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PUBLIC HEARING

before

ASSEMBLY SOLID WASTE MANAGEMENT COMMITTEE

ASSEMBLY RESOLUTION NO. 111

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

May 8, 1989
Room 373
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

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

ALSO PRESENT:

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

* * * * *

New Jersey State Library

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

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New Jersey State Legislature

ASSEMBLY SOLID WASTE MANAGEMENT COMMITTEE

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

ROBERT C. SHINN, JR.
Chairman
ARTHUR R. ALBOHN
Vice-Chairman
NICHOLAS R. FELICE
LAN J. KARCHER
HARRY A. MCENROE

April 28, 1989

Notice of a Public Hearing

The Assembly Solid Waste Management Committee will conduct a public hearing on Assembly Resolution No. 111 on Monday, May 8, 1989 beginning at 1:00 P.M. in Room 373, State House Annex, Third Floor, Trenton, New Jersey.

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

This public hearing will be the second in a series of public hearings to be held by the Assembly Solid Waste Management Committee, pursuant to the directive of Assembly Resolution 111, for the purpose of receiving testimony regarding the development of the State sanctioned solid waste transfer stations located in northern New Jersey. At the first public hearing, which was held on Monday, April 17, 1989, the Committee invited, and received testimony from, the Departments of Environmental Protection and the Public Advocate, the Board of Public Utilities, and representatives from each of the relevant county agencies.

At the present hearing, the Committee will invite representatives from each of the private firms operating these facilities in Bergen, Essex, Morris, Passaic, Somerset and Union Counties, including the transfer station operators and the transporters responsible for the transportation of county solid waste to out-of-state disposal sites.

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

[FIRST REPRINT]
ASSEMBLY RESOLUTION No. 111

STATE OF NEW JERSEY

INTRODUCED JULY 2, 1988

By Assemblymen FRANKS and HARDWICK

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

25 1. The Assembly Solid Waste Management Committee is
directed to conduct an inquiry into the manner in which the rates
27 and charges for the disposal of solid waste being processed at
transfer stations in northern New Jersey were set, and shall
29 investigate complaints of overbilling and illegal ratemaking
practices. Upon the close of its inquiry on these critical public
31 policy issues, the committee shall¹, no later than six months
following the adoption of this resolution,¹ report its
33 recommendations thereto to the Speaker of the General Assembly.

35 2. That a copy of this resolution, signed by the Speaker and
attested by the Clerk, shall be forwarded to the Commissioner of
the Department of Environmental Protection and the President of
37 the Board of Public Utilities.

1 ENVIRONMENT
Solid Waste

3
5 Directs Assembly Solid Waste Management Committee to
conduct an inquiry into the manner in which the rates were set at
the State-sanctioned transfer stations located in northern New
7 Jersey.

TABLE OF CONTENTS

	<u>Page</u>
Stephen J. McCarthy Chambers Development Company	1
Steven J. Madonna, Esq. Regional Counsel Chambers Development Company	12
Theodore A. Schwartz, Esq. Waste Management of New Jersey, Inc.	31
Thomas O'Brien, Esq. Kimmelman, Wolf and Sampson Mitchell Environmental, Inc.	65
Chester Pucillo President Mitchell Environmental, Inc.	73
David Sutherland-Yoest Vice President Laidlaw Waste Systems	77
Joseph Horner President Bridgewater Resources, Inc.	81
John W. Thatcher, Esq. Bridgewater Resources, Inc.	86
Edward P. Bales Project Manager Bridgewater Resources, Inc.	88
APPENDIX:	
Testimony submitted by Steven J. Madonna, Esq.	1x
Letter to The Honorable Robert C. Shinn, Jr., plus attachment, submitted by Theodore A. Schwartz	5x

* * * * *

ASSEMBLYMAN ROBERT C. SHINN, JR. (Chairman): First we will have Mr. Stephen J. McCarthy, Chambers Development Company, Inc.

S T E P H E N J . M c C A R T H Y: First, let me explain that our company, the Chambers Development Company, is the fourth largest publicly held waste company in the United States, headquartered in Pittsburgh, Pennsylvania. We own and operate landfills, hauling companies, and transfer stations in approximately 12 states. While we do have some other involvement in the New Jersey Transfer Station Project, I am going to be speaking about the Morris County Transfer Station Project.

Late in 1987, Chambers was aware of a possible opportunity to acquire a start-up company, namely MCTS. The previous shareholders of the company had been unable to line up the appropriate financing and certain other resources necessary to pull the project together in time. Chambers came in, in October of '87, after the RFP procedure had run its course, and basically acquired the stock and assets and the permits of MCTS. With approximately 50 days to go prior to the January 2, 1988 deadline, Chambers MCTS went about building the two transfer stations in Par/Troy and Mount Olive.

In that 50-day period, we basically had to commit upwards of \$15 million, hire somewhere around 120 people, and acquire over \$10 million worth of transportation equipment. We sunk about \$5 million into the start-up of the building and the two transfer stations. Also at that time, because there was no contract with Morris County, there was no agreement with Morris County at all that would help to finance the transfer stations, guarantee the waste flow, or grant us a franchise, Chambers MCTS had also to make a filing with BPU, basically setting forth the rates that we were seeking for 1988 through 1993, and also asking the Board for a franchise. A franchise was necessary to our project because, as I said, we had no

guarantee, no contract from the County. In other words, the building of the transfer stations and the operation of the facilities under the MPPs was totally at the risk of Chambers MCTS. There was no other financial backing. The total investment in the project today is approximately \$34 million. That would cover the acquisition of the company, the acquisition of all the rolling stock, the building of two transfer stations in Morris County, and various other start-up expenses.

As I said, we had no financial backing from the County. Therefore, we had to undertake a filing with the BPU, which was done just before we opened, late in 1987. The Board, at that time, set our rates on a temporary basis, and also granted us a franchise for five years, or until the resource recovery projects started in Morris County.

Since that time, the Morris County Transfer Station has processed somewhere around a half a million tons of waste from Morris County, transporting it almost seven-and-a-half million miles to various landfills in Pennsylvania, Ohio, and West Virginia. The agreement that MCTS has with these out-of-state landfills is basically with the Empire Landfill in northeastern Pennsylvania, which is not owned by Chambers nor MCTS. It is a third-party landfill. At the time that the previous shareholders of MCTS entered into that contract, I believe the Empire Landfill was the only environmentally sound landfill in northeastern Pennsylvania that had the capacity and the daily volume permits to accept the waste on a long-term basis. This, of course, was the cornerstone of DEP's process and what they wanted to approve for long-term out-of-state disposal. The Empire rates are higher than most other landfills, but it is a state-of-the-art facility and, as I said, it does have both daily and long-term air space capacity to handle the waste from Morris County.

At this point, Chambers and MCTS are engaged in a rate case that the BPU had sent over to OAL sometime in -- I believe it was March of 1988. That case has been postponed periodically because the County and rate counsel are also involved in that proceeding. Most recently, the hearings began in 1989. The judge in that particular case -- Judge Cummis -- had ordered that we would go forward and try the case on the basis of 12 months' actual financial data. We have provided thousands and thousands of pages of information, financial and otherwise, to the Board staff, the OAL, and Morris County.

At this point, we are functioning under our second temporary rate for waste, and don't expect a final, or permanent rate to be granted until sometime in late October of this year.

As I said, the situation in Morris County is perhaps somewhat different from other counties, in that the Morris County Transfer Station, Inc. had no financial commitment and no contract with the County. In other words, it is basically a merchant facility, and all the risk for that project was undertaken by the Chambers Development Company, the parent company.

We are a franchise holder in Morris County, and therefore have undertaken our own efforts to ensure the financial viability of the project via our own waste flow enforcement activities. At this stage of the game, we have probably received the highest percentage of waste expected at the transfer stations of any of the North Jersey transfer stations. We believe that is tied directly to our efforts in waste flow enforcement.

As I said, the case right now is before the OAL, and we are, right now, in the middle of hearings. I spent last week testifying before the law judge in Newark. That case will probably not be over until July, and then a rate will not be set until October.

With that, are there any questions I can answer for the Committee?

ASSEMBLYMAN SHINN: Do you have an interim rate?

MR. McCARTHY: Yes, we do.

ASSEMBLYMAN SHINN: What is that?

MR. McCARTHY: One-hundred and twenty-two dollars.

ASSEMBLYMAN SHINN: One-hundred and twenty-two. And, what was your projected waste to come to that facility, as far as your estimated tonnage you built the plant for?

MR. McCARTHY: We began at 400,000 tons per year.

ASSEMBLYMAN SHINN: That's about 1400 tons a day?

MR. McCARTHY: Approximately, yes.

ASSEMBLYMAN SHINN: And what are you getting?

MR. McCARTHY: Right now, we are very close. Last year, we finished with approximately 390,000 tons, and we expect that to be about the same.

ASSEMBLYMAN SHINN: Are you open on Saturday, by any chance?

MR. McCARTHY: Yes.

ASSEMBLYMAN SHINN: Half a day?

MR. McCARTHY: Yes.

ASSEMBLYMAN SHINN: Any questions? Harry?

ASSEMBLYMAN McENROE: Yes. What is the size of the revenue derived from this operation in Morris County? Have you given the Chairman some figures on that -- total tonnage on an annual basis?

MR. McCARTHY: In 1988, it was about \$48 million.

ASSEMBLYMAN McENROE: Forty-eight million dollars, okay. How much of that do you estimate to be the cost of transporting the waste out-of-state?

MR. McCARTHY: It varies. The waste that goes to Pennsylvania -- northeastern Pennsylvania -- is approximately \$20 to \$25 per ton. The long haul waste that goes to Ohio is much more expensive. It is difficult to split out just that

cost, because our transportation fees are blended rates; in other words, long and short haul. But it is close to, probably, \$100 a ton just for transportation.

ASSEMBLYMAN McENROE: Wouldn't it be a good business practice to understand pretty much what that cost would be?

MR. McCARTHY: Oh, sure. We have the breakdowns. I just don't know the numbers.

ASSEMBLYMAN McENROE: Is it four times as expensive?

MR. McCARTHY: Yes.

ASSEMBLYMAN McENROE: Would it be over \$80?

MR. McCARTHY: Yes.

ASSEMBLYMAN McENROE: Has this been a profitable venture for Chambers Development in comparison to your other contracts in the other states?

MR. McCARTHY: Not at all. It is far below the expectations that Chambers would expect from a standard solid waste venture.

ASSEMBLYMAN McENROE: What percentage of the waste in Morris County is disposed of in northeastern Pennsylvania, in whatever county that is?

MR. McCARTHY: Approximately 90%.

ASSEMBLYMAN McENROE: Ninety percent?

MR. McCARTHY: Yes, sir.

ASSEMBLYMAN McENROE: So, waste at \$122 a ton in Morris County is transported a distance of somewhere between 60 and 80 miles. Is that fair?

MR. McCARTHY: That is 79 and 105.

ASSEMBLYMAN McENROE: The distances?

MR. McCARTHY: Between the two stations and the landfill.

ASSEMBLYMAN McENROE: That results in the cost of \$122?

MR. McCARTHY: Yes.

ASSEMBLYMAN McENROE: And yet, you say that only 25% of that is the transportation cost, for 90% of the waste.

MR. McCARTHY: One of the biggest issues in our rate -- one of the biggest features of it -- is the fact that we had to build two transfer stations at a cost of about \$15 million, and write them off over five years, because once resource recovery comes on-line, those transfer stations may not have any use at all. Therefore, all of the costs of the project are being written down over five years.

ASSEMBLYMAN McENROE: Isn't that beneficial to you? It would seem to me that if they can be written off at five years, it would be of benefit to the company's financial situation.

MR. McCARTHY: Well, it is, but only to the extent that the money we have invested is paid back in five years, but it certainly doesn't do anything for the rate.

ASSEMBLYMAN McENROE: The other question I derive from your comment is, do you really think this will only be for a five-year period? What progress has been made in Morris County that leads you to believe that resource recovery facilities will be accepting waste in Morris County within a five-year period?

MR. McCARTHY: Morris County presently is in the selection process of a vendor for the resource recovery plant. They are also trying to site the facility. I believe they are holding hearings even this week on the siting of the facility. However, the important thing for the purposes of making any financial projection is that the life of the project is set by the franchise and by the permits. Both of those say five years. If they are extended for any reason, we can certainly reflect that in the numbers, but at this point, with no guarantee, we have no piece of paper that leads us to believe that it would last more than five years.

ASSEMBLYMAN McENROE: And yet, your transfer station will still be in operation over the five-year period.

MR. McCARTHY: It could be.

ASSEMBLYMAN McENROE: You will be in a position, quite ready, to conduct business as usual for the next five-year period.

MR. McCARTHY: That would depend on the transportation aspects of it.

ASSEMBLYMAN McENROE: Your contract presently has not been-- You are in the courts working on an interim rate?

MR. McCARTHY: Yes, we don't have a contract.

ASSEMBLYMAN McENROE: You do not have a contract?

MR. McCARTHY: No.

ASSEMBLYMAN McENROE: Not even with the County?

MR. McCARTHY: No, we don't.

ASSEMBLYMAN McENROE: Not a private contract?

MR. McCARTHY: No, sir. As I said, we bore the risk for this project completely on our own.

ASSEMBLYMAN McENROE: So, what gives you the right to go into Morris County and accept their waste? What is there? There is some agreement. Do you have an agreement with the Board of Public Utilities?

MR. McCARTHY: We have a franchise.

ASSEMBLYMAN McENROE: A franchise agreement -- that's what I meant, yes -- to collect the waste from the transfer station?

MR. McCARTHY: That's right.

ASSEMBLYMAN McENROE: And transport it out-of-state. Do you feel that rate will be finalized and a decision will be made in October of '89?

MR. McCARTHY: That is the earliest we can expect one.

ASSEMBLYMAN SHINN: But your first contact was DEP -- is that correct -- on siting the facility; coming into New Jersey and responding to DEP's request?

MR. McCARTHY: For the Morris County project-- We were aware of it through DEP, yes.

ASSEMBLYMAN SHINN: Through DEP. Your first response to come into Morris was to DEP?

MR. McCARTHY: No. They made us aware of this project. In fact, they had referred the MCTS the previous year to Chambers, because we have landfills in Pennsylvania. They had sought us out over a year before that, hoping to acquire long-term air space rights at our landfills.

ASSEMBLYMAN McENROE: I just have a further question: The disposal cost of waste at this northeastern Pennsylvania location-- Is it \$75 a ton?

MR. McCARTHY: It is \$58 a ton right now; \$58.60, I believe.

ASSEMBLYMAN McENROE: Okay. So, \$58 plus \$25 plus your administrative costs adds up to \$122?

MR. McCARTHY: Yes, sir.

ASSEMBLYMAN McENROE: And that's a difficult proposition from a business viewpoint to support, you're saying?

MR. McCARTHY: Yes, it is.

ASSEMBLYMAN McENROE: In other words, you have more profitable ventures in other states?

MR. McCARTHY: Absolutely.

ASSEMBLYMAN McENROE: But that is including your amortization costs and the expense of the facility in Mount Olive and in Parsippany now?

MR. McCARTHY: Yes, sir.

ASSEMBLYMAN FELICE: May I ask a question, Mr. Chairman? Your contract for air rights in Pennsylvania lasts for how long?

MR. McCARTHY: It's for three years, with two option years.

ASSEMBLYMAN FELICE: Two option years.

MR. McCARTHY: A total of five, if all of the options are exercised.

ASSEMBLYMAN FELICE: If, for some reason, the State decided they no longer wanted you to adhere to the contract--

MR. McCARTHY: The State of Pennsylvania or the State of New Jersey?

ASSEMBLYMAN FELICE: The State of Pennsylvania. What are your options there? There would just be a lot of garbage sitting there?

MR. McCARTHY: Our options are rather limited, but we have undertaken the backup facilities being identified in several other states -- Ohio, West Virginia. We own several landfills in South Carolina, North Carolina. It's possible that we would use other Chambers facilities, if no other third-party landfills were available.

ASSEMBLYMAN FELICE: Of course, the costs would be a lot more money if you had to go further out.

MR. McCARTHY: Well, the Empire Landfill that we currently use is a fairly expensive landfill. There would be some net savings, probably, on transportation versus the fee at Empire.

ASSEMBLYMAN FELICE: What was the cost for the three years with the two-year option for acquiring the air rights at Empire?

MR. McCARTHY: MCTS had to put up a \$1 million air space reservation bond. That is amortized over three years. We also had to make a prepayment of \$1,143,000 and prepay each month's dump fees in advance.

ASSEMBLYMAN FELICE: Which comes out to about how much?

MR. McCARTHY: It's roughly \$1.2 million.

ASSEMBLYMAN FELICE: Okay, thank you.

ASSEMBLYMAN SHINN: As far as the amortization of the -- the five-year amortization-- What does that equate to, roughly, in a year? Do you have a feel for that?

MR. McCARTHY: Just in very rough numbers, over \$6 million.

ASSEMBLYMAN ALBOHN: May I follow up on that? If it is 400,000 tons a year, and it is amortized in five years, it is amortized over two million tons. That means that you have a \$10 million investment, then?

MR. McCARTHY: The total investment is over \$34 million.

ASSEMBLYMAN ALBOHN: In Morris County alone?

MR. McCARTHY: Yes.

ASSEMBLYMAN ALBOHN: Oh, okay. So, the \$34 million investment, and two million tons-- You're talking about \$17 per ton to amortize your debt.

MR. McCARTHY: That is correct.

ASSEMBLYMAN ALBOHN: Seventeen dollars per ton, plus, you said, \$20 to \$25 for transportation -- about \$22.50, the average -- plus \$58.60 per ton at Empire-- That comes out to a little over \$90 -- \$97 per ton. Now, that is the difference between that \$97 and the \$122?

MR. McCARTHY: Well, the transportation is roughly about \$82, \$85 -- hauling and transportation and dumping at Empire. The fixed cost, I believe, with interest, is somewhere around \$22 per ton, so that is a hundred right there, plus the actual operation of the facility, the administrative expenses. At this point, we are spending a substantial amount of money on legal fees and rate case preparation. So there are a variety of other expenses.

ASSEMBLYMAN ALBOHN: Okay. The difference then, is your operating cost. That is what you're saying basically, outside of amortization and everything else.

MR. McCARTHY: Yes, sir.

ASSEMBLYMAN ALBOHN: Operating legally and maybe some profit.

ASSEMBLYMAN McENROE: Maybe some profit?

ASSEMBLYMAN ALBOHN: I don't know. I don't suppose they are doing it as a philanthropic gesture. I think they would be looking for something else.

That's all I have.

ASSEMBLYMAN McENROE: I just want to ask a question, through the Chair: The resolution does say-- It directs this Committee to conduct an inquiry into the manner in which rates and charges for the disposal of solid waste being processed were set, and to investigate complaints over billing and illegal rate-making practices. How do you respond to that -- over billing and illegal rate-making practices? I mean, are you totally blameless in this thing? You're a big carrier of waste -- of our citizens' waste out of this State. How do you respond? Do you think this is an absurd resolution? Do you think this Committee is wasting our time? Are you saying you are laboring to make a reasonable profit in your--

MR. McCARTHY: We most certainly are laboring. In fact, we have, as I said, provided thousands and thousands of pages of financial information, down to the most detailed level, to the Board of Public Utilities, to Morris County, to the interveners, to the Public Advocate. We have committed the time and effort of the senior level people in our company to making sure that all of the questions asked of us are answered.

As I said, I just spent the last week, myself, testifying at the OAL. I mean, there isn't one part of our project that has not been examined in great detail.

ASSEMBLYMAN McENROE: Now, you have a franchise. But again, there is no contract.

MR. McCARTHY: No, there isn't.

ASSEMBLYMAN McENROE: No contract. I just can't understand how the waste gets from someone's residence to the Empire Landfill in northeastern Pennsylvania, simply because you have a franchise. I mean, you set your own rate; you're picking it up from the various municipalities. You're not picking it up from the municipalities, but other people are. You have established, just in an arbitrary manner, that \$122 is a sufficient cost to cover your expenses.

MR. McCARTHY: Not at all. That was set by the Board.

ASSEMBLYMAN McENROE: Well then, you said the Board did not set a rate.

MR. McCARTHY: Yes, they did. They set it on a temporary basis.

ASSEMBLYMAN McENROE: They have established the rate thereon?

MR. McCARTHY: Yes, they have.

ASSEMBLYMAN McENROE: The Board itself?

MR. McCARTHY: Yes.

ASSEMBLYMAN McENROE: Okay. So then it's more that you have, in a sense, an agreement, or a contract to dispose of the waste, ratified by the Board of Public Utilities of this State?

MR. McCARTHY: Well, it's not a contract. It's a tariff, and it's a franchise. There is no--

ASSEMBLYMAN McENROE: Well, a franchise-- All that does is permit you, in a particular area of our State, to function in a certain way, under their jurisdiction, with the tariff or the--

MR. McCARTHY: Right. That's what I'm saying. It is not a contract; it's a franchise. It gives us the right to the waste.

ASSEMBLYMAN SHINN: Protecting territories.

ASSEMBLYMAN McENROE: But it is executed by a contract.

S T E V E N J. M A D O N N A, E S Q.: It's actually-- May I-- My name is Steve Madonna. I am the regional counsel for Chambers.

It is actually an order of the Board, and not a contract. It is an order of the Board of Public Utilities, granted on our application. Since this entire transaction was done with the funding of Chambers, without any guarantees, and we petitioned the Board and received the franchise to be the exclusive, in effect, transfer stations during that period for

the two municipalities, all waste in the County must go to us. But there is not a contract.

In terms of the aspects of billing, and what have you, every charge that has come out of our transfer stations has been a charge set by the Board. We have not set anything arbitrarily. We just give them financial data and projections, and they have set the rates. So, nothing here has really been a contract negotiated in any sense -- the usual sense of the term. These are tariff rates and an order of the Board granting a franchise.

ASSEMBLYMAN McENROE: And directing each of the municipalities to provide a flow of waste to your facility.

MR. MADONNA: That is what the franchise does.

