdiction. You can only do what you're charged with under the law. So I think that that begs the question what we need to do to change

the law to give you both, agencies and the State, greater power to protect not only the general health but individual health from workers from dangerous chemicals.

MR. HUDOCK: We tend to be a very collaborative agency. For example, with DEP on flooding issues, we work with them on a number of things. And the same thing with a situation like this with L & I, we'd like to have a collaborative effort with them to do what makes sense for the Commonwealth and the workers.

REPRESENTATIVE McGEEHAN: I'm not beating you up. I think that you do a wonderful job, and your job is much broader than dealing with individual cases. I think we need to find an appropriate agency in the State that we can vest authority to do the kind of things that I think we all want to see done.

So if there are no other questions, Representative?

REPRESENTATIVE SHIMKUS: In your report here, in the Incident Summary Report by county -- I'm just listening here for the last ten minutes and I'm seeing just levels of bureaucracy

here. And there's one that catches my eye. I see we have severe weather and we have ground spring, civil disorder, but then there's a very significant number of terrorist activity reports.

And I'm just wondering what is that, how do we respond? I mean, the number in the category of summaries is scary. It's in the top five. And if we have levels of bureaucracy, I'm wondering how PEMA gets involved in that and how we're dealing with that.

MR. HUDOCK: Yes, sir. What you're referring to in the booklet is the list of incidents that have occurred over the period of a calendar year. And those are taken from our reporting system. We have a 24-hour, seven day a week watch officer group in the Pennsylvania Emergency Management Agency. And as an incident comes in, it gets classified as to the type. If it's a transportation incident or, as you mentioned, terrorist activity, that category, I'm not 100 percent knowledgeable of, but I do know that that particular category includes items, such as bomb threats, a weapon, perhaps that may be suspected to have been brought to a workplace or a

school facility. And I believe that certain types of fireworks also fall into that category.

REPRESENTATIVE SHIMKUS: But by the time it gets to you -- I mean, if there's a bomb threat at a chemical plant, or a refinery or something, it goes immediately to the com center, then would it would go to the local police, and then it would go to the State Police.

By the time it gets to you, then what do you do, just put it in a file and say: We hope that some day we'll have investigative authority?

I mean, what happens then?

MR. HUDOCK: If I can just clarify one thing with regards to that reporting incident, it does come in and gets classified. For example, if at a train station there are a couple of bags there, it's likely to be reported through the PEMA system that there's potential terrorist activity and when it's investigated, finding out if it really is bags. It's not really an actual terrorist activity. So those numbers, depending on what the incident is, may not be clearly reflective of what happened.

REPRESENTATIVE SHIMKUS:

Understood. But just that last question, okay, if there were 400, 596 incidents reported in a calendar year and they ultimately come to PEMA, and one out of 596 is legitimate, how does it get investigated?

What happens at that point?

MR. HUDOCK: Sir, when items like this or other types of categories come in, the appropriate people within PEMA, within the Office of Homeland Security and the various state agencies are notified. So on those types of items, and we're all carrying pagers, we're notified of those when they come in.

REPRESENTATIVE SHIMKUS: Thank you, Mr. Chairman.

REPRESENTATIVE McGEEHAN: Thank you, Representative Shimkus. And thank you, gentlemen, for being here today and offering your testimony. We look forward to working with you in the future to strengthening your role in the Commonwealth.

We'll next hear from the Department of Environmental protection, Kerry Leib,

the director.

Good morning, Mr. Director.

Would you please state your name and the agency you're representing?

MR. LEIB: Good morning. My name is Kerry Leib. That's K-E-R-R-Y, L-E-I-B, as in boy. I'm the Director of Environmental Emergency Response for the Department of Environmental Protection.

Representative McGeehan, Representative Sabatina, and Representative Shimkus, thank you for this opportunity. And thank the Chairman Belfanti and Chairman DiGirolamo for us for inviting the Department of Environmental Protection to participate in today's hearing.

Ensuring proper standards and procedures are in place to manage and dispose of hazardous substances and materials is important to protecting the public's health and safety, as well as the quality of our environment.

A number of existing federal and state statutes guide the Department of Environmental Protection's responsibilities in providing emergency response and administering

regulatory requirements that require emergency planning. In addition, some of these same laws and regulations directed at other similar programs be implemented and managed by other agencies at the federal, state and local levels.

Of those programs managed by the federal government, many fall under the jurisdiction of the U.S. Environmental Protection Agency, the Department of Homeland Security and the Occupational Health and Safety Administration. In Pennsylvania, programs pertaining to emergency response or hazardous material management are managed by DEP, the Department of Labor and Industry and the Pennsylvania Emergency Management Agency.

Many of DEP's administered programs require regulated facilities to develop and implement hazardous material emergency prevention and response plans. DEP's authority with regards to responding to emergencies involving hazardous materials is most clearly delineated in the Hazardous Sites Cleanup Act, or HSCA. The HSCA legislation requires DEP to provide for emergency response capability for spills, accidents and other

releases of hazardous substances and contaminants, and gives DEP the authority to take any action deemed necessary or appropriate in order to protect the public health and safety or the environment from a hazardous materials release or the threat of such a release. The Department also responds and provides technical advice during hazardous materials emergencies by the Hazardous Material Emergency Response and Protection Act.

In its current draft, House Bill 370 would amend the Hazardous Material Emergency Planning and Response Act to require the review of existing training and equipment standards so to ensure regional hazardous material organizations are prepared to respond to biological and chemical emergencies that are a result of terrorism. Responding to emergency incidents of this nature could involve substantially different skills and resources than the Department and other hazardous material organizations possess at this time.

For example, these incidents could involve significant injuries that require emergency medical services or present circumstances where additional training and equipment would be

needed to decontaminate and monitor exposure levels. DEP feels this is a subject worthy of further consideration and stands ready to work with this Committee and the entire General Assembly to further develop this legislation in order to maximize its effectiveness, while eliminating redundancies in areas where similar protocols and procedures exist.

DEP's emergency response program falls under the supervision of the director of environmental emergency response. The incumbent in this position in the event of an emergency situation is empowered with the full authority of the secretary of environmental protection when responding to emergency situations.

In each of DEP's six regional offices, a regional emergency response program manager leads an emergency response program. The regional ERPM has the full authority of the regional director in responding to emergency situations. The regional program is staffed in addition to the ERPM by a full-time assistant ERPM and a part-time staff of DEP specialists who normally work in other program areas. These teams

consist of ten to 17 members who are trained in personal protection and safety, environmental sampling, containment and control and have authority to issue field orders to enforce regulations. In 2006 the Department responded to 2,074 incidents. Six of these incidents were identified as terrorism.

Regardless of whether it is the regional office or central office level, the emergency response program is committed to having management personnel available around the clock to receive notifications in the event of pollution incidents and environmental emergencies. The program has emergency response team members available to respond on-site whenever there is an immediate threat to the public health, safety or the environment.

While the Department's emergency response primarily focuses on responding to spills on land or water, DEP is also significantly involved in air pollution incidents, either from a fire or industrial or transportation-related release and leaking underground storage tanks. The program may become involved in a limited number of

incidents involving public water supply shortages or contamination, mining-related discharges, oil and gas production-related discharges, abandoned explosives and food or waterborne illness outbreaks. Additionally, the program has a role in respond situations involving radioactive materials and participates in nuclear facility drills and incidents.

Finally, while not a direct responsibility, the emergency response program is notified and helps to coordinate work associated with deep mine rescues and dam safety. When responding to an emergency incident, DEP's core mission is to protect and restore the natural environment and protect public health and safety. To that end, teams work to provide assistance to the first responders and ensure DEP regulations are met. DEP's teams maintain level B personal protection, which includes self-contained breathing apparatus, spill response suits, gloves, boots, and DEP personnel are also equipped with portable equipment to monitor the exposure of team members and other first responders and assess the potential exposure of the public and sampling equipment to

assess environmental consequences of the incident.

In the event that a DEP team is the first on scene, personnel also carry supplies of absorbent material. Team members can enforce DEP regulations on scene and the regional ERPM is authorized to enter into any emergency contracts for whatever action is needed to protect the public health, safety or the environment.

Three laws require DEP to be notified of a spill or release to the environment. The Pennsylvania Clean Streams Law requires that when any pollutant is discharged into surface or ground water, including sewers, drains and ditches, the person or entity spilling the substance or owning the premises from where the substance was spilled must notify the Department immediately. There is no reportable quantity to trigger this requirement and practically all substances are reportable.

The Solid Waste Act requires that the Department be notified immediately if there is a hazardous waste spill that effects surface water or ground water regardless of amount. The responsibility to report the spill may apply to the

solid waste generator or transporter. If there is no effect on water, the amount spilled must still be reported to DEP, if the quantity exceeds the reportable quantity. While the state RQs are fairly complex, those responsible for making such a report, DEP suggests that all hazardous waste spills greater than five gallons be reported.

The Pennsylvania Storage Tank Act requires releases from underground and above ground storage tanks be reported to the Department by the owner or operator.

Note that the regulatory requirement to report a release to DEP is on the person responsible for the discharge. It is not on the emergency response community. In the event of water runoff from firefighting activities, the fire company is technically responsible for the discharge. For this reason DEP asks to be notified when firefighting activities may have an effect on a stream. However, regardless of the regulatory requirement, voluntary reporting to the Department is encouraged in the following situations by the incident commander: All spills in excess of five gallons, any hazardous material. All petroleum

spills of five gallons or more with potential to pollute. Air pollution incidents where there may be a release of toxic materials or where smoke from a fire may create a public nuisance; incidents which involve illegal or improper disposal of any material.

DEP encourages notification to be made to the appropriate regional office, although the Department maintains a state-wide toll-free number, 1-800-541-2050, to serve as an additional reporting resource for those who do not know which regional office is responsible for a particular area.

In general, all costs associated with DEP's response to an incident and the spills cleanup are the responsibility of the party that spilled the substance. This includes any costs associated with the proper disposal of any waste. The property on which hazardous materials are located could be considered a responsible party under state law; therefore, it is not advisable for first responders to remove waste materials from the scene of an incident, unless they plan to arrange for and pay for ultimate disposal.

Furthermore, if the material in question is a hazardous waste, it may not be legally transported by anyone other than a DEP licensed hazardous waste transporter. In situations where a hazardous waste must be removed immediately, DEP can issue an emergency permit to transport the waste to a more secure location. As a practical matter, DEP's procedures allow for an emergency contract to be put in place when there is an eminent threat to the public health, safety or the environment. If a material is overpacked and secured by another agency, it generally removes the immediate threat and makes it more difficult for DEP to assist in a later disposal action. Consequently, it is recommended that DEP be notified of these potential situations as early as possible during the incident.

First responders must also take into account liability under the Federal Comprehensive Environmental Response Compensation and Liability Act, commonly known as Superfund, and HSCA. And HSCA is also a concern, too, in arranging for disposal. For a licensed transporter to haul waste, someone must sign a

manifest as the generator. The danger in doing so is that the generator assumes the risk for all future disposals. If any problems develop at the disposal site, the generator can be held liable for the clean-up costs. EPA has already gone back more than 100 years to find responsible parties.

Even if disposal was conducted in accordance with all appropriate regulations at the time, it is not -- with all appropriate regulations at the time is not a factor in assessing clean-up costs. The laws that limit liability for first responders do not cover this particular liability. Only DEP and its contractors are exempted from HSCA liability. Consequently, DEP recommends that emergency service organizations not take on this potential liability. After determining that a particular situation poses a significant threat to the public or to the environment, DEP or its contractors will arrange for material disposal when there is no viable responsible party.

It has not been uncommon in past years for spilled materials to be flushed into a storm sewer or roadside ditch. Fortunately, with the growing environmental awareness among the

public, this practice has become much less prevalent in recent years.

Purposely placing any pollutant into the Commonwealth's waters is a violation of the Clean Streams Law, and first responders should refrain from this practice. However, when flushing a highly flammable product is necessary to prevent or substantially reduce the threat to human life, DEP should be contacted. Certain spilled chemicals can be neutralized or in some other fashion made sufficiently harmless. Certain acids, which although they may have been neutralized, can still contain highly-toxic metals and must be disposed of as hazardous waste. It is recommended that DEP be consulted prior to any attempt to flush a spilled material.

A number of vendors sell dispersants, emulsifiers or other materials that claim to neutralize hydrocarbon products, allowing them to be flushed into any nearby stream. DEP is unaware of any material which can make hydrocarbon safe for flushing into a stream and will not approve these products to be discharged to the waters of the Commonwealth.

In general, DEP should be consulted before any attempts to treat or dispose of any spilled material, unless immediate action is necessary due to health and safety concerns. However, notification to DEP should be made as soon as possible after the actions are taken.

DEP's emergency response program is committed to providing whatever assistance it can to first responders at emergency situations. While one of the mandated tasks is to protect the environment, this always will be a secondary consideration to the health and safety of the public or the incident responders.

Just as DEP recognizes the jurisdictional authority of local responders in protecting the health and safety of their citizens, the Department expects that local personnel will recognize DEP's jurisdiction in situations that involve hazardous waste, contamination of the environment or a member of the regulated community. DEP supports the concept of a unified command system that involves all agencies that have a jurisdictional responsibility for any aspect of the incident.

