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**PUBLIC HEARING**

before

**SENATE ENERGY AND ENVIRONMENT COMMITTEE**

on

**"Financing of Landfill Closure"**

February 20, 1985

Room 441

State House Annex

Trenton, New Jersey

**MEMBERS OF COMMITTEE PRESENT:**

Senator Daniel J. Dalton, Chairman

Senator Catherine A. Costa

Senator Lee B. Laskin

**ALSO PRESENT:**

Mark T. Connelly

Office of Legislative Services

Aide, Senate Energy and Environment Committee

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**SENATOR DANIEL J. DALTON (Chairman):** We will now call this hearing to order. We are here today to discuss the issue of landfill closure. To my left is Senator Cathy Costa, from Burlington County. I suspect that some of the other members of the Committee will be joining us shortly.

The subject of today's hearing, landfill closure, is one that has recently been in the newspaper headlines in various parts of the State, but it is an issue of more than passing importance; it is an issue which officials at both the State and local level will be dealing with more and more in the years to come.

During the last several years, hundreds of the landfills which used to dot the State's landscape, and which were the butt of numerous jokes, have ceased operations. I am sure none of us were sorry to see these dumps go; they were environmentally unsound, and represented the now discredited "out of sight, out of mind" approach to solid waste disposal. In these environmentally enlightened times, we are now talking about shifting the State to a new high ground of solid waste disposal: Resource recovery, state-of-the-art landfills, and sophisticated approaches to recycling and materials recovery. This will be a major advance, and indeed represents a commitment to a more secure environmental future, as all of us can attest to who live in a State in which 25 of our 95 Superfund sites are former solid waste landfills.

As we rush to the new advanced methods of solid waste disposal, we must firmly resist the temptation to believe that our problems with landfills are behind us. Indeed, it may well be the opposite: The problems, both environmental and financial, associated with our unrestrained reliance on landfilling over the last several decades are just beginning. In fact, the issue of landfill closure and long-term monitoring may well be an environmental and financial time bomb, waiting to go off. If it is, the time to start defusing it is now.

The issue is extremely complex, but it can be divided into several major components: First, there is the question of the landfills which ceased operations during the last five years, most of



which were not closed properly and are not being monitored. All of these landfills were in operation during the '70s, when landfill regulation was lax, and nobody was sure what went into them. We clearly need to take inventory of these landfills, determine which ones may present an environmental threat, and establish a method of financing their closure and monitoring. Most of these landfills were owned or operated by municipalities or counties which will be hard-pressed to finance the needed measures.

Second, there are the landfills that have recently closed, or will close in the near future -- Hamm's and Kinsley landfills are prime examples -- for which closure and monitoring funds are insufficient, or they must be raised in a short period of time through outrageous increases in tipping fees, as is the case now with Kinsley.

Third, there are the remaining 11 or 12 major landfills in operation, about which we must ask: Are we putting enough aside to provide for proper closure and maintenance?

The closure problems associated with each of these three major categories of landfills must be treated individually, but they also must each be part of a long-term, well-thought-out, State-level landfill closure master plan. I believe that here, as with many environmental questions, financing will be a major issue. We are probably facing the need to raise a significant amount of money to finance a comprehensive landfill closure program, and we will need to start thinking about the most equitable and efficient way of doing so. I hope this hearing starts us in that direction.

I might also add, for those who are interested, that S-2718 -- a bill which I recently introduced, and which will be on the agenda of this Committee on Monday -- is a bill that deals with the short-term issue -- that is, in a case like Kinsley, how do the municipalities bear the burden of closure? In this bill we allow the municipalities to bond their portion of closure costs over a 5- to 10-year period. This is an answer to what is a short-term problem, as I see it within the context of the whole closure issue.

As I indicated in my statement, we need to develop a statewide master plan to finance closure not only for the landfills



that have recently closed or will be closing in the near future, but also for those landfills that have closed within the past five years.

With that, I would like to start the testimony by hearing from the Executive departments. We will hear first from the Department of Environmental Protection; we will then follow with the Board of Public Utilities.

Our first speaker will be Lee Perira from the Department of Environmental Protection. Lee?

**LENO PEREIRA:** Thank you, Mr. Chairman and Senator Costa. For the record, my name is Leno Perira. I am Special Assistant to Commissioner Hughey, Department of Environmental Protection. I have been employed with the Department for 15 years, having spent almost all of that time in the Solid and Hazardous Waste Program of the Department. I want to thank you for this opportunity to present testimony to the Committee on the subject of landfill closure.

As you know, in 1981, under your sponsorship and stewardship, Mr. Chairman, the Legislature enacted the Sanitary Landfill Closure and Contingency Act, which began to address the problem you described in your opening statement. At least it provided a beginning for us to address the problem in three ways. It is not a very complicated Act; it established a fund into which every landfill in the State must pay. This fund pays for damage claims by third parties, since there may be claims resulting from the operation of landfills. That fund now has some \$18 million in it. Property damage claims amount to about \$15 million. We have yet to quantify any personal injury claims, which we expect to cost even more. However, at least for the time being, we think the fund is adequate, and it is accomplishing its purpose.

The Act also requires a flat \$1 per ton, 30¢ per cubic yard escrow account for every landfill. This will pay for the closure of that landfill. You will recall there was a lengthy debate on the issue of how to set that figure. Clearly, there was no way within the time constraints of the Legislature to come up with a more complicated formula. However, it is obvious to us now that 30¢ is not enough for virtually any of the landfills that are now operating in the State, or that have been put into operation since the Act went into effect three years ago.



However, in our view, probably the most important part of that law is the principle established in statute that landfill operators are strictly liable for the cost of closure and the maintenance of their facilities after they close. The concept of strict liability is important because it is the driving force which helps to make the operators of facilities responsible for their operations; to think ahead regarding what it is going to cost to close; and, to close properly.

Part of the reason for that Act, as I recall, Mr. Chairman, is that even three years ago landfills were beginning to close down. Some of them were private landfills that were apparently looking at bankruptcy, or an inability to get more money from them after they closed. This left the municipalities with a significant liability if they were not closed properly. The problem has continued since the Act took effect.

Shortly after the Act took effect, many more landfills continued to close. The Department adopted regulations which provided a way to audit and maintain the escrow accounts. We then proposed and adopted regulations, effective in mid-1983, which went beyond the 30¢ imposed by the Act. We required every landfill to come up with a plan which figured out how much money they were going to need in the future — an engineering plan and a financial plan which described how they intended to meet that financial obligation.

During this time, landfills have been running out of space and they have been closing down, so the solution has stayed slightly behind the problem.

As you indicated in your opening statement, Mr. Chairman, the problem has many facets. There are many municipal landfills that closed either before or shortly after the Closure Act -- private landfills too. The total cost of this closure is something we haven't yet been able to quantify. We made a commitment to the Assembly County Government and Regional Authorities Committee to try and come up with an estimate of those costs, and we are in the process of doing that.

It appears as though the total capital cost for the closure of all these literally hundreds of old landfills may reach into the



hundreds of millions of dollars. These are landfills that closed even before we had specific closure requirements, either through statute or regulation. Nevertheless, they represent a level of threat to the environment that needs to be addressed: Whether or not they ever had the opportunity to set money aside.

So, we agree that this is an important issue. We do not think it is an easy one; it is very complicated. It is very hard to figure out, at this point, how much money is going to be needed by each of the over 300 landfills. I expect that if we break them into categories, we will be able to see some solutions.

For example, some are industrial landfills which are owned by very large national and multinational corporations, and are used for their own on-site industrial waste. We expect that those companies will have adequate resources to close and maintain those landfills.

There are private landfills that have set aside money, and continue to set aside money, for closure.

There are municipal landfills where closure is relatively easy, and they have been able to bond for the capital cost of closure. In fact, we recently saw confirmation from the Division of Local Government Services that closure of a municipal landfill is a legitimate capital cost, it can be bonded, and the cost of that closure can be paid off over a longer period of time.

We think that one additional solution -- certainly not a full solution -- might be to extend to the municipalities that used other land, the right to bond for closure. When they have to pay a large rate increase in a very short period of time to make up for all the years of dumping, and to pay for the closure, perhaps it would be appropriate for those towns to call that a "capital expense." The law does not allow that now, but if we are looking at legislative solutions, that might be one.

As I said, this is an extremely complicated situation; however, we are working towards litigating that problem. There is some money being set aside. We think it is extremely important that we do not abandon the concept of strict liability. We need that to continue to drive the industry towards their responsibility to set aside money

to pay for closure. Perhaps we have to look again at how they get that money, over what period of time, and how they have acted under both the Closure Act and the regulations adopted by the Department.

Maybe I can enlighten you on what we see as a typical example of what has happened. Long ago, most landfills were owned by garbage collection companies, and they were ancillary to the garbage collection business. They incorporated, and some time later they may have separated the corporations. They may have separated the land ownership through another corporation. They may have resisted attempts to raise their rates to pay for closure. And, finally, when they did close, or when they were about to close, they had not set aside enough money to do so. There are obviously a lot of responsible parties in that matrix who ought to be held liable for all or part of the cost of closing the landfill, because the law requires them to be responsible, and they should have set aside enough money.

So, one thing I want to impress upon you today is, we should not abandon the liability requirement in the Act. We think there are a number of solutions to this problem, and that we can begin to work with you on them. There are probably several ways to address the problem; however, it is important that we recognize this as a complicated problem which we can address in pieces, rather than trying to find one single, sweeping solution. We have to address whether or not this is a burden to all of the municipalities that host the 175 or 200 old municipal landfills, how big a burden it is, and what kind of relief is needed.

We have to define today's burden on the municipalities that are trying to catch up and pay for the closure of private landfills, in order to see what kind of relief we can give them. And, we even have to look again at how to fund the closure of private landfills if enough money has not been set aside. The contingency fund is there for claims, and it is adequate. However, there is no other mechanism, aside from the Spill Fund, for hazardous waste which can help pay for situations when the responsible party is no longer there.

So, we would be very happy to work with you in all those areas. I thank you again for the opportunity to speak here. I think



we should sit down together in the coming weeks, the members of the Committee and Committee staff, to talk about possible solutions to the problem. Thank you.

SENATOR DALTON: Thank you, Lee. Senator Costa, do you have any questions?

SENATOR COSTA: No.

SENATOR DALTON: I want Senator Laskin to sort of get a sense of what you said, so I will start the questions.

Describe for the Committee, if you will, Lee, the scope of the problem. What we are trying to identify is, number one, the number of landfills that existed prior to the closure regulation. It is my understanding that the Closure Law, passed by the Legislature in 1981, provided for the landfills which existed from that time to the present. It provided an escrow account, and required them to put aside escrow money.

Obviously, there were many landfills operating prior to 1981 which closed prior to that period. Do you have any sense of how many landfills there were?

MR. PEREIRA: Yes. There were somewhere in the order of 300 or 350 landfills. Some of them may not need any additional closure; some were small landfills which received inert materials and have already closed adequately. However, most of them will require additional closure activity.

That is the total number of landfills. We have really had very few new ones since 1981-1982. The ones that exist today pretty much preexisted the 1970 statute, which first put the State into the regulatory business. About 175 of those 300 or so landfills were municipally owned and operated, or they are still municipally owned. They do not charge a fee. They are simply operated out of the municipal budget.

About 10%, perhaps 30 of the 300, were industrial on-site landfills that served a particular plant or industry. When I say 300 to 350, it depends on whether you want to count the sites that took hazardous waste and are being addressed by the State's Hazardous Waste Cleanup Plan. There are about one dozen on the Superfund list, and

another dozen or so is included in the State's plan for cleanup, even if we do not get Superfund dollars for them.

So, we think they should be treated entirely separate. We should not overly complicate the landfill closure issue by looking at the hazardous waste cleanups as though they were landfill closures.

SENATOR DALTON: So, what you are talking about is 300 to 350 landfills which are not operating today. They pre-date the State's regulations and statutes relative to closure.

MR. PEREIRA: About 50 of them are operating today, but the remainder have closed.

SENATOR DALTON: One hundred and seventy-five were municipally owned; 30 were industrial sites. I suspect the remainder would then be the private sites of a business or a corporation.

MR. PEREIRA: That's right.

SENATOR DALTON: Okay. That is helpful to the Committee.

Let me ask you this: Given the number of landfills that have closed -- and there are a number of them in my district and I am sure in Senator Laskin's and Senator Costa's districts as well -- what has the Department done regarding monitoring sites, excluding those sites that are on your Hazardous Waste National Superfund list? Has this been a catch-as-catch-can type of situation? If you get a call from Senator Costa's office, or my office, or wherever, do you go out and look at the sites, or is there some type of monitoring done?

MR. PEREIRA: Are you now talking about the closed ones, or all of them?

SENATOR DALTON: Well, actually, closed is a misnomer -- the non-operating ones.

MR. PEREIRA: The ones that have stopped accepting waste?

SENATOR DALTON: Yes.

MR. PEREIRA: We have been regulating landfill since 1970.

SENATOR DALTON: Right.

MR. PEREIRA: A lot of them -- at least one-third -- have installed monitoring wells, and they regularly monitor the groundwater. In some cases, where it is inappropriate to monitor groundwater, they monitor the surface water. So, there is an ongoing monitoring program which looks for pollution.



There is an inspection program for active landfills, and inspections continue at landfills that do not at least do the minimum closure, required at the time the site was closed. In other words, prior to 1981, at the time a landfill closed, the requirements and rules were for two feet of soil, grading, and some gas venting. So, we continued to require those things until they did them, and then we stopped inspecting. From time to time, there may be a reason to go back out and inspect to ensure it is stable and not causing any problems.

SENATOR DALTON: Do all these landfills have monitoring?

MR. PEREIRA: Not all of them. There were probably -- prior to the adoption of the New Jersey Pollution Discharge Elimination System Regulations a few years ago -- about 80 had monitoring wells, required by the Solid Waste Permits when they were installed. Since that time, we have adopted the NJPDES "regs," and issued preliminary permits to a great many landfills, both existing and closed, requiring them to install wells and to begin monitoring. The majority of them have either installed the wells or they are in the process of installing them and submitting the first set of test results.

That is part of the program: It helps us to define how big the problem is, and what kinds of corrective measures will be necessary for each individual site.

SENATOR DALTON: I guess what I am getting at is, we talked about the scope of the problem being approximately 300 landfills. You indicated that only 80 have some type of monitoring program. This leaves the bulk of them without any monitoring, and without having to adhere to the provision of two feet of cover and gas venting. I think you will agree these are fairly minimal types of requirements. I am not blaming you. All of us are moving on this. What I am saying is, in light of what we know today, those are fairly minimal requirements.

So, in effect, what we are talking about is approximately 200 landfills which dot the landscape out there. They have performed a fairly minimal closure program, and we do not know what is happening with them.

MR. PEREIRA: That is pretty accurate, except that I would like to embellish that a little bit. In the original requirement for wells at the initial 80 sites -- even before we had the NJPDES regulation -- we selected sites that we thought posed a greater risk to the water, and where we felt there was a greater need for testing. So, the sites that have wells tend to be the ones that come up first on our list as being sites we are most concerned about.

A few years ago, when we adopted the NJPDES regs, we addressed exactly the problem you are describing. We said every landfill in the State was going to have to start doing this. We started with a schedule which picked the largest landfills, and we have been issuing preliminary permits and requiring monitoring. So, we are starting to catch up.

SENATOR DALTON: It would seem to me, however, that a significant number of these landfills -- roughly, taking your numbers, 100 -- were privately owned. I know from the GEMS situation -- GEMS is a Superfund site -- that at GEMS the owner-operator literally walked away. I suspect the same thing probably happened at the 100 sites that were privately owned, is that correct?