ASSEMBLYMAN McENROE: And you feel that in Morris there is very little waste that is finding its way into another facility?

MR. MADONNA: I don't know that I would go so far as to say there is very little. I mean, we probably have one of the higher compliance rates, but I can document significant amounts that are going to other places. We have been rather successful in keeping our tonnage up. That is not to suggest that there is not a lot more tonnage out there, though.

ASSEMBLYMAN SHINN: Could you describe for me the amount of effort you put into waste flow enforcement? You must put a significant amount in if you are getting the trash, because we have had other people testify that they were not. If you are in communication on your enforcement actions with the AG, the BPU, and DEP, can you sort of run that by me?

MR. MADONNA: One of my responsibilities at Chambers is, in fact, to coordinate waste flow enforcement, and to oversee, not on an investigation-by-investigation, day-to-day basis, but in general, the direction they are going, and working with them in terms of their responsibilities in enforcement.

The Chambers effort in this regard initially started out utilizing what we would call "plain-clothes enforcement individuals," and also individuals from -- using, in effect, marked cars, or an agency in which it was pretty apparent that there were people out there watching. We did a combination of the two when we opened the stations in January of last year.

The idea was to make our presence known; that there was, in fact, active enforcement. And at that time, I think in combination, we had maybe 16 investigators which we utilized, and phased out over the first four months, to the point where by May of last year, I think, we maintained the unit at five men.

Then, toward the end of last year when we were seeing a drop in the tonnage, we temporarily upped the manpower by another 10 men for the course of about a month, and we used maybe 15 men through a 30- or 40-day period at the end of last year.

What we do is make cases. Photographic evidence is obtained; in some cases, videotaped evidence. Reports are put together as you would any other investigative or police type report. What we do is work very closely with the Department of Environmental Protection's Waste Flow Enforcement people, and make available the data which we accumulate to them. Unfortunately, they are extremely backlogged and overwhelmed by their responsibilities in this area. We also work with the Board of Public Utilities at the same kind of problems.

In terms of working with the Division of Criminal Justice, we have done that. The problem in that area is, there is really no clear-cut criminal statute that we can use. We have to use your typical statutes -- criminal statutes -- that would apply, and that is extremely difficult because you don't have a statute specific. One of the statutes you can use is filing of a false public document. That is only-- You can use that if a carter collects in Union County and then goes to an

out-of-county transfer station and gives them an O&D -- an Origin and Destination form -- in which he indicates that the waste actually was picked up within the county that he is then dumping in. If he gives that over at that out-of-county transfer station, that is a false public record, and there is a criminal statute that applies. But if it goes, as it does in most cases, out-of-state to other facilities, or to the -- I guess you can characterize them as phony recycling centers, then there is no clear-cut statute that applies. It is very difficult to go to the district attorney's office or the prosecutor's office, and say, "I have a clear-cut case." I prosecuted for 15 years of my life, and it is very difficult taking the evidence that you are accumulating and making a criminal case.

We are going to have to resort to, probably, civil suits in the end in some of these cases, to try to stem some of the persistent offenders. The difficulty is not in accumulating evidence. It is getting somebody to do something with it. That is not a knock at the agencies, because we work very closely with them. The sheer weight of numbers of cases and the material they have to deal with is such that they can't effectively make these kinds of cases.

ASSEMBLYMAN SHINN: You spent time in the Attorney General's Office previously?

MR. MADONNA: Yes, that is correct.

ASSEMBLYMAN SHINN: In your mind, you have three agencies doing some overlapping in enforcement. Which do you feel would be the most appropriate agency, let's say, to follow through on investigations?

MR. MADONNA: Well, Mr. Chairman, I would like to think that if there were a criminal statute that could be used, quite frankly, one or two prosecutions would have a wealth of deterrent value for the entire system. But unfortunately, it is just hard to get one of those together, based upon the crimes on the books right now.

So, I would suggest that in the long run, criminal justice and the prosecutor's office can play a very key role, not in constant prosecutions, but all people have to see is that we mean it when we say the waste must go to this particular station. Prosecution here or there would go a long distance toward establishing a deterrent precedent.

On the other hand, in terms of day-to-day enforcement, I think the Department of Environmental Protection seems to function very well in this area, and has the unit together and the ability to do field citations and orders and what have you. But because of numbers and volume, again, it seems to bog down.

ASSEMBLYMAN SHINN: Do you feel the overlap in authority is a problem?

MR. MADONNA: I don't think in this-- Are you talking specific to waste flow enforcement?

ASSEMBLYMAN SHINN: Yes, waste flow enforcement, prosecutorial efforts.

MR. MADONNA: I don't think so, Mr. Chairman, for one reason: There is so much work, that it is very easy for them to, in effect, dole it out. And everybody can take something and do something. There is not this constant falling all over each other, which you would have if you had more manpower than you had work. So, it's really not a problem.

ASSEMBLYMAN SHINN: It just seems to me that if you were funding an enforcement arm, and you wanted to get the biggest, most coordinated effort together, it would make sense to fund it in an agency for waste flow enforcement and prosecution, an agency for licensure, an agency for rate setting.

MR. MADONNA: Yes, and that goes into -- as we talked of the last time I was before the Committee, something you alluded to -- the SCI report. That goes into the development of a lot of ideas and thoughts that relate to the way the

industry should be handled across-the-board, as opposed to specifically waste flow enforcement. I mean, there are a lot of considerations with respect to how the industry ought to be regulated.

I don't know if this is the appropriate time, but, you know, if you think, having spent-- I spent a dozen years doing enforcement in the waste industry, both hazardous waste enforcement, pollution, and also solid waste enforcement. If I can assist you, Mr. Chairman, in any thoughts on it, I would be more than happy to make myself available. It probably goes beyond the purview of the Committee's -- the scope of the hearing right now.

ASSEMBLYMAN SHINN: It's just that we keep running into this more and more, and reading the SCI report, and hearing different individuals in the departments talk. It is just something that needs to be addressed and focused on and implemented.

MR. MADONNA: I'm sure it does; I'm sure it does.

ASSEMBLYMAN McENROE: May I just go back for one minute, Mr. Chairman? I am just sitting here trying to be fair to everybody. It is all of our responsibility. I just see this \$34 million investment as a figure that just boggles the mind. I mean, this is not an expenditure. This is basically an investment of \$34 million. I frankly question the \$34 million. The \$10 million figure for equipment-- I know there is a depreciation factor on any kind of equipment. I still believe it has a life beyond five years. I think the facility-- Again, it is built on ground that certainly has appreciated in value since the time of your purchase at five or six or seven, or whatever it was. I think it will have a longer life than five years. I don't think that \$34 million investment is endangered whatsoever. I really think, looking at the \$122 per ton figure, that this offers an opportunity for a staggering amount of profit in the County of Morris.

I submit that. I am not looking for a defense from you. You certainly are capable of defending yourself, but somewhere in all of this, it seems unlikely that this is a marginal investment for a company of your size. When you talk about the numbers and the generation of revenue from an operation like this, with very little control, and very little indication of where the waste really winds up, and what kind of contracts you have with the disposal site, it seems to me that the pervasive sense that people have that there is enormous opportunity for profit in transporting garbage-- To me, it seems totally justified.

We are going to hear from other operators of other facilities, representing other counties, other private vendors, but I just think-- I am so pleased that you have called this Committee to order, Mr. Chairman, and that we are taking a look at how these wastes are handled.

MR. MADONNA: May I respond, Mr. Chairman?

ASSEMBLYMAN SHINN: Sure.

MR. MADONNA: This hearing, to say the least, is extremely abbreviated. As Mr. McCarthy has indicated, we have provided literally thousands and thousands of pages of answers to interrogatories, and financial data. At the hearings before the Board of Public Utilities, there are half a dozen to eight attorneys and accountants, experts, consultants, and what have you, having a full hearing in the rate-setting setting, so to speak. All I can do is assure you that every aspect of this investment or funding of these stations is being looked into.

If you want anything at any point in time, we would be more than happy to make it available. All I am suggesting to you is, I understand your feeling, but when you begin to take apart all the facets of this, and you take a look at what you are left with, and a station that has processed how many millions of tons of garbage at the end of five years, and all the aspects of pollution and concern for what you are going to

be left with in terms of ECRA, I believe you might have a different view when you are privy to all of the facts that are out there on the table.

ASSEMBLYMAN SHINN: Just for the record, we do have two large corrugated boxes from BPU and DEP on the background of Morris, that were submitted to us. So, if anyone has a thirst for spending leisure hours looking at documents--

ASSEMBLYMAN McENROE: They should be made part of our record.

ASSEMBLYMAN SHINN: --we do have them, and they are on file here. So, any further inquiry into details, that is available to anyone.

ASSEMBLYMAN McENROE: Well, I just--

ASSEMBLYMAN SHINN: I think one of the things that pops into my mind is the original decision, or the need for capacity in New Jersey, which really prompted the transfer station as a quick fix, which, in my mind, doesn't give you any capacity anywhere. It dictates a short amortization time because of filling the middle ground between running out of landfill capacity and coming on-line with resource recovery. So, at inception it is a high cost quick fix approach to New Jersey's solid waste problem.

The rates are high. There is no question about that. But I think when you get this whole picture into focus, it becomes clearer and clearer to me that it is a stopgap measure. It was a void that had to be filled by someone. The numbers you are dealing with are pretty substantive. The question of having continuous out-of-state disposal capacity is really one of the big questions in a five-year program.

So, there are a lot of things that fit into this formula. I'm sure the total answer isn't focused into one idea or one particular situation. I think we've got a broader picture here, which needs to be taken apart and analyzed.

ASSEMBLYMAN McENROE: May I just ask one specific question? What are you paying in Mount Olive, and what are you paying in Parsippany, as far as the host community benefit, per ton?

MR. McCARTHY: Five dollars a ton, plus the 10% discount.

ASSEMBLYMAN McENROE: To each?

MR. McCARTHY: Yes.

ASSEMBLYMAN McENROE: And that's bigger than the 122?

MR. McCARTHY: It makes up about \$6 or \$7 of it, on account of the discount.

ASSEMBLYMAN SHINN: Five dollars a ton, plus a 10% discount on the volume.

MR. McCARTHY: On the waste that they generate, yes.

ASSEMBLYMAN McENROE: On their waste.

ASSEMBLYMAN SHINN: And the statute is— The minimum is \$1 and 25%, or a combination either/or?

MR. McCARTHY: I think you have the option of reaching a separate agreement on discount.

ASSEMBLYMAN SHINN: Negotiated at five, and offered at 10%. And that's in both transfer stations? They are the same host benefits?

MR. MADONNA: That is correct.

MR. McCARTHY: Host fees are identical, yes.

ASSEMBLYMAN ALBOHN: Mr. Chairman, does this franchise arrangement have a life of just five years? Is that right?

MR. McCARTHY: Five years or less.

ASSEMBLYMAN ALBOHN: Five years or less, okay. Assuming it is five years beginning January 1, 1988, it now has a remaining life of three and two-thirds. Theoretically, if the Morris County resource recovery facility were up and running at the end of that fifth year, all the waste would immediately be going to that resource recovery facility, and you would be out of business, and you would, I presume, tear

down your facilities and clean up the site and sell the property, and whatever you had left over would be your property.

And you have to, I presume, set these rates in the interim on that five-year basis. Well, frankly, in my mind, with three and two-thirds years left, no specifics as to a site yet determined, no drawings on the drawing board, no litigation by municipalities or individuals or other groups accounted for in the County's timetable, it seems to me that you are going to be in operation for a lot longer than five years. You know, at the very least, I would see six or seven years, and given the worst case scenario, I suppose up to 10 years.

What is going to happen to your rates at the end of the fifth year if you are still going strong?

MR. McCARTHY: We have been offering to the County, since the outset of this project, that if they were interested in extending the life of the facilities, we would be more than willing to reflect that in our rates.

ASSEMBLYMAN ALBOHN: There would be a new negotiation of rates and a new application to the BPU, I suppose?

MR. McCARTHY: It would be just a very simple calculation. Instead of using five years, we would use seven years. I mean, we are more than willing to do that. However, under the circumstances, the life of the project is defined by both the permit and the franchise. And since Morris County did not participate, in fact did not even agree with the grant of the franchise to MCTS, we find it difficult just to offer it up on the hope that we will be in business six or seven years.

ASSEMBLYMAN ALBOHN: Oh, I understand that.

MR. McCARTHY: However -- and we have been saying this all alone; it is well-documented -- if the County were interested in reaching some agreement with us to keep the facilities open for 20 years, we would be more than willing to do that, and show the effect of that in our rates. Hopefully, when we are through this full-blown rate proceeding, and they

have seen the numbers, and have, you know, touched and felt around and are satisfied that the numbers we have presented are reasonable, then we can go about setting a more reasonable scenario, hopefully involving, you know, much more than five years.

At this stage, though, as I said, there was a substantial investment, with some bonds issued, and the investors who buy those bonds want to see the life span of that repayment being tied to the project. I couldn't sell bonds for 15 years, if my permits were only for five. So, in that sense we are waiting. If DEP and BPU and Morris County would like to pursue that, if they saw that as a viable alternative, we are certainly prepared to handle that.

ASSEMBLYMAN SHINN: The size of your site at Parsippany is how big?

MR. McCARTHY: The acreage?

ASSEMBLYMAN SHINN: Yes.

MR. McCARTHY: It is a combined eight acres. The transfer station building is about 33,000 square feet.

ASSEMBLYMAN SHINN: And the one in Mount Olive?

MR. McCARTHY: It's about 10 acres of usable property, and about 16,000 square feet.

ASSEMBLYMAN FELICE: Mr. Chairman, may I-- Just some rough figuring. Last year I think you said you did 390,000 tons approximately.

MR. McCARTHY: Approximately, yes.

ASSEMBLYMAN FELICE: So, at \$122 per ton, that's 47 and a half million. What basically -- just a percentage -- would you say the shareholders, the stock holders-- What kind of a profit would there be in this five-year period, or right now, what would you figure in your contract time of three plus two, or five years-- What kind of annual profit, percentage-wise, just roughly, with all the payments and everything else, and transportation-- Any idea, roughly?

MR. McCARTHY: On a pro forma basis, the three to five year projects are approximately a 4.8% profit.

ASSEMBLYMAN FELICE: A 4.8% profit?

MR. McCARTHY: That is correct.

ASSEMBLYMAN FELICE: You said, I think, that something like \$80--some a ton was for transportation, and the waste costs-- I am trying to figure where I lost some part. Of course, I apologize, because I didn't come in at the beginning of the hearing. I am just wondering where the rest of it was lost. Is there any kind of a breakdown, roughly, you can give me on that \$122? We talked about transportation, depending on where it goes.

MR. McCARTHY: I'm sorry; I don't have the figures in front of me. But if you received copies of our filing from the BPU, there is extensive detail there.

ASSEMBLYMAN FELICE: Okay. I am just curious.

MR. McCARTHY: There are various components. The host fees and taxes, for example, are about \$8 a ton.

ASSEMBLYMAN FELICE: Yes, I've got that. I am just curious, and I would ask the same question of any other county, because some are in a bit more enviable position, you maybe, or others. I am just curious, especially about those that are taking air rights for 10 and 15 years. What happens after five years when the resource recovery plants are on-line? What do they do with the other 10 years' air rights?

Thank you.

ASSEMBLYMAN SHINN: Your 400 tons per year-- That's both facilities?

MR. McCARTHY: Through both, yes, sir; total.

ASSEMBLYMAN SHINN: And you are receiving all of the waste generated from Morris?

MR. McCARTHY: From Morris County.

ASSEMBLYMAN SHINN: What is the population of Morris, roughly?

MR. McCARTHY: About 460,000, 480,000, something like that.

ASSEMBLYMAN SHINN: Okay.

ASSEMBLYMAN McENROE: I just have one further question, I guess.

ASSEMBLYMAN SHINN: Sure.

ASSEMBLYMAN McENROE: Regarding the site itself, could you describe the 33,000 square foot facility in Parsippany? Is it cement block with a corrugated roof?

MR. McCARTHY: It is a combination of concrete floors and push walls, with a freestanding steel span structure around it.

ASSEMBLYMAN McENROE: What is the actual, in round figures, construction costs of each, we'll say, Mount Olive and Parsippany?

MR. McCARTHY: Fourteen million for both of them.

ASSEMBLYMAN McENROE: Fourteen million dollars?

MR. McCARTHY: Yes, sir.

ASSEMBLYMAN McENROE: For both?

MR. McCARTHY: Yes.

ASSEMBLYMAN McENROE: Concrete cement block and -- not even--

MR. McCARTHY: There is so much more to it than just that. We have methane gas venting systems, a large system--

ASSEMBLYMAN McENROE: Yes, I have seen them. I am familiar with transfer stations. But it just seems that if we can build an aquarium in Camden for \$50 million, -I guess, and a proposed art center in Newark for \$33 million--

MR. McCARTHY: I might suggest that you look into the--

ASSEMBLYMAN McENROE: --and this is neither. This is not an aquarium. There are other things swimming around, I guess, but--

MR. McCARTHY: Perhaps this is a bit more vital service; a bit more necessary.

ASSEMBLYMAN McENROE: That is a boggle-the-mind-type figure, in my view.

MR. MADONNA: The Parsippany station is actually adjacent to a former landfill site, and there had to be-- We were mandated to put in, at a significant cost, a gas migration system, with alarm systems in case there was a problem with methane gas. That is something that you would not typically have to deal with in a construction project. That is one of the things.

Another aspect of it is, quite frankly, that the Freeholders mandated two separate -- entirely separate -- stations, so everything was duplicated. You have to have scales and computer systems. Everything you have to do for one, we had to do for two, because that is what the County mandated in its plans.

MR. McCARTHY: Perhaps the most important factor is, keep in mind Morris County, and the other counties, have whatever length of time to get ready for this. When we came into this project, we had 50 days to go, and nothing was done. We did everything, got the project up and running within 50 days. When people know you have a deadline like that, most vendors tend to take advantage. I am not saying that it was an ideal situation. I mean, trying to do this and get the project operational in 50 days' time, certainly did add to the expense of it. The fact that we complied with two master performance permits that have 38 general conditions and over 200 specific conditions, was very difficult, and there was a cost associated with it.

You really have to balance what you truly want. Do you want a transfer station that is basically a concrete slab with a fence around it, or do you want something that would be acceptable to the host community? Given the fact that both of these stations had some legal challenges to siting, and given the fact that today if you asked the mayors of either of those

towns what sort of operation, I think they would tell you that they are state of the art. You have your choice. You can have something that is a stone age operation, or you can have a state-of-the-art operation. I think Morris County and DEP decided that they wanted state of the art, and that is certainly what they got.

ASSEMBLYMAN SHINN: Thank you for coming and sharing your experience with us. I guess Mr. Madonna is going to stay and talk about Passaic.

MR. MADONNA: Yes. I have about a two-page statement that I am going to present to the Committee on behalf of Ed Durand, the general counsel, who could not be here today. This relates to our contract with the County of Passaic.

Among Chambers' major contracts for the disposal of solid waste is our contract with the Passaic County Utilities Authority, or PCUA. Under that contract, Chambers has handled the disposal of up to 15,000 (sic) tons per day of municipal solid waste from the two transfer stations operating within Passaic County.

Let me discuss briefly some of the chronology of events relating to that contract, and discuss also some of the major aspects of that contract.

Chambers was first made aware of the potential contract in mid-1986, when Chambers was contacted by representatives of PenPac, Inc. PenPac was at that time preparing a proposal to be submitted to the New Jersey Department of Environmental Protection in response to the DEP's request for proposals to handle the transfer and disposal of waste from several counties, including Passaic County. Chambers was asked by PenPac to make a commitment of landfill space and price as part of PenPac's proposal to the DEP, with Chambers as a subcontractor to PenPac. Chambers made such a commitment to PenPac on August 11, 1986, and PenPac then submitted its proposal to DEP.

In December 1986, Chambers was requested by the PCUA to commence negotiations directly with the PCUA regarding disposal of Passaic County's waste at Chambers landfills. Prior to that time, the PCUA had been engaged in discussions and certain litigation with DEP in which the PCUA obtained the right to contract directly with private parties for the handling of solid waste from Passaic County. On April 10, 1987, Chambers entered into a contract with the PCUA under which Chambers granted the PCUA a license to dispose of up to a total of 2,250,000 tons of solid waste over a period of five years. Chambers and the PCUA also entered into a contract to provide for the disposal for an additional 10 years of incinerator ash from the resource recovery facility expected to be constructed in Passaic County.

Simultaneously with the agreements between Chambers and the PCUA, Chambers also entered into an agreement with PenPac, Inc. regarding the transportation of the waste from PenPac's transfer stations to Chambers' landfills, and PenPac and the PCUA entered into an agreement regarding the operation of the transfer stations.

The price for landfill disposal to be paid by the PCUA to Chambers was arrived at following extensive negotiation. Payment for the disposal was made through a single payment by the PCUA to Chambers in September 1987 in the amount of approximately \$51,000,000. The amount of this payment was based upon the discounted value of five years' of landfill charges. The funds for that payment were raised by the PCUA through the issuance of Solid Waste Disposal Revenue Bonds sold by the PCUA. The funds received by Chambers were placed in an escrow account, and are released from the account over the term of Chambers' performance under the contract.

Under the contract, Chambers has granted the PCUA license rights in three landfills owned or operated by Chambers or its subsidiaries. This arrangement was undertaken to

provide redundancy of landfill capacity to the PCUA, to better assure the regular flow of waste. Under certain conditions, Chambers may also arrange for the disposal of the waste at additional landfills.

The disposal of the waste from Passaic County commenced in December 1987, and has continued through the present.

That is the end of the statement.

ASSEMBLYMAN SHINN: You meant 1500 tons a day. In the early part of your statement, you said 15,000.

MR. MADONNA: Fifteen hundred tons a day.

ASSEMBLYMAN SHINN: Just so the record is straight.

MR. MADONNA: Thank you.

ASSEMBLYMAN FELICE: This agreement you had with the PCUA was for five-year charges. Right?

MR. MADONNA: Yes, that is correct.

