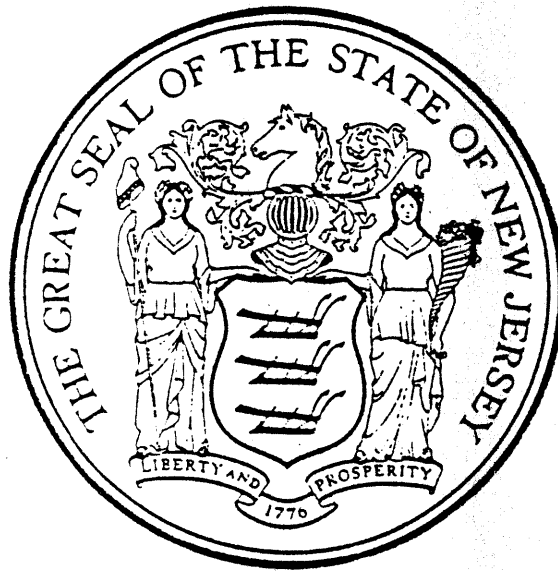


STATE OF NEW JERSEY



REPORT
of the
ASSEMBLY SOLID WASTE MANAGEMENT COMMITTEE
(Assembly Resolution No. 111)

MEMBERS OF COMMITTEE

Assemblyman Robert C. Shinn, Jr., Chairman
Assemblyman Arthur R. Albohn, Vice Chairman
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ASSEMBLY SOLID WASTE MANAGEMENT COMMITTEE

REPORT

Assembly Resolution No. 111.

The Assembly Solid Waste Management Committee hereby respectfully submits its report on the results of its inquiry into the setting of rates and charges for the disposal of solid waste at transfer stations in northern New Jersey.

This report and its recommendations are based on testimony gathered at three public hearings held by the Committee between April and December, 1989, as well as additional documentary materials examined and research conducted by the Committee.

The Committee found no substantial evidence of overbilling or illegal ratemaking practices on the part of any public or private sector entity during the course of its research into the manner in which the State-sanctioned transfer stations were developed and the interim rates set. Nevertheless, a number of questionable decisions, practices and procedures have been uncovered. The Committee laments the lack of State agency coordination of the "transfer station initiative," and concludes that, to be charitable, the entire matter should be viewed as a policy driven by expediency rather than sound judgment.

(s) _____
ROBERT C. SHINN, JR.
Chairman

(s) _____
ARTHUR R. ALBOHN
Vice Chairman

(s) _____
NICHOLAS R. FELICE

(s) _____
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BACKGROUND

In August, 1984, the Commissioner of DEP sent letters to 15 of the 22 solid waste management districts admonishing county solid waste officials to enter into a "court consent agreement," a court sanctioned plan embodying a detailed schedule for implementing the county's 10-year strategy for meeting its solid waste disposal needs. The individual letters outlined the shortcomings and "major deficiencies" of each county's solid waste program and stated that failure to obtain signed agreements would result in possible court action. Several counties responded to this initiative to the department's satisfaction. The DEP filed suit against the remainder.

In June 1985, the New Jersey Superior Court, in a case concerning the DEP's suit against 7 counties that failed to enter into these consent agreements, ruled that the department should not seek relief from a court, but rather should use its own ample administrative powers under the "Solid Waste Management Act" to adopt district solid waste management plans, or portions thereof, on behalf of the delinquent counties (Department of Environmental Protection v. Middlesex County Board of Chosen Freeholders, 206 N.J. Super. 414 (1985)).

Subsequently, the DEP began taking a more active role to insure that the recalcitrant districts would meet their solid waste facility siting and district plan implementation responsibilities. The most significant manifestation of this administrative activity has been the department's "transfer station initiative".

Prompted by projections that most counties in North Jersey would literally have exhausted the permitted capacity at the State's two largest remaining landfills by the end of 1987, and as a consequence of the DEP v. Middlesex County decision, the Commissioner of DEP, in January, 1986, proposed the adoption of amendments to the district solid waste management plans of Morris, Passaic, Somerset and Union Counties, respectively, as an exercise of DEP's administrative powers under the "Solid Waste Management Act." These amendments were formally adopted between March and July, 1987. The amendments incorporate an interim solid waste disposal strategy for each county that provides for the development of in-county transfer station facilities to be utilized in conjunction with out-of-state disposal.

The transfer station strategy initiated by DEP was designed to conserve remaining landfill disposal capacity at the Edgeboro Landfill and HMDC facilities and to provide for a rational contingency plan to avoid a disposal capacity crisis in North Jersey prior to the development of long-term in-county resource recovery facilities. Moreover, the out-of-state disposal option was conceived by DEP as the only viable alternative to the wholesale redirection of North Jersey waste flows to South Jersey landfills. Given the time constraints, and because the department was unwilling to violate its own "performing district" policy - viz., the guiding principle informing DEP's approach to solid waste management has been the department's assurance that any county whose district solid waste management plan provides for suitable in-county interim or long-term disposal capacity would be insulated from the problems of counties experiencing disposal capacity shortfalls - the transfer station initiative was selected by DEP planners as the least disruptive policy option.

On June 12, 1987 the DEP and BPU issued an order terminating the disposal operations at the Edgeboro Landfill as of January 1, 1988. The Joint Order specifically directed Edgeboro to remain open beyond its heretofore permitted termination date of the end of June, 1987, at which time its DEP-approved disposal capacity would have been exhausted; and forbade the further disposal of out-of-state solid waste at Edgeboro, effective immediately, and solid wastes generated in Morris, Somerset and Union Counties after December 31, 1987. The Joint Order further directed each of these counties to cooperate with the department's efforts to develop operational transfer stations within each county by January 1, 1988.

The "Hackensack Meadowlands Reclamation and Development Act," P.L. 1968, c. 404 (C.13:17-1 et seq.) requires the Hackensack Meadowlands Development Commission (HMDC) to provide for the disposal of solid waste to the same extent and in the volumes that solid wastes have been disposed of within the Hackensack Meadowlands District as of the effective date of that act, January 13, 1969. Between 1969 and 1987 and under this "guarantee," the HMDC received solid wastes from municipalities in Bergen, Essex, Hudson, Passaic

and Union Counties. According to the HMDC's district solid waste management plan, until March, 1988 all solid wastes generated from within Bergen County, with the exception of North Arlington Boro, were disposed of at the Kingsland Park Landfill located in Lyndhurst Township. Prior to July 31, 1987, solid wastes generated from within Essex County and Union and Springfield Townships in Union County had been disposed at the HMDC 1-C Landfill located in Kearny, Hudson County. Solid wastes generated from within Hudson County, Passaic County, and North Arlington Boro were disposed of at the HMDC baler/balefill facility located in Lyndhurst Township.

It was generally assumed that the HMDC landfills could not continue to operate safely much beyond the end of 1987, considering that most of them were already beyond their DEP-approved elevation levels in 1987. In accordance with various judicial consent agreements, court orders and interdistrict waste flow agreements between the HMDC and Bergen, Essex and Passaic Counties, the HMDC was required to provide disposal capacity within the district to those counties until a specified date. Although Hudson County and the HMDC have not reached an agreement, the county is nevertheless currently utilizing solid waste facilities provided by the HMDC.

Under a judicial consent agreement entered into between Essex County, HMDC and the DEP in 1983, Essex County solid waste could no longer be accepted for disposal at HMDC solid waste facilities after July 31, 1987. A court order forbade the further disposal of Passaic County solid waste at HMDC facilities after December 1, 1987. Under an interdistrict agreement reached between Bergen County, the DEP and HMDC, after March 1, 1988 Bergen County solid waste could no longer be accepted at HMDC disposal facilities.

Under the transfer station strategy, solid wastes collected from each of these six counties (Essex County, on its own initiative, undertook to adopt this strategy in June, 1987 and Bergen County followed suit in December, 1987) must be transported to one or more designated in-county transfer stations wherein the waste would be compacted and loaded onto large vehicles for transportation to out-of-state landfills pursuant to contracts between the landfill owner-operator and the private firm owning or

operating the transfer station. Interdistrict waste flow orders issued by the DEP and BPU direct all collector-haulers operating within the county to use the State-sanctioned transfer station.

In May, 1986 the DEP issued a request for qualifications (RFQ) of private companies or "vendors" interested in providing the transfer, transportation and disposal services required by Morris, Passaic, Somerset and Union Counties, the four counties on whose behalf the DEP adopted district plan amendments to develop transfer stations. The department also issued a request for proposals (RFP), or actual detailed project plans and specifications, to the vendors it found qualified to provide these services.

Despite the formality of the RFQ/RFP selection process, DEP's main policy concerns - and only meaningful prerequisites - appeared to be that: (1) each qualified vendor would be able to meet the various implementation deadlines imposed by DEP for the construction of, and commencement of operations at, a transfer station capable of receiving specified tonnages; and (2) that each qualified vendor have one or more binding contracts for, or otherwise a guaranteed access to, sufficient out-of-state landfill disposal capacity to meet the needs of the relevant county for at least three to five years. Given the "seller's market" atmosphere under which these contracts were negotiated, the transfer station strategy has been rather expensive relative to the cost of in-state landfill disposal at the various sanitary landfill facilities located in South Jersey.

Nevertheless, DEP maintains that the estimated tipping fees (i.e. combined transfer, transportation and disposal costs) proposed by the various vendors selected by the department were well within the range of disposal costs reported in neighboring states. It should be noted that the various three and five-year tipping fee estimates provided to the DEP by the qualified vendors selected by the department were essentially accepted at face value. Although DEP lacks the statutory authority to regulate the economic aspects of solid waste disposal - a regulatory function which is solely the prerogative of the Board of Public Utilities - and has little experience or expertise in the complexities of utility ratemaking, the department failed to effectively coordinate its transfer station initiative with the Board. Rather, once DEP had set its new strategy in motion, the BPU was faced with a fait accompli.

