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PUBLIC HEARING

before

SENATE ENERGY AND ENVIRONMENT COMMITTEE

on

S-1300

(Hazardous Waste Facilities Corporation Act)

Held:

October 27, 1980

Assembly Chamber

State House

Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Frank J. Dodd, Chairman

Senator John P. Caufield

Senator Barry T. Parker

ALSO:

Michael F. Catania, Research Associate

Office of Legislative Services

Aide, Senate Energy and Environment Committee

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SENATE, No. 1300

STATE OF NEW JERSEY

INTRODUCED JUNE 9, 1980

By Senators DODD, DWYER, MERLINO and PARKER

Referred to Committee on Energy and Environment

A SUPPLEMENT to the "Solid Waste Management Act," approved May 6, 1970 (P. L. 1970, c. 39; C. 13:1E-1 et seq.) and making an appropriation.

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

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

1 2. a. The Legislature finds that hazardous wastes are often dis-
2 posed in an environmentally unacceptable, unsafe, illegal and un-
3 healthy manner; that there is growing need for adequate hazardous
4 waste treatment and disposal facilities in the State and in the
5 nation, and that this need will become more acute as stringent new
6 regulations are enacted across the country; and that there is a
7 public awareness to the harmful effects of the improper disposal of
8 hazardous wastes which is matched by lack of trust and confidence
9 in government's and industry's capability of protecting the public
10 from those effects.

11 b. The Legislature declares that technological and managerial
12 techniques to treat and dispose of hazardous waste without resulting
13 in unacceptable environmental and public health effects exist; that
14 adequate hazardous waste disposal facilities can be constructed and
15 operated, if the State government, private industry, concerned local
16 governments and citizens unite to provide an adequate number of
17 environmentally acceptable facilities to treat the waste; that a
18 Hazardous Waste Facilities Corporation should be created within
19 the Department of Environmental Protection to plan and site these
20 facilities; that public participation procedures should be built into
21 every step of this planning and siting process; that the department
22 should have expanded regulatory and approval powers over certain
23 activities of the corporation; that the corporation and the depart-
24 ment should work together to assure the construction of an adequate
25 number of environmentally adequate hazardous waste facilities to

26 treat the waste generated in the State, and should assure adequate
27 post-closure protection at these sites; that the corporation should
28 be authorized to construct and operate hazardous waste treatment
29 facilities if the private sector fails to construct and operate these
30 facilities; and that the corporation should be authorized to sell
31 revenue bonds and to charge service fees to finance the operations
32 of the facilities and the debt service on the bonds therefor.

1 3. As used in this act:

2 a. "Bonds" means bonds or other obligations of the corporation
3 issued pursuant to the provisions of this act;

4 b. "Corporation" means the Hazardous Waste Facilities Corpora-
5 tion created pursuant to this act;

6 c. "Commissioner" means the Commissioner of Environmental
7 Protection;

8 d. "Cost" means the cost or fair market value, as determined by
9 the corporation, of construction, lands, property rights, utility
10 extensions, disposal facilities, access roads, easements, franchises,
11 financing charges, interest, engineering and legal services, plans,
12 specifications, surveys, cost estimates, studies, transportation and
13 other expenses necessary or incidental to the design, development,
14 construction, financing, management and operation and maintenance
15 of a waste management project, and such other costs or expenses of
16 the corporation, including administrative and operating costs,
17 research and development, and operating capital, including fees,
18 charges, loans, insurances, and the expense of purchasing real and
19 personal property, including waste management projects;

20 e. "Department" means the Department of Environmental Pro-
21 tection;

22 f. "Environmental impact statement" means a statement of likely
23 environmental impacts resulting from the construction and opera-
24 tion of a hazardous waste facility, and includes an inventory of
25 existing environmental conditions at the site, a project description,
26 an assessment of the impact of the project on the environmental
27 conditions, a listing of unavoidable environmental impacts, and
28 steps to be taken to minimize environmental impacts during con-
29 struction and operation;

30 g. "Hazardous waste disposal" means the storage, treatment,
31 utilization, processing, resource recovery or final disposal of
32 hazardous waste;

33 h. "Hazardous waste facility" means any area, plant or other
34 facility the purpose of which is the processing, storage or disposal
35 of hazardous waste, including loading and transportation facilities
36 or equipment used in connection with the processing of hazardous
37 wastes;

38 i. "Hazardous waste industry" means any industry which oper-
39 ates a hazardous waste facility or which proposes to construct or
40 operate a hazardous waste facility;

41 j. "Plan" means the State Hazardous Waste Facilities Plan
42 developed by the corporation for hazardous waste collection treat-
43 ment and disposal pursuant to section 10 of this act;

44 k. "Project" or "waste management project" means any hazard-
45 ous waste disposal area, plant, works, system, facility or component
46 of a facility, equipment, machinery or other element of a facility
47 which the corporation is authorized to plan, design, finance, con-
48 struct, manage, operate or maintain under the provisions of this act,
49 including real estate and improvements thereto and the extension
50 or provisions of utilities and other appurtenant facilities deemed
51 necessary by the corporation for the operation of a project or
52 portion of a project, including all property rights, easements and
53 interests required;

54 l. "Site certificate" means a certificate issued by the corporation,
55 after public hearing, which signifies a determination by the corpora-
56 tion that the establishment of a hazardous waste facility of the
57 type and size proposed for construction at that site is consistent
58 with the hazardous waste facilities plan or with other relevant
59 regulatory and administrative policies of the State;

60 m. "Revenues" means moneys or income received by the corpora-
61 tion in whatever form, including, but not limited to, fees, charges,
62 lease payments, interest payments or investments, payments due
63 and owing on account of any instrument, contract or agreement
64 between the corporation and any person or agency, whether public
65 or private, gifts, grants, bestowals, or any other moneys or pay-
66 ments to which the corporation is entitled under the provisions of
67 this act or any other law, or of any agreement, contract or indenture
68 of the corporation;

69 n. "Waste exchange" means a program and any required facil-
70 ities utilized to transfer hazardous waste from any person or com-
71 pany to any other person or company for the reuse of the waste
72 as a raw material by the latter person or company.

1 4. a. There is established in the Executive Branch of the State
2 Government a public body corporate and politic, with corporate
3 succession, to be known as the Hazardous Waste Facilities Corpora-
4 tion. For the purpose of complying with the provisions of Article V,
5 Section IV, paragraph 1 of the New Jersey Constitution, the
6 corporation is allocated within the Department of Environmental
7 Protection, but notwithstanding that allocation, the corporation

8 shall be independent of any supervision or control by the depart-
9 ment or by any body or officer thereof, except as may be otherwise
10 provided in this act. The corporation is constituted as an instru-
11 mentality of the State exercising public and essential governmental
12 functions, and the exercise by the corporation of the powers con-
13 ferred by this act shall be deemed and held to be an essential govern-
14 mental function of the State.

15 b. The corporation shall be governed by a board which shall
16 consist of nine members, three of whom shall be employed by an
17 industrial firm, three of whom shall be ex officio members employed
18 by a government agency and three of whom shall be members of the
19 general public. One of the governmental members shall be the
20 Director of the Division of Environmental Quality in the Depart-
21 ment of Environmental Protection. Each shall be appointed by the
22 Governor with the advice and consent of the Senate for a term of
23 3 years, provided that of the members of the board first appointed
24 by the Governor, three shall serve for terms of 1 year, three for
25 terms of 2 years, and two for terms of 3 years. Each member shall
26 hold office for the term of his appointment and until his successor
27 shall have been appointed and qualified. A member shall be eligible
28 for reappointment. Any vacancy in the membership occurring other
29 than by expiration of term shall be filled in the same manner as the
30 original appointment but for the unexpired term only.

31 c. Whenever the corporation considers an application for a site
32 certificate it shall have additional board members appointed by the
33 governing body of each county and municipality within which the
34 site is located for reviewing that application. Each such governing
35 body is authorized and directed to appoint a member to the board
36 for that purpose.

37 d. Each appointed board member may be removed from office by
38 the Governor, for cause and after opportunity for a hearing and
39 may be suspended by the Governor pending the completion of the
40 hearing. Each member before entering upon his duties shall take
41 and subscribe an oath to perform the duties of his office faithfully,
42 impartially and justly to the best of his ability. A record of these
43 oaths shall be filed in the office of the Secretary of State.

44 e. The Governor shall appoint the chairman of the board. He
45 shall chair, schedule and convene board meetings. The members of
46 the board shall elect from their remaining number a vice chairman,
47 who shall act in the chairman's absence, and a treasurer. The
48 corporation shall employ an executive director who shall be its
49 secretary and chief executive officer. The powers of the corporation

50 shall be vested in the members of the board thereof in office from
51 time to time and a majority of the authorized membership of the
52 board shall constitute a quorum at any meeting. Action may be
53 taken and motions and resolutions adopted by the board at any
54 meeting by the affirmative vote of a majority of its members.

55 f. Each member of the board shall execute a bond to be condi-
56 tioned upon the faithful performance of his duties in such form and
57 amount as may be prescribed by the State Treasurer. The bonds
58 shall be filed in the Office of the Secretary of State. At all times
59 thereafter the board members shall maintain the bonds in full force.
60 The corporation shall pay the cost of the bonds.

61 g. The members of the board shall serve without compensation,
62 but the corporation shall reimburse them for actual expenses
63 necessarily incurred in the discharge of their duties. Notwith-
64 standing the provisions of any other law, no officer or employee of
65 the State shall be deemed to have forfeited or shall forfeit his office
66 or employment or any benefits or emoluments thereof by reason of
67 his acceptance of the office of ex-officio member of the board or his
68 services therein and no officer or employee of the State shall lose
69 his civil service rights if his services are loaned to the corporation
70 for any period of time.

71 h. The corporation may be dissolved by act of the Legislature on
72 condition that the corporation has no debts or obligations outstand-
73 ing or that provision has been made for the payment or retirement
74 of its debts or obligations. Upon dissolution of the corporation all
75 property, funds and assets and liabilities thereof shall be vested in
76 the State.

77 i. A true copy of the minutes of every meeting of the corporation
78 shall be forthwith delivered by and under the certification of the
79 secretary thereof to the Governor. No action taken at the meeting
80 by the board shall have effect until 10 days, Saturdays and Sundays,
81 and public holidays excepted, after the copy of the minutes shall
82 have been delivered unless during the 10-day period the Governor
83 shall approve the same, in which case the action shall become effec-
84 tive upon that approval. If, in the 10-day period, the Governor
85 returns the copy of the minutes with a veto of any action taken by
86 the board or any member thereof at that meeting, the action shall be
87 of no effect. The powers conferred in this subsection upon the
88 Governor shall be exercised with due regard for the rights of the
89 holders of bonds and notes of the corporation at any time outstand-
90 ing, and nothing in, or done pursuant to, this subsection shall in any
91 way limit, restrict or alter the obligation or powers of the corpora-
92 tion or any member or officer of the corporation to perform every

93 covenant, agreement or contract made or entered into by or on
94 behalf of the corporation with respect to its bonds or notes or for
95 the benefit, protection or security of the holders thereof.

96 j. On or before October 1 in each year, the corporation shall make
97 an annual report of its activities for the preceding fiscal year to
98 the Governor and to the presiding officers of each House of the
99 Legislature and the Senate Energy and Environment and Assem-
100 bly Agriculture and Environment Committees. Each report shall
101 set forth a complete operating and financial statement covering the
102 corporation's operations during the fiscal year. The corporation
103 shall cause an audit of its books and accounts to be made at least
104 once in each year by certified public accountants and cause a copy
105 thereof to be filed with the Secretary of State and the Comptroller
106 of the Treasury.

107 k. The Comptroller of the Treasury and his legally authorized
108 representatives are authorized and directed from time to time to
109 examine the accounts, books and records of the corporation, includ-
110 ing its receipts, disbursements, contracts, sinking funds, invest-
111 ments and any other matters relating thereto and to its financial
112 standing.

113 l. No board member, officer, employee or agent of the corporation
114 shall participate in any decision of the corporation on any project or
115 on any contract, sale, purchase, lease or transfer of real or personal
116 property to which the corporation is a party, if he has a financial
117 interest in that action.

1 5. The corporation shall have the following powers:

2 a. To adopt bylaws for the regulation of its affairs and the con-
3 duct of its business;

4 b. To adopt and have a seal and to alter the same at its pleasure;

5 c. To sue and be sued;

6 d. To prepare and effectuate, with the department's approval, a
7 State Hazardous Waste Facilities Plan, as provided in section 10
8 of this act;

9 e. To utilize eminent domain as provided in sections 16 and 33
10 of this act;

11 f. To construct and operate facilities subject to the provisions
12 of sections 28 and 30 of this act;

13 g. To issue bonds pursuant to the provisions of sections 36
14 through 44 of this act;

15 h. To enter into contracts with a person upon such terms and
16 conditions as the corporation shall determine to be reasonable, and
17 to pay or compromise any claims arising therefrom;

18 i. To contract for and to accept any gifts or grants or loans of
19 funds or financial or other aid in any form from the United States
20 of America or any agency or instrumentality thereof, or from the
21 State or any agency, instrumentality or political subdivision there-
22 of, or from any other source and to comply, subject to the pro-
23 visions of the act, with terms and conditions thereof;

24 j. To charge fees to all generators of hazardous waste which will
25 be used to defray the costs of disposal at any of the hazardous waste
26 treatment facilities located within the State whether public or
27 private:

28 k. To employ consulting engineers, architects, attorneys, real
29 estate counselors, appraisers, and such other consultants and em-
30 ployees as may be required in the judgment of the corporation to
31 carry out the purposes of the act, and to fix and pay their com-
32 pensation from funds available to the corporation therefor, all
33 without regard to the provisions of Title 11, Civil Service, of the
34 Revised Statutes:

35 l. To do and perform any acts and things authorized by this act
36 under, through or by means of its own officers, agents and em-
37 ployees, or by contracts with any person.

1 6. The department shall adopt pursuant to law rules and regula-
2 tions requiring the periodic reporting by hazardous waste in-
3 dustries of hazardous waste information concerning the quantities
4 and qualities of hazardous waste generated or to be generated or
5 other information necessary for carrying out the purpose of this
6 act. Trade secrets submitted under this section shall be exempt
7 from the requirements of P. L. 1963, c. 73 (C. 47:1A-1 et seq.).

1 7. If no privately owned and operated waste exchange is in opera-
2 tion within 1 year from the effective date of this act, the corpora-
3 tion shall operate or assure the operation of a waste exchange to
4 provide for the use of waste from one industry as a raw material
5 in another industry, in order to minimize the volume of hazardous
6 waste requiring treatment and disposal.

1 8. The corporation and the department through their employees
2 or agents shall individually have the right to enter any hazardous
3 waste facility at any time to review records and processes to deter-
4 mine compliance with the facility's site certificate and applicable
5 laws, rules and regulations.

1 9. The department shall adopt, pursuant to law, within 180
2 months of the effective date of this act, rules and regulations
3 establishing siting standards to be utilized in the selection and in
4 the approval of any new hazardous waste facilities.

1 10. The corporation shall prepare and publish, subject to the
2 approval of the department and within 1 year of the effective
3 date of this act, a State Hazardous Waste Facilities Plan. The
4 department shall incorporate the plan into the Statewide solid
5 waste management plan prepared pursuant to section 6 of P. L.
6 1970, c. 39 (C. 13:1E-6). No solid waste management district shall
7 incorporate hazardous waste matters in any solid waste manage-
8 ment plan prepared pursuant to section 11 of P. L. 1975, c. 326
9 (C. 13:1E-20). The State Hazardous Waste Facilities Plan shall
10 be for a period of 10 years and shall be revised and updated
11 biannually, and shall include the following:

12 a. An inventory and appraisal, including the identity, location and
13 life expectancy, of all hazardous waste facilities located within the
14 State, and the identity of every person engaging in hazardous waste
15 collection or disposal within the State;

16 b. A siting plan, which shall include all existing hazardous waste
17 facilities which are operated and maintained in accordance with all
18 applicable health and environmental standards and sufficient addi-
19 tional available suitable sites to provide hazardous waste facilities
20 to treat and dispose of the actual and projected amounts of haz-
21 ardous waste identified in the plan. The sites shall be selected
22 based upon the standards for siting adopted by the department;

23 c. The number and types of new hazardous waste facilities
24 needed;

25 d. An inventory prepared by the department of the sources, com-
26 position and quantity of the hazardous waste generated within the
27 State in the year in which the plan is prepared;

28 e. Projections prepared by the department of the amounts and
29 composition of hazardous waste to be generated within the State in
30 each of the next 10 years;

31 f. An analysis prepared by the department of the ability of all
32 existing facilities to meet current and proposed State and Federal
33 environmental, health and safety standards and their performance
34 in meeting these standards;

35 g. An analysis of transportation routes and transportation costs
36 from proposed waste generators to existing or available suitable
37 sites for hazardous waste facilities;

38 h. Procedures to encourage codisposal, materials recovery,
39 energy recovery, waste exchanging and recycling and to discourage
40 landfilling and all other inappropriate disposal techniques;

41 i. The methods of financing hazardous waste management in the
42 State pursuant to the plan; and

43 j. An environmental assessment of each existing or available suit-
44 able site identified, which shall include a description of any potential
45 economic, environmental, social or other consequences which might
46 result or have resulted from the location and construction of the
47 facilities and of the mitigating measures required to reduce those
48 consequences.

1 11. Upon the completion and publication of the State Hazardous
2 Waste Facilities Plan, and upon each revision thereof, the corpora-
3 tion shall:

4 a. Fix the date for a public hearing concerning the overall content
5 of the plan, particularly with respect to the corporation's estimates
6 of the hazardous waste facilities necessary to meet the State's
7 estimated hazardous waste disposal needs in the 10-year planning
8 period; and

9 b. Fix a number of dates for the commencement of a series of
10 public hearings concerning the designation of specific sites for
11 hazardous waste facilities as contained in the plan and the environ-
12 mental assessment. Each hearing held thereon shall be held at a
13 suitable location in the vicinity of each site designated. Hearings
14 may be held concurrently and may be conducted by such officers or
15 employees of the corporation as the executive director may
16 designate.

1 12. As least 20 days prior to each public hearing concerning the
2 designation of specific sites, the corporation shall notify each
3 affected municipality and county of the time and place for the hear-
4 ing, and shall publish the notice in at least two newspapers of
5 general circulation in the State or region where the hearing is to
6 be held.

1 13. Within 90 days after the conclusion of each public hearing
2 concerning the designation of specific sites, the corporation shall
3 consider the testimony presented at the hearings and shall publish
4 an evaluation of the site and shall issue one of the following find-
5 ings:

6 a. Preliminary approval as a site, subject to review at the time of
7 application for a site certificate;

8 b. Suspension pending further study, because construction of
9 any hazardous waste facility on the site might impair significant
10 environmental, socioeconomic, health or safety values; or

11 c. Disapproval as a site because the construction of any hazardous
12 waste facility on the site would impair significant environmental,
13 health, safety or socioeconomic values.

14 Any site disapproved under this section may not be resubmitted
15 for approval as a site unless there is clear and convincing evidence
16 of changed conditions.

1 14. Upon the completion of the requirements of sections 11, 12
2 and 13 of this act the corporation shall, subject to the approval of
3 the department, the State Hazardous Waste Facilities Plan, to-
4 gether with any additions, deletions or revisions it may deem
5 appropriate.

1 15. The corporation may issue, upon the completion of the plan,
2 requests for proposals to encourage the submission of applications
3 for site certificate for any site contained in the plan.

1 16. a. In addition to the other powers conferred by this act the
2 corporation may acquire in the name of the State by purchase or
3 otherwise, on such terms and conditions and in such manner as it
4 may deem proper, by the exercise of the power of eminent domain
5 as hereinafter provided, and to convey as hereinafter provided to
6 hazardous waste industries, any land and other property which it
7 may determine is reasonably necessary for a hazardous waste
8 facility or for the relocation or reconstruction of any highway by
9 the corporation and any and all rights, title and interest in that land
10 and other property, including public lands, highways or parkways,
11 owned by or in which the State or any county, municipality, or
12 other political subdivision of the State has any right, title or
13 interest, or parts thereof or rights therein and any fee simple
14 absolute or any lesser interest in private property, and any fee
15 simple absolute in, easements upon, or the benefit or restrictions
16 upon, abutting property for the purposes of this act.

17 b. Notwithstanding its land acquisition and conveyance powers
18 provided in subsection a., the corporation shall not implement those
19 powers with respect to any land or interest in land unless an agree-
20 ment has been entered into between the corporation and any
21 hazardous waste industry whereby compensation for the land or any
22 interest therein acquired by the corporation will be provided by the
23 hazardous waste industry, and unless the hazardous waste industry
24 shall have sought to obtain the land or any interest therein from the
25 owner thereof in good faith bargaining, and unless the hazardous
26 waste industry shall have obtained a site certificate as hereinafter
27 provided, for the hazardous waste facility to be constructed on the
28 land.

29 c. Upon the exercise of the power of eminent domain by the
30 corporation the compensation to be paid thereunder shall be as-
31 certain in the manner provided in the "Eminent Domain Act of
32 1971", P. L. 1971, c. 361 (C. 20:3-1 et seq.).

1 17. a. The corporation shall provide in each site certificate and
2 in any contract transferring land ownership rights pursuant to
3 section 15 hereof, that the facility owner maintain complete respon-
4 sibility for any facility in which hazardous waste residues remain
5 after closure for such period of time as may be deemed necessary
6 by the corporation and that ownership may then revert to the
7 corporation.

8 b. The corporation shall require that all hazardous waste facil-
9 ities provide a mechanism to defray closing costs and post closure
10 monitoring expenses for such period of time as may be deemed
11 necessary by the department, whether by escrow accounts, per-
12 formance bonds or otherwise.

1 18. The corporation may provide technical assistance to the
2 applicant in meeting the requirements of any provision of the act
3 to which this act is a supplement or any rules and regulations
4 promulgated pursuant thereto, including assistance in obtaining
5 an approved registration statement and engineering design. The
6 corporation may, however, assist the applicant in obtaining an
7 approved registration statement and engineering design from the
8 department.

1 19. No hazardous waste industry, except as may be otherwise
2 determined by the corporation as hereinafter provided, nor any
3 other person, shall commence construction of any hazardous waste
4 facility on or after the effective date of this act unless the industry
5 or person shall have obtained from the commission a site certificate
6 with respect to the facility as hereinafter provided. The issuance
7 of a site certificate by the corporation does not remove the appli-
8 cant's obligation to obtain the approval of the department for its
9 registration statement and detailed engineering design plan prior
10 to construction of the facility. The corporation shall review
11 applications for certificates as rapidly as is practicable and feasible.
12 A site certificate shall be issued only upon:

13 a. The corporation's determination that the hazardous waste
14 facility for which the site certificate is being sought is in all respects
15 in conformity with the State Hazardous Waste Facilities Plan; or,
16 if (1) proposed on or within a site not previously designated in the
17 plan or (2) if proposed prior to the completion of the plan, the
18 corporation's determination that the facility will meet all the
19 objectives and criteria contained in or established by this act or
20 any other act;

21 b. The acquisition or option to purchase or lease by the industry
22 or person, or the agreement of the corporation to acquire pursuant

23 to section 16 of this act, the land for the site on which it is proposed
24 to construct the facility. Any acquisition required hereunder may
25 be by purchase of the fee simple absolute interest in the land, as
26 may be approved by the corporation, or of a lease of the land or of
27 any interest in the land; and the purchase or lease may be from any
28 person holding title to the land or interest therein, or from the
29 corporation, if the land or interest therein has been acquired by the
30 corporation, according to terms and in a manner prescribed by the
31 corporation. The ownership by the industry or other person of an
32 option to purchase the fee simple absolute or any lesser interest in
33 the land shall, subject to the approval of the corporation, be deemed
34 to constitute acquisition for the purposes of this subsection;

35 c. The payment to the corporation by the industry or person of
36 the appropriate fee, pursuant to the corporation's fee schedule, for
37 processing and reviewing the application for a site certificate; and

38 d. The finding by the corporation that the conceptual basis for
39 the facility proposal for that specific site, as detailed in an environ-
40 mental impact statement prepared by the applicant, is consistent
41 with the plan or any other relevant provisions of this act.

1 20. Immediately upon the receipt of any complete application for
2 a site certificate or as soon thereafter as practicable, the corporation
3 shall acknowledge the receipt, in writing, and shall transmit a copy
4 of the application and all accompanying materials to the depart-
5 ment.

1 21. Any property or interest therein purchased or leased by any
2 hazardous waste industry or by any other person pursuant to sec-
3 tion 16 or section 19 of this act shall be used and operated for the
4 purposes for which it was purchased or leased without regard to
5 any local zoning ordinance, and the use shall not be required to be
6 submitted to or approved by any county or municipal governing
7 body, zoning or planning board or other agency.

1 22. a. Each application for a site certificate shall be accompanied
2 by proof of service of a copy of the application on the governing
3 body of each county and municipality and the head of each county
4 and municipal agency charged by law with the duty of protecting the
5 environment or of planning land use in the area in which any
6 portion of the facility is to be located. The copy of the application
7 shall be accompanied by a notice specifying the date on or about
8 which the application is to be filed. Each application shall also be
9 accompanied by proof that public notice thereof was given to per-
10 sons residing in the municipalities entitled to receive the notice by
11 the publication of a summary of the application, and the date on or

12 about which it is to be filed, in as many newspapers as will serve
13 substantially to inform these persons of the application.

14-15 b. Within 45 days after the receipt of the notice, the governing
16 body of any county or municipality which considers itself in any
17 way likely to be adversely affected by the approval of the applica-
18 tion, or the head of any county or municipal agency charged with
19 the duty of protecting the environment or of planning land use in
20 the area in which any portion of the facility is to be located, may,
21 by ordinance or resolution, as appropriate, file a written objection
22 with the corporation with respect to the application.

23 Pending the filing of the written objection, the governing body or
24 agency may transmit to the corporation its preliminary objections
25 with respect to the application. The corporation shall consider and
26 evaluate these written objections.

27 The filing of an objection as herein provided with respect to an
28 application for the construction of a hazardous waste facility shall
29 in no way alter or interfere with the powers and duties of the
30 corporation pursuant to sections 10 through 21 of this act; except
31 that an application may be finally approved, and a site certificate for
32 a hazardous waste facility which is the subject of the application
33 may be granted, by the corporation only upon its determination,
34 certified in writing to the objecting county, municipality or agency,
35 that the location of the facility for which the site certificate is being
36 sought is in all respects in conformity with the State's estimated
37 hazardous waste needs and is necessary and appropriate to effec-
38 tuate the purposes of this act. The determination shall contain the
39 findings of the corporation with regard to those written objections.

