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Superior Court of New Jersey

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APPELLATE DIVISION

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DOCKET NO. A-267-83T2

MAY 8 1984

DEC 12 1983

CIVIL ACTION

DEPARTMENT OF ENVIRONMENTAL
PROTECTION OF THE STATE OF NEW
JERSEY, et al.,

Plaintiff-Respondent

- vs -

A TO Z CHEMICAL RESOURCE RECOVERY,
INC., et al

Defendant-Appellant

ON APPEAL FROM
AN ORDER ASSESSING CERTAIN
PENALTIES IN A CIVIL ACTION
OF THE SUPERIOR COURT OF
NEW JERSEY, CHANCERY DIVISION,
MIDDLESEX COUNTY

SAT BELOW
HONORABLE RICHARD S. COHEN, J.S.C.

1983 TERM

BRIEF FOR DEFENDANT-APPELLANT
FOR

DEFENDANT-APPELLANT
JERSEY SANITATION CO., INC.

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7-8-83

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FILE NO. 4247

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December 9, 1983

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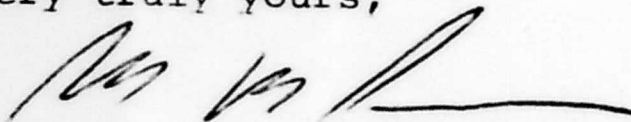
Re: DEP v. A to Z Chemical Resource
Recovery, Inc., et al
Docket No. A 267-83 T2

Dear Ms. McLaughlin:

Enclosed please find an original and four (4) copies of a Brief and Appendix of the Defendant-Appellant/Jersey Sanitation along with an original and two copies of a Proof of Service in the above captioned matter. Also enclosed please find three (3) copies of transcript in the above captioned matter in addition to the copy that has been filed by the reporter pursuant to R.2:5-3(d) and R.2:6-12(d).

Please note that we are requesting oral argument in this matter.

Very truly yours,



Richard M. Pisacane

/f
encls.

cc: Ronald P. Heksch, DAG --CM-RRR
Jersey Sanitation, Inc.

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PROCEDURAL HISTORY

The original Complaint was filed by the Plaintiff/ New Jersey Department of Environmental Protection (hereinafter D.E.P.) on January 12, 1979 against A to Z Chemical Resource Recovery, Inc., John Albert and Eugene Conlon, alleging violations of N.J.S.A. 13:1E-1 et seq, N.J.S.A. 58:10A-1 et seq, N.J.S.A. 23:5-28, and N.J.S.A. 26:2C-19. (Da 1)

The Appellant was not a party to the proceedings at that time. The Complaint stemmed out of the alleged operation of an illegal hazardous dump site by the Defendants, located in the City of New Brunswick. Moreover, the Complaint alleged that the then Defendants were responsible for creating and maintaining a public nuisance. As part of the Complaint, the D.E.P. sought injunctive relief as provided by the statutory authority as well as abatement of the nuisance in the appointment of a receiver. 10

On January 12, 1979, an Order to Show Cause With Temporary Restraints was filed against the then Defendants. (Da 13) On March 2, 1979, an Order was entered requiring the then Defendants to cease accepting any additional chemical and chemical wastes at the New Brunswick site; immediately closing the site and ordering them to submit certain information to the D.E.P. A part of which was to 20

identify the total number and contents of drums and storage tanks as well as identifying any material which may have leaked or spilled from said containers. (Da 17) As part of that Order, the then Defendants were also ordered to submit a plan for the removal of all the chemical waste at that site by a certain specific date contained therein.

Subsequently, on August 24, 1979, the Plaintiff/ Respondent received an Order for the appointment of a receiver, freezing the assets of the Defendant Corporation, A to Z and for the effectuating of the cleaning up of the facility site. (Da 24) On June 6, 1980, an Order was entered by the Superior Court, Chancery Division, relieving the joint receivers of any further responsibility on the site and authorizing the D.E.P. to commence clean-up and to occur costs pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. The said Order also granted the D.E.P. permission to amend its Complaint, at that time to allege a cause of action under the Spill Compensation Act. (Da 31) 10

It is important to know at this juncture, again that 20 the Defendant/Appellant, Jersey Sanitation was not a party at this time to the proceedings and as a consequence, was unable to assert any rights, defenses or take any action to mitigate

the cost and damages that were now being incurred by the D.E.P.