With the exception of the Morris County facilities, all of the State-sanctioned transfer stations have experienced serious waste flow shortfalls. Since the outset, there have been numerous reported violations of the joint DEP-BPU waste flow orders. Due to the costly tipping fees charged at these publicly-owned facilities, (the two Morris County facilities are privately-owned) many collector-haulers have simply avoided the transfer stations and unlawfully transported their waste loads directly to relatively low-cost out-of-state landfills.

In general terms, in contracting with one or more vendors to construct, operate and maintain a transfer station, and provide for the transportation of compacted solid waste to out-of-state disposal facilities, each county entered into an agreement to provide the transfer station with a specified tonnage of solid waste. Under the "put or pay" provisions common to many, but not all transfer station (and resource recovery) contracts - the contracting unit must "put" (deliver) an agreed upon tonnage of solid waste to the facility for compaction and subsequent transportation out-of-state for disposal, or "pay" (reimburse) the vendor for any shortfall - the county is financially liable for the unused capacity. Thus, these reported shortages must eventually be recovered from county ratepayers through increased tipping fees or additional bonding.

As indicated earlier, the current tipping fees at all North Jersey transfer stations are rather high relative to in-state landfill disposal rates. In order to expedite the commencement of operations at these facilities, the rates for all of the transfer stations were hurriedly approved on an interim basis by the BPU in 1987 - 1988 in a series of preliminary orders, pending hearings on the reasonableness of those rates. Formal Office of Administrative Law (OAL) and BPU rate hearings are currently in progress.

The statutory authority of the BPU to analyze the rates of transfer stations operated by county utilities authorities (Bergen; Passaic and Union counties) is problematic. The Bergen County Utilities Authority (BCUA) set the tipping fee at the North Arlington Boro transfer station pursuant to the rate setting methodology authorized under section 15 of P.L. 1977, c. 384 (C.40:14B-22.1), which authorizes county utilities authorities to

"charge and collect solid waste service charges for the use or services of the solid waste system." Moreover, section 68 of P.L. 1957, c. 183 (C.40:14B-68) expressly provides that an authority "shall not be subject to regulation as to its service charges by any other officer, board, agency, commission or other officer of the State."

However, the "Solid Waste Utility Control Act of 1970," P.L. 1970, c. 40 (C.48:13A-1 et seq.) provides the regulatory scheme for the BPU's role in the economic regulation of all solid waste collection and disposal activities in this State. The act empowers the BPU to issue certificates of "public convenience and necessity" to persons seeking to engage in the solid waste collection or disposal business (C.48:13A-6); award specific monopolistic waste flow control privileges (i.e., a franchise) and designate service areas (C.48:13A-5); and regulate collection and disposal rates (C.48:13A-4).

The act also gives the BPU significant enforcement powers, including the explicit power to make adjustments to contracts between local governments and solid waste utilities in order to guarantee that collection or disposal rates or charges are not excessive (C.48:13A-7), and the power to revoke or suspend a certificate of public convenience and necessity for violations of the act, the State's pollution laws, or upon the revocation by DEP of the registration of the solid waste collector or disposal facility (C.48:13A-9).

The resolution of this statutory conflict with respect to the extent of BPU jurisdiction over transfer stations has produced rather varied outcomes. For instance, the tipping fees imposed at the North Arlington Boro transfer station have not been reviewed by the BPU because the BCUA has not filed a rate petition therefor. Conversely, the Passaic County Utilities Authority (PCUA) has voluntarily submitted to the rate regulation of the BPU. The Board awarded the PCUA a franchise and approved the proposed interim rates set forth in the provisions of its publicly-bid contract. By

contrast, the Union County Utilities Authority (UCUA) received a favorable OAL decision in response to its contention that the BPU lacked jurisdiction to review the UCUA's rates. Furthermore, the UCUA also contested whether, as a franchise holder, it was required to obtain a certificate of public convenience and necessity. However, inasmuch as the UCUA had previously petitioned the BPU for a franchise (which the BPU awarded), the BPU overruled the OAL in December, 1988 and concluded that statutory law obligates the Board to review the rates charged for waste disposal by a franchise holder, and that by virtue of having received an exclusive right to control the flow of solid waste within Union County, the franchise holder had taken itself outside of the rate regulation exemption otherwise set forth in the "municipal and county utilities authorities law," P.L. 1957, c. 183 (C.40:14B-1 et seq.). Subsequent BPU orders have slightly revised downward the UCUA's initial rates. The BCUA has not petitioned the BPU for a franchise for either the transfer station or its proposed resource recovery facility.

The BPU maintains that the receipt of a franchise is an indication of public utility status. In other words, any owner-operator of a transfer station awarded a franchise by the BPU would be the recipient of monopolistic rights and privileges unique to public utilities. The term "franchise" is defined as "the exclusive right to control and provide for the disposal of solid waste, except for recyclable material whenever markets for those materials are available, within a district or districts as awarded by the Board of Public Utilities." Similar in concept to the waste flow orders jointly issued by the DEP and BPU, a franchise bestows waste flow guarantees on the holder, as well as legal ownership of all solid waste placed for collection within the service area.

The awarding of a franchise and its associated privileges imposes corresponding duties and obligations on the franchise holder. In return for the monopoly status and waste flow guarantee afforded by a franchise, the franchise holder is required to furnish the same "safe, adequate and proper service" required of all public utilities. Given the monopolistic nature of a franchise, ratepayers within the service area (i.e. county) are left with no choice of

service and are in need of protection against paying excessive rates and unilateral interruptions of service. Accordingly, whenever the BPU awards a franchise for a transfer station, the BPU is authorized to maintain continuing jurisdiction over that facility in order to insure the performance of the franchise holder in this regard.

In order to accustom ratepayers and collector-haulers alike to the tonnage requirements and necessary waste flow discipline of planned resource recovery facilities, virtually every county that owns or operates a transfer station in New Jersey (excepting Bergen, Hunterdon and Sussex counties) has applied for, and has been awarded, a franchise by the BPU.

WASTE FLOW ENFORCEMENT

Under statutory law and New Jersey Supreme Court mandate, the DEP and BPU are jointly charged with directing the flow of solid waste generated within specific waste streams (i.e. counties) to designated transfer or disposal facilities. Despite this regulatory mandate, a number of solid waste haulers have publicly opposed the waste flow directives in theory (and have initiated court actions questioning their constitutionality) and expressed their intent not to comply. Many other haulers have simply bypassed the State sanctioned transfer stations and have unlawfully transported their waste loads directly to out-of-state disposal facilities.

According to DEP, waste flow violations occur with alarming frequency for a number of readily discernible reasons, which may be categorized as follows:

(1) Scope of statewide waste flow. As of December, 1988, 10,752 tpd of New Jersey generated solid waste was exported to 15 separate out-of-state disposal facilities located in five states. This volume represents approximately 60% of all solid waste generated in this State;

(2) Economics of cheating. It has been widely reported that haulers have transported New Jersey solid waste to destinations as far away as Alabama for disposal at roughly one-half the cost of the designated transfer station rate. A typical fully-loaded 25 cubic yard compaction vehicle can carry up to 12 tons of solid waste. Thus, even if one truck per week is diverted from the transfer station, significant illicit profits can be realized;

(3) Labor intensive enforcement. On average, approximately 200 - 250 trucks per day are directed to one of the 13 State sanctioned transfer stations. Thus, a meaningful enforcement effort would involve the employment of a comparable number of inspectors to conduct the monitoring and surveillance necessary to insure compliance with the waste flow orders;

(4) Shortage of Manpower. Neither the DEP nor the BPU has investigative personnel assigned full time to waste flow enforcement. The DEP has 2 field investigators assigned to conduct all solid waste-related investigations as well as all statewide inspections of solid waste haulers, transfer stations and in-state disposal facilities. Thus, there is no one individual assigned full time to waste flow enforcement. Similarly, the BPU has 17 field investigators charged with statewide responsibility to conduct all rate surveys and respond to all complaints to the BPU regarding solid waste matters, tariff violations, unlicensed operators, and waste flow violations. Again, there is no single investigator dedicated full time to the waste flow order compliance effort;

(5) Judicial Insensitivity. It has also been widely reported that municipal and Superior Court judges alike tend to dismiss waste flow violation cases as "frivolous" and of low priority;

(6) Recycling Smokescreen. Certain solid waste collectors or haulers, including a few whose licenses have been revoked by the BPU, are now allegedly working in the recycling business. It is alleged that these former licensees are continuing to collect and dispose of solid waste as before under the guise of recycling. The

solid waste illegally collected in this manner is brought to so-called "recycling-transfer stations" owned and operated by these same individuals and is subsequently transported to out-of-state disposal sites. The economic consequences of failing to curb this illegal activity are enormous. The BPU has estimated that this flagrant circumvention of the waste flow orders may result in the loss of an estimated \$50 million in annual revenues to the transfer stations in Bergen, Essex, Morris, Passaic, Somerset and Union Counties;

(7) Lengthy Administrative Process. Under the "Solid Waste Management Act," P.L. 1970, c. 39 (C.13:1E-1 et seq.), persons convicted of violating the waste flow orders would be subject to civil administrative and civil penalties of up to \$50,000.00 per day for each offense. However, these civil and administrative actions often involve months of tedious discovery motions and legal maneuvering on the part of alleged violators which tend to diminish the effectiveness of the penalties as suitable deterrents. Further, lacking manpower, the State agencies are less likely to initiate enforcement actions than county and local enforcement agencies, whose efforts are subject to the same frustrating administrative procedures.