ASSEMBLYMAN FELICE: Right. Doesn't Passaic County have a 15-year air rights agreement with Pennsylvania?

MR. MADONNA: It's five years, plus there is 10 years of ash, which was referred to in the statement. But as it relates to the solid waste, it is a five-year contract.

ASSEMBLYMAN FELICE: But the contract is for a total of 15 years, five and 10?

MR. MADONNA: Right.

ASSEMBLYMAN FELICE: In other words, they bought air rights with the \$51 million?

MR. MADONNA: The \$51 million relates to the air rights for the solid waste space, which is for five years.

ASSEMBLYMAN FELICE: Five years?

MR. MADONNA: Yes, that is correct.

ASSEMBLYMAN FELICE: And they raised that money by revenue bonds. The PCUA raised it, right?

MR. MADONNA: That is correct.

ASSEMBLYMAN FELICE: Could I have a copy of that report?

MR. MADONNA: I can submit a copy. I will have a copy made for you.

ASSEMBLYMAN SHINN: Your rate at that transfer station was 70--

MR. MADONNA: We don't set-- We have nothing to do with the rates at that station.

ASSEMBLYMAN SHINN: Okay. You're strictly--

ASSEMBLYMAN FELICE: They just transfer it to their site in Pennsylvania. That's your contract, right?

MR. MADONNA: To the landfill, that's correct.

ASSEMBLYMAN SHINN: I think it was 70-some dollars, as I remember.

ASSEMBLYMAN McENROE: Mr. Chairman, I just want to comment that we had a very comprehensive statement read by an attorney on behalf of an attorney representing their organization. I expect that, and I think it was well-done. But we are really here looking into rates. We would do well if we had Passaic County Utilities Authority people here, and we had PenPac people here.

ASSEMBLYMAN FELICE: I would like that very much.

ASSEMBLYMAN McENROE: Because there are questions we would like to educate ourselves by asking. I think one of them certainly is, is the \$51 million prepayment for landfill capacity out-of-state the right way to go? Is that a good example for Morris County to follow? Is it a good example for Essex County, Union, Somerset?

MR. MADONNA: Well--

ASSEMBLYMAN McENROE: If you want to comment, fine.

MR. MADONNA: An aside that the Committee may be interested in, is that the rates that were used in calculating the disposal, reaching the \$51 million figure, were rates for the first year of \$24 a ton; \$26 a ton the second year; \$27 a

ton the third year; \$31 a ton the fourth year; and \$33 a ton the fifth year. Those rates are bargain rates, to say the least. Our landfills were charging between \$30 and \$35 a ton, at a time when the figures we used were \$24 to \$26 a ton. The Empire rate at the same time is almost \$60 a ton. So, there was some benefit in that for the County. The rates based upon-- Obviously, that is one of the things that you are gambling against, and in this case, it worked to the benefit of the County.

ASSEMBLYMAN MCENROE: How about the interest on that \$51 million bonded money?

MR. MADONNA: Well, that's why they paid the discounted value.

ASSEMBLYMAN MCENROE: But Chambers is the beneficiary of that, isn't it?

MR. MADONNA: That is correct, and they got the benefit by paying it up-front.

ASSEMBLYMAN FELICE: We hear that one county is cheaper than the other, and we have done a terrific job from county "A" to county "B," and these rates, you know, are great for this part of it. But when they are figuring from one county to the other, what they are not telling the taxpayers is that they are paying an additional \$25 to \$30 a ton for the interest on these revenue bonds that they had to float.

MR. MADONNA: I guess it is also a consideration, the fact that the bonds are going to last 15 years, while the landfill space lasts five. So from the point of view of comparing, for instance, apples and oranges, you have a problem, because when you try to compare that against Morris County, Morris County is, in effect, paying as it goes, whereas Passaic County is bonded for 15 years. Then I believe there might even be balloon payment considerations.

So, you know, if it appears on the face of it to be a lower rate, there are a lot of things behind the scenes that

have to be taken into account. On the other hand, had possibly the financial integrity of the County of Morris been put forward for the project in Morris County and their borrowing capacity, conceivably there could have been a saving of a point or two on interest rates. But that, unfortunately, was not the case, and Chambers had to do it entirely on its own in the commercial setting.

ASSEMBLYMAN SHINN: We did have the MUA from Passaic come in and testify. I guess PenPac hasn't been here, but everyone else has, I think.

ASSEMBLYMAN FELICE: I would like very much to have them here because there is so much controversy, in our part of the State especially, you know, about what a great job one county is doing, but they are really not coming up with the facts. Once and for all, I think, as was mentioned, you know, what we in public government can do, we are allowing some of these utilities to do on a county basis, which is to borrow long term.

ASSEMBLYMAN SHINN: You said five-year garbage, 10-year ash disposal.

MR. MADONNA: That is correct.

ASSEMBLYMAN SHINN: Well, the 15-year disposal--

MR. MADONNA: There are two aspects to the contract, right.

ASSEMBLYMAN SHINN: Okay. Any other questions? (no response) Thank you very much.

MR. MADONNA: Thank you, Mr. Chairman.

ASSEMBLYMAN SHINN: We appreciate it.

Ted Schwartz, Waste Management of New Jersey, Inc.? Are we in Essex County now, Harry?

ASSEMBLYMAN McENROE: We are in the great State of New Jersey, and one little part of Essex.

T H E O D O R E A . S C H W A R T Z , E S Q . : Thank you. Mr. Chairman, members of the Committee: Permit me to introduce

myself. I am Theodore A. Schwartz, with the law firm of Schwartz, Tobia & Stanziale, in Montclair, New Jersey. We are here on behalf of Waste Management of New Jersey. I represent the company, and am responding to the letter from the Committee dated April 28, 1989, regarding our operations in and for the County of Essex.

What I tried to do to present the picture as I see it and be responsive to the resolution, and particularly the issues that Assemblyman McEnroe mentioned before, is, I took an affidavit I filed in the case before the Board of Public Utilities that we are involved in. I really took the time to lay out in detail the whole picture in New Jersey vis-a-vis the transfer station program, the Essex County program, what it takes to build these things, the Public Utilities aspects, the rates charged in every facility in the entire State of New Jersey, and tried to put them together in a picture so that everybody could understand what went on here and how these programs were created, and hopefully answer a lot of the questions you have.

I would like to start off by discussing in brief detail the situation as it persisted in Essex County, picking up from where County Executive Amato had spoken last time. I am going to try to paraphrase through this, so that I don't bore you with a lot of unnecessary rhetoric.

On May 2, 1983, the Superior Court, Chancery Division, entered an order in the matter of Shapiro et al. v. the Hackensack Meadowlands Commission. Essentially, that order required the Hackensack Meadowlands Commission to provide disposal capacity for the County of Essex until July 31, 1987, and no further. The construction of the proposed resource recovery facility in Essex County did not proceed on time as originally expected, due to various and sundry reasons which have no bearing on Waste Management. Consequently, the waste recovery facility was not available to process Essex County's solid waste prior to July 31, 1987.

Faced with this fact, and coupled with the court order precluding the continued use of the HMDC landfill beyond July 31, '87, Essex County was constrained to find an alternative disposal means and sites for its use until at least 1990. Now, this is important, because, as you will see as I go on, Essex County had already entered into an agreement for construction of their resource recovery facility. Construction was supposed to be completed at the beginning of 1990. The County, in contracting with Waste Management of New Jersey, only contracted with us for a 30-month period. Our contract terminates January 1990, which is when the resource recovery facility is supposed to be operational.

Faced with the impending disposal crisis of great proportions, the County developed an emergency response to address the situation, which I think Executive Amato went into detail on. On June 3, 1987, an emergency amendment was adopted to the County's Solid Waste Management Plan, providing for the establishment of three interim transfer stations to serve the County -- a footnote to this: two facilities in the City of Newark, and one in Orange. The Orange facility was never constructed, and you will see why as I go on, which is the root of some of the problems which you, Mr. Chairman, have discussed, and other members on the waste flow issue, which is a real serious issue in Essex County.

Now, these facilities were to be constructed and operated for the County during the emergency period pending the operation of a resource recovery facility. Thus, the Avenue A facility of Waste Management of New Jersey and the Frelinghuysen Avenue facility of the solid waste transfer station were established as the centralized facilities for the County to manage its solid waste, due to the closing of the HMDC facilities.

In recognition of the impending solid waste crisis facing the County, the New Jersey Department of Environmental

Protection immediately reviewed the planned amendment and certified the same on June 8, 1988. In furtherance of the emergency presented -- I think this is very important; a lot of people probably don't know this -- DEP, on June 18, 1987, adopted emergency procedures to facilitate permitting, finding that it was necessary to avert imminent peril to the public's safety and welfare and the environment posed by the solid waste disposal crisis facing Essex County.

In addition, Governor Kean, on June 23, 1987, concurred with this finding and certified his approval in recognition of the emergency. So we had a multi-departmental declaration of emergency: the County, the Department, the Department of Community Affairs, and the Governor of the State of New Jersey.

The permit for the Waste Management Transfer Station was issued by DEP on July 7, 1987 -- July 7 -- and required construction and operation of the facility by July 31, 1987. I want to show you what we had to build. You'll think that we created the world in seven days. To further facilitate construction, the New Jersey Department of Community Affairs took the extraordinary step of supplanting local permitting agencies and assumed the responsibility of issuing permits and conducting its own inspections. The City of Newark construction code official was supplanted because the Department, the Governor, and so on and so forth, determined that this facility had to be built on an emergency basis -- it was like, 35 days to build it -- and that we couldn't afford to deal with any local problems that might occur, which did occur, as I will go into later on.

In response to the emergency declared by DEP, the Governor, the Department of Community Affairs, the County of Essex, the County, relying upon the emergency provisions of the Local Public Contracts Law -- N.J.S.A. 40A:11-1, et seq. -- Essex County negotiated a complex contract with Waste

Management to build the Avenue A transfer station in less than 45 days.

Waste Management was required to construct the facility on an expedited basis, and operate it for the County for a fixed period of 30 months, during the interim period of the emergency in which the County's resource recovery facility was to be constructed.

That was the situation as it existed in Essex County vis-a-vis the emergency and the dates, as you can see, were a very compressed period of time.

The next issue, which I think was delved into very well by representatives of DEP, and I will just highlight it a little bit, was the statewide solid waste crisis. Many of you probably don't remember this, but back in 1985, the State started to rely more on out-of-state disposal. As a result, Ferris Landfill was being used in the State of Pennsylvania for disposal, and most of those on-line landfills had poor environmental controls at that time, due to the status of the regulations in Pennsylvania, unlike New Jersey.

I remember in about 1985, 1986, all of a sudden one of the major landfills in Pennsylvania closed. It was the Keystone Landfill in Scranton, Pennsylvania. When that landfill closed, it caused chaos throughout the solid waste industry, because that was a large recipient of New Jersey's solid waste. Therefore, you now had that facility closed out, and everybody started scurrying around as to where to put the garbage, because New Jersey is a major exporter of refuse, due to the program, good, bad, or indifferent, that closed landfills in New Jersey, flipped over to resource recovery, which time period -- which had not occurred within the time period that everybody would have liked it to have occurred. So, you were faced with a serious problem.

So, the Keystone Landfill closed. The people shipping garbage from New Jersey were running all over the place trying to find a place to put the garbage, because you couldn't put it in New Jersey.

DEP, back in June of 1986, as testified to earlier, issued a RFP for solid waste transfer stations in the Counties of Somerset, Morris, Union, and Passaic -- not Essex, and not Bergen. The RFP process was a very long, involved process that probably spanned almost a year-and-a-half, two years, with the development of facilities in the four counties that I mentioned. What I think was missing in DEP's testimony at the time -- and this is not critical -- was the fact that with the creation of this RFP, you now created a marketplace condition where everybody knew in Pennsylvania, and in other states, that New Jersey garbage had to go out-of-state. There was no place to dump it in New Jersey.

DEP had hired an outside consultant, J. T. Baker Associates, to analyze the disposal capacity in the State of Pennsylvania vis-a-vis New Jersey waste material, and to come up with scenarios as to what it would cost to do this. There were committees established between DEP and the BPU, wherein the proposals were reviewed that were submitted for the various counties -- not Essex now -- and the approximate cost of the operation was presented; was reviewed by these in-house groups, and DEP required the operating facility to have a contract with an out-of-state landfill, or two landfills, in order to make sure that the waste stream was accounted for, because you were dealing here with reliability, day in and day out, to move garbage for the public. You can't just say, "Well, the thing doesn't work today. We'll worry about it tomorrow." It's day in and day out. The landfill space has to be committed; it has to be available.

The State of New Jersey couldn't even meet its own commitments, due to the fact that all of the landfills had been closed in many of the counties. Some of the counties already had out-of-state operations, like Hunterdon, Mercer, Camden. I think Warren went out-of-state; I think Sussex was even going out-of-state at that time. So, the entire picture vis-a-vis

the management of solid waste was now changed, and the State, through mandating the out-of-state disposal, added additional costly steps to the management and processing of solid waste.

Now, the economic consequences of this type of management program are obvious. Solid waste facilities must be constructed in accordance with the environmental requirements of DEP to receive and process waste, and reload the same in transfer trailers for shipment to out-of-state facilities. At these out-of-state facilities, the solid waste is again rehandled and disposed of in an environmentally sound solid waste disposal facility. So now you are adding two more steps to the solid waste management stream which are very costly, and you are relying on the use of out-of-state facilities that the Department of Environmental Protection and BPU have frankly no control over, and rightfully so.

The contract with the County of Essex was entered into on July 1, 1987. The County determined that emergent arrangements and facilities were required to be implemented to provide for this program. The contract further recognized not only the emergent need of the facilities and the short time available to provide the same, but also that a substantial financial investment was necessary in order to provide for the operation of the facility. The contract recognized the financial investment being made on the emergent conditions for the operation of the transfer station and the significant costs to Waste Management of New Jersey.

We provided the fully operational transfer station in less than 45 days. This was in compliance with the deadlines of the NJDEP. Now, if you read their permit, you would see that it became invalid on August 1 if the facility had not been built. Similarly, our contract with the County of Essex provided that if the facility wasn't fully operational on August 1, 1987, the contract would be declared not in force, in effect.

Now, as a result, Waste Management took on this responsibility and agreed to provide a fully operational facility to process 1600 tons a day, which is 1,200,000 tons, or 4,200,000 truck yards, during the contract period. The transfer station facility was built and operational on the date required in the contract. I lived this program for two months. I practically slept in courtroom after courtroom. I would like to share something with you, so you will understand what went on here.

This facility that was built within this period of time looked like-- I don't know if you have ever seen movies of airports being bombed out, and cities being bombed out in Vietnam, but there were more men working on this job than you can imagine. There were hundreds and hundreds of employees working to build this facility. It looked like a war zone: the concrete trucks coming in; carpenters; electricians; structural people, all with the idea of this company saying, "We are not going to dump a truck of garbage in the open air." That was the policy of Waste Management of New Jersey. We did not dump any garbage in the open air. We had a fully enclosed operational facility in the time required.

Some of the other facilities, as you heard in other testimony, were open-air facilities for many months. We did not do that. We were fully operational on the date required.

Under the contract, the County -- and this is important for some other points I am going to make later on -- was required to obtain the Certificate of Public Convenience and Necessity from BPU, not Waste Management. The County was required to obtain the franchise from the BPU. They were required to establish a tariff and have it approved by the BPU. They were required to implement waste flow regulation. In short, the County was responsible, as the public utility, for all issues relating to the operation. We had absolutely nothing whatsoever to do with any of the matters that I just mentioned.

Waste Management of New Jersey was strictly a contract vendor. We have no dealings with customers. We have no dealings with rates. We have no dealings with waste flow. We have no dealings with accounting. What we do is get paid from the County as we handle the trash. The County is the only entity that we do any business with.

Now, in developing the transfer station program and the contractual arrangements with the two transfer station operators, it was estimated by DEP and the County, based upon disposal records of the HMDC, that approximately 4000 tons per day of solid waste was required to be disposed of in the County. Waste Management was required to provide a constructed facility, transportation system, and disposal capacity for the County to handle approximately 1600 tons per day.

The County was required under the contract to provide in its Solid Waste Management Plan franchise and waste flow requirements for the direction of not less than 1540 tons a day of acceptable waste to the transfer station. Acceptable waste, so you will understand-- Waste Management of New Jersey's transfer station only handles type 10 waste. We do not handle anything else. That is strictly municipal and commercial waste. We do not handle bulky waste; we don't handle ID 27; we don't handle 24, 25, or whatever.

It was critical to the County's obligations under the contract to provide for appropriate quantities of solid waste flow to the transfer station. As a result of these commitments that we undertook with the County, Waste Management was required to provide for the reservation of disposal capacity at acceptable disposal sites and assure that the material was disposed of properly. In our contract with the County of Essex, which I think is very important because this is a risk factor, Waste Management indemnified the County for the destruction -- damage to any property, contamination, or adverse effects to the environment, or any violation of

government laws or regulations. So, we gave full indemnification to the County that when we touched that material, it was ours. Many of you, I am sure, read the newspapers about Superfund sites and Spill Fund sites and how everybody that ever went near a garbage dump is getting sued today and asked to contribute money. Waste Management, as a company, took on the obligation to fully indemnify the County. Our position is, once you put it on the floor and it is acceptable garbage, it is our responsibility thereafter. I don't know if anybody else does that. I have never seen the other arrangements.

Now, as I mentioned earlier, unlike other facilities where the waste project was not conducted in the open air, but in closed buildings-- I brought with me today-- If I had had time, I would have had a videotape made. But I just want to show you the enormity of what we are dealing with. The first picture is the basic transfer station. You can see it has 11 bays, and back in the background is the scales operation. To show you how efficient this place is, every truck that comes in, is out of here in less than 10 minutes. That's fairly remarkable. The reason we are able to do that is because there are so many bays to operate in, and we have so much equipment available to move the refuse. We have a large facility there. It is not a small operation. I can pass this picture around. I intend to leave it with you, so you will have an idea.

This is another continuation of the facility. This is a work building on the right side. Where I am sitting now is the tarpaulining area, where they put the tarps over the transfer trailers. Then there is a long distance shot from one of our trailer storage areas. You can see that the place is fully lighted. In fact, the neighbors love us down there, because we have reduced the crime rate in the area. It is so well lit, and there are people there 24 hours a day. We offered to the City of Newark to pave all the streets in the

area, but they didn't accept that because they were in litigation with the County. They wouldn't do anything that would affect their position.

In any event, when the facilities were being built, I pointed out that DCA had taken over the construction code official's responsibilities. As such, we dealt strictly with DCA on our plans and specifications. FAX machines were being burnt out daily sending plans back and forth, trying to get this project going.

The public record will reveal that at the time -- this is in July now -- the City of Newark, the City of Orange, and others, filed actions against the County, Waste Management, the other transfer station operator, the Freeholders, and I would say that for a 30- to 40-day period, I was in every courtroom and appellate room and the Supreme Court. I couldn't believe I could pump out so much paper so fast in response to these cases.

So, with all the pressure going on and trying to construct these facilities, the constant legal actions which, thank God, were all successful-- There was a challenge to the bidding procedure on which the court ruled in the County's favor. Everything that was challenged was ruled in favor of the County. It was just one case after another. So, it was a very difficult time, and then you have to figure that you are a company putting up the money to build this facility. You have all the litigation pending, and you say to yourself, "Where are we going to wind up? Are we going to have a white elephant?"

What we did, as part of the emergency in the contract, was, after the transfer was prohibited from opening due to an order of the court, the County was going to take back the facility, whatever was built, and that would be developed through some type of evaluation procedure. It is really unimportant now, because it didn't happen, but that is the turmoil that existed. We didn't have the year-and-a-half. It was a crisis, I don't mind telling you. It was 24 hours a day,

seven days a week, of hundreds and hundreds of workers on the job, trying to build this facility. We hired the largest construction company in the world to build it. That was Turner Construction. We kept concrete plants open 24 hours a day -- Colonial Concrete in Newark, on Route 21; asphalt plants; carpenters around the clock. In fact, the carpenters' union ran out of carpenters. They couldn't supply enough carpenters for the job -- or electricians -- because there are so many on the public works' projects that are going on. They didn't have enough men. Men were coming from out-of-state to work for the unions to do this type of work. I just can't describe to you what went on at this period of time.

The next area I thought was important, and which I think is really critical, is the area of waste flow. As I pointed out, the County is the franchise holder. We don't hold any franchises. We don't have any rights to force people to use the transfer station. I pointed out to you earlier that the County's estimate of disposal capacity was 4000 tons a day. There isn't 4000 tons a day of garbage in Essex County. I don't think the figures from the HMDC records were accurate. As a result of the operations of the facilities for the first short period of time, they are now looking at it on a whole. We average, give or take, maybe 1300 tons a day; sometimes it is 12; sometimes we go to 14; sometimes maybe 15. It goes up and down. The other transfer station-- I can't speak for them, but I wouldn't think they do more than 1000 tons a day of regular trash. So you're looking at 2500 tons a day maybe. We know -- and I say this unequivocally to this panel -- that there is massive cheating going on in Essex County vis-a-vis waste flow. And you know, it not only hurts the public; it hurts a lot of people, because of the fact that the recycling taxes are not collected. There is a \$1.50 recycling tax. There is a host community benefit -- taxes -- that Newark gets, which I understand they are trying to raise between the County

and Newark. We don't get in the middle of that situation. And then the public gets hurt, too, because of this noncompliance.

I was glad to listen to the first speaker with regard to the enforcement activities. We also undertook a very substantial expenditure of money for private investigators to document as much of the waste flow violations as we could. True, we don't have the franchise. We have a contract with the County. It is like a put or pay type contract. They meet the minimums all the time, so there really isn't a problem with it. But as a result of the materials we furnished, and the other transfer station operator, and discussions with BPU and DEP, four suits were filed against illegal transfer station operations in the City of Newark. They are entitled: The State Board of Public Utilities and the Department of Environmental Protection v. Industrial and Commercial Refuse Removal, Inc., Newark Disposal, Inc., A. Fiore and Sons Salvage, Inc., and Regional Recycling, Inc. There are other names associated with those. I think one case was settled, but the pleadings are of public record, and document, at least in our view, the illegal transfer stations. In fact, we have one-- I mean, it is such a joke. We are down Anthony Way. I don't know if you know the area. Maybe Assemblyman McEnroe might. But, right across the street from us is a transfer station operation. It is a fairly large one, and we have never seen a drop of garbage go into the place. And you know, we have made these observations to the appropriate people. DEP is trying to do the best they can; BPU is trying to do the best they can, but it is a very serious problem. Waste flow rules and regulations are being violated. There are just no two ways about it. It's an unfortunate situation.

