
Committee Meeting

of

SENATE ENVIRONMENT COMMITTEE

*“The effect of the United States District Court decision declaring
New Jersey’s waste flow regulations unconstitutional”*

LOCATION: Committee Room 10
State House Annex
Trenton, New Jersey

DATE: October 28, 1996
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Henry P. McNamara, Chairman
Senator Robert W. Singer, Vice-Chairman
Senator Andrew R. Ciesla
Senator Byron M. Baer
Senator Gordon A. MacInnes

ALSO PRESENT:

Raymond E. Cantor
Judith L. Horowitz
Office of Legislative Services
Aides, Senate Environment Committee



Meeting Recorded and Transcribed by
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SENATOR HENRY P. McNAMARA (Chairman): I'd like to start this portion of the meeting for continuation of the discussion of solid waste flow. By looking at the number of people that have signed up to speak, I think there are more observers than there are speakers. So it will be rather interesting. I have to meet the two speakers, whoever they are, to see that they've drawn a crowd of people to listen to their eloquent disclosures. I'd like to start that with Ted Schwartz from the Ocean County Landfill.

SENATOR MacINNES: He always brings a lot of supporters.

T H E O D O R E S C H W A R T Z, E S Q .: Good morning, Mr. Chairman--

SENATOR McNAMARA: Good morning.

MR. SCHWARTZ: --members of the Committee. I'd like to speak today on behalf of the Ocean County Landfill. I've provided my written comments to your Committee staff. I'll try to shorten my comments down knowing that you have this eloquent paper to read. I guess everybody's here because of me today.

SENATOR McNAMARA: I'm very impressed.

SENATOR MacINNES: You drew out a very large crowd of observers.

MR. SCHWARTZ: I'm very honored.

Let me start off by saying that the Ocean County Landfill, which is located in Manchester Township, enjoys a unique position within the existing New Jersey solid waste planning and regulatory system.

A special private/public partnership exists in Ocean County that has for over a decade met the county's solid waste management needs and

delivered disposal services to the county's constituents at one of the lowest rates in the State of New Jersey. This partnership differs from that in any other county in the State.

Ocean County has met its statutory obligation to ensure proper disposal of the waste generated within its borders through the adoption of a District Solid Waste Management Plan that relies upon OCLF for the actual delivery of disposal services. OCLF operates the only privately owned landfill in the State of New Jersey that is designated in a district plan as a disposal site for all county waste. Furthermore, Ocean County Landfill is the only private operator holding an exclusive franchise for such a purpose. Most other facilities in the State of New Jersey, disposal facilities, are publicly managed through a county utilities authority or through the county government itself.

Because Ocean County's role has been confined to that of a market regulator and not a market participant, it has not incurred the public debt of concern in other counties. The landfill's development and infrastructure costs have been financed not with government bonds, but with investments made over the years by its ratepayers. I safely sit here, today, and face all of you and say this has been a debt-free operation from day one, due to the unique way we've developed the facility and worked with the Department of Environmental Protection and the former Board of Public Utilities when we initiated operations at the site.

Therefore, OCLF has a unique stake in the Legislature's response to the decision in *Atlantic Coast* declaring New Jersey's system of waste flow control unconstitutional and an important perspective in dialogue, I hope, that will be responsive to this Committee's concerns.

I feel the Legislature's response to the *Atlantic Coast* case should be very carefully and narrowly focused. Overreaction would compromise the environment and the public health and welfare. As Judge Irenas recognized, New Jersey's comprehensive solid waste management system is an admirable one which serves vital public interests. His decision -- and I emphasize -- only affects one aspect, and that is waste flow control that discriminates against interstate commerce. Your response, hopefully, should be as limited as Judge Irenas' decision.

For example, it would be foolhardy to undertake wholesale changes in the New Jersey Solid Waste Management Act. These are, in our opinion, not desirable or necessary. Waste flow control is a regulatory scheme, not a statutory scheme, that was initiated by the DEP. There are no statutory provisions requiring disposal at in-state facilities as opposed to out-of-state facilities. Compliance with *Atlantic Coast* does not necessitate dismantling the planning mandates of the Solid Waste Management Act which are clearly in the public interest and the interest of the environment. We respectfully request--

SENATOR McNAMARA: Excuse me.

Senator.

SENATOR MacINNES: On that point, could I just interrupt and ask a question, Mr. Chairman?

Ted, what is your reading of the *Atlantic Coast* decision in respect to the power of counties to require trash conveyors to funnel all trash through a county designated facility?

MR. SCHWARTZ: I think that's what Atlantic Coast sought to set aside. I think what's happening is when the waste flow rules and regulations were adopted regulating the flow of waste to in-state facilities, although there are a lot of counties that dispose of waste out-of-state through long-term contractual arrangement -- I feel that the system can be changed somewhat; of course, it takes some very bold leadership to do it. I think when I was here at the last hearing, quite a number of speakers made comments about how you could correct the system, but it will take a bold legislative effort to do that. That's what I intend to get into later on in my talk.

But the point I'm trying to make up front is that this system that we have in New Jersey has been around for a long time. It's worked marvelously in handling the problem protecting the public health and welfare. There's no reason why it shouldn't continue. When I heard speakers at the first hearing talking about dismantling the Solid Waste Management Act, I got very nervous, because that's an overreaction to this problem. This is a very narrow issue, albeit, could be a large financial issue, but it's very narrow in scope.

We would respectfully request that you maintain all the constitutional components of the existing solid waste management system. And if specific, we'd like to see that the counties retain the planning and siting authority. I mean, that is a local decision. There's no reason to take the Solid Waste Management Act and gut that out.