MR. PEREIRA: Not in every case. First of all, a lot of them are still operating.

SENATOR DALTON: I am just talking about the ones that are not operating.

MR. PEREIRA: Of the 100 or so that were privately owned, I do not think all of them are closed. Many of them are, or were -- in some cases they continue to be -- operated by rather large corporations in the solid waste business.

SENATOR DALTON: Right. You said 30 were industrially owned.

MR. PEREIRA: That's right.

SENATOR DALTON: One hundred and seventy-five were municipally owned.

MR. PEREIRA: That's right.

SENATOR DALTON: You indicated the remainder were privately owned. I am trying to break down the problem. One component of the problem is the landfills which are not operating. As a result, under



the three components of landfills that are not operating -- private, industrial, and government -- I am trying to get at what was done, and the scope of the problem in each of these categories.

You seem to be indicating there is a way to get at industrial landfills. These corporations -- some are national corporations -- are still in existence, so you may still be able to get at them. The government is a problem; it is a financial problem. I guess what I am leading into is that private landfills are financial problems as well.

MR. PEREIRA: Yes, they are. A fraction of them probably fit into the category of being large national corporations which happen to be in the solid waste business. Some of them did set aside money, and they are tied to financial resources. We think they may try to run away from the problem, but ultimately they will pay most, or a large share of, closure costs. However, you are right, there is a significant share of the 100, or whatever it may be, that will fit into the GEMS mold. We may chase them for a long time -- even though there is a need to do something about it soon -- and we may never get any money from them.

SENATOR DALTON: So, as a result, anything we develop will have to give you the wherewithal to go out and perform proper closure and monitoring. It also has to give you the wherewithal to go after the landfill owners.

At the present time you do not have the staff, nor the money, to go out and close these landfills properly. You probably do not have the staff -- or the A.G. doesn't have the staff -- to go out and "haul" -- excuse the pun -- all these people into court.

MR. PEREIRA: Yes. That is one piece of the problem that needs to be addressed. There is a whole other dimension to the problem that I did not mention: These sites vary in how much waste they took, how big they are, and, therefore, how big the closure costs are going to be. Right now -- as I have said several times on different issues before this Committee -- about 90% of the waste goes to 10 or 11 landfills in the State. That is a lot more skewed than it used to be; however, even back in the '70s when many more landfills were operating, probably 80% of the waste went to 30 or 40 of the landfills in the

State. So, if one looks at the problem, the majority of the waste went to a relatively small list of landfills, and they will take up the bulk of the closure and post-closure costs.

So, that is a special problem that has to be dealt with. It sort of skews all the figures in a different direction.

SENATOR DALTON: Yes. I suspect that when you talk about the closed landfills, the most significant problem you face is, "What was dumped into them."

MR. PEREIRA: Yes. That is why there is an overlap between the Hazardous Cleanup Program and the Closure Program, and that is why I tried to separate the two. If we find hazardous waste which is causing a significant environmental problem, we have the Cleanup Program. Nevertheless, municipal household waste can produce pollution which is certainly sufficient enough to contaminate someone's water supply, and that also has to be addressed.

SENATOR DALTON: The leachate does not have to be chemically laden to be a problem.

MR. PEREIRA: That's right. Some companies like to point out that everything is a chemical, and if household garbage is put in a landfill, it breaks down and can cause enough pollution to contaminate water.

SENATOR DALTON: I would like to move on to the second component of the problem -- that is, either closed or closing landfills. This is one part of the problem that, of course, affects municipalities in my district, and in Senator Laskin's district, because of the Kinsley issue.

Judge DeSimone ordered the Kinsley landfill to close. There was no attempt made by the Board of Chosen Freeholders in Gloucester County to extend the life of that landfill. As a result, one of the things the Judge did was to step in and give it a closing date. Another portion of the Judge's order was to remove Philadelphia from dumping at Kinsley. As a result of that, the owner/operators of Kinsley went to the Board of Public Utilities and asked for an approximate five-fold price increase. The closure cost caused that increase request.

The Legislation I introduced is ~~stop-gap~~ in that it will allow the affected municipalities to bond for a closure cost over a period of years, as opposed to "eating" the whole cost in one year as one line-item in their budgets.

Number one, has the Department looked at that legislation?

MR. PEREIRA: We haven't studied it enough to have reached a conclusion. We think it may be an answer to ~~part~~ of the problems. We have both said this is a very complicated issue. This may fit in with a number of things which may have to be done, but it hard to quantify it.

In the Kinsley situation in particular, I personally find an anomaly because we sought to close the landfill in November when they ran out of space. We said landfills do not operate without licenses, so it should close. As you said, Judge DeSimone continued it. Had that landfill closed in November, it would have had to spend money to close properly. That company is strictly liable; it would have had to come up with all the money.

SENATOR DALTON: Right.

MR. PEREIRA: The rules didn't change between November, 1984, and now. There are no increased closure requirements in the regulations. There was an increase in the requirements in mid-1983, when we adopted our rules. That landfill, in particular, had a 1980 permit condition which said they had to set aside money for closure. So, they have had a long-term responsibility to think about closure and to set aside enough money to do so.

One of the problems here may be that the definition of closure in the Closure Act is so broad that it allows one to call "closure" any cost which could affect the way the landfill performs after it is closed down.

SENATOR DALTON: Right.

MR. PEREIRA: This involves the vast majority of "big ticket" items in operating a landfill. Maybe that is why Kinsley is saying they are asking for "big ticket" closure costs. Certainly, they lost a lot of business. They are down to about one-third of the volume they used to get, so there are fewer paying customers to cover the cost.



However, the Board now has that rate increase under consideration. Obviously, they have to look very carefully at it in order to find out how much of it is for legitimate closure costs, how much is for new responsibilities, and how much is for responsibilities the landfill should have previously addressed.

SENATOR DALTON: As I understand it, the Board has issued a tentative rate increase for Kinsley, which will have to be reflected in the budgets of the municipalities in Gloucester, Camden, and Salem Counties that dump their waste into that landfill, if there is no determination prior to March 14th.

Let me ask you this: It seems to me you are characterizing their rate increase request as somewhat dubious — and I do not want to put words in your mouth. Have you testified before the OAL, where the hearings are ongoing right now?

MR. PEREIRA: We haven't even reviewed their rate petition before the Board.

SENATOR DALTON: Do you have any plans to go before the OAL?

MR. PEREIRA: I do not know if we intend to or not, but we do intend to take a look at this, and if we find something in there that we feel would help the Board make a decision, we certainly will go before the OAL and place testimony on the record.

I am sort of making off-the-cuff statements, based only on what I have been told, and on what I have read regarding the rate increase. As you said, the majority of the increase is for "closure costs."

SENATOR DALTON: Right.

MR. PEREIRA: There is a significant -- it is almost a quadrupling -- increase in the rate for that landfill. In my mind, there are some serious questions since the rules have not been changed. The landfill had to close in November, and they would have had to come up with the money at that time anyway. There are some significant policy as well as financial and technical questions one could ask regarding what goes into a big rate increase. Maybe when we take a look at it, we will find it is completely legitimate and the Department agrees with the figures. Maybe we will see some things we will want to advise the Board about.

SENATOR DALTON: Maybe I will make this statement a request: I think you should look into it. Also, I think you should make some recommendations to the Board as to your thoughts about the integrity of the rate increase request.

A lot of people out there are probably going to bear a significant property tax increase to even pay for this tentative increase by the Board.

Another example of what we are talking about seems to be occurring right now in Sussex County, and that relates to the Hamm's landfill. I assume Hamm's, due to a court order, has stopped operating. As I understand it, rightly or wrongly, the owner-operator has indicated that he does not have enough money to close. Additionally, as I understand it, a fairly significant emergency situation has developed. A reporter called me yesterday, and he indicated that 600 gallons of leachate is flowing unabated from that landfill on a hourly basis.

I suspect I have to ask you two questions:

Number one, what is the Department doing about that situation; and, number two, what are your plans insofar as bringing this private corporation in and making sure they bear their share of the closure burden?

MR. PEREIRA: We are doing that now. Your description of the problem is accurate. The landfill stopped pumping its leachate out last month, and it has now reached the point where the leachate is beginning to escape. It is running over the top of a dike and getting out at approximately the rate your quoted -- several thousand gallons per day, perhaps 600 gallons per hour. We went into court yesterday and asked the court to order Hamm's Sanitation -- HSL, Inc., which is the owner of the landfill and has been for the last couple of years -- to immediately begin pumping again.

In its statutory escrow, that landfill has somewhere between \$1.3 and \$1.5 million, but that is not enough to pay for all the closure and all the pumping which is going to be necessary.

That landfill sort of fits into the mold of the private landfill I previously described to you. It started out as a different

corporation. A corporation owns the land. It is essentially owned by a very small number of majority stockholders. They also happen to be in the solid waste collection business. It is one of the larger ones in the Northwestern part of the State. They collect almost all of the waste in Sussex County. We think there are responsible parties who ought to be paying for the closure of the landfill, and the court has set aside -- they actually started hearing it about an hour ago, I think -- the second day's consideration of our request that they be ordered to immediately begin pumping again.

Perhaps the court will decide to open a closure escrow account, but they are going to have to do something in the future about the rest of that liability.

SENATOR DALTON: I do not want to prejudice the case, but if the court decides that the Hamm's owner/operator doesn't have to start pumping immediately, is the State going to do it?

MR. PEREIRA: We do not have the funding source to do it. We would probably ask the court to start using the \$1.3 million while we pursue our remedies against the responsible parties. That is one of the reasons why I stressed the point that we can't lose strict liability.

The history of Hamm's is that for many years the operator resisted attempts to upgrade that landfill, and to set aside enough money in order to accomplish upgrading. He operated for two years beyond his license, with the permission of the court, because of the need for additional disposal capacity in that part of the State. Nevertheless, it is now, and it always has been, our position that the landfill operator has been recalcitrant. He has always resisted that which has to be done in order to close that landfill properly. So, we would hold him liable -- as he ought to be -- for the cost of closure.

SENATOR DALTON: I have three more questions, and then I am going to turn the questioning over to Senator Laskin, okay?

MR. PEREIRA: Yes.

SENATOR DALTON: Let's go back to Kinsley, very briefly. A significant amount of the waste being dumped at Kinsley was from out-of-state sources. It is unfair to ask the municipalities and the

taxpayers in that area to bear the burden of closure costs relative to the proportion of waste being dumped there by the City of Philadelphia. In my conversations with the Commissioner, he agreed with that basic tenet.

Maybe this is not a question, but we will be looking to the Department, together with the Committee, to develop a source of revenue in order to absorb that portion of the cost.

MR. PEREIRA: Mr. Chairman, we would be happy to work with you on that. I think that is a legitimate concern. It is actually a sort of sub-section of a bigger concern the Board always had: Today's customers paying for what was dumped there in the last 20 years.

SENATOR DALTON: Yes.

MR. PEREIRA: In this case it seems even more important, because the City of Philadelphia dumped there for the most part during the last 20 years, and now New Jersey's residents have to pay for closure. That is a significant problem, both in terms of the rate case before the Board, and in terms of what we might work out between us, insofar as finding an appropriate solution to the problem of paying for those costs.

SENATOR DALTON: In 1981, the Closure Bill— You noted this already in your testimony. You said: "The private owner/operator is strictly liable." It seems to me that gives you a fairly clear path to pull these people into court and ensure that they bear their fair share of any closure costs.

Have you heard about any statutory impediments which you think this Committee can start working on in order to make the Department's life easier when trying to make these people pay?

MR. PEREIRA: In terms of enforcement, no. We have no suggestions in that regard. The 1981 Act has been very helpful. It allows us to go to the corporations, the parent corporations, the majority stockholders -- in some cases -- the landowners, and so forth. There is a clear trail we can follow. Offhand, I cannot think of anything that can be done to make the enforcement side of it easier.

There are probably a lot of things we can do legislatively if we address this problem in the pieces we have described: Make the



private operators more responsible in the future -- before they close and we have to chase them to set aside enough money -- or spread those costs out over as long a period of time as possible.

SENATOR DALTON: This is my last question. What is the status of the landfills, excluding Kinsley, that are presently operating? Will they have enough money to close in an environmentally sound manner, and, if not, do you have any suggestions as to what legislative remedies we might look at, including raising the amount of the escrow -- the amount of money they should have in escrow?

MR. PEREIRA: I don't have any numbers for you, but, statewide, there is about \$34 million in all the escrow accounts. That is far less than the total cost of all 300 that closed in the State, some of which are still operating. Some of those are probably setting aside enough money -- or close to it -- based on their rate increase applications before the Board.

As I indicated, Kinsley represents a big question mark to me -- why the big rate increase now at the end? Nevertheless, they must have come fairly close to setting it aside. They only have one-third of their customers. So, in terms of the entire life of the facility, that is an example of a landfill which came close, even if they missed their target.

I think a few others -- particularly those that still have a few years left and have recently gone to the Board for rate increases -- are beginning to accurately assess what they really need.

We never thought landfills were going to end up being cheap anyway. New landfills are expensive. Kinsley's rate is now equal to Pennsauken's rate. That landfill is in Senator Costa's District, and it charges \$10 per cubic yard. It hasn't been cheap for those towns either.

I expect new landfills to run \$8 to \$10 per cubic yard when they incorporate the real costs of operating and closing.

SENATOR DALTON: Are you saying there is a problem with presently operating landfills putting away enough escrow money?

MR. PEREIRA: Yes. That is just my opinion from looking generally, at what they are charging and what they are putting money

as i e t r; most of them are not setting aside enough money. Thirty cents doesn't come close to the need of most of these landfills.

So there may be an increase in that flat rate, or there may be another mechanism to make them stick to their guns and really set aside what they need.

SENATOR DALTON: Okay. Lee?

SENATOR LASKIN: I am just going to pick up on a couple of things Senator Dalton commented on. I had one basic question I wanted to get into, but the Kinsley thing is-- We talk about it here in these "hallowed halls" in abstract form, but the BPU's Kinsley closing rate mechanism is probably the most -- I am going to be as kind as I can -- horrible thing I have ever seen in all my years.

You know, we talk about quadrupling in the abstract. We are not paying it. Of all the towns that were dumping at Kinsley over the years, let's say one-third or 40% of those who dumped consisted of the City of Philadelphia -- it may have been 50% -- and it is no longer dumping there.

So, the BPU-- I guess in their mechanical way they don't look at things as emotionally as we who are in politics do. We have to. They have decided to quadruple the rates. Now, quadrupling the rates takes on two meanings. One, it is a giant increase. Two, one-third of those who would have paid are gone. So, at best, that leaves two-thirds -- and it is probably a little less than that; it may be 50% -- at best, that pay this newly quadrupled rate.

Again not in the abstract, we don't talk about municipalities paying that quadrupled rate; we talk about individual taxpayers -- homeowners -- paying the quadrupled rate in their annual taxes. In my opinion, that is going to drive some people to the poorhouse. It is an obscene, unbelievable increase in cost. That is four times whatever they were paying before. It is probably a little more than four times, but we will use that figure.

What bothers me is, why the perpetrators -- the City of Philadelphia, or Joe Smith-- I am not using the City of Philadelphia as an example because I don't like them due to other things such as the wage tax, which is another problem; this could be anybody who dumped,

is no longer dumping, and is free from the requirement to pay the closure fee. That is absolute nonsense. Everybody who dumped should be assessed the closure fee. I don't understand -- well, I guess I do understand: Philadelphia is no longer dumping. They are not a party to the case before the BPU, and the BPU probably has no jurisdiction to assess the closure fee against Philly anyway; I am assuming that. I wish there was some legal way to assess everybody who ever dumped.