By working together, a dangerous situation can be handled quickly and responsibly to minimize the threats to the public or to the environment.

Again, thank you very much, members of the Committee, and thanks to Chairman Belfanti and Chairman DiGirolamo for having us here today. I would be happy to answer any questions you have at this time.

REPRESENTATIVE McGEEHAN: Thank you very much, Mr. Leib, for your testimony.

Are there any questions?

REPRESENTATIVE SABATINA: Thank you, Mr. Leib. Just listening to your testimony, it seems that the DEP handles most of their incidents after it happens.

Is there any proactive steps that DEP takes or is involved with to prevent, and I'm sure there are, but to prevent -- the before, rather than dealing with the mess afterwards?

MR. LEIB: Representative Sabatina, there is -- the best way to put this is that the Department of Environmental Protection has been given the authority, the jurisdiction to

regulate waste. But when we're talking about in plant before it's used, before it's considered a waste, we have no authority over that.

What we do is we have inspectors in our Waste Management program who are constantly out at these sites inspecting how they handle and store, treat, dispose of their hazardous wastes. But how they store, or what they use, or what the process is in the plant before it becomes a waste is outside of our purview.

So we have people who are everyday out at the types of plants that we're talking about, the facilities that we're talking about to inspect air emissions, water treatment plants, industrial treatment plants, solid hazardous waste and municipal waste and things like that, how they're doing, how well they're controlling that. But when it comes to the chemical room, the process line, things like that, we have no jurisdiction there.

I will tell you, though, that most of our folks have made hundreds of suggestions to facility owners, prefacing it by saying: We don't regulate this, but I would suggest that you

not, for instance, store those two side-by-side, or something like that.

REPRESENTATIVE SABATINA: That leads to my second question. You do have investigators that do visit these different sites just in the way they store chemicals and the way the plants operate.

Besides suggesting or asking nicely, is there any power that DEP has to enforce, or something more strongly than suggest to these plants on how they conduct their business?

MR. LEIB: Once it becomes a waste, yes. We have regulations. We can penalize them, and we do, when necessary. Before that, no. We don't have any power to do anything more than that. The way we -- and actually, one of the reasons that we get involved so much on traffic accidents and things like that is the regulations define a hazardous waste -- or let's say a hazardous material that spills onto the ground defines it now as a waste. So now we do have purview. But before that, if we have 27 tractor trailers going down the highway, that's a product and we have no authority over that. Once one of

them has an accident and we have it all over the highway, now it's a waste and now we do have authority over that.

REPRESENTATIVE SABATINA: Thank you.

MR. LEIB: You're welcome.

REPRESENTATIVE McGEEHAN: Thank you, Representative Sabatina.

Back to the question. L & I, PEMA, DEP doesn't have jurisdiction under current law to answer individual health-related problems in the work force. I know that the DEP, you're telling me, does not.

MR. LEIB: That's correct.

REPRESENTATIVE McGEEHAN: You talked about air quality, and there's been a suggestion in the case I referenced before about air quality problems inside the facility.

Have there ever been a complaint about waste air emissions at any of those -- at that particular facility or any others?

And if not, are your investigations complaint driven or is there a routine cycle of inspections for air emissions?

MR. LEIB: Well, there's a couple things that go on here. There are routine air quality inspections.

REPRESENTATIVE McGEEHAN: Define routine.

MR. LEIB: Depending on the size of the facility, every six months or once a year.

REPRESENTATIVE McGEEHAN: There are records at DEP that can be accessed?

MR. LEIB: Absolutely, yes. Any citizen of the Commonwealth is welcome to come in and do a file search to look at what is happening with our inspections.

By the same token, when we do get complaints, and to be honest, I cannot tell you that I have heard of any complaints at that particular facility about inside air, but the air quality regulations, when you look at them and the -- not Clean Air Act, but the -- anyway, the act that enables us to write regulations for air quality, specifically exempts indoor air. So we're generally -- when we're going through a plant, it's to look at processes to see how things are running so that we can see how well the control equipment

is handling the emissions that they're planning to put outside through the stack.

For the most part, the exception there is whether it would be a home, a business, a factory, anything. If it's inside, there again, we don't have any jurisdiction over air quality inside of a building. We have -- our jurisdiction is for ambient air quality, everything out here, not here, but everything outside of the facilities, the homes, the businesses, and things like that. And so consequently, we try to improve the ambient air quality by getting as many of the facilities that do emit air contaminants to control those as well as they possibly can.

If we get -- generally, when we get a complaint about, let's say, chemicals in the air inside of a building, we generally refer those to OSHA or to Labor and Industry because it's a workplace. But we don't get that many about factories, facilities like that because many of those have -- because of the inspections by OSHA over the years have developed programs for indoor air quality. And I'm not saying they're good or bad, I'm just saying they know it's not something

they can ignore if OSHA comes in and finds something that's in violation, and they know what the fines are.

REPRESENTATIVE McGEEHAN: So within your jurisdiction, if there are incidents where an individual or groups of individuals complained about an exposure to a particular chemical or other agent, DEP would be an appropriate place it can complain, or not?

MR. LEIB: We always accept those complaints and then refer them to someone with authority to deal with them. And also, we have, in the past, assisted other agencies, because we have air monitoring equipment and we can do some analysis of air samples, because we do it on the outside. We have assisted other agencies to get samples and analyze samples for their use.

But we generally don't have people that are assigned to -- specifically to look at indoor air complaints. It's generally -- it's either they have mostly either been in a work setting or sometimes in a school setting and we're really not certain who would it go to in a school setting. But we try to help out when we can.

REPRESENTATIVE McGEEHAN: I understand the distinction.

Representative Shimkus?

Thank you very much, Mr. Leib, for your testimony today.

MR. LEIB: Thank you.

REPRESENTATIVE McGEEHAN: I want to next welcome Pam Witmer. She's from the Pennsylvania Chemistry Council. She is the president. Welcome. State your name for the Court Reporter and your title, please.

MS. WITMER: Pam Witmer with the Pennsylvania Chemical Industry Council.

Good afternoon, Representative McGeehan, Representative Sabatina and Representative Shimkus. My name is Pam Witmer and I represent the Pennsylvania Chemical Industry Council. I am pleased to be here today to discuss with you the private sector's responsibilities under the Hazardous Material Emergency Planning and Response Act, or Act 165 of 1990.

The Pennsylvania Chemical Industry Council represents over 70 companies in the business of chemistry of Pennsylvania. The

business of chemistry is an important segment of Pennsylvania's manufacturing sector representing seven percent of the state's manufacturing work force. The total economic benefit to Pennsylvania in 2006 by the state's chemical industry was almost 87 billion dollars.

What is the Hazardous Material Emergency Planning Response Act or Act 165? Act 165 is the primary tool the Commonwealth uses to address emergency planning response between the private and public sectors as it relates to hazardous materials. It's through this Act that the Commonwealth's framework for emergency planning response to off-site accidents or incidents is structured. Additionally, Act 165 is an important tool to strengthen relationships between entities that are using or storing hazardous materials, the communities in which they are located and local first responders.

While there are requirements under Act 165 for the Pennsylvania Emergency Management Council, the Department of Labor and Industry, as well as important emergency response planning functions for the local emergency planning

committees and the county emergency planning agency, my statement will identify the private sector's responsibilities under the law.

What are those responsibilities? The most basic requirement of Act 165 for the private sector is to submit to the Pennsylvania Emergency Management Council, the Local Emergency Planning Committee and the Fire Department a list of all hazardous materials as described by the federal SARA Title III and which are at or above the reporting thresholds within five business days of the material arriving on site. The private sector must also submit the corresponding material safety data sheets for each material reported to the Department of Labor and Industry, the Local Emergency Planning Committee and the Fire Department within five business days of the material arriving on site.

The private sector is also required to appropriately label all hazardous material subject to the Act's reporting requirements and immediately identify or -- I'm sorry -- immediately report any release of the substance if it's above the reportable quantity and

it moves beyond the facility's property boundaries to PEMA and to the county emergency response agency. The first call, however, is to the county emergency agency's 24-hour hotline and the second call is to the State.

There is detailed notification information that is required whenever each one of those calls is placed, and I have that listed for you, but rather than reading them, they're in my testimony. And lastly, within 14 days of a release a written report must be submitted to PEMA and the county emergency management agency outlining the incident and actions taken.

In order to ensure compliance with the Act, the Local Emergency Planning Committee may enter the facility at any time during normal business hours to inspect the facility and request any information necessary for emergency planning and response purposes, as it relates to the covered material. If the committee member undertaking the inspection cannot determine, to his satisfaction, that the facility is complying with the law, he may either take a sample to be analyzed or arrange for analysis. The cost for the testing

is borne completely by the facility property owner. So as you can see, there's a lot of work and responsibility under Act 165 and who is responsible for paying a portion of it.

Given that the focus of the Act is the impact of off site emergency planning and response, when the legislature was developing the legislation they correctly created a system to allow for county and local agency involvement. This is a costly system which could inhibit many counties from adequately undertaking their responsibilities. To try and alleviate some of the costs to counties and without unduly impacting the citizens of the Commonwealth, a significant portion of the funding for operation and planning comes from the private sector companies that are subject to the Act.

In addition to companies being responsible for paying the cost of analyzing samples which have been requested by a local agency and the cost of cleanup from an off-site release, there are other fees which support the program created by the Act. There's the annual fee of between 35 and $75 for each hazardous chemical a

facility lists on its hazardous chemical inventory form, which is submitted to the Local Emergency Planning Committee. The level of the fee is actually determined and set by the county.

There's also the hazardous chemical fee, which is an annual fee of $10 for each SARA Title III hazardous chemical that is submitted to the Pennsylvania Emergency Management Council. There's the toxic chemical registration fee, which is an annual fee of $1,000, and it's paid to the Department of Labor and Industry by every facility that submits a toxic chemical registration form.

The Department may retain 10 percent of the fee for administrative purposes and there's a cap of $5,000 per facility. The toxic chemical release form fee, which is an annual fee of $250 for each toxic chemical on the SARA Title III list, and that is also submitted to the Department of Labor and Industry, again, retaining 10 percent for administrative purposes.

And lastly, there's the emergency planning fee, an annual fee of a $100 for any facility manufacturing, producing, using, storing,

supplying or distributing an extremely hazardous material in quantities above the reporting threshold, which is paid to the county in which the facility is located.

The money provided to the Department of Labor and Industry and PEMA, minus amounts retained for their administrative purposes, is used to provide for training programs, public education and administrative and operational expenses for local and county agencies.

The chemical industry recognizes the importance of educating and working with county and local emergency response agencies in the communities in which our facilities are located through which our materials transported. Many PCIC members routinely reach out to these groups to conduct joint exercises of emergency response plans. It's through this joint training that weaknesses in both the facilities and the local agency's response plans are recognized and corrected before incidents occur to ensure a more rapid and thorough response.

Pennsylvania TransCAER, which stands for Transportation Community Awareness

Emergency Response is a volunteer organization of chemical manufacturers, distributors, state and federal government agencies and representatives of county emergency response agencies dedicated to providing education and training to local emergency responders.

Pennsylvania TransCAER, which has been recognized nationally for its outreach efforts, provides free hazardous materials response training to counties. To date, Pennsylvania TransCAER, in the last seven years, has conducted free training in about 50 of Pennsylvania's 67 counties.

The chemical industry in Pennsylvania is committed to working to continue to provide family-sustaining jobs for our employees, as well as a safe environment for the communities in which they are located.

I would be happy to take any questions that you have.

REPRESENTATIVE McGEEHAN: Thank you very much, Ms. Witmer. Thank you for being here and thank you for your testimony.

MS. WITMER: Could I add one

thing to address a question that Representative Sabatina had earlier about penalties? Act 165, in Section 302 actually does provide for penalties, civil penalties, as well as misdemeanors and criminal enforcement action for the Attorney General.

REPRESENTATIVE SABATINA: Act 65, Section --

MS. WITMER: Act 165, Section 302.

REPRESENTATIVE SABATINA: Has the Attorney General -- who provides the Attorney General with this information?

MS. WITMER: Not being the Attorney General or working in his office, I will make an assumption, understanding that that's what it is. Under Act 165 inspections are carried out as referred by the local emergency response committee. If those folks who can go in and do inspections at any time feel that there's a violation, it is referred to L & I and PEMA, and through their collaborative discussions would be referred then on to the Attorney General's Office.

REPRESENTATIVE SABATINA: Thank

you.

REPRESENTATIVE McGEEHAN: Thank you very much, Ms. Witmer.

We're going to next hear from the Pennsylvania and Delaware Cleaners Association, represented by Dale Kaplan. He's a VP of Government Relations. Good afternoon, Mr. Kaplan.

MR. KAPLAN: Thank you for inviting me. Pam did a great job of Act 165. I would say the dry cleaners association, on a national and state level, have been, since 1986, focusing on workplace safety and emergency planning and response in our dry cleaning industry. The Emergency Planning Community Right-To-Know Act of 1986 established requirements for all federal, state and local governments in the industry regarding emergency planning and the community right-to-know reporting on hazardous and toxic chemicals.

