
Committee Meeting

of

ASSEMBLY AGRICULTURE AND WASTE MANAGEMENT COMMITTEE

ASSEMBLY BILL No. 50

*(Solid Waste Management and Environmental
Investment Cost Recovery Act)*

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

DATE: November 25, 1996
1:30 p.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman John C. Gibson, Chair
Assemblyman Anthony R. Bucco, Vice-Chair
Assemblywoman Martha W. Bark
Assemblyman Melvin Cottrell
Assemblywoman Connie Myers
Assemblywoman Nia H. Gill

ALSO PRESENT:

Algis P. Matioska
Leonard J. Colner
Office of Legislative Services
Aides, Assembly Agriculture
and Waste Management Committee



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

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ASSEMBLYMAN JOHN C. GIBSON (Chair): There is a caucus downstairs that hasn't finished yet, so my members may be a little late. So if they get too late, we'll get started with the testimony anyway. We won't keep you too long. Thank you all for being here.

We're going to open the hearing. Would everybody rise for flag salute, please? (participants comply)

Thanks again to everybody for being here. This is the first of a series of hearings that this Committee will have on Assembly Bill A-50, which is our -- which is my, I guess, at least, at this point, legislative solution to the judge's decision last July determining that waste flow control that we have in New Jersey is not consistent with interstate commerce.

The meeting is being transcribed so we will have a formal record of it. We had, originally, eight people who signed up to testify, and we'll basically take it in that order. Then, we had another eight or nine who indicated that they have an interest in the bill. As I call upon them, if they do not wish to testify at this time and they're only here to listen, that is fine, too.

The bill, as you know, is 118 pages long, at the moment, and growing. It's on the best-seller list. We don't expect everybody to be ready to testify in a formal way at this first hearing. We, as a matter of fact, as I said, will hold at least two other hearings where we will just take testimony.

Probably sometime around in the spring, we'll decide, as a Committee, what comments we have, what amendments we need, and if this bill, in fact, will be released by this Committee. I hope it will. I think it's an appropriate answer. I have spent the past six months-- It's my current life's work.

As Chairman of this Committee, I expected that I would be involved in it in one way or another. So I took the lead, starting in the summer, and met with all of the county authorities -- which there are 22 of them -- and in many cases, Boards of Freeholders, mayors' organizations to get input as to what the answer should be, if, in fact, waste flow is declared unconstitutional in New Jersey.

As far as the schedule, I'm going to work within the framework that I must, and that is, this legislative calendar. Assuming there are appeals on the judge's decision, those appeals may or may not go anywhere. On the assumption that they do not go anywhere, we have to be ready with a legislative answer.

The judges gave us two years to do that. That comes out somewhere around July of 1998. If we finish our work by the end of this legislative calendar, it will be January of 1998. That will give another, approximately, six months for the Department of Environmental Protection to promulgate regulations that may be necessary -- that will, in fact, be necessary -- and for the locals to pass resolutions and ordinances that they will require to take advantage of a new flow-control system that may be in place in New Jersey.

If there is a Federal solution in the meantime, of course that is on the table, as well. But to be responsible this Committee has taken it as a task. I have taken it as a task to come up with an answer. Based on those six months of research, I believe we have the right answer here, but certainly not without critics, certainly not without the need to amend, and that is what the process is all about.

So you're all invited to submit to us whatever is on your mind. We will continue to take advice and comments as we go through this process. The best of those advices we will incorporate in the final legislation and, hopefully, do a similar thing on the Senate side.

If the Federal government doesn't come up with a better solution and the appeal process is exhausted, we will be ready with new legislation so that New Jersey can continue to handle the solid waste in the three ways that the judges set out that we must, and that is: consistent with interstate commerce, to protect the environmental investment that we have made out there -- to protect the environment that we have -- and to find a way to pay for the debt.

I'll kind of describe what the bill intends to do in, perhaps, layman's language as I see it. Then, if any of the members of the Committee have anything to say that would be appropriate, and then, we'll hear from you.

The goals-- As I said, the bill complies with the Federal court decision by allowing municipalities and haulers the option of disposing of solid waste at an in-state facility or an out-of-state facility. The bill provides for a mechanism for the recovery of the environmental investment costs. The debt we've described in broad terms. We called it an environmental investment because that is what I believe it is. It includes the debt. It includes pass-through taxes. It can include postcommunity benefits, costs necessary to conform to agreements. It even could include future debt.

Municipal responsibilities: Municipalities may continue to provide municipal solid waste collection services, to contract out for those services, or to allow home owners to contract out for those services.

Municipalities will not be told by the DEP to send their trash to any specific solid waste disposal facility; however, it is required that ultimate disposal shall conform to Federal environmental protection standards.

If a municipality chooses to go a different state because it is to their economic benefit to do that, the bill does, in fact, require that they go to an EPA-approved site.

County or public authority responsibilities: The responsibility for district solid waste management planning is retained by the counties. A voluntary market-based system is established under the bill, whereby counties or public authorities will offer their constituent municipalities solid waste disposal services on a contractual basis. The bill grants counties and public authorities, with permission, to establish and implement a program to enforce its solid waste system.

Up till now, the Department of Health had the authority to do that, and in some cases, it worked well with a partnership between the authorities, the counties, and the Department of Health. But this bill provides for the authorities to have that as an additional responsibility should they choose to do that.

As I said before, the environmental investments: The bill allows any county or public authority which constructed or operates a solid waste facility, as required by the Solid Waste Management Act, to establish a system to calculate charge and collect environmental investment charges. Environmental investments are defined as solid waste facilities, solid waste management programs, the obligation to fulfill interdistrict agreements, solid waste taxes, and host municipality benefits. All or any part of that-- The idea

is for the county -- the authority -- to be as competitive as they can be, and if they're satisfied that their current tipping fee is as competitive as it has to be, it provides the flow of business that they feel, as a business, is all they need, they don't have to change anything. But if, in fact, that tipping fee is so very high that no one would choose to go there unless it becomes competitive, those fixed costs, those costs that we define in this legislation as environmental investments, can be funded in a separate way.

That way the public authority or county may collect environmental costs from any of the following public and private entities: every solid waste generator within the jurisdiction of the county or public authority; every constituent municipality that uses or has used a disposal facility; the governing body of the county where the facility is located. In some cases, the fixed costs may be relatively low and maybe the simplest way is just for the county to put that on the county budget. That is the first option that they do have. It's not necessary for them to put it through to the municipalities unless they choose after public hearings, and so on.

The environmental investment charge may be based on the average annual amount of solid waste generated in the last five years or the average annual amount of solid waste disposed of at the solid waste facility in the last five years or any other criteria established by the public authority or county.

The municipalities may choose not to go to that facility. If they do, there is no tonnage being disposed of at the facility. So we have to go back on a historic five-year average to decide what that county may choose as an appropriate mechanism in that case to distribute the cost.

For many municipalities, those that provide municipal solid waste collection and disposal, payment of the environmental investment charge will not increase taxes. The cost of solid waste disposal will decrease if the county facility tipping fee is reduced or the municipality sends the waste to an out-of-state landfill with lower tipping fees.

In most cases, the municipality has it already in their budget. They have it in their budget as a collection fee. They have it in their budget as a disposal fee. If, in fact, we transfer the cost -- the fixed cost -- from the tipping fees and transfer that -- the county decides to transfer that to a municipality, they will have an item on their budget that calls for environmental investment. The item that is currently on their budget for disposal costs will go down proportionately. In a perfect world, it should be a wash. It's not a perfect world. It won't always be a wash, and that's why we have provided as many options to the county, to make sure they come up with the fairest system as it applies for them.

During the past six months, when I have had all of these meetings, if I've learned anything it's that every county operates differently. Not only do they operate differently, but the distribution of the municipalities in that county, the way the municipalities operate in that county, there is a great variety out there. So the decisions have to be made at that level, insofar as I see it with the legislation that has been introduced.

Other major provisions of the bill: The bill provides for the deregulation of all solid waste facilities and tipping fees in the State. The legislation establishes a five-year moratorium on repayment of State loans made to public authorities and counties from the Resource Recovery and Solid

Waste Disposal Facility Act of 1985. The State certainly has an involvement in the history of this, and I'll be the first to admit it.

Insofar as I feel it's possible to provide for some State help in this, we have introduced in the State a five-year moratorium on the repayment of the principal on a bond issue, where many of the larger debts that are out there in those counties would be deferred for those five years.

That particular debt, out of the \$1.7 billion worth of debt that is out there, it is approximately 10 percent of that debt. So we will have, if this bill becomes law -- and this is part of it -- we will have probably about 10 percent of relief, at least for the next five years. We could go further than that, but it may tie up this particular bill. There may be other legislation that other legislators decide to introduce. I myself may sign on to that, but it is going to tangle it up in this bill. This particular bill, with this clause in it, with this feature in it, does not require a referendum and still makes it possible for us to complete the work within the time frame that I feel, responsibly, has been assigned to us.

The bill provides for cap exceptions from the municipal and county cap law for recycling costs, solid waste collection, and solid disposal costs, including the payment of environmental investment charges. If we change the budgets around from one line item to another, we're going to need some room on the caps. So the bill takes the cap law off as it applies to these items.