1 23. Upon the completion of the requirements of sections 18 and
2 19 of this act, the corporation shall:

3 a. With respect to any application for a site certificate for a
4 specific hazardous waste facility to be located on or within a site
5 previously designated in the State Hazardous Waste Facilities
6 Plan, complete its review thereof, make its tentative determination
7 thereon, hold a public hearing on the tentative determination in the
8 municipality wherein the proposed facility is to be located, consider
9 the testimony presented at the hearing, and report, in writing, its
10 final determination to the applicant, all within 90 days after the
11 receipt of the completed application;

12 b. With respect to any application for a site certificate for a
13 specific hazardous waste facility which is received by the corpora-
14 tion prior to the adoption of the plan or which concerns a specific
15 hazardous waste facility to be located on or within a site not pre-

16 viously designated in the plan, review the application and consider
 17 all relevant factors bearing on whether the objectives of this act
 18 would best be served by the issuance of the site certificate; and
 19 within 1 year after the receipt of the application, complete its review
 20 thereof, make its tentative determination thereon, hold a public
 21 hearing on the tentative determination in the municipality wherein
 22 the proposed facility is to be located, consider the testimony pre-
 23 sented at the hearing, and report, in writing, its final determination
 24 to the applicant.

25 c. Immediately upon making any final determination pursuant to
 26 subsections a. or b. of this section, prepare and submit to any county
 27 or municipality affected by the determination a report detailing the
 28 reasons in support of the determination and responding point-by-
 29 point to all objections the county or municipality may have advanced
 30 against the determination.

1 24. Upon the completion of the requirements of this section and
 2 sections 18 through 23 of this act, the corporation may issue, subject
 3 to the approval of the department, a site certificate for hazardous
 4 waste facilities upon the corporation's determination that the use
 5 of the site will be necessary to meet estimated State hazardous waste
 6 needs as identified in the plan, and that upon a weighing of all
 7 relevant costs and benefits, the public interest is best served by the
 8 issuance of the site certificate, subject to all appropriate safeguards
 9 and conditions, or otherwise to deny the site certificated if the
 10 applicant fails to conform with the intentions and purposes of this
 11 act.

1 25. The department and the corporation shall make reasonable
 2 efforts to negotiate agreements or compacts with neighboring states
 3 for cooperative efforts and mutual assistance in approving sites and
 4 in licensing facilities, for the enforcement of the respective laws of
 5 each state, and for the establishment of whatever authorities or
 6 agencies, joint or otherwise, they may deem desirable for the agree-
 7 ments or compact. An agreement or compact shall be submitted to
 8 the Legislature for its consideration and approval, and by the State
 9 to the Congress for such Federal approval as may be required.

1 26. All departments and agencies of the State are authorized and
 2 directed to cooperate with the corporation so as to foster and fully
 3 effectuate the purposes of this act, and to make available to the
 4 corporation personnel, information and technical assistance upon
 5 request.

1 27. The corporation, pursuant to the provisions of the "Admin-
 2 istrative Procedure Act", P. L. 1968, c. 410 (C. 52:14B-1 et seq.),

3 shall adopt a fee schedule which will not exceed the costs of
4 processing and reviewing applications for site certificates submitted
5 by hazardous waste industries and other persons, as otherwise pro-
6 vided in this act, for hazardous waste facilities of various types,
7 sizes, and capacities.

1 28. The corporation may construct and operate hazardous waste
2 treatment and disposal facilities but only if within 2 years after
3 the effective date of this act:

4 a. Adequate capacity for hazardous waste disposal as indicated
5 in the plan is not provided by privately owned and operated
6 hazardous waste disposal facilities;

7 b. The corporation holds a public hearing after it issues findings
8 of facts detailing this lack of capacity; and

9 c. The corporation reports to the Legislature its intention to
10 operate hazardous waste facilities.

1 29. Sections 32 through 44 shall apply to the construction and
2 operation of any facility meeting the conditions set forth in section
3 28 and in compliance with all State and Federal laws, rules and
4 regulations concerning the construction and operation of hazardous
5 waste facilities including those covered by the "Solid Waste
6 Management Act," P. L. 1970, c. 39 (C. 13:1E-1 et seq.). If any
7 facility is to be constructed or operated by the corporation, the
8 corporation shall be subject to the procedural provisions of sections
9 18 through 24 of this act with respect to the facility design pre-
10 pared by it as if the facility design were an application for a site
11 certificate.

1 30. If the owner or operator of a hazardous waste facility goes
2 bankrupt or otherwise is unable to continue to operate a facility,
3 the corporation may operate the facility or find another operator
4 for the facility.

1 31. The purposes of the corporation, with respect to sections 30
2 through 44 of the act, shall be:

3 a. The planning, design, construction, financing, management,
4 ownership, operation and maintenance of projects for hazardous
5 waste disposal facilities and all related hazardous waste reception,
6 storage, transportation and waste handling and general support
7 facilities or other appropriate activities in carrying out the pro-
8 visions of the State Hazardous Waste Facilities Plan and in
9 establishing, managing and operating solid waste treatment and
10 disposal facilities;

11 b. The provision of hazardous waste management services to
12 industries and persons within the State by receiving hazardous

13 wastes at corporation facilities, pursuant to contracts between the
14 corporation and these persons; and the production from those
15 services of revenues sufficient to provide for the support of the
16 corporation and its operations on a financially self-sustaining basis,
17 with due allowance for the redistribution of any surplus revenues
18 to reduce the costs of corporation services to the users thereof;

19 c. The utilization, through contractual arrangements, of private
20 industry for implementation of some or all of the requirements of
21 the plan, to the maximum extent practicable and feasible, and for
22 such other activities as may be considered necessary, desirable or
23 convenient by the corporation.

1 32. In addition to powers otherwise provided in this act, the
2 corporation shall have the following powers with respect to any
3 project:

4 a. To establish and maintain reserve and insurance funds with
5 respect to the financing of the project;

6 b. To sell, convey or lease to any person all or any portion of a
7 project, for such consideration and upon such terms as the corpora-
8 tion may determine to be reasonable;

9 c. To mortgage, pledge or assign or otherwise encumber all or
10 any portion of a project or revenues whenever it shall find this
11 action to be in furtherance of the purposes of this act;

12 d. To grant options to purchase or renew a lease for any of its
13 projects on such terms as the corporation may determine to be
14 reasonable;

15 e. In connection with any application for assistance under this
16 act or commitments therefor, to require and collect such fees and
17 charges as the corporation shall determine to be reasonable;

18 f. To acquire, purchase, manage and operate, hold and dispose
19 of real and personal property or interest therein, take assignments
20 of rentals and leases and make and enter into all contracts, leases,
21 agreements and arrangements necessary or incidental to the per-
22 formance of its duties;

23 g. To purchase, acquire and take assignments of notes, mortgages
24 and other forms of security and evidences of indebtedness;

25 h. To purchase, acquire, attach, and take title to any project by
26 conveyance or by foreclosure, and sell, lease, manage or operate any
27 project as provided in this act;

28 i. To borrow money and to issue bonds of the corporation and to
29 provide for the rights of the holders thereof as provided in this act;

30 j. To extend credit or make loans to any person for the planning,
31 designing, acquiring, constructing, reconstructing, improving,

32 equipping and furnishing of a project with credits or loans which
33 may be secured by loan and security agreements, mortgages, leases,
34 and other instruments, upon such terms and conditions as the
35 corporation shall deem reasonable, including provision for the
36 establishment and maintenance of reserve and insurance funds, and
37 to require the inclusion in any mortgage, lease, contract, loan and
38 security agreement or other instrument, such provisions for the
39 construction, use, operation and maintenance and financing of the
40 project as the corporation may deem necessary or desirable;

41 k. To procure insurance against any losses in connection with its
42 property, operations or assets in such amounts and from such in-
43 surers as it deems desirable;

44 l. To do any other thing necessary or convenient to carry out its
45 purposes and exercise the powers given and granted in this act.

1 33. The corporation shall also have the power to:

2 a. Charge reasonable fees for the services it performs and waive,
3 suspend, reduce or otherwise modify those fees, provided the fees
4 shall apply uniformly to all users who are provided with hazardous
5 waste management services with respect to a given type or category
6 of wastes, in accordance with criteria established by the corporation,
7 but no change may be made in user fees without at least 60 days'
8 prior notice to the users affected thereby;

9 b. Design or provide for the design of hazardous waste facilities
10 including design for the alteration, reconstruction, improvement,
11 enlargement or extension of existing facilities;

12 c. Construct, erect, build, acquire, alter, reconstruct, improve,
13 enlarge or extend hazardous waste facilities including provision for
14 the inspection and supervision thereof and the engineering,
15 architectural, legal, fiscal and economic investigations and studies,
16 surveys, designs, plans, working drawings, specifications, pro-
17 cedures and any other actions incidental thereto;

18 d. Own, operate and maintain waste management projects and
19 make provisions for their management;

20 e. Exercise eminent domain as provided in the "Eminent Domain
21 Act of 1971", P. L. 1971, c. 361 (C. 20:3-1 et seq.).

22 f. Design and construct improvements or alterations on pro-
23 perties which it owns or which it operates by contract.

24 g. Contract for the construction of hazardous waste facilities
25 with private persons or firms, or consortiums of persons or firms,
26 pursuant to applicable provisions of this act, the requirement of
27 applicable regulations and the State Hazardous Waste Facilities
28 Plan and in accordance with such specifications, terms and condi-
29 tions as the corporation may deem necessary or advisable.

1 34. a. The corporation may, in any resolution authorizing the
2 issuance of bonds or notes, create or authorize the creation within
3 resultant bond funds of special funds to be held in pledge or other-
4 wise for purposes and to covenant as to use and disposition of the
5 moneys held in these funds.

6 b. Moneys at any time in the fund may be invested in any direct
7 obligations of, or obligations as to which the principal and interest
8 thereof is guaranteed by, the United States of America or such
9 other obligations as the corporation may approve.

1 35. For the purpose of providing funds a. to pay all or part of
2 the cost of any project or projects, and b. for the funding or re-
3 funding of any bonds, the corporation shall have the power to
4 authorize or provide for the issuance of bonds pursuant to this act.

1 36. The corporation, by resolution, may incur indebtedness,
2 borrow money and issue its bonds for the purposes stated in section
3 34 of this act. Except as may otherwise be expressly provided by
4 the corporation, every issue of its bonds shall be obligations of the
5 corporation payable from any revenues or moneys of the corpora-
6 tion, subject only to any agreements with the holders of particular
7 bonds or notes pledging any particular revenues or moneys. Bonds
8 shall be authorized by resolution and may be issued in one or more
9 series and shall bear such date or dates, mature at such time or
10 times not exceeding 40 years from the date thereof, bear interest
11 at a rate or rates, be in such denomination or denominations, be in
12 such form, either coupon or registered, carry such conversion or
13 registration privileges, have such rank or priority, be executed in
14 such manner, be payable from such sources in such medium of pay-
15 ment at such place or places within or without the State, and be
16 subject to such terms of redemption, with or without premium, as
17 the resolution may provide. Bonds of the corporation may be sold
18 by the corporation at public or private sale at such price or prices
19 as the corporation shall determine.

1 37. Any provision of any law to the contrary notwithstanding,
2 any bond or other obligation issued pursuant to this act shall be
3 fully negotiable within the meaning and for all purposes of Title
4 12A, Commercial Transactions, of the New Jersey Statutes, and
5 each holder or owner of such a bond or other obligation, or of any
6 coupon appurtenant thereto, by accepting the bond or coupon shall
7 be conclusively deemed to have agreed that the bond, obligation or
8 coupon is and shall be fully negotiable within the meaning and for
9 all purposes of Title 12A.

1 38. In order to secure the payment of bonds and in addition to its
2 other powers, the corporation shall have power by resolution to

3 covenant and agree with the several holders of the bonds, as to:

4 a. The custody, security, use, expenditure or application of the
5 proceeds of the bonds;

6 b. The use, regulation, operation, maintenance, insurance or dis-
7 position of all or any part of any project;

8 c. Payment of the principal of or interest on the bonds, or any
9 other obligations, and the sources and methods thereof, the rank or
10 priority of the bonds or obligations as to any lien or security, or the
11 acceleration of the maturity of the bonds or obligations;

12 d. The use and disposition of any moneys of the corporation
13 derived from any project;

14 e. Pledging, setting aside, depositing or entrusting all or any part
15 of the revenues or other moneys of the corporation to secure the
16 payment of the principal of or interest on the bonds or any other
17 obligations and the powers and duties of any trustee with regard
18 thereto;

19 f. The setting aside of the revenues or other moneys of the
20 corporation, of reserves and sinking funds, and the source, custody,
21 security, regulation, application and disposition thereof;

22 g. The rents, fees or other charges for the use of any project, in-
23 cluding any parts thereof heretofore constructed or acquired and
24 any parts, replacements or improvements thereof thereafter con-
25 structed or acquired, and the fixing, establishment, collection and
26 enforcement of the same;

27 h. Limitation on the issuance of additional bonds or any other
28 obligations or on the incurrence of indebtedness of the corporation;

29 i. Vesting in a trustee or trustees within or without the State such
30 property, rights, powers and duties in trust as the corporation may
31 determine and limiting the rights, duties and powers of the trustee;

32 j. Payment of costs or expenses incident to the enforcement of
33 the bonds or of the provisions of the resolution or of any covenant
34 or contract with the holders of the bonds;

35 k. The procedure, if any, by which the terms of any covenant or
36 contract with, or duty to, the holders of bonds may be amended or
37 abrogated, the amount of bonds and holders of which must consent
38 thereto, and the manner in which the consent may be given or
39 evidenced; or

40 l. Any other matter or course of conduct which, by recital in the
41 resolution, is declared to further secure the payment of the principal
42 of or interest on the bonds.

43 All such provisions of the resolution and all such covenants and
44 agreements shall constitute valid and legally binding contracts
45 between the corporation and the several holders of the bonds, re-

46 gardless of the time of issuance of the bonds, and shall be enforce-
47 able by any holder by appropriate action, suit or proceeding in any
48 court of competent jurisdiction, or by proceeding in lien of pre-
49 rogative writ.

1 39. Any pledge of revenues or other moneys made by the corpora-
2 tion shall be valid and binding from the time when the pledge is
3 made; the revenues or other moneys so pledged and thereafter
4 received by the corporation shall immediately be subject to the
5 lien of the pledge without any physical delivery thereof or further
6 act, and the lien of the pledge shall be valid and binding as against
7 all parties having claims of any kind in tort, contract or otherwise
8 against the corporation, irrespective of whether the parties have
9 notice thereof. Neither the resolution nor any other instrument by
10 which a pledge is created need be filed or recorded except in the
11 records of the corporation.

1 40. Neither the members of the corporation nor any person
2 executing bonds issued pursuant to this act shall be liable personally
3 on the bonds by reason of the issuance thereof. Bonds or other
4 obligations issued by the corporation pursuant to this act shall not
5 be in any way a debt or liability of the State or of any political
6 subdivision thereof and shall not create or constitute any indebt-
7 edness, liability or obligation of the State or of any political sub-
8 division, either legal, moral or otherwise, and nothing in this act
9 contained shall be construed to authorize the corporation to incur
10 any indebtedness on behalf of or in any way to obligate the State or
11 any political subdivision, and all such bonds shall contain on the
12 face thereof a statement to that effect.

1 41. The exercise of the powers granted by this act shall constitute
2 the performance of an essential governmental function and the
3 corporation shall not be required to pay any taxes or assessments
4 upon or in respect of a project, or any property or moneys of the
5 corporation, and the corporation, its projects, property and moneys
6 and any bonds and notes issued under the provisions of this act,
7 their transfer and the income therefrom, including any profit made
8 on the sale thereof, shall at all times be free from taxation of every
9 kind by the State except for transfer inheritance and estate taxes
10 and by any political subdivision of the State; provided, that any
11 person occupying a project whether as lessee, vendee or otherwise
12 shall, as long as title thereto shall remain in the corporation, pay to
13 the political subdivision in which the project is located a payment
14 in lieu of taxes which shall equal the taxes on real and personal
15 property, including water and sewer service charges or assess-
16 ments, which that person would have been required to pay had he

17 been the owner of the property during that period for which the
 18 payment is made, and neither the corporation nor its projects,
 19 properties, money or bonds and notes shall be obligated, liable or
 20 subject in lien of any kind for the enforcement, collection or pay-
 21 ment thereof. If and to the extent the proceedings under which the
 22 bonds authorized to be issued under the provisions of this act so
 23 provide, the corporation may agree to cooperate with that person
 24 occupying a project, in connection with any administrative or
 25 judicial proceedings for determining the validity or amount of those
 26 payments and may agree to appoint or designate and reserve the
 27 right in and for that person to take all action which the corporation
 28 may lawfully take in respect of the payments and all matters relat-
 29 ing thereto, provided those persons shall bear and pay all costs and
 30 expenses of the corporation thereby incurred at the request of the
 31 person or by reason of any action taken by the person in behalf of
 32 the corporation. If the person occupying a project has paid the
 33 amounts in lieu of taxes required to be paid by this section, he shall
 34 not be required to pay any such taxes as to which a payment in
 35 lieu thereof has been made to the State or to any political sub-
 36 division, any other law to the contrary notwithstanding.

1 42. Notwithstanding any restriction contained in any other law,
 2 the State and all political subdivisions of this State, their officers,
 3 boards, commissioners, departments or other agencies, all banks,
 4 bankers, trust companies, savings banks and institutions, building
 5 and loan associations, saving and loan associations, investment
 6 companies and other persons carrying on a banking or investment
 7 business, all insurance companies, insurance associations and other
 8 persons carrying on an insurance business, and all executors,
 9 administrators, guardians, trustees and other fiduciaries, and all
 10 other persons whatsoever who now are or may hereafter be au-
 11 thorized to invest in bonds or other obligations of the State, may
 12 properly and legally invest any sinking funds, moneys, or other
 13 funds, including capital, belonging to them or within their control
 14 in any bonds or notes issued by the corporation under the provisions
 15 of this act; and these bonds and notes are made securities which
 16 may properly and legally be deposited with and received by any
 17 State or municipal officers or agency of the State for any purpose
 18 for which the deposit of bonds or other obligations of the State is
 19 now or may hereafter be authorized by law.

1 43. All banks, bankers, trust companies, savings banks, invest-
 2 ment companies and other persons carrying on a banking business
 3 are authorized to give to the corporation a good sufficient under-
 4 taking with such sureties as shall be approved by the corporation

5 to the effect that the bank or banking institutions as hereinbefore
 6 described shall faithfully keep and pay over to the order of or upon
 7 the warrant of the authority or its authorized agent all such funds
 8 as may be deposited with it by the corporation and agreed interest
 9 thereon, at such times or upon such demands as may be agreed
 10 with the corporation or in lieu of the sureties, deposit with the
 11 corporation or its authorized agent or any trustee therefor or for
 12 the holders of any bonds, as collateral, such securities as the
 13 corporation may approve. The deposits of the corporation may be
 14 evidenced by a depository collateral agreement in such form and
 15 upon such terms and conditions as may be agreed upon by the
 16 corporation and the bank or banking institutions.

1 44. The foregoing sections of this act shall be deemed to provide
 2 a complete method for the doing of things authorized thereby and
 3 shall be regarded as not in conflict with, or as restrictive of, powers
 4 conferred by any other laws, and the provisions of this act shall be
 5 complete authority for the issuance of bonds by the corporation and
 6 the provisions of any other laws shall not apply to the issuance of
 7 those bonds.

1 45. There is appropriated to the corporation from the General
 2 State Fund the sum of \$500,000.00 and to the department from the
 3 New Jersey Spill Compensation Fund the sum of \$500,000.00 for
 4 the purpose of carrying out their functions and duties pursuant to
 5 this act.

1 46. This act shall take effect immediately.

STATEMENT

This bill implements the recommendations of the Governor's Hazardous Waste Advisory Commission concerning the construction and operation of hazardous waste treatment and disposal facilities. It creates a Hazardous Waste Facilities Corporation. The corporation is empowered to act as a planning and siting agency for the location of needed new hazardous waste facilities within the State. The corporation is allocated within the Department of Environmental Protection. New hazardous waste facilities are subject to the rules and regulations of the department. The department is provided additional regulatory powers and approval powers over certain activities of the corporation. The corporation and the department are directed to work together to assure the construction of enough environmentally adequate hazardous waste facilities to treat the waste generated within the State.

Extensive public participation procedures are built into every step of the act. Public hearings are to be held on the State Hazardous Waste Facilities Plan and on each site delineated therein and on every application for a site certificate. The corporation is further directed to respond in writing to the points made at the public hearings.

The corporation is directed to require all hazardous waste facilities to provide adequate mechanisms to assure post-closure protection at the facility site.

The corporation is also authorized to construct and operate hazardous waste treatment facilities, but only if a. the private sector fails to respond to build and operate the necessary facilities, as indicated in the State Hazardous Waste Facilities Plan; b. the corporation holds a public hearing after it issues findings of fact detailing its inability to find a private sector developer; and c. it, then, reports to the Legislature its intention to construct and operate facilities on its own. It is authorized to sell revenue bonds to finance the construction of any such facilities. It is authorized to charge service fees to finance the operations of the facilities and the debt service on the bonds.

OUTLINE
PROPOSED SENATE COMMITTEE SUBSTITUTE
TO S-1300

I. Hazardous Waste Management Commission

1. 9 members
 - a. Appointed by Governor w/advice and consent of Senate
 - b. Membership will include representatives of: public, local officials, environmentalists, industry (but not DEP or other State agencies)
 - c. Terms of 3 years, initial terms of 1, 2 and 3 years
 - d. Bi-partisan balance in membership
2. Commission will elect chairman and vice-chairman
3. Commission will appoint executive director and other staff and consultants, all without regard to Civil Service requirements
4. Commission members will receive no salary but may be reimbursed for expenses
5. Commission will be "in but not of" DEP (i.e., commission not subject to DEP control)

II. Hazardous Waste Advisory Council

1. 11 members
 - a. Appointed by Governor w/advice and consent of Senate
 - b. Membership will include representatives of all relevant groups, including industry, local officials, environmentalists, fire officials, public, etc.
 - c. Terms of 3 years, initial terms of 1, 2 and 3 years
 - d. Bi-partisan balance in membership
2. Council will elect chairman and vice-chairman
3. Council will advise both the commission and DEP re planning, siting and licensing of hazardous waste facilities
4. Council may use staff of commission or DEP, hire own staff within limits of appropriations or grants

III. Siting Criteria

1. Adopted by DEP in consultation with the council, and with public participation, within 1 year
2. Will not designate sites
3. Legislation will specify criteria for ineligible sites:
 - a. Areas within 500 yards of any structure which is routinely occupied by the same persons more than 12 hours per day, or by the same persons under 18 for more than 2 hours per day
 - b. Watershed (drainage basin) areas capable of supplying a sustained yield of more than 1 million gallons per day of potable water
 - c. Areas which may be inundated with water, including flood hazard areas, wetlands, and areas with seasonal high water tables within 1 foot of the surface

IV. Hazardous Waste Facilities Plan

1. Adopted by commission in consultation with the council, and with public participation, within 1 year
2. Will specify number and type of necessary facilities
3. Will be revised at regular 3 year intervals and more frequently upon changes in existing facilities, wastestream, or technological advances

V. Designation of Sites

1. Done by the commission, applying DEP siting criteria, in consultation with the council, and with public participation
2. Sufficient sites will be designated, by type of facility, to meet needs specified in plan
3. Upon the proposed designation of a site:
 - a. Affected municipality awarded grant of \$ X to conduct site suitability study
 - b. Municipality may request information from applicant and commission
 - c. Municipal study to be completed within 6 months, when an adjudicatory hearing re proposed site will be conducted by ALJ w/in 45 days
 - d. Municipality a party of interest to hearing, with right of cross-examination
 - e. ALJ makes recommendation w/in 30 days of close of hearing
 - f. Commission affirms or rejects the recommendations of ALJ w/in 30 days of receipt
 - g. Commission action = final agency action under the APA, subject to review by the Appellate Division of Superior Court
4. Commission may designate alternate or additional sites at request of applicant, who will have burden of proof concerning site suitability

VI. Licensure

1. Done by DEP, in consultation with the council and with public participation
2. Character of applicant and proposed design subject to review
3. EIS for proposed facility prepared by commission (at applicant's expense) and reviewed by DEP
4. Upon the filing of a license application:
 - a. Affected municipality notified
 - b. Municipality conducts review of proposed facility and applicant
 - c. Applicant covers cost of municipal review up to a maximum of \$ X
 - d. Municipality may request information from applicant and DEP
 - e. Municipal review to be completed within 6 months, when an adjudicatory hearing re application will be conducted by ALJ w/in 45 days
 - f. Municipality a party of interest to hearing, with right of cross-examination
 - g. ALJ makes recommendation w/in 30 days of close of hearing
 - h. DEP affirms or rejects the recommendations of ALJ w/in 30 days of receipt
 - i. DEP action = final agency action under the APA, subject to review by the Appellate Division of Superior Court

VII. Above Ground Facilities v. Secure Landfills

1. All hazardous waste facilities must be:
 - a. Totally or partially above ground;
 - b. Physically accessible to inspection personnel;
 - c. Designed to allow 100% extraction of all hazardous waste, and
 - d. Designed to prevent any significant adverse impact on the environment
2. Secure landfills or other facilities which do not meet the criteria of 1.a. or 1.b. may be approved if and only

- if the applicant proves beyond a reasonable doubt that:
- a. All alternatives to the proposed facility are technologically or economically impracticable;
 - b. The hazardous waste to be treated, stored or disposed at the proposed facility can be effectively monitored
 - c. 100% of the hazardous waste to be treated, stored or disposed at the proposed facility can be extracted; and
 - d. The proposed facility will have no significant adverse impact on the environment

VIII. Inspection/Enforcement Actions

1. By DEP and local officials
2. Penalties collected as a result of actions initiated by local officials retained by municipality or county
3. Weekly inspections will be conducted starting from the commencement of construction
4. Commission will sponsor, in cooperation with DEP and through consultants, construction and operation inspection training programs for local officials in affected municipalities

IX. License Revocation/Receivership

1. Upon the revocation of an operator's license, commission shall take over facility as receiver
2. Department will use Spill Compensation Fund for any necessary cleanup operations
3. Commission will find new operator for facility

X. Construction/Operation of Facilities by Commission

1. No power to construct or operate, except as receiver
2. Commission to report to Legislature in 5 years re need for such powers

XI. Compensation to Host Municipality or Region

1. Full property taxes
2. "Gross receipts" type tax or lump sum payments dedicated to specific purposes:
 - a. Extra police, fire costs
 - b. Local inspection program
 - c. Road repair
 - d. Other expenses related to location of hazardous waste facility

XII. Eminent Domain

1. Designated site may be condemned by commission only if:
 - a. Operator has obtained license from DEP and
 - b. Operator makes good faith effort and cannot acquire site
2. Commission may purchase or condemn 5 year option or development easement for designated sites to prevent incompatible development

XIII. Phaseout of Existing Facilities

1. Existing facilities which fail to meet RCRA and DEP regulations will be phased out

XIV. Liability/Post Closure Maintenance

1. Operators maintain perpetual and complete liability, subject to existing statutory limits
2. Operators will establish escrow accounts or post bonds to insure proper closure and post-closure maintenance
3. DEP will take over the monitoring and maintenance of facilities 30 years after closure

XV. Bounty System

1. Persons supplying info leading to conviction of illegal dumpers will receive one-half of penalty
2. Administered by AG

XVI. Rate Regulation

1. No rate regulation by BPU, DEP or commission
2. Commission to report to Legislature in 5 years re need for such regulation

XVII. Appropriation

1. \$ X to commission for preparation of hazardous waste facilities plan
2. \$ X to commission for site suitability grants to affected municipalities and for inspection training programs for municipal officials
3. \$ X to Hazardous Waste Advisory Council

Guide to Terms and Abbreviations

ALJ	- Administrative Law Judge
APA	- Administrative Procedure Act, P.L. 1968, c. 410 (C.52:14B-1 et seq.)
BPU	- Board of Public Utilities
Commission	- The Hazardous Waste Management Commission
Council	- The Hazardous Waste Advisory Council
DEP or department	- The Department of Environmental Protection
RCRA	- Resource Conservation and Recovery Act (Federal)

SENATOR FRANK J. DODD (Chairman): Good morning, ladies and gentlemen, the Senate Energy and Environment Committee will come to order. This is our sixth public hearing on Senate Bill 1300. Senator John Caufield and myself will be conducting the hearing. We will be taking testimony on the outline of the redraft. The technical thing is the number of Committee substitute S-1300 is roughly all that is the same as the original draft. It is the result of numerous public hearings, private meetings with the groups or task forces, as we have come to call them, representing industry, a coalition of environmental groups, municipalities, and the chemical industry people themselves. We have had consultations with disposal firms, and various other expertise relating to hazardous wastes and the disposal and maintenance thereof.

