

PROTECTING OUR SURF FROM SYRINGES: THE COMPREHENSIVE REGULATED MEDICAL WASTE MANAGEMENT ACT

I. Introduction

During the summers of 1987 and 1988, New Jersey and New York, as well as several other states on the eastern seaboard were faced with an environmental nightmare; macabre tides were washing ashore leaving behind medical waste refuse, including syringes and blood vials, some of which were contaminated with the AIDS virus.¹ Tourists were terrified and local beach community economies were devastated.² Public outrage and shock at such incidents, as well as a threat to the safety and welfare of citizens, focused the attention of the public and politicians throughout the country on how to properly dispose of medical waste.³ These incidents also brought to light special problems with medical waste disposal, especially that of tracking the waste back to its originator.⁴ With regard to the wash-ups on the New Jersey shoreline, the New Jersey Department of Environmental Protection (DEP) stated that no definitive evidence existed to allow an official determination that such waste came from New York.⁵ However, the DEP stated that New York City's inadequate trash handling at marine transfer stations and at the Fresh Kills Landfill, as well as illegal dumping from boats and sewer overflow all contributed to the problem.⁶

¹ See generally, N.Y. Times, July 31, 1988, § 12, at 1, col. 1.

² *Id.* According to one source, as a result of the Northeast beach closings, local businesses lost \$2 billion to \$3 billion. Hershkowitz, *Without a Trace: Handling Medical Waste Safely*, TECH. REV., Aug.-Sept., 1990, at 35.

³ See generally, 122 N.J.L.J. 751 (1988).

⁴ N.Y. Times, July 31, 1988, § 12, at 1, col. 1.

⁵ 21 N.J. Reg. 2970 (1989). However, in one example, the Vice-President of Plaza Health Laboratories, a medical laboratory in Brooklyn, N.Y., was found guilty by a federal jury on January 31, 1991 of dumping vials, some contaminated with hepatitis B virus, in waters off Staten Island and New Jersey in 1988. N.Y. Times, Feb. 3, 1991, § 1, at 31, col. 5. A federal grand jury indicted Geronimo Villegas after investigators linked medical waste that had washed up on beaches to Plaza Health through identification numbers on the blood vials. Mr. Villegas was convicted on two criminal counts of knowingly endangering public safety and two counts of discharging a pollutant. *Id.*

⁶ *Id.*

Every citizen at some time in his or her life will generate medical waste, whether it be while visiting a doctor, undergoing surgery, residing at a nursing home, or ultimately through an autopsy or embalming procedure.⁷ Moreover, with today's medical community using an increasing quantity of disposal products, such as paper gowns, plastic syringes and intravenous bottles, and disposable food trays and cutlery, the volume of medical waste is growing rapidly.⁸ If the problem of medical waste is to be properly addressed, a system of tracing waste back to the source of mismanagement must be developed.

In New Jersey alone, it is estimated that approximately 42,000 private practitioners, 130 hospitals, 142 blood banks, 545 clinical laboratories, 798 other licensed health care facilities, such as nursing homes and outpatient clinics, and 1446 other organizations are producing medical waste.⁹ A survey conducted by the DEP for the periods October 1 through November 1, 1988 and November 15 through December 15, 1990 revealed that approximately 16,500 tons of regulated medical waste are generated in New Jersey each year.¹⁰ Although this medical waste comprises less than one percent of the total amount of solid waste generated in this state, it still poses a serious threat to the environment, to the health of those who handle it improperly, and to those who are exposed to it due to mismanagement.¹¹ This note will focus upon New Jersey's attempt to diminish the risks posed by medical waste through the enactment of the Comprehensive Regulated Medical Waste Management Act [hereinafter the Act]¹² which establishes a system of tracing waste from its generation to its disposal and places stringent standards upon every facet of the medical waste community for proper handling and

⁷ Levetan, *Medical Waste Disposal: A Growing Crisis in America*, AM. CITY & COUNTY, May 1990, at 68.

⁸ *Id.* It is estimated that one hospital bed in an acute care situation generates approximately 1 1/2 pounds of medical waste per day. *Waste Transport Uses Special Trucks*, AM. CITY & COUNTY, May 1990, at 46.

⁹ 21 N.J. Reg. 2112 (1989).

¹⁰ Letter from Robert M. Confer, Chief of Bureau of Special Waste Planning, Dep't of Env'tl. Protection, to Diane E. Sugrue (Dec. 19, 1990) (discussing medical waste regulations and statistics).

¹¹ 21 N.J. Reg. 2112 (1989).

¹² N.J. STAT. ANN. § 13:1E-48.1 *et seq.* (West 1989).

control.¹³

II. Background

The Comprehensive Regulated Medical Waste Management Act, N.J. Stat. Ann. § 13:1E-48.1 *et seq.*, was signed into law by New Jersey Governor Thomas Kean on March 6, 1989.¹⁴ It was the culmination of the legislature's attempt to halt the dangers that improper handling and illegal dumping of medical waste posed to the safety and welfare of its citizenry.¹⁵ In its findings, the legislature acknowledged that the present regulatory scheme of medical waste was inadequate,¹⁶ that compliance and enforcement of such regulations were deficient, and that the citizens of New Jersey lacked sufficient assurance that medical waste was being safely handled in their state.¹⁷ The legislature further decided that the most appropriate manner to deal with this plight was through the implementation of a comprehensive waste management system which would trace medical waste from its point of creation to the point of its ultimate disposal or destruction.¹⁸ Such a system would affect every facet of the medical waste community which is primarily composed of medical waste generators, transporters, and those persons who either treat and dispose or otherwise destroy such waste, known as intermediate handlers and destination facilities, respectively.¹⁹ The Act empowered the

¹³ See generally, Assembly Solid Waste Management Committee Statement Senate, 2343 and Assembly, No. 2853-L. 1989 c. 34.

¹⁴ 21 N.J. Reg. 2109(a) (1989).

¹⁵ *Id.* See also N.J. STAT. ANN. § 13:1E-48.2 (West 1989).

¹⁶ Before the implementation of the Act, the disposal of medical waste was governed by the regulations and rules adopted by the DEP on October 7, 1988, pursuant to the provisions of the Solid Waste Management Act, N.J. STAT. ANN. § 13:1E-1 *et seq.* (West 1989). See also N.J. STAT. ANN. § 13:1E-47.5(b) (West 1989).

¹⁷ *Id.* § 13:1E-48.2 (West 1989).

¹⁸ *Id.* Such findings read in pertinent part:

The Legislature therefore declares that it is appropriate to establish a comprehensive management system that provides for the proper and safe tracking, identification, packaging, storage, control, monitoring, handling, collection, and disposal of regulated medical waste; that monitoring of regulation is best accomplished through the creation of a manifest tracking system for regulated medical waste; and that it is appropriate to provide for strict enforcement of the law concerning regulated medical waste and to establish substantial civil and criminal penalties for violation.

