

PUBLIC HEARING

before

ASSEMBLY SOLID WASTE MANAGEMENT COMMITTEE

To receive testimony from interested parties on the rules and regulations setting the fees to be imposed on regulated medical waste generators, facilities, and transporters by the Department of Environmental Protection pursuant to the "Comprehensive Regulated Medical Waste Management Act"

July 10, 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 Alan J. Karcher
Assemblyman Harry A. McEnroe

ALSO PRESENT:

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

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Hearing Recorded and Transcribed by
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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
ALAN J. KARCHER
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July 5, 1989

Revised Public Hearing Notice

Time Change

The Assembly Solid Waste Management Committee will conduct a public hearing on Monday, July 10, 1989 in Room 373, State House Annex, Third Floor, Trenton, New Jersey.

The public hearing, previously scheduled for 10:00 A.M., will begin promptly at 9:00 A.M.

At the public hearing the Committee will receive testimony from interested parties on the rules and regulations setting the fees to be imposed on regulated medical waste generators, facilities and transporters by the Department of Environmental Protection pursuant to the "Comprehensive Regulated Medical Waste Management Act," P.L. 1989, c. 34 (C.13:1E-48.1 et seq.).

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

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ASSEMBLYMAN ROBERT C. SHINN, JR. (Chairman): Good morning. The purpose of today's meeting is for a hearing on the rate schedule -- or the fee schedule on the regulated medical waste legislation. Before we take testimony, we requested DEP to go through their financial picture on how much it is going to cost to implement the medical waste tracking bill, and how they have allocated those costs based on that financial impact.

So, John Czapor, would you lead off? Please bring up to the table whoever you feel you would like to have join you.

J O H N V. C Z A P O R: I would like to thank Assemblyman Shinn and the Committee for today's opportunity to speak on our medical waste structure. I welcome this forum, not just to explain the Department's efforts in implementing one of the most aggressive medical waste programs in the country, but your focus on fee programs couldn't be more appropriate at this time.

With me today are Gary Sondermeyer, on my right, Assistant Director for Planning, and Bob Confer, on my left, Chief of the Special Waste Planning Bureau. Bob was integrally involved in the development of the medical waste rules and regs and the fee structure.

We recognize that you, as legislators, have just completed a very grueling budget process. That budget process -- the FY '90 budget process -- dealt the Division of Solid Waste Management a fairly serious blow. In addition to losing \$6 million in our State aid programs, we also bore a budget reduction of \$1.8 million in our operating programs. I am mentioning this basically to draw your attention to sort of the overall solid waste management funding strategy, and in order to accurately put the medical waste piece in perspective.

ASSEMBLYMAN SHINN: Would you go through that again for me? I lost track of your numbers, John.

MR. CZAPOR: Sure. We lost \$6 million in State aid programs, which primarily was the clean beaches/clean shores

and anti-litter money -- \$3 million in each account. We also had a budget reduction of \$1.8 million in our existing operating programs.

ASSEMBLYMAN SHINN: Which had a total budget of?

MR. CZAPOR: Approximately \$5.4 million.

ASSEMBLYMAN SHINN: Before the \$1.8 million?

MR. CZAPOR: Before the \$1.8 million. This was a very significant loss in revenue. While I recognize that the Legislature did not intend to cut our programs per se, but in light of the deficit situation in the State, and the State's fiscal conditions-- Many other State programs are in similar situations.

The budget bill language, when addressing our situation, did articulate a rationale for the salary appropriations reductions. This rationale, quite frankly, depended heavily upon utilization of fees to support the program. The medical waste bill not only set up a fee structure for medical waste services and to support the Medical Waste Program, but it also removed the historic 18-year, \$500 cap on solid waste fee charges. This sort of played both ways. The Division of Solid Waste was also targeted for an appropriation reduction, the logic being that our program could become increasingly fee-supported in the future as a result of the removal of the cap, and language to that effect is in, I guess, the Senate report on the budget. Of course, the Medical Waste Program was always envisioned to be a fee-based program. The fee system that we are presenting today is based solely on activities associated with the Medical Waste Program.

Therefore, I think we will intend -- not to be presumptuous of the Legislature is clear -- that while emphasizing the need for the programs currently in place across-the-board in solid waste, it is also clear that these programs should be supported by members of the community most directly affected through a fee structure.

The Department and the Division did not take their fee responsibilities lightly. The fees are developed only after a thorough evaluation of the statutory mandates and activities required to meet those mandates. In the case of medical waste, we faced considerable problems in marrying the Federal and State statutes, and then in determining an acceptable level of regulatory activity. We were very sensitive to the burden on the regulated community, but also recognized the need to put into place a Medical Waste Program that was sound, stable, and adequately reflective of the Legislature's intent.

We believe that the fees that we are going to present today are based on a thorough analysis of the requirements of the statute and the resources needed to meet those requirements. We are prepared now to summarize for you our entire process, including our assumptions on required activities. The conclusion I think you will come to is that we have taken the statute; we have been conservative, but appropriately conservative both fiscally and environmentally in what activities are required to meet the statute; and have come up with a sound evaluation which would require an adequate and stable funding source.

So, we feel very comfortable with the fee structure that we are going to be putting in place today, in at least keeping the Medical Waste Program safe for at least the next few months and years, from the problems we are facing elsewhere in our Solid Waste Program.

With that, what I would like to do is turn it over to Gary, who will do a presentation walking you through the activities and the resources. Then, we will all be available to take questions. Anything at this time?

ASSEMBLYMAN SHINN: Yes, just briefly. When you told me about the size of the cut that your Department endured with the budget reductions-- I think we ought to take that up at a different time. I am concerned because of the problem we have

had historically in reviewing county solid waste plans and resource recovery plans. The timing involved in that, I think, is absolutely critical. We want to be sure that we've got an operating Solid Waste Department, because we are just digging our way out of getting that put back together, in my mind.

As you know, we have put fees with the 901 Program, because that was not functioning. So I think you are accurate when you say we are going more toward a fee-based supported program for continuity in those programs, to be assured that they continue to function. I am very concerned about the report that you have had, you know, 25%, 28% reductions in funding, and I want to know where that is going to hit, so we know where we are prepared to deal with some of the issues that are going to be confronting us in the critical issue of municipal solid waste.

MR. CZAPOR: Not to belabor that point, but I think it is something where I would welcome the opportunity to come back and discuss it in greater detail, once the shock has worn off. I think that as we move toward a fee-based program-- This Committee has been very helpful historically and very recently in getting us there in terms of fee-based for the 901, which one considers a user type activity; the Medical Waste Program, where again the activities are based on those members of the regulated community most affected; and then the recent revisions to our fee structure previously, which will allow for fees for permits and for inspections and enforcement. That all works. My general concern is with the activities that are very important, I think, to an aggressive and innovative Solid Waste Management Program in New Jersey, that are not amenable to a fee structure, like developing an increased recycling program; developing a source reduction program that is meaningful in the State; solid waste planning; regionalization; the ability to evaluate innovative technologies and provide technical support to the counties. These are all activities that do not lend

themselves to a fee-based structure. I think that at another time--

ASSEMBLYMAN SHINN: Those are the ones that I was expressing my concern about. We have suffered because of a lack of those types of programs historically. I don't want to go right back in the bucket at this critical juncture in solid waste in New Jersey.

MR. CZAPOR: I'll spare this audience the plea, but--

ASSEMBLYMAN SHINN: Okay, Gary, I have taken up enough of your time.

GARY SONDERMEYER: (this witness using charts to demonstrate) Thank you. I would like to take about 15 minutes, I hope, and try to summarize our rationale for the fee structure we came up with. Really, this is nothing more than a summary of the summary that was in the emergency rule, which hopefully everyone has had a chance to look at.

ASSEMBLYMAN SHINN: Gary, as you go through your program, would you just differentiate the Federal mandate and the State -- where the Federal law is dictating and where the State law is interfacing?

MR. SONDERMEYER: To the extent I can, I will certainly try to do that.

ASSEMBLYMAN SHINN: I know you know it by heart, but so that the rest of us can fine-tune it in our minds.

MR. SONDERMEYER: Okay. The fundamental DEP position, to start out with just some basic facts that were provided as game rules that we had to work under-- No small quantity generator exemption was authorized by the Legislature. If you recall, the Legislature, in the comprehensive act, stated that we have to adopt, identically, the Federal requirements, with one exception -- one major exception that there be no small quantity generator exemptions. So, that is an important point; a very important point.

Significant concern was raised both in this forum here in the Assembly Committee and elsewhere over sharps, the importance here being that nearly all generators do generate sharps. Therefore, based on the fact of the State legislative mandate, and the process that was expressed throughout the public hearings, we didn't feel there was any authority whatsoever for any de minimis exemption or specific de minimis considerations.

All generators, transporters, and disposal facilities must be audited at least once per year. This is the fundamental aspect of this fee, which made the fee rates come out as they did; an assumption that each entity has to be inspected, or audited at least once per year.

ASSEMBLYMAN SHINN: Clarify point number one: No small quantity generator exemption during the planning period -- the 12-month planning period.

MR. SONDERMEYER: That is correct, within the--

ASSEMBLYMAN SHINN: Eventually after the planning period, depending on DEP and the Department of Health review of what the plan is going to be, there could, in fact, be a small quantity exemption.

MR. SONDERMEYER: Exactly right. I believe the structure that the Legislature laid out was that we really don't know a great deal about the area of medical waste. The first year should be a comprehensive study year, after which we would prepare a report, submit it to the Legislature and the Governor, and, if appropriate, make a recommendation toward a small quantity generator exemption in the future.

Some of the facts, just to provide the statutory provisions that we are dealing with-- The act allowed us to do annual registration -- or mandated annual registration and fees collection from generators, transporters, and disposal facilities. The generator fees were to be in accordance with a sliding scale, based upon the volume of regulated medical waste

produced. That was a very difficult thing to do, and I will get into some more detail about how hard it was to deal with a sliding scale.

There was some level of ability to pass rates on. Adjustments to reimbursement rates for affected generators were authorized for consideration by the Department of Health for hospital stays and Medicaid. So, there was some level of pass-through that was authorized in the State statute. Again, as Director Czapor mentioned, the historical cap of \$500 was removed, and the fee allocation formula in the statute was 75% to the Department of Environmental Protection, 25% to the Department of Health. Up-front funding was provided again in the State statute: \$750,000 general utilization seed moneys to get the program started, and \$250,000 which was authorized directly for the preparation of the comprehensive State plan.

The calculation procedure-- What we did was take the rules that we had in place from August of 1988; looked at those provisions; looked at the comprehensive mandate from the Federal government and their demonstration program, and the State statute; and we listed all of the regulatory requirements, all the services we had to provide. From that we developed a detailed work plan. Within that work plan, we listed all these activities, and we calculated the hours necessary per activity. Our Division, and I think a large component of the Department of Environmental Protection does this exercise each year for all of the services that we provide. We do an annual work plan. So we have quite a bit of experience and historical data on how much time it takes to perform specific functions. In some areas we had to do some estimates, because some of these new functions are just that -- brand-new. We didn't have anything historical to base them on.

