

THE SOLID WASTE CRISIS: A NEED FOR LEGISLATIVE ACTION

Solid Waste Issues in New Jersey

Densely populated urban centers and over industrialization have given New Jersey the dubious distinction of being one of the first states to experience a solid waste disposal crisis. Recent estimates show that solid waste landfills will reach capacity within four years.¹ In addition, improper waste disposal is causing severe environmental hazards.² Finally, public opposition to the siting of new landfills or resource recovery plants has inhibited their construction.³ New Jersey must take bold and decisive action to provide for the disposal of our state's waste in an environmentally safe and economically sound manner.

Prior to a discussion of future actions necessary to alleviate the solid waste crisis, two pieces of legislation that were enacted in the 1970's relating to solid waste management warrant examination. These two acts have been important in the development of the State's management of solid waste operations. They have provided the legislative and regulatory backdrop against which solid waste issues have been addressed in the state over the last twelve years.

Solid Waste Utility Control Act of 1970

This Utility Control Act,⁴ signed by former Governor Cahill, provided that the solid waste collection, hauling, and disposal industries in New Jersey would be regulated as public utilities. Consequently, solid waste hauling and disposal companies were to be monitored, examined, and profit-controlled in the same manner as utilities which control water, electric, and telephone services. Specifically, the Act gives the Public Utilities Commission (PUC) the authority to set rates and enforce standards in order to control the economic aspects of collection, disposal, and utilization services.⁵ The Board of Public Utilities Commissioners (Board) may designate municipality(ies) as franchise areas to be served by one or

¹ English, Jerry F., *Waste Disposal: More State Regulation Is Needed*, N.Y. Times, June 7, 1981, § 11, at 32, col. 1.

² BROWN, M., *LAYING WASTE*, N.J.: *Blight in the Garden State* (2d ed. 1980).

³ Susi, Anita, *Waste Burner Opposed*, The Star-Ledger, Oct. 2, 1981, at 31, col. 1.

⁴ N.J. STAT. ANN. §§ 48:13A-1 to -13 (West Supp. 1982-83).

⁵ *Id.* § 48:13A-2.

more collection service companies.⁶ In addition, a solid waste management district⁷ may be designated as a franchise for one or more disposal services.⁸ One of the purposes of the Utility Control Act was to promote competition in the industry.⁹

The Utility Control Act also addressed the problem of qualifications of the operators. Not only must the applicant demonstrate his expertise and knowledge of the field, but he must also be approved by the Department of Environmental Protection (DEP) before a license will be issued.¹⁰ Each licensed operator must furnish to the Board a performance bond along with each franchise contract entered into.¹¹

The Board has final say over the rates that are agreed upon between the collectors and their respective franchise areas.¹² The Board may direct any one engaged in collecting or disposing of solid waste to furnish proofs that the prices charged for their services are reasonable. If the Board finds that such charges are unreasonable it may require a reduction.¹³ The DEP assumes the responsibility for monitoring the environmental aspects of the industry.¹⁴ Today, the Board continues to regulate the cost of solid waste collection and disposal for each individual solid waste company in New Jersey.¹⁵

Solid Waste Management Act of 1975

This Act,¹⁶ signed by former Governor Byrne, attempts to coordinate all solid waste collection, disposal, and utilization within a statutory framework.¹⁷ The DEP, in conjunction with the Solid Waste Advisory Council,¹⁸ is given the authority to research, formulate, and promulgate

⁶ *Id.* § 48:13A-5.

⁷ *Id.* §§ 13:1E-19 to -20.

⁸ *Id.* § 48:13A-5.

⁹ BOARD OF PUBLIC UTILITIES, DEPARTMENT OF ENVIRONMENTAL PROTECTION, DEPARTMENT OF LAW AND PUBLIC SAFETY, REPORT OF TASK FORCE TO STUDY SOLID WASTE REGULATION (1981) [hereinafter referred to as AG REPORT].

¹⁰ N.J. STAT. ANN. § 48:13A-6 (West Supp. 1982-83).

