

PUBLIC HEARING

before

SENATE ENERGY AND ENVIRONMENT COMMITTEE

on

Senate Committee Substitute for S-1300

(Major Hazardous Waste Facilities Siting Act)

Held:

December 17, 1980

Assembly Chamber

State House

Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Frank J. Dodd, Chairman

Senator John P. Caufield

Senator John M. Skevin

Senator Lee B. Laskin

ALSO:

Michael F. Catania, Research Associate

Office of Legislative Services

Aide, Senate Energy and Environment Committee

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SENATE COMMITTEE SUBSTITUTE  
FOR S-1300

AN ACT concerning major hazardous waste facilities, supplementing  
Title 13 of the Revised Statutes, and making an appropriation.

BE IT ENACTED by the Senate and General Assembly of the State  
of New Jersey:

1. This act shall be known and may be cited as the "Major  
Hazardous Waste Facilities Siting Act."

2. The Legislature finds and declares that the proper  
treatment, storage or disposal of hazardous waste generated in  
this State is today the exception, rather than the rule; that the  
improper treatment, storage or disposal of hazardous waste results  
in substantial impairment of the environment and the public health,  
that insuring the proper treatment, storage or disposal of  
hazardous waste is a public purpose in the best interests of all  
citizens of this State; and that the only way to accomplish this  
purpose is to provide for the siting, design, construction, operation  
and use of environmentally-acceptable hazardous waste facilities.

The Legislature further finds and declares that the choice  
of hazardous waste disposal sites is now made, all too frequently,  
on an indiscriminate and illegal basis; that it is necessary to  
establish a mechanism for the rational siting of hazardous waste  
facilities; that the informed participation of the public and of  
elected and appointed officials at all levels of government is  
essential to establish this mechanism; that the siting, design,  
construction, operation and use of major hazardous waste facilities  
must be provided in a timely fashion; and that such facilities  
should be privately operated and subject to strict governmental  
regulation, all as hereinafter provided.

3. As used in this act:

a. "Commission" means the Hazardous Waste Facilities Siting Commission established by section 4 of this act.

b. "Commissioner" means the Commissioner of Environmental Protection.

c. "Council" means the Hazardous Waste Advisory Council established by section 6 of this act.

d. "Criteria" means the criteria for the siting of new major hazardous waste facilities adopted by the department pursuant to section 9 of this act.

e. "Department" means the Department of Environmental Protection.

f. "Engineering design" means the specifications and parameters approved by the department for the construction and operation of a major hazardous waste facility.

g. "Environmental and health impact statement" means a statement of likely environmental and public health impacts resulting from the construction and operation of a major hazardous waste facility, and includes an inventory of existing environmental conditions at the site, a project description, an assessment of the impact of the project on the environment and on public health, a listing of unavoidable environmental and public health impacts, and steps to be taken to minimize environmental and public health impacts during construction and operation;

h. "Hazardous waste" means any waste or combination of wastes which pose a present or potential threat to human health, living organisms or the environment including, but not limited to, waste material that is toxic, carcinogenic, corrosive, irritating, sensitizing, biologically infectious, explosive or flammable, and any wastes so designated by the Occupational Safety and Health Administration, the United States Department of Transportation, and the United States Environmental Protection Agency.

i. "Hazardous waste facility" means any area, plant or other facility for the treatment, storage or disposal of hazardous waste,



including loading and transportation facilities or equipment used in connection with the processing of hazardous wastes; "major hazardous waste facility" means any commercial hazardous waste facility which has the capacity to treat, store or dispose of more than 25,000 gallons of hazardous waste, or the equivalent thereof, as determined by the department; "existing hazardous waste facility" means any major hazardous waste facility which has received a registration statement and an engineering design approval from the department prior to the effective date of this act; "new major hazardous waste facility" means any major hazardous waste facility which has not received a registration statement and an engineering design approval from the department prior to the effective date of this act.

j. "Hazardous waste industry" means any industry which operates a hazardous waste facility or which proposes to construct or operate a hazardous waste facility;

k. "Owner or operator" means and includes, in addition to the usual meanings thereof, every owner of record of any interest in land whereon a major hazardous waste facility is or has been located, and any person or corporation which owns a majority interest in any other corporation which is the owner or operator of any major hazardous waste facility.

l. "Plan" means the hazardous waste facilities plan adopted by the commission pursuant to section 10 of this act.

m. "Registration statement" or "registration" means the operating license, approved by the department, for a major hazardous waste facility; "registrant" means the person to whom such approval was granted.

4. a. There is established in the Executive Branch of the State Government a public body corporate and politic, with corporate succession, to be known as the Hazardous Waste Facilities Siting Commission. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the commission is allocated within the Department of Environmental Protection, but, notwithstanding that allocation, the commission shall be independent of any supervision or control by the department or by the commissioner or any officer or employee thereof. The commission shall constitute an instrumentality of the State exercising public and essential governmental functions, and the exercise by the commission of the powers conferred by this or any other act shall be deemed and held to be an essential governmental function of the State.

b. The commission shall consist of 9 members, except as otherwise provided in subsection c. of this section. Three of these members shall be county or municipal elected or appointed officials at the time of their appointment, three shall be employed by an industrial firm, and three shall be representatives of environmental or public interest organizations. Each of these members shall be appointed by the Governor, with the advice and consent of the Senate, for a term of 3 years, provided that of the members of the commission first appointed by the Governor, three shall serve for terms of 1 year, three for terms of 2 years, and three for terms of 3 years. Each of these members shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. A member shall be eligible for reappointment. Any vacancy in the membership occurring



other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

c. Whenever the commission considers the recommendations of an administrative law judge pursuant to subsection 2 of section 11 hereof, 2 additional voting members shall be appointed to the commission. One of the additional members shall be appointed by the governing body of the county wherein the proposed major hazardous waste facility site is located, and the other shall be appointed by the governing body of the municipality wherein such site is located. In the event that a proposed site is located in more than one county or municipality, each of the affected county and municipal governing bodies shall appoint an additional member of the commission, except that all of such county appointments shall share a single vote, and all of such municipal appointments shall share a single vote.

d. Each member may be removed from office by the appointing authority, for cause and after opportunity for a hearing, and may be suspended by the appointing authority pending the completion of the hearing.

e. Each member of the commission shall, before entering upon his duties, take and subscribe an oath to perform the duties of his office faithfully, impartially, and justly to the best of his ability. A record of these oaths shall be filed in the office of the Secretary of State.

f. The members of the commission shall elect from among their number a chairman, who shall schedule, convene and chair commission meetings, and a vice-chairman, who shall act as chairman in the absence thereof. The members of the commission shall appoint an executive director, who shall be the chief administrative officer and secretary of the commission. The executive officer shall serve at the pleasure of the commission, and shall be a person qualified by training and experience to perform the duties of his office.

g. The powers of the commission shall be vested in the

members thereof in office, and a majority of the total authorized membership of the commission shall be required to exercise its powers at any meeting thereof.

h. Each member of the commission shall execute a bond to be conditioned upon the faithful performance of his duties in such form and amount as may be prescribed by the State Treasurer. The bonds shall be filed in the Office of the Secretary of State. At all times thereafter, the commission members shall maintain the bonds in full force. The commission shall pay the cost of the bonds.

i. The members of the commission shall serve without compensation, but the commission may, within the limits of funds appropriated or otherwise made available therefor, reimburse them for actual expenses necessarily incurred in the discharge of their duties.

j. A true copy of the minutes of every meeting of the commission shall be prepared and forthwith delivered by and under the certification of the secretary thereof to the Governor. No action taken at the meeting by the commission shall have effect until 10 days, Saturdays, Sundays, and public holidays excepted, after the copy of the minutes shall have been so delivered, unless during the 10-day period, the Governor shall approve the minutes, in which case the action shall become effective upon that approval. If, in the 10-day period, the Governor returns the copy of the minutes with a veto of any action taken by the commission at that meeting, the action shall be of no effect.



5. The commission shall have the following powers:

- a. To adopt bylaws for the regulation of its affairs and the conduct of its business;
- b. To adopt and have a seal and to alter the same at its pleasure;
- c. To sue and be sued;
- d. To enter into contracts upon such terms and conditions as the commission shall determine to be reasonable, and to pay or compromise any claims arising therefrom;
- e. To call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, commission or agency as may be required and made available for such purposes;
- f. To contract for and to accept any gifts or grants or loans of funds or financial or other aid in any form from the United States of America or any agency, instrumentality or political subdivision thereof, or from any other source and to comply, subject to the provisions of the act, with terms and conditions thereof;
- g. To employ an executive director, consulting engineers, architects, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the commission to carry out the purposes of the act, and to fix and pay their compensation from funds available to the commission therefor, all without regard to the provisions of Title 11, Civil Service, of the Revised Statutes;
- h. To do and perform any acts and things authorized by this act under, through or by means of its own officers, agents and employees, or by contracts with any person.

6.a. There is established in the department a Hazardous Waste Advisory Council which shall consist of 13 members appointed by the Governor with the advice and consent of the Senate. Of these members, 3 shall be appointed from persons recommended by recognized environmental or public interest organizations; 2 from persons recommended by recognized organizations of municipal elected and appointed officials; 2 from persons recommended by recognized organizations of county elected and appointed officials; 1 from persons recommended by recognized community organizations; 1 from persons recommended by recognized organizations of fire-fighters; 1 from persons recommended by recognized organizations of industries which utilize onsite facilities for the treatment, storage or disposal of hazardous waste; 1 from persons recommended by recognized organizations of industries which utilize major hazardous waste facilities for the treatment, storage or disposal of hazardous waste; 1 from persons recommended by recognized organizations of persons licensed by the department to transport hazardous waste, or by individual licensed hazardous waste transporters; and 1 from persons recommended by recognized organizations of persons licensed by the department to operate major hazardous waste facilities, or by individual licensed major hazardous waste facility operators.

b. A majority of the membership of the council shall constitute a quorum for the transaction of council business. Action may be taken and motions and resolutions adopted by the council at any meeting thereof by the affirmative vote of a majority of the full membership of the council.

c. The council shall meet regularly as it may determine, and shall also meet at the call of the chairman of the commission or the commissioner.

d. The council shall appoint a chairman from among its members and such other officers as may be necessary. The council may, within the limits of any funds appropriated or otherwise made



available to it for this purpose, appoint such staff or hire such experts as it may require.

e. Members of the council shall serve without compensation, but the council may, within the limits of funds appropriated or otherwise made available for such purposes, reimburse its members for necessary expenses incurred in the discharge of their official duties.

7. The council shall:

a. Advise the commission concerning the preparation and adoption of the plan and the proposal and adoption, by the commission, of all sites for major hazardous waste facilities;

b. Advise the department concerning the preparation and adoption of criteria for the siting of new major hazardous waste facilities and make recommendations for departmental action on applications for the approval of registration statements and engineering designs for new major hazardous waste facilities; and

c. Review all matters submitted to it by the commission or the department and state its position on the matter within 60 days of the submission thereof.

8. The council may:

a. Review any matter relating to the siting, licensing, construction, operation or closure of major hazardous waste facilities and to transmit such recommendations thereon to the commission or to the department as it may deem appropriate;

b. Hold public meetings or hearings within this State on any matter related to the siting, licensing, construction, operation or closure of major hazardous waste facilities; and

c. Call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, commission or agency as may be required and made available for such purposes.

9. a. The department shall, within 1 year of the effective date of this act and in consultation with the council, prepare, adopt and transmit to the commission criteria for the siting of new major hazardous waste facilities. Such criteria shall be designed to prevent any significant adverse environmental impact resulting from the location or operation of a major hazardous waste facility, including any significant degradation of the surface or ground waters of this State, and shall prohibit the location or operation of any new major hazardous waste facility within:

(1) 500 yards of any structure which is routinely occupied by the same person or persons more than 12 hours per day, or by the same person or persons under the age of 18 for more than 2 hours per day;

(2) Any flood hazard area delineated pursuant to P.L. 1969, c. 19 (C.58:16A-50 et seq.);

(3) Any wetlands designated pursuant to P.L. 1970, c. 272 (C.13:9A-1 et seq.); and

(4) Any area where the seasonal high water table rises to within 1 foot of the surface, unless the seasonal high water table can be lowered to more than 1 foot below the surface by permanent drainage measures approved by the department.

b. The provisions of the "Administrative Procedure Act," P.L. 1968, c. 410 (C.52:14B-1 et seq.), or any other law to the contrary notwithstanding, the department shall prepare and adopt criteria for the siting of new major hazardous waste facilities as follows:

(1) Within 6 months of the effective date of this act, the department shall prepare and make available to all interested parties preliminary criteria for the siting of new major hazardous waste facilities;

(2) Within 8 months of the effective date of this act, the department shall conduct public meetings on the preliminary criteria in the several geographic areas of this State. Notice of these meetings shall be published at least 30 days in advance thereof in at least 2 newspapers circulating in the specific geographic area where the meeting will be held;

(3) Within 9 months of the effective date of this act, the department shall consider and evaluate any comments made at the public meetings, make such revisions to the preliminary criteria as it deems necessary or appropriate, and to schedule a public hearing on the revised criteria. Notice of this hearing shall be published in at least 4 newspapers of general circulation in this State;

(4) Within 10 months of the effective date of this act, the department shall conduct the public hearing on the revised criteria; and

(5) Within 1 year of the effective date of this act, the department shall consider and evaluate any comments made at the public hearing, make such changes to the revised criteria as it deems necessary or appropriate, and adopt final criteria for the siting of new major hazardous waste facilities.

10. a. The commission shall prepare and adopt, in consultation with the council and within 1 year of the effective date of this act, a Major Hazardous Waste Facilities Plan. This plan shall be revised and updated every 3 years, or more frequently when, in the discretion of the commission, changes in existing hazardous waste facilities, the amount or type of hazardous waste generated in this State, or technological advances so require.

b. The plan shall include, but need not be limited to:

(1) An inventory and appraisal, including the identity, location and life expectancy, of all hazardous waste facilities located within the State, and the identity of every person engaging in hazardous waste collection or disposal within the State;

(2) An inventory of the sources, composition and quantity of the hazardous waste generated within the State in the year in which the plan is prepared;

(3) Projections of the amounts and composition of hazardous waste to be generated within the State in each of the next 3 years;

(4) A determination of the number and type of new major hazardous waste facilities needed to treat, store or dispose of hazardous waste in this State;

(5) An analysis of the ability of all existing facilities to meet current and proposed State and federal environmental, health and safety standards and their performance in meeting these standards;

(6) An analysis of transportation routes and transportation costs from proposed waste generators to existing or available suitable sites for commercial hazardous waste facilities;

(7) Procedures to encourage codisposal of solid and hazardous waste materials recovery, energy recovery, waste exchanging and recycling and to discourage landfilling and all other inappropriate disposal techniques, and to minimize the amount of hazardous waste to be stored or disposed of in this State.



c. The provisions of the "Administrative Procedure Act," P.L. 1968, c. 410 (C.52:14B-1 et seq.), or any other law to the contrary notwithstanding, the commission shall prepare and adopt the plan as follows:

(1) Within 6 months of the effective date of this act, the commission shall prepare and make available to all interested persons a proposed plan;

(2) Within 8 months of the effective date of this act, the commission shall conduct public hearings in the several geographic areas of the State on the proposed plan. Notice of these hearings shall be published at least 30 days in advance thereof in at least 2 newspapers circulating in the specific geographic area where the hearing will be held; and

(3) Within 1 year of the effective date of this act, the commission shall consider any comments made at the public hearings, make such revisions to the proposed plan as it deems necessary or appropriate, and adopt the plan.

11. a. The commission shall, in consultation with the council, propose and adopt site designations for the number and type of new major hazardous waste facilities determined to be necessary in the plan.

The provisions of the "Administrative Procedure Act," P.L. 1968, c. 410 (C.52:14B-1 et seq.) or any other law to the contrary notwithstanding, these sites shall be proposed and adopted in the following manner:

(1) Within 18 months of the effective date of this act, or within 6 months of the receipt of the criteria from the department whichever is sooner, the commission shall propose sites for new major hazardous waste facilities, transmit written notice thereof to the governing body of the affected municipality, and provide the governing body with a grant, pursuant to the provisions of section of this act, to conduct a site suitability study of the proposed site;

(2) Within 6 months of the receipt of a grant from the commission, the governing body of the affected municipality shall complete and transmit to the commission the site suitability study on the proposed site;

(3) Within 45 days of the receipt by the commission of the municipal site suitability study, an adjudicatory hearing concerning the proposed site shall be conducted by an administrative law judge. The affected municipality shall be a party of interest to such hearing, and shall have the right to present testimony and cross-examine witnesses. Intervention in this hearing by any other person shall be as provided by the aforecited "Administrative Procedure Act;"

(4) Within 30 days of the close of such hearing, the administrative law judge shall transmit his recommendations for action on the proposed site to the commission; and,

(5) Within 30 days of the receipt thereof, the commission shall affirm or reject the recommendations of the administrative law judge and adopt or withdraw the proposed site. Such action

by the commission shall be based upon the potential for significant impairment of the environment or the public health, shall be considered to be final agency action thereon for the purposes of the aforecited "Administrative Procedure Act" and shall be subject only to judicial review as provided in the Rules of Court.

b. The commission may designate alternate or additional sites for new major hazardous waste facilities, at the request of any hazardous waste industry, and such requestor shall have the burden of proof concerning the suitability of the site in proceedings conducted pursuant to subsection a. of this section.

c. The commission may, upon its own motion or at the request of the governing body of the affected municipality, repeal or withdraw any adopted site for a new major hazardous waste facility if, in the discretion of the commission, such action is consistent with the purposes and provisions of this act.

12. a. No person shall commence construction of any major hazardous waste facility on or after the effective date of this act unless that person shall have obtained the approval of the department for the registration statement and engineering design for such facility prior to construction thereof.

b. The department shall review all applications for registration statements and engineering designs for new major hazardous waste facilities in consultation with the council. Such review shall include an investigation, by the department, of the character and financial responsibility of the applicant, any history of compliance with or violation of all relevant laws, rules and regulations at any other hazardous waste facility operated by the applicant in this State or elsewhere, and an evaluation of an environmental and health impact statement, which statement shall be prepared by the commission at the applicant's expense.

c. The provisions of the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), or any other law to the contrary notwithstanding, the review of all applications for registration statements and engineering designs for new major hazardous waste facilities shall be conducted in the following manner:

(1) Upon the filing of an application with the department, the applicant shall notify the governing body of the affected municipality;

(2) Within 6 months of the receipt of such notice, the governing body shall conduct and transmit to the department a review of the proposed facility and operator, including a site plan review conducted in the manner provided by the "Municipal Land Use Law,"

P.L. 1975, c.291 (C.40:55D-1 et seq.). The cost of the municipal review shall be borne by the applicant, except that such cost shall not exceed \$15,000.00 per application. In preparing this review, the governing body of the affected municipality may request and receive any reasonable and relevant information from the applicant or the department;



(3) Within 45 days of the receipt by the department of the municipal review, an adjudicatory hearing on the proposed facility and operator shall be conducted by an administrative law judge. The affected municipality shall be a party of interest to such hearing, and shall have the right to present testimony and cross-examine witnesses. Intervention in this hearing by any other person shall be as provided in the aforementioned "Administrative Procedure Act;"

(4) Within 30 days of the close of such hearing, the administrative law judge shall transmit his recommendations for action on the application to the department; and,

(5) Within 30 days of the receipt thereof, the department shall affirm or reject the recommendations of the administrative law judge and approve or deny the application. In the event that this action by the department is contrary to the findings of the municipal review of the application, the department shall prepare and transmit to the municipality a written report stating the reasons for the rejection of such findings. Approval of an application shall be granted by the department only upon a finding that the proposed facility would be operated by the proposed operator on a site designated by the commission for such a facility, and that the environmental and health impact statement accurately demonstrates that the operations of the proposed facility would not result in any significant adverse impact upon the environment or the public health. Such approval or denial of an application by the department shall be considered to be final agency action thereon for the purposes of the aforementioned "Administrative Procedure Act," and shall be subject only to judicial review as provided in the Rules of Court.

d. The department may charge and collect, in accordance with a fee schedule adopted as a rule and regulation pursuant to the aforementioned "Administrative Procedure Act," such reasonable fees as may be necessary to cover the costs of reviewing applications pursuant to this section.

e. The department may exempt major hazardous waste facilities below a certain size or of a particular type being considered as major hazardous waste from facilities for the purposes of this act, when, in the judgment of the department, such exemption is consistent with the purposes hereof.

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13. The provisions of any other law to the contrary notwithstanding, all new major hazardous waste facilities shall be:

- (1) Totally or partially constructed above existing grade;
- (2) Physically accessible to inspection personnel;
- (3) Designed to allow 99.9% extraction of all hazardous waste store or disposed of therein; and
- (4) Designed to prevent any significant adverse impact on the environment or public health,

b. Registration statements and engineering designs for secure landfills or other facilities which do not meet the requirements of criteria (1) or (2) of subsection a. of this section may be approved by the department only upon a finding that:

- (1) All alternatives to the proposed facility design are technologically or economically impracticable;
- (2) All hazardous waste to be treated, stored or disposed of in the proposed facility can be effectively monitored;
- (3) The requirements of criteria (3) and (4) of subsection

a. of this section will not be violated; and

- (4) Such approval is consistent with the purposes and provisions of this act.

14. Every owner or operator of a major hazardous waste facility shall be jointly and severally liable for the proper operation and closure of the facility, in accordance with the registration statement and engineering design approved by the department for the facility and with all relevant Federal and State laws or rules and regulations adopted pursuant thereto, for the cleanup and removal of any discharge of any hazardous substance, and for all direct and indirect damages, no matter by whom sustained, proximately resulting from the operations or closure of the facility, subject only to the limitations and defenses enumerated in section 8 of P.L. 1976, c.141 (C.58:10-23.11g).

15. The owner or operator of any major hazardous waste facility which has received departmental approval of the registration statement and engineering design for the such facility may construct and operate that facility without regard to any local zoning ordinance, and the use shall not be required to be submitted to or approved by any county or municipal governing body, zoning or planning board or other agency, except as otherwise expressly provided herein.

16. a. Every local board of health, or county health department, as the case may be, shall conduct weekly inspections of major hazardous waste facilities in order to determine compliance with the provisions of the registration statement or engineering design for the facility and of all relevant Federal or State laws or any rule and regulation adopted pursuant thereto. These inspections shall commence with the commencement of construction of such facility and shall continue for 30 years following the closure thereof.

b. In the event that any municipal or county inspection proximately results in the imposition of any penalty upon the owner or operator of a major hazardous waste facility, one-half of such penalty shall be awarded to the local board of health or county health department, as the case may be.

c. The commission, in consultation with the department, shall conduct or cause to be conducted a training program for municipal or county officials performing inspections of major hazardous waste facilities pursuant to this section.

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17. The department and the local board of health, or the county health department, as the case may, shall have the right to enter any major hazardous waste facility at any time in order to determine compliance with the registration statement and engineering design, and with the provisions of all applicable laws or rules and regulations adopted pursuant thereto.

18. Subsequent to the effective date of this act, any major hazardous waste facility which fails to comply with the provisions of any Federal or State law, or of any rule and regulation adopted pursuant thereto shall be subject enforcement and closure actions in the manner provided by law.

19. a. Any person who supplies any information which proximately results in the arrest and conviction of any other person for the illegal treatment, storage or disposal of hazardous waste shall be awarded one-half of any penalty collected as a result thereof.

b. The Attorney General shall adopt, pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as are necessary to implement this section.

20. The department shall require that all major hazardous waste facilities provide a mechanism to defray closing costs and post closure monitoring expenses for such period of time as may be deemed necessary by the department, whether by escrow accounts, performance bonds or otherwise. Post closure monitoring of major hazardous waste facilities will be assumed by the department 30 years subsequent to the closure of a particular facility.



21. a. Notwithstanding any other provision of this act or any other law to the contrary:

(1) Upon the revocation of a registration or;

(2) Upon, in the discretion of the commission, the suspension of a registration for a period of in excess of 120 days, and notwithstanding the pendency of any appeal therefrom, the commission shall appoint and constitute a conservator to, among other things, take over and into his possession and control all the property and business of the registrant relating to the major hazardous waste facility.

b. The commission may proceed in a conservatorship action in a summary manner or otherwise and shall have the power to appoint and remove one or more conservators and to enjoin the former or suspended registrant from exercising any of its privileges, from collecting or receiving any debts and from paying out, selling, assigning or transferring any of its property to other than a conservator, except as the commission may otherwise order. The commission shall have such further powers as shall be appropriate for the fulfillment of the purposes of this act.

c. Every conservator shall, before assuming his duties, execute and file a bond for the faithful performance of his duties payable to the commission in the office of the commission with such surety or sureties and in such form as the commission shall approve and in such amount as the commission shall prescribe.

d. When more than one conservator is appointed pursuant to this section, the provisions of this act applicable to one conservator shall be applicable to all; the debts and property of the former or suspended registrant may be collected and received by any of them; and the powers and rights conferred upon them shall be exercised by a majority of them.

