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PUBLIC HEARING

before

SENATE SPECIAL COMMITTEE
TO STUDY COASTAL AND OCEAN POLLUTION

Concerning the Settlement of the Suit
Against New York Regarding the
Fresh Kills Landfill on Staten Island

January 19, 1988
Room 403
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Frank Pallone, Jr., Chairman
Senator Laurence S. Weiss
Senator S. Thomas Gagliano
Senator James R. Hurley

ALSO PRESENT:

Eugene Langelie
Representing
Assemblyman Eric Vitaliano
New York State Legislator

Patricia Cane
Office of Legislative Services
Aide, Senate Special Committee
to Study Coastal and Ocean Pollution

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Hearing Recorded and Transcribed by
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New Jersey State Legislature

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**FRANK PALLONE, JR.
CHAIRMAN
RICHARD VAN WAGNER
LAURENCE S. WEISS
THOMAS GAGLIANO
JAMES R. HURLEY**

December 28, 1987

NOTICE OF A PUBLIC HEARING

The Senate Special Committee to Study Coastal and Ocean Pollution will hold a public hearing at 10:00 a.m. on Tuesday, January 19, 1988, in room 403 of the State House Annex in Trenton.

The Committee will take testimony concerning the settlement of the suit against New York regarding the Fresh Kills Landfill on Staten Island. Attorney General Cary Edwards is scheduled to testify on this matter. He will also provide information on the recent Grand Jury Presentment regarding hospital waste disposal.

Anyone wishing to testify should contact Patricia Cane, the Committee Aide, at (609) 292-7676.

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SENATOR FRANK PALLONE, JR. (Chairman): We are about to get started. If everyone will take a seat. Let me start off by welcoming everybody back. This, of course, is the first hearing of the Senate Special Committee to Study Coastal and Ocean Pollution to begin the new session. As you know, we did have several hearings in the prior session. And I did want to make note of the fact today that a final report and legislation that will accompany that report, is being prepared by the Office of Legislative Services, and we do expect to have a copy or copies of the preliminary report ready for the Committee members to review sometime next week.

If you remember back in December, we did announce that the Committee would prepare a report basically summarizing the hearings and putting together a list of legislative recommendations and priorities for the Senate to move on, with respect to the issue of ocean pollution and coastal pollution, for the new session. After the Committee members review that report next week, we'll have a final report probably by the end of the month, and many have asked about the status of that, so I did want to make mention of that today.

The other thing I did want to mention is that we are expecting all the Committee members here today. To my right -- the gentleman, if you want to just raise your hand -- is Mr. Eugene Langelles, who is here sitting with us today who is a representative from Assemblyman Eric Vitaliano's office. If you remember, Assemblyman Vitaliano co-chaired a bistate hearing with this Committee last September. It is also requested that we have another similar bistate hearing to deal with issues that affect both New York State and New Jersey at some time in the future. So that is another hearing and joint Committee between the New York and New Jersey Legislatures -- that we expecting to have a committee meeting sometime in the near future.

The purpose of the hearing today is really twofold. One is to basically review the consent agreement that was entered into between New York and New Jersey with regard to the Fresh Kills Landfill and the Marine Transfer Station in New York that resulted from the suit brought by Woodbridge Township in the 1970s. And the second purpose is to review recommendations that were made by the New Jersey grand jury in Mercer County with respect to hospital waste.

I wanted to just briefly state that the Committee is concerned with the both of these issues. First of all with regard to the Fresh Kills suit, as I will call it, those of you who have been involved with the Committee hearings for the last two years probably remember that at one of the initial hearings that we held at Woodbridge Township back in 1986, we did recommend and sent letters and requested that both the Attorney General and the Interstate Sanitation Commissioner intervene in this suit brought by Woodbridge Township against New York City over the problem of Fresh Kills. We requested that intervention because of our concern that that suit was important, that it wasn't moving fast enough, and that ultimately, a solution had to be found to the problem with material coming down to the New Jersey shore from Fresh Kills that the suit was initially designed to prevent.

The intervention did take place on behalf of the Attorney General as well as the ISC. They were involved in that suit for at least a year. A consent agreement was entered at the end of last year settling that suit. And the concern by some Committee members and, I think, or environmentalists and members of the public was that perhaps -- and I do say perhaps -- the suit did not go far enough, or the consent agreement, I should say, did not go far enough. There were some lingering doubts about a number of issues. First of all, the fact that there had been a consent agreement entered into several years prior to that requiring New York City to build what we call a

wholly enclosed barge unloading facility; and in fact, that issue was not dealt with directly by the consent agreement and this wholly enclosed facility did not, and was not, being built.

The second primary concern, I think was also expressed by members of this Committee -- I think Senator Gagliano was most pronounced in his mention of it during the course of our hearings -- and that was the question of barge coverage, the fact that the barges on their way to the Fresh Kills Landfill should be covered to prevent debris from flying or from falling off. There was concern by members of the public and this Committee that the agreement did not deal directly and kind of sidestepped the question of the wholly enclosed barge unloading facility as well as the barge coverage, and basically said that those two issues would be studied and looked to in the future, but were not part of the agreement per se as it was set forth.

The other two issues that were not mentioned directly in agreement or in the suit but continued to linger with regard to the question of Fresh Kills are the question of leachate coming from the landfill into the Arthur Kill, and the other long-term question of whether or not the landfill itself was getting too high and too massive and might break up causing debris to fall directly into the Arthur Kill from the landfill itself, as opposed to the problems associated with barges or the unloading of barges.

So, basically we would like to get into those four issues, if I could set them forth today: the unloading facility, the lack thereof, the lack of barge covers, and the future with regard to the leachate and possible massive size or breakdown of the landfill itself. With regard to the hospital waste-- As you know we had a major incident this summer with hospital waste washing up on the Jersey shore, which I think really triggered a lot of the adverse reaction and the interest on the part of the Governor and the Legislature in doing something immediately about the ocean pollution problem. The

fact that hospital waste was washing up on the Jersey shore really highlighted the ocean pollution problem this summer more than anything else.

And legislation was introduced with regard to the hospital waste to establish a manifest system to impose strict liability on hospitals. Those were discussed at a prior hearing. But since that prior hearing, we've had a grand jury presentment which basically exposed the magnitude of the hospital waste problem in New Jersey and made some recommendations; not only about the need for a manifest system, but also about the need for a definition or a redefinition of hospital waste to cover facilities other than hospitals, and the need to license haulers that deal with hospital waste in a special way, and to establish separate crimes and higher penalties for haulers and those involved in the disposal of hospital waste who are caring for it.

So, these are basically the issues that are the subject of this hearing today. We have our first presentation. We have both the Attorney General here today as well as Commissioner Dewling from DEP. Before I start off with them, though, I would like to have the other members of the Committee who are here today and would like to make a statement, give them their opportunity. We'll start with Senator Gagliano.

SENATOR GAGLIANO: Thank you, Mr. Chairman. I'm going to forego a statement at this time. I think that you've summed up our concerns and I would like to hear the testimony.

SENATOR PALLONE: Okay. Senator Weiss?

SENATOR WEISS: Mr. Chairman, I think you pretty well covered the situation and I would like to hear from the Attorney General. I'm here as a member of the Committee and also as a very interested resident of Woodbridge that's just west of that landfill. In my estimation, if this landfill goes up to 500 or 510 feet or whatever, in my house you won't

see the clock (sic) until 10:00 in the morning. So, that's how close I live to it; and so you know my interest is of great magnitude. But as I indicated before, I'd like to hear from the Attorney General and also from Commissioner Dewling. I thank you, Mr. Chairman.

SENATOR PALLONE: Thank you, Senator. Thank you, Senator Weiss. Okay, so with that we'll start with Attorney General Cary Edwards. Thank you for coming this morning. We appreciate you being here.

ATTORNEY GENERAL W. CARY EDWARDS: Thank you, Senator. I want to make it clear from the very beginning that we are going to do everything in our power to be sure the sun comes up on Senator Weiss' house, my old friend.

SENATOR GAGLIANO: It's just a matter of time.

ATTORNEY GENERAL EDWARDS: Yeah, it's just a matter of time. We want to be sure the sun comes up on his house in this process. I appreciate the opportunity, Senator, to be here to go over with you the details of the subject matter that this hearing is designed to cover. It is a very difficult thing to communicate to the general public of this State in any short time frame, through newspaper articles and through television. The complexities of the issue, the complexities of the solution don't lend themselves to quick and easy short answers.

We believe, as a matter of conclusion, in dealing with this matter, that we have gotten the best of both worlds. The agreement, per se, on the court order -- and it was a court supervised consent order -- is the result of literally years of information and work that has all come together at one point in time fortuitously, I might add, in two different manners.

In entering into this agreement, it was my primary concern, that New Jersey did not give up any of its rights in this process. By entering into the consent order, there is no option that is still not available to the State of New Jersey to pursue any manner. You must recognize the status, I think,

of the City of New York in potentially agreeing to be at fault of any particular item, and what that means to them in the process.

The only issues that I think we agreed on that the Committee, I think, might be interested and is the driving force behind the entering into a consent order, that is if New York, were they to admit or were to be proven in a court of law that they caused the garbage, or were the responsible party of the garbage, to wash up on the 127 miles of our shores all the way down to Delaware, they would be subject to liability claims in the hundreds of millions of dollars. As a result of that, New York is never going to admit that they were the cause of that particular event that took place between August 13-15. The consequences of that liability are monumental.

So, in entering into discussions with New York about taking remedial reaction, one must recognize that the litigation as the option to having action taken, as a manner of mandate by court, would take literally years. And I can't measure the number of years when you get to the appellate process because of the liability. This is a threshold for a court to force them to do something. You have to prove a cause and effect. Sure, garbage washing up, the City of New York, and that cause and effect would result in hundreds of millions of dollars in damage claims which they would never admit; and we're looking at three, four, five, eight years of litigation in order to resolve that before remedial action could be taken.

So, the first threshold I had to cross, was whether or not I wanted to go through that process, or whether I was prepared to put that issue of proving in a court of law, or having New York admit that it was their garbage and their cause in putting that garbage into the water that resulted in the events of the 13th and the 15th. If I could put that issue aside, we could then begin to talk about what remedial action could be taken.

And so, I did agree that I would not, in this particular point in time press the issue of New York's fault, either their acceptance of that and admission of it, and/or our necessity to prove that by placing evidence before a court. If you put that aside, we could then talk about all of the remedial action that needs to be taken, that could cause immediate benefit to the people of this State.

I thought it was more important in my ultimate judgment that we took actions to remediate the problem without, for the short-term, worrying about liability and/or blame for that particular action. The people of New Jersey, and I'm sure myself and a lot of others, would have loved to have been able to point to New York and say they are the bad guys and beat New York up in this particular process. I don't disagree with that from a personal standpoint, but from a practical standpoint I needed to take, I think for the people of this State, immediate action to prevent the circumstances that could potentially cause -- I use that word very guardedly -- could potentially cause that garbage to have washed up on the shore.

At the same time, it was important I did not give up New Jersey's rights -- the State's rights, or any subdivision of the State's rights -- to pursue that issue. And we have not. There is specific language in the consent order in which the parties do not waive any of their rights to pursue that matter.

Now, let me add one more practical component to that. When could I begin a litigation, per se, to prove that issue? I am precluded by practical circumstances from beginning that until a Federal grand jury that the U.S. Attorney and myself requested be convened to study this matter is completing and has completed its investigation. There is evidence that is before that grand jury that would be necessary evidence to prove the very foundations of our case. And that grand jury is still sitting and it still has not resolved its particular matters.

After the grand jury has completed its activities for

me to get the evidence before them, I would have to apply to a court to get that evidence or parts of it so that it didn't damage whatever the results of presentments by that grand jury would be. So, I was looking at the prospect of no activity out of New York to modify what it was doing to cause the events of the 13th and the 15th, and were facing another summer coming up.

Using all prudence and looking at what is really in the best interest of New Jersey, not at what is in our best visceral interest -- e.g. to batter New York and to prove that they did this -- I thought it was prudent to take any and all steps that were necessary to remediate the problem, or the potential causes of the problem. The consent agreement that was entered into does that. There is no issue that you just raised in your four questions that were not dealt with in this particular consent order. And they are not dealt with merely as studies. I know it tends to look that way when one reads the consent order -- I am not at all being critical to the Committee for having arrived at that particular conclusion -- while reading of the consent order would lead one to do that.

But a consent order creates rights and liabilities of parties and requirements for activities. The activities that reads, let's say, "study of the barging system and whether it's covered," is merely a practical way of deciding how to cover the barges, not whether the barges should be allowed to continue and allow garbage to either float off them, but doing-- There are no covers manufactured that fit on a barge of that size that carries that level of waste. We don't know how much blows off and what causes the garbage that goes into barges to wind up in the water. We need to determine what those causes are so the steps we take are real steps. The agreement has time frames in it.

In this particular presentation that I go through, the Director of Division of Law, Debbie Poritz, is with me. She will go over point by point the agreement, the chronology of

events that will take place and their practical implication, and I think that will satisfy the Committee that that issue was not being studied. The study is merely to determine what has to be done. There are then vehicles to force what has to be done to, in fact, be done.

The issue, with reference to Woodbridge and the unloader -- the enclosed unloader, is far more complex and is also dealt with in this particular matter. There is not an Army Corps permit to construct an enclosed unloader. The process to accomplish that takes years to do.

SENATOR GAGLIANO: Excuse me, Mr. Chairman. Cary, why didn't they do it? Weren't they suppose to do this years and years ago? And the issue is, why didn't they do it? I mean, we know it takes years, and it's been years since Woodbridge started suit. And they still don't have the beginnings of an enclosed mooring system.

ATTORNEY GENERAL EDWARDS: I will try to lead you through that.

SENATOR GAGLIANO: It just seems to me they should have put up maybe \$10 or \$20 million in escrow to see if it would be done. I mean, I'm not trying to second-guess your office. I know what you are telling us. But we heard this before. You know, we had a hearing--

ATTORNEY GENERAL EDWARDS: You don't know what I am telling you, because I haven't said it yet.

SENATOR GAGLIANO: Well, I think I sense what you are trying to say. We had a hearing on this. And I called your office. In fact, I called your chief of staff immediately after the meeting when I realized how serious the situation was. That was 10 a.m. on Wednesday, September 24, 1986 at the Port Reading Fire House, Woodbridge, New Jersey. Senator Weiss, I think, was the first one to testify. Those issues came up at that time -- about the barge mooring system that was enclosed; and New York gave us a song and dance, or a tap dance

or whatever you call it, and they didn't order their engineers out to start designing this thing so they could go the Corps of Engineers, and I still don't think they have. That's why I'd like to have that addressed.

ATTORNEY GENERAL EDWARDS: Sure. Having said those two things, and it goes with two of the main issues, and you'll see, I think, the issue on the study component when Director Poritz goes through the various component agreement -- how they are not studies, but they are action items in point of fact that require activity.

Now let me address the broader issue. I'd like at this point to walk through a chronology of events that lead us to where we are and the decisions that were made along the way as best as I understand them.

The events takes two tracks. The first track starts all the way back in 1979 when the Township of Woodbridge sues the City of New York in the Federal District Court for how the City of New York operates the Staten Island landfill, the Arthur Kill operation. That case continues on up to 1983. Only the City of Woodbridge is involved in that particular matter.

In 1983, the Federal court order -- there's not the consent order that's entered into -- there was an order of Judge Stern to do a list of various items to clean up the operations of that particular landfill. One of the items in question was an enclosed unloader. It was not something that was, in fact, a consent order like this one was. The court reached down and took what New York was prepared to do and in fact ordered, because the parties were not arriving at a consent.

They were required by December 1, 1985 to have constructed the enclosed unloader at the Arthur Kill in addition to other things that they were supposed to do, which in fact they did. The other items that were on that list -- they

did not, by December 31st, complete the construction of the enclosed unloader.

In the summer of 1986, after I was Attorney General, I received two letters, one from the you, Senator, and one from the Mayor of Woodbridge, asking why the State of New Jersey was not a party to the litigation involving Woodbridge and Staten Island, and being significantly critical of the fact that we weren't, in fact, a party. A similar letter was, I think, sent by you to the Interstate Sanitation Commission.

I asked the same question when I got your letter. I was not aware at that point in time of the existence of the Woodbridge suit as one of the many suits that was going on in the State with any degree of significance. I asked the Director of the Division of Law to do an investigation. I asked Commissioner Dewling to look into it -- to answer the question to me. They came back and gave me the facts that were involved in that case and I made a preliminary judgment during that summer that we should be in that particular litigation.

A subsequent phone call was made to the Interstate Sanitation Commission to discuss with them whether they wanted to go into the litigation also. In October 17, 1986, we formally -- after getting all of our facts lined up and making all of our strategic judgments as to how we are going to proceed -- we entered into the Woodbridge litigation on the enforcement of the order of 1983 that Judge Stern had, in fact, issued.

As you go through the winter and back into the summer of 1986, and the actions are pending and discovery of various motions and court proceedings involving the construction of that enclosed unloader, we began receiving certain documents from New York as part of the discovery as to why that unloader was being construction. During the summer -- it was in July and August -- as the documents were coming in, we became aware at that point of the magnitude of the plan for the Staten

Island landfill and the problems that have come out over the subsequent months in 1987 became obvious; the height of the landfill, the fact that it was a non-permanent landfill that has been in operation since 1949. It was operating under the form of a consent agreement with the New York Department of Conservation -- the equivalent of our DEP -- between them and the City that it had not met all of the qualifications for permitting by the State of New York; and in the State of New York, you should know, operates for and on behalf of the EPA in that particular process for permitting.

We became aware that this was going to be a monumental undertaking -- this particular landfill. Within weeks of us discovering all that is the documents started coming in. The events of August 13-15 happened. I received a phone call, as a matter of fact, I was out-of-state from the Governor indicating, and I think this was the 14th, that he was about to have a press conference. That he was appalled by the circumstances that he had found. He visited the shore area, and saw the volume of garbage that had washed up there. He was going to have a press conference indicating me to begin an investigation as to the cause of that particular event and why and how it happened. He did so.

I returned to the State that evening and started collecting the data myself. We began what was a very intense investigation as to the types of debris, garbage, and whatever had washed up and where it had potentially come from. We put as many resources as the DEP and my Division of Criminal Justice and its Environmental Prosecution Section could muster with reference to that.

It's important, I think, to keep that particular event in context also. There's another part of the history of this that I think should go with it with reference to New York. It was subsequently found out that, I think, it fits now in the chronology.

The State of New York had a number of operating landfills through the '60s and the '70s of which Staten Island was only one. During the period of the late '70s and into the early '80s, New York has proceeded to close all of its landfills in its jurisdiction, to take its wastes of the 7.5 million people in the City of New York -- and they did that during that period of the late '70s and the early '80s -- all garbage, as each landfill was closed, was being transferred and sent to the Staten Island landfill.

So, instead of having just garbage from Staten Island or one or two barges coming over from the City to the Staten Island landfill, ultimately, by the time this event happened in the summer of 1987, all garbage from the City of New York was being barged to or almost being barged to the landfill. They took about 22,000 tons of garbage per day into the Staten Island landfill; about 14,000 to 15,000 are handled by barge and the other 6,000 to 7,000 are handled by truck.

So, literally every piece of garbage from the City of New York winds up in that landfill now and will into the foreseeable future, because there are no options that New York has on the drawing boards nor available to itself to put this garbage at some another location. They are talking about the construction of resource recovery facilities, but they are strictly in the talking stage. They have no such landfills that exist anywhere else in or outside of New York, nor any contracts or discussions for contracts for them to deliver garbage to any other location than the Staten Island landfill.

As a result of the investigations, let me explain to you a little bit about what we found. There's a lot of misconceptions with reference to the volume of garbage that washed up on the shore, where it came from, and what its content was. Discussions about 300,000 tons of garbage have been washed up on the shore of this State. To say they are

grossly exaggerated would be a misstatement. If I could quantify it using those particular numbers, 299,000 tons were wood, 1000 was what we refer to as garbage.

In the context of that, the only infectious waste that is classified as infectious that we have evidence of, are syringes. There is no other infectious waste that falls into that particular category that we found in our investigation that we have evidence that we can place in a court of law. I think it's important that you and the public understand the realities of that.

That does not mean that over the history of the shore the garbage that has washed up over a period of time did not contain infectious waste. The events from the 13th to the 15th -- the greater danger in this process and the greater volume was the wood, and it is being grossly overlooked and I don't think this Committee should overlook that. The size and type of wood that that is floating in and out of our shores on a regular basis, is a very, very significant danger to the health and safety of the people of this particular State. Both the media and everyone is putting that behind the scenes, almost as if it didn't exist. I find that from my conclusion in looking at the items that were in fact picked up as being far more dangerous to the health and safety of the people swimming in that water and using our beaches than the other materials that we did find.

Now, let me walk through this very quickly what materials we did find and what evidence we think we have, that I presented. Now, you should know that we began this investigation on or about the 14th or the 15th. It was on September the--

SENATOR PALLONE: Cary, I don't want to interrupt you, but again, we're focusing today on the consent agreement. I know you have to give some background information for that, but we do want to get into some questions, so if we could focus on

the agreement and what lead up to that and what is going to happen as a result of the agreement. We've had hearings and we are concerned about the wood issue and obviously that is important. We're probably going to have another hearing just dealing with the whole question of wood burning and the source of the wood, and all of that. So, I'm just trying to refocus back again.

ATTORNEY GENERAL EDWARDS: Yeah, I am focusing. What I am getting ready to described to you is very germane to the action that was taken in the consent agreement. If you don't know the character and the quality of the garbage and putting the wood aside-- If you don't know the character and the quality of the garbage, you can't identify where it came from. If you can't identify where it came from, you can't properly judge the agreement as to its effectiveness.

The garbage washed up-- The kind of garbage that we picked up on the shores of this State washed up from Delaware, Staten Island, and Coney Island. It was not just-- And I'm talking about the same general quality of garbage. So, when I talk about the types of things we're talking about here, they washed up on Coney Island, on Staten Island, the entire length of the beach of the State of New Jersey, and on the beaches in Delaware. I think that's important for you also. I'm only speaking of the garbage now, not the wood in that particular process.

The items that we found after the investigation by all kinds of agencies, Federal included -- with the assistance of the State of New York I might add from the very beginning -- we found such things as empty ice pop casings as we call them. We found hospital waste, non-infectious, and syringes which were infectious. We found crack vials by the thousands and thousands. A few of them -- crack vials. They are little vials that are a small piece of plastic with a rubber cork in the end of them which holds eight pieces of crack -- cocaine

derivative crack. Thousands of those particular items. Thousands of those ice pop casings.

We found empty plastic juice containers, some of them partially incinerated. We found deposit cans, aluminum cans, that have the New York, Vermont, Connecticut deposit markings on the top of it. We found various types of identifiable garbage. About 15 different prescription bottles, all that were traceable back to various addresses in the City of New York and in its environs.

We found a helium balloon released from New York to study various weather conditions. We found a balloon that was used at a party in Staten Island someplace. We then proceeded, after we found these various types of items, to see if we could find out where they came from. We went to various locations where garbage is handled in New York and is distributed. You will find these particular items prevalent on or in and around Brooklyn and Coney Island. The crack vials are there, but are not being sold commercially, but the orange juice containers, the ice pop cylinder holders which are called Konido Pops (phonetic spelling) as a phrase. We found in the waters in and around Coney Island on a regular basis and have testimony from various individuals, that this type of garbage in these quantities wash up on a regular basis in Coney Island.

We investigated the Southwest Brooklyn Incinerator; and that becomes an important point; as to the type of garbage that they handle, as to the type of garbage that winds up on the water in and around that facility, and from witnesses and from people that live in that area; and as to the type of garbage and how that incinerator facility is handled on a regular basis.

Each of the items that we described in this that we found in our investigation are found in and around that facility. There are a couple of other items. Hospital waste -- I'll refer to them as being one -- in which there is a

laundry tag from the New York City Hospital Corporation that are only distributed and disposed of at the Southwest Brooklyn Incinerator site, because they have an incinerator that does burn these particular items. The Southwest Brooklyn Incinerator, also being an incinerator, not only delivers more garbage in the landfill, but ash and partially burned items. Some of the cans and some of the orange containers were partially burned, which is an important component as to how we focused back in on the Southwest Brooklyn Incinerator.

There's specific garbage that would normally be picked up. Some of the prescription bottles that we found were disposed of at the homes of the people who those prescriptions were issued to. Their garbage is picked up and delivered to the Southwest Brooklyn Incinerator. So, we believe we have enough evidence to focus all identifiable garbage that we found in 30 days of that investigation, and all that was turned over to us that is identifiable. We have identifiers coming from New York, and we've identified it as being in the routine business of disposal, some of it being disposed of at the Southwest Brooklyn Incinerator.

Completing that particular process and being convinced at that point the Southwest Brooklyn Incinerator was one of the major focal points of the garbage that washed up on the beach during the event of the 13th to the 15th, I filed notice with the EPA that I'm required to do, under the Clean Water Act and RCRA, giving the City of New York and the EPA 60 days to take action with reference to the charges that we in fact were making, with the cause of the garbage component -- not the wood component -- that washed up on the beaches from the 13th to the 15th came from the Southwest Brooklyn Incinerator and other sources within New York that we have not yet specifically identified.

It's important to recognize that the items that floated up on the beach were all plastic oriented. Plastic

doesn't sink. Plastic can come from a number of sources. The crack vials and the syringes, particularly, can come from non-point pollution sources, which means they can come out of combined sewer overflows, storm sewage drainage where syringes that are used by IV drug users and various others are distributed, where crack vials are thrown away, and are washed out into the water. They do not sink. They will float, particularly the crack vials, until they hit some kind of land mass on an usual basis.

Having given that notice to New York, New York having been cooperative to that particular date in our investigations giving us access to the facilities, we continue to have discussions with New York about what to do about this particular problem in which they were denying any liability for it. They denied it after the announcement in receiving the notice on the 15th for the reasons that I described earlier. Whether or not they would agree not was not germane with reference to the liability issues.

The other event, moving simultaneously with this was the content hearing that was being scheduled for the Fresh Kills Landfill in the already existing Woodbridge suit which we were a part of. On October 26, before the 60-day period was up, and then I could file suit, or file actions with reference to this manner, Judge Barry, who had taken over the Woodbridge case from Judge Stern, issued a contempt citation against the City of New York for not having complied with Judge Stern's order; not a consent order, his order of 1983-84 to build the enclosed unloader; and found the continuing washing up of garbage onto the beach and the failure of New York to have complied with that order and the consequences to Woodbridge were reprehensible. And her statement is a part of the record.

What the judge did at that particular point was add a new dimension to the legal options that was available to me at the end of the 60-day period with references to the events of

the 13th to the 15th. My legal options at that point in time were to file a separate piece of litigation on the events of the 13th-to-the 15th and the way New York handled garbage from its marine transfer stations; not how it handles the Woodbridge landfill. We are not making a claim that the events of the August 13-15 are any way directly related to the operation of the landfill. So, those are two separate issues:

Do I bring the case under the original jurisdiction and the United States Supreme Court brings the State of New York in? Which I might do. Do I amend the Woodbridge case to include the items and the way New York handles its marine transfer station component of its garbage operation, because they are running the landfill? It is the same people. The barges that come out of the transfer stations go to that particular landfill. Should I join them together? Ultimately, my decision was to join the two cases together.

It is an option to focus the entire issue and not to have to go and re-invent the wheel from a legal standpoint or a factual standpoint of the history that existed on the Woodbridge case. The facts in the Woodbridge case were vital to the entire operation of the marine transfer station. And for reasons of proof and future proofs, it would be easier to bring that case in there. I told the City of New York that we were going to do that. To say that that didn't make them very happy was an understatement. They already had a judge that was angry with them. They had a record of non-performance already built dealing with how they handle their garbage, and this became another major load on their back with reference to that background before that court, which is exactly why I was choosing at that point to go that way.

Coming up to the end of the 60-day period, New York was under a significant amount of pressure to resolve the case. They were making overtures and continuing to be cooperative saying that, "We do not want to be blamed for

this. We did not want this to be a problem. If there's something we're doing that's wrong, we want to correct it."

~~and~~ The negotiations were comprehensive and intense. Hundreds and hundreds of hours was spent during that particular period trying to ascertain whether we could get to a threshold point where we might be able to agree. I might also add that in that particular litigation was the Interstate Sanitation Commissioner and GAG, which is a Staten Island environmental citizens group that was part of Woodbridge case.

Subsequently, SOS joined in that particular litigation at the same time that we concluded the consent agreement. Ultimately, all of the parties, Woodbridge included, joined in that particular consent order with the court. We had not completed our negotiations in that period leading up to November 16 when the 60-day period and the notice requirements were over. But we had arrived at a framework of an agreement that we thought was something we could build on. There were certain threshold agreements arrived at that allowed us, we believed, to enter into that agreement more profoundly. Those thresholds were--

We would not require that New York admit that they caused the events of the 13th to the 15th. We would not give up our rights to sue them on that particular issue, and to get any actions that come out of that particular litigation. Second, they would take immediate remedial action with reference to how they handled-- That we could define that they could take it immediately -- and be sure it would a consequence. They would take immediate remedial action before this summer coming up -- before another of our summer periods during the shore time would take place; namely action at the Southwest Brooklyn Incinerator where we were obviously able to identify a part of the cause of the 13th to 15th.

And secondly, they would enter into any and all necessary evaluations and take remedial action following those

evaluations for the items that we could not identify, e.g. the barges. How were we going to cover the barges? How high were the barges going to be loaded? Did they need to be covered? What kind of actions had to happen if the other seven marine transfer stations are operating in New York, because once garbage hits the water from anyplace, it eventually floats up and winds up on somebody's shore -- the plastics do. After that particular--

SENATOR PALLONE: Let me just ask you that you mentioned that there was the consent order outstanding about the enclosed unloading facility--

ATTORNEY GENERAL EDWARDS: There was an order of the court; not a consent order.

SENATOR PALLONE: There was an order that she had issued a contempt citation for. And that there were negotiations subsequent to that contempt citation. My problem is that when I read this consent order, the only thing I see about the enclosed unloading facility in there is the fact that I think two years from now, in 1990, it will be reviewed again to see whether it's necessary. Before you go on, I just want to know to what extent was the enclosed unloading facility part of these negotiations, because I always felt that this was the key to the eventual -- you know -- to resolving the problem first, and one of the main components. I mean, why is that only briefly mentioned? Wasn't that part of these negotiations?

ATTORNEY GENERAL EDWARDS: Yes. The negotiations included every single way, every item of procedures and vehicles or equipment used in the entire Staten Island landfill operation. There was no item left out, including the--

SENATOR PALLONE: But General, you haven't explained to us why that wasn't the focus and why this is being left for two years from now? That's what I want to know.

ATTORNEY GENERAL EDWARDS: It was the focus. I did not say it wasn't.

SENATOR PALLONE: Okay.

ATTORNEY GENERAL EDWARDS: I'm saying to you that how New York handles the unloading of those barges and the operation of that landfill from an unloading standpoint, was the focus of this litigation. What was not the focus of this litigation and is not a part of it, is the danger that the landfill poses in a much more profound way -- the leachate stability; only how they got the garbage out in the barges, to the landfill, out of the barges, and stored in that particular landfill.

SENATOR PALLONE: Okay, I guess you are going to get into it, but I just thought I would interrupt you. What I think, to me, is one of the most important things is, why would this contempt citation outstanding -- related to the barge unloading facility -- why when the final agreement came out, that's kind of left to the future and all these other remedial actions are put in instead? I mean, I don't see why those other actions, which I'm sure you're going to get into, deal with the situation effectively, or as effectively as the unloading facility would. That's what I don't see.

ATTORNEY GENERAL EDWARDS: The enclosed unloader, to be constructed and built will take two to four years. Woodbridge can't wait two to four years to stop the garbage washing up on the beach.

SENATOR PALLONE: Right, but in other words, as of October 1987 with the contempt citation outstanding, New York had done nothing since '83? Nothing at all?

ATTORNEY GENERAL EDWARDS: Nothing. On the unloading -- absolutely nothing.

SENATOR PALLONE: Well, weren't we in a position then because of their inaction, for the court, either through her order or through this consent agreement, to insist that certain actions be taken to build that facility?

ATTORNEY GENERAL EDWARDS: That's what we were doing.

SENATOR PALLONE: But I don't see it in here.

SENATOR GAGLIANO: Excuse me, Mr. Chairman. Mr. Attorney General, was there at any time a proposal that New York put up \$20 or \$25 million in escrow so that if the project did not go forward within a reasonable period of time, the court could order it to be done?

ATTORNEY GENERAL EDWARDS: Yeah, probably more profound than that. One of the things that was missing from the original order of the court were any sanctions being imposed on New York as to how it handled its garbage or what it did or didn't do. Now, there is a penalty for failure to perform any of the components -- an automatic \$85,000 per day -- per day -- sanction. Now you can do the multiplication of what that equals.

SENATOR GAGLIANO: Did they put up monies so that we could charge against those dollars?

ATTORNEY GENERAL EDWARDS: No, I don't think the City of New York has to--

SENATOR GAGLIANO: Well, then you have a penalty with a process which is subject to appeal and you know as well as I do as an attorney--

ATTORNEY GENERAL EDWARDS: Collecting the money, Senator-- New York is not bankrupt.

SENATOR GAGLIANO: --eighty-five thousand dollars a day is only good if you collect it. Pardon?

ATTORNEY GENERAL EDWARDS: New York is not bankrupt. The reason you put money on deposit is because money is not available. The money is available in New York. You would not have the automatic right to draw down.

SENATOR GAGLIANO: No, but it would take a process-- In order to get that \$85,000 a day, I presume you would have to issue certain papers saying to have the fine imposed. Once it's imposed, New York would say, "No, you can't impose it." Then the court would have to make a determination that is

subject to appeal, and they still wouldn't have to put up any money.

ATTORNEY GENERAL EDWARDS: Same thing with money on deposit.

SENATOR GAGLIANO: On, no, it's not quite the same, because the money is up, and it's much easier.

ATTORNEY GENERAL EDWARDS: It doesn't matter.

SENATOR GAGLIANO: No.

ATTORNEY GENERAL EDWARDS: Yes it is. Senator, the process to obtain payment of the money out of a deposited account held in escrow for performance is exactly the same process, and the same defenses are there.

SENATOR GAGLIANO: The process is the same, General, the process is the same. I agree with you. The difference is that we have not done anything that I know of in all these years to make it hurt for New York. And until we do, until they have to be concerned that we're going to make it hurt if they do not comply with what they should have done years and years ago, they are going to continue to skate by the issue. We knew in September, we knew prior to that, but I mean those of us on this Committee knew in September of 1986 how serious the things were. Then we go to the summer of '87 and we had this dual problem. We have Fresh Kills still a problem and then we have the dumping off our shores.

ATTORNEY GENERAL EDWARDS: Absolutely.

SENATOR GAGLIANO: Now we have a consent order. My concern, and of course I was part of the process-- My concern is that that consent order now, in effect, becomes a permit for New York to continue what they weren't permitted to do before, which they were really doing semi-illegally. Because we heard that testimony from the person in charge -- I forgot his name. The person in charge of the entire garbage process in New York City pointed out to us in September of '86 how they had closed down, at that point, just about every landfill, and that

everything was going to Fresh Kills.

And now, what we've done is really, give them another, I believe, ~~two, three, or four years~~ to continue to avoid the responsibility. That's why I said, was there any talk of making them put up 20 or \$25 million bucks so that it would hurt?

ATTORNEY GENERAL EDWARDS: Any belief that an enclosed unloader would solve the problem of Woodbridge-- The problem is not the construction of an enclosed-- The problem of the construction--

SENATOR GAGLIANO: Well, it's not just Woodbridge; it's the entire New Jersey shore, at least the north shore.

ATTORNEY GENERAL EDWARDS: Not in that litigation it wasn't.

SENATOR GAGLIANO: That was why we asked you to become involved because it does affect Sandy Hook and all the way around through Monmouth Beach, Sea Bright, and all the way down the shore, as far as we're concerned.

