

P U B L I C H E A R I N G

before

SENATE ENERGY AND ENVIRONMENT COMMITTEE

on

S-1300

(Hazardous Waste Facilities Corporation Act)

Held:

November 6, 1980

City Council Chambers

City Hall

Newark, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Frank J. Dodd, Chairman

Senator John P. Caufield

Senator Barry T. Parker

ALSO:

Michael F. Catania, Research Associate

Office of Legislative Services

Aide, Senate Energy and Environment Committee

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SENATE, No. 1300

STATE OF NEW JERSEY

INTRODUCED JUNE 9, 1980

By Senators DODD, DWYER, MERLINO and PARKER

Referred to Committee on Energy and Environment

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

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

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

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

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

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

1 3. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 5. The corporation shall have the following powers:

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

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

5 c. To sue and be sued;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 46. This act shall take effect immediately.

STATEMENT

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

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

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

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

OUTLINE
PROPOSED SENATE COMMITTEE SUBSTITUTE
TO S-1300

I. Hazardous Waste Management Commission

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

II. Hazardous Waste Advisory Council

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

III. Siting Criteria

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

IV. Hazardous Waste Facilities Plan

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

V. Designation of Sites

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

VI. Licensure

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

VII. Above Ground Facilities v. Secure Landfills

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

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

VIII. Inspection/Enforcement Actions

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

IX. License Revocation/Receivership

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

X. Construction/Operation of Facilities by Commission

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

XI. Compensation to Host Municipality or Region

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

XII. Eminent Domain

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

XIII. Phaseout of Existing Facilities

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

XIV. Liability/Post Closure Maintenance

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

XV. Bounty System

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

XVI. Rate Regulation

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

XVII. Appropriation

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

Guide to Terms and Abbreviations

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

SENATOR FRANK J. DODD (Chairman): Good afternoon, ladies and gentlemen. This is the Senate Energy and Environment Committee. My name is Dodd and Senator John Caufield is Vice-Chairman of the Committee. The setting is not in keeping with our usual informality.

This morning the Committee toured the SCA facilities in the City of Newark, the hazardous waste recycling complex within the city. We were very impressed with what we saw.

We will continue the hearing on Senate Bill-1300, which is technically the Senate Committee Substitute. This will be the last day of the hearings on the drafting of the bill. After today's discussion, we will then go to writing the exact language of the bill. There will be one further review or public hearing, probably in Trenton, on the revised and, hopefully, final language.

With that, we will proceed with our rather short list of witnesses. If anyone else has something to say on the measure, we will be glad to entertain that at the end of the scheduled list.

I would like to call on Frank Sudol, who will speak on behalf of Mayor Gibson. He is from the Engineering Department in the City of Newark.

F R A N K S U D O L: Good afternoon and welcome to Newark.

We are in receipt of the draft outline for the preparation of a revised S-1300 and appreciate this opportunity to comment upon it. The importance of today's public hearing, to develop the framework for the writing of hazardous waste siting legislation, cannot be understated. The problem of hazardous waste is serious and the methods by which it will be handled are crucial to all of us. The development of legislation needs careful deliberation to maximize the protection of our health and environment. The tremendous positive effort put forth to date at informal committee meetings between representatives of government, environmental, educational and business communities must be commended. The proposed outline, which will lead to the writing of a bill after today's public hearing, has been developed in a spirit of cooperation from which legislation of this type must be written if it is to be generally accepted and successful in its intent.

We are impressed with the current Senate leadership, particularly with the membership of the Senate Energy and Environment Committee, that has restructured, the poorly contrived version of the bill known as S-1300 introduced earlier this year.

In light of the above comments, we would now like to comment on the proposed outline involving several crucial areas. Our comments today will be general in nature. Comprehensive comments will be presented once a more thorough draft of the bill is prepared.

Siting facilities of the type encompassed within the intent of the outline will be difficult if not impossible unless communities can be assured of the thoroughness of their safety to the people and environment. It is recognized that well designed methods to reclaim, destroy and, where necessary, store hazardous wastes are essential to prevent illegal disposal of toxic wastes through open dumping into our waters and into our lands.

Newark is a leader in this respect in that we are the host city to a firm which has designed a processing facility to recycle and neutralize these wastes. It is our understanding that many of you in the room today toured the SCA facility on Lister Avenue. Newark encouraged Earthline to locate here for a variety of good reasons:

We wanted to provide local industries with a viable alternative for the proper disposal of their hazardous waste streams, especially in response to the more stringent sewerage effluent discharge standards. If industries were ordered to cease discharging with no alternatives provided, they would be forced to close, relocate or illegally dispose of their effluents. All of these options were and are unthinkable given the need to retain a safe environment, our industries, jobs and tax base. The attraction of this processing plant to Newark has also provided some jobs and taxes beneficial to our local economy.

We recognize that strict monitoring by appropriate regulatory authorities is essential. We support stringent controls and have provided testimony on October 22nd, to the New Jersey Department of Environmental Protection, to expand the long overdue amendments to existing State regulations.

On page 3 of our August, 1980, testimony before this Committee, we repeated a recommendation of the Department of Environmental Protection/Delaware River Basin Commission report entitled, "Hazardous Waste Management Capacity Development in the Delaware River Basin and New Jersey: A Program Strategy," dated April, 1980. Specifically the DEP-DRBC report on page VI-7 states three specific items concerning taxes and gross receipts:

First, "all existing or future off-site facilities which provide for the ultimate disposal of a hazardous waste be subject to the tax (10 percent gross receipts tax)."

Second, "the tax (gross receipts tax) not be a substitute for local property taxes and instead should supplement local taxes."

Third, "revenues from the facility be allocated in total to the community in which the facility is or will be located."

These are direct quotes from the DEP/DRBC document.

It is essential to provide economic incentives to municipalities which will bear the risks involved in locating such facilities within their borders. The provisions recommended by the DEP-DRBC Hazardous Waste Advisory Committee are essential in order to obtain municipal cooperation in such an endeavor.

We support this recommendation, and we support item XI on the proposed outline. We will oppose the bill if such a provision is not ultimately incorporated. Such economic incentives are important to give municipalities a true incentive to step forward to offer sites for the safe processing and destruction of hazardous wastes. The alternative - State imposed acceptance through eminent domain - is a drastic step which will in all likelihood be required unless the cooperation of local government is realized. We trust that you will recognize the realities of the situation and not yield to industry pressure to drop this item from the outline and ultimately the bill.

In addition to the need for the earlier noted economic incentives, there is an equal need, if not greater need, for economic disincentives. Hazardous waste will only be delivered to environmentally acceptable facilities if disposal is economically competitive. The 1,000,000 per day capacity hazardous waste processing facility now located in Newark is only processing, as we learned this morning, at 8 percent capacity, or 80,000 gallons per day. The reason appears that since proper disposal is expensive, most firms are otherwise disposing of their wastes. The problem of the direction of waste flow to legal processing facilities must be dealt with now and not ignored or we will construct capital intensive facilities to which generated waste will not be brought. And that is an important point to emphasize because the facility that we saw this morning

in Newark has a million gallon per day capacity and it is only processing at 8 percent of that capacity.

We submit that a tax on the creation of waste will result in a direct economic disincentive which will lead to new technologies to reduce the generation of wastes which in turn will result in the need for smaller and possibly fewer hazardous waste processing facilities. This will result in the need for smaller and possibly fewer sites.

At a meeting between my staff and that of the Committee on October 1st, it was noted that there might be a problem in redistributing the revenue derived from such a tax to the processing facilities which will in all likelihood be privately owned. We would argue, however, that it is in the best interest of everyone to lower the amount of waste generated, transported and thus processed.

Furthermore, there are precedents for the disbursement of funds from government to private industry. For example, the federal government pays farmers not to grow certain crops. Additionally, tax incentives are provided to industries to effectuate the changes progressive to the public interest, for example, tax credits for energy conservation equipment.

While we agree that strict enforcement of the law is necessary in order to prevent illegal dumping, the need for such economic incentives and disincentives is crucial if we expect hazardous wastes to flow to facilities that can provide proper treatment.

We urge your serious consideration of this concept and ask that you incorporate language into the draft of the bill along the lines of the language recommended on page 4 of our August testimony.

One item lacking in the outline is the need to deal with the issue of licensing vehicles used in the transportation of hazardous wastes. In a meeting between our mutual staffs, we were informed that such a measure would be provided for in a separate bill at a later date. We offer our assistance in drafting an outline and subsequently a bill should such assistance be necessary. It is our belief that the issue of transporting wastes, particularly through heavily populated areas, needs immediate attention.

The last item we would like to comment on is item VIII (Inspection/Enforcement Actions) of the outline. For the reasons stated in our August testimony, we commend you for its inclusion.

We would like to see the DEP develop a certification process to permit municipalities the right of co-equal enforcement of the laws, rules and regulations of the NJDEP. The advantages of such a provision are obvious in that local inspection response time would be rapid and thorough.

We ask that language similar to the language noted on page 5 of our previous testimony be utilized.

Thank you for your attention. Again, we will present more comprehensive comments once a bill is prepared for review.

SENATOR DODD: Frank, what has the city experience been taxwise, healthwise, safetywise, with the facility that we toured this morning, the SCA?

MR. SUDOL: The facility on Lister Avenue, just for background for those people who haven't seen it, is a processing plant. Basically, they accept waste, neutralized waste, and purify certain materials like solvents for future resale. The experience has been very beneficial in terms of its effect on local industries in that now there is a place to properly dispose of what was previously illegally

disposed of.

In terms of its impact on the community, I believe the city is recouping something like \$78,000 per year in taxes. The plant has provided jobs to the city. I am not sure of the exact number. I think SCA representatives here today might be asked that question.

In terms of harm to the community, I believe there has only been one incident of odor complaints in the neighborhood and I think that has been abated. Apparently, one of the scrubbers kicked out. When we went down to the plant to find out what the problem was, there was a scrubber mishap. I think since then they have put in a backup scrubber system. So if scrubbers do break down, there is a backup scrubber system that kicks in. But, overall, the impact on the community has been beneficial to industry and beneficial to the municipality in that we are getting taxes and some jobs.

SENATOR DODD: Senator Caufield.

SENATOR CAUFIELD: Just a comment or two. I agree with Frank that the facility has been very beneficial to the city. In terms of cooperation, as far as we are concerned in the city, and specifically, since I have another position, their cooperation with the Fire Department has been 100 percent.

It does seem kind of inconsistent, however, that at the very same time we keep saying that we cannot legally dispose of the wastes that we are generating in the State, we have a plant such as this, very efficiently operated, that is only working at 8 percent of capacity.

SENATOR DODD: Thank you, Frank.

I would also like to introduce Mike Catania, who is the senior committee staff member of the Senate Energy and Environment Committee; and Kathy Crotty, the Director of the Senate.

I would like to now call on Joseph Boren of SCA Services, the facility that we toured this morning.

J O S E P H B O R E N: My name is Joseph Boren. I am the Director of Corporate and Community Relations for SCA Services. I am located at 60 State Street in Boston, Massachusetts.

I want to say a number of things about the outline and about hazardous waste in general. I think the most appropriate way to begin is by congratulating your committee and your staff, Senator. In my capacity with SCA I travel the country. SCA operates in 32 states. Consequently, what I am doing today I get to do in a lot of states. I read a lot of legislation. I work with a lot of committees. Yours has been the single most open process that I have ever been involved in. The end results may not be everything that the disposal industry would like to see and it is probably not everything the municipalities or citizen groups would like to see. But I have to say that the manner in which this process was conducted, the openness and the affording of the opportunity to the disposal industry, to the public, to the elected officials, to the appointed officials, to the broad spectrum of that audience out there that needs to be concerned with these kinds of social issues, is second to none. And, as you can well imagine over the last two years, environmental legislation in states has focussed almost entirely on the hazardous waste issue. So, I just want to congratulate your staff and the rest of the committee on the way this process was handled.

Now, I can tell you all the things I think are wrong with the outline.

- but we do have a couple of comments which we would like to raise about the
one.

In item number two, relative to the makeup of the Commission, we would like to suggest that instead of having all gubernatorial appointees, there may be a mechanism to have members of this Commission be appointed in some other mechanism than by the Governor. I will give you a suggestion and then tell you why we are making that suggestion.

SENATOR DODD: Is that just Byrne or governors in general?

MR. BOREN: Governors in general. This is the reason. Before I give you the suggestion, I will give you the reason. We would be creating a Commission that one man has appointed. If that person decided that he didn't want something, these people were all appointed by one man.

There may be a way - and this is a suggestion - that either one person be appointed by the Chairman of the Senate Environment Committee or by the Senate Majority Leader or by some other elected official who serves in the Legislature. Or we might want to consider having one person appointed by the Chamber of Commerce of the state or the State's Business Council. The purpose is to try and break up the manner in which this diverse group gets together.

In Section III under the siting criteria - and I have to say relative to the siting criteria that I have looked at the siting board which Michigan has created and the siting board which is being considered in Connecticut and some other states which have considered power facility evaluation council type approaches, yours is really unique, I think it is exciting, and it holds a lot of promise - one of the comments that I would like to make relative to that is that perhaps we might give some thought to having separate criteria for a chemical secure landfill versus a treatment plant. It has been our experience that although it is not a piece of cake to site a treatment plant, a lot of the emotion that you get from siting a chemical landfill is not there. People tend to focus more on technical issues, as to the safety, the type of technology and other kinds of things. So, may want to give some thought there.

In item number VI, relative to the review process, we indicate that the review period for the license should be at least six months. Obviously, we would like to see that cut back to, as quick as possible, for the purpose of review. Now, we understand that these reviews are complicated. But our experience has been, if you give a regulatory agency six months to review something, they will take six months; even though they might be able to complete the review in two months, they are still going to take six months. We do appreciate the fact that you have a time limit in there because if you don't give them a time limit which they have to abide by, then they could take nearly forever. But these kinds of applications should be able to be thoroughly reviewed in a period of two months or less.

In Section VII, item (c) talks about design to allow 100 percent extraction of all hazardous wastes. Our chemists have indicated to me that I should report that you never get 100 percent extraction, that there is always a trace quantity. So to be absolutely accurate, a chemist is always going to say to you, "We can destroy it 99.9 percent." Even though to you and me that is not a lot, somebody might raise the question and, to be very open about it, you can't destroy everything 100 percent.

In item number XIV relative to post closure, we would suggest that post closure only be applicable to facilities that contain waste after closure. For example, if our facility in Newark were to go out of business, when we close

the facility, there would be nothing left in the facility. It is not a storage facility. Therefore, other than dismantling the facility properly, there should not be a requirement to maintain and monitor the site for years to come.

Those are comments relative to the specifics of the outline - again, extremely well done.