The Emergency Planning and Community Right-To-Know, also known as SARA Title III, has four major sections, emergency planning, emergency release, community right to know and toxic chemical inventory.

As a contingency plan, federal regulations require dry cleaning plants have a contingency plan to deal with possible waste-regulated emergencies or accidents. Regulations do not require the plan to be written, although we believe it is prudent and do recommend that all of our members and dry cleaners in Pennsylvania to write down the steps that would be taken in emergencies, such as a waste spill or fire so that procedures can be fully reviewed with employees.

One requirement of such a plan is the designation of one person as an emergency coordinator. This person must ensure that the proper procedures are carried out in the event of an emergency. There are reporting requirements within the emergency planning community right-to-know, Section 311, that apply to facilities that must prepare or have available MSDS, material safety data sheets, under occupational safety and health administration regulations.

EPA has established threshold quantities for hazardous chemicals below which no

facility must report. The current threshold for Section 311 are for extremely hazardous substances, 500 pounds, or the threshold planning quantity, whichever is lower. For all hazardous chemicals, 10,000 pounds. To my knowledge, there are no dry cleaning plants that approach these thresholds and are thereby not included in the reporting requirements.

However, MSDS sheets and a list of all applicable on-premise chemicals are kept on site at all dry cleaning plants. They are immediately available in the unlikely event of an emergency. Further contributing to the workplace safety regiment, MSDSs and the list is updated when new chemicals, or revised information, becomes present in the dry cleaning plant.

Emergency planning. Any facility that has present any listed hazardous substances in a quantity equal to or greater than its threshold planning quantity is subject to the emergency planning requirements. To my knowledge, there are no dry cleaning plants that approach these thresholds and are thereby not included in the emergency planning requirements.

As a brief overview, accidental spills, or other events of an emergency nature are rare in the dry cleaning industry. We maintain careful adherence to health and safety standards, which are always kept current. Please remember that we, as an industry, are 90 percent owner operated mom-and-pop style businesses.

We employ approximately seven to ten people per plant, hard-working men and women, and work directly with, as an owner, I am, and beside them. We often employ our families, as well and we want to make sure that all of us are safe in our facilities. Our personal health and that of our employees and family members is extremely important to the owner and operator of a dry cleaning facility.

I have been working at a dry cleaning plant since I was ten years old when I started working with my grandfather and father in downtown Harrisburg. Today, after 30 years of running my own store, my children both work for me in my store.

Do you really think I'm going to provide an environment in which all of my family's

health would be at risk? We use redundant safety features and containment pans on and under dry cleaning equipment. Also, under our hazardous waste, there are pans that are waiting for safety cleaning or companies of similar nature to pick up. We do have still residues that we give to a company, like Safety Clean. Safe handling of dry cleaning solutions and waste are commonplace as technology continues to advance in these areas.

In my particular case, I put in a new machine two years ago and my usage of a cleaning solvent went from 30 gallons a month to five gallons per month with no decrease in volume. This, as you realize, decreases to almost nothing going out with the clothes or -- so that's indoor air quality, or of that my employees being exposed to fumes.

The time-weighted average exposure of my employees, and we use a DuPont badge that we use on a quarterly basis, is less than seven parts per million. Protective gear, first-aid and eye wash stations, as well as emergency spill kits and training in their use are all part of a standard safety regiment.

These factors, awareness of obligations under the existing regs, keeping current information regarding on-site chemicals, right-to-know training for employees, a contingency plan in the event of an emergency, and safety and safe handling of all chemicals have established a safe workplace for dry cleaning plants in Pennsylvania.

The Pennsylvania and Delaware Cleaners Association, wishes to work with the legislature, and we hope to assist you in and the Committee in your quest to make changes to Act 165 of 1990. We hope that you will consider the difference in resources between big business and small business as you proceed with your investigations and your work here. Our owner operators do use a hazardous air pollutant with primarily 80 percent of the dry cleaners in Pennsylvania use propylethylene. It is an HAP, or hazardous air pollutant.

Please consider making requirements less onerous as the typical cleaner does his environmental reporting on his kitchen table at night at home after eating dinner. We

cannot afford environmental consultants and attorneys. If this legislation comes to fruition, please consider creating a small business assistance committee that would have some input to help the Department of Labor and Industry create forms that are simple and easy to allow, similar to DEP's Small Business Environmental Assistance Program.

We work closely with the DEP Bureau of Air, and I would not -- not correcting the gentleman from DEP, but I have personally helped to train some of the inspectors in, I guess they call it south central region. And I know that they go and visit dry cleaners on a regular basis because they have been in my store three times and I welcome them, because I run a good shop.

Thank you for being here and thank you for letting me have the opportunity to be here.

REPRESENTATIVE McGEEHAN: Thank you very much, Mr. Kaplan. Thank you for making trip from Harrisburg and for sharing your multigenerational business and environmental experience with us. We appreciate that.

Do you have any questions, Representative?

REPRESENTATIVE SABATINA: Thank you, Mr. Kaplan. I'm interested in, I guess, the last page of your testimony where you said you installed a new machine two years ago and went from 30 gallons of solution to five gallons of solution.

My first question is: How much does the new machine cost?

MR. KAPLAN: About 46,000.

REPRESENTATIVE SABATINA: How much is the solution from 30 gallons to five gallons?

MR. KAPLAN: Thirteen dollars and 65 cents a gallon. So I can't pay for the introduction of the new machine, but I know that as -- I would call myself a steward of the environment, that it's better for me and the Commonwealth and my business to use less solvent. It just basically recycles it all and captures it and absorbs it so that we can recapture the solvent and nothing gets admitted into the atmosphere.

A great program. DEP has a small business advantage grant. So when I bought that

machine, I had to spend the money and then apply to DEP, and I got a $7,500 grant from the Commonwealth for updating with a newer, better technology, just to give you a heads up.

REPRESENTATIVE SABATINA: That's where I'm going with this. I'm wondering how cost efficient and how realistic it is to ask or demand that the dry cleaning industry switch to the newer machines.

MR. KAPLAN: It's what is happening all over the country. California and New Jersey have already started to regulate propylethylene out of our industry. So some of us have just updated by going to new machinery technology for propylethylene; others are slowly switching to hydrocarbons. And there are four or five other solvents that are coming into force in our industry. But they're all some kind of solvent, whether it's propylethylene, or hydrocarbon or CO 2. They're all some kind of liquids to wash clothes in that's not water-based, because you can't wash that suit you're wearing in water. It won't look good.

REPRESENTATIVE SABATINA: Thank

you very much.

MR. KAPLAN: You're welcome.

REPRESENTATIVE McGEEHAN: Thank you very much, Mr. Kaplan, for your testimony.

We'll next hear testimony from Dr. Phil Lewis on behalf of the Rohm and Haas Company.

Dr. Lewis? Welcome and thank you for being here. Enunciate your name and your title please, Doctor.

DR. LEWIS: Good afternoon, Representative McGeehan and Representative Sabatina.

REPRESENTATIVE McGEEHAN: There are four or five other meetings today around the State. So Representative Shimkus had to attend another, so my apologies to the rest of the testifiers.

DR. LEWIS: My name is Phil Lewis. Lewis is spelled L-E-W-I-S. I am Vice-president Director of Environmental Health Safety and sustainable Development for Rohm and Haas Company. I am a physician by training and have a Master's Degree in public health. I did my

medical and public health training at Johns Hopkins with a concentration in preventative medicine and epidemiology with special concentration on problems of immune reactions in the skin from environmental exposures.

Rohm and Haas Company is a global specialty materials company that began almost 100 years ago when Rohm and Haas formed a partnership to make a unique product from the leather industry. Today Rohm and Haas is a nine billion dollar company with a portfolio of global businesses, including electronic materials, specialty materials and salt.

Our products enable the creation of leading edge consumer goods and other products that touch almost every facet of our daily lives, including building and construction; electronics; packaging and paper; industrial; transportation; household and personal care; water and food. To serve these markets we have nearly 100 manufacturing and 35 research centers in 27 countries and nearly 16,000 people working to provide value to the society.

We are one of the largest

chemical manufacturer employees in Pennsylvania with our worldwide headquarters in Philadelphia and employing over 2,000 people in the Delaware Valley. We have been part of the Bridesburg community, which is just a few miles away from here, obviously, for almost 90 years and helped provide community development support there, as we do for other communities where we operate.

You have invited us to provide testimony regarding the Hazardous Material Emergency Planning and Response Act, and specifically on workplace safety oversight and the effectiveness of current reporting standards and requirements for owners and operators of facilities, which have on-site hazardous substances and materials.

Let me respond in this way. The principles and practices underlying workplace safety and the Emergency Planning Community Right-to-Know Act, which formed the basis for Pennsylvania Public Law 639 comprise core principles of Rohm and Haas Company environmental health safety and sustainable develop systems. We wholeheartedly endorse and embrace the comments of

the Pennsylvania Chemical Industrial Council. We believe that good regulation and government action are important in protecting the health and well-being of society.

Rohm and Haas Company was, for instance, one of the first companies to call for and support the formation of the federal Chemical Safety Board. We were also one of the two chemical companies to support the establishment of the federal Superfund statute in 1980. And we also supported the amendment to that Act, which created SARA Title III, the federal driver behind the Pennsylvania Hazardous Material Emergency Planning and Response Act. Additionally, we believe that listening to and trying to work with all constituents and stakeholders, even those who may disagree with us, for the greater good is essential to finding solutions that will work in a sustainable society.

At Rohm and Haas our vision to be injury free and to provide a safe workplace for our employees. Our mission is to instill a culture where health and safety are core values, not just an initiative. Above all, we strive to create a

culture where health and safety values or beliefs are deeply embedded in all that we say and do and demonstrated each day in our practices and behaviors. These are reflected and ingrained in our practices, policies, work procedures and medical and industrial hygiene practices in order to safeguard employee health and safety.

We sit less than five miles from the Rohm and Haas Bridesburg plant. That plant and the many thousands of Rohm and Haas employees who spent their careers there have a special significance in our company's history. Decades ago employees working in Building 6 of the Bridgesburg plant were exposed to a chemical known as BCME, a potent carcinogen that resulted in lung cancer deaths of over 60 workers. This tragedy changed the company forever. We have said publicly and we practice daily the moral imperative that we must know the chemistry of our products and the nature of our markets better than anyone else. This means researching how our chemicals could affect employees, the public and the environment. It means providing vigilant oversight of our operations and strict scrutiny of any undue effects

that might result. The Building 6 episode is something I studied in medical school and that all physicians trained in occupational environmental medicine learn about. And it is remembered at Rohm and Haas everyday in our commitment to protecting and safeguarding employee health and safety.

This commitment can best be demonstrated in our actions. Since 1972, Rohm and Haas Company has voluntarily conducted over a dozen epidemiological studies on various sites around the globe. These studies are initiated either in response to concerns raised by employees or former employees, information from cancer registries or other evidence that may indicate there is an excess or undue elevation of a particular disease or illness. In each of these studies we have shared the findings with employees.

The most recent example of this approach began in 2002 after learning of a brain cancer diagnosis of a young scientist. We commenced an epidemiologic study of the Spring House workplace and what might be an elevated number of brain cancers. The study had oversight by a distinguished panel of scientists, including a

full professor from Johns Hopkins, one of 17 specialty credentialed and funded institutions by the National Institute of Occupational Health and Safety or NIOSH. The study findings showed no statistical correlation between any workplace chemical, building or risk factor and the brain-cancer employees or former employees.

We followed up the first study with a second study to understand all causes of death at Spring House. That study showed no significant elevations of any cause of death, including brain cancer. These results were reviewed by an outside expert panel of scientists, including one from an additional NIOSH center. We also voluntarily submitted the draft manuscript to NIOSH for comment and review. Both NIOSH and the outside review panel made comments, some critical, and suggestions for further study.

Based on these comments and in a desire to leave no stone unturned, we made the decision earlier this year to turn the studies over to one of the preeminent NIOSH-funded research centers for completion and publication, the University of Minnesota, which will complete these

studies, and that work has already begun. The University of Minnesota will have complete autonomy to do this work while making the study's results public and will provide regular updates to employees on its progress.

I will be happy to address any specifics on Spring House during the question and answers, but let me close by assuring this Committee that we take the health and safety of our work force and of the community very seriously. We have an active health monitoring and investigation process to identify potential areas of concern, and as a matter of practice, we share our studies with our employees and other appropriate regulatory or industry associations to advance understanding and knowledge in the field.

Let me conclude by thanking you for appearing before you today, and I will be happy to answer any questions.

REPRESENTATIVE McGEEHAN: Thank you very much for taking the time out to appear before the committee today, Dr. Lewis.

Representative Sabatina?

REPRESENTATIVE SABATINA: Thank

you.

Good afternoon.

DR. LEWIS: Good afternoon.

REPRESENTATIVE SABATINA: My question deals with page three of your testimony, NIOSH made some comments, some critical and some suggestions.

Do you care to elaborate on some of their comments and criticisms and suggestions?