The legislation increase the length of time for a contract from five years to a maximum of forty years for the collection or disposal of solid waste and the collection and disposal of recyclable materials. The bill is

comprehensive and those things that we feel we may have learned in solid waste have been incorporated in the legislation since we've had the opportunity to do that.

Again, as far as the schedule, there will be at least two more public hearings and, perhaps, a hearing beyond that to consider all amendments and to consider the release of the bill. The probable schedule is to finish the work by the end of this legislative session so that it is in place in time for the July 1998 original date of the judge.

I'll start with those people who have signed up to testify previous to today, and then the rest who signed up here this afternoon -- if, in fact, you signed up with the intention to speak, then, I'll call on you.

Do any Committee members have anything to say?

Assemblyman Cottrell?

ASSEMBLYMAN COTTRELL: I got calls from my county about this bill, and I'm going to meet with the citizens and make a bill satisfactory to them -- an amendment. So I will present that amendment to you-- (indiscernible)

ASSEMBLYMAN GIBSON: We'll be very happy to receive those, Assemblyman Cottrell. We understand the concerns in your area.

Is there anyone else? (no response)

All right. Thanks again for being here. The first speaker is Ray Barbieri, President and CEO of PenPac.

Is Mr. Barbieri here?

RAYMOND BARBIERE: Good morning.

ASSEMBLYMAN GIBSON: Good morning -- afternoon. Good to see you.

MR. BARBIERE: Good morning, Committee. Thank you for the pleasure of being here. I would like to just give you a little overview of who I am and what my company is.

My name is Ray Barbieri. I am the President and CEO of PenPac, Incorporated. We own and operate all of the transfer stations in Passaic County. With a district-designated facility, we are designed to process approximately 600,000 tons a year, and we are presently handling about 300,000 tons a year. The company was incorporated during the waste crisis. During that period of time, PenPac built facilities, in addition to its own, to provide that service.

We have always received the waste flow from the Passaic County, and what I'm here to encourage the Assemblypeople to do is to make that capability available throughout everybody in the State. PenPac endorses the concept of no waste flow and free competition in the market.

We feel that the pricing in New Jersey has gotten excessive. We lead the country in our pricing, and there are plenty of opportunities for a private company such as ourselves to reduce the pricing. The pricing that faces the legislation comprises two parts: the debt component from the previous history since 1982 and the ongoing expense of waste disposal transportation.

What we would strongly encourage is, first, that competition be allowed at all levels. Bill A-50 allows a mayor, for example, through his local ordinance to be in a position where he could also solicit pricing for the commercial waste. We don't endorse that. We don't endorse that because,

although the initial bid may be competitive, once a company gets that bid and gets all of the commercial, industrial, and municipal waste in a municipality, then the next time that bid is out there will be very little competition to that. So we would encourage that the municipal bidding process allow for a maximum amount of competition by making sure that the entire market is not contained in a municipality with a single bid.

Another thing we would like to address, too, is the need for a lot of the oversight and regulation with regard to the economics of the system. Currently, right now, there is an awful lot of people who count tonnage, and one of the things they do is they monitor waste flow. They enforce waste flow. They try to come up with the amount of tonnage accurately so that they can assess various charges.

Those are all soft costs, gentlemen, and what they do is they add to the high price in New Jersey. I think what is really needed is to make sure that when the debt is repaid, it is repaid in such a manner where it doesn't introduce additional costs just for the mere sake of counting the money.

Most municipalities have a good idea how much tonnage they've shipped to the various district-designated facilities. They also have a pretty good idea of what the total debt for the county is for that service and their fair share; however, it is determined -- and there are several different ways proposed in that bill -- can be allocated and given to the mayors to handle in what is best suited for them.

But what really doesn't add a lot to the system is when you have a lot of people involved with the process of tracking that material, counting the tonnage, enforcing waste flows that don't exist, and those types of things.

Although it is true that when you add up all of the numbers today, the pricing should be roughly equal to what it is now, because, after all, every district-designated facility carries with it a debt component along with its operational cost, I think the concept ought to be for New Jersey to relinquish its leadership in pricing in the country in solid waste and, as such, should be in the position to reduce it significantly.

It doesn't take too many years ago to remember when New Jersey was one of the lowest. It had about a \$12 a ton charge. It was before the solid waste crisis. There were 302 landfills in this State and a lot of them were problem sites. Since then, I think there are a couple of things that have changed. Those type of sites and threats to the environment have closed. There has been a big increase in the debt, and there has been a big increase in soft costs related to that.

I think we ought to be thinking about: Why can't we have competitive landfills and disposal sites in the State of New Jersey, approved by the DEP, conforming to whatever subtitle regulations are required, and at the same time, increasing competition and reducing costs? It is not clear to me as to what role some of the agencies that are in there now can do. New Jersey has in it regulation on all of the people in the solid waste business. We have a certain reporting requirement to begin with, and many of the areas that are handled by various utility authorities are duplications of efforts taking place by different groups.

If we're going to seriously attempt to reduce the overall cost, I think we have to look at two things. We have a legacy of \$1.6 billion that we have to address, and we have to come up with ways that are fair and equitable

as far as repayment of that debt. But we shouldn't be trying to put in a system, to replace an old system, with a duplicated system.

What we should try to do is come up with a system that reduces that debt. We have things like the State bond rating being, in many cases, superior to many of the bonding agencies in the counties, which could help reduce some of that debt. We have State reporting that people in the solid waste business are obligated to do anyway, and we have mayors in municipalities who, with whatever method they use in allocating their costs in their municipalities, are going to make every effort to reduce that overall cost and not increase it.

So I think the Assembly ought to look very carefully at all of the groups in between and the people providing this service and the debt to see how things can be streamlined, eliminated, and reducing cost structure in such a way that the overall cost is being driven downward. Ultimately, the real price is going to be established by the market if it is a competitive situation. The market requires that you have people in the business, you have local disposal facilities, you have clear and consistent regulation by the DEP, and you have the opportunity for anyone who can provide the service to do so. That is what I think A-50 needs to address.

I think many of the areas of A-50 are representative of previous bills and, as such, provide a consistency in the transition. But I think more importantly in the consistency in the transition needs to be a view of: Well, if we're not repaying debt and we're not doing a service, what function does it serve?

County tons don't pay back debt, gentlemen. What we need to do is to come up with a system to repay the debt, make the allocation as fair as possible among the people who are going to pay the debt, and provide a system with maximum competition.

So, in that spirit, I would, again, caution that the Assembly look very carefully at various regulations and regulatory agencies to really try and get clear in their minds how they (A) reduce the debt and (B) provide a service. If the answer is none of the above, then I think we ought to look very carefully to see whether or not those agencies serve a useful public function.

I thank you for your time. I know we're limited to a few minutes and I'll keep my remarks as such.

ASSEMBLYMAN GIBSON: Thank you very much for your comments. We are trying to reduce costs.

We would like the comments to be in the neighborhood of five minutes. Those who need a lot more time than that, we would encourage written comments.

Steve Changaris. Steve, did you want to provide testimony? (affirmative response) Steve is a Chapter Manager of the New Jersey Chapter of the National Solid Waste Management Association.

S T E V E N C H A N G A R I S: Thank you. The red light, right? (referring to microphone)

Thank you, Mr. Chairman, members of the Committee, for the opportunity to testify. My name is Steve Changaris. I am the Regional Manager for the National Solid Waste Management Association. New Jersey is one of my states. I cut my teeth with the Association with the New Jersey

solid waste system, so it's good to be back in the middle of all of this, I think.
(laughter)

ASSEMBLYMAN GIBSON: Welcome back. (laughter)

MR. CHANGARIS: We've done a lot of work. We wanted to try to come to this hearing, as we did with Senator McNamara, and identify to the Committee that we want to be a-- We don't want to be-- We want to be recognized, because we believe we are stakeholders in the process.

I think one of the fundamental viewpoints, if you can think about the kind of information an industry/trade association may provide to the Legislature in this process, is simply that we're in a service business. We have to collect and process the solid waste whether it's recyclables or trash. We work with our customers in a model that is designed and directed by the State. In that regard, we have a certain vantage point that we can feed back to you our thoughts and views about what is going on in the industry.

I think the most fundamental issue that we can get across now is that it's really the rate. The gate rate, the ability to attract the waste on a competitive price, is really the most key aspect of the new system that you want to devise and take New Jersey into the 21st century with. Anything that is done to economically protect existing facilities beyond the existing debt-- I'm short on direct policy determination from my membership, but I'm pretty sure that we're going to look at that and suggest that is going to where we start to get into the weeds.

As you did say, Mr. Chairman, the bill is prospective. This is exactly where the congressional debate on flow control fell down, whether the

existing facilities should be held harmless or whether we should grant flow control for the future. This is going to be a defining issue in this debate.

As a policy analyst, I am absolutely convinced that is the key issue in this debate. Do you want to perpetuate a system that keeps the county ownership and direct involvement of the government in these facilities, or do you want to soften that stance and allow private sector involvement to flourish more readily in the system?