¹¹ *Id.* § 48:13A-8.

¹² *Id.* § 48:13A-7.

¹³ *Id.* § 48:13A-7(b).

¹⁴ *Id.* § 48:13A-6.

¹⁵ *Id.* § 48:13A-4.

¹⁶ N.J. STAT. ANN. §§ 13:1E-2 to -48 (West 1979) [hereinafter referred to as Management Act].

¹⁷ *Id.* § 13:1E-2(b)(1).

¹⁸ *Id.* § 13:1E-7.

rules and regulations concerning solid waste collection and disposal.¹⁹ The DEP is also required to develop and review the statewide solid waste management plan every two years. In addition, the DEP must assist and evaluate district management plans. The Act further establishes a timetable within which these plans should be promulgated.²⁰

New Jersey's twenty-one counties and the Hackensack Meadowlands District are designated as solid waste management districts. Each district was instructed to submit a ten-year plan for solid waste management to the DEP. The DEP has final authority to accept or reject the submitted plan.²¹ Each district's solid waste plan is based upon the following criteria: (1) an accounting of the solid waste generated in the year the report is prepared; (2) anticipated solid waste product during each of the following ten years (provided that waste disposed of in the Hackensack Meadowlands district may not be included); (3) anticipated life expectancy of present solid waste facilities; (4) analysis of collection systems and transportation routes.²² This Management Act also promotes "resource recovery through the development of systems to collect, separate, recycle and recover metals, glass, paper and other materials . . . for energy production."²³

The Issues of the 1980's

In the early 1970's the issues surrounding solid waste management were rarely discussed. There seemed to be abundant land for disposing of waste and the costs to customers for that disposal was minimal. Also, there was a lack of sophisticated resource recovery technology to challenge traditional waste disposal methods. All these factors encouraged the "throw away" mentality among many New Jersey residents. Today, however, solid waste management has become an important environmental concern, especially because of the problems caused by improper hazardous waste disposal methods of the past. The major solid waste issues confronting the State today include: decreasing landfill space and the threat to public safety, dramatically escalating costs, lack of resource recovery facilities, and governmental mismanagement creating oversights.

¹⁹ *Id.* § 13:1E-6(1),(2).

²⁰ *Id.* § 13:1E-6(3).

²¹ *Id.* § 13:1E-20(a).

²² *Id.* § 13:1E-21(a)(1)-(4).

²³ *Id.* § 13:1E-2(b)(7).

Decreasing Landfill Space and the Threat to Public Health

In 1974, the New Jersey Supreme Court observed that the disposition of solid waste in the State had reached "crisis proportions, resulting in serious problems of public health and welfare."²⁴ At the present rate of refuse production, New Jersey will exhaust the currently available landfill space within three to four years.²⁵ While New Jersey residents continue to generate some 15 million tons of solid waste per year, the number of approved sanitary landfills has been cut by one-third in the last ten years.²⁶ Only 220 landfills remain to absorb an ever-increasing amount of solid waste.²⁷ Yet as late as the summer of 1982, the State still did not have an identifiable and manageable document constituting a statewide solid waste disposal plan. New Jersey's highest court, therefore, ordered that the DEP promulgate such a plan in *A.A. Mastrangelo, Inc. v. Environmental Protection Dept.*²⁸

The same court also mentioned its concern for the seriousness of the waste disposal situation in *Hackensack Meadowlands v. Municipal Landfill Authority*.²⁹ This case was ultimately decided by the United States Supreme Court. The New Jersey Supreme Court found that due to the increasing scarcity of sites for solid waste disposal, and the health hazards connected therewith, all solid waste originating outside of the State should be prohibited from being dumped into the landfill areas regulated by the Hackensack Meadowlands Development Commission.³⁰ In addition, the court noted the effect that dumping was having on many floodplains and wetlands which are ecologically sensitive.³¹

It was estimated that in 1971 over 40,000 tons of solid waste originating out of state was being buried each week in the 340 sanitary landfills then existing within the state. DEP estimated that in that year 1.5 million tons of solid waste originating

²⁴ *So. Ocean Landfill v. Mayor & Coun. Tp. of Ocean*, 64 N.J. 190, 193, 314 A.2d 65, 68 (1974).