Prompted by the inability or unwillingness of the State to engage in more aggressive waste flow enforcement, several counties, including Bergen, Somerset and Union counties, (or the transfer station operators themselves, e.g. Chambers Development Company, Inc., and Morris County Transfer Station, Inc.) have engaged the services of county employees or independent contractors for the purpose of establishing a waste flow enforcement unit. Nevertheless, county and local governments may lack the unambiguous authority to enforce compliance with the State's waste flow orders.

As indicated earlier, the State lacks the manpower to properly staff and maintain a meaningful waste flow enforcement capability. In addition, both current and proposed budgetary resources available to the DEP and BPU are woefully inadequate to the enormous task at hand. Until sufficient funds are provided by the Legislature to provide each State agency with additional inspectors and enforcement personnel, a more effective State waste flow control enforcement effort appears unlikely.

BERGEN COUNTY

In response to the interdistrict agreement that required Bergen County to cease disposing of county solid waste at HMDC solid waste facilities after December 31, 1987, the Bergen County Utilities Authority (BCUA) issued an RFP in October, 1987 to obtain submissions from vendors interested in providing the county's needed transportation and disposal services. Since there were no responses to the initial RFP, the BCUA issued a second RFP in November, 1987. Neither of the two proposals received at this time were responsive to the BCUA's needs. In December, 1987, the BCUA received several favorable responses to its RFP, and commenced negotiations with these vendors. At the same time, negotiations between the BCUA and the HMDC extended the county's disposal privileges at HMDC facilities until March 1, 1988. The DEP approved this two month extension and ordered the termination of solid waste disposal operations at the Kingsland Park sanitary landfill facility as of February 29, 1988.

Bergen County has transported its solid waste out-of-state via the State-sanctioned transfer station located in North Arlington Boro since March, 1988. The 3,700 tpd transfer station is owned and operated by the BCUA. The BCUA, under the emergency exception to public bidding provisions of section 6 of the "Local Public Contracts Law," P.L. 1971, c. 198 (C.40A:11-6), contracted with several waste management firms - Mitchell Environmental Inc. of Montville Twp., Morris County (transporter) and Laidlaw Waste Systems of Columbus, Ohio (out-of-state landfill disposal) - to provide for the transportation to, and disposal of, county solid waste at various landfill disposal facilities owned by the Laidlaw firm in Kentucky, Pennsylvania, Ohio, and Michigan.

In June, 1988, the BCUA installed four large balers rated at 55 - 65 tons per hour. This baling equipment reduces the 3,700 tpd which may be received at the facility at least 40% by volume, and compresses the solid waste into 40 x 61 x 46-inch bales averaging 3,500 lbs. per bale. The BCUA has issued \$40 million in authority bonds to finance the development of the facility, including the cost of baling equipment, and an additional \$10 million to subsidize the waste flow shortfalls it experienced in 1988.

The contract between the BCUA and Mitchell-Laidlaw provides for the provision of solid waste transportation and disposal services for 36 months at a fixed rate of \$75.00 per ton of solid waste actually received at the transfer station. The initial rate charged at the facility has been set at \$98.19 per ton. This tipping fee consists of a \$91.69 per ton transfer fee to the BCUA, a \$5.00 per ton "host municipality benefit," and the \$1.50 per ton recycling tax. Thus, the BCUA transfer station rate includes administrative charges of \$16.69 per ton of solid waste received at the facility. Under the contract, the BCUA, rather than Mitchell-Laidlaw, is responsible for the processing and compacting of the solid waste delivered to the transfer station. The contract provides that Mitchell-Laidlaw must provide the BCUA with adequate landfill disposal capacity for a minimum of three years, with an option to renew for an additional two years, and does not contain an "escalator clause."

Although the rated capacity of the transfer station is 3,700 tpd, the BCUA maintains that the "break-even" point is the delivery, on the average, of 3,000 tpd to the facility. However, during 1988 the facility received only 1,200 - 2,400 tpd, or approximately 60 - 20 percent less than required. Throughout 1989, the facility has been receiving approximately 2,200 tpd, or 27 percent less than BCUA's necessary waste flow. It is anticipated that the facility will receive approximately 530,000 tons by the end of 1989. When the transfer station opened in March 1988, it was estimated that the facility would receive approximately 900,000 tons per year, based upon the annual waste volumes received at the Kingsland Park sanitary landfill facility. Due to these continuing waste flow shortfalls, the BCUA has operated the transfer station at an estimated \$11 million deficit in 1989. Faced with a \$12 million debt service payment on its bonds, the BCUA will increase the tipping fee in 1990 to \$137.90 per ton.

ESSEX COUNTY

As of August 1, 1987, all solid waste generated within Essex County is disposed at out-of-state landfills in Pennsylvania. This out-of-state solid waste disposal arrangement resulted from the lack of adequate disposal capacity within the county, due primarily to delays in the construction of the planned 2,250 ton per day resource recovery facility in the City of Newark that will provide for the county's long-term disposal needs. Pending the completion of this facility Essex County residents must endure the high costs of transporting their solid waste for disposal at distant out-of-state landfills in Pennsylvania and elsewhere. To facilitate this arrangement, Essex County has sited and developed several transfer stations located in the City of Newark. Essex County residents, who had been accustomed to disposal fees of \$25.28 per ton at the HMDC's 1-C and 1-E sanitary landfill facilities, must now pay a total of \$102.50 per ton at the Avenue A transfer station or the Frelinghuysen Avenue transfer station. While many residents and local officials view the increased costs of solid waste collection and disposal necessitated by this arrangement excessive and unfair, other less-expensive in-state disposal options are currently unavailable to Essex County.

Upon the determination by the HMDC that the Hackensack Meadowlands District could no longer provide solid waste disposal capacity to Essex County for an indefinite period, the DEP, HMDC and Essex County entered into a judicial consent agreement on May 2, 1983 whereby Essex County solid waste was to cease being disposed of at HMDC facilities after July 31, 1987. Due to the delays experienced in developing its planned resource recovery facility, Essex County initiated an interim transfer station strategy in late 1986.

In December, 1986 Essex County solicited proposals for the development of three in-county transfer stations by placing advertisements in several newspapers and trade journals. By February, 1987, the county had received nine proposals for ten sites. Every proposal was reviewed by the Essex County Division of Solid Waste, the DEP, the Essex County Board of Chosen Freeholders,

and their respective consultants. After reviewing the proposals and meeting with prospective vendors, Essex County chose two vendors and three sites, and the DEP approved the selections.

On June 3, 1987, Essex County adopted an amendment to its district solid waste management plan on an emergency basis to provide for the development of two transfer stations in the City of Newark and one in the City of Orange (which was never constructed). The DEP approved the plan amendment on June 8, 1987. Subsequently, the Commissioner of DEP issued a "Statement of Imminent Peril" relating to the lack of adequate disposal facilities in Essex County and the potential risks to the public health and safety posed thereby. The Governor certified the Statement of Imminent Peril on June 23, 1987.

As part of these emergency measures, the Department of Community Affairs was required to supplant the authority of local planning and construction code officials in the proposed development of the transfer stations. Further, Essex County, under the emergency exception to public bidding provisions of section 6 of the "Local Public Contracts Law," P.L. 1971, c. 198 (C.40A:11-6), contracted with several waste management firms to operate the transfer stations and to provide for the transportation to, and disposal of, county solid waste at various out-of-state landfill disposal facilities.

The DEP issued an operating permit to Waste Management of New Jersey, Inc. on July 7, 1987 and required the Avenue A facility to be constructed and operational by July 31, 1987. The BPU approved the contract between Essex County and Waste Management of New Jersey, Inc. for the operation of the Avenue A transfer station on July 30, 1987. The contractual agreement between Essex County and Waste Management required the vendor to operate the Avenue A transfer station for a fixed period of 30 months, i.e. the interim period during which the county's 2,250 tpd resource recovery facility was to be constructed.

According to Waste Management, Essex County, "as a public utility," was obligated under the terms of this agreement to obtain a certificate of public convenience and necessity from the BPU for the operation of the Avenue A transfer station, and further required to receive a franchise from the BPU to insure sufficient waste flows to the facility. Waste Management considers itself "strictly a contract vendor".

The DEP issued a Master Performance Permit to Solid Waste Transfer and Recycling, Inc. on June 30, 1987 and required the Frelinghuysen Avenue facility to be constructed and operational by July 31, 1987. The BPU approved the contract between Essex County and Solid Waste Transfer and Recycling, Inc. for the operation of the Frelinghuysen Avenue transfer station on July 30, 1987. The contractual agreement between Essex County and Solid Waste Transfer and Recycling, Inc. required the vendor to operate the Frelinghuysen Avenue transfer station and provide for the transportation to, and disposal of, 743,600 tons per year of county solid waste at various out-of-state landfill disposal facilities for a period of 5 years or until the commencement of operations at the county's 2,250 tpd resource recovery facility.

From the outset, the BPU has considered Waste Management of New Jersey, Inc. and Solid Waste Transfer and Recycling, Inc. to be solid waste utilities whose solid waste disposal activities in this State are subject to BPU jurisdiction. Accordingly, the BPU issued a certificate of public convenience and necessity to Essex County on July 30, 1987 on behalf of these vendors. The BPU had previously awarded a franchise to Essex County on July 22, 1983 for the disposal of all solid waste generated within the county; the franchise was reaffirmed by a supplementary BPU order dated October 27, 1987.

Although it was anticipated that the daily solid waste disposal requirement for Essex County averaged 4,000 tpd, based upon generation data and waste flow records maintained by the HMDC, since August 1, 1987, the 1,600 tpd Avenue A transfer station and the 1,400 tpd Frelinghuysen Avenue facility have generally received much smaller waste volumes. The two county-owned facilities collectively receive approximately 2,500 tpd, with the Avenue A facility averaging 1,200 - 1,500 tpd, and the Frelinghuysen Avenue facility receiving approximately 1,000 tpd.

