
Committee Meeting

of

ASSEMBLY AGRICULTURE AND WASTE MANAGEMENT COMMITTEE

Assembly Bill Nos. 50, 2568, 2811, and 2837

(Discussion on bills relating to solid waste management and disposal)

LOCATION: Committee Room 12
State House Annex
Trenton, New Jersey

DATE: March 25, 1997
2:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman John C. Gibson, Chair
Assemblyman Anthony R. Bucco, Vice-Chair
Assemblyman Larry Chatzidakis
Assemblyman Melvin Cottrell
Assemblywoman Connie Myers
Assemblyman Reed Gusciora

ALSO PRESENT:

Algis P. Matioska	Thea M. Sheridan
Leonard J. Colner	Assembly Majority
Office of Legislative Services	Committee Aide
Committee Aides	



Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
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Sandra T. Ayres, Esq.
from the firm of
Schwartz, Tobia, Stanziale,
Becker, Rosensweig & Sedita
Representing
Ocean County Landfill

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APPENDIX:

Comments submitted by
Commissioner Robert C. Shinn Jr.

1x

Testimony submitted by
Ted Banasiewicz

7x

Testimony plus attachments
submitted by
Charles L. Houck

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Letter addressed to
Assemblyman John C. Gibson
from Larry Gindoff
Solid Waste Coordinator
Morris County Municipal
Utilities Authority

18x

Letter addressed to
Assembly Agriculture and
Waste Management Committee et al.
from Kevin A. Conti, Esq.
from the firm of
DeCotiis, Fitzpatrick & Gluck
Teaneck

20x

ses: 1-45

ASSEMBLYMAN JOHN C. GIBSON (Chairman): I'd like to welcome everybody here to the Agriculture and Waste Management Committee. We'll open the meeting with the Pledge of Allegiance to the flag. (participants comply)

Roll call.

MR. COLNER (Committee Aide): Assemblywoman Gill? (no response) Assemblyman Gusciora?

ASSEMBLYMAN GUSCIORA: Here.

MR. COLNER: Assemblywoman Myers?

ASSEMBLYWOMAN MYERS: Here.

MR. COLNER: Assemblyman Cottrell?

ASSEMBLYMAN COTTRELL: Here.

MR. COLNER: Assemblyman Bucco?

ASSEMBLYMAN BUCCO: Here.

MR. COLNER: Assemblyman Gibson?

ASSEMBLYMAN GIBSON: Here.

I certainly welcome everybody here today. I didn't expect this kind of a crowd, but I'm flattered because I understand that many of you here are for a particular bill that I'm sponsoring. We will go out of what was proposed to be our order today, so that we can take that bill up first. Then we will go into hearings for discussion purposes on A-50 and bills that are related to A-50. Then at the end of the meeting, we'll take up the other three pieces of legislation. (tape recorder shut off until testimony on Assembly Bill No. 50 taken)

ASSEMBLYMAN GIBSON: We will now take up A-50. Because this hearing will probably continue for almost an hour, everyone is welcome to stay if they choose, but I assume that, perhaps, this (indicating) was your purpose for being here and that you may not be as interested in A-50 as you were with the other piece of legislation. So you're welcome to do what you please. (audience members leaving)

Commissioner Shinn.

Commissioner, we invite your testimony on A-50. We thank you for accommodating our schedule and welcome you here.

COMMISSIONER ROBERT C. SHINN JR.: Thank you, Mr. Chairman. It's always a pleasure to visit the Waste Committee. Thank you for all the work you've done and staff has done on putting this bill together.

ASSEMBLYMAN GIBSON: Is it on? (referring to microphone)
(affirmative response)

COMMISSIONER SHINN: Thank you for all the hard work in hearing-- I would like to thank the bill cosponsors, as well, and staff for drafting an extremely comprehensive legislative proposal in the wake of the *Atlantic Coast* case.

The concepts contained in the bill strike an appropriate balance between satisfying the legal issues which stem from the failure of Congress to pass Federal legislation and consistency with the historic planning process we've administered in New Jersey for nearly 20 years.

The need for strategic regional, long-term solid waste planning was recognized in this State more than 22 years ago. The statutory amendments to the New Jersey Solid Waste Management Act, which our Legislature passed, even predated planning initiatives by Congress in the form of the Resource Recovery and Conservation Act. Our system has served as a model for states across the country for several years.

Despite being the first state to break new ground and embark on a comprehensive, long-term solid waste management program, and despite some extreme obstacles such as high population density, industrialized nature, and sensitive environmental areas, we've been successful. Courageous county Freeholder Boards across the State have sited and constructed 12 modern, lined landfills and five energy recovery facilities. At the same time, we adopted mandatory recycling, and after a full decade of enormous effort, we are closing in on our statutory goal of 60 percent recycling.

Our integrated system has also pioneered source reduction, household hazardous waste management, landfill mining, universal waste collection, demanufacturing, litter abatement, and extensive public education of our schoolchildren. I firmly believe that New Jersey's system continues to be second to none.

Without it, we would be unable to continually track and reduce or eliminate pollution impacts in New Jersey. I don't think anyone can argue that this has clearly enhanced New Jersey's environment. Our active tracking and abatement of solid waste impacts on the environment have been extremely

successful. We've not only cleaned up the environment, we've certainly had a major impact on cleaning up the waste industry, as well.

Unfortunately, the United States Congress has failed to address the issue of flow control, despite 10 full years of debate. At the same time, the courts have interpreted the commerce clause in such a way that our progressive system of flow control has been determined to be unconstitutional. The legal debate in this matter has yet to be completely settled, and we do expect a decision shortly from the United States Court of Appeals for the 3rd Circuit on reconsideration of the constitutionality of the system, as well as the timing for potential transition to a modified approach.

During this time of ongoing uncertainty, New Jersey counties and authorities, which made the tough decisions and implemented comprehensive systems to manage their solid waste, have been left with over \$1 billion in debt, as you're well aware. A-50, with modifications recommended by the Department, represents a legislative proposal which will deal with our debt problem while offering choices to local governments on solid waste disposal and collection contracting.

The Department has offered a number of comments to the sponsor, many of which have already been addressed through proposed amendments. Briefly, our comments can be categorized as follows:

The bill removes most elements of utility rate regulation. We understand and concur with a desire to streamline and deregulate disposal facility regulation consistent with actions already taken; however, we have proposed a limited, ongoing, oversight role remain in the form of rate bands.

Further, we have requested restoration of the fundamental provisions of the Solid Waste Utility Control Act, or Title 48, which has been valuable to the Department in regulation and enforcement of the solid waste industry through the requirement to obtain a certificate of public convenience and necessity.

Portions of the bill appear to confer additional enforcement powers upon local governments outside the scope of the County Environmental Health Act, or CEHA. We feel that CEHA has worked well and recommend that traditional compliance and enforcement activities remain under the purview of CEHA agreements and the State Department of Environmental Protection.

Several areas of the bill have raised issues of constitutional concern which have been the subject of historic case law decisions. Areas of concern center upon equivalent contracting provisions with respect to in-state and out-of-state disposal facilities, differential rate assessments, and public process in the establishment of environmental investment charges. These portions of the bill may warrant reconsideration to ensure consistency with prior legal interpretations.