An item which is not addressed in here and which may not be the purview of the committee is to try and do something to maybe provide extra staff or some other incentives for the DEP. The last speaker mentioned - and we talked about it this morning - the fact that our processing plant is handling about 8 percent of its capacity. One of the reasons it is only handling 8 percent of its capacity is that there is a lot of improper disposal which is still going on. I think the State of New Jersey has also been very innovative in their approach to try and catch illegal dumpers and to do something about that kind of thing. They have set up a task force which I understand is being copied by other states, in terms of the way they are going to go about doing it. So, it is not really a criticism of the approach but more a question of whether or not they have enough manpower and staff to do that kind of thing. Again, I don't know whether it is your committee that needs to look at that or some other group. But with RCRA two weeks away from being effective and facilities that are available not competitive economically with illegal dumping, I think what we are going to see unless we do the policing job is more innovative ways to break the law. We are convinced that there is enough capacity in New Jersey, or nearly enough capacity, to treat many of the wastes which are produced in New Jersey that are in existence. Obviously, ours and some of the other facilities don't take everything that is produced, but there is certainly more room and we can handle more waste. It is a question of what we do to make it an incentive to use us as opposed to the woods of Maine or New Hampshire.

That is really all the formal remarks that I have. Again, my thanks to the committee for the process that they used. Thank you.

SENATOR DODD: Mr. Boren, thank you for your testimony and the tour today. What percentage would you say is being dumped illegally by the so-called bandit or midnight dumpers?

MR. BOREN: The number that I have always heard EPA use is that about 90 percent of the waste generated is improperly disposed of. Some of that 90 percent is not disposed of with what I would call criminal intent. I mean, the guy doesn't put it on his pickup truck and take it out to get rid of it with the intent of harming the environment. But the methods they are using have been improper. It could be lagoons behind people's plants that are unlined and are leaching into groundwater. It could be incinerator processes that don't really incinerate. It could be any number of things. It is hard to pinpoint what percentage of the 90 percent which is improperly disposed of is being gotten rid of in an open and conscious attempt at breaking the laws.

SENATOR DODD: You are saying that approximately 10 percent of the waste generated in our State, which is how many gallons a year?

MR. CATANIA: Four hundred thousand gallons.

SENATOR DODD: --- four hundred thousand gallons a year, is in one way or another not being treated or stored in an environmentally accepted way?

MR. BOREN: If you can accept the numbers from EPA, I would say, yes. I just tell you a little story. About two months ago the Boston Globe did a tremendous expose on illegal dumping in New England. They were finding these

dumps all over Maine and New Hampshire, which are very industry poor in terms of the kinds of industries which generate this waste. They were tracing it all back to New Jersey, or a good part of it to New Jersey and New York, and as far as Pennsylvania, as its origins. What generators were doing was giving it to people and manifesting it properly. But, as you know, the manifest stopped at the state border. I guess they drove past our plant on the way up to Maine because we can't compete with that kind of thing.

So, there is a lot of it and it is just a question of policing it. I understand that the New England States or the eleven states in the northeast corridor have gotten together now and are doing a lot of things. That is why I say a lot is being done. It is a question now of whether there are enough resources and enough manpower. I know that is the question that everybody raises about government: give us more.

SENATOR CAUFIELD: I appreciated the experience this morning of going through the plant. Obviously, you are doing an excellent job down there.

MR. BOREN: Thank you, Senator.

SENATOR DODD: Thank you, Mr. Boren.

The committee would like to call Jack Trafford, Executive Director of the New Jersey State League of Municipalities. He has worked with our task force in drafting the bill.

J O H N E. T R A F F O R D: As the Senator indicated, I am Jack Trafford, the Executive Director of the New Jersey League of Municipalities. Obviously, I am here today to comment on the provisions of Senate 1300.

At the outset, I want to commend you, Senator, for your efforts in encouraging an ongoing dialogue among the many segments of society which would be affected by this measure. As a result of the many workshops that have taken place, this bill has been substantially modified, and now represents a far better approach to the problem than the original version did.

We still find a number of insufficiencies in the current revised version, however, and I would like to briefly outline them.

1. We are not clear from our reading of the draft whether or not the standards for the operation of newly-created hazardous waste facilities would also apply to waste disposal operations being conducted at existing or expanded chemical or manufacturing plants. I am referring now to on-site operations. If, in fact, the strict standards would not apply to such activities, a very large regulatory void will exist to the serious detriment of the public health and general environmental safety. We, therefore, urge that such on-site activities be regulated and meet the same standards as would the newly-created sites.

2. We understand that the Commission would actually promulgate specific sites as part of its plan. If this is the case, the League feels it is absolutely essential that there be some mechanism whereby the host municipalities would be reimbursed immediately for any blighting effect which the designation might cause. Admittedly, some communities might view the location of a hazardous waste facility as a benefit. For many municipalities, however, the presence of such a facility will result in significant declines in property values and a general deterioration in the community's image. There must be some kind of mechanism, therefore, whereby the affected municipality can seek a damage award, if indeed damages can be determined to have occurred. We must keep in mind that the kind of damages I am referring to occur immediately upon designation and will continue whether or not a facility actually is located on the site.

3. Although the revision carries considerably improved language with regard to the safeguards relating to underground storage, the League feels that there is room for still further improvement. Materials stored below ground should not be merely "extractible" as the draft now provides, but rather "removable" intact from whatever they are stored in.

4. The League must continue to demand that a realistic gross receipts schedule accompany the location of any site. We recognize that there are many philosophical points of view regarding the structure of such gross receipts payments. We believe that the payment, first off, must be calculated to offset the total actual cost to the municipality resulting from the presence of the site. It is reasonable to expect the host municipality to follow a set of priorities, but it is totally unrealistic to limit revenues to those purposes. If, in fact, revenues were to be limited to such specific purposes, then there should be an entirely unrelated "add-on" payment to the municipality to reimburse it on an ongoing basis for the nuisance factor associated with hosting the facility.

5. A suggestion has been made in the work sessions which bears repeating today; that is, the recommendation that all hazardous chemical users must register annually with each municipality. Now I am distinguishing between registration and licensing. We are not referring to licensing; we are referring merely to registration. Such a registration would give everyone concerned about the problem a much better handle on the presence of such substances in the community. It would be an aid to firefighters, to health and to environmental safety officials. And, most importantly, it would provide the basis for some kind of inquiry into where such materials ultimately are being disposed of.

6. This is the last point I would like to comment on. This is the most important issue as far as the League is concerned. I have saved this until last. Although there is a provision in the current draft for a public hearing on a specific application in a host municipality, and although there would be provision for an environmental impact study in the affected community and, further, an opportunity for the community to appear as a party in interest at the hearing, the procedure completely bypasses any local review process under the terms of the Municipal Land Use Law. Therefore, the draft, as presently structured, strikes at the heart of home rule determination and is totally unacceptable to the League and to municipal officials around the State.

We have a proposed alternative approach, however, which we believe will accommodate the municipality's right to participate in the land use determination process, while at the same time offering no real delay or obstacle to the licensing procedure. We are asking that an applicant for a DEP license must show as part of the required qualification that a municipal site plan review has taken place pursuant to the requirements of the Municipal Land Use Law.

There are many benefits of such a local proceeding. It would provide an opportunity for the applicant and municipal officials to work together to look at the problems, if, in fact, there are any. It provides the applicant the opportunity to obtain specific knowledge of local conditions from the only people who really know those conditions. This is a much more positive opportunity for meaningful dialogue than the formal adversary proceeding which takes place at the hearing level.

If the site plan application is granted, it would become part of the applicant's qualifying documentation. If the site plan approval was denied capriciously or arbitrarily, or was otherwise without foundation, the applicant

could ask the Department of Environmental Protection to grant the license notwithstanding the municipal refusal.

This procedure has precedent in the current cable television licensing law, where if a municipal franchise is denied arbitrarily, the PUC can overrule a municipality. I would emphasize that this local site review procedure does not constitute a local veto. It will not obstruct a license. It will not even delay the overall process because it can take place simultaneously with the environmental study and other necessary steps which precede the public hearing. We believe this approach to be reasonable and rational. Without it, we cannot support Senate 1300. Thank you.

SENATOR DODD: Mr. Trafford, the last request, which is the most important request, the site plan review, in layman's terms this would amount to a public forum for the local municipality or a chance for the citizens to come out and hear firsthand what the proposal is all about and would not have the final veto power.

MR. TRAFFORD: Let me clarify that just a little if I might. I think it would be a little more than a local public hearing.

SENATOR DODD: I didn't mean that in the strictest sense.

MR. TRAFFORD: But you are absolutely right. That is the point that we wanted to make sure that it was understood for the record this would not constitute a veto. If there were a denial, then the applicant would still have the very same opportunity that he now has at the public hearing stage and DEP would still have as its prerogative the right to overrule the denial if it was made on the local level.

SENATOR DODD: Do I understand with this provision that the League municipalities would consider endorsing or looking favorably on this measure?

MR. TRAFFORD: Yes, we would in fact. We have a number of other concerns which I have outlined. Obviously, I think everybody in this room has to qualify in whatever position they are taking, based on the actual language of a revised bill when we see it. We are dealing today with the concepts. But, specifically, to answer your question, the matter of some kind of local participation has been at the core of our opposition. And, if some opportunity can be provided along the lines that we have outlined for that local participation, we then would be in a position to support the bill.

SENATOR DODD: I would like to welcome Senator Parker who has just joined us. He has had a long trip from Burlington County in southern New Jersey. Are there any questions?

SENATOR CAUFIELD: Again, I want to make just a couple of comments. I concur wholeheartedly on the point you considered the most important. I think that has been the sense of this Committee right from the very beginning. I am glad that you brought it forth. That is one that I can support 100 percent.

I would have a little problem with the awarding of damages that occur immediately upon designation. I am not sure how that would work. Maybe what it would do, if we adopted that recommendation, would make us hesitate before we designate, and that might be good. It might have a very positive effect.

MR. TRAFFORD: The point is, Senator, if I might elaborate: Some communities, as I indicated, would welcome such a site. I understand that Newark would be in that category. Many other communities, however, would not, for a variety of reasons, several of which would be a decline in property values and very

possibly a general change in the image of the community. We feel, in fact, if that is the case, it is a similar analogy to a situation when an area is designated as a blighted area. We think there should be some kind of determination of damages, if any, to the character of the community; and, if there are damages and if there is a blighting effect on the community because of this designation --- Again, I stress this is long before an actual site comes. Maybe the site will never come and maybe at some point in time a site would be removed from the site list. It would no longer be a site. But, for whatever damages occurred as a result of that particular location being designated as a site, if that can be established - and I think it could - then we think that there should be some reimbursement.

SENATOR CAUFIELD: I understand the philosophy that you are espousing, but I don't see how you would really determine that. However, the other part which I referred to as very positive is that before we designate a place, there should be an awful lot of thought given to it.

As to your fifth suggestion you had about the annual registration with each municipality, I could support that 100 percent. I am glad you thought that would be an aid not only to health and environmental safety officials, but also to firefighters. It would give us a basis for some kind of inquiry as to where such materials are being disposed of. I think that is rather critical.

MR. TRAFFORD: I think you are all familiar with the classic case, I believe in South Brunswick, where only two barrels of some kind of typewriter cleaning fluid were dumped into a water source and it caused serious, serious damage to the wells in the community. That is the kind of thing that could perhaps be controlled through some kind of a local registration. Again, I emphasize this is not a local license. This is just a registration. I understand the DEP already has some kind of a registration. But if it is done at a local level, I think it might be a little more effective. It might be a little easier to keep tabs on.

SENATOR DODD: Senator Parker.

SENATOR PARKER: I just wanted to make a comment about what you said. I am not sure that I clearly understood you. But you said that some damages might flow similar to the Blighted Areas Act when somebody moves in. Not to my knowledge is there any compensation paid once an area is designated as a blighted area. There is no compensation. There may be some tax benefits that may accrue to those areas under the Fox-Lance provision of it. But I think if you are talking about providing damages in an area that surrounds a site, which I think is probably a good idea, you are going to have to do it by way of condemnation. And, in condemnation, when you select a site, such as a roadway, and you condemn it, you have consequential damages which flow to the adjoining properties or damages that they suffer even though they weren't taken, or they were only a portion or a part of it. You get severance damages. So, I think maybe there ought to be some evaluation made. And I am not sure I am going to go with this concept anyway of a separate commission. But I think, if you are going to do that - and I think it is a good idea - you are going to have to do it with some form of condemnation, then have an area similar to a blighted area and have somebody go out and make a designation that it is because of this affected. Then after it is affected, have the appraisals done by those who are involved with the condemnation and see if there is any differentiation in value or loss to the particular people.

MR. TRAFFORD: We hadn't thought through the mechanics as to how this work. That is why I didn't speak directly to that. But that is exactly

the kind of thing that we thought about. When I made reference to the blighted area, I didn't make reference to the extent that damages would be paid, only that we felt there would be a similar kind of a blighting effect and the same result would ensue as happens to an area in terms of a decline in property values.

SENATOR PARKER: Then you could pick up the payments to those people or the losses out of the gross receipts or some of the other moneys coming in under the Spill Compensation Fund, or whatever fund we put it in, so that we don't take it out of the general taxpayers' pocket for that diminution of value to those people.

SENATOR DODD: Senator Parker has made a point and I think, as far as the site plan review is concerned, the committee would look favorably on that and we will take it under advisement.

SENATOR PARKER: I got in a little late and I apologize for that. I didn't realize we had a shindig this morning. For some reason, my memo didn't include anything other than at noontime.

You made reference to an indexing of some kind. It was my understanding that the DEP was already through vouchering, etc., requiring that pretty much. Do you have something in mind different from what they are doing where they are taking the toxic substances from cradle to grave?

SENATOR DODD: You are talking about the local registration?

SENATOR PARKER: Yes, the local registration.

SENATOR DODD: --- of the 14 or 15 thousand generators in the State?

SENATOR PARKER: I know that the voucher system was supposed to be working and it was supposed to have completed the circuit. That will tell you what you have and where it is coming. Do you envision something different from that when it goes to a municipality?

MR. TRAFFORD: We envision this registry on a local level of the use of hazardous materials as being a supplement to whatever registration system DEP has. We feel because it is done locally and does deal only with such use within the community that it can be done more effectively and more efficiently on the local level than any state agency could do it. We think it will accomplish two things: Number one, it will give us a handle on the location of these particular uses, which will be helpful from a firefighting standpoint and public health standpoint. Also, this would serve as the beginning, although in of itself it won't accomplish this purpose --- but it would serve as a beginning of a process whereby we might ask a question, if x number of gallons of toxic chemicals are in use in this community, where are they going.

SENATOR PARKER: Why couldn't you just use ---

MR. TRAFFORD: Where are they being disposed of, I mean.

SENATOR PARKER: The final voucher, as I understand it, is supposed to go back to DEP. Why couldn't that be made part of your process and just file it with the local town ---

MR. TRAFFORD: I think it could.

SENATOR PARKER: (Continuing) --- so that you really wouldn't have to make a dual system of registration because I think it would be an overlapping.

MR. TRAFFORD: As long as the locality has access to that information.

SENATOR DODD: Thank you, and again we want to thank you and your organization, the League of Municipalities, for the work and time you put into the drafting of this outline.

I would like to call George Otis from the Chemical Industry Council of New Jersey. He also toured the facility with us this morning.