On March 31, 1981, the D.E.P. filed an Amended Complaint which for the first time named Jersey Sanitation as a party to the proceeding which had originally commenced on January 12, 1979. (Da 34) On April 30, 1981, Defendant/Appellant filed its Answer, Cross-claim and Jury Demand. (Da 53) On May 10, 1983, the D.E.P. filed a Motion for Summary Judgment on Counts 1, 2,3,5,6,7,8,9 and 10 of the Amended Complaint against all of the named Defendants, 10 including the Defendant/Appellant. (Da 61) The Defendant/Appellant, Jersey Sanitation filed responsive Certifications to the Motion for Summary Judgment on June 9, 1983. (Da 76), (Da 99), (Da 120) The Defendants/ Eugene Conlon, John Albert and A to Z filed no response whatsoever to the Notice of Motion for Summary Judgment.

On June 30, 1983, Judge Richard S. Cohen, Judge of the Superior Court, Chancery Division, entered an Order for Summary Judgment against the Defendant/Appellant, on behalf of the Plaintiff/Respondent. (Da 123) On August 1, 1983, 20 pursuant to application of Defendant/Appellant Jersey Sanitation, Judge Richard S. Cohen entered an Amended Order for Summary Judgment. (Da 127)

The Order entered by Judge Cohen in part, held Jersey Sanitation responsible for the costs incurred for the

cleaning up of the A to Z site, which all costs were incurred and which was the subject matter of hearings prior to the Defendant/Jersey Sanitation becoming a party to the within action. (emphasis added)

STATEMENT OF FACTS

This cause of action with regard to Defendant/ Jersey Sanitation, begins with the Amended Complaint filed on March 31, 1981.

The Original Complaint filed by the New Jersey Department of Environmental Protection (hereinafter DEP), on January 12, 1979, alleging violations of N.J.S.A. 13:1E-1 et seq.; N.J.S.A. 58:10 A-1 et seq.; N.J.S.A. 23:5-28; and N.J.S.A. 26:2C-19, all in relation to an illegally owned and operated chemical waste facility, does not include 10 nor pertain to the Defendant/Jersey Sanitation Inc. Jersey Sanitation was made a party to this action one year and three months after its commencement.

It is important to emphasize to the Court, at the outset, that the Order For Appointment of a Receiver for the A to Z disposal site (Da 24), the Order designating the joint receivers (Da 28), and the Order discharging joint receivers and authorizing the Plaintiff/DEP to clean up Defendant's facility (Da 31) all occurred prior to the Defendant/Appellant, Jersey Sanitation becoming a participant 20 in the Lower Court proceedings. It cannot be denied that all of the disposal costs occurred by the State were a part of the Lower Court proceedings prior to Jersey Sanitation having an

opportunity either to challenge said costs or to attempt to mitigate the cost of the same. As a consequence, the total disposal costs referred to in the Plaintiff's Motion for Summary Judgment at the Lower Court level, as indicated by the certification of Robert E. Hunt, were a part of the proceedings in which Jersey Sanitation did not have an opportunity to either deny or confirm.

Jersey Sanitation Co., is a corporation duly authorized to haul solid, liquid and hazardous waste. For over twenty-five (25) years it has existed as a reputable and respectable corporation, duly licensed by the State to perform its necessary operations serving both public and private interests. 10

The Defendant, herein has never operated or owned a disposal facility. Jersey Sanitation Co., is in the business of transporting, carting and hauling waste. The Defendant/Jersey Sanitation, holds no interest in A to Z Corporation, nor has it ever contemplated acquiring any interest in such corporation. The two companies provide two entirely distinct services in a related field. Jersey Sanitation was not part of any purchase of property from Heritage Bank North for A to Z Corp., for the purposes of maintaining a disposal facility as alleged and referred to by Plaintiff in its Motion for Summary Judgment. Any property purchased by Defendant/John Albert, was purchased 20

for his sole proprietary interest and contrary to those interests and concerns of Defendant/Jersey Sanitation.