²⁵ STATE ADVISORY COMM. ON RECYCLING, RECYCLING IN THE 1980's, at 6 (1980).

²⁶ *Id.*

²⁷ *Id.*

²⁸ 90 N.J. 666, 680, 449 A.2d 516, 520 (1982).

²⁹ 68 N.J. 451, 348 A.2d 505 (1975), *rev'd sub nom.* *Philadelphia v. New Jersey*, 437 U.S. 617 (1978).

³⁰ Hackensack Meadowlands Development Act of 1974, N.J. STAT. ANN. §§ 13:17-1 to -63 (West Supp. 1982-83).

³¹ *Hackensack Meadowlands v. Mun. Landfill Auth.*, 68 N.J. 451, 461-62, 348 A.2d 505, 510 (1975), *rev'd sub nom.* *Philadelphia v. New Jersey*, 437 U.S. 617 (1978).

outside of the State was buried in New Jersey. . . . It has also been estimated that a statewide prohibition on solid waste originating elsewhere would lengthen the state-wide landfill life by approximately 8% with the increase in some specific landfills being as high as 50 to 100%.

Compounding the shortage problem are other extremely important environmental considerations. Many existing landfills within the State are located within ecologically sensitive areas, such as flood plains and wetlands, or State-owned public trust tidelands. The operation of landfills now located in these areas may have to be limited or discontinued.³²

The United States Supreme Court, however, reversed this decision, stating that it would "not allow New Jersey to isolate itself from a problem common to many states by erecting a barrier against the movement of interstate trade" ³³ The Court thus relied upon the Commerce Clause to find unconstitutional the Commission's prohibition despite New Jersey's argument that the prohibition was motivated by a genuine concern for the health and welfare of the State's inhabitants.

In a strong dissent, Justice Rehnquist recognized that health and safety hazards would result from excessive solid waste disposal. Starting with problems which are often found in New Jersey, such as landfills which produce leachate, he went on to mention the existence in the landfills of methane gas, which gives rise to the hazards of explosions, as well as the hazards caused by rodents, fires and scavenger birds. These hazards both hurt the State's aesthetic appearance and increase its noise, water and air pollution problems.³⁴ Justice Rehnquist asserted that "[s]tates can prohibit the importation of items 'which, on account of their existing condition, would bring in and spread disease, pestilence, and death'" ³⁵ The threat to public safety was sufficient, he felt, to uphold the Commission's prohibition against the importation of solid waste.³⁶

Both the courts and the Legislature have recognized the danger that presently exists. We must take more decisive action now, before it is too late.

³² *Id.*

³³ *Philadelphia v. New Jersey*, 437 U.S. 617, 628 (1978).

³⁴ *Id.* at 630 (Rehnquist, J., dissenting).

³⁵ *Id.* at 631 (Rehnquist, J., dissenting) (quoting *Bouman v. Chicago and Northwestern R. Co.*, 125 U.S. 465, 489 (1888)).

³⁶ *Id.* at 633 (Rehnquist, J., dissenting).

Dramatically Escalating Costs

Costs for solid waste disposal are constantly increasing. For instance, the Sanitary Landfill Facility Closure and Contingency Fund Act has levied a \$.15 fee per cubic yard of solid waste.³⁷ In addition, the Recycling Act imposes a \$.12 per cubic yard tax of solid waste accepted by a facility after January 1, 1982.³⁸ Both of these taxes are imposed on every landfill operator or owner. These fees obviously increase the cost of hauling and disposing solid waste in New Jersey.