G E O R G E O T I S: Good afternoon , Senators. My name is George Otis and I am representing the New Jersey Chemical Industry Council, an organization consisting of 65 member chemical companies, including all of the major firms in the State.

We are pleased with the opportunity to testify today on the outline of the proposed Senate Committee Substitute to S-1300, the Hazardous Waste Disposal Facility Siting Plan. We are very encouraged with the progress made so far by this Committee in tackling such an enormously difficult area, and we commend really all that have been involved.

From the outset, the Chemical Industry Council has sought to add its expertise in helping to find the solution to an admittedly major problem. As members of the Governor's Commission on Hazardous Waste, our member companies have long recognized that New Jersey must establish some kind of management corporation or commission that will have the authority to plan, site and monitor the final disposal methods used in handling hazardous wastes.

As the years pass, the public appetite for better and more sophisticated products will increase greatly, creating more complex wastes and probably in larger amounts. Within the State of New Jersey today, there are no existing secure landfills licensed to handle hazardous wastes. This has led to much waste from the State's industries, including the chemical industry, being shipped out of the state.

The industry has been working hard to overcome the problems of handling hazardous waste. Because of the potential for unacceptable environmental impact, as well as escalating hazardous waste disposal costs, the New Jersey chemical industry is investing sizeable resources in the area of hazardous waste management. Efforts are being directed toward modifying production processes to thereby reduce or eliminate the generation of hazardous wastes. In addition, significant monies are being spent to pretreat and detoxify wastes prior to their ultimate disposal. It must be remembered, however, that despite all efforts to decrease volumes or increase pretreatment, a certain amount of hazardous waste will still remain.

With this in mind, let me say that a comprehensive hazardous waste management strategy for New Jersey must be developed. We feel that the concepts embodied in the proposed outline for S-1300 will act as the centerpiece for such a strategy.

Before making specific comments on the merits of individual sections of the proposed plan, we must indicate that our final judgment will be withheld until we have had an opportunity to review the bill when it has been written in the form of legislation.

Specifically, we find many parts of the proposed plan which we can support and others in which we desire to see changes and modifications.

Because of the emotional climate involved in the hazardous waste disposal issue, we agree that the proposed bill should have as many avenues for public participation as possible.

The CIC, Chemical Industry Council, agrees with a balanced approach in regard to the proposed Commission's membership. Three members each from industry, government and the public will guarantee input from all factions concerned with the process of siting a facility.

We also agree with the report and the proposed outline that the public, through their municipalities, have the capability to undertake independent analysis of any proposed sites.

We feel that the outline does meet the high standards for public participation will be needed if a siting plan will be accepted by the public.

The section on Eminent Domain has initiated much negative comment from certain groups at the last hearing. The CIC feels that it is imperative to have this concept as part of the bill. To remove the power of eminent domain from the Commission would fundamentally cripple the intent of the Hazardous Waste Advisory Commission and this committee substitute.

Having dealt with the major areas of the bill in which the CIC is in agreement, I would now like to turn to those areas where we feel change is necessary.

It is our opinion that at the heart of any siting procedure is the list of technologies which will be allowed to be constructed to dispose of wastes. The CIC feels strongly that section (VII) of the outline dealing with Above Ground Facilities vs. Secure Landfills needs to be modified.

This section would allow secure landfills to be approved only as a last resort and only if it is proved beyond a reasonable doubt that all alternatives are technologically or economically impracticable. It is our opinion that secure landfills should be placed in a more acceptable category.

First of all, there are tremendous technological and regulatory differences between today's secure landfill design and yesterday's failures. For example, the failure of Kin Buc's earthen lagoon embankments, or unlined lagoons which store liquid hazardous wastes would not be permitted under today's regulations.

We are not advocating secure landfills as the universal solution. However, the existing technology allows such landfills to be used as a final resting place for those wastes which have been decreased in volume or pretreated for detoxification. In fact, the EPA allows secure landfills in their regulations dealing with hazardous waste disposal. These regulations are strong enough to preclude the problems associated with landfills in the past, that is, bulk liquid dumping, lack of liners, insufficient monitoring, inadequate design, etc. The regulations strictly limit what may be introduced into a secure landfill for disposal. The following types of materials would be generally acceptable with no anticipated significant environmental impact: waste containers, selected inorganic sludges, selected waste water treatment sludges, incinerator residues, filter cakes, residuals from clean-up activities, solvent reclamation residues, dry metallic wastes, air pollution control dusts and spent catalyst.

These materials, and others, were cited as acceptable for secure landfills in the hazardous waste management study done by Weston for the New Jersey DEP.

To further insure that improper disposal into secure landfills does not take place, detailed federal regulations will go into effect on November 19th, providing safeguards for everything from ground water monitoring to detailed personnel training. I have some attachments to my comments, which outline what some of these regulations entail. (Beginning on page 1X can be found attachments referred to.)

Although a commonly held belief, it is erroneous to believe that less than 5 percent of the generated wastes will need to be securely landfilled. Independent engineering studies anticipate volume requirements to range between 20 to 50 percent of all wastes generated. These figures would make construction of above-ground vault-like facilities both economically and physically unacceptable to handle all the material that should be able to be permitted in a well designed, secure landfill.

The CIC submits that the proposed plan must be flexible enough to allow such a volume of wastes to be disposed of in secure landfills which

would meet the test of having no significant adverse impact on the environment.

The point that we are trying to make here is that the existing wording in section VII makes secure landfills too hard to site. We are afraid the possibility may almost be precluded. If it is, and secure landfills do not become sited, the concept of a statewide hazardous waste disposal plan will be severely gutted and a severe problem will have been overlooked. In fact, failure to have reasonable consideration of secure landfills will prevent the chemical industry from supporting S-1300. The State must recognize that, in all probability, wastes will continue to be taken out of state or illegally dumped if less stringent provisions are not included in S-1300. How much longer will other states be able or willing to accept New Jersey's hazardous wastes? We must prepare to handle our own problems within our own boundaries by allowing use of environmentally sound secure landfills.

We have also included a diagram of a secure landfill for your perusal as part of this set of comments. This is the type of structure which would be mandated under RCRA's new rules and regulations and, we submit, sufficiently safe to be used here in New Jersey.

Another area where the member companies of the New Jersey CIC have some problems is in Section XI, Compensation to Host Municipality. We would prefer no gross receipts tax. Really, I guess, where we have tried this in the past, it hasn't worked that well and we are trying to back out of it.

The key to this section is competitiveness. If a hazardous waste disposal facility is too costly and non-competitive, it will not be used by hazardous waste generators, thus increasing New Jersey's disposal problems.

If such a tax must be included, it should be restricted to offsite commercial facilities and not placed on a generator's on-site facilities. These generators are already liable for what happens on their property and need not be taxed in such a way. Such a tax would be counterproductive to the encouragement of generators to handle their own waste.

In the area of Liability and Post Closure Maintenance, the CIC believes that the final bill must establish beyond a doubt that a generator's liability stops when his hazardous material is passed on to a licensed carrier. When such material reaches its final destination, the operator of the facility should assume all liability. This is the basic concept that the Governor's Hazardous Waste Commission endorsed and we agree.

Part 3 of the Siting Criteria section, we feel is too restrictive. We propose that these restrictions be eliminated and that the DEP and the Commission decide what the siting criteria should be. It would be more appropriate, if something is needed, to list points to be considered, as was put in the Governor's Commission report, rather than absolute restrictions. Too many restrictions will unnecessarily tie the Commission's hand in choosing sites.

We would also ask that a reasonable figure be established as to what constitutes major and minor extensions to existing facilities.

Our feeling is that anything less than 50 percent expansion to an existing facility should be classified as a minor expansion and this be regulated under the Resource Conservation and Recovery Act.

Because of the nature of many of our proposed changes, we would ask that, or even two, public hearings be held when the proposed outline is converted to bill form. Until such time, our representatives will continue to work with committee staff and other interested parties in helping to fashion a bill

which will meet New Jersey's critical need.

In conclusion, let me say that the CIC strongly supports the concept of a statewide plan to site hazardous waste disposal facilities. We feel that the proposed S-1300 will be a good vehicle if reasonable resolutions can be reached to the many problems which we have delineated.

Thank you again for your attention.

SENATOR DODD: Mr. Otis, you made several good points. One thing I would like to clear up is this: We are not attempting to regulate nor is it our intent in the bill or in the future to regulate on-site disposal. We are happy that it is being done and monitored now. So, we are not looking to encompass more than what we are trying to deal with on this. The bottom line really is, if we build in so many additional costs and restrictions on new sites and they become less competitive or non-competitive whatsoever, we are back to where we are right now when the trucks pass SCA to dump illegally up in Massachusetts and Maine, and wherever. That is exactly what we are trying to reverse. It is our intent to keep the prices realistic. That is why we didn't even briefly consider and dismissed the concept of doing it through the utilities pricing. We were trying to keep the bill realistic and you make several good points.

SENATOR DODD: Senator Caufield and Senator Parker?

SENATOR PARKER: I just want to make one comment. It seems to me the way I read your proposal that the Chemical Industry Council doesn't want to put any of the burden on those who generate or who create the waste.

MR. OTIS: On liability, you mean, Senator?

SENATOR PARKER: Any liability. Your whole theme here seems to be that once it is in the stream of commerce, those who are generating it shouldn't be involved in picking it up - gross receipts, condemnation, the landfill.

MR. OTIS: The landfill - I don't quite follow your comment there.
On liability, ---

SENATOR PARKER: Maybe not the landfill.

MR. OTIS: But liability - I guess this was discussed very thoroughly in the Governor's Commission. The concept is to place responsibility in the areas where the people that are involved can do something about it. But the generators obviously have to have the responsibility for the materials they generate. They need to make sure they have designated the material through a manifest system to go to a proper disposal point. They need to use a good licensed, reputable haul. But then the concept is, the next link is the haul. He should be a reputable firm with financial responsibility if he makes a mistake. The generator is not transporting the material. The hauler needs to get it from the generator to his disposal site. Assuming it has been properly analyzed and the generator did his job, the disposer should do his job. The generator doesn't run the disposal facility. That is all the concept we are trying to say. Place the responsibility on each link of the chain rather than trying to say that the generator is responsible for how the disposal facility runs its operation.

SENATOR PARKER: Let's just take the concept which we call in the law foreseeability. You indicated in a couple of your comments that there is going to be more volume to dispose of than we anticipate, etc. When you create a toxic waste, isn't it foreseeable that somebody down the line further is going to have something go wrong? Since you were the one who originally generated it, why should you be able to insulate your responsibility from the people further down the

line?

Take, for example, the toxic waste facility -- or the landfill facility that you have put in your plan. Suppose that toxic chemical gets out of the clay seal and it goes on ---

MR. OTIS: Anything on site that the generators are handling themselves on the companies' premises by their own waste disposal facilities, the generators are completely responsible and completely liable. What I was talking about is where you use commercial facilities for your disposal. Not every firm is going to treat their own waste. The responsibility on the terms they are shipping off their own premises to commercial facilities - that is what I was talking about, that the disposal facility there ought to be liable.

SENATOR PARKER: I am assuming that the commercial chemical landfill or the landfill is an ordinary landfill, not one on your place. Is this diagram intended to be just one for anything?

MR. OTIS: No. That would be for a secure landfill, not for a sanitary landfill. I would say it would not be proper to send hazardous waste to a sanitary landfill.

SENATOR PARKER: When you say secure landfill, you are saying a landfill that is owned, maintained and operated by a generator?

MR. OTIS: No. My reference to it was one owned by a commercial firm, such as SCA, if they had a landfill in this area.

SENATOR PARKER: All right. Suppose SCA had one and designed it just like this and because of a shift in the earth or something there was a leak in it and everybody got poisoned and there was a tremendous problem, like Love Canal. Are you saying at that point that the generator or nobody else has any further responsibility for that?

MR. OTIS: I didn't say no one. But I don't see how the generator --- if SCA built a secure landfill that met all the RCRA requirements, the State licensing, the proper standards of design, and they are running and operating an approved facility and the generator has designated proper materials to go to that landfill, yes, I would expect then SCA to run that landfill and take liability for what happens once it is there. The generator doesn't control that landfill. We have no way to run or operate that. You are asking us to take the responsibility for something that we have no control over.

SENATOR PARKER: Well, I think those who create a dangerous substance, put it in the stream of commerce, knowing that it is dangerous, just like dynamite or any poison, should maintain responsibility for it. If you want to get into that type of chemical processing or that type of utilization of a material, then I think you have an obligation to make sure that nothing happens to the public by your activities, putting it into the stream of commerce.

MR. OTIS: In another analogy, an automobile firm manufactures cars. It sells one to a private citizen. The car is in good working condition and the private citizen commits an irresponsible act, drunken driving, or what have you. Is the automobile firm responsible for anything that may happen?

SENATOR PARKER: Certainly not, because it has absolutely no relationship to the vehicle.

MR. OTIS: Well, let's not debate that. We would have strong disagreements.

SENATOR DODD: We could go round and round on that subject.

MR. OTIS: One point I would make though is that I would like to emphasize we are mainly concerned with. We are looking to how we can positively contribute to

solving the State's problems. We want to be responsible. It is a major problem in the State. The one thing we are most concerned about though is that there is not adequate provision in our opinion for secure landfills because there is such a big volume of waste and you have to have secure landfills to handle some of it.

SENATOR DODD: There is the safety valve in the language of the bill. We are looking to encourage the above-ground facility, when and where feasible. As we discussed at the last week's hearing, where it has low toxicity, where it has large bulk and slightly toxic, and cannot reasonably be disposed of above ground, that this would be considered. These things are why we built these safety valves into the language of the criteria.

MR. OTIS: In our opinion, the wording is such that it would be very hard to get a secure landfill. That, to us, is the most pressing problem that the State has, that we have no secure landfill in the State.

SENATOR DODD: The difference is, Mr. Otis, that the Commission will have the same responsibility, if not more responsibility than what we are attempting to do today. All they have to do is look at what the alternative is and that is motivation enough.

Thank you and also I want to thank you for the help and work you have done.

SENATOR CAUFIELD: Mr. Otis, just a moment, please. I just have a couple of comments. First of all, it is your feeling that anything less than 50 percent expansion to an existing facility should be classified as a minor expansion. It sounds like a very high level.

MR. OTIS: Pardon?

SENATOR CAUFIELD: Fifty percent expansion should be minor?

MR. OTIS: Well, you need some breaking point, yes.

SENATOR CAUFIELD: I agree, but I don't think it should be 50 percent. I think it should be considerably lower than that.

My other comment is on your statement, "We would prefer no gross receipts tax." Me too - I would prefer no income tax, no real estate tax and a lot of other taxes. However, I think it's a must that the host municipality receive some remuneration beyond what is spelled out for police and fire protection, because those are very minor things really. You do make the point that it should be restricted to off-site commercial facilities. I think that is the intent of the Committee. So, I really don't think that is a major point.

Another thing, you apparently took very great exception to "above-ground, vault-like facilities, both economically and physically," as being unacceptable. That is what you said.

MR. OTIS: No, that isn't what I am implying.