¹⁹ N.J. ADMIN. CODE tit. 7, § 26-3A.5 (1989).

DEP, in consultation with the New Jersey Department of Health (DOH), to establish a "tracking system" in order to trace medical waste through stringent requirements for packaging, labeling, marking, controlling, tracking, collection, storage and disposal of such waste.²⁰

The DEP had a framework for such regulations readily available, for in late 1988 similar regulations were adopted on an emergency basis in reaction to the public rage and serious economic effects the medical waste pollutants had in New Jersey. On August 10, 1988, Governors Thomas Kean and Mario Cuomo announced the enactment of emergency regulations governing control over medical waste from its creation to its destruction, effective immediately.²¹ Initially, a sixty-day emergency rule was adopted²² which was to be concurrently proposed for readoption on a permanent basis, a status which would be reached in mid-June 1989.²³ This emergency rule called for a manifest tracking system and required one time reports from every facility which produced, treated or disposed of medical waste regarding its waste disposal practices.²⁴ The emphasis of the emergency rule was primarily on establishing a tracking system and recordkeeping standards.²⁵

In anticipation of the expiration of the emergency rule on October 9, 1988, new rules were concurrently proposed and adopted on August 10, 1988.²⁶ Effective June 26, 1989, N.J. Admin. Code tit. 7, § 26-3A was adopted as an Emergency Repeal and New Rule with concurrent proposal.²⁷ The concurrent proposal was readopted, effective August 25, 1989.²⁸ Most recently, this Subchapter was readopted without change in the readoption of N.J. Admin. Code tit. 7, § 26.²⁹

The Act pertains to medical waste which can be classified as

²⁰ N.J. STAT. ANN. § 13:1E-48.4 (West 1989).

²¹ 5 ENVTL. NEWS, Nov.-Dec. 1988, at 1, col. 1.

²² 20 N.J. Reg. 2321(a) (1988). The emergency rule was codified at N.J. ADMIN. CODE tit. 7, § 26-3A (1989).

²³ *Id.*; 20 N.J. Reg. 2760(a).

²⁴ 122 N.J.L.J. 751 (1989).

²⁵ *Id.*

²⁶ 20 N.J. Reg. 2321(a) (1989).

²⁷ 21 N.J. Reg. 2109(a) (1989).

²⁸ 21 N.J. Reg. 2967 (1989).

²⁹ 22 N.J. Reg. 354 (1990).

"regulated medical waste" which by definition includes blood vials, bandages, pathological wastes, including tissue and body parts, "sharps" used in patient care such as syringes and scalpels, contaminated animal carcasses and any other substances deemed appropriate by the DEP and DOH.³⁰ Those who are regulated under the Act include hospitals, physicians, dentists, nursing homes, veterinarian clinics and various health care facilities which produce such waste.³¹

Notably, the Act requires the Departments to adopt the same rules and regulations which the EPA had adopted under the authority of the Medical Waste Tracking Act of 1988 (MWTa),³² which was signed into law by President Ronald Reagan on November 1, 1988.³³ The EPA accelerated the enactment of the MWTa to ensure that it was in place by the 1989 beach season due to the concern of beach degradation caused by medical waste wash-ups on the shores of New Jersey, New York and Connecti-

³⁰ The full text of the definition of regulated medical waste found in the statute reads:

Blood vials; cultures and stocks of infectious agents and associated biologicals, including cultures for medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures; pathological wastes, including tissues, organs and body parts that are removed during surgery or autopsy; waste human blood and products of blood, including serum, plasma and other blood components; sharps that have been used in patient care or in medical, research or industrial laboratories engaged in medical research testing or analysis of diseases affecting the human body, including hypodermic needles, syringes, pasteur pipettes, broken glass and scalpel blades; contaminated animal carcasses, body parts, and bedding of animals that were exposed to infectious agents during the research, production of biologicals or testing of pharmaceuticals; any other substance or material related to the transmission of disease as may be deemed appropriate by the departments, any other substance or material as may be required to be regulated by, or permitted to be exempted from the Federal Act (Medical Waste Tracking Act of 1988).

N.J. STAT. ANN. § 13:1E-48.3 (West 1989).

N.J. ADMIN. CODE tit. 7, § 26-3A.6 (1989) breaks these categories down into specifics in a table format.

³¹ N.J. Stat. Ann. § 13:1E-48.1 (West 1989).

³² Pub. L. No. 100-582, 102 Stat. 29050 (1988) (codified at 42 U.S.C. § 6903, 6992-6992(k)), enacted as Subtitle J to the Resource Conservation Recovery Act.

³³ 54 Fed. Reg. 12,327 (1989). The MWTa system was modeled after New Jersey's emergency program enacted in August 1988. N.Y. Times, Dec. 4, 1988, § 12, at 6, col. 5.

cut.³⁴ Among other things, the MWTa requires the EPA to establish a two year demonstration program for the purpose of tracking medical waste from "cradle to grave".³⁵ The MWTa designates New Jersey, New York, Connecticut and states which border the Great Lakes as those states which will be subject to the demonstration program.³⁶ Currently, only Connecticut, New Jersey, New York, Rhode Island and Puerto Rico are participating in the program.³⁷ The MWTa allows covered states to opt out of the program if they establish a medical tracking system which is equally stringent.³⁸ Importantly, the MWTa provides an express provision that it shall not pre-empt any state law, making compliance with both laws necessary.³⁹

The three primary mandates of the MWTa are to provide for a system to track medical waste to its disposal; to provide a system to assure generators that waste is ultimately received by the proper disposal facility and to provide a standard form of tracking waste within the applicable states.⁴⁰ However, one noteworthy difference exists between the MWTa and New Jersey's act. The New Jersey act requires that all generators track their waste, while the MWTa exempts some generators of waste under 50 pounds per month. This demonstrates the state's more aggressive approach to ensuring proper handling of all waste.⁴¹

The regulations adopted by the Departments under the state act are applicable to any regulated medical waste which originates in New Jersey regardless of whether it is to be transported, stored or disposed of out of state.⁴² The regulations also

³⁴ 54 Fed. Reg. 12,326, 12,327 (1989). However, a 90-day period between the effective date and the date of promulgation was given to allow the community to come into compliance with the Act. *Id.*

³⁵ 42 U.S.C. § 6992 (1990).

³⁶ 54 Fed. Reg. 12,327 (1989). The effective dates for the demonstration program are June 22, 1989 through June 22, 1991. *Id.*

³⁷ *Id.* at 12,328 (1989).

³⁸ 42 U.S.C. § 6992(b)(2) (1990). To opt out of this program, the Governor of the state must have notified the EPA of the implementation of a medical waste program which is equally as stringent as the MWTa within 30 days after MWTa's enactment. *Id.* § 6992(b)(2) and (3).