We also applied standardized rates that we have within the Department of Health and the Department of Environmental Protection. The average cost per staff hour-- Here is a

breakdown: Totals, when you take salaries and direct costs, fringe benefits and operating expenses, to be approximately \$39.66 average total per hour, and for the Department of Health, \$37.28 average total. There is a difference there. The difference is a function of the basic level of title within the respective Departments. The Department of Health has more inspection type titles, which are a little bit lower in the salary range area.

The fee rates that came out of our analysis, again to provide a sliding scale -- three different rates for generators, based upon the amount of regulated medical waste generated per year: Less than 300 pounds generation per year, about \$528; between 300 and 1000 pounds, \$687; and greater than 1000 pounds, \$846 -- rounded.

Transporters: A \$3957 annual registration fee. In addition to that, a per vehicle annual registration fee. Now, this is not a function of the regulated medical waste emergency rule. This is a function of rules that the Department adopted earlier in the year, which provide \$120 per single unit vehicle registration charge. What we anticipate-- In this program, we will be dealing with vans and step-van type vehicles, because of the Federal provisions that require labeling on three sides; the locking of vehicles; not subjecting any of the material to compaction. So you are not going to be dealing with packer trucks. You are going to be dealing with a different type of industry. So you will have a per vehicle, plus an annual company registration charge.

Disposal facilities worked out to a \$2046 annual registration. In addition -- I didn't note it here (referring to chart being used) -- in that same general solid waste fee rule that was adopted earlier in the year, we had a compliance monitoring fee based on the size of the disposal facility. So there will be additional charges for disposal facilities for compliance monitoring, but again, it is not a function of this

emergency rule. It is another fee structure that was previously adopted.

I am going to spend some time now on the generator fees, and try to get into some level of detail. The projected universe that we are dealing with is about 10,000. That is a number that is significantly different than numbers you have heard before. When we first started out, we estimated 55,000. After we did our first mailing, we estimated 45,000. What we based this on was actual fact, with a little bit of estimation put in, and I will try to go through that for you.

Because the Department of Health historically licensed health care facilities -- hospitals, clinical laboratories, blood banks, nursing homes -- we have a good handle on this number -- 1650 known licensed health care facilities, noted here. We estimated approximately 1446 corporations, or companies, that would be generators would be part of the universe. Private practitioners-- In you recall, in the emergency rule of August of '88, we had a requirement for continuous daily logging of the amount of regulated medical waste produced on a daily basis by category. Also as part of that, there were summary reports which took a snapshot of a 30-day period of those continuous daily logs, and they were to be submitted to us, to really serve as the first data base for regulated medical waste in the State.

We only received 4841 summary reports from private practitioners. Therefore, we felt it totally unreasonable to use numbers like 30,000 or 40,000, when we only got that level of response. We did add 40% to that number, to try to make it more realistic, but we were very concerned about overestimating that number.

Breakdown of the generator universe: Again, what we did was-- We were able to do a complete review of the reports -- the summary reports that were submitted from the licensed health care facilities. We did a statistical sample of the

small quantity generator reports -- roughly the 5000 that came in -- and it showed us that the smallest category was about 9000 of that total universe, a very small mid-category of about 100, and then hospitals and other larger generators, about 738 above that 1000 pounds per year generation rate.

In the rule -- if you have had a chance to review it -- we have a rate adjustment formula that is built in. We acknowledge that there may be changes in this fee structure, and if there are relatively minor changes within 10% above, or 10% below, we have put in a structure where we can amend the rate on an annual basis, after a public process. We would notice it; we would go through a public process; and we could adjust that rate up or down by 10%. If there were more wholesale changes in that rate for reductions in services or increases in services, we would have to go through a separate rule amendment process, which again, of course, would be another public process. We tried to build that rate adjustment formula of 10% in.

This is an important point, I believe: The estimated universe would only marginally impact the rates; meaning that we talked larger numbers, or estimated larger numbers -- previously 30,000, 40,000 generators. The way it works out, the sliding scale component is primarily a function of compliance monitoring, going out and looking at these facilities. Therefore, there would be a proportional increase in the services we would have to provide if we have that many more generators.

So, if we had used a larger number than this 10,000, we would not have substantially different rates, we don't believe, because of the services we have to provide per the Federal requirements and the State requirements.

A little more detail on the generators: The work plan that we actually came up with -- nine basic categories. Again, the service provided, or mandated for us and the percent of the

overall total of those three generator fees. Compliance monitoring, again, being 45%, the lion's share of the fee, being going out and that fundamental assumption of a need to go to each facility once a year.

Clerical data: Supervisory functions, typing functions, data entry. We will have annual reports that will come out of the provisions. That is about 15% of the total rate. Annual registrations, all the processing, the mass mailings out to the universe, the processing of the checks that come in, and setting up the accounts, roughly 9%. Legal support services from the Division of Regulatory Affairs within DEP and from the Attorney General's Office amounting to about 9% of the total. Administrative support for getting titles, getting people on board, etc., 6%. Report analysis, which is the reports up-front -- we have those summary reports that were in -- analyzing those reports, about 6%.

Advisement and education: In the State statute, there is a requirement for providing written guidance to generators, transporters, disposal facilities, as well as holding periodic courses. Estimate of the total, 4%. Waste flow: The State statute requires us to have a waste flow system similar to what we have for solid waste statewide. The development of that system and the maintenance of that system estimated at about 3%. Every time you make a waste flow change, you are essentially doing rule making. You have to go through the standard procedure, which takes about five months per waste flow change, so it is a labor-intensive function.

Waste reduction: We have to do an analysis to look at what components of the regulated medical waste stream can be reduced, and come up with recommendations for that. We estimate about 3% of the total work load time spent on that.

I will just try to go through a little more detail on the rationale of how we came up with those categories. I think that is an area of concern. Again, I just put these up as a

reminder of what the categories are: less than 300, 300 to 1000, greater than 1000. Again, we had to come up with a sliding scale. Eight of the nine functions that I just showed you are the basic services we have to provide, are essentially the same no matter the size of the generator. Education: We will be doing the same mailings to everyone. We will be holding courses that everyone will be able to participate in. Those costs are spread uniformly across the estimated universe of approximately 7000 private practitioners and the additional licensed health care facilities -- the 9000. So, they are spread across.

The one variable rate that gives us the sliding scale is the assumption of the time spent in compliance monitoring. We estimated that the smaller category generators would take four hours per compliance monitoring, or per audit; eight hours for the middle range facilities; and 12 hours per audit for the larger scale facilities. Again, these numbers have built into them the travel time, the review of the handling procedures, and the packaging and labeling procedures. All these are functions of the Federal requirements of the demonstration program, which were adopted into our State law. Plus, looking at the record keeping of the institution and what they are doing with those specific requirements for daily logging and summary reporting for manifest retention, exemption retention, etc., I already mentioned uniformly applied.

When we looked at the numbers, we came up with these categories by looking at the actual generation numbers that we got from that 30-day snapshot of the reports from the August '88 rule. So, we looked at those carefully, and they revealed a very small level of generation. I think some of the numbers in general-- The physicians were about 54 pounds per year; the dentists were in the area of about 22 pounds per year. On the larger side, veterinarians, I believe, were about 200, 220 pounds per year. We worked with that number, but most of the private practitioners were under 100 pounds.

Then there was a middle range category, and then there was a very large category. The hospitals were over 100,000 pounds in generation per year. We drew a cutoff here of 3000. You will notice that there is a difference here between these numbers, and that difference primarily is a function of the Federal definition. We anticipate that because of the expanded Federal definition, which takes into account blood-soaked items -- blood-soaked and items soaked with body fluids -- you are going to get a higher level of generation from even the smaller practitioner. So we tried to build in some level of a cushion, so that they still would not kick over into the higher fee category. So we put in -- I might use the term, a "buffer" of 200 pounds, so that we would keep almost all of the private practitioners below the threshold level for the lowest fee category. We did have a middle range category, and then the larger one. So we tried to maintain what the survey results told us of a small, medium, and large.

Again, the biggest piece of these fees being the annual inspection, or the audit, which we felt was absolutely critical, particularly in that first year, to explain the requirements, explain the record keeping, the packaging. It is very complicated. We acknowledge that it is very complicated, and we feel it is fundamentally important that everyone gets visited every year, particularly up-front in the first year.

I'll switch to transporters. Again, just as a reminder of the fee, about \$4000 in annual registration; \$120 per vehicle; a projected universe of 100 companies. Here we have nothing upon which to base a solid estimate. We never had a separate registration category for regulated medical waste. We made an assumption; we made an assumption based upon the number of solid waste companies we have registered, and we came up with approximately 100 companies which we feel might get into this specialized business.

The work plan services -- again similar to generators. The large number here almost 50% being compliance auditing. In this case, each generator is going to generate a certain quantity. Those quantities, for most of the generators, are below 100 pounds a year. A transporter is collecting from multiple generators, so we felt it was very important that we had a very close handle on their activities back at the company. So we planned a quarterly compliance audit, where we would go out and look at whether all of the vehicles were properly labeled; they were lockable; the locks were working; they had separate storage areas for regulated medical waste; all the record keeping was being done; the manifests properly handled, etc.

Legal support; the next category, clerical data supervision-- Basically the same categories we had before, only less because we are required, under the State statute, to provide more services to generators than we are to the transporters and disposal facilities. So, these are the basic categories.

The same type of a quick analysis for disposal facilities. Again, the annual fee is about \$2000. We had a projected universe here of about 100 facilities again. That is strictly coincidental. The 100 here is based on harder numbers. We know we have in the neighborhood of 60 hospital incinerators in the State. We have tried to link, to the extent possible, the transfer and disposal of regulated medical waste with the solid waste system, so that there is a potential for utilization of transfer stations and solid waste landfills, provided the material is treated first. So, we have a pretty good estimate of 100 facilities there, when you take into consideration the big regional transfer stations, the 60 small-scale hospital incinerators, and some of the regional landfills that are located throughout the State.

The numbers here-- Really, these categories and the percentages-- It is misleading. The note is important here. The fee for compliance monitoring, again, is not a function of these emergency rules. Those inspection fees were part of the solid waste fee rule. So, if you were to superimpose that on here, you would have a nearly identical breakdown, or split, in the amount of the total per function. So, if you put in compliance monitoring on top here, you would have in the neighborhood of 40% or 50% of the costs going to compliance monitoring, and these would proportionately be reduced, so it is almost identical to the structure for transporters -- very, very similar.

Accumulative fees assessment -- just a summary of the numbers: The revenue from generators, about \$5.5 million; 90% of the total revenue that would come in. Transporters, round numbers, \$400,000, 7%. Disposal facilities, about \$200,000, or 3%. Again, the total revenue generated from the Medical Waste Program, looking at all of the services we have to provide, comes out to about \$6 million. Of that, again, the formula that was in the State statute: 75% split to DEP; 25% to DOH, would fund 66 positions in the solid waste area; 26 positions for the Department of Health. The vast majority of these positions would go into the compliance monitoring area proportionately with the work load assessment that we performed. Again, a total of 92 positions. Again, a very aggressive monitoring program, which is the foundation of this entire fees package and the work load assessment.