What do we do about this problem for the poor people in our area? By coincidence, this happens to affect our area -- those of us who happen to be at the Committee hearing today. What do we do?

MR. PEREIRA: I don't think we have a pat answer for you. You are right. It is a very significant rate increase petition. As I have said, the Board has some very serious questions to look at when reviewing this. However, the problem you described regarding Philadelphia is the classic problem the Board has always had with people who have used landfills for a long time.

SENATOR LASKIN: It is good you said that. It is a classic problem the Board has always had. Now the Board is Democratic; sometimes it is Republican, so let's forget about partisan politics regarding the Board. Has the Board ever come forward with a suggestion regarding how to solve this problem, or do they just sit there and decide how much more money people will pay for service?

Have they ever come forward, to you or to anyone you know of in any Administration, Democrat or Republican, and said: "Hey, this is unfair; we think you ought to consider this problem," or do they just sit there and say, "Well, show us the figures," and then rule on whether this figure is right, or that figure is wrong? Have they ever come forward with that?

MR. PEREIRA: Senator, I don't know the answer to that because I do not represent them here. I understand they are going to testify today, and they are probably pleased that you gave them advanced warning about that question.

SENATOR LASKIN: I hope so. I don't mean this for the individuals who are here. This is an ongoing, forever, problem. It just so happens that the people who are here today are presently on the BPU.

Would we be better off with no regulation on rate making in solid waste and landfills? I sometimes believe that the American way would be better off with less regulation in certain areas.

For example, Senator Dalton and other members of the Committee are very much involved in things which revolve around recycling. Unless one deregulates certain phases of the recycling business and allows a profit motivation for the recycler, all the talk regarding recycling isn't going to mean anything. Do we have the same situation here? Do we need any regulation at all?

MR. PEREIRA: We haven't taken a position on the deregulation of landfills, but there are several important pieces of the solid waste structure in New Jersey that rely on some kind of rate control. For example, in order to plan in an orderly way -- especially for the capital intensive resource recovery facilities -- we have to guarantee that the garbage is going to show up at the facility, so we have, as was confirmed by the Supreme Court, waste stream control. We are directing towns to use a specific landfill. They can't use any other. Traditionally, that is called a franchise, and you really can't give someone a franchise unless you regulate how much money they make.

SENATOR LASKIN: That is a complex issue. I have a couple of more questions. Just in passing, please make sure you warn Senator Dalton so that he will be made aware of the fact that the strict liability change which just went through the Judiciary Committee is a watering down of that law. I hope you talk to him about it because I think you are going to get upset about it. It is not good. Strict liability is watered down in a bill that just came through the Judiciary Committee.

Let me ask you something. This is really what I wanted to get into. This bothers me. People make political statements about waste, environment, and toxicity -- you know, it is the thing to talk about today. However, everyone forgets -- and this is what I would like to hear from you -- that in 1975 a law was passed which mandated all 21 counties to handle their own solid waste problems. Now, I may not like that law, but it is a law that nobody talks about. Everyone says the DEP ought to be doing, be doing, be doing, when a law on the books



mandates that the counties handle solid waste problems in their own, what they call "districts." Districts are synonymous with counties.

Can't the DEP, or our Attorney General, go after the recalcitrant counties that have done almost nothing? Unfortunately, one of them is my county. There is no question about it. It is not a political thing. They have had a bad track record on doing anything with solid waste, and now that the crisis has it, everyone is scurrying around looking for something to do, or for someone to blame.

Has the Attorney General, Democrat or Republican -- this is since 1975 -- gone after the counties because they have absolutely refused to operate within that Solid Waste Law of 1975?

MR. PEREIRA: Yes. Last year, Commissioner Hughey wrote to 15 counties that had a gap in their plan. They had a partial plan, but not a complete one. He said, "We are either going to reach a binding, legal agreement to get back on schedule and fix this or we are going to sue you." Ultimately, we ended up suing seven of them. We are in court -- in the Chancery Division of Middlesex County -- with seven counties because they, in our opinion, have failed to develop adequate solid waste plans.

SENATOR LASKIN: If it is a county responsibility -- picking up on some of the questions of Senator Dalton -- why should the municipality, where the landfill is sited, be the scapegoat, the big payer, the one who has to solve the problem just because it is in its municipality? If it is a county responsibility, why should the State be involved? The law of 1975 -- which may not be a good law, which may have to be repealed -- is a law that nobody talks about. All they talk about is the State or the municipality not doing something, but the law says the county is supposed to do it.

Should the county be more involved in spending money for closure?

MR. PEREIRA: The counties were put in kind of a strange situation because they were never responsible for getting rid of garbage; they don't collect it. Towns are still largely responsible for that. At least one-half of the waste is collected by municipalities, either under contract or by themselves.

What the Legislature gave the counties was the responsibility to make sure there were facilities to handle waste, that the facilities were adequate, and that the life of those facilities was projected into the future.

I think one of the problems with that is counties themselves have never had the responsibility to get the garbage off the streets and take it somewhere; therefore, in some cases they found it difficult to deal with the tough political issue of where to put it.

SENATOR LASKIN: I will never understand that.

MR. PEREIRA: I can't tell you why the law was passed, but I was around. For example, one of the issues at that time was that before 1975 the courts held — right up to the Supreme Court — that the State preempted all local control over solid waste. When someone came forward with a permit application for a new landfill, they could get a permit, but we could even preempt zoning control for the location of that landfill. There was a desire, as the preamble to the 1975 amendments says, to return some of that control to a regional level, below the State but above municipalities. Municipalities were saying, "This is too complicated for us; we can't handle it anymore."

SENATOR LASKIN: I am going to finish now, but this is something that has been eating at me for months. Every day I read something in the newspaper — and I don't say this to criticize — and the reporters aren't even aware of this 1975 law. I read story after story about the "State not doing," when the law says the county is supposed to do it. Nobody talks about that, and it bothers me. I think that either the counties are going to have to do it or we are going to have to repeal the law and give the power, in total, to the State of New Jersey. Right now, the State does not have that power. It is a county power, but no one asks the counties to do it.

MR. PEREIRA: As you say, it is a problem. Part of the problem this late in the game is throwing out the baby with the bath water. There are some very successful counties that have done a very good job.

SENATOR LASKIN: Oh, I know there are.

SENATOR DALTON: If can just pick up on that line of questioning, I think this is where Senator Laskin and I might part, based upon our interpretation of the law.

I am one of the persons who has been critical of the State. I have been critical of the State based upon the fact that the 1976 law requires the counties to come up with a plan in order to deal with their solid waste disposal. But there is nothing that precludes either the Department from coming down or the counties getting together on a regional basis in order to take care of their solid waste responsibility.

SENATOR LASKIN: That's in the law.

SENATOR DALTON: There is nothing. The Senator is referring to some of my comments, my comments--

SENATOR LASKIN: No, not your comments.

SENATOR DALTON: Well, whomever. Let's just paint a scenario; maybe we are getting off the track here. If you follow Judge DeSimone's order, what you will have is, Camden County will build -- or construct -- two resource recovery plants and a landfill. You will have Gloucester County siting and building a resource recovery plant and a new landfill. You will have Salem County doing likewise.

Our concern is that when you are spreading that risk to three different counties it is not being done in an environmentally sound way, nor is it being done in a financially sound way. Because if anyone thinks the closure costs at Kinsley were astronomical, check out the cost to the taxpayers of each of those three counties if and when two resource recovery plants and a landfill are sited in Camden County, in Gloucester County, and, likewise, in Salem County.

So, we are saying there is nothing in that law which precludes the State -- assuming that you have a rational person to talk to -- from encouraging a regional solution to the problem. There is nothing in that 1976 statute.

SENATOR LASKIN: Dan, since you mentioned it, there is a specific section, and it too doesn't involve the State. I have one of the sections of the law: "Any two or more districts" -- and a district is defined as a county, "may formulate and adopt a single solid waste

waste management plan, which shall meet all the requirements of this act....," etc. The counties have had the power to regionalize. They have had that power since 1975, and they haven't done anything.

SENATOR DALTON: If you give that decision making power to the counties, I am suggesting that the scope of the counties' perspective is going to be fairly myopic.

SENATOR LASKIN: I agree with you. I don't think they ought to have it. I am saying that it is in the law.

SENATOR DALTON: But, there is nothing to preclude the State from coming in and encouraging the counties to regionalize, because it doesn't make sense from an environmental or a financial perspective to allow each of the 21 counties to go their own separate way. That is what we have been saying in the southern part of the State, particularly in our area, as Lee indicated.

Additionally, I might point out that the State doesn't have a Master Plan to address the solid waste problem. So, what we have is 21 separate plans. We don't have a Master Plan. What I am suggesting is that 21 separate plans is not rational; it is not cost-effective; and it is not environmentally effective. That is what we have been saying.

Putting environmental issues aside, I don't know how anyone who looks at all the figures these resource recovery plants and landfills are going to cost, would not agree with me.

Heck, we are talking about Camden County. Two landfills, one in Lee's district and one in my district, on the edge of the Pinelands-- That is ridiculous.

MR. PEREIRA: Let me very briefly address that. The first part of the problem is -- maybe it is the end of the problem -- that the law says after a solid waste management plan is put into effect in a district, or in a series of joint districts, the district shall proceed to implement it. The districts have the power to condemn, to finance, and to do all of those things.

Ultimately -- however the plans turn out -- there has to be a body with the authority and the wherewithal to make it happen. We have encouraged it. We have held meetings with counties, jointly, and said, "We think you two have something to talk about here. Maybe there



is a regional solution." Part of the problem is that counties have just felt if they did nothing, someone would come along and bail them out. In fact, that has been the history, because rather than lay the garbage on the streets, we have ultimately sent it someplace else and burdened another district with it. We have encouraged them.

I think some of the things in 1778, including some of the amendments put into that bill by this Committee a couple of months ago, are beginning to show some results in terms of bringing counties together. We have counties such as Middlesex seriously negotiating with other counties and offering to host at least part of the solution for other counties, because there are financial benefits involved as well as the environmental benefits, as you have described them.

However, our power to make them do it is limited. If you were to take two or three counties in the southern part of the State and say, "Well, we have decided this is where the facility is going to go. You three have to send your waste there," there is no next step; there is no one to implement it. If the county doesn't agree and reach agreements with other counties, there isn't anyone there who can step in, sell the bonds, condemn the land, and make it happen. It has to be something they are willing to do, and reach an agreement to do.

SENATOR DALTON: But if the basis of that agreement isn't some sort of rationally laid-out plan that has to be done on a Statewide basis, I do not know how you expect the counties to be encouraged to cooperate.

In other words, waste shed areas have nothing to do with county lines. I suspect I am being critical of the 1976 law. You know, when I look back at it nine years later, the law makes no sense. But, at the same time there is nothing in that law which precludes the State from coming down, playing a role, and encouraging counties to get together on a rational basis, based on waste shed areas and a common thread regarding the problem which runs through those counties. The State should play a part in that decision making process.

What I have been saying is the State has been reticent in playing a role. The State would rather let a judge play the role; they don't want to play the role.

Lee, I have nothing nothing but the highest respect professionally for you, but this is where your Department and I have different perspectives on the problem. I also suspect we are getting off the closure issue. (laughter)

SENATOR COSTA: I come from one of those counties that took Chapter 326 seriously. I really feel that the State doesn't want us to come to a proper conclusion, because throughout the years all we have done is comply with State regulations. We are getting to the point — or we are coming to the conclusion — where we have to do another study.

When I became a Freeholder in 1972, we already spent a lot of money on a study. I thought we were making some headway. The next thing I knew, we had to do another study. When we completed that study, we had to do another study. I felt as though we were constantly going to school and never graduating.

As you know, we have been trying to secure our own landfill in Burlington County. This brings me to something I heard you say regarding owners who did not have enough money for closure. There are some landfill owners who have so much money that they can constantly keep us in court, so you know what I am speaking about. There is a school right next door to Parklands. Have we ever been able to stop it? How successful has the DEP been in dealing with closure?

We have Big Hill. I went behind people's houses, and I had to wear boots. The water just hit me because of the leachate right in their back yards.

We have L&D, and everyone's wells are becoming contaminated from the leachate there. How successful is the DEP, or are we just spinning wheels when we speak of new laws regarding closure? You know, I look at the Kinsley Landfill; you just made a statement that they ran out of room in October or November. Yet, I keep reading in the newspaper that Philadelphia is still trying to dump their garbage in Kinsley, and they have extended its closure. How can one extend something that has already run out of room?

MR. PEREIRA: The judge allowed them to go one lift higher, on top of what is already a rather substantial mountain, as you will

see if you ever go down and take a look at the site. Two-thirds of the waste has been redirected out of that site. It is the other way around. Two-thirds of the waste was coming mostly from Philadelphia. The judge said, I am going to let you continue, at one-third of the waste flow for one year, on top of the existing Kinsley Landfill. He ordered Kinsley to stay open for one more lift on top, and he put those counties on a schedule to get their own facilities within that one year.

You are right. I think some people in the landfill business would rather spend their resources running away from their responsibilities rather than try to meet them. It is hard to tell how successful we are going to be. Certainly, the operators of some of the landfills you have talked about are going to be very hard to find, and we are going to need a mechanism for closing landfills where they have left.

Others are very substantial companies, and they are going to have to pay for the proper closure and maintenance of those landfills. It may take us some time to extract that from them if they keep running away from us. Maybe we need a--

SENATOR COSTA: We are constantly in court.

MR. PEREIRA: That's right.

SENATOR COSTA: We should have had our own landfill opened by now in compliance with Chapter 326. The people in Burlington County would at least be much better off than they are right now.

It has been years. We passed a bond issue, and we had the money to purchase the landfill, or the ground for the landfill. We can't do it. We do not have it yet, and most of our money is being expended by doing the studies DEP continually puts upon Burlington County, and also through law suits.

MR. PEREIRA: First of all, let me explain the studies. They are a requirement of the statute.

SENATOR COSTA: Yes, but why do they keep changing? We comply with the study, and the next thing we know we have another study. Not only do we have to do a new part of that study, but we have to start from point zero again.

SENATOR DALTON: In many cases there are also redirection orders right in the middle of these studies.

SENATOR COSTA: Where it the DEP encouraging counties to go out on their own? Our tax money is going towards these— Well, it is really from bond issues, but by the time we are ready to buy the landfill, all the landfill money we bonded for will be gone because of law suits.

MR. PEREIRA: Yes.

SENATOR LASKIN: Plus the consultants' fees we keep paying for, which I think is a big rip-off. And the State is causing us to get into that kind of position.

MR. PEREIRA: Well, the statute says there is a very deliberative process to get a new facility, whether you are a county or a private operator. You have to begin a county plan first, and Burlington went about it very deliberately. They did a siting criteria, which they developed with a consultant. They adopted and applied that criteria, they short-listed the sites, and they ultimately selected one.

That is a very defensible process and in all the legal challenges, we have been in court, side by side with Burlington County against those legal challenges, the county has prevailed. Burlington County has created a lot of good case law for the rest of the State. But, the statute requires that before you can even buy the land, you have to do an environmental impact statement, and it defines what that environmental impact statement is, and so forth.

So, again, that is not something we impose by regulation; that is required by statute before you can even go out and buy the land.

I know that part of the delay in Burlington has been the legal challenges to the plan.

SENATOR COSTA: Our Planning Board has studies up in the attic which could fill this whole room -- really -- study upon study, and a whole lot of it is money wasted. What is the use of doing a study and then have the State come down and say now you have to do another study because we came up with something new? Why can't we get it right the first time?

My question here is-- We are getting away from closure, as Dan said, but I would like to see some encouragement from the DEP for counties to get into taking care of solving their solid waste problem, and I don't see it.

