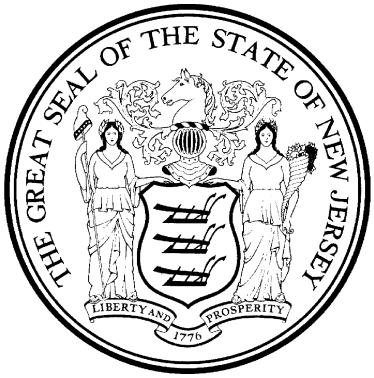

REPORT TO GOVERNOR CHRISTINE TODD WHITMAN ON IMPLEMENTATION OF THE ENHANCED MOTOR VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM

MEMBERS OF THE PANEL

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INTRODUCTION

The Panel's Charge and the Scope of the Investigation

This is the Report of the Panel constituted by Attorney General John J. Farmer, Jr., at the request Governor Christine Todd Whitman, following the trouble-plagued implementation of New Jersey's Enhanced Inspection and Maintenance Program. On December 13, 1999, the system went mandatory and over the next several weeks it failed.

The Governor charged the Panel to investigate the implementation of the program to determine why warnings of serious deficiencies in the system, including those made by retained independent consultants, were not made known to her Office.

In accordance with that directive, the Panel has sought to identify the key design and construction concerns that were raised in the course of the development of the system. In that process, the Panel has also sought to determine the deficiencies in the supervision and oversight of the project that contributed to the failure to bring substantial problems and explicit warnings to the attention of the State's Chief Executive.

Consistent with the focus of its charge, the Panel has not examined in depth the governmental policies resulting in the decision to develop and implement a so-called clean air enhanced emissions inspection system with a combination of central or state facilities and private facilities and to carry out that decision

through "privatization," or the circumstances surrounding the procurement and award of the contract to Parsons Infrastructure and Technology Group Inc. to design, build, operate and maintain the system.

While the Panel has examined in some detail the circumstances surrounding the performance of the contract, it has not evaluated that performance from an engineering, technical or legal perspective to determine whether that performance was substantial or adequate under the express or implied terms of the contract.

Further, the Panel has not extended its inquiry into, nor does it mention, current efforts to rectify and implement the Enhanced I/M system, although occasional references to such ongoing developments were made during the hearings.

Finally, the Panel has not attempted to determine whether the warnings concerning actual or anticipated deficiencies issued by consultants and State employees were correct on engineering or technical grounds. Rather, as will be explained, several consultants and State employees forecast profound problems leading up to the project's implementation. The Panel has concentrated on the many problems and warning signs that arose in the performance of the contract and during the course of the development and implementation of the system and on the lack of corrective action

taken in response, including the failure to make that information known to cabinet-level officers and the Governor's Office.

The Conduct of the Investigation

The Panel, constituted at the direction of the Governor, originally consisted of Attorney General John J. Farmer, Jr., as its Chair, Kenneth Merin, an attorney-at-law and former Deputy Chief Counsel, Chief of Policy and Planning and Commissioner of the Department of Insurance under Governor Kean, and former member of the State Commission on Investigation, and Walter F. Timpone, an attorney-at-law and former Assistant United States Attorney in Charge of the Special Prosecutions Division. Thereafter, the Attorney General determined to recuse himself because of his prior service as Chief Counsel to the Governor. Alan B. Handler, former Associate Justice of the New Jersey Supreme Court, was designated as Chair of the Panel at the request of the Attorney General and with the approval of the Governor. The Office of the Attorney General, Division of Law, provided support staff for the Panel. That staff included Assistant Attorney General Jeffrey J. Miller, Director of the Division of Law, and Deputy Attorneys General William C. Brown and Harlan I. Ettinger, as well as other legal, paralegal and investigative personnel.

On January 27, 2000, the Panel wrote to Commissioner James Weinstein of the Department of Transportation, Commissioner Robert C. Shinn, Jr., of the Department of Environmental

Protection, Chief Counsel to the Governor, Richard Mroz, Treasurer Roland M. Machold and Director of the Division of Motor Vehicles, C. Richard Kamin, requesting them to "cooperate fully" with Panel staff and make available:

> in the form and order in which they have been maintained, all documents pertaining to the enhanced motor vehicle emissions inspection program, including correspondence, reports, calendars, diary entries, memoranda, notes, computer generated matter and e-mails.

The Panel assembled over 115,000 documents. It conducted extensive preliminary interviews with dozens of witnesses. Following those interviews, twenty-one witnesses appeared to testify before the Panel. Their statements, given in response to questioning, were transcribed by a court reporter. In addition, Panel staff interviewed an additional twelve witnesses. The statements of six of those witnesses were taken before a court reporter. A list of witnesses is included in the Addendum.

Among the witnesses interviewed by the Panel were the State employees with direct responsibility for supervising and monitoring the project and their immediate superiors. In addition, high-ranking departmental officials were interviewed, including the Commissioner of the Department of Environmental Protection, the Commissioner of the Department of Transportation, the Deputy Commissioner of the Department of Transportation, and the Director of the Division of Motor Vehicles. The Panel extended its inquiry into the Governor's Office, interviewing officials and staff,

including the Governor's Chief of Staff, Chief Counsel, and Chief of Policy and Planning.

The transcripts of these interviews together with 185 exhibits comprise the record underlying the Panel's report. That record is reproduced in the appendices that accompany this report.

SUMMARY OF REPORT

History and Background

The contract for the implementation of New Jersey's Enhanced Emissions Inspection and Maintenance program was executed in August 1998, with a goal of full project implementation by December 13, 1999. That deadline had been set by a federal Environmental Protection Agency mandate that New Jersey comply with federal clean air requirements. In that period of time, a complex and novel system for enhanced testing and reduction of automobile emissions had to be designed, built and installed.

Following the award of the contract, efforts were made to formulate and clarify contract specifications and to develop working protocols among all involved in the implementation of the project. It became evident over the ensuing months that the contractor, Parsons Infrastructure and Technology Group, Inc. was failing to meet development and testing deadlines. Critical components of the machinery long remained in a developmental stage and critical tests could not be conducted. Adverse evaluations and stern warnings of these failures were issued by the State's consultant, Parsons Brinckerhoff-F.G., Inc. and its retained expert, Sierra Research. The State's project director, Carl Passeri, and other State officials did not fully accept or act on these warnings. In fact, commencing in the Summer of 1999, the oversight role of the retained experts in supervising the project

was reduced by the project director. Later, in the Fall of 1999, consultants and State employees continued to note the failures of the contractor to meet necessary deadlines. Virtually every deadline that was set for the project was missed or discarded. By the time the project went on-line, there had been insufficient testing of a new and complex system that involved highly sophisticated and computerized equipment.

During this process, experts retained by the State to oversee the contractor, as well as certain State employees, provided their superiors and senior project managers with specific and strongly worded warnings about significant problems with the project. Despite their urgency, these predictions of failure were not passed up the chain of command. In addition, senior project managers repeatedly portrayed the project as being on track for an effective December 13 startup.

Enhanced I/M was implemented and became operational on the December 13 deadline, even though the system had not been subjected to the minimum amount of testing necessary to determine whether it was efficient, reliable and durable. The enhanced inspection system failed when it went mandatory.

Conclusions

The Panel has concluded that there are, at least, five reasons for the failure of the system and why the Governor and her cabinet-level officials were not warned of the serious

deficiencies in the system and the risks posed by putting it on-line.

First, senior project managers and key staff in State government believed that the December 13, 1999 deadline could not be extended or deferred. They believed that, pursuant to federal law, failure to meet that deadline would jeopardize one billion dollars of federal highway funding for New Jersey and would inhibit economic development. This mindset contributed to a tunnel vision that hampered senior project managers from objectively and appropriately managing the project.

Second, senior project managers failed to adequately supervise the contractor implementing the Enhanced I/M system. The contractor was repeatedly able to extend deadlines and defer elements of the program that were required under the contract.

Third, senior project managers failed to alert those above them in the chain of command to the severity of the problems with the system leading up to December 13. That extraordinary breakdown in communication prevented critical information from reaching the cabinet-level officers, the Governor's Office, and the Governor herself. As a result, vital policy issues could not be raised and examined at the highest levels of government, including whether the December 13 deadline could have been extended or contingency plans could have been developed.

Fourth, the Commissioners of the Departments of Transportation and Environmental Protection did not effectively supervise the implementation of the Enhanced I/M system. Their ineffective supervision, particularly after reports and warnings of defects in the system were reported in the press, contributed to their lack of information about serious deficiencies in the system and their inability to take corrective action.

Fifth, the Governor's Office did not effectively monitor the progress in the implementation of the Enhanced I/M system. That ineffective monitoring contributed to a lack of information reaching the Governor's Office. As a result, the Governor was not warned about the serious deficiencies in the system and was denied the opportunity to make public policy decisions concerning the implementation of the system.

I. HISTORY AND BACKGROUND LEADING TO THE CONTRACT FOR ENHANCED MOTOR VEHICLE INSPECTIONS

In compiling its Report, the Panel deems it necessary to recount the background and history that eventuated in the governmental decision to pursue and implement a system for enhanced motor vehicle emissions inspections. That background and history will serve to explain the relevance of much of the evidence concerning the development of the system and the attempts to implement it and the substantial failure of the system when it was put into operation. Those circumstances are material and instructive in understanding the inadequacies of the State's supervision and monitoring of the development and implementation of the inspection system, including especially the failure to take effective corrective measures and to communicate and act on recurrent warnings of the threatened failure of the system.

A. Required Enhanced Emissions Inspection

Amendments to the federal Clean Air Act, enacted in 1990, 42 U.S.C. §7401 et seq., mandated that New Jersey reduce air pollution by imposing a variety of sanctions, including the loss of federal highway funding. Under that mandate, New Jersey, having failed to meet the Ozone Health Standard and the Carbon Monoxide Health Standard, was required to implement enhanced motor vehicle emissions inspection to reduce pollution attributable to the State's five million plus motor vehicles.

New Jersey's Enhanced Inspection and Maintenance Program ("Enhanced I/M") is the motor vehicle inspection program that was designed, in response to federal requirements, to improve air quality by reducing automobile emissions. At its core, Enhanced I/M achieves emissions reductions by identifying vehicles that emit excessive levels of contaminants and by requiring those vehicles to be repaired. Repairs to the exhaust systems and gasoline tanks of failing vehicles are estimated to result in emissions reductions totaling 80 tons per day. (Salmi Tr. 10:6-11)

In 1994, the Environmental Protection Agency ("EPA") promulgated regulations implementing the 1990 Clean Air Act amendments. In December 1994, New Jersey and the EPA reached an agreement allowing the State to utilize the ASM 50/15 emissions test rather than the I/M 240 test, in an effort to speed up the process of inspecting vehicles. In contrast to New Jersey's long-standing idle-emissions test, the new test requires the vehicle to be tested while on a dynamometer or treadmill that allows the vehicle to be tested at speed.

In response to the federal Clean Air Act, in 1995 the New Jersey Legislature enacted the Federal Clean Air Mandate Compliance Act, N.J.S.A. 39:8-41, et seq., P.L. 1995, c.112, providing statutory authority at the State level for implementation of New Jersey's Enhanced I/M program. In July 1995, New Jersey submitted a revised State Implementation Plan ("SIP") to the federal EPA.

The SIP detailed the State's plan to implement its Enhanced I/M program and included proposed administrative regulations promulgated by the Division of Motor Vehicles ("DMV") and the Department of Environmental Protection ("DEP"). New Jersey proposed to continue its hybrid system of inspections, allowing citizens the option of undergoing inspection without charge at a Central Inspection Facility ("CIF") or for a market-set fee at a Private Inspection Facility ("PIF"), a privately run gasoline station or automobile repair shop.

In a letter dated December 12, 1997, EPA Region II Deputy Administrator William I. Muszynski concluded that New Jersey had failed to timely commence implementation of its Enhanced I/M program and announced that New Jersey would face mandatory sanctions beginning in June 1999 (Exhibit 21). Sanctions were, in fact, imposed in June 1999. Those sanctions required new or expanded industrial facilities in New Jersey to offset the emission of volatile organic compounds by obtaining credits at a ratio of 2 to 1, an increase from an existing credit offset of 1.3 to 1. Further, New Jersey was notified that beginning on December 13, 1999 (Exhibit 30), federal highway assistance would be withheld, an amount that has been estimated to approach $1 billion per year.

B. Contracting for Enhanced I/M

1. The First Request for Proposal

The State determined to solicit bids from private contractors for the implementation and operation of an Enhanced I/M system. In February 1997, three related requests for proposals ("RFP") were issued by the Department of the Treasury. The most significant RFP called for a contractor to construct and operate the centralized lanes. The second RFP related to private inspection lanes, requiring the contractor to design and assist in the operation of the PIFs. The third RFP was for a contractor to undertake the role of project manager responsible for supervising the performance of the entire contract and overseeing the work of the other two contractors.

Only one bid was received in response to the central lanes RFP in August 1997. That bid was judged unresponsive and a decision was made to issue a new RFP that would combine both CIF and PIF functions.

The third RFP, for a project manager, however, was awarded in April 1997 to Parsons Brinckerhoff - F.G., Inc. (“PB”). PB is an international engineering firm with offices in Princeton, New Jersey. As the State's independent project manager, PB, was responsible for enforcing contract requirements. (Podwal Tr. 99:14-100:1; 16:9-13). Bruce Podwal, in charge of this project for PB, viewed PB as "an extension of the State staff. We provided

what we call program manager services, which is a broad range of technical reviews as well as administrative functions." (Podwal Tr. 6:6-10). That responsibility included verifying that new construction and facility renovations met contractual specification and applicable codes and that inspection equipment met contractual specifications and complied with applicable regulations and controlling project documentation.

PB engaged Sierra Research ("Sierra") as a subcontractor to provide highly technical expertise with regard to various elements of motor vehicle emissions testing, including emissions analyzers and dynamometers. Sierra has been described as the best qualified firm in the country and Mr. Podwal expressed his understanding that "the major reason for our success [in winning the project management contract] was the fact that we had Sierra on our team." (Podwal Tr. 43:1-44:3).

2. <u>The Rebid of the RFP for Central and Private Inspection Facilities</u>

The RFP for the CIF and PIF lanes was rebid on February 18, 1998, with subsequent addendums on April 6 and April 29, 1998. The RFP provided two options: a "design build" or DB option or a "design, build, operate and maintain" or DBOM option. Only one bidder, Parsons Infrastructure and Technology Group, Inc. ("PI") responded by bidding on the "DBOM" option. Under that option, PI was required to design, build, operate and maintain both the centralized inspection component of the enhanced inspection

program, and the extensive data systems required for both the CIF and the PIF lanes. The State ultimately entered into the contract with PI on August 7, 1998. PI, in turn, contracted with a variety of subcontractors, including Environmental Systems Products ("ESP"), which had responsibility for developing complex software components of the project.

The Enhanced I/M contract was designed to continue the historical pattern of car inspection, whereby approximately 70% of vehicles underwent CIF inspection, while 30% underwent PIF inspection.[*] If less than the set percentage were inspected at PIFs, the contractor ultimately received no additional benefit for conducting a greater number of inspections at the CIFs.

3. Contract Features and Provisions[**]

The $392 million contract required full implementation by December 13, 1999, the deadline for the imposition of EPA sanctions

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[*]The development and implementation of the PIF inspection system is not the focus of this investigation. By way of background, however, each PIF was required to make substantial capital expenditures, on the order of $50,000, by purchasing sophisticated new inspection equipment. By December 1999 approximately 1500 facilities were certified as PIFs, in contrast to over 3500 facilities that had been certified under the old emissions test. Five contractors, including ESP, were approved as PIF equipment manufacturers. The development of the PIF equipment proceeded independently of the development of the CIF hardware and software.

[**]The Panel did not evaluate from a legal perspective the contract with PI or the respective rights, duties and obligations of any of the parties to the contract involved in the implementation of the Enhanced I/M program under the contract.

and the loss of federal highway funds. As an incentive, PI would have received a $3 million bonus if the system was implemented by September 9, 1999.

The contract breaks down implementation of the central inspection system into "phases." For each of these phases, the contractor was required to set a date for completion based on when the State received EPA approvals. No central inspection facility lane could be placed in use unless it was accepted by the State. There were four requirements for acceptance by the State:

1. The lane had to be completed in accordance with plans, drawings, and specifications developed by the contractor and approved by the State.

2. The lane equipment had to be properly installed in conformance with approved specifications.

3. Training of all necessary personnel needed to operate the lane had to be completed.

4. The lane, when operating as part of the whole system, had to be capable of operating in conformity with performance standards and criteria set forth in the contract.

Only after each lane met those acceptance standards was the contractor to receive payment.

The RFP defined a "wait time standard" to ensure that the public would not be subjected to excessive wait time under the new system. Wait time under the contract is measured from when a vehicle arrives at a station to when the vehicle is driven into the

inspection bay for testing. The contract does not allow wait time to exceed:

> 1. An average wait time of 30 minutes, per vehicle, for more than four days in any calendar month, at any one inspection station; and
>
> 2. A monthly average wait time of 15 minutes, per vehicle, in any calendar month at any one inspection station.