SENATOR MacINNES: That's my point though. Do the counties retain the power to compel garbage to move according to its contractual deals and its decisions about the ultimate disposition of garbage?

MR. SCHWARTZ: Well, let me answer that this way. The present system which deals with intrastate waste flow, where you tell a town, "If you want to dispose of garbage in the State of New Jersey, then you have to do so at this specific county facility" -- there's nothing unconstitutional about that. The Court did not deal with that issue. So the intrastate waste flow system is certainly viable and still legal. In fact, there was a case decided in Michigan a few weeks ago on an issue similar to that. So you can maintain that piece.

The problem that you're alluding to is telling a municipality that you have to use the XYZ resource recovery facility. And that resource recovery facility prevents them from having the option to go out of state. I think that's what the Court directed itself at, that the municipalities under the Irenas decision do have the ability to make a decision: if they want to go out of state, they can go out of state.

SENATOR MacINNES: Well, that would tear down the whole structure.

MR. SCHWARTZ: No. No, no.

SENATOR MacINNES: Along with the sort of neat planning that you've commended that has grown out of our statutory scheme, we also have the highest, or among the highest, carting and disposal costs in the nation by quite a bit.

MR. SCHWARTZ: Don't get me started on that, because there's a reason for all that. I don't think that today is the day really for that. I think in my own personal view being primarily a private sector attorney is, looking

at the disposal crisis in the State of New Jersey, particularly in the northern counties, I mean, they're just off the wall. I mean, they are ridiculous.

SENATOR MacINNES: I agree.

MR. SCHWARTZ: I'll say that any day of the week. The system--

SENATOR MacINNES: I agree. So that in response to the highest costs in the nation, a private or municipal operation seeking to reduce its costs would be free under the decision we're talking about to seek an out-of-state destination for its garbage which presumably they would only seek if it would reduce their costs. Right? Under the decision, the county would not be able to compel them to keep the garbage in state, would they?

MR. SCHWARTZ: Under the decision as the law presently stands, the answer is yes.

SENATOR MacINNES: They would be able to.

MR. SCHWARTZ: No, they wouldn't be able to.

SENATOR MacINNES: They would not be able to.

MR. SCHWARTZ: Right. That's the problem we're addressing.

SENATOR MacINNES: So that as soon as people recognize that they can save money -- given the fact that people don't like to pay the highest costs if they can avoid it -- isn't that going to mean the undoing of the very sort of county-based planning--

MR. SCHWARTZ: No. Because what I'm saying is you could maintain intrastate waste flow. In other words, you can tell a municipality, if they want to dump garbage in the State of New Jersey, they have to take it to the XYZ facility.

SENATOR MacINNES: I understand that, but if those costs are higher than a Pennsylvania landfill, and they find out that that's the case, there's no way to prevent them from going to Pennsylvania, is there?

MR. SCHWARTZ: Under the laws that presently exist, no.

SENATOR MacINNES: Okay. That's my point.

SENATOR SINGER: Just one comment, Mr. Chairman, if I may.

What I think we have to also keep in the back of our minds though, Senators: At what point when the Federal government says, "No more intrastate transfer of garbage," where do you leave the incinerators or anything else like that if you don't fund them at some point? In other words, at some point there's going to be a cutoff. At some point, Pennsylvania is going to say, "We don't want to take the garbage," just like we're doing with disposal areas of radiation products. At some point, the Federal government is going to say, "Everybody's got to take care of their own garbage." I mean, we've also got to keep that in the back of our mind. When that time comes, what happens?

MR. SCHWARTZ: I think trying--

SENATOR MacINNES: I'm just trying to understand.

SENATOR SINGER: Yes, I understand, but is it--

MR. SCHWARTZ: --to kick off from-- It's a very complicated subject. There are ways for county governments to maintain better pricing. I can give you example after example of how counties have abused the system and the lower cost of disposal that could have been available to them, but they tack on everything else there is in their rate structures. I mean, when you see prices \$127 a ton, that's unconscionable. I don't care where you are. It's unconscionable. There's no reason why it should cost that kind of money.

And I think what's happened is that a lot of counties have lumped in a lot of other extras in the disposal rates, and therefore, they drive them up.

Take Ocean County Landfill, I mean, let's look at this place: \$68 a ton to dump in the finest facility in the State of New Jersey. All the most modern equipment, modern landfill designs that money can buy are in this place. For that \$68, we have \$10 in taxes that are put on, State-mandated taxes for recycling, and so on, and so forth. So our true rate is probably a lot lower.

What's also interesting about this situation is that the ratepayers that have used this facility over the years have paid for all the infrastructure improvements. Now that the infrastructure is almost completed, probably in the next two or three years -- there's some additional materials that have to be put into place -- this rate is going to go down dramatically. Because why-- Because the people in Ocean County decided -- and the Freeholders with their planning -- to have this investment take place over a long period of time in what we call an Environmental Escrow Fund where a portion of the rate is dedicated to environmental improvements. And as a result of that, we've paid for all these improvements over the years, kept the rate stable, and now it's going to start going down.

So all these people in Ocean County are now going to see the benefit of the investment that they made over the years which is why we're so concerned about some of the issues that we hear being spoken about: where they want to tax every county, they want to put surcharges on, and they want to do this and do that. We have the very unique situation -- don't ask me how it happened but-- It's the only private facility in this State. It's worked great.

So why not keep these people in such a position that they can benefit from all this rather than getting soaked up into this other scenario. That's the focus of my concerns.

Having a franchise is very important. Judge Irenas didn't strike down franchises. We have a franchise just like Public Service Gas and Electric (*sic*) or the water and sewer company. We're obligated to provide the service. Our rates are regulated as a utility, unlike the other counties of the State where they don't have to go through the rate-based rate of return concepts that we do as a utility. You have a public hearing. You have the budget come up once a year, everybody votes yes, and that's the end of it.