The final piece before we go into the next segment: the rule-making schedule. The Governor authorized these emergency rules on June 23. There was a filing with the Office of Administrative Law on June 26. Therefore, the emergency rules became effective at that time. Publication in the "Register"-- The formal publication will be July 17. A public hearing will be held on August 1, and there would be a lapse of

the emergency rules within 60 days. So therefore, we would have between August 1 and August 26 to complete a response -- the comment document -- and formally adopt these rules as standard rules, and remove the emergency label from them.

That is a basic overview of the fee structure and our work load analysis that we performed.

ASSEMBLYMAN SHINN: I just have one question, Gary: Of that total revenue figure on your screen that included all of the revenues-- The revenues from the small generator were what percentage of that total number?

MR. SONDERMEYER: They were 90% of the total.

ASSEMBLYMAN SHINN: Ninety percent.

MR. SONDERMEYER: And 7% transporter, 3% disposal facilities, based on our estimates.

ASSEMBLYMAN SHINN: Okay. With that information, we would like to open it up for comment. If you haven't signed in and you wish to comment, please do so. Are there any questions for the Department from our members?

ASSEMBLYMAN ALBOHN: Just one quick question: On the distribution of small, intermediate, and large generators, it was 90% small-- I have forgotten offhand what the other percentages were. The point is, that middle category seems negligible in size. It makes you wonder if we shouldn't just break it into two categories, because if you were to increase the annual generation from 300 to 400, proportionately 90% of the intermediate category would fall into the lower category, which would be an increase of perhaps 90 on a universe of already something near 4000; a negligible change within the order of estimates of your accuracy. And perhaps 10 more would go into the large category.

I don't know if that would simplify anything, but it would seem to me that it should provide some simplification in administration by reducing the number of categories, and simply having two -- large and small -- with the small being somewhere

between 300 and 400 perhaps, and the other being everything above that. I don't know if you have any comment on that or not, but it would seem to me that that might be a reduction in cost there.

MR. SONDERMEYER: Your observation is absolutely right. The middle category is a very small category. When we sat down to do work load assessment with the enforcement folks who will actually be going out and doing the compliance monitoring, and we sat down with the Department of Health people and the Department of Environmental Protection people who have been doing inspections for a long time, they drew some level of distinction between the time that would be necessary based on the size of the facility. While it is a small category, their opinion was that it would take a different amount of time to perform an appropriate compliance audit than it would for the smaller guys. That is why we do have-- That is really the function of the variable rate. The only variable component being that monitoring -- the four hours, the eight hours, and the 12 hours.

So, that was the rationale. Agreed, it was a small number in the middle.

ASSEMBLYMAN ALBOHN: Then, too, based on your estimates that the truly small generators were in the 50- to 100-pound range, it would seem to me that perhaps another approach might be to have that first category only up to 200 pounds. If you are talking about additional time, certainly the difference between 299 pounds and 310 pounds generation isn't going to be significant. So, it would seem to me that the distribution there might be readjusted, so that the truly small generators-- Hopefully in the future, their costs would be down more than the others would be down. I suspect that is perhaps the source of most of the objections that we are going to receive here today.

MR. CZAPOR: I think your point is well taken. We are in a situation where most of the work is on the generators, and a large number of the generators are small- or medium-sized. I think we are sort of bound, in terms of the first year at least, by what it takes to make this type of manifest/tracking program work. When the Federal government and all of us made sort of a determination that fundamentally this would take the approach of a manifest/tracking program, those programs are very heavily weighted toward generator compliance. A RCRA subtitle C hazardous waste program just like this doesn't work unless the generators really understand the program quickly, know it is a real program, and know that there is going to be compliance with that program.

So, we will be happy-- I will ask Gary to address a little bit more directly whether we can slide the scale a little bit, but there is a big hit, and we recognize that, on the generators as the primary source of compliance for the first year.

MR. SONDERMEYER: The only comment about the 200, 300 number there-- When we looked at the sample numbers from that 1988 reporting that we got from the small generators, it showed veterinarians above that 200 level. We felt that they really were in the category of a small generator. We didn't want them to be paying a differential rate from the others. That is why we set it at 300, because the doctors, I think, if I recall, were at 54 -- that was the number -- and the dentists 22. But the veterinarians were at the 221 mark, so we did up that a bit to 300. We also anticipate that we may have different levels of generation now, because of the Federal definition. It is a strange requirement. If an item is blood-soaked, it would fall under regulated medical waste, so you have a potential for even dentists and doctors to have a higher amount. We wanted to be sure that we kept a smaller category.

ASSEMBLYMAN SHINN: Anyone else on the Committee?
Harry?

ASSEMBLYMAN McENROE: I have a question that is fairly general. This question is for anyone who wants to answer it. You mentioned that there are 60 hospital-based incinerators that will address part of the need, but you also anticipate landfill disposal of certain medical waste after, I guess, the process of inspection. How is that going to be handled? That is a concern, I would think. Incineration, to me, destroys the waste and any potential hazard, but landfill disposal offers an opportunity for concern.

MR. CZAPOR: I think we need to recognize a little bit here that this medical waste problem is almost a classic case of what is defined as pollution, which is a resource or a waste that is in the wrong spot. Much of this material, especially the material that isn't part of the regulated medical waste expanded definition, may, in fact, not be -- and there is considerable medical evidence -- infectious or hazardous in terms of it being truly able to convey a disease. The statutes recognize that there is an aesthetic issue here also.

There is a large component of regulated medical waste, that were we to know it got safely to a landfill, that that would be an appropriate disposal method that is safe, environmentally sound, and secure from a public health perspective for this very broad definition. A dry blood-soaked sheet or drape, once it gets to the landfill-- That is a good disposal place for it. We don't want to preclude that, nor do we want to burden the entire industry with tremendous costs for incineration, when landfilling is an appropriate technology.

So what that means is, our basic, fundamental mandate here is getting that waste to an approved and safe disposal site through a tracking system. I think that was the primary intent of the legislation. That is where our primary emphasis is in terms of compliance monitoring.

ASSEMBLYMAN McENROE: So you have a set of definitions that would address certain-- In other words, it isn't just a percentage. It's a question of meeting certain criteria.

MR. SONDERMEYER: It's when treated, though. That is an important distinction. It is when treated, and there is a definition put in the rule of what suitable treatment technologies are. The Department of Health and the DEP are going to be working closely. There are a lot of vendors out there who have new and innovative types of technology that they want to bring to our State. We are going to try to set up a system for evaluating those technologies and authorizing the ones that seem appropriate, issuing DEP air and water permits as necessary. But it is only in the solid waste system after treatment.

ASSEMBLYMAN SHINN: Okay. We will open it up for public comment. Don't go too far away, or don't leave or anything.

MR. CZAPOR: Thank you. We'll be close.

MR. SONDERMEYER: Thank you.

ASSEMBLYMAN SHINN: We may want you to respond.

Dr. Stanley Lane and Clark Martin. They represent the Medical Society of New Jersey.

C L A R K W. M A R T I N: Good morning.

ASSEMBLYMAN SHINN: Welcome.

MR. MARTIN: Dr. Lane will start.

ASSEMBLYMAN SHINN: Okay.

D R. S T A N L E Y R. L A N E: Good morning, gentlemen. My name is Stanley Lane. I am an allergist who practices in Moorestown, and I chair the Medical Society's Committee on Environmental Health. I am here today representing some 10,000 physicians who are stunned by the incredibly high registration fees which the Department of Environmental Protection wants to impose on us as medical waste generators.

We very much appreciate your Committee's quick response in scheduling this public hearing, and we hope that as lawmakers most directly involved in writing the comprehensive Regulated Medical Waste Management Act, you will see fit to prevail upon the Departments of Environmental Protection and Health to reduce the size and scope of the enforcement program which they seek to implement.

Some background: I am sure you will recall that the Medical Society, last year, supported the medical waste bill, even with the inclusion of physicians as regulated generators. We did so despite our conviction, which we know was shared by knowledgeable people in State government, that the medical waste problem was more one of perception than of substance. After all, no less an authority than Governor Kean himself, has said that all the vials and syringes which washed ashore in New Jersey wouldn't fill two shopping bags.

We endorsed the bill despite our suspicions, again shared by knowledgeable people in State government, that the bulk of medical waste which was found in our ocean and bay shores came from New York, and thus signified a problem which was, and is, beyond the reach of a New Jersey manifesting and tracking system. And we endorsed the bill after seeking assurances that even this Committee amended out of the bill the \$100 cap on registration fees. The Departments of Environmental Protection and Health would fashion a program that would not financially crush the practitioner who generates only minimal amounts of medical waste.

Well, as they say, the rest is history. But we, and the other small generators -- funeral directors, veterinarians, dentists, podiatrists -- are here today to see if we can't change history before it is chiseled into stone.

As you all know, the regulations which were signed by the Governor two weeks ago, before legislators or the public had even so much as a peek at them, created an astronomically

expensive program, involving 92 staff positions, two-thirds of them at DEP, at a cost of over \$6 million a year. Who bears the greatest burden? Individual practitioners who generate less than 300 pounds of medical waste a year. The Departments, in effect, want to tax us \$528.50 annually, and by DEP's estimate, some 9000 of us will be paying \$4.7 million towards a \$6 million program.

You can well imagine how unfair this seems to a community of physicians, who expected the registration fee to be more on the order of \$100, not \$528.50. That fee is even more incomprehensible in view of the fact that the Department proposes to assess a large generator, such as a hospital, only \$317 more. Is this rational? How does the State justify this disparity in fees, considering that the solo practitioner generates perhaps 1/100th the amount of waste that comes from a hospital? I think the figure should be 1/10,000th, judging from what Mr. Sondermeyer was telling us.

What's worse, we think, is that our registration fee is just the tip of the iceberg. Under this regulation, hauling fees will skyrocket. You will note that the Department plans to assess transporters and disposal facilities some \$600,000 annually. Because there are practically no disposal facilities in this State, most of the amount will be extracted from an estimated 100 transporting companies. A small company with three vans would be charged \$5500 a year. Under the medical waste law, their rates are unregulated. It doesn't take a crystal ball to figure out that the transporters will pass this increased cost of doing business at a markup back to their customers: And who comprises the bulk of these customers? Again, it is us, the small generators.

In short, if this regulation isn't changed, physicians and others will be paying the State of New Jersey astronomical registration fees, and in turn, will be charged astronomical rates by the transporters. Medical waste transporters are

already in business. Out-of-state disposal sites already exist. The system is in place. Should it really cost more than \$6 million a year to add the manifesting and tracking features to the system?

