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PUBLIC HEARING

before

ASSEMBLY SOLID WASTE MANAGEMENT COMMITTEE

ASSEMBLY RESOLUTION NO. 111

(Directs the Assembly Solid Waste Management Committee to conduct an inquiry into the setting of rates and charges for the disposal of solid waste at transfer stations in northern New Jersey)

April 17, 1989  
Room 373  
State House Annex  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Robert C. Shinn, Jr., Chairman  
Assemblyman Nicholas R. Felice  
Assemblyman Harry A. McEnroe

ALSO PRESENT:

Algis P. Matioska  
Office of Legislative Services  
Aide, Assembly Solid Waste Management Committee

\* \* \* \* \*

Hearing Recorded and Transcribed by  
Office of Legislative Services  
Public Information Office  
Hearing Unit  
State House Annex  
CN 068  
Trenton, New Jersey 08625

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**New Jersey State Legislature**

**ASSEMBLY SOLID WASTE  
MANAGEMENT COMMITTEE**

STATE HOUSE ANNEX, CN 068  
TRENTON, NEW JERSEY 08625  
(609) 292-7676

ROBERT C. SHINN, JR.  
*Chairman*  
ARTHUR R. ALBOHN  
*Vice-Chairman*  
NICHOLAS R. FELICE  
ALAN J. KARCHER  
HARRY A. McENROE

March 31, 1989

Notice of a Public Hearing

The Assembly Solid Waste Management Committee will conduct a public hearing on Assembly Resolution No. 111 on Monday, April 17, 1989 beginning at 1:00 P.M. in Room 373, State House Annex, Third Floor, Trenton, New Jersey.

Assembly Resolution 111 directs the Assembly Solid Waste Management Committee to conduct an inquiry into the setting of rates and charges for the disposal of solid waste at transfer stations in northern New Jersey.

Anyone wishing to testify at the public hearing may contact Algis P. Matisoska, Committee Aide, at (609) 292-7676.

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[FIRST REPRINT]  
ASSEMBLY RESOLUTION No. 111

STATE OF NEW JERSEY

INTRODUCED JULY 2, 1988

By Assemblymen FRANKS and HARDWICK

1    **AN ASSEMBLY RESOLUTION** directing the Assembly Solid Waste  
2       Management Committee to conduct an inquiry into the setting  
3       of rates and charges for the disposal of solid waste at transfer  
4       stations in northern New Jersey.

5  
6       **WHEREAS**, In response to the State's deepening solid waste  
7       crisis, the Department of Environmental Protection has  
8       required a number of counties in northern New Jersey to  
9       construct and operate transfer stations to facilitate the  
10      transportation of solid waste to out-of-state disposal sites as a  
11      means of mitigating the short-term solid waste disposal  
12      capacity crisis in this region; and

13     **WHEREAS**, While every county fully recognizes its lawful  
14      obligation to provide sufficient disposal capacity to meet its  
15      long-term solid waste disposal needs, many northern counties  
16      are now burdened with exorbitant solid waste transportation  
17      and disposal costs pending the implementation of in-county  
18      long-term solid waste disposal arrangements; and

19     **WHEREAS**, While the utilization of in-state transfer stations for  
20      the purposes of facilitating the exportation of solid waste to  
21      out-of-state landfills is no more than a temporary expedient  
22      pending the completion of planned resource recovery facilities  
23      needed to achieve solid waste disposal self-sufficiency for New  
24      Jersey, it is nevertheless imperative that the State insure the  
25      economic viability of these facilities and safeguard the  
26      integrity of the State's interim solid waste management  
27      strategy; and

28     **WHEREAS**, In this regard, it is equally imperative to safeguard  
29      the interests of the ratepayers as well as the interests of those  
30      who have made considerable financial investments in the  
31      construction and operation of transfer stations, the economic

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:  
1    Assembly ASW committee amendments adopted February 23, 1989.

1 vitality of which is based on minimum revenues and expenses  
that are predicated upon anticipated waste volumes; and  
3 WHEREAS, While the expenses of transporting solid waste from  
the transfer stations in northern New Jersey to distant  
5 out-of-state destinations for disposal is understandably more  
costly than the various in-state disposal options available to  
7 counties in the southern part of the State, the reported  
profitable, albeit unlawful diversion and transportation of solid  
9 waste to landfills in the South and Midwest parts of this  
country for substantially less cost than the tipping fees charged  
11 at the State-sanctioned transfer stations is a matter of great  
concern and must be carefully investigated; and  
13 WHEREAS, It is altogether fitting and proper for this House to  
direct the Assembly Solid Waste Management Committee to  
15 conduct an inquiry into the manner in which the Board of  
Public Utilities, or relevant county or county utilities  
17 authority, set the rates and charges collected at these  
facilities, which rates and charges are necessary to meet the  
19 facility's capital and operation and maintenance expenses,  
including transportation costs, and report its findings thereon  
21 to the entire membership of this House; now, therefore,

23 **BE IT RESOLVED** by the *General Assembly of the State of  
New Jersey*:

- 25 1. The Assembly Solid Waste Management Committee is  
directed to conduct an inquiry into the manner in which the rates  
27 and charges for the disposal of solid waste being processed at  
transfer stations in northern New Jersey were set, and shall  
29 investigate complaints of overbilling and illegal ratemaking  
practices. Upon the close of its inquiry on these critical public  
31 policy issues, the committee shall<sup>1</sup>, no later than six months  
following the adoption of this resolution,<sup>1</sup> report its  
33 recommendations thereto to the Speaker of the General Assembly.
- 35 2. That a copy of this resolution, signed by the Speaker and  
attested by the Clerk, shall be forwarded to the Commissioner of  
the Department of Environmental Protection and the President of  
37 the Board of Public Utilities.

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ENVIRONMENT

Solid Waste

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Directs Assembly Solid Waste Management Committee to  
conduct an inquiry into the manner in which the rates were set at  
the State-sanctioned transfer stations located in northern New  
Jersey.



ASSEMBLY SOLID WASTE MANAGEMENT COMMITTEE

STATEMENT TO

ASSEMBLY RESOLUTION No. 111

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 23, 1989

The Assembly Solid Waste Management Committee favorably reports Assembly Resolution No. 111 with Assembly committee amendments.

AR-111 directs the Assembly Solid Waste Management Committee to conduct an inquiry into the setting of rates and charges for the disposal of solid waste at transfer stations in northern New Jersey.

In response to the State's deepening solid waste crisis, the Department of Environmental Protection has required six counties in northern New Jersey to construct and operate transfer stations to facilitate the transportation of solid waste to out-of-state disposal sites as a means of mitigating the short-term solid waste disposal capacity crisis in this region. These State-sanctioned transfer stations have been constructed in Bergen, Essex, Morris, Passaic, Somerset and Union Counties. Since the costs of transporting solid waste from the North Jersey transfer stations to distant out-of-state destinations for disposal is more costly than the in-state disposal options previously available to these counties, there have been a considerable number of reported circumventions of the joint DEP/BPU waste flow orders.

AR-111 directs the Assembly Solid Waste Management Committee to conduct an inquiry into the manner in which the rates and charges for the disposal of solid waste being processed at transfer stations in northern New Jersey were set, and to investigate complaints of overbilling and illegal ratemaking practices. Upon the close of its inquiry on these critical public policy issues, the committee must report its recommendations thereto to the Speaker of the General Assembly.

The Committee amendments require that the recommendations be submitted to the Speaker no later than six months following the adoption of this resolution.



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**ASSEMBLYMAN ROBERT C. SHINN, JR. (Chairman):** As most of you are aware the Assembly Solid Waste Committee essentially has been charged with a-- Under Assembly Resolution No. 111 directs the Committee to conduct an inquiry into the setting of rates and charges for disposal of solid waste at transfer stations in northern New Jersey, and through Legislative Services we've requested to start the process. We've invited the Board of Public Utilities, the Public Advocate, the Department of Environmental Protection and the six counties that have transfer stations in their domains to try to lay some basic ground work as to the history of these stations and the information that is part of the record that ultimately created the record that established the rates of these transfer stations.

From visiting Algis' office, we've received 12 three-inch volumes of documentation, and I thank the BPU for their cooperation in drowning us in those documents. We'll certainly review them. But we do appreciate the data sharing, and we're going to spend a lot of time on this project, I can assure you.

Murray Bevan, representing the Board of Public Utilities.

**M U R R A Y B E V A N:** Thank you, Assemblyman Shinn and members of the Committee. The Board welcomes this opportunity to testify on our rate setting of transfer stations in the -- primarily the northern and central part of this State.

In Al's initial letter to the Board and the material that we forwarded to you, there is a bit of confusion, at least in our mind, that I think maybe we ought to clarify at the outset as to what the Board does and does not have jurisdiction over. We do regulate transfer stations which are not exempt under the municipal exception. So those counties who have county utilities authorities we do not regulate or review those particular rates. In that case it would be Bergen, Hunterdon, and Sussex County.

In addition, we do not regulate all of the rates of solid waste collectors. Those collectors that are deemed public utilities that are primarily in the private scavenger area are the ones that we regulate. To the extent that there are municipal contracts or a community has a Department of Public Works, again, those rates are not scrutinized in the rate base rate of return review by the Board.

Before I begin the body of the testimony, I want to extend Commissioner Whitman's apologies for not being here today. She very much wanted to be, however, we have a hearing on a purchase power contract with Public Service Electric and Gas. That contract expires in a couple of weeks, and they need to get the hearing dates in before the contract expires. It's no good for us to really review it, so she simply could not change her schedule. But again, she extends her regrets.

ASSEMBLYMAN SHINN: Excuse me, Murray. The third county that you have no jurisdiction on rate setting -- Bergen, Sussex--

MR. BEVAN: Sussex and Hunterdon.

ASSEMBLYMAN SHINN: Hunterdon.

MR. BEVAN: If I could, I would like to take the Committee back to the summer of 1987 or thereabouts in that time frame. I recall personally that I had, during that summer and really in that spring, met with groups of mayors in Essex County to talk about the impending closure of the HMDC Landfill to municipalities in Bergen County -- in Essex County, I'm sorry -- and the impact that would have in those particular communities. And I know there were similar kinds of meetings, and there were similar kinds of discussions when Passaic left the HMDC.

And then in January 1 of 1988 when the four counties who were at the Edgeboro Landfill, the out-of-county communities that used the landfill were also removed from that facility and in each case, those counties established transfer stations.

The Board during that time frame was faced with a host of very difficult decisions that we had to make very quickly, very short time frames and really an unprecedented time at our agency.

There were rate case filings on behalf of the transfer station. Subsequent to that when the transfer station received a rate there were also hundred of rate case filings from the collectors that use those facilities. There were issues of setting host community benefits, the issue of whether a facility should or should not receive a franchise -- the franchise really is the indices of public utility status -- and in some of the cases, there were extensive and, in fact still are, contentious and litigious debates about where that issues stands -- in a couple of cases, again, considerations about whether our agency did, in fact, have jurisdiction and how we ought to handle those filings. The Board in most cases made a decision to put in place for the transfer stations interim rates. That is not a policy that we favor. However, given the circumstances and given the short amount of time that we had, it was really the only decision that we could have made.

Typically for, say, a Public Service or a Jersey Central -- if they have a rate case we're talking in an average amount of time of maybe six to nine months for a typical rate case. Since some of these-- I think none of them had a lead time of six months, but surely most of them were a month to two months at the most. There really was no other way for us to handle it to get the facility open.

And after they had done all of the other permitting and local kinds of things that they had to do there was really no other way then to strike an interim rate.

The results of that decision to go interim have really strained Mike's Division, our Division of Solid Waste, to their limit. They have a significant backlog of man-hours of cases, and our agency has attempted and is working very diligently to

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eliminate that backlog. That has resulted in hiring additional people in '88 in Mike's staff and also transferring additional folks to his Division to try and meet those needs.

However, I'd be less than honest with you than to say, you know, the backlog is eliminated or it will be eliminated in the next few months. It's going to take time. Meanwhile, we, in fact, still have those interim rates in place and a number of collectors are still on interim rates.

I've provided the Committee with the case summary and a status report on each of the transfer station cases. You can see they are in various phases of discovery, with the Somerset case being the closest to completion. But none of them have, as yet, been completed.

Commissioner Whitman, in redeploying a number of people from our other Divisions has really made a commitment to say, we're going to do everything within our power to finalize those rates. However, some of the cases are obviously very litigious. The process of a rate case can be lengthy and can be litigious.

If I can turn your attention to the Essex County filing. It's on page 8 of the document. You'll note that--

ASSEMBLYMAN McENROE: Can I, Mr. Chairman? I don't have that document.

MR. BEVAN: Why don't I give this to you, Assemblyman. I'll give you a summary of the Essex County case.

ASSEMBLYMAN McENROE: I mean, am I the only one that has it.

ASSEMBLYMAN SHINN: Yeah, we're going to have copies delivered to us.

MR. BEVAN: On page 8 you'll note that from February 1 to March 30 just of this year -- it's a six- or seven-week period -- the case that has been proceeding at the Administrative -- Office of Administrative Law. The parties have moved 17 interlocutory motions to our agency to rule on in just that seven-week period.

More positively, as I indicated earlier, the Somerset County rate case is very close to completion.

M I C H A E L S. K E S Z L E R Their settlement discussion's scheduled to be convened this week, as a matter of fact, on the Somerset County matter.

MR. BEVAN: In the Union County case which I'm sure other folks from Union County will comment on, one of the initial delays in that case is really an issue of whether we had jurisdiction over that facility or not. That subjected the case to significant delay and really that issue was not resolved until September of this year.

The Morris County Transfer Station case has undergone additional problems although hearings have proceeded and there have been a significant number of days of hearings. Again, the litigious nature of it, the number of interveners in the case and the due process piece has been such that we really don't think that matter is going to resolve, probably, for another six to nine months, somewhere in that time frame.

Finally, I just want to comment again on Mike's Division and the real admirable job that I think his people have done, working long hours; really over the last year-and-a-half doing really everything they can under this process to move those matters forward. But obviously because of the due process constraints which legitimately we ought to be under but are under, those matters have not come to a final resolution.

Mike and I would be glad to answer any additional questions you might have. We also have our Deputy Director of Solid Waste here, Wayne DeFeo, and Bruce Livingston who is our Supervisor of Rates.

ASSEMBLYMAN McENROE: Mr. Chairman, I have a few questions. I think it would be helpful for the record if we had a statement by the representation of the Board that's here today regarding -- and I'll refer to Essex County. You do

indicate that you had no jurisdiction over three other counties, but you do not mention Essex. I just think, for the record, we should have a statement as to why, now, you know, two years -- almost two years after we have had the imposition of interim rates, they're expensive, they're intolerable, in fact, from the viewpoint of cost to the citizenry and taxpayers in our county. Could you define for us in layman's terms, if you will, or your attorney's terms, why you do not have responsibility and an immediate response to the Essex County transfer station rates?

MR. BEVAN: Sure we'd be glad to. In the Essex County case, from the outset the Board took the position that we in fact did have regulatory jurisdiction over those rates and we're going to set a rate. We did that in July--

MR. KESZLER: July.

MR. BEVAN: --July of '87. It is also no secret, Assemblyman, as you've indicated, that although we've had probably 15 to 20 days of hearings on the case that the real contentious issue of getting behind those numbers really has not as yet occurred. The parties have preceded with just about every legal technique possible to argue motions, file motions up to the Board, take them on appeal up through the Appellate Division. And the process has not, as yet, gotten behind those numbers.

We are confident that that, indeed, will happen, but it has not happened as yet. So the process has been slow and has taken a long time, and there are more contentious issues that, still being argued in that case. I think our staff is doing everything they can to move that along, but it has not happened.

ASSEMBLYMAN McENROE: Do you think the legislation expressing the intent of regulating these transfer stations by your body, by the Board of Public Utility, would solve the problem without any delay?

MR. BEVAN: Well, I think the problem, quite honestly, is that the interim rate decision that we made -- and keep in mind really I think that was the only one the Commissioners could have made -- placed everything really on its head -- did 180 degrees. Normally with someone in a rate case working it through the process you don't get the rate and you, in fact, don't get your money until the case is done. So there is clearly an impetus on the parties to move the case along to resolve it. Here the rate's already been in place so the incentives obviously are not there.

ASSEMBLYMAN McENROE: When you have an interim policy -- policy to provide the capability of disclosing waste on an interim basis and you have 17 motions in a short period of time the strategy is obvious; it's to maneuver legally until the problem solves itself or collapses of its own weight. And that could be a taxpayer revolt if we continue to imposing this kind of expenditure on already overburden taxpayers in urban counties.

MR. BEVAN: Well, one of the pieces of the interim rate, Assemblyman, that I hope holds out some hope for ratepayers and taxpayers in Essex County is that by making the rate interim, it is then subject to refund. So to the extent that there have been overcharges and we get to the bottom of those numbers, those monies can be refunded. And so that's the regulatory protection that's in place.

ASSEMBLYMAN SHINN: Just a-- The interim rate that you established in that particular case in Essex, do you recall what it was?

MR. KESZLER: It was \$102 per ton for residential and \$107 per ton for bulk type waste. If I might make on point of clarification. With respect to the Essex County matter, the problems that Murray referred to are not relative to cooperation received from the County of Essex itself. The County entered into contract with two vendors for operations of

those facilities, is the operator of one of those facilities which has filed motion upon motion seeking to prevent us from getting a look at the numbers behind the contractual rates which they -- which are put forth in the contract with the County itself. The County piece is only a very small portion of the overall rate.

ASSEMBLYMAN SHINN: I'm a little confused about the-- I assume the time frame was the reason you didn't get the background for the rate. Can you talk about that time frame just a little bit about when you got the mission?

MR. BEVAN: Yeah, I believe it was filed a week to ten days to two weeks prior to when the rate wanted effectively was to go into place. So, if it was July 30 maybe we got it a week or two before that. There's simply-- An interim rate always is a snapshot in time, and sometimes you have a little bit longer look at it. But in this case, it was a very brief review or snapshot of where that filing was. And the rates were then put in place.

ASSEMBLYMAN SHINN: Essentially you had the contract that Essex had with the vendor, and--

MR. BEVAN: They did follow the contract. And keep in mind the contract does not detail the kinds of pieces that you'd look at in a rate case: the detailed amortization schedules, the transportation components, salaries, labor. All of the kinds of things that you thoroughly go into in a rate case were not there at that time.

ASSEMBLYMAN SHINN: You established the interim rate on some conceptual rate of return for the contractual agreement -- the length of time the contractual agreement was in place. I mean, is that the concept used to set an interim rate.