We have recommended that current host-community benefit provisions be modified to grandfather existing rates, while inserting a prospective rate range to serve as a guide for negotiations to take place exclusively between facility owner-operators and host municipalities with no formal DEP role involved.

Finally, we have provided some additional general recommendation, as well as a proposal to restore certain portions of the

legislative findings and declaration of policy which have served as the foundation of our system, while adding language to more accurately recognize recycling, beneficial reuse, and source separation as integral components of the State's Solid Waste Program.

In closing, we find ourselves at a crossroad in management of solid waste in the State of New Jersey. In the absence of Federal law regarding flow control, it is critical that the New Jersey Legislature identify the framework for the next chapter in our solid waste history to ensure that historic debt is retired and that we continue to implement aggressive, integrated solid waste management to protect public health and the environment.

A-50 establishes such a framework in line with our county and State planning process. The Department supports A-50 in a modified form with these minor amendments. I would, once again, like to commend the sponsor and the staff for yeoman's work in crafting such a comprehensive legislative proposal in light of all the activities going on in this particular issue.

If you have any questions, I'll be happy to attempt to respond.

ASSEMBLYMAN GIBSON: Okay.

Thank you, Commissioner. Just a few comments and then I'll entertain questions from other members of the Committee.

Our schedule is such that we'll keep this bill in this Committee today, perhaps, for another hearing or two. Many of the groups, because the bill is so comprehensive, have needed as much time as possible with which to formulate some recommendations. Those comments and recommendations--

Certainly, your support is gratefully appreciated, but the comments and recommendations you made today were already in the works considering those-- We appreciate your Department and all the input that you had in this.

Perhaps, before the summer break, we may feel-- Unless something critical happens between then and now-- If the Federal government solves the problem for us, that's fine with us. If the appeal process wins, that's also fine with us. We're here to finish a job, if it's necessary, and it does appear that it will be necessary before the end of this legislative calender or by the end of this legislative calender. Our schedule is basically to consider all the amendments to modify the bill as required and, perhaps, at least release it from this Committee before the summer break.

Other Committee members, questions for the Commissioner?
Anyone?

Assemblyman Gusciora.

ASSEMBLYMAN GUSCIORA: Good afternoon, Commissioner.

COMMISSIONER SHINN: Good afternoon.

ASSEMBLYMAN GUSCIORA: Has there been any analysis on the approximately \$1.6 billion worth of debt as far as county or source of the debt, whether it's incineration or landfill or other type of debt?

COMMISSIONER SHINN: Only to the extent that there is roughly, as you stated, \$1.6 million (*sic*) of debt that's out there. I think looking at each facility and the financial situation, and particularly the rate of each facility, you have to analyze, basically, what the options are.

But I think it's very clear that counties have made a tremendous effort in a very aggressive fashion to reduce their rates. I think counties are pulling out all the stops and bringing their rates down as competitive as they can make them, using all the means at their disposal. So this is going on-- I think some of the other bills you have go to that purpose.

It would be pretty hard to do an exacting analysis, except the higher the rate, the more individual debts -- individual counties are in jeopardy because the higher the rate, the more the incentive is to go to another facility. So if you look at a specific county and that debt service, look at the rate of their -- whatever their tariff rate is, the higher the rate, the more, potentially, that debt is in jeopardy.

Now, there may be extenuating circumstances relative to transfer facilities or other pieces of that, but I think as a broad brush you could use the rate jeopardy relationship in a broad assessment, and you could, obviously, spend years analyzing that debt. But I think--

Make no mistake about it, I think our counties, by and large, are in crisis with this debt and the authorities that are adjunct to the counties, I think, recognize that. I think they're doing everything within their power -- I think you'll hear about that later in the testimony -- to get their rates competitive and try to, basically, put themselves in the best position they can for the ultimate result of the court decision.

Right now, we're in that two-year period-- Of course, there is a court opinion that we're waiting for now relative to that issue. But we have a different situation with *C* and *D* waste -- that's about 11 percent of the waste

stream. That, in itself, seems to be going reasonably well. I think that impact we've managed to work reasonably well through the process, but when we reach the point if Congress doesn't act -- the total loss of waste flow control -- we're going to be in serious problem with a lot of our county debt. I'm not saying all of it, but certainly a significant portion of it, just because of rate differential.

I think keeping in mind that the system that we built in New Jersey, through a host of legislative sessions and Department actions, has provided a major benefit from an environmental standpoint. We had a horrendous amount of illegal waste disposal. We've had a lot of, I guess, the wrong people in the business, historically.

The improvements that-- If you look at all the problems we're dealing with-- But the improvements from an environmental standpoint and a public service standpoint-- To dispose of our waste, account for it in an environmentally sound fashion has had significant benefits to the residents of the State. Trying to go from the point where we are now, accounting for our waste, making sure it goes to a responsible facility so we don't build Superfund sites in this process of deregulation, is certainly a concern.

Illegal waste disposal has always been a concern. We went through it with this Legislature with medical waste and certainly solid waste in the past. So we don't want to go backwards with the impact on the environment with this process, and I think the counties have been the leaders in this effort. That's no small undertaking, and I know many of you on this Committee have been involved in that process.

I think recognizing, as A-50 does, the crisis that counties are in currently is the appropriate thing to do, and I think we've got to work together through this process as best we can. Keeping in mind that counties are our governmental partners of the states and any impact that they digest, I think, government digests generally as partners in this process.

So I think we're in it together from a municipality level to the State level, and there are some things we'd like to do from an emotional standpoint, but I think we've got to look at the big picture of where we came from in solid waste at the beginning, why we started this process to start with 20 years ago, where we are in it.

Our recycling successes are leading the country, our household hazardous waste programs are doing great things. We're involved in landfill mining, as the Chairman knows, in a big way. I think some of our future lies in that area. I think having on the horizon the ability to achieve even better recycling numbers than we ever envisioned, I think, is there, with beneficial reuse and some of our more creative programs that municipalities and counties are carrying on.

So I think, even though this is a very problematic time frame, I think the overall outlook from what we've done, where we've been, and what we've accomplished is very positive. It's not all bad news, but certainly the next 18 to 24 months is going to be a high level of controversy. We're changing some of our comments on the bill based on, as you know, some of the best thinking from the Attorney General's Office and from OLS at this time.

It's a moving target, and it's a very difficult bill to nail down because a lot of the goals and a lot of the rules are changing in the litigative process. But I think taking your time with this legislation is the right thing to do. I think there have been some very interesting processes going on with economic waste flow that have really launched some of the bill's intentions early on. So some of this bill is being implemented, as we speak, before the bill gets out of Committee, so that definitely indicates that there is a need for the legislation. So I think we're on the right track.

ASSEMBLYMAN GIBSON: Thank you, Commissioner. The question was answered, I'm sure.

Assemblyman.

