

**Clean Water and Flood Abatement Task Force**

**Thursday, March 17<sup>th</sup>, 2015**

**10:00 a.m. – 12:00 p.m.**

**Buena Vista Conference Center-Buck Library**

**Meeting Attendance**

**Task Force Members:**

**Present:**

Senator Bryan Townsend  
Representative Ronald Gray  
Representative Michael Mulrooney  
Secretary David Small  
Holly Porter  
Jeffrey Bross  
Roy Miller  
Howard Morrison  
Brenna Goggin  
Lew Killmer  
Joseph Corrado  
Andrew Jakubowitch  
Gina Jennings  
Thom May  
Paul Morrill  
Gerald Kauffman  
Gerard Esposito  
George Haggerty  
Robert Baldwin

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**Absent:**

Secretary Jennifer Cohan  
Sam Lathem  
William Lucks  
Jen Adkins  
Dian Taylor  
Thomas Unruh  
Senator Bryant Richardson  
Michael Riemann  
Bruce Jones  
Christine Mason  
Patty Cannon

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**Attendees:**

Doug Hokuf  
Terry Deputy  
Pam Bakerian  
Ed Hallock  
Martha Narvaez  
Heather Warren  
Bob Palmer  
David Spacht  
Michael Bard  
Kelly Glenn  
Marjorie Crofts  
Jeff Long

**Organization:**

NCC  
DNREC  
DE Farm Bureau  
DPH/ODW  
UD WRA  
DPH  
DNREC  
AWC  
Delaware Nature Society  
NAWC  
DNREC  
Partnership for the Delaware Estuary

The Task Force meeting was brought to order at 10:15 am.

**Consideration of Meeting Minutes**

Senator Bryan Townsend, Co-Chair, welcomed Task Force members to the meeting and thanked everyone for coming. Next, the Senator reviewed corrections that were sent to Michelle Zdeb, Task Force Staffer, referencing the February 9, 2016 Meeting Minutes.

Prior to the meeting Gerard Esposito, Delaware State Chamber of Commerce, noted that on page 12 his comment should have stated “captured all but 5% to 15%” instead of “captured 5% to 15%.” Mr. Esposito further noted on the top of page 13 that “PSA” should be changed to reflect “PSC,” Public Service Commission. Lew Killmer, Delaware League of Local Governments, noted the following correction on page 22, which erroneously indicated that Senator Townsend said “guys” instead of “gas.”

George Haggerty, New Castle County (NCC) Executive, asked to change the language written in the Meeting Minutes reflecting two of his comments, as that is not exactly what he meant to say. The comments that Mr. Haggerty referenced are on page 22, second paragraph: “A simple way to do this is to remember that our communities in the state...” Mr. Haggerty asked to change “communities” to “community members.” Additionally in the same paragraph, “If you own a property then you should have to carry this burden.” He asked to include “or a community member” which changed it to: “If you own a property or are a community member then you should have to carry this burden.”

Senator Townsend asked if there were more changes for the February 9<sup>th</sup> Meeting Minutes. As there were none, he asked for motions to approve the February 9<sup>th</sup> Meeting Minutes as amended.

Minutes prepared by Caitlyn Gordon, Legislative Aide

Minutes reviewed by Michelle Zdeb, Legislative Assistant & Task Force Staffer

Mr. Killmer motioned to approve.

Representative Ronald Gray seconded this motion.

With all in favor, the February 9, 2016 Meeting Minutes were approved.

### **Group Discussion**

Senator Townsend notified Task Force members that the timeline set forth for the Final Report will need to get pushed back. The Senator continued to apologize to Task Force members that he does not have the start of a Draft Report for the meeting because he developed a cold within the past few days.

The Senator noted that he is going to bring up topics that have not been brought up in the past in an effort to get expert opinions on these issues. He continued saying that he also wants to talk about the Draft Legislation's language so that the Task Force can move forward and agree on language.

Senator Townsend further noted a few topics, which community members had asked him about and which he wanted to discuss at the meeting:

1. How WIAC's (Water Infrastructure Advisory Council) current control system is put in place, in terms of auditing, program follow-up, and outcome analysis, and what members would propose for the new model.
2. Address concerns about lead in Delaware's water.
3. Discuss environmental enforcement and how to answer the public when they ask about enforcing environmental laws.

