State of New Jersey
Commission of Investigation

SOLID WASTE REGULATION

April 1989

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April, 1989

Governor Thomas H. Kean
The President and Members of the Senate
The Speaker and Members of the General Assembly

The State Commission of Investigation herewith formally submits, pursuant to N.J.S.A. 52:9M, a public report with recommendations regarding its investigation into the solid waste collection industry in New Jersey.

Respectfully,

Henry S. Patterson, II
Chairman

James R. Zazzali

Barry H. Evenchick

W. Hunt Dumont

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INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

This report documents the second effort by the SCI to evaluate the need for reform in the regulation of the solid waste industry. On October 7, 1969, the Commission issued a "Report Relating to the Garbage Industry of New Jersey" in response to the Legislature's request for an investigation. The 1969 Report called for the enactment of a number of laws intended to increase competition among solid waste collectors:

1) Prohibiting illegal restraints of trade such as customer and territorial allocations, price fixing, bid rigging and restrictive association by-laws;

2) Licensing all waste collectors and determining the real persons in interest of each collection and disposal company; and

3) Prohibiting discrimination, either as to availability or price, in the use of privately owned waste disposal facilities.

The Commission in 1969 was concerned that "some organized criminal elements have been moving into the garbage collection and waste disposal industry in New Jersey" and promised "to continue our investigation and surveillance of this aspect of the industry throughout the lifetime of our Commission." The present report fulfills that promise by documenting the progress and failures of the regulatory and law enforcement efforts which followed the 1969 Report.

The Legislature responded to the SCI's 1969 Report, to its own inquiries in early 1969, and to a January, 1970, assessment of the threat of organized crime by the U.S. Attorney for New Jersey by enacting the Solid Waste Utility Control Act (SWUCA), and the New Jersey Antitrust Act. Both laws took effect in 1970. Both prohibited restraints of trade. The former also for the first time placed solid waste collectors and disposers in the domain of utilities regulated by the Board of Public Utilities (BPU) and prohibited price or access discrimination against customers by disposal facilities.

Unfortunately, no organized method of determining the real parties in interest of solid waste firms was instituted until 1986, when the State began to implement the three-year-old Waste Industry Disclosure Law of 1983 after a lengthy court challenge had been defeated. Moreover, that law's effectiveness continues to be severely hampered by inadequate resources.

Meanwhile, it took more than a decade for New Jersey's fledgling Division of Criminal Justice (also created in 1970) to begin to prosecute industry-wide conspiracies in restraint of trade. Furthermore, expensive and lengthy administrative follow-ups to these prosecutions—intended to rid the industry of nefarious elements—are still laboriously continuing.

Most of the energy of the earlier reform efforts has been devoted to a costly, complex, unnecessary, ineffective and counterproductive system of regulation that the SCI never recommended: BPU rate regulation of haulers for commercial and industrial customers. Although most of the 1969 recommendations to the Legislature stressed the importance of encouraging competition within a regulated framework, the SWUCA tipped the balance against competition. Thusly burdened, it has utterly failed as an economic guiding force for the industry. This conclusion will be discussed and supported later in this report, but it should be stated here at the outset so that what follows may be better understood and put in proper context.

Meanwhile, although unlawful customer allocation agreements were eliminated from trade association by-laws, they continued as informal but effective agreements or "ethics" curtailing competition for municipal contracts, as well as the rate-regulated commercial and individual residential accounts. Had the resources that were devoted to this futile regulatory system been devoted to more intensive antitrust enforcement and to more expeditious and resolute screening of unsavory operators, greater strides would have been made in improving the industry's price and service levels.

In that vein, it seems appropriate for the reader to see here the other conclusions and recommendations that will be developed more fully in the pages to come.

—BPU regulation of haulers' rates should be abolished, but the state should concentrate its efforts on encouraging competition by, among other strategies, eliminating unsavory elements from the industry. A single licensing system should replace the dual system presently operated by BPU and the Department of Environmental Protection (DEP).

—An independent Solid Waste Authority should be created subsuming the resources and remaining authority of the BPU and focusing its attention on monitoring and stimulating competition among haulers. This would not automatically increase the bureaucracy but would direct existing resources toward solving the problems which really confront the industry. In addition to regulating the prices of scarce disposal facilities, creating uniform specifications for municipal contracts and consolidating enforcement of waste flow directives, the Authority should monitor costs, bid prices and other economic factors. Starting with municipal contracts, the Authority should be empowered to publicize situations where it found that there was either collusion or a lack of competition creating artificially high prices and to determine a fair or "engineer's estimate" price for specific contracts. If competitive bids were not then forthcoming, the Authority would be empowered to bid to perform the work itself. Any contracts it would obtain would be paid for by the affected municipalities, which would themselves benefit from the lower prices. As competition was stimulated this aspect of the Authority's operations would wane or disappear.

—Already scarce disposal facilities should continue to be regulated rigorously by both the DEP for the protection of the environment and the Authority to ensure reasonable disposal costs.

—Waste flow directives should be continued and strengthened to ensure the economic viability of centralized transfer stations and expensive resource recovery facilities. Waste flow enforcement powers and resources, presently located in both the BPU and the DEP should be consolidated in the proposed Authority.

—The Local Public Contracts law should be amended to require the new Solid Waste Authority—in consultation with other appropriate state agencies—to mandate uniform specifications for municipal garbage hauling and to eliminate those that impose unreasonable demands on prospective competitors.

—The federal government should monitor union activity more closely to make certain all carters are paying their employees the wages and benefits they are entitled to so that carters can compete on an equal footing. Criminal convictions for bid rigging, restraint of trade and commercial bribery should serve to bar individuals from union positions for substantial periods.

—Antitrust, electronic surveillance and disclosure laws should be strengthened so that organized anticompetitive activities can be more readily detected and deterred.

PROPRIETARY ATTITUDE TOWARD CUSTOMERS

National Problem

Conspiracies undermining competition among solid waste collectors have long occurred throughout the United States. In fact, as early as 1957 the Senate McClellan Committee hearings revealed a pattern of corruption and illegality in the Los Angeles solid waste industry similar to that later found in the Northeast. More recently, firms both small and large have been convicted in Miami and Fort Lauderdale, Florida, in Los Angeles, Philadelphia, Chicago, in Toledo, Ohio, Atlanta, and Wisconsin. The Antitrust Division of the U.S. Justice Department disclosed in June, 1987, that federal grand juries in eight states were investigating possible price fixing, bid rigging and other noncompetitive practices in the solid waste collection industry.

In part due to the exposure of efforts by law enforcement authorities in New Jersey and New York, these two states' solid waste collectors have a reputation for anticompetitive activity that exceeds that in other areas of the country. For example, an investigation in the early 1970s, during which the Brooklyn district attorney's office covertly went into the garbage hauling business, provided direct evidence that the purchase of a customer by one collector from another gave the purchaser the exclusive right to service that customer. Fifty-five association-member companies were indicted for unlawful conspiracy in restraint of trade. An additional nine carting industry officials, including the president and vice president of the association, were indicted for perjury in connection with the investigation. Most of the firms pled guilty and were penalized only $500 per truck by the New York City Department of Consumer Affairs (DCA)—New York's garbage hauling regulatory body—and light fines by the court. Although DCA first granted these carters only temporary renewals of their licenses, they were eventually granted permanent renewals. The Brooklyn Trade Waste Association, which had been dissolved, was thereupon reconstituted as the Kings County Trade Association.

"Property Rights"

Historically the solid waste collection industry in northern and portions of central and southern New Jersey has tolerated so-called "property rights" schemes to allocate commercial-industrial, municipal contract and individual residential customers among participating carters. As described by several witnesses before the SCI and documented in numerous prosecutions, property rights embody the concept that whoever serviced a site first has a continuing claim to any customer that occupies the site, regardless of what is later built there. Where this system has operated, there may once have been competition for the right to first service a location. However, customers who benefitted from the resulting initial low prices would in some instances soon receive much higher bills from the haulers who now "owned" their sites. Collectors who had competed for the initial work later rebuffed customer efforts to seek alternative service.

Organized Crime: Aura Versus Actuality

Over the years much evidence has been developed by the SCI and law enforcement agencies that elements of the New York-based Genovese/Gigante and Gambino/Gotti crime organizations have assisted solid waste haulers—for a fee—to maintain illicit property rights agreements. This enforcement role has included unsolved murders of at least three men actively involved in disputes over property rights or turf in solid waste collection. With their ability and willingness to coerce, organized criminal groups found a ready and willing market for their services among some solid waste haulers seeking a collusive solution to "problems" created by competition.

The more participants there are in a conspiracy to restrain trade, the more necessary it becomes

to employ coercion to successfully thwart dissident behavior. Usually the coercion in the solid waste industry has not involved actual violence, but the mere threat and occasional demonstration of violence have certainly affected the way competitors and their customers relate to one another.

Thus, the detrimental effects of organized crime involvement in the industry are not confined to the consequences of actual mob activity. The mere reputation or suggestion of organized crime influence is enough to discourage certain companies from aggressive competition. It also discourages customers from resolutely seeking alternative service or resisting price increases. There is a fear, rational or not, of violence against property or person. As one collector, John M. Zuccarelli, Jr., retorted facetiously in late 1981 to a journalist inquiring about his alleged mob connections, "Go ahead, say I'm with the Mafia; it'll help business."

The effect of the image of an organized crime presence was acknowledged by one of the witnesses who testified in executive session before the Commission, Deputy Attorney General Stephen Resnick, the former head of a unit in the Division of Criminal Justice which specializes in investigations of anticompetitive practices in the solid waste industry. Under questioning by SCI Deputy Director Robert J. Clark, Resnick testified that, while not actually controlling the industry, organized crime has maintained a presence:

Q. Have you drawn any conclusions concerning the involvement of syndicate groups in this industry? . . .

A. I definitely do see involvement. I assume you mean by syndicate the more conventional organized crime type individuals, those people who gain their livelihood by controlling criminal activity?

Q. Yes, I do.

A. Yes, those are the people I'm referring to. Yes, I definitely see their involvement in the industry, and let me just say that at different times and in different parts of the State it can be more pronounced. In other words, it is not a total complete control of the State, nor even a total complete control of any part of the State. It manifests itself in different locations at different times. . . . We become aware of an allegation. We pursue it. In some of these matters that allegation has led us to evidence of the more traditional organized crime involvement. In others it has not. We don't know if it's there; we don't have any evidence that it's there. Yet, in other cases we found an aura of that involvement, but when you investigate intensively, you don't find the substance. And it's entirely possible in one of these cases that a fellow was just making use of the organized crime impression to get his way. We just don't know. But the fellow who did this . . . shows up at a garbage company in a limousine; two fellows get out of the car before him and stand at the door; he marches in, talks tough, and we come to find there's no substance behind it. None, not even a shred. . . .

The influence is there, but it does not permeate and control the entire industry. . . . The bulk of the companies in this State engaged in this business are small operations that mind their own business and are not mob-tied.

Infamous Connections

Over the years several solid waste haulers have been associated to some degree with organized crime figures. A brief listing of some of the more infamous connections, here and elsewhere in this report, should serve to illustrate the point that organized crime activity has been a real issue in the industry. However, the Commission has determined that the existence and aura of organized crime have not been so pervasive as to discourage important competitive elements within the industry today. Moreover, identifying anticompetitive behavior or the presence of organized criminals does little good if ineffective solutions, such as utility regulation of collector rates (as opposed to disposal facility rates), are proposed to deal with the problem.

—Joseph Lemmo, Sr., of South Plainfield, president of Edison Disposal Co., Inc., of South Plainfield, is an associate of John J. Albert, who was an associate of deceased Genovese/Gigante capo Joseph (Joe Beck) Lapi. Albert was recently released from federal prison and has a history of convictions for illegal disposal of toxic wastes,

mail fraud, unlawful restraint of trade, drug trafficking, possession of stolen goods and promoting gambling. He was a part owner of Chemical Control Corp. of Elizabeth and owner of the defunct A-Z Chemical Resource Recovery dump in New Brunswick. Industry insider Harold Kaufman, who became an FBI and state informant, testified before a Congressional subcommittee in 1980 that Albert told him that Lapi was a silent partner in Chemical Control. Curiously, a spectacular fire and explosions among illegally stored chemicals occurred at Chemical Control's facilities in April, 1980. The cause of the fire was never determined.

According to Kaufman, Albert attempted, in vain, to form a hazardous waste trade association similar to one which sought to control garbage collection in the late 1970s. Albert and his solid waste collection company, Jersey Sanitation Co., Inc., of East Brunswick were indicted by a State Grand Jury on March 17, 1981, for unlawful restraint of trade. After pleading guilty, Jersey Sanitation was fined $15,000, and Albert was sentenced to 18 months in State Prison concurrent with a federal sentence for mail fraud.

—Albert's partner in Jersey Sanitation was the late George (Kitten) Katz of Fort Lee, who, prior to his death, was under federal indictment with U.S. Senator Harrison Williams, Jr. and others in the Abscam case. Katz had also been indicted in 1974, along with several paving contractors, on charges that they rigged bids and fixed prices on Passaic County highway contracts. The charges against Katz were dropped when it was determined that a heart condition made him too ill to stand trial. Charges against the others were dropped when the Court determined that the statute of limitations had expired. In 1975, Jersey City filed suit against Hudson-Jersey Sanitation, a company once headed by Katz, charging that, while he was in charge of the firm, he cheated the city out of $4.2 million in a $25 million, 17-year garbage contract. In an effort to terminate the contract, Jersey City alleged that the company received the contract because of a kickback conspiracy involving Katz, Hudson County Democratic boss John V. Kenny, former Mayor Thomas J. Whelan, and former City Council President Thomas J. Flaherty. The suit was dropped when the company agreed to pay Jersey City $500,000 and to void the contract.

In 1979 Katz, as President of American Collectors, embarked on a joint venture, PET-AM, with the James Petrozello Co. and won a $5.4 million, three-year contract to pick up the garbage of a third of the City of Newark. FBI informant Harold Kaufman testified that when the Newark contract was initially bid in 1977, his employer, Statewide Environmental, submitted the lowest bid. Newark rejected the bids, however, and Genovese/Gigante crime organization soldier Tino R. Fiumara ordered Statewide to refrain from bidding again.

—Joseph Lemmo, Jr., a principal in Active Waste Transport, Inc., is in federal prison serving a sentence of 27 years for conspiracy to distribute controlled substances and racketeering. He has a long history of gambling, narcotics, tax evasion and firearms convictions. The DEP revoked Active Waste's license based, in part, on a federal conviction of the company's president, Mario Postorino, for overbilling Morristown for sewage sludge hauling. Postorino was also recently indicted in both New Jersey and New York for illegal gambling, loansharking and drug distribution.

—Carmine Pucillo, of West Orange, one of the owners of L. Pucillo & Sons, Inc., of Lodi, is a criminal associate of Robert E. (Cabert) Bisaccia and Joseph (Demus) Covello, respectively a capo and soldier in the Gambino/Gotti organization. On December 20, 1983, Bisaccia was indicted by a State Grand Jury for attempted extortion and making terroristic threats. The charges arose out of an incident on March 2, 1983, in which Bisaccia allegedly threatened Pucillo with bodily injury if Pucillo did not pay $1,800. After the State completed its case, the court directed a verdict of acquittal for Bisaccia on January 11, 1985. On August 12, 1988, Bisaccia, one of two Gambino/Gotti capos operating in New Jersey, was arrested by the New Jersey Attorney General's Organized Crime Task Force on racketeering charges.

—Louis J. Mongelli of New Windsor, New York, president of ISA in New Jersey of Mahwah and Round Lake Sanitation Corp. of Monroe, New York, is an associate of Genovese/Gigante organization boss Vincent (Chin) Gigante of Old Tappan and capo Mario (The Shadow) Gigante, who was a Round Lake employee.

—In the early 1970s SCA Services, Inc., a Bos-

ton-based solid waste conglomerate, began to buy up several collection companies in New Jersey, all with the approval of the BPU. Among the companies purchased by SCA in 1972 were Intercity Services, Inc., Industrial Haulage Corp., and the Avon Landfill Corp., all owned by the Viola family. In a typical agreement the Violas continued to manage their companies for SCA. Thomas C. Viola became an SCA vice president, and in 1976 he became its president and chief operating officer. He became chairman of the board and chief executive officer in 1979 but resigned in June, 1981, under fire concerning SCA's New Jersey subsidiaries' connections with organized crime and property rights schemes.

An Essex County grand jury had indicted Viola in 1959, along with Teamsters Local 945 business agent John Serratelli and carter (and, later, murder victim) Crescent J. Roselle, for conspiring to rig bids on the Belleville garbage contract. Serratelli disappeared before trial, and the charges against Viola and Roselle were dismissed after the State had presented its case. On May 28, 1981, before the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, Justin J. Dintino, now the SCI's Chief of Organized Crime Intelligence and then a Lt. Colonel in the New Jersey State Police, testified regarding Thomas Viola's denial that he was aware of property rights schemes in New Jersey:

> *It is unbelievable to me that the present chief executive of SCA, employed by SCA since 1972, during the time frame when SCA purchased a number of solid waste corporations in New Jersey in the critical zones controlled by organized crime, has no knowledge of property rights, especially as some of the corporations purchased have deep-rooted organized crime connections.*
>
> *If [Mr. Viola] pleads ignorance to property rights in the State of New Jersey, he is either the most naive person involved in the solid waste industry or the least informed citizen in the State of New Jersey, let alone a top executive of a solid waste conglomerate doing extensive business in New Jersey.*

—SCA purchased Interstate Waste Removal Co., Inc., of Trenton, from John Zuccarelli, Jr., who founded Interstate's predecessor company, Interstate Paper Supply Co., in 1950 with Anthony J. Tassone, Sr., of West Trenton and two other individuals. Tassone is a criminal associate of the Gambino/Gotti mob controlling some gambling in the Trenton area. A convicted gambler, armed robber, conspirator to obstruct justice and horserace fixer, Tassone left Interstate Paper a few years after its formation. In a confidential 1978 report and in the May, 1981, testimony before the House Subcommittee, federal Organized Crime Strike Force investigators in Newark recounted the uncorroborated allegations of a reliable informant that Interstate paid three percent of its profits between 1976 and 1978 to Simone (Sam the Plumber) DeCavalcante, then boss of the New Jersey-based DeCavalcante/Riggi crime organization. Then-FBI Director William Webster wrote to the Subcommittee in August, 1981, that Zuccarelli, Jr., was a "reputed associate of organized crime." Zuccarelli denied these allegations in an affidavit submitted to the SCI.

In late 1978, Zuccarelli, Jr. quit Interstate, and in early 1979, his son, John Zuccarelli, III, set up National Waste Disposal, Inc., in Ewing, with Zuccarelli, Jr., serving as a consultant. Interstate and National then went through a period of heated competition, which included public disputes over movement of each other's dumpsters, lawsuits and suspicious truck fires.

On February 21, 1985, the State filed a civil complaint against National Waste and both Zuccarellis alleging that the defendants and coconspirators (many named in earlier litigation) asserted property rights over customers and rigged bids in Burlington, Hunterdon and Mercer counties. The pleadings alleged that the Zuccarellis "made peace" with Interstate, and the conspiracy continued. On March 31, 1987, the Division of Criminal Justice settled the case with the defendants. National Waste agreed to pay the State $25,000 with no admission of liability by any of the defendants.

On August 25, 1988, the Mercer County Improvement Authority awarded National Waste a $9.5 million, four-year contract to operate the Mercer County trash transfer station in Ewing Township. In the first round of bidding National had offered the lowest price, but all bids were

rejected as too high. In the second round National won the contract with the lowest bid out of five submitted.

SCA eventually sold 60 percent of its assets to Waste Management, Inc., of Oak Brook, Illinois, and the other 40 percent to GSX Corp. of Boston, at that time the first and third largest waste services companies in the U.S., respectively. Waste Management continues a small presence in New Jersey through its subsidiary SCA Services of New Jersey, Inc. San Francisco-based Genstar Services, Inc. then acquired GSX. Genstar was, in turn, acquired by Imasco, Ltd., of Montreal. Finally, Imasco sold the GSX portion of Genstar to Laidlaw Transportation, Ltd., of Ontario, presently the third largest waste industry firm operating in the U.S. after Waste Management and Browning-Ferris Industries, Inc., of Houston. Laidlaw combined GSX's solid waste removal operations with its solid waste subsidiary, Laidlaw Industries, Inc. Joined by Chambers Development Co., Inc., of Pittsburgh, and Western Waste of California, the three top firms represent formidable existing and potential competitors for the New Jersey market.

A Probe and a Breakthrough

In 1977 the Intelligence Bureau of the New Jersey State Police did a study of the solid waste industry which indicated a pattern of organized crime infiltration and anticompetitive activities. Supported by this study, the New Jersey Division of Criminal Justice applied for and received in the Fall of 1977 a grant from the Antitrust Division of the United States Justice Department to conduct an investigation of the industry.

A major breakthrough in Criminal Justice's investigation came in late 1979 when the FBI allowed Harold Kaufman, an undercover operative who had secretly recorded numerous conversations between himself and certain conspirators in the industry, to assist the state investigators. Kaufman's cooperation eventually led to the convictions, for unlawfully restraining trade, of scores of individuals and companies in the solid waste hauling industry.

Kaufman, who has been enrolled in the federal Witness Protection Program for a number of years, had served time in prison in the early 1970s with certain organized crime members. When released from jail, he was employed by the carters' union in New York City, Teamsters Local 813. He then went to work soliciting customers for the Macaluso family, which owned New York Carting and, in New Jersey, Statewide Environmental Contractors, Inc., which eventually became a member of the New Jersey Trade Waste Association (TWA).

Charles A. Macaluso was formerly president of the Greater New York Trade Waste Association, which is presently controlled by Gambino/Gotti crime organization capo James (Jimmy Brown) Failla. According to Harold Kaufman, Macaluso had come to New Jersey in 1976 at the behest of Failla to solicit commercial accounts away from established carters in a bid by the Gambino/Gotti syndicate to increase its influence over the garbage industry in New Jersey.

In June, 1976, the TWA was formed, with approximately 120 members. It was created, in part, to thwart the growing influence of the Gambino/Gotti organization through Macaluso, whose company was required to join the association. Carmine A. Franco, an associate in the New York-based Genovese/Gigante organized crime syndicate and an owner of several solid waste companies in New Jersey, became the TWA's president. FBI and state informant Patrick Kelly, who secretly tape recorded conversations with industry insiders in 1977, testified before a State Grand Jury that Franco answered to Tino R. Fiumara who effectively controlled the association. Kelly is presently enrolled in the federal Witness Protection Program.

Fiumara, a notoriously vicious soldier in the Genovese/Gigante organization, has controlled lucrative racketeering operations along the New Jersey waterfront. He is still in federal prison on a 25-year sentence for a 1980 waterfront racketeering, extortion and conspiracy conviction. In 1979 Fiumara was convicted of federal extortion and conspiracy charges involving an underworld plot to take control of a one-quarter interest in a Morris County restaurant. Kelly testified at Fiumara's federal sentencing hearing, held on October 2, 1979, that Fiumara's capo in the Geno-

vese/Gigante organization was the late Peter LaPlaca, who protected the group's interests in Teamsters Local 945, the union for garbage truck drivers and helpers (lifters) in New Jersey.

Association-Mediated Grievances

The SCI's 1969 investigation showed that collector associations had incorporated formal customer allocation agreements into their bylaws. These became clearly unlawful when the Legislature passed the New Jersey Antitrust Act as part of a multi-bill package to curtail the influence of organized crime in the State. It became apparent, however, that associations continued to assist in the enforcement of informal agreements that de facto accomplished the same anticompetitive results. Among the methods used to protect property rights were: screening applicants for membership in associations to make sure they would abide by property rights; threatening nonmembers who did not respect property rights; and requiring association members to sell customer accounts only to those who would abide by property rights.