ASSEMBLYMAN GUSCIORA: Yes, as a follow-up: Is there a need for any State oversight of this debt? For instance, there are five counties that have incinerators. Are the states doing anything to facilitate a lessening of the debt, such as finding partners for them or doing an analysis of whether they're running at capacity, whether they could bring in other communities? Is there a void in there that can be filled by monitoring or helping to facilitate--

COMMISSIONER SHINN: What we've tried to do is, we've gone to a BTU rate on facilities -- from a volumetric rate to a BTU rate. That's basically had a result of increasing available capacity and maximizing throughput on facilities that are already in place. We've pretty much finished with that process.

We're also encouraging regional partnerships, if there is a capacity that isn't contracted for, to fill those capacity voids to the maximum extent

with in-state waste as much as we can. Some of that's possible, some of that's not possible. Many of the facilities are taking initiatives for looking out of State for contractual arrangements because by not having the maximum throughput on those facilities puts them at an economic disadvantage in this particular time frame. What they could endure at one point in the process from a shortfall, under this situation, an atmosphere can't be endured.

So there are a lot of good initiatives taken, and I think maybe Garry Sondermeyer will follow up with some more detailed comment. But I can tell you that it's a very aggressive atmosphere from the counties' and the authorities' standpoint and doing everything they can in this time frame, working with the Department, trying to get their rates to the lowest possible level, and we're working with them in that regard.

Garry, did you want to add anything to that?

ASSEMBLYMAN GIBSON: Director, welcome to the table. Anything you would care to add would be most appreciated by the Committee.

G A R R Y S O N D E R M E Y E R: Thank you very much.

We do, to answer your question, have a number of regional partnerships that were structured through the years. We have a partnership shared between Union and Bergen Counties for the use of the Union County Resource Recovery Facility. We also have interdistrict agreements that were entered historically for use of the Warren County facility with both Hunterdon County and with Somerset County. There are time frames associated with how long those interdistrict agreements last.

Despite trying to facilitate regional partnerships, as the Commissioner mentioned -- which really goes back to the amendments of the statute from 1975-1976 -- regional partnerships were never structured for the long term with Essex County or with Camden or with Gloucester. In the cases of Gloucester and Camden, there has been sufficient waste flow to keep those facilities operating near their designed capacity.

I think, as the Commissioner mentioned, the uncertainty with the courts -- which has really been with us, at this point, for over three years -- there has been an inability to structure any additional long-term agreements or interdistrict agreements. But A-50 certainly facilitates that toward the future.

ASSEMBLYMAN GUSCIORA: A final question, Mr. Chairman.

Is the State taking any position on whether a county should build or construct any further incinerators to add into the mix?

COMMISSIONER SHINN: We've got-- In our overall approach to solid waste, we've got a full-- Since different parts of the waste stream lend themselves to different technologies, there is a significant portion-- We're talking recycling rates at around 60 percent now, obviously there is a big recycling portion. There is also a compo stable portion. So we've basically said, "Here are the host of technologies you can apply to solid waste, and, counties, you can use your judgement of how you want to apply those technologies." We encourage--

We've sort of leveled the playing field from-- Whether it's a landfill or an incinerator or a composting facilities or a major recycling facility

or household hazardous waste or whatever the technology is, they'll lend themselves to different types of technology. Since counties have the responsibility for solid waste management, we've let them make that decision and try to support those decisions.

ASSEMBLYMAN GUSCIORA: Thank you, Mr. Chairman.

ASSEMBLYMAN GIBSON: Thank you, Assemblyman.

Are there any other questions for the Commissioner?

Assemblywoman Myers.

ASSEMBLYWOMAN MYERS: Good afternoon, Commissioner.

I'd like to hear your position on the status, postwaste flow -- assuming the court decision is implemented -- on these interdistrict agreements, where a facility was built dependent on trash from other counties in light of the provisions of A-50.

COMMISSIONER SHINN: Well, I think the ultimate solution -- we talked about Congress a little earlier-- There are two issues in Congress: One is flow control and one is interstate. I think this State has agreed-- We have three agreements with Pennsylvania, over the years since I've been Commissioner, on limiting our flow to other states. So any state that wants an agreement with New Jersey on long-term planning, joint planning, joint enforcement, New Jersey is willing to talk about that.

Clearly, if we're going to have environmentally sound management of our solid waste, hazardous waste, low-level radioactive waste, we need to have control over the waste stream. I think there's a recognition in some parts of Congress that this is fact, but, as you know, there has been certain states

blocking waste flow control. There are certain states insisting on interstate -- Indiana the most prevalent. New York has been a factor in blocking legislation going through Congress. I think there is a new atmosphere on the horizon for a waste flow bill to happen. I think there is a lot more consensus now than there was before in Congress, and obviously, we need Federal legislation, there is no question about it.

How this all falls out is going to be a function of either Federal legislation or going through the court process, trying to manage it with the help of the Legislature, bills like A-50, and other actions as we get to the next step in the process. Trying to prejudge what's going to happen in the courts is very difficult, from my perspective, but one thing that I know and I know we need from Congress is a bill that lets us control our destiny from a solid waste standpoint.

ASSEMBLYMAN GIBSON: Assemblywoman.

ASSEMBLYWOMAN MYERS: Forgive me, Commissioner, but I asked you to comment with the assumption that we would have a postwaste flow environment because there are a number of us who have been working on these pieces of legislation assuming that that's what is going to happen. What I'm hearing -- and I want to make sure I'm hearing you properly -- is that the only answer you see is that the counties will go to court and the courts will decide. Is that correct?

COMMISSIONER SHINN: The only answer I see is Federal legislation. I think Congress has to come through and recognize that we're in a crisis mode. We've got a significant amount of debt that could be in

jeopardy if we don't get Federal legislation. I think it's incumbent upon Congress to pass a bill. I think we have good support in Congress for that position; it's growing, it's not going the other way. I think we're going in the right direction in our support. There are bills that are alive and being considered. We try to follow them pretty carefully, but barring that, I think we're going to be very involved in a longer term process as we see different facilities in different situations. We could try to give you-- If you set out a certain set of parameters, we'll try to give you our best judgement on what we feel the opportunity is there, but off the top of my head, I think what we really need is Federal legislation to solve this problem.

ASSEMBLYWOMAN MYERS: Well, I will set out the parameters for you for the counties that I represent, Hunterdon and Warren Counties. Without Somerset and Hunterdon fulfilling the contracts that they have with Warren County, Warren County would end up with per capita solid waste debt which is four times what the average is for any other county in the State of New Jersey. I don't think the Legislature could -- or the administration should -- even think about permitting this possibility.

I feel quite strongly about it. I'm sure you're aware of that. I think we're going to be talking about some legislation I've introduced to try to address this problem, but I'd appreciate any cooperation we can get from the Department and the Attorney General's Office in resolving this very, very difficult but necessary-- I think it's necessary that the State Legislature look at this and not just be dependent on our colleagues in Congress to worry about it.

Thank you.

COMMISSIONER SHINN: Absolutely.

ASSEMBLYMAN GIBSON: Commissioner, what is the status of the appeal to the court at this point in time?

COMMISSIONER SHINN: Garry, you want to comment on that?

MR. SONDERMEYER: Yes. The matter was heard in mid-December before the 3rd Circuit Court of Appeals. At this time, we're in a wait mode to see what the decision really will be.