SENATOR CAUFIELD: Well, that is what I read in the statement. It says, "These figures would make construction of above-ground, vault-like facilities, both economically and physically unacceptable."

MR. OTIS: To handle all the waste that would go to a secure landfill ---

SENATOR CAUFIELD: How about environmentally acceptable?

MR. OTIS: Certainly, above-ground vaults have a place in the technology. All I'm trying to say is, don't eliminate secure landfills as a technology, because there is going to be a significant amount of volumes of waste that cannot be reasonably handled in the above-ground vaults. And we would not be protected if we didn't have some way to have a secure landfill. I am not trying to say secure

landfills is the answer to all the prayers. It should be a last resort, but it ought to be available.

SENATOR CAUFIELD: You are saying they should be a last resort or they shouldn't?

MR. OTIS: In a reasonable manner, because when you look at wastes, you just can't handle them all in those vaults and they will be going out of state as long as they can. You couldn't economically or physically build to handle the volumes and types that would be needed. To put it in perspective, we are not saying have all secure landfills. We are saying don't eliminate secure landfills.

SENATOR CAUFIELD: I don't think anybody is suggesting all those things, except that we don't want to lose sight of the fact that we are more concerned about the health and welfare of people than we are about the economics.

MR. OTIS: We prefer too not to put it in the ground. We really want to accomplish the same thing. We are trying to minimize the waste in the plants. We don't want to put things in the ground. All we are saying is: don't put a bill out that would eliminate or would have such restrictive guidelines that you couldn't put a secure landfill in practical terms in the State because that, in our opinion, is the most pressing need today in this State - a secure landfill. That is the most difficult to accomplish. It is the most emotional one to accomplish. If the bill is written in such a way that we don't at least provide for those to be considered by the Commission and the DEP in meeting the technical needs for the handling of the waste, then I think you are ducking the issue. That is all I am saying. There a lot of waste that will not be going in the vaults. They will be going out of state. It works that way.

SENATOR CAUFIELD: As long as they are not going into our water and our air ---

MR. OTIS: We don't want it in the water either. I drink the water too.

As far as our priorities, yes, we recognize it may be absolutely necessary to have a gross receipts tax. That might be a political necessity of life. We accept that. We are just saying we prefer not to have it because it adds to the cost of doing business. You will have to figure out whether it is necessary to do that in order to get it accepted. In our priority of things, our first concern is to make sure there is provision that a secure landfill could be sited. That is the most important thing. The other comments are much secondary to that. It is all meant in a constructive manner.

SENATOR DODD: Thank you.

The chair would like to call Dr. Riva Rubenstein, National Solid Waste Management Association. The Doctor was good enough to tour the facilities with the Committee this morning.

D R. R I V A R U B E N S T E I N: Mr. Chairman, members of the Committee, my name is Riva Rubenstein. I am the Manager of the Institute of Chemical Waste Management, which is a group of chemical waste companies that are part of the National Solid Waste Management Association.

I am here today representing the New Jersey Chapter of the NSWMA and our member firms who are involved in the management of chemical waste in New Jersey. Our industry has, both through the Association's efforts and through the participation of individual companies, been actively involved in the deliberation contributing to the outline of the proposed Senate Committee substitute to S-1300, which is the subject of this hearing today.

We, like others involved in the drafting process to date, have been very favorably impressed and gratified by the enlightening approach this committee, its chairman, and staff have brought to the legislative process. The large measure of consensus which you have already achieved among sharply divergent interests regarding the proposal is a tribute to your good sense, and may well be the contributing factor leading to the eventual passage of an innovative and workable piece of siting legislation.

I would like to offer our comments on the outline and the concepts it embraces, and suggest to you some areas where additional thought may well be given before the bill is actually drafted.

We do, of course, support the general emphasis and direction of the Committee's thinking. The proposed re-draft is a major improvement upon the measure first brought before this Committee some months ago. We are especially pleased at the Committee's decision to rely upon the resources and experience of the private waste services industry, rather than upon those of the State government in the management of hazardous waste in New Jersey.

The safe management of hazardous waste, as you are aware, is highly complex and quite expensive, and should not be entered into lightly, if at all, by a government entity.

On behalf of the private waste industry, I can promise you our support in making the State's hazardous waste program work within the environmental framework that you are going to build.

Our enthusiasm for the general direction notwithstanding, it should not be overlooked that the legislation proposed here will be very difficult to write, and the manner of its writing will dictate its effectiveness -- that is in actually bring about the siting of facilities. I would urge the Committee not to set unrealistic deadlines at the expense of careful drafting. You are contemplating a new and unique siting mechanism for the State of New Jersey which has no precedent anywhere else in the country. It would be far better to move with care and deliberation than to act precipitously and perhaps weaken the effectiveness of all the efforts before.

The document from which we are working today is an outline, and outlines have some limitations. They are much better in showing direction than in illustrating the cohesiveness of the ideas they contain. They also allow for much more comment so that one is not restricted by the language.

There are, for example, many difficult issues which still require detailed and attentive development. For example, the whole apparatus of the siting process and its timetables require a great deal more thought, as do the interrelationships between the Commission, the Advisory Council,

the Department of Environmental Protection, and the host community. The outline actually only hints at how the process will actually work.

The use of eminent domain in the siting process must be fully developed and reflect a sensitivity to the political dynamics and the economic ramifications of the potential siting.

The important issue of liability has only been peripherally addressed in the outline and yet the handling of this matter may well be the single most important step this Committee may be able to take in allaying community fears regarding the siting of the facility.

In addition, the application of the siting mechanism through existing facility expansion must be clarified, and the matter of above-ground facilities versus secure landfills needs to be addressed in greater depth.

Let me deal with just a few of these issues in a little more detail. The outline includes a section on compensation to the host municipality or region. The implication of this section is that the hazardous waste facility will place an unreasonable burden for services upon the community in which it is located, and, therefore, should compensate the community for that burden above and beyond compensation provided for in its rightful payment of property taxes. The Committee should reconsider its thinking with respect to this matter, not only because no documentation has been presented indicating that hazardous waste facilities require services beyond those which they pay for out of their property taxes, but also because hazardous waste facilities are not just another revenue-bearing industry, and should not be considered as such. They are, in fact, important environmental assets which will allow manufacturing firms a safe and convenient outlet for their hazardous waste.

In addition, they serve as an alternative to environmentally unsound disposal practices. In the absence of hazardous waste facilities, both economic development and environmental management will suffer.

We sense here that despite the use of the word "compensation", what is really behind the proposal is an effort to create an environment so that a local government will accept a facility.

I would like to state here unequivocally that there is no such thing as an incentive for a community to accept a hazardous waste facility if we cannot convince the community that the facility is safe. I don't think they would or should accept a fire truck in payment for that lack of safety.

On the other hand, if a facility is safe, there can be no rational basis for insisting upon the payment of an incentive.

Hazardous waste facilities and the waste they process are part of the costs that our society pays for the use and benefits of the many goods that are manufactured in the process of making this waste. Although one can sympathize with a community in which a facility has been sited, for all the reasons given by the League of Municipalities, the fact remains that in the larger community of the State the need for those facilities and the necessity of siting them somewhere cannot be argued. We maintain

if there is to be a penalty levied against a hazardous waste facility that penalty ought not be the burden of the facility itself; it should

be shared by all those other communities in the State in which there is not a facility, but which benefit from its existence. Consequently, if compensation is required elsewhere, nonetheless it is the responsibility of the larger community of the State to provide that compensation. Our industry no more creates hazardous waste than does the police department create crime.

SENATOR PARKER: I will have to chew on that one.

SENATOR DODD: I will have to think about that one.

DR. RUBENSTEIN: We are a service industry, rendering - I think - important environmental services, and we should not be encumbered with financial penalties for providing that service.

An effort to provide compensation through a gross receipt type tax, or a lump-sum payment on a hazardous waste facility, is especially unjustified and cannot even begin to make sense unless it is also levied against those facilities which are maintained on-site by generators.

The firms which use off-site hazardous waste facilities are generally those that cannot afford to handle their own wastes. Consequently, it is the smaller firms in this State who will end up paying this additional tax, this additional levy. This will result in an inducement for firms either to manage their waste on-site, largely away from the regulatory scrutiny of the DEP; or, in the case of many smaller firms for whom the disposal of hazardous waste is a very expensive item, the inducement may be great to rid themselves of those wastes in other than environmentally sound ways. I am sure that none of that is the intention of this Committee.

In addition, should the Committee agree that some kind of compensation needs to be paid to the host community, whether it is paid for by the State, the facility, or by some other means, it would make sense to require that that compensation actually be used to redress the perceived impact of hazardous waste facility on the community. To allow local government simply to put back money into a general fund, to be used at their discretion for whatever purposes they decide both undercuts the rationale for the levying of the fee in the first place, and reduces it to something like bribery.

Finally, the outline is not clear about--

SENATOR DODD: It is like being a little bit pregnant, "something like a bribe"?

DR. RUBENSTEIN: Yes. Finally, the outline - because it is an outline, it is not clear - suggesting which kind of hazardous waste facility would be subject to this kind of compensation -- New Jersey, as far as I know, does not now levy a special extra tax on chemical plants which sometimes processes quite hazardous, pure substances within their midst. Why then should New Jersey compensate special compensation-type taxes on structures like incinerators?

SENATOR DODD: We do have a small compensation tax on the chemical industry.

DR. RUBENSTEIN: On all chemical plants within the State?

SENATOR DODD: On the EPA hazardous substance plants. So, there is precedence on it.

DR. RUBENSTEIN: I see, but you wouldn't be doing more than that to a hazardous waste incinerator?

SENATOR DODD: No.

DR. RUBENSTEIN: Now that I have brought up the subject of incinerators, I feel that I can move from that to secure land fill, if I may, and this is away from compensation.

As a scientist, I am somewhat disturbed by the notion of above-ground storage -- above-ground disposal, whatever that might mean. I would like to make a few remarks about the importance of secure landfills. Without secure landfills, it simply will not be possible to fully manage hazardous waste. The management of hazardous waste involves the use of multiple methods of handling. One can treat the waste by neutralization, by solidification, and gasifying. You can embed it in concrete, you can biodegrade it, and you can alter it once it is in the soil. It breaks up.

If waste contains sufficient coloric value, they are ideal for incineration, and they should be incinerated. But, ultimately, the waste residues from the treatment of the wastes themselves must be placed in a secure landfill. The need for secure landfills is recognized by every group within the industry, and it is recognized by the U. S. FDA and the public.

EPA's Associate Deputy Assistant Administrator in the Office of Solid Waste, Gary Dietrich, stated the need for secure landfills on October 28th in this manner - I am quoting: "We believe that land disposal is, can be, and always will be, a necessary means of dealing with some of our hazardous wastes. Clearly, there are wastes that cannot be incinerated or treated. Clearly, there are wastes and residues of waste treatment and incineration that have to be put in or on the land in some fashion. Clearly, there are pollutants, particularly the heavy metals, that we are going to have to place in the land someplace, sometime, somewhere." Without landfill as an ultimate option, there is no safe place to put the waste residues resulting from incineration and other waste treatment activities.

I ask you to consider pollutants, such as the heavy metals originated from oars buried in the land, and it is to the land that they should be returned. Additionally, placement in a secure landfill is for some substances a form of treatment. A significant number of organic molecules that are manufactured by human beings can be degraded by microorganisms in the soil, and they too should find a place in secure landfill.

Let me turn now to the outline, particularly section 7. It is section 3 (c). I too find that one hundred percent that is written there; I assume that will be changed. Again, as a chemist, it makes me very nervous.

SENATOR PARKER: I'm sorry, which section is that?

DR. RUBENSTEIN: It is page 3, section-- Oh, I'm sorry, it is 6 -- 6, 3 (c). Am I reading right?

SENATOR DODD: Section 7.

DR. RUBENSTEIN: It is at the top of page 3.

SENATOR PARKER: That is 3 (c).

DR. RUBENSTEIN: I may have a different--

SENATOR DODD: Section 7, paragraph 2, subparagraph (c).

DR. RUBENSTEIN: That's right. It reads: "100% of the hazardous waste to be treated, stored, or disposed at the proposed facility can be extracted." First, the 100% label just will not wash. As a chemist, immediately when I see 100%, I say it is unattainable. They

do it. But, if you put a number on it like 999, I may argue with you about what I need to reach that level, but I can get along with it. One Hundred percent just doesn't mean a thing to me, except "forget it."

Now, the other part of that is the notion of removal and extraction. When you do have a secure landfill - and I will now make the assumption that New Jersey will one day have an off-site, secure landfill - there are mitigating circumstances that are built in, contingency plans that are built in, to the running of the secure landfill. If something should happen, as in the scenario you mentioned before, Senator, then the material would be extracted or taken out. But, under normal circumstances, the material that you put into a secure landfill is designed to stay there for as close as we can get to forever. I think that there should be some recognition that when you put it into a secure landfill, when the waste is compatible with the secure landfill, there may be some treatment going on in the soil while it is in the landfill, and some of it may not be there anymore when you try to take it out.

SENATOR PARKER: I think the 100% you say is taking out, is what is there, extracted. Anything, obviously, that would get into the land, or dissipate, would not take away from the 100%, that's for sure. I think what you are saying is 100% of what is there is being extracted.

DR. RUBENSTEIN: Well, as much as we can get out would be extracted and put a number on it as close to the 100% as you like, but the 100% always leaves one with the feeling of, "My God, there is .0001% left behind and someone is going to get me for it."

SENATOR DODD: Your point is well taken. We strive for perfection.

DR. RUBENSTEIN: I wanted to say a few words about the liability. I think it is section 14. The NSWMA believes that the operator should be expected to set aside funds for closure and post-closure -- now, I am again talking about secure landfill -- of secure landfills for maintenance and monitoring of the land, for whatever period that the State requires. Operators may also be required to retain liability for a reasonable period sufficient to indicate that escape of materials from a site will be unlikely.

Operators cannot purchase insurance to cover the liability in perpetuity or in an unlimited amount; therefore, it becomes necessary at some point for the operator's liability to be terminated. We recommend that this be done at the time of closure. Some may want operators to retain liability for up to five years. The need for protection against longer-term liability is recognized, and is included in the super fund bill that is now being considered in the U. S. Senate. If this is passed, as we hope, then this concern will be resolved. The super fund provides a fund to protect both the citizen and company in perpetuity. The citizen has legal recourse, which is governed and established by the State, but the Federal law will give them the means to assure restitution.

Mr. Chairman, we appreciate this opportunity to have presented our very general views on the outline before us. As the legislative process continues, we are looking forward to working closely with your staff in developing key provisions of the draft. Once we have a specific piece of legislation before us, we will, of course, wish to present very specific testimony, on a provision-by-provision basis. I look forward to working with you. Thank you.

SENATOR DODD: Are there any questions?

SENATOR CAUFIELD: I have a few comments.

SENATOR DODD: You almost lost Senator Caufield when you mentioned fire engines.

SENATOR CAUFIELD: When you offered us that new fire engine, I was ready to go with you.

First of all, on the importance of the secure landfills, I can't help but constantly see the inconsistency of making a statement that we cannot dispose properly of the waste that we generate, and then going down to a plant in Newark this morning, and find out they are operating at 8% capacity.