Disputes over the "rights" to serve certain customers were resolved at periodic "grievance" meetings held at restaurants under the auspices of the TWA and the Hudson County Sanitation Association (HCSA). Joseph N. Scugoza of Glen Ridge, the owner and president of Haulaway, Inc., of Hoboken, was president of the HCSA and participated in property rights grievance determinations. Both associations were among 57 defendants indicted in 1980, and both eventually agreed to dissolve. Administrative Law Judge Naomi Dower-LaBastille found that Franco had prescribed a "cutoff date" of July 1, 1977, whereby "any stops [customer accounts] that were stolen before that cutoff date had to be forgiven . . . [and for] stops taken after that date the association would rule on whose stop it was."

As revealed in secretly-taped conversations between FBI informant Kaufman and collectors, the associations played a key role in furthering property rights schemes among New Jersey trash collectors. For example, if a carter took over or threatened to take over a stop (customer) from another hauler, he would receive a telephone call or a visit from Carmine Franco or another official of the association at the behest of the "aggrieved" hauler. If this failed to resolve the dispute, the contending collectors would be called to an association "grievance committee" meeting where each side would present its claim to the property rights for the stop and members of the association hierarchy would decide the issue. Should this procedure fail to resolve the matter, one or both of the contending parties would go to a supporting organized crime figure to plead his case and solicit assistance (for a fee, of course).

Arbitration by Death

According to industry informants Kaufman and Kelly, although the basic property rights rule—whoever services a location first has continuing rights to *any* customer that occupies the site—applied, occasionally a collector would prevail, with resort to violence if necessary, simply because he had the backing of a more powerful organized crime figure than his rival or competitor. Organized criminals' influence in the industry derived primarily from serving as mediators or enforcers in the conspiracy, which normally functioned without their participation.

Three homicides illustrate, as graphically as anything can, the occasional violence that has been employed in the solid waste collection industry to cow collectors operating in areas where property rights prevail. One homicide occurred in the same month that the TWA was formed. In the mid-1970s Custom Disposal Service of Middlesex County, owned by Alfred DiNardi, began taking commercial stops and municipal contracts from a number of competitors. In November, 1975, Custom Disposal successfully underbid Waste Disposal, Inc., for a two-year contract with Roselle Park, previously a long time customer of Waste Disposal. Waste Disposal had been acquired as a subsidiary by SCA Services, Inc., in 1973 and was being managed on behalf of SCA Services by its former owner, Crescent J. Roselle.

Alleging irregularities in the bidding procedures, on December 15, 1975, Waste Disposal sued Roselle Park and Custom Disposal. In May,

1976, the trial court decided in favor of the two defendants. *The following month, on June 3, 1976, DiNardi was shot to death while picking up his automobile at a parking garage in New York City.* The murder remains unsolved. After DiNardi's murder, Custom Disposal was, for all practical purposes, managed by Carmine Franco, soon to become president of the TWA.

In late November, 1976, the Appellate Division reversed the trial court in the Roselle Park dispute. On remand the trial court set aside the contract awarded to Custom Disposal and ordered it to be rebid. After bidding, the next two contracts for 1977-78 and 1979-80 were awarded to Waste Disposal.

Another disputant with Roselle soon followed DiNardi to the grave. In the fall of 1973, Gabriel San Felice's business, Sano Carting Co. of Keyport, Monmouth County, submitted a bid for the Keyport residential scavenger contract to be performed during 1974 and 1975. The only other bidder was Waste Disposal, Inc., the SCA Services, Inc., subsidiary managed by Crescent Roselle, its former owner. Waste Disposal's bid was lower, and it was awarded the contract. Sano Carting unsuccessfully sued to set aside the contract award. Sano Carting successfully underbid Waste Disposal for the subsequent three-year contract (1976-78) let by Keyport. Meanwhile, Sano Carting obtained the contract with Brookdale Community College as of July 1, 1976, a contract that had been held by Waste Disposal since at least 1970.

Roselle was able to use his influence with Ernest P. Palmeri, Sr., then business agent for Teamster Local 945, to intervene in the dispute. San Felice, in turn, obtained the assistance of organized crime figures Frank (The Bug) Caruso—now deceased—Vincent Mauro and Philip B. (Brother) Moscato. Palmeri was a close associate of the late Peter LaPlaca, Tino Fiumara's capo in the Genovese/Gigante organization. According to law enforcement intelligence sources, LaPlaca exerted control over the solid waste industry in New Jersey through Palmeri, who controlled the union, and through Fiumara, his enforcer. The late John DiGilio, an influential soldier in the Genovese/Gigante organization until he was assassinated in May, 1988, also intervened in the Roselle/San Felice dispute. (In 1981, DiGilio served a federal prison term for engineering the theft of his criminal file from the Newark FBI office.)

Various "sitdowns," or meetings, were held among these organized crime figures in an effort to resolve the dispute between Roselle and San Felice. On one occasion in 1976, DiGilio, Fiumara, Palmeri, Roselle, San Felice and other individuals held a meeting at which Fiumara told San Felice to give back the contracts to Roselle. Meanwhile, Waste Disposal began to assist Sano Carting in the performance of certain of its Bayshore area contracts by providing equipment and personnel on a per diem basis. In August, 1977, Sano Carting assigned its contracts with Keyport, Matawan and Brookdale Community College to Waste Disposal.

On May 31, 1978, San Felice was shot to death while unloading a rolloff container at a landfill in Old Bridge. That murder also has never been solved.

October 17, 1980, a New Jersey State Grand Jury returned a single count indictment against 57 corporations, associations and individuals alleging an unlawful conspiracy in restraint of commercial-industrial collection in nine Northern New Jersey counties. *State v. New Jersey Trade Waste Association, et al (Trade Waste).* Determination and enforcement of property rights in customer accounts was at the core of the conspiracy.

On December 22, 1980, Crescent Roselle, was shot to death outside Waste Disposal's facilities in Elizabeth. As in the case of the San Felice and DiNardi killings, this case has never been solved.

A Customer's Dilemma

An example from the time when the *Trade Waste* conspiracy was at full throttle illustrates the dilemma of customers faced with the property rights scheme.

The Children's Specialized Hospital of Mountainside became dissatisfied with its collector, Statewide Environmental, a member of the TWA. In the course of a year, the hospital, which had been paying $400 per month for collection services, found an alternative collector, a member of

the Hudson County Association, that was willing to service the hospital for $600 per month. The first collector requested a grievance proceeding, which was held before members of the TWA and HCSA. Based on property rights, the second collector was ordered to give the stop back to the previous carter. Unsuccessful in a year-long search for a third hauler, the hospital now found itself compelled to utilize the services of the first contractor—only now it was required to pay $800 per month, double what it had been paying Statewide before it sought another carter!

LITIGATION SCORECARD

The trial court in the *Trade Waste* case dismissed charges against the three defendants who were organized crime figures—Tino R. Fiumara, Michael Coppolla and Lawrence (Larry Poppola) Ricci. In the Genovese/Gigante organization Coppolla was subordinate to Fiumara and Ricci was subordinate to Coppolla. Although not members of any industry association, the three had been charged with aiding and advising in the conspiracy. On appeal the dismissal was reversed in March, 1984. By that time, however, the rest of the case had been disposed of through guilty pleas, as well as convictions and acquittals resulting from two trials. Since the State's antitrust law exposed the defendants to no more than 18 months in jail, with a presumption of no incarceration under general sentencing provisions, Criminal Justice moved to dismiss the indictment against the three organized crime figures. Crucial to the decision was the fact that each had been incarcerated for federal offenses, and the State's key witness against them, FBI informant Patrick Kelly, wanted nothing further to do with the matter, having put his life back in order under the federal Witness Protection Program.

One defendant died before the case could come to trial. The president and a salesman of Duane Marine Salvage Corp. were dismissed after the corporation pled guilty. An employee of Central Jersey Disposal Service Co., Inc. was dismissed after the corporation pled guilty. The Arace Brothers partnership was dismissed after Frank Arace pled guilty. Browning-Ferris Industries of Elizabeth, Inc., and its vice president were acquitted on October 13, 1983, after an earlier jury was unable to reach a verdict.

Charles A. Macaluso, a defendant in the *Trade Waste* case and four other indictments, and president of Statewide Environmental Contractors, Inc., was tried separately in mid-1983, and convicted of bribery and attempting to illegally influence elected officials. Macaluso had passed a $1,000 bribe through an aide to a Wanaque councilman in a restaurant lavatory in return for the exclusion of local businesses from the municipal contract. This would have enabled Statewide to charge the businesses separately and thus increase its profits. Macaluso received a one-to-two-year jail term.

After Macaluso pled guilty in *Trade Waste* on July 29, 1983, Statewide Environmental and its secretary-treasurer, Frank J. Lotano, Jr., were dismissed from the case. The plea agreement blocked any civil or administrative action against Statewide or Lotano.

At the conclusion of a lengthy jury trial, Inter County Refuse Service, Inc., its president, Louis Spiegel, and Home and Industrial Disposal Service and a partner, Anthony Scioscia, were found guilty of fourth degree conspiracy to restrain trade. On July 29, 1983, Inter County was sentenced to pay a fine of $15,000, and Spiegel was sentenced to pay a fine of $10,000 and to three years probation with the special condition that he provide 200 hours of community service. Home and Industrial was fined $5,000, and Scioscia was fined $5,000 and placed on probation for two years with 100 hours of community service.

Guilty pleas and sentences in the *Trade Waste* case were entered as indicated in the following list:

Person or Company	Sentence
Carmine Franco & Co., Inc. Carmine Franco, Pres.	$75,000 fine $50,000 fine; 6 mos jail (with work release); 3 yrs prob; 1,000 hrs community svc; forbidden to participate in formation or operation of any new association
A. Rizzo Carting, Inc. Anthony Rizzo, Pres.	$25,000 fine $40,000 fine; 6 mos jail (with work release); 3 yrs prob; 1,000 hrs community svc; barred from solid waste industry other than as a union official, driver or helper

Frank Arace, Partner, Arace Brothers	$35,000 fine; 1,000 hrs community svc
Metro Disposal, Co., Inc.	$65,000 fine
Michael Grillo, Pres.	$10,000 fine; 1,000 hrs community svc
Anthony Scaffidi, V-P	$40,000 fine; 6 mos jail (with work release); 3 yrs prob; 1,000 hrs community svc
N.J. Trade Waste Assn.	Dissolved
Hudson County Sanitation Assn.	Dissolved
Louis T. Roselle, Inc.	$12,500 fine
Louis T. Roselle, Pres.	$2,500; 2 yrs prob
Jack Argento, t/a Argento Disposal	$12,000 fine; 2 yrs prob; 400 hrs community svc
Carmel Chiullo, t/a Carmel Chiullo	$1,000 fine; 1 yr prob; 100 hrs community svc
Frank M. Notarangelo, t/a Frank M. Notarangelo Carting Service	$5,000 fine; 1 yr prob; 200 hrs community svc
Bergen Disposal	$6,000 fine
Raymond Larger, Pres.	$1,500 fine; 1 yr prob; 100 hrs community svc
A. Capone Sanitation	$10,000 fine
Custom Disposal Svc. Corp.	$30,000 fine
John DiCanto, V-P	$1,000 fine; 1 yr prob; 100 hrs community svc
Duane Marine Salvage Corp.	$7,500 fine
Five Brothers Carting Co., Inc.	$12,500 fine
Paul V. D'Ambrosio, Pres.	2,500 fine; 2 yrs prob; 100 hrs community svc
T. Farese and Sons, Inc.	$7,500 fine
Highway Disposal Corp.	$16,000 fine
Frank Intelisano, Pres.	$1,500 fine; 2 yrs prob; 100 hrs community svc
Haulaway, Inc.	$40,000 fine
Joseph Scugoza, Pres.	$15,000 fine; 2 yrs prob; 200 hrs community svc
ISA in New Jersey, Inc.	Hung jury in 1st trial ending 4-6-83; hung jury in 2d trial ending 10-13-83; on 11-10-83, Mongelli pled guilty to a disorderly persons offense, was placed on prob for 1 yr, fined $1,000 and required to complete 100 hrs of community svc; ISA paid a civil penalty of $40,000
Louis Mongelli, Pres.	
M & V Disposal Corp.	$7,500 fine
Michael T. Importico, Jr., V-P	$3,500 fine; 2 yrs prob; 100 hrs community svc
Mauriello Disposal, Inc.	$22,500 fine
Mark L. Mauriello, V-P & Treas.	$2,500 fine; 2 yrs prob; 100 hrs community svc
Modern Industrial Waste Svc., Inc.	$32,000 fine
Joseph Engravalle, Jr., V-P & Sec.	$10,000 fine; 2 yrs prob; 400 hrs community svc
Nicholas Enterprises, Inc.	$20,000 fine
Raymond Nicholas, Pres.	$3,000 fine; 2 yrs prob; 100 hrs community svc

Pinto Service, Inc.	$10,000 fine
Charles A. Macaluso, Pres., Statewide Env. Contractors	$25,000 fine; 18 mos State Prison
Central Jersey Disposal Svc. Co., Inc.	$17,500 fine

In another case, on October 18, 1984, a State Grand Jury indicted three solid waste collection companies, Angelo Miele & Sons, Inc., L. Pucillo & Sons, Inc., and Frank Stamato & Co., Inc.; two industry executives, John A. Pinto and Carmine Pucillo; and the township clerk and administrator of West Caldwell for a conspiracy to rig bids and make payoffs to public officials in nine North Jersey counties. The case involved allegations of the use of threats, intimidation, physical force and other means to control the conspiracy. Pinto and Pucillo pled guilty, the clerk/administrator died before coming to trial, and the companies were dismissed because they remained defendants in a parallel civil suit. Pucillo's and Pinto's sentences to 18 months in prison were suspended, and each was required to pay $50,000 in restitution and divest himself of all interests in the solid waste industry. Pucillo has not yet paid any of the restitution amount.

Contemporaneously with the second major criminal case, the State Attorney General filed a civil suit, *New Jersey v. Arace Brothers, et al,* (*MCA* case) against 40 companies, 60 individuals, the New Jersey Municipal Contractors Association and Teamsters Union Local 945 alleging bid rigging and enforcement of property rights schemes in municipal, as well as some commercial, industrial and private residential hauling. The civil case is still pending and allegedly involves activities in 12 northern counties. It includes allegations of threats, intimidation, physical force and other pressures to enforce the conspiracy. Lengthy delays have resulted from an unsuccessful legal challenge to the complaint and subsequent unsuccessful defense appeals (all the way to the United States Supreme Court) from the initial ruling upholding the complaint.

At the same time that the civil suit was filed, Browning-Ferris Industries (BFI), the most active national firm in New Jersey, and two of its former officers, agreed, without admitting illicit conduct, to refrain from engaging in unreasonable restraints of trade. The firm agreed to pay $3 million to the State.

On January 10, 1986, the State settled with Jersey Carting, Inc., and its President, Mario Moriano, in the *MCA* case. Without admitting the allegations in the complaint, Jersey Carting (on behalf of itself and an affiliated company, Mario's Portable Services) and Moriano agreed to pay $127,000. The settlement agreement provided that neither the settlement nor the payment of money would "constitute a legally sufficient basis for suspension or disbarment of Jersey Carting or Moriano from bidding on public contracts. . . ." The option of administrative agencies to pursue regulatory violations was preserved, but they would have to build any cases on the underlying facts rather than rely on the settlement itself. On November 14, 1985, the State settled with Stivali Bros., Inc, Carmine Stivali and Santos Stivali. This settlement also contained no admissions of liability, although the company and individuals agreed to pay $120,000. In addition to ruling out any prohibition against future public bidding, the agreement provided that it would "not be admissible as evidence for any purpose in any future proceeding. . . ." While the agreement stated that it was "not intended to be binding upon the [BPU] for any claims against settling defendants for any . . . regulatory violations," it ruled out reliance on the settlement as a basis for automatic debarment from the industry. All settling individuals and companies are still operating in the industry.

Municipal contracts that were being performed recently by the remaining defendants in the *MCA* case are indicated in the following list:

Defendant	Municipal Contracts Held
NJ State Municipal Contractors Assn.	
Teamsters Local 945	
Arace Brothers	Rahway
Frank Capasso, t/a Capasso Bros	
William A. Carey Co., Inc. William A. Carey, Jr.	
Crystal Carting Corp.	Mahwah
Custom Disposal, Inc. Reene C. DiNardi	
Joe DiRese & Sons, Inc. Domineck DiRese Felice DiRese Joseph DiRese	Harrington Park, Norwood, Tenafly, Rochelle Park
George A. Lohman	
C. Egan & Sons	Harrison
J. Filiberto Sanitation, Inc. Joseph B. Filiberto John C. Filiberto	Mendham Borough, Morris Plains, Peapack-Gladstone, Washington Borough (Warren Cty)
Carmine Franco & Co., Inc. Carmine Franco Salvatore Franco	Westwood
Frank Fenimore, Inc. Frank Fenimore Madeline Fenimore Guilio Fenimore Michael Fenimore	Jefferson Township, Netcong, Stanhope
Hudson-Jersey Sanitation Co. Frank Stamato, Sr. Frank Stamato, Jr. Patsy Stamato, Sr. Patsy Stamato, Jr.	Bayonne, Jersey City
Impac, Inc. Pompeo Iommetti Chester Iommetti Anthony Iommetti	Paterson, Dumont
Industrial Haulage Corp.	
Intercity Services, Inc.	
Vincent M. Ippolito, Inc.	Cresskill, Northvale, Ramsey, Rockleigh, Teaneck, Teterboro
Jersey Carting, Inc. Mario Moriano	
LaFera Contracting Co. Joseph LaFera, Jr.	Hillside, North Arlington

C.F. Malanka & Sons, Inc. Carmine F. Malanka Gerald E. Malanka Anthony Malanka	Union City, Weehawken
Maplewood Disposal Co. Robert G. Miele Richard Cignarella	
Ralph Marangi & Co. Ralph Marangi Franklin Raso Joseph Marangi	Kearny, Ridgefield
Marpal Co. William F. Palmer Hazel S. Palmer	Bay Head, Manasquan, Mantoloking
Meadowbrook Carting Co., Inc. John P. Pinto Joseph C. Rosselle Peter Rosselle	Aberdeen, Asbury Park, Brielle, Freehold Borough, Keyport, Lacey, Little Silver, Matawan, Middletown, Point Pleasant, South Amboy, Union Beach
Angelo Miele & Sons, Inc. Christopher Miele Samuel Miele	Caldwell, Wayne
Cresencio Miele, t/a Joseph Miele & Son	Fort Lee, New Milford
Frank M. Notarangelo, t/a Frank M. Notarangelo Carting Service	
James Petrozello Co., Inc. Joseph C. Cassini, Jr.	Little Falls, Newark, Orange
PET-AM, a Joint Venture	
Petrozello-Maplewood, a Joint Venture	Keansburg
Piccini Sanitation, Inc.	
L. Pucillo & Sons, Inc. Carmine Pucillo Chester Pucillo	
P & M Sanitation Corp.	
SCA Services, Inc.	
SCA Services of NJ, Inc.	
Schaper Disposal Works, Inc. Orie Schaper William Schaper	Hawthorne
Frank Stamato & Co.	Riverdale, West Milford
Vito Stamato & Co., Inc. Vito Stamato	Elmwood Park, Lodi, Saddle Brook

Stivali Bros, Inc. Santos Stivali Carmine Stivali	
3D Service Co., Inc. Howard Stamato Anthony Votto Val Sica	Wood Ridge, Emerson, River Edge
United Carting Co., Inc. Ralph G. Mastrangelo	
Waste Disposal, Inc.	
White Bros. Trucking Co. Vincent Apice Arthur Rosselle	East Orange, Elizabeth, Roseland, Roselle, Roselle Park, Union Township, West Orange
John Albert	
Eugene Conlon	
Anthony F. Marangi Carmine D. Marangi	
Joseph Mastrangelo	
John A. Pinto	
Thomas C. Viola	

Also on October 18, 1984, the State indicted P & M Sanitation Corporation for not charging BPU-approved landfill tariffs to some of its customers in violation of the Solid Waste Utility Control Act. On the same day, Max Auerbach, the former business administrator of Parsippany-Troy Hills in Morris County, pled guilty to a State accusation charging that he had received payoffs from John A. Pinto and a BFI subsidiary in New Jersey to assist in obtaining customers.

On December 13, 1985, a State Grand Jury indicted America's Automated Environmental Waste Corp., t/a Mr. Trash, of Delanco, John A. M. Avena of Voorhees, the company's secretary-treasurer, and Richard Montalto of Medford, its vice president, for conspiracy to commit theft by deception and theft by deception for requiring customers to pay Pennsauken Landfill fees when the trash was actually dumped elsewhere at lower cost. On February 4, 1988, at the end of the State's case, the court directed a judgment of acquittal of all three defendants.

On December 9, 1985, a State Grand Jury returned an indictment against Scioscia Disposal Service Company, Inc., t/a Monmouth Sanitation Services of Howell and its owners Robert Constantino and Jerry Quaglietta; Louis DiMattis, t/a L & L Carting Company of Lakewood; Garden State Disposal Service, Inc., of Sayreville; Shore Carting Corp. of Lakewood and its owner John Puglisi; and John Shinone, Exec. V-P, Miller Sign Co. of New York City. The indictment charged that between January, 1983, and October, 1985, the defendants engaged in a conspiracy to restrain trade and to control garbage collection in several towns in Monmouth and Ocean counties through a property rights scheme and the use of force and intimidation.

On June 16, 1986, Constantino pled guilty. He was sentenced on January 28, 1987, to 18 months probation and a $25,000 fine. As part of the plea agreement the court granted the State's motion to dismiss the charges against Scioscia Disposal. The charges against Quaglietta and DiMattis were dismissed on December 10, 1986, and October 15, 1988, respectively, after they completed pretrial intervention programs. On June 16, 1988, Shore Carting pled guilty under an agreement providing

for the company to pay a fine of $50,000 and Puglisi to be barred from the solid waste industry in New Jersey, in return for dismissal of the charges against him and Garden State Disposal. On June 30, 1988, Shinone pled guilty to a disorderly persons offense, paid a fine of $500 and paid civil restitution of $25,000 in return for the State's motion (granted by the court) to dismiss the indictment against him.

In October, 1987, two solid waste collection companies and four individuals were indicted by a State Grand Jury for conspiring in 1981 and 1982 to mislead the BPU in an application for approval to buy a third company, Marpal Co. of Tinton Falls. The indictment charged that defendants Anthony Scaffidi of White Plains, New York, and John DiCanto of Watchung, an officer of defendant Sea Bridge Carting Co. of Fairfield, had agreed in 1981 to buy Marpal from the family that had owned it for many years. After Scaffidi was indicted in the *Trade Waste* case, he and DiCanto withdrew from the initial agreement of sale. Subsequently, defendant Alfred DeMarco of Weston, Conn., filed with the BPU for permission to transfer Marpal to Sea Bridge, claiming that Sea Bridge was owned by defendant Suburban Carting Corp. of Mamaroneck, New York, which was in turn owned in equal shares by himself and defendant Thomas Milo of Pelham Manor, New York. The indictment charged that, in reality, Marpal was to be owned 45 percent by DeMarco and Milo, 45 percent by Scaffidi and 10 percent by DiCanto.

Atlantic Disposal Service, Inc., of Mount Laurel, one of the largest trash disposal firms in South Jersey, its president, Alvin H. White of Haddonfield, and its secretary-treasurer, Charles J. Carite of Moorestown, pled guilty in December, 1987, to federal antitrust charges for rigging the bids for trash collection contracts at Fort Dix and McGuire Air Force Base from 1983 through 1986. In March, 1988, Atlantic Disposal was fined $2,000,000, and White and Carite were each fined $350,000 and required to spend one day a week for five years personally picking up garbage or performing maintenance tasks at the two installations. Two other firms implicated in the scheme, DeLorenzo Twin Counties Disposal Corp. of Trenton and Nu-Way Trash Removal Corp. of Primos, Pennsylvania, were each fined $100,000 and required to pay $50,000 in restitution. Pasquale P. DeLorenzo of Trenton, secretary-treasurer of DeLorenzo Twin Counties Disposal, was placed on probation for three years. Stanley R. Moskowitz of Cherry Hill, chief financial officer of Atlantic Disposal, also pled guilty.