Senator Townsend also mentioned that members should start thinking about how to start and continue conversations about the Task Force's Final Report down in Legislative Hall. This way, when a report is issued, and legislation is included, it will not be the first time legislators and other stakeholders are hearing about the content in the report.

Paul Morrill, Committee of 100, asked if there should be another resolution extending the Task Force deadline.

Senator Townsend responded yes, there will need to be a resolution extending the Task Force to April.

Pam Bakerian, on behalf of Thomas Unruh – Delaware Farm Bureau, referenced the Sea Level Rise Committee, which she was a member of, where a lot of stakeholders were involved. Because of the large number of members on this committee, it was difficult for everyone to come to a consensus. However, when they finally concluded their recommendations, members had the opportunity to vote for or against the recommendations. The ones who voted against were given the option to provide a dissenting opinion for the report.

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Senator Townsend noted that although some people will vote yes, they might not relay those comments strongly in Legislative Hall. He continued by saying that transparent conversation and detailed Meeting Minutes are important for this reason. This way, people from the public, other stakeholders, and legislators may see exactly what was agreed upon and discussed during Task Force meetings. The Senator added that putting this Task Force on a timeline to complete what is needed by the April reporting date is necessary.

Roy Miller, Delaware Center for the Inland Bays, noted that a consensus report would be the type of report that this Task Force should strive for, especially coming from a group this large. It would come across as a very powerful message.

Senator Townsend responded that he agrees, though there are some minor details that individuals might still disagree on. But, hopefully the Task Force can keep aiming for an overwhelming majority of support, which would be a strong indicator of hard work. Yet just voting “yes” or “no,” and ending there, isn’t enough. All members need to go to Legislative Hall and start conversations with legislators and stakeholders to inform them that this report is data-driven, thoroughly vetted, and a comprehensive effort to help clean up Delaware’s waterways. The Senator noted the importance of not letting the Task Force’s efforts get lost in an election year.

Brenna Goggin, Delaware Nature Society (DNS), noted that DNS is hosting a legislative luncheon for all 62 legislators to educate them on the Clean Water Task Force. She noted that since almost all the rooms in Legislative Hall were booked, only legislators are invited. However, Task Force members should go to Legislative Hall that day to reiterate the message. Ms. Goggin also noted that DNS will be having a second Clean Water Rally on June 7<sup>th</sup> from 10:30 a.m. -2:30 p.m.

Jeffery Bross, Water Infrastructure Advisory Council, asked Ms. Goggin if she could send out all of the dates of DNS’s events.

Ms. Goggin noted she would send them to Ms. Zdeb so she can circulate them to everyone.

Jeffery Bross continued by saying that he has been involved with a couple of efforts similar to this Task Force over the years. Throughout those reports, they attempted to develop a consensus report. However, there was an overwhelming consensus on a majority of the issues, but there were still sections in which the whole body did not agree on. Therefore, within the body of the report, they embedded a section notifying readers when a certain person or group disagreed with a recommendation.

Mr. Esposito referenced the Sea Level report that Ms. Bakerian noted, saying that is a great example. Additionally, Mr. Esposito agreed with Mr. Bross’ comments because this is what they did in the Sea Level Rise Report.

Senator Townsend noted that he doubts whether or not someone signing onto the Report will be over something small. However, whether or not someone signs onto a set of Findings and Recommendations is important because these are the items that really drive the report.

### **Draft Legislation**

Mr. Morrill addressed language in the existing Code to answer Mr. Miller's question about the composition of WIC (Water Infrastructure Council) and the inclusion of sport fishermen. Mr. Morrill added that the legislation also provides guidance to the Governor as he would appoint the individuals to WIC on what areas of expertise or interest affiliations are important for this group's purpose. The legislation also includes a suggestion of how many people to appoint to WIC, so they can avoid an instance where the group gets too large.

Mr. Morrill referenced the HSCA (Hazardous Substance Cleanup Act) set-aside. The intent of this is to make sure that they operate as they currently do, but the WIC council would have a say over projects. However, they would only give their input when additional Clean Water Fee money was added to the projects or when leverage is applied to projects. The current Draft Legislation is not where it needs to be yet, and those working on it recognize that.