In addition to state mandated costs such as the landfill closure and recycling programs,³⁹ solid waste businesses in New Jersey are currently struggling to keep pace with an industry inflation rate of 25%⁴⁰ which is more than double the national estimated inflation rate of 12% (April 1982). Labor union contract settlements, transportation, fuel, and operating costs threaten to push the cost of solid waste collection and disposal even higher in the coming year.⁴¹ The State estimates that the cost to dump garbage, which is currently \$5 to \$10 per ton, will reach \$35 per ton by 1985 as fully utilized landfills are forced to close.⁴²

Lack of Resource Recovery Facilities

So far efforts to direct garbage to energy conversion facilities and away from landfills have been largely unsuccessful. One such effort was recently opposed in East Brunswick when the citizens of that town got together to fight the construction of a \$100 million garbage incineration facility.⁴³ The citizens claimed that the facility unduly jeopardized the environment of East Brunswick. This is but one of twenty-two similar projects that have been proposed, none of which are currently under construction. The solid waste management plans developed under the Management Act have resulted in years of public meetings and debate,

³⁷ N.J. STAT. ANN. § 13:1E-100 (West Supp. 1982-83).

³⁸ *Id.* § 13:1E-104.

³⁹ See English, *supra* note 1.

⁴⁰ NEW JERSEY TRADE WASTE ASSOCIATION, THE BOTTOM LINE ON INCREASED GARBAGE DISPOSAL COSTS (1982) (public service message brochure distributed to NJTWA member companies' customers).

⁴¹ DeLorenzo, Thomas H., *What Will 'Garbage Taxes' Do for the State?*, N.Y. Times, May 17, 1981, § 11 at 36, col. 1.

⁴² Bishop, Gordon, *'Glass Guru' Leads 70 Towns Into Recycling Consciousness*, The Star-Ledger, Aug. 7, 1981, at 23, col. 1.

⁴³ See Susi, *supra* note 3. Citizen groups such as the Citizens Against Unsafe Environment (CAUSE) and Independent Residents Against Toxic Environment (IRATE) have opposed the construction of a resource recovery facility in East Brunswick.

but no positive action has yet been taken. One of the problems is that the projected costs for a single facility range between \$75 and \$200 million.⁴⁴ Other problems include the air pollution, increased truck traffic, and heavy construction that would result from the erection of a power plant.

Without the guarantee of both a steady and reliable flow of solid waste and a customer who is willing to purchase the resource recovery plant energy, the capital investment necessary to plan, construct, and operate a resource recovery plant will be unavailable. The problems mentioned above make the integration of resource recovery into the waste management plans a very difficult objective to achieve.

Administrative Mismanagement

The current regulations of the solid waste collection and disposal industry are considered cumbersome and ineffective.⁴⁵ Poor administration in solid waste management has exacerbated the problems of garbage disposal in New Jersey. Enforcement of regulatory and oversight statutes presently on the books has been inadequate. Important solid waste issues were channeled into a poorly staffed office that had neither the resources nor the expertise to effectively address the problems. The Department of Energy, the Department of Law & Public Safety, the Solid Waste Administration, local and county boards of health, but especially, the DEP and the Board of Public Utilities have been involved in overregulating the solid waste industry. This costly duplication of effort is not well coordinated and is an enormous drain on industry and government resources alike. The unexplained nonchalance with respect to the Lone Pine landfill has raised many questions with regard to the ability of state agencies to cope with the State's environmental problems. The DEP let the Lone Pine landfill develop into a major toxic cesspool, even though the dangers had been documented for the past ten years.⁴⁶ Ultimately, it is the taxpayer/consumer of New Jersey who will pay the price of this inefficient administration of solid waste management programs.

Where We Are Today

In 1982, the State of New Jersey is at a crossroads in managing our solid waste crisis. Since the enactment of the Solid Waste Management

⁴⁴ See DeLorenzo, *supra* note 42.

⁴⁵ AG REPORT, *supra* note 9, at 1.

⁴⁶ Jaffey, Herb, *Environmental Agencies Play Role in Lone Pine Tragedy*, *The Star-Ledger*, June 20, 1982, at p. 16, col. 1.

Act of 1975, the State government has been preoccupied with the planning process, and no direct action has been taken towards the construction of facilities to meet future waste disposal needs. One reason for State government's delay is the lack of public understanding regarding the solid waste crisis. New Jersey citizens have maintained an attitude that reflects a throw-away society.