ATTORNEY GENERAL EDWARDS: The barging operation does, but the landfill operation doesn't.

SENATOR GAGLIANO: Oh, I think it does. I think it does, because I believe that the floatables that leave there, end up on Sandy Hook and on Monmouth County beaches. And I represent Monmouth County and I resent the floatables from Fresh Kills from being there continuously time and time again.

ATTORNEY GENERAL EDWARDS: Senator, the Arthur Kill and the New York Bay area, there's no question that there is an extension of those floatables that go out into that area. But we have no evidence to show that any significant amount of garbage comes out of the Arthur Kill landfill and winds up on the beaches from Sandy Hook to Cape May of the State. We do believe very strongly that the Southwest Brooklyn Incinerator and their barging operation at that particular location are a major cause of that. The problem of the Woodbridge case is we

were not in litigation with New York on the issue of garbage washing up on our beaches other than Woodbridge. It was a very narrow case, focused on that landfill as it impacted on Woodbridge. The enclosed unloader--

SENATOR GAGLIANO: But the--

ATTORNEY GENERAL EDWARDS: Please, Senator, you asked me a question--

SENATOR GAGLIANO: Go ahead.

ATTORNEY GENERAL EDWARDS: --as to why we didn't ask deposit money to be put up? Deposit money from a governmental entity is not something that is done, because the dollars are continually available if there is a judgment. In order to draw money down out of money in deposit, you still have to get an order of the court to do that. To get an order of the court, the money is available in New York just as quickly through an order, whether the money is on deposit or not.

Secondly, the ongoing fines of \$85,000 a day that mount up for performance are far more significant than putting up dollars to build an enclosed unloader that will not, in fact, be the solution to the problem. Our analysis, and you'll hear that when you hear the terms of the agreement, finds that that is not the primary cause of the garbage washing up, or will it be solved by this enclosed unloader. There are provisions and construction of equipment in this agreement, very specifically, that will prevent garbage from washing up on the beaches of Woodbridge.

SENATOR GAGLIANO: You are referring to the boom and things like that, I presume.

ATTORNEY GENERAL EDWARDS: Not just the boom. The boom, the super boom; there's a hydraulic crane that's going in. There are processes and procedures. Probably more importantly, there are plenty of procedures and ways to stop garbage from washing up. Does New York follow those procedures?

SENATOR GAGLIANO: Is that a rhetorical question?

ATTORNEY GENERAL EDWARDS: Yes, it is, and we'll answer that. The more important question is, what are we doing to guarantee that the procedures for the handling of garbage is done properly? It's not that the procedures aren't in place in many cases, it's that they are ignored. For example--

SENATOR GAGLIANO: That's exactly our problem. The procedures have been ignored.

ATTORNEY GENERAL EDWARDS: This agreement provides--

SENATOR GAGLIANO: Cary, let me just explain something to you of what I understand about the background. We're both frustrated, but let me just explain to you, when we heard the testimony, when we read the newspapers, we recognized that the Fresh Kills Landfill which has an ultimate height, Senator Weiss said, of in excess of 500 feet. I think it's something like 550 feet high when it's completed. That's the testimony I think we heard. What we're concerned about is that by the time we get around to forcing New York to do what they should have done in the first place, this landfill will be 500 and some feet high.

ATTORNEY GENERAL EDWARDS: Five hundred and ten.

SENATOR GAGLIANO: Whatever it is, 510, but it will have reached its maximum and we would not have forced them to carry out the requirements of court orders or just good common sense, or whatever.

ATTORNEY GENERAL EDWARDS: But that's not true. We will have it.

SENATOR GAGLIANO: We're talking here about a facility being built by 1990. I think I saw that here somewhere and we understood that the Fresh Kills Landfill could be all filled up by the early 1990s.

ATTORNEY GENERAL EDWARDS: No, it will take to the year 2000, Senator to get to 510 feet and beyond.

SENATOR GAGLIANO: Well, that I have never heard before. I thought this thing was--

ATTORNEY GENERAL EDWARDS: At the rate it's being filled, that's what the projections are.

SENATOR GAGLIANO: I was under the impression that the projections were the early 1990s.

ATTORNEY GENERAL EDWARDS: Senator, if I may make one more comment on the enclosed unloader. Presently at the Southwest Brooklyn Marine Incinerator, they have an enclosed loader and garbage gets into the water. I'm telling you that an enclosed unloader will not solve the problems of Woodbridge.

SENATOR PALLONE: General, this is what you are going to get into with us--

ATTORNEY GENERAL EDWARDS: That's exactly where I'm headed, sir.

SENATOR PALLONE: --because our impression is, based on the court order that was outstanding, was that the key components to deal with this problem of Fresh Kills were the enclosed unloader as far as the barges unloading; and that possibly the key factor, in terms of preventing garbage from falling off the barges on their way to unloading, was the covers. The absence of those two elements in any significant way as part of this consent order is a major source of concern.

So, you know, somebody is going to have to explain to us why these other requirements or mandates that are in here which seem to us -- or seem to me at least -- to be just cosmetic and kind of a rehash of the things that we've had before, are superior or better than the enclosed unloader or the barge covers? Because my impression from reading this is that these measures, are temporary measures and that further down the road we're going to get to the enclosed unloader and into the barge covers.

Now, you seem to be saying, "No, maybe we don't need the enclosed unloader at all." That's something new.

ATTORNEY GENERAL EDWARDS: The enclosed unloader, Senator-- If I were to have walked out of there, out of that

courtroom, and got an enclosed unloader built at the earliest it could be built and put \$100 million in escrow, whatever amount you want to, whatever guarantees are necessary to have it be built, it would not be built till after 1990 or 1992 just based on the Army Corps of Engineers. So, nothing--

SENATOR PALLONE: Okay, but the problem--

ATTORNEY GENERAL EDWARDS: Wait a minute. This is important. Nothing would be done to modify how and what garbage washed up on Woodbridge. If I walked out of that courtroom with that order to do what was ordered in 1984, the garbage would be washing up on that beach. And when the enclosed unloader was built, garbage would still be washing up on the beaches of New York (sic). There has to be a recognition by this Committee as to what processes caused the garbage to wash up on the beach. The enclosed unloader is and should be a part of that because it helps, but it does not solve the problem.

SENATOR PALLONE: All right, but the only problem is that from reading this -- and hopefully you're going to get into this -- from reading this, you get the impression that the only thing that's in the consent agreement is that in 1990 there's going to be a report about the enclosed unloader on whether it's to be built. No steps are taken between now and then to deal with that issue. You'll get into that.

ATTORNEY GENERAL EDWARDS: We're moving right into that now as I indicated to you. We completed that process of entering into what is a final consent order, agreed to by all of the plaintiffs in that case, the Interstate Sanitation Commission, the City of Woodbridge, SOS, and GAG. At the end of that hearing and during that last two weeks of that particular hearing process, I notified the City of New York that we were still investigating and were going to continue to investigate the stability and leachate that comes out of that landfill.

The problem as we see it in the continued operation reliance by New York on that landfill to the year 2010 or thereabouts, ~~is not something that on its face is acceptable to~~ the State of New Jersey and to the people of this State. And I would be bringing subsequent actions which is not included in any of the legal actions that are there now, to deal with that.

We are continuing, and that's the point I wanted to wind up as I have Debbie Poritz go through and explain each of the details of the agreement so that you'll understand. It is important that you recognize that New York is on notice about, and we will be pursuing, the environmental impact of that landfill. We do not believe it can be allowed to grow to 510 feet nor do we agree that one to two million gallons a day of leachate coming out of that landfill is an acceptable alternative, and New York must come up with either an absolutely environmentally clean way to run that landfill, or close it.

SENATOR PALLONE: Now what about the-- I guess about a month ago there were newspaper accounts of the fact that the EPA was doing tests to verify whether or not the leachate was going into the Arthur Kill. And I think you said at the time that subsequent to those analyses that you would begin the suit with regard to the leachate if that's what was shown.

ATTORNEY GENERAL EDWARDS: The EPA is doing an analysis. I was not waiting for EPA's analysis to happen. We're relying on our own. Chris Daggett of the EPA has indicated that he is doing some test samplings of that leachate. EPA's actions are based on potential clean water justification under the Clean Water Act. We're looking beyond that as to options. Commissioner Dewling and the Department are assisting us in developing what is the prima facie evidence that we can present to a court so that initial action can happen.

First we're going to present it to New York and file our appropriate notices with them.

SENATOR PALLONE: But is that timetable-- I mean, my recollection was that we were talking that this is going to be a few weeks that we were going to get the analysis. Is it going to be long-term?

ATTORNEY GENERAL EDWARDS: We're very close. One of my problems, Senator, that I can't really deal with in an open forum like this is the strategies as to how I will pursue that particular matter. I can't go through those with you. Rest assured that we are taking every single available action to develop the prima facie proof necessary to make that landfill environmentally sound, or to close it.

SENATOR PALLONE: You also mentioned the fact that the landfill now doesn't have a permit. Is that still true? It's not permitted?

ATTORNEY GENERAL EDWARDS: Yes, that's true. It does not have a permit. It's operating under a consent agreement with the Department of Conservation in New York as opposed to a permit -- an ongoing consent agreement as to how it will operate. As matter of fact, it's operating under a ten-year consent agreement that the Department of Environmental Conservation in New York has asked and is dealing with the City of New York on.

SENATOR PALLONE: And what about the State of New Jersey and the Federal government? Can't we get involved in the fact that they--

ATTORNEY GENERAL EDWARDS: That's exactly what we're pursuing.

SENATOR PALLONE: That's the next step.

ATTORNEY GENERAL EDWARDS: That's exactly what we're pursuing with reference to the entire operations of that landfill and its environmental consequences both to Staten Island, Woodbridge, the Arthur Kill, and to this entire region.

We are interested, obviously, in New Jersey and the quality of water in the Arthur Kill. It's a very, very complex set of legal issues because you are dealing with two separate independent governmental entities: One, the State of New York; and two: the City of New York, in which your jurisdiction, rights of actions, and claims, and how they go about their permitting process are different. I will say no--

SENATOR PALLONE: But, I mean, we can definitely anticipate, then, that we are going to see some court actions with regard to the leachate problem and the fact that the landfill, in terms of the size and what's happening to it, is not permitted--

ATTORNEY GENERAL EDWARDS: Yes. I have said clearly that we will take action. That action will be to either make that landfill environmentally sound or close it -- one of the two.

At this point, Senator, I would like to defer to the Director of the Division of Law, Debbie Poritz, who can go through a chronology and a point by point discussion with you about what is contained in the consent agreement and why it is there. If you bear with her, I think a number of your questions will be answered.

SENATOR PALLONE: All right. We'll bear with her, but I just want you to know that the main concern, at least for me and I want to articulate it, is why are these remedial actions an improvement over what we've had in the past? Because the feeling is out there that we're talking about another boom and another fence and that we're really not talking about any improvement over the past. And also, why these things are being realized or being mandated in lieu of the enclosed unloading facility and how this fits into this whole process, because I'm still not convinced that the enclosed unloading facility isn't a necessity, and I guess you're not either, at this point.

DEBORAH PORITZ, ESQ.: Let me start by saying that as far as the enclosed unloader is concerned, as the Attorney General pointed out, we made an evaluation based on the time it would take to get an Army Corps permit and then the time it would take to actually construct the facility, that we were talking about a facility that was years away. We wanted to attempt to get immediate relief, and in the process to see if there were hardware solutions that could be implemented by way of immediate relief that could indeed substitute for and be as effective as an enclosed unloader.

We also recognized that the marine transfer stations are, in fact, enclosed unloaders, as the Attorney General pointed out, and that a good deal of garbage was escaping from, at the very least the Southwest Brooklyn Incinerator and Transfer Station. So, having an enclosed unloader wasn't necessarily the be all and end all, or the best solution. My understanding of how the enclosed unloader came to be required was that New York had intended to use that facility as an unloading facility at the landfill without any concept that it would be a facility to control litter, but rather it would be used as an unloader at the landfill. It was not designed to control litter as were the enclosed loading facilities at the marine transfer stations. They were not designed to control litter.

So, we had to examine other immediate possibilities, procedures, and hardware that could be implemented that could control this situation.

SENATOR PALLONE: I have to interrupt you one second, because the two Senators have to go to a bill signing with the Governor and they are going to come back briefly. Senator Weiss just wanted to ask one question before that.

SENATOR WEISS: General, I'm going to have to leave for a few minutes and by the time I get back you may be gone.

ATTORNEY GENERAL EDWARDS: I will miss you, Senator.

SENATOR WEISS: I'm very happy about that -- that someone will miss me. (laughter) Okay. That's a two-way street. Just tell me, Cary, this sounds great -- about the booms and everything else that they are going to put in and 510 feet of height in the final analysis of this thing and they can't contain what they already have -- rather what they have now -- which is a lot lower. But the question is, what are you going to do? What are you proposing to do? What are you doing to enforce the current situation so that the garbage from over there, the needles, the hazardous waste, or whatever it is comes up on our shore? What do you do to handle that in the immediate future and right now?

ATTORNEY GENERAL EDWARDS: Not as dramatic, Senator, as the construction of the unloader, the putting in of a boom, or a skimmer boat or a process, or a mechanical device, is that there are procedures that exist and ways to handle garbage being unloaded off barges and loaded into landfills that do not cause that garbage to land in the water.

New York has never really put together and followed the procedures that are in place. To me the most important item in that agreement are three components. One, the establishment of a water quality marine police operation in New York on a 24-hour-a-day monitor from their perspective, compliant with all of the procedures in place. Can I give you an example? Maybe you'll understand what I'm talking about.

SENATOR WEISS: You can give me anything that you want.

ATTORNEY GENERAL EDWARDS: They have the broom that goes across the water. A barge comes in and they remove that broom by a little tugboat. It comes out and lifts the broom and moves it back. And they hook it up. A barge comes in and that broom stays open for three hours and they don't come back and close it. It's very simple. All they have to do is come back and close that, and the garbage doesn't wash out as the tides go in and out. That's just one example and there are hundreds of things like that that aren't being done at the landfill that would prevent the garbage from coming out.

So, New York has a water quality maintenance operation, a marine police operation they are putting in. We have an independent monitor appointed by the court to monitor compliance on a 24-hour basis, reporting back to the court and New Jersey, and the DEP has absolutely open access and manpower to be on site at each one of the facilities to guarantee that whatever we asked them to do are, in fact, being done in that process.

Their failure to do those items begins to build on a per day penalty in addition to the court being able to go back in immediately without a whole lot of additional proof for compliance. So, we have for the first time a State of New Jersey manpower operation there, an independent court controlled monitor that's on the scene and New York putting its own Water Quality Monitoring Team on the scene for whatever is contained in this agreement to guarantee that it will be done.

SENATOR WEISS: Have there been any violations at that time since the court order was in about the broom being open for three hours with the garbage coming out?

ATTORNEY GENERAL EDWARDS: There was a time-- Director Poritz is going into the time line of when various things have to be completed.

SENATOR WEISS: Have we made any complaints about it?

ATTORNEY GENERAL EDWARDS: The time lines have not been violated as of yet, Senator. There was interim -- the time lines-- I didn't say there wasn't garbage washing up. Nobody claimed that they were going to be able to put something in place the day after the agreement was put in. But there are time lines here that can guarantee that violations are in fact noted. Yes.

SENATOR WEISS: Could you tell me when the first-- Is it Debbie that has that information?

ATTORNEY GENERAL EDWARDS: That's what she is going to go through. That's exactly what she's going to walk through.

SENATOR WEISS: I now have to leave for a few minutes. Will somebody take notes?

ATTORNEY GENERAL EDWARDS: Senator, we have a written chronology of things that I'll be all so happy to leave with you.

SENATOR WEISS: I'm very curious about it, because I went by that beach the other day and I could see material that wasn't there a day or two before. You know, I only live about a half a mile from that dump, and having lived around landfills all my life, I'm a little touchy about these things.

ATTORNEY GENERAL EDWARDS: You're absolutely right, Senator. We're not claiming that they have installed nor put in all of the procedures, but there are time lines that lead up just prior to this summer's operation when all of those components will be in place.

And there will be things-- There's even monitoring done by independent people that are coming out. There are special cleanups that have to take place both at PSE&G and Woodbridge sites so that we can measure each and every day how much garbage washes up and from where. So that is part of this whole process.

SENATOR WEISS: But in the meantime, I could rest easily at night knowing that the New Jersey is out there enforcing the--

ATTORNEY GENERAL EDWARDS: Well, as the Senator in this State and representing that area, I would never rest easy, Senator.

SENATOR WEISS: I understand that.

SENATOR GAGLIANO: Mr. Chairman?

SENATOR PALLONE: Yes.

SENATOR GAGLIANO: When you're finished, Senator Weiss, I have one question.

SENATOR WEISS: Well, do you want to ask it? I'll be back. I think you have to go also.

SENATOR GAGLIANO: Okay. I'm going to go with you. My one question, and I don't know, Cary, whether it can be answered at this time and whether or not it's part of the process, but is there anything that we've done which would assist you and the law enforcement agencies involved in knowing whether or not a barge or barges with materials slip by and go to sea, as opposed to stopping off and unloading at the landfill? Is there a manifest system required which would say, for example, they pick up the Brooklyn Southwest Terminal and I believe these barges hold--

ATTORNEY GENERAL EDWARDS: Yes, Senator, there are records with reference to every barge that leaves.

SENATOR GAGLIANO: Okay. These barges hold approximately 600 tons. Whether or not that barge number B7 gets to Fresh Kills and is unloaded, a notation is made that it went from Southwest Terminal with 600 tons on it and was unloaded with 600 tons at the terminal. Is that all part of this process?

ATTORNEY GENERAL EDWARDS: Yes, there is a process by which the barge is tracked from any one of the eight marine transfer stations to the landfill.

SENATOR GAGLIANO: So, all barges will be tracked?

ATTORNEY GENERAL EDWARDS: Yes. Our problem is, Senator, and this is part of the Governor's 14 point program, I need a marine police station in the Newark Bay and marine police operations there -- that I need this Legislature to act on it or I won't have them there for the summer and I can't make the representation the Senator just asked me, that I can guarantee that there aren't other facilities or things going on without the manpower to do it.

SENATOR GAGLIANO: Well, manpower is one thing to have people at sea, I agree.

ATTORNEY GENERAL EDWARDS: No, this isn't people at sea. This is marine police patrolling the Newark Bay area,

monitoring barge operations, and doing law enforcement undercover operations. That's very important.

SENATOR GAGLIANO: Okay, people on the water. What I'm trying to find out is whether or not we can have people check the paperwork so that there is some kind of a manifest system.

ATTORNEY GENERAL EDWARDS: Absolutely. We are. That's exactly what I was explaining. Absolutely. We're checking, the independent monitoring court appointee is checking, the water quality monitoring operation for the State of New York is checking it, and so, we have three checks going on to be sure that that's happening. Yes.

COMMISSIONER RICHARD T. DEWLING: Senator, we have access for the first time to all of the facilities without going 24-hours-a-day which we never had before.

SENATOR WEISS: Is that the new marine police station unit that you're talking about up in Newark that comes down from Lake Hopatcong at this point?

ATTORNEY GENERAL EDWARDS: Yeah. We're going to take it out of Lake Hopatcong, pack it up, and move it to Newark Bay.

SENATOR WEISS: And move it to Woodbridge?

ATTORNEY GENERAL EDWARDS: Yes.

SENATOR WEISS: Maybe we'll have some on site monitoring at that point.

ATTORNEY GENERAL EDWARDS: Well, that's one of the items in the marine police operation. You, more than anyone, are aware of the marine police operations, the master plan, and where we are going with it. That Newark Bay station becomes critical.

SENATOR WEISS: I can understand our people monitoring that -- the marine police. In due respect to New York and all of that good stuff that goes with it, I would look askance if there are reports on the quality--

ATTORNEY GENERAL EDWARDS: So do we.

SENATOR WEISS: Okay.

ATTORNEY GENERAL EDWARDS: That's why we have Commissioner Dewling there to do it. We also have an independent court monitor on site -- one appointed by the court, not hired by New York.

SENATOR WEISS: Well, that's the problem. We have too many people who are independent. We ought to have someone who is responsible to us. Is that Richard Dewling?

COMMISSIONER DEWLING: Yes. He's behind me, Senator, way behind. No. We have the ability to get access to the sites and I've just gone out for the capability of having aerial, as well as boat surveillance. The question here is, can it make a difference? Last year as an example with the burn barges-- The year before that we were getting a lot of charred wood on the beaches, last year I took the position that we would not allow these burn barges to go out unsupervised. We basically were there on over 95% of the burns. We have not in the past year seen the amount of burnt wood on the beaches. That's not by my figures, Senator. It's by a lot of other folk's observation that we had before. Enforcement is needed and without the enforcement, you're right, there can be problems.

ATTORNEY GENERAL EDWARDS: It's very important, and I've said to you before Senator, the most important thing in this agreement is our ability to monitor and police this ourselves. The fact that New York is going to do their own policing is fine, the fact that there is even going to be an independent monitor appointed by the court to do that, is that much better. We have the ability in this agreement and the right to have anybody to monitor anything we want, as much manpower as this State wants to put into guaranteeing those items we have the ability to do. And no access--

SENATOR WEISS: We could do that before too, couldn't we?

ATTORNEY GENERAL EDWARDS: No we couldn't. We didn't have access.

SENATOR WEISS: If it was our own people, we could hire them and put them out there and tell them to monitor the water.

ATTORNEY GENERAL EDWARDS: We could not. We did not have access to their book records; we couldn't stand on the site. We couldn't check each and every item in their procedures manual to see if they were doing it, to see if they, in fact, did it; to see what the Senator asked, whether barge B7 was leaving the Southwest Brooklyn Incinerator and arriving in due time at the Staten Island landfill. No, we did not have the ability to do that. This court order gives us the ability to do that.

SENATOR PALLONE: General, we have to-- Because I know we are going to proceed with-- But one of the questions that came up also is the status of these different independent monitors? There are several different groups. There's an independent monitor, an independent consultant, and--

ATTORNEY GENERAL EDWARDS: A court master.

SENATOR PALLONE: You are going to have to distinguish these for us and also tell us whether these people have been appointed pursuant to the deadlines and who they are? We'd like to know that -- their names, specifically.

SENATOR GAGLIANO: Could we have their names -- the names of the individuals or their firms and exactly what position they have been appointed to?

ATTORNEY GENERAL EDWARDS: There's a chronology.

MS. PORITZ: Yes. You have a chronology that has been distributed. The only individual in place at this point, and that's because New York has to go through a RFP procedure the way we do here in New Jersey-- So, in order to get an

independent monitor in place right away, we had to break that function up into two pieces. And they are going ahead with a RFP for an ~~interim monitor on a long-term basis~~, but we have a independent monitor on a long-term basis. We have an interim independent monitor in place immediately. If you look at your chronology, that's under December 21. Ralph Andretta of Ernst & Whinney was selected. Ernst & Whinney has a group that's doing environmental compliance work and has the background -- I've seen the resumes of various people that work in that group. Mr. Andretta is in charge of that group, and that group is immediately in place doing monitoring and submitting reports.

There will be, we've already seen, draft proposals. There have already been meetings with bidders conference, in effect. And I believe Ernst & Whinney is one of the firms that demonstrated an interest in a long-term contract, but there are many others. So, I cannot tell you right now, which firms will come in as low bidders or as overall evaluation including the cost as the best choice.

SENATOR GAGLIANO: How long does the RFP process take place? How long does it take before we can have one in place?

ATTORNEY GENERAL EDWARDS: We have one. It's just a question of replacing the interim.

SENATOR GAGLIANO: I know we have an interim. We have Ralph Andretta. How long will New York run through their RFP procedure and appoint a semi-permanent person?

MS. PORITZ: Again, if you look at your chronology, you'll see that the RFPs for the independent monitor -- January 5 -- were already submitted to us. We've already had a major meeting with the plaintiffs in New York City discussing the scope and the content of the RFPs. Meetings have already been held with potential bidders. Commissioner Dewling has staff people who attend those meetings. So, we have had a presence at every single one of the bidders' conferences to see what's been discussed and what potential problems there are.

SENATOR GAGLIANO: Well, you see, my concern, General -- and I'm sure that everybody on this Committee shares this concern because we've been through this so many times -- the people in New York that run the sanitation program, in my opinion at least, are professionals at delay. And running through a RFP process could take a month, in my opinion, or it could take a year. That's what my concern is; that they would take the year if they could. Because, all the testimony we got with respect to what New York was obliged to do or thought they were obliged to do was just fraught with delays; maybe not on purpose, but they come out that way. The delay process takes an awful long time.

MS. PORITZ: The independent monitor must be in place by March 1 under the consent order. If the independent monitor is not in place by that time, the penalties start kicking in and at a certain point in time we're going to have \$85,000 per day penalties if that monitor is not in place by then. So, we have firm dates built into the consent order, regardless of the RFP procedures.

Now, if there are problems that are beyond the control of anybody -- there is always an issue to that -- that can be taken to court or can be taken to the court appointed arbiter. We built that into the consent agreement also. But barring that, if New York, as you suggest, intentionally delays or drags its feet, then New York will be in trouble.

ATTORNEY GENERAL EDWARDS: And there isn't an independent monitor on the scene now. That's why we went to an interim one quickly. The RFP process is to be sure that they check the right thing. We want it put into that. We want it timed to be sure we were checking all the right things, Senator, which is why the March date was set up. That was at our request so that we were sure we had reviewed all of their protocols and procedures; that we put that down so the monitor had to check all of that. We believe that's important.

It's also important to know that a special master is being appointed to resolve and deal with all disputes to help avoid all of those legal maneuvers that can take place. That's why the master was put in so that we don't get into these big factual arguments. The master does that quickly, submits it to the court, and the court decides it, if there is a dispute as to if action should be taken that's not within our ability to foresee.

So, we've done what we think is the best we can in this agreement to guarantee there's immediate action taken. Remember, our option is to force the building of that unloader which would take two to four years and nothing else would happen. We would be in litigation for two to four years and nothing would happen along our shore. Remember that that is the option that we are looking for versus what we are able to get here, and to walk away with what we think is best. No action for two to four years versus what is contained in this particular agreement and what that means to the people of Woodbridge and what it means to the people all along the shore of this State.

SENATOR PALLONE: But General, doesn't the consent order on its face basically say that because there is now a new consent order, the previous order requiring the unloading facility to be built is no longer in effect? So, therefore, there's no longer a requirement to build the facility.

ATTORNEY GENERAL EDWARDS: That's correct, except as contained in this agreement. This agreement deals with the enclosed unloader. I told you earlier that if anybody wants to stand up and give testimony that the enclosed unloader would stop garbage from washing up on Woodbridge, I want to hear it.

SENATOR PALLONE: Well, my only concern, though, was, pursuant to the new agreement, there is no longer a requirement for New York to build the unloader.

ATTORNEY GENERAL EDWARDS: Yes there is a requirement for them to build the unloader.

SENATOR PALLONE: I don't see that, but maybe you will get into it, because from what I can see, there is no longer a requirement. That's been waived and it's going to be looked at in the future. But let's proceed and the two of you will be back.

SENATOR WEISS: We'll be back. (Senators Weiss and Gagliano leave)

SENATOR PALLONE: Okay.

MS. PORITZ: I'm going to go through this fairly carefully in order to give you a comprehensive picture of what's here, because I think that's important. I will be repeating some of the things that have been focused on, that are particularly important and that the Attorney General has mentioned to you, and I'll try to skim over those more quickly. We've just discussed the independent monitor in some detail. Let me first tell you that conceptually this agreement is broken up into a Fresh Kills section and a marine transfer station section, and that various pieces of it are repetitive.

I will begin with the Fresh Kills section. We've discussed the independent monitor and I've indicated to you that we have the interim monitor in place, Ralph Andretta of Ernst & Whinney, and that we expect to have the permanent independent monitor by March 1. It's important that you understand that this monitor will be reporting to all of the parties in this consent agreement twice a month, and that this monitor will be expected to do continual monitoring and inspection, and review of books and records, and to be filing exception reports with us as well as with New York City where there is not compliance with the procedures and to be making suggestions and recommendations along the way.

If the monitor sees that there are problems that can be corrected or even if there are problems, that monitor will

let us know what they are. We will be getting a comprehensive report from the monitor on October 1, 1988, so that we can have an overview and picture of what's taken place from now up through this summer season until October. New York is also hiring an independent consultant.

SENATOR PALLONE: Why is it that the agreement says that after October 1988, they are going to reevaluate the need for the monitors? Is it possible we won't have the monitor after that? It would seem to me that that would be something you'd want to keep indefinitely.

MS. PORITZ: Absolutely, and we may well decide that. This agreement calls-- It has a structure. It calls for meetings between the parties at certain decision making points -- at certain evaluation points. We have to see what the independent monitor comes up with, what kinds of suggestion, how well that system is working, whether we want to expand it.

When we get to the marine transfer station section, you'll see that there's going to be consideration of expanding whatever is done at Southwest Brooklyn to all of the marine transfer stations.

SENATOR PALLONE: Would you have the authority though to say that you want it to be continued after October?

MS. PORITZ: Yes, we certainly would.

ATTORNEY GENERAL EDWARDS: Yes.

SENATOR PALLONE: Because that would be a matter of a dispute.

MS. PORITZ: That would be a matter of a dispute. If New York City did not agree with us and believed that there was firm ground for not continuing this, that they were absolutely clean and that there was no need for further inspection, they could try to convince the court appointed master, who would hold a hearing on that issue, and ultimately Judge Barry would determine the issue.

We believe that if we get reports from independent consultants on these issues, and those reports make recommendations as to what can be done at these facilities or the need for continual inspections, that we will have little difficulty in either persuading New York in the first instance to voluntarily continue with this, or to persuade the special master in the dispute resolution process that this is necessary.

One of the things we're going to be getting out of this is documentation that we need to be able to make the next set of decisions and to be able to convince the appropriate people that these decisions need to be enforced. That's going to come out of this agreement. That will be paid for by New York. That's very important to us.

The independent consultant was seen in large measure as an adviser to New York. The independent would make long proposals for long-term options to New York for operations of its marine transfer stations, for evaluation of the measures under the consent order, and to design enhancements to the present system and alternate measures to prevent the discharge of solid waste into the water. The independent consultant will submit written reports to all of the parties. We will therefore be able to review any recommendations made by the consultant, and to take issue with them if we wish to.

SENATOR PALLONE: You're going to tell us if that person has been appointed.

MS. PORITZ: That person has not yet been appointed. The RFP procedure is under way. Commissioner Dewling's staff has reviewed the proposals. The attorneys in our office have reviewed the proposals. There's been, as I've said, a bidders' conference and that is moving along.

SENATOR PALLONE: But New York appoints that person?

MS. PORITZ: The way this whole system works is that ultimately New York has to go through its bidding procedures.

ATTORNEY GENERAL EDWARDS: They have to pay for it.

MS. PORITZ: Yeah. They have to pay for it. We've reviewed the firms that have been listed with New York. And at a meeting that we had in New York just a week or so ago, we required that certain firms be deleted from the list because they did too much business with New York City and we felt that it would be inappropriate that they be on the list. We required that other firms be deleted from the list for a variety of reasons relating to expertise and so on. Commissioner Dewling had technical people with us so that we could make those recommendations.

Once that list is paired down so that all of the plaintiffs feel comfortable with the firms on that list, that they do not do business with New York in large measures, or are related to any of these facilities, etc., that they have the requisite expertise, then the normal bidding process takes place. At the same time, however, we reviewed the scope of work that these consultants would be doing, and suggestions that we made and that we required to be made were incorporated into that RFP and are being added to the RFP. Even as we talk now, we've made additional suggestions.

So, that's the process that was developed. Ultimately, yes, through the bidding procedure, New York chooses the consultant, but only after that process has taken place.

SENATOR PALLONE: Is there a deadline for the consultant to be appointed also? I didn't see that in there. I don't see it in the agreement itself.

MS. PORITZ: The independent consultant has to submit certain reports to us by a certain time. But we did not require it since that consultant was going to be advising New York on long-term options, except that we wanted to be in the process, to make sure that the consultant was truly independent in terms of its evaluation. It, nonetheless, is working for New York and is -- if I can describe this to you -- less

independent in that sense than the monitor. The monitor has to get back to us and tell us exactly what's happening. The consultant is there to advise New York. So, there are degrees of independence. You asked that question before, I think, about the relationship.

SENATOR PALLONE: Yeah, what is the distinction between the two? One is long-term and one is more of a monitor.

MS. PORITZ: Well, the monitor has to be truly independent in the sense, I think, you are thinking of; that we want to get objective information from an independent source about what's going on at the landfill and recommendations about those procedures. The consultant, with input from us on the hiring of that consultant, the consultant works directly for New York. The consultant's reports will be made to us as well so that we will be able to see what the consultant is proposing. But the consultant is working for New York.

We felt it was important that New York's long-term options be evaluated at the same time that we were going ahead with the procedures and the hardware that's in the consent order. So that eventually, if these procedures and hardware needed modification or improvement or change or additions, there would be that consultant out there doing the work and would be ready with reports with that.

SENATOR PALLONE: Okay. You're going to get into the Water Quality Team?

MS. PORITZ: Yes I am. I wanted to say a word about procedures. The Attorney General mentioned that. We believe that to a substantial degree, waste is getting into the water because New York isn't even following the procedures they have in place now. Now we called for a review of the procedures we have in place now and for the plaintiffs to have input and a substantial degree of, I'm going to have to say input, I can't say control, but review of those procedures to make sure that they are adequate. But in the meantime, we believe that if the

procedures that are being followed were followed properly, a lot less waste would get into the water.

SENATOR PALLONE: Have you gotten-- It says in here that you were to receive written operating procedures. Those have been received so far?

MS. PORITZ: Yes, they have been.

SENATOR PALLONE: Were there any written procedures prior to this time?

MS. PORITZ: Yes, there are procedures. And indeed, if they followed those procedures -- they are rather strict -- if they followed those procedures, as I just said to you, we believe conditions would improve dramatically. Mooring the barges, for example, tying the barges close to the shore, to the bulkheading, would prevent waste from getting into the water between the barges and the bulkheading. But of course with the tides going up and down, there are problems. You have to tighten the barges continually. There are procedures that can be followed that may take time and that may make unloading a little bit more complicated. But if they were followed, it would very quickly alleviate some of the problems. I'm not saying all of the problem, but some of the problems of the landfill. In addition, we're looking at those procedures.

SENATOR PALLONE: Okay.

MS. PORITZ: But, let me just add-- We have had everything under the consent that was required to be submitted to us up to now has either been submitted on time or ahead of time. There has been no item that has been submitted late.

SENATOR PALLONE: All right. Tell us a little about this Water Quality Compliance Monitoring Team and the role of that.

MS. PORITZ: The Water Quality Compliance Monitoring Team is a team established by New York City. That team is outside the normal chain of command in the Department of Sanitation. So, that these people will not report directly to

the supervisor who is the head of the landfill or through the chain of command at the landfill.

These people report directly to the Commissioner's office -- the Commissioner of Sanitation in New York City. These people -- and I think this extremely important -- these people have the authority to order immediate compliance with the operating procedures in effect at the landfill to delay the unloading of the barges and to interrupt the operation at Fresh Kills if they believe it's necessary. They have to keep records and details of what they are observing and why they ordered an interruption of operations or the delay in the unloading of barges or why they didn't make such orders. We will be able to review those books. They are to maintain books and records that are to be submitted to the plaintiffs and the independent monitor, semimonthly.

SENATOR PALLONE: But again, this is a New York group hired by the City and reporting to the Commissioner in New York, and no offense to Mr. Langelle, because we keep mentioning to New York here, but, you know, how do we know what they are doing other than a written record?

MS. PORITZ: We have unlimited access to the Fresh Kills Landfill. Commissioner Dewling has staff that will be inspecting the landfill on a regular basis -- twice a week or more as necessary. But at the same time, I think we don't want to be in the business of maintaining a presence at this landfill day after day, week after week, month after month. If New York can put a system in place that we can observe-- Now we will be observing both the landfill and the system. If that system works, if these people who report directly to the Commissioner's office are indeed responsible-- And my understanding is, and New York in this sense is ahead of schedule also, they have chosen the members of the Water Quality Management Team.