DR. RUBENSTEIN: It is before November 19th, Senator.

SENATOR CAUFIELD: They are operating at 8%, and 4% of that, incidentally -- or, 50% of that comes from out of state. So, we are only disposing down there -- they are only operating, really, at 4% of capacity if you talk about New Jersey waste.

The other thing you talk about concerns the gross receipts. I might very well, philosophically, agree with you on all gross receipts -- although I kind of think we shouldn't have any gross receipts. But, as a very practical matter, we do have them, as we know, and we do provide them for other places, not because they need police or fire protection but because they are exposed to some kinds of things that they would rather not be exposed to. That is going to be at least the perception of people, if not the actuality, when you put these waste disposal plants in anybody's community. I see absolutely nothing inconsistent, or nothing wrong, with trying to give some reward to the communities who are the host communities for these plants.

The other fact about there being no special tax on the generators -- perhaps that is "shame on us." Maybe we should have had that. Frank Sudol in his memorandum made a very telling point, I think, when he said that additionally a tax on the creation of waste will result in an economic disincentive which will lead to new technologies to reduce the generation of wastes, which in turn will result in the need for smaller, possibly fewer, hazardous waste processing facilities. This will result in the need for smaller and fewer sites. I think there is a great deal to be said about disincentives.

You know, up to the last year or so I used to get a quarterly water bill of about \$35. My quarterly water bill now is about \$94. When it was at the lower figure, I didn't have much concern about water, and I didn't do too much about it -- perhaps "shame on me" for that. But, now, since it costs so much more money, I don't have any sophisticated technologies that I put into effect, but I do some common sense things, such as replacing washers, taking a couple of bricks and putting them in the closet of the toilet so each time we flush we use about two gallons or a gallon and one-half less water. So, I think there is a lot to be said for any of the disincentives. Certainly, if you have to pay that kind of a tax when you generate waste materials, I think you are going to pay a lot more attention to technology, or other techniques that can be employed in order to cut down on the toxic waste.

DR. RUBENSTEIN: May I just suggest to you thought that when you have a disincentive, if it is applied equally to all sized businesses,

then you have an equitable tax, and we can at least begin saying--

SENATOR CAUFIELD: Those who are generating toxic wastes; that is what we are talking about here.

DR. RUBENSTEIN: Yes, but the smaller chemical companies will not be in the same position to deal with that as the larger companies will, and it might be argued that the smaller companies will not be in a position to be innovative about their waste. They going to have to send it off-site anywhere.

SENATOR CAUFIELD: I am talking about not creating it in the first place.

DR. RUBENSTEIN: That's what I am saying. I believe that the cost of that innovation is going to be shouldered by the larger chemical companies, not by the smaller ones. Time is the thing that would determine it.

SENATOR CAUFIELD: Yes, but like most of the good things that have happened in this country, they don't stay just with the bigger companies; they have a way of being spread throughout the country eventually into all companies.

DR. RUBENSTEIN: I hope.

SENATOR CAUFIELD: I hope so too.

SENATOR PARKER: Well, why should a small company that is marginal create a toxic waste that somebody else should take care of? I don't understand that. Why should they not bear the responsibility? A company that is creating a toxic waste is in that type of manufacturing process for whatever purpose, and why should we even tolerate that?

DR. RUBENSTEIN: I don't think that we should. I am in perfect agreement that the generator of a toxic waste should be disposing of it in a safe and well managed manner, and the smaller chemical company will be sending his waste to the firms that make up my association. I am merely raising the question of when an incentive or a tax levy is put on the industry, that it be even-handed, and that the tax that is placed is not not unduly placed on the off-site waste industry, which then will have to be taxing these smaller groups who are less able to shoulder the burden of waste disposal than the larger companies are. That really is the essence of what I mean.

SENATOR PARKER: I gather that what you are saying is that you would support some type of gallonage levy on all those who create some of the toxic waste so it is spread out evenly, based upon the amount of gallonage that they generate as far as their facility is concerned, regardless--

DR. RUBENSTEIN: (interrupting) Yes.

SENATOR PARKER: (continuing) --of where--

DR. RUBENSTEIN: (interrupting) Regardless of where it is disposed, that is correct.

SENATOR PARKER: That sounds like a good proposal.

SENATOR DODD: I think we are all going in the same direction on this. Doctor, again, thank you for your report on the workshops.

DR. RUBENSTEIN: Thank you.

SENATOR DODD: David Lloyd, New Jersey Business and Industry Association.

D A V I D L L O Y D: Mr. Chairman, members of the Senate Energy and Environment Committee, this statement is being presented on behalf of the Committee for Environmental Quality of the New Jersey Business and Industry Association. On behalf of the Association's 13,000 company members, thank you for this opportunity to present its views.

The need for adequate, safe and economically feasible hazardous waste disposal and treatment facilities in New Jersey has been expressed most eloquently by the Governor's Hazardous Waste Advisory Commission, in its report issued in January of this year. It is to the credit of the sponsors of S-1300 and this Committee that legislative action is being taken now to begin the process of meeting this need.

The essential purpose of the Commission's report was to suggest a program for the siting of hazardous waste treatment and disposal facilities in New Jersey. The emphasis was on expediting the siting of these facilities since the need for facilities continues to grow while existing procedures remain inadequate. Mindful of environmental and local concerns, the Commission sought to provide built-in safeguards to provide for maximum public participation, minimum environmental degradation, while limiting bureaucratic interference.

Senate Committee Substitute for S-1300, as we can determine from the outline, provides a firm basis for implementing the Commission's report. While we have some suggestions to offer which we feel should improve the final product, the proposed legislation, as outlined by the Committee merits our support.

The makeup of both the Commission and the Council will play a large part in the ultimate success, or failure, of the State's efforts to develop the needed facilities. The need for true representation of all three major groups - public/environmentalists, local officials, and industry - cannot be over-emphasized.

Therefore, we endorse the suggestion that Commission members be selected on the basis of how well they truly represent their groups' point of view. For example, the bill should make it clear that those appointed to represent the "local officials" point of view be local officials who are at the same time well versed in or have a solid background in municipal waste disposal issues. Industry representatives should be selected on the basis of their technical qualifications -- which should include educational and experience factors. The goal should be a Commission which, when fully staffed, is capable of drawing upon expertise from all points of view.

The Council, too, should look to an individual's expertise. However, the council's advisory nature permits - if not demands - that special interests be accorded some input as to the selection of Council members.

We suggest a provision be made for the receipt of nominations to the Council from interested parties. If specific organizations were to be accorded the right to offer choices, we feel that our organization, the New Jersey Business and Industry Association, should be among them. We are, after all, the largest employer organization in New Jersey, representing manufacturers of all kinds, chemical, metals, machinery, paint, electrical, plating, you name it we have it, both large and small. With some 9,000 small companies in membership, most if not all of whom have no choice

but to rely on off-site waste disposal. We are in a unique position to offer representation of their views on the Council.

Finally, we agree with the suggestion that has been made to require that at least one or two representatives from each of the major groups be in attendance at each Commission meeting in order to constitute a quorum. Further, to prevent one group from impeding the Commission's work by staying away from any of the meetings, Commission members who miss two meetings in a row should be automatically dropped from membership.

The outline of Senate Committee Substitute for S-1300 is not clear as regards to treatment to be accorded existing facilities. As the purpose of the legislation, we feel, is to expedite siting, we suggest that its application be clearly limited to new facilities on virgin sites only. Those existing facilities which are in compliance with RCRA - Federal Resource Conservation and Recovery Act - and Department of Environmental Protection regulations should be encouraged to continue to operate and to expand, if necessary -- as the Governor's Commission recommended.

Industry faces an impending Federal program - RCRA - which is already presenting a real challenge. The Department of Environmental Protection is developing its own regulations to administer that program.

To minimize confusion and to reduce the potential for controversy, we have urged the Department to use terms, definitions, descriptions, etc., which are consistent with Federal requirements under RCRA. We respectfully make the same recommendation to this Committee as it drafts the final version of S-1300.

In conclusion, we wish to continue meeting with the Committee as a sign of our support for the program recommended by the Governor's Hazardous Waste Advisory Commission and sought to be implemented by Senate Committee substitute for S-1300. We feel that its enactment would represent a significant step towards eliminating environmentally hazardous means of disposal by promoting safe and economical alternatives. Thank you for considering our views.

SENATOR DODD: Dave, I would like to thank you. You have been in on this from the beginning with the Committee, along with Diane Graves and her groups and organizations, and the chemical people, and we are getting to the conclusion that we will continue to consult on the actual language for the draft.

MR. LLOYD: Thank you.

SENATOR DODD: Senator Parker.

SENATOR PARKER: Dave, do you agree with Dr. Rubenstein, who testified earlier, that there should be a gallonage tax, or levy, on those who are generating the waste, and that it should then be used for other purposes instead of a gross receipts tax type of thing?

MR. LLOYD: A gallonage tax?

SENATOR PARKER: Yes. In other words, it would be a tax on the person who generates the waste who ships "x" amount of gallons of waste, regardless of what the toxic is as long as it is one of those included on the list.

MR. LLOYD: To an off-site facility?

SENATOR PARKER: Before it gets to the off-site facility, the

levy should be based on that, rather than levying a tax on a gross receipts base, or some other base, at the facility that is disposing of it.

MR. LLOYD: This would be levied on those generators that dispose of their own wastes in their own facilities? I am not sure we would agree with that, for no other reason than that the generator that does dispose on-site has already made a capital investment in that facility.

SENATOR PARKER: Well, I think that if he is properly disposing of his--

MR. LLOYD: He is also incurring costs.

SENATOR PARKER: Right. I am talking about when it is shipped. Once you have the manifest, if you dispose of it yourself, obviously I don't think there should be any taxes on that particular person. But, if it is generated and shipped out - like in the oil refineries - that it should be on those rather than on--

MR. LLOYD: Well, are you talking about a tax or a fee? In other words, if you have a fee for disposal or treatment of these materials, I think you would have to make some determination on the basis of the fee, whether it be the toxicity or quantity.

SENATOR PARKER: But then, if it were only on that part of it you would have people who may be disposing of it illegally. Hopefully, that wouldn't be happening, but they won't be paying anything.

MR. LLOYD: I suspect if they are disposing of it illegally you are not going to find out about it either way. If you are concerned about getting some revenue from all generators, regardless of where they are shipping--

SENATOR PARKER: The revenue would help generate incentive.

MR. LLOYD: It is a little too vague for me to respond directly. I can see problems where, as someone else has mentioned, there would be a question of eminent domain if that power is exercised. My reading of the outline doesn't tell me how that purchase would be financed. I don't know whether this is what you are driving at.

SENATOR PARKER: If there is going to be condemnation, shouldn't that come from the fund that will be generated?

MR. LLOYD: I don't know. I think that chances are you would probably look to something like a bonding authority -- the power to bond in order to raise revenue to make those purchases. We have trouble with a general tax, unless you can be more specific.

SENATOR PARKER: Well, tax on the gallonage -- the amount you generate and ship.

MR. LLOYD: We do have now, as you know, a tax with the spill compensation law. That covers oil and non-petroleum hazardous substances. So, there already is precedent for doing it on the basis of a barrel, or whatever.

SENATOR DODD: As far as the RCRA regulations, we are looking to abide by that Federal program, and we agree virtually with your entire statement, David. Thank you very much.

SENATOR PARKER: On the compensation, do you have any problems with compensation as we have just generally discussed it here -- that if there is condemnation of any facility the compensation would come out of

the fund?

MR. LLOYD: Condemnation of a facility or of land?

SENATOR PARKER: Or area of the facility.

MR. LLOYD: And it would come out of the spill compensation?

SENATOR PARKER: Right now that is where it is coming from.

MR. LLOYD: I think I would be tempted to say it should not come out of that fund. I really think you ought to give the commission the authority to float its own bonds and to do it that way. You would then be generating the revenues from either those who are going to be paying to use it, or for those who would buy the bonds.

The spill compensation fund has a limited amount of money, and as we have been told, it is already in danger of being depleted due to the cleanup of certain facilities. I am not sure you should try and spread it too thin.

SENATOR PARKER: The compensation fund can't ever really be depleted because you replenish it, right?

MR. LLOYD: Yes, that's true, but there are maximum limits that can be raised each year.

SENATOR PARKER: I am concerned about two things: One, suppose we get into condemnation? And, the ancillary, or consequential damages, that surround it have been discussed, and I think that maybe there should be compensation for those people. And, two, there is the liability for injuries sustained down the road. Where do you foresee it coming from if it doesn't come out of the spill compensation fund, and/or a special fund just for the chemical wastes? Where do you foresee it coming from?

MR. LLOYD: Let me say this: The power of eminent domain and to condemn-- Looking at the entire bill, the commission is not going to be running, nor would the department, any facility. So, if you have a private applicant who has the capability to buy a site, and obviously he has the capital to buy that site, that is where the money is going to come from.

SENATOR PARKER: Yes, but I thought one of the main purposes of the whole act was to try and get the public participation because private industry and other people doing it really didn't have the financial wherewithal to really do it.

MR. LLOYD: No, I think the financial wherewithal is probably there. The question you are going to run into is overcoming public opposition to it, and the whole idea of having a public agency handle a site is designed, I think, to accommodate that problem.

SENATOR PARKER: You don't feel that condemnation will even be necessary?

MR. LLOYD: It may very well be necessary, but who pays the bill? You have made it clear in here that you don't want the Commission to run these things; you want private enterprise to do it, and if they can do it and they have the financial wherewithal, which would be part of your screening process as well, I am assuming that they would have the wherewithal to finance it as well.

SENATOR DODD: Unfortunately, there are not too many things that government can do that private industry can't do better, and more efficiently.

SENATOR PARKER: One is condemnation. Private industry can't do it at all, unless it is a utility.

MR. LLOYD: Yes, that's right.

SENATOR PARKER: In effect, what you are saying is what you really need is a siting. The power of condemnation may be necessary for the public purpose to locate, but as soon as it is located, whatever the value of that land is would be resold to the private developer so that there would be no loss, even for consequential damages; they would pick that up.

MR. LLOYD: That's right.

SENATOR DODD: All right, thank you, David.

MR. LLOYD: Thank you.

SENATOR DODD: I would like to call on Jim McCarthy, Jackson Township. You have probably seen Jim, or heard of him, or read about him in the paper. He had to carry buckets of water to his family for -- how many months, Jim?

J A M E S M C C A R T H Y: Twenty two months. Thank you, Senator. I would like to say, first of all, that I am very impressed with the effort of the Senate Committee in pursuing the hazardous waste management problem. I am also impressed with the response you have shown to the question raised by people last June, July, and August at hearings. Your response is shown by the many numerous amendments that you have proposed to the previous bill. I am very impressed with this.

To Senator Parker, I would just like to remind him that the next time he refers to Love Canal, not to forget the 640 men, women, and children that have suffered for so long in Jackson Township.

SENATOR PARKER: I don't forget them. You see that we put that 500 feet in there for you too.

MR. McCARTHY: Thank you.

