
Committee Meeting

of

SENATE ENVIRONMENT COMMITTEE

“Testimony concerning the effect of the United States District Court decision in Atlantic Coast Demolition and Recycling, Inc., et al, v. Board of Chosen Freeholders of Atlantic County, et al, declaring New Jersey’s waste flow regulations unconstitutional”

LOCATION: Committee Room 10
State House Annex
Trenton, New Jersey

DATE: September 19, 1996
1:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Henry P. McNamara, Chairman
Senator Robert W. Singer, Vice-Chairman
Senator Andrew R. Ciesla
Senator Byron M. Baer
Senator Gordon A. MacInnes

ALSO PRESENT:

Raymond E. Cantor
Judith L. Horowitz
Office of Legislative Services
Aides, Senate Environment Committee



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SENATOR HENRY P. McNAMARA (Chairman): Good afternoon. I would like to welcome all of you who have been invited and all who are in attendance.

Today, the Senate Environment Committee will begin a process to develop a legislative response to the recent court decisions that have invalidated New Jersey's system of waste flow control, much like the positions we were in, in 1970, when the Legislature first enacted a comprehensive approach to solid waste management, and again in 1978, when we had to respond to a Supreme Court decision that invalidated our ability to control the waste that entered our landfills.

New Jersey's solid waste future is very much in flux. What has been, perhaps, the most comprehensive system of solid waste management in the nation has now become one of the greatest uncertainties that this State faces. Despite this ominous tone, I believe there is a great opportunity for New Jersey if we act decisive and wisely.

Despite its comprehensive nature, New Jersey's system of solid waste management was far from perfect. Based on the premise that self-sufficiency was the paramount goal and that it was politically and maybe even practically impossible to site enough landfills in the State, New Jersey developed the most costly system of solid waste disposal in the nation. We embarked upon a policy of constructing incinerators, each costing several hundred million dollars, that must be fed constantly to be effective, if at all ever economical. We built inordinately expensive transfer stations merely to enforce a rigid system of flow control. We created a system of background

checks and permitting that has stifled competition and that I believe is leading us to an even more monolithic collection system than we had before.

We have created a regulatory system that stifles innovative recycling efforts, that imposes prohibitive fees on small companies, that has prevented competition, and that has resulted in over \$1 billion in local debt. Maybe the Supreme Court did us a favor when it decided the *Carbone* case, perhaps even when the Third Circuit decided the *Atlantic Coast* and held our waste flow regulations and, thus, the underpinnings of our-- I lost my place when I shut off the microphone. Maybe that was a signal. (laughter) It gave us the opportunity to craft a new system that is less costly, more efficient, more fair, and more environmental.

Our task will not be easy. It took over 20 years and several administrations to get us into this situation that we find ourselves in today. We are not left with just decisions on how to improve our collection of disposal systems. That would be relatively easy. We are faced with the baggage of our past. We are faced with counties that were encouraged, and even forced by the State government to incur over \$1 billion in debt, a debt that is supported by an uncertain revenue source. We are faced with municipalities that want the ability to lower their property taxes by finding less expensive places in which to dispose of their waste. We are faced with counties that want the ability to impose fees on municipalities, and even on other counties, in order to prevent them from defaulting on their bonds. We are faced with an unenforceable waste flow system, and at the same time Congress continually threatens to prohibit the export of our solid waste.

Finally, we are faced with a court-imposed deadline in which to act, a deadline that litigants are trying to move up.

Given our situation, we have no choice but to act. The issues are too numerous and too complex to wait and delay, which brings us all here today. Everyone in the audience has an interest in what we decide, and I want to hear from all of you. I, and I hope the rest of the Committee, will approach these deliberations with an open mind and a willingness to make tough decisions, because, believe me, the decisions that we will have to make will not be easy.

I have only two conditions for any legislation that we craft. We must not allow for the default of any bonds by our counties or their authorities. The impact of that would be worse than the cure.

We must also establish a system that provides for the long-term public health and safety of our citizens and that continues to set an example for environmental protection.

In order to initiate the Committee into the complex of solid waste regulations, we have invited a limited number of witnesses who represent a wide divergence of opinion. It is my intention to eventually hear from everyone who wants to be heard, but given the fact that this is our first meeting of many, I thought it best to limit the witness list so that everyone who testifies will be given an ample opportunity to make his or her point, that is, within a reasonable amount of time. Because of the length of the list, we are going to have to limit the time you speak. Of course, all written statements are welcome and will be made part of the record.

Those who were not invited to testify today will have that opportunity in the future. I look forward to a spirited and enlightening discussion of the issues. I hope our Committee members have enjoyed their summer, because the hard work is about to begin.

At this point, I will ask the Committee members if they have any comments they wish to make. Roll call.

MS. HOROWITZ (Committee Aide): Senator McNamara?

SENATOR McNAMARA: Here.

MS. HOROWITZ: Senator Singer?

SENATOR SINGER: Here.

MS. HOROWITZ: Senator Baer?

SENATOR BAER: Here.

MS. HOROWITZ: Senator MacInnes?

SENATOR MacINNES: Here.

SENATOR McNAMARA: All right, DEP, DCA, and the AG's Office. Why don't you all come up together.

Michael Hogan -- that is if you are representing DEP, Michael.

MICHAEL J. HOGAN, ESQ.: I'm sorry, Senator. I didn't hear you.

SENATOR McNAMARA: Proceed.

MR. HOGAN: Thank you very much, Mr. Chairman. I am most appreciative of the opportunity to appear here before your Committee. Commissioner Shinn sends his regrets and regards today.

New Jersey, as outlined in your opening remarks, is really coming to a crossroads. Despite one of the most comprehensive systems in the United

States, we are now looking to find alternatives to waste flow. As you know, the court has ruled that our current system of waste flow is unconstitutional. That is certainly under appeal, and the Attorney General will be discussing that further.

We have roughly two years to put into place a new way to fund and thereby preserve the great strides we, as a State, have made to protect the environment relating to solid waste, to eliminate corruption related to solid waste, and to pursue our goal of self-sufficiency. One example of that great success is our recycling rate alone, of some 56 percent, which is the highest in the United States.

For over 20 years, our system has survived numerous court challenges. In furtherance of the statutory requirements and the comfort of those court cases, our counties have accrued nearly \$2 billion in outstanding debt that was to be paid from solid waste revenue. Our challenge now is to find alternatives to our waste flow system. In doing so, we need to do three principal things: Any system that we devise must meet the court's standards; it must protect our debt; and it must preserve the environmental integrity of our solid waste management system.

Currently, our tipping fees do more than just pay for the disposal of solid waste. They provide for recycling. They provide for hazardous waste management. They provide for research and development in things such as methane control and landfill mining and educational opportunities. These are things that New Jersey, as a small, but the most densely populated State, needs to continue to pursue.

Unfortunately, as you know, the Congress, despite the efforts of the New Jersey delegations and many of us in this room here today, has failed to act, and the outlook is apparently not very good for the remaining week or so of the congressional session. Therefore, prudence would tell us that we need to plan essentially for the worst case scenario; that is, that our appeal fails and that Congress continues to take no action.

Over the last several months, the Department, in conjunction with the Attorney General's Office, has been working to devise -- to develop a basic model and some variations of what an alternate solid waste system might look like. I would caution everyone here today that what we are about to propose is just that, a proposal. It is not something that is a mandate. It is a discussion that we want to engender, and we are going to be open to just about any idea for discussion purposes.

In early August, we met with the solid waste coordinators of all the counties to give them our view of what a model might look like. We have begun a series of regional meetings with the counties, and I believe one of them is today up in North Jersey. We will be providing a detailed briefing to the League of Municipalities at their convention, and we are going to be reaching out to the Legislature which, of course, this Committee is a very valuable part of and one we hope will be a good source for ideas.

Any system we have, we are convinced now, cannot be a monolithic fix. There isn't going to be-- We do not think we are going to be able to devise a system that has a one-size-fits-all approach, as the outgoing waste flow system attempted to do. Our counties have, over the years, gone in different directions and have different approaches to solid waste. They have

many diverse ideas and, therefore, any solutions-- There are no silver-bullet solutions. Any solutions are going to have to take into consideration the specific problems that counties and municipalities within those counties have. A good solution, obviously, is going to require a cooperative effort of State, county, and local officials. It is going to require us to reach out to the solid waste industry and help them -- or ask them for their help, as I know they are anxious to give.

Now for the model. Keep in mind, again, that this is for discussion purposes. There are basically three tenets to the model: voluntary, flexible, and marketplace. They are the three pillars that our model is built upon.

Voluntary in that, due to the court ruling, we are not going to be able to mandate waste level, so it has to be voluntary for the municipalities and the counties to participate.

Flexible: It has to be flexible to meet the multitude of problems that individual counties and municipalities face.

And three, it has to engage the counties and the municipalities in the marketplace for competition, for it is going to be the economics that are going to drive where waste flow goes, and not regulation.

We think this model, and any one of its variations -- and perhaps there are more variations that the counties and municipalities will come up with -- will, in the end, allow the bottom line, the home owners, and businesses, to certainly remain neutral. There is an excellent opportunity that the cost to them will go down.

I have a handout. I hate to do charts. It is a difficult concept to explain verbally, but I think that when you see it in picture form it will be easier to understand. (witness uses chart on easel and there is a brief discussion about microphones) I will try to speak up. I don't want to take a cue from Ross Perot here, but--

SENATOR McNAMARA: I would straighten out the chart to give people a little more confidence.

MR. HOGAN: Well, let's see here. In the packet we have handed out, there is a copy of this. It may be easier for you all to see.

I direct your attention to this bar right here that has County/ Authority, Municipality, Home Owner, and Commercial. Above this bar is essentially what happens in New Jersey today with regard to how municipalities, haulers, home owners, and commercial people interact. For example, today, municipalities which collect their own trash pay the county authorities directly. When I use county/authority, I am using them interchangeably, because I recognize that some counties do it themselves, and others have various forms of authorities. So if I say county or authority, we are basically talking about the same thing.

So municipalities will pay the county/authority, or they may put out to bid the collection of trash, in which case they pay the hauler who, in turn, pays the authority. The home owner, in most cases, pays the municipality through their tax rate. In some towns, they may have a separate authority, but generally the home owner pays the municipality and it goes to the county/authority. Or, in about 20 percent of our towns, the home owner will pay an individual hauler -- they will have a contract with the hauler -- who

then takes the trash to the authority and pays that bill. Commercial people, for the most part, pay their haulers directly. They have general contracts for their Dumpsters. In this view, it is a fairly simple system.

When you go below the line, we are talking about a potential model. As you will see in the handout, we have a basic model with a number of variations. This basically deals with two possible options that a municipality would have. These are strictly flexible based on what the municipality wants to ultimately do.

The county/authority, under the basic model, would determine what the standard of investment is. Now, just briefly, the stranded investment-- You can generally describe it as that fixed debt that has been incurred. Now, the definition of stranded investment can be expanded or no. That would have to be decided, obviously, by the Legislature. But that stranded investment would have to be calculated by the authority, because it has to be paid off. It is no different than if the county has a road and nobody drives on the road. The road still has to be paid for.

The county then, at that point in time, would notify the municipality of what its potential allocation of stranded investment might be. That allocation would be prorated based on some formula related to the tonnage that that municipality had heretofore sent to that facility. At that point in time, the world opens up for the municipality. If the municipality decides that it wants to send its trash out-of-state, under this model, it can do so. There is absolutely nothing to prevent it.

There are several considerations, though, that the municipality must undertake. The first is: The municipality is going to have to pay the

stranded investment. That is the one main consideration. Secondly, the municipality is going to have to consider the cost of what the out-of-state tipping fee is. And third, the municipality is going to have to consider the cost of transporting that trash. Fourth, a little more subtle, but a potentially lethal cost, is the cost of potential liability to that municipality should the waste that it has sent out-of-state end up in a place other than where it is supposed to be. There is a substantial contingent liability.

SENATOR McNAMARA: Excuse me. Are there any questions?

Senator MacInnes?

SENATOR MacINNES: Well, it is pretty important in terms of the principles that you enunciated. Is this municipal share of the stranded investment a voluntary payment?

MR. HOGAN: No. It is not a-- The answer is no, it is not a voluntary payment. It is a choice payment, and it is a choice in this sense: If they choose to go out-of-state, then they would have to pay that. There is no question about that. If they stay in-state, it will be included in part of their overall negotiated charges, which I will get to under Option 2.

SENATOR MacINNES: So the feature of volunteerism does not apply to municipalities, in this case?

MR. HOGAN: No. It applies to municipalities. If a municipality wants to opt out of the system and go out-of-state, it can voluntarily stay in the system or voluntarily go out of the system, but it is still going to be obligated to pay its share of that stranded investment. Maybe that is an element that is not voluntary, but--

SENATOR MacINNES: Even though it is the county or an authority of the county that has incurred the debt that leads to the stranded investment?

MR. HOGAN: Well, that's true. It sort of fits into-- Certain counties have certain responsibilities. They build roads. Under their current law, they build facilities like this. If they are not used, they still have to be paid for by the people who are within that county. The example I used was that if a county builds a road and no one decides to ride on it because it doesn't go where everybody wants to go, the bonds for those roads are going to be paid by the residents of that county.

SENATOR McNAMARA: Michael, I hear what you're saying. I have a little gray area. I comprehend--

MR. HOGAN: Well, there is a lot of gray, I admit to that, Senator.

SENATOR McNAMARA: I want something clarified right up front. If you had a county that has no debt, they walk away without paying.

MR. HOGAN: One of the options is: If a county has no stranded investment it has to worry about, the municipalities within that county could go anywhere they want. But they have to keep in mind the cost of these potential four items. You know, when you add the costs -- or three items--

SENATOR McNAMARA: Well, presently the county that has no debt today sends it to a transfer station and it goes to a landfill. Their costs should not change at all.

MR. HOGAN: Perhaps not.

SENATOR McNAMARA: Let me go one step further: In a situation where the DEP has mandated a county to enter into a contract with another county that built the facility, and they have been forced by the DEP to enter into a contract to guarantee shipping so much waste to that third county, where is the county that has a limited amount of debt, does not have a very large debt, because it does not have an incinerator, but has a contract that it was dictated to enter into by DEP, where do they go?

MR. HOGAN: I think, first, you would have to look to the contract to see what provisions are within that contract for renegotiation or remodification.

SENATOR McNAMARA: Well, if they were mandated to sign it because it was a push and a pole, if they don't give 200,000 yards -- or 200,000 tons, then they have to pay for it. Are you suggesting that they would be obligated to pay for a different county's facility via a mandated charge?

MR. HOGAN: No, a county would not be obligated to pay the stranded investment of another county. If they had a contract with that other county, depending on what the contract says, they may have to live with that contract for the time being, or, if the contract provides for a reopener or a force de jure--

SENATOR McNAMARA: I think I hear what you're saying. I think it is coming through very clearly. I have to tell you something: I have a real problem with that one. Just so you know when you are putting the final drafting on some proposed legislation, that is an area of grave concern for counties that did not incur the debt, and were dictated and mandated by DEP

to enter into long-term agreements guaranteeing waste flow to support another county's facility.

MR. HOGAN: This is why we are here. We want to find the flaws. We need new ideas. This is not something we are trying to sell or shove down anyone's throat. This is our first--

SENATOR McNAMARA: No, no, I just want to make sure that I am getting the right message, and I think I am. I think I understand what you are saying. That is why I am getting a little bit upset about it, because I do understand.

MR. HOGAN: No problem. Thank you.

Anyway, the other option for the county if it chooses to stay within the system -- excuse me, for the municipality-- A county would offer that municipality a menu of services. Right now, some counties offer a large range of services, others are narrow. But that county would be able -- would be in a position to say, "These are the services we offer, and these are the costs that we offer them for." The municipality would be empowered to negotiate with that county what services it felt it could afford or perhaps do cheaper for itself. That negotiated fee would include the stranded investment. It would not be lopped again on top of that.

So the likelihood is that through this process, because counties and authorities are going to have to take some steps to become more competitive within their own systems, they are going to have to be careful about how they spend their money and their size and so forth-- The likelihood is that the costs to the municipality would certainly be no more than they are paying, and there is a good chance it would be less.

SENATOR McNAMARA: Those services, would they be services mandated by the State?

MR. HOGAN: If you are talking about--

SENATOR McNAMARA: Certain recycling programs, certain--

MR. HOGAN: Certain recycling--

SENATOR McNAMARA: Is that choice, or is it something that they have to do, whether they do it through the county or they do it themselves?

MR. HOGAN: Under recycling, right now, there is mandatory recycling, and it certainly could be argued that if a town didn't want to participate in the county recycling plan through this negotiated contract and thought it could do recycling within its own town more economically, it would be allowed to negotiate that out.

SENATOR McNAMARA: If the waste plan of the county dictates it, which is approved by DEP, does the county obligation cease and desist by virtue of what you are saying, if a town decides that they do not want to do it?

MR. HOGAN: I think that any program is going to require counties-- Any legislation is going to have to take a look at how counties address their solid waste management plan. Obviously, there are going to have to be changes to county solid waste management plans to do this, but the incentive will be there for the Department to do it, because the waste flow has been declared unconstitutional. So we will have to be flexible -- as flexible as we are saying the municipalities will be able to be.

SENATOR MacINNES: May I just ask a question of fact?

SENATOR McNAMARA: Yes, Senator.

SENATOR MacINNES: Does the Supreme Court-- Does the *Carbone* decision apply to that part of the waste stream that is designated for recycling under State regulation?

MR. HOGAN: Not yet.

SENATOR MacINNES: Not yet?

MR. HOGAN: It does not.

SENATOR MacINNES: It might down the road?

MR. HOGAN: The Attorney General, I think, has a representative here. She will be able to answer that. I prefer her to do that.

SENATOR McNAMARA: You'll get your shot.

SENATOR MacINNES: Okay. I will hold the questions.

MR. HOGAN: Now, the other element to this is that towns would be empowered -- as they do now -- to place out to low bid the collection of solid waste, and they would collect residential and commercial. Now, that is a little different wrinkle than we have done before. Commercial waste is a major part of the waste stream, and they cannot be left out of this formula. Otherwise, the debts for these stranded investment counties could not be serviced. But it need not and probably would not, for sure, increase the cost to the small businesses and commercial establishments. The commercial establishment that may pay \$100 -- I am making up a number -- a month to have his Dumpster picked up once a week, instead of paying that \$100 to the hauler, would be paying it to the municipality, or a utility, or some other entity like that, which, in turn, through this negotiated fee, would be paying the county/authority. Thereby, this bid that the town puts out would not be for disposal. It would just be for collection. The bid would say, "We have made

arrangements with XYZ Facility for disposal. All you have to do is give us a bid on what you would charge to collect.” The positive element of this is that because of the economies of scale, the likelihood is that the actual bids would probably, on a per-unit basis, be a lot less than a commercial customer -- a small business trying to negotiate with his hauler as to what the fees would be.