Under the provisions of the Essex County-Waste Management fixed-term contract, the County is obligated to deliver 1,540 tpd to the Avenue A transfer station. Waste Management, which has fully indemnified Essex County for the municipal solid wastes that it receives, is required to provide guaranteed transportation and out-of-state disposal services for a 30 month period ending January 31, 1990 at a sliding scale beginning at \$92.80 per ton. The firm must provide redundancy of landfill disposal capacity at Waste Management-owned facilities located in Ohio, Pennsylvania and Michigan. Essex County imposes a tipping fee of \$102.50 per ton at the Avenue A transfer station.

Under the terms of the Essex County-Solid Waste Transfer and Recycling, Inc. contract, the County is obligated to deliver approximately 1,400 tpd to the Frelinghuysen Avenue transfer station at a sliding scale beginning at \$92.80 per ton. Solid Waste Transfer and Recycling, Inc. fully indemnified Essex County for the municipal solid wastes that it would receive. Concomitantly, Solid Waste Transfer and Recycling, Inc. entered into a contract with Advanced Transportation Systems (a division of Diversified Vacuum Systems, Inc.) for the transportation of county solid waste received at the transfer station to out-of-state landfill disposal facilities owned and operated by the Chambers Development Company, Inc. Essex County imposes a tipping fee of \$102.50 per ton at the Frelinghuysen Avenue transfer station.

At the April 17, 1989 Public Hearing, the Public Advocate presented testimony before the Committee concerning the reasonableness of transfer station rates. The Public Advocate testified that many transfer station owners or operators engage in delaying tactics to avoid BPU scrutiny of their rates. Since the transfer station only has a useful life of approximately 3 - 5 years, the Public Advocate cautioned that the BPU must conduct a rate review while the facility is still in existence so that any ordered refunds for overcharges could be readily returned to ratepayers. However, in the case of the Avenue A transfer station, the contract between Essex County and Waste Management expires on

January 31, 1990. Negotiations are currently underway between the parties to extend the contract through 1990 or until the scheduled opening of the 2,250 tpd resource recovery facility later that year. Thus, it is conceivable that Essex County residents would be required to pay even higher tipping fees to export their solid waste to out-of-state landfills for disposal prior to a final determination by the BPU as to the reasonableness of the initial interim rates. Should these negotiations fail, it would then be necessary for the DEP and BPU to redirect the solid wastes now received at the Avenue A facility to the Frelinghuysen Avenue transfer station for the out-of-state disposal.

The Public Advocate considers Waste Management of New Jersey, Inc. and Solid Waste Transfer and Recycling, Inc. to be solid waste utilities whose transfer station rates are subject to BPU jurisdiction and review as to reasonableness. However, since Waste Management had consistently refused to accept its status as a public utility, resulting in excessive motions for rehearing, reversal, and appeals, like the BPU, the Public Advocate's position on the reasonableness of Waste Management's contractual rates cannot be fully developed until the OAL record is complete. Accordingly, the Public Advocate has recommended that the BPU require transfer station owners or operators to furnish a performance bond or maintain an interest-bearing escrow account to insure the availability of funds to refund excessive rates or charges to consumers, in the event that the BPU determines that the interim rates or charges exceed just and reasonable rates.

MORRIS COUNTY

On January 17, 1986, the DEP proposed an amendment to the Morris County district solid waste management plan. Primarily, the plan amendment proposed the incorporation of a short-term disposal strategy to provide for the development of transfer stations to prepare the county's solid waste for transportation to out-of-state disposal facilities.

The DEP approved the proposed amendment on May 13, 1986, with minor modifications. On May 23, 1986, the department issued an RFP document which solicited proposals from private entities for siting, design, construction, and operation of an in-county transfer station for Morris County for the purpose of out-of-district solid waste disposal. Only one proposal from the private sector was received by the DEP by the department's July 16, 1986 deadline. Morris County Transfer Station, Inc. (MCTS, Inc.) submitted a proposal which provided for construction of two transfer stations to be located in Mount Olive and Parsippany-Troy Hills Townships, respectively. On August 18, 1986, the department found that while the proposal was conceptually consistent with the RFP, it contained a number of deficiencies. Accordingly, DEP granted the vendor 120 days to correct these deficiencies, including a replacement site for one of the proposed facilities. A revised proposal was submitted on December 23, 1986 which the department found to be technically responsive to the RFP requirements and siting criteria. These stations would transport all of Morris County's solid waste to the Keystone Landfill in Dunmore, Pennsylvania at tipping fees of approximately \$81.69 per ton for a three year period.

On April 1, 1987, the DEP proposed an amendment to the Morris County district solid waste management plan to incorporate the proposed sites noted above. The DEP's amendment proposed to include operational plans, transportation routes and waste flow directives to both the Mt. Olive and Parsippany-Troy Hills sites. In order to receive public comment, the DEP followed the public notice procedures outlined in the "Solid Waste Management Act," P.L. 1970, c. 39 (C.13:1E-1 et seq.). The public hearing to receive testimony on the proposed amendment was held at the Randolph High School in Randolph Township on April 29, 1987. The public hearing was continued on May 4, 1987 at the Morris County Administration Building in Morristown, New Jersey, and the public hearing record remained open through May 11, 1987. The Commissioner of DEP certified the approval of the amendment to the Morris County district solid waste management plan on July 28, 1987.

The DEP issued a Master Performance Permit to MCTS, Inc. on October 28, 1987 to own and operate a 510 tpd transfer station in Mt. Olive Township and a 1,500 tpd transfer station in Parsippany-Troy Hills Township. A revised permit was issued on February 24, 1988.

On December 31, 1987, the BPU authorized, on a temporary basis, the issuance of a certificate of public convenience and necessity to MCTS, Inc. pending completion of the (A-901) requirements of P.L. 1983, c. 392, and awarded a franchise to MCTS, Inc. for a five year period. Since November 1987, MCTS, Inc. has been owned by the Chambers Development Company, Inc. The Board also approved an initial interim rate of \$111.85 per ton, including a \$5.00 per ton host community benefit for each municipality. On February 3, 1989, the BPU issued an interim order increasing MCTS, Inc.'s tipping fee to \$122.42 per ton.

PASSAIC COUNTY

On January 17, 1986, the DEP proposed an amendment to the Passaic County district solid waste management plan. Primarily, the plan amendment proposed the incorporation of a short-term disposal strategy to provide for the development of transfer stations to prepare the county's solid waste for transportation to out-of-state disposal facilities.

The DEP approved the proposed plan amendment on May 13, 1986, with minor modifications. On June 4, 1986, the department issued an RFP document which solicited proposals from private entities for the development and operation of in-county transfer stations for Passaic County for the purpose of out-of-district solid waste disposal. On August 13, 1986, one private sector proposal was received by the department. Pen Pac, Inc. submitted a proposal to DEP whereby four transfer stations located, or to be developed in Passaic County, would be used to facilitate the transportation of all of the county's solid waste to out-of-state disposal facilities.

Specifically, Pen Pac, Inc. proposed the utilization of one new, and three previously approved transfer stations to transport solid waste generated in Passaic County to the Southern Alleghenies Landfill in Conemaugh, Pennsylvania owned and operated by Chambers Development Company, Inc. A new transfer station would be constructed in the Borough of Totowa. Three additional transfer stations, which facilities had previously been included within the Passaic County district solid waste management plan, are located at Fulton Street and Iowa Avenue, respectively, in the City of Paterson, and in West Milford Township. Each of the four transfer stations would have a maximum design processing capacity of at least 680 tpd and an expected loading rate of 440 tpd. The proposal provided for a projected 3 year tipping fee cost of \$90.92 per ton, and a 5 year cost of \$88.23 per ton. The DEP selected the Pen Pac, Inc. proposal on August 18, 1986.

On October 27, 1986, DEP sent letters to the owners or operators of the two existing transfer stations in Passaic County who did not submit a proposal. The purpose of the letters was to request assurances from these owners or operators that they had secure arrangements with out-of-state landfills to dispose of that portion of the Passaic County solid waste stream which they currently received and were permitted to accept. Neither of these existing transfer stations could provide the DEP with adequate assurances of out-of-state disposal capabilities.

On November 19, 1986, the DEP proposed an amendment to the Passaic County district solid waste management plan to select the Pen Pac, Inc. proposal noted above. The DEP's amendment proposed to include operational plans, transportation routes and waste flow directives to the four transfer station sites. In order to receive public comment, the DEP followed the public notice procedures outlined in the "Solid Waste Management Act," P.L. 1970, c. 39 (C.13:1E-1 et seq.). The public hearing to receive testimony on the proposed amendment was held at William Paterson College on December 10, 1986. Copies of the proposed amendment and were distributed to various county, local and state level agencies for review and comment as required by law. The Commissioner of DEP certified the approval of the amendment to the Passaic County district solid waste management plan on March 26, 1987.

On June 22, 1987, the Board of Public Utilities issued a certificate of public convenience and necessity to the Passaic County Utilities Authority (PCUA) to engage in the solid waste disposal business "in certain respects" regarding the operation of the four transfer stations and the out-of-state disposal arrangements. Subsequently, the BPU issued a certificate of public convenience and necessity to Pen Pac, Inc. as well. The PCUA had previously been designated by district plan amendment as the implementing agency for the Passaic County district solid waste management plan. On April 10, 1987, the PCUA entered into a 15-year agreement with Chambers Development Company, Inc. for acquired easement and license rights to dispose of the county's solid waste at landfills owned by Chambers for a period of five years, and for the disposal of ash residue and non-processible waste from the PCUA's proposed resource recovery facility for ten years following the operation of that facility. The firm must provide redundancy of landfill disposal capacity at three Chambers-owned or operated facilities located in Pennsylvania. Concomitantly, Chambers entered into an agreement with Pen Pac, Inc. regarding the transportation of the county's solid waste to Chambers' landfills, and Pen Pac, Inc. and the PCUA entered into an agreement concerning the operation of the transfer stations. The PCUA issued \$59,000,000.00 in tax-exempt authority revenue bonds to finance this arrangement.