Those people are from the supervisory staff of the Department of Sanitation. They are individuals who have had authority and are used to exercising authority. They are undergoing training and have been in training till now. We have that information in your chronology. We added that kind of information where we thought it would be of interest to you. If these do their job and if the hardware and the procedures we put in work, then eventually we hope that New Jersey would get out of the daily inspections business of the Fresh Kills Landfill. That's one hope that we might have. But we will be there. We will be a constant presence at the landfill. That's important. And we will be looking at this Water Quality Management Team as well as at the landfill itself.

ATTORNEY GENERAL EDWARDS: We didn't just want to put up our own team to go and have to worry about inspecting their landfills forever. That makes no sense. It makes no sense for us to be paying people to do that forever. We want to be sure they have a process in place that guarantees it and we can guarantee it on a short-term basis and then the monitor, on the long-term, will be sure that they comply.

So, one might say, who cares what they put together? They don't do what they are supposed to do anything/ But we think they can and they will. We see a desire on their part to do that. We want to them guarantee it because of the track record and that's what the Commissioner and his staff is here to do. To do it any other way would be foolish on our part. If we were to accept the responsibility, that would be foolish.

MS. PORITZ: I'm not here to defend New York, and I would say to you that if these procedures don't work and we're in a position two years down the line to feel that there is still significant litter escaping from that landfill off the marine transfer operations, I might come to the Attorney General and recommend that rather than an enclosed unloader, that will take a long period of time, we consider attempting to

get that landfill phased out of operation. That's something that we could consider down the line.

But I have to also say at the same time that I'm saying to you that I'm not here to defend New York, they have met every date so far, they have been ahead of schedule, and I have seen in the individuals that I have been dealing with a sense of responsibility and urgency on this. Their track record is terrible.

The only thing I can say to you is perhaps the unfortunate events on the beaches of New Jersey this past summer and the fact that New Jersey had indicated its strength, its willingness to make sure that this doesn't happen again, is bringing New York around to take this seriously. Corporation Counsel's office has appointed one of their senior attorney to handle this. There are lots of signs; upper level people getting involved in this. They are as intent on trying to make this work as we are. If it doesn't, they know that we're going to be looking for major changes.

COMMISSIONER DEWLING: We're also committed to spend \$15 to \$20 million. The things in this agreement will cost them, you know, over the next 18 months \$15 to \$20 million which is not chicken feed in that process.

SENATOR PALLONE: Okay. And you are going to get into these thing now I hope.

MS. PORITZ: Yes I am.

SENATOR PALLONE: Okay.

MS. PORITZ: We have discussed at great length and worked with Commissioner Dewling's experts and people in New York at discussing ways of controlling the litter in the transfer from the barges to the shore. We have a variety of hardware that's being proposed.

SENATOR PALLONE: Just so that I understand because we perceive-- I say we -- I think the members of the Committee; there's only one here now, but -- perceive the problems twofold

which is the barges on their way, material flying off or falling off, and then material falling off during the unloading process. ~~And I have to bring up at the same time that I'm~~
COMMISSIONER DEWLING: Don't forget the loading process.

SENATOR PALLONE: And the loading process, sure, as well.

COMMISSIONER DEWLING: The loading process is maybe a bigger source for the shore than the unloading process.

SENATOR PALLONE: Okay. Then you can tell us how those are going to be addressed.

MS. PORITZ: I will address the Fresh Kills situation first and then the barges moving under the marine transport stations because we see those as part of a whole system and that's the way the agreement is set up. New York has committed to develop a-- I don't know what to call it because we don't have a name for it, even in the consent agreement. It's a modified atthey wagon, it's a steel plank, if I can describe it that way, that will serve as a shield to prevent waste from getting into the water when the crane lifts the waste out of the barge and moves it onto the shore. I should tell you and this will appear in your chronology that this modified atthey wagon which was not supposed to be in place, I believe, until sometime in the spring, has already been modified -- one experimental wagon -- so that they are considerably ahead of schedule on that, and it is in operation.

Commissioner Dewling has had staff out there watching the operation and it appears on a first, very preliminary inspection that this modification works. Now we have a need for continued review of this modification because we need to see whether if heavy objects fall out of the crane when garbages moved over, this shield will hold up. So, we plan to do that with New York; to review whether this is working. And if it is, New York is required to install modified wagons at

all unloading positions at Fresh Kills to serve as a shield to prevent garbage from getting into the water when it's being unloaded. I personally observed that unloading process and was appalled at the amount of garbage that I thought was going into the water between the barge and the shoreline. If this works, it will be, I think, a major problem that's been taken care of. We'll know that by the spring.

New York is installing a hydraulic crane which costs in the millions and millions of dollars because it has to be built especially for New York. It will first be operational June 1, 1989, and then we will have to determine the effectiveness of this crane. The way the crane works is that it will, we believe and New York believes, more effectively hold the garbage in and prevent the garbage from dropping out as the crane is moving the garbage from the barge to the land.

So, to the extent that we have a shield and to the extent that we have a crane that works better, then we will have control of that operation. It's sort of a series of building blocks and these are two of them. If that hydraulic crane proves to be effective, then we expect to negotiate with New York and to see that those cranes are installed in all unloading stations.

New York has agreed to install what we call a super boom -- to talk about long-term hardware. That super boom will be installed by June 10, 1989, and it is a mechanical device that has been designed in concept, but is being designed in detail right now. It will operate the boom system automatically. The Attorney General described to you that the booms are often left open. Boats go out and open the boom and close the boom the way the system operates now. The super boom will operate automatically. There will be in such a situation such a little chance that the boom will be kept open and that litter will continue to get out.

In the meantime, because the super boom will take that length of time-- We have to wait for the summer after this to get to get that in place. Actually to build it, we need an Army Corps permit here also, although the amount of work that has to be done is much less extensive, and we don't believe that that'll be a problem.

In the meantime, New York is installing a new boom lock system. One of the problems that we have is that every time the boom is opened, litter gets out. And even if skimmer boats are used to clean up the litter that comes up against the boom, if the boom is left open, the garbage is just going to get out. With a lock system, the boom is closed behind the barge, and then the barge moves on and another boom is opened and closed. We will hopefully contain whatever garbage we are not able to control during this interim period within the boom lock system.

Most importantly, the new boom will have a 15-foot skirt which I am told by Dick's staff will bring the skirt of the boom down virtually to the bottom of the Kill so that we will not have material going under that boom. Right now the boom has a three foot skirt.

SENATOR PALLONE: Like a net. I know. We've heard about the net before. Let me ask you, these different devices that you mentioned-- Were any of them part of the previous consent order or these are all totally new? I remember when we were at Port Reading, at that time there was mention of the super boom that they were supposed to install along with the unloading facility. They were being criticized at that hearing in '86 because they hadn't done anything about the boom.

MS. PORITZ: My understanding is that the super boom was proposed as an alternative to the enclosed unloading facility. I was not in the suit at that time and don't know the precise chronology--

SENATOR PALLONE: Oh, so New York was proposing that in order to get out of having to build the enclosed unloading facility? that in place. Actually to build it, we need a

COMMISSIONER DEWLING: I don't know if they were proposing it per se. It was one of the options that was being put on the table by, I think all the parties. The difference between the super boom -- I don't want the super boom to sound like it's so super -- the only thing the super boom is, is that it's an automatic opening and closing device as opposed to meeting a boat to physically do it. The more important component is the garbage floats in-- Now, I've seen video pictures of this. The garbage floats below the water level. If you were to look, you just don't see garbage sitting on top of the water. That's the problem. It's two, four, six feet below at various levels flowing with the tide in and out. The length of that net in that skirt is important as is the actual opening and closing of it promptly. We have witnesses of seeing a barge go in. A little boat comes and moves the boom and the net back and it just sits there for three hours. One boom they have. There have been a number of things constructed over the last four years there including those booms that are there, including a permanent net process along the shore of the skirt of the nets, I think it's called, that was constructed during that period. There was a number of things they were required to do in 1983-84 that they didn't, in fact, do. Whether they follow that is even more significant. To have a boom that's open is like having (inaudible). The super boom automatically--

(Due to an equipment malfunction, approximately 20 minutes of taped testimony was lost at this point. However, none of the witnesses felt the need to add to their formal statements, which are included in the appendix to this transcript.)

ATTORNEY GENERAL EDWARDS: The barge process was not part of the Woodbridge suit. The barge unloading process was, but the barge transport process was not. That's our complaint vis-a-vis the beaches.

SENATOR PALLONE: You amended the suit though, General right?

ATTORNEY GENERAL EDWARDS: They consented to us amending the suit as a condition of this agreement. Otherwise, I've got to file a notice of motion.

SENATOR PALLONE: But's that's much broader now though?

ATTORNEY GENERAL EDWARDS: Yes. It is broader now. And the court retains jurisdiction now of that whole process.

MS. PORITZ: In any evidentiary hearing that we might end up in, had this proceeded to litigation over issues such as barge covering, New York would have presented materials to the court about the cost of particular covers and so on, and attempted to get the court to consider a cost benefit analysis. It is certainly better for us now to know where they are coming from, to know what the costs are, and to be able to take the position if there is indeed litter blowing off those barges -- and we believe that there must be -- that regardless of the cost, it's a problem that has to be addressed.

So, we can't stop New York from raising that consideration. It's up-front here. But we're also considering exactly how much is coming off, what are the various kinds of barge covers that are feasible, and how all of this will play into the mix and the discussions on what to do about this.

ATTORNEY GENERAL EDWARDS: It's very important, Senator, that you and everyone else understand that we have not given up our rights to pursue that litigation. There is no waiver of any of our rights to pursue any litigation in this process.

SENATOR PALLONE: I understand that and I think that's very good, but the only thing is it does seem to me that you waived the requirement of the construction of the enclosed unloader, as you say. But you don't feel that is a problem.

ATTORNEY GENERAL EDWARDS: My insisting-- I had an option. I'll repeat it again. Do I get an enclosed unloader and none of other things in this particular agreement, which will not re-mediate the problem? Garbage will still wash up on Woodbridge, garbage will still wash up on the shore this summer throughout the rest of New Jersey, no action at the marine transfer stations. In return for that I'll take it any day of the week, because the enclosed unloader will not be built for two to four years in reality; there would be no re-mediation for two to four years on Woodbridge other than what they were presently operating to do. Why? They agreed, yes. We will put that unloader in. Our only other option is to close the landfill. That's another--

SENATOR PALLONE: I understand what you are saying. I don't agree with it. But that's another thing.

ATTORNEY GENERAL EDWARDS: Wait a minute. You can't say that you don't agree with it without saying what would you do.

SENATOR PALLONE: I don't want to get into an argument, Cary. I just think that something could have been put in place as part of the agreement to require that efforts be made or money be expended to construct the unloading facility along with these other measures.

ATTORNEY GENERAL EDWARDS: That is. All the things that were necessary to construct the unloading facility are there, with the exception of the building around the outside. The building around the outside is a relatively easy structure to put up. The important thing as I said before, they are installing the hydraulic removal. They are installing the items around the barges that prevent the garbage from falling in the water. Those are important.

SENATOR PALLONE: All right. I think I understand what you are saying and I think everything has been explained well in terms of what you had in mind. I didn't want to interrupt you. Did you want to add anything else about-- I know there's a lot more that we can talk about all afternoon.

MS. PORITZ: I have not touched, except in consideration of the barges, on the marine transfer stations themselves, suffice it to say that New York is installing a boom so that we can attempt to see whether that controls the litter that's getting out of an enclosed facility. We don't know whether that would work. We don't know whether we will be able to use that methods to control what's getting out of the enclosed facility of Southwest Brooklyn.

ATTORNEY GENERAL EDWARDS: Senator the source of the garbage that washed up on the 13th to the 15th was not the landfill. It was the marine transfer station. To focus on the enclosed unloader as preventing that event is misplaced focus. What Debbie just went thought like this was the focus of the events of the 13th -- that we'll have an impact on those, not the enclosed unloader. We were able to leverage their failure to put in the enclosed unloader to mandate items, too, that deal with the entire shore. But for that, we're in litigation for three to ten years; however long it took.

As a result of, however, the enclosed unloader issue not being built by New York, we got the leverage to get into the other eight marine transfer stations. I think it would be very important to have you and you staff, whether we do it here today or later on, to really help us to monitor, to look at what is being done with reference to those marine transfer stations over the next couple of years if you really want to stop garbage from washing up on our shores.

SENATOR PALLONE: Okay, but in terms of the marine transfer stations, I mean, is there anything that you have in devices or whatever measures that had to be taken? We haven't reviewed any of those yet?

ATTORNEY GENERAL EDWARDS:- Not yet.

MS. PORITZ: No. I was just starting to.

SENATOR PALLONE: Okay. Well, why don't we go through that. Could we take a 10- or 15-minute break? Why don't we take a 20-minute break and we'll start. Right now it's a quarter to one. We'll start at five after. Okay?

(R E C E S S)

AFTER RECESS:

SENATOR PALLONE: We are going to reconvene because otherwise we'll never get out of here. I'll ask everybody to take their seats and call those who are out in the corridor, please. Ask them to come in.

Okay, just so that everyone understands how we're going to proceed the rest of the afternoon, we're going to have the Attorney General and Commissioner Dewling-- Can I have everybody's attention? We're going to start the hearing again. I'd like everybody to sit down. Where did Debbie go?

ATTORNEY GENERAL EDWARDS: I'm waiting for her to return, Senator, if it's all right.

SENATOR PALLONE: Okay. We're going to have testimony from the Attorney General and his assistant about the Southwest Brooklyn Marine Transfer Station and the measures in the consent agreement to deal with the problems emanating from there; and that will be about five minutes or so. Then we're going to get into the issue of hospital waste and the presentment by the Mercer County grand jury with both the Attorney General and the Commissioner. That we expect to be another 15 or 20 minutes. Then we'll start with a testimony from other speakers and the first speaker in that order will be Mr. Lou Figurelli and Cindy Zipf from Clean Ocean Action.

After that, we're going to have the Interstate Sanitation Commission. They will testify, then we'll have the other speakers after that. I just wanted to give you a little focus on how we are going to proceed.

The other thing that I wanted to mention is, and I think that this was assumed General, but I'm going to mention it anyway, although it was stated very emphatically by you that the problem of hospital waste and the garbage from this summer's incident, the August incident that was mentioned was primarily focused on the Southwest Brooklyn Marine Transfer facility -- that there has been an ongoing problem of different types of garbage emanating from Fresh Kills coming down from to the Jersey shore. I don't know whether or not the DEP has documented it or whatever.

But I think there's a strong feeling on the part of a lot of people at the shore and environmentalists and some documentary evidence, that material from Fresh Kills does make its way down to Sandy Hook in particular, and even further south on a long-term basis. I'm not saying this summer's incident, per se, but you know, over the years. And that's why this Committee was concerned that your office and the ISC get involved in this, because we didn't see it as just a question of material polluting the beaches in Woodbridge, but rather that it's a problem that affects the whole Jersey shore.

COMMISSIONER DEWLING: Senator, I might elaborate a little bit on that. I don't think that the Fresh Kills Landfill is a major source of the garbage that's washing up on the shores. On the -- I'll call it the inside of Sandy Hook, yes I do. On Staten Island, yes I do. In the whole Kill Newark Bay area, Woodbridge and the other beaches, yes I do. But, if you'll look at the growth, and you are from that district so you are more aware of this than most, there's been an incremental growth over the last 10 years or so in the amount of garbage that has been coming up on our beaches --

forgetting the incident on the 13th to the 15th. That incremental growth matches the growth in the closing of other landfills in New York in the increase of marine barge transfer operations. We tend to think that as much a responsibility as the Arthur Kill and the Staten Island landfill are, the other eight or nine marine transfer stations that are literally putting garbage down into barges. The process of filling barges is as bad as unloading it, and it has no control. The point that we are about to get into is that at each of these eight marine transfers there are no major controls as to how that garbage gets in and how those stations are, in fact, run. There are controls at the landfill. The booms have been there. There have been a number of things. There's been incremental improvement in the landfill, yet an incremental increase in the amount of garbage that's winding up on the shore. That matches the increase in the number of barges being loaded at eight different sites.

We think the marine transfer operation and the way the New York Department of Sanitation handles all of its garbage is a much more critical and a much larger contributing factor to the ongoing problem along the shore; how they sweep their streets, how they handle the pickup of their garbage, how they handle the delivery of garbage to those transfer stations. We're building transfer stations now, Senator, in New Jersey, and we know how difficult they are to handle. I see a new member has arrived. (referring to Senator Russo)

SENATOR RUSSO: I just came to tell you that I just had your car towed out of my parking place. That's all.

COMMISSIONER DEWING: That's fine. The State Police really appreciate that Senator.

SENATOR PALLONE: Excuse me one second. (holds discussion with Senator Russo) Okay, go ahead. Continue.

COMMISSIONER DEWING: Thank you Senator. I hope you were negotiating for the return of my car in that process.

SENATOR PALLONE: It didn't even approach the subject.

COMMISSIONER DEWLING: As I said, the marine transfer operations presently have none of the kinds of controls that we're talking about that exist at the landfill. There's eight of them: the barging operations, the issue of the covers -- and those barges are in fact covered. And in my opinion, even more important, the fact that they are never filled above the gunnels, I think, is far more significant than as a contributing factor to the garbage that washes up on the shore. I also think the non-point pollution issues in the way the streets are cleaned, garbage cans are emptied, the way the stations are operated-- We had some evidence that the Southwest Brooklyn Incinerator, for instance, which is the one we focused on, the trucks would come in and the operation of the Southwest Brooklyn Incinerator is that we've got this huge barn. They've got a barge that slips in that barn. They've got holes in the ceiling which trucks come in and dump the garbage through those holes into the barge. We're not sure that that operation is sound, but we have evidence that because of a lack of controls at the site, trucks are coming in, dumping garbage and there's no barge underneath. Very simple kinds of things. Now a full garbage load -- a truckload of garbage being dumped into the water is then not cleaned up by anybody.

SENATOR PALLONE: Okay. Now, are these provisions that are going to apply to Southwest Brooklyn, are they going to apply to the other transfer stations as well or are they--

ATTORNEY GENERAL EDWARDS: Not immediately.

SENATOR PALLONE: You're going to get into that?

ATTORNEY GENERAL EDWARDS: We're going to get into that.

SENATOR PALLONE: All right, explain to us how we're going to deal with this thing.

ATTORNEY GENERAL EDWARDS: Okay. I really think that that's when we had no jurisdiction over in the Woodbridge case for which we would have been involved in two to four years of litigation to prove that there's a causal effect between how those stations were handled and what wound up on our beaches, with New York never admitting -- never admitting, or agreeing to admit -- that they were a causal effect of that, because of the hundreds of millions of dollars in liability claims that would be exercised against them.

SENATOR PALLONE: Okay, but now you are going to tell us what provisions are in this consent agreement, not only for Southwest, but for these others as well? Or are the others not dealt with?

MS. PORITZ: The others are not dealt with except insofar as any methods that prove effective in controlling waste at the Southwest Brooklyn Incinerator Transfer Station will be extended to the other facilities if we see that they are effective and that they are--

SENATOR PALLONE: But you're not requiring that in the consent agreement. This is basically a test case, in other words.

MS. PORITZ: Well, our evidence is that the offender, if you want to call it that, would be Southwest Brooklyn Incinerator. So, you want to target there first.

ATTORNEY GENERAL EDWARDS: So, that's what we could approve.

MS. PORITZ: So, that's what we're focusing on. The inspections, the Water Quality Management Team, and the monitoring will be done throughout the entire system, although there will also be a focus on the Southwest Brooklyn Incinerator facility.

ATTORNEY GENERAL EDWARDS: And our access by our personnel to all of their marine transfer stations -- their procedures, how they are followed, and what they do will also be monitored in the document.

SENATOR PALLONE: But, what we're reading here in the consent agreement only applies to Southwest Brooklyn, not to the others.

MS. PORITZ: Except insofar as the inspection monitoring procedures. Those take place at the others as well.

SENATOR PALLONE: Okay. Will you explain, you know, as you are going along explain to us the distinction between Southwest and what would apply elsewhere -- even though you have only five minutes.

MS. PORITZ: I'll try. In Southwest Brooklyn we're requiring that security fencing and a gate be installed. So to the extent that there is any unauthorized entry and any use of that facility in any way, that will be controlled. New York has had security guards at that facility, but the security guard could be at one end of the facility or off some place and there was always the potential for unauthorized entry.

ATTORNEY GENERAL EDWARDS: While we were investigating this, Senator, we wandered in and out of that site with trucks, anything we wanted, anytime we wanted, anytime of the day or night. There was no effective control in place and we cross tested that two or three different times.

MR. LANGELE: Excuse me. Is that the one on Hamilton Avenue at the Southwest Brooklyn?

COMMISSIONER DEWLING: No. Gravesend Bay. It's just between Coney Island and the Verrazano Bridge.

ATTORNEY GENERAL EDWARDS: It's south of the Verrazano.

COMMISSIONER DEWLING: Down around Bay Street.

MR. LANGELE: I know where it is. By Korvettes.

COMMISSIONER DEWLING: You got it. By Korvettes. The kiddie playland down there.

MS. PORITZ: As the Attorney General described the facility to you, as we spoke of it before, it has a large opening into which the barges come to be loaded and then to move out. New York City will install an experimental boom.

Now, this is new. This has not been done before. They are going to install an experimental boom around that opening. So, that any garbage that falls off during the loading process can hopefully be captured by that boom. We are working with New York City on the design of that boom, trying to see what would be most effective and what it will look like. We will be reviewing that as it's developed and installed.

In addition, a skimmer boat or a modified boat, like a skimmer boat, will be used to clean up the area within the boom so that when you do open the boom for a barge coming into the facility, the area will have been cleaned up and you don't just let the trash out.

SENATOR PALLONE: That will happen even before each barge comes in?

MS. PORITZ: That's correct. Each time a barge goes in and out, that's what will happen.

ATTORNEY GENERAL EDWARDS: It's not that onerous. They only move two to four barges a day out of that operation. So, it's not a very onerous requirement to put on them.

MS. PORITZ: It will be a more onerous requirement at other transfer stations where more barges move in and out, if it proves to be effective and necessary.

SENATOR PALLONE: What kind of timetable do you have in terms of using this Southwest as an experiment before these things are--

ATTORNEY GENERAL EDWARDS: June 1 of this year.

MS. PORITZ: April 15, this boom and boat system will be in operation and it will be evaluated throughout the summer. Nonetheless, we've set a short time frame; June 1, as the Attorney General pointed out, for the consideration of expansion of this system to the other marine transfer stations in the system. We won't have the whole summer to evaluate that, but we thought it was important enough to have a quick look and see if it seemed to be working, to consider whether to use it elsewhere.

SENATOR PALLONE: Do you have the power to enforce that or would you have to go back to court to have that extended to the other stations?

ATTORNEY GENERAL EDWARDS: We would first make a request directly that the studies in the quick analysis show that this is effective in controlling the garbage -- and we would tell New York that, based on our agreement where they said that they would consider it -- that they would do so. If they refuse to install it, we then deliver it to a special master who would then report back to the court, and the court would either order it or not order it.

SENATOR PALLONE: Because I don't see anything in here that talks about it being extended to the other facilities. But you're saying that you can pursue that?

ATTORNEY GENERAL EDWARDS: No. It's very specific. By June 1, 1988 consideration of the expansion to the entire marine transfer station will be considered on the booming and on the other operation. So, it is very specific and it is subject to expansion based on real facts as to how we think that system works. We're liable to turn around to say that system doesn't work and we need some other kind of hydraulic loading system that has funnels and other kinds of things in it that may be more effective than the booming system.

MS. PORITZ: On page 19, paragraph A-3 has the particular--

SENATOR PALLONE: Yeah. I see it. I didn't understand it until you explained it to me. But I see it now.

ATTORNEY GENERAL EDWARDS: We think the security system is very important at that facility. That's going to be in place by February 1. And to actually lock gates -- have people at the gates -- have a controlled admissions into the facility and once they get in, where they go and how they dump their garbage is a very important component of what we do.

MS. PORITZ: New York will also have a member of the Water Quality Management Team always at this facility when the boom is opening in order to see how that procedure is operating and New Jersey will have inspections of that operation as well, so that we can evaluate it independently. The independent monitor will be evaluating that.

Now the procedures, again. We've stressed that we think procedures are very important. The barges have, for example, edges or lids -- I don't know how to describe them -- shelves along the sides of the barges. When the garbage is dumped into the barge, a lot of garbage spills over into those shelves. It is a simple procedure to see that that shelf is swept or cleaned before that barge ever leaves that marine transport station in such a way that the waste doesn't get into the water. It's clearly a potential source of waste as the barge moves through the harbor. Those kinds of procedures at the marine transfer stations will be reviewed. There's a tight schedule -- a submission of procedures to the plaintiffs -- plaintiff review of those procedures, and New York implementation of new procedures if necessary.

We plan a full study and evaluation of the entire system that will take place by June 30, 1988; reviewed by the plaintiffs by July 15, 1988. There will be records maintained; again, exceptions reports submitted where the procedures are not being followed. So that the plaintiffs in this case can review those exceptions reports and make a determination about whether something needs to be done immediately.

We've spoken about the barge transport and the general study. I think it's important to point out that in addition to dispute resolution sections of this consent order, the special master, we hope, will expedite any dispute resolution problems that we have. We have retention of jurisdiction by the court. That's very important to us. We have a strong judge in this case who I think will take strong action if it needs to be

taken. And that judge has consented to retain jurisdiction so that any of the parties in this manner can go back to that judge if necessary if the dispute resolution mechanism does not work and seek relief directly.

SENATOR PALLONE: Has this special master been appointed?

MS. PORITZ: No. There's a time frame for the appointment of the master and I think we have to submit names very shortly. We'll be meeting with the plaintiffs. There's been some discussion about various possible candidates, among the plaintiffs, and we'll be meeting with the plaintiffs to see if we can develop a list for submission.

ATTORNEY GENERAL EDWARDS: There's a date that's specific in the agreement for the appointment of the master.

SENATOR PALLONE: Okay. Did you want to say anything else, General, about the other problems that aren't in the consent agreement -- the leachate or the problem with the landfill itself, possibly breaking up or expanding too fast?

ATTORNEY GENERAL EDWARDS: Let me add just two things to conclude this. First, it would be very nice, Senator, if we could sit down and unilaterally write a set of criteria that we wanted to impose on New York. If we were to do that, I would write this and add a whole lot more things. I might even close the landfill. But we don't have that power -- that unilateral power.

It is my responsibility in handling this particular matter to do everything that was humanly possible to re-mediate the immediate causes of garbage washing up on both Woodbridge and the beaches of this State. I'm absolutely convinced that no more can be done to re-mediate this than was obtained in this particular agreement. The people who worked an incredible number of hours to accomplish it deserve a lot of credit for having done that. I'm only one of those players in that process.

We were absolutely incredibly fortunate to have had the timing of the Woodbridge contempt citation to be coinciding with our investigation with a bigger issue. For without that, and without the hammer and the leverage of Judge Barry, there would be no re-mediation in this process and we would be here years from now, still debating and litigating with New York as to what should be done. They do not spend \$15 million or \$20 million lightly in that process. And they are spending that amount of money to accomplish these particular goals. I think that Debbie has indicated her dealings and my dealings with them. They want to do -- the Department of Sanitation wants to do a good job. They don't want to be anybody's bad guy. This has given them also the leverage to get done what they would like to get done. They are good people, I think, and are trying to do as good a job as they possible can under the governmental constraints and bureaucracy they live with.

Secondly, with reference to the landfill itself and the leachate and the stability of that landfill, we are doing everything we can to define the problem and to look at the optional remedial solutions that can be taken that will stabilize that landfill over the long haul. I have to tell you from a personal basis, I do not believe a landfill of that magnitude should be on that particular site. That is not where we should be disposing of garbage. We have gotten out of our landfills in the Meadowlands, along the Kill, whether it be Global or others, for exactly the same reasons. It is not the location for a landfill. There are other places it should be. I do not believe New York should be using that landfill.

The practical realities that I have to live under though-- Or can I close it. You have 7.5 million people who are delivering their garbage there with no options on the drawing boards. No court is going to order that thing closed in five minutes. I have to deal with that in a realistic way and try to control leachate, stability, and force New York to find other options for handling their garbage.

SENATOR PALLONE: But is there any-- I know that because of litigation, that you have a problem presenting to us, you know, some facts. But in terms of a timetable, I understand that basically that you're gathering information at this point for a potential suit or a potential action. Is there any timetable as to when that information gathering will be complete and we will see some sort of action in terms of a suit or, you know, whatever?

ATTORNEY GENERAL EDWARDS: We've been gathering information simultaneously from the summer until today. I tell you that timetable because I have to measure the quality of the evidence that we have. EPA may take months before they finish the sampling of the leachate that's in question. DEP is doing an incredible number of things to try to develop the kinds of facts so that I can sustain a prima facie case that will cause action. I've then, got to choose various forums. I'm back to the same old issue. Put it in the Woodbridge case. Move it independently against the State of New York, United States Supreme Court, start a new litigation in the Federal District Court in New York perhaps, as opposed to a New Jersey one. All of those things are being measured simultaneously. I have drafts of complaints. I have more drafts than I can deal with in each of those particular categories. But I have to be sure that I'm going to have effective action to re-mediate the environmental consequences of the operations of that landfill, recognizing that I can't close it.

SENATOR PALLONE: And one other thing, and then Senator Gagliano has some questions. What about the Federal grand jury action with regard to this summer's events? Is there any indication as to when we'll get any findings or anything from that?

ATTORNEY GENERAL EDWARDS: They are getting close, they tell me. But the grand jury is a lot more independent today than they have historically been. They are able to set

their own timetables. I have three deputy attorney generals and seven investigators who are of course deputized to work with the U.S. Attorney's office to pursue that matter. ~~There's~~ There's a great deal of difficulty, as you can see from what we have in arriving in absolute proof as to liability and compatibility; much less criminal liability for which you believe you have proof beyond a reasonable doubt, that you can file a criminal complaint. The criminal laws are not sufficient enough in many instances, either Federal and/or State to be able to pursue them. The more effective action is ultimately civil. We are pursuing them in every piece of evidence that we've presented to them, and the grand jury will act when the grand jury is ready to act.

SENATOR PALLONE: Okay. Senator Gagliano?

SENATOR GAGLIANO: Yes. You mentioned complaints and that reminded me of something. If, for example, the municipalities— Let me start with this. Is there a Tort Claim Act in New York which is similar to the one in New Jersey where a notice has to be given?

ATTORNEY GENERAL EDWARDS: Yes, there is.

SENATOR GAGLIANO: And in the event of, say, a municipality on Long Beach Island, or the County of Ocean, or the County of Monmouth, or one of the entities decided to start a suit on a civil nature to recover damages for any of this, or all of them, have they filed those actions? Excuse me, the notice, so that that they can in turn file suit eventually?

ATTORNEY GENERAL EDWARDS: There's a 90-day notice of action that's required under the New York Tort Claims Act to file claims against the City. None of the individual plaintiffs have individually, to my knowledge, filed notices under the Tort Claims Act as of this particular date.

SENATOR GAGLIANO: Look, did anybody file for them? Is there anything you did?

ATTORNEY GENERAL EDWARDS: Yes, I did.

SENATOR GAGLIANO: You did?

ATTORNEY GENERAL EDWARDS: We did. We filed within the 90-day period the necessary claim of under the Tort Claims Act which I think maybe has generated the kind of fear that New York is suffering from with reference to the admissions. We're required to specify the amount of money for which those claims would be, and we had asserted a billion dollars.

SENATOR GAGLIANO: A what?

ATTORNEY GENERAL EDWARDS: A billion.

SENATOR GAGLIANO: A billion. But in other words, you as Attorney General, ex rel. the others you filed so to protect their rights to sue civilly at sometime in the future.

ATTORNEY GENERAL EDWARDS: As best we was able to, yes. We filed a very comprehensive and very broad notice of intent on behalf of, you know, an (inaudible) action, listing all of those particular individuals. We are prohibited in very many instances, from bringing those claims ourselves because of our governmental entity. The private and the local municipalities who were in fact damaged have even greater rights to file those claims, and we do so on their behalf, in actually pursuing the litigation. There are defenses that can be raised against us.

SENATOR GAGLIANO: How long is that notice good for, Cary, once it's been filed?

ATTORNEY GENERAL EDWARDS: Indefinitely. I think there's a two-year-- I'm not sure of the statutes in New York as to what-- There is a period of time within which you must bring the actual complaint, and in our case we have that and I'm not, off the top of my head, familiar with it. We have not run that--

SENATOR GAGLIANO: But for example, the counties involved or the municipalities involved have at least two years now if they wish to start suit against the City of New York, if they feel they have a case to do it.

ATTORNEY GENERAL EDWARDS:- That's right.

SENATOR GAGLIANO: Okay. Thank you.

SENATOR PALLONE: Okay. We wanted to get into somewhat briefly the hospital waste, the medical waste issue. And as I mentioned before, this was heightened because of the incident last summer, but also because of a presentment that was put out by a grand jury sitting in Mercer County -- I believe was in Trenton -- which highlighted the problem, not only in terms of the need for a manifest system to track hospital waste disposal, but also to make other suggestions and recommendations in terms of licensing of haulers, increased penalties, and violations for improper handling of hospital waste, also a redefinition of infectious waste to include not only hospitals, but other facilities where medical waste is handled. We did touch upon this at a previous hearing in terms of the need for a manifest system.

But at that time, I believe we had not-- The presentment from the grand jury had not been handed down yet. So, we're dealing with the problem, primarily, based on what information we had available -- based on this summer's incident and not in light of that presentment. So, I'd just like to have your comments on that in terms of where we're going.

ATTORNEY GENERAL EDWARDS: Yeah. Allen is the Deputy Attorney General who made that presentation to the grand jury, Senator. If you would like to -- he's available after this particular hearing -- if you or your staff would like to talk to him about some of the kinds of reactions and things that we have. I'll see if I can give you a quick overview. We'll try to answer as many questions that you want to put to us.

There was a group of incidents that developed. We brought this matter to the Federal grand jury in February, 1987, before the summer incident happened. It was a really, as a result of a number of incidences that came up for which we were investigating and trying to bring various criminal

actions. One, we found some medical waste abandoned in trailers and in containers in this State over a period of years. Medical waste had just been abandoned in various places. We didn't have sources or people to go after and etc.

There was a series of incidents involving the improper disposing of medical waste in an Ocean County landfill, including some waste which appeared to have been disguised or put in other kinds of component looks. That was also happening over a period of years. We had some discovery that New York City's medical laboratories were disposing of aborted fetuses in the Edgeboro Landfill.

There were medical waste haulers who had previously been convicted of a medical waste offenses in New York State, discovered while transferring red bag waste into black bags in a Camden facility. So they were taking infectious waste, putting it in black bags, a New York operation, and disposing of it as normal household garbage. We had this belief that hospital waste was washing up on our beaches. There were various instances with infectious waste whether they be syringes which are defined as infectious waste, were washing up on our beaches.

Since the grand jury has really completed its work, we have found some medical waste being dropped in a dumpster at Union Hospital. We found large numbers of syringes mixed with household trash in an Essex County transfer station. It was just open. So, the regular disposal through various facilities of what is defined as infectious waste, we believe, the grand jury ultimately believed -- it was really originally a penalty and a criminal -- thought we ought to expand it -- my staff and myself and really our Environmental Prosecution Section.

I would like to put in a plug if I could for that particular section, Senator. We have one of the most effective and aggressive criminal enforcement of environmental laws in the country in this particular State. We're the founder and

the home of the Northeast Project in which we exchange information among the states. We have almost a 40-man operation in environmental prosecution which is as large as the entire Federal government's and double that of any other state in this nation doing criminal enforcement. These people do a lot of work and come up with a lot of interesting things. Some of them should be criminal and some of them should not. They were the one's who discovered this. They were the ones who made the recommendation that this go before the grand jury.