The question that the Department brought forth was the constitutional issue -- the constitutionality of our very system to be reinstated. There was also argument heard regarding the time frame of the two years. Technically, the two-year time frame from the lower court decision would begin following the date of the last appeal, which technically has not yet taken place. The question remains and was debated on the appropriateness of that two-year time frame and whether or not intermediate milestones were necessary to be observed and monitored by the court.

So at this point, the decision could be rendered on both of those issues -- the constitutionality question, which the Department appealed, and the two-year time frame -- at any point in time and in probability would be released some time before the summer, but it is very uncertain, as any proceeding in Federal court, when that will be handed down.

ASSEMBLYMAN GIBSON: The Committee's schedule will be within the legislative calender that we're operating in now, which is the end of

this calender year, but we ask you to keep us posted on what's happening in the courts.

MR. SONDERMEYER: Certainly.

ASSEMBLYMAN GIBSON: Are there any other questions from any other Committee members? (no response)

We have some folks who signed up to testify on A-50. You're welcome to stay and be available to us, should your schedule permit. We're also going to discuss some related bills to A-50 which intend to provide some funds, by the State of New Jersey, to make this as easy as it can be for those counties that have the highest of debts.

Thank you very much.

COMMISSIONER SHINN: Thank you, Mr. Chairman.

MR. SONDERMEYER: Thank you, Mr. Chairman.

ASSEMBLYMAN GIBSON: Mr. Bontempo, American Forest and Paper Association, regarding A-50.

PAUL N. BONTEMPO: Thank you, Mr. Chairman, members of the Committee.

I'm Paul Bontempo from the firm Martin.Bontempo here in Trenton, representing the American Forest and Paper Association, the trade association which includes most of the producers and manufacturers of paper pulp, paper products, and forest products in the country. In New Jersey, our member companies include familiar names like Marcal Paper, Garden State Paper, Union Camp, and many other out-of-state companies like Proctor and Gamble and Georgia Pacific, which have numerous facilities in the

State. Collectively, the industry employs nearly 28,000 people and is one of the top 10 manufacturing segments in our State.

I am here, Mr. Chairman, to enthusiastically support the most recent draft amendments that became available in the past week. As you know, when we had the opportunity to meet with you, Mr. Chairman, the concern of paper recyclers in New Jersey -- who we represent -- was that there was language in the bill as originally introduced which we thought, potentially, could have been seriously injurious to what has become a very successful recycling effort in our State.

Fortunately, when we met with you, you assured us that was not your intent, and you gave us the opportunity to work with the Committee staff and the folks from DEP -- Mr. Sondermeyer and his people. We were very pleased and grateful to you for what is now in the most recent set of proposed amendments, and we urge their inclusion in A-50 when it ultimately moves from this Committee.

Thank you.

ASSEMBLYMAN GIBSON: Thank you for your comments.

Ted. I can't pronounce your last name, but you're from Atlantic Generation, and you want to speak on A-50. Are you here? (affirmative response)

I apologize for not being able to pronounce your last name. You can probably help us with it.

T E D B A N A S I E W I C Z: Mr. Chairman, my name is Ted Banasiewicz. (indicating pronunciation)

You all have copies of a prepared testimony. I think what I'm going to do, instead of reading it, is to try to summarize it.

ASSEMBLYMAN GIBSON: Please.

MR. BANASIEWICZ: Let me just start by telling you who I am and why I'm here. My position is, I am Director of Project Development for Atlantic Generation. Atlantic Generation is the utility affiliate associated with Atlantic Electric.

For over a year now, we have been working on a project which, as a result of deregulation in our utility industry, we find the need to develop new and innovative ways to reduce our costs and produce cheaper power. Many of the things that you are going through with, with your process of deregulating the solid waste industry, are very common to the type of deregulation that our industry has gone through. I find a lot of similarities.

The project that I'm working on is a revitalization effort of one of Atlantic Electric's existing power plants. We intend to use a processed solid waste as the primary source of fuel. First, I want to say that Atlantic Energy is not in the solid waste business. We are in the energy business. Our purpose is strictly in our ability to compete for a solid waste stream that we can utilize as a fuel source.

In general, I support the bill that you have prepared. I do have two significant concerns. The first of which is the definition of a solid waste facility. I believe it's called a "district solid waste facility." It seems to me that for our facility to be considered a district solid waste facility, we would have to

have the endorsement of the very same entities that we would be in competition with.

My purpose today is to convince you that free enterprise and competition will allow market forces to create efficiencies and drive prices to the lowest possible tipping fees. Section 3 of your bill is the part that requires a district solid waste facility to be designated by a public entity. I think that this unfairly limits the role of private enterprise in the solid waste industry.

The second area that I have concerns with is in the definition of how your environmental charge is calculated. I don't believe that there is enough guidance given and that that charge needs to be limited to a definition of what I call net debt. That should be defined as the total debt, less any reserves that are available for refinancing or paying off the debt. I think both of these ideas are-- They're in line with other businesses and other industries that have deregulated, and they serve to minimize the impact on the taxpayers and, at the same time, motivate free enterprise to create efficiencies that will lower prices. I think these are the two areas that I have the most concern about.

The project that we're working on will utilize state-of-the-art technology. It will utilize fluidized-bed technology for combustion of a solid fuel and, in our view, is the best alternative available to the State of New Jersey today for any options associated with the disposal of solid waste, and that includes incineration, mass-burn incineration, or landfill.

So these are the two areas that I have concerns about and that I would like you to address, and I would appreciate your consideration.

ASSEMBLYMAN GIBSON: Thank you for your comments.

As far as there is a net-net debt, I can understand your comments if you're talking about debt that was, perhaps, authorized but not expended. You certainly wouldn't want to necessarily give authority to transfer something that was never spent, but it sounded like you were talking about reserves. Every agency has some reserve there.

Were you talking about simple annual reserves when--

MR. BANASIEWICZ: I'm not talking about reserves for closure fees or capping or expansion or those types of things, but strictly reserves that have been put aside that are available or earmarked for debt service reserves. I think debt service reserve would be the term that-- We're aware that there are such reserves and that those could be used to pay down the debt and what's left could be considered the stranded or environmental investment charge. But if you take the debt that is on the books but leave the reserves to be utilized for other purposes, I think that would allow costs to be lowered beyond what a fair market, competition type of scenario would dictate.

ASSEMBLYMAN GIBSON: I would request, then, that which you're aware of -- where you see a debt and a reserve -- that you give us the specifics of that, so that the Committee can consider that -- at your convenience.

MR. BANASIEWICZ: I will do that.

ASSEMBLYMAN GIBSON: Are there any questions from other Committee members? (no response)

Thank you for your testimony.

MR. BANASIEWICZ: Thank you.

ASSEMBLYMAN GIBSON: Charles Houck, County of Warren, testimony regarding A-50.

CHARLES L. HOUCK: Good afternoon.

ASSEMBLYMAN GIBSON: Mr. Houck, good afternoon. Thank you for being here.

MR. HOUCK: Thank you for the opportunity.

I've brought along with me some documents. There is a letter, which is basically summarized in what I ask to be able to read and a critique of the bill from one of the Freeholders who asked that I bring it down and share it with you folks. So, if I may, I'd like to summarize the information in the letter that I have drafted on behalf of the Board of Freeholders.