MR. BEVAN: Do you want to-- (referring to Mr. Keszler)

MR. KESZLER: I think with respect to Essex County what the Board was hold a brief hearing on the merits of the contract itself. And find that for purposes of avoiding the

crisis which would have occurred in Essex County that the contract terms themselves were reasonable enough to be put in on an interim basis. There wasn't really a rate of return -- rate base rate of return analysis. It was more an overall reasonableness approach, a one time review of the contract.

We're now attempting to require the vendors to file the financial documentation which will provide the basis for those numbers and allow the Board to make a finding as to whether or not they are in fact reasonable. Our contention is that the vendors are public utilities under the statutes in this State. That they have argued to date that they are not.

ASSEMBLYMAN SHINN: Okay.

ASSEMBLYMAN McENROE: Do you see it as hopeless? You seem to have a lack of enthusiasm--

MR. BEVAN: No, I wouldn't characterize it as hopeless.

ASSEMBLYMAN McENROE: --to resolve this problem in our lifetime or something. And this seems to be--

MR. BEVAN: Very lengthy, very lengthy, Senator -- or Assemblyman. And if we had it to do over again and had more lead time, obviously you don't want to do an interim rate. But in this case, given the lead time and faced with that kind of crisis environment, it was really probably the only decision we could have made.

ASSEMBLYMAN McENROE: Are you bringing private attorneys in to represent your interest or are you working with your own Board attorneys?

MR. BEVAN: We used the Deputy Attorney Generals, yes.

ASSEMBLYMAN McENROE: So we're even -- we're probably losing money because with all the expense of litigation on the side of the public and tolerating a continuing high rate of disposal, we're not really accomplishing much.

MR. BEVAN: I don't have a sense of the numbers but surely the county and municipalities that intervene and the State all attempting to get at those numbers, yes, are expending significant litigation expenses, yes.

ASSEMBLYMAN McENROE: Thank you.

ASSEMBLYMAN SHINN: Okay, thank you very much. Department of Environmental Protection. John Czapor, Gary Sondermeyer, or both.

J O H N C Z A P O R: Thank you, Mr. Chairman. With me is Gary Sondermeyer, the Assistant Director for Planning. Also other members of our staff, Ray Worb, Mike Winka, and Bill Hoffman. Obviously this effort predated me so we've taken the liberty of coming to you with people who are thoroughly familiar with the initiative. Quick comments before I turn it over to Gary.

The transfer station initiative represents two years of history in the six New Jersey counties of Morris, Passaic, Somerset, Union, Essex, and Bergen. In four of those counties there was an unprecedented action by the Department to take over the interim planning process. It represented probably the largest garbage moving project in the country dealing with a total capacity of 16,000 tons per day and was a very difficult initiative for the Department to undertake. And one that significant impact on the Department and the Division for over a year.

The program was successful, and it's something I believe our staff should be proud of, in that it kept garbage off the streets while providing an interim plan pending operation of long-term facilities. It was successful, of course, at a price. The price being significantly higher costs to the residents in that six county area.

The history of the transfer station initiative as we have called it in the Department is very complicated and obviously confusing, the reason for your hearing today. We've attempted to provide a brief overview. And we can make it as lengthy or as brief as time allows. We do have a package that we can leave behind also which will provide the critical information. The objective here to run through the history to

provide the Committee with sort of the full flavor for what went on over a year-and-a-half period.

We basically hope to demonstrate what we believe; that the initiative was based on good logic; that it was a fair process, an open process, and a public process, and that it was indeed the best approach that could be taken under the circumstances that faced the Department two years ago. With that, I'll turn it over to Gary Sondermeyer, the Assistant Director for Planning.

G A R Y   S O N D E R M E Y E R: Can we get the lights?

ASSEMBLYMAN SHINN: We're going to get the lights a little lower so we can-- And if we can get you flat against the wall with that pointer we'll be in good shape. (laughter)

MR. SONDERMEYER: Okay, we're all set. (Mr. Winka is controlling slide projector) Thank you. It's a pleasure to be before you today to try to summarize two years of history of what is commonly termed the Transfer Station Initiative. Really the Transfer Station Initiative is three separate processes: One that was fully administered by the Department of Environmental Protection, which involved the Counties of Morris, Passaic, Somerset, and Union, a separate process that basically predated the Department's initiative that was taken by Essex County, and then a process that followed the DEP's from Bergen County.

Basically the Initiative I'm going to be summarizing is the Department's which dealt with the four counties. If you would like at the conclusion of that, I'd be happy to try to address our perspective of Essex and Bergen.

Primarily our Initiative dealt with seven major steps: a consultant selection step where we had a private consultant develop a request for proposal for us to the private sector, strategy plan amendments that the Department undertook in the four counties, a request for proposal process out to the private sector for siting design, construction, and operation

of transfer stations, RFP evaluation and selection of the submissions that came, site specific plan amendments in the four county area, facility permitting process for the overall of the fourteen transfer stations that were developed under the initiative, and then finally the construction and operation.

Mike has passed out the seven major steps, and we've tried to organize this sequentially A-G so you can follow along. In addition, we are going to supply you with this chronological schedule. I'm not going to deal with it now; I'm going to get into more detail of each component of the initiative. But this will give you a time line from when this whole process was started in November of 1985 through until operation took place in January of 1988.

The genesis of the whole program, again, the formulation of the strategy, the need for the program. Back in late 1985, we acknowledged that Edgeboro was an over utilized landfill. It was receiving solid waste from over 100 municipalities from Somerset, Morris, Union, and Middlesex Counties. Nearly all of the municipalities were using Edgeboro. Edgeboro's capacity was being tapped out.

At the same time up in the other waste shed in the northeast, the Hackensack Meadowlands waste shed, there were previously agreed upon termination dates for the utilization of HMDC capacity. In Essex County it was August 1 of 1987 and Passaic County it was December 1, and in Bergen County it was the end of 1987. So acknowledging that situation and the fact that there had been a delay in long-term facility development in those counties, there was a need for action on the part of the State.

We had three basic options to deal with: no action alternative, a takeover of the long term planning process in each of these four counties, and some type of a hybrid of an interim planning process. The option selection variables that we looked at, we felt that the no action alternative was simply

irresponsible. The State could not simply sit back and allow this to happen. Some action, some intervention was necessary.

From the long-term perspective we didn't feel that we had the necessary powers to take over the process for the long-term for these counties, primarily because we lack under the Solid Waste Management Act implementation powers. We have planning powers. We do not have implementation powers of condemnation of land, independent revenue generation, and entering of contracts.

Therefore, what we selected was an interim planning alternative. And that had a number of advantages from our perspective. First, we maintained what we call the performing district policy. What we meant by that was we would not be directing solid waste from northern counties that had a shortfall to the southern counties that had already developed their long-term space. We felt that was very important to maintain that.

In addition, we were maintaining the integrity of the long-term planning process. We weren't taking that over from the counties. These counties were developing long term facilities, they just were not in place yet. So we felt it important that we weren't getting into the long term process. And finally we were under extreme time constraints so the interim planning process would provide that infrastructure of transfer stations to allow long haul out-of-state disposal for a three- to five-year period.

Now if you'd like to follow along the major steps. The first major step was the consultant selection process. And again, I'd like to focus primarily upon the process that we followed because I believe it was a very public, fair, and uniform kind of a process.

The RFP was developed in-house by the Department, and what we utilized was an emergency form of procurement which we just termed a limited competition contracting. What we did is

we sent the Department's RFP to five companies that we selected, Camp, Dresser, McKee; Velzy Associates; Baker TSA; Woodwark Clide, and Malcolm Perney.

We had a formal process for the review of the submissions from these five companies who were vying to get the award to draft an RFP to go out to the private sector. So if you will, this is an RFP for an RFP.

Representation on the review team were from the DEP Commissioner's Office, the Division of Solid Waste Management's Planning and Engineering staffs, the Department's Division of Financial Management, and the New Jersey Department of Treasury.

We developed review criteria for the ranking of the proposals. We came out, ultimately, with an evaluation committee report, and Baker TSA was selected.

Just quickly to hit some of the criteria, we developed weights, and we developed three major categories for evaluation of the proposals of the five firms: the quality of the technical submission, organization and support, do they have prior experience in siting and design of transfer stations, do they have an experienced project manager, could they meet the tight deadlines that we're under for this entire initiative, do they have expertise in public procurement, and finally the appropriateness of their cost submissions to us. Again, these were the relative weights. And again, Baker TSA was selected.

The second major component of the process is what I term the Strategy Plan Amendment process under the Solid Waste Management Act. Each county has to embody with their ten-year master plan the strategy for how they're going to deal with their solid waste. Since we were intervening in the process and basically taking it over from the four affected counties, we felt the need to amend their solid waste plans to put in this new strategy. And again, you're used to the standard process where the county would do a plan amendment. They would hold a public hearing, the Freeholders would adopt the amendment and submit it to the State for review.

In this case, since we were taking over this process, we had to do both steps. We had to propose the amendment, hold the public hearings, do a response to comment document, certify the amendments, and really do the whole packet. Again, the strategy in the short term was to go out to the private sector to site, design, construct and operate transfer stations in each of those four counties. Each county was treated independently in this process. In addition in the strategy proposed plan amendments we gave an opportunity to the counties to come in at any point in time and take over this process from us.

Long-term component addressed in this amendment as well which dealt primarily with a plug that the counties had to continue with their own long-term plans. We were not taking that process over. We wanted to make it very clear that they had an obligation to continue. In addition, we immediately imposed mandatory recycling requirements on each of the four counties which really predated what we know as the Mandatory Recycling Law, to pull out as much recyclable material before this out-of-state disposal took place.

We followed a public hearing process; again, the standard notification and newspapers. We received comments at the public hearings, and we developed a response to comment document before we certified each of the plan amendments. And these are the dates in May of 1986. Our standard State level review process was followed where at least 16 State level agencies were given an opportunity to comment upon this whole initiative. The Department of Transportation, Department of Health, Public Advocate, EPA, State Departments of -- excuse me -- Divisions of Parks and Forestry, Fish Game and Wildlife; Water Resources, Environmental Quality, the whole bit. So it was a very open and public process that we followed, again, in this second phase.

Just very quickly, to give that Strategy Plan Amendment process just some dates, again, we even went further than the normal process to make sure that we were contacting everybody and trying to involve everybody. We published two papers of general circulation on two separate occasions, sent direct mailings to the Freeholders, to the Mayors of every town in the four county area, to the Solid Waste Coordinators. We put the amendments on file in each municipality that was affected. These are the hearing dates. And again, we kept the process open for written comments after the hearings.

The third major component in the process, or step, a request for proposals process. Again, there were technical submission requirements that were developed, siting criteria -- both exclusionary siting criteria, and nonexclusionary criteria -- which I'll get to in a moment. We held a series of meetings. Again, this is really the most important piece, I think, in the process itself because here is where Baker engineers developed this request for proposals to get the private sector to come forward to do this initiative on behalf of the State and the counties.

We had a preliminary RFP information meeting in April of 1986. And what we did is we sent notification directly to all the major hauling companies and facilities in the State. The end result of that we had approximately 30 firms come forward to this preliminary meeting to explain what we were going to do, and we gave out to them draft copies of our RFP.

Following that, we had a mandatory bidders' conference, RFP conference in June. And at that instant, we had 38 private companies come out in the solid waste business and 14 consulting firms. So we had a very strong showing of interest and response to this RFP, at least, initially here.

In addition to that, as we were going through this process, we realized that to the extent possible we should be maximizing the use of existing transfer stations. So we held

three separate meetings directly targeted at trying to bring in those existing transfer stations into this package, and we did get good participation at these meetings.

Just procedurally, we did have four addendums to that RFP which basically fixed technical errors and supplied supplemental information. And dates were set up for the receipt of specific proposals to site, design, and construct these transfer stations.

Another subcomponent of the request for proposal process, again, the technical proposals that the vendors had to submit had to have a site or sites. They had to provide proof of ownership or lease rights to those sites. They had to be able to fit the proper capacity at those sites to meet the needs of an entire county's waste. They had to provide us with transportation plans. They had to have both primary and secondary contractual arrangements for out-of-state disposal and provide proof of that to us. They had to give us a project schedule which would demonstrate that this process could be achieved, and it could get the transfer stations on line in time. They had to show us they had the qualifications and experience that was necessary. The financial capability to undertake such a development process, personal resumes, cost proposals on two time frames, a three-year amortization of the cost and a five-year proposal. It had to comply with 901 and submit disclosure forms.

I mentioned before we had criteria in this proposal. When they submitted to us, they had to pass both exclusionary criteria, floodways, wetlands, etc. In addition, we ranked the proposals based upon responsiveness to the nonexclusionary criteria, land use compatibility, access to the site, zoning compliance, distance to noise, receptors, proper setbacks, and if possible, use of facilities that were already in place so that it didn't have to construct brand new facilities.

Proposal evaluation and selection process, this is the fourth major step -- go through each county. In Morris County we received a proposal from MCTS. It was selected as responsive in August of '86. In Morris County there were two sites originally proposed, one in Mount Olive, one in Parsippany-Troy Hills. After evaluation, we found that the Parsippany-Troy Hills site violated one of the exclusionary criteria of wetlands, and that site was dropped. As a result, they were given an opportunity to resubmit an alternate site which they did do. And that site was found to be responsive in February of 1986. So the transportation system that was developed was a site in Mount Olive and a site in Parsippany-Troy Hills.

In Passaic, a consortium of local businessmen came together under the name of PENPAC and they proposed four transfer station sites; two in the city of Paterson, Fulton Street and Iowa Avenue, one in Totowa and one in West Milford. That was considered appropriate and they were selected in September of 1986.

Over time, the West Milford site was deleted from the Passaic County plan and was not pursued. The Iowa Avenue site was an existing transfer station facility. Fulton Street was developed and Totowa's was developed at a later date and began operations earlier this year.

In Somerset County, we received two proposals from Bridgewater Resources Incorporated and SIRC. Originally SIRC proposed a new site location to be part of this initiative, and that was rejected. However, SIRC operated an existing transfer facility that became part of this package. So again, we had two proposals, one rejected but ultimately an existing station becoming part of the whole.

In Union County, we had perhaps the most confusing of the processes, where we had a lot of change over time. But originally an original response came from Ellesor Incorporated,

EGRC, and Automated Modular Systems. These three were considered acceptable. Ellesor and EGRC were originally put in as the primary facilities with AMS given a back-up type of a status. As it worked out over time, EGRC did not pursue this initiative so AMS was brought into it. And we wound up also utilizing the existing Summit Transfer Station. So the Union process resulted in three facilities; Ellesor, AMS, and the Summit Transfer Station.

Proposal, evaluation, and selection process. Again, in the review of these submissions, we followed a formal process. We had evaluation committee representation from DEP, BPU, the individual counties and Baker TSA. We did the ranking. I mentioned before, we had the criteria for responsiveness and responsibility; responsiveness pertaining mainly to the technical response of the RFP, and if they pass the exclusionary criteria and the ranking of the nonexclusionary criteria; then the responsibility aspect, the cost proposal, their individual qualifications, and the commitments that they had for out-of-state disposal.

We developed selection reports which summarized this entire process and how these vendor proposals were reviewed. And finally, we issued letters of intent to the vendors that were determined to be acceptable.

Just to go through very quickly the cost proposal at the time -- and it's important to keep in mind that this was when the proposals were submitted. Three-year and five-year time frames, you can see the costs that were submitted as part of the response in the proposals. The end result on average, was an average cost of about \$86 that was projected at that time. I think it's important to note again that at that time these were preliminary numbers. They were not based upon contracts that these people had entered. So they were just preliminary numbers.

Over time, they did enter contracts because, what would beg the question right away is, "Well if that's the average, how come the average turned out to be about \$102 to \$105 a ton?" I think a number of things changed over that subsequent year. We had a situation where these folks were originally looking at Eastern Pennsylvania. Over time they wound up utilizing some Western Pennsylvania capacity, higher transportation costs to get out there -- out to the Pittsburgh area. Also at this time it was not realized the importance of the Pennsylvania permitting process. They have a separate process called the Modular Permitting Process for industrial waste and medical waste. The end result being that virtually none of that waste material gets into Pennsylvania. So these vendors had to get alternate capacity in Ohio, West Virginia and Kentucky at higher costs.

Of course, over time, supply and demand really changed. At this time these numbers were based on preliminary letters of intent. When they got to the stage of contracting capacity started getting used up and just simple supply/demand, the costs escalated.

The fifth major step was a second round of planning. Now that we had the vendors selected, and we had specific proposals, we went back to the public planning process to embody these proposals into the four separate county plans. Plan amendment process, we put in the transfer station sites, operational plans, waste flow directives, transportation routes, and we noted other deficiencies. We went through another public hearing process, another State level review process and certified approval of these dates.

The sixth major step, facility permitting process. We had before us three types of permits that could be utilized: master performance permits, temporary certificates of authority to operate, and standard solid waste facility permits. The process was a standard process that we do, only it was in an

abbreviated format. We hit all the bases, but it was done just under emergency kind of circumstances. We dealt with impact statement submissions, engineering designs, traffic analysis, noise assessment, air and water assessments. We had to get New Jersey pollutant discharge elimination system permits. Other permits that were required in this whole thing before these facilities could get constructed; DCA local building permits, DOT road access permits, erosions sediment control plans, "A-901" disclosure review, and of course, BPU authorization for tariffs.

ASSEMBLYMAN SHINN: Gary, was part of your process a completed "A-901" required to operate this facility?

MR. SONDERMEYER: We gave temporary "A-901" authorizations because under the circumstances, as you know, the process is very voluminous, and temporaries were issued under the emergency circumstances.

The permitting process, again, just real quickly; Morris County, Master Performance Permits were issued, in Passaic, Master performance permits issued, Iowa was an existing facility. Totowa since it came afterward received a full solid waste facility permit. Once again, West Milford was dropped from the process. In Somerset County a full permit was given to Bridgewater Resources. However, they weren't quite ready on time so they wound up not being able to comply with that, so we had to issue a temporary certificate of authority to operate for a short period. And that went back to, over time, their full permit. SIRC, because they expanded, even though they were an existing facility, they got a full solid waste facility permit.

The case of the Union County, AMS received a master performance permit, and Ellesor, master performance permit. Again, EGRC did not pursue it and Summit was an existing facility.

Finally, the last phase of the process, construction and operation. In Morris County, again, what had happened over

time Edgeboro received the Edgeboro order for termination of landfill operations which called for Morris, Somerset, and Union to get out of use of that facility by the end of 1987. In the case of Morris County, they did open on time. They opened January 1 of '87. It was an open air operation without a roof. Passaic County, they had to be out even quicker, as of December 1. The Fulton Street station was ready. Again, an open air operation. Iowa was existing, so that was ready. Totowa didn't come on-line until just this year, a couple of months ago. And Somerset County, BRI was put into effect -- again, an open air operation. In light of the emergency situation we were dealing, SIRC was preexisting.