Throughput, as a by-product of wait time, became a specific subject of the contract. In the course of discussions with the State to clarify the contents of its bid, Tom Peters, a PI vice president, committed PI to a throughput rate of 12 vehicles per hour per lane. That commitment is documented in answers PI faxed to Treasury's John Kennedy on June 22, 1998. In answer to several related questions posed in writing by the State, PI stated:

> We estimate that we will be testing approximately 160,000 vehicles/month before the enhanced program becomes mandatory. Once the enhanced program is fully operational after 18 months, throughput is estimated to average 5 minutes/vehicle resulting in a maximum of 12 vehicles/hour. We assumed a 65% efficiency factor. Based on these assumptions, we have the capacity to test approximately 2.75 million vehicles per year operating 129 lanes, 55 hours/week, 50 weeks/year. This translates into a capacity to perform 2.2 million initial tests per year assuming an 80% pass rate. This equates to approximately 63% of the fleet, which is about what the most recent test volume indicated in the addendum were currently going to the CIFs.
>
> [Exhibit 41]

In implementing the contract, the parties mutually agreed to conduct a number of milestone tests by which progress of the program would be measured. A Project Acceptance Coordination ("PAC") document, developed jointly with the contractor and the State, identified 4 key stages of testing:

> Stage 1 -- Prototype testing of the hardware and software in the CIF lanes in Tucson.
>
> Stage 2 -- State evaluation of the emissions safety hardware and quality assurance (QA) testing of the software.
>
> Stage 3 -- Pre-beta testing conducted by the State utilizing test vehicles (the 6 car test) and communications to various test data bases.
>
> Stage 4 -- Beta testing to evaluate both hardware and software and their communication with the production data bases.

The contractor would be entitled to payment on the acceptance and then roll-out of the equipment and software to CIF facilities throughout the State after completion of the four testing stages.

The RFP further required that the contractor establish a data communications network and a remote database that would receive and store inspection data for each tested vehicle. In order to provide necessary information to the EPA, the data communications network contemplated that the remote database (or VID) would exchange data from the State's existing DMV database. The RFP specifically addresses testing of the computerized system:

> The contractor's system and service must be

> capable of developing applications within the agreed upon time frames that can be debugged and tested before actual use. §3.10, 5.10

Significantly, the contract requires the system to operate under harsh weather conditions. The contract provides:

> The State of New Jersey will not allow the temporary cessation of inspections operations... because of adverse temperature or humidity conditions. § 3.6.5

The RFP also contains specific remedies in the event the contractor fails to meet performance standards. In order to use contract remedies for failure to meet performance standards, however, the State is required to notify the contractor, in writing, of a breach. Under RFP §4.1.1, the State is permitted to impose liquidated damages amounting to $1,000 per calendar day, per failure to meet standards, per facility. The State is also permitted to withhold monthly payments, declare the contractor in default of the contract, terminate the contract for cause, or use any other available remedy. The RFP permits damages of $500 per day, per instance, for excessive inspection wait times.

4. Subcontractors

PI engaged Environmental Systems Products ("ESP") in connection with the development and implementation of Enhanced I/M. ESP had responsibility for developing both the emissions-testing machinery and the computerized components and software essential to the operation of the enhanced inspection system. ESP's software responsibility encompassed computerized intra-lane and database communications.

MCI Worldcom, another PI subcontractor, had responsibility for developing the Vehicle Identification Database or "VID." That database included the make, model, weight and year to determine a vehicle's "cut point" or maximum level of allowable emissions. The VID must correlate the information identifying a particular vehicle with the emissions level applicable to that vehicle.

C. State Management and Oversight

1. Department of Transportation

On March 27, 1997, the Department of Environmental Protection and the Department of Transportation executed a Memorandum of Understanding ("MOU") that vested primary contract responsibility for Enhanced I/M with the DOT. (Exhibit 20). At the time of the contract award to PI in August 1998, Timothy McGough was the Clean Air Project ("CAP") Director at the DMV with

responsibility for overseeing the clean air project and supervision of the private contractors. (Exhibit 171). Mr. McGough resigned in December 1998, to take a position in the private sector but agreed to stay on until his successor was named. Commissioner Weinstein hired Carl Passeri to be CAP Director, effective February 1, 1999.

Mr. Passeri, as the State's new project director understood that his role was:

> to coordinate the efforts of the State groups, the project manager, Parsons Brinkerhoff; the contractor Parsons Infrastructure to bring the focus of all parties together to implement the program the way its supposed to be. Coordinate everyone's effort in, you know, enhancing progress and different elements of project.
>
> [Passeri Tr. 25:16-22]

Mr. Passeri also understood, however, that there was "not a whole lot of difference between his role and that of PB" (Passeri Tr. 26:1-2) and he viewed PB, the retained private contract manager, as playing the traditional project manager role. (Passeri Tr. 27:2-6).

Subsequently, the precise lines of authority at DOT and within DMV apparently became less clear, as did the precise role of PB, the independent contract manager engaged by the State. In any event, key responsibility for contract management still resided with the Director of the Clean Air Project. The CAP Director was ostensibly subordinate to the DMV Director, who is also a DOT

Assistant Commissioner. Both the DMV Director and the CAP Director, as DOT senior executive staff, referred to herein as "senior project managers") generally report directly to the DOT Commissioner at bi-weekly executive staff meetings. On the Enhanced I/M project, they both understood that reports would be made directly to Deputy Commissioner Albert B. Ari.

Mr. Passeri believed he was subject to Director Kamin's oversight. He reported through Director Kamin to Deputy Commissioner Albert B. Ari or to Commissioner Weinstein. (Passeri Tr. 27:8-22; 29:6-10). Similarly, Deputy Commissioner Ari understood the functions of the project manager to be carried out by Mr. Passeri, who reported through Mr. Kamin to Mr. Ari. (Ari Tr. 6:4-7:8). Nevertheless, Mr. Passeri provided regular reports to both Commissioner Weinstein and Mr. Kamin. Those reports, however, were limited to design and construction matters. They did not include the status of progress for technology or computer development for the project under the contract. (Passeri Tr. 39:19-24). Mr. Passeri, also, reviewed broader and more detailed reports, including all project implementation and development aspects of the contract, that were provided on a regular basis by PB, the independent contract manager.

Mr. Kamin stated that although "structurally" Mr. Passeri reported to him, DMV was merely "there to assist [Mr. Passeri] in bringing the program on-line." (Kamin II Tr. 8:10-14). Mr. Kamin

claimed no authority to control Mr. Passeri. (Kamin Tr. 8:18-9:9). He also understood that PB reported directly to Mr. Passeri. Mr. Kamin summarized his role as Director of DMV to be, in effect, a coordinator, who simply brought:

> the resources to bear within my division and other areas of government for completion of this task. There was no task of higher priority underway in the state.
>
> [Kamin II Tr. 24:13-18]

DMV systems manager, William Donahue, had responsibility for overseeing development of the software necessary to implement Enhanced I/M. Mr. Donahue reported to the CAP Director, as well as to Mr. Kamin. He was assisted by William Wanschura, an employee of DMR Consulting Group, an independent private consultant with software and systems expertise, retained by DMV. Mr. Wanschura functioned, in effect, as a line employee at DMV, reporting directly to Mr. Donahue. Mr. Donahue's and Mr. Wanschura's roles evolved in the course of the performance of the contract, when Mr. Donahue was promoted in September 1999.

2. <u>The Department of Environmental Protection</u>

The DEP had key responsibility for overseeing the development of the emissions testing equipment and its concomitant software. David West, Chief of the Bureau of Transportation Control, carried out that supervising function and his bureau audited and certified the accuracy of the test equipment. Mr. West reported directly to John Elston, Administrator of Air Quality

Management in DEP (also referred to herein as a "senior project manager.") He, in turn, reported to DEP Commissioner Robert C. Shinn, Jr.* Mr. West also worked closely with the DOT's CAP director.

Chris Salmi, Chief of the DEP's Bureau of Air Quality Planning, had broad responsibility for the State's clean air implementation plan and for ultimately verifying the emissions reductions claimed by the State. Mr. Salmi also reported to Mr. Elston.

3. <u>The Governor's Office</u>

The Governor's Office monitored the implementation of the project. The Governor's Office hierarchy included Chief of Staff, Michael P. Torpey, Chief Counsel, Rick Mroz, and Chief of Policy and Planning, Eileen McGinnis. Ms. McGinnis functioned as the lead in respect of Enhanced I/M. That Office functioned with a great deal of mutual interaction among the Chiefs and their respective staff. It was not uncommon for staff persons to report to any of the other Chiefs on a given matter.

On the Enhanced I/M project, the Governor's Office regarded its role as monitoring progress and keeping the Governor informed. Senior Assistant Counsel John G. Valeri, because of his

*Mr. Shinn explained that although Mr. Elston technically reported during this time frame through Assistant Commissioner Robert Tudor and Deputy Commissioner Judy Jengo, Commissioner Shinn received most of his reports on this matter in direct conversations with Mr. Elston. (Shinn Tr. 6:15-24).

experience and familiarity with DOT matters generally, assumed primary monitoring responsibility over the project on behalf of the Governor's Office. Later on, Alyssa Weinberger, a member of the staff in Policy and Planning under Ms. McGinnis, assumed greater responsibility for monitoring the project. Mr. Valeri reported primarily to Ms. McGinnis, as did Ms. Weinberger.

II. INITIAL AND EARLY STAGES OF PROJECT IMPLEMENTATION

The implementation of Enhanced I/M involved dozens of individuals, several State departments and divisions, and numerous contractors. All were working simultaneously on CIF and PIF hardware and software design, development, construction, site acquisition, permitting, and the installation of both revamped and new facilities. The initial phase began in August 1998 and continued over the several succeeding months. This phase saw the negotiation and clarification of contract terms, provisions and specifications. The ongoing performance under the contract, viewed in chronological stages, reveals that the progress in implementing the system was marked from the outset and throughout by missed deadlines, the abandonment of crucial tests, the breakdown of lines of communication and the loss of critical information and warnings that threatened failure of the system.

A. Initial Implementation

With the awarding of the contract to PI, a "kickoff meeting" was held on August 27, 1998. Timothy McGough, the then CAP Director, highlighted the need for the State "to establish its expectations," and for the contractor to "layout their plan for meeting these expectations as well as the obligations set forth in the contract." (Exhibit 40). PB and PI described their respective roles. The participants set basic ground rules, including communication and organization protocols. They also specifically

discussed software scheduling, design, construction and personnel issues. (Donahue I Tr. 9:21-10:8). The State representatives focused on the need to complete a number of necessary specifications for the PIF hardware and software. (Exhibit 40).

With the completion of enumerated elements of the PIF software specifications by the State on October 23, 1998, attention turned to the development of specifications for the CIF hardware and software. Initially, PI disclaimed responsibility for the development of the CIF specifications. Mr. Donahue insisted that because the contract was a "DBOM" contract, PI had responsibility for developing the CIF specifications, a task that PI ultimately assumed. Finalization of the CIF specifications, however, continued to haunt the project. PI blamed the State's failure to timely complete the PIF specifications for delaying its development of the CIF specifications until the Summer of 1999.

B. Early Stages of Implementation

1. The Hiring of a New Project Manager

Mr. McGough resigned as CAP Director in December 1998. DOT Commissioner Weinstein hired Carl Passeri as the new CAP Director, effective at the beginning of February. Mr. Passeri had been recommended to Mr. Weinstein by Robert Innocenzie, a former acting DOT Commissioner and by Glenn Paulsen, a former DMV Director (and Burlington County Republican Chairman), who related one of his

law partner's support for Mr. Passeri. (Weinstein Tr. 10:19-12:10).

Mr. Passeri had extensive experience as a construction manager in the private sector, although he had comparatively little experience relating to the implementation and management of projects involving complex computerized systems. Commissioner Weinstein regarded the project "largely as a construction contract... [with] a technology overlay to it..." (Weinstein Tr. 8:17-19). In contrast, PI's project manager, Larry Sherwood, viewed the project more as a computer technology issue and that "construction was a small piece of [it]." (Sherwood Tr. 81:6-16). In addition, the DOT Commissioner stated that he focused on replacing Mr. McGough with a construction project manager because Mr. Donahue, a long time DMV employee with considerable technological experience and knowledge relating to computer systems, would continue to be involved in the project. (Weinstein Tr. 8:20-9:4).

The other two candidates for this position, one of whom was Mr. Donahue, were ranked ahead of Mr. Passeri, but Commissioner Weinstein said that based on Mr. Passeri's credentials and the impression he left during the interview process, Mr. Passeri was the most qualified, and said, "Frankly, I would expect two DMV people to recommend a DMV person to succeed [Mr. McGough]." (Weinstein Tr. 10:4-16).

2. Protocols for Assessing and Assuring Progress

On February 11, 1999, a Partnering Workshop, the first of several that were convened through December 1, 1999, was held to plan implementation of Enhanced I/M. Partnering meetings were conducted by a professional consultant and focused on "optimizing" cooperation between the State employees and private contractors.

Key personnel from DOT, including DOT Deputy Commissioner Ari, DMV Chief of Staff Betty Cutter and the new CAP Director, Mr. Passeri, attended this meeting, along with DEP's Kate Watson on behalf of Clean Air Administrator Elston. Bruce Podwal from PB, the State's Project Manager and other PB staff attended, as did PI's Senior Vice President and General Manager Larry Sherwood.

All resolved to work collaboratively to successfully design, build, operate and maintain the country's best enhanced vehicle inspection and maintenance program. The attendees agreed to common goals, including developing "an operationally efficient facility" that would "meet or exceed program requirements." All committed to keeping the public and elected officials well informed. They identified the Governor and Commissioners Shinn and Weinstein as being at the top of an "Issues Resolution Ladder." Aiming to exceed the expectations of both the public and the client, the Workshop resolved to raise issues before problems had an impact on cost or time. All agreed that inaction was not a viable alternative. (Exhibit 42).

The Partnering Workshop specifically identified the "lack of crisp decision making" and lack of a comprehensive master schedule as risks. They identified design plans as late and set a new delivery date of February 28, 1999. The group agreed to develop an "acceptance procedure to be accomplished in time to meet strategic goals." (Exhibit 42).

The Partnering Workshop fostered a documentation policy that said, “No bad news letters without face to face discussion first.” (Exhibit 42). This policy of not documenting critical assessments of performance without prior discussion evolved into a broader “no bad news” policy. Panel witnesses testified that this broader policy resulted from critical assessments of PI's performance by project supervisors. PI complained of that criticism or "bad news," and Mr. Passeri concluded that such criticism was not constructive and discouraged further criticism.

In a memorandum dated February 16, 1999 (Exhibit 2) to Mr. Podwal of PB, Sierra critically reviewed PI's response to a letter conditionally approving the CIF specifications developed by PI. Sierra's Mr. Joy and Mr. St. Denis indicated that PI was 24 days overdue in responding to the December 23, 1998 conditional acceptance letter. He counseled the State that "no further lack of responsiveness to such critical issues will be tolerated and no delay in the delivery of the CIF system will be accepted." (Exhibit 2). Even as of that date, Sierra characterized PI's approach as

consistent with an emerging pattern of forcing the State to back down from a number of test equipment-related requirements. The memorandum characterized PI's behavior as follows:

> First, the Company agrees to provide requested information or meet certain requirements; then, when PI[ ] does not deliver the requested information or meet the requirements on schedule, Sherwood claims that the Company is not required to do so. After stonewalling the state with this excuse for an additional period of time, PI[ ] then indicates that the equipment has already been ordered and it is too late to do anything or the implementation schedule does not allow time for resolving the issue.

[Exhibit 2]

Mr. Joy and Mr. St. Denis also noted PI's imputation that any lateness on the part of PI in delivering the CIF test systems would be due to the State's delay in finalizing the CIF specifications. Presaging what would subsequently become recurrent and critical delays, the memorandum provides a clear picture of PI's performance flaws, namely, lack of responsiveness, failure to meet deadlines, and inaccurate representations.

Although Sierra engineers had many direct informal communications with State employees through face-to-face meetings, telephone conversations and e-mail, Sierra submitted formal reports and formal written communications only to PB. As Mr. Podwal described the process at a later stage:

> ...we rarely would give the state something to us from our subcontractor [Sierra], we tended to paraphrase it and rewrite it in our own

> words because we take full responsibility, and so, we felt it should be under our letterhead, and as appropriate, we...add our own conclusions and findings...
>
> [Podwal Tr. 47:12-19]

By incorporating in its own report to the State only those portions of Sierra's critiques judged by PB to deal with "contractual" issues (Podwal Tr. 115:19-119:9), PB diminished the gravity and urgency of those critiques.

3. <u>The Spring of 1999</u>

Prototype testing -- the early testing of the separate components -- had been scheduled to be conducted at an ESP facility in Tucson, Arizona. On March 8, 1999, Sierra criticized the Acceptance Testing Procedures proposed by PI as "incomplete, unclear, and difficult to follow." (Exhibit 63) By March 9, 1999, State employees discussed with PB a several-week delay in the prototype testing in Tucson. (Exhibit 64).

On March 26, 1999, PI sent a letter stating that beta testing would begin in Tucson by June 15 and in New Jersey by June 16. Beta testing involves use of the whole system to test actual customer vehicles as a final "shakedown cruise" prior to implementation. In addition, PI confirmed that Phase I was to be completed by July 16. (Exhibit 67). An April 14, 1999 Enhanced I/M implementation schedule detailed a comprehensive set of deadlines for both the PIFs and the CIFs.

- Final release of the CIF specification March 31, 1999
- CIF hardware and software ATP Release April 16, 1999
- ESP prototype testing concluded May 14, 1999
- State prototype testing in Tucson concluded June 15, 1999
- Pre-beta set-up in New Jersey June 16, 1999
- Central lane beta test concluded July 14, 1999.

A detailed list of lane roll-outs by facility was set to begin on June 9, 1999 and continue on a staggered basis through December 9, 1999. (Exhibit 68).