The DEP does oversee some of the contractual arrangements that are made but not in the detail that's involved in the private operation. So we would like the Committee to consider reemphasizing the franchise rights of places like Ocean County and others. And I believe that the-- We have the exclusive franchise right to the year 2015. That's the way we've designed this facility to operate. We have all our permits in place that authorize us to do this.

I think you can take the franchise aspect and use it as a building block to maintain the intrastate waste flow. Also, another important point is in New Jersey, under the Local Public Contracts law, a municipality can only contract for maximum five years for solid waste services. And we would like to see in those areas where there's a franchise that the municipalities would have the right to contract up to 20 years, so to provide some longevity and stability relative to the system.

We think that an amendment is required in order to do that, but you can frame it in such a way that where there is a franchise that you can have the municipalities in that franchise area can have the option to contract for up to a 25-year period of time. The other concern that we have is that the residents and ratepayers in counties that do not have debt should not be compelled to pay the debt occurred in other counties. If gate rates of public facilities will be subsidized in counties with public debt, the subsidies should come from municipal assessments in the affected county or from a State tax revenue source. I won't get into that issue because I don't run for office.

In addition, the subsidies should be no greater than that which is necessary to reduce gate rates to competitive levels after all governmental costs unrelated to the cost of service have been eliminated. Rate reductions are the equivalent of a subsidy and should be mandated.

I wanted to give an example. Morris County-- The rates up there will probably be in excess of \$110 to \$115 a ton. The disposal contract to dispose of the waste out of state is somewhere in the 30s, maybe \$34, \$35. Then you have the transportation costs which may be about \$10 or \$12. So you're up to \$47. You have a transfer station. I don't think that it should cost more than \$10 to \$15 to operate. You just do the arithmetic yourself. Where's all the money going?

You look at Atlantic County -- \$127 a ton. This is unbelievable. Bergen I've worked with a lot, and their rates are high. I live in Essex. We have an incinerator -- pay \$72 a ton. But what the speaker didn't tell you from American Refuel, when they take all the garbage from out of state and bring it into the incinerator and burn it for \$30 to \$35 a ton, that all of us in Essex

County have to pay for ash disposal cost. American Refuel doesn't pay for the ash disposal cost. So, I mean, that in itself is an interesting fact that people don't realize.

When you start to get into these systems and work on them, and you understand what's going on -- and all the fatness and the sweet butter that's taking place -- you begin to understand why these rates are so high.

SENATOR McNAMARA: You begin to wonder who negotiated the contracts when they built that, because, basically, Essex is guaranteeing that shortfall. That \$38 a ton that the out-of-stater is paying--

MR. SCHWARTZ: Right.

SENATOR McNAMARA: The difference between the \$38 and the \$72 is being made up by the Essex County taxpayer.

MR. SCHWARTZ: And also the biggest winner in that deal -- I'm not here to crush deals -- is the Port Authority. They make the most money. This is like having the bridge. I don't think everybody realizes that. They finance part of this. They receive a certain revenue stream from the county to pay for the bonds. I'm not sure of all the intricacies, but they wind up being the biggest winners in this whole situation. And you never hear from them. They hide. So as an Essex County ratepayer, I find that whole arrangement is not very comfortable, but unfortunately it was done years ago.

What I like to finish up with is the fact that we should try and build what we have, fix up what we have. It's done a good job. We've got some of the finest disposal facilities in the country in New Jersey. Most of them are all Subtitle D, double composite liner systems and leachate collection. We've done a hell of a job in protecting the environment.

The lady who spoke from Burlington County -- everybody sort of raised their eyes -- she said, "We only pay \$49 a ton." I was tempted to get up and say, "Yes, but you don't have to put in double composite liners because you have 100 feet of clay under that landfill. You're just in a great spot."

So to build a landfill today with double composite liners and all the systems that you need is about \$1 million an acre. So it's not what it used to be years ago. And I think there are facilities in other states that are comparable in environmental protection. I think that the ones I know over in Pennsylvania, they do a good job. They meet all the requirements, probably exceed some. So we've got some good facilities around that can handle the waste stream, but I think what's driving a lot of this activity is trying to protect those counties where they have this stranded investment issue.

If you start like Mr. Prunetti said at the last meeting, he has \$100 million to \$110 million to make up. He said, "Well, my rate's going to be around \$50 a ton." But what he didn't tell you -- at least I didn't hear him say it -- was that it's going to be more like \$90-some-odd a ton, because of the fact you have to make up for the stranded investment.

Now, how you deal with that stranded investment issue is very interesting. If I heard from Commissioner Kenny where she indicated that it's the responsibility of the communities in the counties that are affected, you can do this through your taxation. Therefore, let the gate rate be, let's say-- Take Mercer County for instance. If you took the \$40 a ton that's associated with the debt and then you put that aside and you established a gate rate of \$50, because every town has to make up that \$40, then what happens to a place like Ocean County? I'm competing with a gate rate of \$50 in Mercer County

which is not fair because I don't have any debt in Ocean County. I think you see the point that I'm trying to make.

It's a very careful balance, and it's something that really has to be done properly. The way to solve some of these problems-- They're hard political decisions. I don't know if we're ready in this State to do that.

You take Florida, for instance, where the county government has a special solid waste services fee that comes in your tax bill every year. So what happens in that instance -- it's the same thing like can happen in Babylon, Long Island and in Smithtown. The government takes over the responsibility. You collect it through the tax rate. People are paying the same thing, same amount of money, only it comes through the government.