DR. LEWIS: Sure. First, as I hope the Committee knows, we do have a web site that's available to the public, all employees, that lists, in fact, the actual letter from NIOSH with all of their concerns. I don't have that letter with me, but let me comment on the process that produced that letter.

We initially, as I said, called NIOSH. And though we were at the point at which we understood that based just on the request from the scientific panel that there was some additional calculations that we would want to do and would probably take a longer period of time, that we wanted to make sure that we had all criticisms up front so that those could be addressed directly.

So we called NIOSH and said: Hey, listen, we would like you to do a health hazard investigation. Now, that's a formal request to the federal government that gives them full carte blanche to come to our facility, look at any records, and we invited them to do that. We'd said we'd be happy to do anything you like. During our conversations they said: Listen, we think you're handling this exactly the right way. You have all of the expertise to handle it. Let us just see the manuscripts for the studies that you've done. We sent those down, and they provided the letter back to us.

Now, as we received their comments, we had a teleconference with the analyst from NIOSH and her two superiors to go over each one of their concerns. And while we had information that addressed each one of those concerns, we agreed that given that some of their criticisms suggested additional calculations that could be done, not that we thought they would add substantially to the information, but given that we had two negative studies, it's not unreasonable to consider doing that. Given that we already had a

set of calculations that the scientific review panel had asked us to do, we thought it would be best, especially given the atmospherics around this.

I know that Aaron Freiwald is in the audience here, and in the deposition I pointed out to him that once this sort thing is in the middle of a legal contest, I don't really have the freedom to investigate this quite the way I'd like to. And so, especially given that sort of a situation, we thought it was very important, knowing that these additional calculations would take additional time, and given the concerns that had been expressed that somehow, notwithstanding that we had two NIOSH centers, four outside professors from different academic institutions looking over our work, the fact that I teach at Hopkins, I teach at University of Pennsylvania, that Dr. Harper, who is doing the studies, had been a principal investigator with NIOSH and teaches at Columbia University, notwithstanding that we had all that expertise in this, we thought that given the atmospherics, it was going to be particularly important that there be no doubt that the science

behind this was right and that the additional calculations that needed to be done were being done in an up front and transparent way.

And so, we looked at the list of 17 NIOSH centers. We marked off the list any of those where I have gone to school, we have taught, we have had contracts in the past. I then talked to the remaining ones to see, of the very best, who had the bandwidth, the expertise and the resources, the expertise within their faculty to be able to do this. It came down to two, University of Minnesota and North Carolina. And it turned out that Minnesota had a more complete program, and North Carolina actually has to coordinate their program with Duke, which produces a little inner institutional policy, so it's not necessarily always helpful. So we decided to go with Minnesota, and they are helping us, as we speak. So that's where we are.

REPRESENTATIVE SABATINA: Do you have any idea when the study is going to be complete?

DR. LEWIS: That's really up to the University of Minnesota. As I say, we have

given them carte blanche to do it exactly the way they want to do it. They're looking over some records and some computer files and that sort of thing. They will actually be here for a site visit the end of this month, I think it's the 28th and 29th. We'd be very happy to have you meet with them, if you like. They're certainly going to be meeting with the employees at Spring House.

We have, for instance, a stakeholder group that's composed of active employees, retired employees, families of people who have been affected by brain cancer. And I realize that there are a number of former Rohm and Haas families and employees here in the audience, and I would certainly encourage them, if they're interested, to be involved in the stakeholder group. We'd welcome that. And so that will be their first opportunity to get a very in-depth look at everything that we have already done.

Their best estimate right now is that it will take them two years to do the work and -- but that's the best we have right now. We won't know more until they have actually been able to look more at the records that are available.

REPRESENTATIVE SABATINA: So your best estimate is two years from now?

DR. LEWIS: That's my best estimate right now. But as I say, it's up to the University of Minnesota. We have, as part of the contract with them, that they will provide at least, at least twice a year updates to us and all stakeholders. So we'll certainly be happy to keep you and anyone else advised about what the timing would be on that.

Again, as I say, the web site that's up will certainly be publishing all that information. So there will be a lot of update about what is going on.

REPRESENTATIVE SABATINA: Thank you.

DR. LEWIS: Certainly.

REPRESENTATIVE McGEEHAN: Thank you, Representative Sabatina. I have a number of questions, Dr. Lewis. And I want to preface by saying I'm not party to the lawsuit and I'm not familiar with the case, other than reading the press accounts of this long-lived problem, both of the workers and of Rohm and Haas.

There are a number of things that raise questions, I think certainly in the minds of the family members of those who have died from these brain cancers. But I think among the general public and the legislature it's been characterized as Rohm and Haas has -- these additional studies as a good faith effort on Rohm and Haas.

But press accounts have indicated that this was based on a number of people who you've even referenced, Dr. Carpenter, who I believe retired --

DR. LEWIS: Yes.

REPRESENTATIVE McGEEHAN: -- and has really made no public comment about this report. You've had a controversy about one of the experts you talked about, Mary Schiavo Bergen (phonetic). She detailed a number of flaws in the study and cast doubt on the effectiveness of this study and how it wasn't relative. And so it does raise some questions, in my mind, and I think the Committee's mind, about how seriously Rohm and Haas took this problem and how effectively the study was.

I also have some concerns when

Rohm and Haas was -- at least in the Illinois case of Amoco, the question was raised about those anomalies in their facility and the number of cancer deaths dealing with a particular chemical at their plant. And at least from the press reports I have read, Rohm and Haas took no action on that instance and didn't follow-up with that company for similar instances. So you understand, among laymen like myself, that raises some serious concerns.

Were there complaints, Doctor, you may not be the appropriate person to answer this, at Rohm and Haas from employees during this process or once this problem was -- we realize we did have a problem at Rohm and Haas? And I don't want to prejudice my comments that this problem existed at Rohm and Haas.

DR. LEWIS: It's no problem.

REPRESENTATIVE McGEEHAN: Our testimony -- I have asked the agencies: Where do we go to complain. And I still haven't found out where we go to complain.

And I'm asking you: Where do these employees -- did they go to Rohm and Haas to complain about this particular problem?

DR. LEWIS: Yeah. Let me address all of your questions. First, let me start off by saying that it personally offends me when people who know very little about this situation suggest that I or anyone at Rohm and Haas is not taking this extremely seriously. That's an affront.

Now, the fact of the matter is that Tom Haag, who is here and I expect is going to speak in a moment, called me about the case. We looked at each and every case. There was nothing unusual about the initial cases. It is a terrible tragedy that illness occurs at all different ages, all different walks of people, and we can't explain them all, and that's a terrible thing. I'd like to be able to prevent every illness, but I can't.

But we looked at each one of those cases individually to understand, talked, got as much information as we could from the physicians or from the families to understand what was going on with each one of those cases; was there anything unusual. We also reviewed the workplace; was there any new information.

One of the things that's important to understand is that we routinely look

at the literature. As I say, I teach in this area. As soon as we knew about the Amoco study, we talked with Peter Leese, who is the professor from Hopkins, who is on the Amoco study. That's, in fact, why we invited him to be on our study, because he had all the information about Amoco. We talked with the folks at Amoco, understood all the materials that they were concerned about. We made sure that the case control study we were analyzing for those materials.

The effectiveness of the study in question, you know, one of the issues in science is to be open to criticism, founded or unfounded, and to take it seriously and make sure that you have done all calculations, figured out as much as you can.

Academically, what normally happens in these situations, and certainly what NIOSH would have done, and what University of Minnesota will do, is to do a corporate study first to figure out, in fact, if that number of brain cancers at Spring House, or in any particular instance, is statistically abnormal or not. Well, in fact, it turns out it's not. And normally in

those cases, NIOSH would stop and do nothing else.

I, as a preventative medicine physician understood that the important question here is not whether there's a statistical aberration here or not, but is there something in the workplace that's causing these cases, is there something we have to do differently. So we launched the case control study first because that's the study that allows you to look at all the Amoco information, all the Chevron information, which, also, is an unpublished study at the time; to look at all those materials.

And, we additionally searched the literature for any material that had any association not caused -- let me make this point clear. It can often occur that there's a statistical association between something but not a causal association. So we searched -- the causal association is the higher threshold. We searched the literature for anything that even had an association of brain cancer and made sure that that was included in the case control study to allow us to, as quickly as possible, to understand if there was anything in the workplace that was associated

with these brain cancers. There was none.

Now, as I said, we sat down with Mary Schiavo Bergen and went over a number of her concerns. The fact of the matter is that one of her major concerns was the sequences of the study. And as I said, this was not an academic pursuit.

REPRESENTATIVE McGEEHAN: Define sequence.

DR. LEWIS: As I said, normally, academically, or normally NIOSH, for instance, would do the cohort study first to determine, in fact, whether there is a statistical increase in disease to begin with. And that sort of answers the first question: Is this abnormal or not. And if it's not, maybe we don't do anything. But if it is, it's only that basis that you go forward.

REPRESENTATIVE McGEEHAN: It is based on sampling size? I read there's an controversy about the sampling size in the initial study.

DR. LEWIS: Yeah, there is. And part of the problem is that any -- this is called a cluster investigation. And part of the problem in any cluster investigation is that you're limited by

the size of the population included in the cluster.

So, for instance, the concern at this point was Spring House. So we included everyone who was ever assigned at Spring House. One of the criticisms has been well, there have been cases for people who work, say, at the home office who had occasional or even routine visits to Spring House, right? We would be happy to include those people, but in order to do that, we can't scientifically just include the cases. You have to also include everyone who had had that similar sort of exposure, anyone who had a routine visit to Spring House from, say, the home office.

Now, to my knowledge, and we have searched through all the company's records, there are no records that allow you to know who routinely was going in an unbiased way. I mean, you can't just take somebody's recollection, okay, they were going every week. You have to have some unbiased way to find everyone who was doing the same thing to include them in the calculations. Otherwise, you have to include the whole population at home office. When you do that, that would suppress or

reduce the apparent increase. It would make it look less.

So those sorts of suggestions, which are in Mary's document, you know, I would have felt that those were inappropriate to do. And when we talked to her we explained why we thought that those were inappropriate.

Another one of her criticisms, for instance, was the exposure record. We have used the lab notebooks at the research facility. Typically, say, in one of our plants we would use what is called a job exposure profile. That's where you have people who are working in the plant come in, sit down with a physician, or nurse, or the industrial hygiene coordinator and go over what materials do you believe you've been exposed to over what period of time and what intensity. And we have those records and we would use those, along with the routine industrial hygiene measurements that we take to understand what the real measurements are in the workplace. We use those as a determination of exposure.

Well, in a research institute or center, because they're using so many materials,

you'd have to do that once a week or so. And no one's going to do that. I mean, you can't even get researchers to do that. So the most accurate record that we know of is the lab notebooks where the researchers have to keep track of what they're working with, the amount, et cetera. So that's what we used. We'll be very happy if the University of Minnesota or someone else can come up with a different approach. We'd be more than happy to look into it. But as far as we can tell, that is the most accurate reflection of exposure.

Your question about notification and investigation here, beyond the fact that Rohm and Haas has routinely run a cancer registry facility where we ask employees to please tell us of any cancers they know about. Now, we can't force anyone to give us information, but we basically ask people: Please give us the information as soon as you know about it so that we can work with you and your physician, one, to make sure that you are getting the right treatment. If we can be of any help to you in finding specialists, helping think through approaches, we're happy to do that, and making sure you're

getting your benefits. But beyond that, looking to understand is there anything unusual about this case or associated cases. So, in deed, that's what we routinely do.

Now, if an employee believes that we're not doing the right thing, for any reason, beyond calling the State Health Department here to ask someone to look into it, they can call the National Institute of Occupational Safety and Health and ask for a health hazard evaluation. And, frankly, that might almost make it a little easier for me, because then there's no doubt of how -- who is doing it and why.

So that availability is there. But remembering what I said here, we voluntarily asked for that involvement of NIOSH, and as I said, at two NIOSH centers involved from the very beginning.

REPRESENTATIVE McGEEHAN: Refresh my memory, if you will, Doctor.

Is the same chemical we are talking about in the Spring House instance the same as the chemical that's being linked to cancers at the Amoco facility?

DR. LEWIS: I think the fairest way to answer your question is, first, the current information does not link any particular chemical at Spring House with these cases. We did, as I say, look at all of the chemicals that were of concern at Amoco and analyzed specifically for those. So, again, there's nothing to show that there's any association between those materials that were used, and mind you, not all of the materials at Amoco that were of concern were used at Rohm and Haas. But we looked at all the overlap, and there was no association between any of those chemicals, but we did look at them.

REPRESENTATIVE McGEEHAN: But the response was different at Amoco. They immediately -- tell me the experience at Amoco. They immediately shut down that particular part of their facility, once it was -- not even there wasn't even a determination, but based on the -- at least the suggestion, somehow, that these many, many employees contracted this rare form of cancer, then it was shut down. And I think for many people, that's troubling in that that same instance wasn't adopted at Rohm and Haas, and I think that's cause

for alarm among, certainly, the legislature and our public in general.

The federal cancer data, in looking at this, some of these reports, this particular type of cancer that -- and the figure is now -- is it 15, Doctor, that you've been made aware of, individuals?