On April 16, 1999, PB's William Reddan, a senior engineer at PB, with responsibility for a variety of software issues, reported to Mr. Donahue and Mr. Passeri that ESP had indicated that:

> the test lane in Tucson is progressing well. It is approximately 80% complete with hardware installation & unit test (with utility software). The software, of course, is still being developed. Overall he [ESP's George Timmerman] sounded encouraging.
>
> [Exhibit 69]

Sierra set a tentative date for the following week to evaluate the prototype lane.

On May 5, 1999, almost three weeks later, Sierra's Mr. St. Denis visited ESP's facilities in Tucson. Mr. St. Denis stated that the prototype lane was:

> not nearly as close to completion as we have been told it was. There are many significant

> items that need to be openly discussed with PI relative to a realistic schedule for rollout of the beta test site in the remaining test lanes.
>
> * * *
>
> There are significant issues related to the analytical system and the ATP of the analytical system that need to be addressed immediately to prevent delay of system finalization and production of the test lane equipment.
>
> [Exhibit 116]

Also in May, EPA Region II Administrator Jeanne M. Fox wrote to Governor Whitman to indicate that the initial mandatory sanctions of the Clean Air Act would be imposed "because of New Jersey's failure to begin mandatory testing and repairs." While Administrator Fox indicated that the selection of a contractor, the transition to biennial testing and the start of retrofitting were important milestones, she noted that "much work still needs to be done." Administrator Fox further stated that the 2:1 industrial facility offset would commence June 12, 1999 and the highway funding sanction would be instituted if the Enhanced I/M program was not implemented by December 12, 1999. (Exhibit 30)

4. <u>Testing Attempts During the Late Spring of 1999</u>

June, six months from the date the system was to be fully operational, was a critical month for evaluating the project. The inability to meet a deadline for the development of a functional

prototype lane presaged subsequent failures in the implementation of the system as a whole.

On June 9, 1999, Mr. West and Mr. Iavarone, an engineer employed by DEP in Mr. West's bureau, along with Mr. St. Denis, visited Tucson to inspect a functional prototype lane that Mr. Sherwood had represented was ready and operative. The development of an operating prototype lane had already been significantly delayed from the agreed upon delivery date of March 15, 1999.

There were fundamental inadequacies in what had been portrayed by the contractors as a fully functional prototype lane. In a June 9, 1999 e-mail to PB, Mr. West and Mr. Donahue, Mr. St. Denis detailed what he observed in Tucson:

> There is still no working "lane" software. They tried to do a demo-test, and the system can not do one. The software is still in very rough form, not in any way close to final and not functioning. . .
>
> [Exhibit 74]

Mr. St. Denis's account of the Tucson visit continued:

> Still, this is not the biggest problem here. The biggest problem is that ESP is not doing any ATP work of their own volition. It seems that they are waiting for the state to force them to do it, otherwise they are going to build and install the systems, and the state will have to live with the fact that they did not do acceptance testing at all.
>
> [Ibid]

Mr. St. Denis also identified an issue that later became prominent -- adequate cold weather testing.

> ESP says that they are going to do temperature testing. The range that they noted they would do the testing over is 60 to 90 degrees F. I asked "Why are you not testing down to a lower temperature as it is expected to be in NJ?". "Isn't PI concerned that you do not know how the analyzers are going to function when it gets cold, that is in December, right at program start up?".
>
> [Ibid]

He continued, prophetically:

> Yes there are punitive damages if PI cannot make the systems operate at cold temperatures, but they may be superfluous if the program collapses due to all of these type[s] of problems at start-up. Who does have control of what is going on here? Is there another recourse other than to just let it continue until something breaks?
>
> [Ibid]

Mr. West's report to the June 17, 1999 bi-weekly meeting describing the visit to Tucson also notes significant problems. In his testimony, Mr. West characterized his impressions as being "a little more positive" with the hardware, although he agreed with Mr. St. Denis that the "progress made on the software was very disappointing." (West Tr. 33:13-34:8) Mr. West noted a variety of specific problems, including:

- ESP was "unable" to perform an end to end test.
- there were no intra-lane software communications and "a full lane test could not be conducted."
- software was "prone to hangups" and incomplete.
- a tailpipe test could not be performed.

In short, Mr. West confirmed Mr. St. Denis's conclusion that the lane was not a prototype.

In a more detailed June 14, 1999 memorandum to PB, Mr. St. Denis expressed a bottom line:

> [I]t is more apparent than ever to Sierra that PI[ ] and ESP will have great difficulty in developing, testing, and installing properly working CIF emissions testing equipment prior to the required implementation date of New Jersey's enhanced program.
>
> [Exhibit 1]

Mr. St. Denis concluded:

> It is Sierra's view that there are still major problems with the development of the CIF hardware and software. ESP has a good working prototype of the analytical system. However, to ensure properly operating software and that the State does not end up performing ESP's development work, at least 1-2 months will be needed to conduct development testing and subsequent acceptance testing before the system should be allowed to be used in beta in New Jersey.
>
> [Ibid]

Mr. St. Denis captured the essence of what was at stake in the testing process.

> We continue to be very concerned that there will be increasing pressure on the State to accept equipment that is not adequately designed or tested as the implementation deadline looms ever nearer. Unless this issue is addressed at the highest level immediately, the State will be forced to either accept CIF test systems that do not meet applicable U.S. EPA guidance and the requirements of the RFP, or delay the implementation of the program.
>
> [Ibid]

Mr. St. Denis emphasized that acceptance testing be finished prior to the start of beta testing:

> The problems we uncovered in the limited acceptance testing we were able to perform were development problems that ESP should have identified and corrected prior to the State's starting acceptance testing. **Pre-beta testing should not begin until all required acceptance tests are conducted (and passed) by ESP**.
>
> [Ibid; emphasis in original]

On June 12, 1999, Mr. Reddan of PB e-mailed Mr. Donahue to confirm the bad news from Tucson, and indicated:

> There's a (politically tough) decision that will have to be made imminently - next week. It is - should the State refuse to permit start of beta or pre-beta testing until all prototype testing is finished by PI and its subs.
>
> [Exhibit 13]

In both his June 9, 1999 e-mail and in his June 14, 1999 report, Mr. St. Denis emphasized a consistent theme regarding what he saw as a major issue -- that acceptance or prototype testing must be performed and concluded before initiating beta testing. In his June 9, 1999 e-mail, Mr. St. Denis repeatedly stressed that the contractor must be required to perform acceptance testing.

Mr. Donahue testified that he also thought requiring the contractors to go through a whole series of prototype testing in Tucson was "a very important step in the process." (Donahue I Tr. 33:8-9). He communicated to Mr. Passeri his concerns that the contractor was not complying with the agreed upon test process.

Nonetheless, Mr. Passeri directed him to push ahead and continue despite those failures. (Donahue I Tr. 33:12-14). DEP also supported the decision not to require prototype testing to be concluded in Tucson, contrary to the evaluations and admonitions of PB and Sierra. (Donahue I Tr. 35:15-21). The impact of such a decision -- to abandon prototype testing -- was significant in Mr. Donahue's view.

> You essentially push your problem identification down the time line which allows you less and less time to recover from the problem.
>
> * * *
>
> The recovery period becomes so small, you jeopardize your opportunity to go with a good system. . . We were putting more and more risk on the December date.

[Donahue 1 Tr. 33:19-34:17]

Mr. Donahue specifically raised with Mr. Passeri his concern that it was not possible to go from an absence of software to fully functional software in a short period of time. (Donahue I Tr. 38:7-17).

On June 14, 1999, Mr. Sherwood of PI confirmed that the software was not ready and that a fully integrated lane did not exist. Nevertheless, Mr. Sherwood told Mr. Donahue that PI would initiate testing in New Jersey beginning June 21, 1999. Mr. Donahue stated in an e-mail to PB's Mr. Reddan and to Mr. Passeri that he was "somewhat skeptical that the software can make as miraculous a recovery as his [Sherwood's] schedule might indicate."

(Exhibit 118). Mr. Donahue also echoed Mr. St. Denis's concerns over ESP's credibility. He had "lost all confidence that any dates that were ventured forth by PI on any aspect of the program that had to do with their subs had any value [or] meant anything." (Donahue I Tr. 37:8-11).

On June 29, 1999, Mr. Donahue e-mailed Mr. Kamin that PI had confirmed that ATP testing would start but regarded PI's predicted date dubiously. Because testing was only beginning, any real assessment of testing status would have to wait. Mr. Donahue wrote: "I see this week as pivotal." (Exhibit 119). He came to believe that ATP testing was not ever successfully done in Tucson, despite PI's representations to the contrary, because when the system was subsequently delivered to New Jersey, it failed. (Donahue I Tr. 41:24-42:6).

III. CONTINUING PROJECT IMPLEMENTATION

A. July 1999

In July, the pivotal decision was made to allow the contractor to install a lane in Deptford, N.J. before concluding prototype testing in Tucson. PI was permitted to install an incomplete test lane in New Jersey and to continue with development work in New Jersey that should have been concluded long before in Arizona. (Donahue I Tr. 65:18-24). In effect, the preliminary testing of the system, generally regarded as essential, was being abandoned or, at best, severely compromised.

At the same time, Mr. Passeri abruptly canceled the bi-weekly meetings, a key mechanism for overseeing and coordinating the development of the project. Mr. Passeri is said to have found those meetings too negative. In September 1999, those meetings were resumed by DMV Director Kamin, on his own initiative.

By July 1, 1999, persistent failures to meet deadlines, particularly testing deadlines, generated the need for new, detailed timelines. In consultation with the contractors and DEP, Mr. Donahue refined the Project Acceptance Coordination (PAC) document detailing the activities required for testing, acceptance, and rollout of the New Jersey Enhanced I/M system.

On July 1, 1999, Sierra's Mr. Joy strongly counseled PB that the State should not agree to allow software development to continue after beta testing and that it is "critical" that

emissions testing software be tested as a whole after any particular modification before such final testing.

> These kind of changes are prevalent enough in the industry that a term for them has been coined: "creeping elegance." The equipment manufacturers have learned through bitter experience that allowing creeping elegance to occur causes all sorts of problems in getting software fully tested and certified.
>
> * * *
>
> [I]t would be best to tie the freezing of the software to a particular milestone, the best of which appears to be the end of beta testing.
>
> [Exhibit 76]

Mr. Donahue agreed that a freeze date was important because the "punch list" approach, typical in construction projects and which had been adopted by Mr. Passeri, was not appropriate for a project that required the development of software. "[W]hen you go into production... [on] the December 13 date, you. . . [need]. . . software that proves itself over time." (Donahue I Tr. 53:21-24). Adequate time for testing was a critical precondition. In Mr. Wanschura's view,

> it was very important ... to have as much testing done in Tucson as possible. The sooner the process of testing is done, the less costly it is to fix mistakes... I always felt like the testing got sliced into smaller and smaller time frames. There was a lot of pressure from Parson's side to get things done quickly, which sometimes, not always, means it isn't done well.
>
> [Wanschura Tr. 78:14-79:1]

Notwithstanding those admonitions, problems with software development and prototype testing continued throughout July. For example, the CIF tailpipe analyzer could not be tested and it was apparent that "ESP ha[d] not performed much, if any, of the [CIF tailpipe] testing on their own." (Exhibit 77). Hardware acceptance testing was still encountering significant problems. (Exhibit 121). By July 15, a variety of prototype testing of the software could not be conducted and hot and cold temperature testing still could not be verified. (Exhibit 122). In light of PI's inability to meet deadlines, the State devised yet another schedule of deferred tests to accommodate PI. (Donahue I Tr. 60:3-6). Schedules indicating that pre-beta software ATP was to be concluded on August 8 and Beta ATP on August 20 were not met. (Exhibit 79).

At the same time, however, PI continued to provide reassurances and representations that progress was being made and that the project was on schedule. On July 7, 1999, Mr. Sherwood informed Mr. Passeri that ESP tested multiple vehicles and had transmitted data within the lane, concluding that the software "is currently functioning according...to specifications...." (Exhibit 48). At an early July software/hardware status meeting, software development was characterized as "going well," although at that time it was already nearly two months behind schedule. (Exhibit 138).

On July 29, 1999, Sierra advised DEP of its concerns about the accuracy of the test equipment below temperatures of 35-40N and that "[t]here will be no way to tell if the analyzers are accurate." (Exhibit 82).

Also in July, the Test Oversight Committee ("TOC") held a key series of meetings. The TOC meetings, at Mr. Passeri's direction, were held on a weekly basis and focused primarily on software and hardware development. Mr. Donahue chaired the TOC. After Mr. Donahue's promotion in September 1999, Mr. Wanschura chaired the meetings, with Mr. Passeri and Mr. West, as the DEP representative, in attendance.

Director Kamin's "what if" monthly meetings, commenced on April 14, 1999 and continued through November 18, 1999. These meetings, as the name suggests, explored contingency planning and were designed "to identify and bring whatever resources to bear to assist... [PI] in bringing the contract on-line". (Kamin II Tr. 88:4-7). During the July 21, 1999 "what if" meeting, Mr. Joy of Sierra expressed the view based on his previous experience with EPA that it was feasible to secure a delay or some relief from its December 13, 1999 deadline. He urged the State to seek EPA relief from the mandatory start-up date because of contractor inadequacies in the development and implementation of the project. Mr. Passeri strongly objected to Sierra's position that it was necessary to

obtain a delay because the project was going so badly. Mr. Donahue, however, agreed with Mr. Joy's assessment:

> [w]e had grave question about the viability or the performance of this network and emission system, and I think that there were enough failures and missed dates and schedule slippages, they all created a very bleak picture in a lot of people's minds as to whether we were going to have an opportunity for success on this.
>
> [Donahue II Tr. 12:1-7]

Mr. Passeri left the meeting, never to attend another "what if" meeting again. Mr. Donahue characterized Mr. Passeri as becoming

> upset and [he] left the room and was very angered at the fact that Sierra which repeatedly sent negative messages throughout the project, now had sort of tried to throw a knife, into the heart of this project, if you will, by saying that we needed to go back to the drawing board and almost start all over again and there was no chance for success.
>
> [Donahue II Tr. 13:4-11]

According to Mr. Podwal, Mr. Passeri announced "there will never be another what if meeting... and then from then on he didn't attend any more of these meetings." (Podwal Tr. 80:12-16).

Mr. Passeri did not recall being upset with Mr. Joy at that meeting and indicated he "never excluded Richard Joy from any meeting." (Passeri Tr. 140:18-141:1; 143:8-9). Mr. Passeri, from that time, however, began to reduce PB's role. He testified he did so because the relationship between PB and PI "got to be a little

strained." (Passeri Tr. 41:15-20). Mr. Passeri felt Mr. Podwal had become too personal in referring to Mr. Sherwood as "a liar." (Passeri Tr. 45:1-9). Mr. Passeri learned that as a result of that tension, Mr. Sherwood was threatening to transfer back to California. The extent to which Mr. Passeri relied on PI, rather than utilize the consultants retained to help the State manage PI, was clearly explained by Mr. Sherwood in the following colloquy:

> Q. The reason I am asking those questions is that this is right around the same time that Carl Passeri made moves to reduce the role of Sierra Research and bring Bob Kozak in as his special consultant. Quite frankly I wanted to know whether or not you had indicated to Carl that you were so angry at the way you personally were being treated by the people from Sierra Research that you were going to get out?...
>
> A. ...They accused me of withholding information from them. They accused me of really, you know, mischaracterizing information on schedules in particular and we talked about it.... Carl called me that evening and he said he was sorry about how things have been expressed. He felt like it was inappropriate particularly Bruce Podwal was the one that had kind of targeted me personally. He felt that was inappropriate and I said well, gee I thought that was my, you know, reason probably to head back to California and work on some other projects. He said he didn't want me to leave. He wanted me to stay on. He felt like I was playing a real strong management role here and getting things done so I talked with Tom Peters about it and we decided I would stay on.
>
> Q. Did you suggest to Carl Passeri that a condition of your staying on was that he somehow reined in Bruce Podwal, Parsons Brinkerhoff and/or his consultant?

A. I didn't have to. Carl offered that.

[Sherwood Tr.76:2-9; 77:16-78:18]

Mr. Passeri asserted greater control over the project by limiting PB's management responsibilities. Although PB was responsible for reviewing invoices submitted by PI, Mr. Passeri sharply reduced PB's role with respect to invoice review in the late summer and early fall of 1999 and undertook to review them himself. He refused to meet again with Sierra or Mr. Joy. Further, Mr. Passeri directed that all communications go directly through him. He instructed that problems with ESP be brought to him. He moved the TOC meetings to Deptford in order to limit attendance, and succeeded in limiting attendance. He, also, specifically requested that PB's Mr. Reddan not attend. (Donahue II Tr. 15:12-21).

On July 22, 1999, Mr. Joy informed Mr. Passeri that PI should explain its position regarding throughput and contingency plans. (Exhibit 81). Mr. Passeri never pressed PI to adequately address those issues.

Slippages continued during this time. On July 21, 1999, Mr. Peters, PI's Vice President, indicated that "the ATP will not be completed at Deptford until sometime in the middle to the end of August...." (Exhibit 123).

By late July, the goal of the program was beginning to change from an efficient operating system to one that would simply be put on-line on December 13. As Mr. Elston stated:

> [T]he program could be up and running. Now, could the program be up and running correctly or according to spec or according to something else, that was a little different question.

[Elston Tr. 43:12-15]

B. <u>August 1999</u>

Throughout August there were repeated failures to meet deadlines, culminating in a complete failure of the Deptford test lanes. The entire testing process had to be shut down for several weeks in order to allow ESP to regroup.