The government can then mandate every collector in the county, "Well, you have to take it to the XYZ resource recovery facility." That's perfectly legal. There's nothing wrong with that, because that way you're a market participant, and that's legal under the Constitution. But it's the fact of deciding to develop a solid waste services fee that may not be palatable but if it's explained to the public that they're paying it anyway.

So if a collector came in, in a situation like that and says, "I'm taking the garbage to Ohio," well, good luck to you, because the garbage disposal is being provided free under the county system. If you take it to Ohio, well, you're going to pay to dump it there. The resident doesn't have to pay for it. So that's one way of tackling this system to--

SENATOR McNAMARA: That's a great way of tackling it if it could be handled in a bipartisan manner--

MR. SCHWARTZ: I know.

SENATOR McNAMARA: --but you know what's going to happen. As soon as someone goes to incorporate it into another fee, it's going to be called a tax, and it's a game.

MR. SCHWARTZ: Its-- But that's the way to do it. There's no question about that. And also I don't know the number of counties of all franchises, but we could build off the franchise operation to help with this situation. I don't have any recommendations on how to deal with the stranded debt. All I can say is that--

SENATOR McNAMARA: You just want to let us know that very clearly Ocean County doesn't want to pick up the stranded debt from Essex or Bergen--

MR. SCHWARTZ: I don't think they will.

SENATOR McNAMARA: Of course not. I don't blame them. I wouldn't want them to either.

MR. SCHWARTZ: Those people down there in about, I'd say -- the way construction is going -- probably two or three years-- In fact, we're going to try to do something very interesting with the DEP. Every two years we're required to file a true-up on all construction costs. We adjust the interior part of the rate to reflect that. Well, we're going to make one construction change, and we hope the county will support this. I know they will, and the DEP certainly will. We'll be able to lower the gate rate by just making this change in construction sequences by \$6 to \$8 a ton off the present \$68.

Then when we finish this last capital improvement that we have by 1998 or thereabouts, we're talking about eliminating a capital fund for

infrastructure improvements which may knock off another \$10 off this rate.

In this county, the people -- the county government--

SENATOR McNAMARA: They planned well and absolutely.

MR. SCHWARTZ: --worked very, very well and have done a great job, and they've been a pleasure to work with. It's been a very interesting public/private partnership. We'd like to see this unique animal stay the way it is, because it's working very well.

We're next to Monmouth County, Monmouth County Reclamation Center. I have no idea what their rate is now, but I know it's probably higher than Ocean County's. If we go into this stranded investment issue where we let the county, the towns, be responsible for part of the stranded investment, Monmouth County could have a low gate rate so to speak. I use the word gate rate very selectively, which could be lower than Ocean County's. People from Ocean County, they want to go to Monmouth just to pay the gate rate. So if you're going to let counties recover or municipalities pay for the capital costs, then you have to make sure that those capital costs are part of the gate rate structure, or else you're going to create a big imbalance.

I read this document that was prepared by the MCIA with -- the Mercer County Improvement Authority -- part of their plan amendment that's going on now where they had a list of all the out-of-state disposal alternatives and their rates and charges. All of them ranged from, depending on where you are, \$40 to \$50, and then you got to dump the transportation on it. The rates are competitive. There's no argument about that. But people from Ocean

County, I don't think, are really interested in driving to Pennsylvania or Ohio right now. I just don't see that as a feasible alternative.

Anyway, I appreciate the time that you've given me. I'd love to work with this staff to help out with some of these possible legislative changes. We do have some draft legislation that we've put together that could deal with the long-term contract issue that municipalities can use and the other Local Public Contracts law.

SENATOR McNAMARA: We will use you as a resource, Ted. I'd have to look into that one a little bit deeper, because I have a particular aversion to long time. I won't say it's--

MR. SCHWARTZ: It's enough, too.

SENATOR McNAMARA: Yes. I hear what you're saying.

MR. SCHWARTZ: But it provides--

SENATOR McNAMARA: I've been around long enough to see the negatives that's produced by some of that also.

MR. SCHWARTZ: It provides stability under those situations. I mean the out-of-state, long-term contracts have worked very well.

SENATOR McNAMARA: Ted, I don't want to interrupt you, but we ran you way past your time.

MR. SCHWARTZ: Thank you. I appreciate it very much. It's a pleasure. Thank you.

SENATOR McNAMARA: Thank you very, very much for your attendance.

Bart Carhardt from Warren County.

BART CARHARDT: I'd like to thank the Committee for the opportunity to allow us to appear before you today.

My experience goes back to the County and Municipal Government Study Commission, which was a State government commission back in late 60s, early 70s that studied the solid waste issue in New Jersey and published its report in 1972. I would like to consider that it was a foundation of the Solid Waste Management Act in 1975. I, too, would agree with Ted that the State has certainly come a long way.

I recall when I first started working on this study, the State had over 300 dumps primarily located in floodplains and wetlands in the State of New Jersey. At that time, tipping fees were about 75 cents to \$1 a cubic yard. I'm reminded of that advertisement by a service station that does lubrications and changes oil, and they say, "Pay me now \$20 for an oil change or pay me later for an engine overhaul." I think that was the problem back in the early 60s, early 70s, where we were paying low prices for disposal fees, and we ended up-- A good number of these sites became Superfund sites, and we're paying now for those mistakes.

As you know, the State passed the Comprehensive Solid Waste bill in 1975, and it designated the counties and the Hackensack Meadowlands as solid waste management districts to develop comprehensive solid waste management plans.

I'm here today representing the Pollution Control Finance Authority of Warren County of which I'm Executive Director. Now, we have facilities in the State that recycle large amounts of our waste stream. We have resource recovery facilities that have continuous emissions monitoring and

stack testing. We undertake frequent testing of our ash. We have fuel quality programs that Senator Singer mentioned, removal of household batteries and household hazardous waste collection programs. We have landfills that are double composite-lined with leachate collection and treatment facilities. I would again agree with Ted that the last time we constructed a cell on our landfill it was close to a million dollars an acre to construct landfill capacity that meets today's environmental standard.