Because the cost of collection and disposal services in New Jersey remains relatively inexpensive when compared to other utility costs, there has been little public concern. However, as health hazards and spiraling costs become more apparent, public attention will increasingly focus on solid waste and hazardous waste issues.

This recently developed public interest in solid waste management has led to several initiatives over the last two years. In 1981, the Legislature endorsed and Governor Byrne signed into law two pieces of legislation related to solid waste management.

The Sanitary Landfill Facility Closure and Contingency Fund Act

The Legislature has found that the correct closure of sanitary landfills is essential to public health, safety, and welfare, and that adequate financing is necessary to insure proper closure.⁴⁷ The Legislature is also concerned with providing adequate compensation for damages from the improper operation or closure of landfill facilities.

In trying to deal with the above problems, the Legislature has levied a tax upon the owners or operators of every sanitary landfill facility in New Jersey.⁴⁸ The tax will be levied on solid waste disposed of in the State, at the rates of \$.15 per cubic yard of solids and \$.002 per gallon of liquids.⁴⁹

The fund will be strictly liable for all damages resulting from the operations or closure of any sanitary landfill.⁵⁰ The damages covered will include: the cost of repairing or replacing property damaged or destroyed; the cost of repairing or replacing natural resources damaged or destroyed; the cost of personal injuries including lost wages and medical expenses; and the costs of design and construction of any device needed to remedy or study any threat to the public health, safety, or welfare.⁵¹

⁴⁷ N.J. STAT. ANN. § 13:1E-101 (West Supp. 1982-83).

⁴⁸ *Id.* § 13:1E-104.

⁴⁹ *Id.*

⁵⁰ *Id.* § 13:1E-106.

⁵¹ *Id.*

The Recycling Act

In January of 1980, Jerry English, the Commissioner of the DEP, and Joel R. Jacobson, the Commissioner of the New Jersey Department of Energy, requested that the Advisory Committee on Recycling determine the amount of material being recycled at the time; determine the amount that could be recycled; and recommend actions that could be taken to maximize the State's full recycling potential.⁵² The Advisory Committee determined that .5 million tons of paper, glass, and metal cans were being recycled annually, and projected that by 1986 an additional .8 million tons could be recycled if suitable incentives were instituted.⁵³ These incentives took the shape of recommendations that would be implemented by legislative, administrative, business, and public actions.⁵⁴

Towards this end the Recycling Act was enacted, effective January 1, 1982.⁵⁵ This Act constituted a legislative effort to implement a statewide recycling plan⁵⁶ and established a \$.12 per cubic yard levy on all solid waste disposed of in New Jersey.⁵⁷ This levy will raise approximately \$6 million per year to be used for the funding of recycling programs in New Jersey by creating a state recycling fund.⁵⁸ The fund would pay out at least 45% of its estimated annual balance to municipalities in the form of annual recycling grants.⁵⁹ The initial grant would be calculated on the amount of materials recycled annually by the municipality, with succeeding grants being determined by the increase in the amount of materials recycled over the preceding year.⁶⁰ Grants would increase to a maximum of \$25 per ton of material recycled.⁶¹

The fund would also pay out at least 20% of its estimated annual balance in the form of low interest loans "to establish a sufficient reserve loan guarantee program for recycling business and industries"⁶² Administrative expenses for state and county plans would each receive 10% of the fund's balance,⁶³ while 15% of said balance would be allo-

⁵² STATE ADVISORY COMM. ON RECYCLING, RECYCLING IN THE 1980's, at 3 (1980).

⁵³ *Id.*

⁵⁴ *Id.* at 4-5.

⁵⁵ N.J. STAT. ANN. §§ 13:1E-92 to -99 (West Supp. 1982-83).

⁵⁶ *Id.* § 13:1E-93.

⁵⁷ *Id.* § 13:1E-95.

⁵⁸ *Id.* § 13:1E-96(b)(1).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* § 13:1E-96(b)(2).