In August, unwilling to accept or rely on the advice provided by the State consultants, PB and Sierra, Mr. Passeri retained Robert Kozak, a private engineering consultant to assist him in evaluating the directly contradictory positions taken by PB and Sierra on the one hand and PI and ESP on the other. Mr. Kozak had been retained as a consultant to the contractor, PI, on New Jersey's Enhanced I/M project just before being engaged by Mr. Passeri as his consultant.*

---

* When he announced several personnel changes in a letter to Mr. Passeri dated July 21, 1999, Mr. Peters of PI described Mr. Kozak as "our equipment consultant." He went on to say:

> Bob [Kozak] resigned because the scope of work he was performing for us in conjunction with Environmental Systems Products (ESP) turned into more of a development function. His

Mr. Passeri used the inadequacy of the performance of the contractor in developing software and the need for additional oversight as his basis for the hiring of Mr. Kozak. By letter dated August 10, 1999, sent in response to Mr. Passeri's request to hire Mr. Kozak, Catherine Schafer, Supervisor, Contract Compliance and Administration Unit within the Division of Purchase and Property of the Department of Treasury, informed Mr. Passeri that PI "must first be noticed, in writing, as to its delay in the software development and testing and they should be instructed to submit a corrective action plan." (Exhibit 152). When questioned as to whether he had notified PI of its failures under the contract, Mr. Passeri testified: "no, I don't believe so." When asked why not, he responded "I don't know. Basically the goal was... just to finish at that point." (Passeri Tr. 151:24-152:4).

On August 5, 1999, because of uncertainties relating to the throughput rate, Mr. Kozak advised Mr. Passeri that a preliminary two hour test should be run in Deptford to determine a representative throughput rate. (Exhibit 132).

> original scope of work was narrowly crafted around developing and performing the acceptance test procedures (ATP) and therefore, the product development role he felt he was performing for us with ESP, was not his preference.
>
> [Exhibit 123]

In the same memorandum, Mr. Kozak also advised Mr. Passeri of the need to conduct a variety of temperature related tests in Tucson on the emissions analyzer and gas tank testing equipment. (Exhibit 132). In an earlier e-mail, dated July 28, 1999, Robert Schell of DEP, by way of clarification also stated that the RFP required PI to "ensure" that the CIF equipment operated accurately regardless of any adverse weather conditions. (Exhibit 82).

In another memorandum to Mr. Passeri dated August 9, 1999, Mr. Kozak stated that from the results of the ATP so far,

> it is safe to say that the NDIR emission equipment selected by Parsons CANNOT (under any circumstances) meet either BAR 97 or EPA ASM specification under actual use.

[Exhibit 86]

Mr. Kozak stressed the need to measure test repeatability and equipment reliability, and he recommended that ATP must begin before conducting beta and production testing. He defined the essentials of "extended pre-beta testing," as a minimum of 30 consecutive full-lane, end-to-end inspections and three consecutive days of testing without critical equipment downtime. Finally, he recommended that beta testing occur over a period of 30 consecutive operating days.

Director Kamin clearly was aware of concerns over the status of the program. (Exhibit 43). On August 12, 1999, he requested PB to draft a letter addressed to itself, to be signed by

him, that would provide him with an updated status report on all aspects of the program by August 20, 1999. Specific concerns over PI's failure to demonstrate a throughput of even seven to eight cars per hour, whether a sufficient number of lanes would be available, and whether adequate staff training had been provided, prompted the letter. (Podwal Tr. 78:13-79:15).

On August 12, 1999, Mr. Reddan of PB informed Mr. Donahue that Mr. Joy of Sierra had predicted that the EPA would grant an extension of its deadline, if asked. Mr. Reddan quoted Mr. Joy as follows:

> EPA is almost certain to grant New Jersey additional time to start the program if it is apparent that the delay was due to the contractor's failure to meet its obligations ... it is highly unlikely that EPA would refuse to allow New Jersey extra time....
>
> [Exhibit 87]

On August 18, 1999, Mr. St. Denis advised Mr. West and Mr. Donahue in an e-mail that the pre-beta testing was not going well and that it might take at least four weeks before the hardware would pass all of the acceptance tests. He also indicated that most, if not all, of the items Sierra tested appeared not to have been tested previously by either PI or ESP. He continued:

> Most all tests conducted in the last three days have failed. There are significant, obvious problems with major parts of the test system which should have ALREADY been found and fixed... Parsons and ESP must perform the testing and confirm proper operation before more testing is to take place. The

> "development by ATP" which has gone this week is too time consuming and expensive to continue.
>
> [Exhibit 14]

As a result of extensive software failures beginning on August 24, Mr. Passeri, at ESP'S request, suspended testing until September 10. (Donahue I Tr. 71:23-72:25). This suspension highlights the ongoing failure to produce a long overdue and promised functional prototype lane and the State's continuing accommodation of its contractor and refusal to require effective corrective action. According to Mr. Donahue, the suspension had "a tremendous impact on the inability to meet the December 13 [deadline]." (Donahue I Tr. 72:12-16).

In an August 24, 1999 e-mail, Mr. Kozak raised again the need for testing, echoing Sierra and Mr. Donahue. Mr. Kozak further identified wait-time through sufficient throughput as a key objective of beta testing. (Exhibit 89). He emphasized that "all agree that an extended period of testing is needed with real vehicle entries and tests given the current fragile nature of the hardware and software." (Exhibit 89).

On August 27, 1999, Director Kamin wrote to Mr. Peters of PI and asked him to establish task forces in anticipation of the December deadline. (Exhibit 44). Mr. Passeri chaired the throughput committee task force that included Messrs. Kozak, Wanschura, Joy, and Thomas Wright and Thomas Bednarz of DMV.

On August 31, 1999, Mr. Kozak stressed to Mr. Passeri that PI have stable/functional hardware and software by September 17, 1999 and that these lanes undergo "check-out" beginning October 20, 1999, allowing approximately 40 days for the completion of an extended pre-beta checkout. (Exhibit 90).

IV. FINAL STAGES OF PROJECT IMPLEMENTATION

A. September 1999

In September there were continued failures in the testing process. Warnings of the risk of ultimate failure on implementation escalated. Deadlines became increasingly tight. Further delays and problems jeopardized implementation. As other deadlines slipped past, December 13 held firm in the minds of those involved in the project. Mr. Elston recognized that:

> well, all of us, contractors and the State, we're all under the supposition December 13 was the day. Obviously all measurements of all our progress were measured against December 13.

[Elston Tr. 15:8-12]

Mr. Passeri took a more active role in directly managing the Test Oversight Committee, previously chaired by Mr. Donahue, which had direct operational responsibility for implementing the software and hardware elements of Enhanced I/M. (Passeri Tr. 68:8-12).

On September 3, 1999, Mr. Donahue e-mailed Mr. Kozak and Mr. Passeri, expressing his concerns regarding the suspension of testing. Consistent with the advice Mr. Kozak had provided to Mr. Passeri, Mr. Donahue concluded that stable software had to be achieved by September 10 and that software/hardware fixes had to be "flawless." (Exhibit 91). Stable functional hardware and software, however, were not available, even by October 20, 1999.

(Passeri Tr. 170:6-14). In a later e-mail, dated September 7, 1999, Mr. Donahue indicated to Mr. West that the regrouping effort of ESP that began in August constituted a very serious delay, noting "we've had one delay after another since May, 1999." (Exhibit 129).

Mr. Donahue characterized Mr. Passeri's reactions to these concerns as:

> to continue on, to make a list of the problems, and to work with the vendor to rectify those problems, and to continue testing.
>
> [Donahue I Tr. 75:8-10]

Mr. Donahue became more disengaged from the project at this critical juncture as a result of his new duties as acting Director of Information Systems at DMV. Mr. Wanschura succeeded to many of Mr. Donahue's responsibilities and also undertook additional responsibilities with respect to software implementation. In another September 7, 1999 e-mail, sent to Mr. Passeri, DEP's Mr. Elston indicated that a vehicle throughput rate of only four or five cars per hour would be unacceptable and recommended that any further delay would require that, "we should get some idea of what our flow rate will look like." (Exhibit 92). Later, in October, Commissioner Shinn was shown a video of a lane in operation, and expressed concern over how long the inspection took. (Shinn Tr. 21:20-22:9).

Beginning September 9, 1999, Mr. Kamin reinstated the Passeri canceled biweekly meetings. (Exhibit 44). In a September 10, 1999 letter to PI's Tom Peters (drafted by PB for Mr. Kamin at his request) and copied to Commissioner Weinstein and Deputy Commissioner Ari, Mr. Kamin stated:

> All parties to our partnering charter meeting in February committed to a Phase I, II and II acceptance by September 10, 1999. That date has past, and I am concerned Parsons Infrastructure will not meet their December 10, 1999 contractual date to go mandatory.
>
> My concern is heightened as the Phase I milestone of July 24, 1999 was not met and the current schedule by Parsons Infrastructure indicates the Phase II milestone of September 24, 1999 also will not be met. Both Phase I and II acceptance are probably over a month away.
>
> * * *
>
> Not only is my confidence low that the mandatory date will be met, current thinking by Parsons Infrastructure leaves too little time for sufficient hardware and software optimization and staff training to maximize throughput. Thus, I am exploring all contractual remedies to which the State is entitled. In the meantime, I strongly suggest Parson Infrastructure take. . . [a variety of listed] actions.
>
> [Exhibit 141; emphasis added]

DMV Director Kamin clearly understood that the persistent delays in meeting testing deadlines would have a negative impact on the ultimate viability of the program. On the same day, Director Kamin

chaired a "what if" meeting to continue to explore a variety of contingencies, including a discussion of unsatisfactory throughput. (Exhibit 138).

On September 17, 1999, PI's Mr. Peter's responded to Director Kamin's letter, writing that "Parsons is doing everything possible to meet the December 10, 1999 date [i.e. the Friday before the Monday, December 13 deadline]." He went on to say that "on September 2, Parsons directed ESP to provide a recovery plan to increase roll out teams, complete hardware ATP, and complete software ATP scripts in preparation for completion of the pre-Beta process." (Exhibit 185).

On September 23, 1999, PI provided Mr. Passeri and Mr. Kamin with a summary of strategies to increase throughput and decrease wait times. (Exhibit 45). This "Optimization Plan" was then provided to both PB and Sierra for evaluation.

On September 30, 1999, Sierra critically evaluated PI's Optimization Plan. (Exhibit 47). Sierra determined that the plan:

> •Lacks any quantitative information on projected vehicle throughput rates and wait times. The estimated impact of potential optimization elements on these parameters is also totally unquantified. The State needs this information to decide which elements should be implemented.
>
> •Does not recognize the seriousness of the situation facing the State and Parsons in beginning mandatory testing in the CIF lanes. Sierra believes this situation is extremely serious. There is a very real possibility that the program will not survive if wait

> times cannot be substantially improved from the levels that we believe are likely to occur at present. There is no demonstration in the plan that the proposed optimization elements will in fact prevent excess wait times.
>
> •Omits a number of elements that have significant potential to improve throughput and wait times. This includes elements aimed at shortening the required inspection procedures, adding additional staff and/or lane positions to increase lane throughput rates, and providing additional inspection lanes to improve facility throughput
>
> •Ignores program elements that may contribute to a further slowdown in throughput. This includes the training of both station management and equipment service staff, and the availability of service and replacement parts.

[Exhibit 47]

Consistent with its practice, PB did not circulate Sierra's comments. Rather, on October 6, 1999, PB provided Mr. Passeri with its own analysis of PI's Optimization Plan, which incorporated some of Sierra's comments. The PB analysis stated:

> •The Plan lacks quantitative information on projected vehicle throughput rates and wait times. The estimated impact of potential optimization elements on these parameters also is not quantified. The State may need this information to decide which elements should be implemented.
>
> •There is a possibility that the program will receive extreme public criticism if wait times cannot be substantially improved from the levels that are occurring at present. There is no demonstration in the Plan the proposed optimization elements will prevent excess wait times.

> •There are a number of elements that have significant potential to improve throughput and wait times that should be addressed in the Plan. These include elements aimed at shortening the required inspection procedures, adding addition staff and/or lane positions to increase lane throughput rates, and providing additional inspection lanes to improve facility throughput.
>
> •Elements that may contribute to a further slowdown in throughput should be addressed in the Plan. These include the training of both station management and equipment service staff and the availability of service and replacement parts.

[Exhibit 46]

On September 27, 1999, Kenneth Stevenson, a career DMV employee, with an extensive background in DMV inspection operations, in a seven page memorandum explicitly and specifically warned Mr. Passeri of the problems to come:

> I hate to be the bearer of bad news, but I doubt there's anything we or PI can do at this point to avoid horrendous and politically damaging long lines when we go mandatory.
>
> I understand from Dave West that five vehicles an hour is what he has observed, when the folks are "well trained and enthusiastic" assuming a throughput of six vehicles an hour leads to a disaster.

[Exhibit 144]

Mr. Stevenson included detailed studies and analyses that supported these conclusions. He testified that he discussed this memo with Mr. Passeri, who told him "bury it" or words to that effect. (Stevenson Tr. 27:5-28:8) In sharp contrast, Mr. Passeri

denied telling any one to bury anything and expressed a "belief" that he discussed the matter with Director Kamin. (Passeri Tr. 102:13-14; 197:13-198:9). Director Kamin, however, did not recall such a discussion. He acknowledged only discussing throughput generally at the biweekly meetings. (Kamin II Tr. 152:15-153:5).

By this point, PI's and ESP's inability to produce stable functioning software was having a profound impact on the progress of the project, making it nearly impossible to train inspectors to work the software necessary to effective inspection. That knowledge was evident to Mr. Kamin, Mr. Passeri and Mr. Elston.

A September 29, 1999 table excerpted from the Project Acceptance Coordination document indicated a substantial number of items had not yet been subjected to ATP testing, including whether the tailpipe analyzer made clear pass/fail evaluations. (Exhibit 136). When these concerns were brought to Mr. Passeri's attention, he:

> remained consistent. He got somewhat annoyed if you talked about things that you thought were going to be critical on December 13th. I think he took the view everything could be fixed. But his other mode of consistency was we needed to get a check list together, go through that process, get new dates from Parsons as to when they were going to do things.
>
> [Donahue II Tr. 76:13-20]

Another Partnering Workshop, held on September 28, 1999, again identified important goals including:

> •an operationally efficient facility that meets or exceeds program requirements;
>
> •a current shared schedule and work plan; and
>
> •keeping public and elected officials well informed.
>
> [Exhibit 23]

Mr. Donahue stated that Mr. Passeri:

> made it very clear in this partnering session that he was going to accept the facilities and as the project progressed through the months up through December that it became very clear that the only acceptance of the system was going to be Carl's decision to put it in.
>
> By this time the PAC document had been set aside. The acceptance protocol that had been laid out was more or less not being paid attention to and the focus was one dimensional. It was a checklist of problems that were out there, and let's get through the problems, and once the problems are done, we'll begin to roll these lanes out.
>
> [Donahue III Tr. 28:19-29:6]

At this Partnering Workshop, the participants highlighted the need for an "Executive in Progress Review for a go or no go decision" (Exhibit 23), set a throughput standard of 10 vehicles per hour by December 10, 1999 and agreed that PI would be paid only upon "substantial completion" of the contract terms. (Exhibit 49).

In late September, Mr. Kamin directly contradicted the concerns expressed in his September 10, 1999 letter to PI by expressing confidence about the project to Alyssa Weinberger, a Policy and Planning staff employee in the Governor's Office. As a

result, Ms. Weinberger wrote a September 28, 1999 memorandum to the Governor's Chief of Policy and Planning, Eileen McGinnis, stating:

> DEP is concerned that there may not be enough inspection stations at the outset, to handle the volume of cars due for inspection. . . Dick Kamin. . . does not believe this will be an issue. I have communicated to both Dick and DEP my concerns that we must manage public expectations. Dick assures me that they will deliver services well beyond what they have promised.

[Exhibit 158; emphasis added]

In his testimony before the Panel, Mr. Kamin provided different explanations for his statements to Ms. Weinberger. In his testimony on April 26, 2000, he stated that although he had grave concerns about the contractor's ability to meet the deadline, "I don't know I would go and talk to Alyssa Weinberger about that." Instead, Mr. Kamin indicated he had provided Senior Assistant Counsel John Valeri with an "indepth status of where we were." (Kamin II Tr. 145:4-19). Mr. Valeri, however, denied that Director Kamin had shared information with him that contradicted Ms. Weinberger's memorandum, or otherwise indicated that there were serious problems with the project. (Valeri Tr. 100:15-101:11). Two days following his testimony, Mr. Kamin appeared again, at his own request, before the Panel to "clarify" his earlier testimony. He stated that:

> Between I believe my letter to Tom Peters and the time of the letter of Alyssa Weinberger, I believe there is a piece of correspondence back, meetings that may have taken place with

> the contractor and with the members -- representatives of the State to show the commitment and what was, in fact, being done by Parsons Infrastructure to bring the contract home.
>
> [Kamin III Tr. 33:21-34:]

B. <u>October 1999</u>

By October, the lack of deliverables and the delays in testing became even more critical.

On October 19, 1999, Sierra observed PI's initial efforts to test "live vehicles" at Deptford. Sierra addressed a variety of specific problems. (Wanschura Tr. 170:2-4). On October 19, 1999, Mr. Kozak e-mailed Mr. Donahue and Mr. Wanschura, noting the "[a]bsence of training for Deptford lane inspectors..." and the "[a]bsence of coordination with ESP's lane roll-out schedule." (Exhibit 99). Mr. Wanschura characterized PI as going ahead:

> without any plan to do it. They just sort of did it. In the face of plans to do certain things, they didn't do them... It seems like Parsons specifically in this time frame had a hard time turning plans into actions, having actions comply with plans.
>
> [Wanschura Tr. 171:20-172:1]

Mr. Wanschura remembered participants raising concerns at a TOC meeting on October 21, 1999:

> about the quality of what we had and the reliability of what we had. But again, maybe the overly optimistic view was we'll deliver this and make it work.
>
> [Wanschura Tr. 173:6-9]

Software ATP, as of October 21, "still had quite a ways to go." (Wanschura Tr. 174:10-12).