The grand jury ultimately gave six recommendations. One was a comprehensive cradle-to-grave regulation both appropriate and necessary to ensure that infectious waste is appropriately managed at all times, both through the Department of Health and the DEP -- that a special medical waste manifest is needed to:

A) to deter operators from engaging in unscrupulous practices;

B) clearly define health care providers' responsibilities -- all health care, not just hospitals;

C) to enable handlers, haulers, and landfills and other points of disposal to take appropriate caution and special care where they are handling infectious waste that has been so defined.

The special licensing of infectious waste haulers is necessary to ensure the proper handling and disposal of the infectious waste. An interagency/intergovernmental approach is necessary to combat the problem of illegal disposal of infectious waste. The legislature should implement statutes providing for the appropriate civil and criminal sanctions for the violations of these regulations as a crime.

The New Jersey DEP and the BPU should act to ensure that health care providers are able to dispose of infectious waste in an economically and orderly fashion -- that the necessary autoclave facilities are in the hospitals, and the

cost to pay for those and/or incinerators where that's necessary. Autoclave, Senator, for you and everyone else, is the sterilization of that particular waste which then would allow it to be disposed of with the landfill structure, as opposed to the incineration option which is also available. But one of those two, with reference to infectious waste, has to be provided with the proper regulations to see that it can be done, and the proper sanctions if it's not done properly. That's basically what we're saying.

SENATOR PALLONE: One of the developments that I think is new with this presentment from what was stated or at least what we inferred from the previous hearing this fall-- I was under the understanding that pursuant to the, what is it, the hospital license manual -- I think that the Department of Health people were here to testify to that effect, unless I'm mistaken -- was that you had to either incinerate or autoclave. Yet, when I looked at the presentment, I was kind of shocked to see that basically the presentment says that those were simply guidelines in the manual. They don't have the force of law. And that actually a generator has the option of simply double bagging the waste and sending it to the landfill without autoclaving or incineration. There was no reason for us to believe at the last hearing that that was the case. I had the opposite impression that they had to do one or the other and that those were the law.

ATTORNEY GENERAL EDWARDS: Double bagging is a permitted option and more importantly--

SENATOR PALLONE: Without autoclaving or incineration, so that New Jersey won't even have to sterilize anything before you send it out.

ATTORNEY GENERAL EDWARDS: That's what the grand jury found and that's the status of the law. I would stand and allow DEP and Health to react to that. More importantly--

SENATOR PALLONE: And also, these guidelines don't have the force of law, General?

ATTORNEY GENERAL EDWARDS: Well, they do. The Department of Health licensing regulations on hospitals, they can deny a license for failure to comply. They can do a lot of other things to force compliance with that. So yes, it has the force of law as it deals with licensed hospitals. They are not the only facility through which infectious waste is generated or comes into this particular State.

SENATOR PALLONE: But then the distinction would be that if a hospital is not doing these things, they can't be penalized. There's no statute that penalizes them, but you can lift their licenses.

ATTORNEY GENERAL EDWARDS: The Department of Health can lift their license. They can impose their own sanctions, and use their muscle, you might say to see--

SENATOR PALLONE: Administratively.

ATTORNEY GENERAL EDWARDS: That's correct.

SENATOR PALLONE: But, I mean, that's a serious flaw, it seems to me, that the grand jury pointed out. Both that they are simply guidelines and nothing statutorily that would require that they be done. Secondly, that there isn't a necessity to either sterilize, as you say autoclave, or incinerate. I think most of the members of this Committee felt that you had to do one of the two.

COMMISSIONER DEWLING: Senator I think you need clarification on that and I think Jim Blumenstock can do that. I'm not aware-- The responsibility for making sure that this material is not infectious is the responsibility of the one generating the waste.

ATTORNEY GENERAL EDWARDS: Right.

COMMISSIONER DEWLING: Now, certification to that must be by them, and then the Health Department has the responsibility for enforcing that. But I do not believe what you said is totally correct.

SENATOR PALLONE: Well, I'm only reading from the grand jury presentment.

ATTORNEY GENERAL EDWARDS: Well, Senator, it's very important that the grand jury made recommendations for this Legislature and for the Departments to review. They did not claim to be the source of all knowledge with reference to it. Their recommendations were based on the information before them. The issue of infectious waste, how it is manifested, how it is regulated, and to what level are judgments left to this Legislature and to the two Departments. The way the Department of Health deals with it, it says that it cannot be infectious. And there are various ways of accomplishing that successfully, including the double bagging process under certain types of wastes and under certain circumstances where it is not and doesn't have an infectious quality or is not a danger to health and safety. That's the judgment of the experts. The Department of Health are the experts.

SENATOR PALLONE: I know. I'm just pointing out something which was that I think this presentment points out to me that there's a much larger problem with hospital waste or medical waste than we had foreseen. I think we run the impression that at least when it left the hospital, there was an requirement that it be autoclaved, i.e. sterilized. But there's actually possible under the current law, if it is even law, to simply double bag it without that happening. That's what the grand jury says. Maybe that isn't happening. That's what the grand jury says. Maybe that doesn't happen--

COMMISSIONER DEWLING: Let's us correct--

ATTORNEY GENERAL EDWARDS: I'll let the experts do that. I'm not the one to answer that.

JAMES BLUMENSTOCK: With all due respect to the grand jury presentment, the Department of Health found that one element to the glaring inaccuracy of the text of the report. The State Department of Health through their hospital manual

standards which is regulations, does specifically define infectious and pathological waste and provides disposal alternatives to each generator governed by those sets of rules and regulations. And as we had mentioned, I guess a couple of months ago while we were together, the hospital manual standard is only specific to hospitals, licensed by the State Department of Health that are operated within the State boundaries as mentioned earlier as far as possibly what stimulated the grand jury reviewing the situation -- with the Edgeboro situation. It was an out-of-state generator, and out-of-state hauler using a disposal facility in the State of New Jersey. Because of those set of circumstances, the State Department of Health's rules and regulations did not apply. This was not from one of our licensed facilities, because we only have jurisdiction within the confines of the generator, which would be the hospital in this case.

There are a number of other generators that are governed by the State Department of Health. Other health care facilities, such as nursing homes, boarding homes, clinical laboratories, and blood banks. But again, our definition of pathological and infectious waste only applies to those four groups of industries doing business within the boundaries of the State of New Jersey.

SENATOR PALLONE: But, I mean, you would certainly agree that regardless of whether the law requires it now, I guess that's somewhat up in the air, based on what the grand jury says -- that the law should require that either incineration on site or autoclave it before it leaves.

MR. BLUMENSTOCK: Of infectious waste.

SENATOR PALLONE: Right.

MR. BLUMENSTOCK: What's truly considered infectious by the experts -- I would totally support that concept. In essence, it is in regulation now as far as the State Department of Health's policies and procedures are concerned.

SENATOR PALLONE: And you just think the presentment is wrong and are saying that that isn't the case?

MR. BLUMENSTOCK: In that one specific element. Again, the Department of Health totally supports the recommendations, and many of the other facts that were brought forth are accurate.

SENATOR PALLONE: All right. I just wanted to ask that because I was kind of in shock when I read that. You basically don't agree with that. Go ahead.

MR. BLUMENSTOCK: The one question that came up about the double bag-- In our hospital manual standards there are several components of the infectious waste stream that are very specific as far as the method of disposal. For example, pathological specimens, body parts, biopsy tissue, incineration, internment, and cremation. Note other options there. So, double bagging would not be an option either. Also autoclaving prior to disposal is not an option.

It also mentions microbiological laboratory specimens such as petri dishes, culture media-- That type of stuff would require autoclaving prior to disposal in a sanitary landfill. There is a reference concerning double bagging. What that alludes to is that when you take out all the other major components of a pathological and infectious waste stream, such as used syringes, all the other materials -- your medical instrumentation; that's truly not considered infectious or pathological by the State Department of Health's definition.

Landfilling in the State of New Jersey through the double bagging process is an acceptable alternative.

SENATOR PALLONE: Okay. You know, the problem is that the presentment gives you the impression that the double bagging option exists for all these forms of infectious waste.

COMMISSIONER DEWLING: The rules are ambiguous. I mean, if you look at the rules one could interpret it that way. But there's absolutely no ability under the rules and the

requirements to take pathological waste that are associated with biopsies or anything like that and double bag them and put them in the landfill.

ATTORNEY GENERAL EDWARDS: Senator, it's very important and I don't want to overkill this, but it's a very complex area. The definitions, the rules, the regulations, how you go about requiring it, what's done with it. What's really needs to be done with it versus what one's aesthetic values may think should be done with it, have to be carefully balanced by everyone. The presentment did not deal with the depth of the issue to that level. We only raised the lack of what we saw and what the grand jury saw were necessary safeguards and standards to have been put in place, dealing with it at that level by the people who know the answers. Mainly the legislators who make public policies, the Department of Environmental Protection, and the Department of Health.

It is a very complex issue that I think this Committee, I really think that more than just this Committee should get involved in -- in establishing those criteria and setting up the rules. So, everyone knows how to play, but don't set a rule up that you can't enforce either.

SENATOR PALLONE: Well, the only reason this came up on the whole context of the Committee basically was because when we had the bistate hearing with New York legislators, we were basically comparing New Jersey's rules versus New York's and whether or not the situation in place in New York would encourage, you know, haulers to come to New Jersey or encourage illegal dumping, that would result in material washing up onto the shore. So, obviously it's important that New Jersey have as stringent a rule as possible if we're going to expect, you know similar treatment by New York, or whatever. I just thought when I read this presentment, the situation was a lot worse than it appeared to be when-- Is it Blumenstall?

MR. BLUMENSTOCK: Blumenstock.

SENATOR PALLONE: When Mr. Blumenstock was here before. Because I had the impression at that time that New Jersey was rather progressive in terms of its regulation of hospital waste, whereas after the presentment I got the impression that we were the worst of the three states -- New York, Pennsylvania, and New Jersey.

COMMISSIONER DEWLING: I think you have to focus and look at the presentment on some of the issues when they talk about the public health issues and the crisis in public health confidence issues where the health risks are not the only thing of concern; that the public's perception of aesthetic conditions affecting proper handling should not be ignored. And that was throughout this also. I think that's what we are trying to address now. I think that was the position that DEP and the Department of Health took. While we recognize that 5% of all the waste generated by these types of facilities falls in the category of being infectious, we still agree that all six recommendations to the grand jury ought to be implemented, to resolve that issue so we don't say, you know, hospital waste are waste from their kitchens also.

Hospital waste are sharp. Hospital waste are infectious and are pathological. So, there's no distinction there.

SENATOR PALLONE: Why don't we just get into then, because I know, again, the time element-- Why don't you just get into, Commissioner, you know, to what extent are these going to be implemented? Because I know that we've drafted, and legislation is being drafted to implement them by statute. But I understand that you have some suggestions in terms of the change in the regulations, and I would just like to know the status of that.

COMMISSIONER DEWLING: Well, right now, we have a task force. I'll give you a schedule of all the meetings -- that we're meeting for 15 times between now and next couple of

months for the prime purpose of coming up with a regulation for the treatment, transportation, and disposal of medical waste. All right? And it's a joint group between Department of Health and ourselves. It's with the interstate agencies; ISC is involved, as well as representatives from New York City, Pennsylvania, and New York State. And it includes generators as well.

So, our hope is to present by early spring what some of the rules and regulations are to clarify some of these issues. And I can give you the schedule of all the meetings. Someone from your staff is welcome to attend. The other thing that we are recommending is that what we have available now is a coupon system that's been designed by DEP that is a quasi-manifest system that we could implement, but I think it's appropriate to try to wait for the total regulation process to go into place as opposed to having a duplicate process at some later date.

We are suggesting some additional requirements such as strict liability for hospital, haulers, and disposal. I think that's important. And also we needed changes in the Federal statutes to establish manifest systems nationally. Many of the problems that we've had, were problems coming into our State. Now, EPA and DEP, under hazardous waste regulations has made certain determinations about the infectious qualities of this material, and EPA was sort of beaten up publicly when they said the problem down along the shore was more perception that it was real. Now that's very easy to say when you're standing back and not standing on the beach seeing this hospital type waste come in. I think that's where we have to dispel all those issues and say, "Hospital waste is hospital waste." We're not going to get into this very fine definition.

SENATOR PALLONE: I understood just from newspaper accounts that the EPA wasn't willing to adopt this manifest system on a Federal level, that they basically were leaving it up to the states.

COMMISSIONER DEWLING: That's correct. What we're asking for here is some encouragement by this Legislature. We are working through our Federal counterparts, and other states, in trying to have that happen. That's why we're bringing in the three states of New York, New Jersey, and Pennsylvania, to try again to give additional pressure and motivation to the U.S. Congress to move in that direction. They can do it very simply. EPA can do it.

SENATOR PALLONE: In the last session there was a bill introduced in both houses establishing the manifest system in New Jersey. Would you support moving in that direction in the absence of the Feds?

COMMISSIONER DEWLING: The problems we've had have not been so much in-State as materials coming into our State. And what I'm saying to you is we're moving ahead within State, but that's not going to totally solve the problem unless the interstate issue is fully addressed. So, I'm saying we go concurrently.

SENATOR PALLONE: So, if we don't get the Feds then we move with the State, but at the same time we-- I guess what I'm asking you is, the recommendations in this presentment are pretty specific--

COMMISSIONER DEWLING: And we're agreeing with it.

SENATOR PALLONE: And what you're saying is if you can get some of them implemented on a Federal level, fine. If some of them can be done by regulation, fine. If we need legislation, we'll do that too.

COMMISSIONER DEWLING: That's right.

ATTORNEY GENERAL EDWARDS: I'll give you an example of one of the problems. This morning, a fellow by the name of Dennis Kelly just received a three-year sentence for having illegally disposed of infectious hospital waste. He was taking hospital waste from the VA Hospital, bringing it over to New Jersey, putting it in regular bags, and dumping it in

dumpsters. We did not charge him with an environmental crime, however. We charged him with the crime of theft by deception. That is a real reaching to try to find a vehicle to prosecute somebody under these kinds of violations. When this Legislature is considering the issue, in order to put some kind of criminal component on the violation of this particular component of the law, you need to approach it and give us the criminal statutes if you want us to try to prosecute people for having done things like that.

SENATOR PALLONE: So that would be one thing that we do need the bills for.

ATTORNEY GENERAL EDWARDS: I think you have to do it, and I don't think anyone else can do it. That is not the Department-- It is a public policy issue for the Legislature.

SENATOR PALLONE: To have a separate offense?

ATTORNEY GENERAL EDWARDS: This is outside of my realm, but I would caution the Legislature in being too specific in its legislative activities. I would be far more comfortable, and I would think you would, in the definition of infectious waste, and to put some meat behind the regulatory framework and the expertise the DEP and Health have.

SENATOR PALLONE: Yeah.

ATTORNEY GENERAL EDWARDS: You could get into interminable debates on some of those issues -- even the manifest system and the design of that manifest system as to what's practical -- if you try to write it all in the statute. So I would just caution you that our investigation shows a very complex area, there's a lot of cost cutting issues, and there's a lot of ambiguities as to what actually falls in and what doesn't. I don't know that that should be in bill form; that it much more is left to the expertise of people who -- especially the Department of Health.

SENATOR PALLONE: Well the legislation that we have from last session requires the manifest, expands the infectious waste to include not only hospitals but other medical facilities, and also has a strict liability. The only thing that's in there that's not in the recommendations of the presentment is the requirement of incineration, which I noticed the presentment is very specific that incineration shouldn't be an absolute requirement. Would you agree with that, that it need not be?

COMMISSIONER DEWLING: It depends upon the type of waste. I mean, it really depends upon-- Certain types of waste must be incinerated.

MR. BLUMENSTOCK: There are also alternative technologies to incineration that work just as well. It can be installed in-house rather than a regional -- or using an outside commercial facility. So to say that all medical waste, by anyone's definition, must be incinerated, would not be an appropriate course of action to take.

SENATOR PALLONE: Okay. Well, in addition to that though, we'd also need the changes in the statute to reflect a separate offense. What about the special licensing provision? Is that something that you intend to deal with by regulation?

COMMISSIONER DEWLING: That's what we're looking at in terms of this medical waste grouping, to find out how to best handle that.

SENATOR PALLONE: Okay. I'm going to end this unless-- Go ahead.

MR. BLUMENSTOCK: I would just like to make one more comment on some of the recommendations, or one specific recommendation -- I think it was the last one of the grand jury presentments -- requiring the different State agencies to work together to prepare a statewide approach to disposal. In addition to the ocean problem we had, the medical waste generating industry as a whole is having a tremendous

difficulty as a whole in disposing of this type of material. Through the different transfer station initiatives that are bringing these solid wastes to other states, that is causing a problem. Even some of the county resource recovery facilities are being built, the vendors are looking real close at the terms of the contract and even questioning if they are obligated to take waste from health care industries to the county resource recovery units. So just in general they are really experiencing a difficult time in disposing of it legally.

ATTORNEY GENERAL EDWARDS: We would caution you. It's very important I think that when you put regulations in place or provide laws and criminal sanctions requiring things to be done, that you also are sure that you've put together the facilities to accomplish what you're requiring. In many instances that's not the case. There was an article today that I pointed out to you earlier in The Star-Ledger.

SENATOR PALLONE: That's true, and that was one of the questions that came up at the last hearing. I think by that time it was the end of the day and I don't even remember who was there from the Department. But we did have some of the hospitals come in and say they had tried to build in-house or on site incineration facilities and had a hard time doing that; and asked for some sort of expedited procedure, or some way to expedite that process, because otherwise they weren't going to build on site incinerators. I don't know if you wanted to comment on that.

COMMISSIONER DEWLING: Well, depending upon the situation -- as was mentioned before by Jim -- some other alternative besides that may be appropriate. But you know, you can't build an incinerator in an area where you are going to get fumigation. You have the potential problem of impact to the local community. It's not a blanket approval for permitting incinerators in all these hospitals. There may be one or two hospitals that may want to be groupings where they

would bring the waste in, but now they don't want to disrupt their community relations program.

SENATOR PALLONE: Yeah.

COMMISSIONER DEWLING: So you're dealing with a program of trying to address this issue, each hospital trying to address it, and in some cases incineration-- The beauty of incineration is that the waste is gone. All right? You know it's disposed of properly. You don't have that additional tag. Once you sterilize it or detoxify it, you still have to dispose of it someplace, so there's a liability issue. So you have to focus on the total problem.

SENATOR PALLONE: Senator Gagliano?

SENATOR GAGLIANO: I guess it's almost impossible to even consider something like this, but for example, if we could require through the health care regulations that there be set up on a regional basis, supported by the hospitals themselves -- maybe partially by the State -- a series of incinerators. I realize how difficult it is to get one incinerator. I know I'm just sort of whistling in the dark here. For example, one incinerator in northern New Jersey or two incinerators in northern New Jersey, could probably service a substantial number of the total health care facilities in northern New Jersey. They could bring it there in enclosed containers and dispose of it. I don't know how we would do that.

COMMISSIONER DEWLING: Very carefully.

SENATOR GAGLIANO: Does it make any sense?

COMMISSIONER DEWLING: Very carefully. It's sort of like sewage sludge or garbage. Once you start talking incineration, you start raising all those other issues.

MR. BLUMENSTOCK: And then again you mentioned the health care facility--

SENATOR GAGLIANO: But the alternative there is what we see today and what we've seen. I mean, there's no place else for it.

COMMISSIONER DEWLING: Yes, we had the same problem-- Remember the problem a couple of years ago with the problem of disposal of dead animals, the violation we had up in North Jersey. I mean, the disposal sites are the problems. We're constraining ourselves. Everybody wants to pick up, nobody wants to put down. It's the same mentality that we're dealing with in the hospital waste. I think that's most important though.

I met with the Mayor of Virginia Beach last week down in Washington, and she said to me-- You know, when you talk about hospital waste, people think about limbs, and she said, "It was a shame all of you folks up in New Jersey had those body parts on the beach." (laughter) I said, "There's nothing more exaggerated fact than those type of issues. We did not have the hospital wastes." Hospital type wastes -- or medical type wastes -- are different than hospital wastes. People perceive hospital wastes as surgically associated. That's the tragedy of what happened this summer. People's perception of hospital wastes on the beach are different than the hospital type wastes that we found on the beach.

SENATOR GAGLIANO: Well the reason I made my comment, Commissioner, was that obviously we have many hospitals and many health care facilities, like nursing homes. We wouldn't really want each one of them to have an incinerator -- assuming incineration is the right way to go -- we certainly wouldn't want a nursing home with 100 beds to have to have an incinerator in the back yard. To me it just doesn't make sense. So if we did something that would force it on a regional basis, if we could have incineration in the first place-- If we can, wouldn't it be better to do it on a regional basis so that these people could subscribe to this, pay whatever the freight is as their share of the operation, and then know-- We have a captive system so that we would know that the material had been properly taken care of.

MR. BLUMENSTOCK: Just to stress that point. It's estimated by one of the major manufacturers of syringes that your average private practitioner generates close to 1000 used syringes a year. Between the physicians, the dentists, the veterinarians, there must be collectively 40,000 or 50,000 professionals in that category. So the regional approach to this disposal is necessary.

COMMISSIONER DEWLING: If you could convince crematories to take on an additional role. (laughter)

SENATOR PALLONE: Are we going to end with that? Senator Weiss, did you want to add anything, otherwise we're going to--

SENATOR WEISS: To that last statement, Mr. Chairman? Hardly. (laughter)

SENATOR PALLONE: Okay. All right. I want to thank both of you for coming today. We appreciate your input. We won't hold you any longer.

COMMISSIONER DEWLING: Thank you.

ATTORNEY GENERAL EDWARDS: Thank you.

SENATOR PALLONE: Take care. As I mentioned previously, we're going to have Mr. Figurelli -- I was going to say from Groups Against Garbage but I better say that's not the case -- the Natural Resources Protective Association, and also Cindy Zipf -- I don't see here -- the Director of Clean Ocean Action. I want to have the two of you testify now because I think that we have to get an environmental view. Then we'll go back to the Interstate Sanitation Commission, and Save Our Shores, and the other parties to the suit. Cindy isn't in the room?

LOUIS FIGURELLI: Howdy doody.

SENATOR PALLONE: Lou, before you start. I know that you have a lot to say, but we have to try to keep it somewhat brief because otherwise we'll never get to the others. And Cindy is going to come up here with you. We'll have the two of you together.

MR. FIGURELLI: What I'll do is let Cindy go first, because I get too noisy.

C I N D Y Z I P F: You sure?

MR. FIGURELLI: Yeah, go.

SENATOR PALLONE: Do you have the mike on there? I guess you don't have mikes.

MS. ZIPF: We don't have mikes, we just have--

SENATOR PALLONE: You don't have mikes for amplification. Okay.

MR. FIGURELLI: You won't need them for me.

SENATOR PALLONE: You have to talk loudly. That's not a problem.

MS. ZIPF: My name is Cindy Zipf, and I'm the Coordinator of Clean Ocean Action, which is a coalition of organizations based in Monmouth County, but representing groups all over the region that are concerned about the degraded water quality off the New Jersey and Long Island coasts.

We're concerned about beaches and aesthetics, which is why we hold trash attacks to clean up the beaches. We go out on a variety of instances, twice a year to clean up beaches out on Sandy Hook, where we find large amounts of debris. Senator Pallone and Senator Gagliano, you've been to those beach cleanups and you know what we're talking about. And you know that the variety of materials that are washing up on our beaches indicate that there are many sources. But we are convinced that the majority of the sources of that pollution comes from the waste transfer on loading and off loading of New York City Department of Sanitation.

The whole operation from where the garbage truck meets the barge, to where it's transferred, and to where it's ultimately taken to the Fresh Kills Landfill, is horrendous. In fact, an attorney that happened to be in court the day that Judge Trump Barry held New York in contempt for not complying with the 1983 court agreement-- It was stated there that 3000

pounds of trash a day wind up as incidental spillage and contribution to the marine environment from that whole hauling operation. But because of the extreme amount of garbage that is hauled -- I believe it's 128,000 tons a day -- that is seemingly insignificant.

SENATOR GAGLIANO: Twenty two thousand tons they tell us, Cindy.

MS. ZIPF: Twenty two thousand tons?

SENATOR GAGLIANO: That's what the testimony has been, 22,000 tons.

MS. ZIPF: It is perhaps a small amount. In any case, we're very concerned about the beaches and aesthetics. We're concerned about the effect on tourism. We're also concerned about the effect on public health. But one important factor that hasn't been raised today that we're concerned about, is that material that doesn't wash up on the beaches and is then left to float into the marine environment, out into the ocean, and just exist forever floating around. It's been well documented that material has killed and maimed hundreds of animals throughout the world, but also we have seen here in New Jersey evidence of endangered species being killed by the ingestion or entanglement in floatables, in garbage.

Those are the two areas that concern Clean Ocean Action. What washes up on the beaches in fact, is taken out of the system and protects the marine environment. So that's one good thing about the material washing up on the beaches, is that it takes it out of the marine ecosystem.

There are two separate activities that had gone on. There's the constant contributions of New York and New Jersey to the floatables crisis. And there are also isolated incidences which resulted in the August 13 affair. There have also been other isolated incidences of floatable trash washing up on the Jersey shore. For instance, the sludge ball incident of May, where sludge balls and tampon applicators and assorted

material washed up on stretches of New Jersey beaches. So isolated incidences do occur, but there is a continual flow. As I said, we strongly suspect that it is the whole operation of the New York Department of Sanitation.

We recognize the advantages of reconciliation and agreement. We work to try to make some agreements, constantly, try to gain a positive response. And we strongly believe that the parties in the litigation believe that they've done the right thing, that they've gone as far as they possibly could have gone, and that they have made significant changes -- and significant positive changes. However, we are disappointed in the agreement. We feel that it requires less than the 1983 agreement, which has been stated over and over again. It doesn't require a totally and wholly enclosed facility, and it doesn't include requiring covers on barges.

It does take some steps, though, to regulate the absolute horrendous operation of that facility. In some cases just basic housecleaning type of activities. I was up at Staten Island landfill. I took a field trip up there and was outraged at what I saw, the way in which the garbage is just mishandled and thrown and strewn, and -- as it was stated -- the pushing of the garbage directly into the waterways, etc. So I believe there has been some progress made from the agreement, but as I say, I am disappointed that it didn't quite go far enough, and that the marine environment has been shortchanged.

I'm concerned that the length of time is two years until we see the total fruits of this negotiation. I'm concerned that it includes the use of booms and super booms and all kinds of booms. Booms have been shown not to work, and every time they're opened up -- whether for a short amount of time or a long amount of time -- that is going to release the garbage that's been contained behind those booms into the marine environment.

I'm concerned about the use of skimmers, because skimmers do just that: they skim. Floatables and garbage do go throughout the water column. They don't just sit on the bottom and they don't just float on the top. They're throughout the water column.

I'm concerned because reviews and studies and evaluations do not result in specific mandated or specific required change. They do not indicate to me that there's going to be aggressive action. We've had ten years-- Woodbridge has been fighting this for ten years -- this battle -- and we're going to be doing some reviews and some studies and some other work.

I'm concerned because of the fines. The fine system that is set up, as Senator Gagliano brought out, is not harsh enough. It doesn't have the monies already set aside that can be immediately taken. The fines are going to take a long time. New York has been fined a lot. Municipalities have been fined. But how do you get those fines? How do you make them actually pay those monies?

Enforcement: It seems to me that, although New Jersey is allowed to go in and peruse the records, and peruse the activities, and go in and have 24-hour access, I didn't hear anything about policing authority. It does say New York has policing authority. The Water Quality Monitoring Team, paid for by New York out of New York's Commissioner's office, has some policing authority. But I didn't hear anything about our rights, New Jersey's rights, or Staten Island's rights, in terms of policing those activities. I feel that's setting up an in-house system that doesn't really deal with the problems. Supply us with the opportunity to detain barges. If we see a barge that has resulted in spillage of a large amount of trash, can New Jersey detain that barge, because in a very short length of time that garbage will wind up on New Jersey's beaches.

I believe that perhaps this Committee could do several things to make sure that things move forward, and that New York is going to comply with this consent order. I know New Jersey has many people: there's private organizations, nonprofit organizations, there's the State DEP and our Attorney General that are involved. However, I feel that the more review and the more we can make sure that New York is staying on schedule, the better.

I went through the document -- the court order -- and there were a number of things that were required by January 15, and I'm not sure if those things have been done. For instance, they were to develop procedures for barge mooring, written procedures for the use of a mooring rack, development of procedures to maximize the use of the skimmer boats, developing the protocol for experimental use of trawlers; that was all for Fresh Kills.

For the marine transfer station, written plans for installing the boom were supposed to be made by the 15th, protocols and procedures for the use of boats within the boom were supposed to be set, protocols for seeing the effect of the boom in boats were supposed to be set, operation and maintenance procedures currently at use and designs to reasonably prevent the discharge were supposed to be proposed, and by January 18, the proposed protocol for the barge study were all supposed to be submitted.

Now I don't know if all those things have been submitted. I've heard a lot of things being talked about, but I don't know if there's actual documentation in hand. And if New York is not going to comply with the very first deadlines, I guess I'm rather cynical that New York is not going to comply.

SENATOR PALLONE: Cindy, I thought that we asked the general question of Cary Edward's assistant as to whether or not the deadlines of the past have been met, and she said, "Yes." We didn't get into the specifics of it, so I still have

some questions too. But generally she said yes, all the deadlines have been met.

SENATOR GAGLIANO: Mr. Chairman, I wonder if we could either ask the staff, or maybe Cindy's group, or someone-- I'm a greatly believer in, if you have timetables set that you prepare a graph or a drawing which shows the date and what is required to be done. And if someone would do that, either staff or--

SENATOR PALLONE: I think we should ask staff, rather than ask Cindy who's understaffed.

MS. ZIPF: Well, we'll do it as well. We've already started.

SENATOR GAGLIANO: As a matter of fact, if this graph came out right, we could even give it to the newspapers as a press release from this Committee--

SENATOR PALLONE: That's a good idea.

SENATOR GAGLIANO: --and say this should have done by February 1, and this by February 15, and this by June 1--

MS. ZIPF: And where are they?

SENATOR GAGLIANO: --and here it is June 15 and these things were or were not done.

MR. FIGURELLI: It hasn't been done, period.

SENATOR PALLONE: Well first of all let's say absolutely we'll ask Len if we can have something like that prepared.

SENATOR GAGLIANO: Then we could show it.

MS. ZIPF: There are a lot of dates in it. It is very confusing.

SENATOR GAGLIANO: The media would understand, and if it's only been partially done, we can say that. But I think it's important that we track this thing.

MS. ZIPF: I think you're right. I think you're absolutely right.

SENATOR PALLONE: Once it's completed, Senator, we'll make it available to the public and to the environmental groups.

SENATOR GAGLIANO: Right.

MS. ZIPF: I mean, it's the response from this Committee that has initiated this whole response. I think to follow up on that, that perhaps the policing aspect of New Jersey's rights within the waterways-- I mean, if we establish the marine police station that Cary Edwards wants in New York Bay, and that we support, will that be able to detain barges? Will that be able to take action against New York, activities within the harbor? If they're not complying with the protocols--

SENATOR GAGLIANO: We'll have to wait until they get to New Jersey and then arrest them.

MS. ZIPF: Do we have to wait for the garbage or the barge?

SENATOR GAGLIANO: A little of each I'm afraid.

MS. ZIPF: Perhaps we'll be surprised if New York complies with all these things, and that would be a good thing. But I think as well, I don't know how we can try to get New York to implement a totally enclosed system for the transfer of garbage. There's going to be several marine transfer stations that are going to be built in New York. It's the opportunity to implement state-of-the-art technology, an opportunity for us to make sure that not one shred of paper is released into the marine environment because of that operation. I don't think one shred should be made open to the marine environment, and get into the marine environment in any way from that operation.

There is nowhere else in the country which allows the kind of transportation which is going on in New York harbor. Again, New Jersey and New York are exceptions to the rule. What does Boston do? What do these harbor communities do? I don't believe that they openly haul and transfer garbage the way that New York is doing. Maybe we can find out what other communities are doing, and perhaps implement some of those technologies or those ideas.

Again, we have Federal laws that state that-- We have the Rivers and Harbors Act which was passed in the late 1800s, and we have the Refuse Act which was also passed in the late 1800s. We have Federal laws that protect our marine environment from these kinds of atrocities, and I think we have to take the upper hand as much as possible.

I was disappointed in what has transpired, but hopefully we'll be able to build off it and make sure that New York stays in compliance, and take every opportunity that we can, to make sure that as New York rebuilds and builds new facilities that we implement the best available technology to have zero discharge.

SENATOR PALLONE: Thanks, Cindy. Just one question, you mentioned new marine transfer stations. Are those on board, that there are new ones to be built? I could always ask Dr. Mytelka.

MS. ZIPF: That was the source of the information that I received.

SENATOR PALLONE: All right. I'll ask him when he comes up.

SENATOR GAGLIANO: How many, I'd like to know?

SENATOR PALLONE: Any questions?

SENATOR GAGLIANO: How many new ones are proposed? Maybe Alan could tell us. (inaudible response from Dr. Mytelka in audience)

SENATOR PALLONE: Yeah, we'll ask you when you come up so we can get it on tape. Otherwise if you speak from back there we won't -- and where they are, and whether they are requiring enclosed facilities and all that. Any questions of Cindy?

SENATOR GAGLIANO: No, thank you.

SENATOR PALLONE: Well, you don't go away because you and Lou are here together. We'll move on to Lou.

MS. ZIPF: Right, okay.

MR. FIGURELLI: She's going to have to move over because the noise that's going to come from here is going to drive her right through the wall.

SENATOR GAGLIANO: Let me open a window.

MR. FIGURELLI: You're right about that. I would like to acknowledge one thing. Right now I see the representative from Assemblyman--

SENATOR PALLONE: Vitaliano.

MR. FIGURELLI: --Eric Vitaliano, and thank God, I see a good friend of mine who has always been a friend and representative of Congressman Molinari, sitting back here, Mike Terrusio. I appreciate that they're here.

Rather than go through a whole lot of speeches, just let me follow my testimony. I'll do it that way because I get carried away.

Good morning. My name is Lou Figurelli, President of the Natural Resources Protective Association of Staten Island. I would appreciate to preserve the continuity of this presentation, that all questions be withheld until the completion of this presentation. Thank you.

I would like to thank the New Jersey Senate, and especially the Chairman, Senator Pallone, for again allowing the NRPA and myself to provide input into these hearings. Since the last hearing, September 29, 1987, at Middletown, New Jersey, many disturbing events have occurred. The NRPA composed of 12,000 paid members has concluded that we are completely dissatisfied with the settlement of the Woodbridge suit. With the time allocated to me at this hearing it would be impossible for me to state all of our complaints and objections to this settlement.

We at the NRPA firmly believe an investigation should be conducted of the procedures used by the New Jersey Attorney General all involved parties in achieving this settlement. I would be willing to testify before any investigative committee

to provide information and evidence that may help to find if illegal practices and procedures have been employed in arriving at this settlement.

At all previous hearings I have represented the NRPA and Groups Against Garbage. I have since resigned as Director of Groups Against Garbage. I no longer represent Groups Against Garbage, and in the very near future the NRPA, myself, and other members of Groups Against Garbage, are contemplating legal action against Groups Against Garbage and its attorneys for their acceptance of this settlement without the consent of the membership of its Executive Board, without a vote. There has been many questionable actions conducted by Groups Against Garbage and its attorneys which cannot be discussed at this time.

I would like to make it very clear at this time that at no time have I, or the 12,000 members of the NRPA, approved of this settlement. My office has received hundreds of calls from our members, citizens of New York and New Jersey -- who have donated their dollars to support the NRPA's battle against plastic and water pollution -- reprimanding me for utilizing their donations to accept this vague settlement, which would allow the pollution to continue without enforcement and penalty for violators of the law. Again, the NRPA and myself would never sell out the people of New York and New Jersey by accepting this settlement.

We firmly believe this action taken by the Attorney General of New Jersey, the Interstate Sanitation Commission, Groups Against Garbage, the Township of Woodbridge, and the questionable intervener Save our Shores, has compromised the health, welfare, and continued pollution of our waters by accepting this settlement which eliminated the original court suit.