³⁹ *Id.* § 6992(f).

⁴⁰ 54 Fed. Reg. 12,327 (1989).

⁴¹ N.J. STAT. ANN. § 13:1E-48.5(b) (West 1989); 54 Fed. Reg. 12375 (1989) (to be codified at 40 C.F.R. § 259.51).

⁴² N.J. ADMIN. CODE tit. 7, § 26-3A.1(b) (1989).

apply to regulated medical waste generated out of state and later transported, stored, treated or disposed of in New Jersey.⁴³ The tracking system established by these regulations will ensure that regulated medical waste is handled properly from the point of generation to the point of disposal or destruction by placing the responsibility upon each person or facility involved in the chain of custody to ensure that the waste reaches its designated destination safely.⁴⁴ This is done through the use of a tracking form available only through the DEP⁴⁵ which accompanies the waste through its ultimate disposal, thus allowing mismanagement to be traced to the proper party. Any discrepancies or exceptions between the form and the waste received must be reported to the DEP and EPA if regulated medical wastes do not reach their proper destination.⁴⁶ The regulations also require that all records relating to the handling of regulated medical waste be maintained for three years by generators, transporters, intermediate handlers and destination facilities which will facilitate the tracing of mismanagement, as will the filing of periodic mandatory reports.⁴⁷ The risks of exposure to the dangers associated with regulated medical waste will be diminished by stringent segregation, labeling, packaging, and storage standards found in the regulations.⁴⁸

To provide the initial start-up costs for the medical waste management program in 1989, the DEP was appropriated \$750,000 and the DOH \$250,000.⁴⁹ The Departments will be funded by annual fees imposed upon the generators, transporters and disposers of medical waste pursuant to fee schedules adopted by regulation.⁵⁰

III. Generators

The term "generator" within the scope of the Act is designed to govern a broad range of health care facilities includ-

⁴³ 21 N.J. Reg. 2109(a) (1989).

⁴⁴ N.J. STAT. ANN. § 13:1E-48.6 (West 1989).

⁴⁵ N.J. ADMIN. CODE tit. 7, § 26-3A.19(a) (1989).

⁴⁶ *Id.* § 26-3A.22.

⁴⁷ *Id.* § 26-3A.21.

⁴⁸ *Id.* § 26-3A.

⁴⁹ Assembly Solid Waste Management Committee Statement, Senate No. 2343, and Assembly No. 2853 - L.1989, c.34.

⁵⁰ *Id.*

ing physicians, nursing homes, hospitals, urgent care centers, morgues, animal care facilities and any laboratory which generates regulated medical waste.⁵¹ The Act expressly mandates that the DEP, in cooperation with the DOH, adopt the federal rules and regulations relating to medical waste which have been adopted by the EPA.⁵²

Under the aegis of the MWTA,⁵³ the EPA adopted the definition of a generator as "any person, by site, whose act or process produces regulated medical waste . . ."⁵⁴ Accordingly, the regulations enacted pursuant to the state act refine the definition to make it clear that the term "generator" includes each individual person, such as each physician who has an office located in a building with several other generators; and each site or business location is to be considered a separate entity.⁵⁵ Generators are subject to the regulations contained in N.J. Admin. Code tit. 7, § 26-3A.8-3A.26 (1989). Under such regulations, every generator must register with the DEP as a regulated medical waste generator and pay an annual fee set by the DEP⁵⁶ using a sliding scale approach based on the volume of regulated medical waste produced annually by that generator⁵⁷ and the services that must be rendered by the Departments to that generator.⁵⁸ According

⁵¹ N.J. STAT. ANN. § 13:1E-48.3 (West 1989) defines a generator as: An ambulatory, surgical or care facility, community health center, medical doctor's office, dentist's office, podiatrist's office, home health care agency, health care facility, hospital, medical clinic, morgue, nursing home, urgent care center, veterinary office or clinic, animal, biological, clinical, medical, microbiological, or pathological diagnostic or research laboratory, any of which generates regulated medical waste. 'Generator' shall not include individual households utilizing self-care.

⁵² *Id.* § 13:1E-48.5.

⁵³ 42 U.S.C. § 6903 *et seq.* (1990); *see supra* note 32.

⁵⁴ *Id.* (codified at 40 C.F.R. 259.10).

⁵⁵ N.J. ADMIN. CODE tit. 7, § 26-3A.5 (1989) in defining "generator" the code reads:

Any person by site, whose act or process produces regulated medical waste, as defined in N.J.A.C. 7:26-3A.6, or whose act first causes a regulated medical waste to become subject to regulation. In the case where more than one person (for example a doctor with separate medical practices) is located in the same building, each individual business entity is a separate generator for purposes of this subchapter.

⁵⁶ The DEP is authorized to charge fees pursuant to N.J. STAT. ANN. § 13:1E-18 (West 1989).

⁵⁷ *Id.* § 13:1E-48.7.

⁵⁸ 21 N.J. Reg. 2968 (1989).

to the DEP, there are currently 11,600 generators of regulated medical waste registered in New Jersey.⁵⁹ The fee schedule adopted by the DEP divides generators into five categories. This schedule is set out in N.J. Admin. Code tit. 7, § 26-3A.8 and reads as follows:⁶⁰

Generator Category	Pounds Generated Per Year	Base Category Fee
1	less than 50	\$100.00
2	50-200	\$300.00
3	200-300	\$500.00
4	300-1000	\$1000.00
5	greater than 1000	\$3500.00

The Act requires that the regulations adopted by the DEP in consultation with the DOH place requirements upon generators for the safe packaging, storing, labeling, marking, tracking and record-keeping for regulated medical waste.⁶¹ If regulated medical waste is placed into the same container as other waste, the generator must package and designate the whole container as if it were pure regulated medical waste.⁶² It is the responsibility of each generator to make the initial determination whether waste should be classified as regulated medical waste.⁶³ All regulated medical waste must be packaged in strong, puncture resistant, waterproof, sealed containers,⁶⁴ commonly known as "red bags" for their distinctive color. Each package must display a label bearing the words "MEDICAL WASTE" or "INFECTIOUS WASTE", or in the alternative, display the universal sign for biohazardous waste material.⁶⁵ Further, each

⁵⁹ See *supra* note 10. The registration period for generators extends from July 22 through July 21 of each calendar year and fees are payable by August 20 of each year. *Id.*

⁶⁰ This fee schedule was proposed in 22 N.J. Reg. 1478(a) (1990) and adopted in 22 N.J. Reg. 2145(a) (1990) after public comment that the previous fee schedule which divided generator fees into only three categories placed an undue financial burden upon small generators. *Id.*

⁶¹ N.J. STAT. ANN. § 13:1E-48.6(c) (West 1990).

⁶² *Id.* § 26-3A.7; 3A.10.

⁶³ *Id.* § 26-3A.16(a).

⁶⁴ *Id.* § 26-3A.11.