Union County, same kind of a thing, we had both AMS and Ellesor operating as open air up-front, and the Summit facility was preexisting. So again, the point being here -- I think that's the last slide -- we went through a very arduous process. It seems like a long period of time, two years, but it's not. We probably shaved, at least, a year or more over the total facility permitting process. I think we followed every step that was required under that process, and the end result was the garbage was kept off the streets and was exported out-of-state and is still going out-of-state now, as a short-term measure pending the development of the long-term facilities, which are progressing.

MR. CZAPOR: Just to reinforce that in addition to being successful, I think what struck me about this process was how many times we had the public involved; that it was an open process, that the criteria are here to be evaluated, the selection process is here to be evaluated, and the public was keyed in through the plan amendment process and the permitting process along the way.

With that, Gary, myself, and the staff is here available for any additional questions.

ASSEMBLYMAN SHINN: You were involved in-- The Essex and Bergen, was a little different. Is that correct?

MR. SONDERMEYER: Correct. The Essex process-- We did not take over the county planning process in Essex County. We realized that the termination date for disposal privilege in the Meadowlands was coming up, August 1 of '87. We are in contact with the County. The County's response was that they would be doing their own transfer station initiative. They followed a very similar process to ours. We did work with them in trying to expedite the permitting process. In fact, that whole concept of a master performance permit was created through law about that time through an emergency rule which allowed us to give the permits to the waste Management facility and the Moriello Facility and Avenue F.

And the Bergen process-- Similarly, the Department was under the long standing understanding from the Hackensack Meadowlands Development Commission that they would attempt to accommodate Bergen and Hudson within the district with expanded capacity. That basically was the assumption that we're operating under; that Bergen would have a place to go. The Meadowlands is made up of municipalities from Bergen and Hudson, and it was felt that there would be additional capacity.

It was not until we got into 1987 -- quite a bit into '87 -- that it was realized that the Kingsland capacity was just about exhausted and that some other capacity would be necessary.

Similar to the Essex situation, Bergen came forward to take over the process. They went through their own bid solicitations and developed their own facility right next to the Kingsland. In fact there were a number of facilities, a temporary facility and then a permanent facility. But similarly, the Department did not take over that process; the county did it.

ASSEMBLYMAN McENROE: Mr. Chairman, I think the presentation was a very fine one but it -- until your question relative to Essex and Bergen it really was off today's

repeated by

subject. We're here to determine why the rates in six northern counties for disposable waste are so exorbitantly high. The Department has mentioned that you have planning powers and no authority in implementation, which I understand. But in the process of developing a statewide initiative, a new way to manage or a better way to manage solid waste, was the concern regarding the cost of disposal for those counties impacted by the transfer station option? Was that considered? Was that given much thought?

MR. SONDERMEYER: Yes, the cost certainly was considered. Again, we took over the process in that four-county area and that's really what I was speaking from. But what I tried to bring out in the presentation is that the cost factor was a critical factor in the submission of the proposals on the private sector. We definitely looked at that cost. The cost average was \$86 a ton. Unfortunately, despite the fact that we had 38-some-odd companies initially express interest in this proposal, in most cases we only had one proposal per county. And again, our objective was to make sure that we didn't have a situation similar to what happened in Sussex, in Hunterdon, and Warren where the garbage piled up in the streets after the Keystone closure. So our primary objective was to get it out-of-state.

ASSEMBLYMAN McENROE: I think you've been very successful, and I think your comment regarding the environmental impact of the policy has been a good one. We have not had revolt, we have not had garbage spilling into the public thoroughfares of the State. But it would seem to me if you approach something from a statewide view, you'd have to consider the impact, not so much on the cost of construction and operations, but the cost of the citizen rate for disposal of their waste. And when resource recovery facilities were planned the Department recommended a bond issue strongly supported by the citizenry of this State, gave considerable

seed money, funding those counties. Essex was a recipient, Camden, all these other counties, Bergen also. All have received monies to provide seed money, construction money, down payments on facilities.

When you came to the program of providing this transfer station option, you just told each county, you came around with your charts, and they were very well done and the presentation is very nice, but it just left those taxpayers in those counties with an intolerable burden as far as the cost and that we have a statewide strategy, if we concern ourselves with an average cost of utilities across the State, of waste disposal as a utility, somewhere in all of this we don't have a fairness that I think should be part of the planning process.

I mean there are so many areas of responsibility that we have in government. Education: We demand the fair opportunity for everyone to be educated. We're trying now to level the cost of the court system. We're doing all these things so the impact is felt fairly evenly by everyone across the State.

In this particular area, it is an issue that is strangling the opportunity for governments, municipal and county level, to deliver the kind of service they want to deliver for their people. It's just-- In this one area, we've just planned for everything except consideration of taxpayers. I wonder where, not only we as the Legislature, but you as a Department with great responsibilities -- where have you been in that you did not recommend that there be some leveling of the cost for those taxpayers out of bearing such an impact? Have you done anything to recommend to the Legislature or to the Executive of this State--

MR. CZAPOR: No, we have not.

ASSEMBLYMAN McENROE: --that we need some monies committed to that?

MR. CZAPOR: I think that -- and Gary can expand on that -- but I think one of the things that we take very

seriously and maintain is our basic policy of countywide planning, and planning at the county level. And in looking at the options that were available to the Department two years ago, maintaining the integrity of the existing planning process, maintaining the integrity of those counties that were a little bit more advanced was one of the issues that was of great concern, of paramount concern. The options were extremely limited at that time and remain limited at this time; its redirection into counties that have already performed utilizing capacity that those taxpayers had already arranged for and bonded and provided financing for.

I think everyone would share your concern but there can be no winner. There would only be additional losers in the process. I think one of the factors that is in this document is to penalize those counties that were a little bit further advanced by tying up their capacity with something that clearly drove the Department at that time. Although it clearly doesn't make it any easier on those people who have to bear the burden in the northeastern counties.

MR. SONDERMEYER: You're absolutely right, we have no control over out-of-state costs. We really don't, and when we looked at this thing we ran some calculations. I think I may have failed to mention it in the presentation. We actually calculated what it would mean if we redirected the northern waste to the southern facilities that have been brought on-line. It would have blown out every ounce of available capacity in the State within a year to a year-and-a-half.

What we would have done in that case is just created a crisis situation for every county, so the only available option was out-of-state disposal. And the costs that came with it were very unfortunate. We did factor in costs into the proposals. We knew that the Board of Public Utilities as the economic rate setting agency in the State would be reviewing those rates and hoped that the rates that were proposed were,

in fact, fair and reasonable and that in time the rates, if necessary, would be altered.

ASSEMBLYMAN McENROE: How could you be that far off on the transportation factor? You're way off on the figures on the charts.

MR. SONDERMEYER: Yeah, they were. They were off, and I think that the main thing that I tried to bring out there is the original proposals that came in anticipated more availability of eastern Pennsylvania capacity as opposed to western Pennsylvania capacity, and no one was thinking about sending industrial waste out to Ohio and West Virginia and Kentucky.

ASSEMBLYMAN McENROE: One thing I just want-- Next time you make your presentation, please emphasize the cooperation you've had from municipal, county officials and also from the poor beaten citizen who pays the bill, because we could have a revolt of substantial proportions if the people ever sat down and really thought about what's happening in this garbage removal area.

ASSEMBLYMAN SHINN: Thank you very much. Ray Makul, New Jersey Department of Public Advocate? The Public Advocate's not here? (no response) Okay, if they come back, we'll call them. Essex County Executive Nicholas Amato?

C O U N T Y   E X E C .   N I C H O L A S   R .   A M A T O: Good afternoon.

ASSEMBLYMAN SHINN: Welcome.

COUNTY EXECUTIVE AMATO: Thank you very much. If I may I'd give a brief history about the Essex County situation. I think I can bring some enlightenment with regard to what's going on before the BPU, and I'll respond to any questions.

Mr. Shinn and members of the Committee, I'm pleased to report to you that it is indeed possible to successfully dispose of solid waste in New Jersey, more specifically Essex County. It is not easy, I submit, but it is possible. As an

elected official, I can tell you there's is probably no more politically charged issue facing county and municipal governments than solid waste disposal. Perhaps the best way to illustrate this point is simply to brief you on how we've tackled the problem in Essex County.

When I took office on January 1, 1987 I was faced with a waste disposal crisis. On July 31, 1987 pursuant to a 1983 consent order, Essex County would be barred from sending its garbage to the Hackensack Meadowlands landfill. It was projected that the proposed resource recovery facility would not be built and ready to accept the County's solid waste until 1991, at the earliest. That meant we had seven months to plan and totally implement an interim solid waste disposal plan for approximately 1.2 million tons of garbage per year.

To give you an idea of the time constraints we were under, I should note that the normal time frame for planning and implementing an operation of this scale is two-and-a-half to three years. You may be wondering how the county could get itself in such a bind? Very simply I call it, "the politics of garbage."

The previous administration understood very clearly that the July 31 '87 deadline was fast approaching. But rather than plan for interim waste disposal to cover the three years before the resource recovery facility would be ready, they chose to do nothing and to hope to force the HMDC to remain open to the County since there would be nowhere else for our County garbage to go.

As a new County Executive and also as a licensed attorney I knew that the County could easily be bound by the consent order it had willingly signed in 1983, and I had to find an interim solution, so we got down to business.

At the end of December 1986 at the urging of my transition team, the County sent out solicitation proposals for transfer stations which were advertised in newspapers and trade

journals. At the end of February 1987 we received nine proposals for ten sites. Every proposal received was carefully evaluated by the Essex County Division of Solid Waste and its consultants, by the DEP and their consultants, and finally by the Essex County Board of Chosen Freeholders and their consultants.

Proposals were judged on site plan design, environmental considerations, tonnage capacity, space for waiting trucks, traffic impact, highway access, and out-of-state contracting landfill capacity. Each vendor's ability to meet the above criteria was evaluated. And after exhaustive reviews of all proposals and interview with potential vendors, two vendors and three sites were approved by the DEP and then recommended and forwarded by my administration to the Board of Chosen Freeholders. The Board adopted and ratified the recommendation by ordinance on June 3, 1987. The DEP's approval came on June 8, 1987 when permits were granted to two vendors. What that meant was that we had one month to implement our interim solid waste disposal plan.

On July 21, 1987 the BPU granted Essex County's petition for a franchise for resource recovery, to operate the transfer stations. On that same date the BPU approved the vendors' contracts to operate the three sites. Final approval for the County's interim solid waste disposal plan came on July 31, the deadline date itself when after extensive public hearings, the Board of BPU unanimously approved the disposal rate which Essex County had contracted with the vendors.

In seven months, Essex County government in cooperation with DEP, the BPU, was able to accomplish what had been ignored for five years, something which most people say could not be done; that is finding an alternative interim disposal plan by the July 31 deadline. It was my responsibility to see that the closing of the Hackensack Meadowlands we would be able to avert -- by the closing we

would be able to avert a very serious health emergency. We had to keep 3000 tons of garbage per day off the streets of Essex County in 100 degree temperature at the same time without interrupting services to our residents and with the least possible hassle to our commercial haulers and vendors.

We did this, and there was no interruption in service. At 5:30 a.m. on Saturday morning August 1, 1987 the first trucks rolled through the transfer station on Frelinghuysen Avenue. At 7 a.m. the Avenue A site received its first truckload of garbage. Admittedly the procedure was not flawless. There were minor inconveniences at first as truck routes were altered to prevent bottlenecking. But under direction of the Essex County Police, Newark Police, Jersey State Police, traffic now flows well at both transfer stations, and for the most part, there's been a spirit of cooperation among the county, municipalities, the haulers, and the vendors which enabled us to work out the difficulties.

Considering the history of the interim disposal crisis, the speed with which our plan was implemented and the smoothness of the operations, I am convinced that we developed the best possible plan, and that we had negotiated the best rate possible. Given the same set of circumstances, I would follow the same course of action.

It was not an easy course of action to choose. As you can imagine, it took plenty of political heat from both during and after the process. But you cannot choose political expediency in a matter of solid waste disposal. You only can do what is right, what is ultimately in the best interest of citizens who depend on their government for these crucial services.

And when it's all said and done, there's only so many things you can do with garbage. You can bury it. You can recycle it. You can take it to a transfer station. And you can ultimately dispose of it out of a landfill, or you can burn

it. But you can't put it on a barge and hope it's going to go away. You must deal with it.

I would submit that our interim rate was set at \$102 a ton which includes the rate with the vendor of \$97.30, recycling tax of \$1.50, State mandated host fee of 50 cents, and County administrative cost of \$2.85. Our total rate is \$102.50, and I submit to you it is the lowest true rate of any county using transfer station -- out-of-state landfills in this State. There is no county that has a lower true rate than we do.

Some would say that the rate in our sister county of Bergen is lower. But unfortunately in that rate they do not include the operation of the transfer station. The Passaic County rate does not include the rate of the debt service. So consequently when you figure all rates at present value Essex County is the lowest rate, Sussex \$117, Morris \$124.42, Hunterdon \$125, Union \$135.15, Passaic County we estimated to be between \$120-\$130 a ton, and Bergen County also \$110-\$120 a ton, based upon our information.

With regard to the BPU, I would suggest to you that on Friday both vendors submitted all the material necessary with regard to the financial disclosure. That information has been put under seal, Mr. McEnroe, and I suspect it will be made public shortly.

Additionally, part of the thing that's going to hurt the process is that the firm representing Newark has been -- intends to be disqualified on the grounds that there was an attorney working for BPU who went with that firm during the hearing date. So that's another problem they're faced with.

I'll be happy to respond to any questions.

ASSEMBLYMAN SHINN: You said both firms submitted the information that was requested?

COUNTY EXECUTIVE AMATO: My information is that both the two transfer vendors have submitted their information to

the Administrative Law Judge -- which information now under seal. And I suspect it will be made public very shortly.

ASSEMBLYMAN SHINN: Okay, any questions? (no response) Very good report. Thank you. Larry McClure, Bergen County Utilities Authority, Executive Director.

L A R R Y J. M c C L U R E, E S Q.: Good afternoon. I have with me General Counsel Steven Sanisi, and that is for actually a specific purpose. As you may or may not be aware, I assumed the responsibilities of the Executive Director of the Authority on January 9 of this year, so therefore I was not -- I did not live through the process, although I've taken a considerable amount of time to review and study the history of the Bergen County process which has brought us up to this state.

As with the case in Essex, by way of example, we were landfilling with the HMDC. And Mr. Sondermeyer made an interesting comment, and this brings us to a focus in and around the fall of 1987, when he indicated that it was anticipated that because Bergen County composed a greater part of the HMDC, that despite the changes that were taking place, it was logical and reasonable to assume that there would be continued landfilling capacity for Bergen in the HMDC.

And it was, in fact-- There were, in fact, discussions and negotiations up to and through the early fall of 1987 in that regard which lead the Bergen County Utility Authority to believe that the December 31 1987 date would not, in fact, be a get out date for Bergen County. And I think, in fairness, that was a reasonable assumption under the circumstances, because of the location -- the primary geographic location of the HMDC.

I should note by way of an aside, Hudson County stayed in despite the direction to get out and litigated the issue and still remains in a position to landfill in a district that we geographically comprise more than Hudson does.

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So it brought us to the fall of '87. In October of '87 we did, in fact-- We, being the Bergen County Utilities Authority, having the mandate of dealing with the solid waste issue, submit and go out for bid proposals.

We advertised. We followed all those procedures which we were required by law to do. Initially we received no responses to those bid requests. At that time, keep in mind, that we were still negotiating with HMDC but we were addressing this issue as an alternative in the event that turned out not to be a realistic probability.

We again went out for bid a second time. At that point we received two responses, neither of which -- two bid responses but neither of which were actually responsive to the bid proposal that we had submitted.

At that point and almost precisely around that time, November 30 of 1987, for Bergen County a day that will long be remembered, we were advised by the HMDC that they had reversed what we thought their position would be and that we, in fact, were going to be held to the December 31 date.

This required the initiation of an emergency negotiation process. With the interested vendors we distributed the proposals widely and began that process of negotiation. We also undertook at that point through Counsel negotiations with the HMDC. Those negotiations resulted in among other things, are being permitted to remain in the district for an additional 60 days. Our new date then became March 1.

We received responses to the solicitation. We were involved in competitive negotiations, and we ultimately made a determination as to one company, in particular, to handle the solid waste for Bergen County.

Initially we had two companies who were going to participate jointly and separately in dealing with the 3000 plus tons a day of solid waste coming out of Bergen County. And one of the preconditions that we had with respect to that

-- these negotiations -- was that the companies have dual-landfill capacity -- dual-state landfill capacity. And that becomes particularly significant as we approach today's dates when we are being told that Pennsylvania and Ohio may very well be telling New Jersey, "We don't want any more of your garbage." So we were anticipating that at the time. And we're concerned about it and insisted upon any person coming in for this contract to have two options for us. Two out-of-state disposal options, meeting all the necessary criteria.

Unfortunately one of the companies that we felt would handle one-half of the waste turned out not to have what we thought they were representing to us that they had. As a result, the Mitchell Laidlaw Company had the opportunity to pick up the option on the second half. They now are the company that disposes of, by way of transportation, the solid waste from Bergen County.

Now Bergen County also at that point in time undertook to construct a transfer station that we would operate -- we as a Utility Authority would operate. Mitchell's responsibility would be disposal; and ours would be the operation of the transfer station and those aspects of it which would bring the garbage to the transfer station in North Arlington.

By March 1, which is the get out date, we did have, and I think it's consistent with some of the other programs that took place here, what was called a temporary pad -- a temporary disposal facility, an open air disposal facility. Obviously everyone can realize that over a 60 day period in the winter, the ability to construct anything during that time period was a tremendous task and we were able to accomplish it. We, like the other counties in responding to the requirements and the mandate that we had and the public health concerns, did not have any difficulty at that point in time in meeting the primary goal; that being to avoid that health emergency with garbage piling up on the street.

I will tell you now, regarding that time period and even to the present -- and I think everyone who will testify from any county here will tell you it hasn't been easy. There have been a lot of obstacles and difficulties. We had full cooperation from the DEP regarding this process. We were subject in many areas to their review and their participation. The temporary transfer facility was opened while a permanent one was under construction, and quite frankly, is not completely constructed. There is still some tightening up aspects of that facility which is still taking place to date.

But we now have in place in Bergen County, a little over a year later, a transfer station facility with four balers capable of handling 3700 tons a day. Our biggest problem is that we're not getting 3700 tons a day and that there's a tremendous amount of diversion of solid waste out of the district and out-of-State, which is resulting in, obviously, an ultimate impact and will result in an ultimate impact on our ratepayers.

ASSEMBLYMAN SHINN: What are you receiving?