These are just two possible options. There is a whole variation on this that you can do. I have outlined some of them in the documents we have handed out. Undoubtedly, as this process moves ahead, you will -- or we all will find new ideas.

Now, the uniqueness of the proposal is true. It is that the stranded investment allocation is really the only constant of the program. Beyond the stranded investment allocation, each county and municipality has almost unlimited flexibility to compete in the marketplace. This meets your test that the debt is protected, because it is going to be economics that is going to drive the program, not government regulation. We envision a substantial reduction in what is perceived and what in reality, in some cases, is red paint, tariff regulation.

Finally, we think this will enable us to continue our push toward self-sufficiency which, in turn, will protect us from out-of-state retaliation. I would like to take a minute on this, because this is very important. Our sister states to the left of us are becoming importing states of waste. New Jersey is an exporting State. Fortunately, we only export about 2.2 million tons of waste out of our total stream, I think, of some 14 million tons. New York State is a large exporter of waste. New York State and other states like that, some of them think that exporting waste is the way to handle the problem.

But there is going to come a time -- and I think it has already begun -- where these importing states are working very diligently in Congress and setting up internal processes within their states to prevent other states from wholesalingly driving exported trash into their states. What does that mean for New Jersey?

It means that if we allow our system to sort of fold up and go away because it is starved for revenue to keep it going, even though it certainly has a cost to it, we are going to be putting New Jersey in a very difficult position in about five years or so, because as soon as these states get a handle on the imports, it is going to be harder and harder for New Jersey itself to find places to export its trash to. These municipalities that are into these contracts, once the facilities themselves, whether regulated by the State or otherwise-- Those communities here in New Jersey are going to be hard pressed to take their trash someplace in the State of Pennsylvania through some congressional legislation which says they can stop it, or they can limit it. If we do not have facilities in New Jersey to handle that, you are going to have another crisis like we had many years ago, at one time, when Pennsylvania closed its doors to New Jersey waste.

So there are short-term problems and there are long-term problems. I think that as the Legislature looks at the situation, they have to think in terms of short term and long term.

Finally, I just want to take a moment more. We do have approximately, roughly, two years, unless the courts modify that, to come up with this new program. In that time, our current system is in effect. While we have heard some horror stories that trash is going out the door left and right -- the numbers do not bear that out -- there are some major violations. The

Attorney General and our Enforcement Division have been working very hard. They have some court cases going on against some of the major violators. There really has been no race to the exits. We have surveillance. The Commissioner has directed it to be stepped up, surveillance on the bridges and in solid waste facilities. We are working with the Secretary over in Pennsylvania. As you know, they recently stepped up their own internal processes again, because they see themselves as being the ultimate disposer of New York's waste.

So there is an active enforcement program going on. There is no question that there are some major violations, but the reality is that the system still remains intact.

I want to thank you, Senator, for the opportunity to be here. If there are any questions, I will--

SENATOR McNAMARA: Before I--

SENATOR CIESLA: Senator, just--

SENATOR McNAMARA: Senator, if you don't mind, I would like to ask your kindness. I would like to ask Assemblyman Gibson, who has a committee that he has to be at, at 2:00, if he could interrupt, just say what he has to say, and then go on his way. Okay? Thank you.

ASSEMBLYMAN JOHN C. GIBSON: Senator, with that, I won't even sit down.

Actually, I am just here to congratulate you and your Committee for starting the process, the formal process of the hearings to address this very important issue, and to report to you that through the summer our Committee, on an informal basis, has been meeting with the authorities. We have met with

15 authorities to date, and even more boards of freeholders and mayors, to get input as a resource so that we can craft the very best legislation, under the circumstances, that we can.

I guess the basic thing that I can report to you this afternoon is that variety is what is out there. Every county works differently. We must craft legislation that is broad enough and flexible enough to let each of the counties, perhaps, make the final decisions for themselves. I am optimistic that the two conditions that you set forth -- the maintenance of the environmental quality that we are very proud of with the system we have now will continue, and that we will certainly be able to protect the \$1.7 billion worth of debt that is out there. I am even optimistic, Senator, that together -- your Committee and our Committee -- we will find a system that will be as competitive as necessary and will reduce the overall cost of the service to the constituents and the people we serve in New Jersey.

Thank you, gentlemen. I compliment you on starting the process.

SENATOR McNAMARA: Thank you very much.

Michael, you were talking about the enforcement of waste control. I believe I just read something from Bergen County, that their flow has decreased between 90,000 to 100,000 tons. Your total number for the State -- you said it is only 2.8 million that is exported?

MR. HOGAN: About 2.2 million.

SENATOR McNAMARA: I am not so sure that before it decreased after the court decision that they were getting 100 percent to begin with. So I am just wondering if the numbers are, you know--

MR. HOGAN: I think up in that region one of the major violators -- who the Attorney General now has in court-- It is in that region, so that may account for some of that loss.

SENATOR McNAMARA: Senator MacInnes?

SENATOR MacINNES: Thank you, Mr. Chairman.

I just have sort of a conceptual question: As I understand your proposal -- and I know it is for discussion only and that you are not bound to it-- But I am curious. It seems that in terms of the stranded investment -- and the number on that varies, I guess, from a little over \$1 billion to \$1.7 billion, or almost \$ 2 billion, as I heard today -- it is a substantial amount of money. I am wondering if in your consideration of alternatives, since this represents, in most cases, a State-imposed facility requirement, where the State used its power of delegation to mandate that counties establish particular facilities that they not be landfill facilities, that they be incinerator facilities, that the State, at that time, looked upon the counties and the municipalities as its partners in dealing with the solid waste problem that it wanted to resolve.

When we get to protecting the debt, it seems that the State has disappeared as a partner. I am just curious whether in the review of your options, whether you considered that the State might, in some way, be a financial partner to the municipality property taxpayer, who seems to be the bill payer at the end of this stream in terms of providing the financial guarantee for the bond? It is falling on the home owner and the business owner, if I am not mistaken. The State has disappeared as a partner. I am just curious as to whether you looked at opportunities for the State to be a part of the financial protection for the stranded investment.

MR. HOGAN: We have looked at that, and I continue to look at certain facets, though we are not really prepared to really discuss that in detail. I think the one element that we have looked at and pretty much felt would not be wise to propose is the concept of a statewide assessment in order to have the State take over the counties' debt completely and somehow have a State funding mechanism that would pay this debt off.

Basically, what I think that would do, it would balkanize the State. You would have north against south. You would have the counties that perceive themselves as having done a good job versus those which they perceive have not done a good job. We think that the State, in terms of using this flexible process, can be a partner just as much, though not financially, but can help ease the counties and the municipalities into the process. It is not an easy answer, but it is a fundamental threshold question: Do you want to basically have a statewide tax to pay this? We do not think that is really the direction we think would be productive, and perhaps not even doable.

Obviously, the counties have accrued this debt. They were following the law. The law was laid down by the Legislature and by the rules of the Department. We are all in this together -- this situation. I mean, we are all taxpayers and we will all pay one way or the other.

I would like to point out, though, that in the system that I outlined for you, there is no reason to think that the home owners or the commercial people will pay any more than they are paying now. There is a very good possibility that they will actually pay less, because the counties themselves and the authorities are going to have to reform themselves to become more competitive. I might say that that process has already begun.

The Commissioner, over the past four or five months, has already begun to sign orders where tipping fees are coming down, and you have to wonder why. They are not coming down by huge steps, but they are coming down a dollar here, a dollar there, five dollars here. That is telling us that the counties are paying attention and doing what has to be done to become more competitive. That is really what it is all about -- competition.

SENATOR McNAMARA: Well, they have been advised by their attorneys as to what the landmark case has established and what is on the horizon, so they better start cutting their overhead.

MR. HOGAN: Right.

SENATOR McNAMARA: In reality, maybe there would be a way, and hopefully legislatively we might be able to suggest some way, in the areas where counties have been mandated to do this, for the State to pick up a share. The State can find a way to get a few funds down to Atlantic City every once in awhile, so I don't know that it should be so objectionable to do it for counties that have followed the law. Maybe they might pick up a portion, or a share.

Senator MacInnes?

SENATOR MacINNES: Well, I just want to say that the only alternative available to the State, and seeing the State's role as perhaps a financial partner to deal with the problem of stranded investment, is not a statewide tax. I mean, that is the most extreme measure. If you want to say that the State should be on the hook for the entire amount, then yes, maybe you would be considering a statewide tax. I can see the headline now, "Whitman Administration Considering Statewide Tax for--

SENATOR McNAMARA: Recommended by Senator MacInnes. That is a hell of a headline.

SENATOR MacINNES: I am just trying to find out if they want to put the whole burden on the property taxpayer in my town, or whether they are willing to step up and--

I think what Senator McNamara said is correct, that there are options between the statewide tax that deals with 100 percent of the stranded investment and one that relies entirely on the local property taxpayer. I think that would be worth considering at the Committee level in terms of at least knowing -- at least having more information available about what the implications would be considering the use of the general obligation authority of the State, if we are in this together.

I know there are major differences between counties in terms of debt and initiative and everything else. I represent a county that has a very small debt from this, because we are relying on the facility in Essex, but I don't think that should be the sole determinant of how we look on dealing with the stranded investment.

SENATOR SINGER: Mr. Chairman, just for the record, from at least another viewpoint, I am not in favor of a statewide tax. If Senator MacInnes is, he can sponsor that.

SENATOR McNAMARA: I can assure you that Senator MacInnes was not suggesting a statewide tax.

SENATOR MacINNES: I was disputing the assertion that that was the only option available. That is what I was offering.

SENATOR McNAMARA: In reality, we all have to recognize today that everybody is already paying it through their -- in one way or another, whether it is by fee or in the property tax. So that is the reality. But something has to be done, because you cannot have counties and towns locked into paying inordinately high rates when it can be shipped out-of-state for half the price.

MR. HOGAN: Well, under our system--

SENATOR McNAMARA: I mean, I understand what our interest is and I understand the potential problem that we can't let those investments close down, but there has to be a way of solving it, but also to be able to pass a measure of assistance and/or reduced rates for these towns. Or, I'll tell you what: You can station one of your enforcers on every road, and all he is going to be doing is giving out tickets for waste flow going out the other way.

All you have to do is drive any major highway today. No one has to tell me what is happening. It is obvious that tonnage is going out of this State, and I think in a much higher number than what your comfort level is here. I think it is far in excess of 2.8 million, and I would suggest that possibly you could very easily find out the number by just finding out what is going into Pennsylvania, Maryland, and a few other states. I think you are going to be in for a shock if you really believe that it is under 3 million in the export. I really do.

Thank you very much.

Are there any other questions of Mr. Hogan? (no response)

Thank you. I'm sure you will stand by there, Michael.

MR. HOGAN: I sure will.

SENATOR McNAMARA: Is there anyone else from the Department who is going to speak, or are you the--

MR. HOGAN: No, not from the Department. I was it.

SENATOR McNAMARA: Okay.

From the Department of Community Affairs, Commissioner Jane Kenny, Beth Gates, and, I assume, Stephanie. Correct?

COMMISSIONER JANE M. KENNY: Yes.

Good afternoon, Mr. Chairman and members of the Committee. Thank you for the opportunity to testify. I know that you probably have many questions regarding the impact of the *Atlantic Coast* decision on the financial integrity of our local governments, so I will keep my remarks brief. With me today is Beth Gates, Director of the Division of Local Government Services and Chairperson of the Local Finance Board.

The Local Finance Board, in but not of the Department of Community Affairs, is an eight-member Board, seven of whom are appointed by the Governor, responsible for overseeing the financial affairs of this State's 567 municipalities, 21 counties, and over 400 fire districts and local authorities.

Of primary interest to this Committee today are the financial affairs of the 11 utilities authorities, 4 improvement authorities, and 2 pollution control financing authorities which have undertaken to acquire, construct, and operate solid waste disposal systems. I broadly define "systems" to include landfills, transfer stations, resource recovery plants, recycling operations, and transportation operation.

As you are aware, the 22 solid waste districts in New Jersey have issued approximately \$1.8 billion in debt to finance solid waste systems to dispose of over 7 million tons of solid waste generated within the State. These systems have been designed in accordance with countywide solid waste management plans mandated by the State.

In 1995, county and authority budgets appropriated \$136 million for solid waste debt service, most of which is supported by revenue guaranteed to be received because of flow control. Less than 5 percent of the debt outstanding represents general obligation debt of the counties.

As a result of the *Atlantic Coast*, disposal charges assessed by county facilities will have to be market competitive in order to generate sufficient revenue to cover debt service and other operating costs. Charges for disposal of municipal solid waste currently range from a low of \$49 per ton in Burlington County to a high of \$125 per ton in Hunterdon County. Debt service coverage is obviously a part of that charge, and the debt service component of the tip fee ranges from \$1.10 per ton in Morris County to \$43.53 per ton in Sussex County, depending upon the type of system the solid waste district has in place.

Forty-six percent of the debt outstanding is supported either by county deficiency agreements or insurance. Fifty-six percent of the debt would have to rely solely on tip fee revenue. In an environment where flow control does not exist, the State must be concerned about these districts receiving sufficient revenue to cover the debt.

There has been much discussion surrounding the impact of these court decisions on the financial integrity of the county authorities, especially

with respect to the ability to cover debt service. Debt issues of governmental entities have always been viewed by municipal finance investors as safe investments, but the market players are reacting with caution. The *Carbone* and *Atlantic Coast* decisions have resulted in the downgrade of solid waste debt of five of the county authorities.

The Local Authorities Fiscal Control Law was enacted in 1983 and was designed to protect investors and taxpayers by ensuring that the financial integrity of local authorities is maintained. The law gives the Division of Local Government Services and the Local Finance Board a great deal of authority. Important in this instance is the ability of the Board to take remedial action to address an emergency situation with respect to the financial condition and operation of a local authority or to respond to an undue financial burden imposed by a local authority on residents of the State.

During the time that any new waste management system shakes out or settles into place in a voluntary market environment, local authorities may experience revenue slippage. If it becomes clear to the Division as it monitors the finances of these local authorities that the rate structure in place is not generating a sufficient waste stream to support the operations of the authority, the Local Finance Board has the ability to order a corrective action plan to remediate the deficiencies, or order the dissolution of the local authority, in a most extreme case, if it is in the public interest. Outstanding debt of the authority would then become the legal obligation of the county.

This represents a last-resort remedy that could be used by the State to ensure that debt service is paid. This remedy is not particularly attractive, however, because, while overall systems costs would not increase,

these costs would be borne by the taxpayer instead of generators of solid waste. A legislative remedy becomes essential.

In a recent document issued for discussion by the Department of Environmental Protection entitled “Alternative Solid Waste Management,” and attached to Mike Hogan’s testimony I believe, Commissioner Shinn identifies as a policy goal “protection of the outstanding public solid waste debt.”

Much discussion has ensued with respect to meeting that goal. In every scenario, it is recognized that support for existing solid waste infrastructure cannot be abandoned. Those generators of solid waste for whom the systems were created must continue to support those investments irrespective of future solid waste disposal choices. The DEP proposal identifies a countywide solid waste utility assessment, or stranded investment charge, which would cover debt service and other mandatory charges for items like closure liabilities.

The difficulty will be in determining what items should be included in that stranded investment charge and how the charge should be allocated by the counties among its various municipalities.

But this is the very approach used by the Mercer County Improvement Authority as it has developed long-term contracts on a voluntary basis with eight municipalities in Mercer County in order to move ahead on its incinerator project.

The Department’s proposal is on the table as a starting point for discussion. Other ideas have been expressed in the form of introduced legislation, and most have merit. I want to extend to you my willingness to

work with this Committee and the Legislature as you craft a legislative response to the court which meets the court's requirement that disposal location becomes a matter of choice and that participation in any system is voluntary, as well as this administration's policy objectives.

I look forward to answering any questions that you might have.

Thank you.

SENATOR McNAMARA: Senator MacInnes?

SENATOR MacINNES: Commissioner Kenny, thank you.

Has your Local Government Services Board done an analysis of the likely impact of the new competitive environment on county authorities that have incurred debt? It seems to me, looking at the chart that was prepared by OLS, that we have some counties that operate at reasonable costs in the competitive environment. Burlington County, for example, operates a landfill where the cost per ton is \$49. They have debt. With this shift, it looks to me like Burlington County's ability to continue to attract garbage is good and, therefore, its ability to make good on the debt it has incurred is also good.

Do you have any sort of sense of whether we are talking-- Maybe it is the five county authorities that have been downgraded. Is that where we should concentrate our attention in terms of the stranded investment problem?

COMMISSIONER KENNY: I am going to ask Beth Gates to answer that.

BETH GATES: Senator, we did an analysis to file with the State's brief in a court case on the amount per ton charged which would be necessary to cover the debt service outstanding in each county. I have attachments here

that I will leave with the Committee so you can see what it would take in each county to, in fact, cover those stranded investment charges.

SENATOR MacINNES: By glancing at that, some counties are obviously in greater danger. Is that the conclusion the rating services have reached, because of what they have to generate and what that does to them if it is competitive in a free marketplace?

MS. GATES: Yes. Clearly, the per-ton charges for debt service range from just over \$1 in Morris County to a high of close to \$49 in certain other counties. So a larger and larger portion of what is charged for the tipping fee needs to go to debt service coverage.

SENATOR MacINNES: So the tip fee has to be higher and, therefore, less competitive and, therefore, fewer customers and the problem--

MS. GATES: In a market-competitive environment, the disposal charges-- The counties will attempt to make the actual disposal charges competitive, but it will be the stranded investment component that will differ from county to county.

SENATOR MacINNES: Thank you, Mr. Chairman.

SENATOR McNAMARA: It is interesting because you wonder, had the counties, when they were building the different facilities, known that they had to be competitive at the end of the -- when they got their product on the road-- It would be like Ford Motor Company going out and designing a car that is really great, but it is going to sell for \$250,000. So obviously, the volume is not going to be there. If, by virtue of the State's mandate of waste flow control, counties were assured, "You build that ball field out in the field and we are going to bring all the garbage to run through your incinerator--"

I have to tell you, anybody looking at it objectively has to draw that conclusion, that this is a problem that was caused by continuous administrations, and I am beginning to wonder, addressing a problem that really wasn't the size that they thought it was.