In Warren County, we have a regional solid waste management system. Warren County itself has a franchise that covers all of the waste that's generated in Warren County, and we have long-term agreements with Hunterdon County. We process approximately half of Hunterdon County's waste, and we also have a long-term agreement with Somerset County where we process approximately a third of Somerset County's waste.

Our resource recovery facility, which went into operation -- it was the first commercial operation in the State -- in July of '88, we processed about 155,000 tons of waste a year in the facility. We generate through this system approximately enough electricity to provide energy for about 10,000 homes. We're in about 50 percent of the homes in Warren County. We also operate a landfill -- a modern double composite-lined landfill -- which receives all the ash that's generated from our resource recovery facility and also disposes of the nonprocessable waste that's generated in Warren County.

Ted also indicated that our tipping fees are inflated by certain other costs that tend to make us noncompetitive with out-of-state landfills. In our tip fee, besides the cost of operating our resource recovery facility and landfill, we operate a recycling center. We have household hazardous waste

collection days. We have a battery collection program. We recycle latex paint. All these things add to the cost of our tipping fee and make us not competitive with out-of-state landfills, which are primarily involved in the disposal of solid waste. They do not provide these other services.

SENATOR SINGER: Just one question.

MR. CARHARDT: Yes.

SENATOR SINGER: Would it not make sense then to send a separate bill for those extra disposals?

MR. CARHARDT: Sure, that would be an option.

SENATOR SINGER: And, therefore, you then would become very competitive in your rate to do that.

MR. CARHARDT: Right. It probably wouldn't be very competitive. Our rate right now is \$99 a ton. It's down from \$113 a ton. If we remove those costs for doing recycling, household hazardous waste, we're talking between \$4 and \$5 a ton. Every little helps, I would agree.

Presently and one of the reasons for waste flow control was the idea that counties' solid waste management authorities could fund the construction, the debt service, and the operation of these facilities through the tip fee and funds would not have to be collected from property taxes. So our county, as well as other New Jersey counties, relied on waste flow control to generate sufficient waste to generate the tipping fees to cover our debt service and operating costs.

In our long-term contracts with Hunterdon and Somerset County, the contracts provide that these counties pay the tipping fee which also includes the debt service. And I would urge, when you consider stranded

investment, that particularly in those cases where a county such as Warren has entered into long-term agreements with other counties to receive their waste over a long-term period, that those sending counties also contribute to the stranded debt service.

Just to highlight our outstanding debt: As I indicated, our facility went into operation in '88, so we paid down a rather large amount of debt service. Currently, our debt service is \$87 million that will be paid off under existing schedules in the year 2007. So after that period of time, if we have continued to receive the waste flow, we would not have any debt. Presently our debt service out of the \$99 tipping fees is approximately \$75 a ton, so \$75 of our tipping fee at \$99 a ton goes for retiring the principal and interest on our resource recovery facility.

Yes, sir.

SENATOR CIESLA: Is that type of repayment schedule typical? Because if you're debt free in the year 2007 -- I don't know when you issued your bonds -- the amortization seems to be for a short period of time based on the expected life of the improvement.

MR. CARHARDT: The debt service was over a 20-year period, and that coincides with the agreement the authority entered into with the owner/operator of the resource recovery facility.

I would also add, too, I think the Committee should realize that while we're paying off the debt on a resource recovery facility and probably the useful life of that facility is an additional 20 years-- In other words, we financed the facility over a 20-year period; that debt is paid off. With some

minor capital improvements, that facility, we anticipate, could operate for another 20 years essentially debt free.

But there is one item that the Committee should be aware of, that there are always changes in law. Just recently we had to retrofit our resource recovery facility with mercury controls. That was about \$1.5 million that we had to put in new equipment to control mercury emissions. There may be similar laws in the future, and that would necessitate the incurring of additional debt. On the landfill side, we have 45 acres that will eventually be developed into a landfill. Currently, we've only developed about 10 acres of that. So in the future, we will have to build additional cells and perhaps go into indebtedness to fund the construction of those facilities.

So that's basically it. As I indicated, we've lowered our rate from \$113 to \$99. We continue to look at our rate taking out those items that would not make us competitive with out-of-state landfills. We're looking at refinancing our debt. We're looking at lowering our operating costs by eliminating recycling and those items from the tip fee.

Another thing that the Committee might consider is that Warren County, as well as other counties, have been the recipient of no-interest State loans. It would be very helpful if the State would perhaps forgive those loans. They were given to the counties that had--

SENATOR SINGER: We didn't hear that.

MR. CARHARDT: These loans were given to counties that were responsive to the State mandate to implement comprehensive solid waste management systems. We would welcome your consideration of that.

Thank you very much.

SENATOR SINGER: Senator MacInnes.

SENATOR MacINNES: What percentage of your total debt is in the form of no-interest loans from the State?

MR. CARHARDT: We have right now about \$87 million outstanding; about \$7 million is involved in no-interest State loans.

SENATOR MacINNES: You have \$87 million outstanding, \$7 million is in no-interest, and you have-- What was your total indebtedness in 1988?

MR. CARHARDT: About \$139 million.

SENATOR MacINNES: And what was the total of the-- Is 7 million the total interest-free loan that you received from the State?

MR. CARHARDT: Yes, I believe it was 7.5 million. Yes.

SENATOR MacINNES: So you're going to be paying back-- Is your amortization table pretty smooth in terms of what you have to pay back every year?