So far we are pleasantly surprised at the progress and I think that is only because of the effort that everyone that we have dealt with has put into this. It is really your bill.

I would like to call on John Caufield who has been very instrumental in many of the changes that have taken place in the new language.

J O H N P. C A U F I E L D: Thank you, Pat. Since I came to Trenton, I have been pleasantly surprised by at least this Committee. I have seen the kind of input we have had from all people involved, the generators, the haulers, the disposal people and the municipalities and counties, and probably most importantly, the environmental people. It has been a real good experience for me listening to all these people. I have come to learn a lot more about legislation and the environment and the entire problem. We all know that we generate much more waste than we can possibly dispose of legally at the moment in the State of New Jersey. And, like all of you, I have great concern with the amount of hazardous materials that are generated, transported, and processed eventually, hopefully processed.

I have said this before, and I will say it again, you know, siting is one of the most important things we are concerned with, but let us never make a mistake that we don't already have siting. We have a siting right now determined, unfortunately, by unscrupulous people, illegal dumpers, haulers. These materials are being dumped all over the place with no plan. It would be much better obviously if there were a siting program done in an intelligent manner. That is what this bill addresses, amongst many other things.

It is in all of our interests to see that we decrease the amount of hazardous wastes, if possible, and if not, at least, that is, dispose of it properly. I think that needs not only strict enforcement. We know that it also needs some incentives. Some of those things we have been dealing with right along, I have been educated on this by this time, and I will continue to get that education, I am sure, before this finally is put up on the floor for a vote. Again, I felt that Pat serving as Chairman of this Committee has done an outstanding job. If he does this with all the bills he has, I don't know where he gets all the time. But, Pat has done an outstanding job on this, and I am very happy to work with him on this Committee.

SENATOR DODD: I once had an income tax bill, John.

SENATOR CAUFIELD: I heard about it.

SENATOR DODD: It is a toss-up between that and this one. If I can paraphrase a statement from the very beginning of our deliberations on this matter by Diane Graves of the Sierra Club which kind of summed up our mission, and it

was that we could do several things in regard to hazardous waste; we can close down all industry that produces hazardous waste. We can ship all of our hazardous wastes out of state. We can have the public stop using articles that are the end results causing hazardous waste. We can leave things the way they are with the midnight dumpers all over the state, or we can come up with a sensible alternative, which is what our efforts to date have been.

Dick and Kathy Giamello also have been very instrumental in helping on the environmental side, and in the deliberations. Now, if anyone would care to testify during the morning or the afternoon session, please come up and sign with Michael Catania our Committee staff who has done an outstanding job as well on setting up the meetings and working with the nuts and bolts. We will be having another hearing in Newark at which time the Committee will be touring a facility, Earthline in the City of Newark that apparently is doing the job that we would like to see repeated. We will be having at least one other public hearing on the actual language of the bill. That is what we are looking for with these two hearings now. This week, and the following hearing, we will be looking to actually draft the language for the new measure. Now, the outlines we have are, in essence, compromises: the detail work we have hammered out also.

So, with that, our first witness will be George Tyler, Assistant Commissioner of the Environmental Management.

G E O R G E T Y L E R: Thank you, Senator. Good morning. I am pleased to be here representing Commissioner English and the Department of Environmental Protection. I would like to express the Department's sincere appreciation to the Committee, not only for this opportunity to be heard, but for their diligence and hard work they have devoted to the review of S-1300 and the excellent manner in which this critical proposal has been handled.

Senator Dodd, and indeed all the members of this Committee and your staff, is to be commended for the openness of the legislative process followed thus far. Not only has the public debate on S-1300 been extensive; it has also been responsive to the public concerns that in many ways is unprecedented.

Senator Dodd, you and the members of this Committee deserve our heartfelt thanks.

Governor Byrne's Hazardous Waste Advisory Commission in their January, 1980 report to the Governor recommended the establishment of a management corporation to be responsible for the planning, preparing and managing of a hazardous waste program for New Jersey. S-1300 is the embodiment of that recommendation. This legislation is the centerpiece of an overall and comprehensive program to manage hazardous waste in New Jersey. I would like to briefly mention some of the other critical elements of this program.

First, a Federal/State Hazardous Waste Strike Force has been established and is the first of its kind in the country. The Strike Force combines the efforts of the New Jersey Attorney General's Office, the Department of Environmental Protection, the Federal Environmental Protection Agency, and the United States Attorney's Office in Newark. It began operations in September of last year, and it has been gathering evidence and prosecuting those persons involved in illegal dumping. Numerous indictments and several convictions of individuals and corporations have already been announced. More will be forthcoming. Moreover, we will meet with representatives of other northeastern states that desire to develop similar methods of combating the illegal

dumping program. Once again New Jersey will be a model for the other states.

Secondly, earlier this year the Department of Environmental Protection initiated a study in conjunction with the Delaware River Basin Commission. That study has examined the institutional options necessary for the proper management of hazardous waste. The work of our consultants on this analysis is in fact the portion of the background to S-1300, and the technical criteria being developed by this study will, of course, be utilized by the Hazardous Waste Management Commission, S-1300 proposes to create.

Last month, the Department of Environmental Protection proposed new regulations to control hazardous waste as it is generated, transported, treated and disposed of in this State. These rules which somehow characterize us as the toughest in the nation are now undergoing public review, and will eventually permit New Jersey to assume responsibility for the Federal Hazardous Waste Program in accordance with the resource conservation and recovery act.

On the legislative front, Governor Byrne has approved various legislative initiatives that tighten our control on the illegal disposal of hazardous waste. The Solid Waste Management Act has been amended increasing penalties for illegal disposal from \$3,000 per day to \$25,000 per day. That law also established new criminal penalties for violation of the act, \$25,000 for first offenses, \$50,000 for subsequent offenses; jail terms for violators have also been included.

Amendments to the New Jersey Spill Compensation and Control Act proposed and signed by the Governor imposed a new tax on chemical companies. This tax is expected to generate \$7 million per year - \$3 million of which will be spent on the clean-up of abandoned dump sites. The remaining \$4 million will be available for chemical spill clean-up. Additionally, a new bill has been introduced further amending the act to raise the amount we are authorized to spend. This new bill will also provide added revenues generated by a tax on the disposal of hazardous waste.

Finally, New Jersey has had, since May of 1978, a manifest system which tracks waste from its point of origin to its point of ultimate disposal. We are one of only a handful of states in the east to presently have such a system. The Department, at the Governor's request, has initiated a series of meetings with neighboring states in the effort to develop a regional manifest system. Happily I can report to you that we are moving very quickly in this regard and have made substantial progress quite recently. I expect an announcement later this week with respect to a regional manifest for ten northeastern states. However, there is a step in the hazardous waste management scheme yet to be taken. Regulation is not enough. New hazardous waste facilities capable of safe treatment and disposal must be cited. S-1300 through the creation of a Hazardous Waste Management Commission will make this possible. The nine-member Commission will have equal representation for the business community, elected officials, environmental community and the general public.

The Hazardous Waste Management Commission's primary charge will be to develop the Hazardous Waste Facilities Plan which clearly defines the number and types of facilities needed to deal with New Jersey's hazardous waste streams. We applaud the division of powers provided for in the revised proposal for S-1300 leaving the regulation of industry and indeed the proposed commission with our department.

We also fully support the concept of a Hazardous Waste Management Commission to first apply siting criteria that has been adopted in regulatory form by the Department of Environmental Protection - obtain sites in accordance with the Department's criteria, award grants to affect the communities to conduct technical reviews, prepare environmental impact statements for proposed facilities at the applicant's expense, act as a receiver, should the operating license of a facility be revoked.

S-1300 also makes broad provision to insure active and meaningful public participation. Upon adoption of the bill, a State Hazardous Waste Advisory Council will be formed. This Council will advise both the Commission and the Department of Environmental Protection on all hazardous waste siting issues.

Other provisions will provide for regional and local task forces with appropriate funding at the applicant's expense, inspection and enforcement activities shared by the Department and local officials, a bounty system to reward persons who supply information about illegal dumping, compensation to host communities to offset the impacts of hazardous waste facilities.

The Department is anxiously awaiting the opportunity to review specific language. It is important for us to insure that the specifics of this legislation to the extent it may impact facility licensing be perfectly compatible with the Federal RCRA licensing requirements.

I should also note that at least one of the federal super fund proposals now before the Congress require that before states can be eligible to receive federal monies for abandoned hazardous waste site clean-up, the state has to first exhibit an ability to deal with their own present hazardous waste disposal problems. S-1300 will be a vital factor in this regard for New Jersey.

I have tried to highlight only a few of the important elements of S- 1300 as the Department views them. This legislation will be further refined to reflect the comments today, I am sure, and next week in Newark. It is clear to me that when S-1300 is adopted New Jersey's attempt at the management of hazardous waste will become the model for the entire nation. I would like to thank the Committee again for this opportunity to testify this morning. I am here with Assistant Commissioner Steven Picco, and we will be happy to answer any questions the Committee might have.

SENATOR DODD: Thank you, George. Could you give us any type of update without divulging top secret information on the Task Force now in relation to organized crime with the hazardous waste stream. I see this is very topical and there are 47 federal agencies investigating and tripping over each other.

MR. TYLER: I will just give you the Department's view. At this point, the Attorney General would be the more appropriate person to respond to the question concerning the Federal investigation.

SENATOR DODD: Are they making headway?

MR. TYLER: Yes. We have to remember that during the first year there were some organizational kinds of issues involved in setting up the strike force. We had to hire staff, for example, where there was none. We had to define how we would work on an inter-agency basis, but in general the strike force has been an excellent mechanism for the various agencies concerned with hazardous waste and its improper disposal, to work together and to share information, and to prosecute either criminally or civilly in a concerted manner. We have found in our case by case reviews opportunities to share evidence which were undoubtedly there in the past, but were not utilized in the past. In addition, we have been able to coordinate our civil and criminal actions, so we can maximize the environmental protection

that the public deserves, and at the same time not trip over ourselves, so to speak, in a criminal investigation, which can happen when multiple agencies are investigating the same event. It has been highly successful from our viewpoint in that regard. They have a good track record of indictments thus far. We expect more. In fact, there is no doubt that there will be more. There have been a number of convictions. The criminal justice process works slowly, but effectively, I think, and many, if not all, of those will be convicted. I think you will see in the coming months an even more impressive track record than we see to date.

SENATOR DODD: What about the super-fund legislation? Do you have any feeling on that?

MR. TYLER: One super-fund proposal has passed the House of Representatives. Several are on the floor of the Senate. I cannot urge the public of this State, and of all states, in fact, to more strongly promote the passage of super-fund. We are in trouble in New Jersey, as I am sure many other states are, with available funding to do clean-ups. We have a mini-fund in New Jersey. We can deal with small problems. We can deal quickly with some large problems, but there is no way we can take on the comprehensive total problem of the past legacy of the banned hazardous waste sites without a federal super-fund. It is very important that those monies remain available to us as quickly as possible, to mitigate the damages of the past, to cut off future damages from occurring. Many of these sites are in a situation where, unless we can act quickly, the dollars that we are going to have to spend to do the total clean-up over the long-term are going to be greatly escalated. So, all I can tell you is that it is before the Senate and it will probably come up very quickly in November, and hopefully it will pass and be signed into law on short order.

SENATOR DODD: Mr. Tyler, it is the Committee's feeling that after the amount of testimony and the type of testimony we received, it is our impression that we are talking about approximately three to five additional sites in the State. Do you have any idea on that?

MR. TYLER: One, I think some of the data base that we are operating on now needs to be refined and improved so that we may have a better handle as the proposed commission begins to do its facility plan on the exact volumes and types of hazardous waste. I would agree, and conceptually it is my perspective that we are not talking about hundreds or even tens of facilities that deal comprehensively with a program. We have a number of facilities now. We need a few things to complement them, and we never know when one of the existing facilities may cease to operate for one reason or another, so that we need some safeguards in that regard.

But, in general, I think the conceptual position that a limited number of facilities is needed is correct.

SENATOR DODD: We have had testimony in the past concerning the problem with our existing manifest system. First of all, the Department lost control of it after it left our State borders, and the sender would not receive, so they couldn't tell as well. They didn't even get a copy. I assume we have corrected that, and perhaps I can direct this to Assistant Commissioner Steve Picco for an update on the manifest system as related to two other states.

S T E V E P I C C O: That question could be answered in two stages, one, closing the loop, so to speak. That refers to getting a copy of the manifest that is on waste that is shipped out of New Jersey. The new hazardous waste laws that are

currently a subject of public hearing in New Jersey on the New Jersey hazardous waste rules do close the loop on the manifest system. As far as the regional manifest system is concerned, staffs from the various states have met over the last few weeks. They have made substantial progress towards an agreement, and we are hoping that progress is finalized in short order. We have gotten cooperation from everyone, most especially the New England states, especially since Governor Byrne initiated the process about eight months ago. I expect it will be successful ultimately, and it is just a matter of time.

MR. TYLER: If I can add one point to that, the fact that the generator was not in the past receiving a copy of the manifest has been corrected, even before our new laws go into effect. The forms that are out there now that we are using provide for a generator copy and as of November 19, as a matter of federal law, there would be a requirement that the treatment or disposal facility return that copy to the generator. So, that problem has been rectified.

SENATOR DODD: Senator Caufield.

SENATOR CAUFIELD: The only questions I had concerned the manifest system, and I think they have been answered satisfactorily. I think that is a very important and very necessary tool. When it first started a few years ago, I thought it was part of the answer. Unfortunately, it hasn't been. But, it is nice to know that those things have been corrected.

MR. TYLER: Thank you.

D A V I D M A T T E K: I just appreciate working with the Committee and I think that you have done an even better job than the Committee has done in the past.

SENATOR DODD: Does DEP have any specific language or recommendations for changes, additions, or whatever, or are you essentially satisfied?

MR. TYLER: Just one caveat on being essentially satisfied, we would like to work with the Committee staff on specific language insofar as it impacts the granting of a license, not during the siting phase, but once an actual operator has been identified and comes in and applies for permits from us and applies to the Commission and gets to use the site, we want to make sure that anything we are bound to do by New Jersey law is totally compatible with the Federal RCRA Program, since we are seeking to be authorized as the Federal Government's representative in New Jersey, and we will have specific suggestions for you with regard to the licensing section.

MR. PICCO: Let me just add to that. To the extent that the outline that the Committee has issued delineates the conceptual framework of the bill, we have no problems with the framework of the bill. We will be talking to the Committee on exact consistency and things of that nature, but we have no conceptual problems with the Committee outline. We would be in the position to support the bill.

SENATOR DODD: But, again, at the suggestion of Diane Graves of the Sierra Club, we will have one final public hearing on the exact language, so that nothing slips through the cracks. We would ask that you do get the language in as soon as possible.

We would like to acknowledge the presence of Senator Parker. He has joined us. Thank you very much

SENATOR PARKER: I am sorry that I am late. The thing that bothers me most is in the very first paragraph. Where is there going to be any safeguard for the public? I am not convinced after the hearings we had before that we should

have had a Commission. We should have no autonomous authority. It should be in the DEP and the legislature should have the say, and we should not delegate the authority to anyone. Put the burden where it should be. I know DEP gets a lot of hell. We get all the good things down in the pinelands.

But, seriously, I think it has to be there. I think the Governor has to have control, and I think the Legislature has to be in a position to at least be in the same category of having some control over it. Once we give it to the New Jersey Turnpike Authority, or whatever have you, it is gone. We have lost it.

MR. PICCO: Okay, as you might expect, we have a basic philosophical difference of opinion. Our philosophy on this is that the local zoning process so far has not worked, for one reason or another. I will step forward. The siting process is a dual process. It is a development in the classic development sense, industrial development problem, and it is also a regulatory problem to make sure that the things that are developed are safe and they are operated soundly.

The Department doesn't want to wear two hats. They either want to be the regulator or the developer. We can't do both. I think that would pose an inherent conflict of interest which would go a long way to knock out the public confidence in what we are doing. So, what this bill does is set up a Commission to have total development powers as far as the hazardous waste facility is concerned, the siting of it and the inducement to industry to build it.

The Department would have total regulatory authority developing the criteria, making sure that the criteria are applied correctly by the Commission and the applicant. The Commission will come before the Department as any other applicant. And, in that regard, the Department will retain total regulatory jurisdiction. I don't see that there would be any overlap.

In terms of local interests, I think the procedure that the bill sets up or at least this outline sets up, that allows the State to pay the local municipality to hire the experts to contest the validity of the siting decision will probably put the local municipality in a stronger position in a court suit than there would be now, because most municipalities just don't have the money to put together the kind of legal and scientific expertise it would need to successfully oppose a hazardous waste siting decision. This bill gives them that resource so that if in fact the siting decision was a poor one, the municipalities will have adequate scientific and legal funds to contest that siting decision. Under the bill it would not only be the municipality contesting the siting decision, but the Department would also have the authority to contest that decision also.

SENATOR PARKER: Why can't you go through all the other procedures and then give the final siting assuming you would have to have it. I assume this includes underground, right?

MR. PICCO: Only in very exceptional circumstances. There is an exception procedure towards the end of it that---

SENATOR PARKER: What is wrong with the Advisory Council going through and making a recommendation and then the Legislature making a final determination. We have done it in many other areas. I don't know why we can't do it here. Use the Advisory Council and follow through the Advisory Council, but put the final burden on the legislature.

MR. PICCO: Well, all I can speak of historically.

SENATOR PARKER: The Departments really regulate and enforce anyway in everything, whether you have a commission assigned to you or not. It is still

your problem and your duty to prepare both the plans and also to enforce them.

MR. PICCO: Your question to me is, who is going to do industrial development, the Industrial Development Commission or the Legislature? And in those areas where the Legislature has--- Well, that is a development issue, who gets it, how is it selected. Those are all industrial development questions as long as they apply criteria that is set up by the Department. You and I don't disagree that those criteria should be established by the Department, I guess.

SENATOR PARKER: In this instance, I am not sure they should be, because the situation is so sensitive and there are so many people involved, that I think that maybe we should not leave it to that agency. And, I think that we should take the bull by the horn like many other states have done. I don't know whether we have in this State, where the final determination, such as the uranium mining, should be left to --- Like, the jail, the new penitentiary for the State of New Jersey that is going to be put in Camden, the Legislature did that, and I think that is the final determination when everything is in, because no matter where you go, no one is going to want it, so that decision will have to be made by someone.

MR. PICCO: Well, we have been down this road before together and all my arguments about administrative expertise and the rest I will just consider entered into the record, but the only parallel that I can see is the direct parallels, what happened with riparian lands and the Legislature. The Legislature kept unto itself the power to transfer riparian lands for a long time, over 100 years. It just got to be a cumbersome legislative process that the Legislature itself put up its hands and sent it back to the Department. I honestly believe that is what is going to happen with the hazardous waste siting facility. I don't know whether you have the time, being a part-time legislature, and, number two, I don't know whether you have the inclination to go through the tortuous public participation site selection process that this kind of bill would entail, whether it is done administratively or by the Legislature.

SENATOR PARKER: Well, we have done it in many other areas. On the bond issues we have an oversight committee, and the Legislature has the final say and the State House Capital Planning Commission has the same determination.

MR. PICCO: We will agree to disagree, Senator.

SENATOR DODD: Anything further?

MR. MATTEK: Also, I am wondering whether the DEP would be involved in this whole process the whole way through, or an autonomous agency would be necessary or helpful in any way. Generally, our Department has a tendency to be opposed to the use of autonomous agencies. We would rather place the power normally in the Commissioner's hands and not in the Commission's or the Council. But, we will make exception to this possibly a number of times when there is a good policy or political reason to do so. I think the Assistant Commissioner Picco gave the policy or reason why it is not thought to be a good idea in this case. That is, the Commissioner is going to have a "development" kind of perspective to try to make sure that there are enough hazardous waste facilities in this State to take care of all our hazardous waste, whereas he is going to have an environmental protection role, is going to be involved in the licensing and regulatory activities to make sure that the public interest is protected, and we don't have any environmentally unacceptable facilities.

The critical or perceptive side of the problem would be that the Governor's Commission had worked for a long time, and the Delaware River Basin Commission had worked for a long time and this Committee had worked for a long time, and the interest groups making recommendations to all those groups favor the development of some kind of other group other than the Department to be actively involved in at least the development side of this equation, so these arguments are convincing to us.

SENATOR DODD: The main point is that the actual siting, which is the most critical and most difficult terms of the entire bill, would take the emotionalism and the political influence that we would all come under and cloud a sensible judgement as to where and how a site would be selected, and when it comes into the Legislature - and, Barry, you and I know better than most people down here the pressures. Say, you and I had an option as to where we were going to build a new highway, in Burlington or Essex. I am going to say Burlington and you are going to say Essex. And, then, it depends upon who can mount the most forces and it becomes a lobbying effort amongst our own group and it takes away from the sensibleness of how and where we select these sites.

I think we need to be free of influence, including the Department, and we go way out of our way not even to include the Department representatives on the advisory board. They have their function, certainly, and establishing siting criteria in itself is a major function.

Is there anything else? If not, we would like to thank you again.

MR. TYLER: Thank you, Senator.

SENATOR DODD: I would like to call on Howard Goldberg, Acting Executive Director of the Hackensack Meadowlands Development Commission.

MEMBER OF AUDIENCE: Mr. Goldberg has not arrived yet.

SENATOR DODD: Okay, the Committee would like to call on Miss Diane Graves representing the Sierra Club amongst many other groups and organizations and thoughts.

D I A N E G R A V E S: Thank you, Senator, for the opportunity to comment on the Outline of Proposed Senate Committee Substitute to S-1300. My name is Diane Graves, and I am Conservation Chairman for the Sierra Club's New Jersey Chapter.

We wish to commend Senator Dodd and the Senate Committee for your attention and time on this issue, and especially Senator Dodd for your initiative in setting up the open and informal process for developing this Committee substitute. The result will be a significantly different S-1300, especially in the basic understanding of and sensitivity to the concerns and needs of the public in siting new hazardous waste facilities.

We generally support the provisions as outlined, however, a number of important provisions for involving the public are not included, and though we understand they will be included in the final bill, it should be understood that our support for the final legislation is dependent upon the public participation details being specified. I am going to go through this section by section.

Sections I and II - Commission and Council, S-1300 should state that the Commission cannot take any action or make any decisions until the Advisory Council is established and functioning. This is important because in the case of the DOT, the Legislature called for an advisory group, which was never established, yet the DOT proceeded to make decisions without the advisory group. The Advisory Council is a key safeguard which should actually be appointed simultaneously with the Commission. To guard against the effectiveness of the Advisory Council being negated by resignation

and/or expired terms, the Commission should not be permitted to make decisions without at least nine of the Council's positions filled.

Temporary Commission Members - a provision for adding four temporary members from the host county and municipality needs to be included. This would give local officials the opportunity to help assure that the Commission considers the information, views, and concerns of the municipality and county.

SENATOR PARKER: Is that on the Commission, Diane?

MS. GRAVES: It was an understanding that this would be included, but it is not in this outline.

SENATOR PARKER: You are talking about Section I.

MS. GRAVES: Yes, the Commission and the Council. This would be for the Commission, the four temporary members on the Commission. There needs to be some provision to include representatives from more than one municipality or county in those cases where a facility is proposed on or adjacent to political boundaries, but in no case should there be more than four.

Section III - siting criteria, 3b should be amplified to assure that it covers aquifers used for supplying drinking water.

Section IV - hazardous waste facilities plan, it should be---

SENATOR PARKER: Excuse me, you are talking about the distance away, 500 yards is enough.

MS. GRAVES: 3b. I think it probably does cover aquifers, but it is not specified and I think it needs to be specified.

Section IV - hazardous waste facilities plan, it should be specified that the Commission consult with the DEP during the development of the plan. Also, there needs to be a provision for extending the planning time beyond one year.

Subpoena power - as the Governor's Hazardous Waste Advisory Commission recommended, the Commission should have subpoena power to gather the necessary information.

Public education - also, as recommended by the Governor's Commission, beginning immediately upon its formation, the Hazardous Waste Management Commission should develop a hazardous waste education program based upon available information, and to be updated as more information becomes available. The purpose of the program would be to inform the public on the nature of the problem, including economic, environmental and health implications, the possible solutions, the governmental programs for solving the problem, and the public's opportunities for involvement in the decision-making. It should be a program that focuses on facts and totally avoids promotion, with the exception that it should encourage and assist citizens to take advantage of opportunities to affect decisions.

Section V - designation of sites, 3b - at this point there is no applicant---

SENATOR PARKER: Excuse me, Diane, you already have sites where toxic waste is being disposed of.

MS. GRAVES: This bill doesn't address those. I am not sure I follow your question.

SENATOR PARKER: Well, we are talking about sites and going into new sites and so forth, and my question is, you indicated that there are no applicants, and my question back to you was, there are areas where they are now disposing of toxic waste under DEP permits.

MS. GRAVES: Yes.

SENATOR PARKER: My question is, why should they not be included or brought in on any part of the plan? Because we are not going to have below ground

burial. Why not then have these sites that are already in existence be the ones where we start to dispose of or try to build up additional machinery and expertise to treat them there as best we can, or better than we can, without going into new sites.

MS. GRAVES: The bill as it is outlined in its purpose is to do a number of things. One, it is to identify candidate sites prior to any application coming in, so you would identify those under ten, number of sites. Then an applicant would come in.

The point that Section V is discussing is simply on identifying and designating those sites. So, actually there is no applicant. Nobody has made an application because the sites have just been designated. The application comes in later. So, it is really an editorial comment of no real significance at this point.

SENATOR PARKER: Let me go a little bit further. Where we are already treating above ground and we have the facilities there, shouldn't we grandfather them in in some way or make sure they are maintained or upgraded? I guess they are already being upgraded according to DEP regulations. Shouldn't we utilize those sites before we start going for new ones, and shouldn't be put something in there to guarantee that we are going to use these sites? We have enough problems moving them from one place to another. Shouldn't we insist that the ones they are now using we continue using?