Are there any questions? (no response)

We will have you back. I have a number of questions, but there are a number of other witnesses and time is beginning to go on.

COMMISSIONER KENNY: Thank you.

SENATOR McNAMARA: We would appreciate it, Beth, if you would leave a copy of that with staff. Thank you.

MS. GATES: I will do that, Senator.

SENATOR McNAMARA: Is there anything the Attorney General's Office would like to lend?

DEP. ATT Y. GENERAL STEPHANIE A. BRAND:

Well, Senator, I am really here to answer any questions you all might have regarding the case itself. I would like to answer the question you asked before as to whether the *Carbone* case affected recyclables in the State. The short answer is no, and that is because source-separated recyclables have never been waste flowed in this State. They are free to go to whatever facility a municipality arranges. So, technically, the decision does not cover those, because we do not flow them.

Do you have any other questions?

SENATOR McNAMARA: Yes. How much do you project is going out of this State -- is being exported out of this State not legally?

DEPUTY ATTORNEY GENERAL BRAND: I actually believe that the number Mr. Hogan stated is as accurate as we can come up with at this point. There is no doubt-- I am sure people may or may not be telling the truth on their monthly facility reports, and there is really no way for us to test that except to actually--

SENATOR McNAMARA: Can't you test, with the facilities you have in existence-- You know how much they were handling last year.

DEPUTY ATTORNEY GENERAL BRAND: That's right.

SENATOR McNAMARA: Is that where you are getting your number, that it is two and a half--

DEPUTY ATTORNEY GENERAL BRAND: Actually, we get monthly updates.

SENATOR McNAMARA: But that is the maximum that it shows?

DEPUTY ATTORNEY GENERAL BRAND: That's right. That is what is going out-of-state. That is our best guess.

SENATOR McNAMARA: I am beginning to think that some never went there to begin with.

DEPUTY ATTORNEY GENERAL BRAND: That may be.

SENATOR McNAMARA: Are you actively enforcing waste flow regulations?

DEPUTY ATTORNEY GENERAL BRAND: Yes, we are. In fact, we have several cases going on throughout the State attempting to enforce the two-year stay that Judge Irenas ordered. None of those cases have yet come to a decision. We actually have a couple that are in court. One is tomorrow and a few are coming up, and we hope to have some word from the courts.

SENATOR McNAMARA: We would appreciate knowing, after the one that is in tomorrow, what the judge's decision is. It will be interesting to see how he decides on a law that has been considered unconstitutional.

DEPUTY ATTORNEY GENERAL BRAND: Absolutely. The issue will be whether or not Judge Irenas' decision is given credence by the State courts.

SENATOR McNAMARA: Thank you.

Assemblyman John Rooney.

ASSEMBLYMAN JOHN E. ROONEY: I am from Northvale and I am here to help. I know when people say, "I am here from Trenton and I am here to help," we all quake with fear. I know that is what happens in my municipality.

SENATOR McNAMARA: We have the same reaction to you, Assemblyman. (laughter)

ASSEMBLYMAN ROONEY: Okay. My neighboring district. We get along well, though.

I really commend you, as Chairman, and this Committee for bringing this up, because I have been fighting this issue for probably the last three or four years. I have been immersed in garbage for that time.

First, I want to speak as a Mayor. I am still the Mayor. I went back as Mayor of Northvale. I also head the-- I am Chairman of a coalition of 240 mayors to reduce property taxes. These are 240 mayors who have signed petitions against flow control. Why have they done that? Because every one of those mayors know that they can reduce their property taxes by having flow control thrown out in this State.

Some of the things you have heard today-- I have passed around the charges, actually, in each county, so you can see what your county is doing. That is from January 1995. It has come down slightly since then, but the average at that time was \$95 or \$96 a ton to dispose of garbage. It is down to around \$87 or \$88 a ton today. We are the highest cost garbage disposal state in the country, by far the highest cost. Actually, New York was just below us by about \$10 a ton until *Carbone I* came along. Since then, it has dropped tremendously. I believe the regional rate for the Northeast right now is around \$60 a ton. The problem is New Jersey. We keep the average high.

Across the country our sister states are paying an average of \$35 or \$36 a ton. That is the real world of garbage. For me, as a Mayor, I am looking at an approximate bill every year of almost \$300,000. I only have 5000 people in my little 1.1 square-mile municipality, and it is costing me \$300,000 to get rid of my garbage. That is absolutely atrocious. We pay \$104 a ton to the Bergen County Utilities Authority and, as the Commissioner said, we are not the highest. We have \$125 a ton fees.

It seems a simple solution, but people are not acknowledging it. If we are worried about stranded investment, fine. That is one issue. As we finally got a number from the Commissioner, \$1.712 billion-- I finally got that number. That is the actual debt. I have been saying it is \$1.6 billion, and it was \$1.6 billion. It has gone up slightly since then. I had Peat Marwick run the numbers. If we took the statewide average of garbage that Mike Hogan gave us, of 14 million tons per year, and divided it into the actual debt, for about a \$13-per-ton fee -- I will call it a tax -- for a tax of \$13 a ton, we could

get rid of the entire debt that we have accrued for solid waste facilities in the State of New Jersey -- \$13 a ton.

Now, let me throw out one other thing: The Bergen County Utilities Authority-- I was a Commissioner there for five years. When I was there, we sited, we contracted, we did all the work -- Hank knows this very well -- to site an incinerator that was mandated to us by the State of New Jersey. We did everything. We said we were going to put it in Lyndhurst. The State said, "No, you are going to put it in Ridgefield." That created a lawsuit.

SENATOR McNAMARA: By the way, the residents of Lyndhurst voted that they wanted the incinerator in their town, right?

ASSEMBLYMAN ROONEY: Absolutely, as you know, Hank, because you were the one who spearheaded the drive. That happened to be the site that the State was reserving for the baseball stadium. That is why they wouldn't give us the nice community that wanted the garbage plant. When they put it in Ridgefield, they put it in wetlands. We had litigation from the Corps of Engineers. We had problems up the kazoo.

Now, I remember fondly Bobby Guido, who later became a BPU Commissioner, who was our Chairman at the time. Talk about competitiveness and building a \$250,000 Ford automobile. Let me tell you, Bobby Guido was responsible for building probably the first and only -- or actually proposing the first and only competitive facility in the State of New Jersey. We projected our rate over a 25-year period. Scott Sproviro, the attorney for the BCUA, is here and can back me up on this. Our rate was going to be \$60 a ton for our garbage disposal in Bergen County, with the provision for additional waste from other counties, or even merchant waste, at

that time, for the City of New York. So that is the real world of garbage. You can actually build an incinerator that will give you a competitive rate of around \$60 a ton. If we didn't have some of this other stuff, it would have been cheaper than that even.

So that gives you kind of a background here. What I am saying to you right now-- I brought in the Bergen County Utilities Authority. I want to bring up an excellent example. The State of New Jersey, today, mandates that the Bergen County Utilities Authority deliver 191,000 tons of garbage to Union County's incinerator. They also mandate that we pay Union County \$80.00 a ton. That is what they tell us to do. We were going to Essex County at \$70.00 a ton, or \$60.00 a ton -- it went up to \$70.00, or \$70.00 a ton, and, right now, we are at \$80.00. They are charging me \$103.44, almost \$104.00 a ton. The rest of their garbage, the BCUA -- and I have to commend them--

You know, I have had my differences, as Hank knows well. I have been to the mat with them. They go out on public bid for the rest of their garbage. They have a contract, a long-term contract, and have had it, with Chambers Environmental. They sent-- They actually pick up the garbage at the transfer station -- Chambers does -- and deliver it to a landfill in Virginia. The open, free market price for garbage under that contract is \$42.75 a ton. That is the real world of garbage. So I am paying double, almost triple the amount to get rid of my garbage because of the State mandate.

If my little community pays the \$300,000, and I could go to their price of \$42.75, plus a fee, I could save my taxpayers in my town about \$150,000 a year, which, for me, is 5 tax points. We are talking about property taxes here, gentlemen -- I see no ladies on the Committee -- five tax points in

my town. This is the same in every town in Bergen County. If you start figuring out the rates in Somerset County, where it is \$125.00, in Atlantic County, where it is \$121.00, you will start to see some significant savings by leaving us alone and letting us do what we have to do in the free market.

I think there was a question from Senator MacInnes about recycling. Recycling is not included in flow control. There is a mixed waste rule in the Solid Waste Act that says that anything that has more than 60 percent of recyclables in it can go to recycling. It does not have to go to these county facilities. They take the 60 percent or more out and they take the trash, whatever, and send the balance to the facility. So that covers that area.

Now, construction and demolition waste has been removed from flow control already. What I am saying to you today is that, if we continue flow control, I continue to pay these high property taxes.

One of the other things I have to say about the BCUA is: Last year, their budget was, I believe, \$56 million, not this current budget, because it is worse. They used \$9 million in surplus to give us \$104.00 a ton rate. If they did not have the \$9 million in surplus, that rate was up 20 percent. This year, I understand, they have used all but \$1 million of the surplus they had left over from the defeasing of the bonds on the incinerator. That was \$16 million, and we are at \$104.00 a ton. We have \$1 million left in surplus. Next year, my rate in Bergen County could be \$130.00 or \$140.00 a ton.

What do I tell my taxpayers when I have to cut in other ways? Where do we go from there?

Now, I will turn the hat around. As a member of the Assembly, I have introduced five bills. There is a five-bill package, and I would welcome

anybody taking the sponsorship in this Committee, because I have not been able to get other than an informal hearing from the Solid Waste Committee in the Assembly. The bills basically change the way we process garbage, or handle garbage. Algis Matioska, I compliment you for your excellent work on it. Algis was involved from the beginning. We sat down and we worked out all the details. But basically, it goes through making the municipalities responsible for the garbage going through it step by step, reinforcing the recycling rules, going all through it. The last part of it is that we impose a statewide tax of \$10 per ton for the 10 years. I don't have a problem with \$15 per ton, or making it 20 years.

SENATOR McNAMARA: John, excuse me for interrupting you, but take Hunterdon County. It has no stranded investment cost. How do you justify assessing a \$10 or \$12 a ton cost to their garbage?

ASSEMBLYMAN ROONEY: Hunterdon County's rate is about \$125 a ton, if I am not mistaken. When they go to \$45 or \$50 a ton in the free market, they will be very able and willing to pay \$10, \$15, or \$20 a ton to take care of the statewide debt. Again, I don't have any pride of authorship on this package of legislation. These are my thoughts. I mean, I put it down. This is my solution. If anybody has a better solution, bring it to the table. But the thing is, we have to kill flow control once and for all. It has to go away, because it is costing our taxpayers millions of dollars. It is \$2 million a day. Every day that we sit here and allow flow control to continue -- \$2 million a day out of our taxpayers' pockets. That is what we have to do.

If the State is saying they are going to-- We have a two-year window. The State is appealing that. I have a resolution in here -- that anyone

also may copy for the Senate purposes -- that tells them to get off their duff and come up with a solution. If you look at the opinion by Judge Irenas, you will see in it that he criticized the State for not having a plan. They have never come up with a plan, up until this.

The other thing I want to tell you is, they are talking about other states putting up the barriers to us. They do not want us to bring our garbage to Ohio, or to wherever it happens to be. I have news for you: This administration, this DEP (sic), has forced -- and I have spoken to all of them, I have been down to Washington -- has forced our delegation to vote in favor of the interstate ban on garbage. They are voting in favor of allowing people to put up barriers to New Jersey. What the hell is this? You know, they are absolutely in our total negative interest. That is the problem with this. They have taken the two bills, the one on flow control and one on interstate, and put them together into one. Originally it was under Lautenberg, now it is under a Republican, which is even worse, because we had a contract with America that said we were going to try to reduce property taxes. It is not happening. Our delegation, to a person, voted to stop us from being able to import -- or to export to other states and to allow this practice of higher property taxes to continue.

This is a terrible thing for property taxholders, and it has no place to go. It is actually getting worse. We have to come up with a plan quickly. Forget about the two years. I would like to have a resolution-- This resolution, I think, is 118.

SENATOR McNAMARA: John, you can leave us a copy, but in deference to the other speakers who are here--

ASSEMBLYMAN ROONEY: I know.

SENATOR McNAMARA: --I want to get moving.

ASSEMBLYMAN ROONEY: I appreciate your time.

SENATOR McNAMARA: I understand, but the reason for the meeting was not that we agreed with the State's move to appeal the decision.

ASSEMBLYMAN ROONEY: Oh, I know that, but I think you have to know the facts that have been going on.

Let me give you one other example. Since New York has gotten rid of flow control-- The Hempstead incinerator was charging, I believe, in the mid \$90s per ton prior to flow control going out, and they weren't getting any garbage. They got no garbage. Since flow control, the price has gone down to about \$62 a ton at that incinerator. They are getting all the garbage they can possibly use. That is what happens without flow control.

The other thing, too, is-- Talking about stranded investment, I just think it ain't stranded if it ain't built. If we can't fill the facilities such as the ones we have now, why look at building other facilities in Mercer County, in Hudson County, and even in Passaic County. They had theirs blown up by Florio a couple of years ago.

The thing is, we have to stop this nonsense. We have to start to get back into sanity again.

Thank you for your time.

SENATOR McNAMARA: Thank you.

Are there any questions? (no response)

Moving right along, Bruce Parker and George Loman? (no response)

Steve Changaris?

S T E V E N C H A N G A R I S: Thank you, Mr. Chairman, for the opportunity to testify. My name is Steve Changaris. I am the Chapter Manager for the New Jersey Chapter of the National Solid Waste Management Association. We are a chapter of a national trade group that represents the private solid waste industry, collection, disposal, recycling. Today, we have enlisted our Committee Chapter Chairman, George Loman, to come down and be with us, as well as our General Counsel from Washington, who has been involved in the flow control litigation over the years.

At this time, George and I would like to be here for local color, but we would like Bruce to give the Committee an overview on how the flow control issue looks outside the State of New Jersey.

Without any further ado, I will introduce Bruce Parker, our General Counsel.

SENATOR McNAMARA: The fact that we have three of you representing does not stretch the time.

MR. CHANGARIS: No. Bruce is our intended speaker.

B R U C E P A R K E R, E S Q .: Thank you, Mr. Chairman.

Good afternoon, members of the Committee. I came here initially not knowing exactly what the scope of the inquiry was going to be, prepared to tell you about the abuses of flow control. But upon listening to the other speakers, that is really irrelevant. The fact of the matter, as you all know, is that it is unconstitutional. We are not here to revisit, rehash the abuses and the inefficiencies. We are here to deal with solutions.

So I think my time would be better served if I were just to do two things: The first -- to get it off the table -- is just to thank you and to accept Mike Hogan's invitation on behalf of the industry to participate genuinely, to the extent we can. We would like to be at the table, since we are part of the regulated community.

I think the second thing that I want to accomplish is just to make some comments on what I have heard today. I think that would probably be the best thing to help to clarify the issues. In listening to all the discussion, I am reminded of a story about Will Rogers, actually. During World War II when the German U-boats were sinking all of the commercial ships carrying supplies to the allies and nobody knew what to do, they asked Will Rogers, "Do you have a solution?" He said, "Of course I do." They said, "What is it?" and he said, "Well, just drain the ocean." And they said, "Well, how do you drain the ocean?" He said, "Well, I am just the big picture guy. You guys figure out the details."

What I am hearing today is, in fact, that the details are where the devil lies. It is going to be difficult. It is going to take a concerted effort legislatively, the counties -- everyone is going to have to be involved.

Number one, the bond default issue: That has been the big bugaboo that has been hanging around this discussion for five years, particularly in the halls of Congress -- threats that there would be bond defaults. It was good to hear today the woman representing the DCA, the Local Finance Board, tell you that there will not be any bond defaults, because DCA has the statutory authority to prevent that from happening.

SENATOR McNAMARA: Excuse me. I don't want to interrupt you, but I have to tell you something. If you are going to repeat the testimony of other witnesses, then, quite frankly, that is not really why we called you up.

We recognize -- and I am sure that everyone here at the table and everybody in the room knows -- that there is no risk of a bond default. We started off the meeting by stating that that was going to be one of the ingredients that absolutely, positively be addressed. Now, you said you had some suggestions--

MR. PARKER: Some comments.

SENATOR McNAMARA: Some comments. We would like to hear those.

MR. PARKER: That's fine.

Probably the most important thing is, Mr. Hogan said that the State has two years to transform from waste flow control to an open economy. I don't think that is quite accurate. In fact, that is one of our biggest contentions in this litigation. Judge Irenas' order says that the State has two years from the effective end of the litigation, including a Supreme Court review. Our position is that that could well take us to the year 2000.

The problem we have had with the State is that there is a tremendous urgency to get on with this thing and not to dillydally. I cannot overemphasize that. Since *Carbone* was decided two years ago, the State has basically stonewalled almost completely. The issue is now that with this appeal -- two points -- with this appeal, even at an expedited briefing, the Third Circuit will likely not decide the case on the merits until May of next year. So the State has a very, very short time.

One of the problems we have in appealing this case is something, Senator McNamara, that you alluded to, and that is the tariff violations. You are concerned about the drainage of garbage leaving the State. I think that is very, very important for the following reason: In our court papers, our position is that the U.S. Supreme Court, last year, in a very important case, a majority opinion, found that an unconstitutional law has to be applied -- it cannot stand. The decisional law, like in *Carbone*, has to apply to all those cases even governing predecisional events. What that means is that Judge Irenas' order allowing this State two years from the end to defashion this thing-- We think that is going to be thrown out by the Third Circuit.

SENATOR McNAMARA: So do I.

MR. PARKER: The point is that the State is going to have to work a hell of a lot harder than they think they have.

SENATOR McNAMARA: That is why we started this thing. The reason for this meeting is that I happen to concur with your logic. We most probably will be proved wrong when it gets to the Third Circuit, but--

MR. PARKER: The second point is Mr. Hogan's concern about importing states, primarily Pennsylvania and other states, that they would retaliate, not unconstitutionally, but there are constitutional ways that they can, such as statements of need so that garbage cannot come in.

I just express a concern there because that sounds an awful lot like the same problem that got the State in trouble in the first instance. Self-sufficiency is a buzzword for all sorts of abuses, and that is what really caused flow control. So my point is: To prevent garbage from leaving this

State, and having problems in the future, New Jersey really has to make the tip fee very, very competitive. There is tremendous pressure upon doing that.