White was president-elect of the New Jersey Chapter of the National Solid Wastes Management Association at the time of his indictment in March, 1987. He and Carite are also owners of a transfer station, Atlantic Recovery and Transfer Systems, Inc., of Mt. Laurel. On October 4, 1988, the Department of Environmental Protection (DEP) instituted proceedings to revoke the licenses of Atlantic Disposal and Atlantic Recovery. It also denied a license to a new company, Continental Waste Corp., owned by White's son and Carite's nephew. The DEP's initial order also seeks to prohibit White and Carite from having any interest in a New Jersey solid waste business, and would make them ineligible to apply for a new license for five years. It is anticipated that it will take years to conclude the expected lengthy administrative and appellate proceedings.

CURRENT TRADE ASSOCIATIONS

Two trade associations presently operate in the solid waste collection industry in New Jersey. The Waste Management Association, Inc., is composed of approximately 80 active member firms that perform private commercial, industrial and individual residential collection in New Jersey. The New Jersey Chapter of the National Solid Wastes Management Association represents approximately 150 waste hauling and disposal entities operating in New Jersey, including private firms and local government agencies.

The Commission has found no evidence that these associations condone the practices that were orchestrated by the Trade Waste Association or the Hudson County Sanitation Association. Indeed, as part of the plea agreements entered by defendants in the *Trade Waste* case, certain individual defendants consented to an injunction barring them from personal participation in association activities in the solid waste collection or disposal industries for a period of 10 years. The corporate defendants were prohibited from financing or becoming members of such an association for 10 years. However, at least one defendant, Custom Disposal Service Corp., was not barred from participation and joined the Waste Management Association.

A QUAGMIRE FOR NATIONAL FIRMS

A major change in the solid waste collection industry has been the development of national collection companies, including Waste Management, Inc., Browning-Ferris Industries, Inc. (BFI) and Laidlaw Industries, Inc. Despite an early concern that these firms seemed in too many instances to be continuing business as usual by granting considerable autonomy to holdover managers of acquired New Jersey firms, they have become formidable competitive elements in the industry. Their apparent regard for wholesome reputation and modern managerial techniques may substantially increase competitive behavior in the industry. Indeed, in settling with the State for its subsidiaries' role in the *MCA* case, BFI and its subsidiaries agreed to make available to the State all records pertaining to their government bidding activity for a period of 10 years from the date of the settlement.

However, these companies must first establish a greater presence in New Jersey. At present they account for only a small percentage of the total solid waste collection market in the State. In testimony before the Commission, representatives for these firms cited several reasons why they have not wholeheartedly committed their resources to New Jersey. The inflexible regulatory system and the reputation for organized crime influence were deemed the most significant factors.

The advent of large, publicly-traded solid waste firms operating nationally has not been a panacea for sluggish competition in the industry. Although it has never been proved that the national companies' headquarters officials have condoned participation in property rights plots, they have not always been able to control the conduct of their subsidiaries' officers, who occasionally take part in such schemes as a short cut to achieving the high profit levels demanded by the parent companies.

Deputy Attorney General Stephen Resnick, the former head of the State's solid waste prosecution unit, testified before the SCI that, like other national concerns, BFI grew in New Jersey by buying up existing companies in the marketplace. Reciting the history of BFI's involvement in New Jersey, Resnick testified that in the mid-1970s BFI purchased a small company called Pinrose that had been owned and operated by John A. Pinto and his family. In an agreement typical of those executed by national companies entering the market, Pinto joined the BFI organization to manage his former company. Toward the end of the 1970s Pinto was promoted to regional vice president in charge of BFI operations in several states. He turned the reins of Pinrose over to Peter Horhutz.

Resnick testified that Horhutz could not keep from BFI's national headquarters management in Houston the fact that he was periodically dispensing money from a slush fund to make payoffs to local officials. Resnick described an example in West Caldwell:

> *For example, the township administrator of West Caldwell was continuously wined and dined on a daily basis by BFI so that he would keep other companies out of West Caldwell, which he did by pushing forward and enforcing ordinances that required licenses that no other town required, or by requesting that the police stop garbage trucks from other companies from coming into town so that West Caldwell residents had [only] one garbage collector, even though there was no municipal contract. Each resident of West Caldwell could hire any company they wanted, but there was only one company doing business in West Caldwell and that was Pinrose.*

Resnick testified that when BFI upper management became aware of Horhutz' schemes, he and other local managers left the firm and were replaced by new management from out of state. Resnick continued:

> *That new management started soliciting bids in towns that they had never been in before. And as a result they started to receive what could be termed in the beginning subtle pressure from their competitors. It reached a point where a*

number of the competitors went over to the new management and tried to explain to them how business is done in New Jersey. And they would tell them, for example, "You don't eat off my table, I don't eat off yours. That town belongs to us; you're not supposed to be there." BFI continued to do it.

In fact, a part of the reason we settled with BFI [in advance of filing the pending civil case against numerous municipal haulers and their former trade association] was because we felt that they had adequately demonstrated that the people involved in the conspiracy on behalf of BFI were no longer employed there, and that as of roughly 1982, they had broken off from the conspiracy and had now become victims of it. The sole exception to that was John [A.] Pinto, which was why we refused to include him in the settlement and insisted upon proceeding with him.

The fact that up until the early 1980s subsidiaries of the first and second largest waste hauling companies in the nation—Waste Management, Inc. and BFI, respectively—have had some involvement in conspiracies in restraint of trade points out the need for continuing vigilance in policing the morals of the marketplace. BFI and Waste Management subsidiaries have been accused of such conspiracies in Ohio, Florida and Georgia.

On October 29, 1987, Ohio Waste Systems, Inc., a Waste Management subsidiary, and BFI of Ohio and Michigan, Inc., a BFI subsidiary, both pled guilty to federal charges of conspiracy to allocate customers and fix prices in the Toledo, Ohio area from February, 1981, through November 1, 1982. Each subsidiary was fined $1 million. On August 15, 1988, the Ohio Attorney General settled a civil antitrust lawsuit against BFI; BFI of Ohio and Michigan; BFI's regional vice president for the east central region; BFI of Ohio and Michigan's vice president and district manager; Waste Management of North America, Inc.; Waste Management's regional vice president for the northeast region and president of Michigan Waste Systems, Inc., Industrial Disposal Division, a subsidiary of Waste Management; Ohio Waste Systems; and the general manager of Ohio Waste Systems. Without admitting any wrongdoing the corporate defendants agreed to pay $700,000 to numerous government customers of trash collection services represented by the Ohio Attorney General and to refrain from allocating customers, rigging bids or fixing prices.

BFI of Georgia, Inc., and its manager pled no contest to federal charges of conspiracy to allocate customers in Georgia during the late 1970s. The company was fined, and the individual was incarcerated for 45 days. In the same case Georgia Waste Systems, Inc., a subsidiary of Waste Management, and its general manager were convicted. The firm was fined, and the individual was incarcerated for 45 days.

Waste Management of Florida, Inc., d/b/a United Sanitation Services, pled no contest in January, 1988, to federal charges of conspiring to allocate customers in Broward and Dade counties in Florida and was fined $1 million. The chief operating officer of United Sanitation Services, a division of Waste Management of Florida after January 31, 1980, pled guilty to an antitrust charge and was sentenced to 14 months in prison, a fine of $200,000 and community service. The general manager of United was found guilty of unlawful customer allocation and sentenced to two years probation, a fine of $10,000 and community service.

The two companies have publicly denied the existence of a national price fixing scheme. In cases where they have admitted price fixing and other anticompetitive practices, officials of both companies have said the offenses were isolated incidents and deviations from corporate policies. Indeed, there has not yet been a successful charge that Waste Management or BFI have engaged in customer allocation conspiracies at the direction of corporate officials in company headquarters.

OWNERSHIP OF CUSTOMERS

It is a common commercial practice for customer lists and the goodwill associated with them to be sold as part of the sale of a business. Nonetheless, carters frequently sell customers to one another for high multiples of monthly revenues—often 20 times—despite the absence of sufficient goodwill or customer contracts to justify the extravagant prices. The persistence of this practice constitutes indirect but compelling evidence of continuing allocation agreements, or at least a strong ethic of noncompetition. It could also indicate confidence—usually not misplaced in light of traditional industry mores—that other firms will see no advantage in risking a price war with a hauler that provides its newly acquired customers with satisfactory services at reasonable prices. The likelihood of the collusion scenario increases as the prices charged the new customers prove excessive.

A BPU statute and regulation require that a collector wishing to sell property to another hauler must apply to the BPU for approval. Customer accounts have often been transferred, with the BPU's routine approval, as part of the sale of an entire business. On rare occasions accounts have also been sold, with Board approval, without any indication that tangible assets are also being sold. Recently the BPU, uncomfortable with the potential of such "naked sales" of customers to restrain trade, directed its staff to propose a rule that would prohibit the practice. At present, even in the case of customer sales ancillary to the sale of a business, the BPU specifically requires the seller to notify the customers that it is discontinuing service to them and that they can avail themselves of the new collector's services or those of any other collector licensed to do business by the BPU.

By allowing the sale of customers as property, however, the current interpretation of the statute and regulation hinders competition, free entry into the industry and route consolidations for improved efficiency. The BPU approval process encourages collectors to view their right to service customers as immutable property. This attitude persists despite the absence of written contracts between collectors and their customers, the fact that either party can terminate the arrangement at any time, and the collectors' inability to recover through tariff revisions either the purchase price for customers or the price of a covenant not to compete. Consequently, a collector breeds considerable animosity if he tries to lure a stop away from another hauler through normal price or service competition.

Moreover, the expense and delay that go along with an application to purchase customers (in order, for example, to consolidate a route while avoiding retaliatory animosity from a hauler that may have paid 20 times monthly fees for its customers along the route) discourages attempts to obtain them. Finally, encouraging the sale of customer accounts, rather than turnover through normal competition, serves to drive up prices in the industry, because nonregulated prices or prices in violation of tariff limits must be charged in order to cover the costs of account purchases.

Meanwhile, the BPU has ordered haulers to list or register their customers with the Board. This encourages (at least mildly) a proprietary attitude toward such customers—the very attitude which government should work feverishly to discourage.

A UNION WITH A SORDID PAST AND AN UNCERTAIN FUTURE

The history of Teamsters Local 945 is inextricably intertwined with some of the most notorious mobsters in New Jersey history. The local is within the jurisdiction of IBT Joint Council 73. According to the Teamsters' official roster of local unions, Local 945 is authorized to represent warehouse, industrial and sanitation workers in northern New Jersey. It has approximately 4,500 members employed by about 175 companies. According to the union's auditors, approximately 1,200 of the members are from the solid waste industry employed by about 127 companies. In a complex overlap of jurisdictions with several other Teamster locals in the same area, 945's representation includes department store, apartment maintenance, auto repair and specialty shop workers in addition to trash collection drivers and lifters. Until defeated by ILA Local 6 in a recent election, 945 represented Newark City employees in sanitation and certain other areas.

In addition to the 127 companies contracting with Local 945, four solid waste collection companies in New Jersey—employing less than 100 union members—are affiliated with other Teamster locals—172, 331, 560 and 671. According to the BPU's most recent census, as of January, 1988, there were 661 licensed haulers in New Jersey. Therefore, 530 collection companies operate without any union members. The influence of Local 945 is, nonetheless, significant because many nonunion carters tend to gear their employee wages and benefits to those available to union members. In addition, the unionized companies employ over half of the approximately 3,200 private sector sanitary workers in New Jersey.

An SCI survey of 10 major nonunion shops indicated several reasons why unions have not represented their employees:

1. Workers rejected union representation in authorized National Labor Relations Board elections. Local 945 won only one out of seven elections from 1982-87.
2. Drivers and lifters were relatives of the owners and felt no need to unionize.
3. There is a lack of union organizing activity, some companies experiencing no Local 945 organizing activity in as much as 20 years.
4. Benefits and wages paid to nonunion workers were comparable to or better than those available to union workers.

The Roots of Corruption and the First Disappearance

Revelations concerning the unsavory activities of Local 945 extend back to 1958 hearings before the New Jersey State Senate. Witnesses testified that members of the haulers' trade association were required to make annual contributions toward the purchase of a luxury car for John Serratelli, a 945 business agent. On February 10, 1959, Serratelli was indicted along with Alfred Lippman, a trash contractor, on state charges that Lippman paid Serratelli $4,000 in bribes to secure labor peace. Two weeks later, Serratelli was again indicted by an Essex County grand jury on charges that he, along with Thomas C. Viola (later chairman and chief executive officer of SCA Services, Inc.) and Crescent J. Roselle, arranged to rig bids for the Belleville contract in 1955. Serratelli disappeared. The case against the remaining defendants was dismissed by the court in 1962 after the prosecution had presented its case.

The Fox Guarding the Chickens

From June 3, 1959, through March 1, 1961, Teamsters International President James R. Hoffa (who disappeared on July 30, 1975, and is presumed murdered) placed 945 under the "trusteeship" of the notorious, recently deceased

Anthony (Tony Pro) Provenzano, then president of Local 560 in New Jersey and of Joint Council 73, the Teamster umbrella group for northern New Jersey. During the period of the trusteeship, Provenzano, a Genovese/Gigante crime organization member, was indicted for doing the same thing charged against Serratelli—taking bribes for labor peace—and asserted his Fifth Amendment privilege 44 times before the U.S. Senate Labor Rackets Committee. He was convicted of extortion in 1963 and spent four years in federal prison. In 1978 and 1979 Provenzano was convicted for labor racketeering in New York and New Jersey, respectively. He was serving a 21 year sentence on those offenses when he died in federal prison on December 12, 1988. Provenzano had also been sentenced to life imprisonment in New York for the 1961 murder of union dissident Anthony (Three Fingers) Castellito.

More Disappearances and Deaths

After the Provenzano trusteeship, Michael Ardis became 945's president. In 1964 he appointed John (Johnny Coca-Cola) Lardiere, a Genovese/Gigante organization member, as business agent. Previously, while working as a business agent for Retail Clerks Local 1262 in Newark, Lardiere worked for Best Sales Co., a Newark and Paterson-based marketing firm owned by the late Gene Catena, the brother of Gerardo (Gerry) Catena, a Genovese/Gigante capo. Best, at the time, was busy using its muscle to force supermarket chains in New Jersey and New York to purchase its line of detergents and other household goods.

In early 1971 the Internal Revenue Service began to audit Ardis' tax returns. On June 18, 1971, following a meeting at 945's union hall, Ardis disappeared and is now presumed dead. Joseph Campisano, an official at 945 since the days of the Provenzano trusteeship, replaced Ardis as president.

Lardiere was imprisoned in August, 1971, for refusing to testify before this Commission. In July, 1972, Lardiere's wife Carolyn was poisoned to death when she took a drink from a soft drink bottle which the medical examiner said contained enough arsenic to kill 50 people. In April, 1977, Lardiere was finally released from incarceration for continuing to refuse to cooperate with the SCI. Less than 24 hours later, he was shot to death outside a motel in Bridgewater.

Vito Cariello became secretary-treasurer of 945 in early 1972. In 1964 he had been convicted of conspiracy while a bookkeeper with Teamster Local 819 of New York. Under the Landrum-Griffin Act of 1959, Cariello had been barred from holding a significant union office for a period of years after his release from prison; however, he had served as 945's office manager and a trustee of the employee benefit funds until 1972, since those positions were exempt from the statutory debarment.

For a long time the dominant figure at 945 was Ernest P. Palmeri, Sr., a business agent and director of the local's sanitation department from 1969 to 1981. Palmeri, an associate of the Genovese/Gigante organization, was convicted of issuing worthless checks in 1963.

Federal witness Patrick Kelly has reported that Ernest Palmeri owed his appointment as business agent to the late Peter (Lodi Pete) LaPlaca, who was until his death in 1979 the Genovese/Gigante outfit's chief operative for controlling sanitation in North Jersey and a capo in that organization. Ernest married LaPlaca's daughter. LaPlaca had been a bodyguard and chauffeur for New Jersey mob boss Willie Moretti, who had been murdered in 1951. Kelly also said that Tino R. Fiumara (now in prison) received 25 percent of all deals and gave shares to LaPlaca.

LaPlaca was sentenced to eight years in a federal prison for bribing a juror during the 1956 income tax evasion trial of Newark mobster Abner (Longy) Zwillman. According to 1971 testimony given before the Senate Permanent Investigations Subcommittee by Michael Raymond, a fellow inmate, LaPlaca served as a jailhouse counsellor for his gang's boss, Vito Genovese. Raymond also said that LaPlaca bragged that he "had [bodies] planted like potatoes" throughout New Jersey.

During the 1977 trial of former Bank of Bloomfield President Robert Prodan, Arnold Daner, a participant in the government's witness protection program, testified that Prodan told him that Ernest Palmeri "was a very powerful man in New

Jersey, . . . nothing ever goes on in the state, in the garbage industry, without his blessing one way or another."

A confidential SCI source, a former official of a major New Jersey hauler, told the SCI that during the Palmeri era Local 945 required his company, and others, to pay tribute in order to remain free from union harassment. He asserted that when vehicles were purchased or sold their prices were inflated, and the difference between the actual value and the artificial value was paid to the union. The confidential source further maintained that one could do nothing major in the industry without talking to Palmeri; and if a firm's activity infringed asserted property rights, Palmeri or another union representative would contact the offending party to maintain the status quo.

Palmeri; Joseph Campisano, then 945's president; Vito Cariello, then its secretary-treasurer; Flen Chestnut, then a business agent; and Frank Smith, a business agent, were indicted in October, 1978, convicted and sentenced in July, 1979, to prison terms for receiving kickbacks and loans from various banks in return for depositing funds from union benefit plans in the banks. Palmeri was also convicted of violating the RICO statute.

At a late 1974, meeting with Alexander Smith, then-President of the State Bank of Chatham, regarding a two percent kickback on 945's deposits with the bank, Frank Rando, an official of another union, threatened to cooperate with the FBI's investigation of the kickback scheme. Palmeri responded, "[I]f you like breathing, you won't even think such things, let alone say them." Campisano, who also attended the meeting, added, "Frank, he's not kidding. Al [Smith] doesn't know anything. You know too much."

George A. Franconero, a once-prominent New Jersey attorney, provided information to the FBI on Ernest Palmeri's role in the misappropriation of 945 pension funds. On March 6, 1981, the morning after Palmeri and other convicted 945 officers received notices requiring them to surrender and begin their prison sentences, Franconero was shot to death in the driveway of his home.

Palmeri was paroled from federal prison on December 15, 1984, and retired to Florida.

On appointment by the Executive Board of 945, Flen Chestnut, whose convictions had been overturned by the federal Court of Appeals, served the rest of Campisano's three-year term as president. While earning an annual salary of $19,500 as a 945 business agent in the mid 1970s, Chestnut received over $80,000 in loans, a large part of which were unsecured, from four different banks receiving deposits from 945 or its benefit funds. Although the government proved that Chestnut knew he would be unable to repay the loans when he obtained them, that he obtained them not on the basis of his financial ability but because of his position with the union, and that he failed to disclose prior loans when he applied for additional loans, it could not prove all the essential elements of the criminal offenses necessary to sustain Chestnut's convictions. Chestnut was elected president of 945 for two more terms and retired at the end of 1987.

The current 945 president is Joseph C. Abbate, who was replaced as vice president by Robert Fusco, formerly a business agent. Abbate is a criminal associate of the Genovese/Gigante crime organization, subordinate to capo Louis (Streaky) Gatto. He has a close relationship with Gatto's son Joseph and son-in-law Alan Grecco, who control an illegal gambling operation within 945. Abbate was convicted of counterfeiting in 1968 and spent time in federal prison.

A Jailed "Manager" for the Union

On October 17, 1980, Anthony J. Rizzo and his solid waste collection company, A. Rizzo Carting, Inc., were indicted by a State Grand Jury in the *Trade Waste* case for conspiracy to restrain trade. On May 4, 1981, Rizzo was appointed by Chestnut to succeed Palmeri as a 945 business agent, after having worked briefly as 945's office manager. In testimony before the SCI, Chestnut recalled Rizzo's background as a former solid waste collection company owner and "a chief negotiator for management" in justifying his selection of Rizzo. Rizzo pled guilty to a solid waste utility monopolization offense on September 21, 1982, and was sentenced on April 22, 1983, to serve six months in jail. With time off for work credits and good behavior, his jail term lasted less than 3½ months.

Incredibly, Rizzo only spent time in jail in the evenings and on the week-ends, since he was granted work release to continue his job with 945. The stage for this aberration was set in the plea agreement, which provided that an injunction prohibiting Rizzo from engaging in the solid waste collection or disposal industry was "not intended in any manner to prohibit his ability to serve as a union official or employee." It is unfathomable why such a provision would have been allowed in the plea agreement given the history of Local 945 as a known facilitating mechanism for anticompetitive behavior in the industry and given Rizzo's role in the *Trade Waste* conspiracy.

In its memorandum to the sentencing judge of February 24, 1983, the State proclaimed that, as secretary of the Trade Waste Association (TWA) in the mid-1970s, Rizzo was second only to association president Carmine Franco "[i]n terms of importance to the conspiracy." Like Franco, Rizzo was one of the original trustees of the TWA when it was incorporated in 1976.

The first time that Harold Kaufman, the State's inside informant, met Rizzo—at a restaurant meeting of the TWA—Rizzo boasted that "he was sent to New Jersey from New York to form and enforce the Association."

Rizzo had been indicted in New York on August 16, 1979, on a charge of grand larceny for allegedly allowing haulers to dump in the Ramapo, New York, landfill before its official opening hours and withholding from the town the fees he and his codefendants received. Other defendants in that case included the landfill's operators, Carmine Franco, the president of the TWA, and his brother Salvatore, as well as Tobias DeMicco, Jr., an associate of the Genovese/Gigante criminal organization. The charges were dismissed on January 17, 1980, because the judge found that the underlying facts indicated in the indictment would, if proven, constitute the crime of theft of services, not grand larceny.

Also indicted in the Ramapo landfill case were the DeMicco family firm, Valley Carting Corp. of Ossining, New York, a Franco family firm, Sal-Car Transfer Systems, Inc., of Hillsdale and the landfill's operating company, Sorgine Construction Services of N.Y., Inc., of Spring Valley. The original successful bidder to operate the landfill was Sorgine Construction, owned by Eugene Sorgine of Mahwah. The Franco company was the second-lowest bidder. After Sorgine received the contract, there was a fire at his home. Shortly thereafter, Sorgine sold his business to the Franco brothers.

Rizzo is the nephew of Joseph Schipani, a Genovese/Gigante organization soldier and an indicted member of the now-defunct Brooklyn Trade Waste Association. Schipani was released from prison in May, 1973, after serving a term for federal income tax evasion.

For a former convict with no substantial union credentials, Rizzo advanced rapidly within the 945 hierarchy. He became director of the sanitation division shortly after his appointment as a business agent. In 1983 Rizzo was elected secretary-treasurer of Local 945, a position to which he was reelected on December 20, 1987. He also serves as office manager, a trustee of the local's pension fund and a trustee of its welfare fund. By virtue of his position as a local officer, Rizzo is also an unpaid delegate to IBT Joint Council 73 and to the International. All officers, including Rizzo, serve as business agents.

Rizzo testified at the SCI under a grant of immunity preventing use of his statements against him in a criminal proceeding. He testified that former 945 president Flen Chestnut recommended him for the job of office manager, a position which Rizzo assumed shortly before becoming a business agent. Rizzo cited his "past experience of labor negotiations, sitting on management side for the sanitation industry" as the reason for Chestnut's interest in hiring him to work at the union. Rizzo recalled that Chestnut advised him that the union was "going to need help to administer their office due to . . . [t]he prior administration . . . leaving office under a mandate of some kind." It is ironic that the "mandate" was a federal law barring convicted labor offenders from holding union office, and that Chestnut's partial solution was to enlist a person then under State indictment for an antitrust offense.