MR. McCLURE: Presently we are receiving in the area of 2200 to 2300 tons a day. I will tell you that we have been in litigation -- enforcement litigation -- for a substantial period of time. We are co-plaintiffs with the DEP and the BPU with four haulers, in particular, as defendants in our County. But we are awaiting an Appellate Division decision, I would say daily and hopefully everyday involving an injunctive order -- temporary restraint order that had been issued by a Chancery judge within our County.

A very important aspect of that issue, one of the haulers, who is a defendant in that case has, in fact, in the interim, brought the waste back. Our figures were lower over the last few months but they are now moving back up because I will suggest to you as a former prosecutor that as others saw four entities resisting successfully or delaying or stalling

enforcement of the Solid Waste Plan in Bergen County, others began to say, "Well, maybe I can do it, if not completely, a little bit." You invite that kind of response when you don't have that kind of an effective enforcement proposition.

I will also tell you that I have personally received phone calls from haulers who had been complying and are complying, who felt put upon, in the sense that they are now engaged in almost an unfair competition circumstance because they were following the law.

They were being underbid for contracts; they were losing commercial accounts; and are losing commercial accounts to those individuals who are in violation of the law.

The biggest difficulty we face, presently, in Bergen is the lack of compliance, or noncompliance of the law by some of the haulers. Others who have been complying have assisted in development of the overall plan and program.

By way of a little further background, you should know that well prior to the 1987-- Bergen County had been actively pursuing the resource recovery program in this State and had in fact -- I believe it was in '86 -- selected a vendor. We had gone through the necessary State processes, which I'm sure one of the Committee members is familiar with.

And we were moving forward with resource recovery, which quite frankly, as I look back on it perhaps as a new person looking at the scenario, I'm somewhat quizzical as to having -- in good faith and going forward with that process -- to have seen the County thrust into this crisis by being pushed out of a landfilling capacity that existed within the geographic borders. But nonetheless, that happened and it had to be addressed and attended to.

I'm really not here to debate -- or debate the issue at this point in time of who has the lowest tipping fee. Our present fee which is part of our budget is \$97.94, broken down into a series of components, \$83 and some change of that being

for baling and disposal purposes and another \$3.31 for administration. It's my contention that within that framework, we have included the labor costs of the operation of the transfer station.

The difficulty, of course, is when you have a capital investment that's geared to in excess of 3000 tons a day, and you are prepared for that and you have balers of that capacity on-site which you are paying for and have cost related to. And you only get 2400 tons a day or 2200 tons a day, obviously, in terms of any projection there is a potential shortfall. That is why we are aggressively and actively involved the enforcement process.

You should know that prior to my even becoming Executive Director, the Authority had approached me as Prosecutor for whatever assistance, if, in fact, there were any issues of criminal involvement, that I might be able to give them respect to the enforcement question.

And I did meet with the Authority representatives and representatives of the DEP to discuss those areas, to determine whether or not there was any pass-through taking place of the charges that were being levied to municipalities even though-- In other words, the hauler billing our rate to the municipality yet diverting out-of-state and paying a lesser rate.

What I have found in the last nine months is any of the people diverting the waste have not done it for the benefit of the ratepayer or the taxpayer because that flow-through has not taken place. They may have argued it in the inception, but the facts reflect that they have not passed it back to anyone; that that money has stayed with them. And their motivations are very clear now, if they were somewhat muddled or there was suggestions to the contrary in the past.

In addition to those overall numbers we have smaller numbers related to this tipping fee that deal with land closure cost; a 45 cent assessment, 8 cents for composting, 28 cents

for recycling, \$1.53 for debt service, \$1.65 for resource recovery, and \$7.50 in host community fees because we have to deal with two communities who both contend very vigorously that they are entitled some host community benefit as a result of the siting of the facility.

How was our rate set? As an MUA we are not subject to the BPU in that regard. But we are subject to the statutory processes for budget and inclusive of that are the rate setting processes which involve public hearings, public comment and criticism. Unfair or justified or unjustified, that process does exist and has taken place for the purpose of this rate for 1989.

I might also point out to you that it doesn't necessarily end there. We have not been free of litigation in this regard, and we have had some very active communities who have commenced litigation in respect to that rate setting issue. We have litigation presently pending and challenging rates, and it's clear, and I understand exactly what Assemblyman McEnroe's referred to, regarding the response and the reaction of the ratepayer or the taxpayer with respect to these particular assessments and this sudden jump and course related thereto.

I don't think that we can minimize that. It is a substantial impact. It is something that hits home. It had to be done. The courts are there. I believe that we have in Bergen County responded reasonably to our obligations and our responsibilities. We have a rate that is a reasonable rate. Whether it's the best or the worst rate, I certainly know it's not the worst rate.

But the fact of the matter is all the processes that took place up to its setting have been inconsistent with the law, have been under public scrutiny. Perhaps as much as anywhere else we have been subject to criticism at times, and we feel comfortable that this rate is a justified rate. Obviously, we have plans for the future.

One of the important aspects of this transfer station is that it has a rail siding as a physical part of the transfer station. And one of our vendors, originally, had the responsibility, the initial -- the second vendor or utilizing rail. Our present vendor assumed that responsibility and the rail aspect is not up and running by may very well be something we can put in place not too far in the future.

Knowing that we will be going beyond the life span of the three-year contract that we presently have, that is something that I am actively pursuing in meetings with Conrail and any other individuals who may want to discuss and approach the issue of utilization of rail and how it affects transportation costs, particularly when we're talking about greater distances depending on the reaction of the states that boarded on the Northeast. It can become a very significant aspect of the future.

So although I wasn't involved with it as it took place, I guess as a Prosecutor I have certain curiosities when I come into a new responsibility. And I've carefully scrutinized what was done and the efforts made by the Authority, and I'm satisfied that the-- Well, none of us are necessarily happy about the fact and the cost factors, but they were done in good faith; that it was done in the fashion to try and serve in the best interest of the public of Bergen County regarding the solid waste disposal.

And I think without getting into the issue of dollars or-- What was it, \$2 higher or a dollars lower than someone else? I think the range of the other numbers tells you that our process must have been fairly successful, because we're right there. Even if we accept what my friend Mr. Amato suggested, the County Executive from Essex, that our rate -- true rate may be 110. Well, that is not necessarily based on all the other factors out there an excessive rate. So that obviously the process from that standpoint did work.

I should also point out to you that we have, in various litigations that have been pending-- This process has been addressed by some of the courts. And they have been satisfied in their opinions, and I can produce those for the Committee if it would serve your purpose. I've indicated that they were satisfied that the BCUA did follow the mandates of the law in this approach and acted in good faith with respect to the setting of the rate -- the procurement issue in particular because that's always a focus once you get to a noncompetitive bid situation. And in this case we had no choice. There's always questions raised. But that process was done very carefully and with great scrutiny and great concern for the public's dollar.

ASSEMBLYMAN SHINN: Has there ever been a question in your mind that 3700 tons isn't there?

MR. McCLURE: That's a difficult-- At this point in time that may very well be a possibility or in the sense of 3700 tons not physically being there. It's very difficult to say. What I would like to see is the opportunity to move it since we have the facility to do it. Recycling I don't believe has impacted that greatly. Our resource recovery facility is being geared for 3000 tons in anticipation of recycling reductions.

But we can function on a break-even basis with less than 3700 tons. Now we're talking in the range of 3200 tons or 3000 tons. Our projections and our factors would be, easily, on a break-even basis with this facility, and that's really what we were working off of, although from the landfilling records the reconstruction factor suggested 3700 tons a day assuming that it was all Bergen County waste.

ASSEMBLYMAN SHINN: That was HMDC?

MR. McCLURE: That's right.

ASSEMBLYMAN SHINN: What was the rate at the landfill when we had 3700 tons, ball park?

S T E V E N S I N I S I, E S Q.: Twenty eight dollars-- Yeah. I would say to you, Assemblyman Shinn, in fact, we had consulting engineers to the Authority who provided us with waste quantification data. And upon that data the Authority exercised certain assumptions. Not to preempt anything our Executive Director had indicated to you, but by way of augmenting a reference to Assemblyman McEnroe whose Committee several years ago we had the pleasure of working with in fashioning a protocol for resource recovery solicitations of interest by vendors, the Assemblyman might recall that Bergen County Utility Authority was one of the earliest, if not the earliest recipient of a certificate of compliance for the -- its handling of a procurement process that became part of what we refer to as the McEnroe law, in terms of the solicitation of proposals for the development of resource recovery projects.

And it's interesting that it's the same Utilities Authority that earned that certificate that was thrust into the position of having to develop a competitive bidding and competitive emergency procurement initiative, because the Bergen County Utilities Authority serves as the implementing agency under the Solid Waste Management Act for the Bergen County Solid Waste Management District, the words of art under 13:1E-1.

I mention that because I think in-- Indirectly I'm responding to a question Assemblyman McEnroe did ask of a prior speaker at this podium, and that is, for example, utility authorities in general, they are not rate regulated by the BPU. But that doesn't mean that there isn't a process which the Legislature in its wisdom put in place to test at the appropriate points in time the rate setting policies of districts charged with the obligation of establishing solid waste service charges.

We've been involved in that process, naturally, as an MUA. We are duty bound to follow that process which can be

found in 40:14B-22 or 23. We followed that procedure in 1988, and we follow that procedure in 1989. Two of the years I reference primarily because those are the two years when we were addressed with the real rate shock visited upon our district given the cessation of landfilling in the Meadowlands District and the costs associated without a State disposal. Those rates were examined by interested citizens and concerned groups, not the least of which is a consortium; municipalities in Bergen County who were at the grass roots of experiencing the impact of rate shock. Twenty-some-odd in number does this group comprise.

Litigation is pending not only in the Superior Court of New Jersey in 1988, but it's pending in the Superior Court of New Jersey in 1989. And as an aside, I should mention to you that because our district comprises that legislatively created district called the Hackensack Meadowlands Development District, we are and have been involved in rate average/rate proceedings while although our rate for district rate setting purposes is exempt from BPU regulation, it is nonetheless part of the rate averaging rate review. And I think that's important for you members of the Committee to understand.

And lastly, if again pursuant to a protocol that MUAs must follow, our budget -- and our budget is not secret. It's comprised of many different features. But addressing only the focus of your Committee which is the solid waste aspect, our budget is subjected to the Division of Local Finance pursuant to the Local Fiscal Authorities Law. And that's another protection the Legislature had in mind, I would presume, when it decreed that MUAs were not rate regulated by the BPU.

ASSEMBLYMAN SHINN: Roughly what population are you serving in Bergen?

MR. McCLURE: Eight hundred and fifty thousand?

MR. SINISI: Right.

MR. McCLURE: I think one of the factors that becomes very important in that the contract is a three-year contract with a basic rate there is options to continue it; but at \$75 a ton for the transportation and disposal. So we have the prospect of -- although we've experienced a rate shock -- of trying to keep it within a tight range now. And a lot will depend on legitimate aspects such as tuning up the operation of a new facility which was geared up and started up in such a fast process.

ASSEMBLYMAN McENROE: One question, please. The County of Bergen-- Bergen County Utility Authority has baled waste for many years. That's been beneficial to you, I would think. As far as-- What impact does baling have in your whole process--

MR. SINISI: There certainly is--

ASSEMBLYMAN McENROE: --from the transportation viewpoint.

MR. McCLURE: Just the very factor alone that the cost for nonbaled waste. If we have nonbaleable waste it costs \$105 a ton. If we--

ASSEMBLYMAN McENROE: So it's \$8 right there.

MR. McCLURE: So were talking about--

ASSEMBLYMAN McENROE: Baled--

MR. McCLURE: --because it's easier from the standpoint of transportation of disposal to handle. That's the purpose of having the balers. Even some of the local transfer station had gone to balers prior--

ASSEMBLYMAN McENROE: So you're talking about a reduction of 10% is you bale the waste and you have the facility?

MR. McCLURE: Operation-- Yes, we have four Moseley balers and we have the capacity to bale-- All baleable waste is now baled at our facility.

ASSEMBLYMAN McENROE: And is that the old Hackensack Meadowlands Baling Facility?

MR. SINISI: No, sir.

ASSEMBLYMAN McENROE: It isn't.

MR. SINISI: That is a facility which was constructed by the Bergen County Utilities Authority in anticipation of -- well, as a response to the problem. The Hackensack Meadowlands baler is still operational. It is used for the Hudson County operations as I understand it.

ASSEMBLYMAN McENROE: One associated question; the resource recovery facility, what are looking at as far as time frame and construction and operation?

MR. McCLURE: Well we've been hopeful for a long period of time in dealing with the Army Corps permits that are necessary. That's the key component we're awaiting. That almost narrows down to a daily or weekly basis. Once we have that in place, we still are optimistic that we might literally be able to break down before the end of the year.

MR. SINISI: The caveat to that being, Assemblyman McEnroe, and again, to supplement what Executive Director McClure just indicated, no one can predict with a degree of certainty the number and the kinds of lawsuits that we are subjected to. We have been defending them successfully since 1984, starting with the first siting decision to locate the regional resource recovery facility in the Hackensack Meadowlands District in Ridgefield.

Assemblyman Felice is probably a historian on the number of articles that have related to the litigation that has evolved concerning the resource recovery project. We've met those challenges successfully in the courtroom, and we are awaiting now one critical path permit, among other permits, but one critical path permit that would enable us to energize other important steps in this project, like property acquisitions, to be in a position to move the project along at year's end.

MR. McCLURE: I think the survey done and presented at the press conference in the State House, just this afternoon, reflects that.

ASSEMBLYMAN McENROE: I wasn't advised.

MR. McCLURE: Although it was 52% of the people indicated that they might be willing -- all things being equal -- to have it in their back yard. The back yard is still a problem. Siting is still on any of these facilities -- trouble.

ASSEMBLYMAN SHINN: When you have a hearing, those 52% are home. They're not at-- The other 48% are in front of you.

MR. McCLURE: Sort of like school budget votes.

ASSEMBLYMAN SHINN: Right. Okay, thank you very much.

MR. McCLURE: Thank you very much.

MR. SINISI: Thank you for your time and your opportunity to be here.

ASSEMBLYMAN SHINN: Joseph Kazar, Director of Union County Municipal Utilities Authority.

J O S E P H K A Z A R: Good afternoon, Joe Kazar, Executive Director of the Union County Utilities Authority. To my left, of our General Counsel's Office, Wayne Hasenbalg. It's a pleasure to be here this afternoon.

By way of background, and I'll try and keep it brief because you heard a lot of background from others on the transfer station program. Union County, of course, has developed a comprehensive Solid Waste Management Plan relying on resource recovery, recycling, and in-county landfilling. The plan has a time frame that requires three to five years to implement. This was the time frame that we were looking at in 1986 when Edgeboro's days were numbered.

Union County had done landfill surveys throughout it's district, and it certified an absence of sufficient available in county sites to serve this interim disposal need. And I think it's important to add that through out Union County, both County government and the newly created Utilities Authority as

well as all 21 of our municipalities had expended a great deal of effort in order to try and convince the State, primarily the DEP which controls solid waste matters, that a temporary extension of landfill capacity throughout the State was necessary in order to allow these modern facilities to be developed.

Nonetheless the State decided that it was more appropriate to develop transfer stations and do so in Union as well as other counties. The process of developing this capacity was related earlier in Gary Sondermeyer's presentation. The DEP, of course, unilaterally amended our County Solid Waste Management Plan and in doing so incorporated three specific sites, the EGRC Transfer Station in the city of Elizabeth, Ellesor Transfer Station in the same city, and the AMS Transfer Station in the City of Linden.

The State went through their procurement process through '86 and into 1987. These transfer station operators then proceeded to try and put together their financing, engineers were hired, plans were drawn up, and the facilities began to take shape in terms of finalized plans taking place.

One of the problems that developed, however, was that by the middle of 1987, it became apparent that financing, at least for the Union County operators, was not a certain thing. The banks to which the private investors were looking wanted more assurances than simply the stock and the disposal companies backing up these operators. They were looking for county or State level guarantees to make sure that both the tonnage and therefore the dollars would flow through during these very limited periods of time that the transfer stations would be needed.

It was because of this factor that the Union County Utilities Authority made a decision in the summer of 1987 to become involved in the transfer station program. That involvement was not meant to say that the Authority endorsed

that initiative to this day. The Authority feels that it's ill conceived and that the resources devoted to the transfer station would have better served prematurely closed landfills here in New Jersey. But nonetheless, we made that decision. We negotiated with the transfer operators who were incorporated into our plan, and in order to try and foster a greater spirit of competitiveness, we enlarged the negotiating process to other transfer station operators who offered the prospect of being able to construct and have an operation transfer station by the January 1, 1988 deadline.

The driving motivation for the Authority in getting involved was the prospect that our 1500 to 1800 tons a day of garbage would find no place for disposal at the end of Edgeboro's permitted period of time. We had seen other counties, Morris, Sussex, and any number of other examples where when push came to shove, the garbage was not accommodated at landfills. It remained in homeowners' back yards and storefront property sidewalks and caused great havoc. So in order to avoid this kind of situation, we became involved in these negotiations.

They resulted ultimately, in a contract with the AMS Transfer Station in Linden which serves as the major site for disposal of waste in Union County. Shortly after that contract was executed, the Ellesor project moved forward since they then had sufficient assurances that remaining tonnage would flow to their transfer station.

Unfortunately the \$85 to \$90 a ton prices that had been proposed to the State of New Jersey during the procurement process did not materialize. When it came time to enter into contracts for assured disposal capacity in other states, line up the necessary trucking, and then make the necessary improvements to the transfer stations, we saw prices ranging from \$125 to as high as \$160 a ton.

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In addition, these prices rested on a guarantee of certain tonnages and in the absence in the delivery of those tonnages required various financial penalties to apply.

This crisis situation resulted in very limited negotiating options, which I mentioned. There were only several transfer operators that we could deal with. The landfill capacity in Pennsylvania and Ohio was perhaps stretched thin. One thing that's certain is that the operators there could read the newspapers just as transfer operators in New Jersey could. There was a climate of emergency. They all knew that county government was under the gun. They knew there was just a few months left before we would be without options, and they used that well to their advantage.

One of the criticisms that we hear today is that a operator who chooses to bypass the transfer stations which are under our county plans can do it cheaper. They can get the same job done for less. I would submit to you that that is not true; they're not doing the same job, although they are doing it for less.

The transfer stations that wound up in the Union County Plan had to satisfy a number of very rigorous and expensive criteria, among them the transfer stations which had lives as short as three years to no more than 5 years had to satisfy the State's environmental standards. They had to be totally enclosed, fencing, pavement, litter control, electronic scales, odor and bird control, fireproofing that runs into hundreds of thousands of dollars, sprinkler systems, balers, parking, noise control, and on and on.

In addition, the landfill capacity is not a spot market capacity. The operators were not free to shop around from week to week and find the cheapest deal for landfilling. They were obligated to provide guaranteed contractual capacity for a three to five year period. In addition, the State required backup capacity beyond that in the event that these landfills were shut down.