Further, any involvement in any other company by John Albert or Eugene Conlon was contrary to the agreement they held with Jersey Sanitation. See Certification of Frank Stamato, Jr. (Da 99) and Certification of Richard Katz (Da 76).

Defendants/Conlon and Albert as executive employees were directly responsible to the Board of Directors. The Plaintiff incorrectly refers to Conlon and Albert as "owners" of Jersey Sanitation. The acquired interests in A to Z was unauthorized and concealed by Conlon and Albert. Both Conlon and Albert made representations to the Board of Directors that the A to Z Disposal facility was duly licensed and all cartings were properly made. Upon discovering of Defendants' unauthorized activity, immediate action was taken against them. The alleged violations and tortious activities are the result of the exclusive conduct of Conlon and Albert, without the knowledge authorization or consent of this Defendant.

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On or about June 30, 1983, as a direct result of the acts of Defendants/Conlon and Albert, Summary Judgment was entered against Defendant/Jersey Sanitation for the within violations, even though no appearance had been made by Conlon and Albert.

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POINT I

THE LOWER COURT ERRED SINCE THERE ARE GENUINE ISSUES OF MATERIAL FACT AS TO THE CULPABILITY AND LIABILITY OF DEFENDANTS JERSEY SANITATION AND SUMMARY JUDGMENT SHOULD NOT BE ENTERED AS A MATTER OF LAW.

The party against whom summary judgment is sought does not have the burden of demonstrating that no genuine issue of material fact exists, Heljon Management Corp. v. DiLeo, 55 N.J. Super 306, 312 (App.Div. 1959). The Court in Heljon Supra, shifted that burden from the movant only after a prima facie case for summary judgment had been shown enabling such a procedure to open up the doors for further evidence. The procedure in that way becomes an aid to discovery encouraging the non movant party to address the issues with positive proofs. More specifically, the Court held:

"Summary judgment procedure is, after all, in, the nature of a discovery device - it opens up and searches the record. It is, of course, true that the movant must sustain the burden of showing that there is palpably no genuine issue of a material fact. On the other hand, however, where the movant has established

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certain facts or alleges them, the "particular circumstances of the case may cast a duty to go forward with controverting facts" and a failure to discharge this duty will entitle the movant to summary judgment. See 6 Moore, *op. cit.*, supra, § 56.16 (3), p. 2130. If this requires the non-movant to produce all his evidence, he must do so to establish clearly the existence of a genuine issue of a material fact. *Id.*, at p.2132. This is particularly true where such proof is peculiarly within the non-movant's knowledge or control or where he has exclusive access to such proof. *Id.*, at p. 2146. He is not permitted to hold back his evidence, if any, until the trial. If this be another form of discovery or an indirect method of temporarily shifting the burden of proof, it may in an appropriate case be justified by the policy in favor of the expeditious disposition of idle claims. In our opinion, this is precisely such a case, and the defendants' principles must yield to the spirit of the rules." At pg. 313 (Emphasis added)

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In granting a Motion for Summary Judgment, all inferences of doubt must be drawn against the moving party. All pleadings and papers filed must be considered in a light favorable to the party in opposition to the motion. Ruvolvo v. American Cas. Co., 39 N.J. 490 (1963) Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67 (1954) Baer v. Sorbello, 1977 N.J. Super 182(A.D. 1981)

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In determining whether there is a genuine issue as to a material fact, the standard the Courts apply is whether there is the slightest doubt as to the facts.