The next area is the costs -- the rates and charges of this facility. Executive Amato testified that the Essex County tariff rate is \$102.86. That is not our rate. I am happy to

inform you that we only receive \$92.80 for the operation of our facility. That is the lowest the County can pay, based upon the sliding scale or the contract, and they seem to hit it all the time. It is a fairly reasonable scale to hit. So, contrary to a lot of things you might have read, our rate is not \$102.86; it is \$92.80.

Now, for the first year of the contract -- July '87 to August 1, '88, we processed 383,000 tons of refuse at our transfer station. Now mind you, the contract has in it that the minimum guarantee for the year period is 400,000 tons, but we did not ask the County of Essex for any additional money, because the way we set the contract up, it is a floating situation. In other words, if they -- which I thought was very interesting-- If they are under their waste flow commitment for the first six months of a given year, they make it up in the second six months, and we balance it out. That has worked very, very well. It is a very fair way, we feel, of doing it. We are not penalizing anybody because they didn't make it in a certain week or a certain day. It is a cumulative approach.

I am just trying to skim here a little bit. What I did was develop an analysis for charges throughout the State of New Jersey. These are the most current figures that I obtained from the Board of Public Utilities, so you can kind of get a feel of where pricing is in New Jersey.

In Somerset-- I know there are people here from Somerset, and they can correct me if I am wrong. I am not criticizing anybody; I am just putting the facts on the table. In Somerset, one facility, SIRC, according to what I read, is \$126.50 a ton; BRI is \$113.95. In Union County, the Linden AMS facility is \$132.65; the Ellesor facility, Elizabeth, is \$136.35. Morris, you have heard from the previous speaker. Passaic is now at \$79.86. I guess you have to figure out what that advance payment is worth, which I happen to think is a good idea, because if you do the mathematics on it with --

which I have seen done-- It is a very attractive way of doing it. It can really cut costs down. I have seen it done in other places.

Let's see, Bergen County-- I know there are people here, and they can correct me if I am wrong. I think the utility rate is \$105.81. The County of Hunterdon operates a little transfer station. It is contracted out, but it is their facility. They own it. It is \$125.75. I am not giving you prices for other than ID 10 type waste. Industrial waste is higher; uncompacted may be higher in some of these places. The County of Sussex transfer station, which is not regulated by the BPU, is \$110 a ton.

Now, to give you a comparison of what landfill charges are in the State of New Jersey, so you can focus that with what is being charged out-of-state: Atlantic County -- the Pinelands Park Landfill -- is \$66.94 a ton; Camden County -- the Pennsauken Landfill -- is \$63.05 a ton; the Cumberland County landfill is \$52.06; the Gloucester County landfill is \$58.87; Middlesex County -- Edgeboro -- is \$50.00 a ton; Monmouth County Reclamation Center is \$68.20 a ton; Ocean County landfill is approximately \$64.00 a ton. That one I know is without taxes, because it is a client of mine. The Salem County landfill is \$59.37. The Warren County resource recovery facility is \$98.00 a ton. All of the last numbers are just disposal costs. They don't include anything else. So you can see, from a disposal perspective, most of these landfills are double lined. They have leachate collection systems, which you must have today. So when you get up into that type of a state-of-the-art facility, you're talking about some fairly hefty disposal numbers, but that is what the marketplace is.

A representative of the Board of Public Utilities testified the first day and made some comments about the situation in Essex County and the processing of the rate matters. I would just like to shed some light on that -- on

those statements. When the County of Essex filed its petition of tariff with the BPU, Waste Management of New Jersey was not part of the filing. All that was filed was our contract with the County, which was a result of the Local Public Contracts Law emergency. That was in July of '87.

The next important milestone was on May-- Strike that. Since the County of Essex was required under the contract to obtain all the approvals from the BPU, including the franchise and charges and so on and so forth, we were not involved. I never even went to the BPU meeting when the County petition was first filed in July. I had no reason to go there. In May of 1988, the BPU transmitted the petition of the County of Essex for establishment of permanent rates to the Office of Administrative Law. Waste Management of New Jersey was not made a party by the BPU to that proceeding. We were not involved in the petition. The BPU at no time sought to have Waste Management as a party to that activity.

It wasn't until May 26, 1988 that Newark filed a petition with the OAL seeking to have Waste Management and the other transfer station made a party to the proceeding. The Administrative Law Judge, on June 22, 1988, ruled that -- denied Newark's motion to make Waste Management and the other transfer station a party to the proceeding. Thereafter, Newark, and I think probably the Public Advocate, sought a leave to appeal to the Board itself and seek reversal of the Administrative Law Judge's determination. In an order dated August 5, 1988, which we received on August 10, the Board reversed the Administrative Law Judge's decision, and made us a party to the proceeding. Needless to say, we were very surprised by this, and we asked for a rehearing. Then sometime in September and October there was a flurry of motions filed. We were contending we were involved in this proceeding. We had nothing to do with it. We proposed a rate under an emergency.

Now, you have to put yourself back in June and July. I know it is hard to do, when we look now, to try to reflect on what happened. I get very emotional with this situation, because of the intense involvement we all had in making this happen. There were calls from the Commissioner's Office, "Is this thing going to be ready? Make sure it's built. It's got to be opened. The Meadowlands is going to close, and we can't have garbage in the street." There was a tremendous amount of pressure on people.

The company had proposed the rate to the County, and they negotiated. Separate negotiations were conducted by the other transfer stations opposed to us. The company agreed on a rate. Now here we are on an emergency situation. Waste Management of New Jersey didn't have to build this thing. If the County said, "No," you know, "we are not interested," fine. We would pick up our bags and go home. But to ask people to build something in a crisis, on an emergency basis, and then turn around and say, "Well, now we want to look at all the money you spent, everything you are doing, and find out if the rate is appropriate," kind of sends a bad message to responsible companies in this business. We got caught up in this thing. If we had to do it over again, I don't think we would, because, frankly, as the records will reveal at a later point in time, whenever they are made public -- they are all under a protective order now, all of the financial records -- this contract has not been a good investment for this company. We could use the air space a lot better at our landfills, and receive better prices for it than we receive under this contract.

But, be that as it may, we have been there since August of '87. We have never failed to meet a deadline. We have moved the garbage. Nobody has been impacted. It has been a beautiful operation, as testified to by the County Executive.

Now, one of the other issues that has come up, and I think if you are reading the resolution you might give some consideration to it, is the standard of proof that is required in cases of this nature before the Board of Public Utilities. We don't have a tariff. We didn't file a tariff with the Board. Therefore, if prices go up in our operation, we have no way of receiving any additional money. We have a standard CPI adjustment clause, which is geared into a published figure. There are no other hidden charges. We have absorbed the \$3.25 per ton tax in Pennsylvania in our rate. Because of the way the contract is worded, there is a question about that, and the company said to the County that the CPI would be fine to cover increased operating costs.

We are under a fixed term contract. We have very good contracts for transportation. We have union employees at the facility. We have people at very modest salaries who run the place. If fuel prices go up-- If they go up, that's our problem. If labor rates go up, which they do, as you all know, that's our problem. So, we figure those things can be covered in the CPI adjustment.

Now, we haven't received our CPI adjustment under the contract. We were supposed to have received that as of September 18, 1988, and the County has not paid it due to some issues before the Board of Public Utilities. So we have been operating under the same rate from day one. The Board has said that if it is determined that our rates are reasonable, the payment of the CPI will be retroactive to September 18, 1988. That is at 12% interest. I think the County is thinking this issue over, that maybe they should start paying it. But, that is the way we have been operating, at the same rate. It is a 30-month contract, and we pick up our bags and leave. You can see from the building-- I don't know what it could be used for. It's a concrete structure, with steel supports. It is a very substantial building. It's very high, and inside there

are push walls. They are about 25 feet high, I think two feet thick. They go around the whole place. I would love to have you come up and look at it and see the operation, see what is involved, and all the interesting things that come out of the garbage trucks.

ASSEMBLYMAN FELICE: Do you give samples?

MR. SCHWARTZ: Yes, we'll give you free samples.

We also tackled the hospital waste program from day one. It's a big problem in Essex County because there are so many hospitals. We developed a protocol with the County as to how to manage the hospital waste program and, knock wood, as I am sitting here today, the County program is run beautifully. We have had no problems whatsoever with it. I think most of the transfer stations have done very well with handling it. But I want you to understand, we are different than most of them, because we only take type 10 waste. We don't take anything else.

Now we are still before the OAL, and we still don't know what the standard of proof is going to be in this case. Life will go on, and we will find out what happens at the end of the rainbow.

If there are any questions you may have-- I don't want to appear uncooperative, but all of our financial records are under the protective order in the OAL proceeding. We were very upset about having to provide all of this information. We didn't feel we were a public utility, and we weren't involved from day one. We didn't file for a tariff. We didn't file for anything. We looked at ourselves as a contract vendor to the County under an emergency condition. So, it would be improper for me to discuss financial details, except in generalities, but I think I can focus on some of your questions and answer them. I think you can see by the rates and charges that are here what the landfill disposal fees are, and what the transportation costs could be, the rest being the operation of the facility itself.

ASSEMBLYMAN SHINN: Harry?

ASSEMBLYMAN McENROE: Thank you, Mr. Chairman. Can you give us a general idea of what the construction costs were of your facility?

MR. SCHWARTZ: It was in the millions of dollars.

UNIDENTIFIED STAFF AIDE: More or less than the Aquarium? (laughter)

ASSEMBLYMAN McENROE: It remains the intention, I believe, of this Committee, to find answers to questions relating to your expenditures, your overhead, your obligations as far as out-of-state disposal costs, and from that to determine whether we feel it is in the public interest to do something legislatively to correct, perhaps, any inequity in the costs of disposal in our State.

Another question: Is there any financial relationship between Chambers Development and Waste Management?

MR. SCHWARTZ: No.

ASSEMBLYMAN McENROE: Do any of your people own any stock--

MR. SCHWARTZ: No. We are fierce competitors. I guess we are the largest company in the world in solid waste management.

ASSEMBLYMAN McENROE: See, I'm here, all of us are, really, to concern ourselves with this question. There is a pervasive, prevailing thought, in Essex County at least, and I think in all of the other northern counties, that our waste collected in those counties is being disposed of in western Pennsylvania, eastern Ohio, and West Virginia. Yet, when we scratch the surface, we find that Morris County's waste is really being transported only a few miles -- 20 miles at the most -- beyond the Delaware River.

Your company, and the other contractors serving Essex County's waste disposal transportation needs, have at least, I think, popularized the concept that this waste is being

disposed of in the far reaches of suburban Pittsburgh. And yet you do own a landfill very close to where we are sitting right now.

MR. SCHWARTZ: Absolutely.

ASSEMBLYMAN McENROE: Yes, in, I guess, Morrisville, across the bridge here.

MR. SCHWARTZ: There are a number of landfills that a sister company owns in Tullytown, outside Morrisville, and some others in Pennsylvania -- Pottstown, and probably Erie, Pennsylvania. There are a bunch of them around. That's right.

ASSEMBLYMAN McENROE: You know, Mr. Schwartz is a very capable attorney. He certainly demonstrates that every time he comes before a panel like this, and I wish we had the questions for Waste Management -- the management of that company, rather than for the attorney representing the legal aspects.

Your presentation on the history of Essex County's crisis, I think, was well-done, but questions, I think, remain on this table for this Committee's consideration. This popular idea that our waste is being sent 300 or 400 miles away is incorrect and unfair, because most waste that is collected in those counties apparently is being disposed of within -- certainly within 100 miles of where it has been picked up, instead of the 300 miles. So that transportation factor, that enormous cost of transporting the waste, in my view, is a smoke screen. The reality is Waste Management having working disposal sites close to the State of New Jersey, and the capacity for construction of further landfill capacity on locations that you own close to New Jersey.

MR. SCHWARTZ: See, I think the problem-- I don't have a problem trying to tackle the question you have. You see what we are getting paid to do the job -- \$92.80. All you have to do is go through a series of deductions, and you can have all your answers. I gave you the prices of landfill disposal in New Jersey, and you are in the \$60 to \$65 per ton area. Okay? And most of those are without taxes.

Now, if you think for a moment about some of the legislation you have been involved in, which I think has been good, the taxes in the State of New Jersey for dumping are outrageous. You have \$1.50 for recycling. We have \$1 for this; we have \$4 for that. When you add it up, it is about \$10 a ton for taxes. Some of them go to good programs, I grant you. The only tax that is applicable to out-of-state disposal is the \$1.50.

Now, if you take the figures I have given you here, which average around \$60 a ton-- The resource recovery plant is \$98. Hunterdon County is over \$125. That is a County operation; it is owned by the County. They built the facility -- \$125 a ton. If you look at the \$65, or \$60 for disposal, which is about what the price should be for a landfill with state-of-the-art requirements-- I'm talking about a first-class operation, with double liners and leachate collection. You know, at one of our facilities, before we can discharge the treated leachate to the river, it has to be exposed to fish. We have big fish tanks, and the treated material goes into a fish tank, and the fish are bioassayed. If there is any problem with them, you can't release the material. That is a very extreme degree of environmental control.

So, your average price for disposal in and around this area of the landfill-- I heard a price of \$58 for Empire. It is in the \$60 to \$65 range. That is what it costs. So, you take that figure. That is a given; you are not going to change that. Then you add the transportation to it. In our case, we own all the trailers. That is another issue I didn't get into. We had to buy over 100 trailers to do this project, and there is maybe one other company in the United States that has the capability of doing that. To get them, one, two, three, and have them all painted the crimson color-- Everybody else is renting trailers, running around trying to find them. We've got them all.

ASSEMBLYMAN McENROE: Are they Essex County's colors?

MR. SCHWARTZ: No, they're a crimson color. I don't know if they are Essex County's colors. But anyway, we had all these trailers that we purchased, and we put them to work. We contract out the tractor, and the waste is taken to the Waste Management landfills. It is taken to a number of landfills, you know, fairly close by. So, if you take the cost factor of \$60 or \$65 a ton to dump the material, just using New Jersey numbers as a background, and then figure out what the costs may be, you will see that the rate in Essex County is very, very reasonable -- extremely reasonable.

ASSEMBLYMAN McENROE: And, you're saying that your company, at the conclusion of the contract in seven months, will not be interested in a renewal?

MR. SCHWARTZ: We have not spoken to the County; the County has not spoken to us. It is now May. I have no idea what is going to happen, but there has been no-- We are very disappointed right now, because we haven't been paid our CPI since September 18, 1988 under our contract. We are very disappointed. So, I don't know what is going to happen, to be honest with you, in Essex County. But the rate is a very reasonable rate. If you broke out some of the disposal rates in some of these other contracts, you would see what I am talking about.

ASSEMBLYMAN McENROE: Well, I am staggered by the Morris County figure, quite frankly--

MR. SCHWARTZ: I don't know. I can't--

ASSEMBLYMAN McENROE: --although perhaps there is more of an ability to pay that rate in Morris than there is in Essex. There are an awful lot of people having great difficulty with the rate established for the County of Essex for waste disposal.

MR. SCHWARTZ: I would think our facility probably cost more than \$10 million.

ASSEMBLYMAN McENROE: Does it have a leachate collection system, as the one in Morris does, or a gas control system to evaluate the gases coming from the station?

MR. SCHWARTZ: No, because we are not next to a landfill. We have--

ASSEMBLYMAN McENROE: They retain it as a part of their transfer station. I know there is a landfill next to it.

MR. SCHWARTZ: All I can tell you is, when we took the site over, we excavated everything off that site, and made it a clean site, and removed it to proper disposal facilities. Waste Management made a decision, and they just went down three or four feet, whatever it was, and just took everything out of the place, and started from scratch, and disposed of it, you know, properly. If you come down to visit, you can see the enormity of this particular operation.

When you look at disposal costs around the region, they are far in excess of these costs, just disposal. Look at Staten Island, Fresh Kills. I think it is \$40 a cubic yard. That is almost \$120 a ton just to dump it. That is right in Fresh Kills. Look at some of your other New Jersey landfills that now have state-of-the-art controls. Most of those landfills I quoted you, and I did that for a reason, were landfills that went through the BPU process, and had all their records scrutinized as far as costs, which demonstrates that they are up in the \$60, \$65 range.

If you are in the metropolitan areas, so to speak, the greater metropolitan area, your landfill costs are higher. They are higher than they are if you go take a ride someplace else. But when you take that long ride, then you get your transportation costs that go way up. So, it's like a balancing act. I think you find that the transportation disposal costs are pretty much the same in a lot of areas, even though you travel a great distance.

ASSEMBLYMAN MCENROE: So, may I just suggest that you're saying that if we did dispose of the waste from any of these counties in western Pennsylvania, we could add substantially to the cost of disposal -- well beyond the \$102, or your \$92?

MR. SCHWARTZ: No, no. What I'm saying to you is, the interior landfills, as I call them, are in around \$60, \$65 a ton, no matter where you go. Then you have to figure transportation costs from wherever. That includes buying equipment to transport and paying for the transportation.

The program in New Jersey-- It is unfortunate that it occurred, because it has been a tremendous expense to the taxpayers. The reason it has been a tremendous expense to the taxpayers, as I tried to outline earlier, is the fact that you now have added two or three components that never existed in the system, and they are expensive. When you start double handling garbage, you're talking about a lot of money. This transfer station-- You will be amazed when you come down and look at it and see all the machines crushing the garbage, picking it up, lifting it, putting it in the trucks. This goes on and on and on. It goes on almost 24 hours a day, to remove this material. The obligation to move it every day-- You can't let it-- In other words, if a trucker said, "I can't move the material today," we would have to shut the place down. We have 44,000 square feet in this building. That's about an acre. That's a huge interior facility. You can just about take care of one day's worth of material. So, you can't afford to have a breakdown in the system, so you have backup after backup. The transportation is a very key note. We're lucky here, because we are right off the Turnpike, so we can go on the Turnpike and take the material. We guaranteed Essex County disposal in three states. We guaranteed them disposal in Pennsylvania, Ohio, and Michigan, because the County Executive said, "I don't want to see a drop of garbage on the

streets in Essex County. It is your obligation to move it; to take it out of here. And I want to make sure that the disposal capacity is available to get rid of this garbage."

That is the term of our contract. I don't know if any other contract has that obligation in it. We have to transport it, no matter what it costs. We can't go in and ask for an increase. See, that has to be very clearly understood. We don't have the ability, as a traditional tariff filing, to walk in and say, "Well, our costs went up. We want an increase." We can't do that. We can't do that.

ASSEMBLYMAN McENROE: Have you anything in common with the other vendor in the County?

MR. SCHWARTZ: I have never read the-- I think it parallels it to some degree, but I am not 100% familiar with it because the negotiations were totally separate. The rate is about the same, but I don't think they get their minimums. See, I think that is a problem at the other facility. They can speak to that better than I can. It's not inexpensive. Anybody would be a fool to tell you it's not expensive. I mean, I brought one of my papers along that I wrote on solving the solid waste crisis at reopened landfills and recycled landfills, to try to fix them up with the money you can get, what you can charge for proper disposal, and it doesn't go anyplace. A lot of people have tried to meet the problem, but New Jersey made a decision to close landfills. So, if you make that decision, you've got a much more expensive option. You can't avoid it.

ASSEMBLYMAN SHINN: What's the date of the Essex County resource recovery facility opening?

ASSEMBLYMAN McENROE: Sometime in 1990. I think it will be '91, very frankly.

ASSEMBLYMAN SHINN: And your contract expiration date is January 31, '90?

MR. SCHWARTZ: That's correct.

ASSEMBLYMAN SHINN: There is going to be a time frame to fill.

MR. SCHWARTZ: Well, you see what happened--

ASSEMBLYMAN McENROE: It will not be ready.

MR. SCHWARTZ: The original concept was, I think, a 36-month contract, and then we were told at the last minute that it had to be 30 months. Because of contractual commitments with the vendor for the resource recovery plant, a contract for 36 months could not be entered into. It would have to be for 30 months, because otherwise we would violate the other agreement. So we said, "Well, 30 months is 30 months." I keep emphasizing that through that June and July, it was unbelievable what was going on. We didn't have the luxury of all these other -- of a year-and-a-half to do all this and plan it out. It was just a bang-bang situation, get it done, get it built. The County Executive rode in on the first garbage truck at seven o'clock in the morning, and the station was open. It was all there, fully operational, with all the garbage being dumped inside.

ASSEMBLYMAN FELICE: Through you, Mr. Chairman, do you have any plans at this point -- your company -- to go to contract with any other counties or anyone else -- at this time, when the seven months is up? Are you negotiating any other contracts? In other words, this facility, at this point, is not going to be used?

MR. SCHWARTZ: I have no idea. There are a lot of interesting ideas that one could get involved in. I think if I was sitting in a public official position, if somebody could make maximum use of this facility, and develop a longer range program-- I know the point you're getting at, and you're right. The longer you stretch this stuff out, the better off you are going to be. You can stabilize the rates. I mean, there is no argument with that. But when somebody says to you, "Do it one, two, three, and you have 30 months and you're

gone--" At these prices, you know, which we feel are extremely reasonable, there are a lot of concepts that can be developed with regard to this facility. If I were a public official in some other county, I might consider developing some type of plan around the use of this facility. But the politics of some of these situations are very difficult to cope with. We try to stay out of it 100%, because it is a difficult problem.

It's there; it's available. I'm sure the company would entertain any reasonable proposal for its use.