⁶⁵ *Id.* § 26-3A.14.

package must display a waterproof identification tag to ensure proper tracking.⁶⁶ Any person who stores regulated medical waste before it is treated or disposed of must protect such waste from the elements if such storage will be outside and maintain highly restricted access to such waste.⁶⁷ Generators must further use only licensed transporters who have complied with all regulations pertaining to transporter registration requirements.⁶⁸ Generators who produce under three cubic feet of regulated medical waste annually and transport their own waste are exempt from this transit requirement.⁶⁹

The true success of the Act hinges upon the accurate completion by generators of a tracking form for all the waste they generate and ship off-site. This is the initial form which will travel with the waste and ensure its proper handling to its ultimate disposal or destruction. A generator must sign each tracking form he completes in order to certify its accuracy,⁷⁰ subject to penalties for misstatements.⁷¹ Even after the waste leaves the generator's site, his responsibilities for that waste do not terminate. If a generator does not receive a fully completed tracking form signed by an agent of the destination facility within 35 days after the waste was initially transported, it is the responsibility of that generator to contact the transporter and/or intermediate handler to determine the status and location of the waste.⁷² If within 45 days from the date of initial transport the generator still has not received a completed tracking form despite his efforts to do so, a "generation exception report" must be filed with the DEP and the regional EPA office, which will place the resolution of the problem into their authority.⁷³

All generators are required to maintain a generator log in accordance with N.J. Admin. Code tit. 7, § 26-3A.21.⁷⁴ These logs will

⁶⁶ N.J. ADMIN. CODE tit. 7, § 26-3A.15(a)(1) (1989) (provides that this tag must contain: (i) the generator's name; (ii) his address; (iii) the transporter's name; (iv) the transporter's NJDEP solid waste registration number; (v) the date of shipment; (vi) an identification of the contents as medical waste.).

⁶⁷ *Id.* § 26-3A.12.

⁶⁸ *Id.* § 26-3A.16(d). *See id.* § 26-3A.27(c)-(f).

⁶⁹ *Id.* § 26-3A.

⁷⁰ *Id.* §§ 26-3A.19(d)(a), 3A.19(e)(1), 3A.19(f)(1).

⁷¹ *See* N.J. STAT. ANN. § 13:1E-48.20(g)(2) (West 1989).

⁷² N.J. ADMIN. CODE tit. 7, § 26-3A.22(a) (1989).

⁷³ *Id.* § 26-3A.22(b).

⁷⁴ N.J. ADMIN. CODE tit. 7, § 26-3A.21(f) (1989) provides:

serve as a method of determining the accuracy of the annual generator's report when reconciled against individual tracking forms with respect to generation, treatment, destruction and disposal of waste.⁷⁵ Furthermore, all generators are responsible for submitting annual generator reports covering all waste they had contact with during the year.⁷⁶ Generators must retain these reports for a minimum of three years.⁷⁷

To monitor generator compliance with the Act and regulations, the Bureau of Inspections and Investigations within the DEP and the Environmental Services Program and Field Operations Program within the DOH are responsible for performing annual compliance inspections.⁷⁸ These inspections will examine logging techniques, verify labeling and packaging practices, confirm proper waste segre-

The generator log shall include, but not be limited to, by Waste Class:

- (1) The date of the entry;
- (2) A description of the regulated medical waste generated by Waste Class;
- (3) The total quantity in pounds for each Waste Class of regulated medical waste generated each day or month for generators of less than 300 pounds per year;
- (4) The name and NJDEP solid waste transporter registration number of each transporter who transported regulated medical waste corresponding to the description in (f)2 and 3 above;
- (5) The EPA regulated medical waste transporter number for each of the transporters listed in (f)4 above;
- (6) The date that the regulated medical waste was given to every transporter listed in (f)4 above;
- (7) The name and address of each intermediate handler or destination facility that received the regulated medical waste, and the quantity in pounds for each Waste Class of regulated medical waste sent to each facility corresponding to the transporter who transported the regulated medical waste to that facility; and
- (8) The method of treatment, destruction or disposal for each Waste Class by quantity in pounds (for example, on-site treatment, on-site incineration, disposal via sanitary sewer) corresponding to the facility listed in (f)7 above.

⁷⁵ 21 N.J. Reg. 2110 (1989). Generators who produce under 300 pounds of regulated medical waste per year must maintain a monthly log of all waste generated, treated and dispatched, while generators of over 300 pounds annually are required to maintain a daily log. *Id.* These daily and monthly logs will serve as a method of determining the accuracy of the annual generator's report when reconciled against individual tracking forms with respect to generation, treatment, destruction and disposal. *Id.*

⁷⁶ N.J. ADMIN. CODE tit. 7, § 26-3A.21(h)(1989).

⁷⁷ *Id.* § 26-3A.7(i).

⁷⁸ 21 N.J. Reg. 2112 (1989). According to the DEP, generators, transporters, intermediate handlers and destination facilities are inspected by the DEP while the

gation and inspect storage areas.⁷⁹ The DEP is fully aware of the inconvenience that such inspections may cause, especially to smaller generators such as private physicians; however, it views annual inspections as a crucial aspect of ensuring compliance.⁸⁰ Furthermore, the Department supports annual inspections as a means of providing guidance on proper compliance techniques to generators and to the same extent, force compliance upon those who would otherwise be unwilling to comply.⁸¹

IV. Transporters

The term "transporter" within the meaning of the Act and the regulations encompasses all persons who collect, ship or otherwise transport regulated medical waste.⁸² Transporters are also subject to a series of regulations promulgated by the DEP under the directive of the Act found in N.J. Admin. Code. tit. 7, §§ 26-3A.27 through 3A.36.⁸³

All transporters must obtain a certificate of public convenience,⁸⁴ register with the Department as both a solid waste transporter, since regulated medical waste is still considered to be a solid waste, and as a medical waste transporter and pay the requisite fees.⁸⁵ According to the DEP, thirty regulated medical waste transporters are registered with the Department for the year beginning May 1, 1990 through May 30, 1991.⁸⁶ The cost of registration for a regulated medical waste transporter in 1989 was set at \$3957.⁸⁷ After 1989, if the cost of providing services to trans-

large volume generators such as hospitals and nursing homes are inspected by the DOH. See *supra* note 10.

⁷⁹ 21 N.J. Reg. 2112 (1989).

⁸⁰ 21 N.J. Reg. 2967 (1989).

⁸¹ *Id.*

⁸² N.J. STAT. ANN. § 13:1E-48.3 (West 1989) defines a "transporter" as a person engaged in the collection or transportation of regulated medical waste. N.J. ADMIN. CODE tit. 7, § 26-3A.5 (1989) refines this definition as a person engaged in the off-site transportation of regulated medical waste by air, rail, highway or water. In addition, N.J. ADMIN. CODE tit. 7, § 26-(a) explains that "transporters" include all generators who transport their own waste. N.J. ADMIN. CODE tit. 7, § 26-3A.27(b) exempts on-site transportation.