When health care is discussed in government circles, quality is hardly ever mentioned. What we hear about and read about these days is the cost of health care. As legislators, I am sure this is one of your primary concerns. Think of what this program will do to the cost of health care. We ask the Departments of Environmental Protection and Health to reconsider what they have created. Does this program really require 92 new staff people? Must Environmental Protection spend \$68,000 per year for each staff person, and Health \$57,000 a year? If our cities and towns can control traffic without placing an officer on every street corner, Environmental Protection and Health ought to be able to track medical waste without hiring one staff person for each transporter in the State.

The staffing should be reduced, and the thresholds for waste generation should be adjusted. Why cap the lowest at 300 pounds, when so many practitioners generate as little as 100 pounds a year? The registration fee should reflect the amount of waste, not the amount the State needs to hire more regulators. If this regulation isn't changed, I think it is likely that physicians will look for ways to avoid producing any form of medical waste. For example, some may stop giving injections in their offices, in order not to get caught up in this expensive program. Mothers may have to take their babies to clinics and hospitals for inoculations, obviously at greater cost and more inconvenience.

This need not happen. Let's change the regulation.
Thank you.

ASSEMBLYMAN SHINN: Thank you.

ASSEMBLYMAN ALBOHN: May I ask a question?

ASSEMBLYMAN SHINN: Sure.

DR. LANE: Sure.

ASSEMBLYMAN ALBOHN: Does this huge cost, as I see it, making suitable allowances for vacations, holidays, length of workdays, patients per day, and so on-- I see an average doctor having, perhaps, 2000 patient visits per year.

DR. LANE: I don't know what the figures are.

ASSEMBLYMAN ALBOHN: Well, I don't either, but you know, assuming 47 workweeks per year, four days per workweek, six hours per day of patient visits, two patients per hour-- That comes to roughly 2000 patient visits per year. So, on that basis, the cost per patient would be 25 cents per visit. Now, if you add to that -- double that for the cost of disposal of waste, it might be 50 cents per visit. Now, in comparison -- and again, I don't know what the average payment per visit by the patient is, but it is perhaps somewhere between \$25 and \$50 on the average-- So, you know, you're talking about 50 cents on a \$50 per visit fee. You know, whether that can be absorbed, or whether it should be a surcharge on your patient charge, it doesn't seem to me that it is really that extravagant a fee, especially since there is that public perception that medical waste is a real problem in society today.

You know, we may agree or disagree on how real that perception is, but a long time ago I learned a political axiom that, "The truth is what the public perceives to be the truth."

MR. MARTIN: May I respond? (no response)

ASSEMBLYMAN ALBOHN: If the public perceives that to be a problem, the Legislature has to respond. It has responded. And offhand, while I am no fan of DEP's rates, believe me -- and I think some of the representatives here will tell you that -- it just doesn't sound to me as though this is as extravagant a fee as would appear to be the case based on a superficial look at it.

MR. MARTIN: My name is Clark Martin, and I represent the Medical Society as well.

There are a couple of things I would like you to think about. The first is this: The bulk of the medical waste that washed ashore last year came from New York -- came from Fresh Kills. People said that some of it may have been from New Jersey, but most of it was from Fresh Kills. What washed up in Longport and Ventnor three weeks ago, according to government officials, came from illegal drug users and from diabetics who flush syringes down their toilets at home.

So, in these two shopping bags' worth of medical waste that washed ashore last year, how much of that will really be covered by this manifesting and tracking system? That is one thing to consider, because we have a \$6 million-plus program to go after essentially maybe a half a shopping bag's worth of needles and syringes and vials and IV bags.

Secondly, DEP says it is going to take them four hours to audit the individual solo practitioner, and yet they say it will only take them 12 hours to audit a 300-bed hospital. I think that has to be further examined. Why should it take four hours? Why should they staff a program so that they have enough people to spend four hours in a solo practitioner's office, essentially to make sure that his or her secretary fills out a form that is not unlike a Federal Express shipping form? You don't take four hours to teach someone how to type in the right blanks on a form that isn't even 8-1/2 by 11 inches. So, that is something that has to be looked at. And the 12 hours for the hospitals, maybe that is an underestimate. But, if they can do a hospital in 12 hours, they can do my office in five minutes -- I think.

Third, you talk about, is it extravagant to charge patients 50 cents or a dollar more? Bear in mind that not all patients are covered by employer-furnished health insurance, where you can balance a bill. You can bill the patient for

more than what the insurance covers. For example, Medicaid is capped, and so is Medicare. Under Medicare, the Federal government gives each physician a cap. He or she may not charge more than what is in that cap, or they will be subjected to Federal penalties of some \$10,000. This is called the "maximum allowable average charge," and it's out there. Each physician has a MAAC, and they may not charge beyond that. I have heard rhetoric to the other side, but this is the case. So, not every patient has insurance that will cover even a one-dollar extra charge.

ASSEMBLYMAN ALBOHN: Is that charge permanent forever, or is that adjusted annually?

MR. MARTIN: Medicare does adjust every couple of years. It looks like this year they are going to adjust downward, or freeze. Medicaid-- It took the State better than what, 15 years to make an adjustment to the doctors' \$7 office visit, but that did happen last year. It didn't happen again this year. But there are caps out there that physicians have to work under, and dentists and others.

DR. LANE: In Medicaid, there have been no fee increases for most doctors since 1971. That is the last time, I think, that there were any increases under that. In Medicare, when there are increases allowed, they are on the order of 1% to 2%.

The other thing that you haven't thought about is the actual -- in the office, the record keeping. That is quite a big expense, to have these documents there and to keep the records. So, I think you are talking maybe more-- If you're talking a quarter for the registration, and you're talking, say, about a small generator who may be paying several thousand dollars a year-- And this fee, by the way, is for individual doctors. If you are in a group of five men, that is five times \$528, or something on the order of about \$2600.

ASSEMBLYMAN SHINN: The Department told me that that isn't accurate. They said that if there is a group of doctors, that fee covers the group. Is that right, Gary?

MR. SONDERMEYER: (speaking from audience) Yes, sir. It is on the business unit. So if it is a group practice-- (remainder of statement indiscernible; not near microphone)

MR. MARTIN: But what if there are five individual practitioners in a medical arts building, and they don't incorporate themselves as a group practice?

ASSEMBLYMAN SHINN: Then it is per individual.

MR. MARTIN: Even if there is a single drop-off point for the medical waste? And yet, there is no more work.

ASSEMBLYMAN SHINN: It is my understanding that if there is not a partnership or an arrangement or an association, then it is per individual practitioner. That is the way it is--

MR. MARTIN: Generally, it seems to us that when the State sets fees to make a program self-supporting, the fees are supposed to reflect the amount of work involved. This seems to be way out of kilter to us, because it is so much loaded on the side of the small generator. I just don't see where it would take them four hours to visit a solo practitioner to make sure that the form is filled out correctly.

ASSEMBLYMAN SHINN: The number of licensed physicians in New Jersey-- What kind of a number are we dealing with?

MR. MARTIN: Well, there are a lot of licenses in New Jersey, but not all of those physicians are practicing medicine, and not all of them who are practicing medicine are practicing here. But the Board of Medical Examiners will tell you that there are over 15,000 licenses. We figure there are about 10,000 practitioners, not all of them in solo practice, but many of them are. Some of them work strictly in hospitals, so of course, they are not affected by this.

ASSEMBLYMAN SHINN: Sure. The basic numbers that DEP used to support the rate-- How do you feel about those numbers they are using as a basis?

MR. MARTIN: Well, they have to-- They can only go by what they know. Now last year, the Governor of the State of New York adopted emergency rules which required the generators to fill out a log for one month's worth of generation -- from November 15 to December 15 -- and then submit that by January 15 -- submit a summary. What happened was, as I understand it -- and I'm sure Gary can-- Gary is my rabbi on this. But, as I understand it from reading their letters, what happened was, some physicians -- and others, dentists, etc. -- submitted the logs instead of the summaries of the logs. That wasn't exactly what the Department asked for. The Department asked for summaries to be submitted.

In other cases, some of the generators submitted nothing. So they can only guess that what they got was a certain percentage of what's really out there. So they multiplied what they received by some factor to arrive at what they think is the number of generating sites out there, and it came to 9000. It could be more; it could be less. I think it is more.

ASSEMBLYMAN FELICE: Mr. Chairman, just a small question. I'm sorry I had to leave. I missed some of it, but what we're saying is that after the first year, these minimum generators-- This will be reevaluated then?

MR. MARTIN: Yeah, but-- I have only been around for 15 years, not as long as some of you, but I have never seen a State program gear up to a certain level -- let's say, 92 staff people -- and then after the first year come back to the Legislature, and say, "Hey, we don't need all these people." Not only that, we suggest that we cut the small generator out, to make our law more like the Federal law. I just don't think that will happen. An awful lot of people ran for Governor this year on this medical waste law, with the exception of Mr. Karcher. He, at least, didn't say, "This is my law, and I invented it," but a lot of others did. So, I think we are stuck with it.

ASSEMBLYMAN KARCHER: I said enough things to get me in trouble. (laughter) I don't have to go look for it.

MR. MARTIN: But that is a fact. You know, so many office holders and office seekers took credit for this thing, and said, "We've got, by God, the toughest law in the United States of America, perhaps the solar system." I just don't see it changing. If they gear up to 92, they are never going to come back and say, "We were wrong. We need only 50."

ASSEMBLYMAN SHINN: Yeah, we had quite a discussion on small-quantity generators here and a lot of the emotion that is embedded in this issue. I was one of the unfortunate people who supported small-quantity generators in the State bill, and basically, I had my head handed to me. I thought there was a work load involved in some areas that really wasn't necessary, which would help to reduce some costs and really address the problem as it really is. But the more cautious approach prevailed. However, we did retain it after the 12-month study period, which I think is important. I think that is probably the best hope for some cost reduction; that after the planning period is completed, there will be some consideration for small-quantity exemption, where it is appropriate.

I think when we spend a year with this whole process and see where we are with hospital capacity and with disposal facilities and with transporters and with generators, we are going to have a wealth of experience behind us that hopefully will provide some economies. But I agree with you, Clark, that very few programs the State has embarked on have had less costs in the following year than at their inception. But, I never give up hope.

One of the things that concerned me when I got these numbers and the phone calls that went with them, was that 100-pound/300-pound differentiation, which, in my mind, differentiates the single practitioner from the group practitioners, at least in some framework. It just seemed to

me that there could have been a little more division in that category, because I think this really falls on the guy who is practicing by himself the hardest. The closeness of that cost for a single practice compared to the hospital cost only being some \$300 difference, struck me as being impacted. I recognize that there are very few numbers in the hospital numbers, and that there are a lot of numbers in the doctors' numbers. Obviously, that is going to have an impact. I think there is some room for improvement somewhere in the whole scope of the process.

Thank you -- if you are finished.

MR. MARTIN: For now. Thank you.

ASSEMBLYMAN SHINN: Okay. We appreciate your talking to us.

Richard Alampi, New Jersey Veterinary Medical Association.

R I C H A R D A L A M P I: I have Dr. Earl Rippie, who is the President of the New Jersey Veterinary Medical Association, with me.