The NRPA, myself, and many sport fishing and environmental organizations -- not GAG -- have spent thousands

of dollars-- I'm getting dizzy. I'm trying to force it out too fast.

SENATOR PALLONE: Go ahead.

MR. FIGURELLI: I'm trying to cover the time. (continuing) --have spent thousands of dollars researching and gathering evidence, such as videotapes, using boats to follow barges for photos, hiring helicopters to have aerial photos and tapes of the landfill and transfer stations, and other expenses in preparation to present evidence for the Woodbridge suit. This evidence would have fully supported our intervener status and the Woodbridge suit, showing the Fresh Kills Landfill was indeed allowing, through its operation, polluting our waterways and our beaches. The blatant disregard for the destruction of our beaches, marine wildlife, and the environment by transporting rubbish, garbage, and tons of plastic waste by open barges for many years, and the mismanagement of the transfer station and the landfill itself, would have been stopped by the provisions of the intervener and Woodbridge suit. We believe the suit should have been completed, and the settlement of the New Jersey Attorney General should have been implemented after the suit had been completed.

We of the NRPA would like to see how much evidence had been gathered by the other parties in this action. Their lack of evidence may have been one of the major reasons for accepting this mediocre settlement. We of the NRPA cannot understand why this settlement was accepted in place of a well-planned, fully supported, legally sound, court action by Woodbridge. The original suit would have penalized New York City for the many years it has destroyed our waters. It would have forced New York City to comply with Federal, State, and City laws, or pay fines. It would have compensated the Interstate Sanitation Commission for the many violations committed by ignoring conservation laws. It would have compensated Woodbridge for the aggravation it has suffered for

all these years. It would have compensated all the involved plaintiffs for their court costs and expenses, who had the guts to take them to court.

By completing the court action, the barges would have to be covered. The correct booms and lock systems would have to be built. The leachate would have to be put under control. The management of the landfill would have to comply with the laws or be shut down. Instead, a settlement was made for studies of problems and monitoring of existing conditions which would continue on for many years into the future without correcting the problem.

From the first hearing in Woodbridge, New Jersey, September 24, 1986 -- enclosed attachment number one, Woodbridge testimony -- it was obvious to all that this hearing was to address salt water and beach pollution by plastics and solid waste, principally from the Fresh Kill Landfill operation, and the attempt by Woodbridge and this Commission to halt the plastic pollution of our waterways from the Fresh Kill Landfill operation.

Without going into detail for the record, read the Woodbridge testimony attached -- which I am supplying a copy to this -- and you will find within the testimony the NRPA severely criticized both the Interstate Sanitation Commission and the New Jersey Attorney General for not helping or joining Woodbridge in suing New York City for the destruction it was causing by the mismanaged landfill. Within a short period of time we were notified that the ISC and the New Jersey Attorney General had joined the suit as interveners. Immediately GAG, at a great expense, applied for intervener status. After submitting expensive legal documents and reasons to the court why we were entering the suit in October, 1987, we were granted our intervener status one year later, one year from when I spoke to you, Frank.

For the record, I am entering this document which we have here (holds up document) to clarify my following statement. We of the NRPA cannot possibly justify the control achieved by the New Jersey Attorney General over the Woodbridge suit by the same intervener status granted to GAG. It was made clear to me by our attorneys that members of GAG were prohibited from discussing any part of the court action with the New York City Sanitation Department, and that by doing so would jeopardize-- Excuse me. You have to forget it. I lost my train of thought. This same provision applies to the New Jersey Attorney General-- Oh, let me go back on that. Let me just re-track because I lost my train of thought.

It was made very clear to me by our attorneys that members of GAG were prohibited from discussing any part of the court action with the New York City Sanitation Department, and that by doing so would jeopardize the Woodbridge court action. The same provisions apply to the New Jersey Attorney General as a--

SENATOR PALLONE: Party?

MR. FIGURELLI: I'm sorry. (continuing) --as a party to the suit. Here it is. The same provision applies to the New Jersey Attorney General. If not, why? It was understood that any action taken by any of the plaintiffs must be submitted to all of the plaintiffs before any action could be taken.

The first time I had access to the settlement consent order -- Civil Action 79 Consent Order -- was on December 2, 1987. The New Jersey Attorney General prepared this order, rammed it down our throats, exerted pressure on all interveners to accept it at the December 4, 1987 meeting. I requested a postponement to study this document to present it to GAG and was denied. I ask this Committee, which I am sure is well represented by qualified attorneys, what gave the New Jersey Attorney General the right to do what was done with the

intervener status? I believe this action was improper and possibly an illegal procedure.

Also, while on the subject of interveners, I would like to state for the record it took GAG -- Groups Against Garbage -- approximately one year to achieve intervener status. A court order was issued -- attachment number two, which is this one (holds up document) -- which was sent to all of the plaintiffs for approval before we were admitted into the suit.

How, why, when, was the organization Save Our Shores granted intervenorship to participate in the suit? We of the NRPA and this Committee should demand to see a court order identical to GAG, and the copies that were sent to the plaintiffs for their approval.

Question, how was SOS allowed to participate in the secret hearings conducted December 4, without this court order? Senator Pallone and Committee members, the object of this hearing was to stop water pollution and get bistate cooperation. The NRPA and GAG have provided more than their share of evidence, time, and money, to these hearings. Our main objective in entering the suit was to stop water pollution from solid waste. The settlement accepted, to me is nothing more than a study monitoring agreement, which may or not be fulfilled. That remains to be seen.

In the interim, I am suggesting to this Committee and to both New York and New Jersey legislators the following:

- 1) That legislation be prepared and enacted in both states that would prohibit the transportation of refuse, garbage, or trash, in, on, or over the waters of both states unless covered, with penalties and jail sentences to the violators;

- 2) That all landfill water entrances to the transfer stations be completely surrounded by fences and retention booms with skirts or nets from the surface of the water to the sea floor;

3) That an efficient dual local boom system be employed at water accessible landfills and transfer stations;

4) That treatment plants be constructed to process the leachate within the landfill itself;

I've lost my train of thought. I'm pushing too much air through these lungs. I'm sorry. Here it is.

5) The Department of Army Engineers -- that these signs be posted and be enforced, and did what these signs says.

Now why these signs were ever taken down -- because I called the Army and this law is still in force. The Department of the Army-- (inaudible) --District of Engineers, Warning Notice: "Federal acts prohibit the deposit of any sludge, garbage or refuse of any kind, into the navigable waters of the United States and its tributaries, or to deposit or cause suffer, or procure to be deposited material of any kind, in any place, on the bank of a navigable water what is same shall be liable to be washed into the navigable waters. Any person or persons violating these laws shall be subject to a fine of \$2500, and not more than one year imprisonment."

I don't believe this. We have the laws that say you go jail if you do what the Sanitation Department is allowing to be done in New York State. If we can accomplish these four suggestions, we feel the time and money and energy devoted to these hearings will not have been wasted.

Before I leave, the following questions and comments should be recorded into the minutes of this hearing for investigation and examination by this Committee, for possible illegal or unethical procedures and practices of law:

1) I firmly believe that Judge Maryanne Trump Barry at no time was aware of what was going on outside her court. I had requested a postponement for reasons stated previously. I also requested from Group Against Garbage's attorney Henry Martuscello to meet with Judge Barry to explain what I was aware of. He refused.

2) Why did the Interstate Sanitation Commission and the Woodbridge counsel reverse their decision to accept the settlement after telling me on December 4, 1987 they would stand firm on the original court action? Is it possible that political influence was exerted, and by whom?

3) Why did the ISC on many occasions refuse to give me information when I requested it?

4) On December 4, 1987, in the New Jersey Attorney General's office, in a so-called secret meeting attended by GAG attorney Burt Guido and myself, was a tape recorder being used at the feet of the Woodbridge delegation? I may be wrong on that. Yeah, Woodbridge delegation. It was detected by the attorney for the ISC, noticed by the representatives for SOS, and alerted by Burt Guido of GAG, about this recorder. As a plaintiff intervener and former Director of GAG, I demanded a copy of this tape be presented to the investigative committee for review.

5) Why, after almost two years of presenting and personally appearing at these hearings as Director of GAG and President of the NRPA, one week before the decision was made to accept this study settlement, that Groups Against Garbage notified the other plaintiffs and possibly the defendant that Lou Figurelli was not an authorized representative of GAG, and should or could not be supplied with so-called secretive information of the proceedings of the decision making meetings? If this is true, was any information withheld from me at the December 4 meeting in full view of the plaintiff and defendants as an authorized representative of GAG?

6) Was Save our Shores illegally attending these decision making meetings without court authorization--

SENATOR PALLONE: Lou, I'm going to let you proceed, but I just want you to know one thing because--

MR. FIGURELLI: I haven't got much more.

SENATOR PALLONE: All right. As a Committee, we're certainly not going to get into the question of who represents GAG or who represents Save Our Shores, and that type of thing.

MR. FIGURELLI: Right.

SENATOR PALLONE: I mean, you understand that. You're asking questions which we're not going to answer. It's not our realm.

MR. FIGURELLI: I'm not asking the questions for you to answer. I'm just entering them into this hearing.

SENATOR PALLONE: You want to just enter it for the record. Okay.

MR. FIGURELLI: That's all I'm doing. I'm not asking for answers. I'm entering them into the hearing so they can be addressed later on.

SENATOR PALLONE: Well, they're not going to be addressed in this forum.

MR. FIGURELLI: I've only got one more page.

SENATOR GAGLIANO: We can't grant you immunity either.

MR. FIGURELLI: Huh?

SENATOR PALLONE: You might be saying things that are libelous, but that's up to you.

MR. FIGURELLI: If you want me--

SENATOR PALLONE: No, no. I'm not going to interrupt you. I just--

MR. FIGURELLI: If they want me, let them come and get me, and I wish they would.

SENATOR PALLONE: Lou, I just want you to know that we can't answer the questions, but if you want to enter them--

MR. FIGURELLI: I'm entering them because it's pertinent to the end of what I've got.

SENATOR PALLONE: Okay.

MR. FIGURELLI: Why, after almost two years of presenting and personally appearing at the hearings as Director of GAG and President of the NRPA, one week before the decision

was made to accept the study settlement, that Groups Against Garbage attorney notified the other plaintiff and possibly the defendant, that Lou Figurelli was not an authorized representative of GAG, and should or could not be supplied with so-called secret information of the proceedings. What am I doing here? I was through it from the beginning. I was at all of the meetings. If this is true, was any information withheld from December 4?

6) Was Save Our Shore illegally attending these decision making meetings without authorization, possibly under the protection of the New Jersey Attorney General? Are there possibly political motives present?

SENATOR GAGLIANO: Lou, I certainly understand your frustration, but it's very difficult for us to sit here and listen to this. We won't have time to get the responses, and you're making some very serious charges and allegations. I don't feel comfortable with it, unless the Chairman wants to have a day--

SENATOR PALLONE: No, I think the--

SENATOR GAGLIANO: --where we would be able to come back and have representatives from Save Our Shores and the Attorney General and anyone else here, to give their side of the story. I feel--

SENATOR PALLONE: See, the problem, Lou, as Senator Gagliano is stating that, if we let you continue with all this, then we're going to have to let the other side say the same thing, and that's not what we're here about today. We're not here to argue over who was representing who, and what deals were made, if any. That's not our realm. So I think that I'm going to have to ask you to stop because otherwise everybody is going to want to be going back and forth on these issues.

SENATOR GAGLIANO: We're not saying we disagree with anything he says. I don't know. But it's not fair for--

SENATOR PALLONE: No. It's just that we can't get into it, and we certainly don't have the time. So why don't you just forget anything else internally as far as the organizations are concerned, and give us anything that relates to the agreement that you're concerned about -- without reference to who was representing who, who was negotiating with who. We can't get into that.

I apologize to the others who are mentioned who aren't going to have an opportunity to respond to it. We'll let everybody speak today. I don't want to give the impression we won't.

MR. FIGURELLI: Well, I'll tell you what. I've only got one more page and I can finish it.

SENATOR PALLONE: You can continue but I just don't want to hear any more about--

MR. FIGURELLI: Oh, all right.

SENATOR PALLONE: I just don't want to hear any more about internal, you know, mechanics of these groups, and who represented who.

MS. ZIPF: The internal politics.

MR. FIGURELLI: All right. I've got only one more page, not even a page.

SENATOR PALLONE: But--

MR. FIGURELLI: I don't want to lose my train of thought. Let me just introduce it.

SENATOR PALLONE: You can do that, but I'm not going to hear any more about these internal mechanics. But go ahead, continue reading as long as you don't give me that.

MR. FIGURELLI: I just want to introduce it--

SENATOR PALLONE: All right.

MR. FIGURELLI: --let it be recorded.

SENATOR PALLONE: No, no. You can't. We're not going to hear any more about the internal politics because if we do we have to have SOS--

MR. FIGURELLI: All right. (begins reading testimony again) I believe I was deliberately kept away from the meetings for fear that I would not accept--

MS. ZIPF: No, no.

SENATOR PALLONE: No.

MR. FIGURELLI: All right. Frank, I am submitting it in writing, so whatever you want deleted later on--

SENATOR PALLONE: All right, fine. Give it to us.

MR. FIGURELLI: --you could do. I'm sure you'll do the right thing.

SENATOR PALLONE: All right, anything else about the agreement and what's said afterward?

MR. FIGURELLI: Number eight, did the Attorney General have sufficient evidence to pursue the 50-mile garbage suit or did he try to combine the evidence gathered in the Woodbridge court action, and eventually take over the Woodbridge suit as an intervener status?

SENATOR PALLONE: Okay, that's what we're trying to avoid.

MR. FIGURELLI: Oh, oh, oh.

MS. ZIPF: No politics. No political statements.

MR. FIGURELLI: Was the bottle experiment that failed the Attorney General's office a maneuver for possible political reasons?

MS. ZIPF: No, no.

MR. FIGURELLI: Not that? What am I doing wrong here?

SENATOR GAGLIANO: Mr. Chairman, if I may?

SENATOR PALLONE: Yes?

SENATOR WEISS: Mr. Figurelli, why don't you just submit that paper you have, as you indicated before, without reading it. It's giving us all a lot of trouble.

MR. FIGURELLI: All right.

SENATOR WEISS: If the Chairman has not explained it clearly, I think he had, but let me repeat it. If you keep on with that statement as it is, we're going to have to have the Attorney General back here.

MR. FIGURELLI: I'll be submitting it written.

SENATOR WEISS: I would suggest to the Chairman that we have him back here in short order, so that we don't wait for the next meeting because there's some allegations in there -- and I'm not in the Attorney General's party -- that would not be pleasant for either one of us.

SENATOR PALLONE: Lou, why don't we do this--

MR. FIGURELLI: All right. Frank, how about if I just go to the conclusion?

SENATOR PALLONE: Okay. That sounds fine.

SENATOR WEISS: That would be the greatest thing you did. Read the last line that says, "Thank you."

SENATOR PALLONE: Because we want to ask you some questions too. We want to ask you some questions also.

MR. FIGURELLI: Oh, I imagine you would, which I'm ready to answer I hope.

Conclusion: My time is up. My presentation is over. Boy that was quick. This settlement smells and stinks of political collusion, corruption and deceit by all parties involved. (laughter) That's what you want?

Members of this Committee and all here today, political pressure-- What? You don't want to get shot from behind? (talking to Ms. Zipf) All right.

MS. ZIPF: I thought I was safe at the conclusion. (laughter)

MR. FIGURELLI: --has destroyed a justified court action. Members of the Committee and all here today, political pressure has destroyed a justified court action which would have been recorded in our laws as a tested case for others in the future to protect themselves from similar situations.

The defendant, the City of New York, has delayed this court action with complete disregard for public health and welfare and the environment of our surrounding waters, beaches, and wildlife. It has played its game well. The landfill has grown larger, the pollution and leachate dangers have steadily increased, and the acceptance of this consent order which has replaced a justified suit will allow New York City and its legal staff to laugh in our faces and close the door by additional delaying tactics without penalties for environmental destruction to our waterways and our wildlife.

Immediate action should be taken by this Committee to expose the events that led to this unwarranted settlement.

I also further suggest that the findings of this hearing and the overwhelming objections projected by many concerned citizens and legislators be forwarded to the Honorable Justice Maryanne Trump Barry who presided over this court action for her evaluation and examination into possible illegal practices or procedures of law.

Since the preparation of this testimony, I have recently been notified that a bill is being prepared to be enacted into law in the New York State Assembly that would prohibit the transportation of rubbish, trash, and solid waste garbage in or over the waters of New York State, unless in a closed or covered barge.

SENATOR PALLONE: Which is what you want?

MR. FIGURELLI: Provisions for high penalties and jail sentences will be considered for violators. Thank you. And I'm sorry I had to miss the rest. If anybody has any questions I'll be glad to respond.

SENATOR PALLONE: I just want, if you could-- Again, you've looked at the agreement. You know that there are devices that were mentioned by the Attorney General's representative that are in the agreement, in an effort over the next two years to try to contain the flow of trash. I started

out today saying that there was concern that most of these potential devices that are mandated by the agreement were simply cosmetic, and that they really weren't that different from what's been proposed, or what's been implemented in the past -- as opposed to the need for the enclosed unloading facility or the covers for the barges. I just wanted your opinion about what's in the consent agreement in terms of what it might mean over the next two years, you know, the different devices that were mentioned and the different things that are mandated.

MR. FIGURELLI: Truthfully Frank, I think what they got in there is worthless. I think they're going to delay that tactic for the next 20 years, and you're going to be in the same position that you are now, unless we introduce some laws to stop the garbage from getting into the water.

SENATOR PALLONE: All right, but what is your answer then, Lou? If what's stated in the agreement doesn't add up to much, and over the next two years--

MR. FIGURELLI: It's only talk. It has no action. It has no teeth in it.

SENATOR PALLONE: Well what would you suggest? What has to be done at Fresh Kills?

MR. FIGURELLI: I think the barges--

SENATOR GAGLIANO: Your four points, Lou, would you read those again quickly?

MR. FIGURELLI: Yeah, those four points. That's exactly right. (reads from prepared statement) --that legislation be prepared and enacted in both states that would prohibit the transportation of refuse, garbage, or trash, in or on the waters of both states, unless covered.

SENATOR PALLONE: So covers is number one?

MR. FIGURELLI: Right.

SENATOR PALLONE: Okay.

MR. FIGURELLI: Number two, that all landfill water entrances and transfer stations be completely surrounded by fences and retention booms with skirts or nets, from the surface of the water to the sea floor.

SENATOR PALLONE: Now, they're not doing that?

MR. FIGURELLI: No. No way.

SENATOR PALLONE: They're only going certain distances, a certain percentage down with the skirts?

MR. FIGURELLI: Well, the skirts go this far, Frank.
(gestures with his hands)

SENATOR PALLONE: And not far enough?

MR. FIGURELLI: Forget it.

SENATOR PALLONE: Okay.

MR. FIGURELLI: All right? Number three, that an efficient dual lock boom system be employed at water accessible landfills. Which means that when a barge goes in, it goes into a lock system, the gate closes behind it, the front one opens up, the barge goes out and makes its deposit. If any trash is going to drift out of that place, it hits the first gateway or lock system, the barge gets into the system and at least there's a chance that it won't get out of the second system.

SENATOR PALLONE: And that's not being done?

MR. FIGURELLI: Of course not. The booms are left completely open constantly, and it's being done today.

SENATOR PALLONE: All right, go ahead.

MR. FIGURELLI: Number four, that the treatment plant be constructed to process leachate from the landfill. That's another big problem. Right now what they do is they take up this material that drains through the garbage and all the poisons, and they send it in the spray back up over the top and go down. Eventually, if you keep turning it over and turning it over, it has to come out, there's no way. There has to be a processing plant -- a water treatment plant -- within the landfill itself, because when it starts to compact down that

water has to go somewhere. Where it's going to go is into the Arthur Kill or the Kill Van Kull and destroy our waters. There has to be a leachate treatment plant -- sewage treatment plant, not a sewage treatment, a leachate treatment plan -- built into the facility to take care of this material.

What they intended to do was to take this material, and pump it into our treatment plants which is situated-- We have the Oakwood Treatment Plant in New Jersey. That thing dumping that material -- not only into our treatment plant -- would destroy our treatment plant, but if we have any way in the transfer of that material going through the pipe line, if we ever have a flood it would automatically allow that material to go right down onto our beaches and into Raritan Bay. No way. The material should be processed in a treatment plant, and the material should be disposed of properly. There's no way. All right?

SENATOR GAGLIANO: Excuse me, Mr. Chairman. Of the four points the only one that I see that we have jurisdiction over at some point -- provided the barges enter New Jersey waters -- is the covering of the barges for the period of time that they are in New Jersey. Now, you know the waterways better than I do. I'm assuming that at some point those barges are plying New Jersey waters. When they are, it seems to me we have the possibility of jurisdiction if it hasn't been preempted by some Federal law we are not aware of. I would certainly be happy to co-sponsor with the Chairman such legislation as the Committee can come up with. That's number one. Let me continue. Maybe you can give us an idea.

But with respect to two, fences booms and skirts; three, the dual lock system; the treatment plant for leachate; those items I believe would strictly be under the jurisdiction of the State of New York or the Corps of Army Engineers or the EPA. Our legislation would not help. We can't get jurisdiction over something which is in New York. I point that

out to you because it may be that it either has to be done through Congress, or jointly through the two states. But New Jersey alone I don't think would have jurisdiction there.

MR. FIGURELLI: I think the Interstate Sanitation Commission has jurisdiction there.

SENATOR PALLONE: We could ask the ISC.

SENATOR GAGLIANO: Fine, but that's not going to be by legislation, not by legislation by us. We can certainly support the idea of the ISC doing it, but it's not legislation we can pass in both houses here, and have signed by Governor Kean -- except, I feel, with respect to the requirement of the covering of barges when they're in New Jersey waters. That may be a violation of interstate commerce-- I don't know. But certainly that's worth a try and I would ask the staff to research it. I think it's an excellent idea. When they're in New Jersey, make them comply. The others, I just don't know what we can do.

SENATOR PALLONE: I agree. I don't know if you had another point there, but what about the control of the landfill itself? That's still very much unclear to me. The Attorney General mentioned that the landfill is not permitted, and is operating pursuant to some consent order between, I guess, New York State DEC and the City, but I'm sure you're concerned about -- particularly being from Staten Island that's a major concern -- about how far this landfill is going to expand?

MR. FIGURELLI: Frank, really I have to address this in this way. My opposition to what has gone on here in the way the hearings were conducted in New York, is the reason why I bowed out to fight them, because Groups Against Garbage, to me, and I'm saying point blank--

SENATOR PALLONE: Yeah, but I don't want to get into that.

MR. FIGURELLI: All right, but these -- so I can finish--

SENATOR PALLONE: I'm just trying to see whether you've dealt with, or thought about the question of the landfill expanding and continuing to grow to higher heights, and the whole thing.

MR. FIGURELLI: I did. The questions that I addressed at the first meeting, which was December--

SENATOR GAGLIANO: September 24.

MR. FIGURELLI: When was it?

SENATOR GAGLIANO: For this?

MR. FIGURELLI: No. I've been to many of these meetings. I've lost my train of thought.

At the hearings which were being conducted by the Attorney General, I believe, of New Jersey-- When did it start? December 4.

SENATOR PALLONE: You mean the meetings amongst the parties to the suit.

MR. FIGURELLI: Right. Where I suggested that certain things be done, and it all blew apart. In other words, there was a court action against things that were being done and procedures that had to be followed, and we accepted-- The Attorney General of New Jersey came in, and it was something totally different.

MS. ZIPF: You're not answering his question.

SENATOR PALLONE: All right. I know. Now you're getting into that again. I was talking administratively in terms of what could be done about the landfill itself. I don't want to get into the situation with GAG.

MS. ZIPF: It's growing. Can you stop it?

MR. FIGURELLI: I don't think you'll ever be able to stop it.

SENATOR PALLONE: All right. Any other questions from the members of the Committee, of Cindy or Lou?

SENATOR GAGLIANO: No. No, thank you.

SENATOR PALLONE: Okay. Anything else you want to say, Cindy?

MR. FIGURELLI: I had a finish. Wait a minute.

SENATOR PALLONE: Oh, I'm sorry.

MR. FIGURELLI: Can I just finish it?

MS. ZIPF: You finished it.

MR. FIGURELLI: No, I didn't.

MS. ZIPF: Yes, you did.

SENATOR PALLONE: I thought you were.

MR. FIGURELLI: I said, "Thank you"?

MS. ZIPF: Yes, you said, "Thank you, and if you have any questions I'll be happy to answer them."

SENATOR PALLONE: You always say thank you. We appreciate your--

SENATOR WEISS: You said, "In conclusion, thank you--" I heard you myself.

MS. ZIPF: Yes you did.

MR. FIGURELLI: I'm sorry.

SENATOR PALLONE: That's all right. Thanks for coming.

MS. ZIPF: I just wanted to add two more points. One is that, as we said, develop the graph and make sure that everything is complied with. If it's not, I don't know what kinds of powers this Committee has.

SENATOR GAGLIANO: All we'd have to do is call a public meeting.

MS. ZIPF: Okay. (laughter) But perhaps the Committee can make recommendations that the Attorney General should act on, to perhaps strengthen the agreement as it's currently being conducted. I don't know how we can move forward if New York doesn't comply with one or two of the stipulations. Maybe we can get stronger enforcement.

The other thing, the other very blatant area that I think has to be addressed -- New Jersey can't, but I just think it shows where there was such a weakness in our leniency towards New York -- is that for the marine transfer operation the requirements of that boom and skimmer is exactly what's

currently being employed at the Staten Island landfill, which we know doesn't work.

MR. FIGURELLI: It don't work.

SENATOR PALLONE: Now I don't understand, Cindy. Tell me that again?

MS. ZIPF: The marine transfer terminal--

SENATOR PALLONE: Right.

MS. ZIPF: --is being required to install a boom and skimmer--

SENATOR PALLONE: Right.

MS. ZIPF: --which is exactly what currently exists at the Fresh Kills Landfill--

SENATOR PALLONE: And doesn't work?

MS. ZIPF: --which we know doesn't work.

SENATOR PALLONE: Okay. That's important.

SENATOR GAGLIANO: I've been there, and it's open.

MS. ZIPF: We know it doesn't work.

MR. FIGURELLI: Frank, before I leave, here's a photograph of a barge--

SENATOR PALLONE: Oh, we have them.

MR. FIGURELLI: --loaded over the top.

SENATOR PALLONE: Yes.

MR. FIGURELLI: Are those mine?

MS. ZIPF: Those are your pictures.

SENATOR PALLONE: These are probably yours, yes.

MR. FIGURELLI: This is impossible. There's no way in God's creation, that barges loaded like that are not going to discharge materials into our waterways. Never happen. These barges have to be enclosed.

SENATOR PALLONE: All right. I agree with you.

MS. ZIPF: And we don't need a study to prove it.

MR. FIGURELLI: And we don't need studies to prove it.

SENATOR PALLONE: I agree.

MS. ZIPF: Thank you.

SENATOR PALLONE: Thank you.

MS. ZIPF: Thank you.

SENATOR PALLONE: Thanks again.

MR. FIGURELLI: I'm sorry I couldn't present the rest--

SENATOR PALLONE: No, you were very good. We'd like to have Dr. Mytelka next. Thank you for bearing with us, Doctor.

D R. A L A N I. M Y T E L K A: Mr. Chairman, members of the Committee, ladies and gentlemen. I do have a prepared statement which will take me about five minutes to read at the most. I do have a few other remarks to make, and I certainly will be prepared to answer any questions that you might ask.

I am Dr. Alan I. Mytelka. As Director and Chief Engineer of the Interstate Sanitation Commission, I appreciate this opportunity to reiterate the Commission's position on the joint settlement between the plaintiffs and the City of New York on the eight-year-old suit concerning litter on the Woodbridge beaches.

Please note that was a concerted action that included a number of plaintiffs, each with its own position. As in a case such as this -- with all parties negotiating in good faith -- it was, indeed, a joint settlement.

We all shared one prime objective, and that was to stop the littering. All parties signed. All believed that the agreement clears the way for immediate action -- and "immediate action" is a phrase I'll be using again. I do know that the Commission was able to exert a positive and constructive force in the shaping of the final agreement.

As you may be aware, after seven years of fruitless negotiation between New York and Woodbridge, the Commission entered the case in 1986 and last fall won the contempt citation against the City of New York. This contempt of court citation might be termed the key -- the useful handle if you wish -- in opening the door to all parties. It dramatized the

seriousness of our intent and set the stage for practical action.

Although the Commission was not invited to join the New Jersey Attorney General's office in its original negotiations with New York, we were able to exert that positive force I mentioned in strengthening the initial agreement.

When we entered the negotiations -- during that two-week period the judge granted for parties to reach a final agreement -- we found an outline for an accord and an opportunity to strengthen the agreement. Specifically, these include:

- 1) An independent monitor to make certain New York is complying with the order;
- 2) Immediate remedial actions; and
- 3) The review and immediate implementation of existing water cleanliness procedures.

There is also the requirement that the construction of a wholly covered barge unloading facility be evaluated by an independent consultant, if the immediate remedial actions are not effective. We also felt that it was important that stringent stipulated penalties be assessed to ensure that the City meets its target dates.

In addition, the ISC shares responsibility for seeing that the remedial program proceeds in a proper manner. The ISC is playing a direct role in the selection of the monitor and the independent consultant, and has the right to continually track progress with the presence of our own trained personnel. We have the right of access to Fresh Kills at all times. Any future actions that we take would be as a result of documented, firsthand knowledge.

I might add that in doing what we're doing right now, and you heard this morning from the Attorney General, a whole litany of these meetings that are taking place, and there's no sense in my going over those in detail. I would say, however,

that so far everything is on schedule. In fact, my general counsel had to leave to get back to our office because there are seven RFPs -- or requests for proposals -- for various aspects of the consent agreement for which comment is needed to New York by tomorrow, and work had to be finished up. All those RFPs have been on time. We've received them, and our comments will go back to the City of New York by tomorrow, which is on time also.

One thing I ought to mention. The consent order that we signed -- among others -- was introduced into the record of a Brooklyn, New York hearing by ISC. That is a resource recovery hearing being held by an administrative law judge of the State of New York concerning the construction and operation of the resource recovery facility to be located at the Brooklyn Navy Yard. The reason we entered it is -- and the administrative law judge found this of interest -- because the issue of floatables also has arisen at the Brooklyn Navy Yard hearing, in terms of keeping the debris out of the water. He will be receiving copies from us of the reports that are generated as a result of this consent decree, both the good and the bad, the findings that are gotten out of this. Specifically he's interested in the barge coverings, and the wind blown effect study that is going to be undertaken and completed before the summer season begins. He's interested in skimmer boat practices, and he's also particularly interested in an interlocking boom system. So I would say that the agreement we have signed has also found other uses.

In response to a question raised by Senator Gagliano before-- At the present time the City of New York is contemplating -- or, will be building -- five resource recovery facilities, one on Staten Island at the Fresh Kills Landfill, four in the other boroughs. Each of those four will have a new marine transfer station. Furthermore, there's a possibility that they will be building three more. I'm not sure yet

whether the City's going to be building five or eight. I'm not sure if they are. So that's the status of those.

SENATOR PALLONE: Are they under the same operating procedures? Are they required to build a completely enclosed unloading facility? What's the situation?

DR. MYTELKA: The operation at the Brooklyn Navy Yard -- as I understand it at the moment -- is that there will probably be an enclosed unloading facility. But the enclosed unloading facility is also a loading ash facility, and I think that ought to be borne in mind as to how it impacts things. You're not only going to be unloading garbage, but you're going to be loading ash. In fact, one of the issues there is, what's the nature of the ash, pelletized or not? Is it free to be blown in the air or not? So that's one of the issues there.

It is true the ISC originally asked for an enclosed barge unloading facility at Fresh Kills. But, as was accurately reported in The New York Times, if the City dug in its heels and fought it -- and they certainly did -- and even though they were found in contempt for not constructing the facility, we'd be facing an appeal and another several years of litigation.

We're not interested in posturing or grandstanding. We're not self-righteous at the Commission. As always, we're open to reason and reasonable alternatives. The Commission's objective was and is for immediate action in stopping the problem.

Our concern is for cleaning up the beaches and the district waters now, and there be no repetition of the pollution of the waters and the closing of the beaches again this summer. That, quite frankly, was the prime guiding force for actions we took at the Commission.

Part of the settlement required the City to install a second boom outside the first and operate the two like a lock system, opening the inner boom only after the outer one has

been closed behind the incoming barge. The new boom will have a 15-foot skirt which should catch both floating and submerged debris. The 15-foot skirt does come down, folks, very close to the bottom. The City will also install booms at the marine transfer stations which were cited as a probable cause of some of the debris that washed up along the shoreline of New Jersey last August.

At this juncture, we do believe that the provisions of the accord significantly minimize the chances of beach pollution reoccurring because of the activities of the City of New York. We feel that all parties are sincere in their intentions, and last but not least, we have a Federal judge with a firm grasp and a thorough understanding of the background and circumstances of the situation -- a judge who is committed to a solution to the problem, no matter where the chips may eventually fall.

In your invitation to me, you asked that I comment on "the recourse available should the agreed upon measures not suffice." My response is clear and succinct. If the measures do not do the job, the Commission is prepared to press the Federal Court for an immediate halt to barging into the Fresh Kills Landfill.

But at the moment, the Commission is committed to making our present agreement work. And when you compare where we stand now to just last September -- when the Commission filed its contempt of court suit against the City -- it is clear that we have made tangible strides forward.

In addition to that prepared statement, I have a couple of remarks to make regarding leachate, the height of the landfill, and perc charts. Maybe I'll do it in reverse order.

A question about perc charts. Tomorrow I will send to the Committee for use of its staff as it sees fit, a copy of a perc chart that I had my staff prepare right after we signed the agreement. We also need to be able to keep track of all

the manifests and the many steps needed. We have prepared one, and your staff can look at it and do with it as they see fit. It may be able to aid them in sorting through the agreement. That will go out in first class mail tomorrow.

Regarding the height of the landfill: In previous testimony -- much I think to the discomfort of many members of your Committee, and to myself for that matter -- when I was asked about the ultimate height of the landfill my response then was, "It's going to be 510 feet. And the only question is, is it going to be 510 feet of all garbage, or is it going to be 510 feet of garbage and ash?" During the course of the negotiations, and in reading the newspapers and the articles that that have printed regarding the suit. I believe that statements have been made that in order for the landfill to reach 510 feet high, permission of the Federal Aviation Agency is needed. To my knowledge, the City of New York doesn't have that present clearance to go that high. It's a point that can be considered by members of your Committee.

Regarding the leachate: The agreement did not solve the leachate problem. The suit by Woodbridge and our entering into the suit was to stop the specific problem of littering of the beaches as well as the waters of our district. We believe we have accomplished that. We have during the past two weeks sampled the Arthur Kill from one end to the other. We have sampled the leachate through the collection system that has been built on the shoreward side of the landfill -- that's the part that is the collection system that the City of New York is building along Route 440 -- to get an idea and to find out what is in the leachate. Those analyses are presently under way by our laboratory. They will be completed shortly, maybe within the next two to four weeks, roughly. These analyses take time.

Following my review of what the results are, then the Commission will assess what its next step ought to be. We've heard a lot of talk and comments about the leachate and its

toxicity. It seems to me, not as an individual now, but as director of an agency charged with prevention of pollution, that we know technically what we're talking about. That's why we're taking these samples, and they're being analyzed, and then we'll proceed from there.

I would point out that the Arthur Kill, from previous data that I have available to me, has toxic problems with it. All of them are not due to the Fresh Kills Landfill. There are other discharges into the Kill, both municipal and industrial. This is not to say that if the City of New York's landfill is a small part of the problem it should get off scot free. By all means, it's got to do what it has to do, and we'll see to it that it does. But it is truly a bistate problem in my opinion, and the Commission will solve it on a bistate basis. Again, those who are responsible will do what they have to do, regardless of which side of the Arthur Kill they're on. The reason I'm mentioning it here is, quite obviously a lot of attention is being paid to the Fresh Kills Landfill, and rightfully so. But it is not the only potential discharger to the Kill. I use the word "potential" there because it still has to be proven technically that the leachate does get into the Arthur Kill, whatever one may feel on a personal basis.