The stations were implemented on Saturday, January 2, 1988. They came in on time. They operated for several months in the open air, and they're still undergoing the final phases of construction in order to be completed.

Union has apparently the highest rates in the State. The AMS Transfer Station charges a rate of \$132.65 per ton. Those municipalities directed to the Ellesor Transfer Station in Elizabeth are paying close to \$136 per ton. Incidentally, the AMS rate is lower than it would have been. It has resulted in a renegotiation of that contract between the operators and the Utility Authority.

The rates at both of these stations are interim rates. They received approvals in very late 1987; in fact, days before the stations opened. The BPU has now commenced rate hearings towards the establishment of permanent rates at both of these stations. Ellesor rate was not tied to the Utility Authority's dispute with the Board of Public Utilities over rate jurisdiction. The AMS rate was, however. The Utilities Authority felt that it, under the statute, was free of BPU regulation. We have to go through hearing process under our enabling legislation and establish rates pursuant to that.

We have recently -- as recently as February of this year -- decided not to litigate any further with the Board of Public Utilities over this jurisdictional matter. We have now submitted filings to the BPU in order that this rate may be reviewed and approved.

One of the severe problems that has become apparent over the last 14 or 15 months with the development of these transfer stations is that waste flow control in this State is a very inexact science and is not uniformly prosecuted. The AMS contract requires that on an average, 900 tons per day of waste be delivered to that facility. During no quarter in 1988 did we see averages of 900 tons a day.

Philip  
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The first quarter of 1989 has gone by, and we're again below 900 tons a day. Under the contract, what this means is that hundreds of thousands of dollars of taxpayers' money will go to AMS as shortfall payments. This is on top of the very high service fees that we're already paying.

Conversely, if the waste that we know is in Union County is delivered to the transfer station, we will be exceeding the 900 ton guarantee by perhaps 100 to 150 tons a day. This would result in the effective tipping fee being reduced, because this is a tonnage sensitive machine. And if we can get above the 900 tons, we'll be able to reduce the rate below that that we've negotiated.

The Utilities Authority is convinced that the problems relating to tonage deliveries at the transfer stations are not based on bad estimates of tonnage or the success of recycling systems, but rather on the substantial and continuing violation of the State waste flow order.

The Utilities Authority engages in services of full-time investigators, and we develop cases and have lodged complaints against dozens of haulers in Superior Court. We believe, and believe very strongly, that the Board of Public Utilities, the Department of Environmental Protection must work very closely with implementing agencies like the Union County Utilities Authority to assure that the waste that is directed to these facilities finds its way to them.

At stake is not just the temporary high cost of getting waste out-of-state. We believe that at stake is the last 10 to 15 years of planning effort that's been going on in New Jersey. Most of the counties have developed comprehensive plans. Many of us are very close to implementing those plans -- without assurances that we have franchises that mean something that we can direct waste to facilities and see substantial compliance. We're concerned that financing for these ultimate solutions won't be possible.

Therefore, in conclusion, the Union District believes that the out-of-state transfer program was ill conceived but nonetheless one that once commitments have been made, must be supported. And we think that the best approach involves the following two points. First, minimize the length of time that we are forced to use these transfer stations. This means accelerating the permitting and replacement of these facilities with more modern landfilling and resource recovery facilities here in New Jersey.

Union County needs its resource recovery permit and we need it now. We have been in the permitting stage since November of 1987 and we feel that the process needs to be concluded without further delay. Until we can begin construction of the resource recovery project, we're only going to be delaying the unnecessary expense of out-of-state disposal, and as we might find in the next few years, unreliable disposal.

Second, we should minimize the per cost ton of these facilities by ending waste flow violations. Slower tonnage means higher tipping fees. The county shouldn't be in the position of being the leaders in the fight on waste flow control. We need the help and the assistance of the DEP and the BPU. We also need the attention -- the attention of the courts. To date we don't feel that this has been a State level priority and we feel it should be. Thank you.

ASSEMBLYMAN SHINN: Thank you. Questions?

ASSEMBLYMAN McENROE: Well, I mean, the news doesn't seem good from Union County. You're familiar to me, and I know you've been involved with this a long time. You say your resource recovery has not been permitted. I mean, the news is around that you have a location in Rahway apparently. How far are you away from construction or do you have no idea?

MR. KAZAR: We're at a point where we really can't control that the permitting data, as I say, has been submitted

to the DEP as far back as November of '87. It was substantially complete in May of '88. And here we are basically a year later, and we're still trying to get through that process. It seems to have a built-in factor that is extremely expensive. It's extremely technical in detail, and it just is extremely difficult to get through that process.

We apparently are a very high priority project at the DEP. Yet again, we're mired in this process, and we're not sure if we see a conclusion this year. We're hoping for permits in the fall, which would allow us to start construction. A lesser priority project would probably be in that pipe line indefinitely, quite frankly.

ASSEMBLYMAN McENROE: I don't know whether you can-- You may have the answer to this. I think I know somewhat the size of your disposal problem. Are you spending \$40 million a year to dispose of your waste out-of-state?

MR. KAZAR: Easily.

ASSEMBLYMAN McENROE: Easily. Is it 50 million?

MR. KAZAR: It's approximately 1500 tons a day by an average of about \$130 to \$135 a ton.

ASSEMBLYMAN McENROE: So you're talking over 30 million?

MR. KAZAR: Absolutely.

ASSEMBLYMAN McENROE: I think this is very important testimony from a county that has been conscientious in planning their waste. And I don't see any solution for Union County. If you're spending \$138 a ton and you don't have the permits for your facility and we have limited potential capacity in surrounding states-- I mean it points again to a requirement, I think, that the State be much more involved in a statewide strategy. I think Union County could very well be the one county where we create a pilot program and see what we can do for Union County. If we ignore the rest of it, at least

address Union because they seem to have the potentially most disastrous problem of those urban counties that are disposing waste out-of-state.

ASSEMBLYMAN SHINN: Are you suggesting we open a landfill in Union?

ASSEMBLYMAN McENROE: No, I'm disposing that the State become more-- Well, they have already sited their own landfill in Union County.

ASSEMBLYMAN SHINN: You have a way of--

ASSEMBLYMAN McENROE: I'm saying the State on a statewide basis with the leadership of the DEP and the Legislature must become more involved in providing financial support for counties like Union that are disposing of the waste properly, environmentally and because of the urban nature of their county are unable to meet their responsibilities. I think the State should be more involved in financial support for those kinds of efforts.

ASSEMBLYMAN FELICE: How many tons-- Excuse me. How many tons a day are you disposing of?

MR. KAZAR: Currently about 1500 tons a day going through the four facilities in the Union County Plan, and there's probably another 300 to 400 tons a day that's being disposed of illegally.

If I can make a suggestion-- While the county would certainly appreciate any financial assistance to solve our problem, I mentioned the permitting and I highlighted that. I think that that's probably the single most important factor in ending this unnecessary cost of out-of-state disposal. And none of my comments are meant to suggest that those at the DEP who are working on our permits are not doing a conscientious job. They're all working very hard; putting in a tremendous effort and time. They need more help; DEP needs more help. The counties have done their jobs by and large. I think we've come to the point where the counties have stepped up to the plate

and we put the resources forward that we need to solve the problem. I think that the DEP needs the same kind of assistance so that they can react to these permits when they're submitted so that they can get the expertise necessary to move them quickly.

ASSEMBLYMAN FELICE: We have them here that they've got--

ASSEMBLYMAN SHINN: There's some legislation in the Senate that addresses the permitting specifically. I think it's Maureen Ogden's bill, if I remember correctly. You can correct me, Algis, if you're--

MR. MATIOSKA (Committee Aide): No, that's it.

ASSEMBLYMAN SHINN: That's an important piece of legislation because it goes right to the heart of that issue and sets out 18 months as a time frame from completed application of approval by the Department. More importantly maybe, it puts money in place to provide the staff -- the technical staff complete with a civil service exemption to bring the proper people on-line to do that.

And quite frankly, my experience with the Department solid waste is not properly staffed. It seems to be the area where there's a medical waste crisis we go into the Solid Waste Department and do extractions to solve that area, while we were under as a severe a crisis in solid waste, and maybe more severe.

From a tonnage standpoint there's no comparison. So I think the Department understands the shortcomings and has requested the Legislature to solve that problem. And we're a little slow in doing that, quite frankly. That bill's in the other house and it's one of the priority bills I feel we need to get behind and support and get the Governor to support.

The hiring freeze, the State's budget situation certainly doesn't help the atmosphere currently. But that's the atmosphere we're in whether we like it or not. Thank you very much.

MR. KAZAR: Thank you.

ASSEMBLYMAN SHINN: John Horensky, Somerset County Solid Waste Director.

J O H N A. H O R E N S K Y: Good afternoon. I'm John Horensky. I'm the Director of the Somerset County Office of Solid Waste Management. I'd like to thank Assemblyman Shinn and his Committee for giving us the opportunity to speak with you today.

I hope I'm not going to ruin your afternoon, but I don't have any real horror stories to tell you about Somerset County. It's not that it's all peaches and cream there but we're not experiencing a lot of the significant problems that the speakers prior to me have mentioned.

Just as a way of background, Somerset was one of the four counties that Mr. Sondermeyer mentioned in his presentation in which the State of New Jersey elected to locate transfer stations. We had been using the landfill in Middlesex County, the Edgeboro Landfill primarily as our mainstay for solid waste disposal for decades. We had in the interim developed our Solid Waste Management Plan in accordance with the provisions of the State statute. We're moving towards implementing all three elements of that plan, those elements being the recycling, the resource recovery, and landfilling.

Nonetheless, with the State's decision to close the Edgeboro Landfill to out-of-county refuse Somerset County was faced with the same prospects as our neighboring counties to the North. The County has adopted the same position that was mentioned by Union County, that being in opposition to the transfer station program. The County believed then and still believes that the Edgeboro facility could have been expanded, could have been more closely developed and monitored in terms of waste moving into that facility.

Nonetheless, Somerset County presently has two operating transfer stations. And those are privately run

facilities. One located in Bridgewater Township run by the Bridgewater Resources Incorporated. The second located in Franklin Township run by Somerset Intermediate Recycling Center.

The latter facility that I mentioned was alluded to by the Department in earlier discussions as having already been part of the Somerset County Solid Waste Management Plan. And I believe that that point, you know, deserves some further clarification.

Early in 1985 the owners of the SIRC Transfer Station approached the county as owners of Colgate Paper Stock Company. That facility had been operating, by and large, as a newspaper and paper recycling operation. The approach to the county was to be included into the Somerset County plan to handle an increased volume in paper recycling and also with an eye towards putting in a small compactor unit to handle the nonprocessible materials that their increasing business was handling.

At that point the County received testimony during its review of the matter as called for under the Solid Waste Management Act, and the County further moved to include that facility in our plan with the understanding that it would serve primarily as a paper recycling operation and that the operation would only need to have a baler -- I'm sorry -- a compactor associated with it to handle the residue from increased newspaper recycling operations.

The State DEP, during its transfer station initiative, looked upon the pending application for the Colgate Paper Stock, subsequently to be known as SIRC facility, and made a determination that indeed the County had felt that to be a transfer operation and that it was to receive a minimum of 250 tons per day of solid waste.

As part of the transfer-- As the transfer station initiative increased there was -- and the facilities eventually became constructed -- the County was made aware that there were

shortfalls in the amount of solid waste being processed by the SIRC facility to the tune of about 200 tons a day. There's also been an indication that the Bridgewater Resources Transfer Station was receiving a much larger portion of the waste stream than what their 820 ton per day permit was receiving.

The County has made recommendations to the State and made observations to the State concerning the transfer station operations within Somerset County. One of our biggest concerns has been the fact that we have one facility that is specifically geared towards removal of solid waste, that being the BRI facility. We have a second facility that is operating both as a transfer station and a recycling center. And I believe this is one of the problems that will continue to plague the transfer initiative that the State started; that is the mixing of recyclable materials and municipal solid waste within the same facility.

It's virtually impossible for us to be able to identify, according to the way the permit is written for SIRC facility the difference between a recyclable load and a solid waste load. And in that part of the issue comes to the definition of what the SIRC facility could accept. That is a Type 10 waste which, is your normal solid waste and commercial waste. But there's a little caveat in there indicating that it must be of the nonputrescible variety. Since 1988, we've been unable to identify what is actually meant by nonputrescible solid waste and what constitutes a minimum of putrescible material within a waste stream to still justify it as being a solid waste and not a recycling matter.

But therein lies, I think, one of the main concerns Somerset has, and that is the ability to differentiate the different types of waste according the waste flow regulations, and our ability to direct them to appropriate facilities. We have also been somewhat dismayed in trying to determine the exact disposal locations of some of our transfer stations,

while the DEP planning process and implementation process with regard to setting up these facilities, I think, has borne itself to be an acceptable process.

The lack of follow-up and insurance that the facilities are operating in accordance with both their DEP and BPU permits I feel needs to be addressed a little bit more closely. There are requirements that each one of the transfer stations report where the material is being sent. On a number of occasions we've attempted to identify the disposal locations for one of our transfer stations and we have been unable to do so. One facility has been operating, as far as we know, in total conformance with this plan with this permit. The wastes are going to the facilities that were identified in its application to the State, and the wastes are being accounted for.

The second facility, however, is not reporting those tonnages, to my understanding, correctly. We have had contact with one of the landfills to which it was supposed to have sent the material. Not one drop of solid waste has been delivered there since the beginning of 1988. Upon repeated requests of the owners for that information, the County has been gracefully, I should say, denied access to those files. So we have no idea where that waste is going. The supposition is that it is going point south, such as West Virginia, South Carolina, Alabama. And those suppositions are based upon casual conversations with the haulers who were taking the materials. We have not been in the position to dedicate County inspectors to take overnight trips to these points.

However, and I'm not making any accusations here today, that the waste indeed is going to those locations. All I'm saying is that the waste is not going to where the State DEP's permit says it should go, to where the BPU's certificate of convenience operations (sic) says it must go to. I do not know whether or not the savings are substantial at alternate

facilities, such that they should be passed back onto the ratepayers. But it's my understanding that if alternate facilities are to be used, they both -- the DEP and BPU -- are to be notified, and any differences in rates should also be notified.

ASSEMBLYMAN SHINN: Your facilities, what's the estimated tonnage that you say are tariff with -- for both facilities?

MR. HORENSKY: The Bridgewater Resources facility is presently under the interim tariff with the BPU for \$114 a ton.

ASSEMBLYMAN SHINN: Based on what tonnage?

MR. HORENSKY: Based on 820 tons per day.

ASSEMBLYMAN SHINN: Eight-twenty?

MR. HORENSKY: Correct. That facility during the reporting year 1988 was averaging waste above 820 to the point where it was bringing in up to 1000 tons per day.

ASSEMBLYMAN SHINN: About what?

MR. HORENSKY: One thousand tons per day.

ASSEMBLYMAN SHINN: And then your other facility, the rate at that facility is based on--

MR. HORENSKY: It is based on \$121 a ton. It is my understanding that the BPU has not heard a rate application yet for that facility. Attempts were made to have a rate hearing. However, appropriate documentation was not filed with them. So the \$121 per ton rate is the same rate that was charged in 1988.

ASSEMBLYMAN SHINN: And the tonnage that that 121 is based on?

MR. HORENSKY: It was averaging about 67 tons a day when according to what, as I mentioned earlier, the DEP was estimating should be 250 tons a day.

ASSEMBLYMAN SHINN: Sixty-seven.

MR. HORENSKY: Correct. The way the waste flow orders are written for that particular facility there's a very restricted waste flow. It is to only receive ID 10 waste which

is readily recyclable and contains no putrescible waste. It is also directed to receive ID 27 waste from only nine of the county's 21 municipalities.

Through the records that we've had and our investigations of both transfer station facilities we are convinced ourselves that the BRI facility, the one that is operating in excess of its permitting capacity is not accepting waste or taking waste, if you would, away from the other facility.

We are not comfortable with the information that was provided to us. Indeed the SIRC facility is only operating at 67 tons a day. And again, Assemblymen, our concern is how do we differentiate a recycling load from a load that is primarily recyclable with only a small amount of putrescible material in it? It's very possible that some of the loads that are being called recyclable loads would fit underneath the category of ID 10 nonputrescible, but they're not being reported that way. And I think my earlier comments with regard to having two operations under the same roof-- It becomes very difficult to make sure that exactly those reported materials are, in fact, being the same.

ASSEMBLYMAN SHINN: The second operation that's a recycling operation is currently reporting 67 ton per day? Or that's what it's--

MR. HORENSKY: It was averaging about 67 tons a day in 1988.

ASSEMBLYMAN SHINN: And its tariff was based on 67 tons.

MR. HORENSKY: Its tariff was based on 250 tons a day.

ASSEMBLYMAN SHINN: Okay.

MR. HORENSKY: One of the other main concerns that we have is similar to what Union County had brought to your attention earlier. That is the lack of ability to control the waste flow within the State of New Jersey.

Somerset County employs inspectors on its own. They are County employees. They are on the road all hours of the day and night because we find out a great deal of material is leaving the borders of Somerset County at two and three o'clock in the morning.

Material is not showing up. We believe that the tonnages that I've given you today are a little bit low in terms of what is actually being produced in Somerset County. Materials are leaving, as I said, primarily from commercial and multifamily residential units. They're being pulled in the wee hours of the morning. Some of them are going back to facilities that are operating in New Jersey under the guise of recycling centers and, in fact, they are not. And some of the material is being hauled directly out-of-state.

ASSEMBLYMAN SHINN: Your population in the County?

MR. HORENSKY: The County's population is approximately 230,000 people. As I mentioned to you earlier I really don't have any major horror stories to present to you, but I do feel that it's in the interest of everyone involved in solid waste management to make sure that the waste is directed as according to waste flow rules. I echo Union County's concern that if that is not brought to bear during this transfer station program, when the resource recovery facilities and other landfill facilities come on-line which will entail tremendous expenditures of the taxpayers' dollars, that they will not be receiving the amount of material they need to offset their costs.

ASSEMBLYMAN SHINN: Thank you very much.

MR. HORENSKY: Thank you.

ASSEMBLYMAN SHINN: Anthony Ross, Director of Passaic County.

ANTHONY ROSS: (away from mike) Mr. Chairman, our presentation will be made by Counsel.

M. R O B E R T D e C O T I I S, E S Q.: Robert DeCotiis, General Counsel from CUA and Glenn Scotland from Special Counsel.

G L E N N F. S C O T L A N D, E S Q.: Hello, Assemblymen.