On October 22, 1999, what has been variously called the one-hour test or the 30-car test was finally performed at Deptford. Thirty cars were run through all four lanes for one hour. In Mr. Wanschura's estimation, this singular test represented the high point of the program. (Wanschura Tr. 176:21-23). By October 26, 1999, however, a variety of software and data communications problems began to negate the optimism created by this solitary and long-overdue testing success.

In an October 26, 1999 e-mail to Mr. Donahue and Mr. Wanschura, Mr. Kozak noted problems with operational stability that were "still far from meeting minimal operational requirements." (Exhibit 106). He noted the program had not been able to get through an entire day without an unscheduled lock-out or partial crash and that long term VID operation had not been proven. He identified presciently the electrical problem of breakers tripping. Mr. Kozak provided Mr. Passeri with two recommendations designed to provide additional levels of staff support in the field. The recommendations were not implemented. (Kozak Tr. 83:1-6).

On October 27, 1999, Mr. Wanschura reported to Mr. Passeri that the program continued "to be plagued by poor information from MCI...[causing] serious delays in this week's testing." (Exhibit 107).

C. November 1999

In November, PI delivered and installed new equipment and software at other central lane facilities throughout the State. The State still planned to rollout the project, even though there was a lack of stability in the equipment and testing was not complete.

On November 5, 1999, Mr. Wanschura provided Mr. Passeri and Mr. Donahue with a limited CIF project implementation plan. (Exhibit 109). With only five weeks to go, Mr. Wanschura thought it important to lay out a precise day-by-day plan of what needed to be accomplished. Nonetheless, he knew of no actions taken on his recommendations. "[T]he information as to what was supposed to be accomplished was not communicated to the station managers...." (Wanschura Tr. 188:9-11). Mr. Wanschura recalled raising specifically the issue of the viability of the project with Mr. Passeri. He stated both Mr. Passeri and Mr. Donahue were aware of his concerns. (Wanschura Tr. 188:14-189:17).

A public media presentation of the system at the Kilmer inspection station was planned for November 11, 1999. In preparation for that event, PI's public relations consultants, D.K.B. Partners, Inc. ("DKB") assembled a list of "Questions for Dry-Run of Nov. 11 Media Event" that they anticipated might be posed by reporters observing the demonstration. One question, in particular, recognized implicitly the dilemma posed by the failures

experienced in the course of the development of the project. The proposed question noted these specific facts: that by November, Parsons should have been testing more than 100,000 cars per month with the new system, but had yet to conduct more than a few hundred enhanced tests. It then concluded rhetorically: "How can you possibly expect us to believe that you are going to be ready State-wide on December 13, 1999?" (Exhibit 168). This significant question was similar to one raised in a *Star Ledger* editorial. (Exhibit 178). The DKB questions were distributed to Mr. Passeri and the communications directors for DEP, DOT and DMV on November 9. Mr. Passeri forwarded a copy to Mr. Valeri in the Governor's Office on November 10. Mr. Valeri could not recall the specific question or its proposed answer, but told the Panel he suspected PI would say merely that they were working hard and expected to have the system up and running by December 13. (Valeri Tr. 111:1-9).

In early November State staffers focused on the objective of advising EPA that the deadline would be met in order to avoid the imposition of sanctions and assure the continuation of highway funding. State staff decided that a face-to-face meeting between Commissioners Weinstein and Shinn and Mr. Muszynski of the EPA on November 19, 1999, with an in-lane demonstration would best achieve that objective. DEP staff prepared a draft letter to EPA for the Commissioners' signatures indicating that the system was being implemented. At the November 19th meeting, PI provided a positive

presentation of the status of the program, for that was the goal. That presentation, given by PI's General Manager Larry Sherwood, did not mention the myriad of software and other problems lying in wait. He did not mention the truncated testing schedule or its potential impact on the system when it went mandatory. (Sherwood Tr. 60:17-67:21). The Commissioners and the EPA representatives toured a PIF and CIF facility. Following PI's presentation and the demonstration, the Commissioners sent the letter to EPA. (Exhibit 26). Mr. Salmi, who drafted the letter, testified that he told Commissioner Shinn just before he signed the letter that there were problems with the VID communications. Commissioner Shinn said he had talked to Mr. Kamin, who had assured him that the project was under control and that the letter should be sent. (Salmi Tr. 107:23-108:14).

By sending the letter, the State, in effect, committed to full implementation by December 13. In the opinion of Mr. Salmi, DEP's Air Quality Planning Bureau Chief, once the letter was sent, there was really no feasible alternative to implementation on December 13 other than some intervening catastrophe. (Salmi Tr. 87:22-88:2). No one seriously explored seeking an extension from EPA. There were staff level discussion at the DEP, involving Christine Shell, Mr. Salmi, and Mr. Elston, about delaying implementation for a month if EPA would withhold the imposition of sanctions. Mr. Elston regarded those discussions as only talk and

not an option. (Elston Tr. 183:1-15). Jack Lettiere, Director of Capital Programs of DOT, indicated a highway funding "hit" for one month would have little impact on the State. Those discussions were not communicated to cabinet-level officials. (Salmi Tr. 91:2-19;132:19-24).

The November 18, 1999 bi-weekly minutes, while not emphasizing or highlighting the profound concerns shared by staff, do reveal real problems. While PI promised that 14 lanes would be up and running by November 20, ESP had released no lanes. Communication connectivity was still a problem. (Exhibit 31). All these problems and the many other concerns shared by State staffers over the feasibility of the project were glossed over in the November 19, 1999 meeting with the EPA and the Commissioners.

At about this time, coincidentally, the Governor, having apparently read a series of news articles and editorials discussing problems at DMV facilities, communicated to Commissioner Weinstein through her Chief of Policy and Planning, Eileen McGinnis. Although unaware of the seriousness of the deficiencies that threatened the system, the Governor, nevertheless, was apparently concerned about wait times. Ms. McGinnis advised Commissioner Weinstein that:

> The Governor is interested in making sure that citizens whose cars are being inspected by the new I&M system are not inconvenienced. The Governor would like to see plans that would, at the very least, provide coffee while they

> were waiting and, more aggressively, make certain provisions if they are waiting more than 30 minutes.
>
> [Exhibit 159]

More bad news followed. A November 22-23, 1999 report on lane roll-out activities disclosed that ESP had not checked out the lanes before activating them at Kilmer and that "without the dedication of adequate resources by ESP, it is doubtful that the required number of inspection lanes will be functional by program start-up on December 13, 1999." (Exhibit 111). Mr. Donahue characterized Mr. Passeri as being sharply focused on getting to beta testing. PI's payment for its capital investment was contingent on implementation of the inspection system. That could occur only after the completion of the beta testing process. (Donahue II Tr. 27:25-28:16). Nevertheless, rollout was being implemented before the completion of beta testing. Mr. Wanschura, Mr. Donahue and Mr. Iavarone all agreed that beta testing was never completed. In fact, Mr. Wanschura indicated: "Pre-beta was still going on when we reached December 13." (Wanschura Tr. 135:14-16). In Mr. Wanschura's opinion:

> Beta testing, since it never really happened, we didn't really do this. Beta testing only makes sense if you have a complete facility that's all connected up. We never did that.
>
> [Wanschura Tr. 137:2-5]

By e-mail dated November 23, 1999, Mr. St. Denis advised Mr. West and Mr. Wanschura that "it is clear after the last two

days that it is impossible for ESP and Parsons to get all of the stations and lanes switched over [to] the enhanced test by December 13." (Exhibit 18; emphasis added). Mr. West discussed the content of the e-mail with Mr. Elston, but did not convey the dire tone of the warnings. Tone or not, Mr. Elston concluded that these warnings were overstated. (Elston Tr. 125:12-18). He did not, therefore, discuss it with the Commissioner.

V. Final Days Leading to Acceptance and Start-up of the System

A. December 1 - December 13, 1999.

By December, the rollout of the lanes in the central inspection facilities was underway. While DEP and DMV employees under Mr. Iavarone's and Mr. Bednarz's supervision worked feverishly around the clock to allow a limited lane acceptance process to proceed, they continued to encounter significant problems. By this point, the goal of the project had been reduced to "a what we could get approach." (Iavarone Tr. 140:21-25).

On December 1, 1999, a final partnering session, referred to as an "in progress review in progress," was held at the Division of Motor Vehicles. DOT Deputy Commissioner Ari , Mr. Kamin and Mr. Passeri attended, along with other key employees, including Mr. West of the DEP and an EPA representative. At this meeting, which took place only two weeks before the Enhanced I/M system went mandatory, Mr. Sherwood of PI repeated for Deputy Commissioner Ari and the other State employees essentially the same presentation that he had made to Commissioner Shinn, Commissioner Weinstein and EPA's Muszynski on November 19. As it had been in November, Mr. Sherwood's presentation was "reassuring." He indicated PI would be able "to meet the requirements of [the] program." (Kamin II Tr. 119:17-23).

In an e-mail on December 1, 1999, Mr. Kozak advised Mr. West and Mr. Passeri that "[t]o meet the goal of having all lanes

operating to even the now minimal N.J. audit requirements by 12/13 would require a miracle," confirming Mr. St. Denis's prediction that full lane implementation would be "impossible." Mr. Kozak recommended that "contingencies to address a situation of less than 100% of lanes being available on 12/13 must be developed." (Exhibit 7)(emphasis added).

Nevertheless, the next day, Mr. Passeri provided a facility summary status to Commissioner Weinstein, Deputy Commissioner Ari and Mr. Kamin, among others. (Exhibit 53) Mr. Passeri represented in that report that:

- •PIF/CIF specification are complete
- •PIF/CIF acceptance testing procedure complete.
- •PIF/CIF beta testing complete.
- •hardware/construction acceptance in process.

By December 2, 1999, only 11 of the 114 lanes had been approved. (Exhibit 5). That approval, as noted by Mr. Kozak, consisted only of the "minimal N.J. audit requirements," which were less than was required by the RFP. (Exhibit 7).

Mr. Passeri testified that he discussed in general terms with Director Kamin "how efficient" the system would be on December 13 and the acceptance process, but did not recall communicating the urgency of Mr. Kozak's December e-mail to Mr. Kamin. (Passeri Tr. 92:3-25). Mr. Passeri indicated "there were memos of concern from a lot of people. None of them were ignored." (Passeri Tr. 94:19-21).

On or about December 1, 1999, Rod Jenkins, PI's Deputy Project Manager, met privately with Mr. Stevenson of DMV and gave him two charts that corroborated and confirmed Mr. Stevenson's September analysis that the inspection system did not have the capacity to perform the enhanced emissions test without creating unacceptably long wait times. (Exhibit 146). Having been rebuffed by Mr. Passeri when he raised that issue in September, and not knowing what else to do, Mr. Stevenson went to William Hoffman, DOT's Director of Research and Technology. Mr. Stevenson met with Mr. Hoffman on Thursday afternoon, December 2, 1999, and described his meeting with Mr. Jenkins, showing Mr. Hoffman the charts prepared by Mr. Jenkins, and his own September 1999 system-capacity analysis. Even though Mr. Hoffman had no responsibilities regarding implementation of Enhanced I/M, he arranged for Mr. Stevenson to take the matter up the line to his superior, Assistant DOT Commissioner Pippa Woods.

Late on Friday afternoon, December 3, 1999, Mr. Stevenson and Mr. Hoffman met with Ms. Woods. Mr. Stevenson "laid it out for her," in much the same fashion he had with Mr. Hoffman. He showed her the charts given to him by Mr. Jenkins and his own September 1999 analysis of system capacity. Mr. Stevenson informed Ms. Woods that the Enhanced I/M Program was substantially undersized and would not be able to meet the expected volume of motor vehicle emissions inspections. Mr. Stevenson and Mr. Hoffman left the

meeting believing that Ms. Woods was convinced of the merits and gravity of Mr. Stevenson's information and his prediction that there were going to be long lines of angry motorists, and that she would communicate those concerns to Deputy Commissioner Ari (and possibly Commissioner Weinstein) that evening. Ms. Woods, however, told the Panel she had a very different perspective from Mr. Stevenson on what she perceived to be a key assumption of Mr. Stevenson's analysis, the expected rate of throughput.

> My reaction was that I had heard a different number than five vehicles an hour. In our previous management meetings, I had heard that we were up somewhere like nine, ten, eleven, which was somewhere where it was closer to what we were thinking the design standard was. So my view was [that] he was, in fact, gloomier than need be.
>
> [Woods Tr. 23:13-21]

She went on to tell the Panel:

> And I disagreed with his characterization that [throughput] was ...five vehicles an hour. ...My view was I was somewhat aware that they [Parsons] were doing remedial actions on all sorts of fronts to make sure they met standard or specification, so my view was that ...he was behind in knowing the actual numbers ...and I assumed that I would have heard the latest.
>
> [Woods Tr. 32:8-22]

Nevertheless, she did speak with Deputy Commissioner Ari about her meeting with Mr. Stevenson and Mr. Hoffman that evening. Ms. Woods told Mr. Ari that Mr. Stevenson had raised issues that she described as relating to "growth in inspection volumes," "system

capacity" and "throughput rates." According to Ms. Woods, she came away with the understanding that Mr. Ari was already aware of those issues. When asked if she had conveyed Mr. Stevenson's concerns, Ms. Woods replied:

> Yeah, but from the perspective that there were lines currently, that there would be lines later, and any expectation that simply a DOT enhanced inspection and maintenance project was going to make the lines disappear was not an accurate perspective of what was being built. We were not improving the existing system. The underlying faults in the current system would continue to exist.
>
> [Woods Tr. 44:4-11]

Ms. Woods simply did not agree with Mr. Stevenson's or Mr. Jenkins's analysis or prediction that there would be "horrendously long" and "politically damaging" lines when enhanced inspection and maintenance went mandatory. (Woods Tr. 44:21-45:4).

According to Mr. Ari, when Ms. Woods met with him, she communicated Mr. Stevenson's concerns relating to the throughput issue. Mr. Ari recalled that she seemed concerned that there might be a problem, so he called Mr. Passeri and questioned him about throughput. Mr. Ari recalled that Mr. Passeri said "he had factored everything out and he said through put will work." (Tr. 30:17-19). Deputy Commissioner Ari treated the concern as a "capacity issue" and appears to have accepted Mr. Passeri's judgment that "capacity-wise, we're there." (Tr. 39:21-40:1).

Mr. Ari told the Panel he mentioned the "issue" to Commissioner Weinstein. (Ari Tr. 32:12-15).

When Mr. Stevenson went home that weekend, he believed that his warning about inadequate sizing and throughput was being communicated to Commissioner Weinstein through Assistant Commissioner Woods and Deputy Commissioner Ari. On reflection, he decided that he should document his concerns in a memo addressed to Mr. Passeri and Mr. Kamin. Mr. Stevenson wrote his "Not Ready For Prime Time" memorandum addressed to Mr. Passeri and Mr. Kamin, on his home computer on Sunday, December 5, 1999. Mr. Stevenson personally left a copy of the memo on Mr. Kamin's chair first thing Monday morning, December 6, 1999. He also hand-delivered a copy to Mr. Passeri that same day. The memo begins:

> I hate to be the [prophet] of doom, but I believe, there is nothing that can be done at this late date to get the central lanes up and running smoothly by next Monday morning. Consequently we need to make contingency plans that address long lines and angry customers.
>
> [Exhibit 145]

Two paragraphs later, the memo says:

> In the long run, I believe we can deal with throughput and other issues, and by June or so can have a well running operation without horrendous lines. But, unless we are careful, because of citizen complaints, I fear the Legislature may close the program down, and we will never get to June. This had happened in a number of other states. Terminating the

> program is something that neither we, nor Parsons nor EPA wants.
>
> [Ibid]

Mr. Stevenson's December 5 memo detailed a variety of installation and structural problems and suggested options that should be considered. The memo reported that as of the previous Friday, December 3, 1999, only 15 lanes had been accepted by the State. It highlighted the lack of staff training and stressed inspection equipment reliability problems. He also reported that an average of 235,000 vehicles had been inspected in each of the previous 6 months, despite the move from annual to biannual inspections. Even if all 106 lanes were operating and could achieve a throughput rate of 12 vehicles per hour, Mr. Stevenson calculated that system capacity would fall short by about 45,000 vehicles per month. At a throughput rate of 6 vehicles per hour, which Mr. Stevenson understood to be the then achievable rate, he calculated that the system had a capacity of only 114,000 vehicles per month, barely 50% of expected demand. Mr. Stevenson's conclusion was that "...this lack of capacity will result in long lines, angry motorists, and a lot of adverse publicity." (Exhibit 145).

Although he disclaimed specific recollection of the circumstances, Mr. Passeri acknowledged receiving Mr. Stevenson's December 5 memo. (Passeri Tr. 109:11-22). Mr. Passeri believed he discussed Mr. Stevenson's memo with Mr. Kamin, but he had no firm recollection of such a conversation. (Passeri Tr. 102:25-103:17).