ASSEMBLYMAN FELICE: Through you, Mr. Chairman, if a company goes into a proposal as a business, and engineering-wise, to build this type of facility, and probably at double rate because of the time element involved, to pick a company like Turner, or any of the other major companies, you are going to get cost plus-- You're going way above that.

MR. SCHWARTZ: You're right.

ASSEMBLYMAN FELICE: Then you go out and buy 100 trucks to take care of this facility-- That is an awful big investment to put out for the time period you had, and not to have any kind of plans or a package or proposal to utilize it for something else, is not up to government or politicians, it is up to good businesspeople to make maximum use of it.

As an engineer, I estimate that they put quite a few million dollars into this project. I'm sure that even with the rate that you say is \$92.80 a ton, you're certainly not losing money. So it had to be at least a venture that was--

MR. SCHWARTZ: I wish I could answer that question, because you would probably fall off your chair.

ASSEMBLYMAN FELICE: Well, unless you rode in on that truck as a volunteer that morning with the County Executive, I'm sure people got paid, and they are getting paid now; otherwise they would have stopped.

I'm saying from an actual business sense, there certainly has to be some kind of a plan, and not waiting until

the eleventh hour to decide what they are going to do with that facility and with the land.

MR. SCHWARTZ: Well, we're not--

ASSEMBLYMAN FELICE: I am just wondering if you are going into other counties or other phases of resource recovery?

MR. SCHWARTZ: We are not involved in that. The contract says specifically that it is 30 months or the start of resource recovery, whichever is sooner. That was what was put on the table. That is what we had to meet. You can see what is involved in building something like this. And you're right. When we had to build this on an emergency basis, it was time and materials -- 24 hours a day, seven days a week.

ASSEMBLYMAN SHINN: Is that a put or pay contract you have?

MR. SCHWARTZ: What was that?

ASSEMBLYMAN SHINN: Is that a put or pay contract you have?

MR. SCHWARTZ: With Essex?

ASSEMBLYMAN SHINN: Yes.

MR. SCHWARTZ: Yeah. It's a scaled contract. In other words, the minimum waste per day is 1000 tons a day. The maximum is 1540. They seem to hit the area where they get the lowest price, which is \$92.80. That is the lowest price on the scale. Although the first year they didn't make the annual minimum, the company-- You know, we didn't bother with it.

ASSEMBLYMAN SHINN: Who is responsible for waste flow enforcement?

MR. SCHWARTZ: The County.

ASSEMBLYMAN SHINN: The County?

MR. SCHWARTZ: Yes. Unlike everybody, we have nothing to do with the billing. We have nothing to do with dealing with the BPU on the tariff for the collectors. We don't hold any of the escrow moneys that are put up by the collectors. The County has its own personnel at the transfer station; they

are in the trailer. I will leave these pictures so you can have them. They are in the scale house. They have their own computers, and they keep track of everything. They are required to make sure that when a truck comes through, that particular customer has enough money in their account to pay the bill. They inspect the loads when they are dumped on the floor. So, they have a fair amount of County employees down there managing the system. All we do is take the garbage, load it, and take it away. These trailers, by the way, so you can get an idea of what we are talking about-- These trailers are 90-yard trailers -- 90 cubic yards. They are not little trailers.

ASSEMBLYMAN SHINN: They are live bottom trailers?

MR. SCHWARTZ: Do you mean walking floor?

ASSEMBLYMAN SHINN: Yes.

MR. SCHWARTZ: I think that is what you call them. So, they're pretty expensive little commodities. There are a lot of people employed down there at that facility. It is a fairly well-run operation. Anybody will tell you that.

ASSEMBLYMAN McENROE: That's about 200 tons in each trailer?

MR. SCHWARTZ: No, no. You just brought up an interesting subject. Do you have five minutes? The most you can put on a trailer on the road under the Federal bridge formula -- and there are some experts in the back of the room who may correct me if I am wrong -- is about 22 tons. So you can have the biggest trailer you want, but that's all the weight you can put on it -- 22 tons.

Now, these trailers carry 90 cubic yards. So, inside the building, at each end of the building here (demonstrates) to the right and the left, there are scales which are built into the floor. The trailers pull up, and there is a big clock up on the wall, and as the trailer is being loaded, it registers when it hits the waste management-- I think it cuts

it off at 21-and-a-half tons, just to be on the safe side. The overweight tickets are staggering. They load the trailer up to that amount, and then they take it away. But it is only 22 tons.

I'll give you an example: If you paid to dump that trailer by the yard, which used to be the way pricing was in Pennsylvania before they had scales, say, back in '87, about \$18 or \$19 a cubic yard, you're talking about 1600 bucks for a trailer that size. If you do it by the ton -- say you do it at \$65 a ton -- you can see the difference.

ASSEMBLYMAN SHINN: That is basically uncompacted waste. You're just putting the waste on the loader and--

MR. SCHWARTZ: Yeah. Well, our position, as Assemblyman McEnroe pointed out-- We are not a long-haul operation. We drive across the river; not all the time, sometimes to other places, because of the concern of people. You have faced it -- garbage coming from New Jersey. There are a lot of mental elements to deal with here. It is not that easy, so you try and play musical trucks, so to speak. We don't disclose where we take our material. We don't think it is appropriate, although a fair amount comes from New Jersey across the river.

ASSEMBLYMAN McENROE: I just want to establish one thing: Isn't it fair for us at least to state that the majority of the waste generated in Essex County is disposed of at GROWS Landfill?

MR. SCHWARTZ: No.

ASSEMBLYMAN McENROE: No? Certainly part of it is.

MR. SCHWARTZ: Yes.

ASSEMBLYMAN McENROE: So, are you maintaining then that the Waste Management facility transports most of the waste from Essex to western Pennsylvania to your landfills?

MR. SCHWARTZ: It goes to different landfills in Pennsylvania. The cost is immaterial. No matter where we have to take it, it's the same price.

ASSEMBLYMAN McENROE: No, but to you the overhead would be material.

MR. SCHWARTZ: No, it's not. It's the same.

ASSEMBLYMAN McENROE: If you transport a ton -- 21 tons of mattresses or popcorn or waste to a certain distance, it is going to be the same. It is going to be less, certainly, to travel 60 miles than it would be to travel 360 miles.

MR. SCHWARTZ: Yeah, but your--

ASSEMBLYMAN McENROE: Time-wise and--

MR. SCHWARTZ: Your transportation costs will go up, but the disposal rate is lower. When you put the two together, you come out at almost the same price.

ASSEMBLYMAN McENROE: You say the disposal rate--

MR. SCHWARTZ: The disposal cost is higher closer in.

ASSEMBLYMAN McENROE: GROWS, let's say, would be considerably higher than western Pennsylvania?

MR. SCHWARTZ: Oh, yes, absolutely; no question. What happens is, one washes the other out. That is what happens.

ASSEMBLYMAN McENROE: But aren't you the owner of the GROWS Landfill -- your Waste Management company?

MR. SCHWARTZ: One of the subsidiaries of Waste Management owns the GROWS Landfill.

ASSEMBLYMAN McENROE: But, the parent company is Waste Management?

MR. SCHWARTZ: The parent company is Waste Management of North America.

ASSEMBLYMAN McENROE: You are both a subsidiary of that -- the company you represent is?

MR. SCHWARTZ: That's right. Whatever charges at the landfill-- You will pay the same charges as everybody, no matter who you are, even if you are a related company. That doesn't make any difference.

ASSEMBLYMAN McENROE: I am only trying to determine really, and establish, at least in my own view, that a

considerable amount of waste generated in Essex, and other northern New Jersey counties, which heretofore has been thought to be disposed of in western Pennsylvania is, in fact, disposed of, to a great degree, in eastern Pennsylvania. It seems reasonable to me, regardless of your comments. But I accept that as reasonable that the waste disposal -- that the final disposal costs in western Pennsylvania per ton may be less than they are in eastern Pennsylvania. But it would seem to me a good business practice that you don't drive past landfills in eastern Pennsylvania to dispose of the waste 300 miles to the west, when you consider time, equipment deterioration, and even costs, when the management of both the landfill and the disposal management company is the same corporation.

ASSEMBLYMAN FELICE: It's like Einstein's theory: If you go fast up in space, you get younger. So if you go far enough west, they actually pay you to dump the garbage.

ASSEMBLYMAN McENROE: If you go all the way around and you come back the right way--

MR. SCHWARTZ: One of the problems you have in Pennsylvania, which is unlike New Jersey's regulation, is in Pennsylvania, there are capacity limits. On the disposal sites in New Jersey-- They never had the capacity limits on disposal. So you have to reserve air space for certain areas. Pennsylvania is very strict on that, as far as the capacity is concerned. Your permit actually limits you to a certain amount of material, unlike New Jersey and a lot of other states.

But, one day, economically, I will show you where your thinking is a little off. When I can make these documents public, you will be very surprised.

ASSEMBLYMAN McENROE: Well, we can't have everybody taking the Fifth Amendment here, either, you know. We've got a public policy.

MR. SCHWARTZ: It is not a question of the Fifth Amendment. It's a question of a proceeding going on. If we

applied for a tariff, like the other transfer station operators did, it would be a different story, but this was an emergency contract, and there are a lot of risk factors that go into a contract like this. The risk of the capital up-front-- I don't have to go through it all, but the risks-- You have to put dollar values on all that, and that is very expensive.

We didn't create the problem. It was created by others, and we responded, and said, "Here it is. Here is the price." If somebody said, "We don't want to do it," we would have said, "Fine, go someplace else." We proposed in Bergen County. We lost. Somebody else got it, so we went someplace else. You know, that's competition.

I don't think there is much more I can say. Thank you.

ASSEMBLYMAN SHINN: We appreciate your coming in.

MR. SCHWARTZ: Thank you. Would you like me to take this document and kind of shape it up and give it to you as a written statement?

ASSEMBLYMAN SHINN: Yes, I think it would be--

MR. SCHWARTZ: It would be helpful for you? Okay, I can do that. I appreciate the time. Again, we invite you to come down to the facility. We invite you to ride on a truck to the landfill, so you can see what it is like.

ASSEMBLYMAN SHINN: On the front or the back?

ASSEMBLYMAN McENROE: I've done that.

MR. SCHWARTZ: Well, you can go in an air conditioned cab, if a trucker has one--

ASSEMBLYMAN McENROE: I went to the Hackensack Meadowlands.

MR. SCHWARTZ: --and you can see what it's like. I am going to leave those things, okay?

ASSEMBLYMAN SHINN: Thank you. I would like to go through the people who are here, if I may: Thomas O'Brien, Mitchell Environmental, Inc. It looks like we have Mr. David Sutherland-Yoest, Laidlaw Waste Systems; Al Marcus-- We've got a host of people.

ASSEMBLYMAN FELICE: You've got a whole gang; they brought the whole team.

ASSEMBLYMAN SHINN: You're operating the Bergen County facility?

T H O M A S O ' B R I E N, E S Q.: That's correct, Mr. Chairman. I am Thomas O'Brien, with the firm of Kimmelman, Wolf and Sampson. We are the law firm for Mitchell Environmental, Inc., which is a New Jersey company. We are presently engaged in the performance of a contract for the transportation and disposal of solid waste in Bergen County. Mitchell is in a joint venture with Laidlaw Waste Systems, and David Sutherland-Yoest, Vice President of Laidlaw, is here, along with Dick Van White, who is general counsel for the company.

We have, after listening to the prior testimony, the fourth scenario to present to this Committee. It is interesting that out of four counties to appear before this Committee, there are four different scenarios, which I think makes a statement about the crisis situation that New Jersey is in at the present time.

But in any event, I appreciate the opportunity, along with my colleagues, to be here, to try to be helpful to the Committee. I would like to say at the outset, so that we don't get into some questions that I am going to have to address later, that we, like Waste Management, have a negotiated contract. Our contract with the Bergen County Utility Authority arose out of emergency situations that existed in Bergen County in early 1988. We engaged in negotiation. I will take the Committee through that process, but we have what is a fixed rate contract for a set period of time very similar to Waste Management's, except for two things: Number one, we do not process the waste under our agreement. We simply transport and dispose of it. And number two, we have no escalator whatsoever for the full three years of the agreement.

ASSEMBLYMAN SHINN: A three-year agreement.

MR. O'BRIEN: Mitchell Environmental, the company that I represent, was formed back in 1986 by individuals who were engaged in the solid waste industry, one of whom is Chester Pucillo -- who is here -- as President of Mitchell. The company was not formed for the purposes of the Bergen County agreement; it was formed for the purpose of doing transportation work in the solid waste industry in the tristate area.

In late 1987, it became known to Mitchell representatives that Bergen County was seeking to negotiate an interim transportation disposal agreement, until their resource recovery facility came on-line. At that time, or right about that time -- and this can be addressed a little later by the principals of the companies -- Mitchell was doing work with Laidlaw, Laidlaw being one of the largest landfill owners and operators in the United States. The principals, therefore, agreed that in making a proposal to Bergen County, it should be done jointly, since there was presented to Bergen County the transportation expertise by Mitchell -- the principals of Mitchell having been involved in this industry for a long period of time -- and the landfill expertise by Laidlaw had seemed a natural. And I think, indeed, now that we are a year and several months into the contract, that that decision has paid off fairly well for the residents of Bergen County. This job has gone without a hitch since day one.

And just let me get to that. I'm sure you have heard testimony on the subject, but DEP ordered the closure of the Kingsland Landfill on February 29, 1988. It was that emergency that the Bergen County Utility Authority was reacting to, when they first went out on bids for this contract, and then subsequently went into negotiation on the emergency provisions of the Local Public Contracts Law.

In Bergen County, the Utility Authority elected to be the owner and operator of the transfer facility, which is a decision that I understand other counties did not make. As I said, this was anticipated to be, and I think has turned out to be probably the largest -- certainly the largest transfer facility of its kind in the State of New Jersey, and probably the largest of its kind in the United States. It was anticipated at the outset that this facility would process approximately 3700 tons of solid waste per day. That would require the use of approximately 160 tractor-trailers per day, once the baling station was on-line.

The County, through the Utility Authority, advised us -- that is, Mitchell/Laidlaw -- of what they needed to put this contract together. They needed adequate landfill capacity in several states for a period of at least three years, with the vendor agreeing to participating in negotiation with respect to years four and five, that being contingent upon the completion of the resource recovery facility. They also needed a guaranteed transportation system. They needed a vendor that would represent that the facilities were available to transport this amount of waste.

They also made a point of having a manifest control system to regulate the integrity of waste, from the time that it hit the tipping floor at the transfer station until it reached the ultimate destination. They needed a vendor that had the financial depth to accommodate irregularities in cash flow. See, this, even though we had asked for it, was not a put or pay contract in any sense of the word. There is no threshold of waste that must be delivered to the vendor by the Utility Authority. The fixed price is paid on a per-ton basis, and is paid only on those tons that are actually transported and disposed of by the vendor.

There also had to be a vendor that had the flexibility to work through the construction phase of this project. On day

one -- which was March 1, 1988 -- the only thing that the BCUA had to work with, was the tipping floor. They were able to construct a concrete pad on which -- and a push wall -- where the garbage was dumped. They needed a vendor that had the operational expertise of handling what we call "open top." And I would like to address this at this point, because I think from reading excerpts in the press and listening to people -- in fact, listening to some testimony here-- It appears there is a misconception as to what the price is in Bergen County.

The initial tipping fee at Bergen County was \$98.19. I think that has since been reduced, very, very slightly, to \$97 and change. There were two rates that were programed into the contract with Mitchell/Laidlaw. The first rate was \$75, which occurred after there was a change in direction by the BCUA with regard to the second vendor. Initially, the BCUA sought two vendors. They did that for two reasons: Number one, so there would be redundancy built into the system; and number two, because they thought they had a vendor that could provide rail transportation, as opposed to truck. After the negotiation phase was completed, they settled on a rate with Mitchell/Laidlaw at \$78 a ton, and with another vendor for \$72 a ton.

At a point in time after our-- And by the way, the waste was then split 50/50 between the two vendors, whatever the amount was. And again, neither was a put or pay. And of course, we did not participate in at all, or communicate with anybody involved in the negotiation of the other half of the contract, so what happened there is beyond our knowledge.

In any event, the BCUA advised us in February -- toward the latter part of February -- that we would be offered the right of first refusal with respect to the second half of the contract, but that to be awarded that half of the contract, we would have to accept the price that had been negotiated with the other vendor, which was \$72 a ton. That was accepted by

Mitchell/Laidlaw, which created a blended rate of \$75 a ton for transportation and disposal for 100% of the Bergen County waste load.

There is another rate that is built into the contract, and that is for the movement of open top -- loose waste, unbaled waste. See, when we came to the negotiating table, it was made clear by both Mitchell and Laidlaw representatives that what we were interested in was baled waste only. The reason for that was because Laidlaw's landfills are located at great distances -- Kentucky and Ohio and Michigan. We were not interested in transporting open top, although if that had to be done to accommodate the BCUA through its start-up phase, Mitchell would do it, and that is exactly what happened. And the rate for that open top transportation was \$105 per ton. That has become, it seems to me, the watchword in Bergen County, that the BCUA made a bad deal, because they were paying \$105 a ton to the vendor, when, in fact, they were only collecting \$98.19 tipping fee from the collectors. But that is not how it worked.

The movement of open top was designed to be of short-term duration -- 90 days -- until the baling stations were on-line. As a matter of fact, it took somewhat longer than 90 days for the baling stations to get on-line, but once they did, the open top movement dropped steadily down to a trickle. This week, I think the movement of open top is down to three or four truckloads, which is well under 100 tons per day out of the total waste load.

ASSEMBLYMAN SHINN: So, the \$105.81 rate--

MR. O'BRIEN: That is incorrect.

ASSEMBLYMAN SHINN: --is an open top rate?

MR. O'BRIEN: Well, that is not even-- The \$105 even was the amount paid to the vendor for the movement of open top. That is not a tipping fee. I think I heard earlier that that was the tipping fee. It is not. The tipping fee is

\$98.19. As I say, I think recently it was reduced less than a dollar, to \$97 and change. And that is what every depositor of waste at the BCUA pays.

In the negotiation process, we then accepted the terms that the BCUA had given us. The price was negotiated. We then advised the BCUA that there were certain things that we needed, one of which was the protection of the integrity of the waste flow. We spent hours discussing, with the operational people at the BCUA, what would be included in a surveillance system, in a security system. We felt, and they felt, that it was very important to do this. As was mentioned earlier, the likelihood of lawsuits and liability that arise from waste -- hazardous waste, toxic waste, medical waste, or whatever -- creeping into a waste stream and being deposited in out-of-state landfills-- The detection and the manifestation of that could be disastrous for this entire system that we are using in the State of New Jersey.

One of the other things that we made clear to the BCUA that we needed was an effective enforcement program, to ensure that we were getting 100% of the waste flow, because our deal was premised on having that number, which as I say, was projected to be about 3700 tons per day. We also tried to get the BCUA to bill us in advance. Since we did not have a put or pay contract, we had no protection -- no financial protection whatsoever. We did not get that.

Getting away from the operational issues, we got into the morass of regulatory problems in Bergen County to a much greater extent than probably any other county in the State of New Jersey. While we were handling the open top disposal -- transportation and disposal -- it seemed that the tonnage was at least 3700 tons. In fact, on several days it exceeded 4000 tons per day. Again, gentlemen, I think the Bergen County -- the residents of Bergen County would attest to the fact that the job went off without a hitch. There were never backups.

There were never long queues at the transfer station. Somehow, between tremendous cooperation between BCUA personnel and the Mitchell Environmental people who were on-site providing contract labor, this job, operationally, went as smoothly as any in the State of New Jersey.

But, following the establishment of the first baler, it seemed -- or perhaps a little before that -- the waste flow started to drop, markedly. We would check the numbers on a week-to-week basis, and finally, after six months of operation, the waste flow was down to approximately 1400 tons per day, on average.

Now, just from simple arithmetic, you can understand the hit that the Bergen County Utility Authority was taking, as well as the vendor. The enforcement mechanism that I would have thought to be in place to combat this monumental problem was slow. It was bifurcated; it was inconsistent, and that is why we are here today, to point out that this system needs some legislative help.

I happened to have spent a few years working in a regulatory system that is probably the best of its kind in the world -- the casino industry. I find, from my experience, that the worst regulations are those regulations that are not enforced, because that allows the guys who decide they are not going to obey the regulations-- It gives them a distinct competitive advantage, because the honest ones, like the people who are here today, go by the book, obey the rules, and do it to their economic disadvantage.

I met with representatives of the BPU, who were most cooperative and most willing to help. I met with representatives of DEP, and found the same attitude. I met with people from the Attorney General's Office, along with representatives of the BCUA, to try to come up with a solution. No solution has been found to date. The matter is in litigation in Bergen County. A case in which the BCUA is

involved, along with the State -- the BPU and the DEP -- is in the Appellate Division awaiting further hearings and a decision. There is civil litigation -- contract litigation -- that has arisen out of that, but with all of this going on, the waste, up to 2000 tons a day, is still not finding its way to the tipping floor at the Bergen County Utility Authority. It has put the BCUA in jeopardy, and that has been said here, I believe.

I am not sure what the solution is. I don't know that anybody here is sure what the solution is. It appears that it is going to be some time before resource recovery comes on-line, and I would think that whatever the problems are, they must be resolved before that, because of the capital investment that has to be made in resource recovery facilities.

I have read the SCI report. I think there are some appealing suggestions that appear in the SCI report. One of the things that they recommend that I think maybe the Legislature should consider, is to dedicate specific investigative and legal resources to the elimination of both civil and criminal violators. As was said here earlier, it is hard to find criminal sanctions. You could do it in a situation we have with the avoidance of waste flow directives, but you would have to reach-- You would have to find something like a theft by deception charge, which would be very difficult to prosecute. Civil remedies are available, but they end up in a lengthy proceeding, usually in the Office of Administrative Law, in an action generated by the BPU or by DEP.

The SCI also recommended that the State regulate rates at all disposal facilities, including transfer stations. This has to be addressed because of the drastic differential in rates in adjacent counties. I don't know whether rate averaging is a solution, but I think that needs this Committee's attention and, indeed, the Legislature's attention.