22. a. Upon his appointment, the conservator shall become vested with the title of all the property of the former or suspended

registrant relating to the major hazardous waste facility, subject to any and all valid liens, claims, and encumbrances. The conservator shall have the duty to conserve and preserve the assets so acquired to the end that such assets shall continue to be operated on a sound and businesslike basis.

b. Subject to the general supervision of the commission and pursuant to any specific order it may deem appropriate, a conservator shall have power to:

- (1) Take into his possession all the property of the former or suspended registrant relating to the major hazardous waste facility, including its books, records and papers;
- (2) Institute and defend actions by or on behalf of the former or suspended registrant;
- (3) Settle or compromise with any debtor or creditor of the former or suspended registrant, including any taxing authority;
- (4) Continue the business of the former or suspended registrant and to that end enter into contracts, borrow money and pledge, mortgage or otherwise encumber the property of the former or suspended registrant as security for the repayment of the conservator's loans; except that such power shall be subject to any provisions and restrictions in any existing credit documents;
- (5) Hire, fire and discipline employees;
- (6) Reach agreements with the department for the cleanup or removal of any discharge of a hazardous substance, or make any payment for any direct or indirect damage claim pursuant to the provisions of P.L. 1976, c. 141 (C.58:10-23.11 et seq.).

c. Except during the pendency of a suspension or during the pendency of any appeal from any action or event set forth in section 21 of this act which precipitated the conservatorship or in instances in which the commission finds that the interests of justice so require, the conservator, subject to the prior approval of and in accordance with such terms and conditions as may be prescribed by the commission and after appropriate prior consultation with the former registrant as to the reasonableness of such terms

and conditions, shall endeavor to and be authorized to sell, assign, convey or otherwise dispose of in bulk, subject to any and all valid liens, claims, and encumbrances, all the property of a former registrant relating to the major hazardous waste facility only upon prior written notice to all creditors and other parties in interest and only to such persons who shall qualify as a major hazardous waste facility owner or operator pursuant to the provisions of this act and any rules and regulations adopted pursuant hereto. Prior to any such sale, the former registrant shall be granted, upon request, a summary review by the commission of such proposed sale.

d. The commission may direct that the conservator, for an indefinite period of time, retain the property and continue the business of the former or suspended registrant relating to the major hazardous waste facility. During such period of time or any period of operation by the conservator, he shall pay when due, without in any way being personally liable, all secured obligations and shall not be immune from foreclosure or other legal proceedings to collect the secured debt, nor with respect thereto shall such conservator have any legal rights, claims, or defenses other than those which would have been available to the former or suspended.

23. In any proceeding pursuant to section of this act, the commission shall allow a reasonable compensation for the services, costs and expenses in the conservatorship action of the conservator, the attorney for the conservator, the appraiser, the auctioneer, the accountant and such other persons as the commission may appoint in connection with the conservatorship action.

24. As an incident of its prior approval pursuant to section of this act of the sale, assignment, conveyance or other disposition in bulk of all property of the former registrant relating to the major hazardous waste facility, the commission may, in its discretion, require that the purchaser thereof assume in a form and substance acceptable to the commission all of the outstanding debts of the former registrant that arose from or were based upon

the operation of major hazardous waste facility.

25. No payment of net earnings during the period of the conservatorship may be made by the conservator without the prior approval of the commission, which may, in its discretion, direct that all or any part of same be paid either to the suspended or former registrant or to the Spill Compensation Fund pursuant to the provision

26. Following any sale, assignment, conveyance or other disposition in bulk of all the property subject to the conservatorship, the net proceeds therefrom, if any, after payment of all obligations owing to the State of New Jersey and any political subdivision thereof and of those allowances set forth in section of this act, shall be paid by the conservator to the former or suspended registrant.

27. A conservator appointed pursuant to section 21 of this act shall at all times be subject to the provisions of any relevant law or any rule or regulation promulgated pursuant thereto, as well as any condition or restriction in the registration statement or engineering design for the particular major hazardous waste facility.

28. a. The commission shall direct the discontinuation of any conservatorship action instituted pursuant to section 21 of this act when the conservator has, pursuant to section 22 of this act and with the prior approval of the commission, consummated the sale, assignment, conveyance or other disposition in bulk of all the property of the former registrant relating to the major hazardous waste facility.

b. The commission may direct the discontinuation of any such conservatorship action when it determines that for any reason the cause for which the action was instituted no longer exists.

c. Upon the discontinuation of the conservatorship action and with the approval of the commission, the conservator shall take such steps as may be necessary in order to effect an orderly transfer of the property of the former or suspended registrant.



d. The sale, assignment, transfer, pledge or other disposition of the securities issued by a former or suspended registrant during the pendency of a conservatorship action instituted pursuant to this article shall neither divest, have the effect of divesting, nor otherwise affect the powers conferred upon a conservator by this act.

e. A conservator appointed and constituted pursuant to section 2Y of this act shall file with the commission such reports with regard to the administration of the conservatorship in such form and at such intervals as the commission shall prescribe. Such reports shall be available for examination and inspection by any creditor or party in interest and, in addition, the commission may direct that copies of any such reports be mailed to such creditors or other parties in interest as it may designate and that summaries of such reports be published in such newspapers of general circulation as it may designate.

29. Any creditor or party in interest aggrieved by any alleged breach of a fiduciary obligation of a conservator in the discharge of his duties shall be entitled, upon request, to a review thereof in accordance with regulations to be promulgated by the commission.

30. The department shall investigate and report to the commission with regard to the qualifications of each person who is proposed as a candidate to serve as a conservator pursuant to this act.

31. The commission is hereby authorized to make grants to municipalities for conducting site suitability studies of proposed sites for major hazardous waste facilities as herein provided. The commission may make such grants from any State, Federal or other funds which may be appropriated or otherwise made available to it for such purpose.

32. a. All major hazardous waste facilities shall, for the purposes of local property taxation, be assessed and taxed in the same manner as other real property.

b. Subsequent to the effective date of this act, the owner or operator of every major hazardous waste facility shall, on or before the twenty-fifth day of January each year, file with the chief fiscal officer of the municipality wherein the facility is located a statement, verified by oath, showing the gross receipts from all charges imposed during the preceding calendar year upon any person for the treatment, storage or disposal of hazardous waste at the facility, and shall at the same time pay to said chief fiscal officer a sum equal to 5% of such receipts.

c. All moneys received by any municipality pursuant to this section shall be appropriated and utilized for the following purposes:

(1) Extra police or fire costs, whether for salaries, equipment, or administrative expenses, which were necessitated by the operations of the major hazardous waste facility;

(2) Any local inspection program costs, as long as such program is performed pursuant to the provisions of this act and any rule or regulation promulgated pursuant hereto;

(3) Road repair costs necessitated by the transportation of hazardous waste through the municipality en route to the major hazardous waste facility; and,

(4) Other expenses directly related to the operation of the facility.

Any appropriation made for an expenditure covered under this subsection shall, for the purposes of P.L. 1976, c.68 (C.40A:4-45.1 et seq.), be considered as an expenditure mandated by State law.

d. Any municipality wherein is located a major hazardous waste facility may petition the commission for approval to collect an amount in excess of the amount prescribed in subsection b. of this section. The commission, after affording the affected owner or

operator with notice of such petition and an opportunity to be heard thereon, may grant the petition, but only if the commission is satisfied that such grant is warranted by the expenses imposed upon the municipality as a result of the operation of the major hazardous waste facility.

33.a. In addition, to the other powers conferred by this act, the commission may acquire, in the name of the State, by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, by the exercise of the power of eminent domain as hereinafter provided, and to lease, sell, or otherwise convey, as hereinafter provided, to hazardous waste industries, any land and other property which it may determine is reasonably necessary for a major hazardous waste facility or for the relocation or reconstruction of any highway by the commission and any and all rights, title, interest or option in that land and other property, including public lands, highways or parkways, owned by or in which the State or any county, municipality, or other political subdivision of the State has any right, title or interest, or parts thereof or rights therein and any fee simple absolute or any lesser interest in private property, and any fee simple absolute in, easements upon, or the benefit or restrictions upon, abutting property for the purposes of this act.

b. Notwithstanding its land acquisition and conveyance powers provided in subsection a., the commission shall not implement those powers with respect to any land or interest therein unless:

(1) The site on which the facility would be constructed has been adopted by the commission pursuant to the provisions of this act;

(2) An agreement has been entered into between the commission and the hazardous waste industry whereby compensation for the land or any interest therein acquired by the commission will be provided by the hazardous waste industry;

(3) The hazardous waste industry shall have sought to obtain the land or any interest therein from the owner thereof in good faith bargaining; and

(4) The hazardous waste industry shall already have obtained the approval of the department for the registration statement and engineering design for the major hazardous waste facility to be constructed on the land.

c. Upon the exercise of the power of eminent domain by the commission, the compensation to be paid thereunder shall be ascertained in the manner provided in the "Eminent Domain Act of 1971," P.L. 1971, c. 361 (C.20:3-1 et seq.).

d. Nothing in this section shall authorize the exercise of the power of eminent domain for the acquisition of any land which has been designated as a site for a solid waste disposal facility by any solid waste management district pursuant to the provisions of the "Solid Waste Management Act," P.L. 1970, c. 39 (13:1E-1 et seq.), unless the prior approval of the affected solid waste management district shall have been obtained by the commission.

34.a. No member, officer, employee, or agent of the commission shall take any official action on any matter in which he has a direct or indirect financial interest.

b. Any commission action taken or approval granted in violation of this section is voidable;

c. Any person who shall willfully violate any provision of this section shall forfeit his office or employment and shall be guilty of a misdemeanor and be punished by a fine of not more than \$7,500.00, or by imprisonment for not more than 18 months, or both such fine and imprisonment.

35. The State Auditor shall conduct an annual audit of the commission's activities pursuant to the provisions of chapter 24 of Title 52 of the Revised Statutes.

36. On or before March 31 in each year the commission shall make an annual report of its activities for the preceding calendar year to the Governor and to the Legislature. Each report shall set forth a complete operating and financial statement covering

37. The commission and the department shall, pursuant to the provisions of the "Administrative Procedure Act," P.L. 1968, c. 410 (C.52:14B-1 et seq.), adopt such rules and regulations as may be necessary for the performance of their respective responsibilities pursuant to this act.

38. Within 5 years of the effective date of this act, the commission, in consultation with the department and the council, shall prepare and transmit to the Governor and the Legislature a report detailing the findings of the commission with respect to the need, if any, for State construction and operation of major hazardous waste facilities, the need, if any, for the State operation of a hazardous waste exchange, as well as the need, if any, for State rate regulation of major hazardous waste facilities.

39. Prior to the adoption of the plan, the criteria for the siting of new major hazardous waste facilities, and of sites for such facilities, no registration statement or engineering design for any new major hazardous waste facility shall be approved by the department. Amendments to registration statements or engineering designs to allow the expansion of existing major hazardous facilities may be granted by the department prior to such adoption, unless the expansion would result in an increase of more than 50% of the capacity of the facility as of the effective date of this act.

40. a. Nothing in this act shall authorize the commission or the department to construct or operate any major hazardous waste facility.

b. Nothing in this act shall authorize the commission or the department to impose any restrictions or regulations upon any rate, fee or charge imposed or collected for the treatment, storage or disposal of hazardous waste at any major hazardous waste facility.

c. The provisions of any law to the contrary notwithstanding, neither the Board of Public Utilities nor any other State, county or municipal department, board, commission or agency shall exercise any power to restrict or regulate any rate, fee or charge imposed or collected for the treatment, storage or disposal of hazardous waste at any major hazardous waste facility.

41. It is the intent of the Legislature that, except as otherwise specifically provided in this act, in the event of any conflict or inconsistency in the provisions of this act and any other acts pertaining to matters herein established or provided for or in any rules and regulations adopted under this act or said other acts, to the extent of such conflict or inconsistency, the provisions of this act and the rules and regulations adopted hereunder shall be enforced and the provisions of such other acts and rules and regulations adopted thereunder shall be of no force and effect.

42. If any section, part, phrase, or provision of this act or the application thereof to any person be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, phrase, provision, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the validity of the remainder of this act or the application thereof to other persons.

43. The object, design and purpose of this act being the proper treatment, storage, or disposal of hazardous waste generated in this State, this act shall be liberally construed.

44. There is hereby appropriated to the Department of Environmental Protection the sum of \$500,000.00, to be utilized as follows:

a. \$300,000.00 to the commission for the preparation and adoption of the plan, for the proposal and adoption of sites for new major hazardous waste facilities, and to otherwise implement this act;

b. \$100,000.00 to the commission for grants to municipalities for the review of proposed major hazardous waste facility sites pursuant to section 31 of this act;

c. \$50,000.00 to the commission to conduct training programs for municipal officials pursuant to section 16 of this act; and

d. \$50,000.00 to the council for the performance of its responsibilities pursuant to section 7 hereof.

45. This act shall take effect immediately.





SENATOR FRANK J. DODD (Chairman): Good morning, ladies and gentlemen. The Senate Energy and Environment Committee will now come to order. Attending the meeting today are Deputy Chairman John Caufield, Senator John Skevin, and Senator Lee Laskin.

This is our tenth and, hopefully, our final meeting on S-1300, the Hazardous Waste Facility Siting Act. This has probably had a longer run than "Annie Get Your Gun" had on Broadway. We started in these very Chambers last April, where we held one of our first hearings, and we are hoping for a conclusion today. The organizations that have made up and given us the input which has brought us to where we are today are present today, and I believe everyone has copies of the bill and also the working outline that we have been updating on a constant basis. Mike Catania, of course, has been the architect of the Bill.

MR. CATANIA: Don't say that.

SENATOR DODD: Do you think I am going to take the blame? (laughter)  
You don't have to run.

Everyone that has been concerned with S-1300 has had ample opportunity, and they certainly have had copies of the outline for the last six months that we have been working on this, and unless there is some dramatic tricks in language in the actual written version of it, we would like to stay on course. The philosophy of the Bill has already been established. We are ready and willing to change "this and that" that will again be agreeable to the working groups, or committees that have worked on it. But, we do not look for any major policy shifts at this time. We are open to reason.

With that, we would like to call Paul Arbesman, the Deputy Commissioner from the Department of Environmental Protection, as our first witness.

P A U L A R B E S M A N: Senator Dodd and members of the Senate Energy and Environment Committee, good morning. I have a little trouble this morning because I have a cold, and I am struggling to speak. I am Paul Arbesman, the Deputy Commissioner of the Department. I am pleased to be here on behalf of Commissioner English to testify on S-1300.

Once again - speaking aside for a minute - the Department has to commend the members of this Committee and the Committee staff for the yeomanship work that has been done. You know, Senator, you have talked about having ten meetings, and it seemed like a long process; sometimes we in government go to meetings and wonder what we have accomplished. I think in this particular case each one of those meetings has brought us another step closer towards solving this very serious problem of hazardous waste facility siting in the State and getting on about the business of adequate treatment and disposal. You and the members of the Committee, and the staff, are to be commended for that.

This Bill, when coupled with the Department's recent regulatory proposals concerning hazardous waste generators, haulers, and disposal facilities, the changes we have made in our own manifest system for tracking waste, the creation of the first Hazardous Waste Strike Force in the country, and the changes in State and Federal law to finance the cleanup of abandoned sites, will fulfill Governor Byrne's directive that the management of hazardous waste in New Jersey become a model for the nation. I point out that this is the first time that we have been able to testify before this Committee

having a super fund bill passed by the Congress, which now, hopefully, may give us some money for cleanup. It also makes the process of siting that much more urgent, because the only place we can put the materials we clean up are in hazardous waste treatment or disposal facilities.

As we stated at the Committee's last hearing on S-1300, the Department must recommend certain technical changes, primarily to insure the process set forth in the Bill is fully consistent with the Federal Resource Conservation and Recovery Act, which governs the licensure of hazardous waste treatment storage and disposal facilities on a national basis. We want to make certain that we are consistent with this national program.

Toward that end, we have already provided the Committee staff with detailed comments concerning the facility licensing process, as we view it, which we trust will be incorporated into the Bill's provisions to make them consistent.

These changes are essentially technical in nature and do nothing to detract from the innovative provisions for public and local government participation in the siting process itself. If anything, these opportunities are enhanced by the addition of a public hearing not previously required.

In addition, there are several vital changes that must be considered. We believe that the time period provided the Commission to prepare and adopt a hazardous waste facility plan may be reconsidered. The Bill would require the Commission to get organized and accomplish all of the deliberations related to the siting process - the implications of the data gathered and the contractor's recommendations - within six months of the effective date of the act, and then make it through a public participation process and adopt the plan within one year of the effective date of the act.

Considering the time it will take to make the Commission operational, which is one of our major concerns from experience in the past, once the Bill is passed, it will take a period of time for the Commission to get organized.

We think Section 10 of the Bill should be amended to permit that one year planning period to begin to run after the full Commission, or a majority of it, has been appointed so as to get out of the starting blocks with a full commitment of people.

Lastly, the Department has been developing a comprehensive Hazardous Waste Management data base on our own. The Committee should consider directing that the proposed Commission rely on this data rather than attempting to develop its own. We don't think it is necessary for us to duplicate throughout government the types of requirements and data that are going to be necessary to make decisions in hazardous waste. This would free additional funds that are already short for the Commission for grants to municipalities and for the much needed staff of the Commission to make these decisions. We have a rather comprehensive data management program underway at this point in time which we think will suffice.

In this vein, we also recommend that in Section 44 an amendment be made to simply allocate the half million dollars provided to the Commission so that the Commission has the discretion to allocate the monies in the most effective manner. It is very difficult now to talk about how those monies should be allocated.

We have also offered to conduct an inspector training program

for municipal and county inspectors, which would obviate the need for an appropriation for this purpose, and allow more of that money to be used for other Commission activities.

In addition, Section 39 of the Bill would establish a moratorium on the licensure of hazardous waste facilities until the facilities plan is adopted and fully implemented by the Commission. We feel that this must be deleted at this point in time. Now, the purpose of the Bill is to provide New Jersey with safe and environmentally sound hazardous waste treatment facilities. This provision cuts against the very purpose of the legislation. Should technically sound treatment facility proposals be put forth during the time frame allotted for the Commission to do its work, we think that we ought to be able to move forward on those applications on their own. There is a direct and important need for hazardous waste facilities. We don't see any need to stymie proposals from being put forward while the Commission gets organized. That has been our position consistently. We recognize that the process may not be as efficient in getting those siting decisions made, but with super fund legislation and all the needs we have in hazardous waste siting, we recommend that approach.

SENATOR DODD: Lee.

SENATOR LASKIN: Before we leave that point, so I don't forget it, if you are in favor of this Commission concept, I don't understand the consistency, or the lack of consistency, between what you just said and your favoring the Commission concept. If you feel that this new legislation establishing the Commission is the way to go, why would DEP still want the authority to grant these licenses during the interim period?

MR. ARBESMAN: The only reason, Senator, is the critical need for adequate treatment and disposal facilities today in New Jersey. The Bill will build in certain time frames to make those decisions and provide for proper facilities in the future. My own belief is that we will need hazardous waste treatment facilities for decades to come. There will constantly be a need for siting decisions in this State as we move forward and develop a comprehensive hazardous waste treatment program. But today we are faced with a shortage of capability. We have millions and millions of gallons being poured out of industries that need to be treated effectively -- more effectively than we are doing at the present time.

The only thrust of my comment is, if an innovative proposal comes along, we not hold back on considering that proposal under present law, under the present process that does exist, even if it is not as adequate as we would like.

SENATOR DODD: Paul, what about the Federal moratorium?

MR. ARBESMAN: George Tyler, Assistant Commissioner, will answer that question, Senator.

MR. TYLER: Senator, at the present time the Federal government has adopted Phase I standards for licensing facilities. We, in turn, have proposed and will shortly adopt similar standards for New Jersey. They have indicated Federal RCRA law provides that no facility can go forward until specific technical standards, called Phase II or Stage II, are adopted by EPA. EPA has estimated that this will happen in the next four to six to eight months, depending upon the kind of facility you are talking about, and probably, with respect to land fill, the time frame is even longer.

So, there is a Federal moratorium, if you will, in licensing as of November, 1980, that will last until they promulgate specific, technical standards for each different kind of storage, treatment, or disposal facility. That will provide a pause in licensing that is going on now.

It is our position that once that is lifted and the specific technical standards are there, then if we get a proposal and RCRA acquires the site on its own, as is the current state of affairs, then that regulatory and licensing review should go forward.

MR. ARBESMAN: Senator, indeed we may not be able to license a facility. We just don't think it is appropriate to have a direct prohibition from our attempting, if an innovative proposal comes along, to license one, and going through a process as best we can in that time period.

SENATOR DODD: Proceed, Mr. Arbesman.

MR. ARBESMAN: Finally, we recommend that Section 33 (d) be amended to accommodate both the hazardous and solid waste disposal interests. Sites selected by solid waste management districts for disposal are few and far between. We know that from working on solid waste management districts, along with the counties, for the past five years or more.

Secondly, they are already provided with protection by State approval as part of the Solid Waste Management Master Plan required under Chapter 326 of the Laws of 1975.

Lastly, there may be a point in time when the Commission, in consultation with the Department and the Advisory Council, may wish to make a public interest determination if a particular site must be used for hazardous waste treatment and disposal, rather than for the disposal of ordinary garbage. Since there are more options available for garbage disposal and significantly fewer, we feel, for environmental and siting problems associated with hazardous waste facilities, the Commission's flexibility, we don't believe, should be limited in this case.

With respect to the definition of major facilities, we have made specific recommendations to the Committee staff, and have tied those recommendations to specific changes in the statutory requirement for weekly inspections. However, the bottom line is our belief that the Commission should be given the authority to establish a regulatory definition for major facilities after they complete their plan. We feel they will be in the best position after reviewing the needs as to what a major facility would constitute and make that determination in a regulatory fashion, and that determination could be subject to change by the Commission as the needs change in the future.

Those remarks complete our comments on the legislation at this point in time, Senator. Again, we commend you for bringing this process so close to a conclusion.

SENATOR DODD: Thank you, Paul. John, do you have any questions?

SENATOR CAUFIELD: Yes, Paul, I have one or two questions, not really on the bill itself, but on some other matters.

As I understand it, there are about 300 known sites?

MR. ARBESMAN: Yes. You are talking about hazardous waste sites that need cleanup?

SENATOR CAUFIELD: Yes.

MR. ARBESMAN: There are between 200 and 300 that are known.

What is unknown, is unknown.

SENATOR CAUFIELD: The other thing concerns the manifest system. How is that working in our own State, plus the problems we had because of our relationship with other states?

MR. ARBESMAN: The manifest system is not working as effectively as it could, mainly because the other states have not yet fully implemented the Federal requirements for a manifest system. We are working with the states in the Northeast on a regional manifest system that would include most of the states in the Northeast. So, when the shipments of waste go across statelines, we can indeed track it.

We also have problems related to our own computer capabilities in State government to handle all the data that comes in in the manifest system. I believe the evolutionary process with that type of tracking system will be one that will be an important enforcement tool in the '80's to help curtail illegal disposal of waste.

SENATOR CAUFIELD: Finally, the superfund has finally cleared -- \$1.6 billion, is that the--?

MR. ARBESMAN: That's the lid on the superfund. Of course, the next Congress has to consider the appropriations into that fund. Now, there was a minimal appropriation given at the time the President signed the legislation of \$5 million to start the superfund process along. There may be subsequent appropriations very near in the future, and we intend to be first in line, if I can state it that way, for monies for the State of New Jersey to begin the cleanups. We have already, through the act of the Legislature to amend New Jersey's own State spill fund, had a clean-up program in this State since March of this year. That has given us a lot of expertise, and a lot of capability. We have people in the field. We have contractors on board. We are geared up and ready to go. We can spend the monies. We need the adequate sites that this Bill would provide in the future to do all the cleanup. Cleanup is not going to be accomplished in one year or in two years. We are talking about a decade or more, a long program, to attack these problems.

SENATOR DODD: Paul, on what we have read about recently, in Lower Alloway's Creek, the Fox Run or I.U. conversion systems, how does a thing like that happen? I look at it as highlighting the way somebody has to disguise to even discuss a toxic waste siting facility, much less get approvals or appear before the planning boards, or whatever. How does that happen from DEP's point of view?

MR. ARBESMAN: From our point of view, Senator, we had no involvement with that application or with that site in particular. We did meet with that company, I think a year and one-half ago, or two years ago. They said they were interested in coming to New Jersey with a hazardous waste treatment process. We told them that was fine and we would encourage them to do so. We also told them that we would urge them to go public, to talk about where they were planning to go in New Jersey, to follow the concepts that are in this legislation before us, to have a full-scale public involvement process. For some reason, they did not do that; they went ahead on their own, from what I read in the newspapers, and determined to select a site which has now met with much opposition, as any of us in this room probably could have

conjectured it would if it was done in that fashion. The whole approach of the business community in siting these facilities has to change along the lines of this legislation if it is going to occur. I think we have all come to realize that.

SENATOR DODD: John.

SENATOR SKEVIN: Paul, the situation in Jackson Township has been highlighted in the press, and of course we are all concerned from the aspect of their personal problems which we are very much aware of. Will they have a priority in terms of cleanup in the program of DEP? Will there be a priority for that situation?

MR. ARBESMAN: There will be a priority as one of the 300 sites.

SENATOR SKEVIN: I am talking about cleanup.

MR. ARBESMAN: Yes. I am saying we have about 300, as Senator Caufield indicated, that we know need cleanup around the State. The Jackson Township case, with all the problems - all the emotional problems related to what happened in Jackson Township - and the cut-off of the well supply is a very difficult situation. There is an alternate water supply in now, however, and at least we feel people are not exposed to the materials they were exposed to previously when it was in their well water. So, we have something from that standpoint that allows us to look at other facilities for cleanup.

The urgency for cleanup will be dependent on how the facilities are actually impacting potable water sources, and in a lot of cases in the state we still have contaminated drinking wells that people are using and that we haven't gotten to, or that we have to get to in the future and we will have to cut them off. I would say those will become the priority sites for cleanup. Jackson Township will certainly be on that agenda.