Doehler Metal Furniture Co. v. United States, 149 F.2d
130, 135 (C.C.A. 2, 1945)

In the case at hand, Jersey Sanitation had no knowledge of the alleged wrongdoings of Defendants Gene Conlon and John Albert or of their interests in A to Z. Any such acts were unauthorized and against the interests of Defendant Jersey Sanitation Co. See the accompanying affidavits of Richard Katz and Frank Stamato, Jr. (Da 76, Da99) The employment contracts entered into with Defendants John Albert and Eugene Conlon called for each to devote all of their time as executive officers to Jersey Sanitation and/or J & B Disposal and no other company. See Affidavit of Frank Stamato Jr. (Da 99). They were employed to supervise and control solid waste haulage since that was the major operation of Defendant since its inception. See Affidavit of Richard Katz (Da 76). By agreement, Eugene Conlon and John Albert were answerable to the Board of Directors of the Defendant and did not have complete control over the company. See affidavit of Frank Stamato, Jr., (Da 99). A to Z was a separate and distinct company having completely different operations in a related field. The Company, as it was fraudulently represented to Defendant, Jersey Sanitation by Defendants Albert and Conlon, allegedly

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existed as licensed disposal facility. See affidavits of Frank Stamato, Jr. and Richard Katz (Da 99 and Da76). The illegal and tortuous activity alleged were the acts of Defendants Albert and Conlon and such acts were both beyond the scope of their employment and contrary to Jersey Sanitation's operations and provisions of its corporate charter.

The affidavits and supporting documents submitted herein palpably show a genuine issue as to whether the acts of Defendants Albert and Conlon are one and the same with Defendant Jersey Sanitation.

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Where a material issue of fact has not been resolved, Summary Judgment cannot be awarded. Chemical Bank v. Perry Plate Inc. 144 N.J. Super. 390 (A.D.1976).

The Summary Judgment proceeding should be no substitute for a trial. United Advertising Corp. v. Metuchen 35 N.J. 193. The Defendant, Jersey Sanitation has a bona-fide defense supported by valid proofs raising a genuine issue of material fact. The acts of Defendants Conlon and Albert were "ultra vires", criminal and unauthorized. Such acts included alleged violations of said statutes (referred to in Plaintiff's original and amended complaints) and their ownerships and involvement in A to Z. The Plaintiff's case against this Defendant rests on the supposition that the acts of Defendants,

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Conlon and Albert were one and the same with Jersey Sanitation. This has been directly disputed by the proofs submitted and supported by the accompanying affidavits and documents submitted in response to this motion.

In Ruvolve v. American Cas. Co. Supra, an action was taken by a guardian on a liability policy. Summary Judgment was entered by the Lower Court in favor of the Plaintiff. The Defendant appealed to the Superior Court, Appellate Division, and the Supreme Court on its own Motion certified the matter before it and reversed the Lower Court's decision.

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The Court held:

"These observations bring us back to the problem of the propriety of the Summary Judgment against Defendant. It is a matter of common knowledge that such judgments are to be granted with extreme caution. The moving papers and the pleadings are to be considered most favorable to the party opposing the Motion. All doubts are to be resolved against the movant. It has been said on the Federal scene (after whose rule our own is patterned). That a litigant has the right to trial where there is the slightest doubt as to the facts. (Peckham v. Ronrico Corp. 171 F Id 653, 657 1cir. 1948, Doehler Metal Furniture Co. v. U. S. 149 F Id 130(c.c.A 2 1945) If there is such doubt it cannot be said the movants case is unequivocally established or that palpably there is no genuine issue as to any material fact. (RR.4:58-3)
at P 499 (Emphasis added)

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In the case at hand, in light of the affidavits and proofs hereby submitted, the Plaintiff has not met his burden of palpably showing no genuine issue as to a material fact.

The tortious and illegal activities are the ultra vires, unauthorized and individual acts of the Defendants Albert and Conlon. Such acts were done in concealment without the knowledge and against the interests of Jersey Sanitation. Jersey Sanitation is a separate and distinct company with no interest, relationships or involvement with A to Z. Jersey Sanitation is licensed to haul hazardous waste and were fraudulently led to believe that A to Z was a licensed facility. All of the preceding factual contentions supported by affidavit and accompanying documents raise a genuine issue of a material fact as to the Defendants Jersey Sanitation's culpability and liabilities in this matter.