DR. LEWIS: I have to say that sounds like about the right number, but part of the problem right now is that I'm not sure that we have full ascertainment of all of the cases, and that's part of what Minnesota will be doing.

REPRESENTATIVE McGEEHAN: According to the data, they say that this brain cancer is extremely rare.

DR. LEWIS: Actually, the cell types of the brain cancers concerned are, in fact, the most common causes of brain cancer. There's nothing rare about them, except that brain cancer, in and of itself, is relatively rare. But these cell types that we've seen are not unusual.

REPRESENTATIVE McGEEHAN: I can't speak to cell types, as a layman. But according to the federal cancer data, 3.45 cases per 100,000

people. That sounds pretty rare to me among the general population. You, certainly, as a medical professional, would know more than I.

Is that typically one of the rarer cancers out there?

DR. LEWIS: The answer to your question is brain cancer, which is the figure that you quoted, is rare relative to, say, lung cancer, skin cancer, bladder cancer, breast cancer, no question that brain cancer is relatively rare compared to other cancers, that's true.

Was that the sense of your question? I want to make sure I'm answering.

REPRESENTATIVE McGEEHAN: Yes, it is.

DR. LEWIS: Yes. Brain cancer is rare.

REPRESENTATIVE McGEEHAN: About those who have succumbed to this cancer, is there anomalies in age groups?

Is this a disease that typically strikes in the general population?

Are they much older than the individuals, rather than the Rohm and Haas

individuals?

DR. LEWIS: No. I mean, the current analysis shows that there's nothing unusual about these cases, either in terms of age or any other factor. However, again, I should say that's part of what we're continuing to look at.

REPRESENTATIVE McGEEHAN: Doctor, what lessons, then, from the Amoco experience -- would there have been something that Rohm and Haas would have done differently, knowing that we're at this point now?

Is it fair to say that Amoco acted more expeditiously than Rohm and Haas or did something different?

Would you have done something differently today?

And since the time you were alerted to these clusters, there have been a number others who have been identified; is that true, Doctor, since the initial warning?

DR. LEWIS: Oh, yes. Right.

REPRESENTATIVE McGEEHAN: My question, then, is: Is the Amoco case something that we should be looking for as a way to proceed

in the future, and have they given us a blueprint?

DR. LEWIS: I would suggest not. I'd ask you to follow through with me on that thought process.

REPRESENTATIVE McGEEHAN: Of course.

DR. LEWIS: Because in the situation in which there is a cluster of disease, and the terrible fact of life is that clusters of disease happen that have no cause, you know, it's not a chemical, it's not sun, it's not something someone did. And it would be wrong, in my opinion, to -- let's say there were three leukemia cases or three brain cancers in this neighborhood, Holmesburg, Bridesburg, right where we are. If you came to me as a physician and said: Well, we have five times the number of brain cancers in this neighborhood, right, and there's no cause, and you asked me to tear down all these houses, I would tell you that's not a good idea. I would say that the right thing to do is bring in NIOSH, Centers for Disease Control, University of Pennsylvania, whoever else, and look and see, is there reason to believe that there's a cause here? And if there

is, then act on that basis. Otherwise, I think we're, frankly, being irresponsible.

REPRESENTATIVE McGEEHAN: Has the agents -- by agents I mean chemicals, that were used at the Spring House facility in these particular parts of the Rohm and Haas facility, have any been proven to be known carcinogens?

DR. LEWIS: There is -- yes, all right, because the researchers work with a lot of materials. Benzene is a known carcinogen.

REPRESENTATIVE McGEEHAN: Before or since, Doctor, has that been determined?

Before the Spring House experience, or after that, or during this process?

DR. LEWIS: Oh, before, before, before. There are groups at Spring House that work with methyl ether.

REPRESENTATIVE McGEEHAN: That's the Bridesburg case?

DR. LEWIS: Right.

So researchers have worked with a lot of materials that are cancer-causing agents, but that's dealt with by making sure, in fact, that this proper personal protective equipment; that

those processes are properly enclosed so people are not exposed; so that emissions are properly captured or not destroyed or kept at a low enough level so there's no impact outside the facility.

So yes. I mean, we have to -- in fact -- I mean, one of the problems -- anytime any one of us, you and I, go to pump gasoline we're exposed to benzene. And I'm not going to ask you to stop pumping your gas today. But we do, as a society, take measures, such as making sure that there are those catchments (phonetic) facilities to minimize the exposure.

But the fact that a material is hazardous is not, in and of itself, reason to stop using it. Let me give you a couple of other clear examples of what I'm talking about. One of the main reasons for much of our environmental law now is DDT. And we banned DDT in the '70s.

And why was that for good, as chief of preventive medicine? The only way I could use DDT was to get rid of bats in somebody's house. But it turned out -- has turned out that DDT is the most cost-effective way to prevent malaria. So even the World Health Organization has

agreed that using DDT in appropriate applications is the right thing to do to combat malaria in malarious areas.

Another good example, thalidomide. Thalidomide, as many of you know, is a cause for the tragedy of babies who are deformed. And for a number of years that medicine was taken off the market, not used. It turns out that in terms of treating people with leprosy or Hanson's disease, that's the best thing going. And so we use thalidomide now, not only for that, but for other immune diseases associated with neurological systems. So the fact that the material is hazardous is not a reason to ban it or not to use it. It is a reason to understand how to use it and how to protect people in the environment.

REPRESENTATIVE McGEEHAN: Doctor, it may not be fair, because I don't know your history at Rohm and Haas or how long you've been there, but the scenario of the 60 lung cancer deaths that were -- and correct me if I don't use the correct terminology -- definitively linked to their job --

DR. LEWIS: Yes. No question.

REPRESENTATIVE McGEEHAN: -- and chemical at that facility, take me through the scenario of what happened there so I can better understand how that particular problem was handled.

DR. LEWIS: Sure. And as you know, when we were coming in I was mentioning an inherent problem within businesses, all right, that, say, in leading business schools, like Wharton, there's nothing to tell a business owner: You have to have environmental health safety and sustainable development expert as one of your major managers in your company.

And so, in the '50s and '60s that was certainly not the case in any company, period. And in chemical companies, in general, there was an approach called structure activity relationships in order to look at the molecular structure of material, think about how it's related to something that was already known to be a problem in terms of cancer or the environment and to go on that basis to decide to control it. But there were not physicians, toxicologists, epidemiologists, industrial hygienists in corporations to the extent that there are now.

And, certainly, Rohm and Haas was, at the time, doing what was known to be right at the time. There was not a person like me within the senior management of Rohm and Haas. And so, on the basis of structure activity relationships, they got it wrong. They missed one. There is nothing inherent about this that allowed them to know this was going to be a bad thing. But what did occur was that once it became clear that there was, in fact, obviously, an association between lung cancer, it's an oat cell cancer and bisaler methdene (phonetic), then the company that worked at Johns Hopkins to establish a screening program, which included chest x-rays and sputum cytology, and they established the Toxicology Department, the Industrial Hygiene Department and all of the groups that I now manage.

Additionally, over the time we continued to follow the literature to know, in fact, that chest x-rays are not helpful, nor are sputum cytology helpful in screening for lung cancers of any sort, but certainly, not for oat cell cancer. Once we found that, we stopped doing that screening. However, we had an agreement with

the employees who are at that plant to provide them with compensation. And once that agreement ended, even though, as far as we could tell at that point, any new cases were more likely to come from other exposures than anything that happened at the plant, in order to make sure that people were taken care of, we extended -- we voluntarily extended that agreement and continued to pay benefits beyond when the legal agreement required it.

Additionally, when we acquired a company in France that was using or producing ion exchange resins, which are the product that uses chlormethyl methyl, either of which bisaler methdene is a side reaction or contaminant, the first thing that we did was an epidemiology study on those workers to understand what their exposures might have been, whether there was an excess or not, and we immediately dealt with that without any request from the government or request from an employee.

REPRESENTATIVE McGEEHAN: Doctor, I know that you do screening and that's, I'm sure, of comfort to the employees.

Is there active testing for

cancer, and is that practical on a regular basis?

DR. LEWIS: It is, but it very much depends on which cancer you're talking about.

REPRESENTATIVE McGEEHAN: And is it done?

DR. LEWIS: Screening for cancer is available to all Rohm and Haas employees. It's part of their medical benefits, so whether it's breast cancer screening, screening for prostate cancer, et cetera. Now, one of the problems is that there is no effective screening for brain cancer, but that's true for a number of cancers. There's really no effective screening for pancreatic cancer.

REPRESENTATIVE McGEEHAN: Is there a difference in terms between screening and testing?

DR. LEWIS: Oh, yeah. Well, yes.

A very important distinction, right? Within preventive medicine, or within medicine, as a whole, screening has to have the following characteristics: One, that the test will identify the illness at a time when medically you can do something about it and that the risks and

costs of the tests are acceptable to the patient. So, for instance, mammography is very effective for breast cancer screening, as is colonoscopy for colon cancer. Now, those can also be used as individual tests, tests, as opposed to screening, for an individual patient when they have a concern.

Now, to do screening, unless it's something that is going to provide you lead time where you can do something about it, and unless the risk from the tests are acceptably low, given that when you're talking about screening, you're talking about people who are asymptomatic, they don't have clear signs of the disease, then it is, frankly, unethical to do screening in that case.

Now, tests, sure, on an individual level, if you come to see me -- in fact, this has come up, particularly with regard to the brain cancer question. If you came to see me as a physician and you said to me: You know, I work at Rohm and Haas and I have seen the Philadelphia Magazine article and I understand about the -- and the Amoco experience, and I think I might have brain cancer, can you screen me, the very best test, probably, and you will get different

neurologists and neurosurgeons to have a different opinion, but probably the better test would be an MRI. The problem with MRIs is that they have a relatively high rate of false positives. That's a case where you do the test and you see something in somebody's brain, and then when you later on do a biopsy and you find out gee, it's not cancer, it's not something that you needed to be worried about, that rate of false positives is high enough for MRIs that it is wrong to use it as a screening test. And there's no indication that MRIs, as a test for screening, would identify brain cancer early enough to do anything about it.

If you come to me as an individual and you say: I hear that, Phil, Dr. Phil. I hear that. But I'm worried to death I may have this. Okay. Now, on the clinical basis, depending upon your family history, your genetics and your level of anxiety, I may order the test, explaining to you that, look, this isn't the world's best test. It's going to be pretty expensive. It's uncomfortable. And the rate of false positives is pretty high. So if we get something, we may have to drill a hole in your head

and do a biopsy just to prove that a shadow on an MRI is nothing. And if you said to me: Well, Phil, you know, that's okay, I want to do it, I would still probably try to talk you out of it. But I might do it if, indeed, I thought you were going to worry yourself sick worrying about this thing, but not as a screening test.

REPRESENTATIVE McGEEHAN: As a layman, I understand that.

The last question, I ask the indulgence of my colleague, knowing everything that's happened at Spring House and the resultant furor, is there anything that is being done differently in Spring House now then before this event has become such a controversy?

DR. LEWIS: Well, a major thing, of course, is we're asking the University of Minnesota to look into this. But in terms of --

REPRESENTATIVE McGEEHAN: I mean in the workplace.

DR. LEWIS: Workplace practices, no, because, in fact, the routine medical checks of individuals, the routine screening of the environment, industrial hygiene testing of the

environment, the routine requirement on work practices to have materials properly contained within hoods, when that's necessary, to, in fact, have researchers do a process hazard analysis before they even begin an experiment, to sit down and think: What are the materials I'm using, is there a safe exposure limit for this, does it need to be done under a hood, is there any other information that I need here, all those practices were already in place.

Now, what we did do is go back to reconfirm that, in fact, those were in place, everyone understood them. We did look at the industrial hygiene information to see if there was anything that suggested that people were being overexposed or anything.

REPRESENTATIVE McGEEHAN: Do you have a process of handling those chemicals is being done the same way now as before?

DR. LEWIS: Yes.

REPRESENTATIVE McGEEHAN: Employees are being informed about -- I'm sure they don't have to be because they're aware of the controversy?

DR. LEWIS: Well, maybe I didn't let you finish your question, in a sense. People are informed of what they're working with. In fact, part of the requirement of the Rohm and Haas system is that people know what they're working with. Materials safety data sheets are available to everyone. In fact, we have an audit system that goes to each one of our sites to ensure that that's the case. And one of the ways for a plant manager or a facility manager, research or not, to get fired is not to have those systems in place.

So people understand what they're working with. We are open to answer any questions that they may have. And as I say, we are constantly looking at the literature to learn more information. And we work with our Toxicology Department on new testing of materials to look for new information. So the -- we take every reasonable precaution to safeguard the health and safety of our employees and the environment around us.

REPRESENTATIVE SABATINA: Doctor, in your testimony you said that Rohm and Haas keeps a record or a journal of all the incidents of

cancer?

DR. LEWIS: Cancer registry, that's right.

REPRESENTATIVE SABATINA: Can you tell me, besides the 60 mentioned in Building 6 and the young doctor in 2002, a rough estimate of how many other employees contracting various forms of cancer?