SENATOR DODD: We do have Mr. James McCarthy from Jackson Township here today. He is one of their leading spokesmen and we will be hearing from him later in the day. Jim, I know you have a few comments on that when it comes your time.

MR. ARBESMAN: Mr. McCarthy and the people down there have suffered a great deal with that hazardous waste dilemma brought about, in large part, because we didn't have sites to dispose of the waste, a regulatory system to make sure hazardous waste was treated effectively, nor a cleanup program in the State or in the nation that could adequately respond to those needs.

SENATOR DODD: He and the Committee are going to fight later on today on some technical points, but I am hoping he will be with us on the concept. I believe he is with us on the concept of the bill.

MR. ARBESMAN: I hope so.

SENATOR DODD: Even after what he has been through.

SENATOR LASKIN: In your concluding remarks you indicated that it is the position of your Department that this Commission should have mandatory regulatory powers -- am I wrong? Did you indicate that in your concluding remarks?

MR. ARBESMAN: I was talking about a specific area of the definition of a major facility that would come in for the licensing requirements of this legislation. There is a definition in the legislation. We thought that the legislation ought to be more flexible and allow the Commission

to define what a major facility is for the purposes of licensing.

SENATOR LASKIN: Who now has that power?

MR. ARBESMAN: At the present time the Department has a requirement for hazardous waste facilities siting.

SENATOR LASKIN: If you agree that the Commission ought to have that power of regulation even in this limited area, do you likewise agree that if there is a similar power in DEP or any other agency that that power should be deleted?

MR. ARBESMAN: No, I don't. They are for two different purposes, if I might respond. I will then let George Tyler and Steve Picco respond as well. The purpose in this law, as I understand it, is the definition for what facilities will be mandated to go through the siting process, and also what facilities would require weekly inspections. In our law, our requirements would be for anybody in the business that already exists, as well as any new facilities. So, our definitional requirements might be more extensive, and they will be more extensive, because there is a large business out there that needs to be regulated. We are talking here about what requirements will be imposed on new facilities coming into the State.

SENATOR LASKIN: If they are requirements that this Commission would have on the new facilities coming into the State, would DEP have any similar requirements on new facilities coming into the State?

MR. ARBESMAN: Yes. As the bill indicates, there is a very specific delineation of authorities between the Commission and the Department for the process of siting a facility. The Commission would say for a certain sized facility they have to go through a process, as in this bill. We would set the specific regulatory requirements that the facility would have to comply with as part of that process. The Commission would not.

SENATOR LASKIN: You don't see any overlapping though?

MR. ARBESMAN: The way this bill is drafted now, I do not.

SENATOR LASKIN: Under your comments that you would like to see this Commission have some regulatory powers?

MR. ARBESMAN: No. The regulatory powers were for a specific purpose, and that was to give a definition for a major facility.

George, do you have any comments?

MR. TYLER: I just want to add that the effect of the definition is that it would limit the Commission's ability to acquire sites or to site anything that fell below the definition. That is the reason we are suggesting it not be defined. Let them decide, after they finish their study and take a look at what kinds of facilities are needed.

On the other hand, the Department has definitions for solid waste facilities. Those are for clear regulatory and control purposes. That is the difference we are talking about.

MR. ARBESMAN: Steve, did you want to add something?

MR. PICCO: I just want to add one thing on the definition of solid waste facilities. We asked for that deletion on Section 33 (d), and that is to clear up what we see as a possible institutional conflict down the road, where there is a county designation and a possible State overriding designation balancing the relative need for a garbage disposal facility, as opposed to a need for a hazardous waste facility. It is our legal

position - there is pretty much of a consensus on this - that we already have that authority under the Solid Waste Act. I personally don't think that this bill changes that authority, but I didn't want to create a situation where we could tie ourselves up in court cases down the road unnecessarily.

SENATOR DODD: We're trying to limit that.

Mike, do you have something to add?

MR. CATANIA: You mentioned that the Department would feel better not having a moratorium on the approval of new facilities before this process is complete. Does that mean the Department would not like to see the new licensing procedure used if you were to receive an application and license a new facility?

MR. TYLER: We are incorporating that in our rules right now so that they will go forward in terms of licensing as of whenever the rules are adopted. We think that will be this January.

MR. ARBESMAN: Let me state it this way: The Committee and the Department and others have been through a long process now to decide on a siting approach. The Commission will carry that out.

The thrust of my comment was that we should not prohibit, legislatively, siting decisions being made prior to the commission being formed and everything being done. We would attempt to follow the process as closely as possible, as it is laid out in the legislation. But, we think we ought to have the opportunity, because of the critical need for treatment facilities, to continue along those lines.

MR. CATANIA: Would you have any problem with the legislation requiring you to follow that licensing process?

MR. ARBESMAN: I wouldn't have any problems with that, per se, except there may be steps in there that the commission was supposed to carry out that may be a conflict role for the Department. I haven't looked at it from that standpoint.

MR. TYLER: There is one point, Michael, in terms of the money for municipal studies. We will provide in our regulations for that opportunity for hearings, etc. We intended to do that anyway, so we don't have to change the rules again when the bill is enacted. However, we are not going to be in the position of having the grant money available.

MR. CATANIA: Well, the applicant in the licensing procedure provides the money.

MR. ARBESMAN: I think we could work that out.

SENATOR DODD: And, you have no problem with the fact that we will give a candidate municipality -- what we are talking about now is a \$10 thousand grant to go out and hire their own environmentalist engineer. You know, the classic story is: "I'm the guy from Trenton and I am here to help you."

MR. ARBESMAN: I haven't heard that lately.

SENATOR DODD: We have had some problems with that concept: "I'm from government, and I am here to help you."

MR. ARBESMAN: That's right. We think specifically that that is an asset to the siting process, and the way the decision-making process is now laid out in the bill, through adjudicatory hearings, etc., etc., it would provide a very correct forum to consider everyone's position on



this facility.

SENATOR DODD: Timewise, how close are you to having your siting criteria?

MR. ARBESMAN: We have our contract on siting criteria. It has been through several phases. It is in a hold pattern pending completion of the bill. So, when the Commission is formed, we want the Commission to be a partner in the final siting process that we go through so that the Commission can hopefully use as much of that siting process as possible.

SENATOR DODD: Virtually all of your technical work is done on that?

MR. ARBESMAN: A good deal of it has been done.

SENATOR DODD: Gentlemen, are there any further questions? (no questions)

We would like to thank you for your participation in this, Mr. Arbesman.

MR. ARBESMAN: Thank you very much again.

SENATOR DODD: The Committee will now call George Otis from the Chemical Industry Council.

G E O R G E O T I S: Senator Dodd, and members of the Senate Committee on Energy and Environment, I am George Otis and I represent the 65 member companies of the Chemical Industry Council of New Jersey.

As you probably are aware, the Chemical Industry Council's membership is composed of the major chemical companies, including those that operate not only in New Jersey, but across the country as well. Overall, the chemical industry represents sixteen percent of New Jersey's total manufacturing employment with an annual payroll estimated to be more than \$1.75 billion.

As Chairman of the Chemical Industry Council's Hazardous Waste Committee, I thank you for the opportunity to discuss the Senate Committee Substitute for S-1300, the Hazardous Waste Facility Siting Bill.

We commend you, Mr. Chairman, and members of the Committee and the staff, for working so diligently in attempting to solve this immense problem. I admire your courage to take on such a difficult and controversial task.

Figures compiled by the Governor's Hazardous Waste Advisory Commission, on which the Chemical Industry Council was represented by our Chairman, Chris Hansen, show the enormity of the problem of hazardous waste disposal in New Jersey. The Commission estimated that at least 720,000 documented tons of hazardous waste are generated in New Jersey yearly, not counting several hundred tons dumped in the ocean. Fully 320,000 tons are disposed of on site, in State. The rest of the wastes are taken off-site and disposed of in New Jersey or other states. The eminent halting of ocean dumping, added to the suspected illegal dumping, will increase the amount of hazardous waste to be disposed of in New Jersey.

The Chemical Industry Council agrees with the findings of the Governor's Commission which recommended site determination by the State and private operation of disposal facilities. We agree that these steps are essential for our industry to survive in New Jersey.

As the Commission pointed out, "hazardous waste management is one of the most critical environmental, public health, and economic issues facing the State of New Jersey. There must be no delay in moving toward a solution for this problem." Although the Chemical Industry Council agrees most heartily with that statement, we must point out that in our opinion S-1300 in its present form will not be the needed solution.

We are pleased to see that S-1300 contains a key recommendation of the Commission which establishes an autonomous corporation with the power to

set siting criteria, select sites, and purchase or condemn land. However, the addition of many qualifiers in the present draft of S-1300 will fail to accomplish the Commission's stated goal of siting hazardous waste management facilities in New Jersey.

We feel that problems in the following general areas of technology and siting restrictions may effectively preclude the siting of any kind of facility anywhere in the State.

The stated philosophy of the bill is to "minimize landfilling and all other inappropriate disposal techniques and to minimize the amount of hazardous waste to be stored or disposed of in this State." We respectfully submit that this philosophy is a direct contradiction to the Commission's goal of siting disposal facilities. In fact, there is only minimal disposal and storage of waste in New Jersey today, and that is the problem.

As it now stands, S-1300 effectively eliminates secure landfills as a possible technology. This ignores a major need of the State. As we have pointed out in previous testimony, we are not advocating secure landfills as the universal solution. However, existing technology allows secure landfills to be safely used as a final repository for those wastes which have been decreased in volume or pretreated for detoxification. The Federal Government, in its RCRA regulations, recognize secure landfills to be an acceptable and needed technology. In fact, the New Jersey DEP has contracted with certain companies to remove the wastes from "problem" dump sites to secure landfills. Wastes from Chemical Control, Plumsted Township, the A-Z Corporation, have all been sent, or are destined to be sent, to secure landfills. The DEP recognizes that secure landfill design is now advanced enough to dispose of waste safely. Yet, today this bill practically denies the use of this technology.

We feel that S-1300 should not place such stringent provisions on the use of such secure landfills. In effect, these provisions, listed in Section 13 of the draft, will make it virtually impossible to include secure landfills as a viable technology.

The consensus of independent engineering studies conducted for the DEP indicates that 20% to 50% of hazardous wastes are appropriate for a secure landfill.

The second section of the draft with which the Chemical Industry Council has concerns deals with the mandatory siting criteria. It is our feeling that the DEP should develop the siting criteria, and then only after considerable study. This was one of the powers originally conferred on the DEP. To arbitrarily tie their hands by establishing "preconditions" serves no useful purpose. The only thing these preconditions would accomplish is to effectively preclude the entire State of New Jersey as a possible area for a hazardous waste management facility site. Officials of the DEP agree that this would be the effect of these four preconditions. We urge language to be inserted in the bill which will allow the DEP to determine, on a case-by-case basis, whether a site meets acceptable siting criteria.

Since informal hearings on S-1300 have begun, we have seen the powers of the Advisory Council significantly expanded. While we agree wholeheartedly with the concept of public input into the siting process, we can see no real value in setting up a completely parallel structure to the Commission.

The Chemical Industry Council feels that there is no reason for the Council to hold public hearings when both the Commission and the Department

will be conducting hearings on the plan and the siting criteria. We also feel it inappropriate for the Council to recommend to the Department on specific registration applications and engineering designs.

At the Newark hearing on S-1300, the Chemical Industry Council pointed out that the final draft of the bill must establish beyond a doubt that a generator's liability stops when his hazardous material is passed on to a licensed carrier. The carrier's liability should likewise only extend from the time he accepts the waste until the waste reaches its final destination. This was a point embraced by the Governor's Commission, but the draft of S-1300 is silent on the matter. We suggest these points be included.

The gross receipts tax levied on the facilities also causes us concern. The proposed facility will already be paying property taxes which we feel will be compensation enough for the host communities. Should a gross receipts tax be felt to be necessary, the Chemical Industry Council suggests that a "cap" be placed on the amount of money able to be collected. Also, the section giving host municipalities the option to petition the Commission to collect from the facility an amount in excess of 5% of the gross receipts should be eliminated. The purpose of this bill should be to site hazardous waste facilities, not "sweeten the deal" for local municipalities. Any money given to these towns should be expressly dedicated to new equipment or services caused directly by the siting of the facility in that town. It is our understanding that the city of Newark, for instance, did not have to increase any service or buy new equipment because of the hazardous waste facility located in that town.

We suggest that both grants to be given to municipalities where facilities are to be located be capped at approximately \$15,000. We feel that this is a sufficient figure.

In the section on definitions, we would suggest that the "new" definition of hazardous waste be changed to conform to the RCRA definition. The "Hazardous Waste Industry" definition includes on-site facilities. This type of facility is clearly out of the domain of this bill and should be changed by adding the word "commercial" in the appropriate places.

Of a more important nature, the Chemical Industry Council feels that the burden of review on application for facility registration has shifted from the DEP to an administrative law judge. Such a mandatory adjudicatory hearing, we feel, will extend the time period for the reviewing process and is inconsistent with other proposed regulations. We suggest this portion of the bill not be made mandatory.

We are pleased to see the draft of S-1300 incorporates our suggestion to allow the expansion of major hazardous waste facilities up to 50% of their capacity.

In closing, I would like to change a misconception stated in the preamble of the bill. It is our feeling that most of our companies treat and dispose of their wastes in a proper fashion. The exception, contrary to the language in the preamble, is the industry involved in the clandestine midnight dumping operation. These companies are by no means the rule, and we resent the chemical industry being painted with so broad a brush.

Senators, I can't underestimate the importance of the issue before us today. Nothing less than the future of our environment is at stake. The State of New Jersey needs the type of hazardous waste management plan outlined in S-1300. Let me reiterate that the member companies of the Chemical Industry

Council support the concept of the bill wholeheartedly. We urge you to make the changes to the bill we have delineated so that S-1300 will be able to accomplish what it has been written for, to site the hazardous waste facilities in New Jersey.

Upon the adoption of such amendments, especially the section dealing with secure landfills, the Chemical Industry Council is certain S-1300 will accomplish just that.

Thank you for your time and consideration. I will be happy to answer any questions.

SENATOR DODD: George, I have a couple of points. We feel we do address the secure landfill portion, but we have phrased that so that would be the last resort. We do certainly realize that there will be secure landfill situations. That is realistic. Where we are talking about low-toxic, high-bulk type situations, they cannot all be physically treated with the state of the art. So, even though you are perhaps not satisfied with the exact language, that is there.

MR. OTIS: I personally agree.

SENATOR DODD: And we will discuss further the cap on the gross receipts type tax. We do not want to create any more Lower Alloways Creek type situations, where one facility will garner so much income that it would be unfair to the rest. So, I think we will look at that later on in the day as far as what type of a cap we can put on that.

MR. OTIS: Well, I think the wording that bothers us on the secure landfill, Senator, is when you start talking--

SENATOR DODD: Last possible resort.

MR. OTIS: Well, it is not only that, but then you come back and say, "Registration statements and engineering designs for secure landfills or other facilities which do not meet the requirements of criteria (1) or (2)" - which is everything above grade and very restrictive - "...may be approved by the department only upon a finding that: (1) All alternatives to the proposed facility design are technologically or economically impracticable." I don't know what that means. That could be-- How you interpret that can practically eliminate everything.

SENATOR DODD: I would hope common sense would prevail. I certainly think DEP does understand the critical nature of having these, so that the cost-benefit ratio would be addressed in those factors. I am not afraid of that.

MR. OTIS: Okay. Well, this is our concern.

SENATOR DODD: If it does become a problem, we will change the law if it is not working. We are not bashful with that end either.

MR. OTIS: Well, good. That is basically our concern. From a generator standpoint, we see no way for the State to solve our problems, or for us to solve our problems, without some access to secure landfill.

SENATOR DODD: Yes. Do the members of the Committee have any questions?

SENATOR CAUFIELD: Yes, I have just a couple of questions. I think I'd need a lot of convincing before I went along with something about secure landfills. I would need a lot more convincing on that.

I hear from other people that secure landfills are not the real safe - environmentally safe - answer. I am certainly going to need more convincing on that.

I think where you made some mention of a problem with the generator's liability stopping when his hazardous material is passed on to a licensed carrier made sense, but I would approach that with great caution because I don't think

that's been the case in the past. I think that generators have passed material on to truckers or other people who supposedly were going to dispose of it in an environmentally safe manner, and we find it in warehouses in the Pine Barrens, and just everywhere else you can imagine.

So, again, I have to face that one, or view that, with a great deal of caution.

As far as the gross receipts are concerned, I am not sure that I agree with the phrase - or the words - that says "sweeten the deal for local municipalities." I don't think it is a question of sweetening the deal. I think it might be a question of doing a whole lot of other things. If you have been at some of the public hearings or the meetings that I have been at where neighborhoods have been protesting, they don't think anybody is sweetening the deal; they don't want it even with all the sweetener in the world. I don't think that a cap which talks about \$15,000 is even remotely adequate. I can't imagine how that is going to be sweetening any deal for anyone with \$15,000.

The plant you are talking about in Newark, I assume that is SCA?

MR. OTIS: Yes.

SENATOR CAUFIELD: Well, I wouldn't say there was no additional cost, and they have been extremely cooperative as far as the fire department is concerned. They have done things they don't have to do, upon our request.

I do have some problems with some other parts of your comments, but they are not really serious. Those are the only ones I have a serious problem with.

MR. OTIS: Well, Senator, on the secure landfill, I guess the point we would like to make is, we are not talking about the old style secure landfills. We recognize secure landfills are not a panacea and we are not trying to push the thought that everything goes to a secure landfill. The KimBucs are not a good, secure landfill. We are talking about the new RCRA standards. It is really new technology. Many people are experts and feel that there is good, sound, safe technology. That, we could probably discuss later.

We don't want to send materials, believe me, where they are not going to be properly handled. In our opinion, in the opinion of the disposal industry, in the Federal government's opinion, and even in DEP's opinion, we feel that you can have a good, secure landfill.

SENATOR CAUFIELD: Again, I guess we look at it with a great deal of caution because we know that if something goes wrong in the future, and we have secure landfills, I am not sure how we could do anything about it.

MR. OTIS: Well, we suggest we look at it with caution too, but we don't want them to have so many restrictions that we practically can't have access to one. We want to have them designed right and built to the right standards. Again, you want to minimize what goes to them, but don't eliminate them. That's out point. And, Senator Dodd is saying that is not the intent.

That is all we are trying to say. On liability, I would agree with your comments. Many times, in a way, in the past it has worked. My comments are based more on what the Commission's report - the Governor's Commission on Hazardous Waste - was predicating, and that is that we have a strong manifest system, where a generator has to know where his material is going, and where he is in a manifest system. At that point, if he has designated his material to go via a good, licensed carrier to a good, licensed disposal site, then his

responsibility ought to end, and the carrier has to get it from the generator to the disposal site, and so forth.

SENATOR CAUFIELD: That may very well be so, and I am not disagreeing, providing we have the good, licensed carriers.

MR. OTIS: I agree.

SENATOR CAUFIELD: Perhaps I am particularly concerned about this because as time goes by, I become more and more intensely involved with this and more concerned all the time. It seems no time goes by that we don't come up with more problems. We came up the other day with a 1,055 gallon drum on one site, but before the week was over we came up with 2,000 more.

SENATOR DODD: That is the one in the abandoned warehouse?

SENATOR CAUFIELD: No, that is the second one. That was only 350 or so. That was less than 100 yards from the Turnpike, and probably less than that even from U.S. 1-9 North. That is still another one. These do cost us money in other ways. We are talking about gross receipts and what we are giving to municipalities. I could go into a long line of what we are now giving because of the toxic waste being abandoned.

In the case that Senator Dodd referred to, for example, the one by the airport, since Thanksgiving eve until now we have had two men around the clock as security because of the type of chemical we are told it is, and the type of radiation and other problems that exist there. That is a very real cost to us, a very great cost.

MR. OTIS: It is cost concern to all of us, and that type of thing shouldn't take place. When I talk about liability I mean that the generator has a very distinct responsibility and liability to designate his material and know where it is going.

SENATOR DODD: We are all going in the same direction on this.

MR. OTIS: Could I make just two other comments, sir? On the question of sweetening it for the municipality, I think what we would like to do-- First of all, we weren't saying a "cap" on that. I think what we were trying to say was misunderstood: a cap on the gross receipts tax. That cap was for grants to the municipality to do engineering studies and the scoping study. I think there are two grants you are talking about. One in the bill was "capped"; the other one is not -- the general scoping one. We would suggest that both of those be capped at \$15,000.

When you come to the gross receipts tax, if there has to be one for the communities, we would like to see, rather than just general monies, to at least have it designated that it has to be supported by services provided by the community because of that facility being there.

SENATOR DODD: We do have that language in the bill.

SENATOR CAUFIELD: I don't see anything in this whole problem at all that is going to be nearly as emotional or as serious a problem as the siting. That is a fantastic problem.

MR. OTIS: That is the big one.

SENATOR CAUFIELD: As soon as people heard anything about incineration or anything else, they protested. The people in Linwood had protest meetings. The people in Newark had protest meetings. No one wants it with all the sweeteners in the world.

MR. OTIS: That's understood. It is a difficult--

SENATOR CAUFIELD: Maybe that is not a good way to go about it.

SENATOR DODD: No, but when you talk to people individually, everyone agrees with the need -- "but not in my back yard."

MR. OTIS: That's the problem.

SENATOR DODD: That is what we are expected to correct.

MR. OTIS: That's why I commend you for tackling a tough, controversial problem. It is not easy.

SENATOR CAUFIELD: I sat and watched on television not too many weeks ago very well dressed, intelligent people protesting about "not on our block", and they weren't even talking about toxic waste; they were talking about retarded people.

MR. OTIS: Yes.

SENATOR CAUFIELD: That is a beautiful thing, rather than a terrible thing like this. So, if they can get that excited and that emotional about retarded people being in their area, imagine what they are going to be with this?

MR. OTIS: Oh, yes.

SENATOR CAUFIELD: We have already had experience with this. There are protest meetings held just on rumors that there might be one in Elizabeth, or there might be one in Newark. And, I am sure the same thing will apply to any county or municipality throughout the State.

SENATOR SKEVIN: I don't quite understand the reason for your opposition to have the council hold public hearings. Is it that you are opposed to the council having the opportunity to have public hearings?

MR. OTIS: Well, it looks like we are almost duplicating the Commission. That is my reaction to it. We are going to have the public hearings, both on the siting by the DEP, and public hearings and participation when the Commission goes through all theirs. They have money for a staff and studies, and so forth. We are setting up the council now to hold public hearings, hire engineers, and make studies. It looks like it is just turning out a lot of duplication.

SENATOR SKEVIN: A lot of duplication?

MR. OTIS: Above and beyond what is necessary for public participation. I don't want to undermine public participation, but do you really need two pretty big bodies?

SENATOR SKEVIN: Don't you feel that would have some effect on the effectiveness of the council if they were limited as far as public hearings are concerned?

MR. OTIS: When the concept was first broached I was under the impression that it was an advisory council. It was going to be a group of people who things could be bounced off of and who would be reviewing what is going on -- I mean from both the Commission and from the DEP. It was not going to be a group that was, in essence, paralleling a lot of what is going on in the Commission. Yes, that made sense to have an advisory group who would make comments. But, it has sort of grown in structure and responsibility, and to me it is very close to the Commission.

SENATOR SKEVIN: I am going to have to respectfully disagree with that comment, Mr. Otis, and the concept of opposition to public hearings. I think that is perhaps the price of a democracy, and perhaps the reason why we have the council there, to provide that input and the opportunity for the public to get involved.

MR. OTIS: First of all, we are not against public hearings, so that is not the point. The question is, how many do you have and how many groups are involved because you want participation, but you want to have it without a large extra expense or contradictory type positions. It is going to be a slowing tactic. It looks like there are three bodies involved. That is just our reaction to it.

SENATOR SKEVIN: Well, in Russia they may not have many public hearings. That may be more effective and perhaps more--

MR. OTIS: Well, we are not suggesting you go to a Russian state.

SENATOR SKEVIN: Okay. Well, in this respect I think the importance of this subject requires as much input and perhaps as many public hearings as we possibly could have. I really take offense, and echo the comments of Senator Caufield, on sweetening the pie here for local municipalities. I think in most cases the best sweetener would be to take the substances and the industry right out of the State of New Jersey. I think they would be more than happy to take that sweetener rather than the sweetener of locating the sites in their communities.

We are talking about the people's homes, their health, and many other concerns that affect them from an economic standpoint, rather than, as you put, to sweeten the pot or sweeten the deal.

I have no further questions, Mr. Chairman.

SENATOR DODD: Again, the Advisory Council is a safety valve, a non-voting situation, and it is so easy to be against anything, especially an emotional misunderstood issue such as this -- such a highly technical issue as this. I would rather have somebody sitting on an advisory council having to deal with the same facts that make up my decision, than outside with a picket sign not understanding what the problem is. So, if you look at it from that respect--

The Committee would like to thank you for the work that you and your staff have put in in helping to draft this measure. We are not going to agree one hundred percent with anyone on anything, but we are getting there. Again, thank you.

MR. OTIS: Thank you very much.

SENATOR DODD: The Chair would like to call Michael Pane representing the League of Municipalities.

M I C H A E L P A N E: Mr. Chairman, Senators, thank you very much for the privilege of being here today to speak on the Committee Substitute for the original S-1300.

I would like to start off by saying some words of praise for the Committee and the Committee staff. I think that in view of the time that the Committee staff has had to prepare this substitute, it is a very well drafted document and I think they deserve a great deal of credit. Unless that be taken totally out of context, however, I do have a couple of comments that I think are appropriate.