Cashing-in Before Union Service

From 1972-75 Rizzo was a partner in Telestar Sanitation of Lodi. In 1975 he became the sole owner of A. Rizzo Carting, which was incorporated

on October 20, 1978. On February 28, 1978, A. Rizzo Carting bought 84 commercial accounts, a covenant not to compete and 100 rear-end load containers from S & H Trucking, owned by Charles P. (Peter) Hunkele, for $75,000, $50,000 and $25,000, respectively (a total of $150,000). Rizzo paid $35,000 down and gave a note for the balance at 6¼% interest per annum.

Three years later, on April 30, 1980, Rizzo agreed to sell 77 commercial accounts, a covenant not to compete and 100 rear-end load containers to Morris County Sanitation Service, Inc., owned by Alexander S. Spagnuolo of East Hanover, for $143,850, $76,720 and $53,430, respectively, (totaling $274,000) inclusive of 6% annual interest. Morris County assumed the remaining debt owed by Rizzo Carting to Hunkele and gave Rizzo a note for the balance, payable in monthly installments. At this time Rizzo was less than six months away from indictment in the *Trade Waste* case. When Rizzo was fined $25,000 in that case, $21,642.14 of the fine came from payments on the Morris County notes.

In a BPU order dated December 23, 1981, approval was obtained for the transfer of remaining Rizzo Carting assets on April 15, 1981. In the putative deal Rizzo Carting supposedly sold 11 commercial accounts, a three-year covenant not to compete and several roll-off containers and compactors to Schaper Disposal Works, Inc., owned by the Franco family, for $125,000, $125,000 and $48,000 respectively. The containers and compactors had a net book value of $4,255. The total of $298,000 was to be paid through the issuance of a non-interest bearing note payable in 25 equal monthly installments of $11,920 commencing one month from the date of closing.

In late 1985, the BPU revoked Schaper's hauling permit because it failed to comply with an earlier board order to merge with its parent company, Carmine Franco and Co., Inc. The SCI could find no BPU records which indicated that Schaper Disposal actually made any payments to Rizzo. The attorney who represented both parties to the would-be transaction reported to the Commission that "the company's records are incomplete," and the company never produced substantiating documentation called for by the SCI.

Thus, the Morris County firm paid a generous price for a three-year covenant not to compete and for customer accounts from a man who would soon abandon the industry to become a union official. Meanwhile, Franco's company obtained several lucrative accounts, as well as documentation of costs for tax writeoffs, apparently without actually paying for them. Rizzo was comfortably ensconced at Local 945 and had already remunerated his mob-associated overseer.

In its 1981 annual report to the BPU, Rizzo Carting reported a profit on the sale of property and routes of $364,014 in addition to interest on notes of $24,472 in 1981. Although Rizzo Carting listed its gross revenue for 1981 carting operations as only $87,257, it reported that it paid Schaper Disposal $174,617 for subcontracting work. In addition, a BPU audit of Rizzo Carting's books revealed that between April 30, 1980, and December 31, 1981, Rizzo withdrew $153,430.60 from Rizzo Carting as loans (actually constructive or liquidating dividends) for "personal expenses." Rizzo never sought BPU approval for the loans as required by statute.

Troubling Consultations

For many years Local 945 has entered into multi-employer master collective bargaining agreements that have operated for three-year periods. Managements of firms operating largely in the commercial sector have negotiated under the auspices of the Waste Management Association and its predecessor, the Trade Waste Association (TWA). Firms concentrating on municipal contract work presently bargain under the auspices of the New Jersey chapter of the National Solid Wastes Management Association. Previously, they relied on the now-defunct Municipal Contractors Association (MCA). The last negotiations resulted in master contracts to operate from July, 1987, through June, 1990. Individual companies and 945 have also executed independent or "me too" agreements, which have embodied terms virtually identical to those found in the master agreements.

Rizzo testified that he and Ira Drogin, Esq., retainer counsel to 945 and to its pension and welfare funds, served as principal negotiators for the July, 1987, master agreements, with then-vice president Abbate and then-business agent Fusco

in attendance. In addition, 12 rank and file members chosen by their peers formed a 945 negotiating team. Then-local president Flen Chestnut did not attend the negotiations on grounds that he was recuperating from a bizarre kidnapping incident. Both Rizzo and Chestnut testified that the latter was kept apprised of the progress of the negotiations.

On December 3, 1987, Rizzo testified at the SCI regarding discussions he had with Carmine Franco during the July, 1987, master agreement negotiations. Although his conversations with Franco involved the most important event on the union's agenda and occurred only five months earlier, Rizzo demonstrated remarkably poor memory during his SCI testimony:

CHAIRMAN HENRY S. PATTERSON, II:

Q. Did you or didn't you have discussions with Mr. Franco with regard to the contract during the course of negotiating the contract?

A. We may have had discussions with reference to the contract, certainly.

BY DEPUTY DIRECTOR CLARK:

Q. What was the substance of those discussions?

A. Our demands.

Q. Could you elaborate on that?

A. What the demands were, what we expected to achieve, what language was important to the union.

Q. Was Mr. Franco a representative of the management negotiating teams?

A. No, he was not.

Q. Why did you discuss the negotiations with Mr. Franco?

A. I gave that courtesy to any employer who called up and spoke to me, who met with me.

Q. Are you saying that that's how the discussions were initiated, by Mr. Franco?

A. No, I'm not.

Q. Who initiated the discussions?

A. I don't recall.

Q. How many discussions did you have with Mr. Franco during the negotiations?

A. During?

Q. During the negotiations?

A. I don't recall.

Q. Approximately?

A. No, I don't recall.

Q. Were these telephone discussions or in person?

A. I believe both.

Q. In person at what locations?

A. I don't recall.

Q. Was it at your office, his office or—

A. It may have been.

Q. Did Mr. Franco give you advice as to what the union's position should be during these discussions? . . .

A. No, he did not.

Members Underreported

Compared to the national averages for sanitary service workers and for general industry drivers and laborers, 945 members' wages are in the upper range of the norm recorded by the Federal Bureau of Labor Statistics. Wages for driver members of 945 are presently $11.24 per hour. Helpers currently earn $9.99 per hour. Rank and file members pay $17 per month in dues.

Meanwhile, the number of members who will receive a pension under the Local 945 Pension Fund is minute. There were only 44 sanitation service retirees or their beneficiaries as of February, 1988. At that time the highest paid pensioner was receiving $4,044 per year. Six were receiving between $3,000 and $4,000; six between $2,500 and $2,999; and three between $2,000 and $2,500. The rest were receiving less than $2,000 annually. Local 945 does not reciprocate with other pension funds, even if they are Teamster affiliated.

Three management representatives and three union representatives serve on the boards of

trustees of the employee benefit funds. Local 945's executive board appoints the union representatives, and employers select the management representatives. Each fund has an agreement and a benefit plan. The latter is defined more particularly by the respective boards of trustees. In the case of the welfare fund, each employer that participates in a master agreement is required to contribute $52 per employee each month.

The SCI discovered evidence of significant underreporting to the union of eligible members. Employers are obligated to report such information in accordance with collective bargaining agreements, which provide that an employee must be discharged if he has not joined the union within 30 days of employment. Under the master contract which expired on June 30, 1987, when an employer failed to report employees as union members eligible for pension and welfare fund benefits, it saved $2,160 per employee per year.

In one situation the SCI discovered that Fiorillo Brothers of New Jersey, Inc., a carting firm partly owned by Genovese/Gigante organization capo Matthew (Matty the Horse) Ianniello, reported in 1985 just three workers to Local 945 as members eligible for pension and welfare fund benefits. During the same year the firm reported $2.2 million in gross revenues to the BPU. Another firm, I.S.A. of New Jersey, reported gross revenues of $5.3 million in 1985. Nonetheless, it reported only four employees to 945 as members eligible for union benefits.

Up until the 1987 master agreements, contracting employers were required to provide to 945 annual lists recording the seniority status of their employees. The 1987 agreements mandated that this information be updated every three months. Local 945 forwards to employers monthly computer-generated updates (check-offs) of employee rosters for updating and billing.

Master agreements have provided that employers must submit written notice to the union whenever an eligible employee is hired. The employers must also notify shop stewards of new drivers and helpers within 30 days of hiring.

The union also relies on information from shop stewards and business agents to keep track of unreported employees. However, a recent list of Local 945 shop stewards indicated that only 48 out of 117 solid waste industry shops had stewards or alternates. There are certain incentives to serve as shop steward, such as not having to pay dues when serving as a steward for a shop with 15 or more members. In addition, the master agreements provide that a shop steward will be the last to be laid off in a reduction in force. The obvious lack of stewards is all the more significant since the master agreements require the management of each shop to recognize alternate shop stewards, as well as stewards, designated by the union.

In his SCI testimony Rizzo referred to fears of problems with management as the reason why so few union members consent to act as stewards. He testified that these fears persist despite the fact that the union acts aggressively to protect its rank and file members.

Collection companies are required to report the number of employees to the BPU. Rizzo testified that he could not recall the union ever requesting to review these records at the BPU to determine if the numbers have corresponded to those reported to Local 945.

For approximately three years 945 has utilized an audit procedure to identify delinquent employers, but this system has made only token progress toward wholesale compliance. Under the master agreements employers must give the union's auditors access to their books and records, including payroll records. Where this access has been denied, 945 has brought suit to force compliance. However, audits that have been allowed have not identified the significant failure of many companies to report all covered employees.

Curb Potential for Evil

Although evidence confirming the union's role in sustaining property rights schemes is fragmentary, its potential as a device to increase the power of customer allocation agreements is undeniable. A union is an effective tool for mob-influenced cartels where numerous firms employ low-skill labor and are vulnerable to short-term strikes. Therefore, labor regulators and law enforcement agencies should exercise continuing vigilance in monitoring the activities of Local 945. In addition, existing laws should be strengthened to ensure that unsavory elements are kept out of the union once they are identified.

REGULATORY FAILURES

The Department of Environmental Protection regulates environmental aspects of the solid waste industry. It registers all collectors and disposal facilities, as well as all trucks used by them; jointly administers waste flow regulations with the BPU; enforces environmental standards; and oversees taxes imposed on landfills to fund disposal planning, recycling initiatives, resource recovery and safe site closure.

Whatever problems may exist in the environmental regulation of the solid waste industry, it cannot be denied that government must make the effort to ensure a safe environment. The same cannot be said for economic regulation, which substitutes for the free enterprise system that usually orders the marketplace. New Jersey is the only state with utility-style regulation of hauling rates. This economic regulation of solid waste collection has been an unmitigated failure.

The Commission has concluded, with great conviction, that encouragement of competition—along with simultaneous policing of the morals of the marketplace—is in the public interest, while rate regulation is not. On the other hand, the Commission believes, with equal conviction, that government should exercise a high degree of control over the scarce disposal facilities. Because of government franchises and waste flow mandates, such facilities have monopolistic power and must be prevented from abusing this power by overcharging customers.

Failure of Price Controls

Incompatible With Collector Competition

The Solid Waste Utility Control Act of 1970, the only such law in the nation, treats all solid waste collectors—even tiny "mom and pop" operations—like traditional fixed capital utilities. Utilities are normally considered to be natural monopolies, serving areas which generally could not be served by competitors because of the need for large initial investment to meet consumer demand at peak periods. On the other hand, the solid waste collection industry is characterized by relatively low fixed costs and the absence of substantial economies of scale. It is particularly unsuitable, therefore, for utilities-style regulation.

Utility regulatory agencies, such as the BPU, were created to serve as a substitute for the competition which is absent in a natural monopoly situation. Ironically, this was never the legislative intent behind the New Jersey system of solid waste regulation. A review of the statute indicates the Legislature's intent that the BPU serve as a safety valve in the event that competition did not work in this industry, rather than as a substitute for competition. The Legislature proscribed anticompetitive practices on the part of collectors and disposers of solid waste. Unfortunately, it also classified collectors as public utilities, thus ensuring the employment of general utility concepts in an industry which should be governed, except for scarce disposal facilities, by competition.

The BPU sets tariff (rate) schedules for each collector handling commercial-industrial or private residential (scavenger) accounts. Some tariff schedules contain more than one hundred separate rates, varying the prices per cubic yard to account for frequency of pickup per month, size and type of container, type of waste and the like. Even a recently-circulated draft of a proposed standardized tariffs petition for a typical solid waste collection company numbers 60 pages.

The rate setting system—called rate base, rate of return—sets tariffs to cover the collector's operating expenses (in certain cases imposing artificially low figures for officer salaries, secretarial salaries, auto expenses, etc.) plus a "reasonable" rate of return of approximately 12.5% on invested capital. Officially, a collector may not charge less nor more than his tariff without applying for and receiving approval from the BPU. It is evident, nonetheless, that the ability of solid waste collectors to compete is directly related to their ability to charge rates that vary depending upon the relevant market. Thus, the rigid and constrictive machinery of rate regulation

has, ironically, stifled the potential competition which the Legislature intended to encourage when it created the system.

In the classic utility situation participants have exclusive franchise areas and a guaranteed customer base so that costs, revenues and profits all remain relatively stable. Although the BPU until 1985 had statutory authority to award franchises for solid waste collection when it decided that the "public interest" required it, the agency never sought to make such a determination, primarily because of a shortage of manpower. This statutory authority was withdrawn in another indication of the Legislature's desire to promote competition in this marketplace.

Without the assured markets afforded by franchises, commercial and private residential solid waste collectors are encouraged to ensure the continuity of their customers in other ways. However, where prices are inflexible, as in the present regulated environment, the ability to acquire or retain customers through competition is limited. Thus, by not establishing franchise areas the system virtually invites collectors to allocate—and thus stabilize—customers by embracing illicit agreements or anticompetitive "ethics." In short, while professing to allow competition for customers, the present regulatory system actually discourages competition.

Burden on Small Operators

In 1970 there were more than 2,000 licensed collectors in New Jersey. At the present time there are approximately 670, not counting municipal, private industrial and landscaper licensees. There is significant evidence that the demise of many small firms was hastened or caused by the red tape and expense associated with the current regulatory system.

Solid waste collection is a labor-intensive endeavor. A small collector's capital investment may, therefore, only include one or two trucks and, perhaps, some other equipment and a garage. If it has depreciated its trucks for five years, it may not have a rate base upon which a rate of return can be applied. In theory, adhering to the standard system would drive it out of business. Indeed, the system punishes the efficient operators—those who keep a truck running for more than five years and who work to keep expenses down—because their rate of return is applied to a smaller rate base than that utilized by an inefficient collector, and they are allowed less money to recoup expenses. In some instances, however, small haulers' rates have been determined without strict reference to a rate base where none could be found and the usual alternative would produce insufficient revenues to allow continued operations.

A firm attempting to comply strictly with this complex system would have to file for tariff increases or BPU approval every time it purchases a truck, buys a telephone, leases new equipment, adjusts wage scales, etc. Although the BPU's staff tries to assist "mom and pop" haulers in the preparation and filing of their petitions, often even small firms feel obliged to hire an attorney and an accountant. There is a fee of at least $1,500 for the participation of the Public Advocate's rate counsel, which intervenes in cases involving rates for residential services. A rate case may therefore cost the petitioner thousands of dollars (recoverable through tariff increases as regulatory costs), even though it may never go to full hearing before an administrative law judge. Indeed, the BPU reported that during one four-year period ending in August, 1986, just 16 rate case petitions had gone to hearing, instead of being stipulated and negotiated among the petitioners, BPU staff, deputy attorneys general and rate counsel.

By statute utilities must obtain BPU approval prior to all long term financing, encumbering their property, and entering into a lease. The Board has determined that truck purchases require advance approval, regardless of source of financing. Until the last couple of years, it usually took months even to obtain BPU approval for something as simple as the purchase of a truck. It currently takes an average of eight weeks to obtain the necessary approval, with the BPU staff submitting requests to the Board for batch approvals. Meanwhile, the BPU has sent a letter to banks telling them not to lend money to haulers for the purchase of trucks if BPU approval has not yet been obtained. While these approvals are being sought, collectors cannot buy extra trucks in anticipation of effectively competing for additional business. Collectors are also prevented from quickly purchasing additional trucks in order to properly service existing customers when main-

tenance problems develop or lines at disposal facilities diminish the amount of trips that a given truck can make in a work day.

Some collectors simply lease their trucks in order to avoid the cumbersome BPU approval process and meet competition expeditiously. This procedure itself may run afoul of the requirement that contractual obligations for more than one year require BPU approval as indebtedness. It also adds unnecessarily to the cost of operations.

The BPU review process unwarrantedly duplicates that performed by lending institutions. These institutions, by virtue of their access to more information regarding the credit histories of collectors, are better qualified than the BPU to judge whether the transaction should proceed. More importantly, the BPU's statutory and regulatory requirements make it difficult for collectors to compete and, at times, to provide safe, adequate and proper service.

Delays and Inflexibility

Of approximately 1,700 pending rate cases currently before the BPU, about 1,400 are solid waste cases. The BPU spends about 70 percent of its time on solid waste matters.

Long delays are common in rate cases. A collector must first give 30 days notice of the effective date of its proposed rate change. The BPU has eight additional months in which to enter its final order.

In the early 1980s the BPU implemented a system for expedited rate cases. This process has been used to more quickly allow the rates to reflect rapidly escalating increases in labor and disposal costs. The system does not allow a simple pass-through, however. It is intended that rates of return revealed by the haulers' preceding annual reports will be calculated. If a rate of return exceeds that which the BPU authorized in prior rate cases, the entire amount of increases for labor and disposal expenses may not be approved. Follow-up reviews are sufficiently backlogged, however, to preclude expeditious identification of collectors with excessive returns on equity.

Until recently, anywhere from two to four months might pass before even an expedited case was concluded. Thus, there was still significant delay or lag time before collectors faced with rising labor and disposal costs could obtain rate relief. In the last couple of years collectors have been allowed to submit their own calculations of the proportionate amounts of expense increases that they should be allowed to pass along to customers. However, if a hauler's computations are substantially inaccurate, as determined by subsequent BPU review, he may become ineligible for expedited treatment for up to five years. So far the ineligibility sanction has not been imposed against any collector, although up to 10 haulers have been required to grant refunds to their customers.

Far from encouraging competition, the present system actually discourages it. When they initially filed tariffs with the BPU, collectors were required to designate service areas where they intended to provide service. A collector must petition the BPU in order to increase its service area, even though the BPU has never exercised its statutory authority to award exclusive franchise areas to collectors, an authority it lost in 1985. Only a few of the largest haulers have service areas encompassing the entire state. Delays in granting increases in service areas merely serve to discourage the very competition the Legislature sought to promote.

The rigid tariffs prevent collectors from responding quickly and competitively to market pressures and opportunities. A company whose tariff is higher for the same service cannot compete with a lower-priced competitor by reducing rates. Moreover, since not all haulers comply with their tariffs, those that do comply are at a severe competitive disadvantage.

Tariffs Ignored

Tariffs have failed to control prices. They have been routinely ignored by collectors. A random survey by the SCI confirmed that the majority of haulers are not in compliance with tariffs on file. Most customers were not only unaware that they were being charged more than their collectors' tariffs allowed but did not know that collection firms are required to adhere to tariffs in the first place. Indeed, both BPU officials and industry representatives, in testimony before the Commission, agreed that there are more haulers in violation of tariffs than in compliance.

Widespread lack of compliance with the regulatory system has created serious competitive imbalances. Those firms that attempt to comply with the regulations are at a significant competitive disadvantage. Thus, the government, unable to control wholesale violations, is actually encouraging those who flout the rules of the marketplace and disadvantaging those who play by the rules. At its logical extreme such a policy drives honest businesses from the industry, leaving the field to those whose moral values are wanting.

Many collectors, especially among the "mom and pop" operations, have not petitioned for individual tariff adjustments since the initial price freeze of 1971. Many of those simply went out of business as they approached the point at which a tariff increase would be necessary. Others have merely made adjustments to reflect pass-throughs approved by the BPU for uniform expense increases, such as landfill fees and across-the-board wage increases.

Despairing of its ability to enforce tariffs, from December 30, 1983, to June 30, 1984, the BPU offered an amnesty to collectors to encourage them to seek long-delayed tariff adjustments. The amnesty was even offered to disposal operators, who, on account of their limited numbers and vital effect on the marketplace, should have been regular compliance targets. For the six-month period collectors and disposers could apply for increased tariffs commensurate with their actual fees. Although there would have been no penalties for earlier tariff violations, the companies would have had to refund the previous overcharges. There was very little response to this program because the refunds alone would have been a substantial expense for the transgressors.

Controlling "Spaghetti"

The present system of setting rates tailored to the capital expenditures of individual collectors has produced some incongruous local markets. For example, 10 "scavenger" haulers pick up residential trash in Teaneck. The SCI's review of BPU records revealed that one hauler has never filed a tariff for Teaneck and the others' last filing dates were in 1972 (one), 1980 (one), 1981 (two), 1982 (three) and 1985 (two). In 1985, tariffs that could be located in the BPU files varied from $6.00 per customer per month to $11.08. In 1989, they varied from $20.66 to $25.27. Waste Management Association executive director Edward M. Cornell, Jr., testified at the SCI regarding the frustrations which such rate disparities create:

> *The whole tariff situation when it comes to solid waste is unbelievably scrambled up like spaghetti. I don't believe there's much rhyme or reason, and a lot of it gets into the base rate of return. . . .*

Collectors have routinely evaded accurate reporting of income and costs. Financial statements submitted to the BPU in support of tariff increases showed an average rate of return of 12% of total revenues. Thus, a commercial-industrial customer charged $100 per month should, on average, have yielded a profit of $1 per month or $12 per annum. If, however, as has often been the case, the collector purchased the customer account for 20 times the monthly revenues ($2,000), this would suggest that the carter would be content with a return of nothing on its investment for 20 months. Carters compensate for such loss of income through various means. One source of offsetting revenue is municipal contract accounts, whose charges have not been regulated by the BPU. When their revenues from municipal contracts are added to those from their regulated commercial accounts, some collectors' total returns have been up to several times the rate of return allowed for commercial operations.

In approving requested tariffs the BPU relies on financial statements submitted by the collectors. BPU officials acknowledged to SCI investigators that the statements may significantly understate revenues and overstate costs, but they maintained that, with a permanent staff of only 14 devoted to rate proceeding expense evaluations, the BPU still lacks sufficient audit staff to effectively challenge the collectors' figures.

The futility of price regulation in collection is apparent when one considers the relative ease with which participants in customer allocation agreements may defeat the regulatory scheme. Excess profits are easily generated by overstating the size of containers, not completely emptying containers during pick-up, picking up containers not yet full or reducing the pressure of compacting machines. Faced with such conduct, customers will typically opt simply to change carters. If,

however, there is customer allocation in the area, the customers will not be able to change collectors. The tariffs remain, but the customers still suffer the effects of any customer allocation conspiracies. In such situations regulation of unit prices has little impact on the actual charges paid by customers.

Customers have, for several reasons, tended to avoid strong reactions to overcharging. Their competitors have generally faced the same gouging from their collectors. In addition, until recently, solid waste collection costs have been a nominal percentage of customers' total operating costs and could therefore be readily passed on to their own customers. Finally, the reputation of the industry for having racketeer involvement has deterred complaints.

Insufficient Resources

Although the BPU has been acutely aware of monopolistic pricing, customer allocation, tariff violations and unreported income, its enforcement efforts have been hindered by very limited resources. The highly complicated, BPU-supervised regulatory system in New Jersey has imposed significant costs on collectors with little corresponding benefits for customers.

In Fiscal Year 1989 approximately $5 million will be spent to support the activities of the Division of Solid Waste in the BPU—over one third of the BPU's total expenditures. In addition the BPU's Audits Division and its Regulatory, Economist's and Secretary's offices all supply additional resources for solid waste regulation. The Board's regulatory operations are funded by an assessment of 1/6 of 1% of all utilities' intrastate gross operating revenues (about $1.5 million coming from solid waste utilities). Presently, there are 73 staff positions in the Division, and four investigators in a Special Projects Unit reporting directly to the BPU. Only 21 people are devoted to investigations for the entire state. This is, in the SCI's opinion, not nearly enough investigators to enforce tariffs, waste flow directives and other regulations for an industry with hundreds of participants of varying sizes.