With that, I end my remarks. If you have any questions, I would be very happy to answer them.

SENATOR McNAMARA: Senator MacInnes?

MR. PARKER: One other point, if I may, and that is scam the debt. During the hearing, Jim Poole, who, I guess, is the head of the State Finance Office, basically said that the debt service on this \$1.6 billion bonds is \$150 million a year -- \$150 million a year. Now, that sounds like a lot of money and, in fact, it is, but when you consider New Jersey's budget for Fiscal Year 1997, which I believe is close to \$16 billion--

SENATOR McNAMARA: Sixteen billion.

MR. PARKER: --\$16 billion, rather-- We are only talking about a little more or less than 1 percent to cover that debt service. I point that out because Senator MacInnes raised the issue of, shouldn't the State have to be a partner in solving this problem, even on a temporary basis. I don't think it would be that difficult to tap into this State given the small amount, relatively speaking, and some type of short-term tax where they could even loan moneys to the local authorities. In fact, Mr. Poole gave a lot of testimony on the fact. You stated your interest, and I would be very happy to make it available to you.

SENATOR McNAMARA: We would be pleased to receive it. Senator?.

SENATOR SINGER: Mr. Chairman, let's not discuss that point. Let me ask one question: Do the rules of the neighboring states

that we are shipping garbage to have the same environmental standards as ours?

MR. PARKER: Absolutely. Pennsylvania has probably the highest standards. They are way beyond Subtitle D compliance, just like New Jersey. All the garbage that is moving right now is basically moving to highly industrialized states -- Michigan, Indiana, Ohio, Pennsylvania, New Jersey. They are way beyond the benchmark of Subtitle D. So the long-term liability that Mr. Hogan talked about, with due respect, just doesn't exist, as far as we are concerned.

SENATOR SINGER: Except that the Tunney Landfill, which is opposite one of my communities, certainly creates major problems to us in New Jersey, though it is a Pennsylvania dump, with odors and everything else like that. I mean, there are certain problems.

We have to also understand, as a State, that as we allow these things to grow and become mountains of garbage overlooking our State, it affects other things, too. If we are going to do some regulations changes on the Federal level, too, there has to be some way that we, as a neighboring state that looks at a landfill, have some say as to what goes on in that landfill, and that is not happening now. How many landfills in Pennsylvania are creating havoc in New Jersey, and we have to bear the brunt of huge landfills adjacent--

I don't know if it is the same standard, because I will tell you right now, we do not have the same odor problem in Ocean County -- at the landfills in Ocean County that they have in Florence. Certainly, that is a serious problem, and we have to deal with it.

SENATOR McNAMARA: Mr. Loman, do you have any comment?

GEORGE LOMAN: I would just like to confirm your suspicions from the industry perspective on how much waste is going out of this State. I agree with you. I think it is considerably more than what DEP is suggesting. It has created a very dramatic unlevel playing field for the industry. People that try to comply with the laws that are in place can no longer compete with the companies that are breaking the law and taking waste out-of-state. It is just not possible to do that.

SENATOR McNAMARA: Absolutely. It is totally impossible. If you are going to be paying X number of dollars for a tipping fee that is two and a half times of shipping it out-of-state, you are not going to be able to keep your accounts. What I am afraid of myself is that the State is going to end up creating a monopoly by eliminating a lot of competition, because those people who are in business obeying the law in the smaller corridors are not going to survive. There is no question.

MR. LOMAN: This is why we suggested some legislation that would put back into place some type of regulation to protect against this.

SENATOR McNAMARA: Well, I do not want to get into that discussion, because I am not so sure that I believe that after all the years of opening it up and making it a free market that now we want to change it again and start the regulation and start putting it back under the auspices of the BPU.

MR. LOMAN: But if it is not enforced, how do we stay in business except to break the law?

SENATOR McNAMARA: The point is, we correct the problem with eliminating the waste flow -- okay? -- correct that problem. You do not correct the problem by bringing back another problem that you unsuccessfully worked with for some 25 years.

MR. LOMAN: But there is, potentially, a four-year period here where we are vulnerable as an industry.

SENATOR McNAMARA: Well, here's hoping that the legislative process can prod it a little sooner than a four-year period.

I fully recognize what the appeal does, and I fully recognize that it could easily take four years, or longer. Therefore, that is why--

MR. PARKER: Unless the Third Circuit decides to ratchet down the remedy.

SENATOR McNAMARA: Exactly, exactly. But, I mean, you know, Murphy's law-- I am hopeful, but, you know, I am not so sure that that is how the decision will come out.

SENATOR MacINNES: Mr. Chairman?

SENATOR McNAMARA: Yes?

SENATOR MacINNES: On the point of the people who are subverting the law taking business away from people who are obeying the law, is this with commercial clients primarily, or is this with municipal clients?

MR. PARKER: Both.

MR. LOMAN: Both.

SENATOR MacINNES: And you are confident that the lower price is based largely on their evading the flow control regulations?

MR. LOMAN: Yes, there is a substantial difference. If the private sector can legitimately--

SENATOR MacINNES: Oh, I understand, yes.

MR. LOMAN: --take waste out-of-state for \$40-some and the public sector, in its facilities, has to charge \$100, something is wrong with that system.

SENATOR MacINNES: But they can only do that by violating the law.

MR. LOMAN: That is correct.

SENATOR MacINNES: You don't stand by and lose business to people who take your business away solely because they are willing to break the law and you are not, do you? I mean, don't you report such losses?

MR. LOMAN: We have a long history of reporting such losses, and nothing--

SENATOR MacINNES: What happens when you do?

MR. LOMAN: Nothing.

SENATOR McNAMARA: You have a long history of it being handled in the same manner?

SENATOR MacINNES: The State, which mandates these regulations, when receiving a complaint of someone violating its regulations with the consequence that a legitimate person losses the business, they do not do anything?

MR. PARKER: The problem is that one of the dislocations-- Unfortunately, the whole flow control scheme, as the Senator knows -- the Chairman -- is that the DEP cannot enforce flow control effectively. They

cannot work 24 hours a day. Garbage is picked up at different hours. Garbage can go on a boat and go to cheaper facilities. That is the problem. And they take customers away from those garbagemen who are, in fact, acting ethically and obeying and taking the garbage to the higher priced facilities. In some cases, unfortunately, it sort of forces criminal behavior by otherwise good people who would not do it, because the downside is, it is a rock and a hard place. You lose your business or you comply with the law. That is just one of the multiple abuses of the whole system.

SENATOR McNAMARA: You lose your business or you don't comply with the law.

MR. PARKER: If you don't.

MR. LOMAN: This is exactly why I suggested that legislation. I do not support that. We want to be a deregulated industry. We asked for that three or four years ago.

SENATOR McNAMARA: George, in all deference, I do not want to discuss the legislation today, because it is going to be a losing battle for you. You are going to make up my mind before you get any further.

MR. LOMAN: Senator, I do not want that legislation. I want to be a free, open marketplace.

SENATOR McNAMARA: Oh, good. I will remember that.

MR. LOMAN: But the conditions do not allow that right now.

SENATOR McNAMARA: Yes.

Are there any questions? (no response)

MR. CHANGARIS: If I might, Senator, just prevail one last time and leave that olive branch on the table. Working with the men and women

involved in this industry for the last four years, we want to be at the table. We are stakeholders in the business. We want to participate in the solution. I have a hunch that if we had been at the table when some of their input had been more taken into consideration earlier on in the process, we might not be where we are today.

We really want to be in the process. We want to continue a credible position, contribute to the dialogue, offer some thoughts, and help you to fashion--

SENATOR McNAMARA: We welcome you to the process, and we will avail ourselves of your expertise.

MR. CHANGARIS: Thank you, Senator.

SENATOR McNAMARA: Thank you.

Bret Schundler?

MAYOR BRET SCHUNDLER: Senator, I just want to congratulate you, as so many have, for trying to move this along. I think there are times when we felt, talking to the DEP, that there wasn't any real sensitivity from the State about what a severe problem this is for us at the local level. As bad as the situation is for all mayors-- In Jersey City, I, with Mayor Rooney, was one of the cofounders of the Mayor's efforts to try to turn this over.

As bad as it is for all mayors in suburbia, the reality is in the cities the property taxes are even higher as a rule, and you have, as you know, as a rule, less wealthy people. So the pressures are even greater for us. I would argue that in an environment where we cannot look forward to dramatically increased State aid, it is absolutely urgent that we have the freedom to be able

to save money, even as we do, in fact, improve environmental soundness over disposal policies.

Right out of the gun, we in Jersey City think we can save approximately \$1 million. Now, that is trying to be conservative, because we do not want to overstate things and then have ourselves being embarrassed. But we believe that we can save \$1 million almost immediately. That represents the potential to make our budget meet and save 20 police officers' jobs, and that is very, very important in a place like Jersey City.

Because so much has been said already that I had prepared, I will go straight to the proposal issue. I agree much with what the State DEP has said in terms of the basic framework. I would love to see a statewide assumption of the cost of the debt outstanding. I appreciate that that may be politically difficult, so if we get a mix--

SENATOR McNAMARA: I don't think that DEP suggested a statewide assumption. (laughter)

MAYOR SCHUNDLER: I know.

SENATOR MacINNES: Singer did that. Singer wants that, too.

SENATOR McNAMARA: He is not here to defend himself, Gordon. It was you.

SENATOR MacINNES: Well, I heard him. A lot of witnesses-- You heard him, didn't you?

MAYOR SCHUNDLER: I would love John Rooney's proposal to be implemented, but I appreciate that that is going to be difficult, because there are going to be counties that say, "Listen, we didn't incur the debt. We should not have to pay for it." So the proposal the State came out with, where

at the level of the county you simply have, on a per-ton basis, a surcharge fixed which services the debt of the county, and then you allow each of us at the municipal level-- We pay that surcharge per ton, and then we look for the best deal we can get, whether it be another governmental entity, perhaps Essex County, or whether it be going out-of-state or to some private disposal facility here in-state.

I think that makes a lot of sense. If there is a hybrid that is possible where the State might, in some way, take some of that cost, again, that is better. From a perfectly self-interested perspective, I would love not to have to cover the costs that Hudson County has incurred. They have issued a \$100 -- I believe it is \$120 million worth of bonds, and we have about \$55 million spent for an incinerator that will never be built, all of that simply for the cost of engineering studies, consulting studies, and so forth.

To me, that is a tragedy, but it is water under the bridge now. If we have the opportunity to simply pay that surcharge, even if that is the best we get, I will still be able to save money, and that is a very, very positive thing.

There are some people who say that authorities-- When you take away the significant percentage in some counties of their disposal charges, that is, for the bond servicing, that leaves, axiomatically, a relatively low amount of debt which is actually -- or let's say a low amount of the charge, which is actually for operating expenses. So let's say in a county where half the costs are debt service, well then, they should be able to cut immediately what they are actually charging for disposal services in half.

Now, if they cut it in half and they are still more expensive than alternatives, where, for instance, you could ship out-of-state, and that provider

is covering their capital expenses and their operating expenses, still for less than it costs to just cover operating expenses at the Hudson County facility, well, thank God for a free market opportunity so you can go to an efficient provider.

But I agree with you, Senator. I think the local authority will become significantly more efficient when they know they have to be. If not, if they actually go out of business, or if they are forced to sell, even better, because then when they sell that asset, let's say, to someone who can manage it more efficiently because they are driven by market forces, they will take the proceeds of that sale and pay down a lot of the bonds. That means that they can drop the surcharge. It doesn't have to be amortized over 20 years. Maybe it could be paid down over -- most of it in 3 years, in the time it takes to achieve a sale on the remnants over a longer period of time.

In the meanwhile, we have now an efficient provider who is here operating that facility. That itself means that-- That is a safeguard against the prospect, let's say, of states forbidding New Jersey to ship to them in the future. Under any circumstance, however, we know that in a market system, if states close their borders, that there will be more efficient solutions than DEP has managed to provide us with heretofore.

I do not have any fears akin to DEP's. I do believe, however, that the opportunity for environmental gains is dramatic, as well as cost savings gains. I have had a chance to testify on this issue in Congress and to meet with people from across the entire United States who are in my position as a mayor or the person responsible for getting rid of the garbage at the local level. The amount of creativity in the industry is tremendous. Once you say that there

is not going to be a monopoly in this waste stream, well then it is there for the mining, and there are literally-- In some of the jurisdictions I have had a chance to meet with in California, they are mining increasingly higher percentages of that waste stream and reusing that material.

That should be our goal ultimately, to create a system that not only saves us money, but creates incentives for people to be able to recycle more and more of the waste stream, because it is open to them to mine. It has not been closed by virtue of a dictate that says it must go to this facility.

I can only say that it seems to me all across the board that there is nothing but gain by moving expeditiously in this matter.

I guess the thing I would like to close with is simply the thought that we believe we are going to win on the court effort to try to move the date more forward. I know there has been a lot of-- There may not be the same receptivity on the Assembly side to move quickly as on the Senate side, but I hope you will be able to prevail on your Assembly colleagues because those of us who have been, you know, rooting on this legal challenge, are successful. New Jersey should try to be prepared, and not again find itself sleeping at the wheel.

Thank you very much.

SENATOR McNAMARA: Are there any questions? (no response)

Mercer County Executive, Bob Prunetti.

C O U N T Y E X E C U T I V E R O B E R T D . P R U N E T T I:
Senator, thank you very much. Mr. Chairman and all the Senators, thank you for giving us an opportunity to speak before you today. I will try to be brief and try to get to the point.

We all know where we came from in this system. I mean, the State of New Jersey mandated counties to take on this task. They also told us how to do it, and we incurred all this debt. Whether it is \$1.6 billion or \$2.1 billion, it is out there. The fact of the matter is, it has to be paid, because I think everybody in this room agrees, and everybody I have talked to agrees in this State, that we are not going to let bonds default. So then the question becomes: How do we pay for that?

Let me just mention a couple of things to you, and then I will be happy to answer any questions you might have.

I wish Assemblyman Rooney were in the room right now, because I think he would have a heart attack to hear what I am about to say. I have debated the issue of flow control over the last two years. We have been in Congress and we have testified before Congress. It seems to me, however, that flow control is not going to happen, at least not from Congress. I don't think it is going to happen in the State of New Jersey either. The only thing that is going to happen is that it will be delayed.

So I think what we need to do is come up with systems and plans to deal with our waste problem and to deal with that stranded investment that is out there. I think, Senator, you were absolutely correct when you pretty much opened up this meeting by saying, "We need to deal with the baggage." The baggage is all the costs that counties have been left with because of State regulation for all those years, from about 1975 up until the *Carbone* decision. We need to deal with the baggage, because after the baggage I firmly believe-- Mercer County has come up with a plan, a voluntary plan, and we are going to build an incinerator. The cost of that incinerator is going to be competitive

with any of the prices I heard here today. It will be competitive with what-- The *Bond Buyer* just issued an article talking about what they believe the market rate is -- what S&P believes the market rate is. It will be competitive with that. It will be around \$52 a ton.

Now, we can go into all sorts of arguments about whether that is competitive, go through all sorts of arguments about what goes into the cost of disposing of waste, but the one thing I don't think anyone argues about is, is that New Jersey mandated us to put in our tipping fee an awful lot of cost that we just might not need, including recycling.

So if we come up with a system-- Mercer County firmly believes that if we come up with a system to pay for those stranded investments-- When I talk about building an incinerator, I am not talking about all that debt from years ago. We are going to include that debt that it costs to build that incinerator in our tipping fee. But everything prior to *Carbone* needs to be paid for somehow. Then we can be competitive. Counties can come up with plans using innovation, using a voluntary system, to make sure that we are dealing with our own problem. In Mercer County, we believe that we are better off with our own solution than leaving ourselves at the mercy of out-of-state landfills.

If anyone thinks that is going to be an easy situation-- It is easy right now because those operators are making it easy for us. They see an opportunity. But later on, when there are no other alternatives, you can rest assured that it is not going to be that easy for municipalities to secure contracts over the long term that aren't going to be costing more and more and more, because as every average person on the street knows, landfills fill up, and you

have to go further and further and further away to dispose of your waste. That distance is very costly.

In addition to the fact that Congress, right now-- Our good colleagues, the Senators and Congresspeople from Pennsylvania, Ohio, Michigan, Virginia, are all looking at states like New Jersey exporting their waste. They are also looking at what is happening in New York, with Fresh Kills closing, adding 11,000 tons of garbage into the waste stream a day.

So we can't simply dismiss it by saying, "Oh, there are solutions. The free market will take care of it." I think free market will, but New Jersey has to understand: We have to compete in that free market. We cannot rely on other states to do it for us.

I think that if we take a look at what we have, if we understand that we are going to have market-based systems, if we understand that flow control, for all intents and purposes, is out the window, that we have to develop a system that is market based and voluntary, which is what we have done in Mercer County-- We have 10 out of our 13 municipalities that have signed on with us. In fact, we have 200,000 tons of garbage a year that have signed on with us from private haulers. So that is an indication, I think, that our incinerator is going to be very, very competitive, but we need to deal with the stranded investment. We need to deal with that debt pre-*Carbone*. That has to be paid for whether or not you are taking it to Pennsylvania to some landfill, whether you have an incinerator, or whether you have your own landfill in New Jersey. You have to deal with it.

Now, let me come to that point: Mercer County has worked with DEP to basically come up with the system that they described earlier.

Assemblyman Rooney has a plan that, for Mercer County's money, we would love to see implemented, because we are one of those counties that has a lot of debt out there.

I think that if we work between those two systems and try to merge something out of those two ideas, out of those two proposals, we can come up with something that will work for the State of New Jersey, that will work for those local property taxpayers, because I am as concerned as everyone who came up here earlier today about that, I think we can do something that works, and have a competitive system, county by county, if you will, or not. I mean, one of the things that Mercer County considered was, "We are out of the business. No flow control? We're out of the business. We will take care of the debt somehow, and we're out of the business."

We do not believe it is the most efficient or environmentally sound option for our taxpayers, so we developed a voluntary system. If we can put together the best aspects of the two plans, I think we will have something here that will work. But it is going to take a commitment on the part of the State to work with the counties in order to do that. Quite frankly, you got us into this mess. All we are asking for is a partnership to get us out.

Thank you.

Are there any questions?

SENATOR McNAMARA: Are there any questions? (no response)

When you are referring to the \$52 per ton and then you keep on talking about pre-*Carbone*, am I to assume that the \$52 per ton and building the incinerator do not include all your soft costs?