Next, Mr. Morrill referenced Senator Richardson's request to create a separate fee for small business entities. The definition of a small business in this context would consist of 5 or fewer employees with \$200,000 thousand dollars in net income. He added that Senator Richardson told him this change encompasses what he was looking for.

Additionally, in reference to the drainage set-aside, they changed the language to make this a minimum of \$2 million instead of the previous percentages that were in the original draft.

Senator Townsend asked Mr. Morrill about another issue that members discussed: collection of funds.

Mr. Morrill replied that at the conclusion of the last meeting there didn't seem to be a general consensus of what to do with the collection of funds. However, Mr. Morrill noted that he also looked at the lockbox idea. He referenced Senator Lavelle's previous legislation regarding the Transportation Trust Fund. Mr. Morrill continued saying that by looking at this legislation it did not seem like it would be easy to amend.

Senator Townsend addressed Mr. Morrill's comments and noted that since this legislation passed both chambers, there is no way to amend. Therefore, the Task Force would need to compose a separate lockbox bill.

Mr. Killmer referenced the legislation at line 312, line 16, and line 323. Mr. Killmer asked to make a change to line 323. He wanted to omit the word "both" and replace it with "or" because not all flooding risks improve water quality.

Mr. Cross noted that when WIAC gives out grants, they also look at projects that are not necessarily water quality improvement projects.

Mr. Morrill noted that the legislation is not ready to be introduced and would like to stay involved. He continued by saying that a Legislative Attorney should also look at the legislation to refine it.

Senator Townsend ensured that an attorney will look at it. He also asked Mr. Morrill and Ms. Goggin to continue working on the Draft Legislation.

### **Environmental Enforcement**

Senator Townsend turned the floor over to Secretary Small to talk about environmental enforcement in Delaware, particularly framed to address concerns from members of the public.

Secretary David Small, Department of Natural Resources and Environmental Control (DNREC), replied that the Department has a history of enforcing violations of delegated programs under the Clean Water Act in Delaware. There are a number of tools that the agency employs from a notice of violation that puts a party on notice that they are out of compliance. The general philosophy has been to get entities back into compliance as soon as possible to minimize the environmental impact of noncompliance. Next, the Department will decide the appropriate enforcement response, which takes some time to do.

The Department has civil, administrative, and criminal enforcement tools available to them. The DOJ (Department of Justice) has worked closely with DNREC to enforce these issues. The Secretary noted that many people do not realize that there are hundreds and thousands of opportunities for noncompliance. There are daily monitoring reports that have to be tracked and collected by a discharging entity. There are also permit limits around the affluent discharges for a variety of constituencies depending on the type of activity that the facility is undertaking, such as, oil, grease, nitrogen limits, phosphorus limits, organics, and metals. Secretary Small further noted that when a facility exceeds that limit on a daily basis, it has to report the noncompliance to DNREC.

Secretary Small continued by saying that there are many instances where facilities exceed limits. However, if a facility is not reporting accordingly, they will face serious consequences, and are subject to fraud and criminal prosecution.

DNREC also works closely with the EPA (Environmental Protection Agency). When the EPA does not think the response from the Department is adequate, they will come in and initiate their own actions, which has happened before. Secretary Small closed his comments by noting that although he gave a broad overview, environmental enforcement is an important piece of what the Department does.

Mr. Bross agreed with Secretary Small's overview of DNREC's role in environmental enforcement. He continued saying the Department has a rigorous and very fair process. He added that a lot of Delaware's water quality issues are legacy issues. But, the most unregulated discharger in the State is the homeowner. There are many things that homeowners do to contribute to the State's water quality problems. For instance, if people are dumping things down their toilet, it ends up at a treatment plant where a different entity has to take care of it. The State has very few large industrial dischargers who are not rigorously regulated, in addition to the farmers. Therefore, the State needs to get this message out there and educate the public that industrial entities and farmers are not always the ones to blame.

Senator Townsend asked Task Force members what would be most effective:

1. Writing a letter, or two, on the importance of educating the public about environmental enforcement;
2. Writing in the report that this topic was discussed and recommending it for future educational initiatives but not including it as a robust finding that was analyzed by the Task Force.