⁸³ N.J. ADMIN. CODE tit. 7, § 26-3A.27-3A.36.

⁸⁴ N.J. ADMIN. CODE tit. 7, § 26-3A.2 requires a certificate of public convenience in accordance with N.J. STAT. ANN. § 48:13-6 (West 1989).

⁸⁵ N.J. ADMIN. CODE tit. 7, § 26-3A.27(c)(2).

⁸⁶ See *supra* note 58.

⁸⁷ N.J. ADMIN. CODE tit. 7, § 26-3A.8(b)(1).

porters changes, this fee will also increase in order to set the registration fee equal to the cost of providing transporter services.⁸⁸ The transporter registration fee collected by the DEP will be used to cover the DEP's cost for education, advertisement and compliance auditing which will be held at the transporter's facility four times a year.⁸⁹ The EPA must be notified by transporters of their intent to carry regulated medical waste.⁹⁰ After proper registration compliance, the EPA will issue the transporter a medical waste transporter identification number.⁹¹

A transporter is prohibited from accepting for transit any shipment of regulated medical waste from a generator which is not in compliance with the container labeling and marking regulations.⁹² Moreover, it is the transporter's responsibility before accepting a shipment of regulated medical waste to ensure that a generator has fully and accurately completed a tracking form for such waste.⁹³ The transporter must sign the form certifying its accuracy,⁹⁴ return one copy to the generator before transport,⁹⁵ and forward one copy with the shipment in transit.⁹⁶ Before any shipment leaves the transporter's facility, he must label the shipment with the transporter's name and NJDEP solid waste regis-

⁸⁸ *Id.* § 26-3A.8(b)(2). The costs of registration for regulated medical waste transporters in the years following 1989 will be calculated by multiplying the annual assessment rate, which represents the change in the costs of services, by the base fee for transporters, which is \$3957. *Id.* The product of this multiplication is then multiplied by the projected number of regulated medical waste transporters for that year. This computation is represented by the equation $N(r1 \times F)$ wherein "N" represents the number of projected transporters, "r1" represents the adjustment factor and "F" represents the base fee of \$3957. *Id.*

⁸⁹ 21 N.J. Reg. 2971 (1989).

⁹⁰ N.J. ADMIN. CODE tit. 7, § 26-3A.27(c)(4). When giving transporter notice to the EPA, such notice must contain the following signed by a corporate official or the owner or operator: "I certify, under penalty of criminal or civil prosecution for making or submission of false statements, representations, or omissions, that I have read, understand and will comply with the regulations at 40 C.F.R., Part 259, issued under the authority of Subtitle J of the Resource Conservation and Recovery Act". *Id.* § 7:26-3A.29(d).

⁹¹ *Id.* § 26-3A.29(e). However, generators of less than three cubic feet of regulated medical waste per month who transport their own waste are exempt from the transporter requirements. *Id.*

⁹² *Id.* § 26-3A.28(a). See *id.* § 26-3A.14, .15.

⁹³ *Id.* § 26-3A.28(b).

⁹⁴ *Id.* § 26-3A.31(b)(1).

⁹⁵ *Id.* § 26-3A.31(b)(2).

⁹⁶ *Id.* § 26-3A.31(c).

tration number.⁹⁷ If a shipment of waste will be handled by more than one transporter, each will be responsible for properly tagging the shipment.⁹⁸ Any vehicle which is used to transport regulated medical waste must be fully enclosed, leak resistant, in sanitary condition and mechanically safe.⁹⁹ All vehicles containing such waste must display on each side and on the back the words "MEDICAL WASTE" or "REGULATED MEDICAL WASTE".¹⁰⁰

Similar to the requirements placed upon generators, transporters must maintain copies of all tracking forms for three years from the date of acceptance of the waste by the next party.¹⁰¹ In addition, all transporters who accept regulated medical waste which has been generated, stored, treated or otherwise destroyed in New Jersey must submit a quarterly transporter report to the DEP and regional EPA office covering all the waste that the transporter dealt with for that quarter.¹⁰² To protect regulated medical waste handlers from the risks involved, the Act mandates that the DEP, in consultation with the DOH, provide written instructions to all regulated medical waste transporters on the proper techniques of handling and controlling regulated medical waste, which each transporter must then in turn distribute among their employees.¹⁰³ Further, to ensure the safe and proper handling of regulated medical waste, the Act requires the Departments to provide a mandatory course on proper tracking, labeling, packaging, storage, control, monitoring, collection and disposal to the supervisory personnel of all transporters.¹⁰⁴

In sum, transporters are regulated thoroughly throughout the Act and regulations. Such regulations can prove quite expensive when one adds all the fees of transporter compliance. The Department estimates the total cost of first year compliance for an average transporter of regulated medical waste with three ve-

⁹⁷ *Id.* § 26-3A.28(c).

⁹⁸ *Id.*

⁹⁹ *Id.* § 26-3A.30(a).

¹⁰⁰ *Id.* § 26-3A.30(b).

¹⁰¹ *Id.* § 26-3A.34.

¹⁰² *Id.* § 26-3A.35. Specific requirements for the report are set forth in sections 3A.35(d) and (e).

¹⁰³ N.J. STAT. ANN. § 13:1E-48.11 (West 1989).

¹⁰⁴ *Id.* § 13:1E-48.11.

hicles and two supervisory employees to be \$5517.00.¹⁰⁵ However, the DEP calculates the cost of the regulated medical waste transporter plan to be approximately only 1.3 cents per pound of waste generated in New Jersey, which will presumably be passed on to the transporter's customers.¹⁰⁶

V. *Intermediate Handlers and Destination Facilities*

An intermediate handler within the meaning of the Act and the regulations is a facility which either destroys regulated medical waste or treats regulated medical waste.¹⁰⁷ A facility which both treats and destroys regulated medical waste is considered a destination facility.¹⁰⁸ N.J. Admin. Code tit. 7, § 26-3A.38 through 3A.42 applies to owners and operators of intermediate handling and destination facilities.

Of foremost importance, the Act mandates that no person accept regulated medical waste for treatment or disposal without the express consent of the DEP through a registration procedure.¹⁰⁹ Pursuant to the regulations, intermediate handlers and destination facilities must pay an annual fee, set for the first year at \$2046. This fee is based upon the costs of providing services to such facilities such as registration, education and report analysis.¹¹⁰ In subsequent years, if the cost of providing services to these facilities changes, this annual fee will be adjusted similar to transporter fees.¹¹¹ Additional costs for a typical incinerator as

¹⁰⁵ 21 N.J. Reg. 2113 (1989). This total is broken down as follows: \$3957 must be paid to the Department as regulated medical waste registration fees to cover compliance monitoring, education and advertisements. Additionally, regulated medical waste transporters must register as solid waste transporters in compliance with the Solid Waste Management Act, which requires a fee of \$120 per solid waste vehicle, plus \$25 for each solid waste container. *Id.* Finally, all transporters of any solid waste must pay a fee of \$600 for disclosure licensing for each key employee. *Id.*

¹⁰⁶ 21 N.J. Reg. 2971 (1989).