MR. PEREIRA: Well, we think we have. We have been very supportive of Burlington. We have supported them in every law suit. When someone sued the county we joined right in there to support them. We have never directed any waste into Burlington County because we refuse to upset a good district's solid waste plan, or a County that is making good progress towards solving its own problem, by taking away their landfill space.

So, when we do a redirection -- when we have to do it because the court orders it, or when the garbage is laying in the streets -- we don't upset someone that has a lot invested in their district's solid waste plan, and Burlington has been a good example of that. It has been very successful in getting Philadelphia out years before it happened elsewhere, and in getting Mercer and other dumpers out. So, that is why we point to Burlington as a good example.

We think we have been supportive. In terms of support by way of funding, well, the grants have declined over the years until the annual budget now seems to include \$500 thousand for the whole State. That is one of the reasons why we so strongly supported the Services Fund part of 1778: There will now be a set amount of money that the county can rely on to keep its program going.

SENATOR COSTA: It seems as though the courts, rather than legislation-- You can draw up legislation, and you come to a point where the DEP has also stated through regulation that a landfill should close. Yet, the courts are the ones who reverse that and allow it. What do they use as background? Most judges are not versed in environmental law, nor what is best for an area. Yet, they are allowed to continue with a landfill, even though the DEP has stated, with expertise behind, that it should close. How can we assist in that area?

MR. PEREIRA: I am not sure that much can be done by way of statute to change that. Judges have their prerogatives. They face a



problem. I don't envy them in some cases. They sometimes have 50 communities standing there saying, "If you close this landfill, the rate is going to quadruple;" or, "We have to drive another 100 miles to get rid of the garbage; you can't close it." The judge takes this testimony and--

SENATOR COSTA: Didn't you take that into consideration as the DEP -- the Departmental of Environmental Protection -- before you said it should be closed?

MR. PEREIRA: Yes. They have permits and a certain amount of capacity. More often than not a judge weighs the relative merits of both sides. What we have seen recently, because of the extreme shortage in landfills in the State, is that they have allowed them to operate a little bit longer, as they have at Kinsley for one year, and Hamm's for two years.

SENATOR COSTA: How about Big Hill? Remember, they were supposed to have closed a long time ago? There was a \$50 fine for each day. What happened? Did they ever pay that fine each day they were open, regardless of the court order?

MR. PEREIRA: No, they didn't. In fact--

SENATOR COSTA: How did they get away with it? This is the reason why we can't enforce anything, because people can get away with it.

MR. PEREIRA: I know, but they just didn't pay. We are chasing them for that, but a much bigger part of their bill is our chase for the money to close that landfill properly.

What we frequently find is, we get into court and it ends becoming a choice between getting money for the environmental improvement or having them pay the penalty. That is an unfortunate situation, but that is what frequently happens when one is faced with companies that are there just for that purpose and then they go bankrupt.

SENATOR COSTA: You know, we don't have any mountains in South Jersey, but I think we are getting some with these landfills.

MR. PEREIRA: That's right. We could end up with skiing in South Jersey.

SENATOR LASKIN: Yes, we have one in Pine Hill; it is called Ski Mountain.

SENATOR COSTA: Thank you very much. Are there any other questions? (no response)

MR. PEREIRA: Thank you.

SENATOR COSTA: Robert Swain, from the Board of Public Utilities. Would you introduce those who are with you, please?

(Mr. Bevan responds)

MURRAY BEVAN: Sure.

SENATOR COSTA: And yourself, please.

MR. BEVAN: Senator Costa, Senator Laskin, my name is Murray Bevan. I am Barbara Curran's assistant on the Board of Public Utilities. On my right is Margaret Foti. Margaret joined the Staff of the Board just recently, within the last three or four months. Prior to that time she was a Deputy Attorney General assigned to the BPU. She was active in a number of the BPU related landfill cases. Robert Swain is on my left. Bob is a regulatory officer who has also been actively involved in a number of these cases.

To the extent that I cannot answer questions -- I have been at the Board for only six months -- I think the individuals on my left and on my right will be able to handle them.

I have a prepared statement. I will try to make it brief, and then we will be open to questions.

The Board of Public Utilities is pleased to present testimony to the Senate Energy and Environment Committee on the issue of landfill closure costs. As indicated by Senator Dalton, in a letter received by the Board on February 8th, there are a number of issues relative to the question of proper landfill closure and maintenance. Among these issues are how many non-operating landfills have been properly closed, the number of landfills which will need funds to properly close in the near future, the adequacy of existing funding sources to meet closure costs, and the need, if any, for new or increased closure funding sources.

The purpose of this testimony today should be to address those issues which are subject to the jurisdiction of the Board, or

which are with areas of its particular knowledge, control and/or expertise. In this vein, so it be made clear at the outset, there are a number of municipal landfills which the Board does not regulate, and perhaps, more importantly, the BPU does not possess any expertise whatsoever relative to engineering requirements for landfill closure or post-closure maintenance. Nevertheless, the BPU will provide any assistance to the Committee or the staff of the Committee which is deemed necessary to adequately enable them to thoroughly review these questions.

As Mr. Pereira indicated in his previous testimony, Chapter 306 of the Laws of New Jersey, 1981, otherwise known as the "Sanitary Landfill Facility Closure and Contingency Fund Act," levies upon the owner or operator of every sanitary landfill facility two taxes, through which funds for closure and post-closure maintenance are provided. The first such tax, which is at a rate of 15¢ per cubic yard of solid waste, and .002¢ per gallon of liquids is administered by the DEP and credited with tax revenues collected by the Division of Taxation. This revolving fund was established so that moneys would be available to satisfy claims for damages proximately resulting from the operation or closure of any sanitary landfill.

The second source of funds created pursuant to this Act are individual escrow accounts established for each landfill at the rate of 30¢ per cubic yard of solids and .004¢ per gallon of liquids of all solid waste accepted for disposal at individual landfills during their preceding month of operation. Both of these funds are funds of last resort and they are administered by DEP. They are subject to review by the BPU only to the extent that it requires the filing of reports by landfills subject to its jurisdiction on a biannual basis, as to the fact that such landfills have deposited moneys into them, pursuant to statutory requirements. Taxes paid pursuant to the requirements of the Act, are passed through to generators of solid waste, and moneys collected for these funds are exclusive of rates established in tariffs on file with and approved by the BPU.

In addition to funds that are available in the statewide contingency fund, or site specific escrow accounts established under

the Act, the BPU has, for some time now, required the establishment of individual escrow accounts within which funds earmarked for environmental improvements, closure, and post-closure maintenance are segregated.

A number of these escrow accounts had been established by the Board prior to the enactment of the Sanitary Landfill Closure and Contingency Fund Act, and reflect the Board's determination to ensure to the greatest extent possible that moneys are available through which landfills may expeditiously effect those environmental improvements deemed necessary by the DEP.

These escrow accounts are established through rate cases filed by landfills after they have been advised by the Department, generally through preliminary approval of plans for closure and post-closure maintenance, of improvements they will be required to make on their facilities. A landfill petitions the BPU for an increase in rates and will indicate in that request what portion of the increase will be dedicated to environmental improvements, what portion will be dedicated to operating expenses, and the amount of the waste which it projects it will receive, what amount of in-place capacity it has to receive such waste, and the per cubic yard rate required to accomplish necessary environmental improvements, closure, and post-closure maintenance.

Assuming there is no immediate urgency attached to this request, is forwarded to the Office of Administrative Law for determination as a contested case, as are other rate cases filed with the BPU. It then becomes the subject of considerable litigation between the petitioning landfill, the staff of the BPU, the Division of Rate Counsel of the Department of the Public Advocate, and, quite frequently, municipalities that will be affected by the proposed increase. During this litigation, DEP witnesses often testify as to the adequacy of the facility's plans and whether sufficient funds will be set aside to satisfy them.

In the event circumstances dictate that an immediate increase to fund environmental improvements is necessary, the BPU may entertain such a request on an emergent, interim, basis, making a preliminary

award, which, of course, is subject to refund. Thereafter, the entire case, including any interim decision of the Board, will be referred to the Office of Administrative Law for full plenary hearing.

Once an escrow account between a utility and its escrow agent has been established pursuant to the final BPU order, that account is monitored on a monthly basis by the Board's Division of Audits to ensure its proper funding. Any withdrawal from an account may be made only upon certification from a licensed professional engineer that such withdrawal is made to reimburse the utility for moneys expended for environmental improvements mandated by the DEP. This certification, which is simultaneously served upon the Board and the DEP, pursuant to procedures established between the agencies, triggers a mechanism through which funds are permitted to be withdrawn from the escrow account either upon agreement by the Department that the funds were spent for a valid improvement or closure, or within 30 days, in the event the Department has not responded to such certification.

There are presently 16 escrow accounts established under this procedure, and as of December 31, 1984, the accounts had a cumulative balance of almost \$36 million. Six of these accounts are dedicated to landfills which are no longer operating, while the remaining 10 have been established by landfills presently receiving waste. I have attached copies of those available funds to this testimony.

It should also be noted that several landfills have recently petitioned the Board for increases in rates for environmental improvements, or are now, for the first time, petitioning for such rate increases.

In addition, several landfills whose rates were most recently approved by the Board are now in the process of establishing escrow accounts to augment the increased rates.

In summation, the BPU has established an independent mechanism through which increased costs, necessitated by DEP mandated environmental improvements are readily available, accessible, and subject to monitoring by its staff auditors. The Board does not have the expertise to determine whether these independent sources of funds will adequately meet all environmental improvements deemed necessary by

the Department, only that funds are available to make the improvements. Thank you.

SENATOR DALTON: Thank you very much. Are there questions from the Committee? Senator Costa? After you, we will have questions from Senator Laskin.

SENATOR COSTA: My first question concerns page two, where you speak of public utilities: "Taxes paid pursuant to requirements of the Act are passed through to generators of solid waste..." which means the public, correct?

MR. BEVAN: That's correct.

SENATOR COSTA: Yet, I am sure you were in the audience when we spoke about Philadelphia sending in its waste. Your statement is not really accurate because we cannot tax people from another state, is that correct?

ROBERT SWAIN: I think while it was disposing of its garbage at Kinsley Landfill the City of Philadelphia was also assessed the tax because the Act speaks of assessment at the landfill.

The Board passes the cost along to the generators through the rates which the collectors charge. I think it is a 37¢ charge per tariff rate, which is not considered to be the normal rate the Board allows to go through.

I think there was a mechanism, and I think the City of Philadelphia was paying taxes. Of course, we can verify this for you.

SENATOR COSTA: One other thing: When they come to you and speak about a hardship in paying their rates, is the money they spend in court costs -- which constantly keeps municipalities in the courts rather than resolving the matter -- taken into consideration? Again, I am again addressing my own area, Burlington County. We have been in court constantly with Parklands and L&D. They have enough money to keep us in court. If they come before you for a rate increase, is that increase granted on the basis of their expenses? Is that taken into consideration, and if it is taken into consideration, does that qualify them for a rate increase?

MR. SWAIN: Senator, it says on the individual landfill's application that if they allege to the Board that part of their



operating expenses were expenses incurred in litigating various courses of action, that request would be a rate for a recoverable expense. Whether the Board would approve such a rate is another question.

To my knowledge, the Board will generally approve a reasonable cost for litigation. I am not aware of any case -- unless Margaret, having been an A.G., can speak to that -- where the Board allowed them to continue to litigate cases and recover those expenses. I know Parklands has just petitioned the Board. They haven't sought a rate increase for a long time, so that might be something we would look closely at, within the context of their most recently filed petition.

**MARGARET FOTTI:** Also, Senator, with respect to the closure funds, funds set aside specifically for closure of a landfill are used traditionally for closure alone, not for legal expenses incurred during the operation of the landfill. That would not be taken from the closure side of the funding.

**SENATOR COSTA:** My concern is that the public is not only paying the rate for getting rid of their trash and for the court suits their county incurs when they have to fight an outfit such as Parkland in court, but they are also paying Parklands to sue. This is what I am driving at.

**MR. SWAIN:** My answer to question is, I am almost positive that is not the case. Of course, we can verify that for you.

**SENATOR COSTA:** I would like to--

**MR. SWAIN:** With respect to Parklands, we are aware of the fact that there has been substantial litigation involving things that are not really subject to our jurisdiction. If they are seeking to recover those expenses through this presently, we can verify that and let you know about it.

**SENATOR COSTA:** They may not put it in as seeking recovery of the expenses; they may just put it in as part of their expenses, as how much it costs them to run their landfill. If that is so, we are really sticking it to the general public.

**MR. SWAIN:** All expenses are subject to litigation, and they are scrutinized by the Board's staff. The public advocate also participates in the proceedings. In cases of landfills, we generally

have an Attorney General representing the Board, and those costs are scrutinized very closely.

SENATOR COSTA: I would appreciate it very much if you would let this Committee know whether that is included when the BPU is considering the rate increase.

I would like to hold any further questions until I hear further testimony.

SENATOR DALTON: Sure, Senator. Senator Laskin?

SENATOR LASKIN: This is rate making— The BPU is not really a policy setting agency?

MR. SWAIN: No.

SENATOR LASKIN: Any questions I have really could not, or should not be answered by them. The whole area of public utilities and exclusive franchises is something that should be determined in a very basic manner by this Legislature, or maybe 10 years from now. But the system of the traditional granting of exclusive franchises to public utilities is an area which is very complex and needs work. You guys just sit up there and say yes or no to people who apply for rates. Of course, most of the time the answer is yes. I am not so sure you can really get into policy determinations. (no response)

SENATOR DALTON: You talked about two escrow accounts in your testimony. One is the Sanitary Landfill Closure and Contingency Act, and you talked about another one also. What is the basis for that other closure account?

MR. SWAIN: Are you speaking of our own established accounts?

SENATOR DALTON: That's right.

MR. SWAIN: I think the Board, from a public policy determination perspective, made a determination back in the late '70s and the '80s that a means to segregate cost, which were to be dedicated solely to the environmental improvements mandated by the Department, should be developed in order to have these funds readily accessible if it were shown that they were going to be spent for environmental purposes.

So, the basis for the establishment of that separate escrow account was the Board's own ratemaking jurisdiction, which was

established under our general statutes, Title 48 and also under the Solid Waste Utility Control Act. I know you are very much aware of that, Senator. I think you were one of the sponsors of that Act.

MS. FOTI: Specifically, Senator, there is a statutory cite, N.J.S.A. 13:1E-2(b)5, which empowers the Board to recognize the end cost of compliance with environmental standards through the provision of rate increases.

SENATOR DALTON: What is your role in monitoring the closure portion of the Solid Waste Closure and Contingency Act? Do you have a role?

MR. SWAIN: No.

SENATOR DALTON: Okay. So, what we have are two closure accounts. One is administered or monitored by the Department of Environmental Protection, and one is monitored by the Board of Public Utilities.

MR. SWAIN: It is monitored to the extent that when a request for reimbursement is filed by a landfill-- Incidentally, these accounts are set up between escrow agents and the landfills themselves. The Board has no part in setting up these accounts, only to the extent that it monitors what goes in and what comes out of them. They are monitored by the Board to the extent that certifications must be filed stating that requests for reimbursement are for environmental purposes; those requests must also be simultaneously served upon the Department. The Board does not have the engineering expertise to determine whether or not the improvements are actually for environmental purposes. We rely upon the Department, as the statute indicates we should.

SENATOR DALTON: Bob and I have talked many times, and he has been very good when supplying us with information. I am not a lawyer; I am a layman. What I am asking is if we are talking about two escrow accounts.

MR. SWAIN: Yes.

SENATOR DALTON: Okay. I don't know whether "monitored" is the right word, but one is monitored by the Department and one is monitored by the Board of Public Utilities. Okay?