The BPU reported in its 1988 budget request that as a result of staff shortages there is inadequate review of assorted taxes intended to promote the safe closure of landfills and creation of resource recovery plants; taxes such as solid waste services tax, resource recovery investment tax, solid waste importation tax and host community benefit tax.

Lack of Compliance With Waste Flow Mandates

A Necessary Hardship

In recent years New Jersey has transformed from a net solid waste importer to a net solid waste exporter. Presently, 55 percent of the State's solid waste is transported to out-of-state facilities. Only a few in-state landfills have survived recent Department of Environmental Protection (DEP) efforts to protect the environment. Much of New Jersey's trash is now hauled to transfer stations and compacted before shipment out-of-state. The transfer stations are intended to be an interim solution to the disposal crisis created by closures of landfills. Eventually, costly resource recovery plants (incinerators) will dispose of the vast majority of New Jersey's solid waste, with the residue from burning deposited in select, high-tech landfills. One resource recovery plant is presently in operation in Warren County, and 19 others are in various stages of siting, planning and construction in another 18 counties.

The DEP has the authority under the Solid Waste Management Act to provide general direction of waste flow between county solid waste management districts. The BPU has the authority under the Solid Waste Utility Control Act to direct individual solid waste collectors to haul waste to specific disposal sites and to mandate that certain disposal facilities receive particular waste flows. DEP and BPU have initiated waste flow redirections through joint rule making.

Exercise of this authority is intended to prolong the useful life of existing landfills and to ensure the economic viability of official transfer stations having reliable, long-term disposal contracts. Eventually, the waste flow regulations will provide a sufficient stream of waste for resource recovery plants to ensure their economic success. On the other hand, there is great disparity in disposal costs, depending on the facilities man-

dated by the waste flow orders. Many collectors and their customers believe that existing transfer stations charge much more than necessary. Higher rates to encompass the costs of operating the transfer stations were hastily approved on an interim basis by the BPU in 1987, pending further hearings on the reasonableness of those rates. Hearings are still pending before administrative law judges.

Meanwhile, abrupt changes in waste flow orders, usually when a landfill is closed or its volume severely limited, have resulted in hardship for individual haulers. Moreover, the tremendous increases in disposal costs result in "rate shock" for their customers.

If, for example, a change in waste flow requires a collector's trucks to travel greater distances or to wait in lengthy lines at a different disposal facility, the collector may have to operate more trucks in order to adequately service its existing customers. However, the BPU process for approval of additional trucks may take up to several weeks, and the collector cannot pass increased costs on to its customers in the meantime.

If the high cost of authorized transfer stations—and, later, resource recovery plants—is deemed a necessary hardship in order to wean society from scarce and environmentally unsound landfills, then close economic regulation of the disposal facilities is essential. State officials have joined official transfer station operators in blaming the high costs of the transfer stations on expensive long-term tipping fees at out-of-state landfills, as well as the expense of shipping the trash to those distant locations. However, affected municipalities, collectors and operators of unsanctioned facilities have contended that alternative long-term contracts may be obtained at far lower costs. Therefore, the SCI proposes creation of a Solid Waste Authority, to assimilate all economic regulatory functions pertaining to disposal facilities and to devote top priority to determining the reasonableness of their rates. (As will be discussed later, environmental regulatory aspects of disposal facilities should remain with the DEP.)

Widespread Violations

Even when collection rates have been increased to reflect the increased disposal costs, there is a tremendous economic incentive for haulers to violate waste flow orders. And given the woefully inadequate size of the BPU and DEP enforcement staffs, there is little fear of discovery and sanctions. Many collectors are continuing to bill their customers the full cost of the authorized transfer stations—which have raised dumping costs in some counties by 100 percent or more—even though they are depositing the trash at unauthorized, but cheaper disposal facilities.

These haulers are making far more money than they are entitled to and have an unfair competitive advantage over compliant collectors. Indeed, in such cases the excess profits have rendered irrelevant the rate setting activities of the BPU. If a collector can lawfully make a $1 profit on a $10 tariff with a $5 disposal cost, and it continues to charge its customer $10, even after saving $2 by dumping in violation of a waste flow order, the collector has just tripled its profit on the transaction from $1 to $3. The tariff becomes irrelevant to the profit picture, and the ability to successfully avoid the waste flow order becomes all-important.

State officials have publicly stated that, as of March, 1988, up to 20 percent of the waste that should have been going to county transfer stations was being shipped directly out of state in contravention of waste flow orders. Flawed estimates of anticipated volume and the successes of some recycling programs account for some of the discrepancy. However, despite improved compliance as a result of recent enforcement efforts against blatant violators, waste flow violations remain substantial. The DEP has estimated that as of December 19, 1988, Essex County was receiving only 51 percent of expected waste volume at its authorized transfer stations, while Passaic and Bergen counties were receiving 74 percent and 39 percent respectively.

In May, 1988, officials of the Hackensack Meadowlands Development Commission (HMDC) announced that trash volume from Hudson County had increased by almost 50 percent since March 1, 1988. This astronomical swell in trash flow to the relatively inexpensive HMDC landfill—which

is intended to receive only Hudson County garbage—coincided with Bergen County's opening of a nearby transfer station where the dumping rate is nearly four times higher. Meanwhile, the Bergen facility's trash flow immediately dropped almost 40 percent.

In May, 1988, it was revealed that the Bergen County Utilities Authority (BCUA) has taken in as little as 2,000 tons of trash a day since its North Arlington transfer station opened on March 1, 1988. Previously, the BCUA had received 3,750 tons at its now-closed Kingsland Landfill, where disposal rates were one-quarter the transfer station fee.

On September 9, 1988, the BCUA filed suit against Sal-Car Transfer Systems, Inc., of Hillsdale, National Transfer, Inc., of Lodi, DiBella Sanitation, Inc., of Park Ridge and Garofalo Recycling and Transfer Systems, Inc., of Garfield, Economy Container and Recycling Services of Park Ridge, and South Trans Co. An undercover investigation by the BCUA, DEP and BPU allegedly revealed that the companies—private transfer station operators—were illegally bypassing the official transfer station. The suit also alleged the unlawful commingling of medical waste with ordinary garbage. The Attorney General's Office intervened in the lawsuit in order to enhance enforcement of waste flow orders. In addition, the BCUA identified Fiorillo Brothers of N.J., Inc., of Lyndhurst, Anchor Carting Corp. of Weehawken, Crystal Carting Corp. of Mahwah, United Carting of Fairview and Miele Sanitation of Closter as firms that had drastically reduced the amounts of trash they had brought to the county's authorized transfer station.

The unofficial transfer stations and haulers have countered that the BCUA improperly gave a monopoly to its transfer station without regard to other facilities' ability to handle all of Bergen County's garbage at lower cost. On March 22, 1989, Superior Court Judge Arthur T. Lesemann enjoined the defendants from avoiding the BCUA's transfer station and rejected arguments that it constituted an illegal monopoly. He noted that he had determined that the waste flow directives were lawful, "not whether they are wise."

In January, 1989, the Executive Director of the Warren County Pollution Control Financing Authority, which owns the state's only operating resource recovery plant, estimated that one third of the plant's 600 ton per week shortfall in anticipated volume was attributable to haulers violating waste flow directives. That would account for $500,000 of the facility's financial deficit recorded in its first six months of operation.

Official estimates for the Middlesex County Utilities Authority revealed that prior to the time when its Edgeboro landfill in East Brunswick was closed to trash from other counties with more expensive transfer stations, the facility received about 2,000 tons of trash each day. By June, 1988, however, six months after the restrictions took effect Edgeboro was accepting as much as 2,747 tons per day.

Enforcement of waste flow orders is a difficult task, involving the monitoring of several thousand trucks per day. Enormous excess profits are available to a collector who routinely violates waste flow directives. Fred S. Grygiel, the BPU's Chief Economist, testified at the SCI as to the powerful motivations prompting rampant cheating to avoid waste flow mandates:

> *. . . [W]e shouldn't be too surprised if people take their waste to the least cost option, inclusive of any additional transportation costs. That's what we should expect, notwithstanding the existence of a piece of paper that says you are not supposed to do that.*
>
> *The motivation is obvious. They would like to increase the margin at which they are operating. They can do that by simply violating an order. The order, on its face, may be unsound economically; it may attempt to be doing something that is so offensive to rational economics that even economists would recommend that people violate the law and do it, because society would be better off if they did it.*
>
> *The waste flow or the use of waste flow orders is, to me, just not a viable way to go. Attempting to enforce a waste flow order in an open economy . . . would require a legion of people checking trucks and going through garbage to find out where it came from.*

Cheating on waste flow orders gives the greatest competitive advantage to the collectors that are the most flagrant violators; and violations are, indeed, brazen and widespread. For example, on January 4, 1989, the BPU revoked the license of Fiorillo Brothers of New Jersey, Inc., and barred five principals of the firm from the solid waste industry in New Jersey based, in part, on violations of waste flow orders. The company, which serves commercial customers throughout northern and central New Jersey, had, according to the BPU, continued to serve all of its accounts; yet for several months it had not shown up at a single authorized transfer station. An appeal of the BPU order is pending.

Fiorillo Brothers contended that it had begun to deposit its trash in designated transfer stations in October, 1988, seven months after the BPU filed its complaint. In addition, in May, 1988, Fiorillo Brothers filed a federal lawsuit against the BPU and DEP alleging that the state's waste flow rules are an unconstitutional impediment and burden on interstate commerce, as well as a violation of federal antitrust laws. In September, 1988, the federal district court for New Jersey dismissed the suit on the ground of abstention, opting to await the outcome of State proceedings. The court retained jurisdiction over certain financial issues, however. In a similar suit by J. Filiberto Sanitation, Inc., the federal district court on December 17, 1987, granted summary judgment in favor of DEP, BPU and the Hunterdon County Utilities Authority. This decision was upheld by the Third Circuit Court of Appeals on September 8, 1988.

On September 28, 1988, the Superior Court in Passaic County ordered Fiorillo Brothers to stop bypassing that county's designated transfer station. The Passaic County Utilities Authority had sued the firm for alleged violations of waste flow orders. The county has two other suits pending against haulers on similar complaints.

Also in March, 1988, the BPU charged Jersey Carting, Inc., of East Rutherford with unlawfully bypassing the Union County transfer station and with dumping Morris County waste in the Essex County transfer station and another unlicensed transfer station in Newark. The firm was charged with additional waste flow violations on June 1, 1988, involving Union, Essex and Bergen counties. On the same date Round Lake Sanitation Corp. of Monroe, New York, was charged with collecting garbage in Morris, Essex, Passaic, Union and Somerset counties without taking it to the designated transfer stations in those counties.

In late April, 1988, the Union County Utilities Authority (UCUA) sued seven haulers in state court to prevent their bypassing a designated transfer station operated by Automated Modular Systems (AMS) in Linden. The UCUA investigated waste flow violations after it was learned that AMS, which is supposed to receive 900 tons of waste per day under a contractual agreement with the authority, was receiving only about 700 tons daily.

On May 25, 1988, the BPU issued orders to show cause against Joseph George, Inc., of Woodbridge; Industrial Haulage Co., Inc., of Lyndhurst; United Carting Co., Inc., of Fairview; Angelo Miele & Sons, Inc., of Montclair; Five Brothers Carting Co., Inc., of Jersey City; and Carmine Franco and Company, Inc., of Hillside, alleging that they illegally bypassed transfer stations in Morris, Union and Passaic counties. Altogether approximately 25 companies have been charged by the BPU or the DEP with violating waste flow rules. On January 25, 1989, United Carting agreed to pay $4,000 to settle its case without any admission of guilt. On February 15, 1989, Five Brothers Carting consented to pay a $5,000 penalty without admitting to any wrongdoing, and Angelo Miele & Sons agreed to pay $2,500, also without acknowledging any guilt.

On January 8, 1989, the BPU even brought administrative charges against the operator of the Mercer County Transfer Station, National Waste Disposal, Inc., of Trenton, for, among other allegations, bypassing its own facility in favor of the less expensive Parklands Landfill in Burlington County and falsifying documents presented to Parklands to make it appear the waste had been collected in Burlington County. According to the BPU, National Waste collected trash from its commercial customers in Mercer County, charged them the $77.49-per-ton rate set by the Mercer County Improvement Authority, took the garbage to Parklands—where the rate is about $36 per ton—and pocketed the difference. The matter was sent to the Office of Administrative Law for hearings.

Bogus Recycling

In pursuing waste flow violations the BPU and DEP have encountered the claim that the trash is merely being "recycled" rather than shipped in violation of waste flow directives. However, after some recyclable material has been removed, remaining or residue waste is often shipped directly out-of-state, with huge amounts bypassing the authorized transfer stations. Thus, sham recycling operations severely complicate the job of enforcement.

On May 4, 1988, the BPU charged Recycling Center of New Jersey, its owner, Joseph Scugoza (also president of Haulaway, Inc., of Hoboken), Recycling and Salvage Corp., and its owners, William Major, Jr., of Toms River and Christopher Yonclaus of Holmdel, with violating waste flow orders under the guise of a recycling operation. BPU investigators have claimed that mixed and unseparated solid waste from retail stores throughout the State has been collected at the site and illegally sent directly to out-of-state disposal facilities. The affiliated companies both operate from 170-180 Frelinghuysen Avenue in Newark. Recycling and Salvage contends that it is engaged exclusively in interstate commerce (only receiving and shipping waste from New York to an out-of-state landfill) and is, therefore, not subject to BPU regulation. Meanwhile, Recycling Center maintains that it operates as a recycling facility, also not subject to Board jurisdiction, which, at worst, merely bypasses the authorized transfer station with shipments of residual waste separated from the recyclable material.

The BPU issued an administrative cease-and-desist order against the two companies in August, 1988, and a hearing to ban the principals of the operations from the solid waste industry began in late 1988, with BPU action not expected until early 1989.

Scugoza is still facing administrative charges of conspiracy to monopolize and restrain trade in connection with the *Trade Waste* case. Additionally, Scugoza and Haulaway were indicted by a State Grand Jury on August 29, 1988, for alleged theft by deception and falsifying records. Scugoza and Haulaway's general manager and a driver were also charged with racketeering, the manager with theft by deception and the driver with falsifying records. Allegedly, between August, 1985, and April, 1987, the defendants charged customers for landfill taxes that defendants never had to pay, because the trash deposited was falsely depicted on waste origin/disposal forms as clean fill. Scugoza and another of his companies—Grand Street Welding and Truck Repairs, Inc., of Hoboken—were charged in a second indictment with falsifying records. He and his general manager were also charged with conspiracy. The second case involves allegations that employee wage reports were falsified before filing them with the State.

On October 13, 1988, the DEP issued a summons to J. Filiberto Sanitation, Inc., of Chester Township to appear in municipal court for allegedly operating a transfer station without a permit and failure to apply for a permit, charges each carrying a $2,500 maximum fine. Filiberto Sanitation countered that it is merely operating a long-standing recycling operation. The company and two of its officers are currently defendants in the civil *MCA* case alleging unlawful restraints in the market for municipal solid waste hauling contracts.

"Mixing" for Excess Profits

Numerous instances of illegal waste "mixing" have been reported. Collectors who serve more than one county have falsified origination forms in order to send loads containing trash from two or more counties to the county with the cheapest disposal site.

Special agents of the SCI, with assistance from BPU inspectors, were able to observe and document an example of such a waste flow violation by a major hauler, BFI of North Jersey, Inc. The Dakota Diner, a BFI customer, is located in Pine Brook, a locality in Montville in Morris County. Waste flow directives require that all trash generated in the Montville area of Morris County be dumped at the Morris County Transfer Station, Inc. (MCTS). The MCTS is only a five-minute drive from the Dakota Diner.

On three occasions SCI surveillances discovered a BFI truck picking up trash from a six cubic yard container at the Dakota Diner in Morris County and dumping this trash, along with Passaic County trash, at the Passaic County Transfer Station

(PCTS) on Iowa Avenue in Paterson. Since disposal rates at the MCTS were then approximately $113 per ton and the rates at the PCTS were about $65 per ton, BFI was able to save $48 on each ton of Dakota Diner trash dumped in Passaic County instead of Morris County.

On all three occasions the driver of the BFI truck signed a certification on a waste origin/waste disposal (O & D) form falsely indicating that all of the trash from the loads came from municipalities in Passaic County. Relying on the false O & D forms, the weighmaster at the PCTS prepared weigh tickets showing that all the waste came from Passaic County.

In testimony at the SCI, both the driver and his lifter insisted that they had always taken the Dakota Diner trash to its authorized disposal site, the MCTS. Both also denied that any of their superiors at BFI ever told them to dump any trash at improper locations. When confronted with the fact that he had been observed dumping Dakota Diner trash at the PCTS, the driver admitted that he had done so. He testified that his superiors did not know about the waste flow violations, and he claimed that he committed them as a matter of convenience in order to avoid long lines at the MCTS. The driver did not offer any explanation as to why his dispatchers and supervisors would not be able to determine that he was not in a line at the MCTS. Moreover, the SCI determined that during the period in question the lines at the MCTS were not excessive.

The Dakota account had previously been handled by Louis Pinto and Sons, Inc. In March, 1988, Pinto's president, John Pinto, notified the Dakota that, due to increases in disposal costs, the price would increase from $500 to approximately $3,500 per month. After receiving similar quotes from other haulers in the area, the Dakota accepted BFI's offer of approximately $1,000 per month, starting April 11, 1988. Invoices and payments corroborated this price.

Ironically, BFI's BPU-approved tariff for the particular service in that area only allows it to charge approximately the amount that was quoted. Conservatively figuring disposal of 72 cubic yards (three 6-yard containers per week for 4 weeks) of Dakota trash per month, 21.8 tons (using BPU's conversion factor of one ton for every 3.3 cubic yards of waste) of this trash would have to be dumped every month. At the $113.35 per ton MCTS fee, monthly disposal costs for Dakota trash would have been at least $2,471. If all this trash were dumped at the PCTS, where the fee was $65 per ton, there would still be a monthly cost of at least $1,417. Under both scenarios BFI would be losing money, but dumping at the PCTS instead of the MCTS would substantially diminish the losses BFI would sustain in its competition with Pinto for the Dakota account. Thus, the waste flow violations helped BFI to sustain its below-cost pricing of the Dakota account.

Complex Issues

Waste flow directives must juggle complex variables. For example, one town, Parsippany-Troy Hills, had agreed to be the location of one of Morris County's transfer stations (and the recipient of lucrative host municipality fees) on DEP's assurances that waste flow orders would route the garbage trucks along interstate routes 80 and 280 and not on municipal roads. Municipal police circled the area to enforce the ban. Meanwhile, loaded rear loading "packer" garbage trucks exceed the federal 17-ton rear axle weight limitation under the Federal Bridge Formula, which applies on interstates in New Jersey pursuant to *N.J.S.A.* 39:384(b). State Police patrolled the interstates issuing weight violation citations.

On May 10, 1988, in response to a challenge to the waste flow order brought by a dozen haulers, an Administrative Law Judge recommended that loaded trucks be allowed to use certain local roads. Lawyers for the BPU responded, however, that the collectors could modify or replace their trucks, or reduce their loads, to comply with the federal weight limitations. The haulers argued that new or half-full trucks ultimately would result in higher collection rates for customers. Finally, on June 10, 1988, the DEP and BPU decided to allow the full rear loading packers entering the facility to use local roads pursuant to a joint DEP/BPU local routing study.

Rate Averaging

Disposal rate averaging—being considered by the Legislature for Passaic, Essex, Union, Morris, Somerset, Bergen, Hudson and Middlesex coun-

ties and by the Office of Administrative Law at the request of the BPU for Essex, Bergen, Hudson and Passaic counties—would diminish the incentive to violate waste flow orders. With everyone paying a uniform rate within New Jersey, there would be less opportunities to avoid hauling trash to the designated county transfer stations. Disposal costs would be reduced in all counties except Hudson, the only county currently allowed to dump in the Hackensack Meadowlands Development Commission sites.

Enforcement Dilemma

When it comes to waste flow violations, inadequacy of potential legal sanctions is not the problem. Available civil and administrative sanctions for violations are diverse and potentially severe. They include issuing orders to comply; civil actions for injunctive relief or receiverships and costs of investigation and litigation; and administrative or civil actions seeking penalties of up to $50,000 per violation per day. (The $50,000 per day violation applies to enforcement proceedings brought by the Commissioner of the DEP. In actions by the BPU for breaches of its regulations, there is no per diem calculation of penalties, which may not exceed $1,000 for a first offense, $5,000 for a second offense and $10,000 for third and subsequent offenses.) In addition, DEP may revoke or suspend the registrations of violators, and the BPU may revoke or suspend their certificates of public convenience and necessity.

Moreover, any person who knowingly violates any of the provisions of the Solid Waste Utility Control Act is guilty of a crime of the fourth degree and subject to imprisonment for up to 18 months, a fine of up to $50,000 for an individual and $100,000 for a corporation (potentially increased to $300,000) and restitution of up to double the pecuniary gain to the offender or loss to the victim. In addition, if a corporation or one of its high managerial agents is convicted of an offense in conducting the affairs of the corporation, the court may request the Attorney General to institute appropriate proceedings to dissolve the corporation, forfeit its charter, revoke any franchises held by it or revoke any certificate authorizing it to conduct business in New Jersey. Finally, a collector billing a customer for disposal fees higher than those actually incurred by the hauler may be charged with theft by deception.

In addition to a 4-person Special Projects Unit reporting directly to the BPU, a 17-member bureau within the Division of Solid Waste is responsible for enforcement of all BPU solid waste regulations, including waste flow violations, for the entire state. This is not nearly enough investigators, given the immensity of their task. In addition, they are poorly equipped, often lacking adequate automobiles and having no radios. (The four Special Projects investigators have walkie-talkies.) Furthermore, these investigators lack sufficient law enforcement powers to permit them to stop and detain violators for investigative and charging purposes.

Within the DEP's Division of Solid Waste Management, there are only two investigators that devote a portion of their time to waste flow enforcement on a statewide basis. They are part of an 11-person unit, including clerks and other non-field classifications, that devotes only a portion of its time to waste flow violations. This is also an absurdly small amount of resources for a major enforcement problem. State waste flow enforcers also need sufficient enforcement powers to enable them to stop those who appear to be in violation and to detain them long enough to gather inculpatory information available in the field.

In early 1986, with statutory authority provided by the Legislature in 1983, the DEP's enforcement personnel (seven at last count) began to issue municipal court summonses for waste flow and other violations. In 1986 there were five waste flow complaints issued in Monmouth County. Four resulted in fines of $625 each and one in a fine of $500. In 1987, two waste flow summonses issued. One is pending, and the other—combined with other charges—resulted in a $225 fine. In 1988, four waste flow complaints were filed in Camden County, and two issued in Monmouth County. Three have not yet been heard, and two—again combined with other offenses—resulted in $5,000 fines each. So far in 1989, 12 waste flow summonses were issued at a State Police roadblock in Cumberland County. Not only have this program's effects been limited to areas of the State where waste flow problems are less severe, but the sparse statistics and nominal fines indicate that its impact is minimal. Moreover, deputy attorneys

general have not been assigned to assist the DEP in the prosecution of the complaints, and attempts to gain assistance from municipal prosecutors have been largely unsuccessful.

Disposal facility operators and the counties and authorities that have contracted with them have not waited for the grossly understaffed State offices to force compliance with waste flow orders. Nonetheless, utility authority surveillance teams not only have meager resources, but also lack law enforcement powers to enable them to confront suspected violators and gather evidence on the spot.