¹⁰⁷ N.J. ADMIN. CODE tit. 7, § 26-3A.5 (1989).

¹⁰⁸ *Id.*

¹⁰⁹ N.J. STAT. ANN. § 13:1E-48.10 (West 1989). N.J. ADMIN. CODE tit. 7, § 26-3A.8(d) (1989) provides instructions for such registration.

¹¹⁰ N.J. ADMIN. CODE tit. 7, § 26-3A.8(c)(1).

¹¹¹ This fee will be computed by the equation $N(r2 \times F)$, wherein "r2" represents the adjustment factor which accounts for the change in service costs, "F" represents the base fee of \$2046 and "n" represents the projected number of intermediate handlers and destination facilities that will register in that year. *Id.* § 26-3A.8(c)(2)(i).

an intermediate handler which destroys regulated medical waste include solid waste facility registration and inspection fees,¹¹² pollution permit fees,¹¹³ as well as disclosure licensing fees for such facilities.¹¹⁴ Thus, intermediate handlers and destination facilities are also faced with large fixed operating expenses.

When a transporter delivers a shipment of regulated medical waste to an intermediate handler or destination facility, the owner or operator of such a facility becomes the next link in the tracking process. Thus, that owner is required to certify to the accuracy of the regulated medical waste listed on a tracking form, immediately return a signed copy to the transporter after inspection of such waste, and retain a copy in his records for three years.¹¹⁵ It is this facility's responsibility to ensure a copy of the tracking form accompanies the waste if it is to be transferred further.¹¹⁶

When an intermediate handler receives regulated medical waste, the facility must comply with the requirements imposed upon a generator regarding segregation, packaging, storage, labeling and marketing, as well as signing the tracking forms for all the waste which he collects.¹¹⁷ It must also originate a new tracking form to accompany the waste to the destination facility for its collection of waste correlating the individual tracking forms he received.¹¹⁸ The owner of such a facility is further required to maintain a log which matches the initial generator form with that which he initiates.¹¹⁹

When an intermediate handler receives the tracking form which it initiated back from the destination facility, it must then send a copy of both the original tracking form and the tracking form which it originated to the generator.¹²⁰ Thus, the process of monitoring the waste from "cradle to grave" will be completed. Every facility which had contact with that waste will be recorded upon the tracking form with the pertinent information

¹¹² *Id.* § 26.4.

¹¹³ *Id.* § 27.

¹¹⁴ *Id.* § 26.16.

¹¹⁵ *Id.* § 26-3A.34(a).

¹¹⁶ *Id.* §§ 26-3A.39(a)(1),(3), -3A.41.

¹¹⁷ *Id.* § 26-3A.39(b)(1).

¹¹⁸ *Id.*

¹¹⁹ *Id.* § 26-3A.39(b)(2).

¹²⁰ *Id.* § 26-3A.39(b)(3).

regarding the waste and the handler.¹²¹ If however, any discrepancies¹²² between what is reported on the tracking form and what the owner or operator of a facility receives is discovered, such discrepancies must be noted on the tracking form.¹²³ Thereinafter, the facility is first required to attempt to resolve the discrepancy with the generator, transporter or intermediate handler who may be responsible for the discrepancy.¹²⁴ If no amicable resolution results within 15 days after the waste was received by the facility, the owner or operator is then required to write to the DEP and regional EPA office describing the nature of the discrepancy and what attempts were made at a resolution.¹²⁵ In addition, all intermediate handlers and destination facilities must submit annual reports covering all waste which the facility has dealt with in that year.¹²⁶

VI. Enforcement

Authority to enforce the Act is granted to the DEP, the DOH and every local board of health or county health department within the State of New Jersey.¹²⁷ Within such authority is the unrestricted right of these enforcement bodies to enter the premises of any generator, transporter or facility to determine compliance with the Act.¹²⁸

Upon a finding of a violation, the Commissioner of the DEP

¹²¹ *Id.*

¹²² N.J. ADMIN. CODE tit. 7, § 26-3A.40(a) (1989) reads:

Tracking form discrepancies are:

- (1) For packages, any variation in piece count such as a discrepancy of one box, pail or drum in a truckload;
- (2) For waste by categories (that is untreated or treated) discrepancies in the number of packages for each category of regulated medical waste as described on the label imprinted or affixed to the outer surface of the package;
- (3) Packaging that is broken, torn or leaking; and
- (4) Regulated medical waste that arrives at an immediate handler or a destination facility unaccompanied by a tracking form or for which the tracking form is incomplete or unsigned.

¹²³ N.J. ADMIN. CODE tit. 7, § 26-3A.39(c)(2) (1989).

¹²⁴ *Id.* § 26-3A.40(b).

¹²⁵ *Id.*

¹²⁶ *Id.* § 26-3A.42.

¹²⁷ N.J. STAT. ANN. § 13:1E-48.20(a) (West 1989).

¹²⁸ *Id.*

or the DOH has a plethora of options available.¹²⁹ He may issue an order of compliance to the violator;¹³⁰ bring a civil action demanding compliance;¹³¹ levy a civil administrative penalty against the violator;¹³² bring a civil action to impose a penalty;¹³³ or, in some circumstances, request that the Attorney General commence a criminal action against the violator.¹³⁴ Aside from these ordinary sanctions, the Act authorizes a variety of other penalties including forfeiture of land,¹³⁵ the imposition of strict liability for clean-up costs,¹³⁶ and license revocation or suspension.¹³⁷

Upon the issuance of an order demanding compliance with the Act, the order must specify the section of the Act which has been violated, what action of the violator has given rise to the violation and demand that such actions cease immediately.¹³⁸ The order must also notify the violator of his right to request a hearing from the Commissioner who issued the order within 20 days of receipt by the violator.¹³⁹ If no hearing is requested, the order will be deemed final upon the conclusion of the 20 day period.¹⁴⁰ If a hearing is requested, however, a final order will be issued by the Commissioner only upon a determination that there is a violation.¹⁴¹

An action for equitable or legal relief may be instituted in superior court by any empowered body under the Act.¹⁴² The action may proceed summarily.¹⁴³ Remedies may include a temporary or permanent injunction, clean up costs incurred by the state, costs incurred in investigation and inspecting the premise, as well as litigation costs, compensatory damages for any result-

¹²⁹ *Id.* § 13:1E-48.20(b).

¹³⁰ *Id.* § 13:1E-48.20(b)(1).

¹³¹ *Id.* § 13:1E-48.20(b)(2).