Mr. Bross replied that it could be included in the "introduction" or "background" portion of the report.

Secretary Small stated that it is hard to think about enforcement in isolation. He continued by saying that improving water quality has been a process for decades. Additionally, the permitting is tied to enforcement, where the State sets the standards in permits. Over time, permits have become more stringent. As the State has learned more about Delaware's need for improved water quality, standards have changed.

Secretary Small stated that it is hard to have a conversation solely about "enforcement." Enforcement should be discussed in a broader, longer-term context. As the State learns more about its water quality, it will make adjustments. NPDES (National Pollutant Discharge Elimination System) permits are renewed every 5 years. If there is a TMDL (Total Maximum Daily Load) that has gone into place in the midst of the 5 years, then the new permit will reflect more stringent conditions for the facilities' operations. Additionally, it is very likely that the facility will have to make investments if this happens. Some people may think that industries are not paying for noncompliance, but in many cases they have. The expenses have been driven by changes that the Department has required through the permitting process.

Mr. Bross replied that if a municipality has a problem, they will go to WIAC and express the need to make upgrades to their plant; therefore they need to borrow money. Mr. Bross continued by saying that WIAC will loan the needed money but then they look to see if the loan will impose an undue hardship on the users. If it does, then WIAC provides a grant to make it affordable.

Secretary Small pointed out that through the Department, municipalities, and industries they have done a good job in using technology to clean up pollution. The challenge now is what to do about storm water, non-point source pollution. Secretary Small referenced Mr. Bross' comments about agricultural impacts, which are more challenges.

Mr. Haggerty referenced a project, that he was a part of years ago, called "Back Creek," where they tested water because they were going to be putting nutrients on a golf course and throughout the community. They tested the water beforehand and afterwards. When they tested the water in advance, the phosphorus and nitrate levels were high. After the community came in and became established, they tested the water again and the phosphorus and nitrate levels were down to almost nothing.

Additionally, Mr. Haggerty noted that the State has had a pretty significant enforcement focus on point source discharge, and less focus on non-point source discharge. He asked that if the State is going to collect funds, the place to distribute the funds should focus more on non-point source discharge enforcement.

Secretary Small agreed. He continued by saying that this is an emerging world with changing permits and more challenges where education is a must. He added that this is a challenge; in some small communities, the same person who is running the storm water treatment plant is also running the trash truck.

Mr. Esposito noted that compared to other parts of the country, Delaware is in really good shape. He said that when he first started in 1978, the State had over 200 discharges. Now Delaware is down to about 40 discharges. Moreover, those 40 lasted because of regulatory, financial, and evolutionary reasons. Counties had more regional approaches than smaller municipalities, which solves a lot of problems because 40 discharges is a lot easier to monitor than 200, and some of those 200 should have never been in the wastewater business. The public perception is that discharges are pumping out nasty discharges. He noted that the discharges that are left will probably keep their discharge permits for a long time.

Gerald Kauffman, University of Delaware's (UD) Water Resource Agency, stated that the answer is addressing the need for public education. He continued saying that he has heard this issue come up in other environmental meetings as well.

Senator Townsend noted that there still is some point-source pollution, and in some parts of Delaware this has led to huge controversies. Next, the Senator moved the conversation to the issue of lead.

### **Lead in Delaware's Water**

Ed Hallock, member of the public with the Office of Drinking Water, stated that sources of lead in Delaware are mostly in homeowners' plumbing, not in source water, streams, or ground water. He continued by saying that older homes built prior to 1986 may have some lead. Additionally,

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some towns have old lead goosenecks that are in their service lines. However, if a lead gooseneck is found, it must be replaced. Mr. Hallock noted that the Flint River didn't have lead; the lead came from the plumbing system.

Ms. Goggin asked Mr. Hallock what a homeowner can do to make sure their lead levels are in a safe zone.

Mr. Hallock replied that there is no safe level of lead. The best thing a homeowner can do is have their water tested. Mr. Hallock recommended doing a first draw sample, letting the water sit overnight, and in the morning draw one liter of water. Then do the flush sample, and test this sample. He added that unfortunately, the test kits that Public Health offers do not test lead.