COUNTY EXECUTIVE PRUNETTI: The soft costs, if you are referring to developmental costs--

SENATOR McNAMARA: Siting, planning, development costs.

COUNTY EXECUTIVE PRUNETTI: We are including anything pre-*Carbone* as being part of a stranded investment.

SENATOR McNAMARA: Okay, but I want to get-- I am assuming, then, that all of those costs you are considering pre-*Carbone*.

COUNTY EXECUTIVE PRUNETTI: Yes.

SENATOR McNAMARA: So the \$52 per-ton figure is a net without those costs. If those costs were factored in, you would be at what figure?

COUNTY EXECUTIVE PRUNETTI: I am not exactly sure what that is, but it is not significantly higher. That is a relatively small -- the smaller portion of our stranded investment. Most of our stranded investment has to do with the fact that we acquired a landfill. We built transfer stations, recycling facilities, and that portion.

SENATOR McNAMARA: Okay. Thank you.

Ray Barbieri, from Penpac.

RAY BARBIERE: Good afternoon, gentlemen. I appreciate the opportunity, from the private sector, to speak to the Committee. My name is Ray Barbieri. I am President and CEO of Penpac. Penpac is the owner/operators of all the transfer stations in Passaic County. We have a design capacity of about 600,000 tons a year, and we are one of the largest in the State.

I would like to say right at the outset that many of the things that have been said before are not only endorsed, but entirely supported by the private sector. From a private sector's viewpoint, we endorse and believe the following: That flexibility ought to be given to municipal governments to find the lowest disposal cost.

SENATOR McNAMARA: Excuse me, Ray. The sidebar chatter-- If you could take it outside, I would appreciate it.

Please go on.

MR. BARBIERE: Thank you, Senator.

I will repeat that. We believe in the following concepts:

*That flexibility be given to municipal governments to find the lowest disposal cost, with a preference for in-state disposal.

*We believe there is a repayment obligation for all the outstanding solid waste debts, and we believe that to be true as good, sound businessmen. When you make commitments, you have to honor them.

*We believe in restructuring a system to make it in accordance with the current rulings by the court; that is, waste flow is simply unconstitutional.

*We believe in the promotion of statewide self-sufficiency and maximizing recycling to accomplish that.

Now, this may sound very similar to what Michael Hogan from DEP said before. The difference, though, is one of perspective. The perspective we offer is that we want to be the ones to participate in providing that flexibility to the municipalities. We want to be the ones to help assist the municipalities in meeting the obligations they have by providing a more

cost-effective, or, simply put, lower price opportunity for the mayors of the municipalities.

In addition, what we want to do is stop being in competition with ourselves. As an owner/operator--

SENATOR McNAMARA: Excuse me. You know, I want to tell you-- Would you please do me a favor? Take a walk. Maybe my hearing is too sensitive, but I asked you nicely once to can it. If you cannot control the fact that you have to talk, do it outside. It is very simple.

I'm sorry, Mr. Barbieri. Please go on.

MR. BARBIERE: Once again, Senator, I thank you for the opportunity to try to make my case.

We also believe that we do not want to be in competition with ourselves. As the owner/operator of transfer stations in Passaic County, we spent over two years and many hearings to propose a material recovery facility capability, and we were denied that opportunity because the amount of garbage available to recycle would be in direct competition with the amount of trash to carry the tipping fees for debt. This is one of the serious conflict issues I was talking about with regard to the State's policy.

Another conflict with State policy is the concept for self-sufficiency in-state. That is simply not true. If you look at the Essex County incinerator, you have a facility that under waste flow as it exists today, it has a shortfall of a significant amount of tonnage and, at the same time, importing New York trash to that facility at a significantly lower rate. Coincident with that are two adjacent counties shipping hundreds of thousands of tons out to out-of-state landfills.

Gentlemen, the private sector would like access to the 12 commercial facilities in this State on a fair basis. We are not asking to get into siting issues. We recognize that the State has been trying to site a hazardous waste incinerator location for 15 years. It is a difficult issue because, frankly, not many people want landfills or incinerators.

What we do ask is that when a facility is available, whether it is Edgeboro Landfill, the Essex incinerator, or any of the other commercially available and sound facilities, that these be made available not on a preferential basis for those residents, but for the people who are trying to adhere to State policy for self-sufficiency. If you do not do that-- If you feel that, for example, in Burlington County -- where the Commissioner is from -- that we have done a good job and we want to keep our landfill only for Burlington County, you cannot, in the same good conscience, also say, "We want self-sufficiency and we are going to operate as a State."

If it requires each county to provide its own, then we are back to where we were back in the 1980s. We in the private sector would like the opportunity to provide collection recycling and disposal services and have available to us, under a tariff made available to anyone who wants to show up, including, hopefully, Mr. Prunetti's incinerator, the opportunity to deliver garbage to that place so that we can try to meet self-sufficiency goals.

We say that for a very simple reason: As businessmen, it is very difficult to plan long-term objectives and lock into long-term contracts when the disposal options are uncertain. This is where we view ourselves differently from DEP. Help us to provide the disposal. There are not many of we people in the private sector anymore who have the ability to do this job. Back in

1982, there were over 3500 private businesses in the collection business alone. There are less than 250. We are a dying breed. All we are trying to do is follow a very, very simple dictum; that is, give us the opportunity to compete. We know one thing. New Jersey has some advantages over Pennsylvania. It costs \$15 a ton to transport material from most locations in New Jersey to Pennsylvania landfills. That is one economic advantage New Jersey has.

Another economic advantage New Jersey has is-- It does have the infrastructure and support of both the constituency and the people in this room who support the debt that is outstanding. New Jersey has a great bond rating, fellows. I am not a financial wizard, but I do know we have a great bond rating.

When Moody comes along and downgrades five of the utilities, perhaps some support, either by refunding or credit support, can be provided to help to do that. I am not saying that everyone has a simple answer on the financial end. I don't think taxes are desirable, certainly before a Committee like this, nor would I propose one. But I do believe, as a private-sector individual, that anyone who generates garbage ought to be the one principally responsible for paying for its disposal. I also think that if you are really serious about recycling in this State, then you have to make it so that facilities like mine, and other facilities, are not in direct competition with the garbage people, because in a kind of paradoxical way, Penpac is the sole operator and transporter to the stations in Passaic County. We are the ones who get all the garbage to ship out under waste flow, and yet we are being denied the ability to reduce that quantity by recycling and reducing the rate, because we are not the ones responsible for the debt.

We want to participate, Senator, and we want to participate in all of the issues. But I think, as opposed to Mr. Hogan's comment that the State has a Plan B which is to address the worst scenario, we in the private sector believe in absolute terms that the State ought to be looking at this as an excellent opportunity for the best of all scenarios, which is the lowest cost conceivable and consistent with the economic and environmental goals of the people of this State.

Thank you.

SENATOR McNAMARA: You know, you mentioned something interesting. The Essex County facility--

MR. BARBIERE: Yes, sir?

SENATOR McNAMARA: --you say is operating at a-- They do not have sufficient refuse, they do not have sufficient trash.

MR. BARBIERE: Within their contract with the Essex County Utility Authority.

SENATOR McNAMARA: So we are importing garbage from New York--

MR. BARBIERE: Yes, sir.

SENATOR McNAMARA: --in order to keep the--

UNIDENTIFIED SPEAKER FROM AUDIENCE: We have testimony on that.

SENATOR McNAMARA: You do?

MR. BARBIERE: What I say here is no surprise, so if it sounds like I am trying to be shocking--

SENATOR McNAMARA: No, no. What I am trying to do is figure out, what is the spread? I want to know what the dollar difference is.

MR. BARBIERE: I can only tell you what I know. Not being an attorney and trying to protect myself from winding up testifying later on--

SENATOR McNAMARA: Well, no. Let me ask the Commissioner from--

MR. BARBIERE: Based upon hearsay, which is inadmissible, based upon that, the residents in Essex County pay somewhere in the high \$70s, and New York trash was admitted at \$28 a ton.

SENATOR McNAMARA: And Bergen was mandated to deliver to Essex for awhile at \$60 or \$70 a ton, as was testified about earlier by Assemblyman Rooney.

Now, I have to tell you something: If that doesn't tell you that there is something wrong with our present system and flow control-- That is outrageous, absolutely outrageous.

Thank you.

Are there any questions? (no response)

MR. BARBIERE: Thank you, Senator.

SENATOR McNAMARA: Thank you.

Assemblywoman Martha Bark? And I believe from Burlington County there is also a Mary Pat Robbie.

A S S E M B L Y W O M A N M A R T H A W. B A R K: Mr. Chairman, members of the Committee: I want to commend you, Mr. Chairman, for holding what will probably be the first of many hearings regarding the future of solid waste disposal as it impacts our State, counties,

and towns. Certainly, I have heard Burlington County mentioned here frequently this afternoon, so I am delighted to be able to wear two hats.

I am in the Assembly, and I am also on Assemblyman Gibson's Solid Waste Committee, so this afternoon has been very informative and I appreciate the opportunity. By the same token, I also wear another hat. I am a Freeholder in Burlington County, and it is in that capacity that I am here this afternoon.

I am about to tell you where the County of Burlington sits with regard to solid waste policy and, more pointedly, how we think future laws and regulations will be shaped. It is customary for those of us from Burlington County to start off by pointing out that our county currently enjoys the lowest tipping fee in the State, with a rate of \$49.45 a ton. We want to believe that we can survive what some perceive as a crisis, or, to put it another way, we are hoping that we can function in the new era of free enterprise that the court has mandated. We know we have no guarantees, and we are trying to assess our vulnerabilities, which I will mention shortly.

But first, so that the record is clear, Burlington County has, over the years, energetically carried out the existing mandate of the Legislature which is embodied in the Solid Waste Management Act. More specifically, we have developed a resource recovery complex which was and is designed to meet the long-term solid waste and resource recovery needs of our 40 municipalities well into the next century.

Our master plan is the size of a New York City phone book, and one more key element of that plan, a \$37 million cocomposting facility, is well on its way to groundbreaking any day now. Once completed, the

cocomposting plant will make us self-sufficient not only in solid waste, but also as regards to sludge management.

The \$49.45 a ton that our municipalities pay to the county covers a lot of costs, including our entire curbside recycling program. Pay a visit to the resource recovery complex -- and, yes, we do give tours -- and you will find on-site a transfer station, recycling facilities for wood waste, tires, shingles, scrap metal, and the only household hazardous waste center in the State of New Jersey. I could elaborate, but I think you understand that we are not just a landfill. We are far more than that, and we continue to upgrade and provide resource recovery facilities to our 40 municipalities.

This, realistically, is where I guess I must pause and relinquish my bragging rights, but the fact of the matter is that Burlington County has been able to provide an integrated system for the disposal and recycling of solid waste and sludge at the lowest cost statewide. We know we face a problem like every other county. We rely on the waste flow, and the \$49.45 per ton we get for waste flow pays the bills. Yet, here we sit in close proximity to competing landfills in Pennsylvania which are poised to cross the border to look for our business.

Two major landfills are located directly across the Delaware River from communities in Burlington County. For the moment, these residents are impacted more by odors than by anything else, but then we do not regulate what goes on across the river. I believe Senator Singer mentioned that earlier. I hope that maybe some consideration could be given to that particular problem.

Burlington County does not plan to sit idly by during the two-year period the court has given us to convert to free enterprise. We will aggressively seek contracts from our 40 municipalities, and we will do all within our means to remain competitive. However, municipal agreements only get us halfway home. I would encourage the Committee to investigate and to put into place mechanisms which will help us to secure delivery of commercial waste streams. Moreover, the State and Federal legislators and administrative agencies have done a stellar job over the years of imposing laws, regulations, and rules which could fill a small landfill. It is now time to recycle some of this paperwork. If Burlington County, if all of our counties are to survive in a competitive interstate market, we need to identify and eliminate those regulations which, at this stage of the game, serve as an impediment to efficiency and cost effectiveness.

It is also time to revisit our State system of regulating rates charged by solid waste facilities. If county government must function on a level playing field with private industry, then our hands must be unfettered. Again, our tipping fee is \$49.45 a ton. Roughly \$6.50 of that ton is for State taxes and local host benefits. State taxes on our tipping fees create a competitive disadvantage. Don't impose any more fees. In fact, let's try to work together to reduce what we have.

Remember, our competition is not limited to the borders of our State. We must compete with facilities out-of-state which are not subject to the same rules, the same regulations, or the same taxes.

Finally, those of us in Burlington County believe that each and every county should be responsible for the payment of its debt associated with

the development of solid waste management plans. We are not fortunate enough that if we go forward on this our debt is not significant enough that if we can find someplace else cheaper to deal with this we are not going to be able-- I think Assemblyman Rooney said \$13 a ton. That would be a significant increase to my taxpayers in Burlington County. I would hope that the Committee would consider that the imposition of the statewide tax could be a burden to some of those counties which, in fact, have always remembered that we must be inexpensive, and yet environmentally sound.

As we have worked to reduce our costs and to give our taxpayers the best deal for the dollar, we would, frankly, rise in opposition if faced with the prospect of paying everybody else's bills, too. As we all know, each county has established a different structure for managing and financing solid waste facilities. It is critical that each county be given the utmost flexibility in addressing the waste flow issue and the latitude to do what it must to recover stranded investment.

I close my remarks by pointing out that more often than not we view this issue with the idea that New Jersey's waste is about to be exported to other states. However, we cannot ignore the possibility that just the opposite may ultimately occur.

As we sit here today, we are confronted with the imminent closure of the Fresh Kills Landfill. Where will New York look to dispose of this waste? That, I think we will agree, is yet another particular problem, and a large one at that. We may want to address that issue.

Again, I thank the Committee for embracing this issue. I would point out that I am joined today by Mary Pat Robbie, Management Specialist

for Burlington County, who oversees solid waste contracts and activities. We would certainly be pleased to answer any questions that the Committee might have.

Thank you.

SENATOR McNAMARA: I have to say that I am not surprised that you are not overly anxious to endorse Assemblyman Rooney's suggestion of a per-ton fee statewide. I kind of assumed that you would take that position.

Are there any questions? (no response)

Thank you very much, Assemblywoman.

ASSEMBLYWOMAN BARK: Thank you very much.

SENATOR McNAMARA: This is embarrassing, especially since I am from Bergen County. Someone signed up from Bergen County to speak. Does anyone know who that is?

RICHARD D. WIERER: Rich Wierer. I did not sign up, because I came in a little late. Rich Wierer, Director of Solid Waste for the Bergen County Utilities Authority.

Thank you for the opportunity to briefly discuss Bergen's system and the impact that the Irenas decision has on the system currently, and will have over the next two years. County Executive Pat Schuber did send to the Senator, the Chairman, a packet of information.

SENATOR McNAMARA: I think that was circulated-- Do you mean the letter that was sent last week?

MR. WIERER: Yes, the letter.

SENATOR McNAMARA: It went to everyone on the Committee, I believe.

MR. WIERER: Okay. That stated, basically, the county's position regarding the current situation regarding flow control.

What I would like to do today is just briefly go over what our system is and what we believe some alternatives are, and to encourage the Legislature to work, individually or collectively, with each individual county which will be the ultimate entity that will be responsible to pay this debt we have been talking about for the past two hours. I am not here to debate flow control. I think that, we all understand, is pretty much a moot issue currently. What I am here to do is to just briefly go over some of the programs that we have implemented through State mandates and that we currently have operating, and to give you some ideas on where we are coming from on how to fund those programs.

Currently, as you mentioned before, about two hours ago, when you mentioned Bergen County, that we have lost a substantial amount of waste over the past two years -- and that is correct--

SENATOR McNAMARA: In reading the letter that was sent down, I noted that when the first decision was made it was referenced that 98,000 tons-- There was a shortfall of 98,000 tons, other than what was budgeted.

MR. WIERER: That is correct.

SENATOR McNAMARA: In the second year, it refers to 90,000. Now, is that, then, what was budgeted? Is that 90,000 plus 98,000?

MR. WIERER: That is correct. That is a combined total.

SENATOR McNAMARA: So it's 188,000 tons less that the transfer station is handling--

MR. WIERER: That is correct.

SENATOR McNAMARA: --as opposed to what it was prior to that decision?

MR. WIERER: Yes. In 19--

SENATOR McNAMARA: I'll tell you, then, that makes me absolutely convinced that the number -- saying that there are less than three million tons being exported -- becomes that much harder to believe.

MR. WIERER: In 1994, we generated -- and we believe this is a real number -- 540,000 tons of solid waste.

SENATOR McNAMARA: In 1994, it was 540,000 tons.

MR. WIERER: In 1996, we anticipate generating, or disposing, not generating-- When I say generating-- We generate more than that. We anticipate disposing--

SENATOR McNAMARA: But what do you dispose after you go through it?

MR. WIERER: --360,000 tons.

SENATOR MacINNES: A great recycling program. (laughter)

SENATOR McNAMARA: Yes. The 540,000 was after recycling also.

MR. WIERER: Some of it is due to recycling and source reduction, but the majority, as we all know, is not.

The Bergen system, the new system which was implemented in 1993-1994, includes source reduction programs, State-mandated recycling

programs, and the closure of a landfill, in which all 70 municipalities, at one time or another, landfilled in -- the Kingsland Park Sanitary Landfill, which has approximately \$60 million worth of debt on it for the closure of that landfill, and the debt on top of the transfer station, which was built in 1989. Our combined debt is \$119 million in Bergen County.

Now, we can debate flow control and those types of issues, but ultimately there is \$119 million worth of debt that needs to be paid off within Bergen County, and we know that the State debt is much larger.

We also, in Bergen County, have an agreement with the Union County Utilities Authority for the delivery of 192,000 tons of solid waste to that facility.

SENATOR McNAMARA: By the way, out of curiosity -- and I read that, too-- In looking at the comparisons, I have to give Morris County credit, because they had a Memorandum of Agreement that if the flow control was thrown out, their contract mandating them to ship it to an incinerator was no longer valid. I did not notice that Bergen's was structured in the same way.

MR. WIERER: We are currently reviewing the contract for those areas. That contract--

SENATOR McNAMARA: Is there a Memorandum of Agreement specifying that?

MR. WIERER: No. It is an actual contract. It is not a Memorandum of Agreement.

SENATOR McNAMARA: No, I understand that. They have an actual contract, too. But in addition to the contract, they have an aside memorandum that addresses the flow control issue. Well, I want to know,

when Bergen entered into their agreement, were they also, let's say, smart enough to attach a Memorandum of Agreement that they would not be required to continue shipping to Union?