Specifically with regard to the Kinsley matter, there was obviously a determination made by the Board in its interim decision that one or both of those accounts were short, insofar as providing enough moneys for closure, given Judge DeSimone's order. Which account was that?

MR. SWAIN: It was our account. The only thing the Board determined was that Judge DeSimone directed the Kinsley Landfill to add another lift. As Lee Perira indicated before, as a result of that, a substantial amount of environmental improvements would be necessary to effect that additional lift, and the landfill had a limited life. At that time, it was represented to us as being 10 months. Subsequent to that representation, we understand it has been expanded to 14 months.

But, in any event, the Board was faced with making a decision on an interim basis. Had it failed to act at that point in time, the cost associated with the new lift would not have been recoverable at all. There would have been losses, and there would have been no way to effect the environmental improvements mandated by the Judge's order, as the Board understood it. So, that is essentially all we determined with respect to that matter.

Again, as indicated by Mr. Bevan, that was an interim decision. With respect to that decision, there was a separate escrow account established for funds awarded through that interim decision. The case is now in litigation before OAL to determine whether or not the \$10 rate was reasonable, if it should be sustained, and also to determine whether or not there was any validity to the questions and issues raised when the additional increases were requested. Incidentally, they subsequently amended their petition and requested a \$17 per cubic yard increase, as opposed to the \$14 increase that was originally requested.

These issues and this case are being litigated fairly heavily. I think we can represent-- We are not really discussing the merits of the case because we are not really aware of them.

SENATOR DALTON: Do you have a ball park time frame as to when the OAL will make a final recommendation to the Board, and when the Board will take action?

MR. SWAIN: I think it is subject to confirmation. You may know that the Board's interim decision -- and I think a number of other decisions -- was appealed to the Appellate Division, and subsequently it was affirmed by the Supreme Court, which ordered expedited hearings. So, we are expecting a decision sometime in the near future, perhaps within a month.

SENATOR DALTON: From the OAL?

MR. SWAIN: From the OAL, and it will be acted upon expeditiously by the Board.

SENATOR DALTON: Okay. So, perhaps we will be hearing something within the next two months, insofar as a final determination of the Kinsley rate hike request is concerned.

MR. SWAIN: Yes. There is one other thing I might mention, Senator. I think Lee mentioned that nobody from the Department is on this case now. We have been led to believe -- in fact, I think this can be confirmed by discussing it with the A.G. who is representing the Board staff in this case -- that there are representatives from the Department there. I know the Department is very large. Maybe Lee is not aware of this. They are from the engineering side, and they are advising our staff, particularly the Deputy Attorney General who is representing us in a number of these issues. That would take care of the Department's concerns. That was said just to correct something Lee may have misstated before.

SENATOR DALTON: Is it clearly indicated in the statute, as you indicated, that the Board has the power to set aside escrow accounts for the closure of landfills. Is that explicit?

MS. FOTI: Yes, Senator. It is fairly explicit. Just to remove any possible doubt, there was a landfill case litigated approximately two years ago, Global Landfill Reclaim, Inc., in which the Appellate Division specifically found that the Board of Public Utilities had the authority through its rate setting powers to provide rates for mandated environmental improvements in the public interest.

SENATOR DALTON: What would the impact be if we allowed-- You make a final determination. This is a hypothetical situation. You decide that no increase is due Kinsley, hypothetically. Then this

Legislature — which I intend to do prior to the municipalities cutting their budgets — passes a bill which allows bonding for these closure costs. Would there be a mechanism to give back the initial outlay to the municipalities made, whether it was done through bonding or whatever via the interim rate increase? This would be used to return the moneys to the municipalities.

MR. SWAIN: That's why we set up the segregated account.

SENATOR DALTON: Okay.

MR. SWAIN: It is not the same as the escrow account that is in existence. So, funds can be readily returned in the event it is determined that the original \$10 interim increase is not justified. I imagine the exact machinations of that mechanism would have to be worked out. I think your question goes further than that though. If the municipalities were all to float bonds in order to recover these costs, how would the money be returned to them?

SENATOR DALTON: That's exactly right.

MR. SWAIN: I imagine the bonds would be for a five year term. They might be able to redeem them. That might be something which could be structured within the bond issuance.

I know with respect to Pennsauken's Resource Recovery Facility planning, they have established a rather novel financing mechanism through which all the bonds will be redeemed and the proceeds will go back to everyone.

SENATOR LASKIN: That's called revenue bonds. Money will be coming in to pay off those bonds. Under Senator Dalton's proposal it is a closure bond. It is closed. There is no new money coming in. So a revenue bond really has nothing to do with what he is talking about.

MR. SWAIN: All right. Well, what I am suggesting, Senator, is, there may be some sort of mechanism through which the bonds could be structured to allow for this. I am not suggesting that it is—

SENATOR LASKIN: No, I understand. But I don't think it is helping the Senator because I don't think he knows the answer; that's why he is asking you.

If a municipality floats a bond to close, there is no way that money is coming in; it is closed. I may be wrong but I think he



wants to know if there is some kind of mechanism -- any kind of mechanism -- which would allow those bonds to be paid off by other than the local taxpayers. I am assuming that.

SENATOR DALTON: What I am afraid of is, I don't want to be leading the municipalities into a Catch 22 situation. I am inviting them, in effect, to pay off their portion of the cost of closure and float that bond over a five-year period. Then, after that is done -- or in and around that time -- you could come back and say, "Well, your proportion of the cost of closure has changed significantly." All right? I am trying to figure this out. You know, we are going to be hearing this bill on Monday. I want to move it, but I do not want to put them in a Catch 22 situation. I am looking to you for advice insofar as how that bill can be framed so we don't invite them into a Catch 22 situation.

The reason I asked for a time frame is because you are talking about having a final determination for Kinsley in two months. However, the municipalities have to have their budget ready -- in stone, I suspect -- by March 15th. That time frame and the bill I plan to introduce may subject them to a Catch 22 situation, which, by the way, is not my intention.

Do you have any suggestions?

MR. BEVAN: This is S-27-- Is that the one, Mark?

MR. SWAIN: It is S-2718. The answer is, we can't give you an answer at this point in time. We have to consult with some of the other members of the Board's staff. I know your affinity for lawyers, but not all lawyers are accountants. However, there may be a mechanism and we will get right back to you on this, or we will do so as soon as possible. If it not later on today it may be tomorrow.

SENATOR DALTON: Yes. For whatever it is worth, I know the machinations of your decision-making process. You have to follow your procedures, but the sooner you can get some sort of decision for these folks the better off they are going to be because they are all waiting now. They are all paying this interim increase, and when we make a final determination, that might not be shown in their budgets.

It is very difficult for mayors and councils in a number of towns to sit down and make any plans, or to go through any type of rational planning procedure when they have this hanging over their heads. For many of the towns I represent this promises to be a significant part of their budget for the coming year.

I guess we should get to the broader issue now. Lee indicated that we have 300 landfills out there that are "not operating." Is that the case, or would you have no way of knowing?

MR. SWAIN: We would really have no way of knowing, except to the extent that some of the landfills we previously regulated have established escrow accounts and have subsequently closed. We have provided a list of those landfills. I think there are six of them. There are certain funds available through escrow accounts which have been established other than through the sources Lee discussed. But presently, there are a number of landfills, as we understand it, operating in the State of New Jersey that we do not even regulate. Municipalities, for instance, have their own landfills which provide service exclusively to their landfills.

So, there are about 20 landfills on this list that we presently regulate. That does not include the six which have closed. Some of those 20 have not even petitioned the Board for any environmental increases yet. So, the question is: "What are they doing? Are they setting aside funds in some other manner, municipal bonds, or whatever"? Or, "Are they going to come in," as some of them are presently doing, "and ask for monumental increases to fund the necessary improvements which will be accomplished within a very limited period of time"?

That, of course, is also a question that will be subject to litigation in the event they have made a bad business judgment. Then perhaps they will not be entitled to as much as they had requested. But, again, that is speculative.

SENATOR DALTON: What resources do you have in order to delve into a private corporation in this whole process -- sometimes there are many arms and legs -- to determine that adequate closure money is being put away, or that the bottom line figure a landfill has received isn't being "fudged"?

MR. SWAIN: Perhaps Margaret can answer that.

MS. FOTI: Yes. Traditionally, in these types of cases, Senator, there is extensive discovery both on the part of the Board's staff and the Public Advocate. Between these two entities the job is done very thoroughly.

In addition, traditionally, many municipalities will intervene in these types of rate proceedings. They will also have the opportunity to very thoroughly cross-examine the landfill witnesses. So we really do have quite a few resources available to us in order to examine the questions, and to examine the numbers. The rate cases are generally quite extensive and quite thorough.

SENATOR DALTON: However, on an interim basis, if you recommend quadrupling a rate and you do it in a time frame that is fairly limited, you really don't have the opportunity to do a very thorough job; yet, the cost that is imposed upon the taxpayer is significant.

MS. FOTI: The only answer to that, Senator, would be that an interim increase would be just that, interim and subject to refund. So, if it did come out during the course of hearings that the rates were not reasonable or they could not be fully justified by the landfill, those moneys would be returned.

SENATOR LASKIN: Did you ever have a refund in all the years of the history of the PUC or the BPU? Did you ever have a refund after an interim increase? Theoretically it sounds good. Can you count the times on one hand in the 100 years there has been an agency?

It sounds good, but the poor guy who spent the money has a problem. The fact is that rarely does one ever get a refund. We all know that.

MR. BEVAN: That's correct.

SENATOR DALTON: Just based upon that and the case that both Lee and I are familiar with, it is my understanding that you did not allow the municipalities to set up their own accounts in order to set aside money for closure costs. The fund itself is being handled via you, Kinsley, or some other entity. In other words, this interim rate hike, okay?-- You have indicated that moneys have to be set aside by a

municipality for closure, but are they allowed to set aside those moneys in their own accounts?

MR. SWAIN: We don't have any jurisdiction over municipalities. I think the Board said in its interim decision that the landfill was required to set aside certain funds to be dedicated to environmental improvements which will be made by virtue of this new lift. We cannot tell the municipalities that they can't go out and set up accounts to fund.

SENATOR DALTON: I guess what I am asking is, who handles the fund?

MR. SWAIN: Do you mean the escrow account established?

SENATOR DALTON: Yes.

MR. SWAIN: As I said before, we only allow disbursements from that account once a certification is filed with us and the Department stating that any expenditure made from that account is for legitimate environmental purposes.

SENATOR DALTON: That's not my question.

MR. SWAIN: I'm sorry.

SENATOR DALTON: Okay. You have an interim increase in effect right now for anyone who dumps at Kinsley. As I understand it, there was a fund set aside to handle this interim increase.

MS. FOTI: Yes.

SENATOR DALTON: Okay. Where is the fund? Who handles that fund?

MR. SWAIN: It is in a separate escrow account established between Kinsley and its escrow agent -- whatever bank it chooses -- which is subject to review by our auditors.

SENATOR DALTON: Wasn't the position taken by several municipalities that they would set up and handle the fund?

MR. SWAIN: Not to my knowledge.

MS. FOTI: Not that I know of, Senator.

MR. BEVAN: I don't think we are aware of that.

MR. SWAIN: If there was, I don't see how we could preclude them from doing something.

SENATOR DALTON: My concern is with an interim increase. If you allow the municipalities to set those moneys aside, then I would suspect those moneys would accrue interest which would ultimately, accrue to the municipalities. Can that be done? Can Kinsley set one up? Is it part of the Board's interim rate decision that any interest accrued has to automatically go back to the municipalities in cases where a determination was made that the interim increase had to be cut substantially?

MR. SWAIN: Senator, I think the Board did say that in its order. Just let me verify that. In any event, even if it didn't say it, that could be part and parcel of its final determination if it showed that the utility was accruing funds it did not necessarily deserve. In fact, it would order the refund of those funds with interest. I think it has the authority to do that.

So, irrespective of whether the Board's order said it or not— This is two pages long, and I think you have a copy of it. But, that would be something the Board could and probably would order.

SENATOR DALTON: You could probably order it relative to an interim rate increase too, couldn't you?

MR. SWAIN: Well, any excess cost recovered through a interim increase would be subject to a refund, which would be effected through a final order; it would be directed that the interest accumulated would also be refunded.

SENATOR DALTON: I guess what I am getting at is, it seems to me that on a interim basis you have an interim rate increase. In this case Kinsley, or its agent, handles the escrow account the additional rates are put into. Why isn't the individual municipality allowed to set up its own account, thus allowing that account to be drawn off as opposed to drawing from the Kinsley account?

MS. FOTI: One of the difficulties with that, Senator, might be that Kinsley would be effecting the improvements, so they would have to submit engineering certifications to the Board and the DEP who, in turn, would review them and indicate that there was no problem with releasing the money.

I don't know how what you are suggesting could be structured. The way it is now structured, the landfill sets up the escrow fund. Nothing goes out before the DEP and BPU have reviewed the engineering certifications. So, there is a fairly close monitoring of those funds.

I also believe that any interest accrued in those funds is dedicated to closure. That has been my experience.

SENATOR DALTON: Okay. I am looking to you, Lee. My concern is that we have a fund, and it is really handled by Kinsley. What I am saying is, why can't the municipalities set up their own fund? The engineering plans would continue to be approved by the Department and the Board of Public Utilities. As a result, the Board would issue an order saying, "'X' amount of dollars should come out of your fund, municipality 'X' as your share of these closure costs."

SENATOR LASKIN: Which would require more involvement by the BPU than perhaps you have been doing in the past.

SENATOR DALTON: I know a number of mayors who are impacted by this increase have expressed this to me.

SENATOR LASKIN: In other words, a bill comes from Kinsley to Dalton's town -- Town Dalton or Town Costa, whatever it is -- and the municipality pays the bill. Now, as a practical matter, the money that is sent to Kinsley for the payment of that bill is probably held by them for a period of time, drawing interest until it is actually utilized to pay their suppliers or their mechanics.

I think that during this interim period the money -- and a huge sum of money in this case -- would be drawing interest. Senator Dalton's question is, "Why shouldn't the municipality be able to hang on to that interest, rather than Kinsley?" I think that is what he is saying.

SENATOR DALTON: That's correct.

SENATOR COSTA: Are you suggesting holding the moneys that are set aside for closure?

MR. SWAIN: That's correct.

SENATOR LASKIN: Right.

SENATOR COSTA: Good idea.



SENATOR LASKIN: Now, that doesn't mean the municipality has to hold the dollars in its hand. That is not really the problem. I think, regardless of where the escrow account is situated, the interest drawn on that money until it is actually expended by Kinsley should inure to the credit of the municipality. It may only involve 10 days. It may involve 30 days. It may be two days. But, until the money is actually expended by Kinsley, I think this is within the jurisdiction of the BPU. In your order, you could probably require that the accumulated interest, until expenditure, is credited to the municipality.

MS. FOTI: Why not dedicate the interest to the particular environmental improvement, plus reducing the rate?

SENATOR LASKIN: I will answer that. When you made your decision that "X" amount of dollars is needed for closure, you didn't consider the interest earned on the money; you considered the principal needed for closure. So, why give the interest to them for closure, which would actually increase your rate allowance?

You have allowed a rate of "X" dollars. Now the interest earned on "X" dollars is not part of the rate. That should go to the municipalities during the interim period between the time the municipality shipped the money and the expenditure was made. I think that is clearly within the jurisdiction of the BPU.

MS. FOTI: The only thing I would want to see is if the interest on those moneys was figured in as part of the rate.

SENATOR LASKIN: That's good; find out if it was. I doubt if it was but—

MS. FOTI: I think traditionally it is, Senator.

SENATOR LASKIN: Okay. That would answer Senator Dalton's question.