ASSEMBLYMAN SHINN: Could you please spell that last name for me?

MR. ALAMPI: R-I-P-P-I-E. I, too, want to thank you for the opportunity to present some testimony. I will be brief, and I do appreciate your responsiveness in scheduling this hearing so very quickly. As I said, my name is Richard Alampi, and this is Dr. Earl Rippie, representing the New Jersey Veterinary Medical Association, which represents the veterinary medical profession in New Jersey.

As did the Medical Society, we supported this legislation, for all of the various political and environmental reasons behind it. However, one point that should be made, which I don't think has really been made, is that really for the past few years, veterinarians and other health care practitioners have been routinely segregating their sharps --

syringes, scalpels, whatever. This is not something that is a complete change; it is something that has been ongoing. The reason we mention it, is that historically it has not been a problem. In other words, within the system, this has been an ongoing deal. Most practitioners are already -- if they are not associated with an incinerator in a hospital -- contracting with some sort of a medical waste transporter/disposer.

We, too, are appalled by the Department's regulatory overkill represented in this rule; specifically the extraordinary fee schedule imposed on small generators and transporters. I want to make a couple of comments on that: The first is, when Gary indicated that veterinarians were generating more waste perhaps than physicians, dentists, podiatrists, etc.-- There is a significant difference in that, and the definition of medical waste changed. The emergency rule of last August included animal body parts, animal blood fluids, and vaccine vials related to animal injections. The new rule -- as it conforms with the Federal definition -- includes for veterinarians, primarily and only, sharps. It does include contaminated bedding from research animals, but again, that is not a normal practice for veterinary practitioners, and it does include infected, or highly infectious animals or waste. But again, that is not the normal case. For example, a carcass is not considered medical waste for a veterinarian. It would be, in the case of a pet, probably going to a pet cemetery or to be cremated or buried or interred. In the case of a large animal, it would probably go to a renderer. As such, it is considered -- deemed to be product in transit, and not medical waste.

So, under that change in definition which we support, and which we think makes all the sense in the world, the volume of medical waste generated by veterinarians goes down considerably.

The other question, of course, as far as the numbers-- I think that has been dealt with, but again, we have

approximately 1400 licensees -- veterinary licensees -- in the State, which I think in the conversation with Gary Sondermeyer before, indicated that that was the basis on which they were going to have to go out and inspect and audit. Really, you are talking about 350 or 400 hospitals. So again, it is a significant difference.

I must disagree with the Department's reasoning that that would have no impact on their fee structure. If they are basing this on a very significant amount of compliance -- 45% of their budget on compliance, which is going to go with these yearly audits, it certainly does seem significant to me the number of facilities they have to go visit. If you reduced by 80%, or 75%, the number of facilities you have to go audit, then clearly that has to have -- to my non-departmental thinking anyhow -- an impact on how many people and how much time it is going to cost you to do that.

I will go through just the basic thing, and again, I don't think this is too much different from anyone else who is going to comment today, or who already has. We think the fee of \$528.50 per practitioner-- By my average, and I looked at the same forms DEP did, except that I excluded the carcasses, it comes to about three ounces of regulated medical waste per day. We feel that fee is punitive; we feel it is excessive; and we feel it is unfair. We don't think the real intent of this was to burden the generators. We thought it was to create a system to keep track of the waste. I guess that is the basic disagreement over what we think is an effective way to monitor this program.

Again, echoing the Medical Society's comment, I think this represents a cop-on-every-corner sort of mentality. Again, historically, health care practitioners have been dealing with this. They are in the loop. It is not a question of these people going outside and dumping it. That is not where the waste on our beaches comes from.

The last point on that is, if these things are really going to hinge and focus on voluntary compliance, the rules should be made to be easily complied with, and not excessive.

As far as the comment about what this is going to cost in terms of patient visits, or per patient, I think the point made about the record keeping is an important one. Yes, perhaps the \$528 taken on its own does not seem excessive, but when you add-- I have been told by several transporters that their fees will go up dramatically because of their registration costs, because of their bookkeeping costs. It becomes a multiplicative factor as it goes along, rather than just the straight \$528 fee.

Finally, throughout the legislative process, the NJVMA testified that the existing laws prescribed against ocean dumping. It was already illegal to dump in the ocean. Nothing in this act can make it more illegal. The needles and syringes found on the beaches were not typically caused by veterinarians, physicians, or dentists, who were illegally dumping their wastes in the ocean, but rather again, from Fresh Kills, from intravenous drug users, from home health care -- needles and syringes flushed down toilets. By an overwhelming majority, health care professionals have disposed of their medical waste in an ethical, environmentally safe manner. This emergency rule will punish these ethical health care professionals, without having any significant environmental or public health benefit.

We urge the Legislature to instruct the Department that its proposed fee schedule is excessive and not in keeping with the intent of the act. Thank you for this opportunity to testify.

ASSEMBLYMAN SHINN: Thank you.

ASSEMBLYMAN ALBOHN: May I ask a question, not to these gentlemen, but to the DEP folks really?

ASSEMBLYMAN SHINN: Okay.

ASSEMBLYMAN ALBOHN: Are the Playtex surgical gloves that are commonly used by dentists for every patient-- Are they included under the medical waste?

MR. SONDERMEYER: (speaking from audience) No, only if by some chance they were blood-soaked. That would be the criteria. There was, at one point in time, an expanded Federal definition that was being considered, that would have taken -- that some types of material, which could be gloves-- (remainder of sentence indiscernible; no microphone) Fortunately, that is not what we have, so, "No."

ASSEMBLYMAN ALBOHN: These are contaminated gloves from being in people's mouths. I'm sure dentists don't wear them for fun. These would amount -- the way I figure it -- to about 100 pounds a year, all by themselves, based on a normal patient load. But if they are not included, then--

I have been asked, as Vice Chairman, to take over for a few moments while our Chairman is gone. Our next speaker will be Enid Torok, from the New Jersey Podiatric Medical Society in Moorestown.

E N I D T O R O K: Good morning, and thank you. I am also here temporarily until Mr. Kausman comes in, to represent the New Jersey Dental Association.

I know the subject has been spoken to death, heard to death, listened to death, and the other speakers before me have very eloquently said what needed to be said. I do want it on the record that both Associations are very upset with the way DEP and the Department of Health have structured their rates. They are balancing this off of the backs of the very small practitioners. It is most unnecessary. By Mr. Sondermeyer's very own words, he said that the dentists are only going to produce 22 pounds. Twenty-two pounds should have its very own category. There should not have been three categories; there should have been many more. They should have taken into consideration the fact that these practitioners -- many, many

dentists and podiatrists specifically -- are single practitioners. They are not in big practices. There should have been something to allow for that.

Other than that, everybody has said everything very eloquently which needed to be said. Are there any questions?

ASSEMBLYMAN ALBOHN: Thank you very much, Enid. Are there any questions for Ms. Torok? (no response) Thanks again.

Our next speakers will be Richard Souder and Tim Ryan, of the New Jersey State Funeral Directors Association.

R I C H A R D W. S O U D E R: Thank you, gentlemen, for the opportunity to present a position from the New Jersey State Funeral Directors Association, which is very similar to those which have been expressed already. With me is Timothy Ryan, the Vice President of the New Jersey State Funeral Directors Association. I am Richard Souder. I am a member of the staff of the 729-member New Jersey State Funeral Directors Association.

We have opposed the inclusion of funeral directors in this program since its inception because of the minimal amounts of medical waste generated by funeral directors. However, we are not opposing our inclusion today, but simply the manner in which the legislation is being implemented. The just-released generator registration requirements, specifically the \$528.50 annual fee, are burdensome and statistically unjustifiable. This annual fee, to give you some idea of its relative size: One, is more money than a funeral home will have to pay to get rid of the medical waste itself. Two, collectively, for the 500-plus establishments that we represent, the sum total payable to DEP -- \$265,000 annually -- is \$80,000 more a year than the New Jersey segment of funeral services voluntarily pays in total State and national association dues. And three, is some five times more than what the industry pays in New Jersey Board of Mortuary Science establishment permits.

In DEP's prologue to the subject rule, they refer, variously, to the impact of the rule as having, one -- and I quote -- "some increased administrative costs," two, "inconveniencing generators," and three, "aggregate costs to small businesses will be minimal." These characterizations are offensive to us, and reflect the abysmal lack of research and investigation by DEP.

We do not find the princely sum of \$500,000 a year for registration and hauling, minimal. In fact, this is just \$150,000 a year less than this Association's annual operating budget.

The rule, as published by DEP, admits its own shaky statistical basis for its rate assessment, wherein they state, on page 10 of the prologue: "The projection of the size of the regulated community was obtained from the regulated medical waste generator 1988 summary reports, pursuant to the August 1988 medical waste rule. In the case of private practitioners, only 4841 private practitioners filed reports, out of an estimated number of 41,000. After surveying a segment of the private practitioner universe, the Department estimates that approximately 40% more private practitioners will register under this more comprehensive rule, than registered in 1988, for a total of 6777 private practitioners."

In short, DEP is saying that only 10% of the proposed generator community is in compliance with the August rule, and that only 17% will comply with the new law. Combined practices do not sufficiently account for this discrepancy. It should also be noted that most associations in the State just received a letter from DEP, saying that compliance with the August rule was not good, and that assistance was requested from the associations in improving it. These statistics, if you care to give them such a description, show that the Department really has absolutely no understanding of the size, complexity, or medical waste generating characteristics of the community it is

seeking to regulate; that it is unable to enforce the most elementary existing rules, and by that failure, shows that the entire economic assumptions they are working under, which were the result of the rules they are so apparently unable to enforce, are pure guess work; and that by these ludicrous registration fees, when combined with their enforcement inability, DEP will probably, and unfortunately, create a massive amount of intentional noncompliance.

As an example of DEP's lack of understanding, they say in the rule prologue, on page 16: "Costs will be minimized for most small businesses, since the costs will be directly related to the amount of waste generated." For small generators, this is patently untrue, because the labor costs of a transporter to pick up almost any quantity of waste are the same whether they pick up a shoe box or a 30-gallon drum. Accordingly, the generator with a shoe box of waste will pay a price nearly identical to that of the location paying for the pick up of a 30-gallon drum.

Now, even supposing that DEP's dollar need calculations were correct and based on accurate statistics, their manpower and man-hour requirement projections are bloated and grossly out of touch with any need or reality. They estimate, for instance on page 12 of the prologue: "Staff time required will be 1.3 hours for a registration, and four hours for a category one inspection." Any rational, presumably computerized system for this kind of volume registration should be able to reduce processing time per generator to minutes.

Additionally, the presumption that effective enforcement requires a site visit for each generator, is wasteful. Random enforcement, when well-done, is, and should be, effective. In any event, how four hours could be spent on a generator site visit that is a funeral home is beyond us. Packaging, labeling, and manifests are generally provided by transporters which DEP is also regulating. In the case of a

funeral home, which probably has a shoe box size container pickup monthly, what are they going to look at? Twelve manifests a year; one hour at best, including travel time.