Nor did he recall providing copies of the memorandum to anyone else. (Passeri Tr. 203:25-204:14). Mr. Passeri did say, however, that he and Mr. Kamin discussed the issues raised by Mr. Stevenson with Mr. Valeri of the Governor's Office. When asked if he "...let Mr. Valeri know there was an issue with wait time?", he said,

> As I recall, we did, yes. The through-put was a concern, and obviously that has an effect on wait time...
> Q. Did you let Mr. Valeri know there was an issue with wait time.
>
> A. As I recall yes, that the throughput affected wait time. Did I know there were going to be those types of lines? No, I didn't."

[Passeri Tr. 208:19-209:3]

When asked if he had relayed to Commissioner Weinstein, or any of the other DOT senior staff, the issues raised by Mr. Stevenson or by PB in its critique of the PI optimization plan, Mr. Passeri said:

> No. What I raised were general issues that related to those memos. You know, it sounds like its being repetitive. It was the same stuff over and over again. It was, you know, I believe back in June when I started to talk about construction, it really isn't on the fast track. That looked like it was progressing very well. Now it's flipping over to the software. Now that's the concern we have to deal with. How was that going to affect other elements. It is just the same scenario over and over again. I honestly think they underestimated the commitment of personnel they had to have. They didn't have

> enough time to do training. It was those types of general issues that were discussed over and over again.
>
> [Passeri Tr. 212:13-213:2]

Mr. Kamin initially had no recollection of receiving Mr. Stevenson's December 5, 1999 memo. In his "clarification" testimony, Mr. Kamin acknowledged that he too had received the memo but testified that he did not discuss the memo with Commissioner Weinstein or the Governor's Office. (Kamin III Tr. 15:11-16:21; 20:22-24).

On December 7, 1999, Mr. Elston provided Commissioner Shinn with a confidential memorandum advising the Commissioner that DEP staff believed:

> that full enhanced I/M program operation conducted in accordance with specifications contained in contractor agreements to the [State's] Request for Proposal (RFP) will not occur by December 12, 1999.
>
> In addition, the prospect of DEP providing "conditional" approval (by audit) by the above date appears uncertain at this time. Of particular note is the reliability of the inspection lane software. Frequent system shutdown has been observed despite the contractor's assurance that software reliability will be achieved. Also, we have no assurance of full network compliance, as we have not received access to data from the centralized computer. (See attached e-mail).
>
> [Exhibit 19]

Mr. Elston attached Mr. Kozak's December 1, 1999 e-mail, but whited out the name of the sender and the recipient. Mr.

Elston recognized that Mr. Kozak's e-mail confirmed Sierra's conclusions, acknowledging it "struck a resounding bell in me." (Elston Tr. 135:8). At this time, PI sought payment under the contract. Despite his awareness of the high level of concern over implementation, Mr. Elston decided not to "blow the whistle." He brought only the payment issue to Commissioner Shinn. (Elston Tr. 136:4-9). Mr. Elston then advised the Commissioner not to sign off on a contract amendment allowing payment unless a provision for retainage was clearly spelled out.

In his testimony before the Panel, Commissioner Shinn indicated he had no recollection of reading Mr. Kozak's e-mail that was attached to Mr. Elston's letter. Although Commissioner Shinn agreed with Mr. Elston, he ultimately approved the change order allowing payment. (Shinn Tr. 52:19-53:22).

On December 9, Mr. Passeri approved Phase I; on December 12, he approved Phase II; and, on December 13, 1999, he approved Phase 3. (Exhibits 154, 155 and 156). Mr. Passeri acknowledged the lanes did not meet the standards for acceptance as set forth in the contract. Further, he did not seek any approval or guidance from any superiors before accepting and authorizing payment for 106 contractually deficient lanes. Commissioner Weinstein testified that Mr. Passeri in accepting the lanes "just bypassed all sort[s] of reasonable protocol...." (Weinstein Tr. 99:7-9). Based on Mr. Passeri's approvals, DOT paid PI $43,244,908 in December as payment

in full for Phase I and II (and in March made a partial payment on Phase III).

DEP and DMV audit teams continued to work around the clock in an effort to make their minimal lane audits in a hectic effort to make up lost time to meet the start-up date. Even though he had "accepted" 106 lanes, Mr. Passeri acknowledged that he was

> not sure we expected a reasonable throughput... The feeling generally was it wasn't as good as we had hoped for. What effect does that have? It has the effect on wait times, that was expected.
>
> [Passeri Tr. 95:20-96:8]

The focus of Mr. Passeri's concern was only that tests could be performed, without regard to the adequacy of the throughput.

> Now does that say that it would mean wait times are acceptable? No. Based on throughput numbers, I think the general consensus was there would be wait time problems.
>
> [Passeri Tr. 107:1-5]

B. <u>Start-up of the System on December 13 and Thereafter</u>

Enhanced I/M "went mandatory" on December 13, 1999. 106 lanes had been approved and accepted in a bare-bones audit process that did not conform to contractual requirements. Mr. Elston testified it was clear that the specification was not going to be met. "Indeed one test in emissions and two tests in safety were dropped initially so that the test could limp up to [the start

date]." (Elston Tr. 49:24-50:3). Mr. Passeri conceded: "[i]n hindsight it obviously was a gamble." (Passeri, Tr. 96:18-19).

From all the evidence presented to the Panel, implementation occurred without beta testing being completed and with, at best, only limited pre-beta and prototype testing. These inadequacies of testing meant there was no way to assure the reliability of the system or to predict what would happen when thousands of citizens brought their cars to the central lanes for inspection. In the absence of testing to assure reliability, the risk of system-wide failure was great.

Mr. Elston characterized the operation of the system after December 13th as "a catastrophic failure," attributable to

> [s]o many things, software failures, cold temperature, training, lack of personnel. The disappointment was intense. The three key issues were software, number of personnel and the training of those personnel.
>
> [Elston Tr. 47:11-20]

Mr. Passeri said: "We started every lane, then we had bugs all over the place." (Passeri Tr. 79:10-11). According to Mr. Elston, by December 14 or 15:

> The equipment started, the software started to just bomb out, then they had to reload. In other words, put yourself in the inspection lane, waiting time as the motorist, all of a sudden the lane would just stop dead, the software stopped, and you find three or four examiners walk over to the computer scratching their heads and wondering what went wrong. Meanwhile the lane was slowly filling up with cars behind you. People said it looked

exactly the way the newspapers report it. No one knows what the hell is going on here.

[Elston Tr. 161:13-23]

In the ensuing weeks, problems mounted throughout the system and continued to surface at one lane after another, and as a result motorists encountered long and unpredictable waits. The following table presents a summary of wait times experienced by motorists at several inspection stations during the first two weeks after startup:

Average Wait Time in Minutes: December 13-21,1999

(rounded to nearest whole minute)

Station	13	14	15	16	17	18	20	21
Newark	158	82	87	46	38	30	54	34
Randolph	122	69	79	43	30	101	51	56
Wayne	168	62	71	30	45	91	31	22
Eatontown	103	43	13	6	32	14	38	17
Westfield	162	40	27	47	53	43	39	33
Ridgewood	22	86	122	141	88	95	66	55
Cherry Hill	100	38	42	15	28	49	30	13

Average Wait Time in Minutes: December 22-31,1999

Station	22	23	24	27	28	29	30	31 .
Newark	34	27	6	95	94	141	102	39
Randolph	62	61	17	103	169	245	78	69
Wayne	16	19	3	55	91	169	69	23
Eatontown	22	13	5	45	85	97	71	40
Westfield	39	41	7	114	28	164	100	25
Ridgewood	41	46	20	79	124	135	159	32
Cherry Hill	27	16	1	87	118	135	60	14

VI. CONCLUSIONS

It is clear that State government wanted this program to succeed. The question then becomes why, if the State wanted the program to succeed, it would take the risk of putting the program on-line without the necessary testing and why the Governor, her Office, and her cabinet-level officials were surprised by the failure of the system after December 13. The Panel has concluded that there are, at least, five reasons for the lack of knowledge by those at the very top of State Government.

FIRST CONCLUSION

THE PRESSURE CREATED BY THE EPA'S DECEMBER 13 DEADLINE INFLUENCED THE DECISION TO IMPLEMENT AN UNRELIABLE AND INEFFICIENT AUTO INSPECTION SYSTEM.

Senior project managers and key staff in State government believed that the December 13, 1999 deadline could not be extended or deferred. They believed that, pursuant to federal law, failure to meet that deadline would jeopardize one billion dollars of federal highway funding for New Jersey and would inhibit economic development. This mindset contributed to a tunnel vision that hampered senior project managers from objectively and appropriately managing the project.

State officials allowed the Enhanced I/M system to go on-line on December 13, 1999 because they were driven, in large part, by a conviction that the December 13 deadline was fixed and unalterable. Failure to put an enhanced emissions inspection and maintenance program in place by that deadline was perceived as having enormous fiscal consequences for the State. State officials all understood the sanction for missing the deadline to be the withholding of one billion dollars in federal transportation funding and the continuation of 2:1 emissions offset requirements for stationary sources of air pollution. Therefore, the December 13 start up date became the single, overriding objective of the program. The drive to avoid the federal sanctions obscured other important considerations, namely, ensuring that the emissions inspection system would be reliable and efficient and would satisfy the clean air mandate without serious inconvenience to the public.

The singular focus on the December 13 deadline was the critical influence that shaped the flawed manner in which State officials developed and implemented this project. The Panel questioned nearly every witness involved in the implementation of the program about their understanding of whether or not the deadline could be relaxed or extended by EPA. Despite their recognition that the program was beset by massive problems and their knowledge of specific recommendations by Sierra Research and others that they do so, senior project managers, such as Mr. Passeri, Mr. Kamin and Mr. Elston, did not even think to recommend to their superiors that an extension of the deadline be explored with EPA.

As Director Kamin expressed it in his testimony before the Panel, the program had three missions: 1) to privatize motor vehicle inspections; 2) to meet the EPA December 13, 1999 deadline for avoiding sanctions; and 3) to "meet the requirements of good business practices [and] have a program that works." (Kamin I Tr. 58:22-60:6). Deadline pressure, however, warped State officials' perceptions of their mission. Mr. Kamin's phrase "a program that works" was apparently intended to mean an efficient and effective enhanced motor vehicle inspection system. That was the goal of the RFP and many other witnesses subscribed to that viewpoint. Unfortunately, that goal became lost in the rush to implement Enhanced I/M by December 13, 1999. Even more unfortunately, fear

of that deadline appears to have caused managers to disregard expert opinions that the deadline could be moved, and no one even attempted to initiate meaningful discussions with EPA policy makers on this issue.

Senior project managers, including Mr. Passeri, Mr. Kamin and Mr. Elston, all acknowledged that they were aware that PI had missed every significant project milestone and had failed to deliver on many promises. To paraphrase Mr. Kozak's December 1 e-mail (Exhibit 7), the project had experienced an almost unbroken chain of missed deadlines and broken promises from the contractor. These three senior managers all acknowledged that they knew the system had not been subjected to adequate, much less rigorous, testing and that, as a result, its reliability and durability had not been determined, much less proven. Further, Mr. Passeri and Mr. Kamin acknowledged they had received explicit warnings of "long lines and angry motorists." Nevertheless, none of the three advised the cabinet officers against going mandatory with an untested system.

In short, a complex and sophisticated software system and database required to handle tens of thousands of transactions per day was put on line on December 13, 1999, without ever having been properly tested. The failure to adequately stress test at multiple sites with multiple users meant, in simple terms, that no one could predict whether the system would work when it was turned on.

Indeed, given the complexity of the system, the risk of failure was great. As Mr. Kamin observed, drawing an analogy based on his six years in the submarine service:

> ...[T]o put it in context, we never had the shake-down cruise to find out whether or not it was going to work. We never went to test depth. It never submerged to even find out if it was going to hold water. We didn't have a chance to bring the program up and running in a real life situation for a full day at any location.

[Kamin I Tr. 110:3-11]

December 13, 1999 became the shakedown cruise for an untested and unproven system and the senior managers seem willing to have let that occur because they apparently believed that they had no choice but to go mandatory on December 13.

SECOND CONCLUSION

THERE WAS INEFFECTIVE SUPERVISION OF THE CONTRACTOR BY SENIOR PROJECT MANAGERS.

Senior project managers failed to adequately supervise the contractor implementing the Enhanced I/M system. The contractor was repeatedly able to extend deadlines and defer elements of the program that were required under the contract.

At the outset, one point must be made very clear -- the evidence presented to this Panel indicates that the primary party responsible for the actual failure of this program is the contractor, PI. It was PI which entered into a contractual relationship with the State to "design, build, operate, and maintain" an Enhanced I/M system and to have it up and running in accordance with the terms of the RFP by December 13, 1999. Acknowledging that PI contends that it was delayed by the State in the formulation of specifications under the contract, in the Panel's opinion, PI failed to meet its obligations. Indeed, the record before the Panel is replete with "missed deadlines and broken promises" by the contractor and its subcontractors.

The Panel understands that not all of the blame for the failure of this program can be assigned to one or even to a few State employees. However, the three senior project managers, Mr. Passeri, Mr. Kamin and Mr. Elston, were pivotal players in the implementation of Enhanced I/M. Their judgments and actions shaped

the course of the development of the project and its implementation on December 13.

The Panel cannot help but conclude that the State was lax in its oversight of PI. There were numerous warnings and other indicators of failure that should have caused these senior project managers to aggressively deal with PI. They included:

- an almost unbroken record of missed deadlines;
- the absence of adequate testing; and
- warnings from consultants and State employees that the system could not handle the expected volume of vehicle inspections

Considered together, and with some hindsight, it is clear that any assurances from PI that the system would work well on December 13, 1999 should have been challenged and treated with great scepticism. Such assurances by the contractor were challenged at the staff level. In fact, open questioning of the credibility of PI representatives by State staff and State consultants precipitated a communications and management breakdown. That breakdown was exacerbated by CAP Director Carl Passeri and it ultimately prevented criticism of PI's performance and system readiness from moving up the chain of command to cabinet-level officials. Indeed, almost all of the witnesses indicated that Mr. Passeri's management style was to discourage bad news and, in fact,

when Sierra and PB attempted in early July of 1999 to press PI, their role was reduced by Mr. Passeri.

Mr. Passeri, Mr. Kamin and Mr. Elston, all of whom were well aware of staff questions about the credibility of PI representatives, accepted PI's assurances that the system could be implemented on December 13. By December, given the almost unbroken pattern of failure by the contractor to meet repeatedly revised milestones for delivery of both hardware and software, PI's assurances must have sounded hollow. There was little basis for the senior project managers, or anyone else connected with the management of this program, to conclude that the contractor's assurances that the system could function effectively on December 13 were realistic.

A. Carl Passeri

Mr. Passeri's extensive background in the management of construction projects mirrored the orientation of the Department of Transportation which hired him. In retrospect, however, he was a poor choice to be the CAP Director. Mr. Passeri's construction project or "punch list" approach for managing this project demonstrated a misunderstanding of the approach necessary to manage the design and development of a novel, complex and sophisticated computerized system. Management of such a system requires the continuous testing to avoid the pitfalls of "creeping elegance." (Exhibit 76). The failure to adequately test the system

contributed to the inability to evaluate the effectiveness of the system as a whole.

As Project Director, Mr. Passeri must bear a large amount of responsibility for the project's failure. Some of Mr. Passeri's behavior is puzzling. His unaccountable reliance on assurances from PI that the system would work is not supported by PI's record of performance. By limiting the role of PB, a nationally recognized contract manager, Mr. Passeri rejected the services of those retained for the very purpose of assisting the State in managing the project. By rejecting the advice of Sierra, a nationally recognized emissions consultant, Mr. Passeri stifled the flow of important information and prevented discussions at senior levels about concerns that needed to be heard.

In late summer and early fall, as vigilant and sedulous project management became even more important, Mr. Passeri began to dismantle critical safeguards. With DEP's concurrence, testing deadlines were extended, actual tests were deferred, the scope of the audits were reduced and technical experts, retained for the purpose of critically evaluating PI's efforts, found their roles sharply limited. Professing a lack of confidence in Sierra, Mr. Passeri sought authority to hire his own expert, Robert Kozak, to evaluate the software being developed by ESP. It is significant that Mr. Passeri even disregarded Mr. Kozak's advice when that advice agreed with PB and Sierra.

Mr. Passeri's engagement of Mr. Kozak was only one of several moves he made to reduce the role of PB and Sierra in project oversight. As earlier detailed, Mr. Passeri tried to eliminate the bi-weekly status meetings and personally boycotted Director Kamin's "what if" meetings rather than listen to criticism of project implementation that he found unhelpful. Mr. Passeri told the Panel that he reduced PB's role because the relationship between PB and PI "got to be a little strained." (Passeri Tr. 41:15-20). From the Panel's perspective, it appears that PB and Sierra were doing exactly what they had been retained to do -- hold the contractor to the terms of the contract.

In addition to reducing PB's influence in the project, Mr. Passeri personally assumed PB's responsibility to review PI invoices. As noted by Commissioner Weinstein, Mr. Passeri's written acceptance of the Phase I-III facilities that did not meet the contractual specifications was inappropriate.

Yet, accepting incomplete facilities on behalf of the State was only the culmination of Mr. Passeri's failure to discharge his responsibility to enforce the contract against PI. Mr. Passeri failed to act upon the advice of software managers at DMV that PI and its subcontractor, ESP, be held to strict testing protocols and to specific deadlines for the development of stable and functional software. In August, Mr. Kozak recommended that the State impose a September "drop dead date" for delivery of a

complete and stable version of the software. (Exhibit 90). Similarly, earlier in August, in connection with the hiring of Mr. Kozak, Mr. Passeri had been instructed by the Division of Purchase and Property to document PI's failures in writing. He has no explanation for his refusal to do so.