The Warren County Pollution Control Financing Authority was created pursuant to New Jersey's Solid Waste Management Act. Warren joined with Hunterdon and Somerset Counties and adopted a plan whereby the Authority constructed an energy from refuse resource recovery facility and sanitary landfill. The design capacity of the facility is limited to meet the needs of the three counties and restrict the importation of out-of-state waste. Approximately 65 percent of the waste stream processed by the facility comes from Warren -- I'm sorry, from Hunterdon and Somerset Counties.

The project was financed through the sale of \$130 million in revenue bonds issued by the Authority. Revenues from solid waste disposal tip fees are pledged to pay the debt service and operating expenses of the facility. The State imposed a system of waste flow controls which required that all solid

waste generated within the service area governed by the agreement be disposed of in the facility. Revenues generated from the facility have been adequate to cover debt service and operating costs since it began operations in 1988.

There are three landfill facilities and three transfer stations located within a 30-mile radius of the Warren County facility. Municipal solid waste disposal costs at the competing facilities average between \$40 and \$50 per ton. Recently, fees have dropped below \$40 per ton, and the market is extremely competitive. The Authority currently charges a tip fee of approximately \$99 per ton.

If flow control is eliminated, the loss of waste and associated revenue to competing facilities will cause severe fiscal stress on the Authority, conceivably bankruptcy. The Authority is exploring ways to become competitive with privately owned solid waste disposal facilities. Their efforts are focusing on identifying methods to reduce operating costs and restructuring debt. However, the facility's limited design capacity makes it very difficult to compete without concessions from the operator, elimination of environmental programs, and some form of financial subsidy. Furthermore, given the current solid waste disposal market, it is unlikely that the debt can be restructured without additional guarantees from the counties.

The proposal to allow the imposition of fees on waste generators included in the County's plan has merit; however, the problem with the proposal as it currently exists are that the fees are optional, not mandatory. As indicated previously, the Authority has issued the debt and Hunterdon and Somerset Counties are supplying 65 percent of the waste processed by the

facility. If all three counties do not pay their proportionate share of subsidy, the burden of paying the shortfall in operating costs will fall entirely on Warren County residents. It is conceivable that Warren County residents will be subsidizing a facility that processes trash originating in other states.

The Commissioner of the Department of Community Affairs has stated that the local Finance Board can dissolve the Authority, and the outstanding debt of the Authority will become a legal obligation of the county. Now, in order to appreciate the impact of the additional debt, consider that Warren County currently has approximately \$28 million in outstanding bonds. The Authority's current outstanding bonded debt, as of January 1, was \$82,600,000. If the county was forced to assume the Authority's debt, our total indebtedness will increase 400 percent to \$110,600,000.

Assuming that none of the debt will be self-liquidating, the county's net debt to equalize tax-based valuation will increase from the current .44 percent to 2.02 percent. It should be noted that the statutory debt limit for New Jersey counties is 2 percent. Our debt per capita ratio will skyrocket from one of the lowest in the State to the highest. Clearly the financial hardship caused by such action would be substantial. Needless to say, the county will be unable to issue additional debt for the foreseeable future and this will limit our ability to meet our obligations and the capital needs of our programs.

The county's 1997 annual operating budget is approximately \$67 million. Debt service in the 1997 budget is approximately \$4.4 million. Debt service for the Authority debt will be \$10.6 million in 1997. The added

expense of the Authority debt will increase the county operating budget by 16 percent over the current level and cause the tax rate to increase by more than 21 cents. This represents a 30 percent increase in county purpose tax.

Warren, Hunterdon, and Somerset counties developed and implemented a State-approved plan to solve a potentially serious environmental and health problem. The Authority relied on flow control and the assurances of the parties included in the plan. As a result, a substantial financial commitment has been made and an environmentally safe disposal facility has been constructed.

The assessment and collection of environmental investment charges for the duration of the term of the bonds will allow the facility to continue to meet its financial obligations. Furthermore, it will place the liability on the individuals that benefitted from the use of the facility.

Warren County acted in a responsible, proactive manner when we developed a long-term waste disposal system that was approved by the State and agreed to by all the participants. It is unconscionable that the residents of Warren County will be forced shoulder a disproportionate burden if the other counties elect not to live up to their commitments made when the agreements were entered into. Any solution to the problem must distribute the financial burden fairly and equitably. If imposed, the environmental investment charges must be enforceable on all parties that were included in our plan.

We appreciate the opportunity to share our concerns, and we urge you to consider our unique circumstance in finding an acceptable resolution to the problem.

Thank you.

ASSEMBLYMAN GIBSON: Thank you for your comments. The Committee remains aware of the problems in Warren County, particularly through the diligence of Assemblywoman Myers.

Are there any questions for the testifier? (no response)

Thank you, sir.

Madelyn Hoffman, Grassroots Environmental Organization, comments in opposition to A-50.

M A D E L Y N H O F F M A N: Thanks for the opportunity to address you. I have been at several of these hearings beforehand, but they've always been packed and I haven't been able to stay long enough to address my comments to you, so I'm glad for the opportunity today.

ASSEMBLYMAN GIBSON: You're welcome.

MS. HOFFMAN: My name is Madelyn Hoffman. I'm the Director of the Grassroots Environmental Organization, a group which has been in the forefront of opposition to the construction of garbage incinerators in New Jersey since 1982.

During that time, we learned a lot about incineration, its economics, and its environmental impacts, and we predicted that incinerators would become an economic nightmare for each county constructing one and for the State as a whole. We warned Freeholder Board after Freeholder Board

about the pitfalls of incineration, and the Department of the Public Advocate, Division of Ratepayer Council prepared lengthy documents to present to Freeholder Boards imploring them not to agree to contracts with incinerator companies because they were the worse contracts that the Public Advocate had ever seen and because they were so incredibly biased in favor of the incinerator companies.

Despite these warnings, some counties proceeded with incinerator projects and are now paying the price, but nowhere -- and I mean nowhere -- does anyone in their discussions as to how to deal with these debts ever mention that perhaps the incinerator operators must be held accountable for the economic nightmare counties face. For this reason I find A-50 unacceptable.

How much more money will the incinerator companies be allowed to drain from the public while their enormous profits are guaranteed? It's important to realize that these contracts, when they were signed, were 20 to 40 years of put-up or pay contracts and an incinerator company came into a county with the guarantee that they were going to reap enormous profits over that period. If the garbage didn't come to them, then payment would come to them in lieu of trash. They bore no risk when they came in and their prices were artificially inflated for people because of this agreement that allowed them to recoup over their investment over a long period of time.

Now that some of the supports for their industry have fallen by the wayside -- like flow control, which will most likely not be reinstituted ever again because of its unconstitutionality -- these same incinerator companies are

looking for sweetheart deals to bail them out, deals that will allow them to maintain the profit that they were guaranteed when they first came in.

I don't know of any other private industry anywhere that would expect not only to get a sweetheart deal to set up shop, where they would be guaranteed a 20 to 40 year profit, but once the free market took over and they were no longer competitive, would expect the whole world around them to scramble around to make sure they still got those enormous guaranteed profits over that period of time.