POINT II

THE LOWER COURT ERRED IMPUTING
THE PENALTIES OF THE ALLEGED ACTS
OF CONLON AND ALBERT TO JERSEY
SANITATION.

The authority of an act of an officer of a corporation is binding upon that corporation only to the extent the act is within the expressed or implied authority of that officer operating within the scope of his employment. Buddleman v. White's Exp. & Transfer Co. 49 N.J. Super 551 (App.Div. 1958) 10

It is not the office status of the officer that determines whether an act is binding on the corporation but rather whether or not that act done was authorized or ratified by the corporate trustees or directors. The principles expounded in the law on agency applies in this regard. Abeles v. Adams Engineering Co. 64 N.J. Super 167 (App.Div. 1961), modified 35 N.J. 411.

The Defendant, Jersey Sanitation has been charged with violating N.J.S.A. 58:10-23.11 b,h(T35-4) .(T36-1) 20 and N.J.S.A. 13:1E-9,(T36-1) of the Spill Compensation Act and Solid Waste Management Act, through the alleged acts of Eugene Conlon and John Albert,(T33-16). No evidence had been presented to the Court below showing the

individual unlawful acts of Defendants, Albert and Conlon and how they were acting on behalf of the Defendant Jersey Sanitation. As a point in fact, no appearance was made by either Defendant Albert or Conlon, (T2-T8.) In effect, there was no adequate examination of the acts of the Defendants to determine whether or not they were acting within the scope of their authority during the alleged commission of the offenses.

Further, the Lower Court had found that the other stockholders and directors were not aware of the alleged unlawful discharge of toxic wastes. (T32-16.) Whereas it was disclosed by Jersey Sanitation that Defendants Albert and Conlon were acting for their own interests and not the company's. The Court failed to make a determination in this regard. (T8-5, T16-4, T17-7) 10

Without such determination and without a valid examination of the acts of the Co-defendants, Albert and Conlon, a genuine issue is raised as to the imputed liability of Jersey Sanitation by the acts of Conlon and Albert. The proofs considered by the Court below in awarding Summary Judgment did not adequately meet those standards set by law. The proofs were admittedly inaccurate. (T30-24) They consist of an alleged admission by Interrogatory of John Albert, while the said Defendant was not present for examination. The Lower Court could not adequately apply 20

apply the law in imputing liability on Jersey Sanitation without adequate proofs as to the conduct and acts of Conlon and Albert, their alleged agent. Without their appearance, a determination was made based on the status of the officer and not whether his act was authorized or within the scope of his employment. See American Photocopy Equipment Co. v. Ampto, Inc., N.J. Super 531 (App. Div. 1964) 85 S.Ct.80, 379 U.S. 842; Abeles v. Adams Engineering Co. 64 N.J. Super 167 (App.Div.1961), modified 35 N.J.411.

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There remains a genuine issue concerning the nature and scope of the acts of Defendants/Conlon and Albert. The Court, therefore, erred imputing the penalties of these acts to Jersey Sanitation in a summary manner.

POINT III

THE LOWER COURT ERRED IN ITS
ASSESSMENT OF DAMAGES FOR THE
ALLEGED VIOLATIONS OF THE SPILL
COMPENSATION ACT.

The Plaintiff/State of New Jersey, alleges certain violations of the Spill Compensation Act, charging Defendant, Jersey Sanitation as an unlawful discharger under N.J.S.A. 58:10A-1 and N.J.S.A. 13:1E-9c. (Da 34) Summary Judgment was awarded the State in an amount in excess of \$1,000,000, in this regard. (Da 123) Admittedly, the State has failed to adequately prove Defendant Jersey Sanitations proportionate share of the harm. (T30-21) Further, the Court has made the determination that no notice of the damage claim was given to Defendant, nor were they aware of any damage claims or spill violations. (T32-16, T34-20)

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To assure the constitutional requirements of due process, one is entitled to be heard in regard to a statutory assessment and the amount thereof. Security Trust Co. and Storage Vault v. Lexington, U.S. 323 (1906) The requirements of N.J.S.A. 58:10-23.11k provide that the State, through the appropriate administrator, give adequate notice of "all affected parties" of the filing of any claims soon after the