First, although I realize this has been an on-going ordeal for the Committee, I think that the fact that this draft was reproduced last Wednesday and the hearing is this Wednesday, and there has been a great deal of interest generated, indicates that it might not be amiss to have at least one more hearing on this draft because there is a difference between working on an outline and getting a specific language, especially in a bill of this magnitude.

Having said that, let me go into some specific points, some of which were covered in the League's testimony on November 6th, some of which relates



specifically to the draft here.

The first point is one of concept, and I realize the Committee has made a decision on this but I would ask a very simple question. The concept is whether new on-site facilities should be considered or not. Let me give a very simple example. Let's say that 'company x' has, over the course of its life as a company in one municipality, always sent their hazardous waste to be disposed of in some other place, and let us say that they decided to change that policy and establish a new on-site facility. Under the definition in this bill, or the use of the word commercial, as I understand it, it is intended to lead only to the licensure of off-site facilities through the process in S-1300. Yet, if the same facility were to be built 1,000 feet away from that chemical plant, it would have to go through the procedures in this bill. From the point of view of the people in the municipality, that seems somewhat anomalous. If there is a new on-site facility, it should be treated in terms of its effect, exactly the same way as the facility 1,000 yards away.

Similarly, I think that while the plan that the Commission will be promulgating deals in some respects with on-site materials, it should deal in all respects with on-site materials simply because, in my mind at least, the planning process should be whole and not partial.

Next is the issue of what happens when a site is designated? We have taken a position that the designation of a site is really in many respects the equivalent of a declaration of blight. Whether the evidence can be found for this or not, or whether it is strictly impressionistic is something that a great deal of research will have to go into. But, the bill should at least provide the opportunity for the municipalities and property owners to make a choice at the time of site designation that there is an immediate effect on their property and on municipal revenues, and as long as that municipality is designated as a potential site, that exists and therefore the issue of damage is a very real one.

Going on to condemnation, if the Commission exercises condemnation powers, this is even clearer. So, we will urge that provisions be made at least for opening that up so that people can make their appearances and make their claims for damages.

The next point I would like to raise is the \$15,000 figure which is presently in the bill for municipal review. That may be, at present, a legitimate figure. We all know, however, that bills are not amended everytime the prime rate goes up or down, or the cost of living index goes up.

SENATOR DODD: Mention that softly; it may go up again today.

MR. PANE: What I am saying is that a specific dollar figure is probably not a reasonable idea in the context of the bill that we hope will be on the books for a long time.

I would suggest as an alternative that the amount be left to the Commission to determine in view of the size, type, and probable environmental implications of the proposal; or, the alternative, to be fixed at a percentage of estimated construction costs, by leaving some flexibility, in other words, rather than trying to put a flat dollar amount today that in three or four years may be meaningless.

Another point on that -- in terms of the site plan review, one thing you can do is simply to say that the fees for site planning review shall be the regular planning board fees for site plan review, because there are fixed fees

in every municipality and that would take care of one part of this.

Going on, I think that there are two places that affect the entire bill, and that are of tremendous significance. They appear on pages 17 and 18 of the draft. The language on page 17 reads as follows: "The department may exempt major hazardous waste facilities below a certain size or of a particular type being considered as major hazardous waste...facilities...." That language has a certain 18th century delicacy about it, but I found that it is so vague that potentially it creates a very serious problem. What is "a certain size"? Obviously, that is not the sort of thing that should be left to total discretion. What is "a particular type"? The exemption there, as it is written, threatens all the good work in the rest of the bill.

At the same time--

SENATOR LASKIN: Where is that?

MR. PANE: That appears as number 12 (e) on page 17 of the bill.

SENATOR DODD: Proceed, Mr. Pane.

MR. PANE: At the same time, the above-ground provision in Section 13 (b), to our mind, has some very serious problems. Originally, language in there included "beyond any reasonable doubt." That, to us, was a reasonable standard. There appears to be problems with that standard. I suggested in my handout to the Committee alternate language to 13 (b), and I would suggest the addition of a legislative intent section here to clarify the issue -- something to the following effect: "It is the intent of the Legislature that storage at or above grade be the preferred and generally used method of storage. To this end, Section (b) hereafter should be construed narrowly by the Department, allowing exemptions (a) hereof, only as a last resort and only in those instances where it is overwhelmingly clear that there is no public reason for above ground storage, and to store totally harmless materials above ground would be economically and technically unreasonable." I believe that such a section giving instructions to the Department and setting forth the intent of the Legislature as to above ground storage would probably add a great deal and it would also solve some of the problems that the previous speaker discussed.

The injunction toward narrow construction has precedent. If you look at the Local Public Contracts law, you see that the section dealing with extraordinary, unspecified expenses has a legislative statement mandating that that be construed narrowly.

Now, on to some other points which are of a technical nature. On page 19, Section 15, the word "operate" is used. I think it should be made clear in the bill that as to operation, such a facility should operate no differently from any other industry; that is, as to standards of noise, smoke, odor, etc., it should be treated the same way any other industry in the municipality should be treated.

Next, I think that the section dealing with the issue of local health authorities should be broadened to include other code enforcement authorities -- for instance, fire inspectors. We should say, "health and other local code enforcement authorities."

Another point which I believe has been missing, which I think there was a consensus on, is the fact that a local official should be able to issue an emergency stop order. Effectively, this would be a very short term order.

Ideally, the order should have basically a 24-hour effect until the bill mandates an official from DEP has to come in, and then within 5 days make a final determination.

Parenthetically, I think it is very clear from the testimony that the Committee has heard on a number of occasions that local officials over the years in those places that have had hazardous waste facilities have had a problem in getting the people from DEP to come out in a timely fashion.

I think that in those sections dealing with local inspections, DEP should be mandated to respond within a certain time, otherwise there is simply no way to deal with the problem.

Next we get to the issue of the gross receipts. Now, clearly, nobody is looking for a bonanza. On the other hand, how difficult is it to talk about the kinds of effects, the kinds of things a municipality would have to do to deal with the impact that such a facility would have? Certainly, the two or three items mentioned here are far too restrictive. Certainly, the notion of expenses directly related to the facility is a little restrictive. For example, health programs, safety education, on-going studies, re-planning because of the impact the location of the facility will have on the nature of the community, economic development strategies are but a few. Therefore, we would suggest that the language in the last subsection of that section be changed to read: "other expenses related to the impact of the facility on the community." That is restrictive and at the same time it makes it clear that there should be a relationship, yet it is broad enough so that if the municipality feels that if the location of the facility demands that a part be put somewhere near there, to compensate the residents in some way for having the facility then it would be a legitimate public purpose to do that. Certainly, the last thing that the Legislature wants to do is to put the facility and its host municipality in the position that they will be constantly fighting each other, haggling over whether or not something really falls within the scope of this section. You are not in the business of promoting irresponsibility, but then again the local officials have to be given some flexibility in order to determine what is needed to compensate for the placement of such a facility in the community.

The remaining points that I want to make, once again, are on condemnation, and broad notice to the municipality and the property owners because the issue of damages is probably a significant one.

As to the moratorium clause, frankly, it would be a good idea as long as you got a 25,000 gallon figure at this point to plug it in. At the time the 50% figure was used, that 25,000 gallon figure was not there.

Finally, the broad construction clause of the bill should have added to it the fact that environmental, public health, and safety factors are also public purposes of the bill so that in interpreting the bill a judge will look to those factors and give them the same broad construction as to the actual hazardous waste siting disposal factors. Thank you.

SENATOR DODD: Other than that how do you like the bill?

MR. PANE: Well, you know, as I said to Mr. Catania the other day, if I could change 30 or 40 words, I would be happy. As I heard the comments of the chemical industry, I realized they were in the same position, except, of course, their 30 or 40 words were in a different part of the bill. In effect, they are kind of mirror images. The things that we feel very pleased about are the things that were addressed with some concern by the previous speaker.

Certainly, the process has been opened to public scrutiny and public participation. The addition of the site plan review, I think, will prove valuable both for the applicant and for DEP and the Commission.

I think that on the whole the process is, in many respects, a very thorough and decent process. But, these are a couple of areas - especially as to the two areas of exemption - where no matter how good the bill is, if the exemptions are not tightly drawn, the rest of the bill becomes really irrelevant.

SENATOR DODD: We do not want to include any of the related expenses, realizing, of course, the cap problems that many of the municipalities are having. We do not want to be a further burden on the cap situation. We will take another look at that language again, but the grant monies that go directly to a candidate municipality and the \$100,000 that we set aside, we just don't know whether there is going to be three sites or five sites or eight sites that will be given, so that is why we left the discretion with the Commission on that.

MR. PANE: I think also the Commission should have discretion to set the amount of money simply because putting a ceiling in a statute today is going to create great harm four or five years from now when the money may not be adequate to the purpose. And, you want a good study. From everybody's point of view, the better the study is, the easier the location of that facility is going to be.

SENATOR DODD: We want the community to feel comfortable, realistically. It is a dramatic turnaround from when we started six months ago on this bill. There is natural opposition to a final thing such as eminent domain and condemnation, and to have your organization, with the realization and the foresight and the fortitude, to come up and say that even with that we can quibble over it, and we will over the years look to update and change this, is a compliment to your organization. I think we have reached a different plateau and understanding of each other in governmental relations.

Lee?

SENATOR LASKIN: Yes. On your change-- On page 26, 32 (c), you have changed 4 to read: "Other expenses related to the impact of the facility on the community." I know what you are talking about, but don't you agree that that will lead to about 150 interpretations every time this application is made?

MR. PANE: The language is--

SENATOR LASKIN: Almost as many as the existing law, by the way. The law that is in there "directly related" doesn't mean anything more to me as a lawyer than "impact on" does.

MR. PANE: I think it is a little narrower. I think that a judge in reviewing a municipal action with a standard of "directly related" doesn't have the kind of flexibility to give local decision-making the assumption of reasonableness that he would have under a broader clause.

SENATOR LASKIN: Would we be better off setting forth examples of the types of expenses that could cause the impact?

MR. PANE: As long as it said including or on a priority basis, or something.

SENATOR LASKIN: But not limited to?

MR. PANE: Yes. The trouble is, it is very difficult to straitjacket it effectively. That is why our original suggestion was to take every purpose you can think of, prioritize them and say expenditure shall be made, first

and foremost, for the following -- and then have a catchall at the end, rather than trying to do it in such a way that really straitjackets the municipal decision-making.

SENATOR DODD: Again, Michael, on behalf of the Committee, we would like to thank you for serving on the task force and working with the Committee in drafting the bill.

MR. PANE: Thank you.

SENATOR DODD: I would like to call Diane Graves, Chairperson of the Sierra Club. She has also been very instrumental in drafting the legislation.

D I A N E G R A V E S: Senator Dodd, members of the Senate Energy and Environment Committee, my name is Diane Graves and I am conservation Chairman of the Sierra Club's New Jersey Chapter.

Six months ago, you embarked on revising S-1300. Five months ago when environmentalists first came before your Committee to discuss S-1300 we said: "It is politically unrealistic to ship our hazardous wastes to some other state, economically unrealistic to shut down industries, and environmentally unrealistic to do what we are doing now -- dumping much of our wastes haphazardly all over New Jersey and into neighboring states." You said to all the interest groups, don't tell me what you are against; tell me what you are for. We took this to mean, help solve the problem, or get out of the way of those who want to solve it.

Since June 12th, you have held six Committee meetings, four task force meetings, additional meetings with the interest groups, and three public hearings. That is at least thirteen opportunities for those who want to solve New Jersey's hazardous wastes problem. That is thirteen, plus, opportunities to sit down with your committee and your staff, and with representatives of other interests, to seek agreement on concepts and principles. To our knowledge, that is an unprecedented opportunity.

Although it is true that we have had the conversion of the outline into bill language for only five days, we have lived with its principle features for about three months. It cannot be said that you have failed to provide ample opportunity for representatives of interests serious about solving this problem.

We support the Senate Committee Substitute for S-1300. The December 10th draft bears little, of any, resemblance to the original S-1300. We include a list of specific recommended changes, most of which are for clarification. I won't read them now, but I assume they will be part of the discussion this afternoon. (see page 1x)

The Governor's Special Hazardous Waste Advisory Commission, in its January Report, concluded that the biggest obstacle to solving the hazardous waste problem is the lack of facilities. Facilities couldn't be sited and couldn't be built. They couldn't be sited because of public opposition and the lack of power to site. In our view, therefore, S-1300 must do two things. First, it must establish, in an entity of State government, the power to site facilities. Second, in siting such facilities, the entity of Commission must follow a mandated process which involves every affected community, and every interested citizen of that community in the decision-making process. In short, it must not just encourage, but it must support local efforts to expose the slipshod, the unscientific, the inaccurate, the irregular, the incompetent. If a site and a facility can successfully run that gauntlet, then the facility should be built.

S-1300 provides specific requirements for involving the public throughout the decision-making process. It assures that people have opportunities to satisfy themselves that hazardous waste problems will be solved and not just transported to their backyard. At the same time, it provides a needed vehicle toward the successful siting of new hazardous waste facilities.

We urge the addition of a public education process. This was a recommendation of the Governor's Commission, and by all accounts is essential. I have included suggested language below.

Another key to successful siting of new facilities is for S-1300 to provide for strict liability, and we urge that this be specifically included.

We are concerned about deleting the requirement that the Commission cannot make any decisions or take any actions until the Council is established. The Council is an important safeguard and will help generate public confidence in the Commission's decisions. We want to stress the urgency of establishing the Council simultaneously with the Commission. We also wish to stress the need for the Legislature to support the DEP's budget. The DEP must have the resources to protect the public's health and the environment.

Again, commendations to the Senate Committee, especially to Senators Dodd and Caufield. Thank you.

The details which we have added here on this one and one-quarter pages were put together by a group of environmentalists, public interest, and community groups that have been working on this for some time. Some of the other people who will testify later may also elaborate on some of the details.

SENATOR DODD: Diane, thank you. Your help has been immeasurable in this. You are right, there have been changes in the original S-1300: We erased everything under that number. (laughter)

MS. GRAVES: That's right.

SENATOR DODD: I would like to call Bill Bertera, National Solid Waste Management Association. Bill, you have worked with the Task Force on several things, and the gentleman with you is from I.U. Conversion.

W I L L I A M B E R T E R A: I have worked with the Task Force so much that the stewardess on the flight from Newark has begun to recognize me on sight now.

My name is Bill Bertera. I am Director of State Affairs for the National Solid Waste Management Association. I am here today representing our New Jersey Chapter.

Mr. Chairman, I would like to re-echo the very favorable comments other witnesses have presented to you with respect to the process this Committee has followed in putting together what is, in fact, in many of its basic points a very sound and exemplary legislative measure.

I travel around the country speaking before legislative groups, every day of every week - almost - and it is very rare that I have an opportunity to participate in a legislative process, as we have been participating here over many, many weeks. This Committee and your staff should be complimented on not only your approach but the conscientious attention to detail you have provided. It is what is required to make laws that work in this very difficult area.

I am, however, in somewhat of a difficult situation here this morning in testifying on the measure. On the one hand, I want to tell you that we enthusiastically support the bill in its important concepts, but on the other hand, I am afraid that in the process of putting together this measure we have added a number of

extraneous provisions which do not contribute to the goals of the measure. Those goals, basically, are to provide adequate sites within the State and to insure that those sites are properly managed, and that the health and environment are protected in so doing.

These extraneous provisions, which I shall refer to in just a moment, probably don't endanger the enactment of your piece of legislation, but we must keep in mind here that our goal is not really to enact a piece of legislation, but to enact a piece of legislation which does, in fact, result in facilities being sited. In that regard, let me just run through a few of our concerns.

Let me first begin by saying that the essence of the bill is sound, and I believe that it is workable. The recognition by this Committee that the State must have a primary role in the siting of facilities, I don't think can be disputed.

Your efforts to include public participation in a number of areas, at a number of points in the process, is essential. There can be no excuse for not writing a piece of legislation which allows the public to come before responsible bodies, express its concerns, and have those concerns addressed.

The process itself is innovative. It is a two-tiered process by which facilities are to eventually be sited and it may well work as a model for other states around the country who are grappling with similar problems. As I am sure you know, there are no tried and true methods for siting facilities. The State of Michigan has a very forward-looking piece of legislation, but even that piece of legislation has not met the test yet of actually having had to site a facility under its provisions. So, in terms of a nationwide prospective, we are still up for grabs in looking for that one solution that works and works well everywhere.

A very general comment on the negative side with respect to the bill is that the measure does in fact refer only to off-site facilities. And, echoing comments that were presented to you earlier this morning, a bill that addresses only off-site facilities and does not address on-site facilities is something less than comprehensive. I would point out to you that there is no track record for on-site facilities that indicates they are managing any more soundly than off-site facilities.

I would refer to you that the Love Canal episode was not an off-site facility; that was an on-site facility. It was run, managed, and owned by the people who generated the waste. So, there ought not to be any misunderstanding that on-site facilities present any less a danger to the environment nor to the health of the people in this State than do off-site facilities. In many respects, quite the opposite may be the case since the regulation of those facilities is oftentimes more difficult than off-site facilities whose doors are open to Federal, State, and local officials for inspection purposes, and otherwise.

Let me make some comments on specific provisions of the measure, if I may. I will refer to sections so that it will be easier for you to understand to what I am referring.

Under the definition section (i) for hazardous waste facility, with respect to the definition for a major hazardous waste facility, there is a reference to 25,000 gallons. As I read the legislation, I am uncertain as to what that 25,000 gallons refers to, per day capacity, per month capacity, or per year capacity. I suggest that some clarification is desirable there.

With respect to Section 4 (b), I see an inherent conflict in having a representative of industrial firms on the Commission, especially in lieu of Section 34 of the bill which provides for penalties for any conflict of interest, either direct or indirect. I submit to you that with respect to industrial firms it would be very difficult for you to find representatives of industrial firms that do not create hazardous waste, and therefore would be by definition in conflict with Section 34. I suggest you may want to amend that language to include representatives of the business community as opposed to specifically referencing industrial firms.

With respect to Section 6 (a), the Advisory Counsel, I have some comments about the makeup of that Counsel. One of the representatives on that Counsel is to be a representative of on-site facilities. It escapes me as to why a representative of an on-site facility would participate in that Advisory Counsel since this bill is directed solely to off-site facilities.

Secondly, it provides for representative of the hazardous waste industry on that Counsel. We suggest you delete a representative of the hazardous waste industry on that Counsel because we believe, based upon the duties assigned to that Counsel, that that representative would be placed in a situation of direct conflict of interest -- once again, based upon the duties assigned to the Advisory Counsel. As I read those duties it seems to provide that the Advisory Counsel may well be called upon to provide advice with respect to specific licenses, applications, and closure procedures for specific facilities, and I submit that any representative of a hazardous waste firm that had to provide counsel on the operation of another's firm, or perhaps even its own, might well find itself in an embarrassing situation, and that the State also ought to feel that embarrassment.

SENATOR DODD: Bill, we also need that expertise on there, where we are dealing with essentially a citizens group, unless it was made non-voting.

MR. BERTERA: Well, I think the problem, Senator, lies in something that someone else suggested a little bit earlier that hadn't really occurred to me in that same context, and that is that the duties of the Advisory Counsel may in some ways parallel that of the Commission, and perhaps it is there that you may wish to direct your attention. We most certainly are more than willing to provide counsel to the Commission in its work, but I am concerned that when that advice gets down to the nitty gritty of specific sites and specific companies that we may not do ourselves or the State justice.

If you keep the duties as they presently are for the Advisory Counsel, you may wish to apply Section 34 to the Advisory Counsel as well as the Commission. In other words, if the Advisory Counsel is going to deal with matters of substance, then I suggest to you that Section 34 probably ought to be applied to that Advisory Counsel as well -- that is, there ought not to be any direct or indirect financial conflicts between the actions they consider and their decisions.

Section 9 (A), Subsection 1, the provision for not allowing facilities within 500 yards of buildings which are occupied for more than two hours a day -- I know that speakers who are going to follow me and who have greater expertise are going to address that matter. Let me just suggest to you a couple of things by way of perhaps cleaning up the language of that measure. It has been suggested to me by representatives of the Department of Environmental Protection that that 500 yard stricture may well preclude the possible siting of facilities in a substantial part of this State, and I am not so sure that is exactly your intent.



Secondly, and more by virtue of cleaning up the language, the way the language is literally written if one reads that bill literally, it would almost preclude anyone from working at a hazardous waste facility for more than a two hour shift. I suggest that the problem there is merely one of language and not of intent, but I think you should address that in your session this afternoon.

Also, Section 9 (a), 2 through 4, I am not at all certain as to the ramifications of these three subsections, but I understand the State has shown some interest in incinerating hazardous waste at sea, and I wonder if those three subsections preclude your ability to have waterside facilities that would allow you to transfer waste from land to ships? I am uncertain there, but I direct it to your attention so that you might take a look at those provisions and make sure that is not, in fact, what those provisions do.

SENATOR DODD: That is the at-sea incineration?

MR. BERTERA: Yes. Obviously, there has to be some sort of a facility close to the water for transferring of waste and my question is, do those provisions preclude that sort of a facility? I suggest you look at that. I really can't give you a judgement on my own.

With respect to Section 10 (b), Subparagraph 7, obviously there are some assumptions made in the discussion of the appropriateness or inappropriateness of landfills with which we would take issue, and with which I won't burden you here because we have covered that matter in previous meetings. However, there is some phrasing in that section which I would like to draw to your attention, and that is the wording which implies that we are going to try to minimize the amounts of hazardous wastes stored and processed in this State. That could be construed to indicate that the State had intention of trying to preclude waste from being shipped out of the State, into the State, and, of course, that would be unconstitutional, at least based upon recent court decisions. The language is unclear and I just wish to bring that up for point of reference.

Section 12, which basically sets forth the timetable for the application process, my Association represents a number for firms, and quite frankly I have had a number of comments that are diametrically opposed on this matter. I have had one firm tell me that a year is probably very, very optimistic, and I have had another firm tell me that if the process is done right the process ought to take considerably less than that. I have no recommendations; I merely bring that to your attention. We would not be surprised if it took longer than a year and you ought to take that into account when considering the urgency that the State faces with respect to siting hazardous waste facilities.

With respect to Section 13, the requirement that 99.9% of the materials that are stored, processed, or disposed of be extractable, I would like to make two comments about that percentage. The first is that that requirement itself is a design standard, and I suggest it is more appropriate for regulation than for statute. Secondly, the assumption seems to be that at some point in time any hazardous waste, be it residue or otherwise, is going to be recyclable or useful and that therefore all materials ought to be readily extractable. The fact of the matter is that we don't see that happening, except for some metals. Most or many of the kinds of materials that eventually end up in final repositories have no practical use, and will have no practical use in the immediate future.

On a more parochial level, we are concerned that making almost 100% of the materials extractable for a facility, for example, that may have a five

year permit, or a ten year permit, at the end of that permit time that firm may well be potentially faced with the possibility of being told to take its waste and get out of town. That is of concern to us. It is of concern to us because we are businessmen and because we have large investments in our facilities, and because we, of course, need some assurances that we won't be told to take our investment and our waste and leave town at some indeterminate time in the future.

Section 16 -- I am concerned about the weekly inspections. Who is going to pay for them? I am especially concerned about how they are going to be paid for during the construction phase. Later on in the tax section, of course, some of those monies are to be provided to the local governments so that they can monitor on a weekly basis, but how are they going to pay for those inspections prior to a facility actually coming on site and accepting waste?

Secondly, how are the inspections going to be paid for 30 years after closure, after materials are no longer accepted at the site? I bring those to your attention for consideration.

Section 21, with respect to the conservator and that whole process, I understand what you are trying to do there, and I have no objection to it. However, our lawyers have not had an opportunity to review that section in-depth, and I can't tell you that we support it or that we disapprove of it because I frankly don't understand what it actually says. If, in fact, you are trying to insure that the State has recourse for irresponsibly operated facilities, then we have no problem with that. I'm not sure the specific language does what you want and in a way that we can live with. I just have no opinion on that section at this time.

Section 31 -- it was mentioned earlier that the \$15,000 provided to a municipality might not be adequate to help it prepare its case for deciding whether a facility was planned properly or not. I would just like to point out to you that in addition to that \$15,000, that municipality is eligible for grants under this section, and while there may be a \$15,000 cap set on the contribution to the locality from the facility, those monies, as I read the bill, could be supplemented under this section. I would also like to point out that even though there is a cap of \$15,000, I recognize that this is a time of inflation and that costs rise. I don't see any restrictions in this measure that the bill could not be amended three or four years hence, and, of course, I expect that it will be in many respects. So, I don't think that localities in that respect are hamstrung for now and evermore with \$15,000, should it prove inadequate over time.

As to giving the Commission the authority to change that amount, as businessmen we would like to know beforehand what our costs are going to be before we get involved in an endeavor, and of course allowing that sum to be set perhaps indiscriminately, or least without any guidelines by a Commission, removes some of that assurance for us, so therefore we are not at all pleased about the prospect of not knowing before we get involved in a situation how much it is going to cost us to supplement a locality's financial requirement.

MR. CATANIA: So, you like the number in the bill if there has to be a number in the bill now?

MR. BERTERA: Well, if there has to be a number, I like the fact that it is there, yes; and I like the fact that it is \$15,000, sure.

Section 32, the taxes, this whole matter of the taxes is very difficult

because it involves not just compensation to the community with respect to cost actually incurred, but because it oftentimes is referred to in the context of those visceral kinds of costs which cannot always be quantified.