MS. GRAVES: I don't think that is necessary to this bill. As you said, the DEP has new rules and regulations which will deal with existing facilities and also with new facilities as far as regulations. But, the purpose of this bill is to site new facilities and so that is really what we are talking about here.

MR. CATANIA: Senator, maybe I can clarify that for you. The Committee discussions with the Task Force so far have centered on the fact that the hazardous waste facilities plan will automatically include existing facilities unless they fail to meet new RCRA regulations or new DEP regulations. If they didn't they would be phased out. If they did meet them, they would automatically be included in the plan.

SENATOR PARKER: Why should we phase any of them out? If we have some already existing, why shouldn't we encourage them by giving them a financial incentive or something else to continue to do it and do it properly? It is going to be difficult enough to locate these things. Forget the below ground, it is going to be difficult enough to locate these things to get people to do them, and we should try to encourage and enforce, whatever you want to call it, the existing sites where they are doing it now, such as Elizabeth and the others.

MS. GRAVES: I think the idea is if existing---

SENATOR PARKER: There are about 16 of them according to the list that the DEP has given us.

MS. GRAVES: The point here is, if there are existing facilities that cannot be upgraded and do not meet the standards, then perhaps those facilities should be phased out. Then we have the new facilities to take the hazardous waste too.

SENATOR PARKER: I understand what you are saying. It means, if Elizabeth is not meeting the criteria, you would cut it down. My simple mind tells me that the best thing to do, if they won't upgrade that site, and bring that facility into compliance, maybe we should give the financial incentives to somebody else and try

to keep it there but try to upgrade it so it doesn't get into somebody else's back yard. You already have an existing site. It is already there. It is already being utilized to some degree. We should build in some incentives or some requirements or something to try to keep it there, and even if they are not maintaining the standards, we ought to give them the incentive and the encouragement to bring it up.

MS. GRAVES: I think the information we have and the Governor's Commission in its deliberations determined that even with the existing facilities there is a need for new facilities to handle the volume of waste that we have. So, I think nobody is going to abandon existing facilities. They will be upgraded. Their capacity is expanded, if that is feasible and so forth. Even then, we need new facilities. And, we need better facilities than those that we have at present. That is the purpose of this bill.

SENATOR PARKER: Assuming we do go into this, and we are one of the states that does put it together and under the federal regulations we comply, are we then going to be in a position of being the only state around to be doing this, then we would be subject to the toxic waste coming in from all the other states for disposal in New Jersey?

SENATOR DODD: Right now we ship out something like 80% of the waste that we generate in this State, and if anything we would be just catching up on what we now--- I think we are the highest in the country, as far as generators of hazardous waste due to the type industries that we do have. We will also be the first state in the country to establish criteria such as we are trying to accomplish. We have had inquiries from other states already on what we are attempting to do. I think we have gotten farther than anyone else's attempts including New York and Pennsylvania which are also high generators.

SENATOR PARKER: However, a point that you raised earlier, Senator Parker, other states are moving with their siting legislation. I think they recognize they have to handle the waste that is generated in their state to the extent that they can, too.

On public education, the purpose of the program would be to inform the public on the nature of the problem---

I am beginning with the designation of sites. At this point there is no applicant. Section 3c, the municipality's report and recommendation should be forwarded to the Commission. 3f, the Commission should also affirm or reject the municipality's report and recommendations if they are not already covered by the recommendations of the Administrative Law Judge.

Section 6 - licensure. This section is confusing because it combines two separate processes, application screening and EIS by the Commission. And, by the way, EIS really should be Environmental Health Impact Statement, so it should be EHIS. But, the screening and the EIS by the Commission and the licensing by the DEP. It also omits a key provision for our local task force. We suggest, therefore, that this section be split into three sections, application with a local task force subsection, EHIS, and DEP licensure.

Application - after the Commission has designated candidate sites an application for a hazardous waste facility should be submitted to the Commission. The Commission should conduct the initial screening and be responsible for the EHIS process. It is important to separate these steps from the DEP's regulatory responsibilities.

Through the Attorney General's Office, the Commission would conduct the investigation of the applicant. If the applicant passes, then the Commission immediately notifies the municipality and holds a public meeting to explain the proposal, the various processes, and also to explain that the municipality will form a local task force to help in the development and review of the EHIS.

Local task force - in an open, widely publicized process, the municipality forms a local task force. The local task force should be composed of a broad spectrum of a public representing environmental, industrial, commercial health, fire, and other community interests. The local task force should be given funds by the Commission provided by the applicant, sufficient to hire an independent consultant to help throughout the entire environmental health impact process.

Environmental and Health Impact Statement - the final bill should contain a separate section on the EHIS. The local task force with its consultant should work with a Commission and Advisory Council to develop the scope of work, a public participation program and criteria for consultant selection. There should be a public hearing on these three items. They should be revised as necessary and then the Commission would hire a consultant and the EHIS development would begin. The EHIS should follow the outline in the DEP's proposed hazardous waste management regulations.

After the EHIS is complete, the Commission submits its findings, the EHIS, Advisory Council and local task force reports and a summary report to the DEP. The summary report should list all agreements, conditions, understandings, limitations, and anything else which were agreed to during the application process thus far. This document must also be sent to the municipality, county, local task force and other appropriate agencies and organizations. The DEP should not act on an application until ten days after the above have received the summary report. That is to make sure that everything was actually in there.

SENATOR DODD: I was going to ask you on timetables for these processes, that which is good, the ten days?

MS. GRAVES: I think ten days is enough for people to review it and make sure all the agreements are in there.

The DEP must then proceed with the licensing process and certify that the sitings, criteria standards, and all rules and regulations have been met and thereafter the applicant may proceed to acquire the land.

Section VII - above ground facilities versus secured landfills, it is important that Senator Dodd's policy that initiated this section be stated in the preamble of final S-1300 and repeated in this section. That policy should express that all hazardous wastes that can be treated should be treated, and all other hazardous wastes should be stored in above ground facilities. This section will then provide a very narrow exception for certain materials that could be put into a below ground facility. Since there evidently is no such thing as a truly secure landfill, we believe the term should either be abandoned or the word "secure" be in quotes.

Section 1A, change "partially" to "predominantly."

Section 2, it should state to whom an applicant must prove "beyond a reasonable doubt."

Section 2A, we fail to see why if it is technologically practical to put hazardous waste below ground, it isn't technologically practical to put it above ground. Therefore, omit "technologically or."

SENATOR PARKER: Before you go on, you are saying, if I understand you, that nothing go below ground.

MS. GRAVES: Essentially, yes.

SENATOR PARKER: And then you want to try to define some criteria, just exactly what that is that should go underground.

MS. GRAVES: I suppose the bill should say that the DEP should develop rules and regulations for above ground facilities and should also come up with criteria perhaps for what could go underground.

SENATOR DODD: What I am envisioning are lesser degrees of toxicity, residues, that type thing that would not leach into whatever, that would not or eventually could be retrieved if practical.

MS. GRAVES: Yes, that is the idea. It is that the burden of proof would be on the applicant to prove that it would not do damage.

SENATOR PARKER: You are talking about the brick substance that comes out after you burn everything.

SENATOR DODD: What we are discussing proves the point as to why we do need that safety valve because we are not technicians, and this would be addressed by---

SENATOR PARKER: What I want to get at is, what is there, what element, or what is there that would have to be stored underground?

MS. GRAVES: I think the idea is that there may be some things that are too expensive, great volumes of somewhat contaminated soil, for instance, to put it in above ground facilities would take an enormous amount of space. It takes an enormous amount of space below ground, too, but it is felt that there perhaps needs to be a provision that would allow for that kind of thing. There are also new processes coming up that would stabilize material in cement type blocks or something. If it can be proven that they don't leach or bust apart, or whatever, could perhaps be stored below ground.

SENATOR PARKER: Things that are in their natural state are toxic in and of themselves---

SENATOR DODD: Or they have been treated or recycled, detoxified. We don't know.

MS. GRAVES: There are residual ashes from the incineration process. There may be only one thing to do with it, and that is to put it into the ground. It is because there are some questions about this that it would need to be some kind of process that would not elaborate on it and come up with very specific rules and regulations on it. I don't think the legislation should be precise on what can and cannot---

SENATOR DODD: That is the point.

SENATOR PARKER: You are firm, though, in your position that there should be no underground burial.

MS. GRAVES: Of hazardous waste, correct.

SENATOR PARKER: Unless it meets the very, very strict requirements. Like you are saying, I can see the slag on some of those items, but are they then toxic? I don't know. Is that toxic in and of itself?

MS. GRAVES: It would depend on the slag, and it would depend upon whether it comes in contact with water; then it may leach. It depends upon a lot of things. This is where the burden of proof would be on the applicant, what it is

he wants to put into the ground, and how safe it would be. And, then, the decision would be---

SENATOR PARKER: I don't know whether you agree or disagree with the Legislature being the final ultimate authority, where it should be, assuming we don't have that.

MS. GRAVES: You mean the Commission?

SENATOR PARKER: Yes. Would you recommend an oversight committee that would have to review, a legislative oversight committee like we do with the bond issues and some other things.

MS. GRAVES: You mean to review a decision by the DEP whether certain things should go into the ground?

SENATOR PARKER: Right. Suppose the decision was made to go underground, and it is the slag and the ash and we are going to put it into a landfill. Do you have any objection to a legislative oversight on that decision before it goes in?

MS. GRAVES: I would want to see the words. Generally we have some problems with some proposals for legislative oversight. It depends upon the provisions. I would think that it should be required that when the DEP is considering such a thing that there would be a public hearing and that whole process on it.

SENATOR PARKER: Public hearings with DEP and the DVRBC that escape everyone, I am told, in East Windsor.

SENATOR DODD: These are highly technical decisions that have to be made that we certainly don't have any expertise in, nor would we in an oversight committee.

SENATOR PARKER: That is not really so. We are the ones who are going to ultimately be responsible and the Governor is going to be ultimately responsible, and you are making a decision that is going to affect people's lives as Love Canal and everything else. I think we have to take a little different procedure on this than we do the normal administrative procedure.

MS. GRAVES: I would think it would be entirely appropriate for the Legislature to make sure that the DEP does in fact conduct public hearings, give adequate notice, and do the whole process correctly and adequately for the public's needs on this. That would certainly be in your province.

SENATOR DODD: But, realistically for a working document we can only spell out what the intent of this Committee is and the intent of the public that we are seeking their advice on. I think the type testimony that we are looking for, the exactness, will come from the industry types who can spell out what degrees of toxicity can be placed underground and they will argue with DEP and that will be worked out. We as lay people are not expected to do that, but it is a statement that we are trying to make in the bill, saying, "Hey, we don't want everything buried underground. We don't want you to go in with the bulldozers and dig a big hole and dump it in and hope it doesn't get in any trouble over the years. We are looking for safe, above ground storage, bunker-type things for the highly toxic, and again with some cost efficiency. It would be nice if we could put everything in a bunker. It would be better if we could ship everything out of state. We know these are not practical alternatives, and we know it won't work. And, if we make things so far out of reach then we have defeated our initial purpose in this whole process. Then we will go back to the way it is being done right now. So, that is the

criteria that we have. It is not like we have the luxury of saying we want to turn the World Trade Centers in. We will buy it from the Port Authority and make them high-rise storage sites. We can't do that, because there are dollars and cents that will make this bill practical or it will not.

MS. GRAVES: On 2c, in order to assure that 100% of hazardous waste will be extracted if necessary, it should be economically possible to extract. Therefore, after "extracted" insert economically.

Section VIII - inspection/enforcement actions, the design for a local monitoring program should be based on the disclosures in the EHIS and on the DEP's regulatory program. Therefore, following the DEP's licensing process, the Commission, Council and the local task force and its consultants should design the local monitoring program in consultation with the DEP. This is not to duplicate, but to act as a check on DEP's enforcement.

Section XIV - liability/post closure maintenance, there needs to be a separate section for liability/operations. Operators should be held strictly liable. We agree with the testimony on liability to be presented by John Wilmer of the New Jersey Public Interest Research Group.

We are very interested that the section on Definitions in the final S-1300 be clear and complete. We suggest the use of the RCRA definitions where they are applicable.

We are equally interested in the specifics of the language incorporating public participation requirements in details. We will be glad to work with the Senate Committee on this and other language to be incorporated in the legislation.

We recognize that holding a public hearing on S-1300 when it is in final legislative form will take additional time. However, converting this outline to legislative language will be complicated. Therefore, the final S-1300 must have full public review and the public must have at least one opportunity to suggest changes, and S-1300 should be open to additional revision. Thank you.

SENATOR CAUFIELD: Senator Parker, do you have any questions? If not, we thank you.

Did Mr. Goldberg arrive yet?

SENATOR PARKER: Yes, I do have a question. Diane, excuse me, you didn't say anything about the voucher system in closing the gap there so that we can keep track ---

MS. GRAVES: You mean the manifest system?

SENATOR PARKER: Yes. Do you have any comments on that?

MS. GRAVES: Well, I think DEP's proposed hazardous waste management regulations have a section in there to upgrade the manifest system, and I think it was Steve Picco who said earlier that they have already implemented that to close the loop with the generator, even though the regulations have not been promulgated yet. And, it is our feeling that that manifest system, once it does get into operation, and becomes also a regional manifest system with the neighboring states, that that will help enormously.

SENATOR PARKER: Do you think we should build that requirement directly into the bill.

MS. GRAVES: I don't think it is necessary, because it is covered in the regulations.

SENATOR PARKER: I didn't hear him say that. Thank you.

SENATOR CAUFIELD: Thank you very much. Mr. Goldberg.

H O W A R D G O L D B E R G: Good morning. Thank you for the opportunity to testify today. I am Howard Goldberg, Acting Executive Director of the Hackensack Meadowlands Development Commission. I am here to testify in support of S-1300 which, in establishing the Hazardous Waste Management Commission and Advisory Council, addresses a genuine and pressing need to prevent hazardous wastes from continuing to fowl the environment, the economy and unfortunately the image of New Jersey.

Manufacturing is an essential component of New Jersey's economy. Such an economy requires a capacity to produce fuels, chemicals, medicine, food, plastics, fabrics and thousands of other products so integral to our way of life. Hazardous wastes are an unfortunate by-product.

New Jersey is also known for its magnificent array of natural resources - its streams, rivers, seashores, farms, wetlands, forests; and most significantly for its nationwide leadership in protecting these resources to make them enjoyable for our residents, our workforce and our visitors. During the past ten years the HMDC has participated in a revitalization of the Hackensack River. We have implemented a dramatic solid waste management plan, while at the same time expanding industry and commerce in the entire meadowlands district. Our history has demonstrated that a project as large and difficult as hazardous waste management can, in fact, succeed.

S-1300 is designed to bring strong controls to the complex and often baffling problem of managing those hazardous wastes which, remaining out of control, threaten to poison our most important resources. No environmental problem is today more pressing in this State than hazardous wastes. Our aquifers, lakes and streams, the land and all too often the air are being fouled by the most complex substances known to man. And, our infinite capacity to invent ever more complex substances guarantees that there are hazardous wastes in our future whose characteristics are yet unknown to us.

I would like to make six suggestions for inclusion into this bill which we are supporting today:

1. That consideration be given to the idea that the Commission to be formed assign the power to sell bonds. This could reduce the cost of these facilities. It might in fact be instrumental in attracting private capital to this publicly important enterprise.

2. That the timing of the Hazardous Waste Facilities Plan envisioned in this bill be such that it can incorporate the Siting Criteria to be developed by the DEP.

SENATOR PARKER: What do you mean by that?

MR. GOLDBERG: That we time this to see that when it is implemented, the criteria that have to be developed by DEP are already in place, and that we don't develop those criteria after the fact, but before the fact.

SENATOR PARKER: You mean, after you start disposing of that?

MR. GOLDBERG: That DEP formulate the siting criteria at this time, so that by the time the Legislature passes the bill, if they do, and the Governor signs it, it is in place.

SENATOR PARKER: Incorporate it right in there.

MR. GOLDBERG: Yes. We think that we should move this as quickly as possible.

SENATOR PARKER: We should know what we are doing before we pass the bill.

MR. GOLDBERG: Right. I will go on with my prepared remarks.

3. That all hazardous waste facilities be designed to allow 100% extraction of all these wastes unless it is clearly demonstrated to the commission that this is economically and environmentally unfeasible to accomplish.

SENATOR PARKER: Do you differ from the bill that says no burial except in the most extreme---

MR. GOLDBERG: We are in the very most extreme. We think that it should be above ground. I think we are being more conservative.

4. We strongly recommend that a comprehensive environmental monitoring program be added to the complex of inspection and enforcement tools incorporated into this bill. This would be funded by the operator of the facility but conducted by the Commissioner and staff.

5. We recommend that existing environmental hot-spots, such as the mercury landfill site in Wood Ridge, which is affecting the meadowlands today---

SENATOR PARKER: Is that within your jurisdiction?

MR. GOLDBERG: Wood Ridge is not, however, the mercury has come down stream and it settling in Burry's Creek, which is in the meadowlands. As a matter of fact, it is to the point now where they can almost mine the creek and make it commercially viable.

SENATOR PARKER: Did you cover that in any way? Is it economically or physically---

MR. GOLDBERG: We think it is to the point where it is economically feasible at this point. It is an expensive proposition, though.

SENATOR PARKER: All right, whose jurisdiction is it within, solely DEP?

MR. GOLDBERG: Cleaning up the river?

SENATOR PARKER: No, extracting that mercury. It is just laying there. Nobody is doing anything with it.

MR. GOLDBERG: That is right. It can even be in our jurisdiction if we had the money to do it. It is quite an expensive proposition. You have to almost create a factory on site to mine it.

SENATOR PARKER: Can't we dedicate a horse race to the event?

MR. GOLDBERG: Sure, the mercury race.

SENATOR PARKER: If that was a promise, do you think you would have the authority to do it if you had some money?

MR. GOLDBERG: Yes, I think so, as long as we didn't make a profit from it. I think it is there for private enterprise, though. I think it sometimes could be worked out, so that in fact, somebody could come in and take this mercury and sell it.

(Whereupon there is a discussion off the record.)

SENATOR PARKER: Okay, go ahead. We ought to know the answer. I was just wondering whether it was within your jurisdiction or whether you might be able to move ahead and do something about that.

MR. GOLDBERG: The Meadowlands Commission agrees that if no one else will do it, we will be happy to, if we can afford it.

6. Regarding the strong stress in this bill on attracting the private sector into what would be essentially a new industry in this State, we feel that there should be some administrative streamlining. We suggest that an attempt be made, without reducing the protection which the people of this State need to reduce the number of administrative steps in time between when an applicant proposed to build one of these needed facilities and the day when such a facility actually opens.

The staff of the Hackensack Meadowlands Development Commission, with both professional environmentalists and experienced engineers will be pleased to assist this Committee and the proposed commission at any time. We look forward to being part of the effort to control hazardous wastes in New Jersey.

SENATOR PARKER: Howard, you are a reactionary thinking that we can streamline the regulations and do that. We have never done that before.

SENATOR CAUFIELD: We will make history.

MR. GOLDBERG: I am just concerned that some of the steps take as long as six months on the municipal level and if that can be even cut in half, we can save a good deal of time. We don't want to cut down on the number of steps particularly, but maybe the time involved in each one.

SENATOR PARKER: When you talk about your bonds, you are envisioning revenue bonds in the good faith and credit of your organization.

MR. GOLDBERG: No, no, we are saying in this case that the Hazardous Waste Commission itself would have the power to issue bonds, probably without the full faith in credit. The State doesn't do that normally for the Commissions.

SENATOR CAUFIELD: Is there really a feeling that we could clean up that mercury at no cost?

MR. GOLDBERG: My staff tells me that there is so much mercury that has settled in Burry's Creek, that is some kind of private enterprise came there and built some type of plant, they could almost mine it out of the creek.

SENATOR DODD: The highest concentration in the world; is that an accurate statement?

MR. GOLDBERG: Well, among the highest.

SENATOR DODD: Drive by and you get your temperature taken?

MR. GOLDBERG: If you fall in. (Laughter)

SENATOR PARKER: Seriously, that is a bad problem and something should be done. The Committee ought to know what the status of that is, because as we travel around a lot of people complain about that, and they keep saying it is getting worse. And, unfortunately, once the mercury gets into the stream, you can't get it out, it passes on down the line to every chain of organism, the eco-cycle and everything else.

MR. GOLDBERG: That is right, the whole eco-system is affected.

SENATOR PARKER: We really ought to, if we can, find out why something has not been done.

SENATOR DODD: Do you feel that the outline, as we have it before us today, in conjunction with the testimony from Diane Graves, that the administration of this bill would be streamlined well enough to be administratively manageable.

MR. GOLDBERG: I didn't hear all of Ms. Graves' testimony. So, I can't respond to that. I believe that under any circumstances according to this outline, the bill will work, the Commission will work. We think it is a little bit too cumbersome at this point. There is too much time involved in each of the steps that it is

going to take so long for a facility to be created from the very beginning that it might make it unreasonable for the private sector.

SENATOR DODD: Do you think if we put timetables on some of the various steps?

MR. GOLDBERG: I think what we should do is lower the timetables that are on some of the steps. I think the municipality has two six-month periods to review and comment on these facilities. At the very least I think it is a little bit too long. You are talking about a year just in the municipal level, and the problem is here today.

I think it is well thought out and the steps are important because it is such a difficult problem to deal with, and it is new and innovative and we are breaking new ground on this one. But, I think at the same time I don't want to break new ground that is going to take forever. Speed it up a bit, Senator.

SENATOR DODD: All right, Howard, thank you very much. We will take your comments under advisement.

William Singer, League for Conservation Legislation. Bill has served on our Task Force in drafting this legislation.

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

I am very pleased today to testify to you on S-1300. When this bill was originally introduced, there was some concern that the bill would get quick, incomplete consideration by the Legislature and be signed by Memorial Day. The process followed by Senator Dodd, this Committee, and legislative staff, has proved the skeptics wrong. This Committee has reviewed this bill in a careful and deliberate fashion. The public has been invited to express opinions on numerous occasions already. This public hearing is only one milestone down the long path. Differing viewpoints have been given the opportunity to be heard on many occasions and in different forums. This Committee has set an example for other committees to follow when dealing with complex issues affecting several competing interests.

The proposed committee substitute takes a long stride toward achieving several laudable aims. Duties and responsibilities for siting hazardous waste facilities have been laid out for various segments of government. After some fine tuning, the committee substitute should earn the support of legislators and interested groups because it carefully and thoroughly treats several sensitive areas.

LCL supports the mandate of this legislation to maintain all hazardous waste facilities above ground, physically accessible to inspection and 100% extractable. This policy should be stressed in the preamble and throughout the bill in strong terms. Such emphasis is necessary to ensure that this policy is not undercut when the law is implemented. The terms and conditions for exceptions to this policy, if any, should be carefully drawn.

I think if it is carefully drawn that you would overcome some of Senator Parker's fears that you need legislative oversight on such a decision. I think it is very carefully drawn in the legislation that it has to be above ground and extractable, et cetera, that if the Commission or DEP were to allow someone to do otherwise, it would be clear that it violated the standards, it could be easily

attacked in court. I think that would overcome your fear or feeling of necessity of having legislative oversight over each of these technical decisions.

SENATOR PARKER: How about some kind of vaults. I know they still have radioactive vaults---

SENATOR DODD: This had been brought out by industry people that in many cases this would be a practical alternative without a great deal of additional expense. But, what we talked about before was the high bulk, low toxicity-type things. We do have to leave some type of safety valve for practical reasons.

MR. SINGER: We agree. We would prefer to see everything above ground, but some things sensibly do belong below ground - very few, but some.

SENATOR DODD: As long as we have a safety valve and we are agreed on that.

MR. SINGER: Exactly, and as long as it is carefully drawn, I think it would be easy to measure whether something meets that criteria.

Another sensitive area in S-1300 concerns public acceptance of the process of siting these facilities. It is not hard to understand why public fear of hazardous waste disposal has reached an hysterical pitch. The scheduled formation of the hazardous waste advisory council would be a key element in securing credibility with the public.

In addition to the provisions included in the outline, it should be made clear that the members of the Advisory Council should be appointed before DEP or the Hazardous Waste Management Commission begins its tasks. There will be an immediate loss of faith if the commission or DEP starts their work before the appointment of the Council. Such a situation recently occurred with the New Jersey Transit Corporation. There, N. J. Transit made significant decisions, such as purchasing the property of Transport of New Jersey before the appointment of the Advisory Council required by the enabling legislation. Such tactics rob and Advisory Council of any credibility. Therefore, LCL urges you to amend the outline to include a provision that the Commission and the DEP cannot act until the Advisory Council is established and at least two-thirds of the members are appointed and in office. Such a provision should be permanent thereby preventing the Commission or DEP from acting to site new facilities without at least two-thirds of the advisory council appointed and in office.

On this same point, the persons living where the facility will be sited must accept the facility in their town. It cannot be thrust on them. Public acceptance will be crucial to the success of S-1300.

Provisions must be included in the bill to add local citizens to the Hazardous Waste Commission when specific siting decisions are made. Money should also be provided for the establishment of a local task force which could review the EHIS. No doubt, such a siting process could be attacked as cumbersome or too expensive. The speaker before said it was too cumbersome. Shortcuts will not win public approval, and without general public consent, the proper siting of such facilities will become impossible. As Senator Caufield has said, we already have siting now, it is being done randomly by midnight dumpers. To replace this dangerous practice with a sensible policy and to gain public confidence in the policy will take time and money. This Committee has a golden opportunity to fashion such a process. Seize it.

LCL also believes that the inclusion of some specific site criteria in the legislation will be important. And, that is already included in part in the outline. People must know that there will be certain areas where no facilities

of this nature could be put. Criteria 3b should be amplified to include prohibition of siting on an aquifer. In addition, it should be made clear that a watershed will be exempted only when it could be used for potable water with no treatment other than conventional treatment.

Another significant portion of the bill concerns compensation to the host municipality or region. Without making the incentives too great, the right to compensation should be clearly specified. The outline provides for full property tax and a gross receipts type tax or lump sum payments dedicated to specific purposes. These provisions are good. When those guidelines are converted into bill form, it should be specified that the Hazardous Waste Commission will be the entity to determine how much money will be awarded to the municipality or region and how it will be divided.

LCL also approves of the provision allowing the Commission to purchase or condemn options or development easements for designated sites to prevent incompatible development. It may be very important to maintain an inventory of potential sites in the State. The mechanics of this process are not in the outline. When drafting, the Committee should be careful that the Commission has the power and money, when needed, to acquire these options or easements without undue delay.

All of the liability sections should be written so that strict liability is imposed upon the operators. If someone or some property is damaged by the operation of a facility, that facility should be held strictly liable. Legal gradations of "a reasonable man" or "the state of the art" should not govern. Liability for all occurrences should be strict.

As stated earlier, this Committee is doing an admirable job. Please keep up the fine work and we shall all have a product we can be proud of and which will serve as an example to other states. Thank you very much.

SENATOR DODD: Thank you, Bill, and the work you have done on the bill with the rest of the members of our so-called task force. Barry.