MR. WIERER: There is no such Memorandum of Agreement.

SENATOR McNAMARA: Shame on the negotiators.

MR. WIERER: The contract was entered into, or negotiated in 199--

SENATOR McNAMARA: In 1994, before you got there, right?
(laughter)

MR. WIERER: Well, no.

SENATOR McNAMARA: Everything has happened before everybody else was there.

MR. WIERER: Before the *Carbone* decision, was the point I was trying to make.

SENATOR McNAMARA: Well, yes, but the decision wasn't made. The decision wasn't made, but the appeal was there.

MR. WIERER: There may be provisions within the contract that render the contract impossible to perform. As I mentioned before, we are looking at those issues right now.

SENATOR McNAMARA: I would definitely want that information sent to me, because I am very concerned about that, being a taxpayer in Bergen County.

MR. WIERER: As are we. We are looking at that. We are looking at those provisions that may render that contract moot and unable for

us to perform. But there is no Memorandum of Agreement, although there may be certain other provisions in there.

SENATOR BAER: And a copy to me, Mr. Chairman.

SENATOR McNAMARA: It will be copied to everyone on the Committee, Senator Baer.

Byron, can you just-- I have to go out for a minute. Would you please continue?

SENATOR BAER: Yes.

Mr. Wierer, please continue.

MR. WIERER: The various disposal districts around the State, including Bergen County, have implemented and financed solid waste systems pursuant to requirements and mandates and policies established by the State of New Jersey. In doing so, we relied upon the receipt of revenues generated from the disposal of our municipal waste systems. Each district must now develop an alternate system which will continue to finance infrastructure put into place to meet the State's mandates and goals.

Each district will struggle, as Bergen County is struggling, to develop a financially stable system which will create as little an impact on our municipalities as possible. As I mentioned before, there is a debt involved in that system. We have developed a system -- what we call a user charge system -- which we believe is implementable, which bifurcates our rate and takes out of our rate those nondisposal-related items such as State-mandated recycling programs, household hazardous waste programs, the debt incurred in closing the landfill.

We believe that by bifurcating the rate we can become competitive on the solid waste end, and become more equitable in comparing our rate to the rate of out-of-state disposal and what private vendors are offering.

However, the State of New Jersey should also accept certain responsibilities for those costs, and the programs, the facilities, and the agreements mandated by the State should now be the financial burden of the State. Currently, pending legislation which is out there and which I believe we are talking about today, which you are going to look at, and over the next few months will develop, hopefully in conjunction with the counties and with the State, legislation that will -- as mentioned by several other speakers before -- solve all the counties' problems, because every county is different in New Jersey. However, whether the proposed user charge, which I briefly mentioned, or a solid waste surcharge is implemented, the financial responsibility for the debt remains on the districts.

The best solution lies in a true State mandate/State pay approach, wherein the State assumes the responsibility for the outstanding solid waste system indebtedness. In this way, no district is penalized for following State policies, and the State has put forth a stable and responsible alternative for the protection of the outstanding Public Solid Waste Act. As I mentioned before, the packet that was handed out, or was sent to the Committee, details specifically alternate systems -- which I will not go into here, because I know we are short on time.

I basically wanted to give you an overview of what our system is, the obstacles we confront, and that we hope the legislation and the State will

assist us in. We hope the State will not prevent us from implementing certain systems that we believe can work within our individual county.

I thank you for the opportunity to speak.

SENATOR BAER: Thank you.

Gordon, do you have a question?

SENATOR MacINNES: No.

SENATOR BAER: Chris Mushell and Chuck Emrich, from Moody's Investors Service.

CHRISTOPHER MUSHELL: Mr. Chairman, members of the Committee: Thank you for inviting Moody's Investors Service to speak at today's meeting. The issue of solid waste management is certainly of paramount importance for the State of New Jersey and a very complex topic. We appreciate the opportunity to discuss the topic from the perspective of a bond-rating agency and to assist the Committee in its efforts to understand the infrastructure of solid waste management in this State.

Before I begin, let me quickly describe the role of Moody's Investors Service within the investment community. It is important to make clear that Moody's does not advise investors about purchasing bonds, nor does Moody's dictate public policy to issuers of municipal bonds to ensure debt repayment. As a bond-rating agency, Moody's provides an independent assessment of an issuer's credit worthiness; that is, we evaluate the ability and willingness to repay debt in a timely and complete manner.

With regard to credit quality of municipal debt issue for the purpose of funding solid waste infrastructure, New Jersey is not alone in dealing with policy of flow control. In early 1995, Moody's undertook an

extensive review of all solid waste revenue bonds that we rate nationwide. Moody's undertook this review in response to the 1994 U.S. Supreme Court decision on flow control in the *Carbone* case in the absence of Federal legislation protecting or grandfathering legal flow control. As a result of this review, Moody's downgraded 14 of 76 ratings, reflecting declining waste streams, financial deterioration, and litigation that increased the vulnerability of dark competitive solid waste systems. The review included five systems located in New Jersey, which were downgraded to BA, which is considered below investment grade.

Following the recent July 15 ruling by the United States District Court in New Jersey in the *Atlantic Coast* decision, which overturned the New Jersey statutory flow control system, a number of solid waste systems in the State faced the dilemma of managing their operations absent legal flow control. While Moody's has maintained speculative grade ratings on revenue bonds issued by a number of solid waste facilities prior to the recent decision, systems with noncompetitive tip fees are most vulnerable to waste diversion to neighboring facilities with lower rates.

Unless alternative mechanisms are established to replace the loss of legal flow control, systems may be in jeopardy of losing an already narrow revenue stream to repay debt and, consequently, may result in further credit deterioration. Moody's is concerned over how these systems will remain competitive, economically feasible, and politically viable, and generate sufficient revenue to satisfy debt requirements. Absent an appeal of the District Court ruling with regard to *Atlantic Coast*, a two-year stay of injunctive relief for the plaintiff should provide sufficient time to construct and

implement an alternative to the State's now illegal flow control system. Assuming that political will is present, Moody's will analyze the ultimate remedies implemented by the issuer with respect to the viability and timeliness in protecting revenues pledged to bondholders.

Our discussions with county officials reveal remedies based on local, financial, and political challenges, which often vary within the State. Many of the county authorities that manage solid waste systems have begun to reduce tip fees, although only incrementally. Officials have reported that additional steps are under consideration to reduce tip fees more substantially. Nevertheless, debt service is often one of the largest components to recovery from tip fees. Some counties have made proposals to shed part of the fixed service costs from the overall expenses of their solid waste utilities by identifying stranded costs associated with their debt issuances. To recover stranded costs, counties may offer special assessment or systems benefit charges.

The issue of who pays the stranded cost charge will also depend on the financial and political considerations of the individual counties. Will the waste following companies pay, or will waste generators such as local governments or individual residents or commercial businesses pay directly? What will be the political ramifications of implementing such changes? Will this practice be legally enforced?

Some counties may attempt to use an indirect subsidy that may be funded through the current fund of operations, rather than implement a new charge that may attract more attention and political heat. With sites debt service, tip fees fund, and other system-related expenses, such as recycling

programs, State taxes need to be factored into the analysis when comparing New Jersey fees with those of other competing facilities.

In addition to exploring mechanisms to carve debt service costs out of tip fees, counties are also considering methods of funding other programs such as recycling, which can account for as much as \$10 to \$15 a ton.

General obligation bondholders are not completely insulated from the current state of flux in New Jersey that has county-appointed authorities in charge of solid waste management transitioning to a competitive environment. Many county authorities issue significant amounts of debt to finance solid waste facilities. The outstanding debt is various forms of bondholder security. Much of the debt is secured by net system revenues, with no recourse to a county general obligation pledge. However, some counties guarantee portions of authority-issued debt or enter into deficiency makeup agreements to provide additional security to revenue bondholders.

Counties that guarantee solid waste debt may be compelled to help transition their authorities to be more competitive without flow control. Some form of subsidization of solid waste operations by county government may be better in the alternative than disregarding the issue and risking eventual step-up by the county to repay all of the then outstanding guaranteed debt.

Ten of the twenty-one counties are rated AA or better, and the favorable rating distribution indicates that counties in New Jersey have strong capabilities to deal with this challenge. Our county government helps transition its authority to operate competitively in the new solid waste environment, without impairing the county's financial flexibility and debt

position. It is important to our ongoing assessment of credit quality of general obligation in the counties.

The issue of solid waste and flow control is a very complex topic. The remedies of how authorities will remain competitive and economically feasible certainly vary and are unique. As such, the ratings are under review.

We have some handouts that discuss some of the issues regarding solid waste in the State of New Jersey.

I thank you very much. My colleagues will be happy to answer any questions.

SENATOR McNAMARA: Senator MacInnes?

SENATOR MacINNES: In looking at your handouts, it appears that not all the counties that have noncompetitive tip fees are on your endangered list here. What explains the difference between Essex and Union Counties? It seems to me that they have pretty high and presumably noncompetitive tip fees.

MR. MUSHELL: I believe -- really quickly -- that as a business we rate what we are asked to rate, so within the context--

SENATOR MacINNES: So this may not be a conclusive rating for all New Jersey counties?

MR. MUSHELL: That is correct. It is ratings that have applied to us -- or issuers who have applied for a rating.

SENATOR MacINNES: I see, okay. So there may be other than the five that Moody's has downgraded in terms of other rating services or the same economic facts, endangered as well in terms of--

MR. MUSHELL: For example, we rate Union County's guaranteed portion debt, but we do not rate the Union County revenue bonds.

SENATOR MacINNES: Oh, I see. Okay.

MR. MUSHELL: That is not one of the credits we looked at.

SENATOR MacINNES: Okay.

SENATOR McNAMARA: How did you rate their guaranteed portion? That must have been rated pretty high.

MR. MUSHELL: Well, it would be rated off of the county, and the county is rated AAA.

SENATOR McNAMARA: Right.

MR. MUSHELL: So it is very high.

SENATOR McNAMARA: Right. Okay.

MR. MUSHELL: That is the issue in terms of-- Generally speaking, counties in New Jersey have a very favorable rating distribution. If the counties have a willingness to deal with the situation, they have strong financial capabilities, good management, and a good economic basis to deal with this problem.

SENATOR McNAMARA: As DCA testified earlier, which they said they would never want to be put in the position of-- But obviously, the revenue bonds, those authorities would be directed back by the State through DCA -- would be directed back to the county. That was the testimony that was given.

MR. MUSHELL: That is true. That begs the question: Why are these bonds rated?

SENATOR McNAMARA: Why are they not rated?

MR. MUSHELL: Well, why are they not?

SENATOR McNAMARA: Yes.

MR. MUSHELL: They are not investment grade.

SENATOR McNAMARA: I mean, they're rated. The way you are rating them is the same as junk bonds. Right?

MR. MUSHELL: You can say that, yes.

SENATOR McNAMARA: I think I can say it. I did say it. But I want to know when I am saying it if I am making a correct statement or not. My conclusion in looking at it was that, really, it would be the same rating that you would give junk bonds.

MR. MUSHELL: That is right. It is a noninvestment grade rating.

SENATOR McNAMARA: Yet, if you look at the structure -- and you heard the testimony this morning -- it is obvious that DCA would simply declare it as an obligation of the county.

MR. MUSHELL: If I may provide an analysis as to why I would still argue that those bonds are BA--

First of all, we rate timeliness. We evaluate timeliness to pay as well. You could argue that these bonds will get paid. I could argue that they are in jeopardy of untimely payment.

SENATOR McNAMARA: Not being done in a timely manner.

MR. MUSHELL: I have also been listening to everybody talk today, and I get the sense that the State is behind coming up with a solution. But the State doesn't have a solution. As I listen, I also hear that certain counties don't want to be involved in the solution. It is nice to--

SENATOR McNAMARA: What you are hearing -- and I think it is a fairly reasonable deduction to have drawn before the meeting started -- is that those counties that do not have debt do not want to pay for someone else's debt.

MR. MUSHELL: That's right.

SENATOR McNAMARA: You know, that is a given where it starts off.

MR. MUSHELL: From a bondholder's perspective what is important to understand is, where is the revenue? We can talk about these bonds are going to get paid, but we need to see the revenue stream that will pay them. I think that is the uncertainty right now. Until there is some certain revenue stream that we can identify to offset the loss of flow control, we are going to be concerned.

SENATOR McNAMARA: If the State were to pick up a portion without giving any percentage, and the counties themselves that were involved, whether they have independent authorities or not, were to pick up an additional portion, which would then drive the cost per ton down to a competitive rate-- Remember, we have a \$15 -- I believe this was mentioned by Mr. Barbieri -- a \$15 cost associated with shipping it over to Pennsylvania. So if that cost factor was bought into a near competitive rate, that would actually increase flow to the incinerators.

MR. MUSHELL: Yes.

SENATOR McNAMARA: In other words, if I am the guy collecting it, with the State stepping in with some contribution and the counties themselves stepping in with another contribution, why would I ship

it to Pennsylvania if I could ship it to Essex County or I could ship it to Union County at a reasonably competitive rate? Right? Again, obviously, that would reflect in-- When you were to review its rating, that would reflect in the rating, correct?

MR. MUSHELL: It is more than the competitive fee, though. One thing that will have to be analyzed in that process is-- These bonds go out for 20 years, more than 20 years.

SENATOR McNAMARA: Twenty years, right.

MR. MUSHELL: We have to make sure that the states step up any type of subsidization of the stranded costs -- that this will be in place for the entire time. We have to feel very comfortable, because, in fact, it is that commitment that is going to pay this shedded debt service to make these fees competitive. It is going to be very important.

Right now, bondholders have-- We valuated a contract that these systems would pay the net revenues of the system as long as those systems are running. We understand that as long as that system exists, as long as it is running, it has to generate -- it must try to generate net revenues. If, all of a sudden, we come and enter a new revenue stream, the subsidization, whether it be local, whether it be State, we have to be comfortable that it is going to be there for the life of the debt, if you want us to evaluate it.

SENATOR McNAMARA: All right. Okay. It makes good sense to me. It makes good sense to me that you rate them presently as junk bonds, too.

Senator MacInnes?

SENATOR MacINNES: We have had a number of instances in the last two budget cycles where statutorily committed revenues have been vacuumed up and shifted from their intended statutory purposes into the General Fund. Would you look at that history in assessing whether a statutorily dedicated revenue stream for the life of a county-issued revenue bond would meet your test for removing the noninvestment grade?

MR. MUSHELL: Yes, we would. What you are telling me is that -- let me rephrase this correctly, if I am wrong -- there have been dedicated revenue streams that have been undedicated?

SENATOR MacINNES: Yes, right.

MR. MUSHELL: You have some history of that. That would be evaluated in the rating. That doesn't necessarily get you-- This is not a pay/no pay business we are in. It is grading relative risk. Okay? So we can evaluate that and we can-- Quite frankly, I am not the analyst who deals with the State's rating. But if the State were to come up with a solution to provide a revenue stream, we would bring in the State analyst and he would be able to evaluate for us the strength of that pledge.

SENATOR MacINNES: Thank you.

MR. MUSHELL: Thank you.

SENATOR McNAMARA: Are there any other questions? (no response)

Thank you very much. I am sure you will be hearing from us again.

MR. MUSHELL: That's fine.

SENATOR McNAMARA: Thank you for coming down.

John Carlton, Director, Division of Solid Waste, Hunterdon County?

J O H N C A R L T O N: Chairman McNamara, members of the Committee: I appreciate the opportunity to come here to speak today.

I represent the Hunterdon County Utilities Authority in the County of Hunterdon. I believe the reason I am being asked to speak here today is to give the perspective from a unique situation. As has been mentioned previously, Hunterdon County is in a unique situation in that we are the only county with an operating county-owned infrastructure for solid waste and recycling that does not have any debt. That does not mean that it does not have operational costs that might be covered by the stranded costs that have been discussed so far, but we do not have outstanding debt and we are not concerned about flow control from that perspective.

I think it is important to give you a little bit of history of Hunterdon County's development, because I think it will show that we have tried to act within the State system, as well as respond to the needs of the county, and to show you where we are today.

In the early 1980s, Hunterdon County government got involved with the management of recycling and the solid waste management infrastructure due to the fact that there was a closure of a local landfill that caused rates, regionally, to skyrocket. Hunterdon County decided to build a transfer station in the early 1980s to deal with that situation and to provide transports, and we were going all the way out to Ohio at one point.

Part of that need was to meet the needs of the haulers who were providing the service in the county. We spent about \$1.5 million in bonds,

and we have since paid them out. We have always contracted the operations out by private contract.

SENATOR McNAMARA: You spent \$1.5 million to build a transfer station. Is that what you're saying?

MR. CARLTON: That is correct, in the early 1980s.

Around the middle 1980s--

SENATOR McNAMARA: Bergen could have used a little of your example. I think they spent \$32 million.

MR. CARLTON: They have a much bigger facility. Ours is around 500 tons per day, and we only generate about 80,000 tons annually of solid waste. So we are in a different ballpark.

SENATOR McNAMARA: Yes, but I think they were talking-- What was their gross tonnage? (no response) What is your tonnage?

MR. CARLTON: Eighty thousand.

SENATOR McNAMARA: Eighty thousand. Okay.

MR. CARLTON: Not to get too involved in those conversations--

SENATOR McNAMARA: I know, I am just running a little math in my head, though, that 80,000, if we do economy of scale, 540,000 tons in 1994-- That leads me to believe that you were-- I am not criticizing you, I think you are doing an excellent job.

MR. CARLTON: Right, okay. Well, good. I cannot take credit, unfortunately, but I will take credit if it is sent my way.

The State came up with -- as you know -- the in-state solution and tried to force Hunterdon County to get involved in working with either siting a landfill in-state, in our county, or a resource recovery facility, or working

regionally. We did enter into a regional agreement with Warren County to send waste to their facility, and we did end up going through a landfill siting process in Hunterdon.

Part of the problem with siting a landfill in Hunterdon is that we are a small community -- we only generate 80,000 tons -- so we were going to work with an out-of-state incinerator to help feed that incinerator and basically fill our landfill with ash, which would have allowed for the extended life of the landfill, and we could have used the landfill in case of power failures, any type of outage, as bypass.