Mr. Chairman, that concludes my testimony. I'll try to answer any questions you or members of the Committee, or representatives of Assemblyman Vitaliano may have.

SENATOR PALLONE: Senator Weiss had a question.

SENATOR WEISS: Alan, the gentleman that appeared before you had a set of four things that he wanted to see done. Two of those I think I read here on page three of your testimony, but I'm not really sure what came first in this instance the chicken or the egg. Is this some innovation that was there before that he picked up, or is it something that he picked up separately? For instance, let's talk about the-- I'm going to read from your text. "It's true that the ISC

originally asked for an enclosed barge unloading facility at Fresh Kills." Did that start here, or did that start with whatever organization he represents, and he named a number of them?

DR. MYTELKA: All right. The first mention of an enclosed barge unloading facility was at the instance of the City of New York way back in '83, I guess it was. The City was ordered to build it by the judge. It did not. Quite frankly, we picked up on that when we entered the hearing as not only possibly a goal in itself, but also, since they obviously had not done it, was as a means of bringing to the attention of the City that it was in contempt of court -- at least that was our opinion -- and this would certainly get their attention; and it did. I was told at the time you can't get contempt against the City of New York, but of course we were able to.

Now, as the negotiations proceeded, we did feel that it was useful, and not only useful just because it's enclosed. It's not magic that it's enclosed. It's the type of equipment you can use in an enclosed facility -- such as a gantry crane -- and the other appurtenances that would go with an enclosed facility that would be useful. This is not to say that it's the only way.

Also, and this is something that I had mentioned to Assemblyman Vitaliano when I had a discussion with him, there was some chance of at least ameliorating some of the odor problems that Staten Island suffers from the barges that sit there over long periods of time on the weekends. So this was an added-- (inaudible) --if you wish.

SENATOR WEISS: I see. This was a suggestion made originally by ISC, is what you're telling me, or as I understand it?

DR. MYTELKA: That is correct.

SENATOR WEISS: Okay.

DR. MYTELKA: Well, picking up on the City's original contempt of court. This is something that we did wish to have. I would point out that we were in a series of negotiations and when you negotiate, if you're trying to arrive at a conclusion, one doesn't always get everything that one wants.

SENATOR WEISS: I understand that. Did the City in fact dig its heels in and say, "No. We're not going to do that ever."?

DR. MYTELKA: I wasn't at every bargaining session. I was at most of them. I spoke to our general counsel. Yes, they absolutely dug their--

SENATOR WEISS: You're Executive Director of the ISC. I would assume that you know.

DR. MYTELKA: They absolutely dug their heels in -- no -- and that nothing else was going to happen if this was pushed. And quite frankly, when I spoke to the Executive Committee of the Commission I could have said, "Look, we're going to just go before the judge and the whole thing is going to fall apart." I faced the decision to make whether we should just push for it regardless, with nothing else happening in the landfill now in terms of the unloading, or was it better to have the procedures that have been enacted go forward now with the expectation, as well as hope, that there would not be a repetition of what happened in the past summer, and the continued material washing up on the shores of Woodbridge. It was a judgment call, and my judgment was I might have preferred something else, but that we did the right thing.

SENATOR WEISS: In your experience, do you think New York is under court mandate to do this thing?

DR. MYTELKA: Yes, they are. And the reason they are is, because if they don't meet the schedules and the requirements, there is a system of fines. Granted it takes time to get them, and I won't go into that, but--

SENATOR WEISS: Let's talk about that. That's that \$85,000-- (inaudible)

DR. MYTELKA: But they are, because any of the plaintiffs, including the Commission, if they don't meet their responsibilities, has the right to go back before the judge. And as I mentioned in the statement, I don't think we need to wait until 1989 to whether it's going to work or not. Once that boom with the 15-foot skirt is in place on May 20, and shortly thereafter give them time to sort out the operations, if we still continue to have debris going out there, we're going to be -- I'm talking about the Commission now, hopefully with the support of the other plaintiffs -- we'll be back before the judge, and our request then to the judge will be to shut down the barging system until the problem is solved.

SENATOR WEISS: What was it, 20,000 tons a day that goes into Fresh Kills?

DR. MYTELKA: Well, there are approximately 14,000 tons per day barged, roughly 7000 tons per day presently trucked. So we would be asking the judge to impose--

SENATOR WEISS: If they close down all of Fresh Kills, it would still bring it to about 20 wouldn't it?

DR. MYTELKA: Well, I didn't say that we were going to ask the judge-- (inaudible) --close down Fresh Kills. What I said was, we would ask the judge to close down the barging operation to the Kills.

SENATOR WEISS: Okay. So you're talking about 14 or 15.

DR. MYTELKA: That still leaves the City some alternatives as to what it could or would do.

SENATOR WEISS: The thing I think I was driving at was that if in fact-- Well if they continued, and even paid the fine, they would be ahead at \$85,000 a day, if they had to do in New York what we do here in New Jersey. That \$85 for us is a surcharge on top of what we already pay. So they will be coming out of it financially well.

DR. MYTELKA: We have no intention at the Commission of allowing an \$85,000 a day fine if you wish, substitute as a cheaper means of solving the problem.

SENATOR WEISS: Which is what it appears to me is happening right at the moment.

DR. MYTELKA: Senator, if what we have put in place does not work--

SENATOR WEISS: Alan, I'm not arguing with you about it. I'm just trying to pursue a point.

DR. MYTELKA: I would take your point to be that one might conclude that the City would get off cheap by an \$85,000 a day fine as the lesser cost of some other means of solving the problem.

SENATOR WEISS: All right, continue.

DR. MYTELKA: And I suggest to you that we will not allow that to happen.

SENATOR WEISS: All right. I will accept that. I'm going to follow you anyway.

DR. MYTELKA: I'm sure you will, sir.

SENATOR WEISS: Let me get on to the other part of this issue. Part of the settlement required the City to install a second boom outside the first boom. The gentleman prior to you -- Figurelli, I think his name is -- mentioned some configuration of booms. It sounds to me like they're one and the same. Are they? Your two lock system and his dual -- he called it a dual lock-- Are we talking about the same thing or are these two different initiatives?

DR. MYTELKA: I believe we are. There at present is a single boom, which essentially only takes the surface materials.

SENATOR WEISS: I've seen-- I'm familiar with how they operate. But I'm not familiar with what you two are talking about.

DR. MYTELKA: The second boom will be out further, and it will have a skirt that goes pretty close to the bottom. I'm not going to say it goes absolutely to the bottom.

SENATOR WEISS: Well, this indicates a 15-foot depth.

DR. MYTELKA: Right, and that's pretty close to, in general, as deep as you can get there.

SENATOR WEISS: That might be. I don't know what the--

DR. MYTELKA: Senator, I would like to say this. I heard the testimony of the previous witness. As soon as possible I would like to review exactly what he said. I have an impression of what he said. I don't think I want to comment too much on what he said, because he did make some allegations among which pertain to the Commission.

SENATOR WEISS: Well, I'm not going to ask you to. I just want to straighten out this boom thing, and a problem I was having before about the enclosed barge unloading facility -- which seemed like to me at the moment an unlikely thing to happen, considering the finances in New York and the magnitude or the size of whatever that facility is going to be. Large is the only word I can use to describe it, in time and in dollars -- of course I have no idea what that will cost -- but in time very costly.

DR. MYTELKA: The double boom should keep the floating materials and the submerged materials out of the Arthur Kill. If they don't -- that's the point I mentioned -- we are going to have to take the action before the judge. We'll know that early this summer.

SENATOR WEISS: That was May 20?

DR. MYTELKA: May 20 is the date it's due.

SENATOR WEISS: That's your deadline date?

DR. MYTELKA: That's correct.

SENATOR WEISS: Let me see if I got the year right, '88?

DR. MYTELKA: 1988, the year we're in, sir.

SENATOR WEISS: Thank you.

DR. MYTELKA: I would mention also that we do have field personnel -- and I've had to rearrange a lot of schedules at the Commission, but nonetheless this situation is important enough to warrant it -- that we will have our boat out there inspecting it frequently enough, and our people will be at the landfill frequently enough for us to know exactly what is going on there. It's a lot of manpower for the very small agency that we are. We've had a meeting last week on how we're going to commit the manpower to it. We intend to do it. I don't want to hear from you, or from the newspapers, or anybody else, that something is going wrong. I want to know it ahead of time and take our action before I hear it from you.

SENATOR WEISS: Thank you, Mr. Chairman.

SENATOR PALLONE: I thought that Lou was talking about some sort of double lock system that would prevent any garbage from going further out to sea, because it would all be contained by the first lock. You know, kind of like a Panama Canal type of situation or something. That was different from the double boom. No?

DR. MYTELKA: My understanding is that the lock system was a lock made up of booms. One, the present one which is ineffective. The second one is one that essentially goes down to the bottom, which will be effective. The second one, that will be manually operated down to the bottom, will duplicate on an interim basis manually what the so-called super boom will be doing automated. So therefore we don't have to wait until 1989 to find out whether the super boom will work in practice because if the City does what it's supposed to do -- and we'll be there to see that they do -- they will be operating manually this new boom with the skirt in a manner similar to what the super boom will do, and we're going to find out whether it works or not right away.

SENATOR PALLONE: Well, you know, Doctor, I don't think I'm going to ask anything further. I just have to say

honestly-- I know that you're a great believer in trying new things and that technology maybe has the answer, but as a result of this hearing and hearing the different analyses of what these devices in this agreement are going to mean, I'm just not very encouraged at all.

You know, Lou made a whole list of things that could have been accomplished, and of course you're saying that you weren't in a position to arrange for those things to be accomplished. It seems to me that we're back to the old starting gate, which is that we wanted New York to do certain things, we couldn't get those things so we're settling for something less, which may or may not work. It probably won't work.

DR. MYTELKA: I think I would have to beg to differ on some of the interpretation. We are far and away better off now than we were before. The City of New York, both by us and by the judge, is on notice that what we are doing now in this agreement better work or else. The City of New York has not implemented in the past what it should have implemented.

SENATOR PALLONE: But aren't you saying that really -- and I'm not going to prolong the point-- Aren't you saying that really because you feel that because of the judge's threat, or her contempt citation which she made because of the increased attention that's been placed on this, and now maybe New York is going to be required to do more and to do what they should have done in the beginning. But when you actually look at what's in the agreement, it doesn't seem to me that it really amounts to much substantively.

DR. MYTELKA: I don't think that's correct, sir. Senator, what they are installing first of all is that second boom down to the bottom. I think that's a large advance.

SENATOR PALLONE: It only goes so far though. It doesn't go that far.

DR. MYTELKA: Well, it goes down 15 feet, and the depth of the water there is not much more than 15 feet. They also are taking action, is this so-called "athey-wagon" -- call it what you want. Really it's a deflector plate, but call it what you want. And it's very low technology, but if it works quite frankly -- being an engineer by background I'm interested in what works -- I don't care if you have hi-tech if it doesn't work, as long as you can make something work. The key is to keep it out of the water to the maximum extent possible. One item there in it is that when that boom -- or when that clam shell -- swings around, it doesn't swing over empty water. It always swings over something that can contain it and keep it out of the water. My own people are going to be there, the independent monitors are going to be there, to see if it works. If it does, then there should be no reason for almost all of it to be out of the water.

The reason I say almost all-- To my way of thinking the booms are your backup. It's not your primary means of solving the problem. The primary means are keeping it out of the water in the first place when you're transferring it. I'm talking at the Kills.

SENATOR PALLONE: What about the leachate? You have direct jurisdiction over that, correct?

DR. MYTELKA: We have jurisdiction over leachate if it gets into the Kills.

SENATOR PALLONE: So, have you determined whether or not it's in the Kills yet?

DR. MYTELKA: No.

SENATOR PALLONE: But at some point soon you will?

DR. MYTELKA: The difficulty of this situation -- not the difficulty of knowing what's in the leachate, I think we will know that very shortly now. You must sink wells into the ground and then you have to find out which way the flow is going. What I don't want to do is have action by the

Commission against the City of New York -- and that most likely would be by Commission action within our own procedures, and not going to court where you have to convince the judge. I'd much prefer that if the Commission takes any action that we take it, the Commission issues its orders, and if the defendant doesn't like it they can go to court against us. But besides that, you need to show which way the flow is going.

We are reviewing some studies that have been done for the City of New York, pursuant to the consent decree with the New York State DEC. We haven't finished reviewing them. We quite frankly don't have the physical capability, nor the financial capability of sinking our own wells to doing it. I say that quite candidly. There have been statements made by some officials of the City of New York, which indicate they believe some of it may be going to the Kill. I've got to review the sum total of the situation with our counsel to see what kind of a case we have. But first of all I've got to convince myself that there truly in fact is a problem with the leachate per se other than just BOD -- which in itself is a problem, but is a different order of magnitude problem than if the leachate itself is toxic. And that I need to know not by supposition, not by what my experience tells me, but by the hard facts that my laboratory is going to tell me; and that we're doing now.

SENATOR PALLONE: But you know I couldn't really get a-- I don't know, it just seemed to me that everybody told me finally who's doing this investigation. The Attorney General said that he was working on it, EPA was working on it--

DR. MYTELKA: I heard what the other witnesses have said. All I can tell you is what we at the Commission are doing with our own capabilities, part of which we have gotten recently -- thanks to the action of the Legislatures of New York, New Jersey, and Connecticut, enabling us to buy or purchase the-- (inaudible) --which is the instrument you need to analyze for the toxics. We are utilizing it.

SENATOR PALLONE: I noticed he looked in your direction, Senator Weiss, on that one.

DR. MYTELKA: I looked at all of you. You all vote on our budget.

SENATOR WEISS: There's good reason.

DR. MYTELKA: But, all I can promise to you, all I can tell you that we will do, is what I have jurisdiction over. I can't answer for other agencies or other parties. We will do all that we can do, but we are dealing with -- it's not only the City of New York -- we're dealing also potentially with industries and municipalities in the State of New Jersey. They are all tough customers, as quite frankly I guess they ought to be, under our system of government. It's not a matter of what they'd like to do because they're nice guys, or what I'd like to do because I'm a nice guy, or I'm not such a nice guy. It's what I can prove to my Commissioners so that they can issue whatever orders are necessary in the first instance. I've got to have the facts at hand to do it, and that's what we're gathering right now.

SENATOR PALLONE: Okay, thank you. Anything further?

MR. LANGELE: Yes.

SENATOR PALLONE: Yes?

MR. LANGELE: I'd like to ask a question if I could. I believe you were aware of the problem of covering the barges.

DR. MYTELKA: Yes.

MR. LANGELE: I believe you were at a meeting where we were, where, I think it was Mr. Carponello--

DR. MYTELKA: Carponello.

MR. LANGELE: --stated that as far as they are concerned, nothing flies off in transit. The question that I'd like to ask, couldn't your, or shouldn't your organization follow up and make testimony to that fact?

DR. MYTELKA: Let me answer it this way. We do now have a vessel, which we are going to do other things with. We will be observing these barges also. If in fact we see it floating into the water, or leaving the barges going into the water -- whichever way it does--

MR. LANGELE: I'm talking specifically floating, which is within your jurisdiction.

DR. MYTELKA: Yes. No, I'm talking about coming off the barges. If we see it, we will document it, and that would be a violation of the compact and our regulations.

MR. LANGELE: Oh, so you didn't have any equipment to do that up until now?

DR. MYTELKA: No, quite frankly. I guess we could have hired helicopters at a couple of hundred dollars an hour. We have not. We now have the research vessel that we're using for sampling of the waters, we're going to use for following the barges, etc. We're doing double duty with it. We will be using it in part for those purposes.

MR. LANGELE: Thank you.

SENATOR WEISS: Alan, where did you get the boat?

DR. MYTELKA: Pardon me?

SENATOR WEISS: Where did you get the boat?

DR. MYTELKA: Where?

SENATOR WEISS: You called it a vessel, so I thought you were talking about a test tube.

DR. MYTELKA: It's a 25 foot work boat, with a small cuddy cabin.

SENATOR WEISS: I didn't think it was a yacht. Where did you get it?

DR. MYTELKA: Where?

SENATOR WEISS: Yeah.

DR. MYTELKA: From--

SENATOR WEISS: Was it a confiscated boat?

DR. MYTELKA: No. It was a purchased boat at roughly \$40,000, plus or minus. It was purchased from-- It's Columbia Seascope. It was purchased out on Long Island. I don't recall what the name of the company was. It escapes me at the moment. It's suitable for use in the harbor, and near shore, not 20 miles offshore unfortunately.

SENATOR WEISS: Well I wouldn't go 20 miles offshore.

SENATOR PALLONE: All right. Thanks a lot, Dr. Mytelka.

DR. MYTELKA: You're certainly welcome.

SENATOR PALLONE: Thanks for coming.

DR. MYTELKA: My pleasure.

SENATOR PALLONE: Sorry you had to wait.

DR. MYTELKA: That's quite all right.

SENATOR PALLONE: Let me just see by a show of hands who we have left here to testify. I know we have the SOS people next. Other than SOS-- Sir? (inaudible response from audience) Okay, and is there anyone else other than SOS? (affirmative response from member of audience) From the Hospital Association? (affirmative response) So we have three. Okay. Can we have the representatives from Save Our Shores?

DAVID MANDELBAUM, ESQ.: Mr. Chairman, my name is David Mandelbaum. I'm accompanied today by Christine Reuther. We are both attorneys for the law firm of Ballard, Spahr, Andrews, and Ingersoll, at the firm's Philadelphia office. We represent Save Our Shores in connection with the litigation which gave rise to the consent order we've been discussing today. I don't have a great deal of prepared testimony, or any prepared testimony for that matter, and given the lateness of the hour I'd like to be very brief and answer any questions you may have.

You said before, however, Mr. Chairman, that you had no particular optimism about this consent order after what you heard today. While I am no great defender of this consent order in the sense that it is a document put together under extraordinary time pressure, and under the pressure of a large number of parties -- some of them using the press, some of them not using the press -- and an announcement of an agreement before a document. It is, I think, a substantial improvement over what would have been, had there been no agreement. And I'll give you the guts of the agreement from where I sit, which doesn't lie in all the hardware. It lies in the following two provisions.

The first is, if you turn to page 20 you'll see III B2, MTS Study. It's on page 20 carrying it over to 21. Now as you've heard testimony before today, the MTSSs we believe were the source -- or at least the likely source -- of the waste which washed up on New Jersey's beaches in August. By the beginning of this summer, New York must identify procedures and hardware at its MTSSs which will be adequate to keep all waste out of the water. That is the target that we have drawn throughout this consent order. They must submit a report to the plaintiffs outlining a set of procedures which will keep waste out of the water, and if procedures alone won't do it, hardware modifications. Then we will have a review period and a dispute resolution period, and the ultimate arbiter on that -- after we go to the special master -- will be Judge Barry.

The standard is clearly enunciated as being keeping all waste out of the water, and the time frame in which we will determine what has to be done to MTSSs to keep the waste out of the water is short, relative to the time frame that would be available had we brought an independent lawsuit. If we filed the lawsuit at the beginning of December, there's no way we would have a final judgment on that question by, say, August -- which is when we will have resolution of this matter.

The second provision -- which I believe is the guts of this consent order -- is II J, on pages 16 carrying over to 17, the evaluation report. There's been considerable amount of back and forth already today about how that report -- which is due on January 1, 1990, two years from now -- is too late, and doesn't really have any teeth. But the answer is that we still have the same target drawn. New York has to have a set of alternatives either in place already, or proposed in the independent consultant's report, which will keep all waste out of the water. And there will be again a procedure where the plaintiffs will review that report, if there are disputes as to implementation of alternatives not already in place, those will go through the dispute resolution procedures and ultimately to the court.

Now, the time frame on this -- two years -- is not as satisfactory as it is on the MTSSs. That is because there is a great deal more learning among the parties as to what sorts of hardware they believe would be adequate to fix the problem at Fresh Kills, than there is about the MTSSs. The MTSSs only became the focus of inquiry this summer. Therefore, there was a certain amount of negotiation -- a great deal of negotiation indeed -- about particular interim hardware and ultimate hardware, things like the super boom and the hydraulic crane.

I will tell you right now that Save Our Shores' expert -- which is a national consulting firm, BCM Eastern Inc., they're located in Plymouth Meeting, Pennsylvania -- their opinion is that the only way to run a marine operation of this sort is to use bailing or containerization of the waste. An enclosed unloader will not affect litter substantially. Neither will these other measures give a high degree of assurance that you won't have waste in the water. But those sorts of solutions are not solutions that we believe we would be able to impose upon New York City in the circumstances in a time frame shorter than two years.

Therefore we have two provisions in this consent order which get us to the point where we would get through litigation at about the same time, and while we're doing those two things we're also making substantial interim improvements to New York City's operation, and we have it in, I would say, a better procedure. That is, we have it through an exchange of documents, negotiations, a special master with some expertise in solid waste management, and ultimately a judge, without having to go through extensive evidentiary hearings as a means of resolving what are essentially technical disputes.

With that, if you have any questions I'd be pleased to answer them.

SENATOR PALLONE: It's Mr. Mandelbaum?

MR. MANDELBAUM: Mandelbaum.

SENATOR PALLONE: I didn't want you to get the impression that in any way I, or any member of the Committee feel that SOS wasn't going about this in, you know, a straightforward way, or hadn't made a very strong analysis of why the agreement was preferable to continuing the suit. The only reason I'm not optimistic is based on past experience. That's what it really comes down to.

I'm not asking a question, but I think the feeling is that there were certain things that we were concerned about, mainly the enclosed facility and the barge covers, and that rather than those being postponed or being -- in the case of the enclosed facility for two years or the barge covers having a study -- that those should have been part of the agreement; that the agreement should have had a timetable for construction of the enclosed facility, or a timetable for the barge covers, because of my feeling that those are two items that would help. I don't think anybody said today that they wouldn't help. I think the reaction that I've gotten from those who testified is that we weren't in the position to mandate them, that it would have been too hard to prove it was necessary, or

New York would have resisted it so much that it wasn't worth pursuing at this stage. That's just my own analysis of it.

MR. MANDELBAUM: Just to respond, and I won't respond on the covers because there's considerably more divergence of opinions on the covers than on other items.

As to the enclosed unloader, with few exceptions, virtually all of the parties to this matter -- and when I say the parties I mean their technical experts -- are agreed that the enclosed barge unloader, or any enclosed barge unloader that would allow you to admit a barge, will do very little if anything to address the litter problem; and that to hinder an agreement on the enclosed barge unloader would be just going off in the wrong direction. To be asking New York City to spend a lot of money on something that won't help us get where we want to be, and by giving up the enclosed barge unloader we were able to move towards things that would work.

SENATOR PALLONE: Well, I guess the only answer is we'll have to see what develops over the next two years. Any questions, Senator? I have nothing further.

SENATOR WEISS: Mr. Mandelbaum, where are you from?

MR. MANDELBAUM: I'm from Philadelphia.

SENATOR WEISS: Okay. You know I don't the genesis or the turf argument between all these organizations, and maybe that's best. I heard some names here before, GAG, SOS, and so on,

MR. MANDELBAUM: I'm merely the lawyer, Senator.

SENATOR WEISS: Sir?

MR. MANDELBAUM: I'm merely the lawyer, Senator.

SENATOR WEISS: Merely the lawyer for?

MR. MANDELBAUM: Save Our Shores.

SENATOR WEISS: Oh, okay. I still don't know the difference between them. They're all working, I think toward the same end, but sort of pulling at one another in order to get-- I listened to the testimony given two before you, and it

sounded like-- Now, I understand why there's such a diversion of opinion between the two of you. I didn't realize the position of SOS was so different than that of one of the other organizations. But your organization, or the organization you represent, doesn't seem to think this was such a bad deal.

MR. MANDELBAUM: I think that given different circumstances, there was a better deal to get. Given the circumstances that we were placed in, I think it was better to participate in this deal than not to participate.

SENATOR WEISS: Well, I live in that area, and I have all my life. It's been that way for ever so many years. I hesitate to tell you how many I know about, but it's been a few. There's nothing been done until recent years. I recognize that you can't do these things overnight, or that you can't build the building or the barge unloading facility -- however simple you make it -- in a period of two years. You have to go on for some time after that. But recognizing also that there's a problem on our side of the river, and apparently that problem ensues also to the people that live in Staten Island. Something ought to be done. Do you think in your learned opinion -- you've been close to this thing and you sounded great -- that the booms themselves for a period of two years would be sufficient to hold back the trash that falls off the barges that are unloading? I'm not talking about traveling now. That's another story. I'm talking about in place at the facility.

MR. MANDELBAUM: The booms--

SENATOR WEISS: I'm talking about this dual boom business that Doctor--

MR. MANDELBAUM: Once the boom with the longer skirt is in place, Senator, as I understand it, if that boom is used properly -- that is, if it is closed after a barge passes through -- it will achieve some measurable reduction in the waste which escapes. We don't have a great deal of confidence

that it will achieve complete elimination of the waste, or complete containment of the waste. And moreover, it's Save Our Shores -- view that you can't -- to use the analogy of the gentleman to your right -- you can't diaper the baby, you have to train the baby. That is, you cannot rely on containment mechanisms for anything other than control of very incidental spillage or catastrophic events. What you have to do is keep the waste out of the water in the first place.

SENATOR WEISS: I'm not sure that you can't diaper the baby and train it at the same time. There may be some problems--

MR. MANDELBAUM: That's true, and the new boom may be a pretty fair interim diaper.

SENATOR WEISS: Well, do you think while we diaper this baby, maybe what we ought to do is have New Jersey Marine Police in charge of opening and closing the booms, and the New York people on the inside?

MR. MANDELBAUM: That's an idea which Save Our Shores, I do not believe, would oppose. I'm not certain you could make New Jersey do it, or New York accept it.

SENATOR WEISS: Well the river is narrow at that point. If we extend the booms out to include part of New Jersey -- the New Jersey side of the Kill Van Kull -- I think we could possibly monitor it. But that's the only solution I can think of in order to keep the feet to the fire on the other side, so that the debris or the fallout off the barges doesn't wind up in this area, or further down the river and back onto the Staten Island shore. I'm sure they are as put out about it as we are. But what do you think of the fine problem?

MR. MANDELBAUM: The fine problem?

SENATOR WEISS: Yeah. I'm talking about the \$85,000 per day.

MR. MANDELBAUM: I think the \$85,000, to be perfectly frank, is a number that was put in for a number of purposes,

and I think the \$85,000 will never be assessed. It will never be assessed for the following reason: If we get to -- and I believe it's three months that \$85,000 kicks in? analog of fine

SENATOR WEISS: There's some date in there, but it really--

MR. MANDELBAUM: I could check. It's a long period.

SENATOR WEISS: Let's assume three months.

MR. MANDELBAUM: If it's three months, Senator, Save Our Shores will be before the judge requesting modification of the order, and injunctive relief requiring the work to be done well before we ever get to the \$85,000 trigger. The pertinent penalties are the penalties for the near misses on the deadlines, which are the nearer penalties which run at lower amounts. Those are there because it's inconvenient and expensive to be going to the judge for misses of a week or two weeks, and there has to be a disincentive for those near misses.

SENATOR WEISS: What do you think a more effective way would have been to go, with the penalty or fine, or some other way?

MR. MANDELBAUM: I am content with the penalties as they're assessed. I don't think the \$85,000 a day means anything.

SENATOR WEISS: You don't think it's collectable. I think that's what you said.

MR. MANDELBAUM: No, I'm sure it's collectable. I don't think we'll ever get to three months.

SENATOR PALLONE: He thinks New York is going to follow-up and do what they're supposed to do.

SENATOR WEISS: Oh, I see. I must have misunderstood you, because I thought you said they weren't.

MR. MANDELBAUM: No, if New York misses a deadline by as much as three months, I'm going to be in court getting an order from the judge requiring them to comply and assessing other sanctions, well before we get to that three-month

period. So by the time that \$85,000 a day kicks in, it's going to be irrelevant because the judge will have acted and ordered different relief.

SENATOR WEISS: And all this is going to come about the 20th of May, 1988?

MR. MANDELBAUM: All what?

SENATOR WEISS: Isn't that the deadline?

MR. MANDELBAUM: For?

SENATOR WEISS: Well, for this project to really get under way. I think that's the date I had here before.

MR. MANDELBAUM: Pieces of the project are under way right now.

SENATOR WEISS: That's right, but there's a starting date, isn't there, that you count your three months from? Isn't that the 20th of May? I seem to recall that date.

MR. MANDELBAUM: I'm not certain what deadline. May 20, 1988, I believe is when the new boom is supposed to be in place, the new boom at Fresh Kills.

SENATOR WEISS: Yeah, that's the date. That's right.

MR. MANDELBAUM: That's right. That's one of many many many deadlines, Senator.

SENATOR WEISS: All right, what's the first deadline that New York has to meet? Give me a date.

MR. MANDELBAUM: It's past. The first deadline was five days after the consent order.

SENATOR WEISS: Did they meet it? That what came up-- I'm sorry.

MR. MANDELBAUM: There was a deadline five days after the consent order for submitting certain procedures. That was done. There have been a number of deadlines throughout the beginning of this month, submitting requests for proposals, procedures, protocols -- those sorts of things.

SENATOR WEISS: To your organization's satisfaction, have they met any of those?

MR. MANDELBAUM: They have met the time deadlines. We are not entirely satisfied with all the documents.

SENATOR WEISS: They have met the time deadlines, but you're not satisfied with all the--

MR. MANDELBAUM: With the documents. We've had meetings with New York. Some of our concerns have been--

SENATOR WEISS: Tell me about the documents. You said you're not satisfied with them? Just basically so I know what documents you're talking about.

MR. MANDELBAUM: Okay.

SENATOR WEISS: I don't want to know in great detail.

MR. MANDELBAUM: All right. There are a number of-- I'm trying to recall here.

SENATOR WEISS: Okay.

MR. MANDELBAUM: There were a series of requests for--

SENATOR WEISS: Take your time. We're going to be here until 9 o'clock anyway.

MR. MANDELBAUM: I hope not.

MR. SACKS-WILNER (Senate Minority Staff): Senator, if we give him this time line, it might help refresh his--

SENATOR WEISS: Are they in there?

MR. MANDELBAUM: Yeah, if you've got the time line I'll take it all.

MR. SACKS-WILNER: I'll give him mine. It's prepared by the Attorney General's office.

MR. MANDELBAUM: Yes. We have a similar time line, and I think they match pretty well. There was a December 12 deadline for New York City to submit written procedures for marine operations at Fresh Kills. They in fact submitted those procedures, and all that they were required to do under the consent order was to give us the procedures so we knew what they were.

SENATOR WEISS: Okay.

MR. MANDELBAUM: On December 21 they put the interim independent monitor in place. On December 23 they submitted proposed RFPs regarding an independent monitor and an independent consultant, and they also submitted protocols for the litter study from the barges as well as the barge cover study. I believe this may be an error in that I believe they-- Oh excuse me. On January 5 they submitted the RFP for the--

SENATOR WEISS: So that in essence they did meet all their deadlines.

MR. MANDELBAUM: They submitted the documents. There were problems that we perceived in the RFPs, some of which were addressed by New York, some of which were not. There were substantial problems in the barge cover study, which were in large part addressed by New York. We have before us the protocols for the trawling study, and then a number of procedures at each of the facilities and for the skimmer boats and booms, as well as protocols for the water quality management team. We've been reviewing those. Some of them are unsatisfactory. Some of them are satisfactory. And we have yet to receive full comments from our technical folks, which we expect to get as soon as we leave this meeting.

SENATOR WEISS: Notwithstanding the fact that they submitted all their documents and you may or may not be unhappy with them, from an operational point of view -- an actual operation point of view where you can go down and put your hand on something and say, "Hey, they put this in place, this is now going to stop some of the waste from coming over to New Jersey or further on to Staten Island in the river," whatever. What did they do that would keep you as representing -- SOS?

MR. MANDELBAUM: Yes.

SENATOR WEISS: --happy, and us in Woodbridge, and we in the State of New Jersey and New York.

MR. MANDELBAUM: All right. There is no new hardware that's due to be put in, I don't believe, until the spring.

SENATOR WEISS: So, then actually they have submitted a lot of paper but have done nothing, is what I'm beginning to quickly understand regarding an independent monitor and

MR. MANDELBAUM: They have submitted a lot of paper, and have committed themselves to contract with a number of people for a lot of money, but other than that -- to do some things that we want them to do. But they have actually put nothing out.

SENATOR WEISS: Okay. When is the first due date for something operational, not paper, operational; movement of some kind?

MR. MANDELBAUM: I'm sure it's April or May. I'm not--

SENATOR WEISS: Is that that May 20 date that I have here?

MR. MANDELBAUM: Well, for operational changes there are certain-- There are certain operational changes -- that is having a Water Quality Management Team in place -- that I think will begin in February. But in terms of hardware I think we're talking April and May, except for the athey wagon. The athey wagon is in place right now as I understand it.

SENATOR WEISS: What's an athey wagon?

MR. MANDELBAUM: The athey wagon are the vehicles used to transport this waste. They have modified one of them to serve as a gang plank--

SENATOR WEISS: Just so I understand what you're saying, would you be kind enough to spell the first part of that word "wagon"?

MR. MANDELBAUM: It's two words, A-T-H-E-Y.

SENATOR WEISS: A-T--

MR. MANDELBAUM: A-T-H-E-Y.

SENATOR WEISS: A-T-H-E-Y.

MR. MANDELBAUM: I had never heard of this before.

SENATOR WEISS: Okay. I haven't either. It's a strange vehicle.

MR. MANDELBAUM: It's a tract vehicle, with three sides on the back. They have modified one or more of these to use as basically a shield to keep the waste from falling in the water as the waste is unloaded. And as you heard testimony before, we understand from DEP's inspectors that that is having some positive effect.

MR. LANGELE: Only one wagon is adapted or all of them?

MR. MANDELBAUM: No, no. Most of the wagons are used to transport the waste. What they've done is they've modified, I believe it's just one -- it may be more than one -- which they move in and use for this different purpose.

I'm not about to defend New York's performance here. I mean, I think they're violating the law everyday. They've got an abominable landfill. The point is that we've got a consent order and they seem to be living up to the consent order in material respects, for the first month and a week -- or whatever it is.

SENATOR WEISS: They're not appealing the consent order or anything else, are they?

MR. MANDELBAUM: They cannot appeal the consent order.

SENATOR WEISS: They can't appeal it. I wasn't sure of that. They're just going to go ahead and do the right thing we hope. You're going to watch and so are we.

MR. MANDELBAUM: Yes. I would assume that no one would execute a consent order without a present intention to perform under it.

SENATOR WEISS: I guess he has to say that. He's an attorney.

SENATOR PALLONE: There was one question you raised about, and I wanted to ask about it, about the violations schedule. In other words, it's not that penalties begin when the deadline isn't met, but three months after that?

MR. MANDELBAUM: No. The penalties begin immediately, but they escalate in amount. And indeed, they only become due if there is an interim deadline when the second deadline is met and missed. The waste is unloaded. And as you heard testimony

SENATOR PALLONE: What is the penalty when the deadline isn't met?

MR. MANDELBAUM: On the first day it's a thousand dollars a day, for the first through the thirtieth day. On the thirty-first through the sixtieth day it's \$4000 per day. On the sixty-first through the nintyeth day it's \$8000 per day, and on the ninety-first day and forever it's \$85,000 a day. And I don't think I need to elaborate to the Committee what the source of the \$85,000 was and which party was pressing it.

SENATOR PALLONE: So in other words, it's not until you get to the final day that it's the 85, the 90s?

MR. MANDELBAUM: Well, no. It's on the third month. Beginning on the ninety-first day and forever it will be at \$85,000 a day.

SENATOR PALLONE: I misunderstood. I thought the 85 was the first day after the violation. It's not.