SENATOR PARKER: That strict liability should be for both clean-up and resulting property damage as well as personal injury.

SENATOR DODD: You want to spell out full liability and perpetuity that will carry forth.

MR. SINGER: And that it is strict. If something happens---

SENATOR PARKER: All he has to do is prove it was done and the causal relationship that that person is suffering as a result of it.

MR. SINGER: Absolutely.

SENATOR DODD: Thank you. We are ahead of schedule, which is highly unusual in our democratic process. We will take anyone who is scheduled for the afternoon now. (No response)

This is highly unusual where we don't have people who want to testify. We will break for lunch. We will be back at one o'clock, ladies and gentlemen.

(Whereupon a luncheon recess was taken.)

AFTERNOON SESSION:

SENATOR DODD: Ladies and gentlemen, I think we are going to have an early day, and I am pleasantly surprised. Our staff monitoring the machines has a ticket to the Barry Manilow concert tonight, so we really have an incentive to get finished.

I would like to call on Freeholder Edmund Zukowski, Director of the Sussex County Board.

E D M U N D Z U K O W S K I: Thank you, Senator, for giving me the opportunity to come down and present our views again on hazardous waste. I will read the opening statement that I have prepared and then just review some of the items that we are concerned about and I am sure you are also. I have read the October 17, 1980 proposal outline for the revision of Senate Bill 1300 and wish to thank both the Committee and yourself for giving Sussex County the opportunity to participate in the revision to this significant piece of legislation. As you know, Sussex County is one of the few counties that have participated in the discussions concerning Senate Bill 1300. We believe that our concerns are the same as the other twenty counties in New Jersey. However, given the circumstances involved, Sussex County will endeavor to express to your Committee our concerns from the county and local point of view.

The following comments are keyed to the proposed outline to Senate Bill 1300, dated October 17, 1980:

I Hazardous Waste Management Commission

We agree with how the members of the commission are appointed but would like to clarify what is meant by local officials as part of the membership. We believe that local officials should be further clarified by referring to county and municipal officials. I think from what I read in the Star Ledger yesterday you are clarifying that.

SENATOR DODD: With the knowledge that it would have a regional impact. I think we know what you are leading to and you are right.

MR. ZUKOWSKI: Right. Thank you.

II Hazardous Waste Advisory Council

We are pleased to see how the Advisory Council membership is set up and agree as to the functions of the Advisory Council. We prefer that the Council be given an appropriation to hire a limited staff should they feel that the staff the Commission or the New Jersey DEP is either not sufficient or not available. I think you covered that also, from what I read.

III Siting Criteria

We cannot overemphasize the need to properly delineate the fact that the New Jersey DEP will not designate sites. It is essential that the siting criteria be adopted by DEP in consultation with the Advisory Council. Public participation is a must. Without it, the whole process will not be credible. We agree that legislation that specifies criteria for ineligible sites is preferred.

IV Hazardous Waste Facilities Plan

Adopting a facilities plan with public participation within one year may not be practicable. We strongly suggest that eighteen months may be more appropriate. We recommend that the facilities plan be revised every two years, which is

the requirement for solid waste management plans and "208" water quality management plans.

V Designation of Sites

We agree that the commission in consultation with the Advisory Council would apply the DEP siting criteria and designate sufficient sites to meet the needs specified in the facility plan. We recommend that once a site has been proposed for a designated area, that the affected municipality be awarded a grant in the amount of at least \$10,000 to conduct a site suitability study. We agree for the most part as to the review schedule delineated in the proposed outline.

VI Licensure

We strongly suggest that upon the filing of a license application, the applicant cover the cost of a municipal review up to the maximum of \$5,000. The remainder of the license application procedure appears appropriate at this time.

VII Above Ground or Retrievable Storage

Sussex County expresses its concern with regard to the storage of any treated waste which can no longer be recycled and must be stored. This must not be stored in such a manner that does not allow us to easily monitor and retrieve the material for later treatment. We request that all stored material be placed above ground. Storing such material either entirely in the ground or partially in the ground would eventually elude municipal and county officials from properly monitoring such material and it would be detrimental from a health point of view. We hope that such hazardous waste will not be contained in 55 gallon drums and that such materials are sealed in tanks which can be easily revealed and monitored by the county and local health boards. Also, the need exists to set a maximum amount of material which may be stored in the above ground facilities. It has been mentioned that a total combined storage capacity of 400,000 gallons or more constitutes a major hazardous waste facility. We strongly urge that preference be given to locating such storage facilities above ground and in smaller quantities. The exact maximum number of gallons to be stored above ground should not be more than 150-200,000 gallons. What we don't need is underground facilities which end up looking like Fort Knox. Hazardous waste is much more explosive than gold. Although we may agree that the price of gold has exploded in monetary value, we cannot afford to pay the price of having hazardous waste explode and endanger the health and well being of local residents through the irretrievable effect of pollution on our most important natural resource - water.

VIII Inspection/Enforcement Actions

Inspection and enforcement should be done equally by DEP and local officials. However, many municipalities do not have the resources with which to properly inspect and enforce the regulations of such facilities. Therefore, it is important that the county environmental and health agencies in cooperation with local health boards inspect and enforce such facilities, and they would work with the DEP should any problems arise. We agree that the commission

must sponsor training programs for local officials. Also, the facilities must provide sufficient equipment on site to provide for the proper extinguishing of fires or handling of other emergency situations as they might relate to such a facility.

XII Eminent Domain

We agree that the designated site may be condemned by the commission only if the operator has obtained a license from the DEP and has shown good faith in a specified period of time and that the operator cannot acquire the site. One method that should be reviewed as to its place in condemnation might be the commission's action concerning purchase of an option or development easement for designated sites. No one likes condemnation, and we feel that every effort should be made by the commission to exhaust every avenue before getting involved with condemnations. Nevertheless, condemnation should be used when all else fails in order to promote the health and safety of our citizens.

The county agrees with these areas identified in the proposed outline for the revisions. It should take over the monetary and maintenance of the facilities immediately after closure.

XVII Appropriation

We recommend that up to \$10,000 should be set aside for site suitability grants for affected municipalities. Also, an amount not to exceed \$20,000 should be set aside for the Hazardous Waste Advisory Council for the first two years.

That is my statement, Senator. I will give you copies of this, and hopefully you will look and consider and I am sure you have in the past, and I would again like to say that your Committee has been more than willing to sit and listen to all the statements from all of the groups and I am sure that when you compile your bill it will be a bill that we will be able to live with in the 21 counties of the State of New Jersey. Thank you very much.

SENATOR DODD: Mr. Freeholder, we would like to thank you for the time and effort and the work that you have put into this. I think the most telling thing is to have a public official recognize the need for something that we would all rather not deal with, and that is the right of eminent domain when it is absolutely necessary. And, if we think of the gravity of that statement, it underlines your knowledge of the seriousness of this problem. We wouldn't have a highway in the State built; we wouldn't have power plants of one type or another. We just wouldn't have have facilities. This is probably the most crucial of all. Thank you very much.

Sussex County, now this is more of a problem in Morris, but it touches Sussex as well, the uranium drilling, the testing up there, could you tell us what is going on in your county on that.

MR. ZUKOWSKI: To my knowledge at this point, we have no facilities, or I haven't heard of any uranium mining in our county at all. Of course, it adjoins our county in the Jefferson area in Morris, and Sussex. As a matter of fact, when I left the office this morning, I had a letter from a lady in the Sparta Township area which is abutting Jefferson Township, and she is very concerned about the

uranium mining. I know of no mining in Sussex County at the present time.

SENATOR DODD: Exploratory drilling is what they said, and even that raises some concerns that we are not sure of the consequences on at some of tailings from the actual drilling.

MR. ZUKOWSKI: We haven't heard of it, but it may be there. I have not heard of it, and I have not seen it, but certainly it is something we should look to.

SENATOR DODD: This Committee is looking into that, and that may well be one of our next projects.

MR. ZUKOWSKI: I had a phone call, also, Senator, and this may be off the subject, but a woman called me the other day at the office, and she claimed she was driving on one of our county roads heading towards Passaic, and this big tank truck she had seen, she didn't know what it was, what was in it, what wasn't in it, and she wondered what he was doing up in our county because the address on the side of the truck said Passaic, or Passaic County, whatever. I told her that I didn't know. Maybe someone had been dumping some type of sewage or something. We have a couple of those in the Sparta area, but I am sure from the information and from the press releases that you have submitted to the press that more and more people now are aware and are looking---

This person had no reason to call me, except the fact that she had seen this tank truck, and she was concerned about what they were dumping, so I think with the information as being released through the press, more and more people are being made aware of hazardous waste, or whatever type of waste they are dumping illegally.

SENATOR DODD: We should be able to trace the siting of the truck type situation like that by roughly the time of day and the location, and we should be able to trace back through the manifest system.

MR. ZUKOWSKI: Thank you very much.

SENATOR DODD: Thank you, Ed. I would like to call on Catherine Costa, Freeholder, Burlington County. Ms. Costa, you have done some work with us in conjunction with many other bills in the past, and we appreciate your effort over and above what you are doing with the Freeholder Board. You take an interest in many things.

C A T H E R I N E C O S T A: Thank you, Senator Dodd. Thank you for the opportunity to comment on this outline of proposed Senate Committee substitute to the S-1300 bill. My name is Cathy Costa, and I am a member of the Board of Chosen Freeholders of the County of Burlington.

During the month of September, I hosted an informational meeting for the local elected officials in Burlington County for the purpose of reviewing the provisions of the original draft of S-1300. Comments which I received from those officials were recently compiled and transmitted to your Committee for consideration. I am happy to see that most of our suggested changes to the bill have been incorporated into the outline for the substitute bill. I am concerned, however, that the issue we raised in our comments regarding the sovereignty of county solid waste facility sites has not been addressed in the outline.

Specifically, we requested that lands and facilities which are acquired by a county solid waste management district for the purpose of managing those solid

wastes under its jurisdiction, for example, municipal, commercial and non-chemical industrial solid waste should be exempted from those public lands which the hazardous waste facilities commission may acquire to fulfill its responsibilities in managing hazardous waste. This is a particularly important matter for those solid waste management districts located along the Delaware River - that is Mercer, Burlington, Camden, Gloucester, and Salem Counties. The various clay outcrop formations identified in the New Jersey DEP and DRBC siting study as being suitable or neutral for secured hazardous waste landfills and hazardous waste treatment facilities occur in these county solid waste management districts.

Prior to this NJDEP and DRBC study it was widely recognized that these clay areas are the most suitable from a groundwater protection standpoint for the location of sanitary landfills. In fact, the 208 water quality management plan for the tri-county area of Burlington, Camden and Gloucester, which was developed in 1977-1978 restricted all new landfill sitings to these clay formation outcrops. Accordingly, solid waste management districts have undertaken extensive, detailed sanitary landfill siting studies of their own to find the most suitable location on the clays. In January of 1980, Burlington County completed a rigorous analysis of approximately 120,000 acres of clay outcrop in our county. Eight broad candidate sites were identified for more detailed investigations, a decision to acquire one of these sites for a county solid waste disposal and processing area is expected to be made by our Board of Chosen Freeholders by January of 1981. The criteria utilized to select these sites are quite similar to those in levels one, two and three of the New Jersey Department of Environmental Protection and Delaware River Basin Commission Siting Study.

I understand that the Salem County Solid Waste Management District has just completed a sanitary landfill siting study similar to the one conducted in Burlington County. In addition, Mercer County would be required to complete a similar siting program pursuant to its district solid waste management land approval issued recently by Commissioner English. Since the county solid waste management districts and the proposed hazardous waste facilities commission will be searching for sites in the same areas with similar criteria, it is highly probable that a conflict will surface. County solid waste management districts which are successful in the difficult task of siting needed for sanitary landfills should not have their efforts abrogated by the hazardous waste facilities commission through its acquisition of these same publicly owned lands. Therefore, any lands or facilities acquired by a solid waste management district for its waste management needs should be exempt from any publicly owned lands which can be acquired by the State Hazardous Waste Facilities Commission for its hazardous waste management needs.

In regard to our earlier comments concerning public participation, I believe that our needs would be met if the recommendations of the New Jersey Sierra Club that were made this morning are incorporated into the final bill, and I would like to also state that when the bill is completed and we have read it, we would like to put in further input. Thank you very much.

SENATOR DODD: Cathy, we were not being discourteous or inattentive, we were discussing, hopefully, a solution to your problem. It is certainly not the intent of this effort to do away or infringe on the solid waste disposal sites, because that is a separate problem in itself, and theoretically where you have gone through the trouble of selecting and getting a solid waste site, and all

of a sudden these guys come in and say, "Hey, you did a great job; we want it now." That is not our intent.

What we don't want to exclude would be the possibility of a combined site, and I think on this point, if we could exclude that from the eminent domain feature, therefore, if it could be negotiated with a solid waste site in conjunction with the toxic waste disposal, or whatever, but it could not be out and out condemned. Now, how would that language---

I see a few heads going up and down now.

MS. COSTA: Yes, I think that would be fine.

SENATOR DODD: We would hope that in certain cases this would be a negotiated situation where you have the room; you have this type of machinery, whatever. Of course, with the above ground feature, we are not concerned about that clay belt scare that we had through the Delaware River effort.

MS. COSTA: This has been our plight in trying to find a site. You know, that isn't so readily accepted by the public to begin with.

SENATOR DODD: Right, that is very difficult to come by, but I think if we put in that language it could be compatible, but not through eminent domain. It would have to be negotiated.

MS. COSTA: That would be fine. Thank you so much.

SENATOR DODD: Thank you. Kathryn Gould, Deputy Mayor, East Windsor Township.

KATHRYN GOULD: Thank you. I want to express the Township's thanks to the Committee for taking several steps back from the position represented by the original S-1300 draft. It may seem strange that progress is represented by backward steps, but from the standpoint of local governments in New Jersey, this is certainly the case. Although the outline being discussed today represents an improvement over the original bill, I hope the Committee will make certain other specific adjustments before a draft bill is presented for public hearings.

I appreciate the fact that this meeting today represents an additional opportunity for local government officials to comment on the outline. There are two facets of the bill that concern me as a local official, and two others that concern me generally.

First, East Windsor Township would like to repeat its insistence that there be local approval for any hazardous waste disposal facility that may be proposed within its borders. An opportunity to comment is not enough. Your outline increases the voice of local officials by making them parties to the hearings before a State body. I think it would be far better to follow the recommendations of the New Jersey State League of Municipalities and have any proposed facility reviewed by the local planning board. This would bring the applicant into the community to hear and perhaps resolve local problems and local concerns. By restricting local reaction to a hearing before a State agency, the opportunity for dialogues and the solving of problems will be lost in the midst of an effort by both sides to present their own version of the situation most strongly and to hack away at the strengths of the other side's arguments. The legislation should force each party to talk to the other during planning review and not force them to adopt unalterable positions before a State agency.

Secondly, you should assure that legislation does not limit the ability of local government receiving gross receipts taxes to spend the money the way

its elected officials see fit. The legislation should also specify that any money received by a local government as a result of a gross receipts levy will be in addition to the budget cap. I want to emphasize that this legislation should not be used to limit further the ability of local elected officials. Those of us who are closest to the people who elect us dispend the money available to us for local priorities, not those imposed upon us by the State.

With regard to the general concerns, I see no reason why the proposed commission and the proposed advisory body should have representation from various designated groups. We support the concept of having three robbers, three victims and three innocent bystanders on the advisory board. This will increase its usefulness by assuring that it is comprised of informed individuals. But, there is no reason that this division should be repeated on the commission which should be dispassionate and impartial as the totality of its actions and the interest of its individual members.

Finally, there is a question of the 500 yard limit on the proximity of an installation to residential areas. When you go home this evening, before you enter your house, walk 500 yards down the street. The walk should take you less than a minute. Then look back at your house and ask yourself if you would want a hazardous waste facility that close. We would suggest at least 1000-yard limit. Again, thank you for the opportunity to address you and your efforts to make this legislation more agreeable and more acceptable to the residents of New Jersey. Progress has been made, and we hope you will make the adjustments we have suggested to enhance the ability of the State to deal with this most serious problem of hazardous waste.

SENATOR DODD: Kathryn, the exemption from the cap limit to the fact that we would be in effect mandating additional cost to a municipality, it would make sense to exempt that portion.

MS. GOULD: I am wondering if it shouldn't, instead of exempting it from the cap limit, be part of the addition to the budget. You see, the problem occurs with the spending situation in that if the gross receipts are for instance decreased for some reason the municipality must make up the difference for those, if you have to have mandated expenditures. It has to make those up from local revenues. And, in that instance, it is a considerable burden on the local municipality to try and make up the difference.

SENATOR DODD: Thank you very much. Mr. Frederick Compton, member of the Citizens Party.

F R E D E R I C K C O M P T O N: Thank you, Senator. It is a privilege to be here. I certainly appreciate the work that you folks are doing, because I think it is splendid. I know it is very difficult. I have looked over the regulations and find them to be highly complex. They are going to be difficult to enforce, I know, because I have been through this rigamarole with the Federal Government many times. And, the closest thing I find to it is a wage/hour operation where one particular loophole or whatever you choose to call it is very bad. There is this common thing called consent-decree where the violator went into the court and then they went back in the judge's chambers and made an agreement. The gist of it was, we did it, but if we don't do it again, will you let us off with a warning. That kind of nonsense, I don't know whether you can get around it or

not. I think it is a judicial affair. It is very difficult, but I hope that something will be in to cover that, if possible.

SENATOR DODD: That is commonly called plea bargaining.

MR. COMPTON: Yes. Now, with respect to this outline of proposed Senate Committee substitute, there are several words in here that cause me a little confusion. One is "significant" in section 7, and I understand the judge determines that. I don't know whether that is so or not. It reminds me of the word "substance" which is kicked all over the lot, "substantially" and so forth. And then there is another words in 7.1.a which is "partially." I don't know exactly what that means. Then there is section 7.1.c after the words waste. I think there should be the words "with no impediments" interposed in that section. I simply throw that out for whatever you choose to do with it.

Now, as to why I am here, I will give you my objectives. I am a member of the Citizens Party, and it didn't get organized until April. I didn't even learn about this situation here until August, so I got in on it rather late. I missed the first hearing. I am a little late, but I hope to contribute something. In other words, I didn't come here to throw rocks politically. I know this thing works across all political parties and people who don't see that are rather stupid, and if they are using this to push themselves politically in one party they are hurting themselves and everybody else.

My objectives are to alert as many people as possible to the necessity for them to engage in forcing change, so that pollution becomes as near as possible a thing of the past and so that people get to know who is doing the damage.

Two, to publicize Dupont's forthcoming ocean dumping. Nobody knows about that. It is something new. It came out in the paper here the other day. EPA has given Dupont the right to dump again if there are no complaints within one month, thirty days. So, I don't know whether somebody went down there and donated, or what is happening, but that indicates what can be done.

Third, to try to have New Jersey work with other states. I will explain that below. To draw attention to job conversion, and that refers to close-down of these plants and using the people as Barry Commoner recommends and Semour Mellman recommends and the CETA operation can be used for this to train these people who are thrown out of work when that operation is closed down and solar energy and rehabilitation of the railroads are something where there is a tremendous amount of labor could be put to work to take up the slack when these places are closed. And, I take the position that many of them should be closed, and that this noted environmentalist who recommended to you that it was not feasible, well, I say, "Feasible or not, we are dealing with death and you don't compromise with death."

My wife got a telephone call from New Egypt from a school teacher just yesterday. School children there are now falling down in the playgrounds with epilepsy. This is an unheard of scale that this is going on down there. My wife was a school teacher for thirty-two years, and she only had three cases of epilepsy in her classes. Check into New Egypt and what is happening down there.

Now, I want also to put the pressure on the legislature so that the most effective bill is passed for the short range, and that is because I don't consider this bill as anything that is going to really solve the problems. But, it is a very good start, and something very worthwhile. And, to assist in obtaining the abolition of chemical pollution entirely within three years by crash programs.

I am also here to cooperate with the Sierra Club, the League of Women Voters and others who are cognizant of the pollution problems and who demand change. And here at lunch I just learned that the NOW organization is going to enter the picture. So, this thing is spreading. It is picking up and people are getting concerned and they don't want their kids killed so that people can make profit from chemicals.

Now, that covers my objectives, so from here on this spiel that I am giving here--- I will begin with the challenges which are up to this Legislature. Senator Vandenberg said he doubted if the people had the wit to meet the challenges of the atomic age.

Kemal Attaturk of Turkey took the people of Turkey in hand about 50 years ago by forcing the entire population - except the blind - to learn to read and write. Thus, he met a terrific challenge head-on.

Franklin D. Roosevelt met the challenge of the United States collapse by instituting the National Recovery Act, Social Security, Unemployment, Soil Conservation, Rural Electrification, Minimum Wage Laws, et cetera, so it can be done.

What the New Jersey Legislature has now is a challenge, and that challenge is corporation profits with pollution, disease, agony, medical expenses and death versus the people's health and living standards. It is up to them to meet this challenge or the people of this State are going to think they are not so very good. This has been going on for forty years. This Legislature that is in office now is not responsible for all this. All that horrible stuff you drive through in Bayonne has been accumulating year after year after year, and nobody has done a damn thing about it. That blame is right here in this legislature in these four walls.

Now, in other words, General De Gaul said to his underground soldiers anybody can live; anybody can die. The important things are how you live and what you die for. This legislature is up against that same thing. You are going to have to do something of some consequence or you are going to kill your own children, and people who will kill their own children are a pretty low breed. I don't mean to put that on all members of this Legislature, by any means.

So, you have chosen to become legislators; you sought the job. Now the test is on you whether you are honest, corrupt or cowards. You are going to have to decide whether or not you love your family or profits most. You are going to have to shut down these people. It has been said by a member of the Legislature during recent hearings that none of the big corporate generators of hazardous waste would ever be shut down. This statement in light of some corporate violators was one of the most outrageous statements I ever heard.

Did it mean that a majority of the members of this Legislature have been or can be bought? Or did it mean the Legislature is loaded with cowards? This is no time for cowards. No doubt, it is a time that try men's souls. If Patrick Henry or Thomas Jefferson or Madison, et cetera were here, God knows what they would think if they looked into this place. You have to justify your existence somehow. In other words, what are you on this planet for? I think of the great homeopathic doctor Leon Voniai who said, "There are only two reasons for life on this planet, and one is to develop yourself to the fullest capacity, and the other is to help others. And, by God when you run into people like Duponts, you

don't get people who help others. And, what I mean by that is EPA is now proposing to let Dupont dump in the ocean. They have given thirty days for complaints to come out in the open, or its permanent job. Somebody got to somebody somewhere and donated. It is a terrible situation.

So, now I go to this proposal which I hope will be of some consequence, but it is in the future, because I got in here a little bit too late to get something like this on the platform, so to speak. Somebody said, "You come down here and you beef." Well, what would you do to shut these people down? I say, it is an operation exactly the same as performed by the New Deal operators under President Roosevelt, specifically, you pass the equivalent of the National Recovery Act, and let it be known as the New Jersey Recovery Act, and you do it within a few weeks of this date on a crash program basis. You load it with teeth and mandatory long prison sentences with absolutely no pardon for any reason. The top executives and those who are on the Board of Directors of those corporations who have violated the law who have in any manner been responsible for actions which brought on cancer, other diseases or death among their employees or the public. These people are the prime killers we are after, and it is either them or us. I can imagine an immediate reaction on this idea from some legislators. They will say, "Well, this is illegal, and besides the Governor has pocket-veto power. Well, my response to that is, when we are in a situation where death to our children is involved, action must be taken just as President Roosevelt did. There is no compromise with death. As for the pocket veto, it is on the way out.

Now, the situation here is, there are four states in the nation which are heavily polluted, Alabama, Colorado, New Jersey and Washington and Kentucky is soon to be added. For instance there is African technology being imported now to be set up in Geneva, Kentucky, tremendous acreage there on the Ohio River, and that thing is going to cause acid rain and ruin the Ohio River and all the adjoining territory. So, here I suggest that the legislators appoint a special committee to join with the Governor, arrange a highly publicized meeting for tackling this horrendous problem, and put forth the combined State pressures on the Federal Government for assistance, such as funds to pay displaced employees while they are in training for conversion to energy jobs. I refer specifically to photovoltaic cells, gasohol, cogenerators, wind generators, et cetera. See pages 35 and 45 of Barry Commoner's book, "The Politics of Energy." Some of these displaced employees as well as other unemployed should be immediately assigned to rehabilitation of the nation's railroads. The gist of the matter here is that we do not have to lose working time. They shift to other productive work which is not harmful to them or the population in general. The CETA organization, as I mentioned before, could probably help in this shift work operation.

The Russians are going to use the White Sea tides to develop enough electricity to run 12 cities the size of Dallas. Are we less competent? I don't think so. If we can dispose of the pressures which will be put upon legislators and others - and here I refer to the lobbyists who represent the 34 or 54 big chemical companies in New Jersey - the quaking and shaking of legislators when Al Bozarth telephones has to end. I recognize that big corporations like Monsanto, Standard Oil, Dupont, et cetera are extremely powerful. But, I also recognize that they are our enemies. The Duponts are the richest family in the world, ten billion dollars. That is ten thousand millions. Are we supposed to die and suffer cancer, emphysema, or whatnot so that they and their stockholders profit from our suffering?

A book, "Dupont - Behind the Nylon Curtain" was published and ten thousand copies hit the press and Dupont had the presses shut down. The case is now in court. If you are lucky enough to get a copy, you will find pages 288 to 299, you will learn the Duponts attempted to use retired Marine General Smedley Butler to head up a coup d'etat against President Roosevelt with a 6 million dollar pot. So, that situation boils down to killing people in time of war by the Duponts and now they are killing people in time of peace. And, I say that has to stop. So, that is it, gentlemen. I hope I have not bored you. I hope this legislature does not operate to kill their own children.

SENATOR DODD: Mr. Compton, we thank you. You made a broader statement than dealing with the actual toxic waste bill that we have before us, but we do appreciate your thought into it.

MR. COMPTON: Thank you. This is off the cuff, so to speak. I didn't bother entirely with what I gave you.

SENATOR DODD: I would hate to see it if you came fully prepared. (Laughter) Thank you again, Mr. Compton.

I would like to call on Sandra Ayres from the Department of the Public Advocate.

S A N D R A A Y R E S: Good afternoon, members of the Committee and the public. My name is Sandra Ayres. I am a staff attorney with the Division of Public Interest Advocacy in the Department of the Public Advocate. The Public Advocate's mandate is to protect the public interest, and there can be no doubt that hazardous waste management, the subject of S-1300 has significant public health and environmental implications. It is an especially serious public interest matter in this highly industrialized State. Thus, almost since its inception in 1974, the Department of the Public Advocate has been actively involved in hazardous waste issues. For one, we commented extensively on S-1300 as originally proposed last spring. We now welcome this opportunity to express our views on the revised S-1300 as outlined for the purposes of this hearing.

As a preliminary matter, we are particularly pleased with the recognition of the need for State hazardous waste management planning. We have long advocated state identification of the volumes and types of waste generated, capacity needed, and technology available to properly handle such waste, and appropriate siting criteria. This is necessary to guide decision-making as opposed to responding to parochial proposals on a case-by-case basis.