MR. DeCOTIIS: Mr. Chairman, rather than go through the history of how we got where we were -- much of it, quite frankly, being the same as most of the other witnesses today put forward, perhaps what I can do is to tell you what I believe was unique about Passaic and that some of the other counties did not experience or did not go through.

First of all, we separated the transporter and the transfer station operator from the landfill operators, and we simultaneously negotiated with both. We obviously were respectful of the proposals of the DEP, but quite frankly, at \$90 a ton which did not include host community benefits, recycling taxes, administration or our host community out in Pennsylvania, we thought the number was high. So we endeavored through simultaneously negotiation perhaps under a mini-McEnroe type of approach, to negotiate independently.

We, in fact, did enter into a 15-year landfill contract with Chambers Development who controls landfills in Pennsylvania and several other states. We acquired that by virtue of an irrevocable and recordable property right which has been opined to by Counsel and those respective states.

Our position is that we have a useful life of 15 years both for solid waste, nonprocessibles, and ash. In view of the fact that we wanted to buy that number down, did acquire a recordable interest which is recorded in those various states, we decided to spread those costs out over the useful life in order to save at least two of our distressed cities, Passaic and Paterson, of that rate shock the first year. So by doing that--

Oh, and quite frankly, we've voluntarily submitted ourselves to the BPU's jurisdiction. We consider it an

exception to the Local Public Contracts Law where two utilities contract. And under In re: Saddle River if the BPU took jurisdiction of that matter they could, in fact, set the rates and tariffs. So both our landfill contract with Chambers and our contract with PENPAC were subject to the BPU.

On October 26 -- I think this, again, is unique -- BPU after reviewing the documents for five or six months after having all of the financial data submitted to them by both the County, PENPAC, and Chambers gave us a positive finding in their order of 26 wherein they approved the contracts. And let me cite this, "The petitioning authority has demonstrated to the Board's satisfaction through competent evidence that PENPAC and Chambers contracts were arrived at through competitive negotiations in the open marketplace and the Board will therefore accept and approve the contracts to govern rates as the lawful tariff rate.

Those primarily are the unique qualities of Passaic experience as opposed to the others. We have had our procurement and the rates reviewed by the DEP, by the BPU, by the Local Finance Board, and as a matter of fact, the procurement was a subject matter of litigation in the Superior Court in New Jersey where the process that we followed was attacked by one of the host communities, so to speak, and Judge Mandak refused to issue restraining orders. The matter went up to the Appellate Division and was resolved thereafter.

So after listening for several hours, I think these are the unique experiences we had. I can go through the history of -- you know the spread sheets and the day-to-day-- Our waste flow is about where we expected it to be. Although I would agree that it could use a considerable amount of teeth in the legislation-- Probably the reason that it's where it is is our rates, whether they're the true rates or not the true rates, our rates are reasonable and we find that we're not

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losing as much as other counties. So in that respect, that turns out to be an absolute plus where we expected 1700 tons a day, we're getting 1700 tons a day.

Some is leaving the county which really means that nobody ever really had a real handle on how much waste there was out there. I'd certainly take any questions that the board has.

ASSEMBLYMAN SHINN: What is your rate?

MR. DeCOTIIS: The municipal rate this year is \$79.

MR. ANTHONY: Seventy-nine eighty-seven.

MR. DeCOTIIS: Last year it was 64.99, and it will be a slight step up next year.

ASSEMBLYMAN SHINN: Taxes and so on.

MR. DeCOTIIS: That includes host community fee in the city of Paterson total for \$3 each, host community in Pennsylvania for \$3.25, recycling tax of \$1.50, and administration of about \$2.50 per ton.

ASSEMBLYMAN SHINN: So in essence by probably bonding--

MR. DeCOTIIS: Plus debt service.

ASSEMBLYMAN SHINN: Plus debt service.

MR. DeCOTIIS: It was \$15 for debt service.

ASSEMBLYMAN SHINN: Because you basically pre-bought your air space--

MR. DeCOTIIS: That's correct.

ASSEMBLYMAN SHINN: --in Pennsylvania and then you're amortizing that debt.

MR. DeCOTIIS: This year our debt service is \$15 or \$16 and our transportation and the three transfer stations is totally about \$58. Those are the five components.

ASSEMBLYMAN SHINN: Essentially you're right on the money with what you estimated the rate for and what you're receiving.

MR. DeCOTIIS: Yes. The only surprise we have had thus far, quite frankly, is we lowered the administration fee.

Last year it was \$3.04, this year it's 2.50 something. But Pennsylvania increased their host community fee. We negotiated a contract with the host community of 25 cents a ton. The Legislature put it up to 3.25.

ASSEMBLYMAN SHINN: It was a high risk decision that you made which was unique to me when I heard about it was buying the air space.

MR. DeCOTIIS: There was no doubt that it's aggressive and innovative. In fact, Dewling in his letter when he approved our plan made that statement. But I don't think it's as high a risk as everybody thinks. We have this proposition secured by an irrevocable letter of credit that they do not draw down on that letter -- on the monies that the North Carolina National Bank is holding until they have in fact permitted us to use the space.

So let's assume we were stopped -- we don't believe that will happen, but let's assume we were -- we would be able to draw down those dollars because they haven't been used.

MR. SCOTLAND: In fact, I guess, in making this-- In analyzing the issue relative to the purchase, we decided to rely on the Supreme Court case that the Commonwealth of Pennsylvania relied on when we couldn't keep out Philadelphia's garbage. We recognize there was a certain risk to that but we believe that the equities are certainly compelling that the law is on our side and that, you know -- if the issue were tested in court we would prevail.

MR. DeCOTIIS: As much as we have a disposal contract we have a property right that's recordable under the laws of Pennsylvania. We're confident that-- At least as to our arrangement that we're unique compared to some of the other contracts.

ASSEMBLYMAN SHINN: Nick?

ASSEMBLYMAN FELICE: No, I just question-- I'm concerned about with the states getting their dander up now;

Pennsylvania, Ohio, West Virginia saying, "Hey I don't care how much money you want to put in here we've had enough." What do you do if they lock you at the doors and take you to court? Meanwhile the garbage piles up.

MR. SCOTLAND: Right.

ASSEMBLYMAN FELICE: That's the only thing-- That question, that's the only risk you have there.

MR. DeCOTIIS: Well, we do have redundancy in the system in that we have negotiated agreements for several other states -- I don't want to mention them unless it becomes necessary -- to take our waste. And quite frankly, the distances are not any further than they are here.

ASSEMBLYMAN SHINN: Harry, do you have anything?

ASSEMBLYMAN McENROE: Well, my question related to the same subject. Is there-- Does a part of the contract address the concern-- For instance, Chambers, if there is no capacity in the location where you own, they have the right to transport the garbage, say at their expense?

MR. DeCOTIIS: At their expense, that's correct.

ASSEMBLYMAN SHINN: I think it would be--

ASSEMBLYMAN McENROE: Do you want to address the County Executive from Essex's comment about your disposal fee, Passaic not being a true one?

MR. DeCOTIIS: All I can say is that the BPU, I don't think, would approve a rate that is not true. If I have any objection to the BPU, is that they are thorough. And after their thorough review -- and they're putting us through another one -- concluded that it was open, it was competitive, and they set the rate.

ASSEMBLYMAN SHINN: It seems to me that the parallel you draw from some of the testimony-- If you look at the tonnage the facility is designed for, the rate that was struck and the tonnage received, tonnage received was pretty reflective of the rate that was charged. Your rate's the

lowest. You're getting waste, but higher rates aren't getting the waste. Waste is magnetic because the source of least disposal--

MR. DeCOTIIS: It certainly does.

ASSEMBLYMAN SHINN: --basically--

MR. SCOTLAND: I'd like to make one other comment and I don't know the extent to which this, you know, Committee would consider amending the McEnroe Act to make it clear that transfer stations could be procured in accordance with the same type of law. But, you know, the State, I think, has recognized the unique nature of solid waste; not only resource recovery but all aspects of solid waste and solid waste procurement.

Part of the unique nature relates to the fact that you have facilities that are located on specifically identified pieces of property that may be owned by someone else. And you know, lawyers, all of us who are in this room, I guess, today testifying had a similar experience in trying to work through the laws to try to determine the best way to do it. A number of us relied on the BPU exception under the Local Public Contracts Law. We relied on the fact that there were emergent circumstances. We also bootstrapped into the DEP procurement process. And, you know, because a number of the facilities that were actually bidding under this procurement process were, you know, in operation and currently owned. There was just, as a matter of fact, a limited number of people who could be involved in the procurement of these kinds of facilities.

And opening up the bidding-- I mean just going under the Local Public Contracts Law under the competitive bidding process makes it very difficult because you were only going to get one bid essentially which is what the DEP experienced when they came back with -- when the responses came back in a number of counties.

So if the Committee would be disposed to consider something like that it might be helpful.

ASSEMBLYMAN SHINN: Thank you very much.

ASSEMBLYMAN McENROE: I want to ask another question, if I may, while you're still here, Counselors. The rate today has climbed from 65 to 79 and from 88--

MR. DeCOTIIS: For municipal solid waste 64.95 to 79--

MR. ANTHONY: Sixty-four ninety-nine to seventy-nine eighty-seven.

MR. DeCOTIIS: That's correct.

ASSEMBLYMAN McENROE: Can we have a comment regarding what can be expected in 1990, '91?

MR. ANTHONY: It should be--

MR. DeCOTIIS: Let me address that. We believe approximately \$3 increase. That would be based on the escalation in the transportation contract assuming recycling tax stays the same, host community stays the same, Chambers has to stay the same, so it's the debt service. The only other factor that we have any control over, quite frankly, is our administration which this year we experienced a downward trend of about 50 cents a ton.

ASSEMBLYMAN SHINN: Thank you very much. Division of Rate Counsel, Public Advocate, Ray Makul and Linda Flores.

R A Y M O N D E. M A K U L, E S Q.: Good afternoon. My name is Ray Makul. I'm the Director of the Division of Rate Counsel. This is Linda Flores, Deputy Director of the Division. Ms. Flores will be presenting our presentation today. Thank you.

L I N D A F L O R E S, E S Q.: Good afternoon, Chairman Shinn and members of the Committee. We are pleased to appear before you today to discuss the continuing crisis in solid waste disposal in the State of New Jersey and current concerns and issues raised as a consequence of recent initiatives to address this crisis.

In the interest of time we will deviate from our prepared remarks with regard to the background information. We'd like however to submit our full statement for the record.

The Department of the Public Advocate, the Division of Rate Counsel as statutory intervener, represents the public's interest in paying the lowest possible rate for solid waste disposal services. To that end Rate Counsel as intervener engages in a thorough examination of all operating expenses as well as profits, to assure that these are necessarily and properly charged to ratepayers and that they do not represent undue exactions occasioned by the social crisis.

Our experiences in the regulation of transfer stations permits us to observe certain abuses in the ameliorative short-term solid waste disposal mechanism. I would now like to describe the patterns of regulatory circumvention that Rate Counsel has witnessed.

Rate Counsel is a statutory intervener in the administrative rate setting proceeding to evaluate utility rates. In fulfillment of this legislative mandate, Rate Counsel has intervened in proceedings involving 11 operating transfer stations whose rates are presently under review for reasonableness before the Office of Administrative Law. These transfer stations cover the counties of Essex, Morris, Union, Passaic, and Somerset.

While no review has been completed for any of the transfer stations, examination of their operations reveals identifiable barriers to the effective regulation of these utilities. The major issues and concerns raised by these transfer stations will now be discussed.

The first: hauler incentives to misdirect waste. In the solid waste disposal industry, levels of utility service have evolved. The hauler serves the ultimate ratepayer, a transfer station serves the hauler, and a landfill serves the transfer station.

However, the existing payment structure builds in an incentive to bypass the level of operation performed by the transfer station. Since the hauler receives payment from the

ultimate ratepayer for its service as well as the requisite tipping fees for payment to the transfer station, the hauler significantly increases his financial gain if he bypasses the station and transports his waste to either an illegal dump site or a legal but not designated landfill.

The ability to pocket tipping fees is a function of the indirect payment structure for the transfer station. Elimination of the incentive to bypass the waste disposal route by creating a direct means of payment to the transfer station reduces the opportunity for violating established waste flow routes.

This would be accomplished by an implementation of a direct payment system for the solid waste disposal. Tipping fees and removal of this component of the cost from waste hauler rates. Solid waste haulers who bill consumers directly would be directed to reduce their charges by an amount per customer which reflects the tipping fee. Each household would pay the cost of waste disposal directly by the purchase of a monthly or a quarterly sticker which would be displayed in a visible location. In effect, the disposal cost of such waste at the waste disposal site is prepaid for the hauler. Therefore, the positive economic incentives for a hauler to bypass the designated facility would be negated. This structural change to the industry would also preclude the need for dozens of expedited hauler rate changes each time rates change at a landfill or transfer station. Thus, separate payment would increase regulatory efficiency.

Site selection: Implementation of the interim solid waste disposal strategy required in the first instance, selection of several sites for locating the transfer stations. In recognition of the NIMBY syndrome, that is the Not In My Back Yard factor, the Legislature provided economic incentives to municipalities to induce voluntary acceptance of a transfer station facility, in return for a negotiated rate.

By statute a minimum was established as the host municipality benefit in voluntary agreements. However, the statutory purpose has been skewed when applied to municipalities in voluntarily selected to serve as host sites.

It has been determined that the minimum rate applicable, even when an involuntary selection occurs, is the same as a statutory minimum applicable to voluntary selections. To impose a transfer station on a municipality at the minimum charge, unfairly and disproportionately and penalizes the reluctant sites. Moreover, this application eliminates any equality and bargaining position thereby encouraging abuse. There would appear to be no basis for this perfunctory application.

Host community benefits paid to an involuntary host should at least be at the average statewide rate for equivalent facilities. The imposition of an average rate would thus be more commensurate with the burden imposed.

Affiliated entities: Determinations regarding appropriate rate charges by utilities require an examination of expenses incurred for reasonableness. In evaluating the expenses of transfer stations, however, such an examination is hampered by the significant level of dealings with related or affiliated entities. The existence of affiliated transactions and the solid waste industry represent in our opinion the largest obstacle to timely and efficient regulation and a principal root of inflated rate claims.

Related parties such as affiliates, principal owners and close kin, parent companies and subsidiaries, significantly influence the management or operating practices of the enterprise. Consequently, dealings between or among related entities must be examined to determine whether such transactions were carried out at arm's length.

Transactions between related parties and affiliated companies often do not constitute dealings in which both

information underlying rates approved on an interim basis by the Board. Exhaustion of all avenues for reversal of each unfavorable order issued by the OAL and the Board is routine and incessant.

A review of these proceeding reveals a clear pattern of defiance by transfer stations to Board regulation. Inasmuch as transfer stations have contracted with various counties for services, it is imperative that the review of interim rates be conducted while the transfer stations continue in existence, if any ordered refund is to be realized.

The transfer stations ought not to be allowed to make a mockery of the regulatory process to which they are subjected. It is, therefore, recommended that a mechanism for escrow accounts or a bond to insure the availability of the refund be established, thus creating a disincentive for delaying through legal means, the rate review process.

The actions of some transfer stations operators to defy timely regulation are extraordinary. In such instances extraordinary measures to protect consumer interests are warranted. We would support escrowing measures up to and including the BPU appointment of an independent agency conservator to oversee cash disbursements and to limit those disbursements to principals and affiliated entities. Such measures would result in operator/investor incentives to expedite rather than delay the present review of transfer station rates.

In summary, our recommendations include the following: First, present regulation sets haulers' rates to include tipping fees. This creates major incentives for waste flow misdirection. A separate payment so that end users pay tipping fees directly is needed to preclude this industry abuse.

Second, the host community benefit paid to an involuntary host community must be fair. The present BPU policy of setting that benefit at the 50 cents per ton minimum,

results in economic coercion instead of true acceptance of such facilities and does nothing to locate facilities where they will be accepted.

Third, the present waste disposal industry practice of organizing regulated entities as conduits to direct funds to affiliated entities requires major reform. The present organizational structure inverts the normal business incentive and severely complicates regulatory oversight.

Fourth, the Committee should be aware that the expected short life terms of these facilities creates regulatory issues, but we are not recommending specific legislative action on this point at this time.

And fifth, we propose that the Legislature support strong measures on the part of the BPU to control cash flow during pendency of proceedings. This will significantly reduce present incentives, to frustrate the present review of the reasonableness of rates now charged.

We thank you for your attention and we'd be more than pleased to answer any questions that you may have.

ASSEMBLYMAN SHINN: Harry?

ASSEMBLYMAN McENROE: No thanks. Very nice statement.

ASSEMBLYMAN SHINN: The host community testimony, I didn't quite understand what you were suggesting in that second statement?

MS. FLORES: The second statement refers to a particular instance in which a transfer station's failed to come to voluntary agreement with regard to the host community benefit amount. As a result, the Board of Public Utilities in hearing the case determined that the applicable statute, which to our reading, applies to voluntary agreements, not where there is no agreement, determines that the transfer station was entitled only to 50 cents per ton. So there is a large discrepancy between the average host community benefits paid to other host communities and that, in this particular instance.

MR. MAKUL: I might add that once the facility is there what incentive is there to negotiate on the part of the transfer station anything more than the minimum. Once it's there, if they can offer the minimum, take it or leave it.

ASSEMBLYMAN SHINN: Yeah, it's a particular problem when you're talking about emergency facilities--

MR. MAKUL: Yes.

ASSEMBLYMAN SHINN: --and a short time frame to get them in place and really exacerbates that problem. Okay, thank you very much. We appreciate you coming and appreciate your testimony.

MR. MAKUL: Thank you.

MS. FLORES: Thank you.

ASSEMBLYMAN SHINN: I think that pretty much concludes what we have to do. Yes, sir?

A S S E M B L Y M A N W I L L I A M J. P A S C R E L L, J R.:  
Mr. Chairman, can I have the liberty just to make a couple of statements?

ASSEMBLYMAN SHINN: I told several--

ASSEMBLYMAN PASCRELL: I waited.

ASSEMBLYMAN SHINN: I told several people we weren't going to take Legislature testimony.

ASSEMBLYMAN PASCRELL: Not so much in the form of testimony, Mr. Chairman. Some observations. I'll make it brief.

ASSEMBLYMAN SHINN: Okay.

ASSEMBLYMAN McENROE: I have a few observations also before the meeting is closed.

ASSEMBLYMAN SHINN: I hope your observations are--

ASSEMBLYMAN McENROE: They'll be succinct and to the point, hopefully.

ASSEMBLYMAN PASCRELL: Mr. Chairman, when I looked at the original resolution which had precipitated this hearing, 111, I'm struck with some of the words here: "Deepening solid

waste crisis," was in the first whereas. Of course we refer specifically to the northern counties. In the fourth whereas, line 28, we're talking about, "Equally impaired it to safeguard the interest of the rate payers as well as the interest of those who have made considerable financial investments." And we talk about the -- on the second page of the resolution "Expenses that are predicated upon anticipated waste volumes.