Just to get on the bill, specifically, one of the key issues that I focused in on immediately had to do with the difference that a town may negotiate with a solid waste authority. I can really appreciate, and I believe the members in my trade group could appreciate, that is a great advantage for the solid waste authority to have. But in the same language, they have to contract and go to bid with a private contractor for disposal or solid waste collection service. That is going to be another issue that creates a little tension. We're going to be out there competing on one level and the county is going to be negotiating with the towns on another level. That is not a fair, equal playing field as we see it as private industry. So the negotiated versus the competitive bid process--

The other issue is, in Section 9 of the bill, there was a provision where the town or the municipality may contract for collection with the county entity. That, again, is sort of a hot button for us, because there is no necessary requirement to do a cost-benefit analysis about how the services are currently being provided and the cost of those services relative to the negotiated arrangement with the county. That is, I think, another flash point for us.

Another issue-- I do believe pretty firmly, having worked five years as a Congressional District Aide for a member of Congress from New Jersey and three years for the League of Municipalities, I do understand we are a home rule State and home rule is a wonderful thing. But I just look at the thorough and efficient education formula problem-- If you allow communities to have such diversity in how they calculate these environmental investment costs, you're opening-- I would suggest that there is going to be a lot of litigation over what a fair formula is and how can the town recover, and will that pit the town against the county in determining that assessment?

In that equation, where is the oversight from the State to help the mayors understand that the fee being passed on by the county authority is a fair and adequate fee to achieve the objectives they need? I don't know if the oversight provisions of the bill are strong enough.

In Section 40 of the bill, I believe that there was some language that was deleted that talked about-- The language that was deleted that concerns me is, "In the instances where these services are not otherwise provided by municipal governing bodies, interlocal agreements, or other private or public recycling program operators--" In the State plan, the State had heralded the role the private sector plays in the solid waste management of the State, and here is a provision that we saw as some refuge that "Look at us first, see if we can help you solve your problems," and now, that is being deleted from the bill.

I guess I'll get off after this because I have probably overstayed my welcome, but the next issue is that-- In terms of competitiveness, if I read the bill correctly, if a county enters into negotiated agreement with another county

for a facility and I go to county A that now has this interdistrict agreement with county B and I say to them, "I want to build a solid waste facility in your area, a recycling center, maybe, or a resource recovery plant of some kind," not a waste energy burner, but some other solid waste facility for our anti-incinerator friends in the audience-- But if I were to do that, I'm pretty sure that the solid waste planners in that district couldn't approve my application because it would compete for the waste that the county has already lent into the interdistrict agreement with the receiving county, and that is not in my way, in terms of a real policy analyst, a competitive market.

So these are probably the kinds of issues that will be on our table. We, obviously, have been before the Committee as very recently encouraging some kind of continued oversight of the industry from an economic perspective, and that is completely removed from the bill. I'm not sure that is going to fly with the folks who pay my salary. So we're going to have to manage that issue into this equation as well.

So those are the kinds of flash point issues that we see. We really do appreciate the effort. We want to be at the table. I really think we have a bona fide reason and you can look at-- We are the champion of our ratepayers. We have to be here to provide economic services to them. To that degree, we hope we're included in the future discussions.

Thank you for your time.

ASSEMBLYMAN GIBSON: Thank you. You certainly will be -- you'll continue to be invited to the table. Your comments are very appropriate and we'll take them into consideration.

MR. CHANGARIS: Thank you.

ASSEMBLYMAN GIBSON: Bob Prunetti, Mercer County Executive and, I assume, also speaking as the Chairman of the New Jersey Association of Counties Subcommittee on Solid Waste.

ROBERT PRUNETTI: Yes. Thank you, Mr. Chairman. Thank you for giving myself and NJAC an opportunity to address you on this particular piece of legislation.

I am the County Executive in Mercer County, and as you said, I am also the Chairman of NJAC's Committee on solid waste matters. I am here to just let you know-- I have some prepared comments that I think you have, so I'll get off of that and try to be brief.

We're here, basically, because counties need to have a vehicle, an opportunity, a way to pay for the debt that is out there already -- close to \$2 billion worth of debt -- that we have incurred to finance solid waste facilities, whether they be resource recovery plants, whether they be landfills, transfer stations, what have you.

We believe that this bill is a good attempt to allow us to recover the cost of that debt in a post-flow control environment. We want to be able to work with the State, obviously, but the State needs to give us some tools that we need to be able to continue the stability of the system -- the financial stability of the system. We believe we can be competitive if we are given the opportunity. We believe we can be competitive if we are playing under the same set of rules as everyone else, and we think the legislation that we're looking at and have examined gives us a start in that direction.

NJAC supports the legislation. The Committee that I Chair has held several meetings about the legislation, and we've come up with some

situations that we think need to be addressed. However, we believe that the legislation moves in the right direction. As you probably know, each and every county probably did something a little bit different with regard to fulfilling a State mandate. Most counties tried to fulfill that mandate in a very serious fashion and were very committed to doing so. We each had a different approach, pretty much. So this legislation needs to be flexible enough to handle each county's given situation.

What I learned at some of our Committee meetings was that pretty much every county has a different way of doing what the State said it had to do. Some of them weren't, sort of, your run-of-the-mill ways of doing it; some were very innovative. So I think we need to accommodate for that, as well.

So if, in fact, you will and this Committee will take our suggestions into consideration, we would be more than happy to work with you. We have already submitted some of the changes in language and some of the components of the bill that we think would be necessary to make the bill flexible enough to handle each county's concerns. We have done that, but we certainly are willing, able, and eager to work with you in putting together a bill that will work for all 21 counties.

Having said that, let me also say that any assistance that the State might have in the offing, obviously, we're ready and willing to accept. We would like to work as partners with State government, because we think we are here because of State government mandates. So we certainly want to be able to work as partners. We want to be able to take care of our own

responsibilities, but we certainly would look forward to the State assisting us in any and every way that it possibly can.

We remain at your disposal to answer any questions today, if you might have them, or in the future to meet with you and continue to work together for a bill that works.

ASSEMBLYMAN GIBSON: Thank you for your comments and your suggestions. We will be working together on the bill as we move ahead.

Celeste -- Celeste is here somewhere.

Celeste, did you sign up separately? (negative response from audience)

Assemblyman John Rooney, would you like to share something with the Committee?

ASSEMBLYMAN JOHN E. ROONEY: Yes. I'll take one of the seats.

ASSEMBLYMAN GIBSON: Thank you for being here, Assemblyman.

ASSEMBLYMAN ROONEY: Thank you.

I'm not only representing myself, but I'm also representing over 240 mayors who have signed up against flow control. They are mainly concerned with the high cost of garbage disposal in the State of New Jersey. On a state-by-state average, we're looking at about \$36 a ton, when in New Jersey it has been costing us about mid-\$90s per ton -- almost triple the national average.

So it's about time, in the last two and a half years that we've been opponents in this-- I, as a municipality, had signed on to the original litigation

as a plaintiff. We were knocked off by the judge. We're now friends of the court. But in two and a half years, on a daily basis, we would waste about \$2 million a day in this State; \$2 million a day going down either a landfill or up an incinerator or somewhere else when it shouldn't have to be. We may spend another two years in that wasteful situation.

Basically, I have come up with my ideas. As you know, A-85 through A-89 have been almost two years because-- Although I am opposed to a particular situation and I believe that the system should have been blown up long ago, I also believe in building a new system. Those are my ideas. I think some of them will be incorporated into the new legislation, hopefully.

The one thing that I do caution you on is that the way this bill, A-50, is structured, as I guess Steve Changaris had said earlier, it really doesn't lead to good, competitive pricing. We may be in the same situation where the municipalities are not going to see the true results because we're trying to save five incinerators. That seems to be the gist of this legislation. I know that is what the DEP would like to see, but that is going to cause us a problem.

Right now, under the free market system, I could go out and save my municipality five tax points -- five full tax points. That is a lot of money in my town. I could probably hire two additional policemen for that kind of money. With the situation as it is, you put Bergen in a situation -- and I think the people from Bergen can speak for themselves, I see the attorney and the Executive Director from the BCUIA are here--

What this legislation does is, it says that because we had a contract which was mandated by the State of New Jersey that we go to Union County and deposit 191,000 tons of garbage there a year -- we were mandated by the

State at a fixed rate of \$80 a ton and, as you heard two weeks ago, that wasn't the only cost-- It's \$24 a ton processing, \$12 a ton transportation. So for \$116 a ton, we were going to Union County to their incinerator. Well, this legislation says that Union County can come after the taxpayers of Bergen County to collect the money that they don't receive when flow control goes away.

I think that is wrong, because we're not only going to be responsible for our debt, which is \$121 million-- And if I'm on a county-by-county average, as some people have suggested, rather than state-by-state, it's \$24 a ton. How much more am I expected to pay for Union County's debt?

That is a real problem I have, Jack. I can't support the bill on the basis of that. I would like to see some competitive rates.

We heard \$2 billion and we have been hearing \$2 billion in debt. That is nonsense. It never was \$2 billion. It never will be \$2 billion, and in fact, it has just been reduced by Mr. Prunetti himself, because his own Mercer County incinerator is not going to be built. That was \$200-and-some-odd million which can be reduced--

The actual number, according to Algis, according to the Division of Local Government Services, it's about \$1.67 billion. That was the number, and then it was further reduced by the fact that Hudson County had \$140 million-- They haven't put a thing in the ground for \$140 million. There are costs that are involved. Passaic County had an incinerator that was blown up by Jim Florio. That was \$98 million. They are suing us for

\$21 million in costs. So you reduce that and you reduce that, and you probably come out to about \$1.2 billion.