SENATOR PARKER: It is in the amendment.

MR. McCARTHY: For those who don't know me, my name is James McCarthy, and I am from the Legler section of Jackson Township, New Jersey. I would like to speak to this Committee today as an expert witness on the subject of hazardous waste disposal.

My expertise is not in the field of chemistry, nor is it in the field of geology or hydrology. My expertise is in the field of death and human suffering, and how Federal, State, and local government through lack of responsive action and regulations of hazardous waste disposal have made me an expert in this field.

For some 22 months my family, as well as 165 other families from the Legler section of Jackson Township, New Jersey, have had to rely on township civil defense workers to supply us with our daily allotment of 30 gallons of potable water per family for drinking and cooking purposes, due to the chemical pollution of our underground water supply for a four square mile area. This is a direct result of illegal dumping of chemical waste in an area where inadequate safeguards were used to protect the health, safety, and welfare of neighborhood residents from the potential toxic waste disaster which eventually developed. S-1300, as amended, would probably have prevented this disaster.

In our water supply has been found acetone, benzene, trichloroethane, trichloroethylene, chloroform, residual aviation fuel, and some 32 additional chemicals within the four square mile contaminated zone.

Six hundred and forty men, women, and children have suffered severely, physically, emotionally, and financially, all as a result of unnecessary exposure of the residents to toxic wastes. Toxic wastes are a fact of life. Mankind demanded that we create these miracle products for our daily convenience. Lack of knowledge and responsibility for their waste byproducts over the past 30 years has created the current potential environmental disaster error. Hazardous waste disposal is a fact of life. It must be treated with respect and reverence. Properly regulated and administered, and with adequate safeguards to protect the populace, we can live with it.

No matter how far we go with engineering and design of hazardous waste disposal sites, we must go one step further and build additional safeguards by creating, number one, a 750 yard residential buffer zone to protect surrounding populations from physical harm.

Your proposal under Siting Criteria, Section 3--

SENATOR PARKER: You are aware that we have put 500, do you want 700?

MR. MCCARTHY: You have 500 yards. If you add that up, that is 1,500 feet. Sir, would you like to live within 1,500 feet of a potential chemical control? I know I wouldn't.

SENATOR PARKER: You are talking about another 250 yards?

MR. MCCARTHY: California passed a law. I testified out in California last August and I helped get it through a Senate Finance Committee. It prohibits residential occupancy within 2,000 feet of a hazardous waste disposal site. Your laws are only limiting to 1500 feet. The law in California faced stiff opposition.

SENATOR PARKER: Is there a significant difference between 2,000 and 1500?

MR. MCCARTHY: Five hundred feet -- yes, it could be a matter of life and death initially.

SENATOR PARKER: Five hundred yards is.

MR. MCCARTHY: I'll tell you something, 2,000 feet for the State of California, where land is so enormously expensive and valuable -- most people can't afford to buy a house in California -- is a large amount. If the California Legislature can get in a 2,000 foot buffer zone around a hazardous waste disposal site, and considering the geological surface -- the ground and everything out there -- as compared to what we have in New Jersey, which is mostly sandy, I think 2,000 or 2,150 -- 750 yards -- should be a minimum -- definitely a minimum. My house is 6,000 feet away from the alleged source of pollution in Jackson Township.

SENATOR PARKER: This is not 500 feet; this is 500 yards.

MR. MCCARTHY: That is 1500 feet. I am asking you to please change that at least to 750 yards, which is 2,250 feet. At least do it that way, and you will most likely learn from experience that it should be expanded. That is residential construction; it would eliminate residential occupancy and construction. It would not eliminate siting of such a facility.

The law, as stated here under section three mentioned areas within five hundred yards of a structure which is routinely occupied by the same person more than twelve hours a day. I have a problem with this because it presently allows the possibility for locating one of these facilities within 500 yards of a college or a hospital, because that is routinely occupied for less than twelve hours a day, and because the people who are there for more than twelve hours a day are there only on a temporary basis, not on a routine basis. So, there is a possibility, the way this is worded, that you could put a hazardous waste treatment facility within 500 yards of a hospital or college.

You mention under age 18, more than two hours a day. Most people in college are over 18 years of age, and there is a possibility that you could build this site near a college. I think every safeguard should be taken to remove any chance of exposure in the event of a disaster. As I said before, no matter how well you scientifically design and engineer a facility, go one step further and add and build in the safeguards for the unknown.

The second thing I would like to say with regard to the Hazardous Waste Management Commission - the nine members - is that I would like to see this Committee appoint to that Commission people from the general public who come from environmentally sensitive areas, such as Legler, Elizabeth, Carteret, New Brunswick, Newark, Rutherford, areas where people have to live with the problem of improper waste disposal, and who will truly represent the true feelings of the general populace; people who will safeguard the general populace. The primary concern on that commission will be for the health, safety, and welfare of the population of the State of New Jersey.

I think it is imperative that thought be given to that and not just make political appointees, per se, to such a commission.

The third thing I would like to see is under the liability compensation to the host municipality or region. Everybody seems to have a problem with allowing municipal representation on the actual commission where there will be final vote. I had the privilege of attending a four day conference on hazardous waste in New England two weeks ago, and I learned a lot about the siting problem. It is a very unpopular thing. No one wants one in their town. I publicly advocate these facilities. I would like to see fifty or a hundred of these facilities in the State of New Jersey, the reason being that I know they will be scientifically engineered and designed. If this bill is amended, they will have adequate safeguards. And, I would rather have these facilities run and used than not have them and have these people continue to dump illegally and dispose illegally in rivers, streams, and landfills. I think it is a necessity to have these sites. However, I think it is imperative, based on the Jackson Township experience-- We spent 15 months before construction of a city water system began because of the problem of who was going to pay for it. It was a new water system down there. Where was this money going to come from and how was it going to be disposed of?

What I am proposing is that under the compensation part, a facility, as part of the licensing requirement, be required to enter into

a contract with the host municipality or region in advance regarding the posting of a performance bond to insure compliance and fees that will be paid in the event of an accident -- spills, cleanup, police service, fire service, temporary relocation. If a water supply is going to be damaged, what would be paid by the facility to instill an alternate water source? If permanent relocation is necessary as a result of exposure, fees would have to be paid. This contract would be required as part of the licensing procedure.

Should a municipality still refuse to negotiate a contract with the facility, this commission would have the power to have an administrative law judge, as they do under the New England proposal. The administrative law judge would have the power to come in and sign that contract on behalf of the municipality after review and determining that that township is not bargaining in good faith.

What this contract would do is it would eliminate the fact that 15 months went by before someone gave Jackson Township money to find an alternate water source, or to start construction -- or something like that. It would be a chain of command to move properly.

Gentlemen, never let what happened in the Legler section of Jackson Township happen again to any citizen of the State of New Jersey.

Senate bill S-1300, as amended, is a precedent-setting piece of legislation. The nation as a whole will be watching the action of the New Jersey Legislature with regards to this bill. It will be a model piece of legislation, a cornerstone upon which other states will be able to build to protect the health, safety, and welfare of its citizens.

I would like to close by saying that as a result of Legler's pollution problem, the residents are currently suing Jackson Township, New Jersey for some fifty-one and one-half million dollars in damages. Are you ready to accept the financial burden for future toxic waste disaster because you did not enact a safeguard today?

Thank you for your time and patience in hearing me today. Thank you, Senator Dodd, for allowing me to accompany you on the tour of SCA, and thank you for allowing me to enter my comments in this hearing.

SENATOR DODD: Jim, you are indeed to be commended. For someone who has lived through what we are trying to prevent, to have the clearmindedness to appreciate the fact that without what we are trying to do it will just go on the way it is, shows a great deal of fortitude on your part.

MR. MCCARTHY: I said that after living through it, I would never want to see anyone in the State live through something like that again. The only way we can prevent this is by joining together and by everyone working towards this goal: The public which is opposed to hazardous waste facilities in general, the State who wants to get them licensed and properly constructed, and the chemical industry itself, which needs these facilities here in New Jersey.

SENATOR DODD: I would like to call Dave Miller, also from Jackson Township.

D A V I D C . M I L L E R: Good afternoon, gentlemen, my name is David C. Miller. I am Assistant Administrator for the Township of Jackson, in Ocean County.

I would like to give you a little recap, if I may, pointing out that I initially became involved with this back in August. At that point there were a number of questions raised about what we considered to be detrimental. I will not even elaborate on them, frankly, because the intentions of the first S-1300 are already on the record.

But, as a result of the various commentaries of the municipalities, the State League of Municipalities, and the citizens, Chairman Dodd at that time acknowledged that revisions were in order. Since that time, of course, there have been many groups who have met, including the Township of Jackson and the State League of Municipalities. We got involved in September and ultimately we got our recommendation as a result of that. We are happy that there is a revision to S-1300, which eliminates many of the major objections to the original bill.

I would like to compliment Senators Dodd, Caufield, Parker, and others on the staff for this ultimate substitution which reflects in my mind, and I am sure in many minds, the fact that you are being responsive to the desires of the citizens that were previously expressed, and to the objections that were raised initially.

Jackson Township, in cooperation with its citizens who have already suffered from the effects of toxic waste, has reviewed the proposed substitute to S-1300, and we suggest further refinements which have been adopted unanimously by the governing body at a meeting on Monday evening, and which they directed me to present to the Senate Energy Committee. If you don't object, I will skip the preamble on this resolution - of which the secretary has two copies - and go into the suggested revisions and quickly end my testimony today.

After reviewing the proposed amendments to Senate Bill, 1300, the Township Committee of the Township of Jackson wishes to go on record urging several additional amendments to the proposal for the benefit of all the citizens and residents of the State of New Jersey.

Under Section 1, concerning the Commission, it is recommended that three members out of the nine Hazardous Waste Management Commission be appointed from areas or locations that have experienced problems or difficulties in connection with hazardous waste in order that their practical experience might be utilized by the commission.

Under Section 2, concerning the Advisory Council, it is proposed that the Hazardous Waste Advisory Council, consisting of 11 members, should have at least one vote on any of the decisions of the Commission as to the siting of future sites.

Under Section 3, siting criteria, which Mr. McCarthy has already mentioned, it is urged that at a minimum no siting be eligible unless it is located at least 700 yards away from an occupied structure.

Finally, under Section 6, concerning licensure, and Section 11, concerning compensation to the host community, it is further requested that the proposed legislation be further revised to require the owner/operator of any facility to submit to the Commission and to the Department of Environmental

Protection an executed contract between itself and the municipality wherein the facility is proposed to be located in which it sets forth and establishes the specific financial arrangements that are to be made, whereby the owner/operator will reimburse any affected property owners and/or municipality for relocation costs, monitoring costs, costs of installation, if necessary, for facilities, and utilities, costs for acquiring affected properties, etc., etc., where damage or injury resulted from an accident or spill in or on the facility, and causes the necessity for such relocation and monitoring of the utility, installation, or the like.

SENATOR PARKER: How about if that was paid out of the fund, out of the oil spill fund rather than a separate contract?

MR. MILLER: I think what the committee and, of course, the citizens are looking for is some sort of a guarantee and up-front decision. If something happens, who is going to take care of it, and where are the funds going to come from?

SENATOR PARKER: I was just told that you had your spill, or your problem, before the act went into effect.

MR. MILLER: Before the act went into effect, yes. There is legislation pending to make it a "retro" or grandfather type of thing, but I don't know where that will ultimately lead.

SENATOR PARKER: Let me just ask you a question. What is the status of your water supply facility now -- fixing it and getting water to these people?

MR. MILLER: There has been a city water system in operation since July 3rd, supplying all homes -- all those who have, at this point in time, tied in to it.

SENATOR DODD: I understand there is some problem.

MR. MILLER: There 186 homes involved, and at this point 62% of them have tied in.

SENATOR DODD: I understand there is a financial problem.

MR. MILLER: There is a financial problem. There are approximately 14 applicants who are looking for municipal assistance, which has not been resolved.

SENATOR PARKER: What did you do, assess the homeowners?

MR. MILLER: Each home was charged a connection fee. That called for \$100 up front and another \$100, for a total of \$200 up front. The extra \$100 was payment for the meter that was installed and a deposit.

SENATOR PARKER: But the cost of the construction of the facilities and the easement was borne by the town, and still some of them had to come up with the \$200, is that what you are saying?

MR. MILLER: Well, the problem is monies have had two sources from which they have come -- 1.2 from the State government, which was one year ago, and since that time an FHA loan has been acquired which will reimburse the State for its loan.

SENATOR DODD: The State lent one million dollars to Jackson Township.

MR. MILLER: Pardon me?

SENATOR DODD: Didn't the State lend Jackson Township one million dollars?

MR. MILLER: I thought it was \$1.2 off the top of my head.

SENATOR DODD: One point two -- who quibbles about the change.

SENATOR PARKER: I just wondered. When you asked the question, I wondered whether you were assessing for this as a municipal improvement, as opposed to putting it into your municipal water company.

MR. MILLER: There is a need for some degree of cash operating expense generated during the first year because the municipality is not managing it. They have contracted to a utility authority to manage it.

SENATOR CAUFIELD: But, is the cost only \$200?

MR. MILLER: Pardon me?

SENATOR CAUFIELD: Is the total cost to the homeowner only \$200?

MR. MILLER: I am afraid it is a lot more than that.

SENATOR CAUFIELD: How much is it?

MR. MILLER: When you think of running it from the curb into the home as an added cost factor, it is not included in that \$600 up front. In other words, the average cost is probably \$15 or \$20 a foot - I am only guessing, this is not an exact figure - for running from the home to the curb.

SENATOR PARKER: The laterals they pay for?

MR. MILLER: Well, you call that an initial. It is drawing a line until such time as it hits the curb, and then it becomes a wet line, connected to the city water.

SENATOR PARKER: And, they have to pay for running it from their house to the main, plus the meter?

MR. MILLER: Those have, at this point, tied in; yes, they have done that.

SENATOR CAUFIELD: Where do the other 28% of the people get their water from now if they are not hooked in? The wells are contaminated.

MR. MILLER: Some of them are on community wells which are of a deep nature. Neither the State Department of Health nor anyone else has resolved as yet whether they have to cap or not. But, they are drawing from a sink supply. And, there are still some receiving deliveries via the city trucks.

SENATOR CAUFIELD: Weren't they also assessed a certain amount of money for the capping of the wells?

MR. MILLER: They have not directed the capping of the wells as yet. We are awaiting direction on that.

SENATOR CAUFIELD: It will be assessed, is that the plan?

MR. MILLER: I don't know. We don't even know the mechanics of capping at this point in time. We are trying to get an agreement out of the State Department of Health that the individual homeowner can cap, and therefore reduce a great deal of the cost involved.

SENATOR CAUFIELD: Reduce the cost to the municipality and not to the person?

MR. MILLER: Well, it reduces the cost to the homeowner because if the township has to assess them for capping, then the bill has to be paid by them. If they can do it on their own, you don't generate a bill as long as it is properly capped.

SENATOR CAUFIELD: I am not sure how you individually cap it without any cost.