Mr. Passeri's failure to heed a wide and compelling array of warnings has little justification. As noted, Mr. Passeri repeatedly demonstrated his willingness to compress and eliminate testing, and he agreed to a stripped down audit process. He unilaterally rejected credible advice that the State should go to EPA and seek an extension of the December 13 deadline, disregarding that advice without consulting his superiors or initiating a frank and rigorous discussion with Commissioner Weinstein of where the program stood and what would happen when Enhanced I/M "went mandatory" on December 13, 1999. Even if Mr. Passeri's actions were driven exclusively by an overarching belief that there was no alternative to startup on December 13, his failure to seek that discussion and allow his superiors to consider the policy implications is inexcusable.

The Panel acknowledges that others charged with implementing Enhanced I/M may have an interest in focusing attention on Mr. Passeri and away from them. Still, we cannot be unmindful of their assertions that Mr. Passeri seemed to be more interested in protecting PI's interests than in protecting the

State's interests. (Kamin I Tr. 115:1-3; Stevenson Tr. 77:7-78:23). Certainly his actions give that appearance.

B. C. Richard Kamin

Mr. Kamin presents a different, but in many ways, equally unsettling paradox. At times, Mr. Kamin seems to have been fully engaged, using the power and prestige of his office to press PI to deliver what they had promised (Exhibit 141), or to encourage the DMV and DEP audit crews that made the big push to complete the testing of the CIF lanes in the last two weeks before December 13. (Exhibit 161). At other times, he seems to have been curiously disengaged, deferring to Mr. Passeri on issues where he should have asserted himself. For example, his failure even to bring Mr. Stevenson's December 5, 1999 memo to the attention of Commissioner Weinstein, Commissioner Shinn, John Valeri or anyone else in the Governor's Office, is difficult to understand. As a former legislator and one very familiar with the State's clean-air history, Mr. Kamin had to have had an understanding and appreciation of the political ramifications if implementation of Enhanced I/M on December 13 resulted in "long lines and angry customers."

The first item on the agenda for his November 18, 1999, "what if" meeting noted that there was to be a "go/no go meeting" on December 1, 1999, and noted the need for a definition of project sufficiency. (Exhibit 138). Yet, Mr. Kamin apparently sat through

the December 1 presentation by Mr. Sherwood, which was also attended by Deputy Commissioner Ari, and heard the assurances of Mr. Sherwood and other PI officials that they would be ready on December 13 without questioning those assurances. Nor did he raise concerns about those assurances with Deputy Commissioner Ari or Commissioner Weinstein.

Mr. Kamin expressed deep concerns and reservations about the project, yet he failed to effectively address those problems, including the problems posed by Mr. Passeri's management of the project. He also failed to elevate specific concerns immediately prior to startup. His failure to aggressively address the prospect of an impending failure is puzzling. He purported to hold "what if" meetings to plan for contingencies, yet no contingency plans were presented.

Mr. Kamin compounded Mr. Passeri's failures by not asserting control and oversight over Mr. Passeri or having these matters clarified and settled by Commissioner Weinstein. Mr. Kamin's confusion or ambivalence regarding his role with regard to Mr. Passeri lingered for almost a year. There is no excuse for Mr. Kamin's failure to attempt to clarify his role vis-a-vis Mr. Passeri. Mr. Kamin's belief that Mr. Passeri did not report to him cannot be reconciled with the indications of virtually every other witness that Mr. Passeri reported to Mr. Kamin. Mr. Kamin's

assertion of authority, at various points, such as the re-establishment of the bi-weekly meetings, gainsay his contention.

Finally, as he himself recognized, this was a program under his direction that went on-line without the necessary "shake-down cruise." Yet, even after receipt of the Stevenson memo, he never sounded an alarm or attempted to institute discussion at the highest levels of State government concerning deferring the start-up of the program. Mr. Kamin, along with Mr. Passeri, must share a significant amount of responsibility for the State's failure to implement this program appropriately.

C. John C. Elston

To a much lesser extent than Mr. Passeri and Director Kamin, Mr. Elston also shares responsibility for the failure of the implementation. Mr. Elston has a long history with clean-air issues in New Jersey. He, uniquely, was in a position to press the issue of seeking an extension from the EPA. The failure to forcefully raise this issue to the cabinet-level for policy discussions with the EPA rests, in part, with him. The complete, unquestioning acceptance of the December 13 startup date appears never to have been critically analyzed as a high-level policy issue at the DEP. Indeed, Mr. Elston's December 7, 1999 memorandum minimizes Mr. Kozak's concerns and focuses attention only on the limited question of partially withholding payment to the contractor. Although Mr. Elston attached Mr. Kozak's December 1,

1999 e-mail to that memo, he did not urge Commissioner Shinn to question the wisdom of "going mandatory" on December 13, 1999. Instead, he retreated to recommending only that Commissioner Shinn not support a DMV proposal to make partial payments to PI unless there was a larger "retainage".

Mr. Elston's memorandum of December 7, 1999 illustrates another important point. As the project hurtled toward the December 13, 1999 deadline, DEP managers redefined their Department's role in the narrowest terms possible. Even though the project was an important environmental initiative that promised to deliver substantial reductions in air pollution, DEP managers came to define their role as primarily limited to ensuring that the testing equipment was accurate. As described by Mr. West:

> We viewed December 13 as a goal, as the goal of the project. My criteria for reaching that goal was [sic] that the equipment passed all the tests to verify that it meet its accuracy requirements... so my judgment on start-up was were those criteria fulfilled... by December 13. If they couldn't be I would advise not starting up. They were fulfilled. We completed all of our audits by that time so the goal was reached.

[West Tr. 122: 9-18]

Although Mr. Elston recognized the importance of throughput and indicated in early September that a throughput rate of four or five cars per hour was "unacceptable," he seemingly never sought to insist or have DOT/DMV assert that the contractor be held to the rate to which it had committed -- 12 cars per hour.

Nor did Mr. Elston mention his concerns over throughput in either his November 16, 1999 briefing memo or his December 7, 1999 memo to Commissioner Shinn, although by that time, it must have been a persistent and obvious problem.

* * *

As the three top managers, Mr. Passeri, Mr. Kamin and Mr. Elston knew of the significant and serious technical problems being experienced with the project, yet they failed to hold the contractor to the terms of its contract and they failed to effectively communicate those problems to their respective cabinet officers. They were aware of the potential for the long lines and angry customers that actually occurred after the system went mandatory. They bear heavy responsibility for such information not reaching the Governor. They bear the heaviest responsibility for the implementation debacle that occurred on December 13 and the Governor's inability to address it.

THIRD CONCLUSION

SENIOR PROJECT MANAGERS FAILED TO WARN CABINET LEVEL OFFICIALS AND THE GOVERNOR'S OFFICE OF THE SEVERITY OF THE PROBLEMS WITH THE SYSTEM.

Senior project managers failed to alert those above them in the chain of command to the severity of the problems with the system leading up to December 13. That extraordinary breakdown in communication prevented critical information from reaching the cabinet-level officers, the Governor's Office, and the Governor herself. As a result, vital policy issues could not be raised and examined at the highest levels of government, including whether the December 13 deadline could have been extended or contingency plans could have been developed.

The failure at the cabinet-level to consider and request an extension of the EPA deadline or to seriously discuss the implications of enduring sanctions until the Enhanced I/M system was proven ready for the public is the result of the failure of the senior project managers to adequately warn their supervisors of the numerous technical problems with the system. While line level employees recognized the severity of the many technical problems that plagued development of the Enhanced I/M program, senior project managers never made their superiors aware of the policy implications of those problems.

A. Failure to Warn

The failure by the senior project managers to raise issues to the policy makers led directly to the Cabinet Officers and Governor's Office failure to rigorously question whether or not it would be prudent or responsible to go mandatory on December 13.

The failure by the senior project managers to advise the Commissioners and the Governor's Office that they had received clear and explicit warnings from individuals and firms with significant expertise in emissions testing programs that it would be unwise to allow Enhanced I/M to go mandatory on December 13 is striking. In effect, senior managers prevented policy makers from making an informed "go/no go" decision about whether or not to proceed as scheduled or to delay implementation. They simply failed to communicate predictions of calamitous failures and disastrous political repercussions to their superiors, the Commissioners of DEP and DOT. It was the responsibility of the Commissioners and the Governor, not senior managers, to make an informed "go/no go" decision.

Much has been written in the press about the warnings contained in the Sierra Research memos. Most of the individuals involved in the program did not see those memos until after December 13.* Those memos, written early in the process of implementation, accurately gauged the problems the program was to eventually encounter. The Panel has concluded that there are, at

* It is noteworthy that PB took upon itself the task of editing Sierra's memoranda into memoranda submitted under PB's own name, which were then forwarded to the State. Although, in general, the PB and Sierra memos contained similar information, the critical and urgent tone of the Sierra memos was filtered out. As a result, dense, jargon filled technical descriptions with little immediacy or threat were circulated widely and Sierra's strident warnings became marginalized.

least, five other documents that illustrate the larger systemic breakdown in the management of this project.

First, in his memorandum of December 5, 1999, to Mr. Passeri and Director Kamin, Mr. Stevenson declared that:

> ...there is nothing that can be done at this late date to get the central lanes up and running smoothly by next Monday morning. Consequently, we need to make contingency plans that address long lines and angry motorists.

[Exhibit 145]

It is difficult to envision a clearer or more explicit warning than Mr. Stevenson's. The memo's analysis of the system's problems is cogent and alarming. Equally striking is the memo's urgency. The concerns so forcefully raised by Mr. Stevenson were simply not brought to the attention of Commissioner Weinstein, Commissioner Shinn or to the Governor's Office. In light of Deputy Commissioner Ari's statement that such information was information he should have seen, that failure by Mr. Passeri and Mr. Kamin is inexcusable. In fact, the senior project managers effectively committed the State to a "successful" implementation when they recommended that the two Commissioners send the November 19, 1999 letter to the EPA. (Exhibit 26).

Second, sometime in late November, Larry Sherwood and Rod Jenkins of PI shared with Carl Passeri a capacity analysis prepared by Mr. Jenkins. (Exhibit 146). Mr. Sherwood testified that they met to discuss concerns raised by Mr. Jenkins about the ability of

the system to handle expected volume. There is no evidence that Mr. Passeri brought the substance of the concerns about system capacity expressed by Mr. Jenkins, or even the fact that the PI General Manager and Deputy General Manager had concerns about capacity, to the attention of Director Kamin, Deputy Commissioner Ari, Commissioner Weinstein or anyone else. To the contrary, when questioned about the issue by Deputy Commissioner Ari on the evening of December 3, 1999, Mr. Passeri reassured him that "capacity-wise, we're there." (Ari Tr. 39:20-40:1).

That same PI capacity analysis was shared by Mr. Jenkins with Mr. Stevenson. On December 3, 1999, Mr. Stevenson and Mr. Hoffman met with Assistant Commissioner Woods to present their concerns regarding throughput and showed her the PI capacity analysis that indicated the system would not be able to handle its expected capacity. Although Ms. Woods did not have operational responsibility for Enhanced I/M, she agreed to present Mr. Stevenson's concerns to Deputy Commissioner Ari.

When she did so, she minimized Mr. Stevenson's concerns. She told Mr. Ari that while capacity issues existed, she viewed the problem as a growth issue that could be dealt with in the coming year. She also thought the lines would not be worse than they had been historically. (Woods Tr. 44:2-20). She believed that PI was acting to optimize throughput and she regarded Mr. Stevenson's information as being less than current. In addition, Ms. Woods

indicated that while she did not regard Mr. Stevenson as an alarmist, she would agree with a characterization "that's probably slightly less than that." (Woods Tr. 31:17-19).

Ms. Woods failed to understand how significant it was for Messrs. Hoffman and Stevenson to go outside Mr. Stevenson's chain of command and come to her in order to recount what they regarded as concerns of the highest level. Rather than accepting the expression of their concerns at face value, Ms. Woods relied on her own more limited knowledge of the program and failed to effectively convey to Deputy Commissioner Ari the substance, tone, or urgency of Mr. Stevenson's warnings. This failure represented a lost opportunity to bring serious and substantial warnings about the program to Commissioner Weinstein.

Ms. Woods also failed to appreciate the significance of the Jenkins spreadsheet, and so could not communicate that significance to Deputy Commissioner Ari. The fact that a high ranking PI official had concerns about system capacity and that his analysis corroborated Mr. Stevenson's September 27, 1999 analysis (Exhibit 144) should have caused a searching high level discussion of system capacity and the related issue of lane throughput.

The third important document is Mr. Stevenson's September 27, 1999 memo warning of "horrendous and politically damaging long lines." Mr. Stevenson had a clear recollection of Mr. Passeri telling him, in effect, to "bury" the memo.

Mr. Passeri denied having done so. It is clear, however, that Mr. Passeri did not circulate Mr. Stevenson's capacity analysis. Again, although Mr. Passeri believed he discussed the matter with Director Kamin and recalled discussing throughput at the bi-weekly meetings, he conceded that it was only a "general" discussion; the most striking element of the memo, its tone of alarm, was concededly not conveyed upward. Mr. Passeri's failure to bring these concerns, in particular the specific nature and level of the concerns represented by Mr. Stevenson, to the attention of Commissioner Weinstein is difficult to understand.

Fourth, Mr. St. Denis's November 23, 1999 e-mail to Mr. West and Mr. Wanschura stated that it was "impossible" for all lanes and stations to be switched over to the Enhanced I/M test by December 13, 1999. (Exhibit 18). Although both Mr. Wanschura and Mr. West shared Mr. St. Denis's concerns, this grim prognosis by a nationally recognized expert in emissions testings was not provided to either Commissioner Shinn or Commissioner Weinstein. That no one brought these concerns to their attention is inexcusable given that only ten days earlier, at the behest of their respective staffs, the Commissioners had signed a letter to the EPA predicting "a successful startup."

Finally, on December 1, 1999, Robert Kozak, the special consultant engaged by Mr. Passeri, advised both Mr. Passeri and Mr. West that having all lanes meet "the now minimal New Jersey

audit requirements," would require a "miracle." (Exhibit 7). Again, while he claims to have discussed the "efficiency" of the system with senior staff in general terms, Mr. Passeri acknowledged that neither the e-mail nor Mr. Kozak's opinion that "it would take a miracle" to bring a minimally acceptable system on line by December 13, 1999, was brought to the attention of Commissioner Weinstein.

Mr. West discussed Mr. Kozak's conclusions with Mr. Iavarone and Mr. Elston (West Tr. 149:25-150:4) and Mr. Elston recognized they were "in trouble." (Elston Tr. 136:12-13). Mr. Elston attempted to bring the Kozak e-mail to the attention of Commissioner Shinn by attaching it to the memo he sent the Commissioner dated December 7, 1999. Commissioner Shinn, however, testified that he never read the attachment. (Shinn Tr. 34:15-22). Further, he and Mr. Elston never discussed either the e-mail or the memo to which it was attached. (Shinn Tr. 36:22-37:11). Mr. Elston's memo recites various reservations about the project, but his only recommendation to Commissioner Shinn was that DEP insist upon more money being withheld than was being recommended by DMV. In fact, Mr. Elston testified the only decision he thought the DEP Commissioner could make was to withhold payments. (Elston Tr. 155:23-156:8). Therefore, despite reporting on problems with implementation, Mr. Elston did not clearly advise the Commissioner that the system should not be allowed to go mandatory on December

13 without further testing to improve reliability and throughput. His memo did not forewarn Commissioner Shinn with any sense of urgency about the failure that awaited.

These five documents, all drafted between September and December 1999, gave explicit warnings that the system was in severe trouble. The documents use words calculated to reflect the seriousness of the problem, such as "impossible, "miracle," and "prophet of doom". Yet at no time was the tone or tenor of those memos ever brought to the attention of Commissioners Weinstein and Shinn, except for Mr. Elston's awkward attempt to bring the Kozak memo to Commissioner Shinn's attention.

B. <u>The Communication of False Expectations</u>

The failure to bring bad news to the attention of supervisors, however, was not limited to the withholding of bad news. It was, in fact, compounded by the dissemination of "good news," that directly contradicted what was known or feared. For example, in late September, Director Kamin told Ms. Weinberger, a staff employee of the Governor's Office of Policy and Planning, that the program would "meet or exceed expectations." He relayed this optimistic projection only three weeks after he himself had expressed serious concerns in a letter to PI that PI would "not meet their December 13, 1999 contractual date" and that "his confidence [was] low" because of insufficient "hardware and software optimization and staff training."

In a similar contradiction, Mr. Kamin testified that although he had imparted good news to Ms. Weinberger, he had advised John Valeri, an assistant counsel in the Governor's Office, of his concerns relating to failures and poor performance. Mr. Valeri testified, however, that he recalled Mr. Kamin only being positive in their discussions regarding implementation, even up to December 13. Mr. Kamin admits that the information he conveyed to these two individuals from the Governor's Office was contradictory.

Similarly, on November 19, 1999, PI made a presentation to Commissioner Shinn, Commissioner Weinstein and federal EPA Deputy Regional Administrator Muszynski, in which they predicted a successful startup. The presentation, given by PI's General Manager Larry Sherwood, did not mention the software development and other problems that were still being experienced by the program. There was no mention of the truncated schedule for system testing or of the potential impact that inadequate testing of the system could have when the system went mandatory less than a month later. On December 1, 1999, Mr. Sherwood repeated essentially the same presentation for Deputy Commissioner Ari and other State employees. Again, Mr. Sherwood's presentation was reassuring and did not highlight any of the concerns he harbored about being ready for December 13. (Kamin II Tr. 119:17-23). At no time did any senior project manager from the State advise any superior that PI's

presentation did not mesh with what they themselves knew to be happening with the implementation.