The put or pay contract was one element of it. In certain counties, like Essex County, for example, the incinerator operator bore absolutely no responsibility for ash disposal costs. I'm not sure if it's the same in Warren County, but I know in Essex County it's that way. If it was more expensive to dispose of it in a hazardous waste landfill or as a hazardous waste, the incinerator operator never had to pay for that, the County had to pay for it.

Limited liability for retrofitting in order to comply with Clean Air Act requirements, an ability to import waste from anywhere at extremely reduced rates -- when they don't have enough trash to burn at Essex County, BFI, which is one of the partners there, can go to New York -- as they have -- charge them virtually nothing in order to burn at the incinerator, and the County taxpayers are forced to subsidize that expense.

Weakened standards for reporting of mercury emission, a whole host of new regulations on the table designed to make it easier for the incinerator industry, already gives this industry one of the largest sweetheart deals imaginable. No other private industry has received so much from so

many while providing those who are subsidizing them with artificially inflated tipping fees, pollution from mercury, lead, cadmium, dioxins, acid gasses, and more.

Now this same favored industry, no longer protected from the realities of the free market, is going under. Instead of subsidizing it still further, while continuing to guarantee their profits, we should finally treat incinerators like any other business. If they go under, the industry itself should foot the bill.

A-50, unfortunately -- this is another part of what disturbs me about it-- Flow control is unconstitutional, or so the U.S. Supreme Court has said. But by allowing solid waste districts to assess charges to virtually anybody who has ever used that incinerator and then artificially increase the prices again, it's basically trying to circumvent what's deemed unconstitutional by putting a monetary value on it and letting the economics take over.

A-50 allows counties and county authorities to charge everyone and anyone to accumulate enough money to pay off their debts. The solid waste generators -- whether or not they even utilized the facility -- taxpayers in their own county, taxpayers in another county, that either once utilized or currently utilizes the incinerator haulers-- But not once is it mentioned that the incinerator companies should absorb any of the loss. This is totally unacceptable. I don't understand--

I know in the case of the Warren County Incinerator not only is there a bond issue that needs to be paid off, but a guaranteed profit to Ogden Martin that needs to be addressed before Ogden Martin would even consider

walking away from that facility. These companies have been arrogant from the very beginning, and they've put us all over the barrel from the very beginning and now they want to continue to put us over the barrel. A number of people who have come before me have testified to that effect. Why should the taxpayers continue to foot the bill?

This has given us-- This crisis in the incinerator industry gives us all an opportunity to make a positive out of a negative. It gives us all an opportunity to take stock of what's actually happened with incineration and set up a fund or set up a comprehensive plan, a very reasoned out plan, that will allow us to put in place rational, cheap, safe, long-term alternatives to the solid waste problem. As you all know, New Jersey has high recycling rates that could be higher. We have good composting rates, they could be higher. All of this could be better if we didn't have to continue to feed these incinerator companies -- the incinerator monsters, in order for the incinerator companies to walk off with a profit.

The other thing I take objection to -- it's been said over and over again today -- is that the garbage incinerators are an environmentally sound way out of the mess for -- the solid waste disposal mess -- New Jersey. That's been shown to be untrue. It's not the case. They are not environmentally sound.

Commissioner Shinn talked about not wanting to go backward by somehow abandoning the incinerator industry. I think it would be a step forward to find a way to slowly phase these out and put in an alternative. He talked about not wanting to create Superfund sites. Well, the ash from these

incinerators goes into landfills which could very well become Superfund sites down the road. He talks about it being environmental sound. In our experience, in the five counties with incinerators, they are not environmentally sound. If we level the playing field, as Commissioner Shinn would like -- naturally, this is what he's been trying to get in place for the last four years -- I don't think that we're being wise. I don't think we're being prudent.

Look at what Mercer County just decided to do in November. When they had an opportunity to proceed with an incinerator, they determined that it was an economic nightmare for their community and their county, and they decided not to go ahead with it. To put incinerators back out there as an option and with a level playing field just dooms us to more of the same. These incinerators that are going under now were built with the most -- with all of the safeguards in place to support them as an industry. Those safeguards are gone. It's folly to think that an incinerator built today could be either economically or environmentally viable.

Just lastly, I think we have to stop protecting this industry. We have to take the cover off. We have to pull up the curtain, take a real good look at the kind of deals they got, how incredibly unfair they were, how much we have been subsidizing them from the get go, and find a way -- within anything that addresses, any bill that addresses this crisis or this situation -- to get a fair share.

Someone mentioned that the costs of these investments -- making up for these investments -- have to be distributed fairly. I couldn't agree more. Because if they were distributed fairly, they'd fall on the backs of the

incinerator companies who have gotten an unfair advantage from the very beginning, and now when they're falling under, they want everybody to do even more for them. It's about time that they do something for us, that they recognize that their industry is not the way that the solid waste problem is going to be handled in this State or anywhere around the country, and that we do something that's right for ourselves.

Thank you.

ASSEMBLYMAN GIBSON: Thank you for your comments. With all that passion I'm surprised that you didn't have the patience to stay at other meetings.

MS. HOFFMAN: Oh, well, I was sick that one time -- I had the flu. I've been working on this issue for 16 years, so I have--

ASSEMBLYMAN GIBSON: All right. Thank you very much.

But I would note-- I think it's necessary to clear up a couple of things. One, I've seen it reported a couple of times that the bill includes passing on the debt to those who have ever used it--

MS. HOFFMAN: It says that, doesn't it? It says in one section -- I wish I had it in front of me--

ASSEMBLYMAN GIBSON: Let me finish, please.

MS. HOFFMAN: --that whether or not you used it or you didn't use it, it could go into that.

ASSEMBLYMAN GIBSON: Let me finish, please.

The bill intends to only pass the debt on to those within the authorized limit of a particular county. If someone used it from another

county, at the present time and with the amendments that are proposed, it doesn't go beyond that. There may be considerations to do that in the future. Warren County came here this afternoon and asked us to consider something like that and we will, but it doesn't go to somebody who just never used it.

For example, you said that New York may use the Essex County incinerator. The debt won't go to New York just because New York used it.

MS. HOFFMAN: I understand that, but why wouldn't it?

ASSEMBLYMAN GIBSON: Secondly, there is no private debt, that I understand, that's being transferred. It's public debt; debts of the counties, not debt of incinerator counties or corporations, and the like.

The last thing I think is very important. The bill has every possibility of lowering costs across the State of New Jersey. Because the debt is there, the debt could be transferred, so that tipping fees can be as competitive as possible. Then, those users of it may be free to go where they want, and if they do, in fact, go where they want, they will do that because it's an economical decision to do that, and costs can, in fact, come down.

MS. HOFFMAN: But from what I read in the initial-- Maybe the amendments are different, but I read in the initial A-50 that anyone and everyone who at one time used the incinerator could be assessed by the authority -- by the solid waste authority could be assessed a cost in order to recoup the debt. It went on and on. The list that was in that bill went on and on without ever even mentioning that the incinerator company would have anything to do with this.

Now, the debt is to pay off the bonds, is that right?

ASSEMBLYMAN GIBSON: The debt is to pay off the public bonds--

MS. HOFFMAN: Okay.