I would like to point out to the Committee that the goal of this bill is to site facilities, and facilities will only be sited by the private sector. And, the degree to which this measure is successful will be the degree to which the private sector is willing to make investments in particular sites and, in fact, site facilities. The hazardous waste industry is not solely what we are trying to regulate here. What we are trying to regulate is the management of hazardous waste. The hazardous waste industry is not the culprit. We are to hazardous waste what firemen are to fires and policemen are to crime. We provide a service, a very important service. I am afraid that the effect of this tax, and the language of this tax, gives the impression of a punitive tax, that rather than only providing compensation to municipalities, it also punishes hazardous waste firms simply for their being in the business. I don't think that is what this Committee has intended.

Let me speak about the tax itself, and some specific provisions. I am very pleased to hear that you are willing to consider a cap on the contributions of individual facilities to those communities. I think it essential, but I especially think it essential in light of that provision which has been added, which allows the locality to appeal to the Commission should funds provided through the 5% gross receipts tax be deemed insufficient.

What we have done here, I think, is provide really a triple dip for the community: first, it gets a 5% gross receipts tax; and, second, it gets those taxes which a business normally provides through property taxes, and so on, to the community; and, third, it gets an opportunity to go before the Commission if it decides that the sums provided to date have not been sufficient. I would like to point out that there are a few precedents for providing double taxation for other industries in this State, even the chemical industry which I understand does have a relatively nominal tax on it simply for being a chemical industry. There are a few other industries which have those kinds of taxes also. The fire and police protection, and other costs associated with having an industry within the environment, within the confines of a community, are generally borne out of general revenues which are contributed to by those firms through the normal taxation process. Creating a double tax, in fact, is punitive, I believe.

Now, when you address this matter of compensation or incentives--

SENATOR DODD: You can call it more of an enticement.

MR. BERTERA: Yes. Well, I'd like to address that because this whole matter of incentives and compensation I think, first of all, is double edged. Let me state, first of all, that with respect to incentives, I don't believe there is an incentive. I don't believe there is such a thing as a financial incentive to any community to accept a hazardous waste facility if the reason for that community's opposition is truly that they believe a facility is unsafe and cannot be made safe. I don't believe that anybody can be bought off for any amount of dollars. So, I think when we talk about incentives which respect to siting hazardous waste facilities, we aren't really addressing the issue at hand. The issue at hand is, in fact, compensation. What is compensation? Compensation is redress for actual cost borne by a community as a result of a facility having

been sited there.

When we talk about compensation, I think we are in far more solid ground when we talk about incentives.

The bill, I think, rightly attempts to restrict the use of contributions of hazardous waste facilities to specific communities to those activities directly related to the sites being present. I am little concerned, in lieu of there not being a cap, that those funds not be allowed to accumulate ad infinitum to the point where we are not simply financing fire services that may be required to serve our facility rather than ending up, in fact, financing the fire department for a given community accross the board. I would like to see some language in that measure, along with a cap, that makes some provision for some accountability of how funds are used and whether those funds are used, in fact, as a direct result of the facility having been placed in the community.

As was indicated earlier, there is very little documentation that the existance of a hazardous waste facility in a community does, in fact, incur real economic cost on that community.

Let me make some comment about the psychological cost of having a facility in the community because I know it is of concern. It should be of concern. I don't believe there is any way to redress those kinds of costs, or to actually identify them in the first instance. This State has made a judgment that in its larger community there is a requirement that hazardous waste facilities actually be sited here. Unfortunately, we can't take those sites and put them in a satilite and have them revolve around the world. They are going to have to exist on plots of land here in this State. That means that some communities are going to have to have those sites within their confines. I cannot help but sympathize with the fears those people have with these kinds of sites. But, from the broader persepctive of the State, I see no alternative to having those sites and to certain communities being specified as having to bear the cost, psychic or otherwise, of having those sites present. There is no answer. Dollars don't provide it. It is just simply one of the unfair-- It is simply one of those inequities for which there is no answer.

Let me move on, if I may. I mentioned earlier that Section 34 ought to include the Advisory Committee if the Advisory Committee is going to retain its present responsibilities.

With respect to Section 39, the one year moratorium, I support the testimony provided by the Department of Environmental Protection in that regard. I don't imagine that in lieu of a moratorium there is going to be a rush of applications, nor that the DEP would honor that rush of applications in any instance, unless those applications were soundly put together. In other words, I don't feel the absence of a moratorium will result in a rush of applications for facilities which would otherwise not qualify were this law to be in place.

With respect to existing facilities in the 50% expansion language, it would seem to me that if you have existing facilities that are operating responsibly it would be in the State's interest to encourage that those existing facilities operate continue to operate responsibly, and that their desire to increase their capacity would be encouraged by the State rather than inhibited. Requiring responsible facilities that intend to expand more than 50% of their capacity to go back to square one, as if they had never touched base in the State, as though they had no record of favorable operation, and requiring those facilities

to be treated as though they were non-entities neither makes sense nor does it seem equitable. Again, it seems to me that if you have a facility that is operating, and operating well, you would want that facility to increase its capacity simply because you knew that it operated well, and simply because you knew that it operated responsibly. Requiring it again to go back to square one, I think, is not an incentive for that facility to expand, but, in fact, it is a disincentive. Obviously, siting a facility is going to be extremely costly under any circumstances, and I see no sense in incurring those costs on a facility which has a proven track record.

Section 34 is language which talks about how the Act should be construed. I have not seen that language in other states as I have worked with their legislation, and when I first saw it a shudder ran down my spine. I understand it is standard language in New Jersey legislation. I guess I don't have any specific comment about it in that regard.

Section 44, appropriations of five hundred thousand dollars, my sense about that appropriation is visceral but my sense is that is probably not enough, given the duties you are assigning to the Commission and to the advisory Committee and to the grant program to the local governments and to the safety program. I have no figure to recommend to you, but I just sense that five hundred thousand dollars doesn't go a long way in doing the kinds of things I think you want to do with that money.

So, where does this put the hazardous waste industry in general with respect to this bill? Well, we find it again difficult to enthusiastically support it because there are provisions which we think detract from its impact. On the other hand, we think that in the long run it is a very responsible step forward, and we hope the Committee will consider some of the changes that I have suggested and that some of the speakers who follow will suggest. We would like to work with you to make the bill better, not so that it will pass but so that when it does become law, the facilities will, in fact, be sited, and that hazardous wastes will, in fact, be managed in a responsible way that provides for both protection of the environment and the health of the citizens of the State.

I would be more than pleased to answer any questions that you might have.

SENATOR DODD: Bill, you have given a very common sense approach to the problem, again in the work you have done with the Task. You closed the triangle that represents virtually all of the interests that we are trying to deal with. The municipalities were represented very well through Mr. Pane's presentation. The citizens groups and the environmental groups were headed up again by Diane Graves and her group of people, and they have been most helpful. You have all sat down and faced each other. We know the basic problems are going to be the human emotions when a candidate in town is selected, and that people will come out against a hazardous waste site just to be gainst it, out of fear or whatever. It will be the same as John Caufield cited when retarded people were located in someone's neighborhood. This is a different type of emotion, but it is nonetheless an emotion, not fact.

On your end what we have to realize is that unless we can make the hazardous waste disposal sites, the new companies that we are looking for to come in and set up-- And, they are going to do it for a profit motive. This isn't going to be a charity case. You are not going to do it out of the goodness

of your heart. So, will it be profitable, and will the prices be reasonable enough to attract those middle firms? And, I am not talking about Allied Chemical because they take care of their own waste problems. I am talking about the firms that are in between the economic scale and that are sometimes not always financially on solid ground. Can they afford to deal with the sites we are talking about? These are the problems that you are addressing to us.

When we are talking about asking a company to come in, perhaps you could explain what kind of a dollar amount of investment are we talking about for an updated facility in New Jersey? What type of dollar amount would that be, from start to finish -- ball park figure?

DR. BUCHANAN: Let me identify myself first. I am Ron Buchanan. I am the former Chief of the Bureau of Hazardous Waste for DEP in New Jersey, and I currently am the Environmental Affairs Manager for IU International, the Conversion Systems Division. Briefly, when SCA and some of the other firms came into this State, we reviewed the plans back then and the estimates at that time ran into the multi-million-dollar figure. For the Newark facility, SCA expended approximately \$6.5 million. On retrofitting the Rahlins facility, after the conflagration back in 1977, Rahlins spent approximately \$1.5 million for one tank farm. A total facility that would incorporate processing, treatment, incineration, and landfill disposal could well exceed \$20 million with today's interest rates and the escalating costs of construction.

SENATOR DODD: So, between what we are attempting to mandate by law, by statute, and having DEP do the siting criteria, and the Commission's obligation of the actual siting, and all of us taking into consideration, of course, that we could well have a bill, or law, but no one will come in and invest a dime -- again, for fear of not making a profit, or us changing the rules as we go along.

DR. BUCHANAN: That's possible, and that has happened in many areas of the country today. Many states are in a state of flux right now with regard to hazardous waste management. I just returned from Michigan, where I testified before a subcommittee up there on hazardous waste siting. They do have legislation that is similar to what is being proposed here. In fact, I have committed to send them copies of this legislation, and some of the other work that has been done in New Jersey as examples of ways to go about that.

But, yes, there is a state of flux, and there are those states in which industries, regardless of whether they are in the hazardous waste business, who, if they generate waste, will not go into because there is no where to put their waste, and they realize that. Several firms have moved out of various states, or have chosen other states because of those types of considerations.

SENATOR CAUFIELD: I don't really have any questions, maybe just a couple of observations. I think you answered all of the questions I had and you have been very helpful. If you think that some additional gross receipts are not an incentive, you don't talk to the mayors I talk to. It is an incentive.

Maybe the whole philosophy of gross receipts and franchise tax is incorrect, however it is there and I don't see it going away. If it is continued a little bit here, I don't see any big problem. Plus, you might be paying for some of the past sins of the chemical industry which we have dealt with for many, many years, in terms of fires and other problems.

One other interesting observation that I would make is, you don't want to think about financing the fire department -- they have a vested interest.

You know, the Port Authority might make the same kind of a statement. Up until not too many years ago I think we received something like \$225 thousand a year from the Port Authority. We have a fire company on their facility which costs us about one-half million dollars a year. And, even today when they pay a little over one-half million dollars a year, it is really not a fair return. They have a value of about \$560 million. Given our tax rate in the City of Newark, that would generate \$56 million, which would be wrong. I would never be for that concept either. The Port Authority, despite the fact they have some other problems, do a very good job.

I had to get my fire department in there. If you can finance part of the fire department, that would be a very noble, fine thing to do.

DR. BUCHANAN: This matter if incentives -- when I speak of incentives, I am referring of incentives to the community, to the people who own homes there and who are not elected officials. Elected officials, unfortunately, sometimes look at incentives in a different way than does the community proper. If there were such a thing as an incentive, I would be concerned about providing that incentive for the community and not for its political leaders. The two are not always necessarily in agreement. As a matter of fact, it is in that regard that the incentive takes on the form of - I think this was referred to at another hearing - a bribe. That is too strong word, I think. But, nevertheless, you don't buy community support by providing local political leaders with sums of money that they can then tout as having gotten for their community. That is not the kind of support that--

SENATOR CAUFIELD: A form of taxes or something.

DR. BUCHANAN: Yes.

SENATOR CAUFIELD: There is some incentive.

DR. BUCHANAN: Well, I won't argue that point with you.

SENATOR DODD: I believe Diane Graves, in a casual conversation this morning, pointed out that our best dollar for dollar efforts will be a community educational process in the community itself where the candidate site is to be located.

DR. BUCHANAN: And, underlying all of our--

SENATOR DODD: When they name 'x' town, we are going to have to go in there, including ourselves, and try and explain as best we can, while ducking whatever they are going to be throwing at us.

DR. BUCHANAN: Given the very real possibility that in the very near future it is going to be highly unlikely that we are going to be unable to convince citizens that a hazardous waste facility in the proximity of their home or their school is, in fact, safe. The fact remains that the best assurance we can give communities and the best incentive we can give communities is to give them laws which are well written, and that provide, in fact, safe management of hazardous waste when those facilities do have to be located. Secondly, we must give them a regulatory program that is enforced -- well written, well developed, and enforced. Aside from there there really are no better incentives for hazardous waste facilities. Good strong laws and regulations, and their very diligent enforcement by the State and by the locals, and, of course, by the Federal government as well are the best incentives.

SENATOR CAUFIELD: I think the educational part is vital.

DR. BUCHANAN: Oh, I do too.

SENATOR CAUFIELD: I am not sure how it is going to work, but it is really vital. For example, in the Ironbound section of Newark now they are protesting very strongly about even the suggestion of anything. Yet, the Ironbound section of Newark is probably the place in the State where the most chemicals are being illegally dumped right now. So, they are getting them right now.

DR. BUCHANAN: I didn't mean, by any means, to demean the value of educational programs. My only concern is that we not raise our expectations too high in the immediate future, because I think the visceral, gut kinds of emotions that surround this hazardous waste issue are beyond being overcome.

SENATOR DODD: When you look at what is happening where the State is trying to locate a prison--

DR. BUCHANAN: Yes.

SENATOR DODD: We started in Camden -- no, they didn't want it. East Newark, which would seem to be a logical place because a great deal of the inmate population is from area -- no. Karney, on 'x' amount of vacant land -- no. So, we can just imagine what we are going to warm up to with this type of a facility.

DR. BUCHANAN: Sure.

SENATOR DODD: Bill, again, on behalf of the Committee thank you for the many trips you have made. You must be a regular down at the airport, on the shuttle.

MR. BERTERA: When the products of our efforts can be something like S-1300, it is our pleasure.

SENATOR DODD: Thank you.

Next we will hear from Joyce Schmidt from the League of Women Voters.



J O Y C E D. S C H M I D T: I am Joyce D. Schmidt, Director of the Natural Resources Committee of the League Of Women Voters. The League of Women Voters of New Jersey appreciates the opportunity to comment on the Senate Committee substitute for S-1300. On October 27 of 1980, we testified on the "Outline of the Proposed Senate Committee Substitute to S-1300." Overall, we supported its provisions and commended the Committee on the manner in which this bill was redrafted. Involvement of many people in the process will probably be a landmark for public participation in New Jersey legislation.

The League strongly supports the present "Substitute for S-1300", with some suggestions. We particularly like the broad representation in the membership of the Hazardous Waste Advisory Council and the designation of its duties and responsibilities. We do, however, urge that the Council be appointed and in place to work with the Commission as it begins its duties and ask that this requirement be included in the bill. We also urge that the Council certify that all public participation requirements have been met before eminent domain is exercised by the Commission.

Involvement of local and county government not only in Commission membership but also in the siting process and in monitoring a hazardous waste facility is a significant feature of this bill. We would suggest, however, that the following additions be included. (1) Under 9.b.(2), insert at the end of line 6 "and to all municipal clerks and environmental commissions within the area." (2) Insert under 12.c. (1), line 2, following shall notify "by certified mail the governing body, the planning board, the board of health and environmental commissions of the affected municipality".

In addition to representation of local government, we had also supported a local citizens' task force and deeply regret that this has not been included. Why has it not?

Public confidence in the siting process is crucial to its success. The exclusionary criteria in 9.a. (1), (2), (3) and (4) should reassure the public that residence, potable water supplies and wetlands will be protected. Detailed siting criteria will be developed and adopted by the Department of Environmental Protection.

Under Finances, we reiterate our previous opposition to the dedicated gross receipts tax, since dedicated revenue and the need seldom match. We favor, instead, a system such as a user fee in which the generator pays for the cost of disposing the waste, including the cost to the municipality and perhaps even some compensation for the psychological cost to the community of having a hazardous waste facility.

We have brief comments on other sections of the S-1300 Substitute.  
Under Section 3.h.--

MR. CATANIA: Are these the same questions as Diane Graves?

MS. SCHMIDT: Radioactive wastes specifically excluded, as in RCRA. We have questions concerning the 25 gallon capacity.

MR. CATANIA: They're the same. I think the Committee is aware of the whole list and they will probably consider them in more detail this afternoon.

MS. SCHMIDT: Okay. What about Section 12.e.? Were there any comments on that? We feel that any exemption of major hazardous waste facilities from the provisions of S-1300 should be done only after careful consideration. We suggest that this be modified as follows: "when in the judgement of the department and the Commission, following public hearing, such exemption is consistent..." Definitions

of both "hazardous waste" and "major hazardous waste facility" should be taken into consideration in this section.

We have done some coordinations between certain sections that have the same subject matter and that we feel could be combined such as Section 31, which could be put into connection with 11.a.(1). Section 38 would be more appropriate as 40.d. I believe there was another one. Section 15, this subject matter is more consistent with 12.c. and we suggest that it become added to 12.c. In other words, the last part is a minor recoordination between the bill. They seem to be dis-coordinated and they could be connected.

This legislation is urgently needed to provide hazardous waste treatment facilities for New Jersey. Senator Caufield has observed that hazardous waste disposal is already being sited by "midnight dumpers" and we believe that S-1300 will make possible environmentally sound siting of badly needed treatment facilities and we urge its prompt passage. We also urge that the Legislature provide sufficient funds for the Department of Environmental Protection to fulfill its responsibilities in the control of hazardous wastes.

SENATOR CAUFIELD: Thank you. All of these things are going to be responded to in whatever detail is required, before the day is over. I don't have any questions at this moment. Do you have any questions, Senator Laskin?

SENATOR LASKIN: I have no questions.

SENATOR CAUFIELD: Okay, thank you very much.

MS. SCHMIDT: Thank you.

SENATOR CAUFIELD: William Singer, League for Conservation Legislation?

W I L L I A M S I N G E R: Good day. I am William Singer, Legislative Agent for the League for Conservation Legislation. The League is a collaboration of environmental organizations and individuals joined to maintain a lobbying presence on environmental issues in the State House.

I'm going to depart from the written testimony that I have presented because a lot of it has been said before. I just want to raise a couple of points with you. Some of them have been raised before, but I think they deserve some emphasis.

The League for Conservation Legislation is very pleased with the legislation as drafted. As people have said before, the Committee is to be congratulated on the process that has gone on here. Not everyone likes everything, but everyone likes most of it and I think that is about all you can ask to achieve. We think that there should be some minor changes, possibly, some further discussion on some points.

One simple one is in the definition of hazardous waste. It should be made very clear that radioactive material is not included. I don't think anyone intended for it to be.

Secondly, the issue of liability--we discussed this at the time that we testified on the outline and we think that the issue of strict liability should again be explored. I don't think the liability section, as written, is as clear as it could be. It was my impression, after the last hearing, that strict liability would be part of the legislation. I think it is going to be important, to win public approval of a site in a municipality, that there be strict liability, that there not be any question that these people will be liable if the people in the municipality have suffered.

Finally, the change we would like to see is concerning the section that says the DEP can unilaterally exempt certain types of facilities from this Act. We think that that should possibly be in conjunction with the Commission or with public hearings. There should be some process set up there. I think DEP should have the flexibility, but I don't think it should be unilateral.

People spoke this morning about the Advisory Council, suggesting that possibly that is a duplication of the Commission. I would like to stress that we think that is very good as written, very important. As Senator Dodd said, you want those people inside the process, not outside picketing. I think we need someone from the hazardous waste industry on the council. Maybe it would be from their association if they feel that a person from one of the industries itself would be in conflict. We could have someone from their association who could give a broader background, but we definitely need that.

As to the question of 99.9% extractable, that is not just there so that they can extract it to recycle it at some later point. It is also put in there so that if there is a problem and things are leaking and things are exploding or whatever, that it can be removed. I think that is more for public health and safety than for just for the recycling of the materials.

In summary, I would like to say that the Committee should feel very contented with the work that it has done on this issue. It is a very complex issue. With the minor changes that I have suggested today and that have been suggested by others, we believe that this Senate Committee Substitute should be adopted and we ask you to release the bill for consideration by the full Senate with a recommendation for passage. Thank you.

SENATOR DODD: Bill, again, you have been in this from day one with us and I would like to extend our thanks for your participation.

MR. SINGER: Thank you.

SENATOR DODD: If we look confused up here, we are. We're trying to figure out--we're approximately halfway through our list of speakers today and so far, what we've heard, we see no dramatic reason that we cannot release the bill today. But, the problem is whether we eat first and hear the rest of the speakers and then go to our committee room, to which, of course, everyone will be invited, where we will debate the final commas and decimals and what not. Now, what we can do, as we go down the list, is ask that, unless there are new pertinent points, that they come up and address whatever their main topic is that hasn't been gone over already and then we will break for lunch and we will get back together in our cubbyhole up on the second floor for the debate on the bill. I would now like to call on Harry Moscatello from HJM Associates.

H A R R Y M O S C A T E L L O: Thank you, Senator. I will not try to repeat some of the fine points brought out by speakers before me, especially Mr. Bertera, who did touch on many of the points I have been concerned about and intended to touch on. So, I will try my best to take, at least, the award for brevity, if not for persuasiveness in my conversation with you.

I think it is fair to say that when this process started some months ago, there was a perception on the part of the people involved from outside of the waste industry that any treatment of toxic waste was synonymous with chemical control or Love Canal or some of the nightmares that we have witnessed over the past few years. I think we have learned through this process that that is certainly not

the case. There is, as you have seen through your tours, a legitimate toxic waste treatment industry in the state and the goal of this bill, as we all understand it, is to expand that industry and have it become adequate to take care of the waste produced in the state.

I do feel, however, that in revising the bill, while some differentiation has been made between treatment of waste and landfill disposal of waste, and while some very sound changes have been made to really tighten up on the landfill disposal of untreated waste, I strongly feel that further differentiation needs to be made in the bill to recognize the need for land in placement of treated waste, that is, residue to the legitimate treatment process that we're trying to encourage. I think the most obvious example, from a layman's point of view, would be the need to permanently store on the land the treated residue from the incineration process and I am recommending that the negative criteria in the bill, siting criteria in the bill, be amended to include only, under those negative criteria, the landfill of untreated waste. In other words, let's try to recognize that if we're going to have a legitimate treatment industry in the state, it is going to produce a residue that is certainly less toxic than untreated, raw materials and, as part of the feasible, economic development of that treatment capacity, we do have to have someplace to permanently store that residue. I think the bill, as currently written, limits that siting ability to the disadvantage of the overall goal of the bill.

SENATOR DODD: I think the implication, though, Harry, the realism of that part of it is that it is 99.9% retractable, but to where, to Pennsylvania, Ohio? If you are going to retract it for whatever reason, where else are you going to put it? So, I think the practical aspect of that negates the concern that you and several others have about the inground problem.

MR. MOSCATELLO: Well, the firms I am representing are in the treatment business and have no intention of landfilling raw waste in this state. Therefore, my opposition is not to the limits that you have placed in here on landfilling raw waste materials. I'm calling for some differentiation in the legislation between the landfilling of a residue from a treatment process, which is found to be acceptable by RCRA and DEP standards for landfilling, differentiating that type of stream from raw waste streams. Just as when we started this process, there was really no differentiation between a treatment process and landfill disposal. I think it is safe to say that the original bill that was proposed kind of viewed all waste handling as ultimately going to a landfill. We have, since then, seen that that is not the case, that there are legitimate treatments that take place that do not require landfilling. What I am suggesting is a step further that we might want to take in refining this and that step would be to recognize that there is a legitimate need for landfilling of certain types of materials that have gone through this process and have become detoxified and stabilized and, therefore, present a less significant threat to the environment and would realistically and in an environmentally sound way go into a landfill type of setting.

MR. CATANIA: The treated residuals that you are talking about, why do they have to be put below ground as opposed to above ground?

MR. MOSCATELLO: I think the response to that is one of economics, primarily.

MR. CATANIA: That's what I thought you were going to say. The bill specifically provides that you can put it above ground if you can show it is economically impractical and could be effectively monitored and you can extract it and the Department

can approve a land in placement.

MR. MOSCATELLO: We limit the areas in which that can be done through the negative siting criteria in the early part of the bill and many of the sites for which that kind of land in placement would be feasible would be in existing landfills, which, through a proper kind of design criteria and construction of cells and liners and so forth, can be made feasible for the placement of treated waste.

MR. CATANIA: I think you misunderstand the whole process. The Commission is going to designate sites for the facilities they say are needed. You won't have to worry about sites. They will say that we need three landfills, two incinerators, something like that and they will designate sites. When you want to do that, when you want to occupy that site, it will be a question of your proposed design and your fitness as an operator. But, there is nothing in the bill to prohibit approval for something that you couldn't financially store above ground.

MR. MOSCATELLO: Well, my reading of it is that the negative siting criteria would severely limit the amount of ground space in the state on which that siting operation could take place and while those limits should exist for the landfill disposal of untreated waste, it is my recommendation that they should be less stringent in the areas of treated waste. I also feel that the public would benefit by having a closer look at the recommendations made earlier by DEP to the Committee regarding a moratorium. As earlier speakers have advocated, if legitimate operating facilities complying with existing regulations have a desire to expand within a municipality that they are currently hosted by, that desire should not be affected by this legislation, if the goal is to encourage that kind of expansion. Since there are no Senate sessions scheduled, to my knowledge, until the middle of January, it might provide ample time for all of these amendments being proposed today to be considered more thoroughly and, perhaps, the bill ought to be held today for these amendments to be considered and adopted at another meeting of the Committee, before the next Senate session. I don't see that that would impede the scheduling that you all want to achieve with this bill.

SENATOR DODD: We are hoping to go through the proposed amendments this afternoon at the second half of our schedule today.

MR. MOSCATELLO: That is the end of my remarks. Thank you.

SENATOR DODD: Harry, thank you for your participation. John Wilmer, Public Interest Research Group?