In addition, we wish to emphasize and commend the salutary process which is being used to develop S-1300. Laudably, this Senate Committee held a number of public meetings on the original bill. Affected interest groups were invited to attend and comment. These groups included members of the chemical industry, treatment, processing and/or disposal industries, environmental and other public interest oriented organizations, as well as local officials. Following the public meetings a revised outline of S-1300 was prepared taking into account public comments. Representatives of the above groups, the Governor's Office, DEP and the Public Advocate were then asked to participate in a workshop to discuss and have input in drafting revisions. This is a commendable process.

As a result of this procedure, consensus was reached on a number of important provisions and necessary revisions, and we for one find the presently proposed outline of S-1300 largely acceptable. The following comments on specific provisions reflect this, although they also indicate some outstanding problems.

Concerning Section One, Hazardous Waste Management Commission, we support the removal of the new Commission from DEP control. This separation of powers avoids conflict of interest problems. These would be inherent if the same agency both promoted and regulated facilities.

We also agree with representative members on the Commission. It has been suggested that this is unnecessary considering the membership of the Advisory Council. A more "objective" commission has been recommended. This is unrealistic. Most persons have their biases. The proposed commission faces this fact. In so doing, equity in representation will be assured.

As to the selection of commission members, the Governor should be obliged to select from qualified candidates submitted by the various interest groups. This would increase confidence in the selection process and Commission decisions.

With regard to Section Two, Hazardous Waste Advisory Council, for the same reasons stated above, members of the Advisory Council should be selected from candidates recommended by the interest group they are to represent.

At this point, we wish to emphasize our support for extensive public participation requirements in S-1300. All recent studies have shown a low level of public confidence in government's ability, or even intent, to adequately manage hazardous waste activities. In light of past experiences, this attitude enjoys some legitimacy. Thus, a legislative guarantee of public input, at all levels of future planning and decision-making, is crucial to public support of both this legislative initiative and its implementation.

With regard to Section Three, Siting Criteria, as noted above, we are pleased with the legislative mandate compelling DEP to adopt siting criteria. However, we question whether S-1300 should go further, and that is, call for a moratorium on final facility approvals pending the adoption of such criteria. We recognize the need for hazardous waste management capacity. Yet, this is an activity with the potential for significantly adverse and long-term, public health and environmental impacts. As S-1300 implicitly recognizes, appropriate siting is critical to protection against such impacts. Thus, it would seem more prudent to await criteria to guide decision-making, which, according to S-1300 must be in place within a year. In short, the stakes are high, the time-frame brief, and the protection afforded well worth the wait.

Section Four, Hazardous Waste Facilities Plan, again we applaud the planning effort required. This is long overdue. However, as with siting criteria, we question whether facility proposals should be approved before a completed plan by which to measure the need for the facility, and alternative technologies.

In addition, we urge that the Commission's Plan explore reduction in volumes of hazardous waste. This would include assessment of the effect of increased management costs as a result of strict enforcement against illegal disposal. It would also include methods to encourage waste reduction. This should be a major emphasis in State planning.

Section Five, Designation of Sites, we fully support the proposal that grants be made available to affected municipalities for independent analysis of proposed sites. We would point out, however, that environmental impacts do not recognize political boundaries. Some mechanism should be devised to assure grants to, and in-put by, all communities affected by each site proposed, not just the host political unit.

Secondly, we advocated and are in complete agreement with the need for plenary proceedings before final site designations. We would add, however, an express provision indicating that intervention is permissible under rules similar to those established by the Court.

In addition, we urge that S-1300 require Commission review and siting decisions on all major facility proposals. These include new facilities proposed at sites not in the plan, and new processes or substantial expansions at existing facilities. This seems more rational where the Commission, not the DEP, will have developed the expertise to determine capacity needs, the most appropriate alternative technologies and sit suitability.

Section Six, Licensure, again we are in accord with express public participation requirements in the DEP licensure process, and plenary proceedings before its final decision to permit a hazardous waste facility. We also agree with statutory requirements concerning the applicant's character.

With regard to the Environmental Impact Statement, we again urge express statutory language indicating that a DEP permit approval would be invalid if the EIS fails to examine all probable impacts of the project and feasible alternatives. A purpose of an EIS is to provide the public with a readily accessible and inclusive record on these matters. To do so it must be complete and accurate.

Section Seven, Above Ground Facilities versus Secure Landfills, this section is particularly commendable. Landfill containment of hazardous waste is not a proven technology. To the contrary, leachate from landfill disposal still represents a potential for significant, long-term and too often irreversible harm to the public health and environment. Thus, landfilling of hazardous waste cannot be viewed as an advisable or final disposal technique. We, therefore, support the criteria described in this section, and the heavy burden of proof placed upon any applicant proposing a landfill.

Section Eight, Inspection/Enforcement Actions, we agree that local officials should be trained to recognize problems in hazardous waste facility construction and operation.

It is not clear, however, whether local officials will have enforcement authority similar to the DEP. If not and DEP must be relied upon to follow-up on local complaints, we would urge the following: (1) a specific time period for response; and (2) written notification to the complainant indicating the DEP's conclusion, basis therefore and any action taken or intended.

Section Nine, License Revocation/Receivership, this provision for state take-over upon revocation of a license is a much needed improvement in the law. Too often in the past, the untenable choices have been continuation of poorly operated facilities or elimination of necessary capacity. Receivership offers a viable alternative.

Section Ten, Construction/Operation of Facilities by Commission, we are pleased that S-1300 will not at this time provide for Commission authority to construct and operate facilities. We agree that this should not be at the Commission's discretion. The need should first be established, and the Legislature should make the final decision.

Section Eleven, Compensation to Host Municipality or Region, we support compensation to affected municipalities for the real and direct impacts of hosting a hazardous waste facility. As to implementation, we suggest a procedure whereby the commission determines the eligibility of local expenditures. This is

analogous to Casino Control Commission authority to rule on a casino's use of its reinvestment monies.

Section Twelve, Eminent Domain, we do not oppose Commission condemnation power under the conditions proposed. In the final analysis we must agree that statewide interests in siting necessary hazardous waste capacity must take precedence over local desire not to have a facility in their community or a recalcitrant owner's profit motive. Condemnation, as we view it, is to insure the culmination of a well-reasoned decision on siting, based upon well-founded siting criteria.

Section Fourteen, Liability/Post Closure Maintenance, financial requirements to insure proper closure and post-closure maintenance are also necessary improvements in existing law. However, it should be noted that present statutory liability, under the Spill Compensation Act, does not appear to cover personal injury claims. Therefore, we urge serious consideration of provisions in S-1300 requiring insurance for such claims resulting from sudden and non-sudden occurrences, at least during the operating life of a facility.

Section Sixteen, Rate Regulation, at this time, we neither oppose nor endorse exemption from rate regulation by the BPU. However, we wish to emphasize the need to re-evaluate exemption after more experience with the price setting practices of hazardous waste management facilities. These will effectively be monopolies. And, they should be. We would not want duplicative capacity with competitive cost cutting. Freedom thereby to set their own rates may lead to price gouging. And, there is no guarantee that industry, particularly marginal operators, will defend through proper channels. Rather, an incentive for illegal disposal may be created. For these reasons, we support the provision calling for a commission report to the Legislature regarding any need to regulate rates.

Finally, in closing, we look forward to working again in the workshop forum to consider comments submitted in these hearings. And, we thank you for your consideration of our observations.

SENATOR PARKER: You mean they will be able to get insurance for this facility.

MS. AYRES: As I understand it, during the operating life of the facility, insurance is not a problem. It is more the post closure period.

SENATOR PARKER: Is it in the statute of limitations, if something should arise in the future?

MS. AYRES: I have not investigated exactly why that is, but I understand even EPA and DEP in their proposal---

SENATOR PARKER: Suppose they can't get insurance, shouldn't that be a part of the provision of the Spill Compensation Fund whereby there should be enough put into that fund to cover any claims for personal injury or property damage arising, say, twenty-five or thirty years later?

MS. AYRES: Yes, I would say so. Personal injury is something that the law does not cover now. I understand at the Federal level---

SENATOR PARKER: I thought this included it. I thought you said strict liability included personal and property.

MR. CATANIA: Yes.

SENATOR PARKER: Yes, we are going to put that in there.

MS. AYRES: Oh, okay. I didn't understand that.

SENATOR PARKER: I was just concerned with the cost item and the

availability of insurance for something like that. Where will we go? We may have to go with some kind of self-insurance, or crank enough into the Spill Compensation or whatever funding mechanism we have to provide enough to cover the loss of life or claims that may arise twenty or thirty years from now.

MS. AYRES: At the post closure period, I understand that no government agency is suggesting that insurance is available.

SENATOR DODD: We have some options with escrow, and the like.

SENATOR PARKER: Well, they have said if it is an escrow account, again, it may be prohibitive.

SENATOR DODD: Something like self-insurance.

SENATOR PARKER: Yes, something like a percentage, 1% or 2% like we do in Worker's Comp. for a second injury fund to spread it out a little more.

SENATOR DODD: We would like to thank you for the time and effort that you put in with our task force and working at our workshops.

Catherine Montague, New Jersey Toxics.

KATHERINE MONTAGUE: Thank you for holding these hearings on the outline of Senate Bill 1300 prior to writing up the final piece of legislation. My name is Katherine Montague and I am from New Jersey Toxics.

It seems as if all the old techniques have been tried to solve the problem of hazardous waste management. Finally, we have realized that for a problem of this magnitude new techniques and creative thinking is required. I want to commend Senator Dodd, this Committee and the staff for daring to truly open up the process to the people, to generators, waste managers, municipal and county officials, and the public in general. I hope that the spirit of cooperation and unity of purpose continues as this bill is redrafted and refined and, even more important, as it is put into effect.

Having an open process means taking more time, but perhaps this has been our problem in the past. We have always been in a hurry and have not been willing to take the time to do it right. I think that the wealth of suggestions that have come out of the public hearings, public meetings and individual sessions with interest groups points to the effectiveness of this technique. I would like to stress the importance of another hearing once the bill is drafted and I'm glad to hear that you are planning that now.

We generally support the present outline, subject to the comments made today by Diane Graves, Bill Singer, Sandra Ayres and others and I would not like to take too much of the Committee's time, but I would like to mention a few specific sections that are particularly important.

Section 2--the success of the Hazardous Waste Commission, in many ways, depends upon the Hazardous Waste Advisory Council, since it will function as a liason between the Commission and the public at large. It is therefore imperative that the Advisory Council be in place before any action is taken by the Commission. The credibility of this entire effort is at stake here and I think specific wording should be included in the final document. I know some people have not had very much success with advisory councils and committees, but I think they can make the entity that they serve more effective if used creatively.

Again, in Section 2, I would stress the need for specific language creating a local task force to work along with the Advisory Council. They will serve as a further arm of the Commission in the community and can avoid possible misunderstandings during the site review process and the review of applicants.

Section 4--although there is a need for work to continue rapidly, I am concerned about placing a time limit on the time used to develop a hazardous waste plant. I would hate to see an incomplete job done simply because we have tied the Commission to an artificial date.

Section 7--I am in complete support of the provision, retrievable surface storage, and understand the motivation behind the section. However, I have a couple of concerns. There are certain types of waste that will be classified as hazardous even after treatment, but, in general, pose little threat to the environment and I am afraid that an absolute prohibition of land filling will not serve our purpose of solving the waste management problem. I would like to see a strong statement saying that anything that can be treated will be treated and then I would like to have a process set up and have any proposal which does not comply with number 1, Section 7 go through this process prior to approval. This would involve public participation, as well as some kind of outside technical evaluation. I believe, later on, someone will propose something specific in this area. While we don't

want to encourage land filling and, as a matter of fact, want to prohibit it, I am concerned about making restrictions so specific as to eliminate the possibility of innovation.

The DEP should be instructed to develop--

SENATOR PARKER: Excuse me. On the bill, there is nothing that would limit innovation, except in the landfill aspect of it. Is that what you are referring to?

MS. MONTAGUE: I am just concerned that we may be working against ourselves if we are too restrictive. I would like to see us say, no landfilling, and then have a process set up so that if someone wants to propose something which is not permitted in this legislation--

SENATOR PARKER: You mean like a variance for a municipality?

MS. MONTAGUE: I'm nervous about the term, "variance," and, as a matter of fact, I was a little bit worried in Section 7. I felt that there was sort of a loophole that you can't put it in the land, but--

SENATOR PARKER: Well, that's our concern. How do we tie it strong enough? I would be happy with no burial, but I understand the problem.

SENATOR DODD: We have to leave a safety valve.

SENATOR PARKER: How do we prepare the safety valve and to whom do we give the power to make exceptions? Should we write them into the bill specifically?

MS. MONTAGUE: I don't believe we can write them into the bill because we don't know what kind of proposals will come up.

SENATOR PARKER: Well, if something comes up that is not permitted, then they would have to come back to the Legislature to amend the bill.

SENATOR DODD: But, is that counter-productive?

MS. MONTAGUE: I think there is going to be someone later on who is going to address this, who has thought of a process that could be used so that we could have a prohibition. For me, the way it is stated in Section 7 is unclear. I would like to see a strong statement and then--

SENATOR PARKER: Before we pass it, something is going to be clear, hopefully.

MS. MONTAGUE: Okay. The DEP should be instructed to develop rules and regulations to reflect the position of Senate Bill 1300 on landfills. The present hazardous waste regs, which are proposed, still permit certain landfilling and have relative regulations about how many liners and things like that. I think they should be instructed to develop rules that would be consistent with some kind of prohibition against landfill.

I would like to close by saying that I strongly support strict liability. I think that, in addition to the public participation segment of this piece of legislation, are two things that will make the public feel that their interests are being protected. Hopefully, we have started a process that will finally deal, in a meaningful way, with the problem of hazardous waste management in the State of New Jersey. What we propose here in Senate Bill 1300 is new. I think I am safe in saying that never before has there been such extensive and specific public involvement placed in a law dealing with a complex problem. I commend you for this initiative. I believe that with this legislation and the proposed hazardous waste regulations, New Jersey can truly set an example for the rest of the country. Perhaps we have a larger problem than many of the other states, but we also have the creative minds and will to solve that problem. Thank you for the opportunity to address this Committee.

SENATOR DODD: Thank you very much, as one having once served on our task force and attended the workshops and contributed. Thank you very much. I would now like to call on the representative from the League of Women Voters.

JOAN CROWLEY: I am Joan Crowley, President of the League of Women Voters in New Jersey. The League appreciates the opportunity to comment on the "Outline of the Proposed Senate Committee Substitute to S1300". We particularly commend Senator Dodd and the Energy and Environment Committee for their understanding of the serious and emotional nature of the hazardous waste problem and the need to involve the public in any solution. As you know, the League vigorously objected to the original legislation introduced in June, primarily for two reasons: the way in which it was drafted, without public participation; and the content of the bill. The proposal did not provide for public participation and municipal involvement throughout the entire process of siting a hazardous waste facility and it did not provide sufficient safeguards on the exercise of eminent domain by the appointed corporation.

The manner in which the substitute to S-1300 is being drafted may well be a landmark for public participation in New Jersey legislation. The League has been part of the so-called "environmental, public and community" group working with this Committee throughout the summer on the revision. We greatly appreciate this opportunity to contribute to the rewriting of S-1300.

Overall, we support the provisions of the October 21 outline, but we do have some suggestions and questions. The creation of the Hazardous Waste Advisory Council is a crucial element in the siting effort. The League believes, however, that the bill should state clearly that this advisory group will be appointed and in place before the Commission takes any action. We also urge, as part of the safeguard on the exercise of eminent domain, that the bill specify that the Advisory Council will certify that all of the public participation requirements of the siting process have been met. Furthermore, the public participation process must be spelled out more explicitly than is indicated in the outline. In this connection, the use of the EPA Public Participation Guidelines might be helpful. Finally, we hope that the public at large will be invited to submit names of qualified nominees for consideration on both the Commission and the Council.

On the financial side of the proposal, the League opposes using a tax dedicated for a specific purpose, i.e. to pay for the extra cost of fire, police, inspection and so on that would be created by the facility. Very seldom does the dedicated revenue match the need. Either too much is collected or too little.

We favor a system in which the generator pays for the cost of disposing of waste, including the cost to the municipality and perhaps even some compensation for the psychological cost to the community of having a hazardous waste plant.

SENATOR PARKER: Excuse me. What is the difference with what our proposal is, that the money be utilized--I don't understand your difference.

MS. CROWLEY: Well, it has more to do with the tax than, I think, the user fee. Is that what you mean? In other words, we really--I think I go on to explain this, if I may, and then if you have questions, I will try to answer them.

The gross receipts tax could, perhaps, be viewed as a user fee that serves this purpose, but there is an important difference. A gross receipts tax is only loosely related to the extra costs for the municipality. Operating costs

have a much larger effect on gross receipts and if these costs for hazardous waste plants increase sharply--as they did for energy--the revenue from the tax could also increase sharply, most likely without a corresponding rise in the cost to the community. In that case, there would be too much ante for the pot.

In addition, there can be different effects for different sites. One disposal plant may have higher receipts than another. One municipality may have to provide more services than another, depending on the type of hazardous waste, the volume, the difficulty of disposal and whether the site is urban or rural. Some sites may have more revenue than they need and some too little. As we have seen in the case of the gross receipts tax on public utilities, the revenue from the tax in some areas is so great that no property tax is necessary and these municipalities have a surplus. I don't know whether that answers your question or not. In addition to our comments on the tax itself, we also wonder how the revenues from a tax--if you decide to initiate one--would be distributed--according to the gross receipts collected or the need of the municipality and we wondered if you would be considering pooling the tax, as opposed to having it go to individual municipalities from each plant.

Instead of a gross receipts tax, we hope you will consider a user fee or surcharge on the price the generator is charged that could be passed onto the municipality for extra services that the facility requires. The user would pay the cost and the fee would be more nearly related to the need.

We have further questions in regard to finances. Is there an estimate on the amount of costs to the State? I understand there will be some federal funds. We also wonder how the State is planning to pay any costs in this fiscal year and are costs being included in budget proposals for the next fiscal year? Would some of these costs be considered state aid and, therefore, exempt from the budget cap?

We also wonder how the facility would affect municipal caps. Would there be more expenditures that would have to be met within the caps at the expense of other existing municipal costs? We realize that this would be difficult to determine but I'm sure that you are considering it. Would there be a difference in the interpretation of the cap law if a fee were imposed instead of a gross receipts tax? Our reading of the law was unclear there.

SENATOR PARKER: Really, there is no real difference between a user fee and a gross receipts tax on the generator. Where is the difference?

MS. CROWLEY: Well, we understood the taxes to be on the facility and the tax could fluctuate according to the amount of the receipts, whereas a fee might be more easily adjusted, a flat fee over and above the cost of using the facility, an extra dollar per ton or whatever.

SENATOR DODD: Well, we wanted the Commission to have the flexibility on this because, as you well point out, one facility may be very cost efficient and no real financial burden on the town. But, there should be, certainly, full property taxes and whatever inconvenience tax. In another town, it may be a traffic situation where there are real police. We have had an inquiry already about whether a municipality could build a town hall in lieu of receiving road repair. So, they are out there thinking.

MS. CROWLEY: Well, that is what we were concerned about too, that, however the revenue for aiding the municipality is collected, that it be related as closely as possible to the need.

SENATOR PARKER: Well, we can do that. That can be done. We can build in a certain amount and put in a maximum on the fund or on the level like we did in some of the others. The Oil Spill Fund has a maximum amount. Once you reach a certain level, the contributions stop. We can build that type of framework into it and then feed it out on the basis of a need, one for the additional municipal services required and take that outside the cap. You know, I think we can work most of those in.

SENATOR DODD: We don't want to create any more Lower Alloways Creek fiefdoms and shiekdoms.

SENATOR PARKER: That's not what the guys in Lower Alloways say.

MS. CROWLEY: We do have some brief comments on some specific sections of the outline as well. On Section 3, Siting Criteria, we agree that the criteria for ineligible sites should be included in S-1300 to assure the public that these three major concerns are covered. Under 3.b., we would add that all significant potable water sources should be protected, including aquifers and and major recharge areas. In preparing the final bill, the provisions spelling out the criteria, we would suggest, should be carefully checked with experts and the language should be clear and explicit to avoid misinterpretation. We also agree that the Department of Environmental Protection should prepare--with input from the public--and adopt the siting criteria.

In Section 4, we believe the Advisory Council should sign off on the public participation in development of the Hazardous Waste Facilities Plan.

Section 5,--

SENATOR PARKER: What about legislative oversight?

MS. CROWLEY: You mean once the plan is adopted?

SENATOR PARKER: You are giving, in effect, an oversight.

MS. CROWLEY: Well, what we're suggesting there is that the Advisory Council which would be, hopefully, working closely with the Commission would, before the plan is adopted, review the public participation aspects and sort of give its OK. But, it would be the Advisory Commission--

SENATOR PARKER: Do you oppose the legislative oversight?

MS. CROWLEY: Well, I guess it depends on what you mean by that.

SENATOR PARKER: Like we do with the expenditures on the bond issues.

MS. CROWLEY: You mean, as a watchdog. I don't think we would have any objection to watchdogging, if you're not talking about separating the administrative powers from the administration and the legislative powers from the Legislature.

SENATOR PARKER: Except, if it doesn't get through the watchdog committee, it doesn't get through, right? There is a sort of veto power there.

MS. CROWLEY: Well, I think that we would feel that there should be a distinction between the administrative role and the legislative role. I'm not prepared to fine tune it at this moment. I think that what we're really concerned about here is the role of the public in this whole process, as it appears to be spelled out in the outline and if you consider our recommendations, it seems to me that the public role would, in a sense, serve the same purpose and may be even a better situation.

In Section 5, 3.c., we would like to see the municipal study result in a formal report to the Commission. That was just not clear to us.

Section 5, 3.b. and Section 6, 4.d., we also suggest that the information requested by the municipality should be provided within a specified time.

Section 6, Licensure, we had also understood that there was to be a local task force of citizens as well as municipal officials involved in this process. We didn't see it mentioned in the outline.

SENATOR DODD: We had discussed that and I see no reason why it wouldn't be. I would like to leave that loosely drawn so that each municipality could devise their own system, half citizens, half public members or whatever their particular-- if they have a very active local group, they can lean more on them and if they don't, then it is up to the governing body or some combination.

MS. CROWLEY: Section 7, we strongly support above ground storage for ground water protection, although we realize that, with present technology, landfills may be the only alternative for some bulky wastes. I don't know that we were the group that Katherine was mentioning earlier, but we have a little suggestion here. We urge that for the final bill this section be very carefully prepared, with good technical consultants. You might also consider setting up some kind of technical group to determine on a case by case basis what could go into a landfill.

Section 8, on the Inspection and Enforcement Actions, we are concerned that the retention of fines by municipalities or counties has potential for conflict of interest. Would it not be more suitable for penalties to accrue in something like a liability fund for accidents at the facility?

Regarding eminent domain in Section 12, we have some questions about who would own the land in the event it was condemned, the Commission or the State. Would the owner lease the land to the facility operator? We reiterate here that the Advisory Council should sign off on public participation before eminent domain is granted.

Under Section 14, Liability, we are concerned that this section does not appear to provide for protection to health and property in the event of an accident while the facility is operating.

The League of Women Voters is keenly aware that hazardous wastes are among our nation's most pressing problems and we appreciate the urgent need for this legislation. But, as you have recognized, public support is crucial to finding solutions to this emotionally charged issue. We believe that the public must continue to have a voice in the drafting of this bill and, therefore--I understand that you are planning to have a final hearing on the final draft of S-1300 before it goes to the Legislature and we commend you for that. Thank you.

SENATOR DODD: The Advisory Council, we will put that language in. Of course, the outline is just that, an outline, and we tried to address as many things as we could put together and that is the reason for today's testimony, so we can get the actual language down for the bill. But, we will have an Advisory Council clause in there, that they must be appointed and sitting before the actions begin. One point that was made before, I believe by Katherine, the Department is and has been working on siting criteria for the past year and they are fairly well along with deciding criteria. So, there should not be that long lag time that we're all afraid of and it is not going to be rushed either. We have asked them quite a while ago to start that and they are quite well along as far as establishing siting criteria. Again, thank you for your work and your workshops. Senator Parker has to leave to select more sites. Do you have any comments?

SENATOR PARKER: I just want to make one comment for everybody here. I think we got off to a rocky start maybe because there was some promotion of information and some assembling of information from several sources, which led to some conclusions

which had not been arrived at by anybody in the Legislature and really not by anybody in the Administration. That led to the problem of many people saying that sites had already been selected and we were going to start going along with underground storage in East Windsor and various other areas. Believe me, we had no participation in that. It led to a lot of misunderstanding and we certainly want to avoid that now and that's what Pat is doing here with these hearings, to try to make sure that that doesn't happen. Certainly, as a result of that problem and those hearings that we had before, we learned that the bill was not very good and we've made-- as the Minority Leader of the Senate--the Republicans had made suggestions after the hearings, most of which are all encompassed in this provision and I think it is a bill that, when we get it going, everybody, hopefully, will be able to live with. But, the one thing I want to leave you with, as I'm sure Pat does, as the Chairman of the Committee, is that we want to have the broadest possible public participation. We want everybody to have a chance to be heard because it is of such vital interest to everybody. With that, I say that we will be cooperating with you. One of the areas that I think has to be refined has to do with the tax, whether it is a user tax or whether it is a gallonage tax, per gallon levy, and how it is to be used, I think, has to be worked out in detail. But, it is my general feeling, and I think the feeling of most of the people here, and certainly from what I've seen in the proposals, that it would be a tax on the user or the generator of the waste and we should try to impose that burden on them and spread the risk, as best we can, among all of them, so that it doesn't fall on our citizens, the taxpayer or one particular municipality. So, I think it is good, the comments about strict liability, the comments about aboveground storage, the comments about the tax. All of these things, I think, are good and it will certainly be a lot better bill.

SENATOR DODD: I would like to thank Senator Parker for the work that he has done on this bill and his suggestions and homework. They have been invaluable and that's what it is all about, when we can work together. An issue like this, as all of us well know, could leave alot for mischief and political advantage. That has not been the case and that I commend Senator Parker for. I would like to call on Dr. Robert Ahlert, American Society of Mechanical Engineers.

D R . R O B E R T A H L E R T: Senators, good afternoon. I will make myself very brief. I am Dr. Robert Ahlert and I am a licensed professional engineer in New Jersey. Presently, I am employed as Director of Engineering Research and a Professor of Chemical Engineering at Rutgers University. As it happens, I am representing, this afternoon, the American Society of Mechanical Engineers. This is part of an ongoing effort of the ASME to bring a closer relationship between members of various professional organizations--not only their own--and local government, state government and federal government.