Hunterdon County, which is contractually obligated to ship 30,000 tons of trash a year to Warren County's resource recovery facility, created a three-person task force in 1987, to monitor compliance. A licensed sanitarian and two public health inspectors have mapped out haulers' routes and schedules from data collected from customers. The unit is verifying the information with the collectors and has begun to document violations of orders directing Hunterdon County's trash to its transfer station in Clinton Township for compacting prior to shipment to a Pennsylvania landfill or to the Warren County plant. The program will cost $100,000 annually, with half of that being funded by a State Department of Environmental Protection grant. The County expects that its share of the cost will be recouped in the form of increased revenues at its transfer station.

The BPU has authorized Morris County Transfer Station, Inc. (MCTS) and Chambers Development Company, Inc., to include within their costs for rate-setting purposes approximately $400,000 to provide for personnel to surveil solid waste haulers operating within Morris County. This is intended to ensure compliance with waste flow orders directing trash to Morris County's transfer stations for eventual out-of-state disposal by Chambers. Essex County is also seeking a fee structure that will allow it to add up to 65 additional enforcement personnel to its existing staff of about 20.

In May, 1988, then-Bergen County Prosecutor Larry McClure and County Executive William McDowell announced that staff from the Prosecutor's Office, with assistance, if necessary, from county and municipal police departments, would surveil collectors in order to promote compliance with the state directives channeling waste generated in Bergen County to the Bergen County Utility Authority (BCUA) transfer station in North Arlington. In September, 1988, the Bergen County Board of Freeholders approved ordinances authorizing the County Health Department to enforce compliance with solid waste regulations. The Health Department planned to deputize BCUA employees as inspectors, giving them the enforcement powers of the County Health Department.

On October 12, 1988, the Gloucester County Board of Freeholders agreed to apply for $85,305 in DEP funds (collected from taxes on landfill tipping fees) to apply toward a new $139,305 enforcement program. A two-inspector waste flow enforcement unit, complete with cars, radios and surveillance equipment, will be created. The unit will monitor haulers who either illegally dump out-of-county trash at the Gloucester County landfill in South Harrison Township or who bypass the landfill in favor of other dumps. Gloucester County officials reported that they expected 212,000 tons of trash per year would be deposited in the landfill; however, only 185,000 tons materialized. With the lower volume they warned that taxes might have to rise in order to pay increased tipping fees necessary to run the facility.

In January, 1989, Sussex County hired a private law firm to push for prosecution of waste flow violation cases before the BPU. The Sussex County Municipal Utilities Authority had earlier hired a private investigation firm, which reported that it had uncovered evidence of significant violations of waste flow directives costing the county hundreds of thousands of dollars.

Excluding Undesirables

The most important regulation in the solid waste industry is that which seeks to improve the morals of the marketplace. Once undesirable elements are identified—as violators of dumping, antitrust, waste flow or other laws—they must be eliminated from the industry. Such stringency is necessary because of the tarnished history of the

industry and its importance to the public interest. The authority to eliminate violators must be enhanced, and existing authority must be exercised more effectively.

Missed Opportunity

A major letdown in efforts to ban unsavory persons from the solid waste industry occurred, ironically, when most of the defendants in the State's massive *Trade Waste* antitrust prosecution entered guilty pleas to lesser offenses of monopolization under the Solid Waste Utility Control Act. The initial pleas took place in September, 1982, after six days of jury selection in the first of several trials carved out of the original indictment by the trial court. Unfortunately, the Division of Criminal Justice consented to the entry of so-called Rule 3:9-2 protective orders, which had been urged by counsel for defendants as a condition for their clients' entry of guilty pleas. These orders prohibited the use of the guilty pleas in subsequent administrative proceedings. As a result, the BPU could not automatically revoke the defendants' certificates of public convenience and necessity based on the quilty pleas. In time-consuming revocation proceedings the BPU has had to proceed, at great expense, to again present the same facts underlying the *Trade Waste* case. (Additional facts have also been presented in order to provide further grounds for action against licensees.)

The courts have upheld the BPU's exclusion from the solid waste collection business of the two individuals and two companies that were convicted of violating the Antitrust Act in the *Trade Waste* case. They are Home and Industrial Disposal, its owner Anthony Scioscia, Inter County Refuse Service, Inc., and its president Louis W. Spiegal. Meanwhile, because of the terms of plea bargains, the worst offenders among the conspirators were able to preclude use of their guilty pleas in later proceedings. To bar them from the industry the BPU has so far spent many years and nearly $1.2 million for outside counsel fees.

Then-BPU President Barbara Curran testified at the SCI that the BPU commissioners "were absolutely shocked by those plea bargains." She continued:

> *We were, therefore, in a position of realizing that we were less than at zero. We had a number of meetings and discussions with the . . . Attorney General and with members of his staff, at which point we were told . . . you are not only on your own, but you can't use anything, not even the sentencing reports . . . . In fact, because of the plea bargains, it appeared to us that there was less than an aggressive governmental approach toward cleaning up the solid waste industry.*

BPU Commissioner George H. Barbour testified at the SCI that the Criminal Justice Division "did not consult [the BPU commissioners] before these plea bargainings were entered into and approved by the court."

Expensive Administrative Follow-up Continues

License revocation proceedings have been pursued against six companies and eight individuals that were defendants in the *Trade Waste* case, as well as six other individuals who were not defendants. For various reasons administrative sanctions have not been sought against the rest of the convicted defendants, some of whom presently hold key positions in the industry. For example, one of the owners of one of Essex County's two solid waste transfer stations is Mark L. Mauriello, who also owned Mauriello Disposal, Inc. Both pled guilty. The company was fined $22,500, while Mauriello was fined $2,500, placed on probation for two years and required to perform 100 hours of community service.

The administrative cases have been handled largely by outside counsel paid for by the BPU rather than by deputy attorneys general who normally prosecute such actions before the Board. The private law firms have done a meritorious and thus far successful job in prosecuting the proceedings. Although they have performed the task at less than their private sector fees, through September, 1988, they have billed the State a total of $1,192,829.24 for their services.

The Commission is satisfied that the motivation for using outside counsel was to obtain ex-

perienced trial attorneys who could successfully prosecute the administrative hearings. Nonetheless, experienced deputy attorneys general did try to conclusion in criminal court a few of the *Trade Waste* case defendants. Although the results were mixed, the burden of proof in the criminal cases—beyond a reasonable doubt—was more severe than that governing the administrative proceedings. It seems inconceivable that the Attorney General's Office could not have obtained competent, salaried counsel to satisfactorily pursue the administrative cases. The money saved could have been used to fund continuing investigations, as well as to reduce the present intractable backlog of licensee background checks. Moreover, the presence of a cadre of attorneys with industry expertise would have subsequently benefitted ongoing monitoring activities, which this Commission regards as essential to encouraging competition in the industry.

One case against Carmine Franco, the convicted former president of the now-defunct Trade Waste Association, and Carmine Franco & Co., Inc., has been prosecuted by special counsel for the BPU, Hellring, Lindeman, Goldstein, Siegal & Stern of Newark. That case was transmitted to the Office of Administrative Law (OAL) for a hearing on April 9, 1984. Delayed by extended discovery; the appointment of special counsel in 1985 after a succession of several deputy attorneys general had represented the BPU; numerous motions by both parties; updating of expert reports; amendment of the original order to show cause; 27 days of hearings; a stay by the bankruptcy court; and a briefing schedule, the administrative ruling was finally rendered on April 10, 1987, nearly three years to the day after the case went to the OAL!

Five months later, on September 4, 1987, the BPU upheld the Administrative Law Judge's decision to revoke the company's certificate of public convenience and necessity and to bar Franco from further participation in the solid waste collection or disposal industries. Citing its authority to impose per diem penalties for each day that Franco and the company earned "monopoly profits" as a result of their anticompetitive activity, the BPU imposed penalties of $1,121,000 on each. The BPU could, however, find no authority for the imposition of approximately $415,000 in costs and attorney fees. The decision is presently on appeal to the courts.

Pending the outcome of the appeal, Carmine Franco still holds a position of prominence in the industry. He is president of Northeastern Recycling and was named on June 23, 1987, to an advisory board of waste management and recycling professionals by the Royal Bank of Pennsylvania, a commercial bank with executive offices in Narberth, Pennsylvania, including a newly-formed waste management division. At the time of his appointment to the advisory board, Franco was touted as the "best" in his "field" by Royal Bank's chairman. On August 11; 1987, Royal Bank announced that it had arranged a $4.5 million credit facility for S. W. Investments, Inc., an affiliate of Penpac, Inc. Penpac has contracts to transfer solid waste in Passaic, Essex and other counties in Northern New Jersey to landfills in Pennsylvania.

Meanwhile, in late 1985 the BPU revoked the collection permit held by Schaper Disposal Works, Inc., because it failed to comply with an earlier order to merge with its parent company, Carmine Franco & Co., Inc. Without necessary board approval, Piccini Sanitation, Inc., a third Franco company, took over the municipal contract with Hawthorne. On July 18, 1986, the BPU revoked Piccini Sanitation's license and barred Salvatore Franco, Carmine's brother, from owning or managing a solid waste company in New Jersey because of his role in circumventing regulations prohibiting individuals and companies from holding more than one permit to collect solid waste.

Another action against five companies convicted in the *Trade Waste* case and certain of their officers is being prosecuted by another special counsel for the BPU, Saiber, Schlesinger, Satz & Goldstein of Newark. Respondents in that proceeding are Arace Brothers and Frank Arace; Custom Disposal Service Corp., Reene C. DiNardi and John DiCanto; Haulaway, Inc., Joseph Scugoza and Mario Goffredo; Metro Disposal Co., Inc., Anthony Scaffidi, President, Michael Grillo, V-P, and Richard A. Massaux and William Rieger, shareholders; and Statewide Environmental Contractors, Inc., Charles A. Macaluso, Robert Macaluso, Joseph Macaluso and Frank J. Lotano, Jr.

On July 15, 1988, the BPU fined Metro Disposal $325,000 for leasing trucks to an unlicensed carting company, A-1 Carting Co., renting garage

space to it and billing its customers on Metro Disposal invoices. A-1 had operated as a trash hauler since 1978 without a BPU certificate, even though it signed a consent order in 1980 agreeing to be permanently enjoined from operating as a solid waste collector until it received a certificate of public convenience. The conduct will be considered as another ground for barring the principals of Metro from the solid waste industry in New Jersey.

At the end of 1987, the BPU created a four-person Special Projects Unit (assisted by an accountant from the Solid Waste Division staff) to prosecute cases, including waste flow violations, that could lead to license revocations. The Unit was funded with $125,000 of excess funds anticipated by the General Fund from BPU-collected fees, fines and penalties and reports directly to the Board. The BPU has continued, without success, to seek legislative approval for an increase in assessments (beyond the presently allowed 1/6 of 1% of licensed utilities' gross revenues) in order to fund additional enforcement efforts. The BPU has also been prevented from hiring additional investigators, even though the funding could come from penalites assessed against enforcement targets.

Disclosure Law

On December 14, 1983, Assembly Bill 901, the Waste Industry Disclosure Law, was enacted. There is no other waste industry licensing law like it in the country. The law seeks to diminish anticompetitive and other illegal activity by providing a mechanism to bar from the solid and hazardous waste industries in New Jersey firms and key individuals with criminal records, habits or associations.

If effective enforcement of A-901 were to successfully eliminate nefarious elements from the industry, there would be almost no risk involved in deregulation of collection price controls. Customers would receive quality service at fair prices as a result of competition unimpeded by those intent on keeping prices artificially high. The Commission believes that strengthening the Disclosure Law and providing sufficient resources to its enforcers is, therefore, a cornerstone of regulatory reform.

Although the Legislature intended the law to take effect in mid-1984, a constitutional challenge delayed its activation. The law was upheld by the federal Third Circuit Court of Appeals on December 19, 1985, and the lower court's injunction against its enforcement was dissolved on January 23, 1986. Nonetheless, the law's implementation did not substantially begin until mid-1986, when the staff was reassembled.

As of October, 1988, the Disclosure Law had been invoked against 10 companies and their owners. Two delicensed companies, American Environmental Services, Inc., and United Hospital Services, Inc., were hospital waste haulers. Another, Active Waste Transport Co., Inc., hauled primarily sewage sludge. Administrative proceedings were pending against a waste oil recovery facility, two solid waste haulers and a transfer station. License denial proceedings were pending against two alleged solid waste hauler "fronts" and the would-be operator of a transfer station. Regulators believe that another 10 companies have withdrawn their applications as a result of A-901 scrutiny.

Disclosure Law Procedures and Standards

The Disclosure Law embodies a strict licensing procedure for approximately 1,630 entities within the solid and hazardous waste industries. The procedure requires that the companies, and over 6,520 of their officers, directors, partners, key employees and holders of equity or debt liability submit disclosure statements to the DEP. The Attorney General, through the Solid/Hazardous Waste Background Investigation Unit of the Division of State Police, performs a background investigation, including a criminal records check. The Division of Law in the Attorney General's Department of Law and Public Safety evaluates the information revealed by each investigation and prepares a report in which it advises whether DEP is precluded by the standards of A-901 from granting a license. In appropriate cases the Division of Law may issue interrogatories or subpoenas specifically authorized by the law to aid in the investigation. The Division also represents DEP in litigation arising from DEP's decisions to deny or revoke licenses.

The law provides that the DEP shall not approve a company's license if an officer, director, partner or key employee has been convicted of an enumerated crime, including racketeering or an antitrust violation, and has failed to meet certain rehabilitation criteria. A license shall also be denied if the Attorney General determines that such person does not possess a reputation for good character, honesty and integrity, and the person cannot refute the Attorney General's reasonable suspicion with clear and convincing evidence. Finally, if such person earns a living in a manner which violates the criminal or civil public policies of New Jersey, a license shall be denied. These grounds, as well as specified misconduct involving the industry or the licensing process, may be cause for revocation of existing licenses. An applicant or licensee may restore itself to good standing by severing the affiliation with the person who caused it to be disqualified.

Lengthy administrative and appellate court proceedings have been prominent hurdles in the DEP's (as well as the BPU's) attempts to deny or revoke the licenses of solid and hazardous waste industry participants. The Disclosure Law is strong in many respects. Nonetheless, its rehabilitation provisions still offer opportunities for delay and reflect a lack of resolve in eliminating nefarious elements from the industry. The power to exclude undesirable elements from the waste industry should not be thusly diminished.

On January 20, 1988, the New Jersey Supreme Court affirmed an Appellate Division decision which held that the Casino Control Commission has the authority to ban reputed mobsters from Atlantic City casinos even though they have never been convicted of a crime. The solid and allied hazardous waste industries are affected with a public interest every bit as important as the casino industry. Therefore, equally strict exclusion standards should apply. There is too much history of, and opportunity for, midnight dumping, mixing of hazardous and solid waste materials, waste flow violations, customer allocation and bid rigging schemes, and union manipulations to warrant an overly-tolerant attitude. If collectors are to be granted the benefits of competition, high standards of morality in the marketplace should be rigorously applied.

Intractable Backlog

The statute requires submission of the Attorney General's investigation report to DEP within 120 days of the receipt of a disclosure statement from an applicant for an initial permit. However, as a result of a lack of resources, it has proven impossible to meet the deadline in many cases. Moreover, an intractable backlog exists in the investigations of entities already in operation for which there is no statutory deadline.

In late 1987, then-Attorney General Cary Edwards requested a report from the divisions of State Police and Law in his Department, and from the divisions of Solid Waste Management, Hazardous Waste Management and Regulatory Affairs in the Department of Environmental Protection, concerning the adequacy of resources to properly perform tasks called for by the Disclosure Law. Their January, 1988 report detailed a "serious backlog of investigations," despite "commendable efforts" by limited staff. A follow-up report to the Attorney General in October, 1988, drew some dramatic conclusions:

> *With that gross degree of understaffing, it should come as no surprise that the investigations on over **half** of the waste entities have not yet even **begun**, let alone been completed. Only about 100 companies—1 in 16—have been fully reviewed since A-901 took effect in June, 1984. At that pace it will be well beyond the year 2000 before the entire industry is reviewed even **once**, and that allows for no post-licensing compliance checks to insure continuing adherence to A-901's standards.*
>
> *The problem may, in fact, be even worse. In addition to the 1600 entities, there are **another** 2400 entities (with about 7200 key individuals) which have claimed exemption from A-901 as alleged handlers of only self-generated waste. Yet the acute resource shortages mean that neither [Law and Public Safety] nor DEP can determine which, if any, of those exemptions were fraudulently obtained. Thus there may be many more entities subject to A-901 beyond the 1600 upon which the re-*

source needs set forth in this report (and the January report) were based. [Emphasis in original.]

Missed Priorities

Awash in license applications, the Disclosure Law enforcers have failed to expeditiously pursue the most obvious candidates for exclusion. For example, Matthew (Matty the Horse) Ianniello, a known mobster, and Benjamin Cohen, two owners of Fiorillo Brothers of New Jersey, Inc., a Lyndhurst hauler, were convicted in December, 1985, of racketeering, mail fraud and tax evasion for skimming millions of dollars from Manhattan bars and restaurants they secretly owned and controlled. Both remain in prison. Based on this background, the DEP should have moved against the company, Ianniello and Cohen as one of its first priorities. (Ianniello, a capo in the Genovese/Gigante crime organization, is also serving a 13 year sentence on a May 4, 1988, conviction for rigging concrete bids on several Manhattan construction projects.)

Despite the fact that Ianniello and Cohen were listed as owners of Fiorillo Brothers on the disclosure forms filed with the DEP in July, 1987, the DEP did not begin a debarment action against them or their company until June 3, 1988, weeks after the press reported the matter. Indeed, the State Police had not even begun its background checks on the company and its principals because Ianniello and Cohen had simply declined, claiming constitutional grounds, to supply certain information and fingerprint cards. The State Police were awaiting action by the DEP and the Attorney General to enforce full disclosure.

Meanwhile, the BPU had decided in March, 1988, to itself hear a delicensure action against Fiorillo Brothers for violations of waste flow orders. The BPU moved on May 16, 1988, to amend its original show cause order against Fiorillo Brothers, seeking debarment on the additional grounds of the convictions against Ianniello and Cohen. While the DEP's complaint proceeded before an administrative law judge—and despite the firm's application on November 17, 1988, to buy out Ianniello's and Cohen's interests—the BPU revoked the operating certificate of Fiorillo Brothers of New Jersey, Inc., on January 4, 1989, based on the waste flow violations, Ianniello's and Cohen's convictions and overcharging violations. The BPU also banned Ianniello, Cohen and three other principals of the firm from doing business in New Jersey and on January 18, 1989, imposed a methodology for assessing penalties that could result in a payment of more than $8 million. The rulings are presently on appeal.

The protective orders preventing administrative use of guilty pleas in the *Trade Waste* case, described above, have also stifled use of the Disclosure Law to prevent defendants in that case from operating in the waste industry. While the BPU has been attempting for years to delicense some of the defendants by building original cases, the DEP has refrained from pursuing them under the Disclosure Law.

Inadequate Resources

Current funding for the program provides for 21 state police detectives, including supervisors, five clerical staff and the equivalent of two deputy attorneys general working part-time to carry out the responsibilities of the Department of Law and Public Safety under the Disclosure Law. DEP has only 10 persons, including clerical staff, to perform its functions. Appropriated funds account for the lion's share of resources devoted to A-901 duties. The statute does provide for a one-time fee of $200 to be paid for each officer, director, partner, or key employee listed on the disclosure statement of an applicant or licensee. However, the fee need only be paid for the initial investigation and does not help to finance ongoing compliance monitoring.

The January, 1988, report contended that an appropriation of $4,780,000 would be "absolutely necessary" for Fiscal Year 1989 in order to properly implement the law, including the crucial functions of post-licensing compliance monitoring and special investigations. The funds were to pay for 28 additional detectives and five additional clerical personnel for the State Police Solid/Hazardous Waste Background Investigation Unit. Including existing personnel, the additional funds would also have supported seven deputy attorneys general with four clerical support staff, 14 personnel in DEP's Division of Solid Waste Management, eight individuals in its Division of Regulatory Affairs and three staff members for the

Division of Hazardous Waste Management (which currently has no one devoted to A-901 tasks).

On February 28, 1988, Attorney General Edwards branded the Disclosure Law a "failure" and urged that the law be scrapped unless the Legislature provided the funds necessary to conduct meaningful investigations and to adequately prosecute exclusion proceedings. Given the importance of improving the morals of the marketplace in both the solid and hazardous waste industries, the Commission agrees with the Attorney General that this regulatory effort cannot be shortchanged. Nonetheless, the Legislature responded to the Attorney General's concerns by appropriating only $1.5 million of the nearly $4.8 million requested for Fiscal Year 1989.

The follow-up report to the Attorney General in October, 1988, emphasized the continuing need for full funding of the A-901 program. It requested a supplemental appropriation of $1,554,000 to provide for a phase-in of personnel to achieve full staffing by March 1, 1989. Not only has no supplemental appropriation been received, but the Governor's recently released budget for Fiscal Year 1990 deleted all appropriations for A-901 enforcement. Instead, the Governor's budget officials indicated their intention to ask the Legislature to finance the system with increased fees from licensees.

If all of the additional staff sought by the Attorney General for his department and for DEP were eventually put in place, the appropriation necessary to continue that staffing level through all of Fiscal Year 1990 would be about $5 million, less than one-twelfth of the resources devoted to regulating casino gaming in New Jersey. Effective regulation of the sensitive solid and hazardous waste industries certainly deserves no less.

If the Disclosure Law were amended to require that fees assessed industry participants provide the necessary funding, an extremely high fee would have to be charged. A bill, A-3101, sponsored by Assemblyman Robert C. Shinn, Jr., would impose an annual fee on all waste haulers in order to fund A-901 enforcement. The 1988 report to the Attorney General calculated that each waste entity would have to pay, on the average, an annual fee of about $2,600 in order to support the program at the level requested by the Attorney General. Even more would be required simply to fund a collection mechanism.

Since an averaged annual fee would prove excessive for small haulers, a graduated fee based on annual gross revenues would ease the burden for those least able to pay. The wisdom of requiring that regulated parties pay for the regulatory system is not so apparent, however, where costs may be passed on to customers. As everyone in society is a solid waste customer, either directly or indirectly, the Disclosure Law should be funded by the taxpayers through a State appropriation. This is especially desirable in order to avoid expenses associated with the collection of periodic fees.

MUNICIPAL BID FAILURES

Municipal Contracts Not Regulated

As the solid waste collection industry in New Jersey grew during the 1940s and 1950s, many haulers became unionized. Simultaneously, there was a substantial increase in the number of municipalities awarding contracts for solid waste collection. As the number of collection firms grew to meet the increased demand, some of the older firms banded together to keep the newcomers in their place. Customer control and allocation was effected through the union, Teamsters Local 945, and through the Municipal Contractors Association (MCA), which was formed in 1956 and never numbered more than 30 members. A "property rights" scheme, concentrated in northern and central New Jersey, evolved and was referred to by its participants as "respect" for one another's claims to particular municipal contracts, which were instead supposed to be awarded on the basis of competitive bidding.

The Solid Waste Utility Control Act of 1970 authorized the BPU to review municipal contracts and to adjust "excessive" prices so that they are "just and reasonable." Bidders that win municipal contracts have to file copies with the BPU. The BPU has, however, almost never overturned any contract between a municipality and a potential contractor on account of the price. Therefore, for all practical purposes municipal contracts are not regulated.

Gradual Decline in One-Bid Towns

A 1980 analysis of public information by the Division of Criminal Justice concerning five northern counties—Hudson, Essex, Union, Passaic and Bergen—revealed that in 1979 MCA members controlled 92 percent of the dollar value of all municipal contracts awarded in the area. On average the towns involved had been serviced by the same contractors for 17 years.

The SCI conducted a survey of municipal bidding covering the period 1980 through 1987. 551 out of 567 municipalities responded. The survey indicates a slow but steady trend toward greater competition for municipal contracts. In part, this increased competition has resulted from the demise of the MCA, whose members migrated to the New Jersey chapter of the National Solid Wastes Management Association and, to a lesser extent, to the New Jersey Waste Management Association.