DR. LEWIS: To accurately answer your question, I'll have to go back and look at the cancer registry, because there are over 200 different cell types of cancers. The other thing to keep in mind is the cancer registry is voluntary. So employees do not have to give us the information. So that's one of the difficulties, again.

But the number of brain cancers we know reasonably well to be somewhere around a dozen or 15 or so. I have heard of maybe an additional three or so, it may be 18. But in order to get that information beyond what people voluntarily give us, we have to go to state cancer registries and/or go to individual physicians and hospitals and ask for the information. So that's

part of what happens in the cohort of the case control studies that we have done and what University of Minnesota will be doing.

But to answer your question, I'd have to go back and look at the registry, and I can tell you how many cancers we had at different times.

REPRESENTATIVE SABATINA: Beside this scientist in 2002, is there a string or a series of like cancers, like brain cancers?

DR. LEWIS: You mean excesses of cancer?

Is that what you mean?

You mean excesses of cancer?

REPRESENTATIVE SABATINA: Yes.

DR. LEWIS: We have -- there was -- we initiated a look at our Bristol plant, because there was a question about whether ethyl accolade or some of the monomers might generate an increase in lung cancer. That was not found, but we did find an increase in colon cancer. It seems to be reasonably similar to the Spring House cases where there's an excess number that seemed not, in the end, to be associated with anything there in

the workplace; did offer screening for that.

At the Philadelphia plant, and in a follow-up to the lung cancer study, we did find an increase in pancreatic cancer. Again, that's a cancer for which there's no screening. We did see what seemed to be an association with DDT, but that was not held in any other investigation that we did in any other center, nor anywhere else around the world. And so that was the most we could do there.

There was a question about a cluster of esophageal cancers at our plants in Jarrow, England. We worked that issue with the health and safety executive for the government in the U.K. Again, there was no clear association with anything in the environment or anything from the plant. We did, however, continue to work with the community just to reduce odors, just because that was a problem. But there was no clear association of cause for the disease.

There are others, but I'd have to go back and look at the record.

REPRESENTATIVE SABATINA: Thank you.

REPRESENTATIVE McGEEHAN: Thank

you very much, Dr. Lewis, for taking the time out to be here and for sharing your expertise with us.

DR. LEWIS: Sure.

Let me offer one other thing. I understand that part of the sense of this is to make sure that the appropriate agencies within the Pennsylvania government have the opportunity to look into this thing. Let me volunteer myself and Rohm and Haas Company to work with you to figure out what would work the best. We'd be very happy to do that.

REPRESENTATIVE McGEEHAN: Thanks very much, Doctor.

DR. LEWIS: You're welcome.

REPRESENTATIVE McGEEHAN: We're going to take a five-minute break.

(Whereupon, a recess was taken at 1:45 p.m.

(Whereupon, testimony resumed at 2:00 p.m.)

REPRESENTATIVE McGEEHAN: I want

to reconvene this meeting of the public hearing for the House Labor Relations Committee meeting. I want to next introduce Thomas Haag. He's the next testifier. He will be joined by Aaron Freiwald. He's an attorney.

Would you please state your names for the stenographer and your interest today?

MR. HAAG: Thomas Haag, H-A-A-G.

MR. FREIWALD: Aaron Freiwald.

REPRESENTATIVE McGEEHAN: You may be give your testimony, gentleman.

MR. HAAG: My name is Thomas Haag. I was a Rohm and Haas Company employee for 38 years, split evenly between the Research Division and the business end and managerial and management roles. I was head of a large polymer research laboratory at the Spring House facility. I worked at the corporate headquarters in Philadelphia as a marketing manager, then as a business director of the largest and single most profitable unit of the corporation. I retired as Director of Corporate Development.

In August, 1996 I read an Associated Press article in the Wall Street Journal

and the Philadelphia Inquirer about Amoco closing a polymer research center in Illinois because they were finding a high rate of brain cancers among their research workers. The description noted that the cancers were occurring at young ages. Brain cancers tend to occur most frequently in the very young and in the elderly. Brain cancers among working-age individuals and the ages of 18 to 64 are rare.

The article jolted my memory because I had a co-worker friend who, in his early 30s, as a polymer chemist at Spring House had contracted brain cancer. I had the terrible experience of watching him disintegrate from being an excellent athlete, who actually played against Wilt Chamberlain in the high school basketball championship game to being a stumbling Frankenstein figure with a bald head and scars before his death.

This motivated me to write a letter to Dr. Phil Lewis, the vice-president and medical director of Rohm and Haas. I inquired about any possible similarities between the experience of my former co-worker and those involved in the Amoco facility in Illinois. I got

a return letter noting great concern and stating that Rohm and Haas epidemiologists would contact his counterpart at Amoco to probe the topic.

I heard nothing more until the year 2002 when I attended a meeting in Spring House at which the company announced the start of an epidemiological study because of a concern with the rate of brain cancers. When I asked the Rohm and Haas epidemiologist, Dr. Arvind Carpenter, he had no recollection of my friend and he responded to a direct question that he had never had contact with his Amoco counterpart. I took that to mean that the Rohm and Haas medical director had lied to me in his response.

I called Dr. Lewis to discuss the topic with no meaningful response. I then spoke with John McKeough, head of corporate public relations for Rohm and Haas, and suggested that he come to see me at my house. At that meeting I gave a full warning that I was not about to sit on my butt for two years waiting for some ponderous study. I had a separate meeting with the Rohm and Haas epidemiologist, Dr. Carpenter, which did not allay my concerns. I spent a few hours making

phone calls to fellow researchers and established, within a matter of hours, in my mind, that there was a serious problem at Spring House.

I wrote a letter to John Haas and Mr. Raj Gupta, the CEO, requesting a half-hour meeting with them to outline my concerns. Both of them knew me and knew very well that I had a long and distinguished career with the company and had helped the company make millions of dollars over the years, and I was certainly not a malcontent.

They referred my letter back to the medical director, Dr. Lewis, the same person I had already spoken to and had done nothing six years earlier. I sent them a close-out letter to Mr. McKeough noting that the response was completely disingenuous and stating that I would act on my own. The chief results were that I established contact with Tom Avril of the Philadelphia Inquirer and attorney, Aaron Freiwald. Both of these gentleman deserve great credit, Mr. Avril, for his thorough reporting, and Mr. Freiwald for taking on this iconic Philadelphia company.

In summary, when a former lawyer -- loyal employee tried to shed light on the

problem of brain cancers at Spring House I was lied to, stalled, given the runaround and brushed off. Now, after nearly 12 years we're still talking about brain cancers and the death of some of the best and the brightest scientists around. NIOSH has trashed Dr. Carpenter's epidemiological studies, which Rohm and Haas had promised would answer all questions and would prove that Spring House was safe and the company was not responsible. Of course, during all those years, chemists continued to die.

In my efforts to understand the Spring House brain cancer problem and to push the company to action, I have learned a few things about epidemiology. Epidemiology is the science that deals with the incidence, distribution and control of disease in the population. This can be a valuable scientific discipline, but as with other sciences, it can be used or abused.

At Rohm and Haas, epidemiology has been used to manipulate the truth. If a company has been lax when it comes to industrial hygiene, has failed to investigate individual complaints, has failed to pay attention to

worrisome deaths of its employees, has failed to follow the scientific and governmental literature, such as the National Cancer Registry, then a company can, when trouble breaks out, declare that the only scientifically sound way to look at the problem is with epidemiology.

Of course, the quality and reliability of such studies can easily be compromised to suit the investigator. It can be used to stall and bury simple logic under a mound of superfluous facts. To wit, simple logic says that if the standard rate of brain cancer is six per 100,000, then if you have 100,000 people working at Spring House, you'd expect six cancers a year. However, Spring House has had an average population of about 1,000, so you would expect .06 cases a year. Now, if I multiply that for the 40 years of the study, I come out with 2.4 cases, not 12, not 14, not 15, 2.4.

More than a dozen brilliant scientists have now died of brain cancer. This is an aside, but I probably know more people that have died of glioblastoma multiforme than most neurosurgeons do. The company defends its shoddy

epidemiology, which the federal government now has completely discredited. All of the Spring House brain cancers happen to involve laboratory scientists or people exposed in Buildings 2 and 4. In Building 4 at least five people in one hallway died of brain cancer. The company's scientists have ignored or covered up the facts. Not one secretary, guard, janitor, librarian, groundskeeper, cafeteria worker or powerhouse worker ever contracted brain cancer, yet these were all counted in the Carpenter studies. Add that the fact that the majority of cases were of a most virulent and rare type, glioblastoma multiforme. The unmistakable conclusion, there's a major problem at Spring House.

Rohm and Haas has known that there's a major problem with its scientists dying of these cancers for years, yet nothing has been done. The company has been allowed to investigate and study a problem for years and years without any outside oversight and quality control. Rohm and Haas has not learned the lessons of Building 6 lung cancer tragedy from the '70s, and I commend this book to you. I will quote from it later. Rohm and

Haas preaches corporate responsibility, but its actions speak much more loudly than its words.

I humbly recommend the following: Give the Commonwealth of Pennsylvania stronger investigative authority because it's obvious that OSHA is not doing its job. Companies, such as Rohm and Haas, cannot be left to monitor themselves. The problem is not peculiar to Rohm and Haas. Note that Amoco had the problem. Note that in the March issue of Scientific American Magazine there is a discussion of a major study by Pratt and Whitney Corporation in Connecticut regarding workplace cancers. DuPont is now performing court-ordered medical monitoring in West Virginia.

During 2002 I read two letters to Pennsylvania state officials without effect. There needs to be a stronger investigative and enforcement authority in place.

Number two. Companies should consider hiring and electing an outside director who is expert in health safety and toxicity. I served as an outside director for six years of a mid-sized specialty manufacturing firm. They wanted me for my marketing and management

experience. However, on my first production plant walk-through, there was a strong odor of a volatile organic solvent. Because of my experience working for a chemical company, I was able to suggest changes to the workplace processes to include the safety and well-being of the plant personnel.

Three. Companies should appoint an ombudsman, who may be contacted privately or by an employer with the health, safety or toxicity problem, and who has access, on occasion, to the ear of a CEO or a president of a corporation. Ironically, Rohm and Haas regularly boasts about having such a system to report concerns about apparent business ethics violation, and I have to raise the question: Is it ethical to be concerned about business ethics but not also about the health and safety of your employees?

Thank you for holding this meeting and allowing me to share my experiences and views on this important subject.

Now, I just wanted to quote one paragraph from here. The book is Building 6. And as you can see, I have read it and earmarked it thoroughly. On page 167 Rohm and Haas finally

called in NIOSH to do an inspection of the plant. The NIOSH inspector, a Mr. Johnson, walks in, looks around, and he said: It didn't take a sophisticated epidemiological study to tell something was going on, recalls Johnson. I was surprised it wasn't seen earlier. It was readily apparent. The problem was they were getting guys in their 30s and 40s. They were getting relatively young people with lung cancer, which should have immediately raised some suspicions. Within a given period, the number of lung cancers should be fairly limited, especially in a healthy working population.

End of my comments. I'd be happy to field questions.

REPRESENTATIVE McGEEHAN: Thank you, Mr. Haag. We're going to directly to Mr. Freiwald and open it up for questions for both individuals.

MR. FREIWALD: Thank you very much, Representative McGeehan and Representative Sabatina. Thank you very much for inviting us to testify at today's hearing. My name is Aaron Freiwald and I'm a founding shareholder of Layser &

Freiwald, P.C., a civil litigation firm in Center City, Philadelphia. I concentrate my practice in cases involving significant personal injuries, and in particular, losses from toxic chemical exposure.

I represent ten families of individuals who worked at the Rohm and Haas Spring House facility located in Spring House, Pennsylvania. To my knowledge, Spring House stands as one of, if not the largest brain cancer cluster in a workplace ever identified.

Most of the brain cancer cases at Spring House, as Mr. Haag pointed out, involved research chemists or those who worked in or near the chemical laboratories there. Most involved individuals who at sometime worked with leather chemicals. Most involved individuals who worked in one of two of the laboratory buildings at Spring House, Buildings 2 and Building 4. At least five of the brain cancer victims worked on the same hallway of Building 4.

The families of Dr. Barry Lange and his co-worker, Charles Hsu, have pending Workers' Compensation claims in Pennsylvania. Several of the other families have pending court

cases. Rohm and Haas has maintained consistently that it cannot identify a single cause for these brain cancers and that the brain cancer deaths of its employees are not in any way workplace related.

I'm joined here in the hearing room today by several of those families, if I may just mention their names to the panel and for the record. Linda Lange is here. She is the widow of Dr. Barry Lange. His daughter -- their daughter, Julianna is here, as well. Lee Hsu, the widow of Charles Hsu is here. Dr. Lange and Dr. Hsu worked closely together in the same hallway of Building 4.

Tony Renally is here. He is the widow of Olivia Ranalli who worked in the Leather Chemicals Department of Rohm and Haas, as well as Tony's sister, Maria, and Oliva's sister, Norma Ivarolla. Martina Granger is here, being a person, I'm aware of, that has most recently been diagnosed with a brain tumor, she was diagnosed last October, and her husband, Bill.