J O H N W I L M E R: Good morning. My name is John Wilmer and I am with the New Jersey Public Interest Research Group. We are represented on nine college campuses, with a total enrollment of 25,000 students.

I want to begin by saying that S-1300 appears to be a progressive bill. It provides for public participation in the siting process while, at the same time, helping industry to overcome public opposition to the much needed disposal sites. I doubt whether people are going to do without polyester clothes and modern office buildings; and so, we must find somewhere to put our hazardous wastes. I do believe, however, that if we are going to solve this problem, we should do it correctly and we should do it correctly now.

S-1300 provides for proper siting. The DEP's hazardous waste regulations and other laws provide for proper control; but at this point, protection disappears. If a facility were to explode or otherwise cause personal injury, this bill would give very little protection. I am asking that this Committee require that a major

hazardous waste facility be held strictly liable for any injury or damage which it may cause.

The arguments against imposing strict liability are weak and incorrect. First, I have heard that industry would not come to this state if S-1300 were to require strict liability. That is poppycock. Hazardous waste disposal means big money and I think we are going to have to fight to have to keep companies out of New Jersey. In regard to insurance difficulties, the courts in a 1976 decision have held that the storage of highly inflammable gasoline is an activity requiring the imposition of strict liability and neither Exxon nor others have left this state claiming that they could not obtain insurance. The fact that insurance companies would charge higher rates if industry were to be strictly liable shows that hazardous waste facilities are indeed highly dangerous.

Will industry move to another state? I am not sure about New York, but Pennsylvania has enacted a very tough law that holds strictly liable anyone who "stores, transports, treats or disposes of hazardous waste." If anything, those industries which are prone to operate in an unsafe manner will now be encouraged to move into New Jersey in order to escape Pennsylvania's tougher law.

I have also heard that these facilities are already held strictly liable under the Spill Compensation and Control Act. This Act does not cover personal injury. In my earlier comments, I detailed the reasons for this point of view; but now let me add two further arguments. First, the Administrator of the fund has stated that the Act does not cover personal injury. He is the one to whom all claims would come. He is the one who has the power to deny a claim. Anyone claiming compensation for personal injury would have to take the Administrator to court and the courts traditionally defer to agency interpretation.

SENATOR LASKIN: Before we forget that one, I don't understand how you come to that conclusion, that you can't recover for personal injury.

MR. WILMER: From the Spill Act.

SENATOR LASKIN: No, from our bill. I don't care about the Spill Act. How do you read that you can't recover for personal injury?

MR. WILMER: Under the strict liability theory, you cannot.

SENATOR LASKIN: I think under the strict liability theory is what you want.

MR. WILMER: Yes.

SENATOR LASKIN: Well, then, why would you want that if you can't recover personal injury damages?

MR. WILMER: I'm sorry. I don't understand what you are saying.

SENATOR LASKIN: The problem is that I don't understand what you're saying. You just indicated that there can be no recovery for personal injuries.

MR. WILMER: Under the Spill and Compensation Fund.

SENATOR LASKIN: Now, under our bill, do you read it the same way, that there can be no recovery for personal injuries in the event of an accident?

MR. WILMER: No, I do not. I'm sure that someone can recover under a theory of negligence, but not under a theory of strict liability.

SENATOR LASKIN: What's the difference, if they can recover?

MR. WILMER: Well, recovering under strict liability is a lot easier than recovering under negligence. In fact, the problem is, under negligence, many people do not recover at all.

SENATOR DODD: I should have warned you and everyone else in the audience, Senator Laskin is our secret weapon and virtually all of the bills that do finally come out of our Committee are scrutinized by him from a different point of view, that is, a legal point of view, where we try to keep as much of what we put down statutorily out of court tests and that is why he will challenge you and anyone else on specific language. Senator Skevin also keeps us honest in that regard. Senator Skevin, as a matter of fact, is the prime sponsor or the mover of our bounty system that is in the bill.

MR. WILMER: The second argument concerning whether or not personal injury is covered under the Spill Claim may be found in that section of the New Jersey Administrative Code that deals with the rules for processing claims under the Spill Act. Under the section entitled "claims", it lists property damage and loss of income or tax revenue as the only allowable claims. It does not mention personal injury.

Another argument that the courts might hold such a facility strictly liable, is a very weak argument because by the fact that you senators have considered and rejected this very issue, you will have told the courts that you intend that these facilities not be held strictly liable. The Environmental Defense Fund has commented on this very problem. "EDF cannot claim to a legal certainty that the New Jersey courts would apply the entire above analysis (strict liability) in a hazardous waste disposal context. And that is precisely the point--without legislative leadership in the liability area, the evolution of a liability scheme will be time consuming and unpredictable. Reliance on the courts and common law is an awkward and ofttn inadequate method of making policy." I would say to these arguments that if the courts are going to hold such facilities strictly liable anyway--then what is the harm of putting such a provision in S-1300? At least it would eliminate any ambiguity.

Finally, people have said that liability without fault is unfair to industry. Poor industry. Let me explain more fully just what is meant by strict liability. Industry, by operating a hazardous waste facility, creates a risk to people living in the immediate area. Those people do not benefit from that risk. Industry does. It will make the profits while the executives live safely in some other area. Strict liability says that if an industry is to make a profit based on the chance it is taking with other people's lives, then let industry pay if the risk that it has created does indeed cause harm. In the area of products liability, strict liability came about because of the failure of negligence law to compensate those who had been injured.

You will provide maximum protection to the people by putting a strict liability provision in S-1300. Under current law, if a facility were to cause personal injury, citizens could only sue under a theory of negligence, which would mean costly and time consuming litigation. If they did win, it would probably only be pennies on the dollar. Strict liability would not only give people a better chance of winning in and out of court, but it would act as a deterrent effect on industry to act in a much safer manner.

The New Jersey Public Interest Research Group has very reluctantly decided to oppose this bill in its entirety because it does not provide for strict liability. We will campaign against passage of this bill, and if this bill is passed, we will go to those areas of the state where these facilities are to be located and we will inform the local people that they will not be protected.

SENATOR LASKIN: You will be informing them improperly. In case you are interested, you will be informing them improperly. There is quite a lot of protection in this bill, under the language that is proposed.

MR. WILMER: What protection does this bill give, other than simple negligence?

SENATOR LASKIN: This bill gives them the right to bring an action, just as they would have the same right to bring an action under strict liability, directly and indirectly caused. But, when you say that there is no protection--

MR. WILMER: The theory is still negligence, am I not correct?

SENATOR LASKIN: But, when you say there is no protection, that is irresponsibility.

MR. WILMER: May I ask you a question, Senator?

SENATOR LASKIN: You can ask all you want.

MR. WILMER: Under what cause of action may people sue?

SENATOR LASKIN: I think that cause #14 is about as broad a cause as I've seen.

MR. WILMER: Would you call this cause of action negligence?

SENATOR LASKIN: Most causes of action for damages are grounded in negligence. There are many theories of negligence. There is a theory of res ipsa loquitur--

MR. WILMER: Which is a theory of proof, not a theory of negligence.

SENATOR LASKIN: Which means the thing speaks for itself, which is, in effect, a strict liability theory, but I don't want to spend time arguing legal principles with you. But, when you say that there is no protection, that is an act of irresponsibility. There is a lot of protection. You may not agree with the amount of protection that is in the bill, but I don't know how you can say that there is no protection.

SENATOR DODD: I would also like to say that your group has always been noted for its integrity and its purpose, but I would suggest that you brush up on your legal counsel and you may touch base with our own Public Advocate.

MR. WILMER: He also advocated strict liability for this bill.

SENATOR DODD: Yes, but having agreed on the practical aspects of the language that we have included, nonetheless, you feel that they have turned against us and are now working against the public.

MR. WILMER: I spoke with Sandy Ayres yesterday and she found the language very confusing. At first, she thought that strict liability was in this bill. It is very deceptive, but it is not.

SENATOR DODD: Please go on.

MR. WILMER: Accidents may, and probably will, occur, even given the best regulation. Industry itself cannot guarantee safe results. We cannot support a bill that will not provide for adequate protection to those who might be injured. A major hazardous waste facility is an ultra-hazardous activity and should be held strictly liable for any harm it might cause.

This Committee, however, has already considered the question and has decided against such a provision. I feel that the members of this Committee have failed in their duty to provide for the protection of the citizens of New Jersey. Too often, I have had to tell people that nothing can be done because "that's the law." Well, now, I can go one step further. I can tell the people of New Jersey that they will not be adequately protected because the legislators have decided



that the people should not be adequately protected. I fully understand that this issue is a hot potato and that you would rather let the courts make the decision, but you are the ones who are accountable for these consequences.

You will hear many environmental groups and many public interest organizations and many municipalities in this State ask for strict liability in this bill. These groups do not represent political entities separate from the people. These groups represent the interests of the people. Opposed to strict liability is industry and who does industry represent? It represents private profit. Senators, you must make your choice and you must make it clear to every voter. Thank you.

MR. CATANIA: John, I have one question. Is your problem with Section 14 that you think the liability is not strict or that you think the liability is strict or arguably strict, but it still allows the operator defenses and monetary limitations or both?

MR. WILMER: Strict liability is a term of art and what it means is--

MR. CATANIA: I know that. I really would like an answer to the question.

MR. WILMER: Well, would you rephrase the question?

MR. CATANIA: Is your opposition to Section 14, and hence to the whole bill, premised on the fact that Section 14 does not impose strict liability or that it imposes liability that is arguably strict, but it has limitations such as defenses that are allowed to be raised and dollar amounts such as the ceiling the Spill Compensation Act sets on damages?

MR. WILMER: First of all, liability is never arguably strict. It either is or it isn't. The courts use buzz words, strict liability, liability without harm, liability without fault, but they need those words to eliminate the elements of negligence which cause a hang-up in the courts, that is proving that this company has a duty, proving that they've breached that duty.

MR. CATANIA: You still haven't answered the question. So, you think the liability is not strict?

MR. WILMER: Yes.

MR. CATANIA: All right. Let me ask another question. Would you have an equal problem even if the liability were strict with allowing the defenses and the dollar limitations in the Spill Act? Are we talking about semantics?

MR. WILMER: I have no problem with the defenses in the Spill Act. I have no problems with dollar amounts at all. I have problems with not using strict liability. The protection in Section 14 gives people no more protection than they already have under the courts. It doesn't do anything new. It is not even needed in this bill.

MR. CATANIA: That's what I'm trying to identify, whether you are just asking the Committee to insert strict liability without regard to fault--

MR. WILMER: Yes, two little words, not thirty or forty, just two little words, that these facilities be held strictly liable for everything else that you say. I have no problems with anything else in the bill except for the exclusion of those two little words, which will mean everything to a court.

MR. CATANIA: That's all I was trying to understand.

SENATOR DODD: Senator Laskin?

SENATOR LASKIN: I have no questions.

SENATOR DODD: Thank you very much.

MR. WILMER: Thank you.

SENATOR DODD: I would like to call Art Mackwell from Englehard Industries.

A R T H U R   M .   M A C K W E L L: Mr. Chairman and members of the Committee, I appreciate the opportunity to address you on the subject of S-1300. My name is Arthur Mackwell and I am Public Affairs Officer of Englehard Industries and of Englehard Minerals and Chemicals Corporation. I am accompanied by Ernest Fredericks, Environmental Affairs Officer of Englehard Industries. Mr. Fredericks is thoroughly familiar with all aspects of Englehard's manufacturing facilities in New Jersey and in particular with their potential for environmental problems, if such potential exists. I am also accompanied by Mr. Edward Sellick, who is a specialist in environmental law.

I am not going to attempt to go through the legislation before you section by section today, although we may wish to make a submission of that nature at some later time. Rather, I will address the central issue which is whether it is the Committee's intent to include Englehard and companies like it, which would certainly include all or almost all of the chemicals and metals industries in New Jersey, as well as many other industrial companies within the jurisdiction of this legislation.

Reading the language of the draft bill, which we received last week, we are unclear as to whether, in fact, Englehard and many other New Jersey manufacturers would be classified as hazardous waste facilities. However, reading the requirements which will be imposed upon hazardous waste facilities and the comprehensive regulatory structure which will be enacted to administer these requirements, it is not at all clear to us that the Committee, in fact, intended to bring Englehard and companies like it under the jurisdiction of S-1300.

As I said, I do not intend to go through the legislation section by section, but let me give you one example of what I am talking about. Under this bill, Englehard would have to obtain engineering design approval from the Department of Environmental Protection for each of its refining and manufacturing plants now existing in the State of New Jersey. One more example, Englehard would have to pay to the municipalities in which its plants are located five percent of a substantial portion of its gross receipts. Precisely how much of its gross receipts would fall under this section of the bill, it is impossible for us to tell, but some substantial portion would.

The purpose of this legislation, as we read it, is to establish procedures and a mechanism which will insure that hazardous wastes are disposed of safely. That can be accomplished without imposing on the state the regulatory burden and on a certain class of industry, the administrative burdens of this act.

As an illustration, take Englehard Industries which has precious metals manufacturing facilities in Cartaret, East Newark and Newark and a precious metals refinery at Newark. Briefly, in these operations, we manufacture industrial products from precious metals and we refine and recycle a substantial amount of spent or scrap products. In the course of the refining /recycling process, we take in precious metals which are sometimes contaminated with hazardous materials. In addition, under some definitions, in some statutes, some of the precious metals are declared to be hazardous.

In this recycling process, the non-precious metal material is either destroyed or extracted. In most cases, it is inert. In those cases in which it is hazardous material, without exception, its generation, or temporary storage on-site already is regulated, or, in the case of RCRA, soon will be.

RCRA will mandate a strict manifest system which will require Englehard and other companies in this situation to report on all hazardous substances received or generated and track them to their ultimate disposal. In the case of Englehard,

this means that they are either destroyed on-site, disposed of off-site or, in the case of precious metals, sent out in product form. The manifest system so indicates in each case. The point is that there is no on-site disposal or permanent storage of wastes at out facilities. We are not in the business of operating facilities for treatment, storage or disposal of hazardous wastes.

If we are correct in our understanding of the intent of the Committee, we would like to suggest an amendment to S-1300, which will sharply define the line of demarcation between facilities which are, in fact, hazardous waste disposal sites and facilities which, in the course of other manufacturing operations, may take in, generate, or temporarily store materials which contain materials defined as hazardous wastes in other statutes that are either destroyed in the manufacturing process or disposed of expeditiously off-site to a regulated hazardous waste facility.

We suggest inserting a definition of waste in the bill as follows: "Waste means any material that is discarded or is destined to be discarded by means of burning, incineration or other treatment in lieu of prior to disposal, or by means of discharge, deposit, injection, dumping, spilling, leaking or other placement into or on any land or water so that such material or any constituent thereof may enter the environment. Waste does not include 1) material that is, or will be, burned as fuel for the purpose of recovering usable energy or 2) material that is or will be reused or recycled, refined or reclaimed as a matter of established commercial practice."

We sincerely believe that this amendment falls within not only the meaning but the spirit of the legislation which you have drafted. It would relieve Englehard and companies like it of a substantial administrative burden. It would relieve the State of a substantial regulatory burden.

We also believe the Committee did not intend to include temporary on-site storage of hazardous wastes within the definition of hazardous wastes facility. In fact, Englehard, like many other generators, does store wastes briefly at the site of generation until transporters arrive to take it to a permanent treatment, storage or disposal facility. The bill, therefore, should define storage as excluding "temporary storage of hazardous wastes at the site of the generator prior to shipment off-site to a permitted hazardous wastes facility." Thank you.

SENATOR DODD: Mr. Mackwell, we appreciate your testimony and it is not the intent of this Committee nor the bill to include yours or similar industries into it. We will accept your amendment. We have discussed that. We just want to know where you hide your hazardous materials.

MR. MACKWELL: Well, we rather thought that was the case, but--

SENATOR DODD: Like chicken noodle soup, it won't hurt to come down.

MR. MACKWELL: Right.

SENATOR DODD: We appreciate that. It is certainly not our intention. We've had inquiries from similar organizations as yourselves. I believe Michael does have language drafted similar, if not identical. Apparently, you had--

MR. MACKWELL: We would appreciate the opportunity for Mr. Sellick, our attorney, to work with Mr. Catania in working out the language.

MR. FREDERICKS: Is it the intent to include temporary storage?

SENATOR DODD: Not on your related aspects. We understand that in some cases the federal requirement is that when copper is extracted and then reused in circuitry or whatever, it must have hazardous waste on the--

MR. MACKWELL: Yes, copper is another one.

MR. CATANIA: It is not really the temporary storage that argues for the exemption. It is more the nature of the industry. The SCA facility in Newark has temporary storage of hazardous waste, but they are very much a hazardous waste facility so we certainly don't want to exempt temporary storage. But, temporary storage incident to a precious metals recycling process is a whole different thing and I think that maybe the best way to approach it is to do it the same way that a similar exemption was written into the Spill Compensation Act and to use that language as much as possible.

MR. FREDERICKS: So, when storage is mentioned in this particular bill, it is storage related to--

MR. CATANIA: Well, I think that we can just positively state that--

SENATOR DODD: We will clarify it.

MR. MACKWELL: We understand. Thank you very much, Mr. Chairman.

SENATOR DODD: Thank you very much, Mr. Mackwell and gentlemen.

I would like to call Mr. Jim McCarthy from Jackson Township.

J A M E S M C C A R T H Y: Thank you, Mr. Chairman. I would like to make a few comments. Number one, I would like to say again, as I've said at other hearings, that I am very impressed with the efforts of this Committee here in pursuing the hazardous waste management problem. It has been a very open committee and I have seen revisions from the original proposals. You have listened to testimony that has been given. You have revised it and I am extremely impressed.

I fully endorse S-1300, the concept of S-1300. I think it is the greatest thing that has happened to the State of New Jersey since the invention of the automobile. We have had an industry here that has had over thirty years to police itself and because of the indiscriminate actions of a few of these industries, many have suffered. This has been shown all too well in the Legler section of Jackson Township. I think if an industry, in thirty years, has not been able to police itself, it is up to us to police them and I see this bill, S-1300, as that action.

I would just like to make a comment to Senator Skevin. This morning, Commissioner Paul Arbesman was questioned by you on the Jackson Township problem, could that be one of the priority sites. No, it is not. They have no intention of spending one nickel in cleaning up or doing any remedial action at the Legler landfill. They have stated that--last February, Jackson Township was hauled into court by the State Attorney General's office at the request of the DEP and the DEP's attitude has been that it does not behoove the State of New Jersey to pay to clean up the Jackson Township landfill and turn around and sue Jackson Township for the cost, for recovery of those costs, as they claim Jackson Township is responsible. In the past two years that Jackson Township has been made public, not 5¢ has been spent by the New Jersey Department of Environmental Protection for remedial action in cleaning up the landfill. They have spent approximately \$100,000 in legal costs to force Jackson Township to close the landfill because the Township would not do so willingly. These costs involve testing, additional testing and legal costs to bring it before the Superior Court. I, myself, have grave concerns. I know personally and feel strongly that Jackson Township is responsible for that situation. They collected almost \$1 million in six years in revenue and allowed this to happen because of inadequate safeguards. However, I know, as a taxpayer, Jackson Township abused the people for some 15 months in Legler because they did not have the money to build an alternate water supply and had to wait for some 15 months for special legislative

action to be enacted here in Trenton to loan the Township the money for the water system. It was a \$1.2 million loan for which the taxpayers in Jackson are going to be paying higher taxes for the next 20 to 40 years. Jackson Township definately does not have \$10 or \$15 million to clean that landfill up. They are going to be left out to hang by their ears by the State and I think this is wrong. I just wanted to make that clear.

SENATOR SKEVIN: Thank you, Mr. McCarthy. Mr. Chairman, if I could respond at this moment, I understood that they would give priority. That was in his response this morning.

MR. MCCARTHY: No, you misunderstood that. The response was that Jackson Township now has a municipal water system in a four square mile contaminated area. Therefore, theoretically, the people in that four square mile area are longer directly exposed to the chemicals, although today, this morning, 25 of those families are still bathing in chemically polluted water because they do not have the money to pay Jackson Township \$600 for the privilege of hooking into the city water system nor do they have an average of \$600 each to pay for a plumber to run the pipe from the house to the road, a total of \$1200, average cost. Senator Dodd is aware of that and has helped me get an Assembly bill through the Legislature and hopefully, the Governor will sign it, which will allow us to apply to the Spill Compensation Fund to get money for these people to hook into this water to get them away from this hazardous substance.

SENATOR DODD: That is on the Governor's desk now. We're encouraging him to sign it before Christmas.

SENATOR SKEVIN: Mr. Chairman, if we may consider this matter of priorities at a future committee meeting, perhaps we can draft a resolution which would reflect the sense of this Committee and the Senate that Jackson Township certainly should receive priority consideration.

MR. MCCARTHY: That would be appreciated. My biggest concern in Legler is, fine, we have 165 families in a four square mile zone hooked up to a municipal water system. It took me 22 months before I could bathe in decent, clean water. They claim it is only a four square mile area. When this notice was served on me two years ago, the area was a two square mile area and they told us that it couldn't spread, that there were natural underground barriers so that this thing could not spread. Yet, six weeks later they came around and doubled the area because they found, by God, it did spread. So, it was a four square mile area and nothing has been done to do extensive testing to confirm that there are not people outside this area today that are bathing in contaminated water. They did a token testing back in September due to my persistance and drilled six wells in the border of the perimeter of a four square mile area and they said, "Well, we're satisfied that it didn't spread." Yet, to me, I feel very uncomfortable with that. If they don't want to clean the site up, they should install monitoring wells outside that area and actively test to make sure that it has not spread.

For the record, my name is James McCarthy and I am from the Legler section of Jackson Township, New Jersey. I would like to speak to this Committee today, again, as an expert on the subject of hazardous waste disposal. My expertise is not in the field of chemistry, nor in the field of geology or hydrology. My expertise is in the field of death and human suffering and how federal, state and local government, through a lack of responsive action and regulation of the hazardous waste disposal industry has made me an expert in this field.

For some 22 months, my family, as well as 165 other families from the Legler section of Jackson Township, New Jersey, have had to rely on township civil defense workers to supply us with our daily allotment of 30 gallons of potable water per family for drinking and cooking purposes due to chemical pollution of our underground water supply in a four square mile area. This is a direct result of illegal dumping of chemical wastes at a municipally owned and operated liquid and solid waste disposal area where inadequate safeguards were used to protect the health, safety and welfare of neighborhood residents from the potential toxic waste disaster which eventually developed.

Senator Dodd's bill, S-1300, if amended, would probably avert this kind of disaster. Over forty different chemicals, including acetone, benzyne, chloroform, trichloroethene, trichloroethylene, have found in our water supply within the four square mile contaminated area. 640 men, women and children have suffered severely, physically, emotionally and financially, all as a result of unnecessary exposure to toxic wastes. These innocent third party victims of the vicious toxic waste pollution cycle have been made pawns in the bureaucratic maze of governmental statistics. We have lost our identities as human beings and have become numbers in someone's files, rather than names. We are subject to economic considerations rather than help when our files are reviewed for possible state agency action, as mentioned just previously. We have dollar signs in front of us instead of names. We are treated as a financial burden rather than jeopardized human beings and that has been the key to this whole situation for the past two years. This barbaric treatment of New Jersey citizens must cease immediately. What has happened to the residents of Legler must never be allowed to happen to anyone in the State of New Jersey again. Additional safeguards I will recommend will prevent this inhuman treatment of New Jersey citizens from continuing.

Senator Dodd's bill, S-1300, is the solution to the long-term problem. Toxic wastes are a fact of life. Mankind demanded that we create these miracle convenience products for our daily use. A lack of knowledge and above all, responsibility for their waste by-products over the past thirty years has created the current environmental disaster error. Hazardous waste disposal is a fact of life. It must be treated with respect and reverence. Properly regulated, as this bill will do, and administered, as we hope this bill will create, and with adequate safeguards to protect the populace, which I do emphasize again, we can all live with it. No matter how far we go with the engineering and design of hazardous waste disposal facilities, we must go one step further and build additional safeguards to protect the surrounding populace from physical harm. This is the key to the whole situation, additional safeguards.

I ask you in the interest of public safety, as I have asked you previously, to create a minimum buffer zone of 750 yards between boundaries of these future sites and any residential property. The bill would allow--and I have no objection to these sites being located closer together in industrial areas. My key concern is that you keep it away from residential properties. Page 10, Section 9A-1 states 500 yards. I had the privilege to testify in California last August on a bill known as the "California Love Canal Bill" before the Senate Finance Committee in California. The bill out there was passed despite extensive opposition from the real estate industry and the chemical lobbyists and it prohibits occupancy, all occupancy within 2,000 feet of any hazardous waste disposal area. The geographical situation out there is a lot different from New Jersey. It is usually mountainous; a lot of lots. New Jersey has a lot of sand. I am over 6,000 feet from the Jackson Township landfill

and my water is contaminated. I have neighbors who are 1,000 feet below me and their water is contaminated. I definitely do not feel comfortable with a 1,500 foot or 500 yard buffer zone. I really think adequate safeguards should definitely be increased. We must learn by our past mistakes and, by God, the biggest mistake in the State of New Jersey was the Jackson Township landfill.

On the subject of strict liability versus negligence, I can tell you that I am not a Philadelphia lawyer and I am not a New Jersey lawyer. I don't understand too well the difference between what was said. I can only ask Mr. Laskin. What I am proposing now as part of this siting criteria in the permitting process, I ask you to require as part of this legislation that the facilitator, the gentlemen or company that will be building the site, be required to sign a liability contract with the host municipality specifying in advance the amounts to be paid for emergency services, temporary or permanent relocation of residents, restoration of private property, cost of construction of alternate water supply or anything like that and, above all, medical expenses for the treatment, screening and monitoring of health problems in the event of an accident at the proposed site. This action is part of legislation that is currently proposed by the New England Regional Commission and, if used by New Jersey, it would ease fears of the host municipality due to the absence of home rule on siting.