FOURTH CONCLUSION

SUPERVISION OF THE PROJECT BY THE COMMISSIONERS WAS INEFFECTIVE.

The Commissioners of the Departments of Transportation and Environmental Protection did not effectively supervise the implementation of the Enhanced I/M system. Their ineffective supervision, particularly after reports and warnings of defects in the system were reported in the press, contributed to their lack of information about serious deficiencies in the system and their inability to take corrective action.

The Panel recognizes that the crush of business demanding the attention of cabinet officials, as well as members of the Governor's staff, often dictates management by "exception reporting." As Commissioner Weinstein described his "exception reporting" style of management, he relies on trusted subordinates to apprise him of problems that require his attention.

The "exception reporting" style of management, however did not work for either Commissioner here because important information did not reach them. Although PI's Deputy General Manager had shared with Carl Passeri and Mr. Stevenson, for example, a spreadsheet showing that the system did not have sufficient capacity to handle the expected volume of inspections, that information was never made known to Commissioner Weinstein. Equally, Mr. Stevenson's predictions of long lines of angry motorists and the consultants' warnings that the system could not be "rolled-out" properly or tested sufficiently before December 13

to ensure acceptably smooth operation never rose to the Commissioner's level.

Despite the breakdowns in regular lines of communications that imperiled the supervision of the project, there was a last clear chance to initiate a searching review of project status at the executive/policy making level -- and that was Mr. Stevenson's approach to Assistant Commissioner Woods. It is most unfortunate that Ms. Woods, who was only tangentially involved in the Enhanced I/M project, did not recognize or convey to Deputy Commissioner Ari the import of the warning that Mr. Stevenson tried to communicate through her.

Although, as discussed, the actual and direct responsibility for the failure in oversight of the system rests with the three senior project managers, Commissioner Weinstein has acknowledged an overall responsibility for the failure of the implementation of the program. Commissioner Weinstein should have became aware of serious deficiencies in the implementation of the system through adverse press reports. He apparently took no corrective measures based on such accounts. Moreover, the Commissioner misperceived the essential nature of this project as one involving complex construction matters rather than one involving difficult and sensitive computerization systems. That misperception influenced his hiring of and misguided reliance on

Mr. Passeri, whose experience was in construction and not computerized technology systems.

It is evident to the Panel, given the enormous difficulty and the public ramifications in the implementation of the Enhanced I/M project, that Commissioner Weinstein should have exercised closer and more attentive supervision, particularly in light of adverse press reports.

Commissioner Shinn's supervision was likewise lax and inadequate. Commissioner Shinn should have been aware of the deficiencies of the system from adverse press reports. In addition, he was directly exposed to specific information of project deficiencies. There were communications in John Elston's December 7, 1999 memo to Commissioner Shinn that also represent another missed opportunity, where "exception reporting" did not work in this case. That memo does not explicitly tell Commissioner Shinn that the issues it discussed represented potential threats to successful implementation on December 13, but it should have prompted further inquiry, especially in light of the adverse press reports. Commissioner Shinn read Mr. Elston's memo. Nevertheless, he did not question Mr. Elston about the ways in which Mr. Elston expected the Enhanced I/M system to fall short of full compliance with "specifications contained in contractor agreements to the [State's] Request for Proposal...." Nor did he inquire of Mr. Elston about what appears to be a proposal that DEP provide only

"'conditional approval (by audit)." Commissioner Shinn did not ask about Mr. Elston's system reliability comment, or seek a report from Mr. Elston on the frequent system shutdowns and lack of "assurance of full network compliance" that were cited in the memo. Commissioner Shinn did not ask Mr. Elston why he was concerned that pressure to make payments to PI might "...compromise the [DEP lane acceptance] audit, and thus the reliability and accuracy of the emissions inspection test." Despite parenthetical invitations that he do so in Mr. Elston's memo, Commissioner Shinn did not read the attachment to the memo, the Kozak e-mail, that expressed concerns about too little time for the system to be "rolled-out" properly or exercised sufficiently before December 13.

The Panel concludes that Commissioner Shinn's supervision of the project was lax and ineffective.

FIFTH CONCLUSION

MONITORING OF THE PROJECT BY THE GOVERNOR'S OFFICE WAS INEFFECTIVE.

The Governor's Office did not effectively monitor the progress in the implementation of the Enhanced I/M system. That ineffective monitoring contributed to a lack of information reaching the Governor's Office. As a result, the Governor was not warned about the serious deficiencies in the system and was denied the opportunity to make public policy decisions concerning the implementation of the system.

The Panel concludes that the Governor's Office was in fact caught off guard and did not receive the information it needed to understand the magnitude of the problems that were likely to surface once the system went on-line on December 13, 1999. When the Governor's Office asked for updates, it was routinely reassured by Mr. Passeri, Mr. Kamin, and others that the program would be up and running on time. Presentations given by PI also influenced the expectations of State policy makers. Everyone at the highest levels of government seems to have expected that the program would run effectively, without unacceptably long lines.

The monitoring of the project by the Governor's Office failed to generate complete and accurate information concerning the progress of the program. Eileen McGinnis, the Governor's Chief of Policy and Planning, told the Panel that among the Chiefs, she was the lead on Enhanced I/M. (McGinnis Tr. 8:4-5). As had her colleagues, Chief of Staff, Michael P. Torpey and Chief Counsel, Richard Mroz, Ms. McGinnis stated that she relied on the

Commissioners, Governor's Office staff, and others to keep her informed of developments that merited her attention. If the Commissioners of DOT and DEP were not receiving negative information, it is not surprising that the Governor's Office was also not receiving that information.

Given the importance, sensitivity, complexity and difficulty of this project, monitoring by the Governor's Office should have been more aggressive and attentive. The Panel assumes that the Chiefs and the Governor would expect to be fully apprised of all important developments and, particularly, the risk that this important project could go off track.

Nevertheless, it does not appear that the Governor's Office staff monitoring the project was given explicit directions to follow the project carefully and to report regularly and in detail. In fact, in the Fall of 1999, Mr. Valeri, the staff person primarily responsible for monitoring the progress of the project, stated he was diverted to other responsibilities and was no longer paying the same attention to the project. Ms. Weinberger, without specific directions or instructions from her superior, Ms. McGinnis, involved herself in the monitoring of the project. Neither she nor Mr. Valeri were specifically directed by their superiors to be sure that the progress of the project was very closely followed.

Moreover, as the December 13 deadline approached, there were questions raised in the press that should have prompted the Commissioners and Ms. McGinnis to demand an in-depth review of Enhanced I/M's readiness. Particularly in light of news reports on December 8 about motorists being forced to wait in line for several hours at the inspection station in Edison when the Enhanced I/M at was turned on and malfunctioned, it is puzzling that the Chiefs did not question their respective staff about the potential for widespread problems or the need for contingency plans when the system went mandatory statewide the following week.

It is noteworthy that the Governor herself seems to have been attuned to the potential for public inconvenience as a result of news reports in mid-November. Those news reports caused her to inquire about measures to deal with wait time and what, in addition, could be done if wait times ever exceeded 30 minutes. (Exhibit 159). Neither her staff nor her Cabinet officers seem to have been as attuned to the real potential for serious inconvenience to the public and the corresponding need to deal with that contingency.

The people charged with policy implementation -- the Commissioners and the Governor's Office -- understood generally the importance of this project, even though they may not have appreciated the intricacies and significance of many of the technical problems, particularly the software development problems,

that beset the implementation of Enhanced I/M and plagued its start-up. Persons in the Governor's Office, as well as the Commissioners, not having the expertise, or even the time, to assess the specifics of either emissions analyzer design or software capacity, necessarily and properly relied upon the professionals from the several State departments and large and well-respected private consultants for those evaluations. However, it is the responsibility of government to deliver essential public services in an appropriate way. As officials directly and intimately involved in the formulation and effectuation of governmental policies, the Governor's Office, in respect of the development and implementation of Enhanced I/M, should have been alerted to the potential for problems, particularly when heightened by the press accounts and should have demanded answers. They should directly and vigorously have pressed their staff and the Departments for accurate and detailed assessments of the project.

VII. FINAL OBSERVATIONS

After reviewing the evidence before it, the Panel has concluded that in the development and implementation of the enhanced inspection program, a great many dedicated State employees performed their work with high degrees of professionalism and commitment. They worked diligently to resolve the very difficult and complex problems that some recognized as mounting threats to successful implementation. Many, such as the rollout teams at DEP under the supervision of Antonio Iavarone and at DMV under the supervision of Thomas Bednarz, worked long hours in an effort to get the system on-line. Others, such as Christine Schell at DEP or Alyssa Weinberger in the Governor's Office, foresaw the potential for problems with a December 13 implementation. No one, however, took greater risks than Ken Stevenson at DMV. He made three separate and determined attempts to bring his concerns to the attention of Commissioner Weinstein in the face of clear indications that his efforts would not be well received by Mr. Passeri and possibly Mr. Kamin. Mr. Stevenson performed admirably; the failure is not his but those who ignored, discounted or watered down his careful and persistent warnings.

Acknowledging this, however, the Panel also concludes that it bordered on irresponsibility for senior project managers to have allowed the State to implement Enhanced I/M on December 13,

1999 without having subjected the system to the minimum amount of testing necessary to determine that the system was reliable, thereby exposing the public to a near-certain risk of extreme inconvenience. The trust placed in senior project managers of this program by the Commissioners of DOT and DEP and by the Governor's Office did not serve the State or the Governor well. Neither the Commissioners nor the Governor's Office knew of the acute need for more time to implement Enhanced I/M. They were never told by knowledgeable senior staff managers that an extension of time should be pursued. That is most unfortunate for, as Eileen McGinnis told the Panel:

> ...[I]t had been delayed so often that...by the end of that year, all of us had developed a relationship with Bill Muszynski and certainly the Governor had a good relationship with Carol Browner and called her several times to explain to her -- ...Yes, is the answer to your question. I think we could have asked [for] and received another extension.
>
> [McGinnis Tr. 19:5 through 19:15]

The Panel has no way of knowing if the Governor would have sought EPA approval to delay the program or whether or not EPA would have granted relief from the sanctions. What we do know, based on the record before us, is that given the serious problems that still plagued the system in early December and the lack of proper testing of Enhanced I/M before December 13, the Governor should have been apprised of these problems and the recurrent predictions of

failure. The Governor, armed with such information, clearly should have been given the opportunity to assess the policy implications of the threatened failure of this major project and the severe public impact that such a failure would create. The Governor was not given that information, the threatened failure of the system inevitably occurred, and the adverse impact on the public was predictably severe.

Respectfully submitted,

Alan B. Handler

Kenneth D. Merin

Walter F. Timpone

Dated: June 8, 2000

ADDENDUM

Glossary of Terms and Abbreviations

ASM 50/15: The enhanced emissions test used in New Jersey's new inspection system to replace the old idle test. Under this test, a vehicle is positioned with its drive-wheels on the rollers of a dynamometer and is then driven at 15 miles per hour as a 50% load is applied to the engine by the dynamometer. Emissions readings are taken with a probe placed in the vehicle's tailpipe. EPA considers this test to be more accurate than the idle emissions test it replaces.

ATP: Acceptance Test Protocol- Quality assurance procedure which is used to test a lane or facility before acceptance of that lane or facility by the State. The purpose of the ATP is to identify potential operational problems before a system is put into full production.

BAR: California Bureau of Automotive Repair- A nationally recognized leader in the certification of auto emissions test equipment.

Beta Test: In this stage of testing the new enhanced inspection system, inspection lanes are subjected to full end to end testing using actual motorist-owned vehicles with communication between the State DMV database and the new VID database.

CIF: Central Inspection Facility- Centralized auto inspection stations operated by Parsons infrastructure under contract with the State. Inspections at these facilities are free of charge to the motoring public.

DBOM: A contractual arrangement requiring a contractor to Design, Build, Operate and Maintain New Jersey's motor vehicle inspection system. The inspection system being built by PI is a DBOM type system.

DEP: New Jersey Department of Environmental Protection- State department involved in oversight of the emissions component of the enhanced auto inspection system.

DMV: New Jersey Division of Motor Vehicles- State agency that is responsible for motor vehicle inspections. DMV is located within the Department of Transportation.

DOT: New Jersey Department of Transportation- State department charged with addressing New Jersey's transportation needs.

Dynamometer: A machine comprised of large rollers which are used to create rolling resistance that simulates the load placed on the engine of a motor vehicle while it is traveling on the highway. A vehicle undergoing enhanced emissions testing is driven onto the rollers. While on the rollers, the vehicle is driven at a speed of 15 miles per hour as emissions readings are taken by a probe placed in the vehicle's tailpipe.

End to End Testing: A test of an entire auto inspection lane to verify the proper functioning of all emissions and safety test hardware and software. This test also verifies that there is proper data communication between different positions within an individual inspection lane as well as data communication between the inspection lane, the State DMV database and the new VID database.

Enhanced I/M: Enhanced Inspection and Maintenance- The new, stricter auto inspection system that New Jersey is implementing in order to comply with the Federal Clean Air Act Amendments of 1990.

EPA: Environmental Protection Agency- Federal agency charged with enforcing federal environmental laws.

ESP: Environmental Systems Products- PI subcontractor charged with development of enhanced emissions inspection hardware and software for the CIFs.

Idle Test: New Jersey's old auto emissions inspection system where auto emissions are tested by placing a probe in the tailpipe of an idling vehicle.

I/M 240:	A more stringent enhanced emissions test than the ASM 50/15 test in which the vehicle is driven on a dynamometer at varying speeds of up to 50 miles per hour for a period of 4 minutes.
MCI-Worldcom:	PI sub-contractor responsible for building and maintaining the "VID" auto emissions database for use with the enhanced inspection system. (See "VID" below)
OIT:	Office of Information Technology- State agency which has interdepartmental responsibility to manage New Jersey's information technology needs. OIT is providing computer expertise to the enhanced inspection program. Specifically, OIT maintains DMV's already-existing database of driver and vehicle information. OIT is responsible for ensuring that all necessary driver and vehicle information is effectively communicated to the VID.
PI:	Parsons Infrastructure and Technology Group, Inc.- Prime contractor charged with designing, building, operating and maintaining the State's new auto inspection system.
PIF:	Private Inspection Facility- Private automobile repair businesses that are authorized by the State to conduct enhanced motor vehicle inspections. Motorists who opt to have their vehicles inspected at PIFs pay a market-set fee for the inspection.
Pre-beta Test:	In this stage of testing the new enhanced inspection system a full end to end test is conducted using contractor/State vehicles only. During this test proper data communication between the State DMV database and a test VID database is verified. No vehicles owned by the public would be tested during this stage.

Prototype Testing:	The earliest stage of testing of the enhanced inspection system. In this stage of testing, various equipment options are tested in order to establish the most efficient final system configuration. The prototype test lane for the enhanced inspection system was built by ESP at its facility in Tucson, Arizona. Subsequently, what has been referred to as a prototype inspection lane was built in Deptford, New Jersey.
SIP:	State Implementation Plan- The State's plan for meeting federal clean air mandates. Enhanced I/M is a critical component of the SIP. The SIP commits the State to specific courses of action. Once approved by EPA, the SIP has the force and effect of federal Law.
Stress Testing:	A full end to end test of the enhanced inspection system where a high number of vehicles are tested in secession at multiple inspection lanes and stations at the same time. The purpose of this type of test is to simulate the kind of "stress" the entire vehicle inspection system would experience in a typical day of operation.
Throughput:	The average number of vehicles per hour that can be inspected by a CIF inspection lane.
VID:	Vehicle Identification Database- This database is maintained by MCI-Worldcom in California. The VID stores emissions test pass/fail information from all New Jersey vehicle inspections. That information is essential to the enforcement component of New Jersey's Enhanced I/M program. The data collected in the VID also provides the information for reports that are required to be generated and submitted to the EPA to demonstrate compliance with the Clean Air Act Amendments of 1990.
Wait Time:	Wait time is measured from when a vehicle arrives at an inspection station to when the vehicle is driven into the inspection bay for testing.

Wait Time Standard:	A contractual obligation requiring that the average wait time for vehicles in line for inspection not exceed an average of 30 minutes in any contiguous two hour period at any one inspection station for more than 4 days in any calendar month, and, that no inspection station have an average wait time of more than 15 minutes during any one month.

WITNESSES

- Albert B. Ari, Deputy Commissioner/DOT
- Thomas Bednarz, Coordinator
  Enhanced I/M Program/DMV
- William Donahue, Systems Manager/DMV
- John C. Elston, Administrator
  Air Quality Management/DEP
- Steve Hanson, Chief Financial Officer/DOT
- Antonio Iavarone, Senior Environmental Specialist
  DEP
- Richard Joy, Project Manager
  Sierra Research
- C. Richard Kamin, Director/DMV
- Robert E. Kozak, Engineering Consultant
  Kozak Environmental
- Jeffrey M. Maclin, Director of Communications/DOT
- Eileen McGinnis, Chief of Policy & Planning
  Governor's Office
- Richard Mroz, Chief Counsel to Governor
- Carl J. Passeri, Executive Director,
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- Bruce Podwal, Program Manager
  Parsons Brinckerhoff-F.G., Inc.
- Michael St.Denis, Sierra Research
- Chris Salmi, Chief
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- Larry Sherwood, Senior Vice-President &
  General Manager/Parsons Infrastructure
- Robert Shinn, Commissioner/DEP
- Kenneth C. Stevenson, Administrative Analyst/DMV
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