⁶³ *Id.* § 13:1E-96(b)(3),(4).

cated to "a public information and education program concerning recycling and anti-litter activities."⁶⁴

In addition to these two important pieces of legislation, a \$100 million bond issue to clean up New Jersey's contaminated landfills was approved by the voters of New Jersey in 1981.⁶⁵ This money is in addition to the federal superfund money that is anticipated to help clean up some of our major hazardous waste sites.⁶⁶ With the exception of the Recycling Act,⁶⁷ the majority of the legislation in recent years has been aimed at trying to solve the problems caused by mismanagement of our solid waste disposal methods of the past. Clearly, it is time to focus attempts and efforts on developing a comprehensive and effective solid waste management program for the future.

Suggestions for Future Action

The New Jersey State Senate Energy and Environment Committee created a special task force to consider the most effective system for regulating and overseeing the solid waste collection and disposal industries in the State.⁶⁸ This task force includes representatives of the solid waste industry, the DEP, the Board, the Public Advocate, and the committee staffs of the General Assembly and State Senate. In its report issued on September 14, 1981, the task force noted that the present regulatory system "is currently being criticized for being unduly burdensome to the industry and ineffective in addressing the problems it was designed to correct."⁶⁹ After recounting the forty-year history of the New Jersey solid waste industry,⁷⁰ the report observed that the 1975 amendments to the Solid Waste Management Act have mandated the increased involvement of the DEP with the economic regulation of the solid waste industry.⁷¹

In fact, a strong contrast can be drawn between DEP's and BPU's experience in solid waste regulation over the past ten years. BPU's responsibility in this area has basically remained the same during that period of time. DEP's responsibility on the other

⁶⁴ *Id.* § 13:1E-96(b)(5).

⁶⁵ 1981 N.J. Sess. Law Serv. 275 (West).

⁶⁶ Schratweiser, Dave, *Toxic Waste Cleanup May Wait Years*, The News Tribune, July 23, 1982, at 1, col. 1.

⁶⁷ N.J. STAT. ANN. §§ 13:1E-92 to -98 (West Supp. 1982-83).

⁶⁸ AG REPORT, *supra* note 9.

⁶⁹ *Id.* at 1.

⁷⁰ *Id.* at 3-23.

⁷¹ *Id.* at 29.

hand has increased at least tenfold. Put simply, DEP has the impetus in the area of solid waste regulation while BPU is still attempting to adopt utility style regulation to an industry without utility characteristics.

It is also clear that it is the intention of the Legislature that solid waste collection and disposal be more strictly managed in a planned environmentally and economically sound manner. Planning is made more difficult when approval of other agencies is not within the planning agency's control.⁷²

The report recommended that the regulation of the economic and environmental aspects of the solid waste industry be given to the DEP.⁷³ In addition, quick implementation of the district master plans is essential to getting a handle on our environmental problems.⁷⁴ "Once this is recognized it becomes clear that DEP must receive complete regulatory responsibility."⁷⁵

Conclusion

The solid waste industry is now caught in a regulatory bind. With the industry rates being controlled by the BPU, and the DEP imposing taxes which squeeze profits, the haulers and facility operators are being pinched. The key to the environmental problems is public awareness. The public must be made to recognize the actual cost of landfills in monetary and social terms. If the cost of solid waste was not regulated and prices were allowed to rise, the economic feasibility of resource recovery would become apparent.

Low interest loans to private industry for establishing recycling programs is a laudable idea, however, it is overshadowed by the economic shackles about the industry.⁷⁶

The solid waste crisis is not limited to New Jersey. We, however, are on the vanguard of this issue. Economically feasible and environmentally acceptable methods of waste disposal can be obtained with certain adjustments in state regulations. The private and the public sectors must work together to successfully abate the solid waste crisis.

*Jack Argento, former president of
the New Jersey Trade Waste Association*

⁷² *Id.* at 29-30 (Citations omitted).

⁷³ *Id.* at 32.

⁷⁴ *Id.* at 34.

⁷⁵ *Id.*

⁷⁶ *Id.* § 13:1E-96(b)(2).