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discharge or as immediately thereafter as possible.
KESSLER V. TARRATS, et al, N.J. Super (Super.Ct. Ch.
Div. 1983) 112 N.J.L.J. Index page 496 (1983)

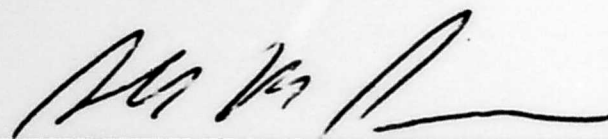
The (D.E.P.) State has no authority in itself to enforce the penalty provisions of the appropriate statutes related to the unlawful discharge of toxic waste specifically Section 9c of the Solid Waste Management Act., N.J.S.A. 13:1E-1. All such penalties must be examined pursuant to all due process protections. Bordentown v. Interstate Waste Removal, Inc., N.J. Super (Sup.Ct. Law Div. 1983) 112 N.J.L.J. Index page 496 (1983)

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There having been no adequate appearance by any of the actual violators and a record admission by Plaintiff that its numbers were inaccurate, an adequate and lawful determination as to the damages in the within matter is lacking and in violation of all due process protections.

CONCLUSION

It is respectfully submitted, based upon the foregoing, that the Plaintiff's Motion for Summary Judgment was wrongfully entered against Defendant/ Jersey Sanitation and should thereby be reversed.



Richard M. Pisacane

Superior Court of New Jersey

APPELLATE DIVISION

DOCKET NO. A-267-83T2

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DEPARTMENT OF ENVIRONMENTAL
PROTECTION OF THE STATE OF NEW
JERSEY, et al.,

Plaintiff-Respondent

-vs-

A TO Z CHEMICAL RESOURCE RECOVERY,
INC., et al

Defendant-Appellant

CIVIL ACTION

ON APPEAL FROM

AN ORDER ASSESSING CERTAIN
PENALTIES IN A CIVIL ACTION
OF THE SUPERIOR COURT OF
NEW JERSEY, CHANCERY DIVISION
MIDDLESEX COUNTY

SAT BELOW

HONORABLE RICHARD S. COHEN, J.S.C.

APPENDIX FOR DEFENDANT-APPELLANT
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FILED

JAN 12 1979

DAVID D. FURMAN, J.S.C.

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MIDDLESEX CO..
DOCKET NO.

DEPARTMENT OF ENVIRONMENTAL)
PROTECTION OF THE STATE OF)
NEW JERSEY,)

Plaintiff,)

-vs-

Civil Action

A TO Z CHEMICAL RESOURCE)
RECOVERY, INC., a corporation)
of the State of New Jersey,)
JOHN ALBERT, and EUGENE CONLON,)

Defendants.)

COMPLAINT

The Department of Environmental Protection of the State of New Jersey (hereinafter, "DEP"), having its principal office at John Fitch Plaza, Trenton, New Jersey, by way of complaint against A to Z Chemical Resource Recovery, Inc. (hereinafter, "A-to-Z"), John Albert, and Eugene Conlon, says:

FIRST COUNT

1. A-to-Z is a corporation organized under the laws of the State of New Jersey.

2. A-to-Z is the present operator of a chemical resource recovery facility located at Block 597.02, Lot 9, in the City of New Brunswick, Middlesex County, New Jersey. A-to-Z has been the operator of this facility continuously since prior to August 8, 1977.

3. In the operation of its facility, A-to-Z has stored and is presently storing several thousand drums containing various chemicals and chemical wastes. In the operation of its facility, A-to-Z has installed and is now utilizing two process tanks of approximately 10,000 gallon capacity each, and five storage tanks of lesser capacity. In the operation of its facility, A-to-Z has used and is now using three tank trucks located at its facility for the storage of chemicals and chemical wastes. A-to-Z has in the past and is now storing chemicals and chemical wastes in bins, in open piles, and in five gallon pails located at its facility.