The DEP permitted the proposed Totowa transfer station on September 1, 1987, and issued a Master Performance Permit to Pen Pac, Inc. on September 21, 1987 for the Fulton Street facility. The Iowa Avenue transfer station was already permitted as an existing facility, and the proposed West Milford facility was subsequently eliminated from the plan and not constructed.

On October 26, 1987, the BPU approved the terms of a contract between the PCUA and Pen Pac, Inc. for the construction and operation of the two Paterson transfer stations in conjunction with the aforementioned Chambers disposal agreement. Further, On May 11, 1988, the BPU approved the terms of a contract between Pen Pac, Inc. and Makowka Transportation, Inc. for the transportation of Passaic County solid waste to the Chambers' landfills.

The PCUA, which voluntarily submitted to the rate regulation of the BPU, set an initial \$64.99 per ton tipping fee at the two Paterson transfer stations. The BPU approved the proposed initial rate on December 3, 1987. This rate consisted of a \$60.49 per ton transfer fee to Pen Pac, Inc., a \$3.00 per ton "host municipality benefit" to the City of Paterson, and the \$1.50 per ton recycling tax. On December 30, 1988, the BPU issued an order approving an increase in the tipping fee for the Iowa Avenue and Fulton Street facilities. This increase became the initial interim rate for the Totowa facility which commenced operations on February 1, 1989. The \$79.86 per ton tipping fee consists of a \$75.36 per ton transfer fee to Pen Pac, Inc., a \$3.00 per ton host municipality benefit, and the \$1.50 per ton recycling tax.

On October 12, 1989, the OAL completed its review of the reasonableness of the PCUA's interim rates. The BPU adopted the OAL decision and on November 1, 1989 issued an order approving adjusted and final rates for the PCUA's three transfer stations. The adjusted rate of \$78.75 per ton consists of a \$73.75 per ton transfer fee to Pen Pac, Inc., the \$3.00 per ton host municipality benefit, and the \$1.50 per ton recycling tax. The adjusted rate will be in effect through the remainder of the calendar year. On January 1, 1990, a final rate of \$79.59 (inclusive of the \$3.00 per ton host municipality benefit and the \$1.50 per ton recycling tax) will take effect.

SOMERSET COUNTY

On January 17, 1986, the DEP proposed an amendment to the Somerset County district solid waste management plan. Primarily, the plan amendment proposed the incorporation of a short-term disposal strategy to provide for the development of transfer stations to prepare the county's solid waste for transportation to out-of-state disposal facilities.

The DEP approved the proposed amendment on May 13, 1986, with minor modifications. On May 23, 1986, the department issued an RFP document which solicited proposals from private entities for the siting, design, construction, and operation of one or more transfer stations in Somerset County to facilitate the out-of-state solid waste disposal strategy. Two proposals from the private sector were received by the DEP on July 30, 1986. Bridgewater Resources, Inc. (BRI) submitted a proposal which provided for construction of a single 820 ton per day transfer station to be located in Bridgewater Township. As originally proposed, this transfer station would transport all of Somerset County's waste to the Keystone Landfill in Dunmore, Pennsylvania. However, BRI subsequently obtained a disposal contract with the Empire Landfill in Taylor, Pennsylvania. Nevertheless, as with the initial proposal, the revised proposal provided for a projected 3 year tipping fee cost of \$76.91 per ton, and a 5 year cost of \$74.64 per ton.

The Somerset Intermediate Recycling Center (SIRC) submitted a proposal which would utilize two transfer stations, one 568 tpd facility to be located in Branchburg Township and one 250 tpd facility already sited in Franklin Township. Both of the SIRC transfer stations proposed to transfer and transport all of Somerset County's solid waste to the West Side Sanitary Landfill, Plymouth, Pennsylvania. The SIRC proposal provided for a projected 3 year tipping fee cost of \$86.30 per ton, and a 5 year cost of \$81.15 per ton.

On November 19, 1986, the DEP proposed an amendment to the Somerset County district solid waste management plan to select the BRI proposal noted above. The department found that this proposal included the lowest tipping fees for both the three and five year periods, and was the most technically responsive and responsible of the two proposals. The DEP also proposed utilization of the SIRC Franklin Township facility within the overall transfer station program. The SIRC facility had been previously sited by the County, adopted in the district plan, and hosted an operational facility. The Branchburg site proposed by SIRC failed to meet the

RFP siting requirements. The DEP's amendment proposed to include operational plans, transportation routes and waste flow directives to both the BRI and SIRC sites.

In order to receive public comment, the DEP followed the public notice procedures outlined in the "Solid Waste Management Act," P.L. 1970, c. 39 (C.13:1E-1 et seq.). The public hearing to receive testimony on the proposed amendment was held at the Bridgewater-Raritan High School West in Bridgewater Township on December 9, 1986. The Commissioner of DEP certified the approval of the amendment to the Somerset County district solid waste management plan on April 3, 1987.

The DEP issued solid waste facility permits to BRI on August 26, 1987 and September 8, 1987, and a Temporary Certificate of Authority to Operate (TCAO) on December 30, 1987, to allow for interim operations at the 820 tpd transfer station pending final construction of the facility and fulfillment of the other permit conditions. The department issued a temporary solid waste permit to SIRC on September 3, 1987 and a full permit on December 28, 1987 for the 250 tpd facility.

On August 29, 1987, Somerset County filed a petition with the BPU requesting a franchise for the disposal of the county's solid waste. Concomitantly, an agreement between Somerset County and BRI was executed on August 31, 1987 whereby the County would assume the operation of the BRI-owned and operated Bridgewater transfer station upon the commencement of operations at the county's proposed resource recovery facility to be located adjacent to the BRI facility. The BPU awarded a franchise to Somerset County on February 23, 1988 for a period of five years or until the operation of the proposed resource recovery facility.

On August 28, 1987, the BPU authorized the issuance of a certificate of public convenience and necessity to BRI. On December 31, 1987, the BPU approved an initial interim rate of \$97.00 per ton. According to BRI, this interim rate is comprised of a \$20.00 per ton transportation cost (110 mile one-way trip), a \$57.00 per

ton disposal charge at the Empire Landfill in Taylor, Pennsylvania, and in excess of \$20.00 per ton in administrative and operating expenses, including amortized investment costs, insurance and a \$2.00 per ton profit margin.

The BPU approved a \$3.00 per ton host municipality benefit for Bridgewater Township under terms outlined in an order dated February 18, 1988. On April 21, 1988, the BPU allowed BRI to collect the funds necessary to pay this benefit as a \$4.00 per ton surcharge on its existing rate due to a compression factor with the stipulation that on January 1, 1989, the host municipality benefit would revert back to \$3.00 per ton. On March 9, 1989, the BPU ordered the host municipality benefit to be reduced to \$2.40 per ton as of January 1, 1990.

On February 3, 1989, the BPU issued an interim order increasing BRI's tipping fee to \$110.05 per ton. The \$13.05 per ton increase in the interim tipping fee is comprised of a \$9.80 per ton increase in contractual landfill disposal costs, and \$3.25 per ton in contingent liability escrow fees imposed by the Commonwealth of Pennsylvania.

BRI is currently seeking another interim tipping fee increase of \$11.76 per ton. The proposed rate change is comprised of a \$9.76 per ton increase in contractual landfill disposal costs, and a \$2.00 per ton increase in hauling costs. If approved by the BPU, these changes would increase BRI's tipping fee from \$110.05 to \$121.81 per ton as of January 1, 1990.

On December 31, 1987, the BPU authorized the issuance of a certificate of public convenience and necessity to SIRC, and at the same time approved an initial interim rate of \$121.00 per ton, exclusive of a \$3.00 per ton host municipality benefit to Franklin Township. Contrary to its original proposal, this order directs solid waste received at the SIRC transfer station to the Arden Landfill in Washington, Pennsylvania, which facility is owned by the Chambers Development Company, Inc.

However, according to County officials, the true destinations of the solid waste received at the SIRC transfer station are unknown; SIRC has repeatedly denied the County access to its files. Through casual conversations with the haulers utilizing the Franklin Township facility, the County has surmised that much of this solid waste is being transported to disposal sites in Alabama, South Carolina and West Virginia.

UNION COUNTY

On January 17, 1986, the DEP proposed an amendment to the Union County district solid waste management plan. Primarily, the plan amendment proposed the incorporation of a short-term disposal strategy to provide for the development of transfer stations to prepare the county's solid waste for transportation to out-of-state disposal facilities.

The DEP approved the proposed plan amendment on May 14, 1986, with minor modifications. On May 23, 1986, the department issued an RFP document which solicited proposals from private entities for the development and operation of in-county transfer stations for Union County for the purpose of out-of-district solid waste disposal. On August 28, 1986, the department issued a revised RFP document due to the apparent availability of sufficient existing, pending and proposed transfer station facilities within Union County to accomodate all of the county's solid waste.

Three proposals from the private sector were received by the DEP by October 6, 1986. EGRC, Inc. submitted a proposal which provided for the utilization of a single 800 tpd transfer station to be located in the City of Elizabeth. This station would transport a portion of Union County's solid waste to the Amity Landfill in Taylor, Pennsylvania as a primary disposal site with four other back-up landfills also in Pennsylvania, at a projected three year tipping fee cost of \$85.00 per ton. At the time, the proposed EGRC, Inc. Elizabeth facility was already included in the Union County district solid waste management plan and was in the final stages of the DEP permit process.