SENATOR WEISS: That's what I thought. That's what Gagliano thinks too.

MR. MANDELBAUM: I would expect to be in court well before the ninety-first day.

SENATOR PALLONE: Okay.

SENATOR WEISS: You say you expect to be in court on--

MR. MANDELBAUM: I would expect to be in court seeking an order requiring New York to do something immediately, well before the ninety-first day after New York had missed a deadline.

SENATOR WEISS: Oh, okay. Because my next question was, what happens to the other 89?

MR. MANDELBAUM: There's a penalty amount--

SENATOR WEISS: I know, but where are you going to be?

MR. MANDELBAUM: Where am-I going to be?

SENATOR WEISS: Yeah.

MR. MANDELBAUM: I said well before--and dwelling in that

SENATOR WEISS: Oh, but you didn't say that before.
But that's okay. Thank you, Mr. Chairman.

SENATOR PALLONE: Thank you. I have no further
questions. Thanks a lot.

MR. MANDELBAUM: Thank you.

SENATOR PALLONE: The representative from the New
Jersey Hospital Association, Mr. Edmund Abramovitz.

EDMUND A. ABRAMOVITZ: Good afternoon, ladies
and gentlemen. I am Edmund Abramovitz, and I'm Vice President
of the New Jersey Hospital Association. I'm very pleased to
have the opportunity to take a few minutes of your time this
afternoon because, if for no other reason, the Hospital
Association has not had an opportunity to speak publicly on
this issue before this Committee at any of its previous
hearings.

I'd like to say that although I was not present for
the Department of Health's testimony this afternoon, we've
spoken with the Department on many occasions regarding the
issue of hospital waste. NJHA and the Department are in
generally very very close agreement, and I think I can speak
pretty confidently that whatever the Department said this
afternoon also bears the agreement of the New Jersey Hospital
Association as well. That having been said, I would like to
emphasize a few points that we think have particular
significant bearing on this issue and the work of this
Committee.

We didn't have the opportunity to appear before the
grand jury either. Yet I'm very pleased to say that we are in
strong agreement with almost all of the comments and findings
in the grand jury presentment.

In particular we would like to note and to emphasize once again that there was absolutely no indication that any New Jersey Hospital acted improperly in any of the serious and offensive instances of medical waste disposal, which the grand jury investigated, and which the Department of Health has been very deeply involved in overseeing.

We also agree that presently existing definition and regulations promulgated by the Department of Health, are neither current nor are sufficiently broad in their application to deal with the medical waste problem. And we commend the Department's efforts to revise and expand that section of their regulations relating to the disposal of medical waste, and we strongly encourage all other appropriate executive departments to expand the coverage of their regulations as well; particularly to include other generators of medical waste, and to include waste handlers as well.

We concur that the present system -- or actually I suppose we should really say non system -- of regulating the haulers and the handlers of medical waste is deplorable. It leaves hospitals with no way to protect themselves or the public from unscrupulous or incompetent operators.

We do disagree with the presentment on one point, and it is a small one. The implication seems to be -- in the grand jury's findings -- that since the Department of Health had on only one occasion levied a fine against a licensed health care facility for improper waste disposal, that somehow the implication is that the Department's method of regulating its institutions is ineffective. Our conclusion would be rather the opposite; that the Department's longstanding involvement in the operations of our facilities has been more than effective, and as a result there was a need to levy a fine only once because the Department surveyors only once found a violation, and that the hospitals are basically doing a good job. We think that's true. We think that the Department's approach to

regulating its hospitals with unannounced, surprise inspections by a team of experts -- including sanitary engineers and building inspectors -- would certainly have uncovered any egregious violations of public law, public policy, or good practice; even if that good practice had not been taken down to our regulation.

Because of the highly visible and highly offensive nature of the medical waste disposal problems which were reviewed by the grand jury, there appears to us to be an unfortunate tendency to focus the waste disposal problem on hospitals. In fact, most hospital generated solid waste is nonmedical. It is non infectious. It is non threatening general Type 10 waste, which does not deserve nor does it receive special attention. In fact, the least regulated and therefore the most threatening medical waste generators are not hospitals, but rather independent offices, clinics, and laboratories. In fact, New Jersey hospitals are as concerned with the environment as anyone in the State of New Jersey, but they are powerless to control their waste once it leaves their premises. They are also potential victims of improper handling practices by others. In fact, New Jersey hospitals have an excellent track record in the disposal of medical waste. They do not threaten the environment, but rather they conscientiously strive to meet all applicable regulations regarding waste disposal.

When we speak of solutions to the problem as you have many times today, I would hope that we would bear in mind that what we are speaking of is: Number one, preventing New York's medical waste from reaching our beaches; and number two, preventing the inappropriate dumping in New Jersey of medical waste generated by out-of-state sources and unregulated instate generators; because that is what the problem really is. But when we speak of the involvement of New Jersey's hospitals we should be speaking not of solutions to the problem because

they're not part of it, but rather prevention of future problems. And in that context the New Jersey Hospital Association and our member hospitals would support:

- Strengthening law and regulation as it relates to the disposal of medical waste;

- The licensure of medical waste haulers;

- The protection of hospitals and other health care facilities from the unscrupulous and incompetent, among the companies who would haul and handle their waste;

- And offering protection for hospitals from those who would seize upon the public outcry surrounding solid waste problems as a source of dramatic windfall profits, by victimizing the health care institutions with exorbitant costs for special handling which may not be necessary.

We strongly support the approach of the creation of a commission to study the issue of medical waste and hospital waste before this Committee, or any other body within the Legislature, undertakes to develop legislative solutions for a public problem.

As I had indicated, most of what we believe about the techniques and the approach to handling the solid waste/medical waste issue has been placed on the table by the Department of Health. I don't think there's anything that I can add to their testimony today, but I would be delighted to respond to any questions which you have at this time.

SENATOR PALLONE: I just wanted you to quickly if you could, to give your opinion about the requirement of incineration, and to what extent there might be some way to make it easier for hospitals to develop incinerators.

MR. ABRAMOVITZ: Every expert with whom I've spoken about the issue of disposing of hospital solid waste is quick to point out that landfilling or other similar approaches, is very clearly a short run solution. The eventual solution to disposing of hospital solid waste has got to become

incineration, or some similar technology which isn't presently on the horizon. We support that. We think incineration should be encouraged, and I know your Committee has heard from representatives, for example, from Mercer Medical Center detailing the difficulties that they have had in getting an incinerator -- which they are ready and willing and prepared to build -- getting it permitted, and getting it moved through the process, and the enormous amount of regulatory difficulty that they've had in that. We deplore that. We think if a hospital is in a position to incinerate its waste it should have every possible encouragement to do so. And to the extent that departments of executive government can assist with that I think they should be encouraged in that regard.

We're also realists, and we know that there are some communities in New Jersey which would have, to say the least, a great problem with accepting on site incineration. I can tell you the story for example of one New Jersey hospital -- which by the way does not incinerate its waste, but does have a boiler on the premises for the production of domestic hot water and steam. This hospital, because it switched over the burner unit in its boiler one day for maintenance on the other one, produced a little dark smoke from the stack. They were lambasted in the local press in their community, and urged by the editorial board of the paper to really reconsider whether or not they should be incinerating their trash. They don't incinerate any trash. If a hospital can come under a great deal of public scrutiny and public contumely for something that it's not even doing, imagine what the result would have been in that community if they suddenly announced that we want to get a permit for a waste incinerator? The administrator would probably be looking for another job. That's the realist side of the issue.

But to the extent that perhaps a consortia of hospitals might be able to get together and find one which was a willing site, and had no substantial community opposition. I think there should be some, certainly encouragement; and if through the Department of Commerce or some other venue if there's a way to channel some seed money or get it recognized in the rates to encourage hospitals to do so, we think it's a great idea. Right now not only aren't we encouraged, as Mercer Medical Center has told you, we're in fact encountering roadblocks.

SENATOR PALLONE: Okay. Thank you very much. I appreciate your coming down. Oh, I'm sorry. Go ahead.

MR. LANGELE: Yes, what you just said-- They're going to be doing something in New York State. I think it's a state hospital. A private organization is going to build a large incinerator, and then they're going to charge tipping fees -- similar to a resource recovery -- throughout a geographic area. If you need information on that, if you give us a call I'll get you some information. But we're looking into it as far as the state.

MR. ABRAMOVITZ: That would be great. I'd have to say that the Department of Environmental Protection in New Jersey has been really less than helpful to us in this regard. We've got all kinds of problems with one agency of that Department, for example, giving one of our hospitals a permit to burn waste from another facility, and another division of that same Department saying, "Ah yes, but you can't legally move it from that facility to your hospital. So if it can suddenly appear on your doorstep you can legally burn it, but we can't help you get it there." Now these are some things we're going to have to sort out among ourselves I think before we can really legitimately proceed. That's one reason why I think there ought to be a special commission with Health and DEP and ourselves and the hospitals, to try to come to grips with

this. It is an interdisciplinary problem. It involves numerous agencies and our member institutions. We'd like to work with you to resolve it. Substantial community opposition.

SENATOR PALLONE: Okay. Thanks again.

MR. ABRAMOVITZ: Thank you for the opportunity.

SENATOR PALLONE: We have one more individual, Mr. Arthur Hoekstra, from Sanifoam? Are we going to have a demonstration?

I. A R T H U R H O E K S T R A: Not quite. I appreciate your letting me testify before you and your Committee. There's been much talk this afternoon about the problem of covering the barges and covering the waste. And my purpose is to present some technology that would greatly simplify this problem. It wouldn't require extensive capital to install it. It would solve the problem at a very modest cost, and it could be done almost immediately. So with that preamble, I don't know if I should read my speech--

SENATOR PALLONE: Mr. Hoekstra, why don't you just try to summarize it for us.

MR. HOEKSTRA: This is what the material looks like. I can even show you. (shows samples to Chairman) This was generated in Connecticut. In Connecticut they are now covering their garbage with--

SENATOR WEISS: Is this--

MR. HOEKSTRA: This is a ureaformaldehyde foam.

SENATOR PALLONE: It's not toxic?

MR. HOEKSTRA: It's not toxic, no. You can see how it is. It's kind of sticky. You spray it on the waste. It holds down the paper, prevents litter, keeps away the flies. It works. It works as a--

SENATOR WEISS: Has this been used or is this just demonstration material?

MR. HOEKSTRA: This is being used in Connecticut on a regular basis.

SENATOR WEISS: I understand that.

MR. HOEKSTRA: It's being used in Buffalo at a hazardous ~~wasteland~~ landfill. It's used in California extensively. ~~It's a new product. It's had a little trouble~~ getting started. There are pictures in there showing how it would be applied.

SENATOR WEISS: If a barge was 50 feet wide and 200 feet long, and whatever the height is -- 10 feet over the gunnels, whatever -- what would it cost to cover? If you can't do that, give it me by the square foot.

MR. HOEKSTRA: Ten to fifteen cents a square foot.

SENATOR WEISS: Okay.

SENATOR PALLONE: It's used as landfill cover also?

MR. HOEKSTRA: Yes. It's also used for landfill covers. So, you discussed the problem of paper blowing off the landfill. This would be used for that purpose.

SENATOR PALLONE: Okay.

MR. HOEKSTRA: And it has odor and vapor control. If the barges were standing out at a dock on a hot summer day, this would prevent odors from coming off the garbage, and this is a very important part. This has been used -- and I've used it -- in covering sludge from a disposal pipe or in-- (inaudible) We can cover the sludge and contain the odors.

SENATOR PALLONE: Well, Mr. Hoekstra, I don't want to interrupt you but I think that we can just take your statement and put it in as a matter of record. The main thing is you showed us what this is like.

MR. HOEKSTRA: Yes.

SENATOR PALLONE: I think it's significant because of the stated need for some kind of covering.

MR. HOEKSTRA: Let me point this out. There's been a-- We showed this to the City. They are reluctant to ask that they get permission to use it. I don't know. The State says the City has to ask permission, and it goes back and forth.

SENATOR PALLONE: It goes back and forth.

MR. LANGELE: So you say they have to get it from the State, the DEC? Yes 1943 1945 used in California

MR. HOEKSTRA: Yes. I'm trying to get a blanket approval from the State, and I think that it's very likely to happen. I'm positive it can be. I think this may solve one of your main problems that I heard today. The barges as they're being--

SENATOR PALLONE: No, you're right. It certainly seems like it might be a solution. I appreciate your coming down.

MR. HOEKSTRA: Okay, thanks for having me.

SENATOR PALLONE: Okay. I want to thank everyone today, particularly the reporter again, and Pat. Thank you for coming down representing the Assemblyman. With that we'll close.

(HEARING CONCLUDED)

APPENDIX

**STATUS AND CHRONOLOGY
OF
EVENTS**

**Consent Order Entered December 7, 1987
Township of Woodbridge v. City of New York**

**W. CARY EDWARDS
Attorney General of New Jersey
By: Paul H. Schneider
Deputy Attorney General**

CHRONOLOGY

WOODBIDGE v. N.Y.C. CONSENT ORDER

1987

Dec.

Inspections by DEP personnel of the Freshkills Landfill and New York City's Marine Transfer Stations (MTS') in progress and continuing under the unlimited access provisions of the consent order.

Dec. 12 N.Y.C. submitted written procedures for marine operations at Freshkills in accordance with the deadlines in the consent order.

Dec. 21 The interim independent monitor in place in accordance with the Consent Order; Ralph Andretta of Ernst & Whinney was selected.

Dec. 23 New York submitted proposed RFPs regarding an independent monitor for New York City's marine operations as well as for the independent consultant called for by the consent order.

N.Y. submitted protocols for a barge windblown litter study to measure the quantum of waste falling off barges during transport; submitted several weeks ahead of schedule.

1988

Jan. 5 Meeting between the parties: RFPs for the independent monitor and independent consultant as well as the protocols for the windblown litter study were discussed and modified as appropriate.

N.Y. submitted protocol for trawling boats in the Arthur Kill in accordance with the time frame in the consent order.

Jan. 14 N.Y. retrofits and implements at they wagon to function as a metal gang plank to prevent waste from entering water during the unloading of barges; completed 2½ months ahead of schedule; preliminary DEP reports indicate that it functions well.

Jan. 15 N.Y. has timely submitted:

Protocols for the water quality management (WQM) team for the Freshkills Landfill (WQM staff in place as of January 5; training in progress and continuing).

Barge mooring procedures to prevent waste from falling into the water during the unloading of barges at the landfill.

Procedures to maximize the use of the mooring rack to minimize instances when the booms are opened on an outgoing tide.

Skimmer boat procedures which assure that any waste which enters the water is captured before it escapes into the Arthur Kill.

Procedures for all MTS' which assure water cleanliness.

Protocols for booms and a boat to capture any waste which enters the water at the SW Brooklyn MTS.

Draft Memo of Understanding for general study of all sources of floatable waste in interstate waters has been prepared and will be circulated among the parties.

Not Later Than...

Jan: 21 Meetings are scheduled to finalize agreement on:
and Jan. 27

Trawling boat protocols.

Barge windblown litter study protocols.

WQM Team protocols for Freshkills.

Barge mooring procedures for Freshkills.

Procedures to maximize use of mooring rack at Freshkills.

Procedures for use of the skimmer boats at the Freshkills landfill.

Water cleanliness procedures for all MTS'.

SW Brooklyn boom/boat protocols.

Jan. 30 N.Y. to commence implementation of the approved barge mooring procedures.

N.Y. to submit and implement procedures for use of environmental police as a further enforcement tool at the Freshkills landfill and MTS'.

Feb. 1 N.Y. to implement the WQM Team at Freshkills landfill; semimonthly reports.

N.Y. to complete implementation of gate and security fencing to preclude unauthorized entry at the SW Brooklyn MTS.

The parties to submit list of nominees for special master for consideration by the court.

Feb. 15 N.Y. to implement WQM team at all MTS' and to submit to plaintiffs protocols which govern the WQM team.

N.Y. to implement approved water cleanliness procedures for all MTS'.

Feb. 28 N.Y. to propose a consultant to conduct the barge cover study.

Feb. - March Barge windblown litter study to be conducted under the observation of New Jersey.

Mar. 1 Meeting to finalize the WQM team protocols for all MTS'.

N.Y. to implement indep. monitor.

N.Y. to submit the completed superboom design, plans and specifications.

Mar. 15 N.Y. to submit a revised management plan for Freshkills landfill marine operations based upon review of reports by the independent monitor, WQM team, NJDEP monitors, etc.

N.Y. to advertise bids for construction of superboom.

Parties to meet to finalize agreement on consultant to perform barge cover study.

Mar. 30 N.Y. to place order to purchase lock boom for Freshkills.

N.Y. to submit proposed O&M procedures for use of the lock boom system in order to assure that one boom at the landfill is closed at all times to control escape of waste to the Arthur Kill.

April 1 N.Y. to submit a written report evaluating the effectiveness of the athey wagon/gang plank; if the athey wagon/gang plank is effective, it shall be installed at all crane locations not later than June 15, 1988; if it is determined that the athey wagon/gang plank is not effective, not later than July 1, 1988 New York shall implement approved alternatives.

N.Y. Department of Sanitation to submit its selected vendor for the hydraulic crane to the Bd. of Estimate.

Meeting to finalize agreement on a revised management plan for Freshkills landfill marine operation procedures.

N.Y. to submit the first quarterly status report. These are in addition to all other reports and submissions expressly provided for in the consent order.

April 7 The consultant to submit barge windblown litter study report quantifying the extent to which waste escapes from barges during marine transport.

April 15 Meeting to finalize agreement on boom/boat O&M procedures for the SW Brooklyn MTS.

N.Y. to operate boom/boat at SW Brooklyn MTS in accordance with approved protocols. A member of the WQM Team must be present at all times when the boom is open.

April 22 Meeting to finalize agreement concerning barge covers or other remedial action to prevent waste from entering the water during barge transport.

N.Y. to complete cleanup of the shoreline around the SW Brooklyn MTS to provide a baseline for measuring the effectiveness of the boom/boat system.

May 1 N.Y. to implement sidewalls on trestle bridge across the tidal creek at Freshkills to prevent spillage of waste (implemented as of January 5).

May 15 N.Y. to submit report on effectiveness of the boom/boat at SW Brooklyn MTS.

N.Y. to submit report on feasibility and costs of various barge cover and other remedial options which would prevent the escape of waste during barge transport.

May 20 N.Y. to commence operation of the boom lock system at Freshkills.

June 1 N.Y. to award contract for the purchase of hydraulic crane.

Meeting to assess the effectiveness of boom/boat at the SW Brooklyn MTS and expansion of the system to other MTS'.

- June 19 N.Y. to complete shoreline cleanup in Woodbridge, including PSE&G property, to form a baseline for measuring the effectiveness of measures implemented to date.
- June 30 N.Y. to complete shoreline cleanup on Staten Island.
- N.Y. to submit report on adequacy of its procedures at all MTS and the need for additional equipment and modified procedures to prevent waste from entering the water.
- July 15 Meeting to finalize agreement concerning the additional equipment and modified procedures N.Y. will implement at all MTS'.
- Oct. 1 Independent monitor submits comprehensive report on pollution abatement at Freshkills and the MTS' after the 1988 summer season.
- Oct. 15 Meeting among the parties concerning the report of the independent monitor concerning Freshkills and the MTS.

1989

- May 15 N.Y. to complete construction of superboom.
- June 1 N.Y. to begin operation of hydraulic crane.
- June 10 N.Y. to begin operation of superboom.
- Dec. 15 N.Y. to submit report on effectiveness of the superboom.

1990

- Jan. 1 N.Y. to submit report on effectiveness of hydraulic crane.
- N.Y. to submit comprehensive report on effectiveness of hydraulic crane, superboom, enclosed unloader, and all other remedial measures it has implemented.
- Jan. 15 Meeting on the above report is held to assess whether floatable waste from the Freshkills Landfill has been effectively abated. If not, New York must implement an enclosed unloader and/or other necessary measures.



FOR DISTRIBUTION TO NJ LEGISLATORS

NATURAL RESOURCES PROTECTIVE ASSN.
OF STATEN ISLAND, INC.
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STATEN ISLAND, N.Y. 10308
PRES. L. FIGURELLI

AND ONE COPY TO TRANSCRIBER
PRESENT AT HEARING

Testimony of Lou Figurelli, President of the Natural Resources Protective Association of Staten Island Inc., also former Director and past chairman of Groups Against Garbage. This testimony will be submitted orally with substantiating attachments before the New Jersey Senate Special Committee to study coastal and ocean pollution, on January 19, 1988 at 10 a.m. in Room 403 of the State House Annex in Trenton, New Jersey. The purpose of this hearing is to take testimony concerning the settlement of the Woodbridge Law Suit against the City of New York's Fresh Kill Landfill operation on Staten Island.

Testimony

Good morning. My name is Lou Figurelli, President of the Natural Resources Protective Association of Staten Island. I would appreciate, to reserve the continuity of this presentation, that all questions be withheld until the completion of this presentation. Thank you.

I would like to thank the New Jersey Senate and especially the Chairman, Senator Frank Pallone, for again allowing the NRPA and myself to provide input into these hearings. Since the last hearing, September 29, 1987, at Middletown, New Jersey many disturbing events have occurred. The NRPA composed of 12,000 paid members has concluded we are completely dissatisfied with settlement of the Woodbridge suit. With the time allocated to me at this hearing it would be impossible for me to state all of our complaints and objections to this settlement. We of the NRPA firmly believe an investigation should be conducted of the procedure used by the N.J. Attorney General and all the involved parties in achieving this settlement. I would be willing to testify before any investigative committee to provide information and evidence that may help to find if illegal practices and procedures have been employed in arriving at this settlement.

At all previous hearings I have represented the NRPA and Groups Against Garbage. I have since resigned as Director of G.A.G. I no longer represent G.A.G and in the very near future the NRPA, myself and other members of G.A.G. are contemplating legal action against G.A.G. and its attorneys for their acceptance of the settlement without the consent of the membership or its Executive Board without a vote. There have been questionable actions conducted by G.A.G. and its attorneys which cannot be discussed at this time.

I would like to make it very clear at this time that at no time have I, or the 12,000 members of the NRPA approved of this settlement. My office has received hundreds of calls from our members, and citizens of N.Y. and N.J. who have donated many dollars to support the NRPA battle against plastic and water pollution, reprimanding me for utilizing their donations to accept this vague settlement, which would allow the pollution to continue without enforcement and penalty for violators of the law. Again the NRPA and myself would never sell out the people of N.Y. and N.J. by accepting this settlement.

We firmly believe this action taken by the Attorney General of N.J., the Interstate Sanitation Commission, G.A.G., the Township of

7X

Woodbridge and the questionable intervenor Save our Shores has compromised the Health, Welfare and continued pollution of our waters by accepting this settlement which eliminated the original suit.

The NRPA, myself and many sportfishing and environmental organizations, not G.A.G. have spent thousands of dollars, researching and gathering evidence, such as video tapes, using boats to follow barges for photos, hiring helicopters to have aerial photos and tapes of the landfill and transfer stations and other expenses, in preparation to present evidence for the Woodbridge suit. This evidence would have fully supported our intervenor status and the Woodbridge suit, showing the Freshkill Landfill was indeed allowing through its operation polluting our waterways and beaches. The blatant disregard for the destruction of our beaches, marine wildlife, and the environment by transporting rubbish, garbage and tons of plastic waste by open barges for many years and the mismanagement of the transfer stations and the Landfill itself, would have been stopped by the provisions of the intervenor and Woodbridge suit, we believe the suit should have been completed and the settlement of the N.J. Attorney General should have been implemented after the suit had been completed.

We of the NRPA would like to see how much evidence had been gathered by the other parties in this action. Their lack of evidence may have been one of the major reasons for accepting this mediocre settlement. We of the NRPA cannot understand why this settlement was accepted in place of well planned, fully supported, and legally sound court action by Woodbridge. The original suit would have penalized New York City for the many years it has destroyed our waters. It would have forced New York City to comply with federal, state and city laws or pay fines. It would have compensated the Interstate Sanitation Commission for the many violations it had committed by ignoring Conservation Laws, it would have compensated Woodbridge for the aggravation it has suffered all these years. It would have compensated all the involved plaintiffs for their cost and expenses who had the guts to take them to court.

By completing the Court Action, the barges could have to be covered. The correct booms and lock systems could have been built. The Leachate would have to be put under control. The management of the Landfill would have to comply with the laws or be shut down. Instead a settlement was made for studies of problems and monitoring of existing conditions which could continue on for many years into the future without correcting the problems.

From the first hearing in Woodbridge N.J. September 24 1986 (enclosed attachment No. 1 Woodbridge Testimony) it was obvious to all that this hearing was to address salt water and beach pollution by plastics and solid wastes, principally from the Fresh Kill Landfill operation and the attempt by Woodbridge and this Commission to halt the plastic pollution of our waters coming from the Freshkill Landfill operation.

Without going into detail, for the record, read the Woodbridge testimony, attachment 1 and you will find within this testimony the NRPA severely criticized both the Interstate Sanitation Commission and the New Jersey Attorney General for not helping or joining Woodbridge in suing New York City for the destruction it was causing with the mismanaged Landfill. Within a short period of time, we were notified that the I.S.C. and the N.J. Attorney General had joined the suit as intervenors. Immediately G.A.G., at a great expense, applied for intervenor status. After submitting expensive legal documents and reasons to the Court why we were entering the suit on October 8, 1987. We were granted our intervenor request by the Courts one year later.

For the record, I am entering this document as (attachment 2) to clarify my following statement. (Read excerpt from motion). We of the NRPA cannot possibly justify the control achieved by the New Jersey Attorney General over the Woodbridge suit by the same intervenor status granted to the G.A.G. It was made very clear to me by our attorneys that members of

8x

.A.G. were prohibited from discussing any part of the Court action with the New York City Sanitation Department and that by doing so could jeopardize the Woodbridge Court action. This same provision applies to the New Jersey Attorney General. If not, why? It was understood that any action taken by any of the plaintiffs must be submitted to all of the plaintiffs before any action could be taken.

The first time I had access to the settlement consent order (Civil Action #79-1060MTB Consent order) was on December 2, 1987. The New Jersey Attorney General prepared this order, rammed it down our throats, exerted pressure to all the intervenors to accept it at the December 4, 1987 meeting. I requested a postponement to study this document to present to .A.G. and was denied. I ask this committee, which I am sure is well represented by qualified attorneys, what gave the New Jersey Attorney General the right to do what was done with intervenor status. I believe this action was improper and possibly an illegal procedure.

Also while on the subject of intervenors, I would like to state on the record it took G.A.G. approximately one year to achieve intervenor status. A court order was issued (attachment#2), copies were sent to all plaintiffs for approval before we were admitted to the suit.

How? Why? When? Was the organization of Save Our Shores granted intervenorship to participate in this suit? We of the NRPA and this committee should demand to see a court order identical to G.A.G.'s motion and copies that were sent to plaintiffs for their approval.

Question? How was SOS allowed to participate in the secret hearings conducted from December 4, 1987 without this Court Order? Senator Mallone and committee members, the object of these hearings was to stop water pollution and get bi-state cooperation. The NRPA and G.A.G. have provided more than their share of evidence, time and money to these hearings. Our main objective in entering this suit was to stop water pollution from solid waste. The settlement accepted to me is nothing more than a study monitoring agreement which may or not be fulfilled. That remains to be seen. In the interim, I am suggesting to this Committee and to both the New York and New Jersey legislators the following.

1. That legislation be prepared and enacted in both states that would prohibit the transportation of refuse, garbage or trash in, on or over the waters of both states unless covered with penalties and jail sentences or both to violators.

2. That all landfill water entrances and transfer stations be completely surrounded by fences and retention booms with skirts or nets from surface of water to sea floor.

3. That an efficient dual lock boom system be employed at water accessible landfills and transfer stations.

4. That treatment plants be constructed to process leachate within the landfill itself. **5. THAT WARNING SIGNS BE POSTED, AND LAWS ENFORCED.**

If we can accomplish these four suggestions, we feel the time, money and energy devoted to these hearings will not have been wasted.

Before I leave the following questions and comments should be recorded into the minutes of this hearing for investigation and examination by this committee for possible illegal or unethical procedures and practice of law.

1. I firmly believe Judge MaryAnn Trump Barry at no time was aware of what was going on outside her court. I had requested a postponement for reasons stated previously and I also requested from .A.G.'s attorney Henry Martuscello to meet with Judge Barry to explain what I was aware of. He refused.

2. Why did the Interstate Sanitation Commission and the Woodbridge counsel reverse their decision to accept the settlement after telling me on December 4, 1987 they would stand firm on the original court action? Is it possible that political influence was exerted? And by whom?

3. Why did the ISC on many occasions refuse to give me

information when I requested it?

4. On December 4, 1987 in the New Jersey Attorney General's office, in a so-called secret meeting attended by G.A.G. attorney Burt Guido and myself, was a tape recorder being used at the feet of the Woodbridge delegation. It was detected by the attorney for the I.S.C., noticed by the representative for S.O.S., also I alerted Burt Guido of G.A.G. about this recorder. As a plaintiff intervenor and former Director of G.A.G. I demand a copy of this tape be presented to an investigative committee for review.

5. Why? After almost two years of presenting and personally appearing at these hearings as Director of G.A.G. and President of NRPA, one week before the decision was made to accept this study settlement that G.A.G.'s attorney notified the other plaintiffs and possibly the defendant that Lou Figurelli was not an authorized representative of G.A.G. and should or could not be supplied with so called secret information of the proceedings of the decision making meetings? If this is true, was any information withheld from me at the December 4, 1987 meeting in full view of the plaintiff and defendants as an authorized representative of G.A.G.

6. Was Save Our Shores illegally attending these decision making meetings without court authorization, possibly under the protection of the New Jersey Attorney General? Are there possibly political motives present?

7. The day after I attended the meeting (December 4, 1987) in Newark, at the New Jersey Attorney General's Office, I could not find out from anyone including G.A.G.'s attorney where the meeting was to be held. Is it possible that because of my failure to agree with portions of this settlement which was being railroad through the day before, all present knew that if I were present at the second meeting, I still would not agree to this settlement.

I firmly believe I was deliberately kept away from these meetings for fear that I would not accept the compromise that was being made and would have jeopardized the settlement.

8. Did the New Jersey Attorney General have sufficient evidence to pursue the 50 mile garbage suit or did he try to combine the evidence gathered in the Woodbridge Court Action and eventually take control of the Woodbridge suit with intervenor status.

9. Was the Bottle experiment that failed the Attorney General's office, a maneuver for possible political reasons.

10. Solid waste either discharged intentionally or accidentally into navigable waters is prohibited by many Federal, State and Local laws. Damn it, when are we going to start enforcing the Law. We do not need studies and monitoring as per the Attorney Generals's settlement, we need law enforcement.

11. Recently Commissioner Sexton of the New York City Sanitation Department has provided our local news publication with statements and comments on leachate. His attempts to minimize its danger and lack of control at the Landfill site is obvious by his juggling of figures and facts.

His predecessor Commissioner Norman Steisel in an interview on videotape has clearly stated one of his major concerns at the Landfill was the growing problem of leachate control. He expressed deep concern that the dangerous deadly highly toxic leachate was steadily increasing to uncontrollable proportions. (This tape is available).

12. On or about December 4, 1987 I requested G.A.G.'s attorney that to contact the Sanitation Department with the condition that before we would accept any settlement that all expenses and costs incurred by G.A.G.s to date including legal fees be paid by the New York City Sanitation Department. I later received a call from G.A.G.'s attorney stating that the defendant (NYC Sanitation Dept.) had agreed to this.

As of November 9, 1987, Groups against Garbage had \$1,200 in its treasury and legal expenses of \$3,200 to November 9, 1987 and additional

expenses from November 9, 1987 to December 7, 1987. How were these bill paid and who paid them?

Senators: Are you thinking the same as I am?

CONCLUSION:

My time is up. My presentation is over. The settlement smells and stinks of political collusion, corruption and deceit by all parties involved.

Members of this committee and all here today, political pressure has destroyed a justified court action which would have been recorded in our laws as a tested case for others in the future to protect themselves from similar situations.

The defendant, the City of New York, has delayed this court action with complete disregard for public health and welfare and the environment of our surrounding waterways, beaches and wildlife. It has played its game well - the landfill has grown larger, the pollution and leachate dangers have steadily increased and the acceptance of this Consent Order which has replaced a justified suit will allow New York City and its legal staff to laugh in our faces and close the door by additional delaying tactics without penalties for environmental destruction to our waterway beaches and wildlife.

Immediate action should be taken by this committee to expose the events that led to this unwarranted settlement.

I also further suggest the findings of this hearing and the overwhelming objections projected by many concerned citizens and legislators be forwarded to the Hon. Justice Mary Ann Trump Barry who presided over this court action for her evaluation and examination into possible illegal practices or procedures of law.

Since the preparation of this testimony, I have recently been notified that a bill is being prepared to be enacted into law in the New York State Assembly that would prohibit the transportation of rubbish, trash and solid waste garbage in, on or over the water of New York State unless in a closed or covered barge. Provisions for high penalties and jail sentences will be considered for violators.

Thank you

Sincerely

Sam Figurelli
Law. Figurelli
Pres. N.R.P.A.

If anybody has any questions I will be glad to respond now.

c:

TESTIMONY OF LINDA S. HASBROUCK
EXECUTIVE DIRECTOR-ENVIRONMENTAL PRIORITIES/88
BEFORE SENATE SPECIAL COMMITTEE TO STUDY
COASTAL AND OCEAN POLLUTION
JANUARY 19, 1988

SENATOR PALLONE AND MEMBERS OF THE COMMITTEE, THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE AND ALSO FOR HAVING THE GOOD JUDGEMENT TO QUESTION AN AGREEMENT THAT IS NOT IN THE BEST INTEREST OF THE GENERAL POPULATION THAT IS AFFECTED DIRECTLY AND INDIRECTLY BY THE FRESH KILLS LANDFILL.

THERE ARE SEVERAL LAWS THAT HAVE BEEN VIOLATED BY THE CONDITIONS AT FRESH KILLS LAND FILL: THE TRI-STATE COMPACT, THE INTERSTATE SANITATION COMMISSION WATER QUALITY REGULATIONS, THE CLEAN WATER ACT, AS AMENDED BY THE WATER QUALITY ACT OF 1987 AND THE RESOURCE CONSERVATION AND RECOVERY ACT, AS WELL AS OTHER LAWS.

ONE OF THE UNFORTUNATE FACTS IS THAT NOT ONLY ARE THESE LAWS NOT BEING COMPLIED WITH BUT IT SEEMS ALMOST LUDICROUS THAT IN 1988 WE ARE HAVING TO DISCUSS HOW TO COMPLY WITH A LAW THAT IS FROM 1888- RIVER AND HARBOR ACT OF 1888- AS WELL AS THE FEDERAL REFUSE ACT OF 1899. "TO PROHIBIT THE DEPOSIT OF ANY SLUDGE, GARBAGE, AND REFUSE OF ANY KIND INTO THE NAVIGABLE WATER OF THE UNITED STATES OR ITS TRIBUTARIES, OR TO DEPOSIT, OR CAUSE, SUFFER, PROCURE TO BE DEPOSITED MATERIAL OF ANY KIND IN ANY PLACE ON THE BANK OF ANY NAVIGABLE WATER, WHERE THE SAME SHALL BE LIABLE TO BE WASHED INTO SUCH NAVIGABLE WATER. ANY PERSON OR PERSONS VIOLATING THESE LAWS MAY BE SUBJECTED TO A FINE OF NOT MORE THAN \$2,500, AND NOT MORE THAN ONE YEAR IMPRISONMENT, OR BOTH."

COMMITTEE MEMBERS - I URGE YOU TO CONSIDER WHAT THE PRIORITIES ARE, THE ENVIRONMENTAL PRIORITIES, CONCERNING THE EXISTING CONDITIONS AFFECTED BY THIS AGREEMENT. THERE IS A MOUNTAIN OF GARBAGE 500 FEET HIGH AT FRESH KILLS LAND FILL, WHERE IS THAT ISSUE ADDRESSED IN THIS AGREEMENT?