MR. CARHARDT: Yes. In '96 in terms of dollars per ton, it's \$75 a ton. It goes up. The highest it gets is in the year 2005. It's \$83 a ton, and then it starts going down. And then, as I said, in the year 2007, the indebtedness is paid off, and that would, during that year, be about \$50 a ton debt service.

SENATOR MacINNES: In the last year?

MR. CARHARDT: Yes.

The State loans go on out to the year 2011 at about \$200,000 a year beyond 2007.

SENATOR MacINNES: And you're financing this with a revenue -- a tax-exempt revenue bond?

MR. CARHARDT: That's correct.

SENATOR MacINNES: Warren County Municipal Utilities Authority?

MR. CARHARDT: It's the Pollution Control Financing Authority.

SENATOR MacINNES: And what's the rate repaying? What's the--

MR. CARHARDT: It varies. We have several bond issues.

SENATOR MacINNES: --average rate?

MR. CARHARDT: About 8 percent, between 8 and 9 percent.

SENATOR MacINNES: And you have refinancing opportunities with--

MR. CARHARDT: There is one bond issue that can be refinanced about a year from now. Our calculations are, if we refinance that, we could probably reduce the rate between \$9 and \$10 a ton.

SENATOR MacINNES: But only one of the bond issues includes the refinancing option?

MR. CARHARDT: Yes. Later out in the payback period there are similar opportunities with other bond issues.

SENATOR MacINNES: Thank you.

SENATOR CIESLA: Mr. Chairman.

SENATOR McNAMARA: Yes, Andy.

SENATOR CIESLA: Bart, I guess my question is a simple one. I don't know what you're telling us other than the fact that you're already at

about \$70 a ton for debt service on your waste. I don't know what your operating expenses are. I imagine a differential between what your debt service is and what your cost per ton is.

MR. CARHARDT: Yes, that's about right.

SENATOR CIESLA: But what does that mean in terms of the case? What are you essentially saying? What are you recommending to this Committee? You're saying obviously you've incurred this debt. You've got these operating expenses. The Court has decided something. What are you suggesting?

MR. CARHARDT: I'm suggesting that in order for us to be competitive we have to get some means to eliminate a portion at least of the debt service from our tipping fees.

SENATOR CIESLA: What are you suggesting is competitive?

MR. CARHARDT: In our area, Warren County doesn't lack a transfer station. So without the ability to transfer waste, our haulers would essentially be limited to close in landfills in Pennsylvania. We're talking tip fees that range between \$50 and \$60 a ton.

One advantage at our resource recovery facility is that the packer trucks come in on macadam roads. They tip on concrete. They don't have to wait in long lines. They don't have to put up with mud and inclement weather that cause problems at landfills. So our haulers are telling us that between \$60 and \$70 a ton we would continue to receive the waste from Warren County.

SENATOR CIESLA: Isn't there a big fear, though, in the marketplace that when you have the subsidy that the subsidized rate's going to drive the market?

MR. CARHARDT: That's a good point. I think another thing I'm sure you're all aware is Fresh Kills closure. I mean, what impact is that. We, as well as other disposal facilities, have received solicitations from New York City anticipating the closure and asking us for disposal capacity. I think the out-of-state landfills are certainly aware of that particular issue.

SENATOR CIESLA: What would happen if the State did nothing?

MR. CARHARDT: If the State did nothing, I think we would at our facility-- We would start seeing less and less waste appearing at the door. In order to meet our debt service, we would have to continue to raise our tipping fee to at least show on paper that we can meet our debt service. As we do that, we would continue to lose waste, and eventually, we'd be in a death spiral, and we wouldn't be receiving any waste.

SENATOR CIESLA: So essentially what you're saying -- at least as I read it and I'm not sure I agree with it -- you're saying that there is no options available to you other than some sort of statewide assistance program. Just seems to me, you know as I sit here, if you've got 15 years left on a facility that has a useful life of 40-- Senator MacInnes suggested some sort of refinancing opportunities. There's got to be operational savings that seem to be available.

My hesitation, quite frankly as a member of the Committee, Mr. Chairman, is that while I understand that the State has a role to play, I'm not so sure that we should ride in as a white knight and try to solve this problem before the efficiencies that these particular organizations can gain are available. If we solve the problem for them, I think we limit the creativity of the

marketplace, and I've never seen creativity limited less when peoples' livelihoods are at stake. Obviously, your bonds are guaranteed by someone. They're going to have something to say about that. The people that hold the bonds are going to have something to say about that.

My admonition, I guess, at this particular time, is that this is a terribly complicated subject that is going to have severe repercussions in the public and private marketplace of not only New Jersey, but of the immediate area that serves as a market for waste flow. I don't think that we should act or even consider acting until we understand what the ramifications of all of these actions can be.

MR. CARHARDT: It's a tough job for you.

SENATOR MacINNES: Maybe it's a tough job for you.

SENATOR McNAMARA: Any other questions?

Senator MacInnes.

SENATOR MacINNES: Well, it-- I mean it strikes me that the-- First of all, the refinancing opportunity may or may not exist depending on where interest rates are, where your demand is -- I mean, how attractive bonds look at that time. Is the capacity 150,000 a year? Could you take more? Is New York an opportunity that--

MR. CARHARDT: We could take more waste in our resource recovery facility.

SENATOR MacINNES: How much more?

MR. CARHARDT: Probably about 50,000 tons a year more.

SENATOR MacINNES: Is New York interested in talking about such a small amount?

MR. CARHARDT: Yes, I think they're interested. We've had inquiries from private haulers that service New York commercial customers.

SENATOR MacINNES: Right.

MR. CARHARDT: Certainly not at \$99 a ton.