When we drop down to the resolved, the Assembly Solid Waste Management Committee is directed to conduct an inquiry into the manner in which the rates and charges for the disposal of solid waste being processed at transfer stations in northern New Jersey are set, shall investigate complaints of over billing and illegal rate making practices.

I would like to know what are the complaints that you are investigating? And I would like to know who provided this Committee with those complaints and what examples of illegal rate making practices are you investigating, for the public record.

ASSEMBLYMAN SHINN: For the public record, we initiated our first hearing today and were receiving complaints from the people that are operating the stations, the Board of Public Utilities, the Public Advocate, and DEP to determine what complaints there are. Certainly if you have any to offer, we will be glad to receive them. But this is a data gathering--

ASSEMBLYMAN PASCRELL: Well, this--

ASSEMBLYMAN SHINN: --session as our first hearing and our intent is to gather all the data and all the problems. And believe me, we have at least 12 volumes of documents from BPU and submissions from DEP on their process, and we're taking public testimony. So anyone that has any complaints to offer, we're open to receive them.

ASSEMBLYMAN PASCRELL: I'm talking about what precipitated this legislation. I didn't hear-- I listened to practically all the testimony. I left the room a couple -- on

two occasions. But I didn't hear of any complaints of over billing or illegal rate making practices. Now I would like to know what I missed?

ASSEMBLYMAN SHINN: We heard testimony today that would suggest that the majority of the transfer stations aren't receiving the volume of waste that they estimated, which is certainly a rate problem, a rate escalation problem -- if not today it's certainly going to be tomorrow. As far as where the waste goes from certain facilities that have combination transfer station/recycling centers, that certainly seems to be an issue that's disposition is not certain at this point.

ASSEMBLYMAN PASCRELL: When I was listening to the testimony in the very beginning concerning BPU about the confusion -- to use their words -- of who had jurisdiction in these matters. You remember that, going back to the first-- And the question of--

ASSEMBLYMAN SHINN: You're talking specifically of Essex?

ASSEMBLYMAN PASCRELL: Yeah, well they discussed-- There were questions concerning jurisdiction-- The first person testified, BPU. They were talking about it, in general, before they got into Essex County. There were many questions of who had the authority, and then it was defined as to where the authority rested. There were still questions, apparently. This is just before we talked about the backlog of cases which they had which they said in two or three months they'd be able to -- should be able to clear.

Because there are questions of jurisdiction in these matters-- Because this Committee -- I still hold -- does not have the resources to investigate what was said here today. I mean you can't. It's humanly impossible for you to do that unless you're Houdinis. I know you're magicians, but you're not Houdinis.

ASSEMBLYMAN SHINN: What we intend to do is, essentially, what the resolution suggests we do. We're not the AG and we're not the SCI, but we certainly intend to do our best to conform with the resolution that was adopted by the Assembly. We don't have a separate arm in this Committee that is armed with investigators or accountants. But I think we can do an inquiry into the rate setting process, try to ferret through the procedure between DEP and BPU, take the comments from the operators of the facilities and try to ferret that out into a conclusive statement which responds to the request for an inquiry back to the Speaker, which is what we're directed to do.

ASSEMBLYMAN PASCRELL: Well, each--

ASSEMBLYMAN SHINN: I think each one of those-- You know, when get to the end of this process it may well be that there's a mission for someone else, beyond the scope of this Committee.

ASSEMBLYMAN McENROE: Mr. Chairman?

ASSEMBLYMAN SHINN: And I would think that that very well could be the situation. I can't conclude that at this point.

ASSEMBLYMAN McENROE: Mr. Chairman, I would hope that the inquiry would result in a conclusion by the Committee that a strong legislative effort is needed to define and encourage the responsibility of the BPU to involve itself totally under law and this process.

ASSEMBLYMAN SHINN: I usually don't like to give quick reactions before you get to the end of the process but I've got two quick ones just at the end of the day's hearing. Number one, we've got to do waste flow enforcement. We've got to make sure that the waste gets to the facility in the volume that they're designed for. I don't think there's any question about that, and if they're short of resources at BPU or DEP to do that. I know we've addressed that before, but we've got to re address that issue and fairly quickly.

ASSEMBLYMAN McENROE: I, also, and I'm sure at the next meeting we need the operators to be here--

ASSEMBLYMAN SHINN: Oh, absolutely.

ASSEMBLYMAN McENROE: --and ask these questions. You know, where are these rates coming from, and defend yourself. We're the body empowered with that responsibility.

ASSEMBLYMAN PASCRELL: But Assemblyman McEnroe, when you hear these counties talking, they're trying to outdo each other as one is better than the next. You're not hearing here a series of complaints. You're hearing a series of self-fulfilling prophecies from these counties. And yet the ratepayer, the person who has to pay in each of those counties, your county, my county--

ASSEMBLYMAN McENROE: I think they're much happier than they should be.

ASSEMBLYMAN PASCRELL: Well, because they're not paying-- You know, in a sense, the public doesn't know what's going on. And when you hear how deferred payments, for instance, as just once example, are put off like that's just one instance of creative financing when we have to pay back on that principal three or four years from now what's the fee going to be? It's dismissed like nothing. The people in that county have no idea, no conception whatsoever of how that rate is going to be affected by this creative financing.

ASSEMBLYMAN SHINN: You know the Passaic thing interested me a couple of years ago when they were embarking on the process. Essentially, they were buying landfill futures. They were attempting to fix air space at a rate, pay the interest on a debt service, and bet that that debt service and that principal based on the agreement they could reach at that time at the end of this 15-year period would be more beneficial than going into the free market--

ASSEMBLYMAN PASCRELL: That's right.

ASSEMBLYMAN SHINN: --and trying to grapple with all the other factors. I don't know whether the final story is going to be known until we're well under that process or if that was a good or bad decision. And I think there's a high risk--

ASSEMBLYMAN PASCRELL: Right.

ASSEMBLYMAN SHINN: --as to how it goes, but you're certainly--

ASSEMBLYMAN PASCRELL: I think you're being charitable when you say that. I think you're right.

ASSEMBLYMAN SHINN: Given what happened to rates in the past two years since they initiated that, that may be a wise decision in the final analysis. I'm not sure that it isn't at this point because rates are escalating dramatically. If everyone else gets thrown out of Pennsylvania, Ohio, West Virginia, and wherever and they still have volume and everyone else is running around siting emergency landfills to solve the capacity crisis, and they still have capacity at 79.87 or whatever the rate was--

ASSEMBLYMAN PASCRELL: Close.

ASSEMBLYMAN SHINN: --that may prove to be-- They may be wise in the final analysis.

ASSEMBLYMAN PASCRELL: In paying off the landfill which they won't be in use of because they're going to be building this mass burn incinerator.

ASSEMBLYMAN SHINN: Well, they still have ash.

ASSEMBLYMAN PASCRELL: And how much is it going to cost to transfer toxic ash?

ASSEMBLYMAN SHINN: Well, the toxic question is still open.

ASSEMBLYMAN PASCRELL: I'm saying--

ASSEMBLYMAN SHINN: So there's--

ASSEMBLYMAN PASCRELL: It's not only a risk it's a risk with my money.

ASSEMBLYMAN SHINN: The jury's out on that one and it was a -- I thought a-- That's exactly what they're doing. They're buying landfill futures, and the wisdom of that is they're betting on what they foresaw as a future, in my estimation. They felt that that was a wise decision at the outset in preserving capacity for a 15-year time frame including ash disposal.

ASSEMBLYMAN PASCRELL: But the--

ASSEMBLYMAN SHINN: The flip side is that they could be wrong in that bet.

ASSEMBLYMAN PASCRELL: But when the schedule -- when the payback is such -- is shaped so that the payments up front are very low, you have to come to a time when you have to pay the bill. Don't you?

ASSEMBLYMAN SHINN: Are they permanent financing? Are they bond anticipation notes, or are they solely bond issue?

ASSEMBLYMAN PASCRELL: It's bond anticipation notes.

ASSEMBLYMAN SHINN: So they're essentially--

ASSEMBLYMAN PASCRELL: And they've deferred the payments--

ASSEMBLYMAN SHINN: --doing the notes in a certain period of time--

ASSEMBLYMAN PASCRELL: That's right.

ASSEMBLYMAN SHINN: --into permanent financing.

ASSEMBLYMAN PASCRELL: They've deferred the payment on the principal.

ASSEMBLYMAN SHINN: Usually--

ASSEMBLYMAN PASCRELL: Now what if we had to pay part of that principal in this year's tipping fee, what would the cost be?

ASSEMBLYMAN SHINN: I don't know what the debt service is.

ASSEMBLYMAN PASCRELL: Nobody knows really what--

ASSEMBLYMAN McENROE: Do the Board of Freeholders know? Has that question been offered?

ASSEMBLYMAN PASCRELL: It depends on where you ask them and how you ask them. I think that's just one part. You know, we're talking about the whole situation here. But I think it is a very clear mirror as to the kinds of things that are happening in other counties with different situations. Each county has a unique pitch to this whole thing. Thank you, Mr. Chairman.

ASSEMBLYMAN SHINN: Okay.

ASSEMBLYMAN McENROE: Mr. Chairman, when will our inquiry be completed?

ASSEMBLYMAN SHINN: Well, we've got a six-month time frame.

ASSEMBLYMAN McENROE: In six months I want to make sure there's time for action following our digestion of our inquiry.

ASSEMBLYMAN SHINN: Absolutely. Our action is-- At least our mandated action is a report to the Speaker. And if-- We wanted to get started on these hearings early because I envision a good deal of testimony. We've started with basically the counties and the regulatory agencies, and we certainly want to have time for testimony from the taxpayers, the people who are in the system. So I think we need at least two more hearings, before we start to try to assemble a position, and action and report. And of course, the legislation goes without saying.

ASSEMBLYMAN McENROE: What are we saying? Six months following the-- No later than six months following--

ASSEMBLYMAN SHINN: Well that's roughly our time frame.

ASSEMBLYMAN McENROE: So if we did take six months we'd still have it on the Speaker's desk by November or so which would give us time.

ASSEMBLYMAN SHINN: We literally have reams of information. But at least it's a good data collection experience if someone goes the next step, we've got the data collected.

ASSEMBLYMAN McENROE: Thank you.

ASSEMBLYMAN SHINN: Okay. I move the hearing be adjourned.

**(HEARING CONCLUDED)**

# **APPENDIX**





**GENERAL ASSEMBLY OF NEW JERSEY  
ASSEMBLY MAJORITY OFFICE**

**2ND FLOOR, STATE HOUSE ANNEX**

**CN-098**

**TRENTON, NEW JERSEY 08625**

**(609) 292-5339**

**CHUCK HARDWICK  
SPEAKER**

**BRADLEY S. BREWSTER  
EXECUTIVE DIRECTOR**

Assembly Solid Waste Committee

Statement on AR-111

by Assembly Roberts D. Franks

April 17, 1989

I want to commend the members of this committee for expediting the inquiry into the rate-setting practices of North Jersey trash transfer stations. Your swift response to Assembly Resolution 111 serves to highlight the critical nature of this issue and the need to regulate and control runaway garbage disposal costs.

It does not take a crystal ball to recognize how important it is to develop a safe and cost effective means for disposing of solid and toxic waste materials in a state as small but heavily populated as New Jersey. There are so many logistical problems to contend with, that we simply cannot afford to further complicate the situation by allowing arbitrary price-setting and an unfettered license for a limited number of unscrupulous purveyors to operate in a callous, unjust, anti-consumer manner.

We have been told by the Public Advocates Office that these designated transfer stations - established to insure New Jersey a reliable means of garbage disposal until a sufficient number of incinerators are in place - have been issued the equivalent of an exclusive franchise. They are as close as we get to an airtight monopoly in New Jersey. Worse yet, they have been allowed to exist and evolve in a regulatory vacuum. No single agency has been charged with overseeing or documenting their operations. As a result, rate-setting is shrouded in secrecy, and contracts arranged between affiliated companies seem to be proliferating.

The consequences of this laissez-faire approach have been disturbing to both rate-payers and county governments that have made financial investments in these stations. A Newark Star-Ledger article of May 15, 1988 reported that garbage disposal fees now contain millions of dollars of hidden management fees, handling expenses and county administrative surcharges. In many cases, these charges and operating expenses more than double the basic disposal fee.

In Morris County, the article stated, disposal rates charged by the stations are \$113.35 per ton, and actual dumping costs paid by the stations are only \$48. In Somerset County, disposal rates are \$101.50 per ton and dumping costs are \$44. In Passaic County, disposal rates were \$65 per ton and dumping costs were \$24.

Residents that I represent in Union County are paying the highest disposal rates in the state at \$137 per ton, while other members of my constituency in Essex County experienced an outrageous hike in their garbage rates from \$25 to \$102 per ton when the county was forced to stop dumping at a landfill in Kearny and required to truck waste out-of-state via two trash transfer stations.

In neither case were station operators required to explain or document how the rates were set, or how much they are paying for actual dumping.

These exorbitant rates have led a number of haulers to illegally by-pass designated transfer stations, despite receiving maximum payments from a county, and instead reach private deals with out-of-state landfills that enable them to undercut transfer costs. Not only are those haulers reaping illegal profits by their actions, they are also weakening the financial integrity of the transfer stations.

Even though transfer stations have been installed as only a temporary expedient, pending completion of planned resource recovery facilities, we cannot let them serve as a convenient gravy train for unscrupulous operators and haulers. Speaker Hardwick and myself sponsored AR-111 to safe-guard the interests of ratepayers and county governments and to provide for the adequate regulation and state supervision of these facilities. I urge the members of this committee to rigorously investigate the rate-setting practices and management procedures employed by transfer station operators and recommend the appropriate changes. We owe it to the residents of New Jersey.

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STATEMENT  
OF THE  
DEPARTMENT OF THE PUBLIC ADVOCATE  
BEFORE THE  
ASSEMBLY SOLID WASTE MANAGEMENT COMMITTEE  
ON ASSEMBLY RESOLUTION 111

APRIL 17, 1989

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INTRODUCTION

GOOD AFTERNOON, CHAIRMAN SHINN, AND MEMBERS OF THE SOLID WASTE MANAGEMENT COMMITTEE. WE ARE PLEASED TO APPEAR BEFORE YOU TODAY TO DISCUSS THE CONTINUING CRISIS IN SOLID WASTE DISPOSAL IN THE STATE OF NEW JERSEY AND THE CURRENT CONCERNS AND ISSUES RAISED AS A CONSEQUENCE OF RECENT INITIATIVES TO ADDRESS THIS CRISIS.

THE DEPARTMENT OF THE PUBLIC ADVOCATE IS QUITE FAMILIAR WITH SOLID WASTE DISPOSAL IMPERATIVES ARISING AS A CONSEQUENCE OF LIMITED REMAINING LANDFILL CAPACITY. WE HAVE WITNESSED, AS A RESULT OF ERODING LANDFILL CAPACITY, THE HIGH COST PLACED ON AVAILABLE LANDFILL SPACE, AND THE RESULTING NEED FOR GREATER ADMINISTRATIVE CONTROL OVER THE UTILIZATION OF LIMITED LANDFILL CAPACITY.

CITIZENS COMPLAINTS TO THE DEPARTMENT CONCERNING THE HIGH COST OF WASTE DISPOSAL HAVE MULTIPLIED A THOUSAND-FOLD REFLECTING THE DRAMATIC INCREASE IN THE PERCENTAGE OF HOUSEHOLD DOLLARS WHICH MUST BE EARMARKED FOR GARBAGE DISPOSAL. WE ARE NOT TALKING ABOUT INDUSTRIAL WASTE HERE! THIS IS A PROBLEM WHICH AFFECTS EVERY ONE! FACED WITH THIS CRISIS, THE STATE LEGISLATURE, IN ITS WISDOM, PROVIDED FOR A THREE-PRONGED STRATEGY FOR SOLID WASTE

DISPOSAL. THE LONG-TERM SOLUTION TO NEW JERSEY'S SOLID WASTE DISPOSAL NEEDS WOULD BE MET THROUGH RESOURCE RECOVERY FACILITIES AND, TO A LESSER EXTENT, RECYCLING AND CONTINUED LANDFILLING. MINDFUL OF THE ONGOING STRESS EXPERIENCED BY THE STATE'S RESIDENTS, TRANSFER STATIONS WERE CONCEIVED OF AS THE MOST VIABLE STRATEGY TO RESPOND TO THE NEED FOR SHORT-TERM RELIEF.

IN ITS BROADEST SENSE, THE TRANSFER STATION INITIATIVE INCLUDED THE COLLECTION OF A COUNTY'S SOLID WASTE, THE COMPACTION OF SOLID WASTE AT THE STATION AND EXPORTATION OF SAID WASTE TO AN OUT-OF-STATE DISPOSAL FACILITY. HIGH TRANSFER STATION DISPOSAL COSTS WERE ANTICIPATED; THE GREATER DISTANCE TRAVELED BY PRIVATE ENTREPRENEURS TO LARGELY UNREGULATED OUT-OF-STATE DISPOSAL SITES WOULD ASSUREDLY INCREASE TONNAGE RATES. NEVERTHELESS, THE LEGISLATIVE SCHEME ENVISIONED REGULATORY OVERSIGHT. TRANSFER STATIONS HAVING SINCE BEEN DEFINED AS PUBLIC UTILITIES, REGULATION OF THEIR RATES NOW INCLUDES THE PARTICIPATION OF THE DIVISION OF RATE COUNSEL TO AMELIORATE RATE SHOCK. BUT PERHAPS MORE TO THE POINT, THROUGH THE RATESETTING PROCESS, THE DEPARTMENT'S DIVISION OF RATE COUNSEL HAS SOUGHT TO SECURE FOR RATEPAYERS "PERMANENT" RATES WHICH REPRESENT JUST AND REASONABLE CHARGES.

THE DIVISION OF RATE COUNSEL, AS STATUTORY INTERVENOR, REPRESENTS THE PUBLIC'S INTEREST IN PAYING THE LOWEST POSSIBLE

RATE FOR SOLID WASTE DISPOSAL SERVICES. TO THAT END, RATE COUNSEL AS INTERVENOR ENGAGES IN A THOROUGH EXAMINATION OF ALL OPERATING EXPENSES, AS WELL AS PROFITS, TO INSURE THAT THESE ARE NECESSARILY AND PROPERLY CHARGED TO RATEPAYERS AND THAT THEY DO NOT REPRESENT UNDUE EXACTIONS OCCASIONED BY THIS SOCIAL CRISIS. OUR EXPERIENCES IN THE REGULATION OF TRANSFER STATIONS PERMITS US TO OBSERVE CERTAIN ABUSES IN THE AMELIORATIVE SHORT-TERM SOLID WASTE DISPOSAL MECHANISM.