As Mr. Haag mentioned, the story dates back to 1996. And we have heard reference to Mr. Haag's letter to Dr. Lewis about the Amoco facility in Naperville, Illinois. Dr. Lewis

testified a short while ago that there was some investigation at that time of some sort following up on Mr. Haag's letter inquiry. Having reviewed hundreds of those of pages of documents produced in the varying cases that we're handling, I can tell the panel I have not seen one single piece of paper in any way referencing any inquiry or investigation that was done in 1996 in follow-up to Mr. Haag's request, or in 1997, or any year following until we get to the year 2001.

At that time, in the summer, Barry Lange, who is widely regarded within the company and throughout as a brilliant research chemist and holder of dozens of patents for his work in research for the company was diagnosed with malignant brain cancer. He died less than two years later.

Rohm and Haas, in part in response to Dr. Lange's diagnosis, as well as some published reports that had come out by that time regarding the Amoco situation, determined that after a look at the numbers of employees it could quickly identify as having been diagnosed with or having died of brain cancer determined that Dr.

Lange was the tenth brain cancer case among Spring House employees, and very quickly determined that this appeared very strongly to represent an increased incidence of brain cancer.

Mr. Haag read that passage from the book, Building 6, a work that won the Pulitzer Prize in its time. And Dr. Lewis, I believe, mentioned that it was quickly looked at, the incidence of brain cancers. I can cite to you an E-mail that we have from September 21st, 2001. The author of the E-mail is Dr. Carpenter, the just-retired epidemiologist. The recipient is Dr. Lewis. In this E-mail Dr. Carpenter does a quick look at the number of brain cancer cases and performs some back-of-the-envelope calculations, if you will, and determines that the number of brain cancer cases is two and a half times what you would expect in the general population.

And then he goes on to note in this E-mail, quote, I am using very conservative numbers here. The SIR is probably as high as four or five. SIR is an epidemiology term for standard incidence ratio. In lay terms it means that the rate of brain cancer, Dr. Carpenter says, is

probably four or five times as high as what you'd expect in the general population.

The company quickly recognized that they had a situation of an apparent increased incidence of brain cancer, and after extensive meetings within the company that included Dr. Lewis, Dr. Carpenter, and senior members of the corporate Legal Departments and the corporate PR Departments, including Syd Havely from the company's corporate PR Department, Mr. Havely's here today, nine months later, in May of 2002, the company announced to its Spring House employees, current and former, that it would embark on an epidemiology study to try to determine if they could explain these brain cancers by looking at specific buildings, specific chemicals, or anything else that might be attributable to these brain cancers. This study was launched, as I say, in May of 2002, along with a reassurance to company employees that Spring House was, quote, safe.

From the beginning, Rohm and Haas promised its employees that it would publish the results of this study in a peer-reviewed scientific journal. After completing this first epidemiology

study in January, 2004 the company repeated this promise. Now, four years later, the study has not been published. And it's my understanding there are no immediate plans to publish it.

When it was announced that they were going to do this study, Rohm and Haas also assured the Spring House community that its epidemiology work, even though it was going to be handled in-house by staff scientists, unlike what was done at the Amoco facility, and even though the work would be supervised by managers of the corporate, legal and corporate PR departments, the company assured everyone that the study would be scientifically sound based on the outside supervision of three experts in the field. The company did not share with its employees, however, that each these three outside independent experts had close ties either to Dr. Carpenter or to Dr. Lewis. For example, one of the three advisors had been Dr. Carpenter's dissertation advisor.

At the presentation of the study's conclusions in January, 2004 one of the three outside experts was not present, Dr. Elizabeth Ward of the American Cancer Society. She

had been critical of Dr. Carpenter's work during the study and had complained that she hadn't had enough time properly to comment on the study, form any opinions about its conclusions, or in any other way assist in the company's efforts, since she hadn't really been provided the data. This fact was not shared with the Spring House community as Dr. Carpenter took the stage and reported that the study had concluded that no workplace chemical exposures had been identified to associate with these brain cancers.

There was a draft press release that was prepared by Mr. Havely in advance of the January 8, 2004 announcement of the study's findings. This draft press release was also not shared with the Spring House community, but it has come to light since. And although the final press release that was shared with the Spring House community and with other members of the media, although the final press release said that the study concluded nothing was responsible for these brain cancers, that no single factor had been identified as statistically significant, the draft of this release, prepared just a few days earlier,

actually references two chemicals that were found to be statistically significant. Those findings were deleted from the final version of this press release.

Meanwhile, as the company studied through Dr. Carpenter and its other staff members, as the company performed the epidemiology study beginning in 2002, others continued to be diagnosed with brain cancer. Charles Hsu was diagnosed with the same glioblastoma multiforme, the same kind of brain cancer as Dr. Lange. Dr. Hsu was diagnosed in August of 2003, and he died just a few short months ago.

Olivia Ranalli, who had worked -- whose home office, if you will, her main office was in the 5th and Market headquarters, but who spent considerable amount of time at Spring House was diagnosed with glioblastoma multiforme. She died in January of 2007. Her immediate supervisor, Charles Hart, also diagnosed and died from glioblastoma multiforme. And Martina Granger, preparing to go on vacation with her husband, was pulled back to shore and was diagnosed with a large meningioma in October of last year.

Although Rohm and Haas has not submitted any write up on its epidemiology studies for publication, as has been discussed at this hearing today, in November, 2007 Dr. Lewis did submit draft write ups to the National Institute for Occupational Health and Safety, NIOSH. To my knowledge, this is the first and only time that Rohm and Haas took the initiative to share information about the Spring House brain cancer cases with any state or federal agency or department.

One month later, on December 18, 2007, NIOSH issued a letter critique of the Rohm and Haas epidemiology studies. I know Dr. Lewis said he didn't have it with him. I have a copy here, if the Committee's interested. It is available, as Dr. Lewis said, on the company's web site, which is located at www.rohmhaas, R-O-H-M-H-A-A-S, dot com, backslash epi, E-P-I.

In sum, the NIOSH letter critique told of the deep flaws in the company's epidemiology work, and essentially told Rohm and Haas that they had to start all over. And the findings of the NIOSH researchers who looked at the

work the company had done found such things as the order of conduct of the case control study before the cohort mortality study is highly unusual and perhaps methodologically unsound. The reviewer at NIOSH concluded, quote, that brain cancer is of primary interest within the cohort study. The reviewer found that, quote, the study was very underpowered to detect with statistical significance as much as a doubling of brain cancer rates.

The study found -- or excuse me -- the reviewer found that the company had employed, quote, a scattershot approach in its epidemiology work; that it had improperly conducted its exposure assessment; that it had improperly counted the number of cases; that it had not adequately accounted for denominator, the number of the cohort that they were looking at. The reviewer found the discussion was extremely poor; that the study had many limitations that were not taken into account in the study's write up.

The only other government involvement in the Spring House brain cancer investigation to my knowledge, again, having

reviewed hundreds of thousands of pages of documents relating to its epidemiology studies, and having taken Dr. Carpenter's deposition over three days came in early 2004, very shortly after the company announced the results of its first study. Apparently, because of a worker complaint, and I hope this gets to the question that the Committee is really asking here today, apparently, in response to a worker complaint OSHA issued a notice of investigation to Rohm and Haas, and in a letter to the company identified two alleged hazards at the Spring House facility. One, that employees at Spring House had developed a high rate of brain cancer or brain tumors possibly resulting from workplace exposures, and two, that the company had not done an adequate investigation into the cause of those brain cancers.

In response to the OSHA letter, Rohm and Haas sent a letter in response in which it cited to its just completed epidemiology investigation, and the results of that, it said, showed that the company, indeed, had done an adequate investigation and hadn't turned up anything that could explain these brain cancer

cases. In other words, Rohm and Haas relied on the same study that NIOSH has now discredited. In receiving the letter from Rohm and Haas, OSHA terminated its investigation and looked no further. To the best of my knowledge, that is the extent of any state or federal agency scrutiny of this, other than the more recent submitting of its write ups to NIOSH.

There is so much more that could be said. I'm going to end my comments here and join Mr. Haag and be willing to answer any questions you may have.

REPRESENTATIVE McGEEHAN: Representative Sabatina?

REPRESENTATIVE SABATINA: My question, first, is for Mr. Haag.

You said you know of ten or 12 people that have contracted brain cancer; is that correct?

MR. HAAG: I actually, personally, know about six Rohm and Haasers (sic) who died of glioblastoma multiforme. So I probably know more than anyone else, other than a neurosurgeon. Four of them were in one hallway.

There were five men in one hallway that died over a period of 17 years of brain cancer. Four of them died from glioblastoma multiforme.

Now, I went through that routine with the six per 100,000. If I were to go through it with glioblastoma multiforme, I would use the number of two per 100,000. So I would take 1,000 people, and that would be .02, multiply by 40, and that would be .8 cases of glioblastoma multiforme. You can't have part of that case, so it would be one. It is, by far, the most common cancer found at Spring House.

REPRESENTATIVE SABATINA: How common is it in the normal world?

MR. HAAG: Two per 100,000 versus six per 100,000 of total rate of cancer. It's the most virulent form.

However, I have to take disagreement with something that Dr. Lewis said, that MRI screening would not be effective. I attended a symposium by Dr. Digby, who is head of the Duke Brain Tumor Institute with 42 years of experience. He was the doctor who treated Dr. Barry Lange, or an associate of his. He claims

that he has now achieved four or five cures of glioblastoma multiforme. And in addition, the quality of their life and their lifespan has been greatly expanded. So I think there's a good reason to do an MRI, if you happen to be working next to a group of chemists who are dying of brain cancer.

By the way, Dr. Hsu and Dr. Lange worked on the same project, which was reducing the level of nitroso amenes in a product. Nitroso amenes have been recognized as a human carcinogen for generations now, decades, at least. However, I can't say that they have been linked with brain cancer, but I'm not so sure that we're not on the way to establishing that link right now. One of the chemicals the public relations man Xed out was N, N dimethyl nitroso amene. That's one of the things that just happened to get dropped.

REPRESENTATIVE SABATINA: Thank you. I have no further questions at this time. Thank you.

REPRESENTATIVE McGEEHAN: Thank you, Representative Sabatina.

Mr. Haag and Mr. Freiwald, thank you for appearing here today. This Committee,

above all committees, is here to make sure that workplace safety is the number one priority for this Committee and for the state agencies that should be involved in doing what we all hope comes from this hearing.

I want to extend to the families who waited so long here today and so long in this entire process, know that this Committee is not done with its finding or its work, and we want to work with the representatives of Rohm and Haas and your attorney and Mr. Haag and others to find the truth, and just as importantly, set in motion the state authority to prevent these things from happening again, if it can be.

Mr. Freiwald, you have become, I'm sure, an expert in your undertaking of this monumental task.

It's referred to the Amoco case is, I think -- and I questioned Dr. Lewis on the same fact. It took from 1996, according to your testimony, until 2002 when the initial study was begun. That's six years between the time that there was some indication that there was an anomaly of brain cancers at Spring House and the time the

study was done, and our closest guide is the Amoco case.

What is the difference between the case here at Spring House and Amoco?

Are there glaring differences on the way it was handled?

MR. FREIWALD: There are a number of similarities and differences. Similarities are that they both involved chemical research operations. The research chemists were of particular interest because of the work they were doing, the research they were doing and the exposures to hazardous substances that were a necessary and usual part of their jobs. That was also true of the Spring House researchers.

Rohm and Haas, as Dr. Lewis testified, is -- I do believe, from what I have seen, very aware at all times of Building 6 and that legacy. And they have an in-house epidemiologist. At least until a couple of months ago they had an in-house epidemiologist. I understand Dr. Carpenter is now retired, and I don't know if he's been replaced or if he will be replaced. But at least for a great number of years

they had an in-house epidemiologist serving under Dr. Lewis. I don't believe that was true at Amoco. Although, they did have health and worker safety officials. So Rohm and Haas had an in-house person to look at these types of situations when they might come up. That's a significant difference in terms of how a scientific study is conducted.

In the Amoco case, they brought in outside scientists, epidemiologists, to look at the problem and to report on any findings they might make. All of the people involved in the Rohm and Haas epidemiology study were Rohm and Haas employees, starting with Dr. Carpenter, supervised, as I mentioned, by very senior company officials, including his immediate boss, and right on down to the people who were reviewing those notebooks, analyzing the data, programming the computer to run the models and everything else. They were all Rohm and Haas employees, paid by the company, and indeed, rewarded for their work, receiving bonuses from the company after the study was completed.

The outside experts who were supposed to have reviewed the work along the way really didn't do that at any point in time. They

were sent, very late in the process, as in several weeks before the entire study was concluded, they were sent copies of slides for a PowerPoint presentation and there were a couple of meetings where everyone got together. But they really didn't supervise how the data was collected, how exposure was determined, how the data was analyzed.

And again, looking -- relying on the documents -- judging from the documents and some of the questions that were being asked in the final days before the results were announced, it's pretty clear that these outside experts didn't have really substantive involvement. For instance, there's one E-mail Dr. Carpenter asks, literally within 48 hours of taking the stage at the company and announcing the study's conclusions, where he asks one of his subordinates: Are Buildings 4A and 4B connected. And that was a pretty important question, because Building 4 had been identified as one of the buildings on the property where significant number of brain cancer cases were occurring.