SENATOR MacINNES: When does Fresh Kills close?

MR. CARHARDT: Two thousand, two thousand and one.

SENATOR MacINNES: Well, I mean, that's a lot of garbage we're talking about.

MR. CARHARDT: That's right. Probably it's close to equaling the amount that's generated in New Jersey.

SENATOR MacINNES: How close are you to Route 80, your site?

MR. CARHARDT: To out-of-state sites?

SENATOR MacINNES: To Route 80.

MR. CARHARDT: To Route 80, 15 to 20 minutes. There are convoys of transport trailers using Route 80 to reach out of state.

SENATOR MacINNES: Yes, I know that. Okay. If you've got a reasonably flat amortization table, you're talking about repayment of about \$210 million over the life of these bonds, right -- something like that for an \$88 million facility -- a lot of money. Thanks.

SENATOR McNAMARA: At least.

Any other questions?

Thank you, Bart.

MR. CARHARDT: Okay. Thank you.

SENATOR McNAMARA: Anyone else that wants to add their comments today?

Certainly, Mr. Wolfe.

WILLIAM WOLFE: I'll be -- Bill Wolfe, Environmental Federation -- very brief. Following on last time, I appreciate the opportunity to be here. Given what we've heard today, New Jersey has paid an extraordinarily high environmental and economic cost to essentially publicly subsidize the incineration industry primarily.

Ted, Mr. Schwartz, talked about landfill, but the issue in terms of equity is the same. The ratepayers in that county basically financed an infrastructure that is now going to be opened up to the marketplace. And how we make the transition is key, because over the weekend -- I'm sure you're aware -- a barge pulled into Port Newark, the *Cashcow*, and the Essex incinerator financing, who's making good rates of return on their investment -- is burning plastic waste generated originally in Atlanta through Hong Kong and China.

So what New Jersey is moving towards is the Third World type of marketplace in garbage. It's intolerable environmentally. It should be more intolerable economically once the taxpayer gets wind of what he is subsidizing, or he or she. And we would call for an effort on the part of the Legislature, because there's been totally a head-in-the-sand attitude within the administration and the DEP to deal with this. Obviously given the magnitude of the issues, that's probably a smart stance on the part of the Commissioner. But what we would call for is some type of--

SENATOR CIESLA: Did you get that in a memo?

MR. WOLFE: Excuse me.

SENATOR CIESLA: I was just wondering if you got that in a memo?

MR. WOLFE: Excuse me. (laughter)

Well, I have a striking memo from the Commissioner committing to a schedule of approving the Mercer County Plan Amendment -- with given the context to this to date -- which I think is a billion plus in incineration bonds ready to go into the death spiral, from Mr. Carhardt. I couldn't use a better term. That's the Wall Street term. With a billion dollars or more headed for a death spiral, the notion that this administration is working behind the scenes very aggressively with Treasurer Clymer's Office with--

SENATOR McNAMARA: Why don't we stick on the subject matter. I tell you what. This is not a disease of this administration only--

MR. WOLFE: I understand that. I understand that.

SENATOR McNAMARA: It's been a disease of every administration both Democrat and Republican, and I'm not addressing--

MR. WOLFE: I'm not trying to be partisan.

SENATOR McNAMARA: To be very honest with you, everybody knew what the Irenas decision was going to be, because if you understand the Constitution you understood.

MR. WOLFE: But the Attorney General's Office understood, filed briefs that were on their face not supportive.

SENATOR McNAMARA: I recognize that. I recognize it.

MR. WOLFE: Continues to do so.

SENATOR McNAMARA: Yes.

SENATOR MacINNES: But it's a fair point that raised-- Bill raises a fair point, Mr. Chairman, if I could. You're saying that-- This is the Duck Island Project we're talking about?

MR. WOLFE: Yes.

SENATOR MacINNES: You're saying that the administration is on the verge -- is actively encouraging the development of yet another incinerator?

MR. WOLFE: Yes, \$260 million suffers all the structural financial flaws that we've heard that deal with landfills, that deal with incinerators in terms of the financial underpinnings of the project and the contracts and the fairness of the contracts. I'm glad we heard the point as to who pays the Essex ash, because I've been trying to get that out for years, what's really going on economically there. Once the light of day gets shed on the structure of these contracts, people are going to be outraged as to what's going on.

So what we call for is some slowdown, number one. I agree with the Senator, slow down. Number two, try to structure a planning process similar to what's going on in the energy deregulatory discussion where you get the people to the table that have the economic and environmental interest at stake to come up with something rational, because what's happening here is you're having a political response that's trying in a last-gasp effort to keep the reality quiet. You didn't hear Mr. Prunetti here last time talking about his stranded investments.

SENATOR McNAMARA: I asked several questions to try to get him to answer it, but I have to admit that he only did talk about-- Tony ignored the cost of the stranded investment, you're right, in the actual rate.

MR. WOLFE: The point is, from the legislative standpoint, it's not limited to a county decision that's reckless. It's Treasurer Clymer who's allocated \$265 million of private activity volume cap that could leverage probably almost a billion dollars in private investment in the State of New Jersey, a third of the State's entire cap volume over the next three-year period to that one project. That's an extraordinary allocation, having been involved in that allocation with the department. The State allocators are things we all support, housing and economic development. EDA and HFMA are the other issuers. DEP allocates to water supply and wastewater projects. So this one project is carrying a third of the entire State allocation for three years. An extraordinary thing even if the project was beneficial.