THIS AGREEMENT CALLS FOR:

[1] AN INDEPENDENT MONITOR AT FRESH KILLS, " TO INSPECT, TO MONITOR, AND TO REVIEW THE OPERATIONS AND PROCEDURES AT FRESH KILLS CONCERNING THE PREVENTION OF DISCHARGE OF SOLID WASTE TO THE WATER AND THE CONTAINMENT OF SOLID WASTE WHICH ENTERS THE WATER."

[2] AN INDEPENDENT CONSULTANT TO EVALUATE THE EFFECTIVENESS OF THE DETAILS OF THE MEASURES DETAILED IN THE AGREEMENT.

[3] A WATER QUALITY COMPLIANCE MONITORING TEAM ASSURING COMPLIANCE WITH ALL EXISTING PROCEDURES AFFECTING DISCHARGES OF SOLID WASTE TO THE WATER.

[4] ENVIRONMENTAL POLICE AND ACCESS TO THE LAND FILL BY NEW JERSEY DEP AND THE INTERSTATE SANITATION COMMISSION.

[5] BARGE UNLOADING PROCEDURES TO PREVENT SOLID WASTE ENTERING THE WATER. NOTE: REMEMBER THE 1888 LAW?

[6] PREVENTING WASTE FROM ENTERING THE ARTHUR KILL BY: USING AN EXISTING MOORING RACK, SKIMMER BOATS, NEW BOOM/LOCK SYSTEM, SUPERBOOM AND SIDE WALLS ON THE TRESTLE BRIDGE AT FRESH KILLS . ALL THESE MEASURES TO SIMPLY KEEP THE GARBAGE OUT OF THE WATER.

[7] SUBMIT A PROTOCOL FOR THE EXPERIMENTAL USE OF A BOAT WITH NETS FOR THE PURPOSE OF CAPTURING FLOATABLE GARBAGE AND LITTER BY TRAWLING THE WATERS OF THE ARTHUR KILL.

[8] SHORELINE CLEANUP OF WOODBRIDGE TOWNSHIP BEACHES.

[9] STUDIES- AN EVALUATION REPORT OF THE AFOREMENTIONED POINTS-RECOMMENDATIONS FOR A WHOLLY ENCLOSED BARGE UNLOADING FACILITY.

[10] STUDY OF PROCEDURES AND MONITORING OF MARINE TRANSFER STATIONS (SOUTHWEST BROOKLYN MARINE TRANSFER STATION).

[11] STUDIES OF THE BARGES CARRYING GARBAGE FROM THE MARINE TRANSFER STATIONS TO THE LANDFILLS.

ALL OF THESE POINTS ADDRESS ONE ISSUE - HOW TO PREVENT GARBAGE FROM FALLING INTO AND FLOATING IN THE WATER. THERE HAS TO BE AN EFFORT MADE TO LOOK BEYOND THE TOPICAL PROBLEMS THAT ARE CREATED BY FRESH KILLS LANDFILL AND TO APPROACH THE PROBLEM ITSELF- FRESH KILLS LANDFILL - A 500 FOOT MONUMENT TO OUR INABILITY TO HAVE A COMPREHENSIVE AND EFFECTIVE TECHNOLOGY IN PLACE TO DEAL WITH OUR GARBAGE. THE AGREEMENT OF DEC. 7, 1987 DOES NOT EVEN TOUCH THESE AREAS. THE PROBLEM DOES NOT LIE WHOLLY WITH THE AGENCIES OF GOVERNMENT, IT IS THE PROBLEM OF OUR SOCIETY AS WELL, IT WILL NOT STOP PRODUCING GARBAGE, IT MUST LEARN TO CHANGE IT'S HABITS. THERE ARE THREE R'S OF GARBAGE - REDUCTION, RECYCLING AND REALITY. REDUCTION AND RECYCLING HAVE TO BECOME PART OF OUR EVERY DAY LIVES. THE REALITIES OF GARBAGE ARE MOST GRAPHICALLY ILLUSTRATED BY FRESH KILLS. I APPEAL TO YOU TO NOT ACCEPT THE SHORTSIGHTEDNESS OF THIS AGREEMENT AND TO ADDRESS THE TOTAL PROBLEM CREATED BY OUR ANTIQUATED GARBAGE HANDLING PRACTICES.

THANK YOU AGAIN FOR YOUR CONCERN ABOUT THIS AGREEMENT.

I. ARTHUR HOEKSTRA
28 LYNN LEA
WILLIAMSVILLE, N. Y. 14221

STATEMENT OF I. ARTHUR HOEKSTRA
BEFORE THE
SPECIAL COMMITTEE TO STUDY COASTAL AND OCEAN POLLUTION
TRENTON, NEW JERSEY
TUESDAY, JANUARY 19, 1988

GOOD DAY, MY NAME IS ARTHUR HOEKSTRA, I RESIDE IN BUFFALO, N.Y. AND I AM A PROFESSIONAL ENGINEER IN NEW YORK STATE AND OHIO. I ALSO HAVE THE PRIVILEGE OF HOLDING THE HIGHEST PUBLIC HEALTH ENGINEERS TITLE IN NYS -- PRINCIPLE PUBLIC HEALTH ENGINEER. I WANT TO THANK YOU FOR PRESENTING THIS OPPORTUNITY TO DEVELOP ADDITIONAL INFORMATION VITAL TO ASSURING THAT NEW JERSEY'S NATURAL RESOURCE -- ITS BEAUTIFUL BEACHES, CONTINUE TO REMAIN UNSULLIED.

I UNDERSTAND THAT ONE REASON FOR TODAY'S HEARING, IS THE DISSATISFACTION THAT PERHAPS MORE COULD HAVE BEEN DONE WHEN DEVELOPING THE CONSENT ORDER THAT NOW EXISTS BETWEEN NEW YORK CITY AND NEW JERSEY, TO SPELL OUT THE VARIOUS STEPS NECESSARY TO PROTECT NEW JERSEY'S INTERESTS, WHILE ALLOWING NEW YORK TO PROCEED WITH THE NECESSARY ACT OF WASTE DISPOSAL, AND I AM HERE TO PRESENT YOU WITH SOME INFORMATION WHICH I BELIEVE WILL PROVE HELPFUL IN DOING JUST THAT.

New Jersey State Library

14x

LET ME JUST GIVE YOU A LITTLE MORE INFORMATION ABOUT MY BACKGROUND. I HAVE WORKED IN ENVIRONMENTAL PROTECTION POSITIONS AND IN PUBLIC HEALTH IN N.Y.S. AND OHIO, FOR MORE THAT 30 YEARS. I ALSO HAVE MUCH EXPERIENCE IN THE TREATMENT AND DISPOSAL OF HAZARDOUS WASTE. I WORKED AT CECOS INTERNATIONAL WORKING AS ITS ENVIRONMENTAL MANAGER AND ENGINEERING MANAGER FOR 8 YEARS.

I NOW REPRESENT SANIFOAM INC. WHICH MANUFACTURES A PRODUCT WHICH I BELIEVE HAS THE POTENTIAL TO SOLVE A MAJOR PART OF THE NUISANCE PROBLEMS ASSOCIATED WITH NEW YORK'S REFUSE DISPOSAL. IT IS CALLED SANIBLANKET, AND IT IS MY PURPOSE TODAY TO ASSURE YOUR THAT THIS TECHNOLOGY EXISTS AND IS READILY AVAILABLE.

SANIBLANKET IS A RESIN WHICH IS APPLIED AS A FOAM OVER REFUSE. THIS FOAM LOOKS JUST LIKE SHAVING CREAM , WHIPPED CREAM OR BUILDING INSULATION.

AS THE FOAM IS APPLIED, IT CONGEALS OR SOLIDIFIES ON THE SURFACE TO FORM A COATING WHICH HOLDS TOGETHER PAPER, PLASTIC, AND BITS OF REFUSE SO THAT THEY CAN NOT BLOW AWAY.

IT ALSO FORMS A BARRIER TO CONTROL ODOR AND VAPOR EMISSIONS. HAMILTON, OHIO HAD A VERY SERIOUS ODOR PROBLEM WITH THEIR SLUDGE DISPOSAL AREAS IN THE SPRING OF THE YEAR. THE NEIGHBORS WERE RELIEVED WHEN THE PILES OF SLUDGE WERE COVERED WITH SANIBLANKET BECAUSE IT CONTROLLED THE ODORS.

THE FOAM IS SIMPLE TO APPLY AND CONVENIENT TO HANDLE. I HAVE INCLUDED WITH MY TESTIMONY, PICTURES SHOWING HOW THE FOAM CAN BE APPLIED EITHER SINGLE NOZZLE OR BY USING A TRUCK WITH MULTIPLE NOZZLES.

TESTIMONY OF VICTOR W. WILSON

THE CITY OF NEW YORK WILL SOON BE LOOKING INTO POSSIBLE METHODS OF COVERING ITS BARGES. I BELIEVE THAT SANIBLANKET REPRESENTS A SOLID, COST-EFFECTIVE MEANS OF ACHIEVING FIRM CONTROL. IT PREVENTS GARBAGE LOSS DURING TRANSPORTATION. IT PREVENTS LOSS AT DOCKSIDE, AND IT PREVENTS ODORS WHILE THE BARGES ARE MOORED.

FOR NEW YORK THERE IS AN ADDITIONAL BENEFIT, AND THAT IS SANIBLANKET'S ABILITY TO ALLOW HIGHER BARGE LOADING WITHOUT FEAR OF SPILLAGE.

HAVING PRESENTED THIS BRIEF OVERVIEW OF SANIBLANKET FOR YOUR INFORMATION, I WISH ALSO TO STATE THAT SANIFOAM STANDS READY TO DEMONSTRATE ITS CAPABILITIES TO ALL CONCERNED, AND WILL BE CONTACTING BOTH STATE'S REPRESENTATIVES IN THE IMMEDIATE FUTURE TO ARRANGE FOR A DEMONSTRATION OF ITS ABILITY. IF YOU, SENATOR, OR ANY OTHER PARTY WISHES TO OBSERVE THE DEMONSTRATION, I WILL BE GLAD TO NOTIFY YOU AS TO THE TIME AND PLACE.

AT THIS TIME I WISH TO THANK YOU FOR YOUR KIND ATTENTION, AND WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

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other uses. It can also be used as an emergency compactor. For dust, litter and odor

control combined with savings in fill space, time and money, the PB83 and Sanifoam are the winning combination.



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Legionella found

Medical health experts who found Legionnaire's disease bacteria in the plumbing of seven building complexes in Columbus, Ohio, determined that situation did not pose a health threat. But the investigators did record that plumbing codes address the situation of plumbing systems.

The seven buildings or complexes, the recent study, which was conducted by the Ohio State University and a water plant, randomly sampled Legionella in the month study was conducted. The study indicates that this is also

enclosure and use portable scrubbers, which is expensive. So we probably would have had to wait until another technology came along.

The foam has also been used successfully in New Jersey, Illinois and other states on class one, or nontoxic landfills.

Statewide bill

is to have been in a peculiar way lost when the Port & New Jersey attorney's office was closed. The bill would have been passed by the legislature in the summer of 1984. The bill would have been passed by the legislature in the summer of 1984. The bill would have been passed by the legislature in the summer of 1984.

City Police Power
N.Y.C. final authority

ers would provide the city with reports of the condition of the exterior. All qualifying buildings must be in compliance within a year after the ordinance is passed. After that, they must be inspected every five years. The law will likely require some form of hands-on, close-up inspection, but the specifics must still be hashed out.

Roti's version will probably be passed unless there is evidence of disease," she says. There are too many questions that need to be answered for the center to recommend changes in plumbing systems, she says.

Julius A. Ballanco, plumbing and mechanical code liaison for the Building Officials & Code Administrators International, Inc., Homewood, Ill., says a BOCA committee has discussed Legionella in study sessions with health officials. But committee members don't feel enough is known about it yet to merit any code change, he says.

New alliance targets toxics

After three frustrating years of confrontation with the Environmental Protection Agency over hazardous waste dump cleanups, the chemical industry and two conservation groups have formed a nonprofit company to accelerate work on superfund program sites.

Called Clean Sites, Inc. (CSI), the group will work with companies involved in specific site cleanups to determine responsibility. CSI will then negotiate on their behalf with EPA for actual cleanup settlements. The company will serve three functions:

- Bring together parties responsible for abandoned waste sites.
- Help negotiate a settlement assigning cost-sharing responsibilities for cleanup.
- Plan and sometimes manage cleanup activities.

Initially, CSI plans to begin cleanup studies at 20 sites on the agency's priority list of 547 dumps. After the third year of operation, it expects to work on as many as 60 sites a year.

Funding will come primarily from the chemical industry, which will contribute 50% of the eventual \$12-million annual operating budget. The remaining monies will be contributed by foundations and the steel, metals, auto, electronics, rubber and aerospace industries. Each company participating in a CSI project at a superfund site will also pay a portion of the total cleanup costs for that work.

Toxics site cleanups cost an average of

\$6 million, according to EPA officials. But some sites have cost as much as \$50 million to clean up.

To add credibility to the venture, CSI planners have recruited Russel E. Train to be chairman of the company. Train, currently president of the World Wildlife Fund, was administrator of EPA during the Ford administration and worked at the Council on Environmental Quality.

ty. Another member of the CSI board is Douglas M. Costle, former EPA administrator under President Carter.

Although the new company is supported by the National Wildlife Federation and the Conservation Foundation, a number of other environmental groups have expressed serious reservations. In a statement issued last week, the Sierra Club and Environmental Defense Fund warned that "results, not rhetoric, will be the true test of industry's commitment" toward solving the nation's hazardous-waste problem.

Foam aids toxics cleanup

A foam cover developed from urea-formaldehyde insulation once banned because of its toxicity is now being successfully used for odor and emission control on municipal landfills and toxic-waste sites.

A 1-in. blanket of foam can be used as a temporary cover on toxic or non-toxic landfills as a substitute for the 6-in. cover of dirt required by the Environmental Protection Agency, claims Fritz Kramer, chief executive officer of Sanifoam, Inc., Costa Mesa, Calif. Kramer developed the nontoxic foam after the Consumer Product Safety Commission banned the foam insulation he previously marketed. That ban was eventually overturned by the courts.

The foam has been successfully used in test excavations at the McCall hazardous-waste site in Fullerton, Calif., says

Charles E. Schmidt, senior scientist for Radian Corp., Austin, Tex. Radian designed removal procedures at the site and will supervise cleanup of the acidic sludges stored there. Work is expected to begin later this year.

"Foam is really becoming a buzzword for emission controls," says Schmidt. "We've tested this out at 90% effectiveness in controlling emissions. It's about the equivalent of using several layers of plastic."

Schmidt says the foam is essential for removing the wastes at the McCall project, located near a densely populated neighborhood. The foam prevents the emission of noxious fumes.

"Remedial action involves disturbing and exposing the wastes," he says. "We can't just dig the wastes up. If we didn't have the foam, we'd have to work in an



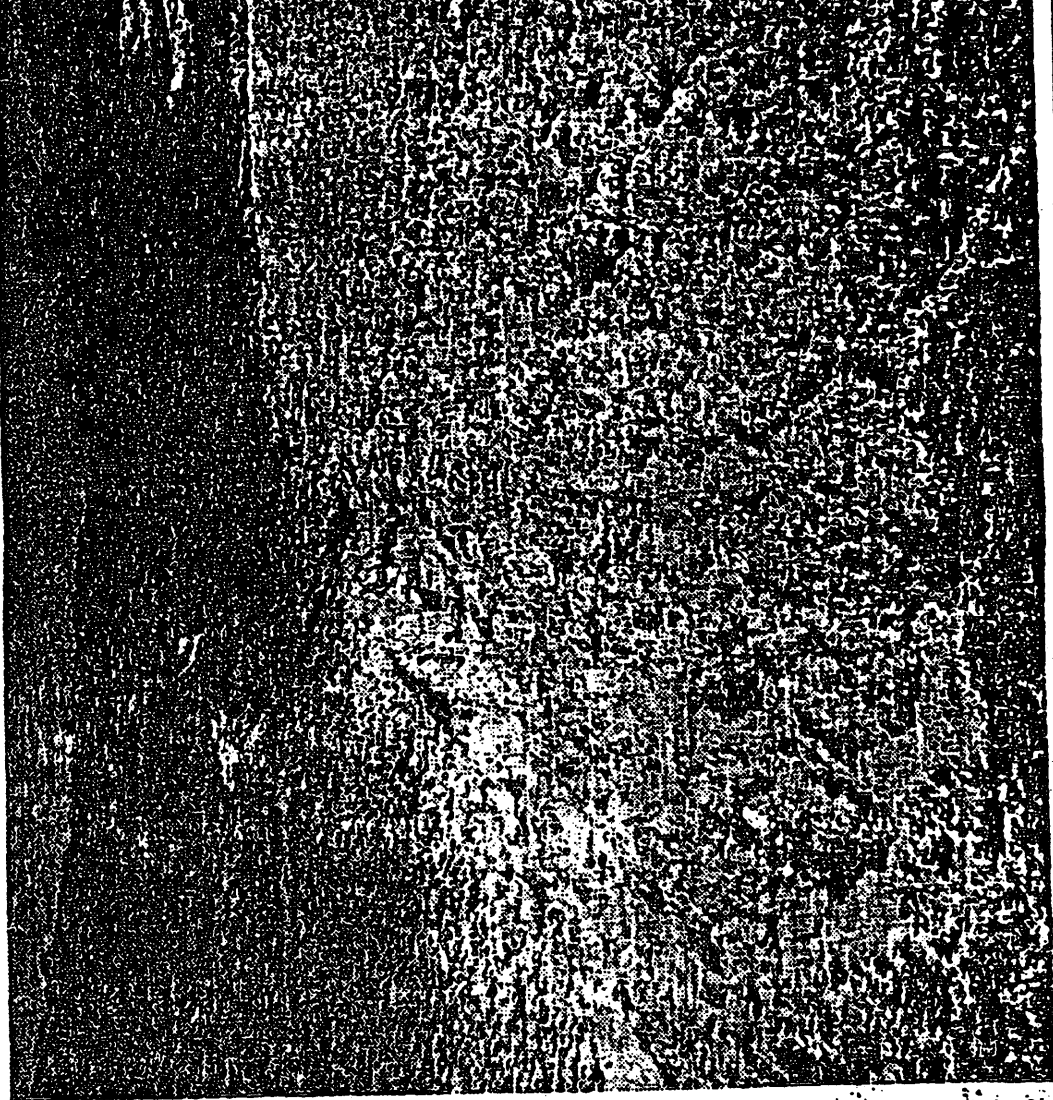
Foam may end nose woes

MAY 9, 1965

City workers are covering sludge trenches at Hamilton's wastewater treatment plant (above) with plastic foam in an innovative attempt to subdue odors. Mike Wheeler, plant supervisor, said the pits — roughly 15 by 30 feet (right) — can be disturbed by several factors, including rain, humidity and ground settling. That causes the odor problems.

The foam was created as a landfill cover, but Hamilton officials decided to try it at the treatment plant. Wheeler said millions of dollars are being spent for a number of projects at the plant. "We're getting to the point where things are really starting to improve," he said.

Journal News photo by Nick Burns





Alliance for a Living Ocean

P.O. Box 95, Ship Bottom, New Jersey 08008

January 19, 1988

My name is Karen Kiss and I am the President of the Alliance For A Living Ocean. A.L.O. is a Southern Ocean County based citizen's group which has been in existence for 4 1/2 months and has approximately 1200 members on file and growing daily. The organization was founded the day after 60,000 people lined our 13 mile long beaches in silent protest to the degradation of the ocean by pollution, a demonstration which was orchestrated by many in our organization.

The A.L.O. membership is committed to ending the degradation of New Jersey's coastal waters through public education and citizen action. As such we are grateful today to this committee for the opportunity to express our views on the consent agreement reached between New Jersey and New York regarding the Fresh Kills Landfill.

Although Monmouth and Middlesex Counties receive the vast preponderance of the solid waste pollution emanating from the Fresh Kills Landfills operation, Ocean County has received over the years a disgusting share of this solid

waste pollution including medical waste. Although merchant vessels contribute to this pollution, it is also quite arguable that Fresh Kills is an equal contributor to the solid waste pollution we experience. As Don Myers of the Long Beach Township Beach Patrol will testify, syringes have been washing in for years, but obviously not to the magnitude of the garbage slick of August 13, 1987.

I truly find it hard to believe that so many sailors on these merchant vessels are so chronically ill that they require all this medical paraphernalia on ship and then throw it overboard before docking.

A.L.O. wants this committee to know that the people in Ocean County, especially the coastal communities, have as much, if not more at stake as Monmouth and Middlesex Counties, if we do not realize a resolution to this problem of solid waste in the marine environment. Tourism is the #1 industry to our area and it is being jeopardized by pollution of all types. The membership of the Alliance For a Living Ocean has studied the Fresh Kills Landfill operation and settlement which was reached and we feel the consent agreement is a serious set back in the resolution of solid waste pollution to the New York Bight. As long as the garbage barges are overfilled and not covered; as long as there is no enclosed transfer station; as long as there is no state-of-the-art leachate control system, solid and liquid waste pours into the marine environment from the Fresh Kills site in direct violation of the Clear Water and

Rivers and Harbours Acts. It is inconceivable to us that such a lackluster compromise was agreed upon by New Jersey when the present public sentiment for pollution reform provides a fertile climate for strigent sanctions against the polluters.

Therefore, we applaud this committee and Senator Pallone for proceeding with this investigation and for providing the public with a forum to explore the apparent inadequacies of this settlement.

Thank you!

STATEMENT OF CONGRESSMAN GUY MOLINARI
BEFORE THE
SPECIAL COMMITTEE TO STUDY COASTAL AND OCEAN POLLUTION
TRENTON, NEW JERSEY
TUESDAY, JANUARY 19, 1988

GOOD DAY, I AM CONGRESSMAN GUY MOLINARI. I REPRESENT THE 14TH CONGRESSIONAL DISTRICT OF NEW YORK, WHICH ENCOMPASSES ALL OF STATEN ISLAND AND PORTIONS OF BROOKLYN.

I WISH TO THANK SENATOR PALLONE FOR PROVIDING US WITH THIS FORUM TODAY. I BELIEVE WE ARE HERE BECAUSE THERE IS A GROWING SENSE OF DISSATISFACTION OVER THIS LATEST IN A LONG LINE OF NEW YORK CITY, NEW JERSEY CONSENT ORDERS, IN WHICH THE CITY PROMISES TO STOP DESPOILING JERSEY'S BEACHES, ONLY TO IGNORE THOSE PROMISES. FRANKLY, I DON'T BLAME YOU FOR BEING DISSATISFIED. HISTORY CERTAINLY SUPPORTS YOUR VIEWPOINT.

IN 1979, WOODBRIDGE TOWNSHIP, FRUSTRATED IN ITS ATTEMPT TO WORK WITH THE CITY, WENT INTO FEDERAL COURT. THE CITY WAS ORDERED TO STOP ITS SLOPPY DUMPING PRACTICES. BY 1980, THE CITY'S PROCEDURES AT FRESH KILLS WAS SO OBNOXIOUS, THAT THE CITY WAS AGAIN DRAGGED INTO COURT. AGAIN THE CITY PROMISED TO IMPROVE ITS PRACTICES. IN FACT IT EVEN SIGNED A CONSENT ORDER. TWO YEARS LATER, THE ORDER EXPIRED, AND LITTLE THAT WAS PROMISED HAD BEEN DELIVERED. IT TOOK TWO ADDITIONAL YEARS TO HAMMER OUT A NEW AGREEMENT WITH NEW YORK.

DURING THIS TIME, JERSEY WAS BACK IN COURT, COMPLAINING ABOUT THE CITY'S REFUSAL TO LIVE UP TO ITS END OF THE BARGAIN. THE CITY ONCE AGAIN PROMISED TO LIVE UP TO THE AGREEMENT. IT MADE THAT PROMISE AGAIN IN 1985, AND YET AGAIN IN 1987. IN THE MEANWHILE THE

LANDFILL HAS GROWN INTO A MALIGNANCY THAT SEEKS TO DESTROY STATEN ISLAND'S QUALITY OF LIFE, AND CAUSE NEW JERSEY NO END OF GRIEF.

TRUTHFULLY, ONE MUST WONDER AT THE CONTINUING TRUST AND BELIEF EXHIBITED BY ALL PARTIES INVOLVED. LESSOR PEOPLE MIGHT HAVE GROWN CYNICAL.

THE IRONIC PART OF THIS SITUATION IS THAT I BELIEVE THERE HAS FOR YEARS EXISTED A MEANS TO HELP SOLVE THIS PROBLEM, INDEED EVEN POSSIBLY TO HAVE PREVENTED IT. IT IS THE INTERSTATE SANITATION COMMISSION.

THIS AGENCY, WITH ITS INTERSTATE INSPECTION AND ENFORCEMENT POWERS, COULD HAVE BEEN UTILIZED TO ITS FULLEST AND CALLED UPON TO WORK TOWARD SOLVING THE FRESH KILLS PROBLEM. BUT IT WASN'T. IT HAS ALWAYS SEEMED STRANGE TO ME THAT AN AGENCY SPECIFICALLY DESIGNED BY THE STATES OF NEW JERSEY, NEW YORK AND CONNECTICUT, TO COPE WITH INTERSTATE POLLUTION PROBLEMS, SHOULD THEN BE NEGLECTED AND PRACTICALLY PROHIBITED FROM ACHIEVING ITS MANDATED GOALS.

OF COURSE, THE HEART OF ANY AGENCY IS ITS FUNDING, AND THE ISC HAS PERPETUALLY BEEN UNDERFUNDED. HOWEVER, IN SPITE OF THIS RESTRICTION, OVER THE YEARS IT HAS PRODUCED AN ENVIABLE WORK RECORD, GENERATING DATA ON WATER QUALITY THROUGHOUT THE TRI-STATE AREA. IN FACT, IT IS MY UNDERSTANDING THAT, WITH THE EXCEPTION OF COLIFORM DATA, THE ISC SUPPLIES NEW JERSEY WITH ALL ITS WATER QUALITY DATA.

YET DESPITE THIS, AND DESPITE THE FACT THAT A SIMILAR SITUATION EXISTS IN NEW YORK, THE ISC MUST GO, HAT IN HAND, TO EACH STATE SEEKING FUNDS, WHICH ALL TOO OFTEN WINDS UP TO BE LITTLE MORE THAN A HAND-OUT.

I TRIED TO RECTIFY THAT SITUATION BY PLACING AN AMENDMENT INTO THE CLEAN WATER ACT THAT WOULD PROVIDE FOR PASS-THROUGH FUNDING TO THE ISC OF TWO MILLION DOLLARS ANNUALLY. I BELIEVED THEN, AND DO NOW, THAT STEADY FUNDS OF THIS MAGNITUDE WOULD ALLOW THE ISC TO INCREASE ITS STAFF AND ENCOURAGE MORE SUBSTANTIAL LONG-RANGE PLANNING.

I'M SORRY TO TELL YOU THAT DESPITE THE STRONG SUPPORT OF NEW JERSEY'S CONGRESSIONAL DELEGATION, MEN SUCH AS JIM HOWARD AND BOB ROE WHO WORKED HARD WITH ME AND GOT THIS AMENDMENT SUCCESSFULLY THROUGH A HOUSE VOTE, YOUR ENVIRONMENTAL AGENCY STRONGLY OPPOSED MY AMENDMENT. SO DID NEW YORK STATE'S AGENCY.

IT'S IRONIC THAT THESE AGENCIES, CHARGED WITH PROTECTING THE ENVIRONMENT, SHOULD JOIN FORCES TO PREVENT ANOTHER AGENCY FROM RECEIVING THE FUNDS NECESSARY TO DO A BETTER JOB OF PROTECTING THE ENVIRONMENT.

IN TRUTH, THEIR LOBBYING EFFORT WAS SO STRONG THAT DESPITE SENATOR ALFONSE D'AMATO'S VIGOROUS ATTEMPTS, MY AMENDMENT WAS STRUCK DOWN IN CONFERENCE. AND SO WE ARE HERE TODAY, FACING THE POSSIBILITY OF MORE BROKEN PROMISES.

WE ARE HERE DEALING WITH COMPLEX PROBLEMS. YET I THINK IT FAIR TO SAY THAT THE CITY HAS TAKEN ADVANTAGE OF THE FACT THAT IT HAS BUT ONE LARGE REPOSITORY FOR ITS WASTE DISPOSAL. I BELIEVE WE MUST ALSO UNDERSTAND THAT IT IS IN THE CITY'S BEST INTEREST TO ENTER INTO NEW CONSENT DECREES. EACH TIME A NEW AGREEMENT IS SIGNED, IT FORGIVES THE SINS OF THE PAST. ALL PRIOR VIOLATIONS ARE FOREGONE AND A NEW CLEAN SLATE IS PRODUCED. I THINK THAT IS WRONG FOR NEW JERSEY. I BELIEVE IT IS WRONG FOR STATEN ISLAND. IT IS ONLY RIGHT FOR NEW YORK CITY.

I BELIEVE WE ALL SHOULD SHIFT OUR EMPHASIS. IT DOES US NO GOOD TO ARGUE FOR STRONGER CONSENT AGREEMENTS, EVEN IF THEY CONTAIN PENALTIES SUCH AS THE MILLION DOLLAR FINE THAT MUST BE PAID TO WOODBRIDGE. WHEN YOU CONSIDER THE STAKES, EVEN A MILLION DOLLARS BECOMES A MINOR CONSIDERATION. I BELIEVE THAT OUR MOST VIABLE COURSE IS TO INSURE ENHANCED LEVELS OF FUNDING FOR THE ISC. GIVE IT THE MONEY IT NEEDS TO DO THE JOB. THE ISC HAS THE POWERS. I THINK ITS ACTIONS IN THIS ISSUE SHOW THAT, PERHAPS MORE THAN MANY, IT HAS THE WILL. IT JUST DOESN'T HAVE THE RESOURCES, AND I THINK IT IS TIME THAT YOU GENTLEMEN GAVE IT TO THEM.

THANK YOU.

STATEMENT OF COUNCILWOMAN SUSAN MOLINARI
BEFORE THE
SPECIAL COMMITTEE TO STUDY COASTAL AND OCEAN POLLUTION
TRENTON, NEW JERSEY
TUESDAY, JANUARY 19, 1988

GOOD DAY, I AM NEW YORK CITY COUNCILWOMAN SUSAN MOLINARI. I REPRESENT THE FIRST DISTRICT, WHICH INCLUDES THE SOUTH SHORE AND MID-ISLAND SECTIONS OF STATEN ISLAND, WITHIN WHICH IS THE FRESH KILLS DUMP.

LET ME ACKNOWLEDGE WITH DEEP GRATITUDE, THOSE RESPONSIBLE PARTIES HERE IN NEW JERSEY, ALONG WITH THE INTERSTATE SANITATION COMMISSION, FOR INITIATING THE WOODBRIDGE TOWNSHIP SUIT. LET ME ALSO THANK SENATOR PALLONE FOR PROVIDING THOSE OF US WHO ARE STILL DISTRESSED OVER THE SITUATION, THIS OPPORTUNITY TO SHARE OUR FRUSTRATIONS AND TO SUGGEST OTHER AVENUES OF ACTION.

THIS SUMMER, MANY OF YOU IN THIS ROOM HAD A TASTE OF WHAT IT IS LIKE HAVING A DUMP FOR A NEIGHBOR. YOUR BEACHES WERE UNINHABITABLE, YOUR WATER UNSWIMABLE. YET YOU HAVE EXPERIENCED ONLY A SMALL PORTION OF THE INSULTS THIS DUMP HEAPS UPON MY CONSTITUENCY.

IT IS DIFFICULT TO IMAGINE WHAT IT'S LIKE LIVING NEXT TO 3,000 ACRES OF RAW, UNTREATED GARBAGE, INTERSPERSED WITH MEDICAL WASTE, ASBESTOS AND OOZING LEACHATE. IT IS A CONSTANT PHYSICAL AND MENTAL ASSAULT. OUR WINDOWS STAY SHUT AND OUR YARDS STAND UNUSED. EVEN BEAUTIFUL SUMMER DAYS ARE SPENT INDOORS TRYING TO FILTER OUT THE NAUSEATING ODORS. OUR CHILDREN CONTINUOUSLY COMPLAIN ABOUT THE SMELL, AND OUR NIGHTS ARE SPENT WORRYING ABOUT OUR FAMILY'S HEALTH.

LIKE YOU, WE DID NOT CHOOSE THIS UNPLEASANT, AND POSSIBLY UNHEALTHY LIFESTYLE. WE WERE SIMPLY THE POLITICAL LOSERS IN A FIVE BOROUGH POWER GAME, WITH THE KITTY BEING THE GARBAGE GENERATED BY EIGHT MILLION RESIDENTS.

TODAY WE ARE DISCUSSING A CONSENT AGREEMENT BETWEEN NEW YORK AND NEW JERSEY THAT IS SUPPOSED TO SOLVE MANY OF THE ILLS I JUST MENTIONED. I'M NOT SURE WE SHOULD HOLD TOO MUCH HOPE AS TO THE SUCCESS OF THE AGREEMENT. HISTORY SHOWS A LACK OF RECOGNITION ON THE CITY'S PART. WE DO NOT RECOGNIZE LANDFILL LINERS. WE DO NOT RECOGNIZE THE NEED FOR ADEQUATE COVER. NOR DO WE RECOGNIZE THE NEED TO CONTROL LEACHATE. WE CERTAINLY REFUSE TO RECOGNIZE THE CRYING NEED TO RECYCLE WASTE AND, PERHAPS MOST IMPORTANT OF ALL, WE HAVE NEVER RECOGNIZED THE NEED TO LIVE UP TO ANY CONSENT ORDERS.

IN 1980, THE CITY ENTERED INTO A TWO YEAR AGREEMENT TO CLEAN-UP ITS LANDFILL ACT. TWO YEARS LATER ALL BUT THE MOST MINOR PROVISIONS OF THAT AGREEMENT STILL REMAINED TO BE ACCOMPLISHED. IT TOOK TWO ADDITIONAL YEARS TO DRAW A NEW AGREEMENT, DURING WHICH TIME IT WAS BUSINESS AS USUAL. I'M SURE YOU ARE WELL AWARE OF THE CITY'S BRASHNESS IN LEGAL MATTERS. IT HAS SIMPLY RELIED UPON THE FACT THAT THE FRESH KILLS IS THE ONLY LANDFILL GAME IN TOWN. ULTIMATELY, A NEW CONSENT ORDER WAS APPROVED, BUT IT IS MY UNDERSTANDING THAT THE CITY IS ALREADY BEHIND IN MEETING SOME OF ITS PROVISIONS.

IT IS CLEAR THAT THESE AGREEMENTS ARE BASED UPON GOOD-WILL. IN FACT THE AGREEMENT WE ARE ADDRESSING TODAY HAS QUITE A BIT TO SAY ABOUT GOOD-WILL. BUT GOOD-WILL IS NOT ENOUGH. REVENUE IS ALSO NEEDED, UNFORTUNATELY, ALTHOUGH THE SANITATION DEPARTMENT GENERATES OVER 60 MILLION DOLLARS EACH YEAR, THROUGH TIPPING AND INCINERATION FEES, VERY LITTLE IS BROUGHT BACK INTO THE DEPARTMENT FOR DUMP

MAINTENANCE. I FEAR THAT UNTIL THIS SITUATION IS CORRECTED, LITTLE PROGRESS CAN BE ACHIEVED.

LET ME CLOSE WITH A WORD OF WARNING ABOUT THE FUTURE. AS INCINERATION COMES ON LINE, THE CHARACTER OF FRESH KILLS COMPOSITION WILL CHANGE. FLY AND BOTTOM ASH WILL BECOME THE MAIN INGREDIENTS PLACED INTO FRESH KILLS. THIS TYPE OF DUMPING INTO THE UNLINED LANDFILL WILL, OVER TIME, CREATE A LEACHATE PROBLEM MORE PERVASIVE, MORE DEADLY THAN THOSE CURRENTLY THREATENING OUR AIR, SOIL AND WATER.

THANK YOU.