MR. MILLER: That is part of the mechanics they are trying to work out too, they being the municipality not the State.

SENATOR DODD: Please continue.

MR. MILLER: Thank you. I just have one more sentence, gentlemen. In the event the foregoing amendments are made, the Township Committee of the Township of Jackson wishes to go on record as approving Senate Bill No. S-1300 as amended and urges the Legislature to adopt the revised bill. I thank you very much for your courtesy in listening to me.

SENATOR DODD: Thank you, Mr. Miller. I would like to call Sister Fernandes, Coalition for a United Elizabeth.

S I S T E R J A C I N T A F E R N A N D E S: Mr. Chairman, members of the Committee, my name is Sister Jacinta Fernandes. I am the Associate Director of the Coalition for a United Elizabeth, a coalition of 100 community groups in the City of Elizabeth. These groups consist of churches, neighborhood organizations, tenant associations, homeowners' associations, youth clubs, senior citizen organizations, civic and social clubs. The Coalition for a United Elizabeth, known as CUE, is representative of the various ethnic, religious and racial make-up of the City of Elizabeth.

CUE works on a variety of issues in the City and as you can expect one of our major issues over the past few years has been the issue of hazardous wastes.

I come to you today not as an expert on hazardous waste, by any means. I am not a scientist. I am a community worker and resident in a city which this year experienced a major explosion at the Chemical Control Corporation, a city in which I would say the majority of us have suffered some type of health disorder which may very well be attributable to the fact that we are in the heart of the petrochemical industry. I come as one who has grave concerns about the health and indeed the very lives of our people in Elizabeth.

First, I would like to thank you for this opportunity to speak to you today. I want to commend all those who prepared this substitute proposal allowing for public participation before decisions are reached regarding designation of sites. All too often, the people most affected by decisions, whether it be in the area of toxic wastes or in other areas, are the last to find out what is happening. Informing communities of plans already in progress is not citizen participation. It is therefore refreshing to know that the people will be involved at an early stage should this proposal be implemented.

I would like to raise a few questions, however, which are of great concern to us. We have learned that a Connecticut firm called At-Sea, Inc., has proposed the building of a toxic waste tank farm in the Port-Elizabeth, Port-Newark area which would collect hazardous wastes from six states for at-sea incineration. We are concerned. We are concerned that At-Sea may not be covered by S-1300. We are concerned that there may not be any regulatory procedure mandating that people in the Port-Newark, Port-Elizabeth area be given the opportunity to study the proposal and react to it before any action is taken.

Ladies and gentlemen, we in Elizabeth have had it. We have been literally dumped on. We want to be assured that we will have a major role

in decisions which affect our health, and safety, decisions which affect our lives. We want to be assured that no action is ever taken, no plan ever implemented, no decision ever made regarding the transportation, disposal or storage of toxic wastes, without full participation from the people of our community. Thank you.

SENATOR DODD: Sister, the At-Sea proposal that is being discussed now for Port Elizabeth would come under the purview of S-1300.

SISTER FERNANDES: It would come under it?

SENATOR DODD: Yes. And, you would have full opportunity to go before the Site Review Committee, so we are building that right in.

SISTER FERNANDES: Thank you, Senator.

SENATOR DODD: Thank you, Sister.

SENATOR PARKER: It would probably also have to go before your own planning board here in the city as far as site plan approval, and/or subdivision, if there is a subdivision; there is probably none. But, also, John, it would have to go through the fire inspector, right?

SENATOR CAUFIELD: She is talking about Elizabeth, and I assume the same thing applies there. It is a new plant, and we would have sign-off on it.

SENATOR PARKER: It would have to comply with the fire code. Normally, they have toxic, inflammables, etc. It would cover them all.

SENATOR CAUFIELD: Any new building would have a sign-off by the fire department.

SENATOR PARKER: So, you will have not only DEP, but you should have approvals that are required by your municipality. You will have someone to keep an eye on them. You can look at the newspapers for the notices. But, as far as fire sign-off is concerned, there is no public hearing, right?

SENATOR CAUFIELD: That's in Newark. I can't speak for Elizabeth on that. We have our own ordinance on that.

SENATOR PARKER: Most municipalities have that type of ordinance.

SISTER FERNANDES: Okay. We are concerned.

SENATOR DODD: With good reason.

SISTER FERNANDES: Yes, sixty thousand barrels dumped illegally in our city, and we feel if all the laws that were present then were implemented that would not have gone as far as it did. Thank you.

SENATOR DODD: Again, thank you, Sister.

I would like to call on Harry Moscatello.

H A R R Y M O S C A T E L L O: Thank you, Senator. My name is Harry Moscatello, H.J.M. Associates, and I am representing a group of currently licensed transfer and treatment facilities, on the State's approved list. I promise you I will be brief in my remarks to the Committee, and offer to you and the staff an opportunity, should you decide to follow up on this, to work on some of the details.

I wanted to just expand upon some of the fine remarks that I heard earlier, one of them being in the area of siting criteria, specified in the outline, which would be carried into the legislation. I do support the concept of the Legislature guiding the bureaucracy in this area. I think it is significant that you do that so they are not given a blank check in designing a siting criteria.

If the goal of this legislation, as I understand it, is to encourage the development of innovative technology in this field - something that has been lacking - and to have State government support the development of an adequate toxic waste treatment and disposal capability for the State of New Jersey, those siting criteria in the legislation should not exclude the potential for certain technology. I am afraid, as outlined, you have a few items there which would exclude certain technologies.

One of them, for example, is in Subsection 3 (c). You propose to exclude from potential siting any area within a one foot high water table. I think - I am not a geologist - that might exclude facilities that have access to water transportation, in that you normally find high water tables in those areas. I would suggest that you leave an option in there for water transportation of toxic waste, should the technology for safe and effective at-sea incineration be developed. I don't think you would want to exclude the use of that technology in the legislation.

SENATOR DODD: No.

SENATOR CAUFIELD: That has to be talked about.

MR. MOSCATELLO: The other item I would touch on in the siting criteria section would be that you include in these criteria the possibility that an incinerator technology be able to locate next to a power plant, or next to another major manufacturing facility. In that, you would get the advantage of using the excess heat generated by the incineration of the toxic waste for the beneficial energy that would be derived. And, I think that some of your barrier items in the siting criteria might work against that goal, should that be one of your goals. So, maybe some fine tuning in that area is all that is required.

One other item that I would touch on deals with the coordination of other policy in the legislative process, something that I know a little bit more about than toxic waste. Specifically, in the area of tax policy, I am sure you are aware that Assemblyman Lesniak has now proposed major amendments to the Spill Compensation Fund. Earlier testimony pointed to some of the economic negative spillover effects which might occur if a gross receipts tax fell very hard on smaller industry in the State, which, as you know, is generating quite a bit of toxic waste and has some of the more difficult problems, economically, in disposing of that waste. I think an opportunity may occur to combine some of the tax concerns in S-1300 with some of the new tax policy being discussed in the Lesniak bill. Both bills would attempt to instill a new tax on the handling of toxic waste, and I am not sure that when you add both bills up you come up with a consistent goal. I think there may be need for careful coordination as early as possible with the tax mechanisms in the Lesniak bill and in the one proposed here.

In this bill you are trying basically to induce a municipality to go along with the land use decision that the State is making. In the Lesniak bill, I think the goal is one of revenue raising for the State, and if the ultimate objective of this Committee is to report legislation which helps to create a legitimate toxic waste treatment industry, I think you have to look at what you are doing, and what other committees of the legislature are doing with tax policy to make sure you are not clashing with each other.

It also occurred to me, in listening to the representative of the League of Municipalities, that there may be some opportunities here to effect policy in a municipal land use law. Specifically, with regard to some very sensitive housing decisions that are made by the local level, and zoning decisions, the Supreme Court, as you know, has recently tied in the need for balanced housing to the amount of land that a municipality zones for heavy industry, and so forth, on the premise that if a municipality is trying to attract heavy industry and the jobs associated with it, and the ratables associated with it, it has an affirmative obligation to provide the necessary housing for the people who will fill those jobs. It is very sound public policy from the point of view of many.

You might want to consider applying that very same logic in the toxic waste field, in that if you are going to make land use decisions and you are going to guide a State Siting Board, maybe one of the elements you would build into your legislation that would guide them would be that in coming up with a siting plan, it would fully take into account the amount of land that a municipality has, on its own local decision-making process, dedicated towards heavy industry. And, in those cases, if a municipality is aggressively pursuing heavy industrial development, it would seem to me it is fair to say they have an affirmative obligation to at least make an opportunity for the siting of waste treatment associated with that industry. Because, it is not only the chemical industry, as you know, that creates this waste; it is part and parcel of manufacturing of all types with an emphasis on heavy manufacturing. I think there are opportunities there for coordination of public policy.

One other item in the siting criteria area is, I think it is essential that in writing your legislative criteria you stipulate among treatment and transfer as one type of activity, which if done properly is not more hazardous to the environment than chemical manufacturing, or heavy manufacturing.

And, of course, the real sensitivity has to be on permanent storage, or permanent land filling of some sort. That, I think, is where the emphasis ought to be on State control, and not so much in the area of transferring and treatment.

The clients I represent are of the opinion that the geology of the State of New Jersey may not be altogether that suitable for the land emplacement of untreated toxic waste. However, if you do want to encourage the development of the treatment capacity of the State, the economics of the industry require that there be opportunity for close-by disposal of residuals which, through treatment, have as much as possible been neutralized. That would probably be essential to your goal, and should be taken into account in your development of siting criteria.

That's all I have. I don't have any prepared remarks to leave with you, but I would be glad to follow up in writing if you want to pursue any of the ideas further. Again, I think you for the opportunity to get on your agenda without prior notice.

SENATOR DODD: Thank you very much, Harry, your remarks are well taken.

SENATOR PARKER: Harry, on the proposal for community involvement in developing the total community with some of the housing needs, you are

familiar with Mt. Laurel; how can we go about doing that? It is not a bad idea, I just want to find out how to implement that.

MR. MOSCATELLO: I am simply trying to draw a parallel between that problem and this problem in regard to state land use determinations, and I think you might want to consider having the Siting Board take that kind of local zoning decision that has already been made into account as it develops criteria. In other words, it makes eminent good sense to locate sites where municipalities have already, through their local zoning processes, determined that it is suitable for heavy industry.

SENATOR PARKER: Oh, I thought you meant putting in some compatible housing in a total overall community.

MR. MOSCATELLO: No, that is not at all what I am suggesting.

SENATOR PARKER: Okay. You are just saying taking into consideration all the other--

MR. MOSCATELLO: I am saying drawing a parallel between the Mt. Laurel balance required by that decision, and using your guidance to the Siting Board there be a requirement that they take into account the posture of a local community regarding heavy industry. If a local community has zoned intensively for it, then the Siting Board may want to state to that community that it has an affirmative obligation to include toxic waste treatment in that zoning.

SENATOR DODD: That is common sense.

MR. MOSCATELLO: Yes.

SENATOR DODD: Thank you. That concludes our hearing. Our final hearing will be on the language of the bill. We will be drafting language and working with the Task Force that we have. Those of you who have been with us since May have been doing this. We are in the homestretch now, and there will be one final hearing when the bill is actually drafted. We will then, hopefully, have enough input from everyone at that time. Thank you.

(Hearing Concluded)

SUBMITTED BY GEORGE OTIS

ATTACHMENT #1

- . The following regulations will take effect on 11/19/80 at the federal level:
 - Detailed chemical and physical analyses of H.W. must be made BEFORE disposal in landfill to ensure the acceptability and capability of site.
 - Schedules for required inspections and detailed personnel training must be maintained.
 - Detailed operating records and contingency plans must be prepared.
 - Ground water monitoring must be undertaken on proposed sites to ensure no significant impact on background levels.
 - Ignitable or reactive wastes must not be placed in landfill without first pretreating to render non-hazardous.
 - Bulk liquids or wastes containing free liquids must not be placed in landfill unless first stabilized or unless landfill designed to handle leachate.
 - No drummed liquid wastes permitted to be disposed in secure landfills.
(All empty drums must be crushed flat prior to disposal in landfill)
- . Must remember that above take effect now. Any future regulations (including state regulations) must be at least as stringent!

ATTACHMENT #2

Federal Regulatory Requirements dealing with Secure Landfills.

- . Specific design standards ALREADY in place at federal level (as of 11/19/80)
 - Run-on must be diverted from active portion
 - Run-off must be collected
 - Control of wind disposal of hazardous wastes

- . While federal standards are still being anticipated, these future secure landfill design standards have been proposed at both the federal and state levels and are influencing today's designs. Design standards include:
 - Minimum of two impermeable bottom liners
 - Leachate collection and removal system (if leachate is H.W., it must be handled as such)
 - Ground water monitoring facilities both upstream and downstream

ATTACHMENT #3

Studies reviewed in preparing this Testimony include:

- 1978 Draft: Roy F. Weston, Inc., "Hazardous Waste Management Study"
prepared for N.J.D.E.P.
- 1979 Booze, Allen & Hamilton, "Hazardous Waste Management"
prepared for N.J. State Environmental Facilities Corp.
- 1979 IT Corp., "Model Regional Hazardous Waste Recovery and
Disposal Facility" prepared for Louisiana Dept. of Natural Resources.

All studies reviewed agreed that secure landfills are integral part of centralized offsite treatment facility--even those facilities designed as "most stringent cases."

Managing Chemical Wastes

What the chemical industry is doing to improve waste-disposal methods

America's chemical companies have already invested hundreds of millions of dollars in a safer, better waste-disposal methods. We'll spend over \$2 billion more on waste-disposal facilities in the next two years. Here's how we're advancing the "state of the art":

1. Eliminating wasteful processes

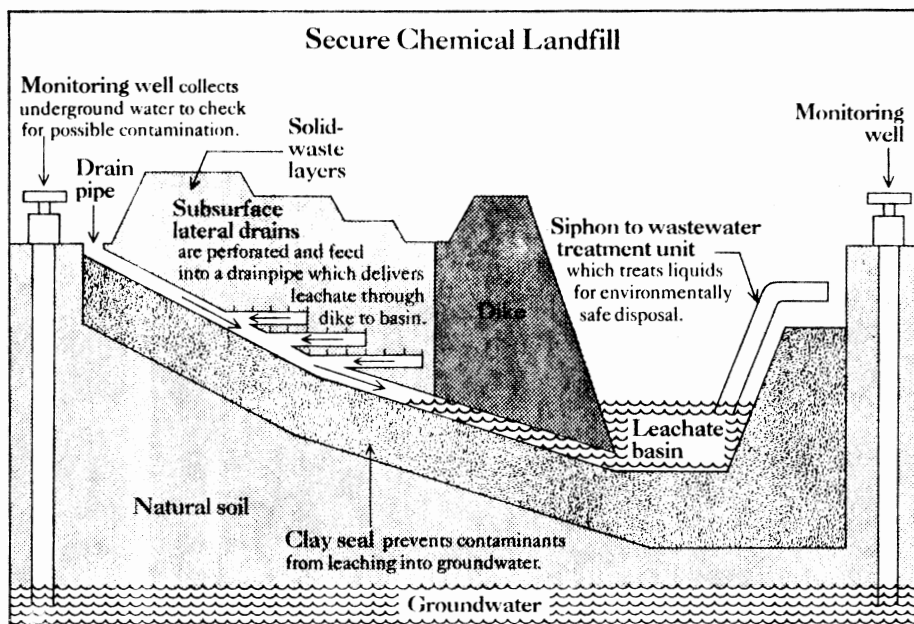
We're redesigning manufacturing processes and improving efficiency. We're adding on-line treatment systems to neutralize, reduce the volume or change the nature of waste by-products. We're also using recovery techniques that let us recycle wastes back into the production process.