4. The chemicals and chemical wastes which have been and are now being stored by A-to-Z at its facility include: a mixture of nitric and sulfuric acids; lime; methanol; latex residues; paint sludges; various flammable solvents; waste adhesives; an unidentified gray-white odorous liquid; an unidentified brown odorous liquid; an unidentified clear, odorous and highly alkaline liquid; an unidentified clear, odorous liquid; solvent based rubber adhesives; water based rubber adhesives; and, plasticizer, resin, monomer or elastomer residues.

5. On January 10, 1978, July 11, 1978, July 12, 1978, August 7, 1978 and on various other dates not known to plaintiff but well known to A-to-Z, A-to-Z has used the process tanks located at its facility to dilute acids and other chemicals.

6. In the operation of its facility, A-to-Z is now storing numerous fifty-five gallon drums and fibreboard drums containing chemicals and chemical wastes which are leaking, open, broken, unsealed, toppled over, bulged, and otherwise stored in a manner which permits the chemicals and chemical wastes contained in such drums to be discharged. Spills, leaks and other discharges from these drums have now covered almost the entire ground area in the vicinity of the drums.

7. In the operation of its facility, A-to-Z is now storing a gray-white odorous liquid in both of its 10,000 gallon capacity process tanks. Both of these tanks are filled to capacity. The five lesser capacity tanks are also filled with unknown liquid chemicals. The hatches on four of these tanks are open. The entire top has been cut off the top of the fifth tank. The fifth tank is, in addition, exposed to the weather because there is no roof on that portion of the building in which it is located. Each of these tanks has a valve on the bottom that can be easily opened. Several of these valves are dripping.

8. At present, rainfall and surface water entering onto the A-to-Z site mixes with and picks up the chemical waste materials which have been discharged and are now contaminating the soil. This contaminated material is continuously seeping into the potable

groundwaters underlying this chemical waste facility. The subject facility is located within one-half mile of approximately thirty water wells. The subject facility is located within one-half mile of the McKinley School and the Raritan Valley Workshop for Retarded Children. There is at present no fence surrounding either the A-to-Z facility or the drums being stored by A-to-Z. A-to-Z does not utilize guards, watchmen or other employees so as to insure that children or other unauthorized individuals are denied access to its facility. It is the practice of A-to-Z to leave the facility totally unsupervised by any employee of A-to-Z for days at a time. There are residences located in the vicinity of A-to-Z's facility. There is an apartment complex located in the vicinity of A-to-Z's facility. Children routinely walk through and play in the A-to-Z facility itself. Numerous flammable, irritant and toxic chemicals are presently being stored by A-to-Z at the site. Many of the drums containing these chemicals are open. Many of these drums containing these chemicals may easily be opened.

9. A marsh is located approximately 75 yards from an area of drums being stored by A-to-Z at this facility. This marsh is exposed to chemical wastes transported by surface water runoff from A-to-Z's facility. The facility is drained by Mile Run, a tributary of the Raritan River.

10. Pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-3 et seq., no person may engage in the operation of a waste

5a

disposal facility without approval by the DEP including an approved engineering design for the facility. Additionally, no person may engage in waste disposal activities in violation of the Act and the rules, regulations and orders promulgated and issued thereunder, N.J.S.A. 13:1E-5, 9, 10; N.J.A.C. 7:26-1 et seq.

11. On December 13, 1977, the DEP issued a Cease and Desist Notice concerning the subject facility. A copy of this Cease and Desist Notice is attached hereto as Exhibit "A".

12. On July 20, 1978, the DEP issued an Administrative Order concerning the subject facility. A copy of this Administrative Order is attached hereto as Exhibit "B".

13. A-to-Z has not at any time obtained approval for its registration statement from the DEP pursuant to N.J.S.A. 13:1E-5. Despite issuance of the DEP's Cease and Desist Notice of December 13, 1977 and the DEP's Administrative Order of Closure dated July 20, 1978, A-to-Z has operated and presently continues to operate the subject chemical waste recovery facility.

14. Pursuant to N.J.S.A. 13:1E-9(b), 10, the Commissioner of the DEP is authorized to institute an action or proceeding in the Superior Court for injunctive and other relief against any chemical resource recovery facility or operation which is operated in violation of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., or in violation of any code, rule, regulation or order promulgated or issued pursuant to that Act.