With respect to the so-called sliding generator registration fees, it is self evident that if a small funeral home, eking out a modest living, must pay \$528.50 a year, while a mammoth hospital operation only pays \$317.28 a year more, the system is inherently unjust, and bears no real relationship to quantifiable and objective standards of fairness that we can identify.

Lastly, we should like to point out that along with the registration fee fiasco, this program is off to a chaotic, disorganized, and discreditable beginning, in large part because the regulations were not prepared in time for the Federal June 22 implementation date. Accordingly, as an example, this Association spent significant amounts of time and effort doing what the DEP should have done: informing, educating, and helping the small generator. To that end, we published and distributed to our membership this compliance kit, which I will provide for all of you. That DEP had to wait until the Federal regulations were out, is no excuse; so did we.

In conclusion, we recommend that this Committee initiate emergency legislation sharply cutting the generator registration fees by at least 75% for category one. In any event, and much to our dismay, we may feel compelled to seek redress in the courts prior to the implementation of the fees, so wronged and abused do we feel.

Thank you.

T I M O T H Y R Y A N: I would just like to add, on a practical note, that I operate three funeral homes in the shore communities of Toms River, Lavallette, and Seaside Park, so I am very aware of the heated issue of the medical waste washing up on the New Jersey shore, as it touches me right in my backyard.

I think that some of the reporting done in August by funeral homes is grossly miscalculated, in that we were required to include in our poundage bulk blood, which is not included in this act. So when you look at the amount of medical waste that would be distributed by a funeral director, it seems to be very high, when, in fact, it is minimal.

We have, for the past month, collected the medical waste in all three of our funeral homes, and we do more than the average case volume per year. We will not fill up half a shoe box. We have gotten costs to transport and haul and get rid of this waste from as low as \$20 a month to as high as \$60. So, at \$20 a month, you can see that we certainly aren't going to spend as much in hauling as we are in registration.

ASSEMBLYMAN SHINN: Thank you.

MR. SOUDER: I will leave copies of this, and also this report that I referred to, which was sent out to our members to help them to prepare for this.

ASSEMBLYMAN SHINN: Okay.

ASSEMBLYMAN McENROE: One question, Mr. Chairman. Have you asked DEP to define how many business units this gentleman from Ocean County has, who has places in Toms River, Lavallette, and Seaside Park? Would that be one business unit, or several?

MR. RYAN: Well, we have made an internal decision to just do preparation in one funeral home. So we will not register all three funeral homes, but only one, because only that one funeral home will add to the waste stream.

ASSEMBLYMAN ALBOHN: A question for DEP-- May I?

ASSEMBLYMAN SHINN: Sure.

ASSEMBLYMAN ALBOHN: The comment was made that bulk blood is not included as a hazardous or medical waste. Can you justify that?

MR. SONDERMEYER: (speaking from audience) Well, the procedure, as I understand it, is that they use sanitary sewers

for the drain, and that the material would not be going off-site, and would not have any potential impacts. So we tried--

ASSEMBLYMAN ALBOHN: It is disposed of in a sanitary sewer system, for the most part?

MR. SONDERMEYER: Yes, sir. We tried to put that in so they would not be hit with a very high generation fee, if they were not going to be transporting off-site. We put an exemption in that would not add that for the purposes of fees assessment.

ASSEMBLYMAN ALBOHN: It sounds like it is substantially in excess of the normal BOD limits that you would allow for discharge into a sanitary sewer.

MR. CZAPOR: (speaking from audience) I think it is fairly universal in terms of not just funeral homes, but hospitals and clinics, which all dispose of bulk blood into sanitary sewage systems historically.

ASSEMBLYMAN ALBOHN: When it went into the ocean it was all right, but when it is going into a sewage treatment plant, that adds a lot of load to it. I'm being a little sarcastic, but it seems to be an unusual practice. I speak as one who is a member of a sewage authority. I am concerned about the loads on our treatment plant and our \$20 million expansion programs, and things of that sort.

One comment: Those fees that are expressed do include the cost of enforcement, so that is not simply the cost of inspection, but is the cost of going after people who fail to adhere to the regulations?

MR. SONDERMEYER: Anything that would add to the work load that would come as an additional piece of an audit, yes-- (remainder of statement indiscernible; no microphone)

ASSEMBLYMAN ALBOHN: When you catch someone, what are the penalties for noncompliance?

MR. SONDERMEYER: The penalty structure is very similar to the RCRA subtitle C compliance--

ASSEMBLYMAN ALBOHN: But it is not in these regulations?

MR. SONDERMEYER: Fifty thousand dollars per event.

ASSEMBLYMAN ALBOHN: Fifty thousand dollars per violation. So, would those fees then go into the enforcement fund also?

MR. CZAPOR: If we don't enforce them under the Federal statute-- Part of it is going to have to do with how the statutes are enforced. If you enforce them under the Federal statute, the money goes into the Federal Treasury. One of the advantages to having a very cynical, selfish reason for having a (indiscernible) State statute, is that once we enforce, those moneys at least come into the State government.

MR. SONDERMEYER: The General Fund, though. I don't think they come to the program itself.

ASSEMBLYMAN ALBOHN: Part of my point is, deliberate noncompliance could be a very risky procedure for people to follow.

MR. SONDERMEYER: Yes.

ASSEMBLYMAN ALBOHN: And if enforcement is a substantial part of the procedure, or a substantial part of the cost, why that might-- Well, it would either make true believers out of a lot of people, or it would cause them to finance the rest of the operation, I guess.

ASSEMBLYMAN SHINN: Do you have any money in your budget for advertising? I am just thinking about maybe general information for the system, the penalties--

MR. SONDERMEYER: We do have costs in for--

ASSEMBLYMAN SHINN: I'm sorry?

MR. SONDERMEYER: We do have costs in for advisement and education, which we take into consideration, and generation of summary materials that will be mass mailed out to all the generators, transporters, and disposal facilities.

ASSEMBLYMAN SHINN: But I am just thinking, you don't know who all the generators are, admittedly. Right?

MR. SONDERMEYER: Yes.

ASSEMBLYMAN SHINN: So, somehow you want to go through some association magazines or literature to try to catch -- so we don't have a large number of people who just don't get the message.

MR. SONDERMEYER: Yes.

ASSEMBLYMAN SHINN: So I think maybe if you have an area for that, it would be helpful.

Sam Fierra, Vice President, New Jersey Association of Health Care Facilities?

S A M U E L F I E R R A: Thank you. I am Sam Fierra, Vice President of the New Jersey Association of Health Care Facilities. I am here today representing nearly 200 nursing homes and residential health care facilities across the State. We appreciate your quick response to these medical waste fees, and we are here today in opposition to the excessively high fee schedule proposed for our facilities.

A typical 100-bed nursing home uses 75 syringes per month, or 900 per year, for a total yearly weight of approximately 14 pounds. The cost, brand-new, for these 900 syringes, is \$116.10. Assuming they are all put into one disposal box, it currently costs \$14 to dispose of these 900 syringes for the year. This equals \$130 per year, total cost, new and used, of sharps and syringes in a nursing home. A registration fee of \$528.50 per year is ludicrous. A fee of \$100 would be a more fair amount to use for nursing homes.

The New Jersey Association of Health Care Facilities supported the medical waste legislation last year, and worked with you to arrive at a workable system. We stand ready to assist the Committee to ensure a fair, proportionately balanced medical waste fee schedule for nursing homes and other providers.

Thank you.

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

ASSEMBLYMAN ALBOHN: I hate to keep doing this, but I keep having questions for DEP which these comments provoke. You are estimating four hours per year per registered generator. Of that four hours per year, how much time would be spent at the site itself?

R O B E R T M. C O N F E R: (speaking from audience) We estimated two to three hours, depending on the size of the facility and the nature of the facility. I would like to point out that there is more involved in an inspection at a facility, albeit a small facility, than simply looking at the paperwork. The individual would be examining the storage areas for the material to see that they were secured, and the packaging material -- what it has been put into, that kind of thing.

ASSEMBLYMAN ALBOHN: Surely you are not going to be opening every closet and going into every drawer?

MR. CONFER: No, certainly not.

MR. SONDERMEYER: No, but the element of on-site handling has to be looked at; the record keeping, going through the forms. There are daily logging requirements, or monthly logging requirements. We have to see if they are being filled out properly. The record keeping of the manifest forms, any exception reports, when there is a problem throughout the loop-- Anything they would have of that nature would be looked at. There is the travel time. If there is any follow-up activity necessary-- I think we built in a component for follow-up activities if there are any violations. There would be the writing up of any orders pursuant to penalty assessments. So, there are a number of factors that are built into that four hours, including, as was mentioned, the travel time.

ASSEMBLYMAN ALBOHN: Well, I can see the travel time component, but certainly not originating in Trenton and returning to Trenton from every one.

MR. SONDERMEYER: Correct.

ASSEMBLYMAN ALBOHN: Hopefully, travel time might be 15 minutes per visit, or something of that sort--

MR. SONDERMEYER: It could be, if it is properly spaced.

ASSEMBLYMAN ALBOHN: --on a property-routed arrangement. I find it difficult to see, for a small-quantity generator, who might be manifesting his materials weekly, perhaps, or something like that, that it is going to take three and three-quarter hours per year -- or, per visit. I don't know how many visits per year you are going to make.

MR. SONDERMEYER: One.

ASSEMBLYMAN ALBOHN: Just one. You know, this is far worse, it seems to me, than is the case with hazardous waste manifesting, where the manifest is returned to Trenton and presumably there it is evaluated. They are never evaluated in the field, to the best of my knowledge, or perhaps only on a spot check.

MR. SONDERMEYER: We don't have the provision of these coming to the Department, so our only means of assessing compliance is to go out. You know, it is different than the hazardous waste, where they get the forms back. We don't get these manifest forms.

ASSEMBLYMAN ALBOHN: Well, maybe it should be changed. Wouldn't it be appropriate to have the manifest sent to Trenton?

MR. SONDERMEYER: To do that, we would need a whole work load of staff to accept those forms, analyze the forms there, put them on a data base. I think it would be probably a similar type of a work load requirement.

ASSEMBLYMAN ALBOHN: Well, what is the man in the field going to do when he looks at the forms, just see that they are there physically?

MR. SONDERMEYER: To see if they are properly filled out, and if they keep the records on site -- those types of things, yes, sir.

MR. CZAPOR: Along with the packaging requirements.

ASSEMBLYMAN ALBOHN: It seems to me that you have an existing program that works very well with all sorts of volumes of hazardous material. I see little reason to visit a site, a large purpose of the reason being to evaluate the record keeping. You know, a 23-cent stamp, or whatever it is these days -- a 25-cent stamp -- is a much more economical way of doing it, and it would seem to me that you could have a group of clerks this size, which could handle literally thousands of such forms per day. I don't know-- (applause) Thank you. That is the first time in 10 years. (laughter)

ASSEMBLYMAN SHINN: You're doing well, Albohn.