With respect to Senate bill 1300, the ASME brought together a task force of five professional inter-disciplinary members to evaluate the bill, to comment individually and then to attempt to prepare some form of summary comment. That summary comment was prepared by Mr. James Teabeau, who unfortunately is a resident of Rhode Island and consequently found it inconvenient to be here this afternoon. That summary was forwarded to the Senate Committee on October 3, unfortunately, somewhat too long after the series of public hearings during the past summer. The Committee has, now, in hand an outline of the revisions to the bill and what I would like to do, very briefly, is to read from some of the summary comments of the Committee

and make some observations which I have been able to gather which were not able to be submitted in writing with respect to the reaction of the Committee to the outline revisions relative to its sense of modest concern and its sense of importance in this bill.

Let me read, then, from the original summary and I will paraphrase parts that are essentially irrelevant, at this point, after the outline. An inter-society team has reviewed the above referenced bill and, in general, find it to be a commendable and bold framework for proper and future management of hazardous waste in the State of New Jersey. Of course, success will depend primarily on the knowledge and wisdom of the nine board members in implementing what likely will be highly technical solutions to problems. Comments of the review team can be summarized as follows. Hazardous waste should be clearly defined. This definition will form the basis for weight classification, inventory, manifesting, inspections and facility performance standards. The federal government has done much in identifying the sources and characteristics of hazardous waste. Municipal sewage sludge should be addressed in the definition.

As a further comment, insuring public participation and information should be a requirement to the corporation beyond simply conducting public hearings as called for in section 11 of the original draft. An advisory task force should be established to devise and disseminate ideas, particularly regarding facility siting.

Bills should require the corporation local and county planning activities in the facility site selection process in an attempt to minimize conflict.

There is a lengthy paragraph that I will not read, but I will paraphrase it to the point that there concerns expressed about the possibility of the proposed corporation entering into what might likely be a sophisticated state of the art chemical processing activity, mixing this with the regulatory process in the bargain.

Section 31 of the original bill stated that the purpose of the corporation shall be in establishing, managing, and operating solid waste treatment at disposal facilities. Is it the intent of the corporation to be responsible for very substantial and diverse management problems of solid--primarily municipal--refuse and hazardous--primarily industrial--waste?

Section 31 of the original bill, part 6, should include as a purpose of the corporation the exchange, recycle, recovery and beneficiation of hazardous waste wherever economically justified.

With respect to the draft outline revisions to the bill, clearly a number of the public participation issues have been responded to very effectively. The inter-relationship with the local planning process has been addressed very effectively. The task force would continue to recommend a more specific definition of hazardous waste. It is still not entirely clear where the distinction will fall between hazardous waste, bulky waste, solid waste, non-hazardous waste, liquid waste, et cetera, as one goes down through the possible shopping list of things that divide between generally offensive and being extremely dangerous and toxic.

May I point out that the May 19, 1980 Federal Register published as a consequence and direct response to the Resource Conservation and Recovery Act of the federal government and goes into great detail defining and categorizing hazardous waste, as opposed to other forms of waste.

I would like to extend this comment, again, within the context of the outline revisions and the original comment made by the ASME task force, that there is a potential confusion arising over industrial sludges which may or may not be perceptually found to be hazardous waste as a function of what the specific definition of such substances and materials may be.

Finally, we wish to reiterate the last initial comment of the task force that one of the major purposes of the proposed corporation should be the elimination of hazardous wastes at the source and that is to the process of exchanging, causing a waste stream to become an input or feedstream to another system or process; recycling internally within the system; recovery of useful assets, that which is freely discharged to the environment may be dangerous. That which can be recovered and reused certainly may be very valuable to the economy and finally, there is beneficiation which is simply to say a conversion of material which must be disposed of, which can be disposed of in a more beneficial fashion, a conversion of nutrient capability, for example, of various sludges.

I would like, finally, to offer the continued assistance, not only of this task force, but more broadly of the membership of ASME through its Director and staff, which is readily available in New York City and finally, with the positive prospect that this legislation will see the light of day and will be implemented, ASME has asked me to offer the continued technical guidance to the corporation and to the advisory council or to the commission and to the advisory council when the legislation makes those bodies possible. Thank you, gentlemen.

SENATOR DODD: Doctor, the one question that we can answer right now is that we will be dealing with hazardous wastes. We will not get into the other fields, which is an ongoing situation under a different purview. We will be using the federal guidelines from RCRA for clarity's sake so that, hopefully, as other states come on line, we all dealing with one established guideline rather than us make up our own. We think this is more hazardous than that. We will use the federal guidelines for continuity and that is the only way we can go at this point.

DR. AHLERT: I don't believe that was spelled out in either the original bill or in the outline and that would be, I think, very useful information because, one, of the very recent and detailed information under RCRA of what is hazardous and, secondly, it deflects certain kinds of criticisms or possible controversies from yourselves, the State, the legislation to the federal level. That is to say, those who might disagree would have a more fundamental direction to take that disagreement to.

SENATOR DODD: We have enough real problems on our hands without getting into those type things. Again, thank you and if you would thank your task force, Doctor, we would like you to work closely with us as we become established. To tell you the truth, day by day I'm becoming more optimistic that we will have a bill that will pass and become law. We have other states that are now monitoring our ongoing process and I'm sure that if we are successful in New Jersey, we will be seeing this established in other states.

DR. AHLERT: Thank you.

SENATOR DODD: Thank you. Anne Kruger, Association of New Jersey Environmental Commissions.

A N N E K R U G E R: Before I start, may I comment on the last topic under

discussion, which was the definition of hazardous waste. I don't know whether you are aware of it, but the proposed state regulation called for a broadening of the RCRA definition and--

SENATOR DODD: We would imagine it would be tailoring to a degree, but we do want to use RCRA as our homebase to start with.

MS. KRUGER: Definately, but the definition is not a trivial matter. It is something that has to be addressed.

SENATOR DODD: Oh, no. It is a crucial matter. But, as far as the statutory law will go, we will have to establish a point and say that that is our base. Now, we can lessen or increase it from there.

MS. KRUGER: Yes, we have to settle on a definition and work around that.

SENATOR DODD: Yes, I think it would be presumptuous to try and establish in the legislation the broadening or lessening of the RCRA, for ourselves, anyway.

MS. KRUGER: I am Anne Kruger and I am Trustee of the Association of New Jersey Environmental Commissions. I'm going to speak first in that capacity. The purpose behind this proposed legislation is to promote the development of ecologically acceptable hazardous waste facilities. The goal is shared by nearly everyone in New Jersey. Some perceive that our existing institutional structures may not allow timely achievement of this goal, that people's fears, the "not-in-my-backyard" syndrome, will immobilize our society into retaining a ridiculously debilitating status quo. S-1300 seeks to overcome that perceived paralysis by creating new institutions, a commission and a council of state government. The Association of New Jersey Environmental Commissions, representing more than 2,000 environmental commissioners throughout the state, supports the basic purpose of S-1300 and the new institutions and broad concept.

We commend all who have been involved in the evolution of S-1300 for a process which has been a remarkably outstanding example of democracy in action. We recommend that we try to weave into the words of S-1300 the spirit of this process in which we are now public participants.

As chairman of the South Brunswick Environmental Commission for eight years, Association of New Jersey Environmental Commissions trustee for four years and Coordinator for the Middlesex Toxics Task Force for the past two years, I personally have frequently been an intermediary between people or environments besieged with pollution problems and governments or industries. So, I am speaking from personal experience.

The new commission and council will have two difficult tasks; first, to bring together good minds to plan for hazardous wastes facilities which are both ecologically acceptable and socially equitable; and second, to bring together the good minds of those people who will be impacted, positively and negatively, by proposed facilities into a consensus.

Regarding the first task, one year is too short a time for even an inadequate hazardous wastes facilities plan. Please lengthen the time limit in IV.1.

Regarding the second task, how V., Designation of Sites, and VI., Licensure are formulated will be crucial in determining how readily a consensus can be reached, and a consensus is crucial if these facilities are to function well. Would you want to have a facility where the neighbors hated the operation and were intent on seeing it fail?

It is my sense that most aware New Jerseyans accept the need for ecologically acceptable hazardous waste facilities. However, they want to be able to tell government what risks they are willing to accept, to be able to express their opinions in a forum where they are heard and listened to, without having to hire a lawyer to speak for them. Public participants need to sense that they can, through reasonable rhetoric, influence decisions. When the citizenry has such a sense, then cooperation and, ultimately, consensus become possible. So, the question is, how can the processes by which the proposed commission functions be developed so that cooperation and consensus can occur?

We suggest that the proposed commission, council and the Department of Environmental Protection should utilize the existing institutional processes to the fullest extent possible because people are, more or less, familiar with them, more or less comfortable with them. Both functions of the commission are land use management. In this state, under the Municipal Land Use Law, the municipality is the only level of government that can exercise police power with respect to land use control with minor exceptions delegated to county and state. This law has established processes by which municipalities, with public input, establish land use zones and control development. The commission should use these established municipal and county processes to help set aside land through the zoning process for hazardous waste facilities and to help reach agreement between proposed facility developers and the potentially impacted public. The major exception to municipal control of land use allows state government to plan and construct public facilities that state government provides. Ecologically acceptable waste facilities may fall into that category, but we feel that by maximizing municipal and county involvement in the processes and minimizing the diminution of home rule, cooperation and consensus will be achieved most rapidly.

We respectfully request that I or another representative of ANJEC be involved in your explanatory discussions of how to amplify or amend the policies outlined under Section 4, Designation of Site, Sections 5 and 6, Licensure. We hope that or insights into good public participation at the municipal level, will help to make S-1300 an act acceptable to most New Jerseyans.

I should have included the council in some of my comments here because the council is supposed to be an intermediary between the DEP and the citizens in the licensure process. But, your one section here which allows the municipality six months to do such and such is a good start, but how that section is spelled out is going to determine how well the process works.

SENATOR DODD: As we write the language into the bill?

MS. KRUGER: We would like to be involved, yes, in getting the wording down.

SENATOR DODD: Well, sharpen up your pencil because we're going to be doing that very shortly.

MS. KRUGER: Now, representing myself as an environmental scientist, about landfills, Section VII, as a long-time advocate of recognition that landfilling hazardous wastes, as presently practiced, even in so-called secure landfills, poses grave environmental dangers, I gratefully commend you for the concepts expressed in Section VII. However, I fear that some of the suggested wording may, in fact, allow the control to be less stringent than desired, while also stifling ecologically appropriate disposal of some low-risk level hazardous waste.

I suggest that S-1300 state that no "hazardous wastes", as defined by the New Jersey regulations, shall be placed into or on any land or water in a "dump" or "disposed of" in any way so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters. This prohibition should include disposal in a "secure landfill" and land treatment.

It may, however, be necessary to allow some variances to this regulation because the proposed definition for "hazardous wastes" may include some materials which could be land emplaced without causing undue deleterious environmental effects. It is suggested that a highly qualified, multi-disciplinary, scientific panel, which is independent of undue industrial or governmental influence, be formed as an adjunct to the commission and council. Any application for a hazardous waste facility which proposes land and placement of hazardous wastes should be studied by the panel before any other action is taken. The criterion by which a variance could be allowed or denied might be: Will this human activity, i.e., this hazardous wastes facility, alter the quality and/or quantity of the ground water resource on which it impacts so that the multiplicity of uses, present and potential, of that ground water resource will be significantly diminished for present and future generations? If the panel were to answer this question affirmatively, then the variance application would automatically be denied. If the panel found that the land emplacement might not significantly diminish the multiplicity of uses of the ground water resource, then the application could go to full-scale review as a variance request, i.e., assumed illegal, unless proven otherwise.

SENATOR DODD: All right, Anne, thank you very much.

MS. KRUGER: It's been a pleasure working with you.

SENATOR DODD: We have our next workshop Friday, I believe. Thank you. I would like to call on Mayor John McCarroll of Washington Township.

J O H N M C C A R R O L: Thank you very much for giving me the opportunity to come here today and I commend you on trying to take on this very urgent, serious problem we have in the State of New Jersey. What I have given you today is some of the information that is from our Master Plan and background studies and information generally about our township, which is Washington Township in Mercer County.

I would like to read to you some of the things that we have to live with in our community and make you aware of them this afternoon. Water is supplied to limited areas within the township by the Garden State Water Company. Plate 7 of the Background Studies provides the location of the water mains. The other ninety percent of the community depends on wells for their entire water supply. The majority of the wells are of the shallow well nature. Since many of the homes and industries in the township may continue to depend on ground water resources in the future, it is imperative that these water users be insured a potable, usable supply of water. The Raritan Geologic Formation can supply up to 500 gallons per minute to deep well users.

Approximately 9,000 of the township's 13,000 acres (of which only 22% is developed) are currently proposed to be zoned for various residential categories, including 914 acres, or 10% of the residential lands, specifically recommended for high density housing. Another 4100 acres are proposed for low density, industrial and other commercial type zoning. The types and intensities of land uses recommended reflect the problem and potentials identified in our Background Studies, especially

those related to physical and infrastructural considerations. Proposed densities are generally predicated on ground water supply, geology and soil suitability for septic filter fields. Where public water and sewage facilities exist, available sewage treatment capacity is balanced against road access, the existence of high seasonal water table and other natural and manmade features to determine how high densities should go. Washington Township is currently relatively sparsely developed.

Land uses near the Trenton-Robbinsville Airport Route I-195 and the New Jersey Turnpike are planned for compatibility. Low density, industrial development is proposed in their vicinity to reduce conflicts over noise and possible danger to human life while providing space to key users of the transportation facilities.

In addition to the new proposed bill, we would like to recommend that you take into consideration that the toxic generators, toxic waste generators be located within a 15 mile radius of these generators, the treatment facilities.

We would also highly recommend, as you have outlined here, that these people be compensated financially--I'm talking about the municipalities--provided that every environmental concern is taken into consideration. I think, with the current situation, some of the townships in the State of New Jersey and also some of our cities, that this may be an incentive to help these people. Industry certainly must pay for their waste. The threat of industry leaving our state is a two edged sword. If we look at the money market and the current conditions that we have in the State of New Jersey, not only here, but throughout the United States, the tremendous amount of inflation and certainly the conditions of the money market would indicate that people are not just going to arbitrarily pull out of the State of New Jersey. Also, the tremendous available pool of talent that we have within our state certainly must be a very heavily weighed factor. We also have the higher densities with the people and users of some of the goods that are generated through these toxic wastes. Again, thank you very much for the opportunity to come here today.

SENATOR DODD: John, as a mayor of a township--and I believe your township went through the scare of the Delaware River Basin Authority's clay belt--have your citizens understood what we are now trying to do, that this was not a fait accompli, that if they had clay in their municipality, that we're going to get a dozen or so toxic waste sites or dumps, as they called them?

MAYOR MC CARROL: Sir, I certainly feel that some of the people have calmed down, immeasurably, and it is as a result of information that was disseminated back to us, going to special meetings that we have had in our community. We have had the good fortune of having an environmental coalition started in our community. We have taken a very active part in it. Some of the people's fears are still very much on the top of the surface because, as you recall, the criterias that were originally outlined in the Delaware River Basin Commission and also S-1300, the criterias would certainly point to our community and the one thing I do not want to see happen, and the people do not want to see it, is that literally we would become sterile if something like this would happen. Some of them have seemed to have calmed down, yes, in answer to your question.

SENATOR DODD: Thank you very much.

MAYOR MC CARROL: Thank you.

SENATOR DODD: I would like to call on Mayor Jack Rafferty of Hamilton Township, our neighboring municipality. Mr. Mayor, I believe you had some problems too, as we just talked about with Mayor McCarrol.

JACK RAFFERTY: Yes. Senator our municipality is right next to Mayor McCarroll's. Washington Township and Hamilton about one another here in Mercer County.

Senator Dodd, my comments, I doubt, are nothing new to you, but I would like to read them into the record. They are pretty concise, but on behalf of the people of Hamilton Township, I would like to express these concerns formally. I did attend the last meeting that the Senate held on this Committee meeting downstairs and I know extensive comments were made at that time.

Existing, inadequately regulated waste sites in New Jersey are a concern to every person and municipality in the state. The attempt made by the Senate to come to terms with the existing realities of toxic waste disposal is, therefore, both timely and laudable. While S-1300 is an outgrowth of this process, it would also establish a superagency that would threaten the ability of every municipality in the state to control its own growth development, community profile. The state corporation, through eminent domain, would be exempt from all zoning, site plan and construction code reviews. While such a corporation would be established, there does not appear to be adequate provisions for protecting the local public's health and safety, for protecting key water, air and drainage resources, for the cost of municipal services at a time when our budgets are under the strain of complying with the caps law, for municipal participation in planning and decision making, for the siting of hazardous waste treatment and disposal facilities and for adequate coordination with adopted plans governing land use and environmental and economic resources at the municipal level. In order to insure that New Jersey has the best possible system for dealing with the toxic waste problem, I would offer the following suggestions.

A) Public participation and comment--conspicuously absent in this legislation, is adequate time for review and comment by the public and adequate participation by the public and municipalities in establishing criteria for the selection for the most suitable sites for the treatment and disposal of hazardous wastes. Since toxic wastes may have such an impact on the public, their full participation in the review process of selecting a site is desirable. Criteria for site selection should be established in an open atmosphere and not be left to the agency which will be charged, ultimately, with fostering and, perhaps, even constructing such facilities. The criteria should be in place before the corporation is created.

B) Land use controls. The State of New Jersey certainly has one of the most sophisticated set of land development rules and regulations in the nation. Most municipalities have long established track records in the field of planning and zoning which have shown that they are capable of administering planning and zoning in an unbiased manner. To take such control away from local municipalities is a disservice to the local municipalities. I would suggest that hazardous waste facilities be treated as a conditional use and that it would be the burden of the applicant to prove that, one, the proposed location is the best possible one in the region of the state; two, the proposed facility poses no threat to the community and the environment; three, the proposed facility will not adversely impact the character or economy of the community; four, the proposed facility would meet specified performance standards that would insure a safe operation; and five, all local plans which address population and employment characteristics and growth, and water and resources characteristics must be positively impacted by any hazardous waste facility.

C) Liability and compensation. An area which is not addressed by the proposed legislation is that of liability and compensation. While compensation will certainly be paid to land-owners whose land is utilized for hazardous waste

facilities under eminent domain, no compensation is contemplated for those whose property values will be affected by such facilities. Furthermore, no compensation will be made to municipalities whose economic development may be sharply curtailed by the location of such a facility within their confines. Applying the criteria established by the Delaware River Basin Commission and the DEP to Hamilton Township indicates that a vast proportion of those vacant areas indicated for industrial growth would be severely impacted by this bill. It is difficult enough to attract industries into our communities without asking them to locate next to a hazardous waste facilities or landfills. There is also no discussion as to who will pay for specialized municipal services that may be warranted for such a site, that is, special fire equipment, rescue equipment, et cetera. The recent fire at the Acme Hamilton Plant in Hamilton Township, for example, pointed out this problem. For some of the fumes given off, a special respirator, which costs between \$1,500 and \$2,000 should have been provided for our volunteer firemen. Luckily, the concentration of these fumes were at acceptable environmental levels. I would also add that most importantly, nothing is stated about just compensation to those whose health may be affected by such a facility. I believe that a special compensation and insurance should be established to aid communities potentially impacted by such facilities. Such a fund should be able to pay compensation to meet the following: 1) Impacts on local governmental facilities and services; 2) Impacts on existing private properties and systems and their land values; 3) Cover damages on replacement to public and private properties, systems and services or any future events resulting from any accidental discharges of waste to land or water surfaces and systems; 4) Cover all damages associated with the health of an individual.

D) Land placement and site of the art technology. As contamination of ground water is almost an irreversible process, great strides must be taken to prevent this from occurring. I would, therefore, suggest that in any criteria established, land placement or landfilling be specifically rejected as being an acceptable method of disposal. Unrecyclable waste should not be hidden from view in underground dumps. As the state of the art in waste disposal is constantly changing, the unrecyclable waste of today may be the recyclable waste of tomorrow. Continuous monitoring of such waste in above ground areas should occur so that when the state of the art in recycling that matter is produced, the materials will be readily available for recycling. To reduce the output of recyclable waste, taxes should be placed on such substances. Industry would, therefore, have an incentive to reduce such output. Every method should be utilized to foster the treatment of hazardous waste, rather than the emplacement of such waste.

E) Additional criteria for siting hazardous waste facilities. All criteria i siting hazardous waste facilities should cover the following: 1) Toxic and hazardous waste facilities and the transportation routes leaving to such must be kept remote from present projected concentrations of population; 2) Toxic and hazardous waste facilities should be located away from natural surface water and ground waer systems and facilities that can transmit such waste to public and agricultural water supply systems, reservoirs, and recharge facilities to prevent contamination; 3) A framework for assessing the safety of a facility from a construction standpoint should be made; 4) Risk assessments and analyses of selected sites and transportation routes must be made; 5) Adequate emergency evacuation plans should be established. and analyzed

I hope that the recommendations submitted will aid in developing the legislation needed to address the problem of the disposal of toxic and hazardous waste generated in New Jersey. I have also prepared review documents which address the proposed bill in detail.

Senator Dodd, Hamilton Township happens to be located in that proposed aquaclude--I believe that is the term--that could possibly be selected for the proposed facility and it is located right down our prime industrial land. Not to elaborate on that, but you can imagine how it would affect us under the caps, et cetera, et cetera. So, sir, I appreciate you allowing me the opportunity to present our feelings for the record in front of your Committee.

SENATOR DODD: I saw you at our last hearing and we have addressed, I would say, 90% of the items that you have brought to our attention. They are still in outline form and I'm glad you did testify today because this will add to it when we get to the final draft of the bill, which should be within the next few weeks anyway and, hopefully, we are talking three to five additional sites throughout the entire state and I'm afraid that the initial go-around with the Delaware River Basin Authority, and they mapped out the clay belt, and every poor municipality that was in that felt that they were going to get ten sites right in their city halls and what not, which is not the case. It did serve its purpose in alerting the public to this critical issue and the one criteria we use, and we will continue to use it, I don't like hazardous waste sites and I wouldn't particularly want one in my backyard, but there are only 600 municipalities in this state and does somebody have a better way or does somebody have a better suggestion? This is the one thing that we have asked ourselves and the people who have worked in this workshop with us are presenting environmental, business and governmental information and they asked themselves that. Whenever we get to a tough point on a question, we'll say, "Give me an alternative." This has helped us move along and you are bringing the same things to us and we appreciate that.

MAYOR RAFFERTY: Well, Senator, I know your position here and your charge is not an easy one and we hate to just be critical. We try to supply constructive criticism and I appreciate your attention, sir.

SENATOR DODD: This makes the income tax seem like fun. Thank you, Mr. Mayor. I would like to call on Tom Wells, New Jersey Conservation Foundation.

T H O M A S W E L L S: I haven't had a chance to hear all the testimony this afternoon. So, at the risk of being redundant, I'll just read my statement. It is pretty brief.

My name is Thomas Wells. I represent the New Jersey Conservation Foundation. We have reviewed the outline of the Senate committee substitute to S-1300, and we appreciate this opportunity to comment on it.

We wish to compliment the Committee on its effort to involve all interest groups in an open and organized process of public participation. As members of the environmental community, we are determined to see that the proposed hazardous waste management commission is as diligent in providing for public input. We feel that the outline prepared by the Senate committee provides a strong foundation from which to draft legislation. The comments that we offer today constitute additions to three areas, which we feel would strengthen the final bill. I believe two of those three areas have been touched on by previous witnesses.

On the issue of the treatment method chosen, we feel that the bill should require that all hazardous materials that can be treated should be treated

using the best available technology. Storage should only be considered when it is proven that the material in question cannot be treated. Requiring treatment, where possible, will protect the public from large accumulations of potentially lethal hazardous waste, while providing industry and users with financial disincentives for using products which require the generation of hazardous waste. Where storage is the only method possible, the legislation should state that total, above-ground storage is required, unless it is proven that below-ground or partial below-ground storage is the only feasible alternative, considering best available technology. As the outline states, any treatment or storage method chosen must provide for monitoring and extraction, where applicable, while posing no significant adverse impact on the environment.

In the area of facility siting, the outline provides a comprehensive methodology to designate acceptable hazardous waste treatment sites. There is no guarantee that industry will choose to use every site so designated, for a variety of reasons, including technical advances which might render a designated site unnecessary. The outline provides for revisions to the plan on a three year basis. We feel that the review process should include a specific provision for local appeal actions aimed at deauthorization of designated sites where, after a set number of years, the sites that have not been chosen by industry or where the site was originally used, but because of unforeseen conditions, is rendered unnecessary.

Our final comment deals with the issue of strict liability. We feel that the final bill should require strict liability on the part of all operators. There are at least three reasons why this provision is necessary.

1. In the event that any member of the public is harmed in any way by a hazardous waste facility, he or she must be guaranteed swift and complete recourse in the courts.
2. The provision of strict liability will act as a deterrent against accidents by increasing the risk of costly litigation, where accidents are permitted to occur.
3. Strict liability must be provided if the proposed facilities are to receive even minimal local support.

My statement has touched on several areas where the New Jersey Conservation Foundation feels that the proposed legislation could be strengthened. We share the concerns of other environmental organizations here today. Based on your past performance, we are confident that you will give our comments careful consideration.

SENATOR DODD: Thank you, Tom. We were just whispering about the three year rotation that a site could be taken off the eligibility list and perhaps even sooner, if we can build that mechanism in. I think that would make sense.

MR. WELLS: Right. I think that, somehow, perhaps some funds or at least a specific statement that the locals could bring it up for review and have a voice in whether it gets authorized or not would be helpful.

SENATOR DODD: Excellent point. Okay, thank you very much. I will now call on Gary Szelc, Assistant Engineer of Old Bridge Township. Gary, do you have a site in your township, in Old Bridge?

GARY SZELC: Yes. We were in this clay belt.

SENATOR DODD: Yes, but do you have a site now there?

MR. SZELC: There is a zinc reprocessing plant in the town, which we've had a lot of problems with.

I just received the outline today and I did make some notes. Some of the stuff I say may be repetitious, but worthwhile, I hope. I think, so far, everybody has been unanimous that Senate bill 1300 is a step in the right direction. A public agency is required to adequately protect the residents of the State from toxic waste. Unfortunately, some of us do think the bill does not go far enough in some areas and, perhaps, too far in other areas. The proposed public commission should not have the total right of eminent domain. We feel that this power should reside with the Legislature or, at least, the Legislature should be required to give its approval of any condemnation. Otherwise, we run the risk of creating another arrogant state agency where the attitude will be, us against them, which, unfortunately, has happened quite a bit. Increased participation by local and county officials must be mandatory. Representation on the commissioners' board should include more members at the local level. Local officials should also participate in the formation of regulations and procedures of the commission. A recent hazardous waste conference reporting in Civil Engineering Magazine, which is the magazine of the American Society of Civil Engineers, made two important observations: one, with regard to landfill disposal, there is no way to guarantee the public zero risk; and two, the current emphasis on the permanent containment of hazardous waste is a short-sighted postponement of the effective solutions to the presence of toxic substances in the environment. Accordingly, the aim of the commission should be for the complete recycling, in one way or another, of waste material. The only storage allowed should be above-ground facilities to temporarily store the materials while they are awaiting recycling of some type. All the commission's energies should be directed to this effort with any unrecyclable materials being incinerated, rather than landfilled.

SENATOR DODD: Excuse me. Are you familiar with the presentation by the incineration group that we had testify before us?