My bill said we could possibly look at \$10 a ton -- I ran these numbers by Peat Marwick -- \$10 a ton for 10 years statewide, we would eliminate the entire solid waste debt of the State of New Jersey. If you want to do it county by county, my county is talking about \$24 a ton by these numbers.

December 17th is a key date for all of us to look at. That is when the plaintiffs and the defendants both go before the court again -- the Appeals Court -- on flow control. The plaintiffs are trying-- Well, actually, the defendants are trying to keep flow control forever. The plaintiffs are saying that two years is just too long.

As you heard me say before, it's like you're beating me over the head with a baseball bat for the last two and a half years under flow control. I call a cop and I ask the cop to stop you, and he says, "Okay. He's wrong absolutely, but I'm going to give him two years to quit." Stop beating us over the head in the municipalities. We're tired of paying the highest rates in the country, and we'll be paying even more.

Bergen County may go to \$130 or \$135 a ton in two years when they use up all of the surplus. We can't afford that. We can't afford to pay for our own debt, Union County's debt-- We need some solutions. I think mine are best -- pride of authorship -- but I think there is some compromise here. We certainly can't go with a system that puts one flow control out and puts another flow control in.

By saying that we're going to actually perpetuate the system that the DEP wants to perpetuate, it's not doing our citizens and taxpayers any good. We're not going to save any money by perpetuating a system and doing everything at -- or to the benefit of the incinerators. So let's start talking about compromise, and I'll come to your additional hearings.

Thanks a lot.

ASSEMBLYMAN GIBSON: All right, John. Nice to have you again.

Ted Schwartz, Ocean County Landfill Corporation.

Mr. Schwartz, thank you for being here. Good afternoon.

T E D S C H W A R T Z E S Q . : Mr. Chairman, members of the Committee, good afternoon.

First, I would like to compliment you, Mr. Chairman, and the Committee members who worked with you on this bill. It has provided a lot of reading for us lawyers and other people involved in this industry.

I find that you tried to touch every single stone involved in this area. Having been involved in it for probably, I don't know, 26 years or 30 years, this is probably the most complex, comprehensive piece of legislation I've seen in the solid waste area. I know you're dealing with a very, very difficult issue.

I, today, am speaking on behalf of the Ocean County Landfill. I've had the pleasure of speaking before Senator McNamara's Committee. We did prepare a short position paper, which I think we've provided to your Committee. I will be brief today, because we intend to provide you with formal written comments relative to your bill. Hopefully, you will consider

them in good stead, which I know you will. We would like to work with the Committee to reach a solution that is acceptable and serves the needs of all of the citizens of the State, including Ocean County.

Ocean County Landfill is located in Manchester Township. It enjoys a very unique position in the solid waste planning arena in New Jersey. The landfill represents a unique public/private partnership with the County of Ocean that has, for over a decade, met the county's solid waste management needs. This partnership differs from most any other county.

Ocean County and its Board of Freeholders have met their statutory obligation to ensure that there is proper solid waste disposal for many years in that county. The county relies upon the privately operated Ocean County Landfill to provide this needed disposal service. We are part of the Ocean County Solid Waste Management Plan and have operated, with the county, over many years to provide a very competitive, efficient, and economical system to the citizens of Ocean County.

What is different about this facility is, number one, it is the only privately operated solid waste landfill in the State of New Jersey. It is also the only privately operated solid waste landfill that has a franchise from the Department of Environmental Protection/Board of Public Utilities, since it goes back a number of years. It is the only facility that I know of in the State of New Jersey that operates debt free.

So one of the issues that concerns us is the overreaction to the *Atlantic Coast* decision, and I am happy to see that in your bill that you have maintained a fair amount of the old Solid Waste Management Act, particularly in the planning area, which I feel is very important. New Jersey and the

counties should be commended for the aggressive planning that they undertook to deal with the solid waste problem and provide solid waste disposal facilities in the State of New Jersey that are environmentally sound compared to what we had 20 or 30 years ago. So the planning aspects of this existing law have worked very, very well and should be continued.

One of the areas that I would like to talk about in a very short period of time is the fact that this bill addresses the public debt but, in effect, impairs this privately operated facility. The attempt to recover the moneys that have been spent over the years, I think, are a laudable objective; however, with a privately operated landfill -- and it's a good thing you only have one of these to deal with, because it probably makes it a lot easier -- we can become uncompetitive in the system due to the fact that Ocean County Landfill would not enjoy the benefits of a county or an authority.

That is to say that under your bill the counties and the authorities have a great deal of economic clout to bring about very competitive rates in their operations, which makes it difficult because Ocean County, not being a public entity, can't take on those powers and responsibilities.

The other issue that concerns us is the fact that we have a franchise. Citizens of Ocean County have paid for the infrastructure development at this facility over its operating life, which began in the early 1980s. As such, the infrastructure facility at this site will almost be paid for in the relatively few years that we have left to develop. What we are concerned about is letting the Ocean County ratepayers who have paid for this facility enjoy the benefits of what they have provided and paid for. So as a franchise holder, we will have suggestions as to how to deal with this particular issue.

We also are supportive of the section of the bill that deals with long-term contracting with municipalities. We would also like to enjoy that activity in a similar fashion as an operating entity. We almost have to be put in the class of a county- or authority-type facility to be competitive in your system. I was very glad to hear from Mr. Prunetti the fact that the Association of Counties is supportive of dealing with individual problems that may exist in various counties. We are, for lack of a better word, a problem that has to be dealt with, and we are hopeful that you will be able to do that.

I think at this point in time it would be better for me to conclude my remarks, since there are a lot of people who are in the room who would probably like to be heard. We will, as I said, submit our suggested legislative changes as time goes on. We look forward to working with the Committee to achieve a fair and equitable bill. I do agree with some of the speakers that the disposal prices in the State of New Jersey, in many cases, are unconscionable and something has to be done about it, but I think that that is limited to a certain number of counties and not to all. For whatever reason, as Assemblyman Rooney pointed out, in his county the rates are extremely high. I think one has to look at how the system was developed in each county and see where you can cut out a lot of the costs.

We share your deregulation approach relative to pricing. We think that is a step in the right direction. We do support your \$1 per ton continuation of the closure and postclosure fee. There are other issues that we have kind of skipped around at some of our meetings on other financial matters, which we can get into at a later point in time.

Again, I commend you for really putting something together that has a good framework to work from and develop a bill that is responsive to the court decision.

Thank you for the opportunity to appear.

ASSEMBLYMAN GIBSON: Thank you, Mr. Schwartz.

The Chair is aware of the good relationship you have in Ocean County. Assemblyman Cottrell spoke earlier that he may entertain amendments to make sure that that relationship is protected in this.

So thank you for your comments. We'll look forward to your suggestions as time goes on.

MR. SCHWARTZ: Thank you very much.

ASSEMBLYMAN GIBSON: Freeholder Robertson, County of Passaic. Is Freeholder Robertson here?

FREEHOLDER NORMAN M. ROBERTSON: Yes.

ASSEMBLYMAN GIBSON: Freeholder, good afternoon.

FREEHOLDER ROBERTSON: Good afternoon, Mr. Chairman. We appreciate the opportunity to come before the Committee.

By way of introduction, my name is Norman Robertson. I am an elected Freeholder from the County of Passaic but also serve on the Passaic County Utilities Authority and am the former Chairman of the Authority. While we will have some other comments made to some of the more esoteric portions of the bill, I just really want to make three major points to all of the Assemblypeople on the Committee.

The first of those three points is that a lot of the work that has been done, as I'm sure you know, but it bears repeating-- A lot of the work

that was done by so many of the counties was done in very good faith at State mandate. When we say State mandate, we don't simply say that it was a Republican administration or a Democratic administration, because, indeed, it was both. We don't say it was a Republican Legislature or a Democratic Legislature that did, because, in fact, it was bipartisan. But there was a time when there were scheduled to be 21 or 22 incinerators throughout the State of New Jersey as part of some early legislation. We went forward in good faith and put an awful lot of money into a lot of programs toward that end. We don't have an incinerator, not that we're looking for one now, we're not. But, in fact, some \$36 million or more was spent in the quest to put that on line, and the gun that was to our head was from Trenton and it was bipartisan, administrative, and regulatory, as well.

That should be very clearly understood, because one of the things that I think-- I certainly understand the Chairman's reluctance to deal more directly with that issue in this bill, which is a very difficult bill to put together, I can certainly understand. But I also understand Assemblyman Rooney's point about trying to look at a conclusion that really takes this into account. It is very difficult for us, as people who answer to the people, to talk about concepts like State mandate/State pay and, then, not understand the State mandate component of this particular problem in the counties that are affected. So even if your county is not directly affected, certainly, I think we have a responsibility to what we say concerning issues like State mandate/State pay.

The second major point I wish to make is that there really is a difference -- and occasionally I have heard from the DEP that there is no

difference in this respect, but there really is -- a difference between ratepayers and taxpayers. There really is a big difference. I want you to take it back to your towns and your individual municipalities and understand the difference.