#### PATTERNS OF REGULATORY CIRCUMVENTION

RATE COUNSEL IS THE STATUTORY INTERVENOR IN THE ADMINISTRATIVE RATE SETTING PROCEEDINGS TO EVALUATE UTILITY RATES. IN FULFILLMENT OF THIS LEGISLATIVE MANDATE, RATE COUNSEL HAS INTERVENED IN PROCEEDINGS INVOLVING 11 OPERATING TRANSFER STATIONS WHOSE RATES ARE PRESENTLY UNDER REVIEW FOR REASONABLENESS BEFORE THE OFFICE OF ADMINISTRATIVE LAW (OAL); THESE TRANSFER STATIONS COVER THE COUNTIES OF ESSEX, MORRIS, UNION, PASSAIC AND SOMERSET. WHILE NO REVIEW HAS BEEN COMPLETED FOR ANY OF THE TRANSFER STATIONS, EXAMINATION OF THEIR OPERATIONS REVEALS IDENTIFIABLE BARRIERS TO THE EFFECTIVE REGULATION OF THESE UTILITIES. THE MAJOR ISSUES AND CONCERNS RAISED BY THE TRANSFER STATION STRATEGY FOLLOW.

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I. HAULER INCENTIVES TO MISDIRECT WASTE

IN THE SOLID WASTE DISPOSAL INDUSTRY, LEVELS OF UTILITY SERVICE HAVE EVOLVED. THE HAULER SERVES THE ULTIMATE RATEPAYER, A TRANSFER STATION SERVES THE HAULER, AND A LANDFILL SERVES THE TRANSFER STATION. HOWEVER, THE EXISTING PAYMENT STRUCTURE BUILDS IN AN INCENTIVE TO BYPASS THE LEVEL OF OPERATION PERFORMED BY THE TRANSFER STATION. SINCE THE HAULER RECEIVES PAYMENT FROM THE ULTIMATE RATEPAYER FOR ITS SERVICE, AS WELL AS THE REQUISITE TIPPING FEES FOR PAYMENT TO THE TRANSFER STATION, THE HAULER SIGNIFICANTLY INCREASES HIS FINANCIAL GAIN IF HE BYPASSES THE STATION AND TRANSPORTS HIS WASTES TO EITHER AN ILLEGAL DUMP SITE OR A LEGAL, BUT NOT DESIGNATED, LANDFILL. THE ABILITY TO POCKET TIPPING FEES IS A FUNCTION OF THE INDIRECT PAYMENT STRUCTURE FOR THE TRANSFER STATION.

ELIMINATION OF THE INCENTIVE TO BYPASS THE WASTE DISPOSAL ROUTE BY CREATING A DIRECT MEANS OF PAYMENT TO THE TRANSFER STATION REDUCES THE OPPORTUNITY FOR VIOLATING ESTABLISHED WASTE FLOW ROUTES.

THIS WOULD BE ACCOMPLISHED VIA IMPLEMENTATION OF DIRECT PAYMENT SYSTEM FOR THE SOLID WASTE DISPOSAL, TIPPING FEES AND REMOVAL OF THIS COMPONENT OF COST FROM WASTE HAULER RATES.

SOLID WASTE HAULERS WHO BILL CONSUMERS DIRECTLY WOULD BE DIRECTED TO REDUCE THEIR CHARGES BY AN AMOUNT, PER CUSTOMER, WHICH REFLECTS THE TIPPING FEE. EACH HOUSEHOLD WOULD PAY THE COST OF WASTE DISPOSAL DIRECTLY VIA THE PURCHASE OF A MONTHLY OR QUARTERLY STICKER, WHICH WOULD BE DISPLAYED IN A VISIBLE LOCATION.

IN EFFECT, THE DISPOSAL COST OF SUCH WASTE AT THE WASTE DISPOSAL SITE IS PREPAID FOR THE HAULER. THEREFORE, THE POSITIVE ECONOMIC INCENTIVES FOR A HAULER TO BYPASS THE DESIGNATED FACILITY WOULD BE NEGATED. THIS STRUCTURAL CHANGE TO THE INDUSTRY WOULD ALSO PRECLUDE THE NEED FOR DOZENS OF "EXPEDITED" HAULER RATE CHANGES EACH TIME RATES CHANGED AT A LANDFILL OR TRANSFER STATION. THUS, SEPARATE PAYMENT WOULD INCREASE REGULATORY EFFICIENCY.

## II. SITE SELECTION

IMPLEMENTATION OF THE INTERIM SOLID WASTE DISPOSAL STRATEGY REQUIRED, IN THE FIRST INSTANCE, SELECTION OF THE SEVERAL SITES FOR LOCATING THE TRANSFER STATIONS. IN RECOGNITION OF THE "NIMBY" SYNDROME, THAT IS, THE "NOT IN MY BACK YARD FACTOR," THE LEGISLATURE PROVIDED ECONOMIC INCENTIVES TO MUNICIPALITIES TO INDUCE VOLUNTARY ACCEPTANCE OF A TRANSFER STATION FACILITY IN RETURN FOR A NEGOTIATED RATE. BY STATUTE, A MINIMUM WAS

ESTABLISHED AS THE HOST MUNICIPALITY BENEFIT IN VOLUNTARY AGREEMENTS.

HOWEVER, THE STATUTORY PURPOSE HAS BEEN SKEWED WHEN APPLIED TO MUNICIPALITIES INVOLUNTARILY SELECTED TO SERVE AS HOST SITES.

IT HAS BEEN DETERMINED THAT THE MINIMUM RATE APPLICABLE, EVEN WHEN AN INVOLUNTARY SELECTION OCCURS, IS THE SAME AS THE STATUTORY MINIMUM APPLICABLE TO VOLUNTARY SELECTIONS. TO IMPOSE A TRANSFER STATION ON A MUNICIPALITY AT THE MINIMUM CHARGE UNFAIRLY AND DISPROPORTIONATELY PENALIZES THE RELUCTANT SITE. MOREOVER, THIS APPLICATION ELIMINATES ANY EQUALITY IN BARGAINING POSITION, THEREBY ENCOURAGING ABUSE. THERE WOULD APPEAR TO BE NO BASIS FOR THIS PERFUNCTORY APPLICATION.

HOST COMMUNITY BENEFITS PAID TO AN INVOLUNTARY HOST SHOULD AT LEAST BE AT THE AVERAGE STATEWIDE RATE FOR EQUIVALENT FACILITIES. THE IMPOSITION OF AN AVERAGE RATE WOULD BE MORE COMMENSURATE WITH THE BURDEN IMPOSED.

### III. AFFILIATED ENTITIES

DETERMINATIONS REGARDING APPROPRIATE RATE CHARGES BY UTILITIES REQUIRE AN EXAMINATION OF EXPENSES INCURRED FOR REASONABLENESS. IN EVALUATING THE EXPENSES OF TRANSFER STATIONS,

HOWEVER, SUCH AN EXAMINATION IS HAMPERED BY THE SIGNIFICANT LEVEL OF DEALINGS WITH RELATED OR AFFILIATED ENTITIES. THE EXISTENCE OF AFFILIATED TRANSACTIONS IN THE SOLID WASTE INDUSTRY REPRESENT, IN OUR OPINION, THE LARGEST OBSTACLE TO TIMELY AND EFFICIENT REGULATION, AND A PRINCIPAL ROOT OF INFLATED RATE CLAIMS.

RELATED PARTIES, SUCH AS AFFILIATES, PRINCIPAL OWNERS AND CLOSE KIN, PARENT COMPANIES AND SUBSIDIARIES, SIGNIFICANTLY INFLUENCE THE MANAGEMENT OR OPERATING PRACTICES OF THE ENTERPRISE. CONSEQUENTLY, DEALINGS BETWEEN OR AMONG RELATED ENTITIES MUST BE EXAMINED TO DETERMINE WHETHER SUCH TRANSACTIONS WERE CARRIED OUT AT ARM'S LENGTH. TRANSACTIONS BETWEEN RELATED PARTIES AND AFFILIATED COMPANIES OFTEN DO NOT CONSTITUTE DEALINGS IN WHICH BOTH PARTIES TO THE TRANSACTION SEEK THEIR RESPECTIVE BEST INTERESTS AND ARE FREE TO ACT ACCORDINGLY. TRANSACTIONS WITH AFFILIATED ENTITIES TURN REGULATED ENTERPRISES INTO CONDUITS FOR ECONOMIC ABUSE. THERE IS NO BASIS TO BELIEVE SUCH TRANSACTION ARE SET ON AN ARM'S LENGTH BASIS. MOREOVER, THEY VIOLATE THE TENETS OF ORIGINAL COST RATEMAKING LONG ACCEPTED IN THIS JURISDICTION.

WE WOULD PROPOSE THE ADOPTION OF SPECIFIC LEGISLATION WHICH DIRECTS THE BPU TO CONSOLIDATE, ON A RATE BASE/RATE OF RETURN STANDARD, ALL AFFILIATED OPERATIONS IN THE SOLID WASTE DISPOSAL INDUSTRY. THERE IS ABSOLUTELY NO REASON, OTHER THAN TO GAIN

UNREASONABLE REGULATORY ADVANTAGES, WHY TRANSFER STATIONS SHOULD BE PERMITTED TO LEASE LAND, BUILDINGS, AND EQUIPMENT FROM AFFILIATES, ENTER INTO EXCLUSIVE TRUCKING ARRANGEMENTS WITH AFFILIATES, AND OTHER SUCH SWEETHEART DEALS, AND THEN PASS 100% OF THE CONTRACT COSTS ON TO RATEPAYERS AS "EXPENSES." ALLOWING THAT FORM OF OWNERSHIP/OPERATIONAL STRUCTURE CREATES DISINCENTIVES FOR ECONOMIC EFFICIENCY, AND REQUIRES CLOSE EXAMINATION OF EACH AND EVERY SUCH CONTRACT. AS A RESULT, THE FOCUS OF REGULATIONS THEN CHANGES FROM THE COST OF PROVIDING THE SERVICE TO THE MARKET VALUE OF THE SERVICES PROVIDED.

#### IV. SHORT-TERM EXISTENCE

TRANSFER STATIONS, AS AN INTERIM, STOPGAP MECHANISM FOR THE STATE'S SOLID WASTE DISPOSAL NEEDS, ARE DISTINCT AS CORPORATE ENTITIES. TRANSFER STATIONS HAVE AN EXPECTED LIFE OF ONLY FIVE YEARS. THIS ANTICIPATED SHORT-TERM EXISTENCE HAS A SIGNIFICANT UPWARD IMPACT ON EXPENSES OF THE TRANSFER STATION WHICH ARE RECOVERED IN RATES.

TYPICALLY, THE TRANSFER STATION SEEKS TO DEPRECIATE ALL ASSETS OVER THE FIVE-YEAR PERIOD. WHILE THESE ASSETS MAY ONLY HAVE A FIVE-YEAR ECONOMIC LIFE, SOME OF THEIR PHYSICAL LIVES ARE CONSIDERABLY LONGER. THE TRANSFER STATIONS HAVE MAINTAINED THAT THE ASSETS HAVE ZERO NET SALVAGE VALUE. IT IS NECESSARY TO

ASSESS VIA EXPERT WITNESSES THE SALVAGE VALUE OF THESE ASSETS, THEREBY RECONCILING THE PHYSICAL AND ECONOMIC LIFE OF THE ASSETS.

MOREOVER, THE LIMITED LIFE OF TRANSFER STATIONS PREVENTS ANALYSIS OF COSTS PLUS PROFIT CONSISTENT WITH RATE-OF-RETURN REGULATION. INHERENT IN THE EXAMINATION OF RATES IS THE EVALUATION OF EXPENSES IN THE TEST YEAR UTILIZED FOR TRENDING OR PREDICTING FUTURE EXPENSES. THE TRENDING IS NECESSARILY PREDICATED ON THE REPRESENTATIVENESS OF THE YEAR SELECTED. NEW BUSINESSES, HOWEVER, GENERALLY INCUR START-UP COSTS AND ACQUISITION EXPENSES DURING THEIR FORMATIVE YEARS WHICH ARE HIGH AND ATYPICAL. THUS, THOSE COMPONENTS OF RATE-OF-RETURN REGULATION WHICH RELY ON HISTORICAL DATA FOR TRENDING FORWARD ARE LARGELY NONEXISTENT FOR TRANSFER STATIONS. GUARDING AGAINST THE IMPOSITION OF UNREASONABLE RATES BASED ON NON-RECURRING EXPENDITURES IN THE TEST YEAR IS THUS NECESSARY.

THE PROBLEM OF SHORT TERM EXISTENCE AND ITS EFFECT ON DEPRECIATION EXPENSE CAN PROBABLY BE HANDLED WITHIN THE CONTEXT OF EACH RATE REVIEW. THEREFORE, WE ARE NOT PROPOSING ANY DIRECT LEGISLATIVE INTERVENTION OR GUIDANCE AT THIS TIME.

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V. INTENTIONAL EVASION OF REVIEW

THE TRANSFER STATION PROCEEDINGS EXEMPLIFY THE DELAY TACTICS BEING UTILIZED BY UTILITIES TO EVADE REVIEW. IN THESE CASES, NO DEMONSTRATION OF THE REASONABLENESS OF THE RATES CHARGED HAVE BEEN MADE. RATE COUNSEL, AS STATUTORILY MANDATED INTERVENOR, MUST ESSENTIALLY CONSTRUCT THE COMPLETE FILING THROUGH DISCOVERY AND THEN CHALLENGE ON BEHALF OF THE PUBLIC THE PRELIMINARY ASSERTIONS. HOWEVER, THESE EFFORTS HAVE BEEN REPEATEDLY THWARTED IN TRANSFER STATION CASES.

THE TRANSFER STATIONS HAVE CONSISTENTLY REFUSED TO ACCEPT THEIR STATUS AS PUBLIC UTILITIES, RESULTING IN EXCESSIVE NUMBERS OF MOTIONS FOR REHEARING, REVERSAL AND APPEALS, PARTICULARLY MOTIONS TO COMPEL DISCOVERY OF PERTINENT INFORMATION UNDERLYING RATES APPROVED ON AN INTERIM BASIS BY THE BOARD. EXHAUSTION OF ALL AVENUES FOR REVERSAL OF EACH UNFAVORABLE ORDER ISSUED BY THE OAL AND THE BOARD IS ROUTINE AND INCESSANT.

A REVIEW OF THESE PROCEEDINGS REVEALS A CLEAR PATTERN OF DEFIANCE BY TRANSFER STATIONS TO BOARD REGULATION. INASMUCH AS TRANSFER STATIONS HAVE CONTRACTED WITH THE VARIOUS COUNTIES FOR SERVICES, IT IS IMPERATIVE THAT THE REVIEW OF INTERIM RATES BE CONDUCTED WHILE THE TRANSFER STATIONS CONTINUE IN EXISTENCE IF ANY ORDERED REFUND IS TO BE REALIZED. THE TRANSFER STATIONS

OUGHT NOT BE ALLOWED TO MAKE A MOCKERY OF THE REGULATORY PROCESS TO WHICH THEY ARE SUBJECTED. IT IS, THEREFORE, RECOMMENDED THAT A MECHANISM FOR ESCROW ACCOUNTS OR A BOND TO INSURE THE AVAILABILITY OF THE REFUND BE ESTABLISHED, THUS CREATING A DISINCENTIVE FOR DELAYING, THROUGH LEGAL MEANS, THE RATE REVIEW PROCESS.

THE ACTIONS OF SOME TRANSFER STATION OPERATORS TO DEFY TIMELY REGULATION ARE EXTRAORDINARY. IN SUCH INSTANCES, EXTRAORDINARY MEASURES TO PROTECT CONSUMER INTERESTS ARE WARRANTED. WE WOULD SUPPORT ESCROWING MEASURES, UP TO AND INCLUDING THE BPU APPOINTMENT OF AN INDEPENDENT AGENT/CONSERVATOR TO OVERSEE CASH DISBURSEMENTS, AND TO LIMIT THOSE DISBURSEMENTS TO PRINCIPALS AND AFFILIATED ENTITIES. SUCH MEASURES WOULD RESULT IN OPERATOR/INVESTOR INCENTIVES TO EXPEDITE, RATHER THAN DELAY, THE PRESENT REVIEW OF TRANSFER STATION RATES.

#### CONCLUSION

THUS, PERMIT ME TO BRIEFLY RECAPITULATE OUR TESTIMONY, AND SUMMARIZE OUR RECOMMENDATIONS.

FIRST, PRESENT REGULATION SETS HAULERS RATES TO INCLUDE TIPPING FEES. THIS CREATES MAJOR INCENTIVES FOR WASTE FLOW

MISDIRECTION. A SEPARATE PAYMENT SYSTEM SO THAT END USERS PAY TIPPING FEES DIRECTLY IS NEEDED TO PRECLUDE THIS INDUSTRY ABUSE;

SECOND, THE HOST COMMUNITY BENEFIT PAID TO AN INVOLUNTARY HOST COMMUNITY MUST BE FAIR. THE PRESENT BPU POLICY OF SETTING THAT BENEFIT AT THE \$.50/TON MINIMUM RESULTS IN ECONOMIC COERCION, INSTEAD OF TRUE ACCEPTANCE OF SUCH FACILITIES, AND DOES NOTHING TO LOCATE FACILITIES WHERE THEY WILL BE ACCEPTED;

THIRD, THE PRESENT WASTE DISPOSAL INDUSTRY PRACTICE OF ORGANIZING REGULATED ENTITIES AS CONDUITS TO DIRECT FUNDS TO AFFILIATED ENTITIES REQUIRES MAJOR REFORM. THE PRESENT ORGANIZATIONAL STRUCTURE INVERTS THE NORMAL BUSINESS INCENTIVE AND SEVERELY COMPLICATES REGULATORY OVERSIGHT;

FOURTH, THE COMMITTEE SHOULD BE AWARE THAT THE EXPECTED SHORT LIFE TERMS OF THESE FACILITIES CREATES REGULATORY ISSUES, BUT WE ARE NOT RECOMMENDING SPECIFIC LEGISLATIVE ACTION ON THIS POINT AT THIS TIME; AND

FIFTH, WE PROPOSE THAT THE LEGISLATURE SUPPORT STRONG MEASURES ON THE PART OF THE BPU TO CONTROL CASH FLOW DURING THE PENDENCY OF PROCEEDINGS. THIS WILL SIGNIFICANTLY REDUCE PRESENT INCENTIVES TO FRUSTRATE THE PRESENT REVIEW OF THE REASONABLENESS OF RATES NOW CHARGED.

THANK YOU FOR YOUR ATTENTION AND WE WILL ANSWER ANY QUESTIONS  
YOU MAY HAVE.

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