There was a thought raised in the SCI report that I think merits some attention, and that's the establishment of a separate authority. I have my own different varying ideas on that, but to have a commission established, perhaps within DEP, to coordinate all of the regulatory efforts in the solid waste industry, I think would be beneficial. Whereas now you have 901 investigations being parceled out to the State Police, you have the decision-making powers, the licensing powers, being made by a totally different agency. I think that all needs to be coordinated.

I certainly would be happy to answer any questions on the regulatory aspects, but perhaps you would like to hear first from Mr. Pucillo, of Mitchell, on some operational issues. C H E S T E R P U C I L L O: Gentlemen, I appreciate the time you are giving us today.

The business of moving trash state to state is complex, and in Bergen County, was even more complex than the other counties. It was more complex because they asked us to stand ready for a 90-day open top mode, which wound up being, I think, six to seven months in nature. They had planned on putting a baling facility together, which is under construction even to this day.

We had to move 3700 tons a day open top. Somewhere along the line, we came up with the idea to put a baler on the temporary pad. We have done that, and have further complicated the job. Trash moved continuously. While the baler was on the temporary pad, the permanent building opened up, and we were asked to move trash from there as well. We did so, and the job has run without a hitch throughout.

We do move trash, in some instances, over 710 miles, and it is done without a hitch. But this is further complicated by the fact that there is no put or pay arrangement. There is no guarantee of the tonnage that comes in the door.

Again, I appreciate the time you have given us. Those are my comments.

ASSEMBLYMAN SHINN: At one point, you were handling trash open top, 4000 tons a day, and then you were down to 1400.

MR. PUCILLO: Fourteen and fifteen hundred.

ASSEMBLYMAN SHINN: Through the baler?

MR. PUCILLO: Well, it actually started dropping before the--

ASSEMBLYMAN SHINN: Before the baler?

MR. PUCILLO: Before the baler.

ASSEMBLYMAN SHINN: You were getting a diminishing amount of waste flow. In your mind, essentially that is going out-of-state illegally?

MR. PUCILLO: It definitely is; definitely.

MR. O'BRIEN: That has been admitted, Mr. Chairman. That isn't being covered up by anyone. The violators have admitted that that is what they are doing, extensively on the basis that they have challenged the legal efficacy of the waste flow orders. That is the issue that is in the Appellate Division at the present time.

ASSEMBLYMAN FELICE: Mr. Chairman, I know from the reports, and being in my county -- Bergen County -- and I have been following this very closely-- Of course, the reason these haulers say they are doing it, is that it is in the best interest of the communities. To save them money, they can haul it. But last year, the Bergen County Utilities lost \$10 million -- \$10 million. And they are asking the State and the Governor-- They are asking-- We mandated a program, and they are asking that it be enforced, because they are doing a job, and they are not getting the support of the communities that are designated to support this facility.

As we hear the different counties, and about the different programs -- and I have sat in on some of the things with the Freeholders and the County Executive -- this is a

problem. It is not just the rate setting. It is a problem that, if the State is mandating a program, those communities and counties that should be supporting it, are openly -- openly, as you know -- defying it, and saying that we can get it cheaper by dumping elsewhere. What is going to happen-- What I am concerned about in listening is, not only right now, but what is going to happen when the resource recovery plants come on-line? They have to have hundreds of millions of dollars invested to resolve the problem, if these people are going to be just as openly defiant and not support what we are trying to do in the State of New Jersey. I know right now that we lost \$10 million last year in Bergen County.

MR. O'BRIEN: You raise the point about them doing it cheaper. My assumption is that they are doing it cheaper, but we have seen no evidence -- and I am sure this will come out through rather--

ASSEMBLYMAN FELICE: I didn't say legally, though.

MR. O'BRIEN: No, but I'm sure it will come out that there has been no application for any rate increases.

ASSEMBLYMAN SHINN: I'm sure the saving isn't going to the consumer.

MR. O'BRIEN: That's my point.

ASSEMBLYMAN SHINN: The part that confuses me -- maybe I am missing a point here somewhere-- In most of the testimony we have received, when they open the facilities, they never get the waste. You had the waste, and then it disappeared.

MR. PUCILLO: I think, sir, I know where--

ASSEMBLYMAN SHINN: I haven't got the trigger--

MR. PUCILLO: I think what happened was, certain of the privates weren't sophisticated. They didn't have the out-of-state contacts that would allow them to develop as they were using our facility. They, in turn, developed out-of-state contacts with landfills, and then maneuvered to move away from us.

ASSEMBLYMAN SHINN: Okay.

MR. PUCILLO: The problem of the waste moving away in Bergen County-- I don't think it affects the residents, other than-- Well, it does affect the residents in the fact that they do have fixed costs -- operating capital. The County manages-- In Essex and some of the other counties, if these companies, based on 2000 or (indiscernible) tons a day, price their jobs accordingly, and wind up with half of that waste flow, then the collectors and the townships that are using the transfer stations, sooner or later, will have to pick up this difference in the tonnage. The price will have to--

ASSEMBLYMAN SHINN: Sure.

ASSEMBLYMAN McENROE: Mr. Pucillo, a lot of solid waste services tax moneys are being lost by those counties.

ASSEMBLYMAN FELICE: Absolutely.

MR. PUCILLO: Most definitely.

ASSEMBLYMAN McENROE: I'm, as you are, Mr. Chairman, a little befuddled. I don't get this either, where you don't have a guaranteed flow of waste. That's a problem in the contract.

MR. O'BRIEN: That's a big problem, sir.

ASSEMBLYMAN McENROE: And then you have a disappearing waste flow. We are here to check overcharges and various concerns with the high costs of waste, and we have an operator here advising us that you are in a difficult position. And we have a Utility Authority which has lost \$10 million. Now, what is this, a total disaster in Bergen County?

MR. O'BRIEN: I think it's a total disaster for Bergen County. The only thing that has saved it is that the fixed cost to date has not been that great. They have constructed a beautiful transfer station, that is three or four times the size of what was described for you earlier. They have a rail spur into that transfer station. We would love to be able to utilize rail. Even though we have no contractual commitment to

it, we would like to be able to use rail because it is less intrusive to the environment. You can move more tonnage, more quietly, without clogging the roadways. But we have a problem, with the waste flow as low as it is, in trying to accomplish that. So that is another benefit that Bergen County people could receive, if the laws were being obeyed.

Perhaps David would have some perspective on the landfills.

ASSEMBLYMAN SHINN: I just have one more question before David starts: In your bale material-- How are you transporting your bales, in closed trailers now?

MR. PUCILLO: Yes, in closed trailers.

ASSEMBLYMAN SHINN: In closed trailers -- land trailers?

MR. PUCILLO: Right.

MR. O'BRIEN: Can you explain, perhaps, just to follow up on that question, Chet, how you do it in terms of seals and manifests?

MR. PUCILLO: It's an elaborate system. The trailer is tagged. When it is closed, it is sealed. There are license plate numbers, serial numbers on the trailers. That is all entered onto a manifest system that is booked at the BCUA scale. The trailer, in turn, goes to a Laidlaw landfill. The seal is undisturbed, so the contents of the trailer are exactly as they left the Bergen County Utility Authority. There is no tampering. The integrity of the waste is protected from cradle -- in this instance, Bergen County -- to grave, which is the Laidlaw landfill, which is either in Kentucky, Michigan, or Ohio.

ASSEMBLYMAN SHINN: Okay. David, please continue.

DAVID SUTHERLAND - YOEST: I appreciate the opportunity to come down from Toronto this morning to meet with the Committee.

I am Vice President of Corporate Development. Prior to that, I was responsible for the Atlantic Region, which is the northeastern portion of the United States. Inasmuch as I was a participant on the Laidlaw side, I worked through the negotiations on the contract with Bergen County.

Laidlaw has made a policy commitment, and Bergen County's contract exemplifies that for us. All of our out-of-state waste disposal activity, which is located in Michigan, Ohio, and Kentucky, is through municipal contract, such as Bergen County. We do not participate in the spot market to private transfer station operations, inasmuch as we are concerned about the integrity of the waste flow. The integrity of the waste flow from Bergen County is such that it meets our standards and our expectations.

The essence of what we are describing today is a situation where there is a County transportation and disposal contract that has not met our original expectation economically, because of the flow control issue. The County has been hurt; the transportation arm has been hurt; and so has the disposal arm. This is not a situation such as others described today where there is a license fee paid in advance. But in effect, we have the same transaction, because Laidlaw, in this case, has dedicated three sites specific, and dedicated air space out of those sites, on a multi-year contract. There is only so much air space available at each landfill. We have reserved that air space to meet the maximum requirements of this contract of 3750 tons per day. As we are not receiving that waste, we have been economically impacted.

We believe the out-of-state transportation and disposal to these three states enables us an element of flexibility, so that in the event that we run into State regulations that try to preclude depositing waste in a state, we've got alternative options in at least two others, not to mention a network of 40-plus sites that Laidlaw has throughout the U.S.

I, also, would be happy to answer any questions.

ASSEMBLYMAN FELICE: So what we are saying in this case, Mr. Chairman, is that basically our problem is not the efficiency, the technology of the station. From my inspection, it is the fact that we have violators that are not meeting their requirements to contribute their solid waste to this transfer station. Basically, that is it in a nutshell. I mean, they proved they could handle the capacity they were designed for, plus; and we have people who are openly defying what the State has mandated.

ASSEMBLYMAN SHINN: It is not a matter of trying to find out who. We know who. It is a matter of getting waste flow upheld in the courts.

MR. O'BRIEN: Yeah. Bergen County is a little bit different, because they have had, historically, a number of private transfer stations operating within the County, some larger than others. Some, I understand, can handle 800 to 1000 tons a day, and the others are less than 100 a day. They were used for the benefit of the carters -- of the collectors -- to compact their waste and make the transportation costs cheaper to get it to the Kingsland Landfill. When they were charging \$28 at Kingsland, it made sense to do that. But with the advent of transfer stations, there was a genuine problem for some of these people, and that problem was recognized, I think, in the beginning. But they now continue to use those transfer stations. Without having those transfer station facilities available to them, they would never be able to carry on the activities that they are carrying on.

Also, Bergen County being close to the State line, makes other landfills out-of-state very accessible to them.

MR. SUTHERLAND-YOEST: See, dissimilar to the management scenario where they've got landfills located in Pennsylvania, all of our sites are toward the Midwest. Really, what has happened in this situation, unfortunately, is that it

has put the rate beyond years three into four, five, six, into a position where without the consistency of waste flow, our economic models are not working properly, and by comparison, the \$75 rate which is being charged for Bergen County, as opposed to the \$92 in and around the other counties, is at stake for the future.

ASSEMBLYMAN McENROE: Is that a polite way of saying it will double?

MR. SUTHERLAND-YOEST: I think there will be sufficient competition that it won't double, but it will increase.

ASSEMBLYMAN SHINN: If you are not getting the volume, only one thing happens. Basically, estimated volume, whether it is put or pay or some other scenario-- If you get half of what you anticipate--

MR. PUCILLO: The numbers don't work.

ASSEMBLYMAN SHINN: The numbers don't work, right.

ASSEMBLYMAN FELICE: This being one of the most affluent counties in this State, and even in the country, we are either eating more garbage, or hiding it more, because our rate, as you can see-- The explanation is definitely there. I think this is a dual problem, because in the long run, you know, the rate -- the taxpayers really have to eat \$10 million extra.

ASSEMBLYMAN SHINN: There is something slipping somewhere, because in the 1980 census, Bergen had 845,000 people, and Burlington had 362,000. We get 1500 tons a day at our facility, and you're getting 1400.

MR. O'BRIEN: That has crept up since the litigation has heated up. It is now getting closer to what, Chet, 2000 tons a day?

MR. PUCILLO: Twenty-two hundred tons per day, if you average it out.

ASSEMBLYMAN SHINN: Your high is about 1800. Very interesting.

If there aren't any questions, thank you for coming and testifying and sharing your experience with us.

MR. O'BRIEN: Thank you. It was nice to be here.

ASSEMBLYMAN FELICE: We would appreciate it if you would put together a little short report and send it to us, on what you spoke about today.

MR. O'BRIEN: Sure.

ASSEMBLYMAN FELICE: Just so we have it for the record.

MR. O'BRIEN: Thank you.

MR. PUCILLO: Thanks very much.

MR. SUTHERLAND-YOEST: Thank you.

ASSEMBLYMAN SHINN: Thank you. Somerset County?

J O S E P H H O R N E R: Good afternoon, Mr. Chairman, Committee members. Today I bring along with me, Mr. Ed Bales, Project Manager, and Mr. Jack Thatcher, attorney for the project. I am Joseph Horner, the owner, operator, and President of Bridgewater Resources, one of the only two transfer stations for Somerset County.

I will give you a little brief background on myself and the transfer station, and how I got in the transfer business. I am a hauler in Somerset County. Back in '85, '86, I was a Ford truck operator, and drove one of my own trash trucks. I did that for the past 20 years. I waited in the Edgeboro lines for hours and hours. I was one of the disgusted ones. I spent most of my life in the Edgeboro Landfill.

I am here purely by accident, in the transferring business. In 1986, I decided to do something about the Edgeboro lines. I wanted to build a small, mini transfer station to accommodate my own business, and possibly several other businesses in Somerset County. I went to the County Freeholders and made a proposal on April 1, 1986 to put up a small RDF facility in the County of Somerset, to accommodate my

waste at the rate of \$27 a ton for the County. The Freeholders, at that point, more or less laughed at my proposal, and said, "Who in the world would ever pay \$27 a ton to dispose of garbage?" when Edgeboro was approximately \$5 a yard, or less. I can't remember the exact rate.

ASSEMBLYMAN SHINN: Did you say IPF?

MR. HORNER: Pardon me?

ASSEMBLYMAN SHINN: Did you say an IPF facility?

MR. HORNER: No, RDF.

ASSEMBLYMAN SHINN: Oh, RDF, okay.

MR. HORNER: It was a pelletizing operation.

ASSEMBLYMAN MCENROE: Refuse derived fuel?

MR. HORNER: That's right; correct. It was a pelletizing operation that I intended to put in at that point.

ASSEMBLYMAN ALBOHN: We call our Chairman "RDF Shinn." (laughter)

ASSEMBLYMAN SHINN: You'll bring four utility people right in here just saying that.

MR. HORNER: Anyway, they laughed at me at that point. Purely by accident, I went to the State to try to get permitted to put in my own mini transfer station. When I did that, I found out there was a RFP that the State was in the process of developing -- a mandated transfer station in Somerset County. I immediately jumped on the bandwagon, and I was one of the proposers. Of course, ultimately, I won the award to put up the transfer station. As I said, one of the two transfer operators. I am the largest operator in Somerset County. My permit calls for 820 tons per day. The other station is located approximately five miles south of us, and his permit is for approximately 250 tons per day. So, we do the bulk of the County's waste.

I'll back up a little bit further. In 1986, as I said, when I decided to go into the transferring business, I had the opportunity to visit several landfills in the

Pennsylvania area, the major one being the Keystone facility. At that time, of course, I had a choice: either go to Edgeboro, and wait five or six hours, or ride out to Scranton, Pennsylvania and dump waste within 10 minutes after I got there. At that time, I can remember the numbers back then in '86, and I think, if I recall correctly, we were looking at \$3 to \$4 per cubic yard.

Again, I will go back to the RFP now. One of the conditions that I had to meet on the RFP, the most critical condition, since I already had the property and the site, was to obtain a five-year, out-of-state contract for the ultimate disposal of the Somerset waste. I tried doing that. I went to Ohio, Pennsylvania, South Carolina. I couldn't find a reasonable rate. It was impossible at that point. It was impossible to link up with anyone -- any out-of-state facility wanting to grant a five-year contract. I was back and forth to the Department of Environmental Protection. That basically at that time was their program. I brought back some contracts -- what I called contracts -- from different landfills in Pennsylvania. They rejected them, saying they didn't have any substance to them. They had to be a five-year deal.

Well, as a few of the other transfer operators have done here, I was the original transfer to link up with the Empire Sanitary Landfill in Taylorboro, Pennsylvania. Of course, we got in on the ground floor. We got in at \$44 a ton. That was back in 1987. They did give me a five-year deal. Keystone, at that point, would have given me a five-year deal for less than \$11 a cubic yard, but of course we all know, Keystone went out of business back in 1987. So, I was one of the ones -- one of the early ones that went with Empire Landfill.

In the beginning, of course, the way the RFP was structured, the State DEP said there were only some 600 tons that were generated in Somerset County. We based all our

original numbers on those 600 or 630 tons. I don't remember exactly what it was. I know it was no more than 630. Our original tip fee at that point, based on the 630 tons, that is building and facility based on 630 tons, was \$76 a ton, which we felt was quite reasonable.

After an in-depth study of the real waste flow in Somerset County -- that is myself, my project manager, and my attorney -- going in different directions in the County out to all the commercial industrial facilities and analyzing their waste streams, we made a determination some months later that there was in excess of 1200 to 1500 tons a day generated in Somerset County.

We went back to DEP, and fought like dogs trying to make them understand that there was a lot more waste than they originally anticipated. Their numbers had been generated by a 1984 census taken at the Edgeboro Landfill by Killam Associates, which they presumed was correct, but it was incorrect. At that time -- I was on the truck in 1984 -- I met a nice pretty girl with long blonde hair. Anybody from Somerset County, you walked over to her and gave her the documentation as to where your load came from, and so on. Anybody from Middlesex County, you just went right through the line, and you dumped. So obviously, their count was off. (laughter)

Anyway, we fought with DEP for some months. We tried to maintain our tip fee at \$76 a ton. Our original cost of constructing a turnkey operation, I think, was somewhere around \$6 million to \$7 million, based on the 600-and-some-odd tons per day. When we found out-- When DEP finally accepted the fact that there was a lot more waste out there than they had anticipated, we had to increase the size of our facility. So we increased the size of the facility three times to accommodate the additional flow of waste, and of course, that brought our numbers up to opening day of \$97 a ton.

We had some setbacks. We only had less than two months to build this facility. We were on the fast track. We got our permit two months before opening day. There were a lot of restrictions. We were under DCA control. We were fighting-- We weren't fighting, the township was fighting with us. The County, up until mid-summer, was fighting with us, and then realized that this was the only option for Somerset County. They decided to work with us, and as a result of that, it became a lot easier at that point.

Opening day we had no roof, no water, no electricity. We had our inbound and outbound scale hooked up. We had half of a tip floor, because we couldn't pour concrete because the weather turned really cold the last two weeks of the year. And of course, we had Baker Engineering with us; the people who were on retainer from DEP. They were guiding us all the way. "Today, we are going to pour." It got so cold that we couldn't pour. "Okay, we are going to change that. Tomorrow, we are going to put blacktop in." Okay? So we went and we put a foot-and-a-half of blacktop in, and we went to work. And it was a half of a tip floor.

The first day, which was January 2 -- it was on a Saturday, with everybody freezing to death -- we had two girls in a small office trailer, and again, no water, no electricity. We had power generators. We filled them up with liquid gas every hour-and-a-half. I mean, this sounds like a real war story, but this is the truth. We would work approximately 22 hours a day, as we were limited on our finances. We only had enough money in the till to buy 15 trailers, and we needed 35. We had strung out. We had everything on a hook -- my house, my car, my kids. It was all over. If this facility didn't fly, done.

Anyway, the first two weeks of the year-- Unfortunately, I had pneumonia, but I stayed right there with the facility. I worked on the floor for the first five months

of the operation, right in the garbage. I think we have a first-class facility now that has a roof and water. Of course, we didn't get that roof or electricity for a good five months. We just literally froze to death.

Fortunately, by February or March, I had some credibility with the bank and was able to go buy 15 more trailers, which I did. We have been operating now for a year and five months. We are doing in excess of our permitted tonnage, which is 820 tons per day. We do about 950 tons a day, approximately. It has been a rather slow year this year, I guess because construction seems to be off this year. We are still dumping at the Empire Landfill. Our rate went from \$44 to \$57.05. We applied for a rate increase, or rate relief, back in May of 1988. We have not yet received the final word on that rate increase. As a matter of fact--

J O H N W. T H A T C H E R, E S Q.: It is not a rate increase. It is an interim final tariff for operating under-- Excuse me.

MR. HORNER: I'll let Jay explain the numbers of the tariff, but I will just give my-- Anyway, we went from, again, \$44 a ton, to \$57.05, and that became effective January 1 of this year, and we got no rate relief until the fourth of February?

MR. THATCHER: Yes.

MR. HORNER: So we lost 250,000, approximately, the first month of the year. I'll back up a little bit. Back in '88, when we opened the doors, again, we had to put blacktop down on the floor. DEP said it was okay at that time, but they said, "Sometime in the near future, you are going to have to rip all of that out, and you are going to have to put concrete in." They finally got ahold of us, and said, "Now it is time to rip out your floor and put the concrete in." We did that. We just finished that about two months ago. We are looking for some rate relief now, as well as a final rate for our tariff,

for the concrete floor that we had to rip out -- or the blacktop floor that we had to rip out, to put concrete in its place. We are now being pressured by DEP to replace, or put the final coat of blacktop around the facility. Again, we are looking at rate relief for the blacktop, to bring us up to -- or, to get us in compliance with our original permit condition.

I think what I am trying to tell you is, we are now operating at a loss, and we still have a lot of permit conditions to meet as far as DEP is concerned, and there is no money in the till to make these needed repairs.

ASSEMBLYMAN SHINN: Your disposal fee went up after the five-year contract, or within that five-year period?

MR. HORNER: Every year it goes up. In other words, this year it went up from \$44 to \$57.05. What is it next year, Jay?

MR. THATCHER: It is up about another \$13; I believe.

MR. HORNER: Okay. In other words, that was all structured in the very beginning. We knew what our increases would be.

ASSEMBLYMAN SHINN: The five years started at \$44 then -- the first year?

MR. HORNER: Plus, we had to put a million dollars up-front, and one month in advance, and we have to send one month in advance every month, before we start with them. The money has to be paid in advance.