We submitted that as a plan amendment to our solid waste management plan to DEP, and they rejected part of it. They rejected the out-of-state incinerator, but they said, "Go ahead with the landfill." Unfortunately, what happened with that was, that caused us to have a useful life of less than 10 years, prohibitively costly to the county, and we did not go with that. So we have sought other regional solutions. We have looked at other in-state facilities. We have an agreement with the Atlantic County Utilities Authority to dispose of waste at their facility. There is no mandated tonnage in that agreement, but it is too costly for us to use it, so we are not utilizing that agreement. We are currently meeting our Warren County commitment.

There are other programs that the county has undertaken over the years -- recycling, household hazardous waste planning, education -- that have tried to keep us consistent with the State goals. We have not always met them, but I think we have tried to do what we could with the resources we had available. We run a curbside recycling program. This applies curbside

collection to 75 percent of the municipalities -- 75 percent of the households in the State, and it costs us around -- the entire program -- \$1 million a year. So it is a stranded cost that we will have to deal with in the event of flow control, because currently part of that funding, a large part, is through tip fees at our transfer station.

I would like to emphasize that Hunterdon County is no longer the leader in the State in tipping fees. I think it has been incorrectly mentioned that we were at \$125. It is true that at the beginning of the year we were. In March, we did reduce our rate to \$95 a ton to try to be competitive, because we are losing approximately 25 percent of our waste to what we feel is out-of-state disposal. There are three regional landfills that are offering rates in the \$30s and \$40s, and we know there is a lot of illegal hauling going on.

Our freeholders have worked with our Health Department to beef up in our department, as well as beef up our enforcement measures, and they are paying off. We are taking the tack that as long as flow control is the law, we will enforce it, and, in part again, in fairness to the haulers, we feel that if there is going to be a level playing field -- and I know that someone has mentioned this -- that you need to make it fair to everyone. The people who are abiding by the system are going to get hurt if they stay in the flow control system if others are not. So we are trying to enforce it and make an even playing field.

The issues that come up for Hunterdon County: If flow control is not enforceable -- which we are assuming is what is going to happen, but we are not making that decision at this point -- we will not be able to reduce our rate and it will become uncompetitive as long as we have to honor our

agreement. Now, we are attempting to honor our agreement with Warren County, but we are not certain that we will be able to honor that agreement if we do not have the ability to direct flow of our waste and if we have to pay \$99 a ton at their facility, because we are currently subsidizing their facility with other out-of-state facilities. That seems to be what we have to do.

We will lose tonnage, and we will have to find alternate ways to fund our recycling programs, household hazardous waste, and other mechanisms, and we will have to evaluate what our role is in that. I am not saying that we will back out of those commitments. I think our freeholders and our Utilities Authority Board are standing behind those programs and will continue to do so, but it will be a matter of funding.

We are also concerned that private recycling that is going on in the county is going to be hurt by the loss of flow control, because there will not be the economic incentive to recycle. With high tipping fees, recycling may have an economic advantage, and with lower tipping fees there will probably be more just pure disposal, and it is going to make it harder for Hunterdon County to meet our State-mandated rates, either through us or through private activities.

We do not necessarily have a solution to the problem. If we did, I think we would be called to task on it. But I think Hunterdon County is going to be trying to evaluate its role in solid waste management. We are going to try to work with our partners that we have developed over the years -- the Pollution Control Financing Authority in one county -- to see if they can't reduce their rates to ones that we can live with. We are going to propose to meet with our haulers and our municipalities that are collecting waste within

the county to see how we can meet their needs in the future. We are concerned about some of the things that we have heard about today, with Fresh Kills closing their landfill and that waste flooding the market -- how that is going to impact. We are concerned about a possible interstate waste bill that is going to close the doors in Pennsylvania to New Jersey waste and how, again, that might create a crisis. So we want to maintain, probably, some role, but what role that will be we are not sure. Probably it will involve some type of public/private partnership.

We are definitely not in favor of bills such as Assemblyman Rooney's bill for the \$10 a ton, primarily because Hunterdon County sought to construct its infrastructure and build its program to meet the needs of our county. We have tried to enter into agreements that have met our needs, as well as meet the State mandates, but we do not feel that we want to be responsible for other programs and how other counties have done things.

So we will oppose any type of legislative fix that will put any stranded costs on Hunterdon County from other programs.

SENATOR McNAMARA: What if it came out that it was a net less cost than you are paying today?

MR. CARLTON: Well, that is interesting. When I heard that statement mentioned previously, my mind started to race. If those costs are going to be lower anyway as a result of the flow control laws, then they will be lower to the point where the \$10 a ton is still going to be \$10 on top of that. True flow control will probably end up with a loss of flow control which will end up with lower rates in Hunterdon County, at least for the short term. I don't know what the long term holds, but for the short term it will. But the

\$10 a ton will be a \$10 tax on Hunterdon County no matter how you look at it. We are not going to be in favor of that.

That basically concludes my remarks. I will be happy to answer any questions.

SENATOR McNAMARA: We get the message. (laughter)

MR. CARLTON: Thank you.

SENATOR McNAMARA: From Gloucester County, David Fanslau? (no response)

From Warren County, Frank Leary? (no response)

Okay, I guess he had to leave also.

Someone is moving around. Is that Frank Leary? (no response)

There is no one here from Warren? (no response) Okay.

Dolores Phillips and Bill Wolfe?

DOLORES A. PHILLIPS: Thank you, Mr. Chairman.

I am Dolores Phillips, and I am the Legislative Director for the New Jersey Environmental Federation, a nonprofit environmental advocacy organization. With me is Bill Wolfe, who is our Policy Research Director and a solid waste expert. I am also formerly from Hunterdon County, and now Mercer.

I want to thank you for the opportunity to be here to represent not only our own members, but also several other environmental organizations in the State that feel similarly to our own philosophies. This is an opportunity for us, and we appreciate the invitation to offer you our opinions and our recommendations, because I would like to move this into somewhat of a

different direction from what you have heard today. That is one of: What is the solid waste policy of the State of New Jersey today?

I have been asking this question for three years, since Commissioner Shinn declined to readopt the 1993 Solid Waste Master Plan. I have not been able to receive an answer, nor has my colleague. The Plan was not readopted, and no other plan exists in its place, which means that the State essentially has been operating off of the mid-1980 Solid Waste Plan.

The State recently, in May, did promulgate regs, 250 pages of solid waste regs that do reverse the hierarchy that was established after months and months and months of development of a new hierarchy and plan for the State. That is one that-- It was determined that the most economically and environmentally viable option was source reduction at the outset, incineration at the last. This has been reversed by the regulations that have been promulgated by DEP.

As a result of that, and not having any solid waste master plan existing today, we would suggest that the environmental goals of the State have been abandoned by State policy on solid waste. We have heard many people here today, both elected officials and also the private sector, who have come before us and asked for economically viable solutions and have simultaneously claimed to be supportive of the environmental goals. The environmental goals are not being implemented by this State currently. In the regulations that have actually been promulgated, they will not be.

We would request, both to this Committee and appeal also to the DEP, to be able to participate in the development of any legislation that moves

through your Committee on solid waste, and the same for the Department of Environmental Protection.

I must tell you that our organization is incredibly dismayed that after seven years of working on changing solid waste policy for the State of New Jersey that we are essentially in the same place, except for a better management act and, also, a 60 percent recycling rate which we feel is being implemented moderately, at best, currently.

The Solid Waste Master Plan that was developed in 1990-- The goal was to move us away from incineration. It did that, and it implemented -- it fully implemented what has brought this State to the development of source reduction initiatives that would have put us in a place today of significantly reduced volume, which is where this Committee also needs to address its concerns, not just in disposal or cost of debt or elimination of debt, but also to that of shifting the concept away from disposal to one of source reduction and reducing volume. If we did this, and if we implemented any of the suggestions that were in there, they create markets, and if they create the markets, they bring in jobs, they move us away from the status quo, and they begin to change society dramatically.

I would urge you today to begin to move away from the status quo.

SENATOR McNAMARA: One of the current problems is that the markets have dried up for some of the recycling--

MS. PHILLIPS: Well, precisely one of the reasons that they dried up is because we are not driving statutory policy to help to create those markets.

SENATOR McNAMARA: I don't know legislatively if I can create a market for paper and/or glass anywhere--

MS. PHILLIPS: Well, actually, you can't.

SENATOR McNAMARA: I can create one statutorily, I understand what you're saying, but realistically there has to be a demand if we are going to continue to increase the supply.

MS. PHILLIPS: What happens is that you create the demand and you create the market simultaneously. Bill can address that in a second.

What I would like to do -- just to finish with my piece of this and be able to let him speak to the economics of this, because he knows much more specifically than I-- My goal here is to ask you to be able to participate in the process. Realize that we have a Solid Waste Master Plan that could have moved the State in another direction. It was not adopted or implemented. We are not-- The Department has not implemented, in the last three years, any source reduction strategies. The budget has been cut, as you know. In that budget cut this last spring, 25 percent of all the employees at Solid Waste were terminated and, as a result, a lot of those people were the planners you needed and the economic regulation people that you needed. This is currently a Division that is not going to be able to handle what it needs to do. There is no education that has been done on any of these components with the public. There is literally no money that exists for that. This is a compromise Division that I think this Committee needs to seriously look at in terms of what we are going to do with solid waste policy.

What they have done is expand the Essex County incinerator permit, and grant a Mercer County permit. Those are the developments we

have seen. In the solid waste regulations that have been promulgated, they not only have totally moved away from source reduction, but actually have impeding businesses that can create those options, because those source--

SENATOR McNAMARA: I might have mentioned some of that in my remarks. I think that the fact that you have been invited to speak today kind of gives it a little attention.

MS. PHILLIPS: Yes, and we appreciate that.

SENATOR McNAMARA: And we want to make it part of the process, so don't, you know--

MS. PHILLIPS: Yes, sir.

Well, I am going to conclude and let Bill take over, but again, I need to ask the Committee to be aware of the fact that we need to address solid waste policy on the whole. We cannot simply move forward on legislation that is going to address just the debt service, without understanding how else that is going to affect the rest of solid waste in this State. Do we meet environmental goals by just addressing the debt service? No, we do not.

I would also like to point out, as an example, that while the incinerators right now need volume, they are competing for the same materials as Marcal, which, as you know, is using all its stock-- All its stock is used office paper and junk mail. They do not have enough currently. They have a supply problem, and the incinerators have a supply problem. Marcal is an industry that creates jobs, that is producing a product, and that is actually closed-loop currently, which is where we want to go. That is why you need to look at the entire solid waste policy of the State and what we are doing.

For those of you who have not been at a MSW incinerator, I urge you to look at how many jobs it takes to keep the incinerator running. In Gloucester County -- which I recently visited over the summer -- it is less than 10.

Now I would like to turn this over to Bill.

WILLIAM WOLFE: I appreciate the invitation.

I concur with your strong introduction in terms of the scope of the problem. Let's move forward and look at constructive solutions that I think we can offer.

Seeing the people in the room today, we were involved with Mayors Schundler and Rooney's Mayors Task Force and the Solid Waste Industry in lobbying Congress and in litigation with respect to waste flow, so we celebrate the end of waste flow. I think it is highly unusual to hear the solid waste industry and the environmental community on the same page, so I think that is something that is positive and constructive.

At the same time, I am really glad to follow Moody's presentation and Mercer County's, because we are also organizationally very involved in the evolution of the Mercer incinerator, whereby I think counties have, in good faith, engaged debt obligations under the gun of State policy. But now you have an anomaly in Mercer County, where you have a looking forward, going into a stranded investment scenario, which is ludicrous on its face.

The other economic factor that was not mentioned that Moody's is certainly looking closely at, and we are urging them to look closely at, is the electric revenue stream that is propping up the incineration industry as the electric industry moves forward into a deregulatory mode. So that needs to be

looked at from the economic point of view by the Committee in terms of the potential revenue hit there in terms of increasing the ultimate debt obligation.

The other thing is, I think Mr. Hogan from DEP mentioned the word “highway.” We are not talking about a highway here. A highway does not operate under contract and generate return on investment in the 40 percent range, as some of these incinerator contracts do. So we would strongly urge that in any solution -- and we all have to be part of the solution -- that the cost be fairly allocated, in that if there is a notion that there is going to be some kind of a bailout and subsidy, which there will need to be, that the hit be shared. In sharing the hit, local property taxpayers are going to have to pick up some.

The solid waste industry, in terms of the lucrative contracts they are operating those facilities under, will have to take a hit. I mean, I don't think the county authority should be the sole entity that is forced to become competitive.

The other major public policy point with respect to the allocation of the stranded investment is that these authorities-- I think Mr. Hogan also indicated that he was not making any distinctions between authorities and counties. It ain't so. The legislative power of the freeholders is supreme to the implementing powers of the authority under the Solid Waste Management Act. That is a fundamental. What we are seeing in Mercer County is a situation where this notion of voluntary contract-based waste flow is just the status quo under a contract, and they are marching through the county, through the municipalities, putting a gun to their heads, saying, “Execute these 20-year deals. Take it or leave it. And you will pay us” -- and they fail to

mention, 43 a ton in stranded investment. So they are merely taking the debt service component out of the total cost of their system, as if that is bringing them into a competitive framework, when they are proposing an entirely uncompetitive technology.

So we need to look at the authority debt that is out there. I would urge that public utility type review, cost reasonably incurred, as documented by an independent audit, would be the way that the Legislature should march forward with that type of, what are the costs we are obligated to, because I don't know that some of these costs were reasonably incurred and should be reasonably backed by the general obligation of either a county or a municipality taxpayer. That is a hard question that we need to look at.

Already today, I have heard a reduction of \$500 million from what the congressional delegation was told in terms of the outstanding indebtedness. It was over \$2 billion. Now today, I hear it is down to \$1.6 billion, \$1.7 billion. That is good news, but that number needs to be nailed down. We are talking big dollars.

The other fundamental policy objective I think you have to be wary of is, we are putting ourselves, if we walk into this bailout scenario-- We are walking back to the 1960s with respect to a market-driven system where New York City and Philadelphia will be coming in and using New Jersey-financed infrastructure at lower cost. It is ludicrous, what we are hearing in the Essex County situation. By bailing out the stranded investment debts and guaranteeing that revenue stream, we are inviting out-of-state imports. In the 1960s, it was landfills, and now in the 1990s, it is going to be incinerators.

So part of our solution would call for -- and I will provide the Committee with a recent report by the Center for Biology and Natural Systems out of Queens College-- It is a report on the Great Lakes Basin that showed a \$500 million savings for shutting down the incinerators operating in that Basin. So there is an economic-- If you can't shut them down, I would urge Mayor Schundler's approach -- liquidate the asset, sell off the assets and lower the debt burden, and privatize these things. If they can compete on an open market, great. If they can't, then let's not have the taxpayer prop them up, or these subsidized purchase agreements, and then we pay through our electric utility rates. These are hard questions to even be looked at.

The last two fundamental goals we need are: One, to protect the economics of recycling. The statutory 60 percent rate is not a market rate; it is a policy rate. We need to see that there are mechanisms in place to see that that rate is exceeded, and that is in the public long-run interest of the State. It is existing environmental policy, and it should not be undermined by the mechanism we choose to finance this thing.

The last one we have seen. Princeton Borough and Princeton Township are in litigation, primarily on this point. It is the process that we utilize to get to the solution. Now, DEP has been working quietly behind the scenes and issued those recommendations or the framework or guidance, or whatever they suggested it was. I would urge very quietly. I think we get out of the problem the same way we got into it. It is through the legislative direction of the Legislature, through county planning processes, where there is an open evaluation of objective fact and public policy choices made. That has not been the case in Mercer County. It is the fundamental issue that is

before Judge Yaskin as to whether you can go through a contract mechanism as a backdoor quiet way to resolving major billion-dollar economic liability questions. It would not be tolerated in any other field of public policy in the State with respect to the magnitude of dollars that are out there. It should not be tolerated in the solid waste industry.

What Mercer County has done is walk municipality by municipality saying, "Take it or leave," propped up by the mythology that Congress was going to close the borders and all this other mythology that has been-- It is like a mantra at this point. We have had a very difficult time on an equal footing as we would in an open public hearing rebutting that kind of a challenge, because there is never anything on paper where you can get into the data and evaluate what is really happening.

So the stranded investment component of the Mercer system has been characterized as \$110 million, when it needs to be characterized that way. In other words, "Oops, terminate the incinerator. You have this big hit coming down the pike," or when it is in the interest of the MCIA to minimize the extent of the stranded investment component. That same tack was taken in briefs to Federal courts in the *Atlantic Coast* case, greatly amplifying the magnitude of that hit.

When it is in their interest to minimize the hit, they say, "Oh, the going forward stranded investment is \$50 million." With all this going--

SENATOR McNAMARA: I hear what you're saying. I attempted today to get a number.

MR. WOLFE: With all this noise out there it becomes very difficult to determine reality. That is why I urge independent audit financial

expertise subject to a reasonable incurred traditional public policy basis very similar to what has happened in the shakeout in the electric industry. If we could have that type of a discussion, we would be much more comfortable. I think the taxpayers would be much better served, and I think we would get to the competitive situation that the industry is advocating, and then, overlaying that, we have to have some protection on recycling. We urge that you just liquidate the incineration assets.

I would be glad to respond to any questions, because I have probably gone over my time.

SENATOR McNAMARA: Are there any questions? (no response)

Thank you, Bill. I would appreciate it if you would get us a copy of that report.

MR. WOLFE: Yes, I will.

MS. PHILLIPS: And, Senator, if we may be involved in the process of developing any type of legislation.

SENATOR McNAMARA: Absolutely, Dolores. I wouldn't think of not involving you.

MS. PHILLIPS: I appreciate that.

SENATOR McNAMARA: I mean, after all, you're here today, right? I mean, can you believe it? Can you believe that I actually asked you?

MS. PHILLIPS: Well, you wouldn't have a hearing without us.

SENATOR McNAMARA: I could have. It was by invitation. It was by invitation, so obviously I invited you. Right?

MS. PHILLIPS: Thank you very much.

Can you request that DEP also work with us in that same manner?

MR. WOLFE: We have gotten, really, to be friends. The doors are closed over there, and it is unfortunate.

SENATOR McNAMARA: Well, do you know what? Maybe in the spirit of cooperation we will be able to generate a magnanimous feeling to where they would be willing to listen to your input. If not, they will be listening to it through public hearings, which obviously we are going to be having, and you will be invited. Okay?

MS. PHILLIPS: And then the public process will only help you in the development of this policy.

MR. WOLFE: Filing certifications and litigation in terms of participating in the process-- That is the role I have been forced into.

SENATOR McNAMARA: American Ref-Fuel, William Glover, Vice President, and Al Iantosca. How do you say that?