I definitely agree with the concept of the removal of home rule on siting because I have been through this myself. I know only too well that these sites are a necessary evil. We have to have these sites to end the indiscriminate dumping of toxic wastes. However, no one is going to give you the consent to stick this in their own backyard, as you stated, based on demonstrations and lack of knowledge and just based on the knowledge of what happened in Legler. You won't find one place in the State of New Jersey; maybe Newark, but I think sincerely Newark would even oppose it--at least the residents would. I sincerely doubt that there would be anyplace in this state that you will not have opposition. So, I strongly feel that in the absence of home rule, you must ease all the fears and protect the populace, considering that they will have no real say in the decision. Legler's biggest problem in Jackson Township was that it took 15 months between the State and local government to decide who was going to pay for an alternate water supply and who was going to pay to clean up the landfill. As of right now, we still don't know who is going to pay to clean up that landfill. This would remove all opposition and it would immediately allow remedial action to be taken. You mentioned negligence and strict liability. I can only say that we are suing Jackson Township for \$51.5 million; \$25 million to make them clean up the site because the State wouldn't clean it up and Jackson Township doesn't want to clean it up; \$25 million to be put into a medical trust fund in the event of any environmentally related medical expenses for any environmentally related diseases that might occur over the next 60 years; and \$1.5 million for replacement of property damage. Now, that sounds fine. We have a legal right to do that. Well, the suit was filed a year and a half ago and it will probably six years before anybody sees any money. Is it right to wait six years for somebody to clean up that landfill? Is it right to abuse citizens of the State of New Jersey for two years? I don't know whether this would be called strict liability contract--it is in other states who have it--but it would establish the liability and if the gentleman wouldn't clean it up, it would give the State Spill Compensation Fund the right to immediately come in, spend the money on behalf of the residents and they would definitely have, the Spill Compensation Fund would have a right to recover

from it. Clean now, get the money later and don't abuse the citizens in between. That's the key.

The final last step is that you choose, as part of your nine member Hazardous Waste Siting Committee, at least two members from environmentally sensitive areas such as Legler, Monroe Township, Elizabeth, New Brunswick, Newark, Hackensack, Rutherford, et cetera; areas where people have experienced first-hand the ravages of improper hazardous waste disposal. The primary concern of these two chosen board members will be for the health, safety and welfare of the residents of a designated host site municipality and these residents will be able to feel that someone is truly looking out after their health concerns. Use their on-the-job experience to benefit the populace of the State of New Jersey.

Senator Dodd's bill, S-1300, if amended, would be a precedent setting piece of legislation. The nation, as a whole, will be watching the actions of the New Jersey Legislature with regard to this bill. It will be a model piece of legislation, a cornerstone upon which other states will be able to build to protect the health, safety, and welfare of its citizens. Are you ready to accept the financial liability for future toxic waste disasters because you did not take adequate safeguards today? This Committee, and the Legislature as well, has a moral and a legal obligation to protect the health, safety and welfare of all New Jersey citizens from the ravages of illegal and improper disposal of hazardous wastes.

I would like to point out the seriousness of the potential health problems by quoting from an affidavit which was prepared by a Dr. Dunn B. Patel of the New Jersey Department of Health. He is an environmental health scientist and stated on January 10, 1980. This affidavit was requested by the New Jersey Attorney General's office to be used in court action against Jackson Township at the end of January, 1980 to force Jackson Township to close down the landfill as they refused to do so voluntarily. The affidavit was submitted before Ocean County Superior Court Judge Henry C. Wiley and states in part, "I have reviewed the chemical analysis of the water samples taken from the Cohansey aquifer in and around the vicinity of the Jackson Township landfill. These chemicals, for the most part, are extremely hazardous and dangerous and even minimal exposure of human beings to such chemicals over time can be of reasonable scientific certainty to result in future carcinogenic effects." The good doctor went down the line and identified approximately eight of them which could cause cancer, neurotoxic effects, nephrotoxic effects, damage to the liver, blood cells and more. If anyone in this room does not believe that there truly is a health problem in this country due to unnecessary exposure of human beings to toxic chemicals, I strongly urge you to read the book, "Laying Waste: The Poisoning of America by Toxic Chemicals." The author is Michael Brown, the reporter who broke the Love Canal story. The book covers similar Love Canal stories throughout the country. Where does this all put us, the residents of Legler? I can tell you that it is not a comfortable feeling. One thing they all say is that we all stand a much higher chance of contracting cancer in the future. What can be done now? Who knows. But, you must amend your bill with additional safeguards to prevent another Legler disaster from ever occurring in New Jersey. Until somebody in government steps forward and accepts responsibility to insure the health, safety and welfare of the populace, we will continue to have numerous other Legler tragedies. We must acknowledge the seriousness of the health problems from indiscriminate disposal of hazardous wastes and have the courage to take adequate safeguards to isolate the populace from potential exposure. Lack



of responsible action by a few disreputable chemical companies has created this current situation. Lack of proper policing of the chemical industry by their peers over the past 30 years has mandated that S-1300 must be passed to police an industry that has failed to police itself. What we do now by promptly passing S-1300 is truly the first step in ending the potential environmental disaster era that we are now in. What we do now to clean up our act will affect our children and their children. If we refuse to think of ourselves, think of them. Amend the bill now with additional safeguards and push promptly for its passage. Thank you.

SENATOR CAUFIELD: I have to make one observation to clarify what apparently is a misunderstanding by at least some people. That is, perhaps, Newark is willing to take the toxic wastes. You haven't spoken to the people of Newark, obviously. I don't know how that impression got about or, perhaps the second part, where the political leaders may want it. Any political leader that has spoken out in the districts that I represent, Irvington, South Orange and parts of Newark, has taken a very strong and perhaps not too informed attitude that they don't want it under any circumstances. So, don't make any mistake in thinking that they may want it there for political reasons or for some other reason because, if it is for political reasons, quite the opposite is true. The popular thing for everyone to do is to be 100% against siting in their community. I would hope that we would have some more intelligent and informed people throughout the State, in Newark and South Orange and Irvington, who will look at it that way, who will take a look at it from what is best for the State of New Jersey.

MR. MCCARTHY: I apologize to you if you feel offended. I heard the comment made by Mayor Gibson with regard to the possibility of siting another one of these sites in your industrial area. That statement was made some months ago.

SENATOR CAUFIELD: That's a very informed observation.

SENATOR DODD: Yes, we are hoping that the siting criteria will look at industrial areas, which will be the practical place and not necessarily virgin farmland as someone may imagine. Again, Mr. McCarthy, thank you.

MR. MCCARTHY. Thank you very much.

SENATOR DODD: Folks, what I think we should do is take a quick lunch break and get over to the cafeteria. We will return here in approximately 35 or 40 minutes. We have approximately six more speakers and then we will get down to the business at hand of doing the rewriting. Senator Skevin has to leave now, but the rest of us will return.

(At which time a luncheon recess was taken)



Afternoon Session

SENATOR DODD: Ladies and gentlemen, we will resume the hearing.

Is Mr. Chuck McMullin of Scientific, Incorporated, present?

C H A R L E S     J.     M c M U L L I N:

My name is Chuck McMullin. I am Vice President of Scientific, Incorporated. We are a publicly held company that is involved in New Jersey in the solid waste collection disposal business.

Frankly, I am not a lobbyist and we are not typically involved in testifying before committees. So we apologize for not knowing each of the Senators personally. However, with the proposed bill, we did have a comment that is very brief and has to do with the language.

We recognize very deeply the need for hazardous waste disposal facilities and the problems that are involved in not having them, as well as trying to get those facilities, and we applaud you in terms of courage.

Looking at the existing bill, we do feel it has an impact, which I would classify as an unintended impact, upon other aspects of waste treatment. Specifically, the bill identifies a major hazardous waste facility as one that has a capacity of 25,000 gallons a day. The bill also identifies in its definition of hazardous waste --- for the most part, it deals with the Environmental Protection Agency's definition that has to do with the Resource Conservation and Recovery Act. Both of those items taken together may render industrial pretreatment facilities and leachate treatment facilities as what would be classified under this bill as major hazardous waste facilities. Frankly, that action we believe would be rather counterproductive because the Federal Water Pollution Control Act is the authority dealing with industrial pretreatment and has mandated industrial pretreatment - this is pretreatment prior to disposal of waste into a sewer system - for several years. And to have those facilities classified as major hazardous waste facilities would either impede or preclude their implementation. (See page 6X for Mr. McMullin's written statement.)

SENATOR DODD: Chuck, were you here when the people from Englehard Industries testified?

MR. MC MULLIN: Yes, I was.

SENATOR DODD: Is your situation a similar situation?

MR. MC MULLIN: It is somewhat different in so far as - if I could take the position of a landfill for a moment - we operate a landfill in the State of New Jersey that has the liner and the leachate collection. The leachate coming out of there we want to pretreat prior to its disposition. The amount of leachate would probably be in excess of 25,000 gallons a day or a capacity of 25,000 gallons. Yet we want to implement the facility without having to respond to this type of comprehensive program. RCRA, which is the federal law, requires these collection pipes and the liners and the treatment of the waste. We have the New Jersey Water Quality Planning Act, which under its new NJ-DPDES Program, which is their discharge program, will, in fact, require pretreatment. And, finally, you have the New Jersey Solid Waste Management Act which requires the pretreatment of leachate.

Frankly, the inclusion of these types of facilities in this bill does, in some cases, preclude its implementation.

SENATOR DODD: Do you feel there is language in the bill ---

MR. MC MULLIN: Yes, and that is specifically related to --- Well, what I did, Senator, I took the liberty ---

SENATOR DODD: Let me put it this way: It is not our intention that you

be brought under this.

MR. MC MULLIN: I did have a conversation with Mr. Catania and he indicated that. Based upon that and timely efficiency, I wrote up a very brief amendment which is on the third page and this would be inserted where you have the 25,000 gallons of hazardous waste, saying "with the exception of those pretreatment facilities implemented pursuant to the Federal Water Pollution Control Act and leachate treatment systems implemented pursuant to the Resource Conservation and Recovery Act, the New Jersey Water Quality Planning Act or the New Jersey Solid Waste Management Act." I feel that would make it crystal clear in terms of what would or would not be covered under this. I think one of the problems that we face as an industry is hazardous waste's evolving definition that is getting larger and larger. Frankly, I just don't know if the influent into an industrial treatment system or the influent into a leachate treatment system will be classified as hazardous waste.

I recognize your intent and we felt it was sufficiently important to come down here today to request clarification. I was here this morning and heard the gentleman from DEP saying leave this up to regulatory ---

SENATOR DODD: We don't want duplication.

MR. MC MULLIN: Correct. We would prefer, if we could urge it, that this be specified clearly in the bill rather than to leave it up to a regulatory process that leads us into a period of uncertainty at best. That simply is what my comments are at this point.

SENATOR DODD: We will work on that and it was not our intent to include you in.

MR. MC MULLIN: Thank you.

SENATOR DODD: Frank Ollweiler, Chairman of the Alloway Township Planning Board.

F R A N K O L L W E I L E R: Good afternoon. My name is Frank Ollweiler and, for the record, it is spelled O-l-l-w-e-i-l-e-r. It is probably the only one in the State, so there is some uniqueness to my visit here. The other uniqueness is that my comments will be limited to about four minutes. So you can sit back and relax.

SENATOR DODD: We understand your township is to be the recipient of a beautiful new resort area called Fox Run Estates with tree-lined streets, swimming pools and what not.

MR. OLLWEILER: If this is going to be limited to four minutes, we had better just ignore that.

This is my first visit to the State House and the first time I have ever testified. So please excuse me. I have not been able to have anyone type up and hand out copies of what I am going to say. I apologize for that.

I am Chairman of the Alloway Township Planning Board and have been for the last five years. We cover about 35 square miles and we have only about 2,700 people. So I come representing them.

I am concerned about the short notice given for this meeting. I only received a copy of the substitute bill late last night. As a matter of fact, I read it for the first time at six o'clock this morning. I am not an attorney and I am taking a day's vacation from work to make this appearance. And I don't think it is fair to have to operate in such a short time period. I see the bill is only dated December 10th. I am not detracting from the importance of the bill or the

need to expedite it. I am not detracting in any shape, manner or form from all the hard work and effort that has already gone into it.

I agree that we do need to do something to handle hazardous waste. However, I believe very strongly that the problem should be solved at its source. Let the manufacturers of the chemicals pay for the disposal of the waste out of their profits. It is not right to dump them in a small community for ten or twenty years and then walk away and leave them forever.

I am in favor of the moratorium. There is no question that a systematic approach to the problem must be set up. And, since the Chairman brought it up, International Utilities Conversion Systems, Inc. called the Mayor of our township 11:30 P.M., on December 2nd, and announced that they were going to develop a 400-acre waste dump in our township. They wanted a meeting the next day with the township officials. Since all of the township officials work full time, such meetings are difficult to set up on short notice. They also insisted on having a public meeting and, in fact, held one less than 72 hours later. Over 300 residents showed up even on such short notice. IU's reception was so unwelcome that the newspapers quoted them as saying they would not return to Alloway unless the residents had a complete change of opinion. If that is true, then they will never return to Alloway.

Under the terms of this bill, I am opposed to a dump being able to operate "without regard to local or county zoning ordinances." All of the time and effort spent by our Planning Board, setting up a master plan and land ordinances, is completely bypassed by this phase of the bill.

Under the bill, our local Board of Health is required to inspect the dump every week for the length of its operation and, in addition, every week for 30 years after it closes. That is 2,600 inspections. The bill will be responsible for training the officials or, at least, I understand that is one of the portions of it. But we do not have any full-time municipal officials, much less a full-time Health Department. I understand that we would get paid out of the 5 percent gross receipts. But, even if this is true, what happens to the 1,560 inspections that take place after the dump is closed?

All of the money figures I have heard with regard to waste dumps up until today run into the hundreds of thousands and even to millions of dollars, except that the bill sets a limit of \$15,000 for costs involved in municipal review of an applicant. I won't belabor the point. It was made by some of my predecessors. But, certainly, some consideration has to be given in case that figure is not adequate. Tying it to the cost of living might be a method of getting around it.

From page 22 through 25, the bill talks about appointing a conservator and how he would run the site. This would be in the event of default or improper operation. But I am not quite clear what happens if there is no profit. If the liabilities outweigh the assets - bankruptcy - where do the moneys come from to continue to run the operation?

On page 26, it says the dump will be assessed and taxed as "other real property." Is the waste real or personal property? Either way, its effect on the value of the land will be negative. In fact, as an assessor - and I am not an assessor - but, as an assessor, I would be hard pressed to decide what a fair value for that real property would be. It would seem to me that the wastes that are going to be stored there for the next 10, 20, 30, 40 or 50 years would place such a negative impact on the value of the land that - although it is impossible, obviously -

the township may have to pay them taxes. I can't see how it could be a tax advantage to have the type of waste disposal that, for example, IU is talking about.

I must have a bad copy. Paragraph 36 ends in an incomplete sentence. Probably the other copies don't do that.

Last, but not least, the use of eminent domain to take property so it can be sold to an operator of a dump flies in the face of proper land management in my opinion. I am completely opposed to this. By the mere stroke of a pen land condemned for one or two thousand dollars an acre will be worth literally hundreds of thousands of dollars to the operator.

In summary, let the problem be solved at its source by the people who make the waste. Do not take away any more of our home rule. Condemning property for such dump sites will not take place in the large cities, I don't believe, but in the farmlands where there are few people and few votes. We in Alloway Township and Salem County are very willing to do our share. However, we already have two nuclear plants down there and more planned. We also have Dupont's dumps. They are located on their property. We have the Rollins Environmental Dump that is in Gloucester County, but right on our border. So, we feel that someone else should be doing their fair share. We have certainly done more than ours. Remember, when the wastes are disposed of, they are supposed to stay there forever. The only thing I can suggest is that forever is a long time.

I thank you for the opportunity of being here. It is not very often we get someone from Alloway up here. I really do appreciate it. I am sure there are no questions, but if there are, I will certainly try to answer them. Thank you.

SENATOR DODD: Thank you very much.

The chair would like to call Marlene Jaffee, Cherry Hill Environmental Action Committee.

M A R L E N E J A F F E E: I am Marlene Jaffee, Chairperson of the Cherry Hill Environmental Action Committee.

The operation of a hazardous waste facility presents the greatest potential threat to the health and welfare of the citizens and to the environment in which we live. Therefore, our Committee has some great concerns about the implications of this bill and also some questions which we feel the Senate Committee should address.

If the Senate Committee's preparation for this public hearing on the Substitute Bill for S 1300 is any indication of your concern for public participation, as provided for in this bill, we are fearful that it will fail. The notices for the public hearings were almost inaccessible to the people of Southern New Jersey. Copies of the bill were extremely difficult to obtain and most of us did not receive copies until late yesterday.

How will this bill affect hazardous waste that is accepted from out-of-state sources by a commercial hazardous waste facility? Is this bill going to allow for a corporation such as International Utilities Conversion Systems to site their facility in a town such as Alloway on a tract of land that is in wetlands and that is adjacent to working farms just because the DEP has determined that this site is generally suitable because it has a natural clay aquiclude?

What becomes of the DRBC and DEP joint study? Will the new siting criteria be developed by the Commission or will they use the joint study criteria?

The plan should call for treatment of wastes on the generator's site as its first priority and/or conversion or recycling of these wastes.

This bill should state that out-of-state generators and transporters of hazardous wastes into New Jersey should meet the regulations of this bill. There is nothing in this bill that talks about accepting out-of-state waste and I just wonder why.

SENATOR DODD: Because it is illegal. You can't do that. We can't tell Pennsylvania, "Don't send us your garbage," any more than we cannot send our toxic waste disposal to Pennsylvania. That has been established by law.

MS. JAFFEE: That is not what I meant. Couldn't something be written in the bill that they would have to follow the same regulations that any other ---

SENATOR DODD: They would.

MS. JAFFEE: Then it doesn't have to be stated in this bill?

SENATOR DODD: No.

MS. JAFFEE: Because it talks about ---

SENATOR DODD: "Any person" is the phrase. We don't treat Ohio waste different than we would Pennsylvania waste or than we would our own. Put it in little green bottles instead of yellow bottles.

MS. JAFFEE: Location and operation of any new major hazardous waste facility within any wetlands designated by federal/state law should be prohibited. In order to prevent degradation of the environment through improper use of land, the Commission should not site facilities in areas that are not consistent with municipal zoning ordinances.

Under whose jurisdiction would a facility of less than 25,000-gallon capacity fall?

The plan should require the identity and specific dangers of every hazardous substance to be handled by a proposed hazardous waste facility to be made available to the public in the affected municipalities.

The Hazardous Waste Advisory Council members should be selected from candidates solicited throughout the State and asked to submit resumes stating their qualifications and a letter of their interest in serving on this board, as specified in Section 6. a. of this bill.

This bill creates too much of a bureaucracy as written. The Task Force members from the New Jersey Public Participation Pilot Program have expressed concern over the lack of enforcement of existing laws and lack of coordination in the regulatory authorities. We do not have reason to believe that this new agency to be created by this Act will be any more effective in protecting the health and welfare of the citizens of New Jersey unless the creation of a Citizens Task Force is created in this bill.

If you do not provide more funding for public participation and through the local municipalities that will be affected, then we will surely have to pay the price in creating any adverse impacts that result from having overlooked any possible protective measures that the affected public could have identified beforehand.

Public participation should be specifically defined in this bill to avoid any token efforts to comply.

For any future public hearings on this bill and, subsequently, if the bill becomes law, in order to be certain that the public at large receives sufficient notice, this bill should contain the statement that county governments and active environmental and citizens' groups will be sent notices well in advance, so that they can inform their membership.

In closing, I would like to have something clarified and that is Section 9, Subparagraph 4. In Paragraphs 2 and 3 you exempt flood hazard areas and wetlands from areas that would be suitable to place hazardous waste facilities. But in 4, you say, "Any area where the seasonal high water table rises to within 1 foot of the surface, unless the seasonal high water table can be lowered to more than 1 foot below the surface by permanent drainage measures approved by the department." I just wonder if you could clarify what that means? Isn't that in conflict with parts 2 and 3? And what is the intent of part 4? Is it to make certain wetlands are acceptable if they are not officially designated as wetlands?

SENATOR DODD: No. Let me have Michael explain that.

MR. CATANIA: Seasonal high water tables are a totally different topic than designated wetlands or flood hazard areas that are delineated - just where the groundwater comes up to within a foot of the surface. And, if you can keep the groundwater down and you are not subject to one of the other prohibitions, that area would be acceptable, as long as it is otherwise acceptable under the siting criteria. The fact is that some areas of the State have very high groundwater, but they are still not wetlands or flood hazard areas. So it is a totally separate category.

MS. JAFFEE: Well, they are not wetlands or flood hazard areas according to state designation, but sometimes they might be according to federal.

SENATOR LASKIN: This expands the areas where these facilities can be located.

MR. CATANIA: --- cannot be located.

SENATOR LASKIN: --- Cannot be located. It expands it; it makes it tougher. I think you are reading backwards.

MS. JAFFEE: That is why I wanted to clarify it. It makes it tougher to put it in any ---

SENATOR LASKIN: It prohibits it from these areas.

MR. CATANIA: It says, the criteria shall prohibit "the location or operation of any new major hazardous waste facility within..."

MS. JAFFEE: Unless you can lower the water table.

MR. CATANIA: That's right.

MS. JAFFEE: That means there is going to be drainage or some alteration of the water.

MR. CATANIA: Unless the department will approve it and unless you can lower the water table, you will be automatically precluded from locating a facility in that area.

MS. JAFFEE: Suppose it is under federal designation as wetland.

MR. CATANIA: Then that would preclude it because it is designated as wetland. It is a separate category.

MS. JAFFEE: Thank you.

SENATOR DODD: Ms. Jaffee and Mr. Ollweiler, if I can explain something to you, you are relatively new to our family. The people generally that you see in the audience today were with us six months ago when we first started work on the bill. Unfortunately, you received the bill last night; and, Frank, you read it this morning. We have been reading it for six months, day in, day out. These people have given up their time. They don't get paid for this. We get paid. But they have done this. This is their bill. The environmental groups have led the way in this.

MS. JAFFEE: I understand that.



SENATOR DODD: Industry people get paid for doing this. But most of the people who worked in the drafting of this didn't just pop up and say, "Hey, we have a great idea. Let's run with this bill because there is nothing else doing on this particular day."

As to the practical aspect - and, Frank, you would appreciate this perhaps a bit more - if I had 580 municipal representatives of every town in this State and I said, "I'd like to have a show of hands of the representatives that have any interest at all in having a waste treatment facility plant or a dump in your municipality so that we can send some firms over to make a presentation before your planning board," what kind of a response do you think we would get?

Frank, the League of Municipalities of which your township is a dues-paying member endorses the bill, even with the condemnation - the eminent domain. And we use that very guardedly because I, as you, like home rule. I think that things done on a municipal level are done more efficiently than on a state or federal level. But you wouldn't have a highway built in the State if home rule was exercised and you have to put this problem in that category. No one wants one of these in their backyard. No one wants a nuclear plant in their backyard. I didn't even want a solid waste place in my backyard. Route 280 happens to go through my backyard. I don't particularly like that either.

So, it is easy to be against, as we have said - and unfortunately these poor people have heard me say this a hundred times - but give me a better way. Are we going to send in all to Pennsylvania? Great - we are all for that. But they are not going to take it. We generate more hazardous toxic waste than any other state in the country. We have got to solve this problem ourselves - and this is an attempt to solve it. It is not the final answer. We will be back next month, next year, changing it. The Commission will give us recommendations. You will give us recommendations. We will know better. This is the first time this has ever been done.

I can appreciate your frustrations and uncertainties. But unless we take action now, today, your alternative is to leave it the way it is being done, with a midnight dumper pulling up in the lot next to you in Cherry Hill and opening the petcock of his truck while he is in the diner having coffee. You have hazardous waste in Cherry Hill now as you have in Alloway Township and as we have in every town in this State. But you don't give us alternatives.

Thank you.

MS. JAFFEE: We are not asking you not to take action; we are asking you to consider all the safeguards you possibly can.

SENATOR DODD: Tell us some new ones.

MS. JAFFEE: Well, I just thought that public participation should be stronger.

SENATOR DODD: Who wants to answer that? Diane, go ahead.

MS. DIANE GRAVES: There was a time in the earlier outline that we talked about a preamble or explanation of it. But then we incorporated so many things in the body of the bill, some specific provisions, that it was sort of left out. I think maybe it is important that it be reincluded as an explanation - the intent.

SENATOR DODD: Perhaps in the statement, there could be the explanation.

MS. GRAVES: Yes.

SENATOR DODD: This has had as much public participation almost as an

election, believe me.

MS. JAFFE: But I have seen in the past what has happened to public participation programs.

SENATOR DODD: I didn't write them. I will take the responsibility for this one, but not the others. That is all I can say.

Thank you for coming today.

Richard Sullivan is the next speaker on the list. He was here earlier, but I don't think he is here now. Mr. Sullivan was our first Environmental Commissioner of the State of New Jersey. He was representing himself. I am sorry he is not here.

Jim Gaffney of the Stony Brook Millstone Water Shed Association.

(Not present.)

Ken DiMuzio, the Logan Township Solicitor. You are here to request another waste treatment facility in your township.