¹³² *Id.* § 13:1E-48.20(b)(3).

¹³³ *Id.* § 13:1E-48.20(b)(4).

¹³⁴ *Id.*

¹³⁵ *Id.* § 13:1E-48.20(k).

¹³⁶ *Id.* § 13:1E-48.21.

¹³⁷ *Id.* § 13:1E-48.23.

¹³⁸ *Id.* § 13:1E-48.20(c).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ An automatic stay of the order will not result from a request for a hearing. *Id.* § 13:1E-49.20(c).

¹⁴² *Id.* § 13:1E-49.20(d).

¹⁴³ *Id.*

ing damage to the environment, including any fish or wildlife, and any other actual losses incurred by the state.¹⁴⁴

Civil administrative penalties may be assessed against a violator by either of the commissioners of up to \$50,000 per violation.¹⁴⁵ The statute provides that each day in which the violation continues will constitute an additional and separate violation.¹⁴⁶ In assessing a civil administrative penalty, the Commissioner must consider the prior history of the operator, the severity of the offense, what, if any, actions have been taken to prevent future violations and the appropriateness of the penalty being assessed as a deterrent.¹⁴⁷ Before such a penalty may be levied against a violator, they must be given proper notice of the violation¹⁴⁸ and of their right to request a hearing on the matter before the Commissioner of the issuing agency within 20 days, at which time a final order will be issued.¹⁴⁹ Upon the issuance of a final order, all penalties levied against the violator become due.¹⁵⁰ One important feature of the civil administrative penalties provision is that the Act expressly provides that this remedy is a separate and distinct remedy which will not affect the availability or the determination of the amount of the imposition of additional penalties.¹⁵¹

In addition to other available sanctions, any person who violates the Act, or any rule or regulation adopted pursuant thereto shall be liable for a mandatory penalty of not more than \$50,000 per day, to be collected in a civil action by the Commissioner of

¹⁴⁴ *Id.* § 13:1E-48.2-(c). Any costs which are assessed against a violator under this provision are to be paid to the State Treasurer if the complainant is either the DEP or the DOH. If the complainant is a local board of health or county health department, such costs will be paid to that agency. *Id.* § 13:1E-48.20(c)(5).

¹⁴⁵ *Id.* § 13:1E-48.20(e). However, such penalties are limited to \$25,000 per violation and \$2,500 per day. *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* § 13:1E-48.20(e).

¹⁴⁸ *Id.* § 13:1E-48.20(e). This provision states that the violator must be notified by either certified mail or personal service. Further, it states that such notice must contain the precise regulation, order, rule or statute section which has been violated, a statement of the facts alleged to constitute the violation, and the amount of the civil administrative penalty being assessed. *Id.*

¹⁴⁹ *Id.* § 13:1E-48.20(e). If no hearing is requested by the violator, the notice served upon him will be deemed to constitute a final order. *Id.*

¹⁵⁰ *Id.* § 13:1E-48.20(e).

¹⁵¹ *Id.*

the department which commenced the action.¹⁵² Further, any person who violates an administrative order of compliance or a court order issued pursuant to an action for relief or who fails to pay in full any civil administrative penalties levied against them shall be strictly liable for a civil penalty not to exceed \$100,000 per day of each violation upon the issuance of a court order resulting from an action brought under this provision.¹⁵³ The Act grants jurisdiction upon the superior court and the municipal court to collect any penalties imposed under this section, plus costs, in a summary proceeding under the "penalty enforcement law."¹⁵⁴

Criminal penalties are also available pursuant to the Act for purposeful or knowing violations of the Act as well as reckless or negligent violations by any person in the medical waste community.¹⁵⁵ If a person purposely or knowingly, without proper authorization from the DEP or DOH, stores or disposes of regulated medical waste,¹⁵⁶ makes a misleading statement on or to a person preparing any regulated medical waste document required by the Act,¹⁵⁷ or fails to treat regulated medical waste in a manner prescribed by the DOH,¹⁵⁸ such action will constitute a third degree crime and the violator will be subjected to a fine up to \$50,000 for the first offense, and up to \$100,000 for every subsequent offense.¹⁵⁹ A person convicted of recklessly or negligently committing an offense will be deemed to have committed a crime of the fourth degree.¹⁶⁰ Further, this provision authorizes the imposition of fines and restitution under N.J.S.A. 2C:43-2 for all offenses,¹⁶¹ to be sentenced in accordance with the New Jersey Criminal Code¹⁶² which calls for terms of 3-5 years for a

¹⁵² *Id.* § 13:1E-48.20(f).

¹⁵³ *Id.*

¹⁵⁴ *Id.* § 13:1E-48.20(e). *See id.* § 2A-58.1 *et seq.*

¹⁵⁵ *Id.* § 13:1E-48.20(g).

¹⁵⁶ *Id.* § 13:1E-48.20(g)(1).

¹⁵⁷ *Id.* § 13:1E-48.20(g)(2).

¹⁵⁸ *Id.* § 13:1E-48.20(g)(3).

¹⁵⁹ *Id.* § 13:1E-48.20(g)(4).

¹⁶⁰ *Id.* § 13:1E-48.20(h).

¹⁶¹ N.J. STAT. ANN. § 2C:43-3 (West 1989) provides that a person convicted of third or fourth degree crime offenses may be sentenced to pay a fine not exceeding \$7500.00 or make restitution or both.

¹⁶² *Id.* § 2C:43-2.

third degree crime¹⁶³ and up to 18 months for a fourth degree crime.¹⁶⁴

Additional sanctions exist for specific classes of violators. Transporters who, without regard to intent, transport regulated medical waste in violation of any provision of this Act or any regulation promulgated therefrom, or who transport waste to an unauthorized disposal site shall be charged with a fourth degree crime.¹⁶⁵ A generator who allows or causes regulated medical waste to be transported to a site in New Jersey which has not been authorized by the DEP or BPU to accept such waste¹⁶⁶ or commits a violation of this Act or its regulations shall also be charged with a fourth degree crime.¹⁶⁷

Any prosecution for a violation of a provision of the Act or the regulations will not preclude prosecution for a violation of any separate applicable statute such as the Clean Water Act,¹⁶⁸ which prohibits discharge of a pollutant into waters of the United States without a permit.¹⁶⁹ The applicable statute of limitations for criminal prosecution for a violation is five years from the date of discovery of the violation.¹⁷⁰ It is important to note that in addition to any sanctions, the Act mandates that any person who proximately causes the discharge of regulated medical waste into the land or waters of New Jersey will be strictly, jointly and severally liable for all clean up and removal costs.¹⁷¹ Other aggressive approaches to enforcement of the Act include authorizing the forfeiture of any land intentionally used for the willful discharge of regulated medical waste in violation of the Act or any rule or regulation promulgated therefrom,¹⁷² or license revocation or suspension of transporters or facilities upon a finding by the department that such transporter or facility has violated the Act, its regulations or any other environmental or public health law.¹⁷³

¹⁶³ *Id.* § 2C:43-6(a)(3).