J A M E S S. B L U M E N S T O C K: (speaking from audience) If I may just elaborate on what an off-site inspection would entail-- My name is Jim Blumenstock, Director of Consumer Health Services for the State Health Department. We listed, maybe, about six or eight different variables in the formula, to come up with that four-hour per inspection. One of the other elements, again with on-site assessment, is the interviewing of personnel. The bigger concern, quite frankly, when you deal with the segregation of what is regulated versus what is not regulated-- We have talked about the tracking and the paperwork that follow the regulated material. But if the employee is not aware of the proper segregation, the problem, from an environmental and public health point of view, is when you get regulated medical waste that is inappropriately discarded as solid waste-- Rather than your ocean pollution problem, you have a problem with the landfills and the transfer stations when you have regulated waste being disposed of.

So there is actually an interview and an interaction process going on, to make sure that the preparation and

segregation of the waste is appropriate. This takes site observation, as well as the interviewing of the staff.

Another feature -- again, because this is truly untested in many of the industries that we are going to be regulating -- is that there will be unannounced inspections. So, there is an accessibility issue, and we will be sending agents in during hours of operation. We have to anticipate that there will be significant downtime just waiting for access to a competent staff person, who can address our needs during the site inspection. We will be in private practitioner segments when they are doing business. We can't expect to walk in the front door and be accommodated immediately.

So, all of these unknown issues have to be taken into consideration when we do work plans and budgeting. That is really how we came up with the four-hour assessment.

MR. CZAPOR: If I may echo some of Jim's comments-- You know, we focused, in the last few minutes, on simply the paper part of this system. Again echoing his comments, RCRA admittedly has a manifest system that is a five-part system, and the information comes back as part of that system to the regulatory agencies. But RCRA also has inspection authority that goes in to ensure that the requirements for hazardous waste control and management are being met; that the material is being stored properly; that it is contained properly; that it is not being held for too long a period of time prior to shipment; and that the approved haulers are what they say they are. That is basically the program that has now been put on what is admittedly a regulated community that does not have a history of noncompliance on this issue. But nevertheless, it is the way the Federal statute reads, and the way our statute reads. It reads as a cradle to the grave type of tracking system, one that puts on new requirements for transporting and for packaging; one that has convoluted definitions where none existed previously, which need to be evaluated continually to

ensure proper waste segregation. That's the program. It is not simply a matter, I think, of putting numbers in columns and then reading forms.

ASSEMBLYMAN FELICE: Mr. Chairman, if I may-- You mentioned that you would approach a small generator. Wouldn't you make an appointment before you actually went to a small generator? Are you planning to just stop in at any time at the small generator's, unannounced?

MR. BLUMINSTOCK: The Department of Health's method of operation traditionally has been to perform unannounced regulatory inspections. I guess that is an issue that is still pending between the two Departments -- our enforcement strategy, and whether or not we will make announced inspections with an appointment. But right now, from a planning point of view, we are basing it on unannounced inspections during reasonable periods of operation.

ASSEMBLYMAN FELICE: Well, never on Wednesday, because that is the golf day for doctors, right? You can forget about Wednesdays, in most cases.

ASSEMBLYMAN SHINN: I would think during the gear-up session, where you are going to train people, you would want to try to make an appointment, because that is when you want to make sure you get the doctor there. If you make an unannounced visit, if you're looking for the doctor, you're liable to be making a dry run, with the doctor not in attendance, you know. There might be a difference of opinion on the enforcement part of this, but the educational part of this, as far--

ASSEMBLYMAN FELICE: Mr. Chairman, just one quick thing: The calls that I have been getting-- What I am concerned about with the fees is that you are going to have professionals-- Instead of encouraging the reporting of the material and its proper transportation, with these high fees, you might just get people who will not do what they should be doing, which they would do with a modest fee for the medical profession.

That is the only thing I am concerned about. I think the basis of this hearing is to just look at the overall fees and what you are trying to do. With these high fees, we are not going to encourage people to operate legally, and we will really magnify the problem that is out there. I think that is the one thing I am concerned about. My constituents, and the people who have called and written to me, you know-- There is the 300 pounds. How about the people with less than 100 pounds, and so forth?

That is the concern I have. I think we are looking to have a more realistic approach to many of the things that we have discussed here today.

ASSEMBLYMAN SHINN: Okay. We have one more person who wishes to testify -- Barbara Lenoble. Is she still here? (affirmative response)

B A R B A R A L E N O B L E: Good morning. I am Barbara Lenoble, and I represent the Family Planning Association of New Jersey. I want to first mention that the Association was in full support of regulating medical waste at the time the emergency rule was put into effect. We alerted all of our member clinics, or member agencies -- 21 -- which are State-licensed health care facilities, and provided them with the information that DEP and the Department of Health provided. In addition, I gave a public program with staff from DEP and Health.

We echo everything that has come before you this morning. The two things I would like to stress are: Our agencies are all nonprofit. We serve low-income women. We are funded -- many of the agencies, if not all -- by State and Federal funds, and private fees from patients are really minimal compared to our State and Federal funding and private donations. We are concerned about the impact this will have on our patient care.

The other aspect -- and this is really a question I would have to pose to the Department -- is, we have agencies that have more than one clinic site. They have a main clinic and they have satellite clinics. Some satellite clinics are only open one day a week, for maybe two or three hours. Are they basing that fee on a per-clinic site, or under one agency? The agencies are incorporated.

ASSEMBLYMAN SHINN: We will let the Department answer that one.

MR. SONDERMEYER: (speaking from audience) That is based on a per-site assessment.

MS. LENOBLE: So that one site-- I will give you an example: In Middlesex County, the Planned Parenthood League of Middlesex has three hours one afternoon at John F. Kennedy. Those three hours, over a year, we don't generate 30 pounds. It's totally unfair. It's just way out. There are other agencies that have sites that are open every other week for a couple of hours.

ASSEMBLYMAN ALBOHN: A question for the Department on that: As with the funeral directors, where the gentleman with three funeral homes decided that all this preparation would take place at one funeral home, would it be in violation of the medical waste transport rules, for example, if each of these sub-agencies were to deliver their stuff to the headquarters department, and perhaps permit it all to be handled, processed, the records kept, and so on?

MR. SONDERMEYER: Each individual one would be a generator. They could make a business decision to have it all go to the one for the purposes of packaging, etc., but then they would become intermediate handlers for the Federal requirements, and there are additional record keeping, etc. requirements. Filling out the manifests in a different way would be required, but they could make that kind of a decision.

ASSEMBLYMAN ALBOHN: That wouldn't relieve them of the fee, because they would still be generators.

ASSEMBLYMAN SHINN: Just so I understand it more clearly, in order to be considered one, they would have to be under one roof -- central?

MR. CONFER: At one site.

MR. SONDERMEYER: One continuous site. (complete response here lost to transcriber; witness speaking off mike)

MS. LENOBLE: If that is the case, then with a fee like this, if we close up clinics in the areas we are trying to reach -- underserved women -- I don't-- You know, I wonder whether there could be a consideration of waivers in a situation like this? Practically the way we were told -- DEP and the Department of Health told us during that one month that we were logging -- it was perfectly appropriate for these sites to log at site, and then, whenever it is, or at the end of the month, or if they filled a container prior to that, we could bring it to the main site. We followed those procedures.

But to individually assess an agency over \$500 for a short period of time that they are in operation per week, or per month-- It's insane.

ASSEMBLYMAN SHINN: You may want to have a conversation with the Department afterwards. I'm sure these are certain areas which weren't fully looked at.

MS. LENOBLE: My understanding -- because the Association requested copies of the summary report -- is that they receive 100% from our 21 licensed health care facilities.

ASSEMBLYMAN ALBOHN: A quick question for Ms. Lenoble: Is there any possibility that some of these satellites would not necessarily be generators of medical waste; I mean, counseling centers, and things of that sort? They would automatically be exempted, I presume, since they would not be generators of medical waste.

MS. LENOBLE: Now, there may be some instances there this is not the case, but women are coming, as I mentioned in the Middlesex case, for contraceptive visits. They see a physician; they see a nurse practitioner; they use slides, and sometimes they have to use sharps. That is really the main source of medical waste at our agencies -- that our agencies generate.

ASSEMBLYMAN SHINN: Anyone else? (no response) Thank you very much.

That concludes our list of people wanting to testify. We've got a quorum call. We have been called several times already, so we better--

ASSEMBLYMAN McENROE: Are you going to have additional hearings on this?

ASSEMBLYMAN SHINN: I think we are going to essentially conclude this hearing. We will probably have some dialogue with the Department. They have a hearing scheduled for August 1, so that will be a second hearing, and we will get our data into their second hearing.

ASSEMBLYMAN McENROE: How about the transcript of this hearing? Is that going to be available within a reasonable time? Will there be any activity or anything anticipated by the Committee prior to the publication of the transcript?

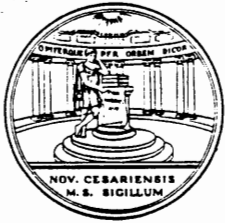
ASSEMBLYMAN SHINN: We will make a request for the transcript to be expedited, so it will be available. We will also submit it to the Department.

ASSEMBLYMAN McENROE: Thank you.

ASSEMBLYMAN SHINN: Thank you all very much.

(HEARING CONCLUDED)

APPENDIX



MEDICAL SOCIETY OF NEW JERSEY

EXECUTIVE OFFICES □ TWO PRINCESS ROAD, LAWRENCEVILLE, NEW JERSEY 08648 □ TELEPHONE 609-896-1766

**STATEMENT BY STANLEY R. LANE, MD
REPRESENTING THE MEDICAL SOCIETY OF NEW JERSEY
BEFORE THE ASSEMBLY COMMITTEE ON SOLID WASTE MANAGEMENT
JULY 10, 1989**

Good morning. My name is Stanley Lane. I am an allergist who practices in Moorestown and I chair the Medical Society's Committee on Environmental Health. I am here today representing some ten thousand physicians who are stunned by the incredibly high registration fees which the Department of Environmental Protection wants to impose on us as medical waste generators.

We very much appreciate your committee's quick response in scheduling this public hearing, and we hope that as the lawmakers most directly involved in writing the Comprehensive Regulated Medical Waste Management Act, you will see fit to prevail upon the Departments of Environmental Protection and Health to reduce the size and scope of the enforcement program which they seek to implement.

Some background: I'm sure you'll recall that the Medical Society last year supported the medical waste bill, even with the inclusion of physicians as regulated generators. We did so despite our conviction --which we know was shared by knowledgeable people in state government --that the medical waste problem was more one of perception than of

substance. After all, no less an authority than Governor Kean himself has said that all the vials and syringes which washed ashore in New Jersey last year wouldn't fill two shopping bags.

We endorsed the bill despite our suspicions--again shared by knowledgeable people in state government--that the bulk of the medical waste which was found on our ocean and bay shores came from New York, and thus signified a problem which was and is beyond the reach of a New Jersey manifesting and tracking system.