I happen to live in the City of Clifton in Passaic County. The City of Clifton takes up about 15 percent of the total waste flow in our county but takes up about 23 percent of county taxes. Now, even within the 15 percent of the waste flow, some 43 percent of that is commercial. Only 57 percent is from the municipality itself.

So we have a situation where a municipal taxpayer -- and we're talking about senior citizens trying to hang on to their homes, they are paying something in the area of 8.5 percent of the debt service on our solid waste debt. Now, that will be raised to 23 percent if, in fact, we simply allow it to fall to the county tax levy or to a municipal tax levy. In the case of the City of Clifton, that is \$1.8 million to \$1.9 million more that it will cost local property owners in that city. It happens to be a city of about 65,000 or 70,000. If you take that down to a city with 10,000 people, you're still talking about \$200,000 or \$300,000 or \$400,000 more it will cost if we do nothing, if we simply allow it to fall to the tax levy.

So it's very important that we understand that there is a very large difference between ratepayers and taxpayers. Forty percent of the ratepayers in solid waste in Passaic County are commercial entities that, if we allow it simply to fall to the taxpayers, will be able to avoid a major, major cost, but the burden will be placed on people who can afford it least.

I certainly praise the Chairman for understanding that in the bill that has been drafted. That is one of the things that I know is uppermost in

your mind. But also uppermost in my mind is the fact that there should be more State participation. So it is very, very clear that there should be a user-based solution in this case.

The third major point happens to be one that is a little more practical and peculiar to Passaic County itself and that goes back to the old Solid Waste Facility Bond Act of 1985. The Legislature in its wisdom had set aside \$13.3 million to give to Passaic County as a loan under that program. That loan has never been made. Ultimately, we weren't able to build the resource recovery facility. Now there seems to be some confusion as to whether or not we qualify because we don't actually have a structure to point to.

The fact of the matter is we spent \$36 million in preparation and in response to State mandates, and even the opportunity that was afforded to us by the State Legislature has not been followed through on. We've dealt directly with the administration for about a year and a half on this particular issue, and we can't even get an answer to the question as to whether or not we are entitled to that \$13.3 million.

So whether it is through this legislation or through whatever influence you can bring on the administration to, at least, respond to this question, we would certainly appreciate it in Passaic County, because \$13.3 million on an interest-free basis over the life of the loan will probably save our ratepayers, which includes taxpayers, some \$8 million.

So I certainly hope you will take note of those three items: The \$13.3 million; the fact that this is a State-mandated problem to a large degree;

and also, that there is a difference between ratepayers and taxpayers. Any legislation that you craft should really bear those in mind.

Thank you very much, Mr. Chairman.

ASSEMBLYMAN GIBSON: Thank you, Freeholder. Thank you for your appropriate comments, and we certainly will take all that into consideration.

M. Anthony Vaida, Esquire, Hunterdon County Utility Authority
Solicitor.

Good afternoon.

M. ANTHONY VAIDA, ESQ.: Good afternoon, Mr. Chairman, thank you, and thank you, members of the Committee.

The easiest way to remember my name is the opera *Aida* with a *V* in front of it, Vaida. (indicating pronunciation)

ASSEMBLYMAN GIBSON: Vaida. (indicating pronunciation)

MR. VAIDA: I would like to just briefly review the written comments that we have preliminarily made to the Committee. We do commend the Committee for its efforts in this regard, and there are provisions of this bill that we can support, as well as provision that we are opposed to.

I would call your attention to Section 2, the purposes of the legislation provide that the Legislature determines that pursuant to public policy, the State of New Jersey should authorize and empower every county to recover their environmental investment costs associated with developing and implementing self-sufficient solid waste management systems, including debt service on bonds or payment of solid waste collection, disposal, or recycling services under lawfully executed contracts or agreements.

This is very broad language. It permits, for instance, a host county to charge a sending county for services which may or may not be provided to the sending county. In that regard I think you are going to have to tighten up that language. I'm sure that wasn't the intention, but the way the language reads, it gives carte blanche to the host county in terms of determining what those costs will be that they are going to assess.

Cost means, and then there is a definition, in addition to the usual connotation thereof, any expenses related to the planning, acquisition, construction, operation, maintenance of solid waste facilities, including debt service on bonds issued to finance solid waste facilities; two, the fulfillment of any interdistrict agreements; and three, the establishment and implementation of solid waste management programs; four, the payment of solid waste taxes; five, the payment of host municipality benefits.

That definition of cost together with the purposes in the preamble make it clear that the host county is completely open, completely at liberty to decide for itself what costs they will impose.

Section 11, paragraph *c.* subparagraph (4) provides that any other county or public authority that has entered into an interdistrict agreement with the public authority can be assessed for extra charges, i.e., assessment for costs. I question whether this violates the provisions of Article IV, Section VII, subparagraph 3 of the New Jersey Constitution, which states the Legislature shall not pass any bill of attainder, ex post facto law impairing the obligation of contracts or depriving a party of any remedy for enforcing a contract which exists when the contract is made.

We all know, at least those of us who practice law, that there are exceptions to that constitutional provision. There are a number of New Jersey cases on it. I question, however, whether or not, based on the recent history of Federal decisions regarding flow control, the courts will look favorably upon this legislation. It clearly impairs existing contractual relationships.

The bill also requires any county that has assumed the responsibility for collection of environmental investment costs, whether voluntary or involuntary, to enter into an agreement with every municipality within the county that it serves.

The bill makes no provision for a circumstance where a municipality elects not to enter into such an agreement. I question whether the State can require such agreements. Certainly, if New Jersey's waste flow control legislation is unconstitutional, it is likely that forcing a municipality to pay for the assessed costs for operating and paying for a facility that disposes of the product of flow control would also be unconstitutional.

With regard to Section 11a., Page 9 (*sic*) the method of calculating environmental investment costs is also an issue. There is no oversight or public comment requirement in the calculation of environmental investment costs. The county or authority is free to calculate their cost without input from those who may be required to pay for it.

The provisions of Section 11c. (4) on Page 10 (*sic*) allow a county or authority who has entered into an interdistrict agreement with a second county or authority to charge that second county for its environmental investment costs, again, without any view to whether or not that cost is to be

imposed over the life of the bonds of the host county or whether or not any other criteria or standard is to be used for that determination.

With regard to Section 34, subparagraph 15*d.*, Hunterdon County supports the provision that the DEP Commissioner may no longer reject or require a modification to the Solid Waste Management Plan with regard to out-of-state contracts. Hunterdon County is fortunate to have a local government to local government agreement with the City of Harrisburg, which has been a very useful agreement for Hunterdon County. As far as I know, we may be one of the few local government entities in the nation that has an agreement with a facility in another state.

Paragraph 15, on the other hand, provides that any public authority or county that enters into an interdistrict agreement with another public authority or county can utilize the receiving entity's facility provided that the sending public authority or county has agreed to the payment of environmental investment charges on a voluntary basis. I see an inconsistency in the legislation in that it would appear on the one hand that it's a mandate, that if you have an interdistrict agreement you are obligated to pay the environmental investment costs. On the other hand, this portion of the legislation seems to indicate that there is a certain amount of volunteerism on the part of the county that is the sending county.

Hunterdon County also supports the provisions that the rates or charges set at a solid waste facility under county authority operation shall not be subject to BPU, DEP, or other State agency oversight. We have found that that process has been extremely expensive and not particularly useful.

I'd like to again express my appreciation on the part of Hunterdon County for the opportunity to appear here. We appreciate the efforts you are making in struggling with a difficult problem. There is an old saying about not visiting the sins of the parents on the children, and in some respects I think we can relate that here. The process of flow control and the huge amount of debt that was wracked up in the process of creating these facilities was a questionable policy for many of us, and I would like to suggest that possibly the State, as one of the previous speakers has indicated, is going to have to bear a much larger share of the cost of resolving this problem than this bill would visit upon the local counties and municipalities.

Thank you very much.

ASSEMBLYMAN GIBSON: Thank you, Mr. Vaida, and thank you for your thorough review of the bill. The Committee will take everything into consideration, particularly the representative from your area, Assemblywoman Myers, who is very conscientious and very much interested in seeing that your area is appropriately represented and well served by whatever legislation this Committee comes up with.

How about Ms. Frazier Russell, Wheelabrator Technologies, Incorporated.

Good afternoon.

FRAZIER RUSSELL: Good afternoon.

Thank you, Mr. Chairman, and members of the Committee. My name is Frazier Russell. I am the Director of State Legislative Affairs for Wheelabrator Technologies. My comments will be very brief this afternoon, because we have not had enough time, at this point, internally to review A-50

entirely and provide substantive comments, but we would like to offer our support and commend the Committee for a good start in allowing the communities, the counties of New Jersey to adjust in the wake of the *Carbone* and *Atlantic Coast* decisions.

Wheelabrator operates the Gloucester County waste-to-energy facility. We serve 24 communities and look forward to working with the communities, as well as the Committee, to determine the best ways for our clients and ourselves to preserve our environmental investments and preserve the stability of the solid waste disposal program that has been implemented in Gloucester.

Thank you very much.

ASSEMBLYMAN GIBSON: Thank you for being here, and there will be time for us to consider whatever you have to say in a more formal way as we go along.

MS. RUSSELL: Thank you, Mr. Chairman.

ASSEMBLYMAN GIBSON: It is a working document, and you're welcome to work with us on that.