MS. FOTI: I think the interest offsets the rate. I think the interest is calculated. When the rate case is litigated, I think the interest on the money is calculated and figured into the rate. I can check that for you.

SENATOR DALTON: I would appreciate that.

SENATOR COSTA: It would be very interesting to find out on what basis and percentage it is calculated.

MS. FOTI: Accountants and engineers testify at these hearings, and all these numbers are projections. But, I will check that particular--

SENATOR DALTON: On an interim basis?

MR. SWAIN: I don't necessarily know if it is on an interim basis.

MS. FOTI: In a permanent party rate case.

SENATOR DALTON: I am talking about on an interim basis as well. You would have to take a guess as to what interest rate this money would accrue.

MR. SWAIN: When we make an interim decision we don't set up a final rate. We are just saying, "You can recover these costs over a period of time, subject to verification of the fact."

SENATOR LASKIN: But still, the basis is, once the money is sent, whether it be interim or permanent-- Once the money leaves the municipality and gets sent to you -- you meaning Kinsley -- you may hold the money for 14 days until you pay the bill.

MR. SWAIN: Right.

SENATOR LASKIN: Senator Dalton's question is, for those 14 days why shouldn't the municipality that advanced the funds be given credit for that interest, regardless of whether it is interim or permanent?

SENATOR DALTON: Senator Laskin put it much more directly and effectively than I did. I appreciate it.

SENATOR LASKIN: We accomplished the same thing.

SENATOR DALTON: I have no further questions. Senator Costa?

SENATOR COSTA: I have just one question. Is the question of whether Philadelphia should come into a New Jersey landfill within your purview or is it under your jurisdiction?

MR. SWAIN: No.

SENATOR COSTA: Not at all? Thank you.

MR. SWAIN: That is strictly something within the jurisdiction of the courts.

SENATOR DALTON: Thank you.

MS. FOTI: Thank you.

MR. SWAIN: We will get that information to you as soon as possible.

SENATOR DALTON: The next person we will hear from is Fred Sultic from the Sussex County Planning Department. I suspect he is the Solid Waste Coordinator.

**FRED SULTIC:** Good morning, Senators. My name is Fred Sultic. I am the County Planning Director for Sussex County, and I am representing Edmund Zukowski, Jr., who is the Freeholder-Director of our County.

I have been the Planning Director since 1978, and within a year I became involved with solid waste matters. We had a Solid Waste Coordinator who was under my supervision, and about three years ago when he left, I had the dubious title of Solid Waste Coordinator as well as Water Quality Manager for Sussex County and four municipalities in Morris County. So, a lot of my comments will be prefaced by my experience covering areas ranging from water quality, to solid waste, to planning.

I also am a licensed professional planner in the State of New Jersey, as well as the President of the New Jersey County Planners Association. We communicate every other month with other counties, especially the planning boards and planning departments that are specifically involved with solid waste, concerning their role in the solid waste field.

The first thing I would like to cover is the discussion by Mr. Lee Perira regarding the 30¢ per cubic yard for an escrow closure account. This is very important, as we found out with HSL. That is not Hamm's Sanitation, but Hamm's Sanitation Landfill, Inc., which is Facility #1913B. I guess we have been in court for almost two years. We were delayed from June of 1984 until December of 1984 as a result of going into further landfill implementation on a site that is adjacent to this facility which is known as a lowland. We have an upland site that is adjacent to that 1913B facility.

Judge Stein did hold us from doing any further work on a landfill siting study as well as resource recovery for that period of time. So, that held us in abeyance, although I believe our county had been diligently working on that effort.

We also had negotiations with Passaic and Morris Counties, and I sat in on all the sessions with those Counties' legal counsel, as well as Freeholder-Directors and Freeholder members. Nothing came of those negotiations simply because those counties wanted us to not only site a resource recovery facility in our county, but to also site a landfill, which, later on, would be turned into a landfill ash residue and bulk waste facility.

So, regionalization is an awfully tough item to try to convince another county of if they have the attitude that you are supposed to be the back yard for them.

We did a study on Morris, Passaic, Hunterdon, Warren, and Sussex Counties for regionalization, but after we did that study several years ago, none of the counties ever commented on it and they never implemented it. So, implementation for all the 21 counties, including the HMDC as a district, is awfully hard. We are supposed to coordinate implementation, and we are also supposed to try to have either private vendors or municipal utility agencies promulgate these concepts. In our case, the upland facility will be a county landfill.

Politics change, as they did this past January. We are now going to own the landfill, the upland site, which we were not going to own before. We were trying to tie in the lowland so we would get proper closure. Right now -- in fact this morning -- our attorneys went into court, as did the DEP and the attorney for HSL, Inc. The county has filed a suit against the DEP and HSL to get the New Jersey DEP to either release the escrow moneys and closure fund to HSL, or to at least release it to someone else so we can do something properly.

Since last Thursday morning, I have been specifically involved, as was our County Health Officer. We went out on the site. We found that leachate was seeping. We had some tremendous rains two days before -- and "tremendous" is about an inch and one-half up our way. We have a cutoff law, and in that particular case we saw seepage over the cutoff law, and over the dike. In terms of the hydrogeologic aspect, it is supposed to be a container much like a salad bowl, and because pumping had not occurred since January 17th, a representative of HSL indicated it was seeping. Since last Thursday, we have not had

any action by the DEP. Again, it is not so much the fault of the DEP as it is the Deputy Attorney General's office, because they are now involved due to past and current litigation.

This morning our attorneys went into court. I do not know the results. I stayed and listened to the BPU and the DEP comments here this morning, so I don't know what the final action was regarding that court appearance.

As you indicated, Senator Dalton, whether counties should be involved in coming up with funds may be the last drastic step to take, but it may have to be considered through some sort of legislation where you allow a third party to become interested and to work with escrow funds.

In the case of HSL, there is a \$1.36 million plus or minus fund for closure, and if you start looking at what it takes in terms of pumping leachate, Judge Stein indicated that 30,000 gallons a day had to be pumped. Since about 8,500 gallons go to the County Municipal Utility Authority and about 11,500 plus or minus go to Mont Transport in South Kearny. That comes to almost \$60,000 a month to pump and dispose of leachate. That also might be slightly increased because the collection fee to Mont Transport is included in the 12¢ per gallon, but the 3.5¢ a gallon charge to the Sussex County Municipal Utilities Authority does not include collection. So, we dare say it would be slightly more than \$60,000 a month.

So, \$1.36 million certainly would not last more than 17 to 20 months when disposing of leachate. And we are trying to dispose of that for 20 or 30 years. We want to thank everyone for their cooperation three years ago with the 30¢, but the 30¢ is not nearly enough; it would have to be increased to \$1.00 or \$1.50 per cubic yard. I think Senator Laskin made a very good point: That charge goes down to the user.

One thing that has always plagued us -- and it is indirectly related -- is recycling. We were the first county to have an owned and operated recycling center. We have volunteers who come to the site to deliver all the waste. We do not pay them a fee. On average, we have saved approximately a one acre lift every 18 months, and an acre lift

is worth well over \$100,000. We are certainly not allowed to put on the books that we have saved that type of money, and the facility is operating in the red. However, the Freeholders feel this is important since we help the landfill and we also encourage people to recycle. But the market is just not there.

We had two markets that dissipated. Actually, there were three. The third one was for plastics. We have been to Connecticut to investigate that type of industry.

Our concern is, until we start looking at how to reduce the cost — even though we recognize that landfill construction and operation is going to be more expensive — it is going to jump to \$25 a ton. Cape May is at \$25. The three landfills that we are going to out of state are approximately \$24 to \$25 a ton, and that is going to be raised. I believe the Pennsylvania landfill that we go to, Grand Central Sanitation — either last week or this week — will invoke \$1.50, in addition to their \$8.50 per cubic yard charge for recovery. This is to be placed in escrow for closure. In Pennsylvania they do not have that as a requirement, and the owner felt that in the next two or three years that part of the landfill he is taking additional waste into is going to be closed.

Hamm's Sanitation had been taking over 1,000 tons a day from Passaic, Morris, and Sussex Counties. Sussex was only contributing about 240 tons of that amount. We are lucky to have three other municipal landfills, Sparta, Hopatcong, and Stillwater, which is very small. It comprises about 70 tons to 75 tons a day. Stillwater will be closing at the end of February. Sparta and Hopatcong have not received any notices that I am aware of, but I would assume that they will be closing by year's end, or if, hopefully, we can get the upland on-line, by about April or May of 1986. However, we had about six to seven months of stalling because the judge would not allow us to do anything. As a result, I think it is very important to recognize that past landfills have closed. The town of Newton is in pretty good shape, except that they feel some of their cost for continued monitoring, as required by the DEP, may be a little bit excessive. We heard these comments from the Town Manager.



We are not aware of any problems at the Worthington Landfill in Frankford Township, and Hardyston closed several months ago.

Those facilities do not have either natural or man-made liners, and the leachate does come out. In some cases we see it ponding to the side; in other cases it just goes straight into the groundwater. Eighty-five percent of our water supply is from groundwater. We have only three small reservoirs which act as a water supply for three communities in the county.

We will be growing continually, as we had through 1970 and 1980, but we will still be relying on about 80% to 85% of the groundwater for drinking water in the next 20 years.

What we are concerned about is, what will happen to those municipalities, especially those where there has been a private landfill which has been closed for several years? What will happen in the case of Worthington and Newton? What will the municipality's role be? What will be the role of the county in the future? I think this is where some counties, especially Passaic and Morris which refused to site landfills have failed. They have to be pushed and prodded by the judge and the DEP.

One thing we feel is very important is that you have to decide quickly who the receiver will be. Should the counties be involved? Should there be joint municipal and county involvement to try and expedite the use of the escrow accounts?

Hopefully, not too many weeks down the road— Hopefully, within the next few days we can do something to step in and resolve the leachate spewing out, because we are talking about something in the magnitude of-- I think it is 20 gallons per minute. If our visual analysis the other day was accurate, we are talking about 30 gallons a day that might be coming out of that landfill. It is going into an adjacent marshland which is a discharge. That swampy area is a discharge to a local brook which ties into a local stream, a river, and eventually a lake. Near that lake there is a lake association which is using two or three wells to pump groundwater.

I can talk all day about the association between streams, lakes, and groundwater, but that will wait for another time and another period.

We have another concern. Senator Laskin spoke about counties which don't do anything because maybe they feel they do not have to. We had a process known as a 208 Water Quality Management, and it kind of reverts to Chapter 326. We took our own initiative and we petitioned the DEP as well as the Governor at the time, to be our own water quality management district. It was a job well done. There were only five or six that did this, Mercer, Middlesex, Atlantic, Ocean, and us. Gloucester, Burlington, and Camden were grouped together with the DBRPC. Those jobs were all done. When the State got involved with doing that for the other counties, that State plan never came about. The DEP's plan is really just a compilation of all our individual plans; it is just the waste flows placed together.

In our case, we finally made the decision that we must get involved with county ownership of a landfill. We may bid the operation out to another operator on our behalf, but at least we now have the opportunity through the Environmental Health Act and our County Health Department -- we do not have a County Health Board -- which provides services to about 22 out of 24 municipalities, because the resources of those municipalities are too small to hire their own staff, so it is done by population formula.

Some of the other things we wanted to talk about include requiring a maximum time for the DEP to review closure problems and closure plans. There does not seem to be a set time or limit at the present time. Let's say a plan is submitted in the second week of January, we don't have time to waste; we don't have six, nine, or 12 months. We need to talk about 15 or 30 days if no action is taken, in order to allow a county or someone else to step in. We were very concerned that without pumping the 30,000 gallons a day it was going to go over the cutoff law and the dike.

In other areas where landfills are fortunate to have marshland or swampy areas nearby, they can go in and contain it. But, in our case, since one side is towards a marshland, it is very hard. We have tried in the last few days to put earthen dikes around it, but it simply does not work and it must be pumped.

Also, I would like to add that especially in counties that have failed to site and implement solid waste facilities, we refused, outright, to sign any intra-district waste flows back in 1980 and 1981 because we felt those waste flows didn't mean anything contractually. We found that too many other counties which had not made the key decision at the appropriate time, would go back to a county where they were disposing their waste and try to negotiate another 12, 18, or 24 months. One needs at least 18 to 24 months from the time a facility is sited to put in a plan, go through the design process, be reviewed by the DEP and actually start up an operation.

Also, one thing that has become very important is, as we get involved with this legal process— HSL was at it almost two years, with provocative attorneys, and supportive judges. And, the general public attitude of those people who did not live in the landfill's host community was to say, "Please have it extended because we don't want to pay those additional fees."

In Florida they do charge on a per can basis. This is something that should be considered in this State in terms of buying either a sticker or a tag ahead of time which can be placed on a garbage can, say for those who only collect on a once-a-week pickup basis, which we have in Sussex. In the other counties there is a two or three times a week pickup. In some cases it used to be five times a week. However, we feel that by using a sticker or a tag it will not punish those who source separate. If we do source separate, then we should allow for that, because a lot of counties and municipalities are now getting into that in order to reduce their waste stream. They simply cannot afford to send it to landfills that are 50 miles away or out of state.

The last item is, please do not allow closure funds which are collected in one district to be used elsewhere. We feel that even though \$1.36 million is not nearly enough — the DEP claims \$4 million to \$5 million — please do not, during any of your deliberations in the future, give other districts the ability to take that away and use it at their facilities. While we do not have hazardous waste spewing out of that landfill to our knowledge, it is something we need to verify at

adjoining streams by doing some tests. Hopefully, the Freeholders will approve that.

I will end with that statement. It is getting rather late in the day and I know there are other people who are going to give testimony here today.

SENATOR DALTON: Thank you very much. Are there any questions from the Committee members?

SENATOR COSTA: I would like to ask one thing. We spoke of source separation and those people not getting penalized, and then you spoke about a sticker. I do not understand that. Would you elaborate on that?

MR. SULTIC: Yes. For example, let's say you have a once-a-week pickup. A majority of the people in the county now are generating anywhere from three to five 32 gallon cans. We now have a three can tariff limit by HSL. So in order not to penalize people who generate more than three 32 gallon cans-- About two or three plastic bags will go into a container. In order not to penalize people, if the markets are available, some counties can do a little bit better when getting a base price for a recyclable such as newsprint, cans, aluminum, and bi-metal. The charge would then be a lot less for a person because if he is going to have his two cans collected once a week, he might buy 104 stickers ahead of time. He then attaches them to the cans. That way he is actually going to be billed for the amount he uses.

Right now, if you put out three cans or one can, you are still going to pay the same fee, and the closure funds are applicable to everyone. This seems to at least be a start off point for those who generate less. They will pay less. For those who generate more, they will pay more.

SENATOR COSTA: So your residents pay their bill by buying stickers?

MR. SULTIC: No. It is something that has been done in Florida, and it is being considered in other states such as California and Michigan.

SENATOR COSTA: You don't have that in your--

MR. SULTIC: We don't have it now; it is something that would have to be resolved by legislation because there is a problem with recycling and the markets.

One thing that is very important to realize is, while everyone would like to recycle 25% of a municipality's generated waste, it is never going to happen unless you get to a point where those who generate less pay less.

The concern that Senator Laskin expressed was for those people who simply can't afford it. If they generate less, they should pay less. It shouldn't be done across the board. This is one way of doing it. When collecting mixed waste versus separables, I think it would help, and I think it would be an incentive across the board. It would be a nightmare for haulers and collectors to be out there with a pad, checking whether you or Fred Sultic has one, two, or three cans. But if the stickers are bought and paid for ahead of time, I think it will solve a lot of problems. Right now, we know that HSL is chasing almost \$130,000 from people who disposed with either pickup trucks or other haulers. They disposed of municipal solid waste, and HSL is chasing them and going after those funds. So, you can add almost another \$130,000 to the \$1.36 million which they have to chase.