ASSEMBLYMAN GIBSON: --and I saw what you said, too, but I saw it in newspapers. I didn't see it in the bill.

MS. HOFFMAN: No, I saw it in your bill. I would have to find it for you, because I-- If it's been changed, fine. But I'll look in my old copy, and I distinctly-- I marked it, so--

ASSEMBLYMAN GIBSON: All right.

MS. HOFFMAN: I'll take a look at the amendments and see if it's there.

ASSEMBLYMAN GIBSON: Thank you for your testimony, and I'm sure you'll stay with the bill and as it continues on, we'll enjoy whatever comments you do have. So thank you very much.

MS. HOFFMAN: Thank you.

ASSEMBLYMAN GIBSON: The next testifier is Sandra Ayres. Sandra wants to testify on A-50 and also A-2568. So perhaps we'll enjoy your testimony, but we'll introduce A-2568 so it's not necessary as each of the other bills come up for anybody to return unless they're specifically interested in that.

May I have the title of A-2568?

MR. COLNER: The bill would revise the Resource Recovery and Solid Waste Disposal Facility Bond Act from 1985, authorizes the Department of Community Affairs to use bond moneys in their Resource Recovery and

Solid Waste Disposal Facility Fund, established therein, for grants and loans to counties and public authorities to assist these local governments in the payment of stranded investment costs associated with the development of State-mandated solid waste facilities.

ASSEMBLYMAN GIBSON: Thank you.

Assemblywoman Myers, that's your particular bill. Do you want to have any introductory comments on that before we take the next testimony?

ASSEMBLYWOMAN MYERS: Sure. Thank you.

I appreciate your agreeing to cosponsor this Assembly Committee Substitute which addresses concerns of not only Warren County, but a number of counties -- that the State mandated these facilities -- which are now looking at paying off debt in a climate where they may not be able to recoup from revenues the money needed to pay off the bonds.

I agree with you that under A-50 if counties and municipalities handle the situation wisely within their counties, there's really no reason for any increase in cost to taxpayers or ratepayers. There will have to be a reallocation of cost. There will have to be a breakout of the components of the tipping fees as they currently are levied, but beyond that, I don't think costs should rise. They should decrease.

However, to cover those counties, like Warren, where there is an uncertain ability to recoup investments in a postwaste flow environment, the State of New Jersey did mandate these facilities and I think it's up to the State Legislature to provide cover for these counties. I've introduced several bills that would give the Legislature options as to how to address this.

I know you also, Mr. Chairman, have a bill to provide some funding for these counties.

This particular bill, Assembly Committee Substitute for A-2568, would require any authority or county that wanted to get State assistance to take as many steps as it could to reduce the tipping fees and address their debt service problems on their own before they would be eligible for funding. I think this is very important.

Under A-50, the counties are pretty much free to handle their situation as it suits them, but if we're going to have counties and authorities seeking money from all of the State's taxpayers through State government, I think we have to set some parameters and some restrictions on how that money is awarded. In keeping with the comments of Ms. Hoffman that it's a different environment postwaste flow, there are no more guarantees and everyone must have a fiscally responsible approach to this problem.

A-2568 seeks to use money that's already been approved by the Legislature, by the Governor, by the taxpayers of New Jersey through a 1985 Resource Recovery Bond Act. There is arguably between \$55 million and \$65 million unused that was awarded through that bond act because the moneys were to be allocated to counties where facilities have been canceled and are not now going to be built.

Since the facilities will not be built, it's been the position of the administration and the Legislature that these moneys will not be awarded. Therefore, let's reallocate the money. Let's pass this bill, put it before the voters, and get permission to use this \$65 million to be allocated for counties

that need it. A priority would be for counties with the highest stranded debt in the State.

I might as well mention the other bill that's on the list for discussion today would provide \$20 million immediately. It would not have to be approved by the voters, so that we wouldn't have to wait, in case there is a sudden court decision, to make moneys immediately available. In the situation where we have interdistrict agreements, really no one knows how that's all going to work out. I'm hoping for a legislative solution that all parties can agree to. I think it's possible.

I would appreciate continuing to work with you, Mr. Chairman, toward that end.

But if we don't get there or if there is some kind of a legal decision where these contracts fall by the wayside, these bills would provide funding to make sure that Warren County taxpayers/ratepayers don't pay any more than anybody else in New Jersey.

Thank you.

ASSEMBLYMAN GIBSON: Thank you for your patience, Sandra. I just wanted to get it on the table, and now your comments on A-50 and A-2568 are certainly in order.

SANDRA T. AYRES, ESQ.: I'm with the firm of Schwartz, Tobia, Stanziale, and three more names. We represent the Ocean County Landfill facility which -- because of other comments made to this Committee on A-50 -- I believe you know is a privately owned and operated district facility under the new definition for district solid waste facility in A-50.

As such, we have appeared before this Committee before and submitted comments: Our goal being to ensure that the resolution of the debt for the counties with debt -- public authorities and the counties -- that have publicly financed facilities doesn't in turn jeopardize the financial well-being of the Ocean County Landfill facility, which, in effect, is the investment of the Ocean County ratepayers.

Therefore, we feel that they should be entitled to use that facility until its capacity is exhausted, which is, I believe, around the year 2015. Our comments on A-50 have been consistent with that concern, as will be my comment on A-2568 and the other bills proposed by Assemblywoman Myers.

We submitted extensive comments on A-50 as initially proposed, and we intend, again, to submit comments addressing now the amended version of A-50. My comments here today will be brief, and in general, I'd like to focus on three points.

One, I did just pick up the latest amendments which seems to narrow the environmental investment cost, for the most part, to prior costs incurred. I think, though-- I don't know if it was intended to narrow the costs that can be considered stranded investment costs simply and solely to prior costs. If that was the intent, there needs to be some clarification, especially with regard to obligations for interdistrict agreements, obligations for host benefits. It's not clear that those are prior costs and not ongoing costs.

Our concern with the definition of the environmental investment costs and to the extent they are limited to prior costs: It is a step in the right direction considering our concern, because then we don't have perpetually

subsidized public facilities in the State of New Jersey with which the Ocean County Landfill facility must compete.

I don't know if that is your intent to limit that -- everything to prior costs -- or whether there will be some ongoing cost obligations incurred after the passage of this bill that will then--

ASSEMBLYMAN GIBSON: The intent was just to limit the debt, not necessarily the host community benefit. That could go ongoing as it currently is amended. But that's up for discussion as well, so you can continue, and we'll take what you just said into consideration.

MS. AYRES: As I said, we will be submitting comments on our remaining concerns with A-50.

Let me give you an example of our remaining concern in that regard. We have asked that there be some ability of counties such as Ocean, that don't have debt -- don't have any debt to be considered stranded investment costs -- but have the same ability, for example, to assess host community benefits.

I mean, Ocean County Landfill will have to pass through or charge its customers in sufficient sums to recover host community benefits for Manchester Township in its rate and must then compete with in-state facilities that A-50 would allow to pass -- to assess those charges and not have it within its rate. We would be competing for -- possibly be competing for -- waste flows and our rate would be fixed, or Manchester Township would suffer by virtue of the fact that we may find it not possible to afford Manchester Township the

kind of host benefit that the publicly operated facilities can afford to their host communities.