And we endorsed the bill after seeking assurances that, even though this Committee amended out of the bill the \$100 cap on registration fees, the Departments of Environmental Protection and Health would fashion a program which would not financially crush the practitioner who generates only minimal amounts of medical wastes.

Well, as they say, the rest is history. But we and the other small generators--funeral directors, veterinarians, dentists, podiatrists--are here today to see if we can't change history before it's chiseled into stone.

As you all know, the regulations which were signed by the Governor two weeks ago, before legislators or the public had even so much as a peek at them, create an astronomically expensive program, involving 92 staff positions, two-thirds of them at the DEP, at a cost

of over \$6 million a year. And who bears the greatest burden? Individual practitioners who generate less than 300 lbs. of medical waste a year. The Departments in effect want to tax us \$528.50 annually, and by DEP's estimation some 9,000 of us will be paying a \$4.7 million towards a \$6 million program.

You can well imagine how unfair this seems to a community of physicians who expected the registration fee to be more on the order of \$100, not \$528.50. That fee is even more incomprehensible in view of the fact that the Department proposes to assess a large generator, such as a hospital, only \$317 more. Is this rational? How does the state justify this disparity in fees, considering that a solo practitioner generates perhaps one hundredth the amount of waste that comes from a hospital?

What's worse, we think, is that our registration fee is just the tip of the iceberg. Under this regulation, hauling fees will skyrocket. You'll note that the Department plans to assess transporters and disposal facilities some \$2 million annually. Because there are practically no disposal facilities in this state, almost all of the \$2 million will be extracted from an estimated 100 transporting companies. Under the medical waste law, their rates are unregulated. It doesn't take a crystal ball to figure out that the transporters will pass this increased cost of doing business, at a markup, back to their customers. And who comprises the bulk of those

customers? Again, it is we, the small generators.

In short, if this regulation isn't changed, physicians and others will be paying the State of New Jersey astronomical registration fees, and in turn will be charged astronomical rates by the transporters.

Medical waste transporters are already in business. Out-of-state disposal sites already exist. The system is in place. Should it really cost more than \$6 million a year to add the manifesting and tracking features to the system?

When health care is discussed in government circles, quality is hardly ever mentioned. What we hear about and read about these days is the cost of health care. As legislators, I'm sure this is one of your primary concerns. Think what this program will do to the cost of health care.

We asked the Departments of Environmental Protection and Health to reconsider what they've created. Does this program really require 92 new staff people? Must Environmental Protection spend \$68,000 per year for each staff person, and Health, \$57,000 a year? If our cities and towns can control traffic without placing an officer on every street corner, Environmental Protection and Health ought to be able to track medical waste without hiring one staff person for each transporter in the state.

The staffing should be reduced, and the thresholds for waste generators should be adjusted. Why cap the lowest category at 300 lbs. when so many practitioners generate as little as 100 lbs. a year? The registration fee should reflect the amount of waste, not the amount the State needs to hire more regulators.

If this regulation isn't changed, I think it's likely that physicians will look for ways to avoid producing any form of medical waste. For example, some may stop giving injections in their offices in order not to get caught up in this expensive program. Mothers may have to take their babies to clinics and hospitals for inoculations, obviously at greater cost and more inconvenience. This need not happen. Let's change the regulation.



The Second Century

New Jersey Veterinary Medical Association

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TESTIMONY ON NJDEP MEDICAL WASTE REGULATIONS
ASSEMBLY COMMITTEE ON SOLID WASTE MANAGEMENT

STATE HOUSE ANNEX- TRENTON, NJ
JULY 10, 1989

Chairman Shinn, distinguished members of the Assembly Committee on Solid Waste Management, the New Jersey Veterinary Medical Association appreciates the opportunity to comment on the NJDEP's Emergency Rule implementing the Comprehensive Regulated Medical Waste Management Act. The New Jersey Veterinary Medical Association represents the veterinary medical profession in New Jersey.

The veterinary profession in New Jersey recognizes the need for the segregation of infectious waste and supported legislation and regulation that would protect the citizens and environment of the State from contamination from infectious waste. Indeed, veterinarians, as are other members of the medical community, have been segregating prescribed segments of medical waste, such as needles, scalpels and other "sharps" for several years now.

However, the veterinary profession is appalled by the regulatory "overkill" represented in the Department's emergency rule, specifically the extraordinary fee schedule imposed on small generators and transporters.

When the Comprehensive Regulated Medical Waste Management Act was being considered by the New Jersey Legislature, veterinarians and other members of the health care profession were led to believe that registration fees for generators would be reasonable- somewhere in the range of \$100 per year for small generators. A reasonable fee would have minimal economic impact on the health care profession and their clients.

However, an annual fee of \$528.50 for veterinarians that will average 3 ounces of regulated medical waste per day is punitive, excessive and unfair. The veterinary profession is confident that this fee schedule was not the intent of the legislature when they envisioned the implementation of the Act.

In addition, the proposed annual fee of \$5,517 for transporters will undoubtedly result in a dramatic increase in transporters fees. We are concerned that large increases in disposal costs will either hurt veterinarians, if they absorb the increases, or their clients, if the cost is passed through.

And finally, throughout the legislative process, the NJVMA testified that existing laws proscribed against ocean dumping. Needles and syringes found on our beaches is typically not caused by veterinarians, physicians or dentists illegally dumping their waste in the ocean, but rather by individuals, such as diabetics and intravenous drug users disposing of their waste in the household waste stream or illegally. By an overwhelming majority, health care professionals have disposed of their medical waste in an ethical, environmentally safe manner. The emergency rule will punish ethical health care professionals, without having any significant environmental or public health benefit.

Consequently, the NJVMA urges the legislature to instruct the NJDEP that its proposed fee schedule is excessive, and not in keeping with the intent of the Act.

Thank you for allowing this opportunity to present testimony on this issue.

New Jersey State Funeral Directors Association, Inc.



**P.O. Box L
Manasquan, New Jersey 08736
201-974-9444**

**Testimony During the Public Hearing
Before the New Jersey Assembly
Solid Waste Management Committee
Concerning Regulated Medical Waste**

Robert C. Shinn, Jr., *Chairman*

July 10, 1989

Robert C. Moore III, President

Wilson H. Beebe, Jr., Executive Director

My name is Richard W. Souder. I am a member of the Staff of the 729 member New Jersey State Funeral Directors Association.

We have opposed the inclusion of funeral directors in this program since its inception because of the minimal amounts of medical waste generated by funeral directors. We are not opposing our inclusion today but simply the manner in which the legislation is being implemented.

The just released "generator" registration requirements--specifically the \$528.50 annual fee--is burdensome and statistically unjustifiable.

This annual fee--to give you some idea of its relative size:

- 1) is more money than a funeral home will have to pay to get rid of the medical waste itself;
- 2) collectively, for the 500 plus establishments we represent, the sum total payable to DEP--\$265,000 annually--is \$80,000 more a year than the New Jersey segment of funeral service voluntarily pays in total State and National Association dues;
- 3) is some five (5) times more than what the industry pays in New Jersey Board of Mortuary Science establishment permits.

In the DEP's prologue to the subject rule, they refer variously to the impact of the rule as:

having

- 1) "some increased administrative costs;"
- 2) "inconveniencing generators;"
- 3) "aggregate costs to small businesses will be minimal;"

These characterizations are offensive to us and reflect the abysmal lack of research and investigation by the DEP. We do not find the princely sum of \$500,000 a year for registration and hauling minimal. In fact, this is just \$150,000 a year less than this Association's annual operating budget. That figure does not include overhead and labor.

The rule as published by the DEP admits its own shakey statistical basis for its rate assessment wherein they state on page 10 of the prologue:

"The projection of the size of the regulated community was obtained from the regulated medical waste generator 1988 Summary Reports ... pursuant to the August 1988 medical waste rule."

"In the case of private practitioners, only 4,841 private practitioners filed reports out of an estimated number of 42,000. After surveying a segment of the private practitioner universe, the Department estimates that approximately 40% more private practitioners will register under this more comprehensive rule than registered in 1988, for a total of 6,777 private practitioners."

In short, the DEP is saying that only 10% of the proposed generator community is in compliance with the August rule and that only 17% will comply with the new law. Combined practices do not sufficiently account for this discrepancy. It should also be noted that most associations in the state just received a letter from DEP saying that compliance with the August rule was not good and that assistance was requested from the associations in improving it. These statistics--if you care to give them such a description--show that the Department really has absolutely no understanding of the size, complexity, or medical waste generating characteristics of the community it is seeking to regulate; that it is unable to enforce the most elementary existing rules and by that failure shows that the entire economic assumptions they are working under, which were the result of the rules they are so apparently unable to enforce, are pure guesswork; and that by these ludicrous registration fees--when combined with their enforcement inability--the DEP will probably, and unfortunately, create a massive amount of intentional non-compliance.

As an example of the DEP's lack of understanding, they say, in the rule prologue on page 16, that the "costs will be minimized for most small businesses"... "since the costs...will be directly related to the amount of waste generated." For small generators, this is patently untrue because the labor costs of a transporter to pick up almost any quantity of waste are the same whether they pick up a shoebox or a 30 gallon drum. Accordingly, the generator with a shoebox of waste will pay a price nearly identical to that of the location paying for the pickup of a 30 gallon drum.

Even supposing the DEP's dollar need calculations were correct and based on accurate statistics, their manpower and manhour requirement projections are bloated and grossly out of touch with any need or reality. They estimate, for instance, on page 12 of the prologue, that staff time required will be "1.3 hours for a registration," and "4 hours" for a category one inspection. Any rational (presumably computerized) system for this kind of volume registration should be able to reduce processing time per generator to minutes. Additionally, the presumption that effective enforcement requires a site visit for each generator is wasteful. Random enforcement--when well done--is and should be effective. In any event, how four hours could be spent on a generator site visit that is a funeral home is beyond us--packaging, labeling, and manifests are generally provided by transporters the DEP is also regulating. In the case of a funeral home that probably has a shoebox-sized container picked up monthly--what are they going to look at--twelve manifests a year? One hour, at best, including travel time.

With respect to the "so-called" sliding generator registration fees, it is self-evident that --if a small funeral home eking out a modest living must pay \$528.50 a year while a mammoth hospital operation only pays \$317.28 a year more--the system is inherently unjust and bears no real relationship to quantifiable and objective standards of fairness that we can identify.

Last, we should like to point out that, along with the registration fee fiasco, this program is off to a chaotic, disorganized and discreditable beginning, in large part because the regulations were not prepared in time for the Federal, June 22nd implementation date. Accordingly, as an example, this Association spent significant amounts of time and effort doing what DEP should have done--informing, educating and helping the small generator. To that end, we published and distributed to our membership this compliance kit we have provided you with copies of. That the DEP had to wait until the Federal regulations were out is no excuse...so did we.

IN CONCLUSION, we recommend that this committee initiate emergency legislation sharply cutting the generator registration fees by at least 75% for category I.

In any event, and much to our dismay, we may feel compelled to seek redress in the courts prior to the implementation of the fees, so wronged and abused do we feel.