Susan A. Dickey, Freeholder Director from Warren County. Is Director Dickey here? (no response)

How about Frank Leary, Pollution Control Financing Authority of Warren County.

FRANK LEARY: Thank you very much for your courtesies in hearing me. One of the nice things about being late in the process is that you have a chance to hear other people. I can only say with respect to what Mr.

Robertson said earlier that I absolutely agree with every word of it, and I will, in a moment, call your attention to something Mr. Vaida said.

I would like to say that what I am saying here today is personal as a long-term member of the Authority and having been associated with waste management in Warren County since about 1977. The Authority has not had a chance to meet and develop policy with respect to A-50 or any of the other legislation before the Assembly. Consequently, I think we would like another opportunity to make a somewhat more formal and substantive comment later.

But I would like to say that-- I noted on my application sheet when I filled it out that I was opposed to the legislation. I would like to clarify that. On the basis of what I understand about it, through the courtesies of our Executive Director and other people who have had a chance to read it, what I am opposed to is the commingling, in effect, of two different solutions. It appears to me that the attempts to include a county or municipal solution to the stranded investment question becomes an invitation to enormous amounts of litigation.

Since Warren County first set out to respond to the legislative and regulatory mandates and build a self-sufficient waste management system, we have been subject to interdistrict and interlocal litigation starting from the attempt on the part of a neighboring county to be included in our waste management program. They actually sued us in Administrative Law, and when they were admitted to our program then began litigation, which goes on to this day, over the question of whether or not we were being fair.

It is our judgement-- I mean, it's my judgement at least, in looking at the legislation and in measuring it against past experience, that any attempt

to visit upon the counties -- allowing them to go into agreements with people with whom they have interdistrict agreements, and so forth -- allowing them to reach into neighboring municipalities and counties in an attempt to recover what you call environmental investment is going to be an invitation to litigation. We have had a lot of it. We have had a lot of experience with the very, very tacky problem of litigating against neighboring counties. It is an unpleasant thing to have to do, and it is something that we would just as soon avoid.

In thinking about this personally, and I think in talking about it with the other members of the Authority, I get the same feeling. What really needs to be done is, by all means, if we are not to have flow control, which is the basis for the revenue stream that was to have paid for that bonded indebtedness in the first place--

If flow control cannot be restored by the national Legislature, and apparently they don't have the guts to do it-- They don't have the guts to stand up against the New York legislative group, which very strongly supports the idea that New York should never have to maintain a system to care for its own waste. As long as our New Jersey delegation cannot get at least grandfathering of flow control, then by all means, throw the system open to a market basis.

But if that is the case, what has to be separated out of that system, it seems to me and it seems to all of the people who I have talked to about it, is the whole business of what is to be done about the stranded investment. The idea that there is a way to visit it upon the waste generator becomes so

enormously complex that there is no way that it can be built into a law, it seems to me, it seems to us.

I think that what is going to have to happen is that the State is going to have to recognize that it mandated the problem in the first place with the Solid Waste Management Act and self-sufficiency in flow control, continued to mandate it through the regulatory processes -- largely of the Department of Environmental Protection -- and that the State now is going to have to do something that is statewide that cannot be visited upon those people who have the bonded indebtedness. And an attempt to make it fit into the systems of neighboring districts and neighboring counties is going to invite litigation.

So the State is going to have to, as a couple of other people have said today, swallow the pill and say, "Okay, this started out being our problem," and the only way it's going to be equitably and justly ended is for the State to take it on as a statewide problem and say, "Okay, uniform levy across the ratepayer structure, across the taxpayer structure, however" -- but separate it entirely out from the idea of the free market.

I will tell this Committee, very clearly, we've studied it and studied it to death. If you remove the pre-*Carbone* costs from the very high bonded indebtedness that we have in Warren County, we can compete and compete extremely effectively. But the pre-*Carbone* costs are a killer, and they were a killer that we would never have invited into our house had it not been for the assurance that the revenue stream would be guaranteed.

It has nothing to do with efficiency or inefficiency of management. We have managed very efficiently, indeed. Our figures now demonstrate that you take away the cost of debt service, and we have a system that works very

efficiently and can compete with anybody in or out of this State. But somehow or other, if we are not to have the guarantee of the revenue stream that caused us to assume those bonds in the first place, that burden has got to be taken away from the county, largely because there is no way to distribute it on the ratepayer or the taxpayer or the people in neighboring counties who have been using our system without going into enormous litigational difficulties.

I thank the Committee. After we do our policy analysis, we will probably come back with additional comments. I thank you.

ASSEMBLYMAN GIBSON: We will welcome you back, Mr. Leary, because we are aware of the seriousness of Warren County.

Tim Dillingham.

Tim, do you want to comment next? (affirmative response)

TIMOTHY DILLINGHAM: Thank you, Mr. Chairman.

I am Tim Dillingham. I am the State Director for the Sierra Club in New Jersey. I will be very, very brief.

We recognize that the game has basically changed since Solid Waste Management, and you have a very difficult task ahead of you in trying to respond to the courts' decisions in the way that they have fundamentally altered the solid waste management planning process here in the State and the policies that have been carried out under the State laws.

We would like to just put on the table at the beginning of this discussion that in making that transition to bring the State system into conformance, we would strongly like you to consider, in addition to the financial issue of the revenue mechanism to recover the stranded investment,

that we not lose New Jersey's historical national leadership in promoting recycling, as well as source reduction and some of the other more environmentally oriented policies.

We don't wish to see a one-dimensional, market-driven approach undermine our current policy and our attempts to reduce the generation of waste and, by extension, protection of the environment. We think that the current bill has some problems and raises some issues in that area.

We are very much interested in working with you to try and address those and make sure those concerns are resolved.

ASSEMBLYMAN GIBSON: Thank you.

MR. DILLINGHAM: Thank you.

ASSEMBLYMAN GIBSON: The Chair and the Committee will be interested in working with you to make sure we maintain our good record to the extent that we can on recycling. So all the ideas you have we'll be very happy to hear and see if they can be incorporated into the legislation.

MR. DILLINGHAM: Okay. Thank you.

ASSEMBLYMAN GIBSON: John Morley, ex-Director, PCUA.
(witness distributes statement)

Thank you, John. Oh, Executive Director. I'm sorry, John.

He abbreviated it. (laughter)

JOHN C. MORLEY: Ex-Freeholder. (laughter) As long as you know I'm here.

Passaic County Utilities Authority would like to thank Assembly Gibson and the members of the Assembly Agriculture and Waste Management

Committee for the opportunity to provide comments this afternoon on Assembly Bill No. 50.

I would like to preface my comments by first stating that due to the appeal filed with the PCUA in *Atlantic Coast* that is currently pending in the Third Circuit Court of Appeals and our position taken therein, we reserve our position on the legislation at this time. However, we believe that it is necessary and important to at least offer some preliminary comments on the legislation, particularly in light of the aggressive schedule proposed by Assemblyman Gibson.

Before commenting on the legislation, I think it would be helpful for the Committee to know a little bit about Passaic County's solid waste system. Passaic County, like the other counties in New Jersey, designed, developed, and implemented a comprehensive countywide solid waste management system as mandated by the State of New Jersey.

The Passaic County system currently consists of arrangements for the disposal of county solid waste at three transfer stations located in Passaic County that are owned and operated by PenPac, Inc., pursuant to an order issued by the Department of Environmental Protection. Our system also includes provisions for the transportation of solid waste by a licensed transportation contractor to the Empire Landfill in Taylor, Pennsylvania, for the ultimate disposal.

The Passaic County solid waste system also previously provided for the construction and operation of a proposed resource recovery facility. However, this State-mandated facility was never constructed as a result of the

State's change in policy on resource recovery facilities, despite the fact that PCUA expended over \$36 million in costs related to its proposed operation.

To date, the Passaic County Utility Authority has \$86,899,831 in outstanding bonds and notes related to the costs associated with the planning, financing, implementation, operation, and maintenance of the solid waste system. These costs were incurred pursuant to State-mandated legislation and policy directives and were incurred on behalf of all of the solid waste generators in the county.

If solid waste generators are able to cease utilizing our countywide system without regard to the economic consequences to the Passaic County Utilities Authority and remaining customers of the system, the Passaic County Utilities Authority and its remaining customers will suffer severe economic harm. Therefore, it is imperative that a system be in place to mitigate the economic consequences that may result by providing the PCUA with the ability to recover on an equitable basis the costs of our investments and expenses from those customers on whose behalf such costs were incurred. Based on our preliminary review, Assembly Bill No. 50 appears to be a step in the right direction.

In reviewing Assembly Bill No. 50, the PCUA was very pleased to see that the legislation embraced the same type of cost recovery system that the PCUA initially proposed in March of 1995 in the stranded investment petitions we filed with the DEP and the local finance board. It is heartening to know that Passaic County was on the right track from the start in addressing this important issue.

With respect to our comments, the PCUA offers several technical suggestions to the legislation, which are attached separately to my comments for Committee review. Substantively, there are a few issues we would like to raise for discussion and action by the Committee.

Throughout the legislation, reference is made to a public authority or county that owns or operates a registered solid waste facility. In Passaic County, the applicable registered solid waste facilities are not owned or operated by the PCUA. Rather, the three transfer stations involved are owned and operated by PenPac, Incorporated, pursuant to an order issued by the DEP.