Ellesor, Inc. submitted a proposal which would provide for the expansion of its existing operational facility located in the City of Elizabeth to an 800 tpd facility to facilitate the transportation of a portion of Union County's solid waste to the Empire Landfill in Taylor, Pennsylvania as a primary disposal site, and the Keystone Landfill in Dunmore, Pennsylvania as a back-up site. This proposal provided for a projected 3 year tipping fee cost of \$87.06 per ton, and a 5 year cost of \$84.40 per ton.

Finally, the Automated Modular Systems, Inc. (AMS, Inc.) proposal provided for the development of a 1,000 tpd transfer station adjacent to firm's existing transfer station in the City of Linden. This transfer station would transport all or a portion of Union County's solid waste to the Southern Alleghenies Landfill in Conemaugh, Pennsylvania as a primary disposal site and the Arden Landfill in Chartiers, Pennsylvania as a back-up site, at a projected three year tipping fee cost of \$90.63 per ton.

On October 23, 1986, DEP sent letters to the owners or operators of all existing transfer stations in Union County who did not submit a proposal. The purpose of the letters was to request assurances from these owners or operators that they had secure arrangements with out-of-state landfills to dispose of that portion of the Union County solid waste stream which they currently received and were permitted to accept. It was estimated that these owner-operators collectively processed approximately 325 tpd of Union County-generated solid waste. None of these existing transfer stations could provide the DEP with adequate assurances of out-of-state disposal capabilities.

However, in early 1987 the City of Summit, which operates a transfer station already included within the district plan, submitted a letter of commitment from an out-of-state disposal facility providing for the disposal of solid waste transported from the Summit transfer station under a contract to be approved by the department. This transfer station would transport approximately 130 tpd of Summit's solid waste to the SWIN Resources, Inc. landfill in Bloomsburg, Pennsylvania at a projected three year tipping fee cost of \$54.25 per ton.

On December 24, 1986, the DEP issued a Preliminary Notice of Intent to amend the Union County district solid waste management plan to include two of the three proposals noted above. The department found that the proposals by EGRC, Inc. and Ellesor, Inc. were the most technically responsive and responsible of the proposals. However, in the interim, EGRC, Inc. had obtained a disposal contract with Waste Management of Pennsylvania, Inc. rather than with the Amity Landfill as previously proposed. The previously estimated tipping fee of \$85.00 per ton was not revised, however, notwithstanding the involvement of a different disposal entity. The Ellesor, Inc. proposal remained unchanged.

Following the issuance of its original evaluation report, the DEP conducted a further evaluation of solid waste generation rates in Union County for the purposes of developing a waste flow redirection order to each proposed facility. Accordingly, DEP revised county waste generation rates based upon the monthly volume reports submitted by disposal facilities, which reports indicated that the department's earlier estimates had been too low. Due to these revised estimates on March 30, 1987 the department proposed to include the AMS, Inc. proposal (unchanged) within the amended Union County district solid waste management plan.

On May 19, 1987, the DEP proposed an amendment to the Union County district solid waste management plan to select the three proposals noted above. The DEP's amendment proposed to include operational plans, transportation routes and waste flow directives to the three transfer station sites.

In order to receive public comment, the DEP followed the public notice procedures outlined in the "Solid Waste Management Act," P.L. 1970, c. 39 (C.13:1E-1 et seq.). The public hearing to receive testimony on the proposed amendment was held at the Elizabeth Municipal Building on June 11, 1987. Copies of the proposed amendment and were distributed to various county and state level agencies for review and comment as required by law. The Commissioner of DEP certified the approval of the amendment to the Union County district solid waste management plan on July 21, 1987.

The DEP issued a Master Performance Permit to AMS, Inc. on December 2, 1987, and to Ellesor, Inc. on December 30, 1987. The proposed EGRC, Inc. facility was never constructed.

On June 5, 1986, the Union County Board of Chosen Freeholders adopted an ordinance to create the Union County Utilities Authority (UCUA) in accordance with the provisions of the "municipal and county utilities authorities law," P.L. 1957, c. 183 (C.40:14B-1 et seq.). Subsequently, a district plan amendment designated the UCUA as the implementing agency for the Union County district solid waste management plan. On November 4, 1987, the UCUA filed a petition before the BPU for a franchise for the disposal of all solid waste originating within Union County. In response to the petition, the BPU issued a preliminary order on December 31, 1987. The preliminary order awarded a franchise to the UCUA, and authorized the issuance of certificates of public convenience and necessity to AMS, Inc. and Ellesor, Inc. to enable the Linden and Elizabeth transfer stations to be operational on January 2, 1988.

The franchise petition was filed in contemplation of the transfer station agreements the UCUA was negotiating at that time, and in accordance with the UCUA's obligations under the resource recovery facility contracts entered into with Ogden Martin Systems, Inc. in October, 1987 regarding the financing requirements of that project. Accordingly, the petition specifically identifies the need to insure the UCUA's ability to control and direct the flow of Union County solid waste to the transfer stations and, ultimately, the resource recovery facility.

After lengthy negotiations, the UCUA reached an agreement with AMS, Inc. for the design, construction and operation of a 1,000 tpd transfer station in Linden, New Jersey. This agreement stipulated that, inter alia, the UCUA is responsible for the delivery of an annual average of 900 tpd to the transfer station or the payment of a waste flow adjustment fee for any shortfall. On December 21, 1987, the UCUA petitioned the BPU for approval of its proposed agreement with AMS, Inc. The BPU approved the agreement on December 31, 1987.

At the same time, the BPU authorized, on a temporary basis, the issuance of a certificate of public convenience and necessity to AMS, Inc. pending completion of the (A-901) requirements of P.L. 1983, c. 392 (C.13:1E-126 et seq.).

The UCUA set the initial \$137.00 per ton tipping fee at the Linden transfer station pursuant to the rate setting methodology authorized under section 15 of P.L. 1977, c. 384 (C.40:14B-22.1). This rate consisted of a \$125.00 per ton "service fee" to AMS, Inc., a \$3.00 per ton "host municipality benefit" to the City of Linden, the \$1.50 per ton recycling tax, and a \$7.50 per ton "administrative fee" retained by the UCUA. On February 10, 1989, the BPU issued an interim order reducing the AMS, Inc.- UCUA tipping fee. Thus, the current \$132.65 per ton interim tipping fee consists of a \$125.00 per ton "service fee" to AMS, Inc., a \$3.15 per ton "host municipality benefit," the \$1.50 per ton recycling tax, and a \$3.00 per ton "administrative fee" retained by the UCUA. The UCUA collects the tipping fees directly from the solid waste haulers utilizing the facility and remits payments of its service fee under the agreement to AMS, Inc. on a weekly basis.

In December, 1988, the BPU overruled an earlier favorable OAL decision in response to the UCUA's contention that the BPU lacked jurisdiction to review the UCUA's rates. Furthermore, the UCUA also contested whether, as a franchise holder, it was required to obtain a certificate of public convenience and necessity. However, the BPU concluded that statutory law obligates the Board to review the rates charged for waste disposal by a franchise holder, and that by virtue of having received an exclusive right to control the flow of solid waste within Union County, the franchise holder had taken itself outside of the rate regulation exemption otherwise set forth in the "municipal and county utilities authorities law," P.L. 1957, c. 183 (C.40:14B-1 et seq.). On January 5, 1989, the Board determined that the UCUA, as a franchise holder, requires a certificate of public convenience and necessity and remanded the rate portion of the hearings to the OAL to determine the reasonableness of the UCUA's interim rates.

It should be noted that the UCUA currently has no contractual or financial relationship with the Ellesor, Inc. transfer station or the Summit transfer station, although in early 1989 the UCUA approved an agreement with Ellesor, Inc. concerning, inter alia, allocation of waste flows between the Elizabeth and Linden transfer stations.

On December 31, 1987, the BPU authorized, on a temporary basis, the issuance of a certificate of public convenience and necessity to Ellesor, Inc. pending completion of the (A-901) requirements of P.L. 1983, c. 392. The Board also approved an initial interim rate of \$123.00 per ton for the processing of solid waste generated within the municipalities of Elizabeth, Union, Roselle, Roselle Park and Hillside at its 800 tpd transfer station located in the City of Elizabeth. On February 8, 1989, the BPU issued an interim order increasing Ellesor, Inc.'s tipping fee to \$131.85 per ton. The \$8.85 per ton increase in the interim tipping fee is comprised of a \$5.60 per ton increase in contractual landfill disposal costs, and \$3.25 per ton in contingent liability escrow fees imposed by the Commonwealth of Pennsylvania.

As indicated earlier, in order to expedite the commencement of operations at these facilities, the rates for all of the Union County transfer stations were approved on an interim basis by the BPU in 1987 - 1988 in a series of preliminary orders, pending hearings on the reasonableness of those rates. The Elizabeth transfer station rate case has been delayed over Ellesor's refusal to furnish the BPU with financial data relating to the affiliated companies which provide services to the firm. Ellesor, Inc. had argued that the Board's requests for information concerning these affiliates were improper because they required the firm to produce "irrelevant and immaterial financial records" of nonaffiliated and nonregulated entities that were beyond the firm's control. In an order dated October 31, 1989, the BPU strongly disagreed with Ellesor's contention and imposed the maximum statutory penalty on the firm for its failure to comply with BPU directives. The Board found that:

"The ability to review a utility's rates and to protect the ratepayers of this State are at the heart of this Board's power and statutory responsibility...every public utility must demonstrate the reasonableness of its rates. This very proceeding in which Ellesor has declined to provide information has the purpose of determining the reasonableness of the rates which Ellesor has been collecting, and will continue to collect. If the requested discovery concerning the associated companies is not supplied, the Board will be denied the opportunity to decide whether Ellesor's rates are just and reasonable."

Thus, the BPU imposed a \$10,000.00 per day fine on the firm, retroactive to August 31, 1989 when an appellate court denied a motion to appeal the Board's order compelling Ellesor, Inc. to provide the information.