ASSEMBLYMAN SHINN: Your temporary rate from BPU is how much?

MR. HORNER: It's \$97; I believe, \$97.50. And we had a host community benefit of \$4 a ton, and we since negotiated that down to \$2.40. We have a very good relationship with the township now -- it has completely turned around -- and with the County.

Do you want to pick up on that, Jay, or--

MR. THATCHER: Do you want to pick up, or do you want me to--

E D W A R D P. B A L E S: You make a statement, and I'll close.

MR. THATCHER: Being very brief, we started in January of 1988 at \$97 a ton on an interim basis. Basically, "interim" means the Board of Public Utilities permitted us to charge this rate, subject to true-up and subject to further examination. For an initial tariff, you only have to come before the Board of Public Utilities by code with pro forma figures. What eventually happened was, this case has dragged before the OAL since May of last year. They did not have to use pro forma figures. They have actual figures. They know exactly what we spent in 1988.

Just to give you an idea of what we did in 1988, we showed a profit of about roughly \$700,000 -- okay? -- based on the formula that DEP and the BPU permitted, to get us into this deal. We should have made about \$2 million in profit. Okay? That is what they approved up-front. Although we made \$700,000 in '88, what we do not show as an expense item is cost overruns that exceed a million dollars. That is not a traditional expense in rate-making. So the bottom line is, we lost in 1988.

We get back into this alphabet soup syndrome of DEP, BPU, DCA, everybody coming in, because what happened was, DEP would come in, and say, "Gee, we want to fix these drains up," but it costs 50,000 bucks. And, "Gee, we think you should enclose this stairwell," for \$200,000. So what we're trying to do is make these people happy. They took a facility that should have been a Chevy-- It was designed to be a Cadillac, and it is now a Rolls-Royce. All right? And we really didn't have much say in it.

I now have the BPU saying, "We don't want to give you the money now to pay for it." We've been bushwhacked, because starting January 1988, we moved that garbage. What Mr. Horner has said to you is, what a nightmare in the very beginning, and what we ended up with-- Without hesitation, gentlemen, we have

the best facility in the State of New Jersey; probably the best facility on the East Coast. It is absolutely state of the art. It runs like a clock. It is run by people who know the business, who are there operating the business. I have been representing Mr. Horner for 10 years; this is the second time I have seen him in a suit. Okay? He is in the garbage every day. He runs this facility. Right now, our problem is that we are being dictated to by too many people, and now the final folks are saying, "We won't give you a tariff." Well, they offered us a tariff in settlement that won't even pay our bills.

I know the tenor, from what I have seen this afternoon, is, "Gee, maybe people are making too much money, and that's what we have to look into." Well, what nobody has said to you is-- In my client's case, they should make a lot of money. They were given a RFP. They were told they could make 13% on an operating margin, which is 13% of their operating costs. That is what got them into the game. Instead, they are losing money.

Now we go to the Board of Public Utilities, and say, "This is what you told us we could do," and they say, "No, we changed our minds now. Now that you are moving the garbage and everything is working okay, we want you to go to traditional rate base rate of return." If you are familiar with utility law and utility accounting, rate base rate of return does not really work. That is why the SCI said the BPU control of the last 17 years was an unmitigated failure. You can't do it that way. I am speaking somewhat from experience. I have been a lawyer for 15 years, and for 13 years I have primarily been in the garbage business; primarily representing collectors and haulers.

I'll stop.

MR. BALES: Thank you, Jay. Gentlemen, I would like to just make a little point and summarize what our present situation is on these costs. I noticed the other haulers were

giving you some costs, and I would like to just give you our input on what the numbers are generally running.

Our hauling costs, going to Empire, which is a 110-mile, one-way trip, are averaging about \$20 a ton. Our tip fee up there right now is about \$57. That brings you up to \$77. The amortization of our investment is about 15 bucks, which brings you to \$92. Our operating costs for running the transfer station administrative offices and everything else is around \$10 a ton. So that's now up to \$102. Our insurance costs are \$6 a ton. That brings you to \$108, and our margin for profit is \$2 at this stage of the game, and to take care of any unexpected circumstances.

We have been pleading this case now before the BPU since last May, and we still haven't gotten it resolved. I think it is going to be October for us, too; maybe even further on down the line, before we get the case resolved.

I will use this as an example: We are like a little car. We have been wound up and put out on the floor to run, to see how long we can run. And it gets really frustrating sometimes trying to manage cash flows under these circumstances, especially when there are no dividends to pay. The cash flow has been robbed from construction cost overruns. You didn't get that feeling, I don't think, from these two gentlemen's comments, but our construction cost overruns are about \$1.6 million. We had nothing to do with that. The DCA requirements, the DEP requirements, everybody's requirements telling us what to do -- and we have no control over this -- added about \$1.6 million to this project's costs, which has not been given back to us in our rate. We're eating it, and there are no dividends to pay. The owners of Bridgewater Resources, Inc. are subsidizing the State of New Jersey -- Somerset County -- and it is not fair.

That is all I have to say about it.

MR. HORNER: Just a couple of other things I have to say: There were a couple of questions asked before. I have my answers ready, but of course we haven't gotten into questions yet. We don't have a franchise for this facility. We are an extension of the County franchise. We have absolutely no guarantees, as far as waste flow; absolutely none. We have all the guarantees in the world to DEP, met all their requirements, and in turn got no guarantee, only the fact that you should get the waste flow. We went out and borrowed \$9 million EDA money for this facility also.

ASSEMBLYMAN FELICE: This facility is-- The only benefit you have gotten out of all this hard work is a beautiful head of hair. You should have been in the hauling business.

MR. HORNER: I need a haircut, too.

ASSEMBLYMAN FELICE: What you're saying, though, seriously, is, because of the cost overruns, you have no way to balance out the other unexpected costs that came in. You also talked about cash flow. In other words, you're not even getting paid for what you're doing, because of what, not meeting certain criteria of the DEP?

MR. THATCHER: Well, the very peculiar nature of this case -- and I don't understand it -- is, we have gone through hearings where the testimony we brought before the Office of Administrative Law was basically uncontroverted. After the case was concluded -- and that included putting into evidence, as you have heard from other collectors, thousands of pages of documents-- There is nothing against us. Nobody even questioned the documents basically. We then got into settlement conferences that lasted almost two months with Board staff. We sat down, and we literally had to explain the stuff from beginning to end. There is nothing that is unknown about this facility. Every dime that came in, every dime that went out is known. Okay? The reason why Mr. Bales is in a position

to say \$6 for insurance, and-- We know how this facility runs. We have absolutely broken it down to the penny. Okay? They know that. And in settlement discussions, when we were very close to getting a rate-- We do not have a tariff -- a permanent tariff; we never had one. All of a sudden, they come back and say, "Here is the number we think you should live with." It is a number that won't even pay the bills.

And, we have this \$13 increase coming in January. We are hanging on, but in January, when Empire says, "Here is the new amount of money," this facility will not make it for a week, and either the Board of Public Utilities or somebody is responsive -- okay? -- or this facility shuts down, because there is just not cash flow.

I will say this also; I will extend this, unless you gentlemen disagree: Our numbers are very public. We have our numbers broken down in such a way where I can explain it to you gentlemen very easily. If there is anyone who would like to come to my office, or if you would like me to come down and give you a full break-out, just to show you -- okay? -- what was promised, what we've done, and where we really are today-- One hundred and ten dollars a ton may be a lot of money in Somerset County, but I'm telling you, everybody else is making it but us. The landfills are getting rich. The people who work for us-- They're making money. But, it is not going into our pockets, that's for sure. I take that back. It is nice to be the lawyer for this facility. I take that back.

ASSEMBLYMAN McENROE: Through you, Mr. Chairman. Thank you. I think you have made a very nice presentation. I admire your County. Somerset County is a very nice place to live. I think it has a great future, because waste is continually being generated in developing areas like Somerset. I think whatever losses you may encounter now, I think you're saying down the road, that it will be a profitable venture.

However, certain things you are talking about-- You're saying \$6 per day insurance. That's \$5000 a day.

MR. HORNER: No, that's per ton.

ASSEMBLYMAN McENROE: Per ton. You are going to be generating, how many, 840 tons per day, at \$6 for each of those tons that has to be committed to insurance? That's \$5000 a day for insurance. I just think that is a little bit high. You are talking also about an expenditure of about \$10,000 a day for administration. That is another factor that I am not sure I totally accept.

MR. BALES: No, it is not administration, sir. It's total operation; that is, salaries--

ASSEMBLYMAN McENROE: Salaries are in there, too?

MR. HORNER: Salaries -- 45 people.

ASSEMBLYMAN McENROE: Again, all of your presentations have been illuminating and interesting. But, when you are paying a final disposal cost of somewhere in the area of \$55 or so--

MR. HORNER: Fifty-seven.

ASSEMBLYMAN McENROE: --\$57 at the present time -- and \$110 your fee at the-- Regardless of all of these statistics, and all of my interest in making sure that you are a success, somewhere, something doesn't ring true. Again, your figure of \$20 per ton for transportation, a 110-mile round-trip-- That is reasonable, I guess; very reasonable, it seems, in comparison to what the other counties are projecting.

But somewhere in all this, all of these figures from the various counties, and all the various approaches, and different ways of doing things, somehow add up to an enormous expenditure of public moneys, and a very uncertain procedural--

MR. HORNER: I think what you've got to look at, though, is the supply and demand condition the State has put us in. Here in Pennsylvania, a couple of years back, it would have only been about 3.3 -- about \$12 a ton, you know, the

normal circumstances, and they see an opportunity to get rich quick. Fifty-seven dollars a ton is a lot of dough.

ASSEMBLYMAN McENROE: I think DEP is very much the culprit in all this; I agree with you.

MR. HORNER: Well, no, I don't particularly blame DEP, but in general-- I don't want to isolate DEP, but I just think--

ASSEMBLYMAN McENROE: No, let me. I'll give it a shot.

MR. HORNER: Well, you do it. I don't want to do it. That's not what I want to do. It's just that, we created a supply and demand. It's a no-win situation as far as we are concerned in Pennsylvania, Ohio, and, you know, the price is only going to go up. It is not going to come down at this point. I don't see it coming down in the near future and, of course, we're locked in. Our hands are tied. If we back out of the contract, we pay anyway, and we wind up in court. I just don't know what to do at this point.

ASSEMBLYMAN McENROE: A few particular questions: How large is your facility, acre-wise?

MR. HORNER: Acre-wise, we are on 11 acres, of which five acres approximately are in flood plain.

ASSEMBLYMAN McENROE: Flood plain?

MR. HORNER: Yes.

ASSEMBLYMAN McENROE: Okay. Are you associated also with the other incinerators proposed? Is that in the same--

MR. HORNER: Approximately 800 feet from our facility. As a matter of fact, we entered into an agreement with the County some time ago, at a very, very reduced rate, in order to cooperate with the County. We offered them the facility at \$1.2 million. That was when the facility was going to cost us a total of \$6 million or \$7 million. Now we are up to over \$12 million, so they got a bargain. We walk out of that place in three-and-a-half years, and they wind up with a facility for \$1.2 million.

ASSEMBLYMAN McENROE: And you have nothing--

MR. HORNER: With all the goodies.

ASSEMBLYMAN McENROE: You have an agreement with the County--

MR. HORNER: Oh, yeah.

ASSEMBLYMAN McENROE: --regarding waste flow at the present time. You get all of the waste flow.

MR. HORNER: No, we get--

ASSEMBLYMAN McENROE: They get 800, or whatever.

MR. BALES: Eight-hundred and twenty.

MR. HORNER: And the other facility in the County is the SIRC facility. I think he is up to \$126 a ton -- when that facility was an existing facility. We are the only two.

ASSEMBLYMAN SHINN: Any other questions?

ASSEMBLYMAN McENROE: I hate to see this conference turned around into, you know, a sympathetic view of what is happening in New Jersey to the waste haulers. We're here, I think, to ask tough questions regarding how these rates and billings are established.

MR. HORNER: We're here to offer our assistance. As Jay said, he would be glad to come in and put the cards on the table.

MR. THATCHER: We have our numbers really dissected. We really have that. That is public record. The Board of Public Utilities couldn't give it to you like I could. I would be more than happy to help you.

ASSEMBLYMAN SHINN: Yes, Algis (referring to Committee Aide) has the numbers. They have been supplied to BPU, so I think we have your numbers also.

MR. HORNER: Thank you very much.

ASSEMBLYMAN SHINN: Thank you very much. I think that was the last group that was scheduled to testify.

I would just like to thank everyone for coming and sharing candidly their experiences and frustrations, facts and

figures. I think it really starts to build a picture for the Committee, so we can give a serious look at all of the factors that are involved in this complex process, some of the problems of regulation, and our emergency actions that have been taken in the past. I think we really built a complex system, which certainly will have some long-term impacts.

With that, I think we can conclude. Okay?

ASSEMBLYMAN McENROE: I hope, Mr. Chairman, you appreciate the plight of northern New Jersey, and sympathize somewhat with the staggering costs of disposal for us.

ASSEMBLYMAN SHINN: Absolutely.

ASSEMBLYMAN ALBOHN: Recycle plastics.

ASSEMBLYMAN McENROE: That is only a part of it.

(HEARING CONCLUDED)

APPENDIX

New Jersey State Library

DRAFT TESTIMONY BEFORE NEW JERSEY
ASSEMBLY SOLID WASTE MANAGEMENT COMMITTEE

Chambers Development Company, Inc. is a publicly traded company engaged in the waste management business in selected areas of Pennsylvania, New Jersey, South Carolina, Georgia, North Carolina, Indiana, Texas and Alabama. Major elements of this business include the operation, management, construction and engineering of solid waste landfills, transfer stations and related operations. The company also provides services for the collection and hauling of solid waste for commercial, industrial and residential customers. Chambers has been publicly traded since 1985, and its stock is listed on the American Stock Exchange. The company currently operates ten landfills in the eastern United States.

Among Chambers' major contracts for the disposal of solid waste is our contract with the Passaic County Utilities Authority, or PCUA. Under that contract, Chambers has handled the disposal of up to 1,500 tons per day of municipal solid waste from the two transfer stations operating within Passaic County.

Let me discuss briefly some of the chronology of events relating to that contract, and discuss also some of the major aspects of that contract.

Testimony - Passaic
May 5, 1989
Page 2

Chambers was first made aware of the potential contract in mid-1986, when Chambers was contacted by representatives of PenPac, Inc. PenPac was at that time preparing a proposal to be submitted to the New Jersey Department of Environmental Protection in response to the DEP's request for proposals to handle the transfer and disposal of waste from several counties, including Passaic County. Chambers was asked by PenPac to make a commitment of landfill space and price as part of PenPac's proposal to the DEP with Chambers as a subcontractor to PenPac. Chambers made such a commitment to PenPac on August 11, 1986, and PenPac then submitted its proposal to the DEP.

In December 1986, Chambers was requested by the PCUA to commence negotiations directly with the PCUA regarding disposal of Passaic County waste at Chambers landfills. Prior to that time, the PCUA had been engaged in discussions and certain litigation with the DEP in which the PCUA obtained the right to contract directly with private parties for the handling of solid waste from Passaic County. On April 10, 1987, Chambers entered into a contract with the PCUA under which Chambers granted the PCUA a license to dispose of up to a total of 2,250,000 tons of solid waste over a period of five (5) years. Chambers and the PCUA also entered into a contract

Testimony - Passaic
May 5, 1989
Page 3

to provide for the disposal for an additional ten (10) years of incinerator ash from the resource recovery facility expected to be constructed in Passaic County.

Simultaneously with the agreements between Chambers and the PCUA, Chambers also entered into an agreement with PenPac, Inc. regarding the transportation of the waste from PenPac's transfer stations to Chambers' landfills, and PenPac and the PCUA entered into an agreement regarding the operation of the transfer stations.

The price for landfill disposal to be paid by the PCUA to Chambers was arrived at following extensive negotiation. Payment for the disposal was made through a single payment by the PCUA to Chambers in September 1987 in the amount of approximately \$51,000,000. The amount of this payment was based upon the discounted value of five years' of landfill charges. The funds for that payment were raised by the PCUA through the issuance of Solid Waste Disposal Revenue Bonds sold by the PCUA. The funds received by Chambers were placed in an escrow account, and are released from the account over the term of Chambers' performance under the contract.

Under the contract, Chambers has granted the PCUA license rights in three landfills owned or operated by Chambers

Testimony - Passaic
May 5, 1989
Page 4

or its subsidiaries. This arrangement was undertaken to provide redundancy of landfill capacity to the PCUA, to better assure the regular flow of waste. Under certain conditions, Chambers may also arrange for the disposal of the waste at additional landfills.

The disposal of the waste from Passaic County commenced in December, 1987, and has continued through the present.

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June 13, 1989

The Honorable Robert C. Shinn, Jr.
Chairman
Assembly Solid Waste Management Committee
State House Annex
CN 068
Trenton, New Jersey 08625

Dear Chairman Shinn:

As you may recall, I appeared before the Assembly Committee on May 8, 1989 in regard to Assembly Resolution 111.

During my presentation, I discussed the development of the solid waste transfer station operated by my client, Waste Management of New Jersey, Inc. At the conclusion of my testimony, I indicated to you that I would prepare, in addition to my oral testimony, a written statement which went into more detail concerning the transfer station program, which is of interest to the Committee.

Accordingly, I am enclosing herein an original and four (4) copies of my statement on behalf of Waste Management of New Jersey, Inc. As you may glean from my statement, I tried to trace the development of the transfer station program in the State of New Jersey and then pay particular attention to the facility operated by Waste Management of New Jersey for the County of Essex.

The Honorable Robert C. Shinn, Jr.
Page Two
June 13, 1989

If there are any questions that you may have regarding this matter, please feel free to contact me at your earliest convenience. Thanking you in advance for your kind courtesies.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'T. Schwartz', with a long horizontal stroke extending to the right.

THEODORE A. SCHWARTZ

TAS:pm
cc: K. Arnold

STATEMENT OF THEODORE A. SCHWARTZ, ESQ.
ON BEHALF OF WASTE MANAGEMENT OF NEW JERSEY

ESSEX COUNTY DISPOSAL CRISIS

On May 2, 1983, the Superior Court Chancery Division entered an Amended Consent Order in the matter of Shapiro, et al. v. Hackensack Meadowlands Development Commission, Docket No. L-21706-81, which required the Hackensack Meadowlands Development Commission (hereinafter referred to as "HMDC") to provide a disposal site for Essex County solid waste until the County's resource recovery facility became operational, "...but in no event...beyond July 31, 1987." Pursuant to the said judgment the HMDC permitted Essex County to dispose of solid waste at the HMDC I-C Landfill until July 31, 1987. The construction of the proposed resource recovery facility did not proceed on time as originally expected. Consequently, the resource recovery facility was not available to process Essex County solid waste prior to or by July 31, 1987. Faced with this fact and coupled with the above Order precluding the continued use of the HMDC Landfill beyond July 31, 1987, Essex County was constrained to find alternative disposal means and sites for its use until at least 1990.

Faced with an impending disposal crisis of great proportions, the County developed an emergency response to address this situation. On June 3, 1987, an emergency amendment was adopted to

the County Solid Waste Management Plan providing for the establishment of three interim transfer stations to serve the County.* These facilities were to be constructed and operated for the County during the emergency period pending the operation of a resource recovery facility. Thus, the Avenue A facility of WMNJ and the Frelinghuysen Avenue facility of Solid Waste Transfer Station were established as the centralized facilities for the County to manage its solid waste due to the closing of the HMDC facilities.

In recognition of the impending solid waste crisis facing the County, the New Jersey Department of Environmental Protection (hereinafter referred to as "NJDEP") immediately reviewed the Plan Amendment and certified the same on June 8, 1988. In furtherance of the emergency presented, the NJDEP on June 18, 1987 adopted emergency procedures to facilitate permitting, finding that it was necessary "...to avert eminent peril to the public health, safety, and welfare and the environment posed by the solid waste disposal crisis facing Essex County." In addition, Governor Kean on June 23, 1987 concurred with this finding and certified his approval and recognition of the emergency. The permit for the WMNJ transfer station facility was issued by the NJDEP on July 7, 1987, and required construction and operation of the

* Two facilities in the City of Newark and one in Orange. The Orange facility was never constructed.

facility by July 31, 1987. To further facilitate construction, the New Jersey Department of Community Affairs (hereinafter referred to as "NJDCA") took the extraordinary step of supplanting local permitting agencies and assumed the responsibility for issuing permits and conducting inspections itself.

In response to the emergency declared by the NJDEP, the Governor, the NJDCA, and the County of Essex, and relying upon emergency provisions of the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq., Essex County negotiated a complex contract with WMNJ to build the Avenue A Transfer Station in less than 45 days. The contract clearly recognized the emergency and the emergent nature of having a transfer facility constructed and operational by July 31, 1987. WMNJ was required to construct the facility on an expedited basis and operate it for the County for a fixed period of 30 months, i.e. during the interim period of the emergency in which the County's resource recovery facility was to be constructed.

STATEWIDE SOLID WASTE CRISIS

The existence of the solid waste disposal crisis was not limited to the County of Essex. In June of 1986, the NJDEP as evidenced by the public record, issued a Request for Proposals (hereinafter referred to as "RFP") for the establishment of transfer stations to provide out-of-state disposal in the Counties of Somerset, Morris,

Passaic, and Union. The RFP process was necessary because the NJDEP recognized that there were no long-term solid waste disposal facilities provided for in the aforesaid Counties, insofar as resource recovery facilities had not yet been constructed and operational. (The Solid Waste Management Plan of each of the Counties were amended by the NJDEP to incorporate this program.)

The NJDEP, pursuant to the aforesaid proposal process, undertook a program to provide for the construction and operation of transfer station facilities in the aforesaid Counties. The NJDEP and the Board of Public Utilities (hereinafter referred to as "BPU") participated together in establishing the transfer station programs in each of the said Counties as evidenced by the procurement process, the Solid Waste Management Plan Amendments that were adopted in each County and the Waste Flow Rules and Regulations as amended by the BPU and the NJDEP in each of the said Counties. Thus, the Counties of Somerset, Morris, Passaic, and Union were required to have transfer station facilities operational by the beginning of 1988, and disposal was mandated to be provided for at out-of-state facilities.