Accordingly, all references that appear throughout the legislation in this regard must be amended to reflect our type of authority/facility relationship. Otherwise, the PCUA will be excluded from recovering environmental investment costs in the manner provided for under the legislation. I have attached proposed language in this regard for consideration by the Committee.

Probably the most important issue to our county involves the fact that Assembly Bill No. 50 fails to provide any direct financial assistance from the State to help counties like Passaic with the debt they incurred in complying with the State's solid waste mandates. In its present form, Assembly Bill No. 50 only provides preliminary relief in the form of a five-year moratorium on payments for loans granted to those counties that received loans from the Resource Recovery and Solid Waste Disposal Facility bond Act of 1985.

Although the State Legislature appropriates \$13.3 million from this Act to the DEP to provide a zero-interest loan to Passaic County to

finance its resource recovery facility, the PCUA never received the moneys appropriated to it. Despite that fact, we incurred over \$36 million in debt for costs related to this facility.

Although the Passaic County facility was subsequently canceled by the DEP, it is our position that we are still entitled to these funds based on the language contained in the Bond Act and because the appropriation has never been canceled by the Legislature. Thus, the authorization is still, in our opinion, valid.

As many of you know, over the course of the last two years, Passaic County has been attempting to secure this loan appropriation. We have met with numerous representatives, as indicated by a Freeholder of Passaic County, along with the DEP, the Legislature, and the administration in this regard. We also filed an action against the State and the DEP in an attempt to recoup the damages we incurred as a result of the DEP's cancellation of our resource recovery project. This litigation is still pending at the Appellate Division.

The grant of the \$13.3 million loan to our county, particularly in light of the proposed five-year moratorium set forth in Assembly Bill No. 50, would have material impact in significantly reducing our tipping fee to make us truly competitive in this market. Since Assembly Bill No. 50 does address loans made under the Resource Recovery Act fund, it clearly presents one of the best and most appropriate options for providing assistance to counties like Passaic that incurred costs on our canceled resource recovery facilities and where moneys have been and continue to remain appropriated for such a loan.

It is imperative that the State be held accountable and be obligated to provide some form of financial assistance to counties like Passaic to help

retire the county's solid waste debts, particularly since these costs are the direct result of our compliance with the State's mandates and policies. We intend to provide the Committee with proposed language in this regard and would be happy to work with the Committee on this issue.

Another area of concern involves Section 79 of the legislation, which deregulates solid waste disposal in New Jersey. The PCUA wholeheartedly supports deregulation with respect to public authorities and counties, but must reserve any judgement with respect to the proposed deregulation of private entities engaged in solid waste disposal. Under the proposed deregulation provision, review of the rates of public entities would essentially continue by virtue of these entities' filings with the local finance board and other agencies.

However, privately operated facilities would totally escape any form of oversight. In our case, the sole provider of transfer station services in Passaic County is a private entity, PenPac. In this type of situation, regulation may provide some benefit. At the very least, the legislation would provide some of the transition from a regulated to a deregulated environment based on factors such as the existence or absence of true competitive alternatives.

Assembly Bill No. 50 requires in Section 5.b that a municipal governing body that establishes a municipal service system adopt an ordinance. The legislation also sets forth the minimum requirements for inclusion in the ordinance. These requirements seem unduly cumbersome. Also, it is not clear whether the municipal governing body must include only the registered solid waste facility but also the out-of-state disposal site in the case where the municipality collects solid waste and delivers the waste to a transfer station

facility that will provide transportation and disposal services to the municipality.

In addition, under the legislation, the municipality must provide evidence that the disposal site conforms with all relevant Federal or State laws, rules, and regulations. Specific guidelines should be provided as to what constitutes compliance.

Assembly Bill No. 50 further requires in Section 13.*b* that the governing body may determine the amount of money necessary for the collection of environmental investment charges based on the assessed valuation of all taxable property. For consistency with other provisions in the legislation, Section 13.*b* should also provide appropriate language that the governing body has the option of determining the amount of money necessary for the collection of environmental charges based on usage.

The legislation does not appear to provide a cost recovery mechanism for new debt that may be incurred for the development and maintenance of solid waste systems. This should be addressed. This Committee should also consider including in this legislation or in companion legislation provisions to provide municipalities with the ability to finance the applicable share of the district's environmental investment costs and include that amount in their capital budget.

Assembly Bill No. 50 also required that the public authority or county hold a public hearing upon establishment of a system to collect the environmental investment charges but prior to actual implementation. The purpose of the hearing is not clear from the legislation. Is the hearing simply informational? Are any reports required? The legislation should clarify this

requirement. Further, the notice provision regarding publication must be clarified as to when the notice must be published.

Assembly Bill No. 50 provides in Section 17 that a public authority may establish and implement a solid waste collection and disposal inspection program. Does the DEP intend to provide any guidelines or direction as to the scope of the type of inspections that will be permitted, or will it be at the discretion of each public authority?

Assembly Bill No. 50 provides in Section 21 that the DEP will approve a proposed resource recovery services agreement if, among other things, the financial terms are in the public interest. It would be helpful in implementing this provision if more clearly defined standards are provided in the legislation.

In closing, we again thank the Committee for the opportunity to provide comments this afternoon. We strongly urge that the legislation be amended as stated above, particularly with respect to the State providing financial assistance to assist the counties.

In situations like Passaic County, we strongly urge that the bill allow the county to secure the loan previously appropriated to the county from the Resource Recovery and Solid Waste Facility Bond Fund. The PCUA plans to provide further comments as the legislative process proceeds.

I thank you very much for your time.

ASSEMBLYMAN GIBSON: Thank you, Director Morley, for your thorough comments. We will look forward to your further comments, particularly on the \$13 million as a tool to help in your case.

Madelyn Hoffman, Director of Grassroots Environmental Organization. Is Madelyn here? (no response) Then we'll go on to Ed Cornell, Waste Management Association.

Mr. Cornell.

EDWARD M. CORNELL: Good afternoon, Assemblyman Gibson, and Committee.

ASSEMBLYMAN GIBSON: Good afternoon.

MR. CORNELL: I am Ed Cornell, President of Waste Management Association, a privately owned trade association of collection companies, transfer stations, and recycling companies. Our offices are located in Park Ridge, New Jersey.

I have represented this Association for the last 14 years, and I have seen firsthand the action of a government misdirected toward maliciously eliminating privately owned garbage collection companies from doing business in this State because of a few bad actors.

I have witnessed ethnic prejudice against those who own the major of the private collection companies in this State. They have been silenced and don't come before bodies like this. I represent them. We seem to have forgotten that they did the hazardous and dirty work of collecting garbage for the better part of this century. They also had very large investments and great personal risk but offered reasonable rates at a time when no one else wanted to touch, regulate, or finance garbage.

An industry was blamed for the environmental neglect, the impropriety of government in decades past, and the high cost of garbage collection today. Generators cancel waste collection service every time disposal

facilities raise tipping fees and taxes, because they believe they can save money with another hauler, even if he operates illegally, creating an industry in turmoil.

On the government side of all of this, over the last decade we have operated under an illegal, haphazard, poorly designed, ill-informed, overestimated solution to a problem that needed attention, of course, but the problem begged for expert planning and research laced with economic sensitivities. Disposal facilities were oversized, overconstructed, overstaffed, and because of all of these shortfalls, they are overbonded.

Today, the State's major concern is how to pay off this mass waste of time and dollars. We will now meet to discuss new solutions, and you have allowed us to have input into the process by making sensible, economically sound corrective legislation keeping the taxpayers' pocketbooks in mind at all times.

Our Association implores this Committee not to make fast decisions out of desperation just to save the risk-taking bond holders. Decisions must, ultimately, be good for your constituents, our customers, and the next generations. They are the real investors. The solution must be fair to the privately owned system operators. We also invested in a challenge to regain our constitutional rights of interstate commerce. We now pledge to cooperate with you in any possible way to help you reduce the cost of garbage disposal in this State, and as you have heard before and you'll hear many times, probably, New Jersey still offers the highest disposal costs in the United States.

This legislation is bent on blocking interstate commerce and promotes public, not private, facilities and operations. A quick study of A-50 -- we received it on November 15 -- revealed that is a well-thought-out plan but not to resolve the true problem at hand. Instead, it closes doors to punish the industry for *Carbone II*.

A thorough study of A-50 will present detailed testimony in writing to this Committee. A testimony that will reflect a true government/private cooperation. It will assist you in your present legislative challenge, and it is a challenge. We hope that you will keep the record open for meaningful input from members of our industry.

In the meantime, there are just a few items that we wish to enter into the record today. Number one, the new definition of solid waste facilities excludes privately operated facilities, including currently licensed transfer stations. Our concern is for the regulatory status of these facilities and their future as private ownership participants in the updated county waste management plans.

We are concerned that A-50 eliminates all economic regulation of public and private disposal operators. What was previously defined as a monopoly is not permitted to set prices without State price controls. We fear that all collection companies using these facilities will not necessarily pay the same price. This will lead to unfair competition.