2. Building secure landfills

Secure landfills have a barrier that keeps wastes from seeping out into groundwater and keeps groundwater from migrating through the landfill. They may include facilities for recycling liquids, or a wastewater treatment unit to clean up liquids for safe disposal. Landfills—if properly designed, operated and monitored—are one of the best ways to dispose of certain kinds of solid wastes.

3. Continuing industry commitment

We were finding ways to manage solid wastes long before the nation recognized the need for better waste-disposal methods. In fact, we already had much of the required waste-disposal technology and remedial strategies in place—or being de-



Depending on the solid waste, the chemical industry selects disposal techniques such as incineration, by-product recovery, stabilization or secure landfill design to protect the environment.

veloped—when Congress passed the Resource Conservation and Recovery Act of 1976, which sets forth strict waste-disposal guidelines.

4. Sharing knowledge and new technology

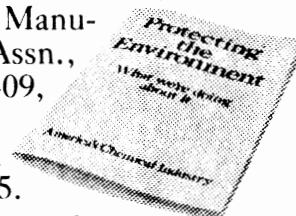
As we develop new waste-disposal techniques, we share our knowledge with industry, government and the public. In 1979, the chemical industry began conducting a series of regional seminars that presented current techniques for solid-waste disposal. Individual chemical companies may use videotapes, visual aids or other techniques to train personnel in

waste-disposal methods.

5. Encouraging solid-waste exchanges

Sometimes one chemical company's wastes can become another company's raw material. So the chemical industry has encouraged the development of waste-exchange organizations, which develop and distribute lists of available wastes.

For more information, write to: Chemical Manufacturers Assn., Dept. FY-09, Box 363, Beltsville, MD 20705.



America's Chemical Industry

The Windsor-Hights Environmental Coalition, a citizen's committee in East Windsor and Hightstown, was formed in response to the original version of Senate Bill 1300. Our members have worked with other community volunteer groups and have studied the technical, social, economic and political issues that affect and contribute to the problem of hazardous wastes. The time since the public fervor in our community over S-1300 has been one of community education to the point where we believe we can address the new bill as informed citizens.

In general, we support the position taken by the New Jersey League of Municipalities that a number of the provisions in the proposed bill need increased or improved definition, especially the provisions for site placement. We support the League's recommendations for a 1000 yard buffer and additional protection for municipalities zoned residential as of January 1, 1981.

We also agree that applicants for construction of facilities should have municipal site plan approval prior to applying for a DEP license. The provision for an adversary proceeding after DEP approval is, in our opinion, wholly inadequate.

We feel that much more serious attention should be given to the whole problem of on-site management of wastes. This is not covered at all by the bill as currently outlined, nor is the concept of resource recovery.

Beyond supporting the League's position, we also believe that the legislature would do well to seriously consider positive, public-benefit programs which would answer the legitimate as well as the self-serving arguments put forth by representatives of the chemical industry.

Most of the larger chemical firms have demonstrated that on-site waste control is feasible and economically supportable. None have, to the best of our knowledge, claimed that the burden of waste control has put them in the red. As waste control and resource recovery technology improve, so should the costs and even the benefits to the large generators.

We must recognize, however, that the smaller the enterprise, the greater must be the financial burden of waste control. Administrative overhead produces no revenue (although resource recovery can be very helpful to a company's overall financial health) and is something every business seeks to reduce. The chemical industry, in the eyes of many observers of business, has been woefully short of imagination and intelligence in its overall operations, not just in waste control.

The free enterprise system, to whose ethos the industry appeals, does not insure against the results of incompetent management.

In fact, it is characteristic of all small businesses that administrative overhead often means the difference between continuing in business or going under. Pollution management systems are not affordable for many companies, especially those which are poorly planned and managed. For those who wish to succeed and meet their responsibility to the public, the State could provide a program of tax incentives to upgrade and improve waste management or to encourage facilities management operations in which a number of small firms would share a common facility managed by a licensed and regulated warehousing and waste treatment organization. Many other business functions such as data processing have been made affordable when operated on a shared basis. Why not waste management?

The ultimate benefit to the public of emphasizing on-site waste control is a reduction of those things that can go wrong: waste transport, records control, administrative management, etc. By reducing these factors, the State may realize a significant reduction in other costs, such as the costs of siting and monitoring waste treatment and storage facilities.

Finally, we feel strongly that the Legislature must incorporate a Nuremberg principle when defining penalties for violation of hazardous waste laws. A Nuremberg principle would allow no absolution from responsibility for one's actions whether sought by a truck driver who was only following orders when releasing wastes on a deserted highway or by a corporation president claiming no control over his subordinates.

Hazardous waste pollution, especially now that we know its long-term consequence, is a true crime against humanity and must, like genocide, be treated as such.

Testimony of
Charles S. Warren
Regional Administrator
U.S. Environmental Protection Agency, Region 2
before the
New Jersey State Senate
Energy and Environmental Committee
Concerning Senate Bill - 1300
November 6, 1980

Thank you for the opportunity to present the Environmental Protection Agency's perspective on the management of hazardous waste in the State of New Jersey.

In less than two weeks, on November 19, 1980, a comprehensive program for the management of hazardous waste will go into effect across the nation. This program is the culmination of a long and difficult effort which began more than seven years ago when the Environmental Protection Agency (EPA) recommended to the Congress the passage of a Federal law to regulate the handling of hazardous waste. Congress responded by including provisions in the Resource Conservation and Recovery Act (RCRA) directed at establishing a system to regulate management of hazardous wastes. RCRA lays out the framework for a program designed to monitor hazardous wastes from point of generation through point of ultimate disposal.

The issue of siting hazardous waste facilities is not addressed by RCRA. Unquestionably, however, the problem of siting is one of the most critical issues to be resolved if the national hazardous waste management program is to be successful. I would like to review the various aspects of the RCRA program and our implementation efforts.

The regulations promulgated by the EPA which build upon the legislative framework cover:

- definition of hazardous waste;
- a manifest system to track hazardous waste from generation to disposal;
- standards for generators and transporters of hazardous wastes;
- performance, design, and operating requirements for facilities that treat, store, or dispose of hazardous waste;
- a system for issuing permits to such facilities; and,
- guidelines describing conditions under which States can be authorized to carry out their own hazardous waste management programs.

Under the program, when a solid waste is defined as hazardous, it is subject to all the controls of Subtitle C of the Act. The regulation governing definition of hazardous wastes contains criteria for identifying such wastes based on four characteristics: ignitability; corrosivity; reactivity; and toxicity. EPA has already listed certain solid wastes it has determined to be hazardous in the regulation. Responsibility for defining additional hazardous wastes based on the four characteristics rests primarily with the generators of such waste. Procedures for modifying the list and the characteristics are also included in the definition regulation.

The cornerstone of the RCRA regulatory program is a hazardous waste control system based upon transportation manifests and reporting. The control system is initiated when a generator or transporter of hazardous waste or an owner/operator of a hazardous waste treatment, storage or disposal facility, notifies EPA of its activities, as required by Section 3010 of RCRA.

Earlier this year, in a major effort to get the control system off the ground, the EPA mailed about 350,000 notification packets nationwide with an August 18, 1980 reply date. Anyone engaged in generating, transporting, treating, storing, or disposing of hazardous wastes who did not notify EPA by that date is in violation of RCRA and may not continue operation without obtaining an EPA identification number. New generators or transporters must apply to EPA for an identification number before any hazardous waste activities can be undertaken. To date, Region 2 has received more than 6,000 notifications from generators, transporters and owners/operators.

The key to an effective regulatory program is swift, sure enforcement against violators. EPA Region 2 has issued 19 notices of violation against those who failed to report by August 18. We intend to continue this enforcement policy until those who deal with hazardous wastes are convinced that voluntary compliance with RCRA is the best way to do business. November 19 is the effective date for final regulations that cover owners and operators of facilities that generate, treat, store or dispose of hazardous substances as well as individuals and firms involved in transporting this type of waste. Beginning November 19, in cooperation with the States, we intend to expand our RCRA enforcement program beyond notification to the other aspects of the RCRA regulations, focusing particularly on compliance with the transportation manifest system.

In addition to notifying EPA and obtaining an identification number, hazardous waste generators are also responsible for determining if a waste they produce is hazardous, based on the list of the identification characteristics. Generators initiate the preparation of manifests for tracking hazardous waste and must assure, through the manifest system, that transported waste arrives at the designated facility. If waste accumulates on-site for more than 90 days, the generator must obtain a facility permit under RCRA, as well. An annual summary of activities must also be prepared and submitted by all hazardous waste generators.

Transporters of hazardous waste also need an EPA identification number and must comply with the manifest tracking system. The RCRA regulations incorporate by reference U.S. Department of Transportation rules for transport of hazardous wastes including reporting of discharges and spills. Transporters also are responsible for clean-up of any hazardous waste discharged during transport.

Owners and operators of hazardous waste facilities must receive a permit from EPA or from a State with an authorized hazardous waste management program. Standards for issuing permanent facility permits will not be fully promulgated until 1981; however, requirements have been established for the interim period. These govern prevention of hazards, recordkeeping and reporting, emergency planning, manifest maintenance, groundwater monitoring, facility closure and post closure care, and financial requirements.

To facilitate and streamline the regulatory process, EPA has consolidated procedures and requirements for permits for hazardous waste facilities with four other programs it administers -- the Underground Injection Control program under the Safe Drinking Water Act, the Prevention of Significant Deterioration program under the Clean Air Act, and the National Pollution Discharge Elimination System and Dredge and Fill Programs under the Clean Water Act. A facility which is subject to more than one of these regulatory programs needs to submit only one application for all of its permits under the Consolidated Permits Program.

The RCRA permits program will operate in two phases. Part A of the RCRA permit application for hazardous waste facilities defining processes to be used, design capability, and hazardous wastes to be handled must be submitted to EPA by November 19. Part B of the application which requires more detailed information to establish that the facility can meet the detailed technical standards to be promulgated in 1981 will be due at a later date. A facility can receive interim status if notice is filed with EPA and Part A of the application is submitted on time. The facility is allowed to operate with interim status until Part B is acted on. EPA will classify facilities as major or minor so that resources can be focused on permit applications that are of major concern. EPA expects that ten percent of the facilities will be classified as "major".

RCRA also calls for public participation in the permit process. When the EPA Regional Administrator arrives at a decision on an application, a draft permit will be prepared and subjected to public notice, public comment, and, in some cases, public hearings. After the comment period, a final decision on the permit will be issued along with a response to the significant comments received. RCRA permits will be issued for a fixed term, not to exceed ten years, subject to review at any time during the life of the permit.

Preference for States assuming the responsibility for controlling hazardous wastes was clearly expressed by the Congress when it authorized Federal financial assistance under RCRA for the development of State programs. Funds have been appropriated by the Congress for State program development under Subtitle C of RCRA in the amount of \$30 million in Fiscal year 1981. During FY 1981, New Jersey can expect to receive \$853,000 for its program development and implementation.

EPA regulations which are designed to assure consistency among the States set minimum requirements for State hazardous waste programs. To receive "final" approval, State programs must be equivalent to and consistent with the Federal RCRA program. Thus, the regulations set minimum requirements upon which the States may build more stringent requirements. States may not, however, impose any requirements that might interfere with interstate movement of hazardous wastes to RCRA-permitted facilities.

States whose programs are substantially equivalent to the federal program may be accorded "interim" authorization while they are upgraded to qualify for final authorization. The interim authorization would be effective for up to 24 months. Interim authorization can be granted to a State program which controls a nearly identical universe of waste as the Federal program, covers all types of facilities in the State, is based on standards that protect health and the environment to a like degree, and is administered through procedures that are equivalent to the Federal procedures.

EPA is currently working with the New Jersey Department of Environmental Protection (DEP) to help shape a State program for hazardous waste management that will meet the requirements of RCRA. New Jersey is a step ahead having had a manifest system in place since May, 1978. We are confident that the current efforts to develop hazardous waste regulations for the State will enable interim authorization of the State's program in the Spring of 1981.

During the development of a complex application for this interim authorization, the State will be funded through a Cooperative Arrangement to perform the tasks and pursue the activities necessary for the State to receive interim authorization. Under the Cooperative Arrangement which we are negotiating the State of New Jersey will agree to perform tasks such as 1) inspections of hazardous waste treatment, storage and disposal facilities (TSDFs) and hazardous waste generators and hazardous waste transporters for the purposes of determining compliance with Federal regulations; 2) operation of a State manifest system and the utilization of a State manifest form which hazardous waste generators, transporters and TSDFs may use to meet both Federal and State requirements; and, 3) review of manifest exception reports, manifest discrepancy reports and unmanifested waste reports received by EPA Region 2 from hazardous waste generators and TSDFs.

Under the Cooperative Arrangement, EPA will perform tasks which include: 1) enforcement of all pertinent Federal regulations, including initiation of enforcement actions against those generators, transporters and TSDFs who have not notified EPA of their hazardous waste activities; 2) oversight of all activities being undertaken by the State with respect to the federal hazardous waste management program; 3) identification of all hazardous waste TSDFs, generators and transporters in the State which come under the federal program; and 4) provision of funds and assistance to the State to perform those tasks agreed upon and to pursue those activities necessary for the State to receive interim authorization.

On November 12, EPA will hold a meeting at the State Museum Auditorium in Trenton on the EPA/DEP Cooperative Arrangement to inform the public of our proposed actions to implement RCRA in New Jersey.

The hazardous waste management program that is being initiated this month is like a jig-saw puzzle where smaller pieces are fitted together correctly to form a clear picture. An essential piece which will make the hazardous waste management picture complete is adequate capacity for the safe and proper disposal of hazardous wastes. The program will likely fail if there is insufficient, legitimate disposal capacity. The key ingredient for developing this capacity is a reasonable siting process for locating hazardous waste disposal facilities. This difficult task has been left to the States.

I commend the Committee for its efforts to get a siting process into place. Siting facilities is not only the most difficult part of the overall national scheme for managing hazardous wastes but it is also the most critical. Public apprehension and mistrust stemming from past bad practices has led to the "not-in-my-backyard" attitude so prevalent today.

The committee made a wise decision in opening the legislative process on this bill to the affected publics in its early stages of development. Not only can the policymakers respond to the public in this way, but the public can also begin to appreciate the need for a siting process that will give the State the capacity it needs to safely dispose of hazardous wastes.

I am hopeful that our various mutual efforts to manage hazardous waste will result in significant benefit to the environment and to the well being of our citizens.

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