In addition to the solid waste disposal crisis facing the aforesaid Counties and the County of Essex, the County of Bergen was also confronted with the closing of its landfill in the Hackensack Meadowlands District. Consequently, Bergen County undertook an emergency procurement process in December of 1987 to provide for the

transportation and disposal of all of Bergen County solid waste to out-of-state facilities. Thus, all of the Counties in Northern New Jersey were now required to provide transfer station facilities and disposal of solid waste outside the State of New Jersey.

In addition to the six populous Northern Counties, the County of Sussex was also engaged in undertaking the establishment of a transfer station program with out-of-state disposal. Similarly, the County of Hunterdon had already been engaged in the operation of a transfer station for disposal of waste out of state. The Counties of Warren, Mercer, and Camden were also required to rely on out-of-state disposal for their solid waste. By 1988, well over 65% of the solid waste generated in the State of New Jersey was required to be disposed of at out-of-state facilities due to the lack of in-state facilities.* It has been clearly recognized in many published documents, the news media, Solid Waste Management Plan Amendments of the NJDEP, and other official documents of the NJDEP and BPU that the State of New Jersey faces a significant disposal crisis since it does not have adequate in-state capacity to handle its solid waste needs.

As a result of the transfer station strategy developed by the NJDEP and the BPU, approximately seven million tons of solid

*See Solid Waste Management in New Jersey, County and Municipal Government Study Commission, Nov. 1987.

waste per year are required to be shipped out-of-state for

disposal. The requirement for out-of-state disposal and the construction and operation of facilities to provide the same were established by law in policies of the NJDEP and the BPU in their respective planning and economic functions. The economic consequences of the aforesaid solid waste management program regarding out-of-state disposal are obvious. Solid waste facilities must be constructed in accordance with the environmental requirements of the NJDEP to receive and process solid waste, reload the same in transfer trailer vehicles for shipment to out-of-state facilities. At these out-of-state facilities the solid waste is again rehandled and disposed of in an environmentally sound solid waste disposal facility. Consequently, the State mandated programs of out-of-state disposal have added additional costly steps to the management and processing of solid waste for out-of-state disposal.

The disposal crisis as described above is important in understanding what will be set forth hereafter regarding the costs of the facilities that were developed under the out-of-state disposal mandates of the NJDEP, BPU, and affected Counties.

THE CONTRACT WITH THE COUNTY OF ESSEX

The County of Essex and WMNJ entered into a solid waste

agreement on July 1, 1987 wherein the County determined that emergent arrangements and facilities were required to be implemented to provide for the processing, transportation, and disposal of solid waste generated in the County for the protection of the public health and welfare. The contract further recognized not only the emergent need of the facilities and the short time available to provide the same for the County but also that a substantial financial investment was necessary in order to provide for the operation of the transfer station facility to accept, process, load, transport, and dispose of the solid waste from the County. The contract also recognized that the financial investment being made under the emergent conditions for the operation and construction of the transfer station would require WMNJ to incur substantial and accelerated start-up costs and obligations for the design, acquisition of property and equipment, construction, site improvements, and other related emergent expenditures.

As noted above, WMNJ was required to provide a fully operational solid waste transfer station, transportation system, and for disposal of solid waste in less than 45 days. In compliance with the deadlines of the NJDEP permit, WMNJ agreed to deliver and did in fact deliver a fully operational transfer station for the County, with all necessary machinery and equipment to process and dispose of approximately 1,600 tons per day, by July 31, 1987 (1,200,000 tons/4,200,000 truck yards during contract period). Due to the

emergent nature and the short time allotted for the substantial undertaking, the same was only accomplished through an emergency construction program with construction being performed virtually 24 hours per day, seven days per week.

The contract between WMNJ and the County provided for WMNJ to build and operate the facility for a period of 30 months and insure disposal capacity for the same period. (No facilities existed in the State to provide this assurance.) If WMNJ failed to have the transfer station facility in operation by July 31, 1987, the contract with the County would have been breached, and the permit issued by the NJDEP declared null and void. The risks associated with providing the facility under these conditions with the County were quite substantial due to the extraordinary nature of the emergency. Under the contract the County was required among other obligations to (1) obtain a Certificate of Public Convenience and Necessity from the BPU; (2) a Franchise from the BPU; (3) establish a tariff and have the same approved by the BPU; and (4) implement appropriate waste flow regulations. In short, the County was responsible--as the public utility--for all issues relating to the same. There were other substantial provisions in the contract relating to the County's non-performance, non-payment of fees, and increased costs.

Since the transfer station was constructed as provided by contract to provide for the processing, transporting, and disposal

of approximately 1,600 tons of solid waste per day, it was imperative that these quantities of solid waste be generated along with payment for the same as provided for in the contract. In developing the transfer station program and the contractual arrangements with the two transfer station operators, it was estimated by the NJDEP and the County, based upon the disposal records of the HMDC, that approximately 4,000 tons per day of solid waste was required to be disposed of in the County. WMNJ was required to provide and construct a facility, transportation system, and disposal capacity for the County to handle approximately 1,600 tons per day.

The County was required under the contract to provide in its Solid Waste Management Plan, franchise, and waste flow requirements for the direction of not less than 1,540 tons per day of acceptable waste to the WMNJ transfer station during the term of the agreement. Thus, it was critical to the County's obligations under the contract to provide for appropriate quantities of solid waste for the transfer station facility. As noted above WMNJ was required to provide for the County a transfer station facility to handle approximately 1,600 tons per day and insuring for the processing, transportation, and disposal of over 1,200,000 tons of solid waste for the contract period which represents in excess of 4,200,000 truck yards. Pursuant to the contract, WMNJ was to provide for reservation of the aforesaid disposal capacity at acceptable

disposal sites and insure that the solid waste was disposed of in compliance with all applicable rules and regulations. WMNJ is also obligated to indemnify the County for "destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of government laws, regulations, or orders..."

The transfer station was opened and operational by July 31, 1987 providing for the transfer, processing, transportation, and disposal of the County's solid waste, thus averting the solid waste disposal crisis. WMNJ was commended by the NJDEP, County, and other government agencies involved in the project for its excellent performance. Unlike other transfer station facilities in the Counties mentioned earlier herein, the transferring of solid waste did not occur in the open air but within enclosed buildings as required by the NJDEP Permit. WMNJ provided all the necessary environmental safeguards for the handling of the County's waste, using paved roads, scales, closed facilities, adequate transfer trailers and transportation systems, and the like as required by its NJDEP Permit.

ACTIONS OF THE CITY OF NEWARK

A. Construction of Facilities

Due to the emergent nature of the transfer station program, the NJDCA supplanted local permitting agencies including the City of

Newark during the construction of the facility. The NJDCA assumed the responsibility for issuing permits and conducting inspections of the transfer station. Despite this overwhelming State action, the City of Newark nevertheless took every step and measure available to it to seek to prevent the transfer station program from being implemented. I was personally involved in each and every administrative and legal matter that affected the transfer station and the transfer station program undertaken by the County wherein the City of Newark sought to prevent the facilities from being constructed and operational.

Public record will reveal that the City of Newark instituted various legal actions (three separate lawsuits) against the County before the Superior Court Law Division, Chancery Division, Appellate Division and the Supreme Court in an attempt to block the construction and operation of these facilities, set aside the contract for alleged violation of public bidding laws and the attempt by the County to meet its mandate for solid waste disposal. The City has been unsuccessful in these legal challenges. The Courts have consistently and unequivocally decided in favor of the County and Transfer Station operations.

Waste Flows

Pursuant to applicable law and regulation, the NJDEP and BPU adopted waste flow regulations for solid waste generated in the County of Essex in conjunction with the transfer station program.

The waste flow regulations were to provide not only direction by municipality as to disposal of their wastes but also provide for the quantities of waste to be received at the transfer stations. Despite the promulgation of these regulations jointly by the NJDEP and the BPU, it has been learned that numerous entities, such as public utilities and municipalities, have consistently deviated from the said regulations since the initial operations of the transfer station facilities. This non-compliance with waste flow regulations adversely impacts the County of Essex and its tariff for transfer station services. The contract has a service fee schedule which corresponds to the quantities of waste received on a weekly basis and adjusted on six month intervals. By not complying with the waste flow regulations and failing to utilize the transfer stations it causes a reduction in the quantities of waste received, loss of recycling taxes and host community benefits.

Non-compliance with waste flow rules and regulations directly affects the service fees payable by the County to WMNJ as provided for in the contract. Thus, non-compliance with waste flow requirements impacts upon the users of the system to their financial detriment under the County's tariff schedule, since the County administers the entire transfer station program and collects all the charges pursuant to its tariff, in order to apply the same on an equal basis to all municipalities and the public at large.

In matters related to waste flow, the BPU and the NJDEP

instituted within the last several months several enforcement actions against illegal transfer station operations within the City of Newark. State of New Jersey, Board of Public Utilities and Department of Environmental Protection v. Industrial and Commercial Refuse Removal Service, Inc., a corporation of the State of New Jersey, Frank Cicalese and Carol Cicalese, individually-(C-15593-88E); Newark Disposal Service, Inc., a corporation of the State of New Jersey and Peter R. Delli Santi, individually (C-15594-88E); A. Fiore & Sons Salvage, Inc., a corporation of the State of New Jersey and Andrew Fiore, individually-(C-15592-88E); Regional Recycling, Inc., a Corporation of the State of New Jersey, Frank & Joseph Savino, individually. The pleadings in these matters are public record and demonstrate the existence of illegal transfer stations within the City of Newark. The pleadings further allege that the operators of these facilities have also failed to comply with waste flow requirements of the BPU and the NJDEP by shipping waste materials to out-of-state facilities. According to the pleadings, in addition to operating illegal transfer stations, certain of these facilities are not in compliance with environmental requirements of the NJDEP.

The operators of these facilities as noted in the pleadings of the aforesaid enforcement actions, have effectively avoided waste flow rules and regulations of the BPU and the NJDEP, and have also had an adverse financial impact on the County's operation of its solid waste program.

COUNTY OF ESSEX SOLID WASTE TRANSFER STATION RATES

The Office of Legislative Services in the New Jersey State Legislature and the Board of Public Utilities maintain a reporting system on solid waste disposal and transfer station charges throughout the various counties in the State of New Jersey. Accordingly, the information set forth hereafter has been obtained from the Board of Public Utilities, confirmed by direct inquiries to various county entities, and of my own personal knowledge. Although the County of Essex tariff rate is \$102.86, that rate is not paid to WMNJ. Under the contract with the County of Essex, the lowest service fee for the operation of the facility is \$92.80, based upon the receipt of 1,400 to 1,640 tons per day. The service fee, based upon a yearly average service fee per ton, according to the records of the County, has been \$92.80. The service fee paid to WMNJ represents the lowest cost per ton for the operation of a transfer station and disposal of solid waste in the entire State of New Jersey.

The transfer station facilities operated in numerous other counties are either conducted as municipal operations or by private vendors. In reviewing the cost per ton for these facilities, which are unrelated to WMNJ, it will be clear from the facts presented below that the service fee being paid by the County is fair and

reasonable. Further, the County tariff rate is also fair and reasonable. These observations are a point in fact.

As noted earlier herein, the Counties of Somerset, Morris, Passaic and Union are required pursuant to NJDEP Solid Waste Management Plan Amendments to provide for transfer station facilities and disposal of solid waste out of state. The charge by the transfer station facilities located in these particular counties, which are run by private vendors and public entities for the disposal of municipal waste are as follows:

Somerset:

S.I.R.C.	\$126.50 per ton
B.R.I	\$113.95 per ton

Union:

a. Summit:	\$103.00 per ton
b. Linden (AMS):	\$132.65 per ton
c. Elizabeth (Ellesor):	\$136.35 per ton

Morris:	\$122.42 per ton
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Passaic:	\$ 79.86 per ton
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(The County of Passaic paid to a disposal site operator \$55,000,000 to reserve a specified amount of landfill capacity. The financial arrangement for this sum of money was brought about by the sale of bonds to be paid back by the County over a 10 to 15-year period. The airspace reserved by the County was for five years. The bonds will thereafter be paid over the ten year period from the County tax base. Calculations as to the actual cost per ton in the County of Passaic due to this arrangement represent with the payback of principal and interest and

estimated disposal cost of over \$106.00 per ton. It has been estimated that the County is paying one third of the disposal costs, approximately \$30.00 per ton, under the aforesaid financial arrangement plus interest.

The aforesaid transfer station programs as set forth earlier herein were developed by joint NJDEP/BPU action under the program established by the NJDEP in June 1986 (RFP), resulting from the NJDEP's mandate that transfer stations be provided in each of the four counties mentioned above. The BPU Staff participated in the development of the financial arrangements for this program and is certainly well aware of the costs for the same. The cost for these operations are indicative of the experience associated with out-of-state disposal. These facilities, under NJDEP Plan Amendment requirements are required to provide a centralized facility, reservation of disposal capacity, financial guarantees, adequate equipment, environmentally sound facilities, and reliability of service.

In addition to the NJDEP mandated transfer station plan amendment programs, the County of Bergen recently undertook the transfer and disposal of its solid waste to out-of-state facilities. The County of Bergen charges the following:

Bergen County Utilities Authority - \$98.00 per ton

(Note: The contract vendor's fee is for the transport and disposal only of solid waste which does not include the cost of constructing a transfer station facility, its operation or loading the refuse. The County of Bergen began dumping its garbage on an open pad at the inception of its program.)

The County of Hunterdon operates a solid waste transfer station and its charges are as follows:

\$125.75 for compacted waste

\$145.00 for uncompacted waste

(Note: This facility is operated by a County Utilities Authority and is apparently not subject to regulation by the BPU.)

The County of Sussex operates a public transfer station, and its charges are as follows:

\$110.00 per ton

(This facility is operated by a County Utilities Authority also.)

In addition to transfer station operations, it is also important to look at rates that are charged for direct landfill disposal of municipal waste at facilities in New Jersey (Some under BPU jurisdiction). These costs are presented to demonstrate the cost component for disposal operations having mandated environmental controls. Rates cited do not necessarily illustrate all State mandated taxes and Host Community Benefits.

Atlantic County, Pinelands Park Landfill:

\$66.94 per ton

Camden County, Pennsauken Township Landfill:

\$ 63.05/76.80 per ton

(depends on density of solid waste)

Cumberland County Landfill: \$52.06 per ton

Gloucester County Landfill: \$58.87 per ton

Middlesex County, Edgeboro Landfill:
\$ 50.00 per ton

Monmouth County, Monmouth Reclamation Center:
\$ 68.20 per ton

Ocean County, Ocean County Landfill: \$64.40
per ton

Salem County Landfill: \$59.37 per ton

In addition to the transfer stations and landfill facilities referenced above, the County of Warren recently opened its resource recovery facility. In accordance with the tariff filed with the Board, the charge for disposal of municipal waste is at \$98.00 per ton.

It is readily apparent from the above that the tariff rates of the County of Essex and, in particular, the service fee of WMNJ, are well below the rates charged at other transfer station facilities throughout the State. This is particularly noteworthy in that certain of the transfer stations referenced above are publicly operated facilities, such as the County of Hunterdon, Bergen County Utilities Authority, County of Sussex, and the City of Summit, representing rates which are in excess of the service fee paid to WMNJ under its contract with the County and the County's tariff. The factual information presented herein and the comparison of similar transfer station programs throughout the State, under NJDEP mandated programs, County programs, and disposal costs at existing landfills with environmental safeguards unequivocally demonstrate

the reasonableness of the County's tariff and WMNJ contract service fees.

It must be recognized that there are now additional components added to the handling, processing, and disposal of solid waste than previously existed in the Hackensack Meadowlands area. Previously, disposal in the Meadowlands area consisted of merely utilizing a collection vehicle and disposing of its contents at facilities which did not contain state-of-the-art environmental safeguards. Presently, the transfer station program which mandates out-of-state disposal caused additional components to be added to the solid waste management picture--namely, the construction of a transfer station facility, additional equipment, the double handling of the solid waste, the transportation of the same for long distances, the need to reserve capacity in out-of-state disposal facilities, and reliability of the system to serve the public. In the instant matter, WMNJ, is obligated to handle under its contract, over 1,200,000 tons of solid waste representing in excess of almost 4,200,000 truck yards and to have arrangements for disposal capacity in properly permitted and operated landfills for receipt of this enormous amount of material over a 30-month period.

BPU PROCEEDINGS

Since the County of Essex was required under its contract to

obtain a Certificate of Public Convenience and Necessity, a Franchise, and approval of its tariff, WMNJ was not involved at all in the matters before the BPU in July of 1987. WMNJ's position has always been clear. It is not a public utility envisioned under the Solid Waste Utility Control Act; but rather the County is the franchise holder and entity "engaged in the disposal business." WMNJ has maintained its position as a contract vendor to the County and, further, that its contract is not subject to review or modification by the BPU.

On May 2, 1988, the BPU transmitted the petition of the County of Essex for establishment of its permanent rates to the Office of Administrative Law (hereinafter referred to as "OAL"). As noted therein WMNJ was not referenced as a party in the said transmittal, was not involved in the petition of the County of Essex, and further was not considered a party to the proceeding by the BPU. (This is confirmed in the BPU's Decision and Order dated August 5, 1988.) The BPU, at no time, sought to have WMNJ as a party to the County's petition for any reason whatsoever. After the matter was transmitted to the OAL, the City of Newark filed a Motion (May 26, 1988) with the OAL seeking to have WMNJ and SWT made a party to the proceeding. After filing of Briefs, the Administrative Law Judge (hereinafter referred to as "ALJ") ruled against the City of Newark on June 22, 1988 (subsequent written opinion on July 12, 1988). It was, thereafter, the decision of the City of Newark to seek leave to

appeal the ALJ's decision to the BPU. The BPU granted Newark's request. The BPU, after reviewing the pleadings of the parties reversed the Decision of the ALJ in an Order dated August 5, 1988 (issued to WMNJ on August 10, 1988).

It is clear from the aforesaid factual scenario that it was not WMNJ that caused any delay in the OAL proceedings as previously inferred in these meetings by the representatives of the Board of Public Utilities. The City of Newark initiated various steps and measures to protect its rights regarding the initial decision of the ALJ seeking reversal of the same. If Newark had accepted the ALJ's Decision, the case could have proceeded as recognized by the ALJ in her Decision. However, it was Newark that decided to exercise its appeal rights and/or preserve its interests. WMNJ, upon receiving the BPU's Decision and Order of August 10, 1988, also undertook to protect and preserve its rights in this matter and sought Reconsideration and Rehearing by the BPU pursuant to the applicable rules. Certainly, WMNJ cannot be faulted for seeking to review the BPU's Decision to protect its rights similar to other parties. It is apparent that having a favorable Decision rendered by the OAL and a reversal of the same by the BPU, an inconsistency in the case developed regarding a serious matter of jurisdiction. It would certainly be highly irresponsible and inconsistent for WMNJ having argued so strongly in support of its position to abandon the same or be penalized for exercising its rights.

It was apparent from the Decisions of the ALJ and the BPU that substantial legal issues were presented which WMNJ sought to have reviewed as provided by applicable law and rule to the Superior Court Appellate Division. The BPU assertions with regard to procedures and alleged delaying tactics by WMNJ are totally unwarranted, misplaced, and represent a continued distorted picture. WMNJ feels very strongly about its position and is seeking to protect and preserve its legal rights. It is certainly unfair to criticize WMNJ for these actions since BPU staff would be undertaking the same steps and measures had the shoe been on the other foot.

It should be patently clear that WMNJ had no control or involvement in the processing of the County's petition. WMNJ's involvement in this matter occurred on August 10, 1988 when the BPU issued its Order of Reversal, over one (1) year after the County's initial filings for its franchise and tariff. WMNJ immediately exercised its rights concerning the BPU's Order. When this matter was forwarded to the OAL, the County of Essex indicated to the OAL Judge at the prehearing conference that it was prepared to undertake its case and present the same in support of its tariff. Throughout the briefs filed by the County of Essex in this matter, they have maintained the position that they are prepared to go forward in support of their petition without the necessity of WMNJ. Had the matter proceeded before the OAL as originally forwarded by the BPU,

the posture of the case may have been different at this point of time. The exercise of one's rights under law is certainly no foundation for any statements criticizing WMNJ regarding any delay in the rate review proceedings.

It should be noted that to this day the BPU has not decided on the standard of proof that will be required in the rate proceeding before the OAL. Repeated requests have been made through various motions seeking to bring this issue to a head. It is imperative in a legal matter, be it before a Court of Law or State Agency, that the parties before trial or hearing know the specific standard of proof that will be used to render a final judgement. Without the same, a clear denial of due process will occur. The Superior Court, Appellate Division, recently granted a motion of WMNJ seeking to review an Order of the BPU concerning the CPI adjustment clause of the Transfer Station contracts. The BPU Order sought to interfere with various contractual provisions in the contract, to the detriment of WMNJ. The County has not paid WMNJ the CPI adjustment since September 18, 1988. Additionally, WMNJ has paid the environmental taxes imposed by the State of Pennsylvania since 1988, which taxes were levied subsequent to the execution of the contract between the County and WMNJ. However, WMNJ has continued to perform its contractual obligation without a hitch.

CONCLUSION

WMNJ has presented the facts from comparable solid waste transfer programs regarding the costs associated with the disposal crisis in New Jersey for out-of-state disposal as experienced by many other Counties and unrelated private vendors providing transfer station services for these public programs. What better barometer could there be to demonstrate that the County's tariff is fair and reasonable including the service fees.

Let us not forget the emergent conditions that existed at the time of the crisis. To perform a contract under these conditions and then be subject to rate review proceedings thereafter appears to be inconsistent with the protection of public health and private sector response to the same. WMNJ never expected any BPU involvement with its charge for services, as that was clearly the responsibility of the County of Essex under the contract. Further, the County of Essex agreed to the service charge as a duly authorized public entity, it could have decided to do otherwise.