¹⁶⁴ *Id.* § 2C:43-6(a)(4).

¹⁶⁵ *Id.* § 13:1E-48.20(i). See *supra* note 116.

¹⁶⁶ N.J. STAT. ANN. § 13:1E-48.20(j)(1) (West 1989).

¹⁶⁷ *Id.* § 13:1E-48.20(i). See *supra* note 161.

¹⁶⁸ 33 U.S.C. § 1251 - § 1387 (1987).

¹⁶⁹ *Id.* § 1343.

¹⁷⁰ *Id.* § 13:48.20(l).

¹⁷¹ *Id.* § 13:1E-48.21.

¹⁷² *Id.* § 13:1E-48.20(k).

¹⁷³ *Id.* § 13:1E-48.23.

This Act recognizes that the public's assistance will be necessary for its strict enforcement. To provide an incentive to the public, the Act authorizes a reward to any member of the public who supplies information to an enforcing authority that leads to the imposition of penalties under the Act.¹⁷⁴ This reward will be in the amount of \$250 or ten percent of the penalty collected from the violator, whichever is greater.¹⁷⁵

VII. Conclusion

The medical waste wash-ups during the summers of 1988 and 1989 drew extraordinary media attention. However, the facts which this coverage revealed amounted to more than just media hype. The substandard handling of medical waste was brought to light to the point where the state was forced to step in and act. Dangers from improperly handled medical waste are real. Although the probability of acquiring the AIDS virus, hepatitis or some other communicable disease from the waste washed ashore is relatively small, it is a possibility which should not exist at all.¹⁷⁶ Further, greater risks are posed to those who handle improperly packaged waste by sharp objects which puncture the container and pierce the handler.¹⁷⁷ Moreover, one source reports that medical waste may have been linked to the deaths of porpoises and other sea life in the Atlantic Ocean in 1988.¹⁷⁸ The DEP believes that the overall social, environmental and economic impact of this waste management act will be positive.¹⁷⁹ Aware of the burden which logging, tracking and reporting will place upon all components of the medical waste community, the DEP strongly supports its belief that the ends will justify the means; these burdens will be heavily outweighed by the positive impacts the implementation of the regulations will have.¹⁸⁰ First, waste handlers and the public will be protected from the dangers posed by exposure to regulated medical waste. Second, since the

¹⁷⁴ *Id.* § 13:1E-48.24.

¹⁷⁵ *Id.* Such rewards will be paid by the enforcing body who received the information from monies collected under the penalty provision of N.J. STAT. ANN. § 13:1E-48.20 (West 1989).

¹⁷⁶ Hershkowitz, *supra* note 2, at 35.

¹⁷⁷ *Id.*

¹⁷⁸ *Symposium on Waste Management Law and Policy*, 18 ENVTL. L. REV. 665 (1988).

¹⁷⁹ 21 N.J. Reg. 2111 (1989).

¹⁸⁰ *Id.*

regulations require that regulated medical waste be distinctively identified as such, fears of unidentified waste should be diminished. Lastly, the public will likely regain confidence in the state government if compliance with the Act and regulations remains strictly enforced. Thus, all of the concerns raised in the legislative findings will have been met.¹⁸¹

It is expected that the fees collected under this program will cost the medical waste industry \$6 million dollars.¹⁸² The DEP has analyzed that the overall added cost of this program to the patients of private practitioners will be approximately 20 to 30 cents per visit.¹⁸³

The DEP and DOH have promised strict and aggressive enforcement of the federal and state acts and their regulations.¹⁸⁴ According to the DEP, 766 notices of violation have been issued by the DEP and DOH inspectors between June 1989, the inception of this program, and October 1990.¹⁸⁵ Total penalties which have been assessed are \$308,950 for the same period.¹⁸⁶ If these acts are treated as more than "paper tigers" by the enforcing bodies, as well as the medical waste community, they should, at the very least, provide a uniform system of medical waste disposal and allow a large percentage of mismanaged waste to be traced to the violators.

The problem of hazardous medical waste is nationwide. It is estimated that 500,000 to 3 million tons of medical waste is generated by this nation's hospitals alone.¹⁸⁷ This Act should not be the end of the state's effort to solve this problem. This law

¹⁸¹ See N.J. STAT. ANN. § 13:1E-48.2 (West 1990).

¹⁸² 21 N.J. Reg. 2112 (1989).

¹⁸³ 21 N.J. Reg. 2969 (1989).

¹⁸⁴ In addition to New Jersey officials, the EPA will also be enforcing the federal act.

¹⁸⁵ See *supra* note 10.

¹⁸⁶ *Id.* According to Mr. Confer, the most common violations are:

1. Failure to register as a medical waste generator (N.J.A.C. 7:26-3A.8(a)),

2. Failure to segregate, package, label and mark the regulated medical waste in accordance with the regulations (N.J.A.C. 7:26-3A.10,11,14 and 15),

3. Failure to maintain generator log forms recording information on all regulated medical waste generated, treated, or disposed of on-site and/or sent off-site for treatment, destruction or disposal (N.J.A.C. 7:26-3A.21 (d) and (e)). *Id.*

¹⁸⁷ Hershkowitz, *supra* note 2, at 36.

should be monitored closely for effectiveness and necessary changes should be made to protect the environment as well as the citizenry from a reoccurrence of the incidents of previous summers.¹⁸⁸ However, some have already noted a source of weakness in the Act. The Solid Waste Management Association suggests that regulations for proper waste management should address all sources, including households.¹⁸⁹ The Comprehensive Regulated Medical Waste Management Act expressly excludes individual households utilizing self home-care from the definition of generators covered by the Act.¹⁹⁰ This group contends that this Act will not do much to prevent beach washups, claiming that most of the syringes found were disposed of by diabetics or intravenous drug abusers.¹⁹¹ When looking to the statistics, this view may deserve merit. If for example, a city such as New York City has 100,000 diabetics who inject themselves daily with insulin, approximately 35 million unregulated syringes will be generated annually in that city alone.¹⁹²

The New Jersey Legislature, as well as the DEP and DOH, should be commended for their quick response and pioneerism with regard to this Act. However, it should not be viewed as the end of the problem, but merely as a foundation upon which to build in accordance with our changing society.

Diane E. Sugrue

¹⁸⁸ See generally, 123 N.J.L.J. 766 (1988).

¹⁸⁹ *Tracking Seaside Medical Wastes*, SCI. NEWS, Sept. 16, 1989, at 191.

¹⁹⁰ N.J. STAT. ANN. § 13:1E-48.3 (West 1989). See *supra* note 50.

¹⁹¹ See *supra* note 186.

¹⁹² Hershkowitz, *supra* note 2, at 40.