MR. SZELC: I've only heard a little bit of that. I understand that there's been some work done in Bethlehem, Pennsylvania, I believe.

SENATOR DODD: Holland, also, is where the initial firm began. But, there is now land site incineration of, again, the high intensity variety.

MR. SZELC: Although the commission should encourage recycling, the state should alter its tax laws to provide tax incentives for waste generators. Tax incentives should encourage both existing and future manufacturers to recycle their materials and for companies themselves who are in the recycling business, they should also be granted some type of tax incentive. These tax incentives should take effect with the passage of the bill and should not wait until some time in the future, when the commission is established. The commission and other state officials, we believe, should also work to see if they can change the federal tax system to provide incentives to these companies. Recycling facilities could then be located in areas of heavy industrial development where most of the waste is generated. Furthermore, appropriations of the state and the fees collected by the commission should be used to develop a research and development program aimed at determining how waste can best be recycled or disposed of.

Senate bill 1300 should impose, immediately upon passage, severe penalties on those who illegally dispose of toxic substances. Since many of those toxic wastes can kill, the illegal disposal of the same should be considered tantamount to murder. The bill should impose such penalties as lengthy prison terms, ten, twenty years, perhaps even life imprisonment, for illegal toxic material disposal.

This would include the person who actually discharged the waste and any company officials who might have ordered it.

Fines of the magnitude sufficient to cover the cost of cleanup operations, damage to property and residents, administrative costs should be imposed. The state should be empowered to go after the personal assets of any of the company officers who knowingly ordered or allowed the illegal disposal to take place. Local authorities should be granted the power to enforce the regulations of the Senate bill and the commission in this regard. These penalties should discourage most midnight operators.

The Governor should be allowed up to thirty days to veto the minutes of the commission. This will allow him or her the time to analyze the actions of the commission with regard to local impact. Also, local governments should be allowed to protest the actions of the commission through the Public Advocate or similar high level officials. An official protest should stop the commission action for a specified period of time to allow for a reassessment of the action by the legislative, executive or judicial branches of the government.

Contamination of the ground water is irreversible and no one can live very long without water. The commission must make as its prime goal the absolute protection of this priceless natural resource. In addition to protecting watersheds and aquifers, facilities must be located far away from streams, rivers and other bodies of water that may feed into the watershed or aquifer areas.

The escrow accounts for bonds considered in the outline to cover various stages of the waste facility should be periodically reexamined or upgraded to account for inflation and other factors.

The proposed bill mentions grants to municipalities for suitability studies. The criteria for determining the amount of the grant must be clearly spelled out. The bill should also consider compensation to property owners for reduced property values because of facilities located in their area.

Special training and equipment should be provided to the local authorities in the event of an accident, spillage or fire. In all probability, most municipalities are not prepared to deal with an emergency involving hazardous waste. A state assistance force should be created to assist municipalities at a moment's notice in the event of any emergency.

Existing facilities do not meet established criteria within a certain period of time and tax incentives to encourage them to change within a certain period of time should be taken over by the commission.

In conclusion, we would just like to get copies of the revised bill as soon as possible, before the next hearing, so that we can, again, examine it for comment prior to that.

SENATOR DODD: Well, it is in a constant state of revision and the outline that you saw today is the farthest revision so far. We will be adding, again, today and probably Friday, when our task force meets to digest today's testimony and it will be an ongoing process.

MR. SZELC: Well, our township is willing at any time to send any of its people down for any assistance or questions or whatever by your committee and others.

SENATOR DODD: The eminent domain, Gary, is a constant question and as far as that decision coming back to the Legislature, we addressed this early on and you can imagine if the eminent domain factor was a real situation in the

designing or engineering of our highways in the state. I would say, "Should the highway go through Essex County or should it go through Old Bridge?" If my delegation in the Legislature is bigger, it is going to go through Old Bridge. Would this happen with siting? Would it become political as opposed to a realistic need or a realistic environmental decision or a political decision? That's why I feel, personally, it should not be in this arena.

MR. SZELC: Well, unfortunately, we're way past the time when the decisions are easy.

SENATOR DODD: As far as the other statement on the zero risk factor, that I would love to put in the bill and put in the criteria. Zero risk factor as opposed to what? As opposed to the way it is being done now, midnight dumping? That's our alternative. That's the time clock that we're racing against. As much as we want to continue this process, and it will be continued and continue to be an open process, we are going against a very set set of circumstances and they're dumping in your town, my town every day, every night. So, this is the zero factor that we're trying to match up against. Thank you.

MR. SZELC: Thank you.

SENATOR DODD: I would call on Jack Silverman, resident of Clearbrook.

JACK SILVERMAN: I represent a condominium of approximately 11,000 units, 11,000 homes in the Township of Monroe. It is called Clearbrook. We have nearly 1800 residents who are very much concerned with S-1300. We are concerned because our water supply is coming from six wells in the Monroe Township, or nearby, community. That is our sole source of water and we are concerned about maintaining present freshness, drinkability of the water.

We understand that hazardous and other wastes must be disposed of. But, we do not want to endanger our water supply. We also understand that the sites for the hazardous wastes are determined by the condition of the ground such as aquiclude formations and the aquiclude formation, as we understand it, is a clay barrier within the soil structure which is considered relatively impermeable by comparison to other soil structures. Now, relatively impermeable means that it is not strictly impermeable. We don't know if hazardous waste sites above this clay structure will stop any hazardous waste materials from going through the clay to the aquifer beneath that which is going to supply our water. So, we are very, very much concerned. We know that this aquiclude area is considered near Twin Rivers, which is only about three miles away from our Clearbrook condominiums and that is why we are so much concerned with this bill.

Therefore, we have a petition here of several hundred signatures which is asking you to include in the bill and to take care that the bill will stress buffer siting. Don't build near homes or natural resources which are vital to a community's welfare. Emphasis must be on detoxification, that is resource recovery, before dumping. Government should encourage this through tax incentive programs and an annual licensing program for generators. Primary responsibility for waste disposal must be on generators, not on citizens.

Criminal penalties for illegal dumping must be imposed on officers and directors of corporations. Any site selected for waste disposal by the state, DEP or corporation must require the approval of the municipalities which might be impacted and affected. Curb the importation of toxic wastes into New Jersey.

That's one of our primary concerns.

SENATOR DODD: Jack, it goes the other way, I'm afraid.

MR. SILVERMAN: I have one more sentence. This may, if not taken into consideration, pollute our wells and affect our lives and we ask you to be very, very considerate and do the best that you can.

SENATOR DODD: Jack, I would like to compliment you. You did your homework on the bill. We do spell out in the outline of the new draft the specification that it be away from habitated sites and away from aquicludes and acquifers and potable water supplies. So, this will be taken into consideration and strongly. This is not a thing that we'll take a chance on putting a site in and keep our fingers crossed that it doesn't go through the clay and maybe get into the water. That is not a thing--as we said so many times today, we are probably talking about between three and five sites in the state and there is no reason to take a chance near any potable water supply. You have done your homework and you can assure your citizens at Clearbrook that we intend to keep it that way.

MR. SILVERMAN: Thank you very much. I'm going to give you these petitions and I also have an associate of mine, Arthur Schlosser, who would like to add a few words to mine.

SENATOR DODD: That would be fine. We signed you up earlier anyway, Arthur.

A R T H U R S C H L O S S E R: This wasn't prepared in advance. So, you will pardon me if I refer to a few pieces of paper. I'm a native of New Jersey and I've lived in Essex County, Bergen County and, for the last four years, in Middlesex County. During my lifetime as a resident of New Jersey, I've seen the state get dumped on much too much. I'm happy to see that Senator Dodd and this Committee have come up with S-1300, which helps to clean up the state.

S-1300 came to my attention as a parent and a grandparent of a family living in one of the proposed sites for the dumping of toxic wastes, at which time I wrote a letter to you, Senator Dodd, and some of the other senators saying that the people of the State of New Jersey are fed up with being dumped on. Before proposing any new sites in New Jersey for toxic wastes or other wastes, we should start cleaning up some of the noxious odors and dumps throughout New Jersey that make New Jersey the bearer of such national reputé as "Cancer Alley" or as the state you don't have to see to know where you are. I was delighted to see and hear that there are people such as Diane Graves of the Sierra Club and many of the others who spoke here this morning and this afternoon who are concerned as to the safety and future of our citizens, among them my children and my grandchildren.

Senator Dodd, who I was delighted to meet for the first time today, admits that he doesn't know all of the many technicalities that go into toxic wastes and their disposal and depends strongly on so-called "experts", who will determine which site is best and which site isn't, for the guarantee of our safety. In picking experts, there are many experts in the nuclear energy field who, in the news recently, have proved not to be such experts and have endangered sites and also lives of people living near to these particular plants. I believe that, rather than have any of our future generations suffer cancer or any of the birth defects that are possible through any fault in choosing sites and what can happen and have another Love Canal on our hands that we move very cautiously rather than expeditiously to achieve our goal.

One of the points I would like to ask is, why, if we feel that these sites offer no danger to the people living in the area, why are only non-densely populated areas being considered rather than areas like Newark and Jersey City and Camden which can use the financial help of such a site being in their location? Otherwise, putting it into rural areas indicates that, apparently, there are some considerations as to the fact that these sites may become dangerous.

Contamination of ground water is more definate than being a little pregnant. It is irreversible and it is important that industry recycles any waste that they can rather than them classifying it as a waste material to be dumped. I think they should be responsible, where it can be recycled and where it may cost money to do so, that they be required to recycle it rather than finding the easy way out.

Fines should be of such a nature that it hurts and is not just a built in business expense to be passed onto consumers in higher prices. Make certain that the experts are people who work for the people and are present in their future, not for a quick solution for the toxic waste producers. Jobs are very important, but the health and safety of our children and grandchildren is much more important. Thank you very much.

SENATOR DODD: Arthur, thank you for being here all day. There are waste disposal sites in the City of Newark. As a matter of fact, on the November 6 public hearing we are to tour that site in the City of Newark and through our industry testimony, there are a great many new industries anxious and eager to get into the recyclables and we are setting up an exchange program where one industry's waste could be the next industry's raw product. So, there is some innovating. It is not that blinder mentality that we've always had in government. We're trying to break out of that mold and get some fresh ideas and that is why we're opening this up. Again, we established the one criteria. You can't just be against it unless you give us an alternative. Then, you can be against it. Thank you. John Wilmer of the Public Interest Research Group?

J O H N W I L M E R: Thank you very much. I promise to be brief. My name is John Wilmer and I'm with the New Jersey Public Interest Research Group. We are represented on nine college campuses with a total enrollment of 25,000 students. Some of these students are mellow, some of them are radical, but all of them are very concerned.

SENATOR DODD: Things haven't changed.

MR. WILMER: Not at all. I'm asking that a strict liability provision be attached to S-1300. My concern is that S-1300 is only one part of a three part process governing the safe disposal of hazardous waste in New Jersey. The second part is enforcement by the DEP of regulations concerning the proper management of hazardous waste. The third part, and the one that I now address, is liability. Assuming that a hazardous waste facility is properly located and constructed and assuming that the DEP enforces all pertinent regulations, accidents can still occur. I give you Three Mile Island. Under existing New Jersey law, there is inadequate protection if a person or his property is injured from an accident which occurs during the operation of a hazardous waste facility. It should be noted that the types of facilities envisioned under S-1300 will be truly gigantic. Thus, the magnitude of harm could also be great.

The Spill Compensation and Control Act which covers such accidental discharges addresses only property damage and not personal injury. Now, there is some concern as to whether the administration of this Act is being done properly. I have heard conflicting reports and am now attempting to ascertain whether the Act does, indeed, work, even for its limited purposes. I have a law student working under a clinical program who is researching what I call the realities of the Act. I'm having her make phone calls and just try and find out what happens when someone puts in a claim, what is the likelihood of getting results. The personal injury is the real problem, however, and a claimant would have to resort to the common law for relief. Strict liability should be imposed on ultra-hazardous activities according to Prosser law of torts and according to the restatement second of torts. The New Jersey courts, however, have taken diverse views. In the City of Bridgeton versus BP Oil, Inc., a 1976 decision, the court indicated that storage of fuel oil should require the imposition of strict liability for damages resulting to adjacent property. A more recent court, however--this is a 1977 court--has said, "New Jersey law is unclear in defining the scope of strict liability as applied to the use of land. The terms 'nuisance per se', 'ultrahazardous' and 'inherently dangerous' have not been clearly or consistently defined."

Other legal theories are very limited. Trespass and nuisance claims, while used traditionally in environmental actions, deal more with property than with personal injury. It seems that the only cause of action which is guaranteed to a plaintiff is one lying in negligence. This, however, places a difficult and expensive burden on the injured party.

I would ask that the owner-operator of a hazardous waste facility be held statutorily, strictly liable for any harm to persons or property resulting from the operation of such a facility. The liability should be both joint and several so that a claimant may sue the owner-operator and he, in turn, may sue the generator or transporter that contributed to the harm.

Now, the State of Pennsylvania has recently passed a hazardous waste management plan which includes a strict liability provision. It is very brief. Let me just read that to you to give you an idea of how such a provision could be worded. "The storage, transportation, treatment and disposal of hazardous wastes are hereby declared to be activities which subject the person carrying on those activities to liability for harm, although he has exercised utmost care to prevent harm." It is a very simple statement, but yet, it imposes liability.

Now, there is a strong momentum in New Jersey toward solving hazardous waste problems now and it is hoped that this concern will continue for sometime. But, unfortunately new problems always arise to replace the old ones. If strong protection for citizens is not attached to S-1300, it may not become law in time to fully protect those people who might otherwise be injured.

In addition, I think a strict liability provision would aid in the passage of this bill. The local communities will not tolerate a hazardous waste facility in their area, even with full and honest public participation, if they know that there is little protection in the event of an accident. Strict liability is not a panacea, of course, but it does give a potential plaintiff a strong cause of action and it does, hopefully, have a deterrent effect on those who operate such facilities. Now, I think of strict liability in S-1300 as a minimum provision. What I would ideally like to see is have the Spill Act amended to include personal injury and to have this section under liability. I don't know if this is the proper

time to do that. That's why, right now, I'm only asking for strict liability in the S-1300 bill.

I want to thank you very much for giving me your time.

SENATOR DODD: John, we're going over the liability portion of the bill, as it is. Do you have any indication that the Spill Compensation Fund is not working or are you just investigating the possibility that it isn't?

MR. WILMER: I'm hearing rumor because I'm new to New Jersey. I've been in the state about three months and I've said, "Gee, the Spill Fund looks like a really good act. Who has used it? How has it worked?" Everyone seems to give me complaints, rather than compliments, on the Act.

SENATOR DODD: Is there anything specific? We have two avenues of resource on the, the Attorney General's office, certainly, local prosecutors and/or our Public Advocate.

MR. WILMER: I am working with a new member of the Public Advocate's office and she has indicated that she has heard about problems concerning the Act as well.

SENATOR DODD: We would be interested in any specifics. We don't deal in rumors, of course, but specific complaints we would be interested in and we do have a representative of the Public Advocate on our task force.

MR. WILMER: Any information I get, then, through my studies I will gladly pass onto you. I think it is important to follow an act through to find out if it is being administered properly.

SENATOR DODD: That is also part of our function that we don't do often enough in the Legislature. Thank you very much.

MR. WILMER: Thank you.

SENATOR DODD: Phillis Anderson?

P H I L L I S A N D E R S O N: Good afternoon. I am Phillis Anderson and I am from the Mercer Soil Conservation District and I am also leader of the Rural Task Force. I sincerely appreciate the way you, Senator Dodd, researched the data needed in the rewriting of this bill and the way you have encouraged input from all sections concerning the proper disposal of hazardous waste in New Jersey.

In order to save time, I will limit my comments and instead endorse the statements made by Freeholder Zukowski from Sussex County, Diane Graves, Anne Kruger, and Katherine Montague. I would like to emphasize the need for for the appointment of four temporary members to the commission which, on application, is considered for a specific location. Two of these members should be appointed by the local governing body and two by the county's board of freeholders. Public education programs, local task forces and the training of local officials are important factors for the future success of this bill. As Freeholder Zukowski said, at least \$10,000 should be allocated to the local task force to hire an independent consultant. Money should also be allocated for the training of local officials in the handling of emergencies and site monitoring. We applaud your committee for expressing the need for above-ground storage facilities. However, we realize that there are a few instances when above-ground storage will not be economically feasible. Certainly, consideration must be given to these exceptions.

I would like to see the word "technologically" omitted from the bill. Nearly everything is technologically feasible. I would also request that

agriculture be included in those sections of the bill that refer to the environmental and health impact statements and I agree with Diane Graves that S-1399 must have full public review and that the public must have at least one more opportunity to suggest changes in the bill.

Senator Dodd, I would like to compliment you and your Committee on the manner in which you have redrafted S-1300. I greatly appreciate the opportunity you gave me, through the environmental group, to help in the redrafting of this bill and I would like to offer you the services of all the State Soil Conservation Districts to help you implement the bill. I believe, if this bill is made law, we will be able to live with it and be proud of it.

SENATOR DODD: Thank you very much. Jane Scott King?

JANE SCOTT KING: Thank you and good afternoon. I am here pinch-hitting today. My husband usually covers these meetings. We did get a copy of the revised outline ahead of time and we have some marginal notes. Most of our comments have been quite adequately covered.

Under siting criteria, we were concerned that, perhaps, exceptions should be made, possibly, for generators on sites where the generator has been producing a hazardous waste for sometime or has been safely handling, treating, detoxifying or disposing of a waste in a safe manner that would go along with the guidelines.

Again, we were concerned with the aquifer protection and I think that has been expressed under 3C. We would like to see areas which may be inundated with water to also include the 100 year flood plain for maximum safety. This is often overlooked.

SENATOR DODD: The flood hazard areas are mapped out with the 100 year storm taken into consideration.

Ms. KING: Thank you. Under Licensure, Section 6, we would like to see the required environmental impact statement to be prepared and interpreted with alternate use cost-loss statements so that that would take into account the possible liabilities, should there be any problems with the operation.

As far as above-ground storage, Section 7, we realize that you are trying to be as general as possible, but we would like to see further spelling out of that.

Under Section 8, number 3, we would like to see inspections spelled out as well. As far as eminent domain, we can see the necessity of that. We would like to see the requirement for a perpetual buffer included under that.

We, again, would like to commend your group for the tremendous amount of time and effort that has gone into this. We would like to be able to have outlines as your office can make them available to us so that we can have some input. The Environmental Coalition in East Windsor has helped to reduce a lot of the fears of the residents and--

SENATOR DODD: That is not an easy task.

MS. KING: And, where they have the technical expertise or the legal expertise to understand what is going on in this process, we try to keep the local citizens informed. We thank you very much.

SENATOR DODD: Thank you very much. Janet Van Nest, Washington Township Environmental Coalition?

J A N E T V A N N E S S: Thank you, Senator Dodd, for this opportunity. You mentioned to our mayor a concern about our citizens and their reaction. I will be glad to take this outline to our committee. We have regular meetings to inform them of this that are taking place and this has been discussed here at the hearing today and I'm sure that they will be reassured that some of their fears are not particularly necessary. We just want to keep on top of this and keep them informed. I don't think the majority of the people are concerned with the well being of the state, in general. A big concern is with the quality of our water, especially in our area, where most of our residents are furnished with well water.

Also, I had a problem getting an outline before today. So, I really didn't have any prepared comments. However, I would like to take this back to our technical committee and go over it. I would also like to know if you will be receiving written comments and until what time.

SENATOR DODD: The next hearing is November 6. But, if you can get your comments to Michael Catania here at the State House, he will take care of you. A great deal of the work, time and effort was put in by Mike Catania, who has put this together. Those of you who know this know that he is the main reason we are this far along with our efforts.

MS. VAN NESS: My problem is that I couldn't get through to his office and I would like to know how we could get an outline in advance so we can go over it and be ready.

SENATOR DODD: Leave your name and address and we will put you on our mailing list.

MS. VAN NESS: We are working very closely with some of our neighbors, Allentown, which is a township which borders ours, Cranbury, and South Brunswick also. We are trying to join together and keep on top of this. There is just one comment that I have. In a recent visit to Conneticut, I found that in their state, the large generators that have the storage and treatment facilities allow the smaller generators to use the facilities, which is also good for the cost of the facility. It seemed like a good idea and I was wondering if that might not work here. There is a concern with these regulations and if the large generators would allow the smaller generators to use the facilities, it might work out.

SENATOR DODD: We are looking to encourage that type of cooperation for detoxifying and all of this can work together. That is why we don't want to exclude sanitary landfill sites for the less toxic type of recycling or whatever. Hopefully, the commission will be able to work together on this.

MS. VAN NESS: I think it has been most encouraging to be here today.

SENATOR DODD: Thank you. I think that is a wrap. Again, thank you very much. The next work session is Friday, November 6, in Newark, at which time we will be taking a tour of the site up there. Thank you very much.

(Hearing Concluded)



November 14, 1980

TO: Senate Energy and Environment Committee.

RE: Outline of Proposed Senate Committee Substitute to S-1300.

My name is John Wilmer and I am with the New Jersey Public Interest Research Group, located in Trenton, NJ. We are represented on nine college campuses with a total enrollment of 25,000 students. Some of these students are mellow, some are radical, but all are concerned. I ask that a provision which would hold owner/operators of hazardous waste facilities strictly liable be attached to S-1300.

My concern is that S-1300 is only one part of a three part process governing the safe disposal of hazardous wastes in New Jersey. The second part covers enforcement of the laws and regulations of this disposal. The third part, and the one which I now address, is liability. Assuming that a hazardous waste facility is properly located and constructed, and assuming that all pertinent regulations are enforced---accidents can still occur. Mislabeled drums may result in toxics mixing and causing explosions, safety equipment may fail at critical moments, human error may compound mechanical breakdowns, etc.

Under existing New Jersey law there is inadequate protection if a person or his property is injured or damaged from an accident which occurs during the operation of a hazardous waste facility. It should be noted that the types of facilities envisioned under S-1300 will be truly gigantic, and thus the magnitude of harm may also be great.

The Spill Compensation and Control Act (N.J.S.A. 58:10-23.11, et seq.) which covers such accidental discharges addresses only property damage and not personal injury. While §23.11g of the act states that it covers "direct and indirect damage", this section then says "included, but not limited to the following:" with a description of five types of property damage that would be covered. Applying the legal theory of statutory interpretation entitled eiusdem generis, which states that a general category ("direct and indirect damages") must be analyzed in light of any listed specifics (property damage only) it would

seem that personal injury is not included. There is another theory entitled expressio unius which states that to express one thing is to exclude others. In this case, I find it difficult to believe that personal injury, the most important injury, would be unintentionally omitted. In addition, the assistant to the Administrator of the Spill Fund has said, in a telephone conversation, that personal injury is not covered by the Fund. These are, of course, only interpretations of the act and if I were trying to show that the act covered personal injury I would make opposing arguments. What is clear, however, is that the Spill and Compensation Act is ambiguous concerning personal injury. If personal injury was to be covered, why was it not included?

As to property damage, there is some concern as to whether the administration of this act is being handled properly. I have heard conflicting reports and am now attempting to ascertain whether the act does work, even for its limited purposes.

Personal injury is the real problem, however, and a claimant would have to resort to judge-made law for relief. Under the common law strict liability should be imposed on activities which are considered highly dangerous.

The defendant is held liable although he has exercised the utmost care to prevent the harm to the plaintiff that has ensued. The liability arises out of the abnormal danger of the activity itself, and the risk it creates, of harm to those in the vicinity. It is founded upon a policy of the law that imposes upon anyone who for his own purposes creates an abnormal risk of harm to his neighbors, the responsibility of relieving against the harm when it does in fact occur.

(RESTATEMENT (SECOND) OF TORTS, §519, comment (d).)

The New Jersey courts, though, have taken diverse views. In City of Bridgeton v. B.P. Oil, Inc. (146 N.J. Super. 169, 369 A. 2d 49 (1976)), the court indicated that storage of fuel oil should require the imposition of strict liability for damages resulting to adjacent property. A more recent court, however, has said that "[N]ew Jersey law is unclear in defining the scope of strict liability as applied to the

use of land. The terms "nuisance per se", "ultrahazardous" and "inherently dangerous" have not been clearly or consistently defined." (State Department of Environmental Protection v. Ventron Corp., 151 N.J. Super. 464, ___, 376 A.2d 1339, 1349 (1977).) This last statement is, in legal terms, considered to be dictum---but it does show that one must not hope or assume that the courts will apply the common law to particular cases.

Other legal theories are just as limited. Trespass and nuisance claims, while used traditionally in environmental actions, deal more with property damage than with personal injury. It seems that the only cause of action which is guaranteed to a plaintiff is one lying in negligence. This, however, places a difficult and expensive burden on the injured party.

I would ask that S-1300 include a provision which statutorily holds owners/operators strictly liable. The language should be clear and concise so that there is no room for any doubts. An example of such a provision would state that "an owner/operator of a hazardous waste facility shall be strictly liable for all personal injury, property damage, economic and any other harm resulting from the operation of such a facility."

It should be noted that strict liability for hazardous waste facilities is only one part of the total protection that can be given to New Jerseyans. The Solid Waste Management Act itself should be amended to hold generators, transporters and disposers of hazardous waste strictly liable. Pennsylvania's new Solid Waste Management Act does just that by stating, "[T]he storage, transportation, treatment, and disposal of hazardous waste are hereby declared to be activities, which subject the person carrying on those activities to liability for harm although he has exercised utmost care to prevent harm,...." (35 P.S. 6018.401 (b)).

Going one step further, greater protection could be given to the people through amending the Spill and Compensation Fund to include personal injury. The way the Fund presently works is that when a plaintiff has a claim against a potential defendant, the plaintiff files a damage claim with the Administrator of the Fund. The Fund itself is strictly liable and

it in turn may ultimately go against the defendant for reimbursement. In between these separate claims there is much negotiation and settlement between the Fund, the plaintiff and the defendant. The important advantage is that the plaintiff does not have to sue the defendant in a court of law, a costly and lengthy process. If the Fund could be amended to include personal injury, people who live near hazardous waste facilities would feel better protected, not only by the law as written, but also by a process which should assure them of compensation without going to court. This is, of course, assuming that the Fund is presently working properly for the damage it does cover.

These last two recommendations; 1. strict liability for generators and transporters as well as disposers, and 2. including personal injury in the Spill and Compensation Act, should be given serious consideration while the S-1300 Corporation develops a statewide hazardous waste plan.

There is a strong momentum in New Jersey toward solving hazardous waste problems quickly. It is hoped that this concern will continue for some time, but unfortunately new problems always arise to displace the old ones. If strong protection for citizens is not attached to S-1300 now, it may not become law in time to fully protect those people who might be injured. In addition, a strict liability provision would aid in the passage of this bill. Local communities will not tolerate a hazardous waste facility in their area, even with full and honest public participation, if they know that there is little protection in the event of an accident. Strict liability is not a panacea, of course, but it does give a potential plaintiff a strong cause of action and it does, hopefully, have a deterrent effect on those who operate such facilities to do so safely.

Thank you.

John Wilmer

Director, Clean Water Action Project

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