SENATOR MacINNES: It occurs to me that there is a fair warning in this, Mr. Chairman, which -- and reflects what Senator Ciesla said and what Bill just said. I mean, we don't have the information to develop a legislative response, and maybe a legislative response isn't what will be required in the end, although, it's a little hard to believe that. But clearly one of the things we don't need is a quiet and rushed approval on a controversial proposal to build yet another incinerator with tax-exempt financing in New Jersey when we're--

SENATOR McNAMARA: Senator, I might suggest that prior to the calling of these public hearings there was no word being said about any of it. The intent and purpose of calling these public hearings is to try to get people aware and to focus on the fact of what is really going on. And it's outrageous the amount of debt that has been piled up and the cost to the

residents of New Jersey. You go up into Bergen County-- I have to tell you something. Those costs are astronomical.

SENATOR MacINNES: But this is an opportunity, and I commend you on your foresight on it, and you know a lot more about it than I do. But to have the good sense to at least try and focus some public attention on this at a time when yet another facility is under review and where decisions are being made and where the administration has a direct role in encouraging or not another development on this scale, I would think that we would all be-- Any prudent person would want to, I would think, wait and see a bit before they proceed with a commitment on that scale. I don't know what the timetable is for Duck Island, but it sounds--

MR. WOLFE: It's rapidly approaching.

SENATOR McNAMARA: I tell you what. We going to have to start going back through the Chair. This isn't just a fireside chat.

MR. WOLFE: I apologize.

SENATOR MacINNES: I apologize.

MR. WOLFE: Through the Chair, the response to that question is it's not only Treasurer Clymer's involvement. Jane Kenny was here last time representing DCA. They expedited the positive findings that they issued with respect to the financing. They issued positive findings that everything was copacetic in light of Wall Street-- You heard Moody's here last time saying there was red flags at every stage, and they expedited that. Mr. Shinn has pledged to expedite the plan amendment that would deal with the allocation of the stranded investment question that would deal with this contractual basis for waste flow that Mr. Schwartz was talking about. And the MCIA does have

a franchise. So it deals with a host of incredibly complex legal and economic issues and yet is being given a bright green light across the entire administration. It's very difficult for me to sit here knowing what I know and not be -- appear to be going after the administration or appearing to be partisan.

SENATOR MacINNES: Mr. Chairman, is there-- Maybe you know this, Mr. Chairman, the documents that Mr. Wolfe's referring to -- these are in the public realm, I assume, aren't they?

SENATOR McNAMARA: I would assume they're in a public realm.

MR. WOLFE: There was a letter from the Director of -- Beth Gates, of the Local Finance Board, and Commissioner Shinn to the MCIA laying out a plan amendment review schedule to meet their Wall Street underwriting schedule which called for DEP certification of the plan amendment by December 3.

SENATOR MacINNES: Mercer County Improvement Authority is that what, what we're talking about?

MR. WOLFE: Mercer County Improvement Authority. They will meet-- Mercer County Improvement Authority will meet this afternoon and the Freeholders will meet this evening to deal with the issue. So this is happening as we speak, and yet there are forces pouring gasoline on a fire from my standpoint.

SENATOR MacINNES: Mr. Chairman, does OLS have the capacity to review the prudence of the financial commitment that we're talking about in this case?

SENATOR McNAMARA: I don't believe that we have the ability to delve into the internal decision-making process of Mercer County to be very honest with you.

SENATOR MacINNES: But where a State role is intended, there obviously is some role that State government plays in by way of delegation and by way of approval. All the time there are towns and authorities in my district that have to come down to DCA to get approvals for any number of investments. This sound like this is in the same category, and I would like to urge--

SENATOR McNAMARA: I don't see, Senator, any problem with you, as a sitting Senator, making that request of the department of OLS. I don't, also, on the other hand -- and I don't mean to say that they don't have the expertise -- know if they do or they don't, but that's a decision that OLS would have to make. Make the request yourself directly through the Director and be specific as to exactly what it is that you want to know and let him answer you whether they have the expertise or they don't have the expertise. And certainly, you're entitled to a response as a Senator in New Jersey, no question in my mind about that.

SENATOR MacINNES: Well, I intend to do that. Thank you for the guidance. I appreciate that.

MR. WOLFE: In closing, that the two other policy concerns that were on the table is that we would like to see as part of the solution that the Legislature entertains is the protection of New Jersey's environment and taxpayer from the migration, as New Jersey waste flows out of New Jersey to seek lower cost options, New Jersey becomes a lower cost option for New York.

SENATOR McNAMARA: There's no question. Just what's happening with the Essex County incinerator--

MR. WOLFE: Exactly.

SENATOR MCNAMARA: --the fact that we are importing garbage from New York at \$38 a ton and, by the way, shipping it out of the State at a higher cost. That's a real catch-all.

SENATOR MacINNES: Charging Morris County \$86.

MR. WOLFE: The secondary question is there's already concern, and Mr. Carhardt talked about it -- it's happened here in Mercer -- of shaving off so-called other government functions that we find to be critical, meaning the recycling programs, finding a financing mechanism to see that that happens to see that the marketplace doesn't drive the cost so low that recycling no longer becomes economically competitive. So we clearly have to maintain some equilibrium there.

The third point, and I think it's a viable option -- I think it's financially sound -- is liquidate the asset in the incineration industry. If we can't protect the taxpayers from other folks using their investments, then let's shut it down. I would urge you liquidate the asset.

SENATOR McNAMARA: I think that that's a rather dramatic recommendation and approach. I'm not so sure how many people will embrace that as being the best way of solving the problem.

MR. WOLFE: We heard two proposals to forgive State loans, and we heard a proposal to increase taxes. I think mine is more in line with Wall Street thinking than either a tax increase or a forgiveness on a State loan, respectfully.

SENATOR McNAMARA: Thank you. Don't worry. It's not going to be forgiven. We don't have the money.

Any other?

Adjourned.

(MEETING CONCLUDED)