So in terms of the analysis of the data, at Amoco you had truly outside and

independent scientists working independently, and then fairly quickly publishing their findings in peer-reviewed scientific journals, meaning journals where your peers, as a scientist, are reviewing, are critiquing your work before the work is published to assure that it was scientifically valid; that it was conducted appropriately; that it made sense scientifically; and then the work is published in the journal. None of that was done in this case.

MR. HAAG: May I add a postscript to that? Rohm and Haas belongs to the American Chemical Council. They have guidelines for conducting such studies. The first recommendation is do not do it in-house. Get a sound outside academic association to conduct the study.

REPRESENTATIVE McGEEHAN: Well, Mr. Haag, your testimony certainly carries a lot of weight with me. As a scientist, you, at times, have to use your analytical brain based on facts, and as a human being, you're responding to these cases. Many of these people who have died of brain cancer you knew well and were friends with.

My question about Amoco, I think

deals with the time line, between the time they suspected and the time they closed that facility, because the time line here is troubling for me in that we first had suspicions in 1996, and it's now 2008. And as Dr. Lewis testified, there's nothing being done differently today than there was in 1996.

Is the Amoco facility still in operation?

And have there been -- do you know that, Mr. Freiwald, in discovery?

MR. FREIWALD: I think it is back in operation. I wouldn't want to swear to that today. I'm not sure. I think that the response there was quick, though, and is distinguishable here. I'm not going to be the one to say -- I don't think it's my place to say should Rohm and Haas have shut down Spring House. That would be a major decision for this company. It's the -- it's really the heart and nerve center of its entire research operations.

But I can say that the company relied on the work it was doing to do in terms of this epidemiology work even before they started,

and after it was completed, to reassure everybody that Spring House was safe. And that is, I think, an important distinction between the Amoco situation, or any other that I'm aware of, to illustrate that I can point to the experience of both Dr. Lange and his family and Dr. Hsu and his family.

The question that the epidemiology study was meant to answer, if it was honestly asked, is: Is there a problem at Spring House?

Is there something we can identify? That's a question. That's not an answer. The study is then supposed to try to answer that question. Both Dr. Lange and his wife, before Dr. Lange died, and Dr. Hsu and Dr. Hsu's wife, before Dr. Hsu died, were told, during the time the study was either being planned for or during the time the study was actually being conducted, that their brain cancers -- that is that Dr. Lange's brain cancer and Dr. Hsu's brain cancer were not work related. Now, I don't know how that can be said if the study hasn't been completed.

So the study was used as a way of

reassuring everybody, and I don't think there's any quarreling with doing an epidemiology study, per se. That's an appropriate thing to do, and a company that wants to be responsible would want to do that. But it's got to ask a question and then proceed to do the work of the study to get an answer and not start with the answer.

REPRESENTATIVE McGEEHAN: Sir, you're in the middle of litigation and you're limited to what you can reveal to the community and the public, but I was struck, and I think you referenced, and correct me if I'm wrong, Dr. Carpenter in that draft press release, is it Dr. Carpenter that did the draft press release, and he identified two agents which he suspected were contributing to this anomaly of brain cancers.

Had you had had an opportunity, got an explanation or find out where that information had come from, why that was used and why it was expunged from the official version that was released to the press and the public and employees?

MR. FREIWALD: No, I haven't. I can say that this was reported in the Inquirer last

year on May 18th, and I think that there's a comment in the article from the company. But in terms of any official answer, I don't have one at this time.

MR. HAAG: If I may, I'd like to make two more points. One is that Dr. Lewis said the chemists always know what they're working with. I have to tell you I did a lot of work for many years on the applications of isothiazolones, paint mildewcides, emulsion preservatives and so forth. The fact that I was head of a laboratory, I was doing a lot of applications where I never knew that they contained nitroso amenes. I knew I wasn't supposed to get them in my eye because they were corrosive. I knew I shouldn't get them on my skin because they're sensitizers. I didn't know that they contained substantial amounts of nitroso amenes, so I shouldn't have been breathing around them.

Also, their second epidemiological study is partial on its face. They concluded that Spring House is really a health spa because it has a below normal rate of death for all the major causes of death. So apparently, people

at Spring House don't get heart attacks or strokes and so forth, let alone brain cancer.

REPRESENTATIVE McGEEHAN: Mr. Freiwald, you've given me some information I didn't know about the initial OSHA investigation, and obviously, that goes to the heart of our concern, Representative Sabatina and I, and the Committee's, about who has jurisdiction, if they don't have jurisdiction, who should we vest that jurisdiction in, investigating these types of complaints and situations. You said based on a NIOSH report that was provided to OSHA from Rohm and Haas that they terminated the investigation.

Are you aware of anyone that has asked that an investigation be reopened based on the debunking of that initial study?

MR. FREIWALD: Well, first of all, I may have misspoken, so I just want to be clear on one thing. The two points in time that are referenced in your question are early 2004, after the company finished its first study, and that's when an OSHA investigation began, as far as I know. NIOSH doesn't really come into the story until 2007.

REPRESENTATIVE McGEEHAN: I correct myself, yes. The initial Rohm and Haas investigation, yes.

MR. FREIWALD: So the question: Has anybody asked either to OSHA or anyone else that an investigation be reopened based on the NIOSH critique? I'm not aware of any. I'm not aware of any, sir.

REPRESENTATIVE McGEEHAN: Maybe that's something we need to be doing in conjunction with your efforts.

MR. HAAG: Sorry. Most people tell me to be quiet, but this is a golden opportunity. But I can tell you honestly what I went through in trying to do something with this problem. I tried to work within the company. And in the end, I found I was lied to, stalled, given the runaround and brushed off.

I tried going outside the company. I spoke with a surgeon, a neurosurgeon, and he recommended I contact the CDC. When I contacted the CDC, they said: Oh, we have to be requested to come in by a state. I sent letters to two state officials. I covered two City Council

people in Philadelphia who are known for environmental concerns.

The chemists, themselves, should be protected by the American Chemical Society. This is a professional organization. I talked to the local chapter of the ACS. They did nothing. I talked to the editor of the C and E News, which is the ACS magazine, which is mailed to 150,000 chemists and chemical engineers in the United States every week. They did nothing. I ran out of places to go, and I decided the only places I could go was to the press and to the law before anything would be done.

REPRESENTATIVE McGEEHAN: Mr. Freiwald, in your discovery in this case, do you have a general idea of where the NIOSH review is now and whether a report is going to be issued eminently?

MR. FREIWALD: Well, I do not. I know what I have heard this morning from Dr. Lewis and I know what the company is stating in public announcements. And that's really a function of the litigation and limitations of what we're being provided access to at this time. I'm hoping that

in the near future we'll be able to get access to some of those materials, but that's a process that's working its way through the courts. And without getting into all the details of that, simplest to say I don't know anything beyond what I understand the Committee has been told today as to the status of the NIOSH investigation.

I know Rohm and Haas has enlisted the University of Minnesota, and it appears that they are now following more closely the model that Amoco followed years ago in having an outside agency conduct this work. I am not under the impression, as Dr. Lewis testified to earlier, that it is simply a matter of running a few additional calculations. I think you don't have to be an epidemiologist to read the NIOSH letter, which is publicly available, to see the scope of their comments and criticisms, and their recommendation that what Rohm and Haas is now doing years later needs to be done because the work that has been done cannot be relied on to say that there is no explanation identifiable for these brain cancers.

So I think it seems that the University of Minnesota is taking this project on

and is, in effect, starting over. I'm not saying they're not going to build on work that may have been done. I don't know that. But I don't perceive this as being a matter of a simple mathematical calculation or two.

REPRESENTATIVE McGEEHAN: How difficult has it been to identify those individuals who have -- or have succumbed to a brain cancer? I know you spoke of the disseminule moment of Barry Lange dying and that really opened a lot of people's eyes about this. And I want to be so respectful to the families, but we're throwing around numbers like it doesn't mean anything. These were men and women who were vital and succumbed to a very rare and devastating disease, some 12, 15, 18. I mean, I don't want to be flippant about that.

Do you have a number of individuals who are being treated now and who have died of this disease?

MR. FREIWALD: Yes.

REPRESENTATIVE McGEEHAN: Dr. Lewis, I think, wants to be recognized.

DR. LEWIS: If I could, the

question on NIOSH, the first thing, as a federal law, any employee may call NIOSH at any time. Mr. Haag, Mr. Freiwald, anybody can call NIOSH. We encourage them to do so, if they like.

Additionally, it is particularly important to know that as I testified, we went over the situation with NIOSH. We offered them to come to anything that they wanted to do. They asked to look at the papers, alone. And at the end, they said their investigation was done.

However, again, as I have said, we'd be very happy to have Mr. Freiwald, Mr. Haag or anyone contact NIOSH. The federal government is required, under law, to do an investigation, if they think there is a problem.

REPRESENTATIVE McGEEHAN: Thank you, Doctor.

MR. FREIWALD: Just briefly on that before I get to the Representative's question, I represent families in litigation, and I appreciate very much Dr. Lewis' suggestion, but I don't perceive my role as the same as Mr. Haag's role. So I wouldn't ever consider myself to be the one who should be requesting an investigation. I

work within the confines of the court system and consider that my role and my place.

But I am trying to be careful to answer the Committee's questions and be helpful, while also being mindful of these matters being in pending litigation.

Having said that, I do greatly appreciate what you've said about the individuals involved. And it was my thought that not only would my clients and these families be interested to hear what the Committee was doing, but that they also do put a human face on this issue very much so. These are brilliant individuals who have been lost, and their families, each and every one of them that I've gotten to know, are I think the best that we, as a community, have to offer.

Brain cancer is a particularly devastating disease, and glioblastoma multiforme, in particular, we can quibble about whether it's only really rare, or it's exceedingly rare, or however we want to characterize it. It's rare and it's deadly, in particular, because it almost always manifests itself outwardly, late in the stage of the disease when there are limited

treatment options. And I'm not going to reopen the subject of monitoring, but it would be one of the goals to screen an exposed population to try to make an earlier diagnosis of what is a cancer that grows over a long time before it becomes apparent outwardly with a seizure or some other sign or symptom.

There are no surviving brain cancer victims among the Spring House employees that I'm aware of. There is malignant brain cancer on the one hand, and then there are, I believe, the very inaptly named benign brain tumor cases. The company, in its first study, identified 12 malignant brain cancer cases and three brain tumor cases for a total of 15.

I'm aware of two -- at least two further brain cancer cases that were not counted that we have mentioned, Mr. Charles Hart and Olivia Ranalli. They were not counted. Well, Mr. Hart was not counted, though he was aware -- though the Rohm and Haas researchers were aware of his case because they determined that he was not assigned to Spring House, and therefore, wouldn't be counted. And Dr. Lewis had some comments on that.

Ms. Ranalli was not counted because she was much more recently diagnosed, although still diagnosed within the time period of the company's second study. And I haven't seen any final product or write up on either study, so I don't know whether they're intending to count either of those two cases, but I certainly am aware of their existence, and that would, to my count, bring the number to 14, the total of brain cancer cases. And then I'm aware of at least a few additional brain tumor cases, including Ms. Granger's case, so that the number is closer to 20.

But as I mentioned, it's a devastating disease, brain cancer, with an almost assured death sentence attached to it.

REPRESENTATIVE McGEEHAN: Well, I want to thank you. I don't think Representative Sabatina has a follow-up question. I want to thank Mr. Freiwald, and Mr. Haag, and all those who participated today. This Committee, as I said before, as opposed to any other committee, is charged with the duty of workplace safety and we take that responsibility seriously.

This issue is a complicated one,

but I think one that deserves further investigation from this Committee and from the full House. And although only three members of the Committee were here today because of conflicting committee hearings around the State, that in no way indicates the seriousness in which this Committee takes this issue. And we are determined, as a committee, to get to the truth and to place into law the mechanism that, pray God, would prevent this from happening ever again.

I'm frustrated, I think as many of you are, including the company, and the victims' families, and the attorneys, and others that we don't seem to have a mechanism in the Commonwealth to adequately police and investigate the problems when they occur. If we had, maybe in 1996 we could have gotten a handle on it. So we're going to be investigating how best to empower our local agencies in the State to do a better job of protecting the health and safety of workers and for all Pennsylvanians.

So I thank you for your participation. I thank the Chairman's staff. I thank the Department of Recreation for their help

with the sound and the use of the facility, and thank the Court Reporter for her diligence today.

Having said that, I will adjourn this official hearing of the House Labor Relations Committee.

(Whereupon, the hearing concluded at 2:59 p.m.)

C E R T I F I C A T E

STATE OF PENNSYLVANIA

COUNTY OF BUCKS

I, SUSAN L. SINGLAR, a Court Reporter and Notary Public in and for the State of Pennsylvania, do hereby certify that the foregoing transcript of the Public Hearing of the House Labor Relations Committee, taken on Thursday, May 15, 2008 is true and accurate to the best of my knowledge, skill and ability.

SUSAN L. SINGLAR

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