David Spacht, on behalf of Dian Taylor – Business Roundtable, noted that the primary issue that Artesian deals with is the corrosion control inhibitor and the corrosivity of the water, just in pH, which Artesian routinely does. They make sure that their water's pH is in the range of "non-aggressive." The key of Delaware is the State has very experienced operators who are well aware of the steps that are necessary for quality water in the pipes.

Mr. Esposito added that what happened in Flint, Michigan was either a lack of experience or a lack of oversight. Additionally, Flint is bankrupt and there was a receiver there who was trying to save money and nobody informed them to fix their practices. He added that this should never happen in Delaware because of the regulatory environment that the State has. The State's water quality would not get to that level without someone blowing the whistle on it.

Thom May, Department of Health and Social Services, stated that under the lead and copper rule, they all follow a similar model where every day they are monitoring but that their overall goal is compliance. So, they are adding in educational steps and are trying to achieve compliance. The enforcement step is the last step that they use in noncompliance situations.

Roy Miller, Delaware Center for the Inland Bays, asked that based on Secretary Small's comments, if there is a need for additional resources to be funneled into assisting enforcement programs. Mr. Miller asked if the Task Force should create a set-aside with the funds they collect for enforcement purposes.

Secretary Small replied that if Mr. Miller is asking him if DNREC needs more resources and staff, he is not going to say no to that. Moreover, every 3-5 years the EPA comes around to all of the states and conducts a framework review of their permitting and enforcement capacity. Their conclusion, based on a national model, was that DNREC needed 18 additional staff people for several programs. This is not going to happen. However, there is a need to raise permit fees in these programs to bring on additional staffers to help with permitting and enforcement.

Mr. Miller asked if the Task Force should be considering some set aside to boost enforcement and permitting.

Secretary Small noted that when all of the agencies put together their need numbers, they included both capital need for infrastructure and operating need. He noted that these numbers have already been provided to Task Force members, at a prior meeting.

Senator Townsend asked in terms of operating, if it also includes enforcement.

Secretary Small answered yes; enforcement is included in those numbers.

Mr. Bross addressed Mr. Miller's question, noting that raising permit fees is the most efficient way to provide enforcement with more funding.

Mr. Morrill added that issues might arise if the Task Force discusses a new fee to fund capital projects, puts it in a lockbox to protect it, but then puts more money into DNREC enforcement.

Senator Townsend replied that the Task Force is talking about clean water, and if part of achieving clean water is strengthening enforcement, then it is the duty of any serious policy maker to make that argument.

Mr. Bross noted that the Revolving Fund currently funds 6 DNREC positions, and one could argue that these positions are a part of the enforcement chain.

Senator Townsend noted that there could have been a lot of money saved if there was a reasonably priced expert involved in the regulatory process informing entities that were non-compliant to adjust their practices to ensure cleaner water.

Secretary Small stated that the most complex permits that DNREC deals with are held by county governments for wastewater treatment plants and city governments; from a point source standpoint, these entities probably outnumber the private sector. However, the county and city governments do not pay anything.

### **Auditing & Quality Control**

Senator Townsend moved the discussion to the issue of auditing and quality control. He asked Task Force members to discuss how the programs are analyzed, how the outcome analysis is conducted, how it is audited, and what the quality controls are in all of this.

Mr. Bross replied that good outcomes start with the beginning of the process. When people say they would like to have WIAC fund something, they look at what they want us to do and score it with their scoring system. If this project scores well, then they fund the project. WIAC has very rigorous technical reviews that go into their scoring. They also have a rigorous ranking system. If the project is funded, then they have a very intensive inspection process to make sure they are building what they said they will build. WIAC will not pay them in full up front; they pay as they go. At the completion of construction WIAC inspects the work. At this point, they hand the project off to the regulatory side.

After WIAC noticed that they have spent a lot of money over the past couple of decades to put these assets in place, they decided to construct a program to make sure their assets are well maintained. They are now providing grants to projects to help them manage their assets and fund their projects. As demands come in for funding to manage their projects, WIAC is going to need more capital.

Terry Deputy, on behalf of DNREC and a member of the public, noted that projects cannot be funded unless they are on the Project Priority List. Then, DNREC is required to provide an annual report, financial statements, and an independent audit. Following that the EPA comes on-site annually to inspect the quality and outcomes of the program.