At the April 17, 1989 Public Hearing, the Public Advocate presented testimony before the Committee concerning the difficulty of determining the reasonableness of transfer station rates, particularly whenever affiliated entities are involved. The Public Advocate testified that determinations regarding appropriate rate charges by utilities require an examination of expenses incurred for reasonableness. In evaluating the operating expenses and profits of transfer stations such as the Ellesor, Inc. facility in Elizabeth, the Division of Rate Counsel's examination has been hampered by the existence of multiple financial transactions between affiliated solid waste companies. The significance of this problem is such that the Public Advocate stated that the existence of financial transactions between related entities is "the largest obstacle to timely and efficient rate regulation, and the principal root of inflated rate claims."

Further, the Public Advocate testified that private transfer station owners or operators must not be allowed to lease land, buildings and equipment from an affiliated company, enter into exclusive trucking arrangements with affiliates, or other similar "sweetheart deals," and then pass all of these contract costs on to ratepayers as "expenses," and recommended that the BPU consider all of these financial transactions on a consolidated basis.

TABLE I

County Transfer, Transportation and Disposal Arrangements

<u>County</u>	<u>Transfer Station Operator</u>	<u>Transporter</u>	<u>Out-of-State LF Owner-Operator</u>
Bergen	BCUA	Mitchell Environmental	Laidlaw Waste Systems
Essex (Avenue A)	Waste Management	Waste Management	Waste Management
Essex (Frelinghuysen Avenue)	SWT&R	Advanced Transportation Systems	Chambers Development
Morris (Mt. Olive)	MCTS (Chambers)	Chambers Development	Chambers Development
Morris (Par-Troy)	MCTS (Chambers)	Chambers Development	Chambers Development
Passaic (Paterson)	Pen Pac, Inc.	Pen Pac, Inc.	Chambers Development
Passaic (Totowa)	Pen Pac, Inc.	Pen Pac, Inc.	Chambers Development
Somerset (Franklin Twp.)	SIRC	SIRC	Chambers Development
Somerset (Bridgewater Twp.)	BRI	BRI	Empire Landfill
Union (Elizabeth)	Ellesor, Inc.	Ellesor, Inc.	Empire Landfill
Union (Linden)	AMS, Inc.	AMS, Inc.	Southern Alleghenies Landfill
Union (Summit)	Summit, Inc.	NA	SWIN Resources, Inc.

TABLE II

County Out-of-State Solid Waste Disposal Waste Flow

<u>County</u>	<u>Waste Flow (tpd)</u> <u>(Permitted)</u>	<u>Destination</u>	<u>Out-of-State LF</u> <u>Facility Operator</u>
Bergen	5,000	Kentucky; Ohio	Laidlaw Waste Systems
Essex (Avenue A)	1,600	Ohio; Pennsylvania	Waste Management
Essex (Frelinghuysen Avenue)	1,400	Pennsylvania	Chambers Development
Morris (Mt. Olive)	510	Pennsylvania	Chambers Development
Morris (Parsippany-Troy Hills)	1,500	Pennsylvania	Chambers Development
Passaic (Paterson)	1,400; 150	Pennsylvania	Chambers Development
Passaic (Totowa)	480	Pennsylvania	Chambers Development
Somerset (Franklin Twp.)	150	Pennsylvania	Chambers Development
Somerset (Bridgewater Twp.)	820	Pennsylvania	Empire Landfill
Union (Elizabeth)	800	Pennsylvania	Empire Landfill
Union (Linden)	1,000	Pennsylvania	Southern Alleghenies Landfill
Union (Summit)	130	Pennsylvania	SWIN Resources, Inc.

TABLE III

County Transfer Station Tipping Fees

<u>County</u>	<u>Transfer Charges*</u>	<u>Administrative Costs</u>	<u>Gross Tipping Fee**</u>
Bergen	91.69	16.69	98.19
Essex (Avenue A)	97.30	5.20	102.50
Essex (Frelinghuysen Avenue)	97.30	5.20	102.50
Morris (Mt. Olive)	122.42	NA	122.42
Morris (Parsippany-Troy Hills)	122.42	NA	122.42
Passaic (Paterson)	75.09	2.50	79.59
Passaic (Totowa)	75.09	2.50	79.59
Somerset (Franklin Twp.)	123.50	2.00	125.50
Somerset (Bridgewater Twp.)	110.05	NA	114.55
Union (Elizabeth)	123.00	NA	131.85
Union (Linden)	125.00	7.65	132.65
Union (Summit)	54.25	NA	103.00

*Combined transfer, transportation and disposal costs.

**Includes \$1.50 per ton Recycling tax and host municipality benefit.

TABLE IV

County Transfer Station Waste Flow
1988

<u>County</u>	<u>Waste Flow (tpd)</u> <u>(Permitted)</u>	<u>Waste Flow (tpd)</u> <u>(Reported)*</u>	<u>%</u>	<u>1988 Tonnage</u> <u>(Reported)</u>
Bergen	5,000	2,090	42	610,399
Essex (Avenue A)	1,600	1,272	79	381,429
Essex (Frelinghuysen Avenue)	1,400	1,287	92	386,145
Morris (Mt. Olive)	510	406	80	121,695
Morris (Parsippany-Troy Hills)	1,500	775	52	232,358
Passaic (Paterson)	1,400	1,500	107	449,986
Passaic (Totowa)	480	NA	NA	NA
Somerset (Franklin Twp.)	150	49	33	14,728
Somerset (Bridgewater Twp.)	820	789	96	236,616
Union (Elizabeth)	800	545	68	163,546
Union (Linden)	1,000	768	77	230,504
Union (Summit)	130	89	68	26,725

*Based on 300 days per year.

SUMMARY AND CONCLUSIONS

The fundamental solid waste disposal problem in New Jersey is that long-term disposal facilities have not been constructed and district plans to accommodate the growing waste flows not implemented as rapidly as needed to avert the existing serious short-term disposal capacity shortfall crisis. Contributing to the crisis may have been DEP's own over-commitment to resource recovery facilities in the service of which it prematurely terminated many in-state landfills. Throughout the 1980's the department's major policy objective appears to have been the construction of resource recovery facilities in virtually every county in the State.

In 1986, the DEP initiated a new strategy to insure that the recalcitrant counties would meet their solid waste facility siting and district plan implementation responsibilities. The transfer station strategy was intended as a temporary expedient pending the construction of 12 -18 resource recovery facilities. In January, 1986, the DEP adopted amendments to the district solid waste management plans of Morris, Passaic, Somerset and Union Counties, respectively. The amendments incorporated an interim solid waste disposal strategy for each county that provided for the development of in-county transfer station facilities to be utilized in conjunction with out-of-state disposal for approximately three to five years. All solid waste collected from each of these counties would be transported to designated transfer stations wherein the waste would be compacted and loaded onto large vehicles for transportation to out-of-state landfills pursuant to contracts between the landfill owner-operator and the private firm owning or operating the transfer station. Interdistrict waste flow orders issued by the DEP and BPU direct all collector-haulers operating within the county to use the State-sanctioned transfer station.

Although they shared a common predicament, the DEP failed to include Bergen and Essex Counties in its initial transfer station strategy. Thus, it was necessary for these counties to secure contracts with vendors for the construction of transfer stations and the provision of transportation and out-of-state disposal services on an expedited, "emergency" basis. The Essex County initiative began in December, 1986 and the two Newark transfer stations were operational by August, 1987. Similarly, the BCUA initially issued an RFP in October, 1987 to secure vendors interested in providing needed solid waste transfer, transportation and disposal services, and the BCUA transfer station facility opened in March, 1988. By contrast, the four counties on whose behalf the DEP adopted district plan amendments to develop transfer stations had approximately two years to prepare for the out-of-state disposal option.

The counties that have developed State-sanctioned transfer stations have all experienced serious waste flow shortfalls. Since the outset, there have been numerous reported violations of the joint DEP-BPU waste flow orders. Due to the costly tipping fees charged at these facilities, many collector-haulers have simply avoided the transfer stations and transported their waste loads directly to inexpensive out-of-state landfills.

In contracting with one or more vendors to construct, operate and maintain a transfer station, and provide for the transportation of compacted solid waste to out-of-state disposal facilities, each county entered into an agreement to provide the transfer station with a specified tonnage of solid waste. Under the minimum tonnage provisions common to most transfer station contracts, the county must deliver an agreed upon minimum tonnage of solid waste to the facility for compaction and subsequent transportation out-of-state for disposal in order to maximize its investment. Generally, the county (i.e the ratepayers) is financially liable for the unused capacity. Since most counties have incurred short-term debt to finance the development of these facilities, these reported shortages must eventually be recovered from county ratepayers through increased tipping fees.

The tipping fees at the North Jersey transfer stations are rather high relative to in-state landfill disposal rates. In order to expedite the commencement of operations at these facilities, the rates for all of the transfer stations were hurriedly approved on an interim basis by the BPU in 1987 - 1988 in a series of preliminary orders, pending hearings on the reasonableness of those rates. Formal OAL and BPU rate hearings on the reasonableness of the initial interim rates are still in progress in a number of instances.

The Committee found that there was a distinct lack of communication and coordination between the DEP and the BPU on the implementation of the transfer station initiative. In its testimony, the DEP stated that in 1986 the department received cost estimates averaging \$86.00 per ton from the vendors that were eventually selected by the department. The actual initial tipping fees averaged \$100.00 per ton. It does not appear that the department - which is mandated by statute to administer the environmental aspects of solid waste management in this State - ever bothered to consult with the board on this matter, even though the BPU is expressly authorized by statute to regulate the economic aspects of solid waste disposal.