In that regard, though, I would like to second Commissioner Shinn's recommendation that you consider making it very clear that enhanced host community benefits are subject to the agreement between the host community and the facility and cannot be dictated by the State. In an era of the need to be competitive, I don't think the State should be dictating increased charges that these facilities must impose.

For one, I think -- and I want to get to the solid waste services tax, because it's a similar theory-- If you think about it, under waste flow control all charges and taxes that the State says must be assessed at the disposal facility, literally, can be passed on to the user of that facility. That is what it can be viewed as -- as some would call it, pejoratively -- a hidden tax.

But the fact of the matter is, you really are assessing the user of that facility in an era of regulatory waste flow control. When you don't have waste flow control, you're assessing the business. You're assessing Ocean County Landfill facility-- It's the Ocean County Landfill's obligation that it may or may not be able to pass on and pass on fully to its customers -- if it wants to remain competitive with respect to the gate rate that it charges for use of its facility. I think that's a different consideration.

Therefore, I'm going to also suggest -- and was going to suggest this, perhaps, in relation to Assemblywoman Myer's bills or A-50 -- that this Committee seriously consider proposing a repeal of the solid waste services tax.

What that tax is-- It's only imposed on landfills, and it's for the purposes of State aid to counties for the preparation, development, etc., of county plans.

Now, in an era when, Assemblywoman Myers, your bills are insisting, and rightly so, that resource recovery facilities show a shift of those kinds of costs to where they should be, really, and that is, to the county as a governmental cost and not as part of the gate rate, I think it's inconsistent to continue to require landfills in this State to, in effect, subsidize county governmental functions. That's what the solid waste services tax does, and the reason, again, for Ocean County Landfill's concern in this regard is that we're going to have to be competitive not only with out-of-state facilities, but perhaps, under A-50, with in-state facilities. We need the flexibility not to have those kinds of costs imposed by the State such that we have to charge them at the gate, which could jeopardize our ability to attract the flows from revenues we need.

With respect to-- There is another amendment to A-50 that I'd like to address at least in general terms and to address more specifically in our written comments. You now have in the bill an obligation for the district facility to act as a weighing facility for all trucks in the county destined for out-of-state disposal. That could prove counterproductive, certainly with respect to the Ocean County Landfill.

Most facilities in this State, including the Ocean County Landfill, were constructed with a certain volume of waste flow in mind. Of course, trucks come and they line up. They line up-- For a collector, waiting in line is a key. Time is money for a collector -- turnaround time. How fast can I get

back out there to pick up again, and so forth? They will choose -- collectors will choose -- disposal sites based, in part, upon how long it takes them to get through the gate into the working face -- in the case of a landfill.

Let me give you an example. If Ocean County Landfill were to lose business -- disposal business -- because of the time it takes to get to the face of the landfill because of long lines and lose it because of the obligation to take trucks that aren't disposing and aren't paying the disposal charge that offsets his revenue requirement, in terms of actually operating that facility, but merely going to the weigh-in station, that could present a serious problem to the Ocean County Landfill and to Manchester Township, to Route 70, where the trucks may be backed up, I don't know.

Ocean County Landfill would then, under this provision, be taking -- receiving -- all of the trucks it now receives, and if it lost some of its disposal revenues, would have to be searching for other volumes to come in to replace it, to maintain a competitive rate and yet keep the stream of waste it needs and, thus, the revenues it needs and may be forced to increase significantly the number of trucks that are coming to the facility, which, in turn, creates this snowball effect of perhaps losing more disposal business.

Another thing that's not worked out in that provision, there-- Again, that particular provision seems to go back to the assumption that all of the facilities that are being talked about are publicly operated facilities, and I would assume under that scenario there is some thought that the public or the government -- the county government, the public authorities -- may have some obligation to weigh in the waste that's going out of state. But what isn't

addressed is how that works with respect to a privately owned and operated landfill, especially the inspection requirements. I don't know how the State can impose upon a private operator some obligation and, therefore, some suggestion of liability to inspect waste and be responsible for whether that waste is indeed appropriately going where it's going in some fashion or another. I don't think the Ocean County Landfill facility, as a private facility, can fairly be asked to assume that kind of responsibility.

As far as the weigh-in function is concerned, it would seem that there needs to be some caveat -- maybe ability for the county -- to find some alternative for accounting for the weight that goes out of state with some criteria keyed to an adverse effect on the operation and the ability -- the financial ability -- of the facility to which these trucks are now directed. We will work with that in terms of our written comments, because it is of serious concern to the Ocean County Landfill facility.

Turning to Assemblywoman Myers -- your bill -- our main concern there, again, is with a State subsidy that might go beyond that which is critically necessary simply to maintain -- to ensure that debt is paid and bond ratings are not affected. We would like to see -- and again we will submit written comments on this -- some criteria that says that the State aid will not exceed the amount necessary to reduce the charge at the gate to one that is competitive with whatever facilities this particular facility deems it necessary to be competitive with.

I think that that kind of criteria can be stated in the outset of the bill and then can be addressed in the plan that is required for someone to be

eligible for State aid. Perhaps the identification of facilities with which this facility feels it must compete and therefore -- and also an analysis of what gate rate it must achieve in order to remain competitive and attract the volumes of waste that it needs to maintain its revenue requirements. We would like to see that standard worked in.

Again, we will submit proposals to you in writing in that regard, which, I said at the outset, is out of our concern that the privately operated facilities, such as Ocean County Landfill, are not -- and the investment made by the Ocean County ratepayers in this facility are not lost because of the need to address the debt incurred in counties with publicly operated facilities.

ASSEMBLYMAN GIBSON: Okay. Thank you, Ms. Ayres. We'll look forward to your written comments.

Let me just pay you one comment for your landfill. If anybody had to wait in line, the approach to your landfill is a very attractive approach, I would say.

MS. AYRES: It's beautiful. I don't think collectors pay too much attention to the aesthetics.

ASSEMBLYMAN GIBSON: Also, it is necessary to clarify one thing. We have amended the bill to indicate that the private haulers would have to get weighed but only -- at least, this is our intention and we'll take your comments into consideration, we'll take a second look at it -- in those municipalities that elect to do that, because they do not offer this as a public service. They don't collect. They have private haulers who work there, and somehow, that has to be measured. Those private haulers will have a free

choice with which to go, ultimately. But in order to measure that tonnage from that particular area, they're the ones that have to be weighed and no more than that, at least the way I had intended it.

Thank you for your comments.

Let me put on the record -- no one had signed up for any comments, and we won't necessarily take any-- But let me put on the record A-2811 is a new piece of legislation which actually removes a piece of A-50 -- separates it. It was in A-50. I've taken it out so that all the related pieces of legislation that tried to provide some additional State help to this problem are separated out of A-50. This simply takes the five-year moratorium on the repayment of existing debt that the State loaned to the counties, to defer that debt for five years. That's now a separate piece of legislation, A-2811.

With that, I'd like to close the hearing on these four bills. We'll continue it again in the coming month or months.

(MEETING CONCLUDED)