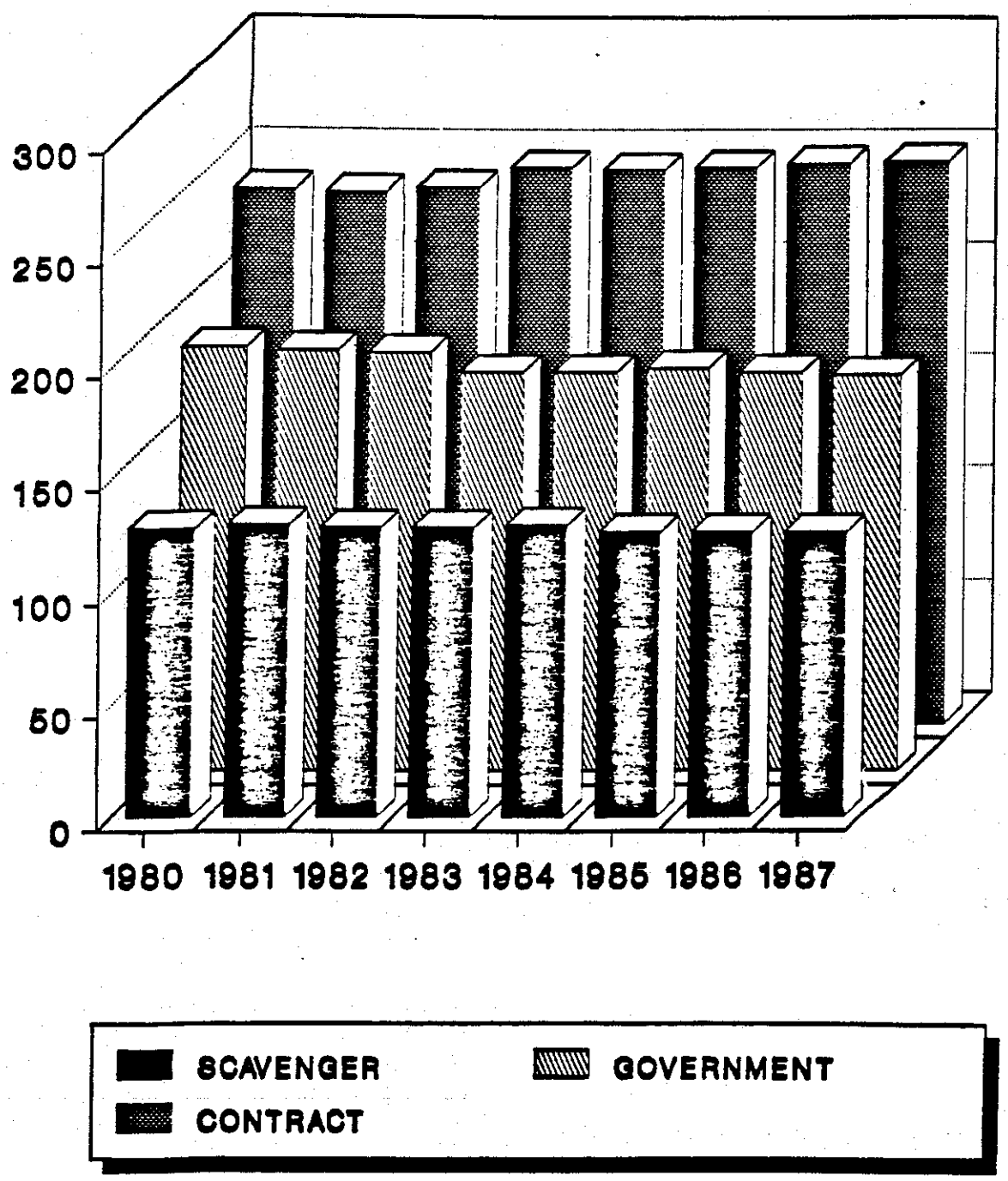
There are three basic types of residential hauling: contract, government and scavenger. Under the contract method, a municipality enters into a single contract with a private collector—usually after receiving bids—on behalf of all of its residents. Government hauling involves local government employees and equipment picking up the trash. Finally, scavenger collection consists of individual residents entering into their own agreements with private haulers operating under tariffs approved by the BPU.

Graph #1 shows that the number of municipalities operating under the three types of residential collection has remained relatively constant over the eight-year period covered by the SCI survey. Contract hauling has ranged from a low of 236 municipalities in 1981 to a high of 250 (45% of the total) in 1987. Government collection was the method for a high of 187 towns in 1980 and a low of 175 (32%) in 1987. A high of 129 municipalities relied on scavenger hauling in 1981, with a low of 126 (23%) in 1987.

On average during the survey period, more municipalities in four northern counties—Hudson, Passaic, Essex and Bergen—reported using contract hauling than towns in other counties. As Chart #1 shows, only 21 percent of the municipalities in Sussex County relied on contract collection, while 100 percent in Hudson used that type in 1987.

Bidding has increased in some areas, although it does not necessarily follow that true competition has increased in those areas. In addition, many municipalities continue to be serviced by the same haulers that have held their contracts for over 20

3 TYPES OF RESIDENTIAL COLLECTION
(NUMBER OF MUNICIPALITIES USING THEM)



GRAPH #1

MUNICIPAL CONTRACTS
BY COUNTY IN 1987

COUNTY	# TOWNS	CONTRACTS	% CONTRACTS
ATLANTIC	23	07	30%
BERGEN	70	44	63%
BURLINGTON	40	19	48%
CAMDEN	37	20	54%
CAPE MAY	16	05	31%
CUMBERLAND	14	05	36%
ESSEX	22	15	68%
GLOUCESTER	24	11	46%
HUDSON	12	12	100%
HUNTERDON	26	11	42%
MERCER	13	06	46%
MIDDLESEX	25	06	24%
MONMOUTH	53	23	43%
MORRIS	39	15	38%
OCEAN	33	10	30%
PASSAIC	16	13	81%
SALEM	15	05	33%
SOMERSET	21	06	29%
SUSSEX	24	05	21%
UNION	21	08	38%
WARREN	23	05	22%

CHART #1

years. In some cases there have been *no competing bids* during that period, despite substantial and frequent increases in the contract price. In a few towns the rejection of a single bid has merely prompted another single submission from the same contractor *at an even higher price* than it had bid the first time.

In Jersey City, Hudson-Jersey Sanitation Co., a defendant in the *MCA* case and once part-owned by the aforementioned notorious George (Kitten) Katz, obtained the last two contracts covering periods of five years each (1979-83 and 1984-88). Between 1983 and 1984, however, Hudson-Jersey, which had become accustomed to winning the contract on a single bid, now faced competition from Browning-Ferris Industries. In order to retain the contract in the face of this competition, Hudson-Jersey lowered its bid for 1984 to $540,000 less than its figure for 1983, a 12% reduction in

MUNICIPAL CONTRACTS
BIDS RECEIVED-STATE WIDE

YEAR	1	(%)	2	(%)	3	(%)	4	(%)	MORE	TOTAL
1980	155	65%	60	25%	15	06%	4	02%	2	237
1981	150	64%	61	26%	18	08%	4	02%	1	236
1982	157	66%	61	26%	13	05%	5	02%	1	238
1983	160	65%	59	24%	21	09%	4	02%	2	247
1984	148	60%	58	24%	31	13%	8	03%	0	246
1985	134	54%	66	27%	28	11%	13	05%	5	247
1986	117	47%	80	32%	32	13%	13	05%	6	249
1987	113	43%	78	31%	40	16%	9	04%	9	250

CHART #2

annual price despite rising industry costs. Indeed, the fact that Hudson-Jersey's 1984 bid exceeded its 1981 price by less than $25,000 indicates a significant probability of excessive pricing in the earlier period.

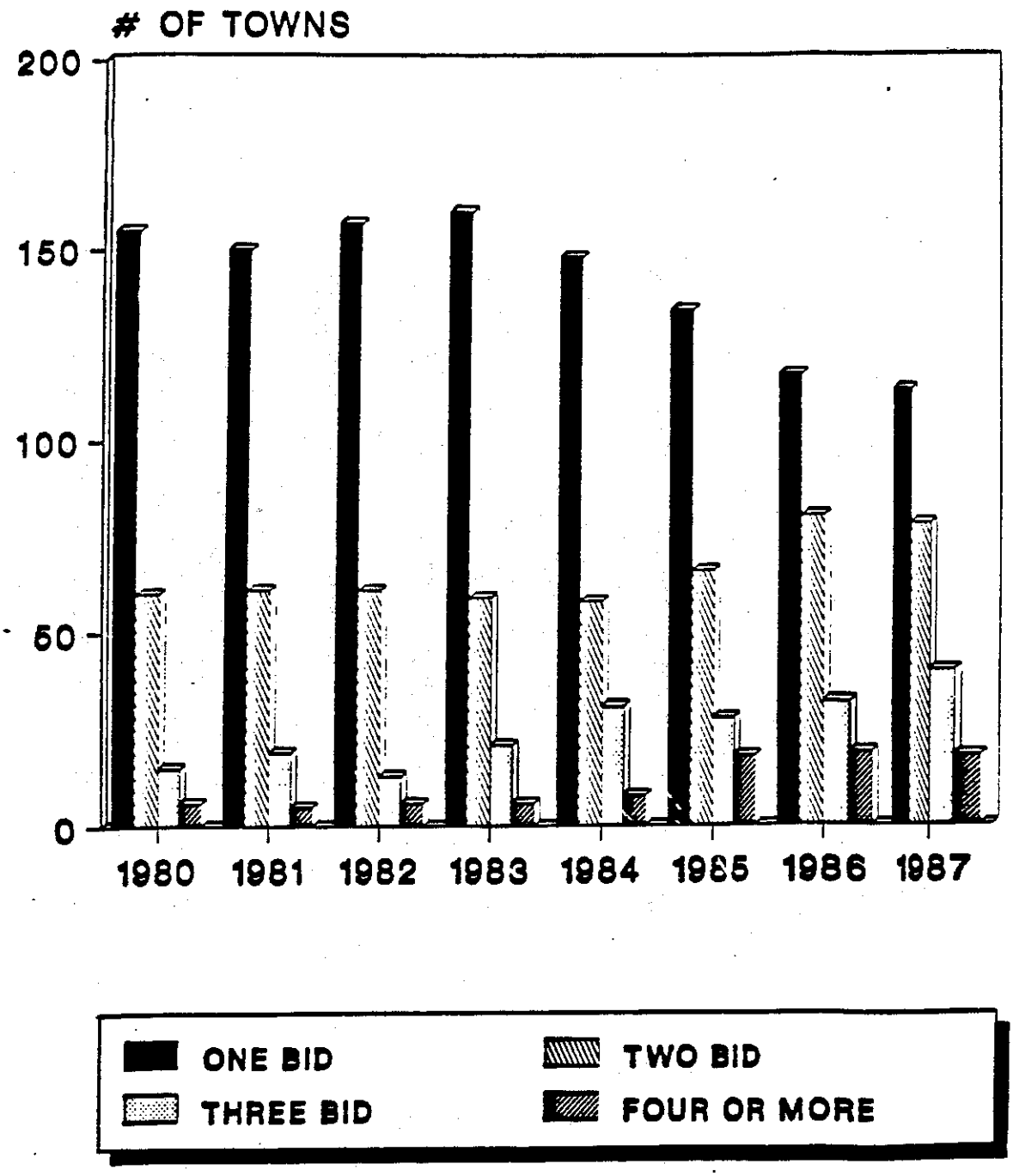
During the period of the SCI survey, 190 companies submitted bids for municipal contracts. Of these, 160 were successful in receiving at least one contract award.

As indicated by Chart #2, the number of municipalities receiving just one bid for their municipal contracts declined from 155 (65% of the total) in 1980 to 113 (45%) in 1987. This trend for fewer towns to be operating under single-bid contracts is also illustrated in Graph #2.

Bergen County has had the greatest number of single-bid contracts in relation to other counties. Also, more towns in Bergen County have been serviced by a single hauler for extensive periods than in other counties. However, as indicated in Graph #3, the trend of single-bid contracts has decreased for Bergen County communities as in the rest of the State.

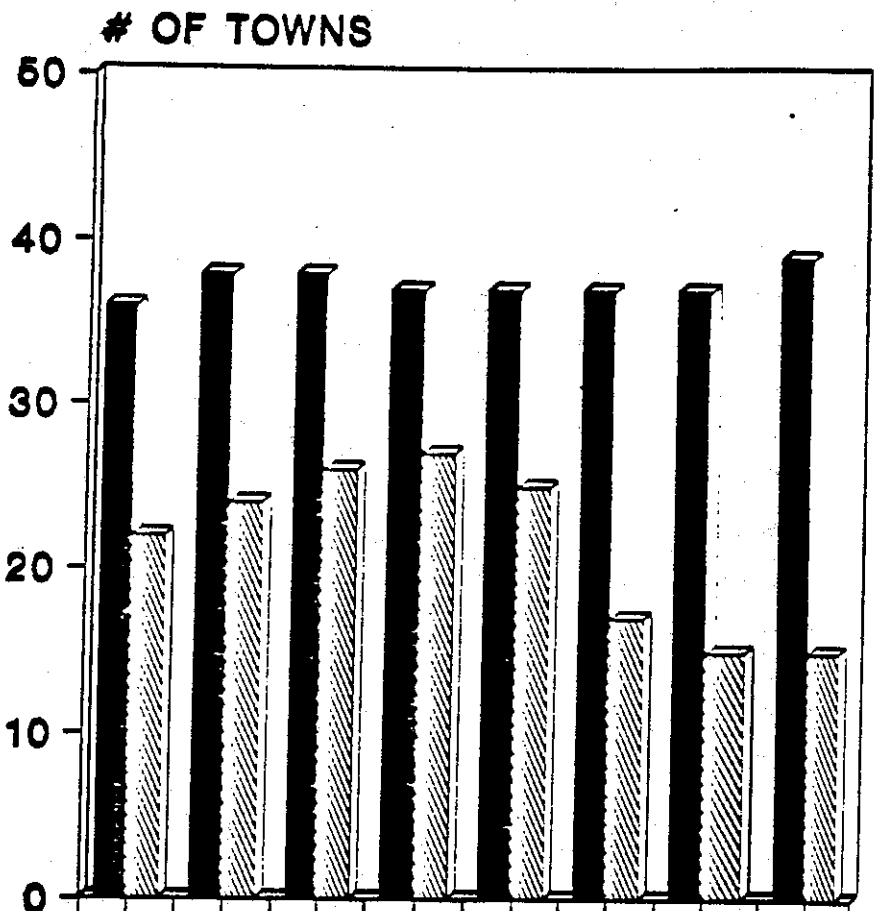
Competition for municipal contracts has increased as the number of single-bid towns has declined. Firms now subsidiaries of at least two national conglomerates—Browning-Ferris Industries and Waste Management—have serviced 19 and 37 municipal contracts, respectively, in 1987. Meanwhile, they have submitted bids in many other towns. In some municipalities contractors that were never members of the MCA have competed against former MCA members with mixed results. In others former members of the MCA have successfully bid for municipal work previously handled by other former MCA members. Thus, any conspiracy to allocate municipal customers has not successfully excluded all potential competitors nor maintained unfailing discipline among its members. In certain areas tacit or deliberate collusion has from time to time endured, but an indomitable conspiracy does not presently exist throughout the industry.

MUNICIPAL CONTRACT BIDS
STATE WIDE



GRAPH #2

SINGLE BID MUNICIPAL CONTRACT
BERGEN COUNTY



	1980	1981	1982	1983	1984	1985	1986	1987
CONTRACTS	36	38	38	37	37	37	37	39
SINGLE BIDDER	22	24	26	27	25	17	15	15

CONTRACTS SINGLE BIDDER

GRAPH #3

Market and Regulatory Underpinnings of Sluggish Competition

There are also legitimate, nonconspiratorial reasons for the substantial retention rate of municipal solid waste collection contracts over the years. Once a hauler has made a capital investment in a particular town and has served that town for a period of time, it has a substantial built-in advantage over potential competitors. Over a period of time, the contractor learns intimately the contours of the streets, people's habits, scheduling, routing and the like. The contractor comes to know where it can cut costs and is thus able to estimate its expenses with precision. A potential competitor would have to make a very substantial analysis of the community in order to be in a position to submit a competitive bid against an established hauler. After factoring in its start-up costs, it is unlikely that a would-be contractor could underbid an existing contractor who was charging reasonable prices and still make a profit. Further, because of the possibility that a municipality may take over trash collection for itself, the ensconced contractor, in the absence of official complacency or corruption, must perform at reasonable prices to the satisfaction of a large number of householders through all kinds of conditions.

Once a potential competitor's resources are fully utilized elsewhere, there are legitimate disincentives to expanding to distant towns. For maximum efficiency, collection equipment should be used within a reasonable radius of both garage and disposal facility. To seek work in distant towns, substantial additional capital expenditures might have to be made.

In addition to market impediments, the BPU's regulations contribute to the lack of competition. For example, as already stated, the BPU requires that all loans for periods greater than 12 months and in excess of $100,000 (a typical amount borrowed to purchase a truck) be approved before the money is lent (and the truck purchased). The BPU takes at least several weeks to grant these approvals, thus making the purchase of new equipment in time to meet contract performance dates extremely difficult. Most collectors have neither the equipment nor the cash to service new municipal contracts without borrowing. Thus, the regulatory process effectively bars them from becoming potential competitors for municipal work.

Restrictive Bid Specifications

Municipalities themselves have, wittingly or not, contributed to the low level of competition by imposing restrictive and unnecessary bid specifications. Under the Local Public Contracts Law specifications must be prepared in such a manner as "to encourage free, open and competitive bidding." The statute further proscribes "any standard, restriction, condition or limitation not directly related to the purpose, function or activity for which the purchase, contract or agreement is made." Moreover, the Solid Waste Utility Control Act itself specifies, "No municipality may require a public utility engaged in the solid waste collection business . . . to submit to any prequalification test before permitting it to bid on a contract or before the employment of a solid waste collection . . . contractor." Notwithstanding these statutory provisions, municipalities continue to include unreasonably restrictive provisions in their specifications.

For instance, some towns mandate that prospective bidders have previous municipal contract experience. However, if a collector has a residential scavenger route or has done commercial hauling for a number of years, there is no reason why it also has to have municipal contract experience in order to qualify.

Some communities require prospective bidders to prove that they have garage facilities within a certain distance of the town's borders. Another idiosyncrasy is insisting on certain days of the week for collection. Both requirements may be tailored to the needs of an existing collector, thus supplying it with an unfair advantage in the bidding.

Certain bids contain numerous "option" plans. Although would-be competitors have submitted low bids on various options, municipalities have often awarded the contract according to the option for which a favored, long standing contractor has submitted the low bid.

Municipalities further restrict competition by requiring performance bonds for the full amount of the contract. The Solid Waste Utility Control Act merely requires that a performance bond be filed with the BPU, without specifying the amount. Many potential competitors cannot obtain bonds for the entire amount, especially if they have not previously done municipal work. Moreover, 100 percent bonds are not necessary to protect the town in the event of a default. A longtime consultant and researcher in the field of solid waste management, Emanuel S. Savas, testified before the SCI:

> *In my experience in examining many, many bid documents, many cities do not understand the purpose of . . . bonds, whether it's a bid bond or performance bond, and somehow cities often feel that if they put a properly high price on that, they create the illusion of being good managers or effective businessmen by making a stiffer penalty, losing sight of what the purpose of a bond is. The purpose of a bid bond is to make sure that if the bid is awarded, the contract will be signed. The purpose of a performance bond is to assure that if the contractor somehow fails to carry out the work, that the city is properly protected. The idea is not to make a killing if the contractor fails to perform, but rather to reimburse the city for the cost of the time and effort required to find another contractor. Too often cities lose total sight of that and choose numbers in their bonding contracts which have a lot of zeros in them but are unrelated to the task at hand. It falls in the general domain of improved bidding practices, and I think there is a lot to be done there.*

Bonding companies and municipalities surveyed by the SCI confirmed that losses have never occurred. In such a secure environment performance bonds should not be required for an amount exceeding 25 percent of the face amount of the contract.

Certain towns have been reluctant to enter into contracts that would extend for a period of time sufficient to justify a new bidder's investment in trucks and other equipment should its bid successfully oust the firm accustomed to winning the contract. However, the potential bidder may only be willing to risk a competitive bid if it is satisfied that it may depreciate any required new investment for at least five years. Such potential competitors are unavailable to those communities that are unwilling to request proposals to provide service for periods up to five years, as authorized by the Local Public Contracts Law for garbage collection and disposal.

If a municipality's contract period extends beyond the time that the union's master collective bargaining agreement runs, potential bidders for the contract may be reluctant to compete lest they be faced with a significant rise in labor costs in midcontract. A significant wage increase is particularly devastating for labor-intensive municipal hauling. A municipality could encourage potential bidders by preparing bid specifications that would allow increases in the contract price equivalent to labor cost increases that were not deemed sweetheart deals by the Solid Waste Authority. This so-called "pass-through" of bona fide rising labor costs would be similar to that increasingly allowed for escalating charges by disposal facilities.

Some municipalities, on the other hand, refuse to accept bids that would allow an automatic pass-through of increases in disposal rates confronting the collector during the contract period. This often excludes from the bidding those companies that have a policy of insisting upon escalator clauses in accordance with sound business practice. Nonetheless, the communities do not necessarily escape payment for increasing disposal rates (or labor cost rises). Favored collectors who lack escalator clauses in their contracts have occasionally been allowed to renegotiate the contracts to meet such increases. Meanwhile, they have been shielded from competition at the time of the contract award.

Bid Manipulations

Under certain circumstances a municipality may enter into negotiations after two bid rejections. The statute provides only that in rejecting the bids the governing body must have "de-

termined that they are not reasonable as to price, on the basis of cost estimates prepared . . . prior to the advertising therefor, or have not been independently arrived at in open competition." There have been allegations of sham rejections in order to allow favored bidders to resubmit with knowledge of their competitors' quotations.

In some instances an unscrupulous bidder has intentionally withheld some of the required documentation while submitting bid prices guaranteed to beat those offered by other bidders. When the municipality, unwittingly or not, rebids the contract, the dissolute bidder, having the benefit of seeing his competitors' best proposals, may now take the contract at prices higher than he originally bid. This practice could be curtailed by statutorily requiring the municipality to award a contract to the lowest responsible bidder, unless a deficient bidder with lower prices corrects the deficiency within a reasonable period and agrees to perform the contract at the prices it originally bid. The precise standards governing such a procedure would have to be carefully established in regulations promulgated by the proposed Authority in consultation with the Division of Local Government Services and the Purchase Bureau.

A recurring problem is the lack of adequate time in which to bid. The Local Public Contracts Law, which primarily governs the municipal bidding process, provides: "All advertisements for bids shall be published in a legal newspaper *sufficiently in advance* of the date fixed for receiving the bids *to promote competitive bidding*, but in no event less than 10 days prior to such date." [Emphasis added.] Notwithstanding that it was the apparent intent of the Legislature to require, in the case of complex specifications, that more than 10 days be afforded in order to promote competition, many municipalities interpret this provision as requiring that *only* 10 days notice need be given prior to the receipt of the bids. This is a totally unacceptable period of time in which to prepare a competitive bid for a complex contract and unfairly advantages incumbent contractors.

Public Collection "Safety Valve"

If, for one reason or another, a municipality faces unfairly high prices with little prospect of future reductions due to prospective competition, the option of public hauling provides an effective, if potentially expensive, safety valve. Extensive, scientifically-designed government and academic studies have demonstrated that the cost of public collection is roughly 35 to 40 percent greater than the price of private collection of comparable quality. Thus, if a municipality finds that with public employees and equipment it can do the job for the same or less money than the best price it can obtain from a private contractor, it should ask serious questions about whether it is the victim of collusion or some other aberration in the marketplace.