The host community fee setup is changing. The DEP is relieved of regulatory oversight over agreements between the community and the operator. We don't know if that is a good situation for the towns that are

counting on this host community tax. Park Ridge, where our office is, has a transfer station within it.

The New Jersey DEP is relieved of all economic regulatory and oversight of our industry in the bill. One of our problems has been selective enforcement of existing regulations. We need regulations that protect our customers, that is true, but industry also needs the protection of government agencies to protect the legitimate licensed operators from the scabs.

Without stricter enforcement of legitimate solid waste laws, the State creates outlaws of legitimate companies who must stay in business to support their employees and families. Eventually, the legitimate company feels it must also break the law to compete. Everyone in enforcement knows who is breaking the law and who is not.

Commercial and institutional waste generators appear to be excluded from individual private collection and become part of the municipal bidding procedure. This action alone will hurt the smaller independent collection companies immeasurably.

Finally, we believe, as you have heard before from two incinerator representatives here -- not incinerator representatives, but counties with incinerators -- that there is a positive aspect to *Carbone II*. The facilities that we have been told are not getting enough waste to pay for their stranded debts will receive more waste than ever planned for. If the price is right, the disposal tonnage and money will follow the real legitimate waste stream, and that waste stream, from wherever it comes from, will reward the risk-taking bondholders and return to the taxpayers. Just ask Essex County incinerator operatives who

are wishing also that waste flow would be abolished. I spoke to them at the Atlantic City League of Municipalities convention.

We thank you for allowing me this time to address you today and to set the stage for our written comments which will be in more detail in the future. Thank you very much, Mr. Chairman.

ASSEMBLYMAN GIBSON: Thank you for your preliminary comments. We look forward to working with you for a mutually beneficial solution.

MR. CORNELL: Thank you very much.

ASSEMBLYMAN GIBSON: John Carlton, Hunterdon County Utilities Authority. Did you want to speak, John? (negative response)

Rick Dovey, did you want to comment? (affirmative response)

There are two others who have signed up that they are here, but they didn't indicate that they had to speak, so I think Rick Dovey may be the last speaker unless there is somebody who feels or has an urge this afternoon, we'll be glad to hear them.

Mr. Dovey, good afternoon.

R I C H A R D D O V E Y: Good afternoon, Mr. Chairman, members of the Committee.

My name is Rick Dovey. I am the President of the Atlantic County Utilities Authority. The Authority operates a double-lined landfill, transfer station, compost facility, recycling center, and provides recycling services to 108,000 homes and 3700 businesses in Atlantic County.

We applaud the Committee and Assemblyman Gibson for taking the lead and the foresight to move this legislation to deal with this difficult

issue that faces New Jersey. The Board of Directors of the Atlantic County Utilities Authority, after presentation by Assemblyman Gibson on Thursday, passed a resolution supporting the concept of the bill and looks forward to commenting through the staff as time goes on.

The most important thing from the Authority's point of view is that we have a major problem because of the two waste flow court decisions. There must a way to protect the \$1.7 billion in debt; \$87 million of that debt is Atlantic County Utilities Authority's. We need to know what the system is going to be in the future. This is the start of the process to know what the system is going to be so that we can, first of all, protect our bondholders, our ratepayers, and taxpayers in Atlantic County to devise a system that will survive and benefit the ratepayers and taxpayers beyond the loss of waste flow, if, indeed, that is what has happened.

In government, it takes a long period of time to devise a solution. There is a term in our business referring to revenue -- solid waste revenue bond issues, as "story bonds," and as you have heard so far today, there is a story in every county. There is a story in Atlantic County, also. What we think is commendable and encouraging about this legislation is it allows each county to deal with their particular story. I won't go through our story, but it is unique to us, and it doesn't fit anybody else's circumstances.

But this draft legislation allows for our particular situation to be dealt with in a way that will be beneficial to the ratepayers and taxpayers of Atlantic County and provides the opportunity for the policy makers, the elected officials at the county level, to basically revisit the whole system at the point this legislation is enacted and regulations are adopted. It allows for

everybody to look at the system as it stands, what was committed to before, and that, we think, is the only way to do it.

It's not one system imposed on the whole State, because we all have different stories. That was the message that we tried to get through to the Assemblyman through the summer and fall, and we think it's reflected here. As time goes on, we will continue to add our specific comments to specific provisions in this legislation.

One other issue that has not been brought up, the *Atlantic Coast* case, which is *Atlantic Coast v. Atlantic County government, the Freeholders, and the Authority*, dealt with the deregulation of *C* and *D* waste, construction and demolition debris. That has been deregulated since January or February of this year, and just something that should be remembered and factored into this discussion is, in our county, *C* and *D* waste is a large part of our waste stream, maybe a quarter of our waste stream, unlike other parts of the State. It was an important part of our revenue stream that has been deregulated.

One of the immediate effects of deregulation has been that the waste is being shipped to out-of-state landfills -- *C* and *D* landfills -- in Delaware, Maryland, Pennsylvania, and Ohio, in some cases. Only a handful of those facilities-- In fact, three of the major four landfills that receive *C* and *D* waste from Atlantic County are lined to the standards of New Jersey and only one of them meets the Federal Title *D* landfill regulations that the EPA has.

The other effect that has not been clearly articulated is that recycling of *C* and *D* waste, which was a large business in our county, not with just the ACUA, but also for the private sector, has basically ceased, because

there is no economic incentive for *C* and *D* waste to be recycled. Almost no recycling of *C* and *D* waste takes place now, where a year ago this time there was a tremendous amount.

Having a level playing field with the facilities out of state means that-- And there is a provision in this bill that deals with the trash going to other facilities that have equal regulatory protection as New Jersey facilities, whether they are public or private, should have.

Thank you for the opportunity to comment. We'll have more to add as time goes on. Thank you.

ASSEMBLYMAN GIBSON: Thank you for your comments.

David Pringle, New Jersey Environmental Federation.

You signed up so you are welcome to testify, David.

D A V I D P R I N G L E: My name is David Pringle. I am the Field Director for the New Jersey Environmental Federation. We are the State's largest environmental group, with 90,000 individual members and an adjunct coalition of an additional 71 member groups.

Madelyn Hoffman, who was called earlier, had to go home. She was not feeling well. But she would like to make a comment at another hearing.

In addition, we held a press conference with Madelyn and Delva Quigley from Women for a Safer Future and over the last few days have organized a coalition -- in addition to the Environmental Federation and GREO, which are statewide groups -- of 16 local, county grassroots groups that are opposed to incineration and, unfortunately, have been forced into a position to oppose this bill.

We recognize that the Committee has a large task at hand to pay back this stranded investment; however, the mechanism at which this bill calls on this investment to be paid back we object to. In particular, we have a problem with--

The vast majority of this debt has been incurred from the building and operating of the five existing incinerators in this State. The vast majority of this debt is from these five incinerators. Each of these incinerators are operated by a private company which, with their contracts with the corresponding county or improvement authority, they have received a guaranteed large profit margin. Yet this bill falls on the taxpayers and ratepayers of New Jersey to pay back this debt, while calling on nothing from the incinerator industry which is getting this guaranteed profit. We feel that is fundamentally unfair and needs to be addressed.

Secondly, the way the bill addresses or allows municipalities that are not currently using the solid waste facility and having them be billed, we feel, is fundamentally unfair, as well.

For example, I live in the town of Cranford. In Union County, there is an incinerator. Let's say, if this bill went into effect five years from now, Cranford strikes a better deal with a Pennsylvania landfill where they can save money and ship their garbage there, yet under this bill, even though Cranford is not sending any of its trash to the Union County facility, they would be charged with that-- They would be able to be charged by the Union County Improvement Authority for that debt, and we object to that.

As an alternative to this bill, we would like to see four things put in place. We concur with the Sierra Club's comments that this bill needs to

address more than just the economics of the solid waste policy in the State. We want to ensure that New Jersey's strong recycling program is not even -- is continued and strengthened, along with-- We need to strengthen the composting and source reductions policies within the State.

Second, we want to see this bill or an alternative to it develop an orderly phase out, not an unconditional bail out, of New Jersey's five incinerators. They need to renegotiate their contracts that guarantee their profit to assist in implementing this plan. We are confident that if the market sets the price for tipping fees that the cost will be lowered so much that the debt will more than pay for itself. The taxpayers will be able to be relieved, and at the same time, we can boost our recycling, composting, and source reduction programs.

Finally, we need to protect New Jersey from out-of-state imports. Currently, the Essex incinerator, by the Essex incinerator operator's own admission, is burning New York City trash in New Jersey at discount prices. We, again, feel that this is fundamentally unfair, and we would like to see some of these things be addressed.

I apologize for the cursory comments. We haven't had time to take as an in-depth look at this legislation as we would like. We would appreciate a later opportunity to comment further.

Thank you.

ASSEMBLYMAN GIBSON: You'll have that opportunity. I would hope that you'll be flexible with your position, if, in fact, you find some good in the legislation somewhere.

MR. PRINGLE: Yes.

ASSEMBLYMAN GIBSON: With that, are there any comments from any Committee members? (no response)

Then I just thank everybody for being here. I know that many of the comments were preliminary. You are invited to continue with formal comments and proposed amendments to the bill. It is a working document. We'll probably meet again on it in December.

Thank you very much. I'll adjourn the meeting.

(MEETING CONCLUDED)