A L L A N P. I A N T O S C A: Iantosca.

SENATOR McNAMARA: I was close.

I apologize for the lateness of the day. Unfortunately, when we planned the meeting we didn't think that it would run quite so long. But I appreciate your patience and I want to hear what you have to say.

W I L L I A M G. G L O V E R: Well, Senator, we still appreciate the opportunity to speak, even at this time of day.

I have with me Al Iantosca, who is the Plant Manager at the American Ref-Fuel Plant in Essex County, and Tyler Scoffield, an attorney with American Ref-Fuel. I am a retired executive of American Ref-Fuel, and I represent them today.

We want to talk about an in-state disposal solution that is not being utilized by New Jersey. American Ref-Fuel Company of Essex County is the owner and operator of the Essex County resource recovery facility in Newark, New Jersey. We are an existing, in-state disposal facility that could immediately reduce waste exports from New Jersey by an additional 400,000 tons per year. However, this can only be done if the unintended hurdles are cleared which presently block New Jersey waste generators from contracting for disposal service at the facility.

The facility presently processes 914,000 tons per year, of which only 510,000 tons per year are provided from New Jersey, and that is down 8 percent from last year in terms of the New Jersey component. American Ref-Fuel is prepared to operate either with a functional flow control system -- the current one has never worked effectively -- or preferably in a free market, with the goal of serving New Jersey customers at competitive prices. To facilitate this, we need a predictable business environment. To accomplish this goal on any reasonable time scale, the Legislature must act promptly.

How did we get to this condition? American Ref-Fuel, in conjunction with the Port Authority, has planned and executed this public service project within the present flow control system. Service has been reliably provided to Essex County and, at various times under the DEP power of redirection of interdistrict flow, to Bergen County, Union County, Hudson County, and Passaic County.

Since January 1, 1995, the DEP has chosen not to redirect New Jersey waste to the facility in the absence of a long-term, interdistrict agreement between Essex County and the redirected county. Ref-Fuel, the

Port Authority, and Essex County have renegotiated the facility agreements to permit Essex County to independently enter such interdistrict agreements. To date, no interdistrict agreements have been implemented, in part due to the recognized uncertainty over pending court decisions and, more recently, due to the need for a transition policy to free market controls and due to the prospect of reversing Federal legislation.

In order to fulfill its contractual obligations, Ref-Fuel has filled the unutilized New Jersey capacity with out-of-state waste. The current indecision on New Jersey flow control penalizes Essex County ratepayers and the facility owners due to lost revenues, and denies economic disposal to willing New Jersey waste sources. A rapid transition to an open and free market system is desirable. The prospect of a four- to six-year period of chaos is unreasonable.

We believe that existing State controls are presently ineffective. Although the State expected advantages from the economy of scale and financial assurance of full-county commitments to deliver waste, the indecision about the future of flow control has invalidated the effectiveness of such commitments. The anticipation of decontrol has fostered violations which have reduced compliance with current waste flow controls. You heard testimony about that. DEP has used mandatory redirection of waste to the Essex facility -- and we mentioned the counties -- to achieve a reasonable economic result. In each, the redirected counties saved money. But DEP was subsequently legally challenged and can no longer intercede.

The interdistrict agreement approach to getting waste flow commitments has been cumbersome, ineffective, and, with the recent Irenas decision, incapable of producing a long-term agreement. Federal legislation has

only a slim prospect of producing a restitution of State flow control, and then only focused on cases where debt retirement is the issue, which is not applicable to this facility. Power pays the debt at this facility, and it was the Port Authority and American Ref-Fuel which invested in the facility, not Essex County.

SENATOR McNAMARA: Doesn't Essex have a contract guaranteeing--

MR. GLOVER: They have a contract guaranteeing a certain quantity of waste.

SENATOR McNAMARA: At a certain price.

MR. GLOVER: The price is established by the Port Authority in their contract with the county.

SENATOR McNAMARA: But if American Ref-Fuel and the Port Authority invested X number of dollars, obviously there is a guarantee that Essex has to, you know -- either they produce the tonnage or they pay the difference. Right?

MR. GLOVER: That is correct. They have a minimum payment in the Port Authority contract. However--

SENATOR McNAMARA: What happens if you go to this open market system and your tonnage increases? Does Essex's obligation go down?

MR. GLOVER: Essex's obligation to the Port Authority is in their contract. It is not in a contract with American Ref-Fuel. That is up to the Port Authority as to what happens to that commitment. But the commitment is a 25-year commitment to bring 680,000 tons per year. The contracts also provide that if Essex County does not have that waste, that American Ref-Fuel

takes the first waste that it can find and puts it to satisfying that volume obligation of the county.

SENATOR McNAMARA: But the spread and the cost, then, is picked up by the Essex County taxpayer?

MR. GLOVER: That is a matter in the Port Authority county contract that I think the Port Authority should answer and not American Ref-Fuel. I am not sure just how that works.

SENATOR McNAMARA: Well, I guess maybe we have to have in the Port Authority, because I hear what you're saying with one ear, but it disturbs me with my sense of what Essex County is obligated-- You know, you go to an open market and you produce *X* number of tons, or you get *X* number of tons in, that does not relieve Essex of its obligation, right?

MR. GLOVER: It is my understanding that it relieves it to the extent that the tip fees are similar. The problem we have is that we have to go to New York and get waste, which then is burdened by the--

SENATOR McNAMARA: Well, because the tipping fees are too high.

MR. GLOVER: No, we set the tipping fees at whatever it takes to bring that waste in for the top end of the plant. The problem is that New York waste has to pay for transfer, they have to pay for transportation costs to get to New Jersey, and they have to--

SENATOR McNAMARA: Well, if it is \$15 transportation costs from New Jersey to Pennsylvania for dumping, I can't imagine that New York's transportation costs could be higher than \$15.

MR. GLOVER: It is less than \$15.

SENATOR McNAMARA: It's got to be less than \$15. All you have to do is go over the bridge or through the tunnel.

MR. GLOVER: But they do incur a transportation and transfer cost. There is a cost to transfer waste, where you take it out of packers and put it into transfer trucks. If we were able to get local waste -- Hudson County, Bergen County, Morris County, which are all exporting waste to Pennsylvania -- they would not have to go through this cost of putting it into large transfer trailers and having transfer station operation costs. They could just bring it to our plant, and have in the past, and we would like to do that under free-market contracts in the future.

SENATOR McNAMARA: Would you be willing to-- Are you representing that you would be willing to renegotiate with the Port Authority and Essex County as far as their-- If we make it an open market, how do we--

MR. GLOVER: Well, we started out with a set of contracts. We, all three of us, sat down and renegotiated those contracts when we saw that the world had changed somewhat. We provided Essex County with basically what they had asked for at that time, in 1993. So far, those contracts have not been implemented. We are not suggesting that we renegotiate the contracts a third time. What we are suggesting is that we have access to New Jersey waste. We built a facility in New Jersey to serve New Jersey, and we are not able to because of flow control and because of the (indiscernible) law. We are not able to contract directly with municipalities and with transfer stations, because the process just doesn't get us there.

I have some more comments here that really address that directly.

The system is already in breakdown and does not work to benefit New Jersey. I think I have illustrated that. But, for example, large New Jersey municipalities cannot contract for service at our facility, private transfer stations cannot deliver without interdistrict agreements and solid waste plan amendments -- which take years to bring about -- and the owners and the operators of the facility are being denied revenues. The result? We are forced to seek out-of-state waste sources to be made whole. At the same time, New Jersey waste is being attracted to disposal sites in other states.

We know that transition is inevitable, but why must it take several years? The Irenas decision has set forth a two-year transition period to abolish the current flow control system. We believe that the actual transition period may be lengthened, with little effort, by appeals and judicial proceedings to a span of four to six years. Given the fact that we have already been impacted for years by an unworkable system, any additional delay is unreasonable and untenable. If more delay occurs, many disposal arrangements will expire and both generators and disposers will have no clear set of rules for contracting. We cannot make investment and operating decisions in this climate. The company believes there is a clear and compelling need for leadership in providing a mandatory schedule for rapid transition to a workable solution. We stand ready to work with the Senate, the Assembly, the DEP, and other public leaders to address this urgent problem.

In closing, we urge you to do the following:

- 1) Rapidly adopt a free market system or implement a workable flow control system which fully utilizes existing disposal resources in New Jersey.

2) Reduce the period of chaos by providing a prompt, legislatively mandated schedule.

3) Importantly, because I think it has been missed by most people, close the gaps in procurement law -- both the McEnroe Act and local public contracts law -- to allow contractual access to our facility.

Thank you.

SENATOR McNAMARA: I hear what you're saying, but one thing that you stated earlier was that you also are not willing to -- if we proceeded along those lines, you are not willing to renegotiate the contract again.

MR. GLOVER: Well, we have shown willingness to renegotiate the contract in the past when we knew what the rules were.

SENATOR McNAMARA: In the past. Right, that is exactly what I said.

MR. GLOVER: I think that--

SENATOR McNAMARA: Let me tell you something: I would not, as a businessman, want to renegotiate a contract without knowing what the rules are. Absolutely.

MR. GLOVER: We won't until we know what the rules are.

SENATOR McNAMARA: Absolutely. But if there are rules that would open it up to a free market, are you indicating that you would then be willing to renegotiate the contract?

MR. GLOVER: With a new set of facts, a new set of rules that we understand are going to be the rules, we have always been willing, and will be willing in the future, to sit down and do what is fair under those circumstances.

I think Essex County and the Port Authority can both attest to that. We just ask for a chance to process New Jersey waste.

Thank you.

SENATOR McNAMARA: What present capacity are you running at?

MR. GLOVER: At 914,000 tons a year.

SENATOR McNAMARA: What are you capable of doing?

MR. GLOVER: We have a potential permit expansion to 985,000 tons per year. We have an identical plant on Long Island that operates at that rate.

SENATOR McNAMARA: Nine hundred and?

MR. IANTOSCA: Eighty-five thousand, five hundred.

MR. GLOVER: Roughly a million tons a year.

SENATOR McNAMARA: A million tons. And you are presently doing--

MR. IANTOSCA: Nine hundred and fourteen thousand.

SENATOR McNAMARA: How much of that is New Jersey waste?

MR. IANTOSCA: Five hundred and ten thousand.

SENATOR McNAMARA: So we are taking in 404,000 tons of--

MR. IANTOSCA: New York waste.

SENATOR McNAMARA: We are importing--

MR. IANTOSCA: Four hundred thousand tons a year of New York waste. And we would like to have New Jersey stop exporting 400,000 tons and importing 400,000 tons of New York waste and let us do local waste.

SENATOR McNAMARA: I think I might want to do that, too, especially if we can do it cheaper.

MR. IANTOSCA: We'll stay with whatever the market presents us.

SENATOR McNAMARA: Yes, whatever. Absolutely.

Thank you.

Alan Ashkinaze. I said it wrong, I apologize.

ALAN S. ASHKINAZE ESQ.: Thank you, Senator, and Senator Baer.

I will be brief. My name is Alan Ashkinaze, and I am Chairman of the New Jersey Advisory Council on Solid Waste Management.

Mr. Chairman, thank you for this opportunity to appear this afternoon, and thank you for your leadership on this issue.

As you may know, the Council is a 14-member advisory board responsible for helping in the formulation of solid waste policy for the Department of Environmental Protection. Our members are appointed by the Governor with the advice and consent of the State Senate. Several State agencies, including DEP, DCA, BPU, and Agriculture, participate as ex officio members. With representatives from the public and private sectors, including representatives from the energy, recycling, medical, and agricultural community, we are the most broad-based advisory body in the State to address solid waste issues.

For the last two years, the Council has investigated issues relating to waste flow control. We began this task two years ago because we believed that the Federal court would ultimately find the State system to be

unconstitutional. So, well before the most recent decision by Judge Irenas, the Council began addressing the issues associated in a post-waste-flow era. While we have not reached any definitive conclusions as to how to address issues concerning the so-called stranded investment or the role of the counties or regional utility authorities in solid waste management, we all agree that the status quo, i.e., a system based on flow control, whether by contract or by regulation, that supports inefficient public monopolies, is unacceptable.

Our review of flow control, to date, has revealed the following:

1) Flow control represents an unfunded mandate on applicable municipalities. Flow control regulations deprive municipalities -- as we have talked about -- of their ability to access more affordable disposal facilities, and in doing so, has forced municipalities to pay artificially high disposal rights.

2) Flow control does not promote recycling. The U.S. EPA, for example, reported to Congress that flow control did not facilitate recycling or create other environmental benefits. In New Jersey, flow control actually serves as a disincentive to recycling; that is, county-based incinerators and transfer stations burn or collect waste that could otherwise be recycled because it represents much needed revenue.

3) Flow control supports inefficient public monopolies. Under the present system, inefficient public monopolies have been created and continued. These monopolies operate facilities that charge artificially high rates for solid waste disposal because they have no competition. Moreover, many of these monopolies, operating as county utility authorities, are nothing more than an unnecessary and unaccountable layer of government.

4) Flow control has forced municipalities to finance ancillary activities. County entities and/or county utility authorities have forced municipalities to finance activities ancillary to solid waste disposal, such as curbside recycling, landfill closure, recycling education, and household hazardous waste disposal. These ancillary activities could have been implemented at a reduced cost by these municipalities through interlocal government service arrangements. All they needed was the opportunity and the chance to do so.

Based on the above, the Council's initial -- and I underscore initial -- recommendations are as follows:

1) Because of the demonstrated lack of efficiency and the artificially high disposal rates charged by many county and/or regional utilities authorities, the privatization of solid waste disposal is strongly encouraged. Public sector disposal facilities should no longer be permitted to operate as a monopoly -- free from competition -- charging municipalities and ratepayers artificially high disposal rates.

2) Public sector disposal facilities unable to charge competitive disposal rates should immediately begin the process of transitioning to privatizing solid waste disposal activities.

3) Public sector disposal facilities should not be permitted to bundle ancillary solid waste activities in the solid waste tipping fee.

Mr. Chairman, once again, thank you for the opportunity to present the Council's findings and initial recommendations relating to waste flow issues. We all agree that the issues before us are complex and that there are no easy solutions. The Council will continue our work, however, to provide

solutions to the critical issues before us, such as the stranded investment and the proper role of counties and regional utility authorities and solid waste planning. As we continue our work, I offer the Council's complete support to you and the Committee as you continue your work in resolving these issues.

I appreciate your time.

SENATOR McNAMARA: Thank you, Allan.

Steve Lonegan.

MAYOR STEVEN M. LONEGAN: Thank you, Senator.

My name is Steven Lonegan. I am the Mayor of Bogota, New Jersey. I appreciate the opportunity to speak to the Committee this afternoon.

My goal is to urge you to move quickly on your decisions regarding waste control, and also, I hope to emphasize to you the devastating effect that the current waste flow situation is having on small towns. You heard today from Assemblyman Rooney and Mayor Schundler discussing its impact on large cities.

I represent what I believe is the consummate small town New Jersey community. Bogota has a population of 7800 people. We have 2500 home owners. We cover 5/8 of a square mile. We have a volunteer rescue squad, a volunteer ambulance corps, a volunteer fire department, our own high school. We have everything everybody would like to find in a small town community. We have a budget of \$5.8 million. I have to laugh when I think about Mayor Schundler's \$288 million budget. He probably spends more on toilet paper than we do on our whole town.

So when you talk about the extra \$250,000 a year that we are forced to spend on tipping fees because of the current waste flow regulations,

I believe the impact shows up much quicker in a town like Bogota than it does elsewhere.

Over the last eight years, our community has begun to show signs of wilting, I guess you would say. We don't seem to have enough money to plant the trees we need to plant, to buy the beepers we need to buy for our ambulance corps, to fund our rescue squad, to fund our volunteers, etc. This year, in order to stop the rise in taxes-- Our taxes have been going up about 7 percent a year, and we have the highest tax rate in Bergen County, unfortunately. That was before I came into office, and I am working on it.

This year, I was forced to lay off five borough employees. That was a savings of \$250,000. That is the approximate cost of what we are forced to pay the BCUA for the privilege of bringing our solid waste to their facility, instead of going out to the free market. I have to say that I deeply resent, since I was the person who sat with these five employees and had to let them go -- deeply resent being forced to spend this extra money for, as far as I am concerned, subsidizing and financing an inefficient monopoly in a patronage mill. If anybody is going to give jobs, I want to give them back to my people in Bogota, to the families that were shocked when they lost their jobs and now have a hard time paying their mortgages.

I urge this board to please consider moving very quickly on coming up with a solution to this situation. I hope you will adopt Mayor Schundler's proposal of privatizing, selling off the BCUA assets as quickly as possible, using that revenue to buy down the current debt, and spread out that debt amongst the remaining communities. I would say that Assemblyman Rooney's plan, or

proposal of \$13 a ton-- According to my estimates, that would still result in savings to the Borough of Bogota of \$200,000 a year.

SENATOR McNAMARA: Unfortunately, Mayor, that is spreading it statewide -- Assemblyman Rooney's solution. You heard people from counties that either have no debt or have a limited amount of debt, and they are not particularly anxious to pick up on a per-ton basis statewide what costs were incurred by counties that-- I mean, look at Hunterdon County. They spent \$1.8 million to do a facility that handles 80,000 tons. You know, we spent \$32 million to build one that would handle 540,000 tons.

MAYOR LONEGAN: I believe earlier the testimony was that the total debt is \$119 million -- if I am correct -- spread out over 72 towns over 20 years, and then decreased by the amount of the selling off of the current assets. I don't know what they would sell for, hopefully half. But I tried to do a little quick calculation, and I would imagine that the portion of the debt inherited by Bogota, based on its size, would be somewhere in the neighborhood of maybe \$2 million to \$3 million, the funding of which is still far less than the cost of the extra revenue we spend--

SENATOR McNAMARA: The fee that you are paying today.

MAYOR LONEGAN: The fee, yes.

SENATOR McNAMARA: I agree with you.

MAYOR LONEGAN: So that is my recommendation, gentlemen. I would urge that you move quickly. The \$200,000 or so that could be back into our revenue stream would make a major, major difference in my town, and the results would be seen very quickly.

I thank you.

SENATOR McNAMARA: Thank you very much, and thank you for your patience, Mayor.

SENATOR BAER: Thank you.

SENATOR McNAMARA: Senator Baer, do you have a question?

SENATOR BAER: No, I just said thank you.

SENATOR McNAMARA: At this point, I would love to adjourn.

(MEETING CONCLUDED)