They may have to go into court for the next several years. At least pre-paid stickers, I think, would be a more equitable system.

SENATOR COSTA: So, in other words, you are basing this cost on so much tonnage, and that is broken down by what you consider a pail, and plastic bags. One full plastic bag would fit in a pail.

MR. SULTIC: Yes.

SENATOR COSTA: They could buy this ahead of time, so they are paying their solid waste bill ahead of time, and the less they generate by taking their resource recovery--

MR. SULTIC: Yes, and the recyclables could be picked up by either the hauler-collector if approved by the district, which is the county, and also by the municipality. Only five municipalities in our county have bids with a local collector. Four of them happen to be with HSL -- with Hamm's Sanitation -- and one is with another collector. We have two towns that pick up their own waste, Hopatcong and Franklin Boro.

I live in the town of Newton and I must pay my collector on a quarterly basis. It amounts to about \$24 and change. It was raised two months ago from \$22 and change to that amount. We will get another rate increase soon. But, if I don't pay the collector within 30 days after the three months of previous collection, he can attempt to stop me, but he really can't. I can go to the BPU and say he must still collect, but he can take me into small claims court. That chasing after the fact makes it very hard and it causes a lot of aggravation. It really becomes a costly matter.

So, if we can solve these problems ahead of time, I think we would reduce them, and maybe the other mechanisms I spoke of earlier regarding closure will help to spread that more equitably.

SENATOR COSTA: Thank you.

SENATOR DALTON: Lee?

SENATOR LASKIN: No questions.

SENATOR DALTON: As the father of a new baby, and father of four, I am against the sticker approach, by the way.

MR. SOLTIC: I have children myself.

SENATOR DALTON: I'm just kidding. Thank you very much, we appreciate it.

MR. SOLTIC: Thank you.

SENATOR DALTON: We will next hear from Mark Everett from the Cumberland County Improvement Authority.

**MARK EVERETT:** Mr. Chairman, members of the Committee, my name is Mark Everett. I currently hold the position of Executive Director for the Cumberland County Improvement Authority.

I would like to limit my comments to one or two areas. My purpose in coming before the Committee is to bring attention to a problem that often tends to be overlooked in this very complex issue of landfill closure, and that is small municipal landfills.

The other reason for my coming before the Committee is because I have never been directly involved in landfill closure myself, and this has been a learning experience as I have gone along.

In addition to my position as Director, I am the designated Solid Waste Coordinator in Cumberland County. I am in charge of developing and implementing the County's Solid Waste Management Plan.

Last month Cumberland County became the second County in the State to present a full landfill application to the DEP under the Solid Waste Management Act, passed in 1975.

Cumberland County recognizes the need for development of new solid waste facilities, as well as the need to close all existing open dumps in an environmentally secure manner.

Let me just give you some background on Cumberland County's situation. I think in some ways we are somewhat of a sleeping— Not a sleeping giant, but our problems have not extended into other counties, and we have not received the publicity that our surrounding counties have gotten, either negative or positive.

Cumberland County currently contains nine landfills which are publicly owned and operated. Approximately 95% of the County's waste is disposed of in two BPU regulated facilities, owned by the Cities of Vineland and Bridgeton. The other seven landfills in the county receive approximately 5% of the waste, so they are a very small variety.

Four municipal landfills have closed in the last four years, with only one facility submitting a closure plan for DEP approval.

In our current schedule, our new county landfill is scheduled to open in January of '86, a very short period of time. At that time, our plan calls for all nine existing landfills to close.

At this time, only the City of Vineland has indicated they have the financial capability to finance a closure plan in conformance with DEP regulations. I found out this morning that even this might not be true, since their existing account may not have sufficient funds to close the facility in an environmentally secure manner.

The other BPU landfill in the City of Bridgeton is scheduled to close by DEP administrative order on March 31, 1985, and they do not have the capability to close their facility in an environmentally secure manner. In fact, the BPU has questioned them on this and has encouraged them to increase their rate.

As I indicated, my real purpose for coming to you today is to present the predicament of these very small municipally owned facilities, which receive, primarily, household waste, usually



averaging 10 to 20 feet in depth, and serve an average population of 3,800 residents.

Despite notification from the State and the County, these townships have not planned sufficient closure funds to close these landfills according to DEP regulations.

In order to demonstrate the size of these seven landfills, I have listed them below in the handout I have provided. For example, under these regulations Downe Township, which is right on Delaware Bay, with a population of 1,800 people, would be asked to finance a closure fund of approximately one-half million dollars. Downe Township's annual municipal budget alone is only \$500,000, or \$518,000 to be more specific. That is in the current year, 1985.

Some of the more large scale facilities receive as much waste in one day as these landfills receive in their entire active life. With the familiarity of local residents and township officials, they have limited the use of these landfills to township residents only. They have not allowed commercial waste to be dumped in these facilities.

Cumberland County receives almost 100% of its drinking water from groundwater resources. It is clear that our abundant groundwater resources must be protected. However, DEP regulations do not include a flexible approach for small, non BPU municipal landfills with no registered problems nor affected nearby wells. These regulations need to be developed so that environmental controls are required when necessary, but can be applied with some discretion when different or unique circumstances are found.

What I am saying is, I think I am in agreement with Mr. Pereira, that sweeping regulatory solutions, or legislative solutions, do not always address all of the municipal problems, and some discretion needs to be taken in individual examples. There has to be a more rational approach for these very small landfills. They do not have people nearby. They don't have wells nearby. They are basically just seven to 10 acre fills found out in the country, in between farmland which does not have homes nor wells nearby to be affected.

So I would ask, if the Legislature is rethinking the closure issue, that these unique circumstances be included.

I have one or two comments regarding things said today before I am open to questions. I also agree with Mr. Pereira and the gentleman who just spoke regarding existing closure accounts of 30¢ per cubic yard; that is definitely not enough and needs to be increased.

The problem facing my County and the municipal landfills there is the big question, "How much is it going to cost?" Until we know how much it is going to cost, we do not know how much to set aside in an account. That is a big, big question that the DEP could be of help with. Naturally, they will indicate it requires an individual solution, and they won't know, or they won't tell you how much you are going to need until you give them a completed application which, naturally, may take them three to four months to look at.

SENATOR DALTON: I would like to ask you a question, Mr. Everett. You were talking about a county, such as Cumberland, which has municipally owned and operated landfills. Are you suggesting that those landfills shouldn't be closed in an environmentally sound manner?

MR. EVERETT: No, they should be closed. But the existing draft regulations from DEP call for these improvements across the board. These improvements may not be necessary. In fact, these improvements may simply bankrupt some of these very small townships.

SENATOR DALTON: Can you be more specific? What improvements is DEP recommending that you feel these landfills can do without?

MR. EVERETT: Well, naturally, it does have to be done on a case-by-case basis. You would have to have a complete history of what went into the facility, what the monitoring wells say, etc. I am not prepared. I do not have that background. My Authority has taken the position, as most of the other counties have, that this is a State and a municipal matter. The county really isn't involved in mandating that these facilities close.

Now, as the Solid Waste Coordinator in the County, I feel I do have an obligation to answer the questions of people who are putting their hands up in the air and saying, "Okay, what do we do?" I feel I have an obligation to represent them if I can here in Trenton and to help them with their problems.

As far as the specific requirements that I would change are concerned, naturally I would need more information, just as the DEP would. What I am asking for is not an across-the-board liner, top soil, drainage, and all the requirements that are in the DEP draft regulations that you are supposed to see, I believe, in a month or two. Some discretionary exemptions may be available. If it can be done specifically for those areas that do not have problems, maybe an advanced monitoring program could be developed rather than these incredible parts that may not be necessary at all.

SENATOR DALTON: I understand where you are coming from. What you are trying to do is to find a more rational way of dealing with the problem, particularly in the case of small communities. Most of the towns I represent are small communities, so I understand your concern.

It seems that you are leading me to believe that a municipal landfill of seven acres may not need a proper cover. Perhaps we may be in disagreement on that, because it seems to me that the leachate process does not make any distinctions between big landfills and small landfills. Regardless of the size, there is a leachate potential. Even if you are talking about household waste, you are talking about a potential contamination of the groundwater. Being a fellow South Jerseyan, this is something I do not want to see, and it is something you do not want to see because we drink from the same aquifer.

What I am trying to do is to ask you to be more specific. Are you saying we shouldn't have liners, and that we shouldn't have collection systems in these municipally run operations?

MR. EVERETT: No. In Cumberland County we want to close these landfills as soon as possible. Everyone is in favor of that, and everyone agrees. That is why we are building a new facility that we believe will be safe, and according to DEP regulations it will be safe.

What I am suggesting is, let's take a practical look at some of these very small facilities. If they do have problems, definitely close them down in complete conformance with the regulations. But, I know of some facilities that really-- I don't know for a fact at this point-- But if they are able to prove that they have no problems, a

liner isn't necessary, and if they will establish an advanced monitoring program that would detect problems at any time, then, if they did have a problem, they could cover it completely. That would be a much more practical financial solution to their problem.

I don't want to get into the environmental aspects of each facility because I am not aware of them. What I am really pointing to is a financial solution.

SENATOR DALTON: What about the approach used in the bill we had a preliminary discussion about this morning? That bill is going to be heard at our Committee meeting on Monday. It would allow the municipalities to bond these improvements over a period of time as a capital expense instead of doing it on a one-shot basis.

MR. EVERETT: I could not speak for the municipalities themselves, but my reaction is that would be beneficial for them to have that capability. It may be just a stopgap measure because of the incredible fixed cost all of them would have to apply.

What I am really saying to you today is, these costs are great and the regulations will be very great for the very small townships which are being overlooked because of the very complex problems we have with Kinsley and many of the larger facilities. DEP should take this case-by-case and look at these facilities rather than just mandating improvements across the board.

SENATOR COSTA: From what I hear, Mr. Everett, you feel that what is asked for might be too much. It would be going beyond what you actually need. What you are saying is, "Let's just put in what we need and not go beyond that." Is that what you are saying?

MR. EVERETT: Right. I don't know exactly what is needed.

SENATOR COSTA: I thought that before closure one had to have a plan on how to do it, and the plan had to be approved by DEP. In this instance it would be solely what you need to protect the environment in your area, rather than just asking you to do something that is really not necessary.

MR. EVERETT: Well, the draft regulations that have been approved say these requirements are necessary.

SENATOR COSTA: Have the landfills you are speaking of started to go into closure, or have they formed a plan for closure yet?

MR. EVERETT: They have draft regulations, but those--

SENATOR COSTA: Is more being required of them than you feel is necessary?

MR. EVERETT: I am not an expert on closure. I haven't really been involved in closure. I am not equipped to answer that.

SENATOR COSTA: I think the DEP could answer whether they take it on a case-by-case basis.

MR. EVERETT: I'm sure they do, but what I am asking for is to have that reflected in the regulations in order to make sure you are aware of it and they are aware of it. To bring it to everyone's attention.

SENATOR DALTON: We are aware of the cost, believe me. That's why we are here today. We know the enormity of the issue, both to small towns and on a statewide basis. What we are trying to do is to develop a mechanism to deal with this and attempt to minimize the cost, if that can be done. So, we are sensitive to that.

SENATOR COSTA: I agree with what he saying. You don't bring in a Cadillac if you all you need is a Ford, to put it on that basis.

SENATOR DALTON: Senator Laskin?

SENATOR LASKIN: I just want to say I am envious of the taxpayers in your county because you indicated in your remarks that you are only the second county in the State to comply with the 1975 law we talked about earlier today. I think that is a great achievement.

MR. EVERETT: Thank you very much.

SENATOR DALTON: Mr. Everett, thank you very much.

Mr. O'Neill, Cape May County Utility Authority.

**THEODORE F. O'NEILL:** Senator Dalton, members of the Committee, thank you very much for inviting me here this afternoon to talk with you about the issue of sanitary landfill closure in our County and throughout the State of New Jersey.

You already heard from Lee Pereira this morning regarding the range and scope of this problem and the potential financial obligations that both public and private landfill operators will have to bear when complying with the regulations promulgated by DEP pursuant to the Sanitary Landfill Closure and Contingency Act.

I am not here to suggest that we waive or minimize those regulations or requirements. I think they represent a studied view and careful assessment of the kind of closure requirements needed for the safe long-term closure of sanitary landfills. Therefore, I would like to primarily address the question of how to pay the bill for the necessary improvements.

In our County — as I think I pointed out the last time here, in December — when we opened our sanitary landfill in May of last year, six existing landfills closed. Five of those were municipally owned, and one was privately owned. Those six landfills, which represent approximately 160 acres of landfill space, would exceed \$6 million, collectively; some would be more, and some would be less. The average cost is between \$35,000 and \$45,000 per acre for what we would consider a conventional closure, consistent with the regulations as they stand at the moment: Nothing exotic, nothing sophisticated, no on site leachate treatment, and so on. This is just for basic closure, covered and monitored wells with grading drainage, and that sort of thing. That is the bill our communities are looking at.

Frankly, the same thing holds true for our colleagues in the private sector. I am not sure if you heard testimony this morning relative to the closure cost burden borne by the private sector.

I think the fundamental problem is that we have a set of very high standards which have only been in place a very short time, with a very short time to change and adjust tariffs to recover the necessary costs. We have seen in the Kinsley case what it takes to catch up financially with that kind of financial burden. So, there clearly has to be attention given to the financial problems and responsibilities of our private colleagues who are, in fact, regulated utilities by the Board of Public Utilities, and are therefore very limited in terms of things such as reserve funds they could have accumulated in the past due to the amount of profittaking that could have been taken in earlier years.

I don't think we should treat them as a special case and assume that because they are private, they all have a deep pocket and can dig into it without question.

Similarly, one could assume that municipalities may resort to the municipal tax base to recover through taxes whatever is needed to close their landfills. That may or may not apply in every community.

Closure expenses — as I understand them — are not exempt from the annual caps limit. Moreover, many communities do not have the remaining bonding capacities to simply go out and finance the closure of their landfills through the issuance of bonds, or that sort of thing. So, they are in a jam. We have one municipality looking at a closure bill that exceeds eight times the amount of remaining debt capacity they have for any capital expenditure in their community. You know, they are up against it, and I think that problem is shared by many other municipalities in this State.

So, we want to make sure that we here not just to sell you Cape May County's problem; we are here because of the fact that we opened a new landfill and so many landfills were shut down, and we might be looking at the future of other counties in this State. The problem is certainly an enormous one.

So the question is, "How do we deal with that?" I would like to suggest that you consider an amendment to the Sanitary Landfill Closure and Contingency Fund Act, to provide a substantial financial addition to the Statewide Contingency Fund portion. If you recall, there are individual escrow funds for each landfill, and then there is a statewide Contingency Fund to primarily address major events, pollution problems and abatement, and for claims relative to those pollution problems.

I would like to suggest that you consider a major amendment to the Contingency Fund to permit that Fund to serve as a source of loans and grants to municipalities and to regulated utilities for the purpose of aiding them in the closure of their landfills.

Now, I am certainly not suggesting that this is a bailout of municipalities or the private sector, not do I naively believe that there is an endless supply of State level funds to be directed in this way. Resources are certainly limited and the problems are enormous. I think the suggestion I am making here could act as an aid or an assistance to address this problem. In the end -- as you suggested,



Mr. Chairman -- we all drink from the same aquifers, and we have to take a collective approach to deal with essentially a very serious groundwater protection and public health protection measure which affects every community and county in this State.

Basically, having made that recommendation, I would be pleased to talk to you about the practical aspects, or to share more of our experiences in Cape May County with you.