Mr. Bross noted that because of all these rigorous checks in place, the money that WIAC has been spending has been well spent and wisely spent. Additionally, they ensure that the money invested is being protected over time.

Senator Townsend noted that throughout the entirety of the Task Force meetings, and outside of the Task Force, he has never heard complaints about WIAC, which speaks volumes for how well the job gets done. The Senator then turned the floor over to Ms. Jennings to begin the conversation on collections.

### **Collections**

Gina Jennings, Sussex County Administrator, stated that the issue with the new legislation is the mechanism put in place for the overlaps of all the entities. Another way that is doable is to look at the ways that the entities are being taxed. She also stated that another way to tax is through the Division of Revenue and the Tax Form itself; that way one can see how much businesses bring in.

Senator Townsend asked if it would be productive to have a group get together over the next few weeks to hash this idea out.

Secretary Small wanted to validate Ms. Jennings comments. He continued saying that based on the 155,000 sewer customers that Sussex County has, they have at least a dozen people in the Collections Office to cover all the elements of what's involved. He added that based on a quick assessment of ratios, DNREC has somewhere around 80,000 on-site permits that they issue and under this proposal would be responsible for collecting. He continued by saying that they probably have about 8 or 9 staff people within the agency who do not have that expertise either.

Secretary Small referenced Senator Richardson's comments about looking for another layer for small personal businesses. However, the more layers, the more confusion that will exist. Additionally, DNREC does not have a way to know who would fit into each category without some type of front-end assessment survey information. He added that he would like to see the counties receive some additional funding. The counties are in the business of collecting property

taxes and there is a lot to talk about. However, in former legislation they had talked about the school-tax model. But, when talking about the head tax, it has ups and downs as well.

Mr. Esposito noted that the approach when drafting the legislation was to keep it equitable and simple. Once that is figured out, they can subcontract out for the collections. Then, the overall responsibility comes on that company to manage it. However, once the program is set, they are not going to hire anyone else. Mr. Esposito noted that this is a suggestion.

Senator Townsend asked if the structure of the fee is back on the table.

Secretary Small wanted to just reiterate the struggle that they have had with the initial legislation. He continued by saying that some people might not like it, however he knows the model in the legislation is one that is understood and implemented. But now, a different system has been created, which has not been totally figured out. Secretary Small noted that there needs to be another conversation offline with those who are charged with the collections to see if there is another approach, or figure out a way to make the new system workable.

Senator Townsend asked if over the next couple of weeks Mr. Morrill, Ms. Goggin, Ms. Jennings, Secretary Small and whoever else, could pull together and hash this out enough to be prepared to discuss at the next Task Force meeting.

Mr. Corrado added that it would be helpful to know how the legislators feel about it.

Senator Townsend responded that he just wants a collections mechanism that works well.

Representative Gray replied that a new system does not make sense if there is already a working system available. He continued by saying that putting in a new system that doesn't work is awful. He does not know if the Task Force wants to stray away from a system that they already know works.

Mr. Bross noted that the current draft of the legislation provides reimbursement to the collection agency to fund the additional effort; he added that this is important to look at and to keep in mind.

Jerry Kauffman, University of Delaware's Water Resources Agency, recommended to this group to look at models where this is already being done in the State.

Senator Townsend noted that as long as there is a collection system that works, he doesn't think there will be issues with it.

Senator Townsend moved the discussion onto the future meeting schedule. The next meeting is scheduled for March 28<sup>th</sup> at 2:00pm. He stated that the collection mechanism should be discussed at this meeting, along with integrating the Draft Legislation into the conversation.

The following meetings are:

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- April 13<sup>th</sup> at 10:00 am in the Buck Library of Buena Vista
- April 20<sup>th</sup> at 10:00 am in the House Hearing Room of Legislative Hall
- April 26<sup>th</sup> at 10:00 am in the House Hearing Room of Legislative Hall

The Senator noted that depending on how the meetings go in the future, this schedule is crafted to allow for an ongoing dialogue. Therefore, if they get enough discussed in the next meeting, then the April 20<sup>th</sup> meeting may not be necessary.

Senator Townsend asked Task Force members and members of the public if there were any more comments. As there were none, the Task Force meeting was brought to a close at 12:01 PM.