A municipality's threat to abandon unreasonably priced private collection and adopt public hauling can unleash latent competitive forces that may eliminate the need to go public. If the private sector does not respond, however, there are some encouraging studies that indicate that effective administration of public collection can reduce its cost to an acceptable level.

CONCLUSIONS AND RECOMMENDATIONS

Deregulate Collection Rate Setting

For 18 years the principal response to sluggish competition in solid waste collection has been rate regulation. It bears repeating that New Jersey is the only state with utility-style regulation of hauling rates. It has been conspicuously ineffective. It should be eliminated so that New Jersey may focus more attention on aberrant industry behavior, such as customer allocation agreements, dumping violations, consumer fraud and racketeer influence.

The requirements that collectors obtain prior Board approval before executing security agreements, issuing notes payable more than 12 months from the date of issue or entering into leases should be eliminated along with the deregulation of rate setting. In addition, collectors should not have to petition any agency in order to increase their service areas.

Until 1981, Colorado regulated solid waste collection as a utility with franchises and rate regulation. When the Colorado legislature deregulated the industry, wholesale insolvencies did not occur. Since deregulation, there has been increased competition, substantial investment by private and large publicly-owned companies and a general improvement in the quality and variety of services available to the public in the more populated areas. Although prices fluctuated initially, competition by existing firms and new entrants brought prices within acceptable norms.

It is important to note that exceptions to the municipal and county "cap laws" at present exempt from the cap certain amounts required to fund increases in "public utility" charges. If solid waste collectors are relieved of their current public utility designation, it will be necessary to simultaneously amend the cap law exceptions so as to specifically include charges for municipal and county solid waste collection services. This is particularly important in the present era of rapidly escalating disposal costs to meet environmental needs.

It is not necessary or desirable to establish a bureaucracy to set standardized maximum or minimum rates as an interim regulatory measure. Interminable cost variables would have to be considered in determining such rates. In the case of maximum rates, there would be a tendency for collectors to relinquish competitive impulses and charge the maximum rates. These would have to be set high enough to accommodate marginal and inefficient collectors. Thus, maximum rates would adversely affect the average customer.

Standard minimum rates have been urged in order to discourage so-called predatory pricing—the charging of excessively low rates in order to eliminate competitors and pave the way for gouging prices when competition is gone. Dr. Peter Reuter, an economist with the RAND Corporation with expertise in the solid waste industry, testified before the SCI that economists are "increasingly skeptical" of the existence of predatory pricing in an industry such as solid waste collection:

> *As strictly defined, it is a policy under which a firm takes current losses in order to put itself in a position to acquire monopoly power and monopoly profits later. Now [solid waste collection] is an industry in which, except for reputation, there are no barriers to entry. So if a firm sets out to lower its priees aggressively in 1987 in order to drive out small companies and then raised its prices in 1988 when they have all been driven out, it faces the very serious problem that it's very easy to reenter this market. And absent some restraint on competition, such as we currently have, and absent the barrier to entry, I would say that any effort at predatory pricing is likely to have very few dividends precisely because when prices get raised again there will be a lot of aggressive entry. . . . [T]he evidence is that the large firms have, if anything, a very modest competitive advantage, so over*

time it's not likely that they can obtain a predatory pricing policy and leave people in the market out.

COUNSEL WILLIAM DIBUONO:

Q. *Would predatory pricing be more probable if the industry kept property rights with particular customers?*

A. *Well, only if the predator wanted to break the agreement, that is the point of predatory pricing, to take customers from other firms. So it's just going to be a violation of the customer allocation agreement, and presumably the other firms would respond, and you then move to the situation I talked about where there are no barriers to entry. [A firm] may drive others out, but [it has] to face the fact that it's very easy to come back in.*

A relatively efficient "mom and pop" solid waste hauler can compete rather effectively with even the large national firms. This is so because the large operations have higher management and overhead costs, and the small collectors often provide convenient, individualized service. Moreover, the industry does not lend itself to substantial economies of scale. Thus, to beat the reasonable prices of a small hauler and entice its regular customers to change collectors, a large company would have to price significantly below its own costs.

The ultimate success of predatory pricing strategies greatly depends upon successfully neutralizing the competition, a costly and uncertain outcome. Moreover, driving out existing rivals is not a sufficient condition for earning future monopoly profits. In the words of a 1986 United States Supreme Court opinion, a predator must have some assurance that its anticipated monopoly pricing will not "breed quick entry by new competitors eager to share in excess profits."

That below cost pricing is unwise business strategy has not deterred its use where shortsighted individuals have perceived that it may provide an advantage over the competition. In one case a company created by a former district manager of Browning-Ferris Industries, Inc., to compete with his former employer for commercial "rolloff" accounts, successfully sued BFI and its subsidiary, BFI of Vermont, Inc., for engaging in predatory pricing to drive the new company out of the Burlington, Vermont market, where its only competitor was BFI of Vermont, Inc.

After its founder left BFI in 1980, the plaintiff company gained 37.6% of the Burlington roll-off market in a single year. In 1982, when the new firm's market share had risen to 42.7%, BFI's boss in Boston ordered the Burlington manager to "Put [the new competitor] out of business. Do whatever it takes. Squish him like a bug." Although for six months BFI of Vermont reduced its roll-off prices by about 40%, this merely temporarily stabilized BFI's decline in market share. By 1985 the plaintiff company had captured almost 56% of the market, and BFI had sold out to a third party. In April, 1988, the 2d U.S. Circuit Court of Appeals upheld a $6 million punitive damage award to the plaintiff company against BFI and its subsidiary on a state tort claim. The United States Supreme Court agreed on December 5, 1988, to consider BFI's appeal that the punitive damage award was excessive in light of the fact that actual damages in the case were only around $51,000. Meanwhile, the incident powerfully demonstrates the pitfalls of predatory pricing in the solid waste collection industry.

At least temporarily successful predatory pricing in solid waste collection can occur with a practice called "blitz and price gouging." A former sales employee of BFI's Houston subsidiary, Donald Roseberry, described this practice in sworn testimony in a lawsuit brought by BFI against Roseberry to prevent alleged use of BFI's trade secrets. Roseberry described the "blitz" as concentrating a sales force on a particular competitor's accounts to entice them away with "subpar" pricing in amounts less than necessary for BFI to make money. The intent of the blitz was to put the competitor out of business. His customers would be identified by having the sales staff follow the competitor's trucks to jot down the pick-up points. Roseberry testified that the money to pay for the blitz came from the "price gouging" of established BFI customers who were not likely to complain, even if their prices were increased to two or three times more than typical market prices.

It is interesting to note that this early 1980s behavior of a particular BFI subsidiary was only modestly successful in eliminating competitors. Roseberry indicated that of the three companies that were targeted in operations in which he as-

sisted two remained in business and one was bought out by BFI. Roseberry also noted that, as a sales representative for his new employer, a BFI competitor, he was adept at identifying BFI customers that *were* being gouged and who would therefore be receptive to competitive offers by the new employer. By offering to handle those accounts at what he claimed was a fair market rate, Roseberry was able to acquire them for his new employer. Thus, Roseberry himself believed that a targeted competitor could successfully counter an attempt to engage in below cost pricing.

The anti-monopoly provisions of the New Jersey Antitrust Act already provide some measure of protection against predatory pricing. To the extent that such pricing meets the relatively complex legal preconditions for finding an attempt to monopolize, there are adequate private remedies—treble damages, injunctive relief, attorneys fees and costs—available to an aggrieved competitor.

To simplify the elements of the offense in such a situation, however, the Antitrust Act should be amended to provide that it would be an offense "to sell, or contract to sell, goods or services at unreasonably low prices for the purpose of destroying competition or eliminating a competitor." Remedies should be available to both injured private parties and public prosecutors. However, to discourage retaliatory private lawsuits intended to dampen vigorous price competition, victorious defendants who substantially prevail in suits found by the presiding judge to be frivolous, unreasonable, without foundation or brought in bad faith, should be awarded attorneys fees and costs at the expense of the unsuccessful plaintiff.

Solid Waste Authority to Monitor and Ensure Competition

The ideal of a single state agency responsible for all regulation of an industry is not, in the view of the Commission, a desirable goal for solid waste collection and disposal. Due to the importance of environmental concerns, the DEP must retain its jurisdiction to set and enforce environmental standards. Meanwhile, there are a number of other tasks, existing and proposed, more appropriately performed by an independent Solid Waste Authority with an economic orientation and focused solely on the problems of this single sensitive industry.

The Commission is nonetheless mindful of the recent report to the Governor recommending against the creation of additional bureaucracies that hinder business operations and expansion. The Commission believes, however, that a Solid Waste Authority would not really be an additional bureaucracy but would, rather, consolidate and alter existing government operations (at no additional cost) in order to *foster* competition, a goal not possible under present law. To this end, and as set forth in detail below, the proposed Authority would absorb all remaining BPU resources and responsibilities, such as waste flow regulation and rate regulation of scarce disposal facilities. It would further absorb the DEP's waste flow enforcement activities so that there would be a single agency coordinating this vital function. In turn, the DEP, which also licenses hazardous waste operators, would become the single organization responsible for licensing solid waste industry participants.

Meanwhile, the resources presently devoted by the BPU to collection rate regulation would be much more productively spent monitoring and, if necessary in vulnerable areas, stimulating competition. The Authority should have the power to guarantee, as much as possible, that residential collection services will be provided at benchmark prices—reasonable levels in light of actual costs. The Authority would monitor competition, costs and prices in the industry and, if deemed necessary, would itself become a competitive element in the marketplace. It would also mandate that municipalities opting for private contract collection select bid specifications from a uniform menu designed by the Authority to encourage competition.

Initially, the Authority could operate in the market for municipal contracts and residential scavenger contracts. If it were later determined to be necessary or desirable, the Authority could enter the commercial-industrial marketplace. Authority participation would serve as the tip of the free enterprise wedge in those areas where, because of lethargic competitors or collusion, prices were exorbitant. The Authority's competitive activity in any given market area would initially be determined by the results of studies

and would not be permanent. It would begin and continue only so long as necessary to ensure the breakdown of entrenched, localized conspiracies in restraint of trade and to displace rigid adherence to the "ethic" of noncompetition.

At first blush it might seem incongruous to allow, even temporarily, government intervention as a potential competitor, while at the same time eliminating bureaucratic responsibility for determining hauling rates. Rate regulation has proven to be an impediment to competition, however, whereas the Authority's limited market entry would disrupt anticompetitive activity and encourage competition.

By conducting studies the Authority would be able to determine and reveal to public scrutiny those municipalities in which individual residential customers were paying excessive prices. Each identified municipality could then decide whether it would opt for local government hauling to reduce costs or vigorously seek more assertive competition from the private sector.

To assist those municipalities that chose to obtain competitive bids, the Solid Waste Authority should be empowered to announce that it planned to submit bids for certain municipal contracts. It could also solicit individual residential customers determined to be paying excessive prices in certain areas dominated by a single scavenger hauler. The prices offered by the Authority would include a figure for a reasonable rate of return. In effect the Authority's price quotations would constitute something akin to "engineering estimates." There would be sufficient leeway in the Authority's proposals so that competitive elements of the private sector would be encouraged to go after the business. In all likelihood the mere announcement by the Authority that it had discovered overcharged customers and intended to submit a bid would disrupt noncompetitive behavior and result in a private competitor successfully bidding at reasonable prices.

How much actual hauling the Authority would have to perform would depend upon the persistence of anticompetitive agreements or practices. Municipalities or individual residential customers could petition the Authority to study their contracts. If the Authority agreed that there were overcharges for these accounts, it could add them to its list of potential Authority customers and submit bids or offer service at competitive benchmark prices. A municipality would have to allow sufficient time between its solicitation of bids and the bid opening date to inform all potential bidders of the Authority's intention to bid.

In the face of genuine competition from the Authority, any customer allocation agreements would lose their purpose and participants would scramble to obtain available business. Even if certain haulers resorted to collusion to fill the void, the need to take affirmative action to reaffirm restrictive agreements and the resulting friction would create opportunities for discovery by law enforcement.

With the Authority in operation, it would be impossible for collusive elements to maintain discipline, and they would revert to competition or get out of the industry altogether. Racketeer influence would also dissipate due to declining demand for such services and a reduced pool of excess profits (spoils) to share with mediators or enforcers.

If competitive elements appear to Authority analysts to be supplying quality services at reasonable prices, the Authority's bidding and contract performance would decline or never commence. On the other hand, in those areas where excessive prices persist and competition is nonexistent or a sham, the Authority's bids would be welcomed by frustrated local officials and residents.

Meanwhile, the Authority's initial operations, including any necessary start-up of collection activities, would cost no more than the BPU and DEP currently spend on resources that would be transferred to the Authority. Municipalities benefiting from lower prices would applaud the Authority's endeavors. At the same time, revenues from the Authority's municipal customers would pay for its collection enterprise. Indeed, with a reasonable "profit" factor built into the Authority's bids, funds would be available to offset the cost of disposal facility, waste flow and integrity assurance regulations.

The Authority should also have a statutory mandate to monitor commercial-industrial prices to determine if they are unreasonable or predatory and to recommend remedial legislation if necessary. In order to assist the Authority in this task, it should have the power to require haulers to

identify their customers, as well as other investigative powers. Presently collectors must routinely file lists of customers with the BPU. This procedure results in much excessive paperwork and unduly encourages haulers to view their customers as property. The Authority should have the power to require the information on an as-needed basis but should not be required to collect it as a routine exercise.

The Authority should be located in the Department of Law and Public Safety, since much of its activity would involve disclosing market aberrations requiring law enforcement investigation. Its members should be appointed by the Governor with the advice and consent of the Senate. To ensure proper functioning of the Authority, its implementing legislation should contain provisions ensuring proper control of project financing and monitoring of internal financial conduct.

The statute should also require that no more than a bare majority of the Authority's members shall belong to the same political party. In addition, neither Authority members nor their employees should be allowed to hold any other public office or public employment. All Authority members should be required to submit personal financial disclosures designed to prevent conflicts of interest, with enforcement of substantial penalties for violations vested in the Executive Commission on Ethical Standards. Finally, the Authority should operate under a strong code of ethics for its members and employees.

Regulate Disposal Facilities

The Commission wishes to stress that its recommendation to deregulate collection rate setting does not include solid waste disposal facilities. Facilities such as landfills, resource recovery plants and transfer stations are scarce and require massive infusions of capital. Waste flow directives to such facilities allow no alternative choices to collectors who might otherwise shop for better disposal prices. Indeed, they are the kinds of facilities which have traditionally been treated as regulated monopolies. These circumstances argue convincingly in favor of close scrutiny of the rates charged by such facilities.

In mid-1987 the BPU approved interim emergent rates for all transfer stations on a temporary basis in order to meet the "crisis" resulting from the shutdown of several major landfills. The BPU considers the rates to be subject to review as to "reasonableness" and refunds if the Board decides that rates were excessive. It transmitted cases to the Office of Administrative Law to determine whether the rates were reasonable. On the other hand, the transfer stations in Union, Passaic and Bergen counties are all under the control of local utilities authorities, which at times have contended that they are not subject to the BPU's jurisdiction. On December 7, 1988, the BPU (rejecting the recommendations of an administrative law judge) ruled that its grant of an exclusive franchise to the Union County Utilities Authority gave the Board the ultimate jurisdiction over rates in Union County. Unless successfully appealed, the ruling would require the Authority to justify its rates to the BPU.

Attorneys for other transfer stations have argued that the BPU may not conduct a more extensive review of county contracts with transfer station operators than it presently conducts of municipal collection contracts. Since late 1988 the Office of Administrative Law has been conducting initial proceedings to determine these issues.

As a long term solution, the Legislature should clearly provide that transfer stations are subject to comprehensive rate regulation by the proposed Solid Waste Authority.

In 1985 the Legislature amended the Solid Waste Management Act with passage of the McEnroe Act. As a result of concern that environmentally sound landfill capacity would vanish before resource recovery plants were installed, the Legislature decided that to "attract private investment capital" it would be "necessary to establish a favorable regulatory climate, which will at the same time insure safe, adequate and proper solid waste disposal service at just and reasonable rates." It therefore created a special process allowing local government units to request proposals from qualified private vendors and negotiate the award of long-term contracts (up to 40 years) for the design, financing, construction, operation and maintenance of resource recovery systems, "taking into consideration price" and other evaluation factors.

grounds for license revocation or suspension. Thus, all adverse information about a licensee could be accumulated in, and acted upon by, a single agency.

The law should also clearly specify civil and criminal sanctions for offending licensees and individuals. In addition, costs and attorneys fees expended in successful disciplinary actions should be assessed against licensees and their key personnel involved in the proceedings.

Licenses should be required of firms engaged in "brokering" of solid or hazardous waste removal, as well as recycling operations. Their key personnel should be required to meet the standards of the Disclosure Law. Brokering is contracting or arranging for waste transportation by and to companies that hold licenses under existing requirements. At least one waste transporter that was debarred from the industry for criminal conduct has informed the DEP that it would actively broker removal of New Jersey waste. In addition, there have been numerous allegations that recycling has been used as a guise for the conduct of unauthorized transfer station operations. Unscrupulous individuals should be excluded from these activities in order to prevent abuses.

The Disclosure Law should be amended to expressly provide that a person who knowingly fails to comply with any of its provisions or who submits false information on a disclosure statement, or who knowingly assists or aids the violation, shall be guilty of a crime of the third degree. Currently, if applicants obtain licensure as "fronts" for disqualified individuals or firms, the only remedy available to DEP is to revoke the license of the front company or assess civil penalties. The stakes are not high enough to prevent sinister individuals from taking the risk that their true interests will be discovered.

The Legislature should provide the DEP and Department of Law and Public Safety with sufficient resources to effectively implement the Disclosure Law.

Deregulation of collection rate setting would place greater reliance on free enterprise to protect consumer interests. The antitrust laws are the primary means of preserving the competition which is so essential to free enterprise. The New Jersey Antitrust Act's sanctions must, therefore, be strengthened to effectively deter industry participants—even if they be national conglomerates—from anticompetitive conduct. Consequently, maximum fines for State criminal antitrust offenses should be increased from the present $100,000 for a corporation to $1 million ($250,000 for an individual), the maximum under the State law's federal counterpart, the Sherman Act. In order to more effectively deter individuals considering participation in property rights schemes, Antitrust Act crimes should be designated crimes of the third degree. Under the New Jersey Code of Criminal Justice such crimes are punishable by imprisonment of between 3 and 5 years. The present law only allows for a maximum of 18 months imprisonment, whereas current federal law provides for 3 years.

Federal and State laws should be amended to permit use of electronic surveillance (under existing strict judicial supervision) for criminal violations of the Antitrust Act. In 1986, the President's Commission on Organized Crime recommended this change for the federal law. Antitrust crimes are a major tool of organized criminals. As such, they should be among the offenses for which electronic surveillance is appropriate.

Other Measures to Stimulate a More Competitive Municipal Contract Market

The State should take steps to create a more competitive marketplace for municipal contracts. The Local Public Contracts Law affords too much discretion to municipalities in preparing specifications, rejecting bid submissions and awarding contracts. The impact is particularly detrimental in solid waste collection, an industry accustomed to a low level of competitive activity. In light of the past history and current sensitivity of this industry, the Local Public Contracts Law should be amended to require the Solid Waste Authority—in consultation with the Division of Local Government Services in the Department of Community Affairs and the Purchase Bureau in the General Services Administration, Department of Treasury—to prepare and mandate uniform

solid waste collection bid specifications for municipal hauling. Municipalities would be allowed to select from a menu of alternative provisions so that they could tailor their requests for proposals to systems meeting their needs. Meanwhile, those wishing to deviate from the uniform specifications should be allowed to do so only by petitioning the Authority upon good cause.

In order to foster competition and prevent fraud, favoritism, extravagance and collusion in the awarding of municipal solid waste collection contracts, it is necessary to curtail, to some degree, the statutorily authorized discretion which municipalities now enjoy. Requirements for previous municipal hauling experience, garage facilities within certain distances, inflexible days of the week for collection and the like should be prohibited.

Since the law requires a performance bond in connection with each contract "in such amount as may be required by the board in rules or regulations," the BPU should immediately limit the amount of such bonds to 25 percent. The long-term solution is for a statute or regulation of the Solid Waste Authority to cap the bond requirement at 25 percent.

Mandates and guidelines governing bid rejections and awards, negotiated contracts, disposal and labor cost pass-throughs, service options, certificates of noncollusion, timing of bid notices, and contract performance periods and renewals should be established with the goal in mind of stimulating competition. In addition, municipalities should be required to provide potential bidders a reasonable period of time to obtain the required equipment from the time of the award of the contract to the start-up date.

The statute should be amended to require that advertisements for municipal solid waste services be published at least 60 days prior to the date fixed for receiving the bids and to mandate that the specifications be available at the time the notice is published. Contracting units should also be required to publish the notice in at least one newspaper of general circulation, as well as one of local circulation. Moreover, the law should direct contracting units to mail a copy of the notice to all potential bidders who have previously filed by certified mail written requests to be placed on the mailing list.

Since the history of competition in the provision of solid waste collection services to municipalities has continually disappointed those who believe in the free enterprise system, all bids for public contracts to provide such services should contain certificates of noncollusion in a form prescribed by the Solid Waste Authority. This would impress upon the bidders that such activity will not be tolerated. It would also allow an additional effective criminal sanction against individuals in the event that collusion takes place.

To guard against the possibility of sham bid rejections in order to allow favored bidders to resubmit with knowledge of their competitors' quotations, the law should be amended to allow a municipality to reject solid waste collection bids only if the Solid Waste Authority, upon petition from the affected municipality, determines, based on the Authority's established standards, that the prices offered are not reasonable or that the bidding involved collusion in restraint of trade.

Regulatory impediments to effective competition for municipal contracts should be removed. For example, the requirement that the BPU approve certain long-term financing for solid waste collectors should be eliminated. This would give greater flexibility to firms desiring to purchase additional trucks in order to handle increased work resulting from competition.

Monitor Union Activity

Should it decide to compete for contracts in municipalities denied the benefits of competition, the proposed Solid Waste Authority would, undoubtedly, employ unionized civil service workers and abide by its union contract obligations. It appears, however, that certain private collectors, though signatories to union agreements, are not in fact paying union-level wages or benefits. Consequently, the Authority, as well as honest private collectors, would incur higher costs than haulers engaging in union contract violations. Thus, the union's continued inability or unwillingness to guarantee private collector adherence to contract terms could give trangressing collectors an unfair competitive advantage and undermine procompetitive reforms.

The SCI recognizes that the obligation to enforce a collective bargaining agreement rests primarily, if not exclusively, with a union. We do not seek to interfere with that right and responsibility. Nonetheless, given Local 945's demonstrated inability or unwillingness to enforce all of its agreements, the Commission recommends that appropriate agencies, including the United States and New Jersey Departments of Labor, monitor the enforcement and collection efforts of Local 945 and its funds so as to ascertain whether contributions due from employers to the funds, on behalf of employees, are being made. If not, appropriate remedial action can be considered. (Whether such action should be taken and, if so, the extent of such action may depend on whether the failure to collect was intentional or unintentional.)

Further, the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act) bars a person who has been convicted of an enumerated crime from holding certain union positions for from three to 13 years. Criminal bid rigging, restraint of trade and commercial bribery are not included in the listed offenses warranting debarment. Each has proven to be a tool of organized crime and a significant threat to competition in solid waste and other industries. In appropriate cases, prosecutors and sentencing judges may wish to consider conditions of probation that would provide substantial periods of debarment from union activities for those convicted of such offenses.

In particular, federal investigative and prosecuting agencies, in cooperation with their state counterparts, should carefully scrutinize the activities of Local 945.

The SCI's investigative team for this report consisted of Deputy Director (and Counsel) Robert J. Clark, former Counsel William DiBuono, Chief Investigative Accountant Julius M. Cayson, Special Agents Raymond H. Schellhammer, Anthony J. Quaranta and Patricia England, and Secretaries Celia L. Murphy and Patricia M. Leach.