K E N N E T H A. D i M U Z I O: Yes, we would like to attract as many as we can. We have had a lot of experience with them.

Senator Dodd and members of your Committee, again I would like to thank you for the opportunity to participate. I join with the prior speakers in commending you and Mike Catania on the draft of this legislation. It is an entirely different bill. There is no question about it.

I will not rehash most of what has been said. I would like to say that I would have made all the incisive comments that were made by the people before me. And I will take credit for them at this point.

I would like to pinpoint a few things - some are minor - which may have been missed. Then I would like to conclude with a little more general statement about the concerns of a municipality that has an existing hazardous waste facility.

Just very quickly, on page 3, I agree that the definition of a "major hazardous waste facility" has to be gone over and clarified for the comments already made. But also - and there was a discussion at lunch about this - there seems to be a bifurcation of legal liability. The question arose as to whether - I think it was Section 14 on liability on page 19. If we are talking not about strict liability in Section 14 for major facilities, are we really saying then that those facilities not defined as major because they are less than 25,000 gallons per day, or whatever, are subject to strict liability or the common law doctrine? Let me state it differently. I think there will be a difficult determination to be made as to whether it is intended by the drafters of this bill to limit liability for a 25,000 gallon plus facility to pure negligence concepts and to have those facilities of less than 25,000 gallons subject to normal common law strict liability principles, because these are ultra-hazardous activities. I think that should be analyzed. I don't think we have to do it now. But I think that should be analyzed.

Secondly, on page 3, paragraph k, where the "owner or operator" is defined, it appears to pierce the corporate veil for a corporation. That may be your intention. I wasn't sure from the legislation. I think it does mean that if somebody holds --- That is page 3, definition k, "owner or operator." There is a section there that talks about a person owning a majority interest in a corporation. I take that to mean that if I hold a 50 percent plus interest of the shares of a corporation, I may be held personally liable for the activities of that corporation. If that is the intention, I think perhaps it should be made more clear and perhaps

some recognition should be made of the State Incorporation Act to indicate that you are saying --- and I know that there is a general clause in here that says basically that this is to be construed as taking precedence over any other statute in the State. But I think people who tend to invest in companies and start companies ought to know that they are not having their normal corporate liability limited to the activities of the corporation and that their personal ownership interest may impose liability on them.

Page 5, paragraph c - again this is a minor point which could create difficulty I think. That is in terms of when there is apparently contiguous municipalities associated with a proposed site, they share a single vote. I don't know what would happen if they disagree on how to cast that one vote.

MR. CATANIA: They would each get one-half a vote. They would share one vote.

MR. DI MUZIO: Which would basically negate the vote. In other words, a judgment was made that each one of them should not have a full vote and, therefore, reflect on the decision of the entire body, but they would be 50 percent partners in one vote? That was intentional?

MR. CATANIA: If they each had one vote and disagreed, they would cancel out too.

MR. DI MUZIO: Well, not necessarily, because their votes would be weighted differently. You have downgraded their vote because there is a facility that encompasses two jurisdictions, so to speak. I was wondering if that was the intent? I haven't thought beyond that; but if that is the intent, you have basically downgraded their vote.

MR. CATANIA: I don't follow that at all. What do you mean by weighted?

MR. DI MUZIO: If you increased the voting membership by giving a vote to each municipality wherein a proposed site was to be located, that is one full vote. But because the site happens to cover two boundary lines or transcends two boundary lines, a municipality has had its vote downgraded. Maybe I am wrong, but my gut reaction is that you have downgraded the weight of the vote for those municipalities simply because a particular site happened to transgress a boundary between two municipalities. I could be wrong.

SENATOR LASKIN: He is right on the votes from the proposed site municipalities.

MR. DI MUZIO: That's right.

SENATOR LASKIN: They are weighted less under this paragraph.

MR. DI MUZIO: I didn't know whether that was your intention. I am not too sure it is a good idea, but I think it should be analyzed for its impact.

SENATOR DODD: We will take that up.

MR. DI MUZIO: My point is that it should be clarified as to its impact.

SENATOR DODD: Obviously. You made your point very well.

MR. DI MUZIO: On page 10, paragraph 9. a., you have set up a mandatory prohibition category. One suggestion I have is that you include the qualifying phrase "at a minimum" or some other qualifying phrase after the term "shall prohibit." The reason I suggest that is that this statute may be construed to mean that only the following environmentally sensitive areas shall be considered as prohibited areas; whereas the State Department of Environmental Protection or some other consulting group may eventually advise DEP in the siting criteria that there are

half a dozen others. I don't think it was the intention of the legislators who drafted this bill to make this an exclusive area prohibition. I think the statute should make it clear that this list can be expanded, but this is a minimum prohibition.

Secondly, I am not too sure why aquifer outcrops are not included as a prohibited area. I think with the water pollution problems in the State, they certainly take priority with any of the four. And I am not downgrading the four that you have listed. They are all very important. We have a problem in Logan Township associated with not the facility I have talked about in the past, but another facility, where the estimate now is between five and fifteen million dollars to clean it up. It is in the outcrop of the Raritan-Magothy Aquifer. Certainly, as a matter of policy, we should avoid by legislative prohibition the location of facilities in that kind of area.

Again, I am not an expert in terms of identifying these areas, but I think that should be considered.

MR. CATANIA: If I could respond to that, in the outline there had been specific language on areas on top of aquifers. One of the things we found with that was that it precluded virtually the entire State. The Task Force and other people got together and tried to design some language around that came to the conclusion that it was not possible to identify aquifer areas. Instead, there is some general language before those four things are listed that says the criteria - let me find the language - have to prevent significant degradation of the surface or ground waters of the State, just as a recognition that there is no way to identify aquifer outcrop areas.

SENATOR DODD: We have to leave that description to the Commission because of the extensiveness of the aquifer within our State, which it benefits; but it would preclude all but seven acres in Sussex County from being considered.

MR. DI MUZIO: I am a little bit surprised by that finding of the Task Force because, for instance, I have been told by people in the Planning Board in Gloucester County that there are maps which identify the apparent outcrop of the Raritan-Magothy Aquifer along the Delaware River in Logan Township and it doesn't cover a great area. Again, it may be a problem of definition.

MR. CATANIA: Outcrop wasn't the problem. Some people wanted it to be areas over aquifers, not just over aquifer outcrops.

MR. DI MUZIO: As I understand it, the outcrop of an aquifer is the sponge area. It is the direct area of replenishment of the aquifer as opposed to the fact that I think it is fairly obvious that, hopefully, we do have an aquifer underlying most of New Jersey. But the outcrop is an especially sensitive area and it is identified in certain plans and maps, or so I have been told. The county planning boards probably have those identifications. The DRBC probably has those identifications. The reason we are having so much trouble in Logan Township with this particular facility is that the lagoon is 62 feet deep and it has been said that it is right in the aquifer itself; and it is in the outcrop area which is where this area is replenished. The reason it becomes important, I think, is that, one, it feeds the aquifer; but, secondly, if you have a pollution problem in that outcrop, you are forced to pump out water. So what are you doing? You are depriving the aquifer of replenishment because a facility is located there that is hazardous.

I think that somebody who knows more than I about the way of defining it should seriously consider the aquifer outcrop problem.

MR. CATANIA: We sat through a multi-hour meeting with the geologists, hydrologists and the whole bit. That group could not come up with an acceptable definition of that kind of area and chose instead to have the department do it in its criteria, knowing that the public participation procedure would enable people to criticize what they came up with.

SENATOR DODD: --- and, again, during the Commission's hearings or their deliberations on sites. So there will be two additional bites of the apple for that.

MR. DI MUZIO: On page 12, paragraph 10. b. (5), it talks in terms of the State plan. Paragraph 5 says the plan will include an analysis of the ability of all existing facilities to meet current and proposed State and federal environmental, health and safety standards and their performance in meeting these standards. If by existing facilities, we mean pre-existing facilities ---

MR. CATANIA: Facilities are defined as facilities which are operating in accordance with all relevant laws.

MR. DI MUZIO: Okay. I think there should be some direction in the statute as to what happens to those facilities that are determined by the Commission in its plan to not be meeting state or federal environmental, health and safety standards. To report on it is one thing. What will be the result of that report? Should there be a direction in the statute that DEP take action to phase out or close this facility? I think just to report it is half a loaf, so to speak, and there should be some direction as to the purpose of that. I could see it in terms of trying to judge capacity.

SENATOR DODD: We are assuming that that would be covered under existing situations.

MR. CATANIA: If they are violating the law, the fact we say in here somebody should enforce another law doesn't increase the likelihood that person ---

MR. DI MUZIO: Well, we are going to get back to legislative prohibitions and the need for the phase-out of existing sites. I would like to discuss that in a minute or so because that is the Achilles' heel of the whole enforcement process, as far as our experience in Logan Township is concerned.

I have just a few other comments. On page 16, Paragraph c (2), where we talk about site plan review, the way the statute is worded, I couldn't tell whether you meant that the governing body would sit in place of the planning board for site plan review procedures or whether the planning board, itself, still sits. The probability is that the planning board should sit.

SENATOR DODD: Yes.

MR. DI MUZIO: I would suggest that be added, "including a site plan review by the planning board," because it says, "the governing body shall conduct and transmit. . . including a site plan review." So I think there will be some confusion when this is implemented as to whether the governing body or the planning board had to conduct a site plan review.

On page 17, the last paragraph at the bottom, I am extremely concerned for the same reasons I think Michael Pane indicated, and some of the other speakers. There is entirely too much discretion conferred on the Department to exempt major hazardous waste facilities below a certain size or particular type being considered as a major hazardous waste facility. If the definition is so difficult to arrive

at in terms of deciding what kinds should be exempted, then I would opt for the necessity of a public hearing on the proposed exemption. That is something that can be too readily abused under the current hazardous waste crisis and the pressure on DEP to find solutions to the problems within the next five to ten years.

In terms of page 19, Paragraph 14, on liability, I am an attorney and I do have difficulty in deciding whether this section proposes strict liability or merely liability based upon negligence. I don't know, for instance, whether the second line should read: shall be jointly and severably liable for the improper operation. Because if they are being held jointly and severably liable for the proper operation and damage is caused by the proper operation, it seems as though that is a strict liability concept. So I don't know whether there is a qualifying prefix left off. I think the language should be cleaned up. It is my personal opinion that we should have a strict liability concept. I think, dealing with these kinds of facilities and the hazardous nature of the materials we are dealing with, that the public needs to be safeguarded.

I think Mr. McCarthy educated us today on a new procedure, which I certainly as a Township Solicitor would heartily recommend, and that was this indemnity agreement between the proposed facility and the township. I think it is a concept that should be thoroughly explored. Number one, it does outline in advance some of the contingencies that could occur through the operation of this facility and provides in contract language the remedies, so people think ahead of time what could go wrong and how those things would be remedied. Secondly - and I think this is probably the most important factor - local people will feel there is some security, if they are going to be saddled with this facility, if there is a contract. I think people generally understand that a contract means something. It is better than saying, "Well, they are held strictly liable under the common law and they are held strictly liable under the statute." You have contractual rights that have been arrived at and there could be funding mechanisms associated with that. If there is material breach of that contract justifying the inception or commencement of a conservatorship proceeding, the conservator would have a checklist, so to speak, of remedies available to him.

I think that is something that could be incorporated into the concept that you now have and it may be extremely beneficial. I think it is beneficial, primarily again, because of the public perception. Then the people who are going to be saddled with this can look back and say, "But, at least, we have a contract. We have some protection." I think the public perception is perhaps one of the fundamental things you have to deal with in this whole crisis that we are trying to legislate in terms of regulation.

On page 19, Paragraph 16. a., we are talking about the local board of health or the county health department conducting weekly inspections of major facilities. In one of the informal conferences, I mentioned the fact that the Department of Environmental Protection was unaware of the Department of Community Affairs' Uniform Construction Code Office and that construction is regulated throughout the State of New Jersey under a statewide code. I think in this section you have to make some reference, during the construction phase, of the employment of local enforcing agency personnel or State construction code personnel, because

a Health Inspector from the County Board of Health does not necessarily know very much about construction. On the other hand, the Uniform Construction Code people have to go through training programs set up by the Department of Community Affairs and have to be qualified to understand construction.

SENATOR LASKIN: That is going to be done. We have already made a note that there should be a reference to code enforcement officials - the general category.

SENATOR DODD: Rather than specify ---

MR. DI MUZIO: On page 29, Paragraph 39, I am again concerned about the last sentence which provides that amendments to registration statements or engineering designs to allow the expansion of existing major hazardous facilities may be granted by the department prior to such adoption of the plan, unless the expansion would result in an increase of more than 50 percent. I am concerned about giving that much discretion to the Department of Environmental Protection, especially in terms of existing facilities. I have stated the position in the past - and, unfortunately, I have confirmed my suspicions - that under the current problems, the State Department of Environmental Protection has been compromised by the necessity of dealing with the current crisis. For that reason, its tolerance of existing facilities will be stretched to the limit. And, in stretching that tolerance to the limit, local interests are not properly safeguarded. It was for this reason that I suggested at an earlier committee meeting that, in the area of legislative prohibitions of environmentally sensitive areas, existing facilities who fall within those environmentally sensitive areas should be required to be phased out over a period of time. The DRBC site criteria, level one, was bottomed on the premise that as a matter of policy there are certain areas so environmentally sensitive that we should not tolerate the location of a facility in those areas, no matter how well engineered or designed. Again, with equally compelling logic - and more logic - if we have an existing facility in a prohibited area, as a matter of policy, I think legislatively we should direct that such a facility be phased out. To allow those facilities to operate without that clear direction in the statute gives too much discretion to the Department of Environmental Protection to perpetuate a facility that is poorly sited. The ramifications of that are, because of the location of a facility, we have recurrence of, say, a Bridgeport Rentals' problem or a Jackson Township problem. The adverse publicity generated is going to outweigh all the good you have tried to accomplish through this legislation.

I think it would be a serious defect in the legislation if there is not a provision in the legislation that people who are saddled with these pre-existing facilities can point to and say, "Look, the State Legislature has recognized as a matter of State law that this is a poorly sited facility and it will be phased out within the time table established. It is unfair, in one sense, to saddle DEP with the problem of trying to establish site criteria and to perpetuate a facility, not because it particularly likes the facility, but because it has no alternative. The concern is, again, that since they do have to breathe life and perpetuate a facility that five or ten or fifteen years from now, because the facility is in an environmentally sensitive area, we are going to have a recurrence of Bridgeport Rentals in Logan Township, etc.

I can't emphasize this enough. I have said it in the past. I understand your focus on trying to handle the siting of new facilities. But to piecemeal the legislation and ignore the very real dilemma of municipalities who have existing

facilities will cause, I think, in a very real sense the loss of credence on the part of this legislation. Administratively, I know you would rather have DEP handle the problem. I am telling you they are not handling that problem. The result is going to be that we are going to be involved in litigation down the line. The adverse publicity from that legislation is not going to do anybody any good. But it will have to come if there is no hope in this legislation for a phase-out of such poorly sited facilities.

I have taken enough time. I thank you for your attention and, again, compliment you on, I think, the institutionalization of the public participation process. The bringing in of municipalities into the process is a tremendous step forward. There are no guarantees, obviously, but you are surely headed in the right direction. Thank you again.

SENATOR DODD: Ken, thank you very much. You were one of the ones with us from day one when we started in Room 90 downstairs.

Phyllis Anderson, Sussex County Soil Conservation District.

P H Y L L I S     A N D E R S O N: I would like to thank you again, Senator Dodd, the Committee members and staff, for the super job you have done on the rewriting of S-1300.

After the debate that just went on, I didn't know whether I should come up here or not. I don't know whether I am ready to debate with you.

On page 10, Section 9, with regard to the areas in which new hazardous waste facilities shall be prohibited, I realize why you are not addressing the areas that supply water to reservoirs or aquifer-recharge areas, but I really think you should address that. The original wording that we had worked out did cover most of the State and, as Senator Dodd said, it really did cut out most of Sussex County. But we do supply water to the Passaic River, the Hudson River and the Delaware River from Sussex County. With the water shortages that we have had this year, I think it is evident that we really have to protect those recharge areas. If only those areas that were supplying water to reservoirs and major aquifer-recharge areas were addressed, I think that would be sufficient.

I understand that DRBC has wording now - I was just told this at lunch time - where they do address just this specific area. If you could get that wording, it might be helpful to you. I believe the gentleman right here has it.

Thank you very much for giving me the opportunity to speak to you.

SENATOR DODD: Phyllis, thank you.

Katherine Montague, I believe, just had to leave.

For practical purposes, we will retire to our committee room up on the second floor, room 217, where we can start sifting through some of the suggested changes. You are free to join us.

(Hearing concluded)

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The following are some specific details needed to clarify and/or add to S. 1300:

- p. 2 - 3.h. - Radioactive waste should be specifically excluded;  
- the National Institutes of Occupational Safety & Health should be included in the list of agencies.
- p. 3 - 3.i. - It needs to be clear whether the 25,000 gallons is for a unit of time or capacity for storage.
- p. 4 - 4.b. - line 11 - add after "3 years." One member of each segment shall be appointed for each of the three terms.
- p. 5 - 4.b (continued) - line 3, after "only" add Whenever a member misses 3 meetings in a row, the member is automatically off the Commission and a new member must be appointed.
- p. 7 - Add to the list of Commission powers: h. To hold Public Hearings.
- p. 9 - 7. Add new section d. Advise and assist the Commission concerning the preparation and implementation of the Public Education Program pursuant to Section 10.d. (see p. 13 of S. 1300).
- p. 11 - (2) line 6, add and to all Environmental Commissions and municipal clerks within the specified geographical area.  
(3) line 6, add after "published" at least 30 days in advance thereof and
- p. 12 - 10.b.(1) line 4, after "collection" insert , treatment, storage  
(2) delete all words after "State".  
(4) Change to read "the number, type and geographic location of new..."  
(6) line 2, omit "proposed"  
(7) delete "codisposal of solid and hazardous waste" and insert source reduction...; a comma after "recycling"; line 5, after "to be", insert treated.
- p. 13 - add a new section 10.d. - As a first order of business, the Commission and the Council, with the support of the department, shall prepare and implement a Public Education Program which will explain clearly the nature and dimensions of the hazardous wastes problem, the need for siting new facilities as part of the solution, the Commission's work, and the need and opportunity for public participation.
- p. 14 - 11.a.(1) line 5, after "thereof", insert by certified mail; after "body" insert including Board of Health, Planning Board and Environmental Commission.
- p. 16 - 12.b - after "department" insert along with the Dept. of Law and Public Safety.  
c.(1) - after "notify" insert immediately by certified mail; after "body" insert including the Board of Health, Planning Board and Environmental Commission.
- p. 17 - e., line 4, after "department" insert and the Commission following a Public Hearing.
- p. 18 - after 13, insert a.  
13.a.(3) stored  
b.(1) delete "or economically"
- p. 19 - 14., line 2, after "be" insert strictly liable, both; after "severably" delete "liable";
- p. 20 - 18, line 4, after "subject" insert to
- p. 22 - b.(4) - it is not clear whether "continue the business" includes operating a facility. If it does include operating a facility, then the conservator should be put under the provisions of the Tort Claims Act.
- p. 25 - 31., line 4, change "may" to shall. This would be consistent with Sec. 11.a.(1).
- p. 27 - 33.a. - line 8 - why should the Commission have the power of Eminent Domain to relocate or reconstruct a highway? We think this is a mistake.  
39., line 2, after "and" insert identification.

TESTIMONY OF WILLIAM S. SINGER  
BEFORE THE SENATE ENERGY AND ENVIRONMENT COMMITTEE  
ON SENATE COMMITTEE SUBSTITUTE FOR S.1300

December 17, 1980

Good day. I am William S. Singer, legislative agent for the League for Conservation Legislation. The League is a collaboration of environmental organizations and individuals joined to maintain a lobbying presence on environmental issues in the State House.

I am very pleased to testify to you on S.1300 today. The Senate Committee substitute as proposed, except for several small exceptions, is an excellent substitute to the bill originally introduced. The many hours of hard work by this Committee, its staff and all of the interested parties are reflected in the Committee substitute. The League for Conservation Legislation recommends that this bill be released with only minor modifications. If this bill is accepted by the Legislature and the Governor, New Jersey will again have provided the nation with an excellent standard to follow.

As to several points of clarification:

1. In the definition of hazardous waste on page 2, it should be clearly stated that this waste does not include any radioactive waste. It should be made clear that radioactive wastes are specifically excluded from this bill.
2. In the definition of hazardous waste facility on pages 2 and 3, the 25,000 gallons bench mark should have an explanation if this is per day or some other time frame.
3. On page 11 in subparagraph (3), the notices for the

hearings should be published at least three weeks before the date of the hearing. That requirement should be specifically spelled out in the legislation.

4. On page 12 in paragraph 10.b.(1), the identity of every person treating hazardous waste should also be included so that the last line would read "engaging in hazardous waste collection, treatment or disposal within the state."

5. In b.(2) on the same page, it would seem impossible to provide an inventory in the year in which the plan is prepared. This time reference should be clarified. In b.(7), procedures to encourage reduction should also be included.

6. On page 14 in paragraph 11.a.(1), notices should be sent by the Commission not only to the governing body of the affected municipality but also to the municipal board of health, planning board and other relevant municipal agencies. These mailings should be by certified mail.

7. On page 16 in paragraph 12.b., the Department of Law and Public Safety should assist the Department of Environmental Protection in the investigation of the character and financial responsibility of the applicant. Presently, DEP is not equipped to make these investigations.

8. On the same page in paragraph c.(1), the notices should be sent as previously mentioned to the municipal board of health, planning board and other relevant municipal agencies by certified mail.

9. On page 17 in paragraph 12.e., DEP should not unilaterally make decisions to exempt major hazardous waste facilities from

the purposes of this act. This section should be amended to include the Commission in such deliberations and to make public hearings a requirement before such exemptions are granted.

10. On page 18, paragraph 13.B.(1), the words economically impracticable are too vague. To do the job right, there will be extra costs which could be alleged to be impracticable. Economics should not be made part of this consideration.

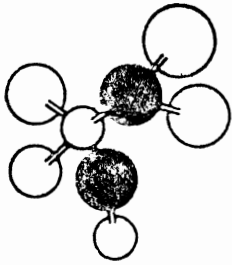
11. On page 19, section 14 as to liability, this section should be changed to include strict liability. It appears from the language as drafted that if any operator performs in accordance with all registration statements, engineering designs and relevant statutes, it will be exempt from any liability should there be a problem. However, the treatment of hazardous wastes are so dangerous and the public is so aroused as to these dangers, the public will only be satisfied if strict liability is imposed upon operators and owners.

The League for Conservation Legislation would like to state that the sections concerning the local boards of health and county health department inspections are well drawn. If the local persons who will be directly affected by these facilities know that they will be allowed to conduct such inspections, there will be greater public confidence in the siting of a facility in a locality.

In addition, the sections on the payment of gross receipts charges to a municipality are also excellent. Now the municipality will know it will have the proper funds to conduct the necessary inspections and provide for the extra police, fire and road costs

related to the operation of a facility.

This Committee should feel content with the work that it has done so far on this complex issue. With the minor changes I have suggested today, the Senate Committee substitute for S.1300 should be adopted. The Committee should then release this bill to the full Senate with a recommendation for passage.



SCIENTIFIC, INC.

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STATEMENT  
OF  
CHARLES J. MCMULLIN  
to  
SENATE ENERGY AND ENVIRONMENT COMMITTEE  
REGARDING  
HAZARDOUS WASTE FACILITIES SITING ACT

The proposed bill has the unintended impact to hinder the advancement of industrial pretreatment pursuant to the Federal Water Pollution Control Act and the implementation of the necessary treatment systems to handle leachate from landfills designed with liners and leachate collection pipes. Specifically, item 3i of the proposed bill establishes a 25,000 gallon capacity as the threshold for classification as a "major hazardous waste facility". This threshold will necessitate the inclusion of both industrial pretreatment facilities and leachate treatment systems since they are operating at capacities in excess of 25000 gallons.

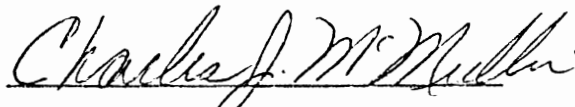
Additionally, the proposed bill employs the United States Environmental Protection Agency's definition of hazardous waste. This definition is in its evolutionary stage and may encompass the influent into both industrial pretreatment facilities and leachate treatment systems. In light of the fact that the Federal Water Pollution Control Act, Resource Conservation and Recovery Act, N.J. Water Quality Act and N.J. Solid Waste Management Act encompass these facilities; the inadvertant application of this proposed bill is unnecessary and probably counterproductive. I suggest the latter since the implementation of the facilities has for several years been established public policy. Additionally, the inclusion of industrial pretreatment facilities and leachate treatment systems into the definition of a "Major Hazardous Waste Facility" would delay and in many cases preclude their implementation. This consequence is clearly not in the interest of industry, public policy or environmental protection.

In light of the above, I request that you consider the following

language amendment: (Section 3i)

"major hazardous waste management facility" means any commercial hazardous waste facility which has the capacity to treat, store or dispose of more than 25,000 gallons of hazardous waste with the exception of those pretreatment facilities implemented pursuant to the Federal Water Pollution Control Act and leachate treatment systems implemented pursuant to the Resource Conservation and Recovery Act, N.J. Water Quality Planning Act <sup>CK</sup> and the N.J. Solid Waste Management Act,

Thank You!



Charles J. McMullin VP  
Scientific Inc.

Note: underlined portion of the text is the proposed amendment



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