Consequently, in 1987 the BPU was faced with a host of difficult decisions that had to be made rather hastily. Within the space of a few months, the board had to: (1) set interim rates at each of the transfer stations; (2) process, on an expedited basis, hundreds of rate case filings from the collector-haulers directed to utilize these new facilities; and (3) settle issues related to BPU jurisdiction, the granting of franchises, and the issuance of redirect orders in conjunction with the DEP. Thus, in most instances the BPU reluctantly decided to set interim rates based upon financial data provided by the vendors. According to BPU testimony, rate cases typically take at least 6 - 9 months to settle. However, due to the constraints imposed by DEP's transfer station implementation schedule, the board was obliged to approve interim rates for these facilities in 1 - 2 months.

The Committee heard testimony from several sources that a number of counties will require the use of transfer stations for the foreseeable future. Although the transfer station strategy was intended as a temporary solution to New Jersey's solid waste disposal problems, it appears that it will be necessary for many of the State-sanctioned transfer stations to remain in operation well past the expiration of their respective three - five year contractual obligations. The proposed resource recovery facility projects to be undertaken in Bergen, Passaic and Union Counties are either undergoing permit review by the DEP or are still in the pre-construction planning stage. Similar projects proposed in Morris and Somerset Counties have not been developed beyond the site selection phase. Thus, none of these long-term disposal facilities will be operational (assuming that they are constructed at all) until the mid-1990's. For example, the proposed 3,000 tpd resource recovery facility in Bergen County - tentatively scheduled to commence operations in 1993 - is presently 15 months behind schedule. Even the Essex County project, which will be fully operational by December, 1990, poses a problem, inasmuch as the Essex County-Waste Management contract for the operation of the Avenue A transfer station will expire on January 31, 1990.

The indefinite continuation of the State's "interim solution" poses a number of serious economic and environmental consequences. First, upon the expiration of the various 3 - 5 year transfer station contracts, the tipping fees received at these facilities will inevitably escalate to levels well above the statewide average \$100.00 per ton disposal charges currently being imposed as those contracts are renegotiated. If the parties fail to renegotiate an existing contract, further disruptions can be anticipated as the county must hurriedly seek a new disposal option.

Second, to the extent that these contractual arrangements involve parallel 3 - 5 year disposal privileges at out-of-state landfills, consideration must be given to the prospect of transporting New Jersey solid waste to disposal sites even further west if states like Pennsylvania and Ohio succeed in effectively limiting the volumes of out-of-state solid wastes that may be landfilled within their borders. Obviously, the transportation costs would be considerably increased by this outcome.

Third, under the "option year" provisions common to most five year transfer station contracts, the county must absorb a rather sizable built-in tipping fee increase in the fourth or option year of these agreements. For most counties, these increase would occur between 1991 and 1992. The annual operational and maintenance expenses at a transfer station, which include the amortized costs of recovering the expenses incurred for construction and equipment, and from which the tipping fee is derived, are spread over the five year or useful life of these facilities. If a transfer station remains in operation beyond five years, it is anticipated that vendors will receive windfall profits at the expense of county ratepayers.

Finally, many of the pending rate cases before the Board of Public Utilities are yet to be finalized. At the outset, the BPU set interim rates at virtually all of the transfer stations as a matter of expediency. However, even if a final rate determination by the Board results in slightly reduced tipping fees, the prospect of continued waste exportation to ever further disposal site destinations, and the uncertainties of out-of-state disposal costs - over which the BPU has no jurisdiction - may negate any possible savings to ratepayers.

In light of the foregoing, the Committee finds that the new Legislature should anticipate the consideration of a number of new and previously introduced bills addressing the entire spectrum of issues raised herein, including: BPU rate regulation of transfer stations; escalating solid waste transfer, transportation and disposal costs; the effects of recent developments in other jurisdictions on New Jersey's waste exportation policies; coordinated State and local waste flow enforcement; the need to develop an effective statewide solid waste management planning and implementation capability; the effects of delaying or eliminating planned resource recovery facility projects; and so forth.

RECOMMENDATIONS

1. The Department of Environmental Protection must engage in comprehensive and continuous solid waste planning on behalf of those counties whose district solid waste management plans have not been implemented, or have failed to address, the environmentally sound disposal of current and future solid waste generated within their respective borders. It is necessary to have available a mechanism for the implementation by the DEP of contingency plans or other emergency measures - as envisioned by Assembly Bill No. 462 of 1988 - to provide for interim disposal capacity in the event of interruptions in the flow of solid waste transported to out-of-state disposal sites due to changes in state laws, default or termination of out-of-state disposal contracts, or other circumstances beyond the control of the department, the Board of Public Utilities or the waste-exporting county.

The DEP must be prepared to take immediate action to provide and, if necessary, implement short-term disposal arrangements in those instances where counties have failed to provide for their own short-term solid waste disposal needs. Any short-term arrangements must, to the maximum extent possible, be fully integrated into the district solid waste management plans of the counties affected thereby, both from a functional and an economic standpoint.

The Committee finds that this will only occur if the DEP makes a firm commitment to make meaningful statewide solid waste management planning a priority, and the department is provided the economic resources and statutory authority necessary for a comprehensive solid waste planning effort.

Further, the department must cooperate with, and provide greater assistance to the counties in the implementation of short-term disposal arrangements. In the future, the execution of major State solid waste policy initiatives cannot be allowed to become uncoordinated, individual county efforts like the transfer station strategy. The DEP must devote more time to policy implementation and greater "hands-on" assistance to the counties so that actual solid waste plan implementation in the field will become

a truly functional partnership between the State and the counties. Similarly, the enforcement of the State's solid waste laws is the joint responsibility of DEP and BPU. The Committee finds that an effective statewide solid waste disposal strategy cannot be achieved without the on-going cooperation and coordination of efforts between the two State agencies.

2. The Committee finds that without effective waste flow control enforcement, neither the statewide nor any county solid waste management plan will be effective. A coordinated approach to the enforcement of DEP and BPU waste flow directives must be a priority for both agencies, and must necessarily involve the combined efforts of the Attorney General and individual county prosecutors, county and local health departments, and county solid waste facilities.

3. Require all transfer station owners or operators to furnish a performance bond or maintain an escrow account to insure the availability of funds to refund excessive interim rates or charges to consumers, and reaffirm the role of the Board of Public Utilities in the rate regulation of transfer stations.

Specifically, whenever the rates or charges received at a transfer station have been approved by the Board of Public Utilities on an interim basis, the BPU must direct the owner or operator of the facility to furnish and file with the BPU during the pendency of the final rate proceeding with respect to the initial tariff, contract or service agreement a performance bond or evidence of an interest-bearing escrow account in an amount necessary to insure the availability of funds to provide appropriate refunds or credits in the event that the BPU determines that the interim rates or charges exceed just and reasonable rates for the provision of solid waste transfer, transportation or disposal services.

4. Require that the Board of Public Utilities must approve any contract or service agreement entered into by any county, municipal or county utilities authority, county improvement authority, or any other public body or private sector firm for the operation of a transfer station in this State, or for the provision of solid waste transfer, transportation or disposal services, and that the interim rates or charges approved by the BPU under emergency circumstances are subject to refund if the board, after hearing, determines that they are excessive.

5. Require the Board of Public Utilities, in determining a rate base for a transfer station, to consider all operating expenses and revenues of the owner or operator of the facility, together with those of every affiliated company with any direct or indirect financial interest in the facility, or the transportation or disposal of the solid waste received at the facility, and all financial transactions between these parties related to these solid waste transfer, transportation or disposal activities, on a consolidated basis.

6. Provide for the direct payment by municipalities of the fees and charges imposed at a transfer station. Specifically, provide that every municipality whose solid waste is directed to a transfer station, whether solid waste collection or transportation services are contracted and provided for solely on a private, individual household basis, pursuant to a lawfully bid public contract, or by the municipality itself, should be responsible for the direct payment of all fees and charges owed to the transfer station by the collector or transporter's residential customers or the municipality, as the case may be, directly to the owner or operator of the transfer station for payment.

The purpose of this provision is to establish a prepayment system for the transfer and disposal charges owed to transfer station owners or operators. By separating solid waste transfer and disposal charges from collection charges, the economic incentive for the solid waste collector or transporter to transport solid waste directly out-of-state in violation of the State's waste flow orders would be greatly reduced.

7. Recommend the timely passage of A-462 ACS of 1988. This bill would grant the Governor and the Commissioner of Environmental Protection specific solid waste emergency powers, and authorizes the DEP to adopt and, if necessary, implement emergency plans in the event of a declared state of solid waste emergency in any area of the State.

8. Recommend the timely passage of A-2701 Aca of 1988. This bill would require that all completed registration statement and engineering design applications submitted to the DEP for the permitting of solid waste facilities must be reviewed and acted upon by the department within 3 months of the close of the public hearing to be conducted by the department on the proposed facility and operator within the affected municipality.

In order to restore public confidence in the solid waste disposal cost ratemaking process, the Committee finds that existing law must be revised to subject all transfer stations to the rate regulation of the Board of Public Utilities in a uniform manner. This would require that the appropriate statutes be amended to provide that no transfer station may commence or continue operations and no person may own or operate a transfer station in this State unless the person has: (1) filed a registration statement and engineering design application and obtained approval thereof from the DEP as required by P.L. 1970, c. 39 (C.13:1E-1 et seq.); (2) obtained a certificate of public convenience and necessity from the BPU as required by P.L. 1970, c. 40 (C.48:13A-6); and (3) filed an initial tariff or lawfully negotiated contract for the solid waste transfer operations of the facility and obtained approval thereof from the BPU. Every such tariff or contract submitted to the BPU must include the formulas to be used to determine the charges, rates, or fees to be charged for the utilization of the transfer station, and the methodology or methodologies used to develop these formulas.

Further, the BPU must approve any contract entered into by any county, municipal or county utilities authority, county improvement authority, or any other public body or private company authorized by law to own or operate a transfer station in this State.