SENATOR DALTON: Given the fact that you describe this as a collective approach, why do you only lay out more property tax increases to the homeowners as a potential solution?

MR. O'NEILL: No, I am not suggesting that. I am suggesting that we should not assume, for example, that that is where one would look for these costs.

SENATOR DALTON: Well, if you increase tipping fees, whether it is a closure account or whatever, it is passed on to the homeowner.

MR. O'NEILL: That's correct. Yes, sir, that is right.

The thing I would like to address here is the problem of landfills that have already closed since 1982, since the Closure and Contingency Fund Act or that are likely to close before 1987 or so, within a five year period, when it will probably be impossible -- it has already been impossible in our case -- for these facilities to recover the moneys they need through rates. So, they have no other source of financing but the local tax base for publicly owned landfills. Privately owned landfills have virtually no source other than from wherever they get their money: through borrowing or the profits from earlier operation, and so on, which we have already acknowledged is regulated by the Board of Public Utilities. These kinds of funds are not generally waiting in the wings simply to be made available.

So, I am suggesting that resorting to the tax base is a very difficult and unattractive source of funds. But for municipalities, in the absence of State assistance, there really is no other source.

SENATOR DALTON: I understand. Senator Laskin, do you have any questions?

SENATOR LASKIN: No questions.

SENATOR DALTON: Senator Costa?

SENATOR COSTA: No questions.

SENATOR DALTON: Thank you very much. Frank, do you want to testify?

**FRANK BRILL:** Senator, my name is Frank Brill, and I represent the National Solid Waste Management Association. I did not prepare any testimony. I came here — as I am sure you and a number of other people did — to learn something.

However, some things have been raised here this morning, and I would like to provide you with a little bit more information from our perspective, or possibly to rebut some of the things that were said, particularly in the case of Kinsley. I think there is more information I could give you to clarify that situation.

Lee Pereira speculated this morning because he hadn't seen the rate increase application, and he wasn't that familiar with it. I think he left the unfortunate impression that Kinsley had a lot of money — or they should have money — and they were asking for money that somehow should have been collected all along because they knew they were going to close.

I am glad Senator Laskin hasn't quite gotten out the door because I would also like him to hear this.

SENATOR LASKIN: I'm listening.

MR. BRILL: Okay, good.

I know in the Kinsley case, they were expected to close -- as was pointed out -- in November of '84. I want you to note, because it is important, that Kinsley had the money to close at that point, to cover their closure costs. They had approximately \$16 million set aside for that closure if it came about at that point as was scheduled.

What happened was, Judge DeSimone ordered Kinsley to stay open and to go up one lift, as Lee said. I should also say that Kinsley -- as all well-managed landfills do -- does permanent closure as they are operating. They do one section at a time.

Kinsley had permanently closed or had anticipated closing 80 acres of 130 acres up to that point. That means they did their cover, they receded, and they put in their gas venting wells.

When the judge ordered them to continue their operation and to go up one lift, what they essentially had to do was to reopen the sections which had been closed. When it is all finished, they are going to have to go back and close them again. The major portion of the increased fee they are seeking -- the increase in their rates for closure -- is due to that fact.

There is another factor as well. They were supposed to close in 1984 -- before 1985 -- and they would have been subject to a previous set of DEP regulations which would have required 20 years of post-closure monitoring. Just the fact that they have continued their life into 1985 causes them to fall under a new set of regulations which requires them to do post-closure monitoring for 30 years.

So, when one puts those two factors together -- the fact that they are going to have to reopen and then reclose 80 acres, and the fact that they are going to have to monitor for 30 years rather than 20 years -- he gets a better appreciation as to why they are seeking the higher rates for closure, and why the cost is so high.

We are not trying to tell you that is not a huge, as you said, obscene increase to the people who have to pay it. But we would also like to point out, as did Senator Laskin, that Philadelphia seems to be walking away from the problem. I would like to say that I am sure Philadelphia would be very glad to continue to dump at Kinsley and to pay their portion of the closure cost. Kinsley also would be glad to have been able to address this regional problem by staying open. They wanted to stay open, not by going higher -- which is the basis on which they are operating now -- but by expanding. They had an extension plan which was rejected by the County Freeholders.

When we get to that point, I think we come back to the point the Senator made earlier, that the real problem we are facing-- Or, this whole problem has been precipitated by the Solid Waste Management Act, which gave the weakest link of government, the County Freeholders, the power and responsibility to make these big decisions. What we contend is that in the Kinsley case, that decision was not an environmental decision; it was purely a political decision. It was a case of Freeholders buckling under to a very vocal local group. What

it did was, it destroyed what was essentially de facto regional dumping solution. We had three counties sharing one regional landfill. That regional landfill, with its expansion plan, could have continued to handle the waste of those three counties and a considerable amount of Philadelphia's waste for at least 10 years, and probably do it at the tipping rate they were handling before the expansion plan was denied.

I think DEP is being a little too innocent here in telling you today that they tried to encourage a regional approach. We know for a fact that the DEP was the author of, or the drafter of Judge DeSimone's decision. It was at their suggestion that Judge DeSimone ordered all three of those counties to come up with their own resource recovery and landfill solutions.

We couldn't agree more with Senator Dalton. It just doesn't make sense to have 21 districts siting their own resource recovery facilities. In the case of Gloucester, once again it makes no sense to us to put a very good regional landfill out of business. By the way, it is the state-of-the-art landfill in the State. DEP's inspectors are all trained at Kinsley because Kinsley has the most advanced monitoring systems, leachate collection systems, and the rest of it.

We think that in that section of South Jersey Kinsley was already operating in a way that the State should be going towards, where counties are congregating and doing it on a regional basis. What do we do now? I think we should look to the example of the Hazardous Waste Facilities Siting Commission. Admittedly they have not done anything yet. It hasn't proven anything. They haven't sited a facility. They do not have one operating. But at least it occurs to us that they are talking a somewhat more rational approach. They are saying, "What are the State's problems? Where do we need to center our resources? How many facilities are we going to need to handle the amount of waste that is being produced here? Where are the best environmental locations for these facilities?" With the solid waste problem, that information is all out there. It should be pretty easy for the State to come up with a plan, or some other siting authority, and let the State make the decision as to where facilities have to be located on a waste shed basis, or on a regional basis: How many does there have to be?

This will not do away with the siting problem entirely, but it is going to take the burden off the local, or the weakest unit, the Freeholder.

SENATOR LASKIN: Do you suggest that the law this Committee has discussed be adopted -- similar to the Hazardous Waste Siting Bill -- to take the jurisdiction for siting away from the counties and municipalities and put it in the hands of the State? I would personally prefer that. Is that what you are suggesting?

MR. BRILL: I think that is where we are starting to lean towards. We are frustrated by the fact that nothing has worked at the county level. As Lee said, there is a problem with throwing out the baby with the bath water, because some counties are doing things--

SENATOR LASKIN: Nothing will ever work either.

MR. BRILL: No.

SENATOR LASKIN: Because every time a crowd comes to a meeting and screams that they don't want a landfill in their town, they are not going to get it. That is why it would make sense for the law of 1975 to be changed, so the State would make the decision. That would make sense politically and it would make sense environmentally.

MR. BRILL: That's right. Economically, as the Senator pointed out, the closure cost in the future of all those facilities -- if they are ever built -- is going to be astronomical with this approach.

SENATOR DALTON: Cathy?

MR. BRILL: I just want to make two short points. One is to comment on your bill. We have not fully reviewed your bill yet, the new approach. This is a real burden for the municipalities, especially the ones that have run into the Kinsley closure situation. I would just like to point out that in looking at the bill, right off the top there is a certain equity problem. The municipalities and their taxpayers are essentially going to be relieved of the burden of closure costs, but that is not going to happen for the homeowner or the businessman who has a private carter and not a municipal collection system. That person is still going to have to pay the full share. We wonder if it is equitable to have someone who has a scavenger pick up

garbage at his home pay a much higher fee than someone else would because he happens to live in a town where there is a municipal service provided.

The same thing holds true for the average businessman -- the restaurant, the shoe store, or whoever -- who is going to have to pay those closure fees. If he happens to live in a town that has a municipal collection service, he will not have to pay in that case. We see that as a real problem.

SENATOR DALTON: If you have any suggestions, Frank, you have three days to submit them. I am moving a bill on Monday, and I appreciate the equity argument, but at the same time we have to move forward with legislation to help these folks out.

We would be glad to consider any suggestions you may come up with on Monday.

MR. BRILL: Okay. Thank you.

SENATOR DALTON: Thank you, Frank.

Assemblyman Littell?

ASSEMBLYMAN ROBERT E. LITTELL: Senator Laskin, I would like to comment on what you said if you will wait a minute.

SENATOR LASKIN: Okay.

ASSEMBLYMAN LITTELL: I know he has the experience of being a Freeholder. Lee and I have been in this business for a long time.

Thank you, Mr. Chairman and members of the Committee. I did not come here prepared to speak on your bill. As I said earlier this morning, I came here for a monorail meeting, and because a crisis erupted in Sussex County at Hamm's Landfill, I felt compelled to bring a copy of a newspaper article about that problem in order to explain it to you and to give you a letter I have with regard to my suggestion for a financial plan to deal with that situation.

You spoke of a proposed bill that would allow a Siting Commission to select a site. You think that because Freeholders are subject to public pressure and sentiment, they will never select a site. I can tell you from firsthand knowledge that in the Sussex, Morris, Passaic law suit that was ongoing for over a year, the judge got so frustrated with Morris County for failing to select a site --

they took the position that there was not a suitable landfill site in the whole county of Morris — that he ordered the DEP to select a site. After that process was done, the sites they selected were announced, and there was just as much uproar and political pressure brought to bear.

So it does not make any difference whether the State DEP, a siting agency, or some other power selects a site, the site is still going to be just as unpopular and we are going to be the recipients of this same sentiment.

SENATOR LASKIN: Except that the site will be selected.

ASSEMBLYMAN LITTELL: Well, I think sites can be selected by the local governments. I think they have the ability to do that.

SENATOR LASKIN: But they won't do it.

ASSEMBLYMAN LITTELL: I think they will ultimately. I think you have to put pressure on them, as DEP has done, to force them to do what the law, adopted in 1975, requires them to do. I might remind you that in 1975 the counties said they wanted that power because they wanted home rule. As I recall, there was no objection from any of the counties which said they didn't want that power and authority. They said, "We want it. We want to control our own destiny."

I might point out that the problem with a regional concept is that everyone feels they are the region. You know, we in Sussex and Warren Counties -- the areas that I represent -- feel that in every one of these instances where you are talking about regions, the region is the far out land we live in because we don't have as much political clout. So, that is the fear we live under when you talk about a region for a landfill, resource recovery, or refuse energy type site.

We had a landfill which was used by two outside counties, and the public sentiment against that was tremendous. Everyone in our county said, "Don't let them dump here." They dumped there because they got an order to come there; the courts closed the landfills they were using. That is the same scenario you have in every instance around this State.

In my opinion, you need several things. One, we should direct the BPU to make sure the funds are available for proper



closure. They don't have that direction right now. As I understand it, they can consider it and they can include it but the law directs them to provide operating expenses plus 14% profit, and that is it. If they want to include money for closure, they may.

I think it ought to be mandated by legislation that the BPU be required to attempt to calculate how much money is needed and work it into the rate structure so that we don't get into these financial jams.

SENATOR DALTON: It is not that simple, and I will tell you why. You have a landfill that is putting money in escrow. There is a court case brought and that landfill closes. The court requires them to close. The Board had no way of knowing about the imminent closure of that landfill, and as a result it is looking at this landfill that has to close within "X" amount of months, and they don't have a crystal ball. They don't know when the courts are going to step in. They don't know when the Department is going to step in and shut them down.

I don't want to minimize your suggestion, but it is not as simple as saying the BPU should make them have an adequate closure account. I understand the BPU has a closure account set up for most of the operating landfills. The DEP has a closure account. In many cases, those same landfills -- I think we are talking about two separate accounts at Kinsley -- still don't have enough money to close because no one could foresee Judge DeSimone's order regarding when that landfill was going to close. So it is not a simplistic issue.

ASSEMBLYMAN LITTELL: No, it is not a simplistic issue, but that is one phase of the problem. In the case of Hamm's, they applied for a rate increase. The rate increase was granted about a month before they were actually closed. Had it been given to them at the time it was requested, the escrow account would have had substantial dollars in it compared to what it actually has now.

I suggested some creative financing in my letter. I think that is something the Legislature lacks in many areas. What I suggest is that the \$1.36 million, if it were converted from the fund it is now in to a single payment annuity, would produce \$4 million over 20 years. That is a substantial increase from what it would produce in a simple bank fund. I think we have to look at the major players

involved in every issue and say, "You benefited from this. You, the county benefited from this." If there are three counties involved, then let's say, "You three counties benefited from this. Had this landfill not existed, you would not have had a place to dump and you would have gone someplace else and maybe paid a much higher rate, maybe even out of state at a higher rate, as we are doing now. The point is, you benefited from this, and there are additional costs which you did not pay at the time. You ought to be made to put some money on the table to care for this closure in your county."

If solid waste is, in fact, the responsibility of the county, then the county ought to make sure there are ample funds to protect the environment and health of the citizens within the county. I think we in the Legislature should say to the counties, "If the closure fees are not there, you ought to sit down and negotiate a settlement and make sure there are enough dollars on the table to buy some of these zero based bonds or annuities for a long period of protection in order to make sure this environment is safe and sound."

I think that is a reasonable position for the Legislature to assume. We have given them the responsibility. We can't let them turn their backs on it and say, "Well the law doesn't specifically say we are responsible for closure; therefore, we are not going to take any part in it." I think that is absurd. I think we in the Legislature need to address that matter.

SENATOR DALTON: I couldn't agree with you more. All counties -- if it is a regional landfill -- have benefited from this facility, and as a result we must all bear a portion of the closure cost. That is one of the fundamental principles of any legislation coming out of this Committee. Anything that is drafted is certainly going to include that.

ASSEMBLYMAN LITTELL: May I add just one more thing?

SENATOR DALTON: Sure.

ASSEMBLYMAN LITTELL: I think some money should be paid to the host community because host communities experience hidden costs with those kinds of facilities. They may have to call out the fire department to put out a fire. They may have to call out the police

department to control a strike by the operators or the haulers. They may have to get involved in a citizens' dispute. There are many hidden costs involved.

In our case, a very small municipality has spent a substantial portion of their budget in legal fees, just to try and protect the citizens of their community.

I think we should say, "If you are a host community of a resource recovery or of a landfill, you are going to get one dollar per ton given to you to use as you see fit." If you don't like a dollar a ton, make it two dollars.

SENATOR DALTON: We did that just a month ago. We included the host community provision within the McEnroe Bill for new resource recovery facilities and landfills. We did it at one dollar per ton.

ASSEMBLYMAN LITTELL: I talked to Harry about that. I really feel that is a real world thing you have to deal with. It is unfair for them to be—

SENATOR DALTON: This is the Committee that put it in.

ASSEMBLYMAN LITTELL: Thank you; that's great.

SENATOR DALTON: Senator Costa?

SENATOR COSTA: I would like to say one thing before you leave. Having been involved in the siting of a county landfill -- I was on the Board of Freeholders -- I feel, unlike Senator Laskin, that the county is the right place for it to be. They should take care of their solid waste program. It was rough, but elected officials have to take the fire; it is all part of being an elected official. We did what was the right thing to do, and I feel it worked out all right. We also made arrangements with the host community that amenities would be given to that community. So, it can be done.

SENATOR DALTON: Thank you very much, Assemblyman. The hearing is now concluded.

(HEARING CONCLUDED)