15. Pursuant to N.J.S.A. 13:1E-9, the Superior Court may proceed in this action in a summary manner.

WHEREFORE, the DEP prays that this Court issue its Order:

- (a) enforcing the Cease and Desist Notice of the DEP dated December 13, 1977;
- (b) enforcing the Administrative Order of the DEP dated July 20, 1978;
- (c) requiring A-to-Z to post a performance bond to assure compliance with said order;
- (d) awarding attorneys fees and costs of suit; and
- (e) granting such other relief as the Court deems just and equitable.

SECOND COUNT

1. The DEP adopts by reference each of the statements made in the First Count.

2. By its action, A-to-Z is and has been responsible for the creation of a nuisance.

WHEREFORE, the DEP prays that this Court issue its Order:

- (a) enjoining A-to-Z from accepting any waste material at the chemical resource recovery facility located at Block 597.02, Lot 9, in the City of New Brunswick, New Jersey;
- (b) requiring A-to-Z to close the subject chemical resource recovery facility;

(c) requiring A-to-Z to identify the total number, contents and quantity of drums, storage tanks, and tank trucks presently located at the subject facility;

(d) requiring A-to-Z to identify all materials which have leaked or spilled from containers of materials stored at the facility, and to state the quantity of such materials;

(e) requiring A-to-Z to remove all chemical waste materials from the subject facility to an authorized special waste facility;

(f) requiring A-to-Z to excavate and remove all chemical materials which have leaked or spilled from containers of materials stored at the subject facility;

(g) requiring A-to-Z to notify the Solid Waste Administration within twenty-four (24) hours of any shipments of waste materials

(h) requiring A-to-Z to post a performance bond to assure compliance with said order;

(i) awarding attorneys fees and costs of suit; and

(j) granting such other relief as the Court deems just and equitable.

THIRD COUNT

1. The DEP adopts by reference each of the statements made in the First Count.

2. Since August 8, 1977, A-to-Z has continuously operated a chemical resource recovery facility without an approved registration statement and an approved engineering design, in violation of both N.J.S.A. 13:1E-5 and N.J.A.C. 7:26-2.2

3. Since on or about December 15, 1977, A-to-Z has continuously operated the subject chemical resource recovery facility in violation of a Cease and Desist Notice issued by the DEP on December 13, 1977.

4. Since July 21, 1978, A-to-Z has continuously operated the subject chemical resource recovery facility in violation of an Administrative Order of the DEP issued on July 20, 1978.

WHEREFORE, the DEP prays that this Court issue its Order:

(a) holding A-to-Z liable for maximum penalties pursuant to N.J.S.A. 13:1E-9;

(b) awarding attorneys fees and costs of suit; and

(c) granting such other relief as the Court deems just and equitable.

FOURTH COUNT

1. The DEP adopts by reference each of the statements made in the First Count.

2. Since August 8, 1978, A-to-Z has continuously stored hazardous, deleterious, destructive and poisonous substances in such a manner that these substances can flow and be washed into the groundwaters and other fresh waters of the State of New Jersey.

WHEREFORE, the DEP prays that this Court issue its Order:

(a) holding A-to-Z liable for maximum penalties pursuant to N.J.S.A. 23:5-28;

(b) awarding attorneys fees and costs of suit; and

(c) granting such other relief as the Court deems just and equitable.

FIFTH COUNT

1. The DEP adopts by reference each of the statements made in the First Count.

2. A-to-Z has not obtained a Permit to Construct, Install or Alter Control Apparatus or Equipment for any of the process tanks installed at A-to-Z's facility.

3. On February 1, 1978, an Order of the Bureau of Air Pollution Control, DEP, was issued to A-to-Z. This Order is attached hereto as Exhibit "C".

4. Since April 1, 1978, A-to-Z has failed to obtain a Permit to Construct, Install or Alter Control Apparatus or Equipment, and has not otherwise complied with the Order of the Bureau of Air Pollution Control, DEP, as issued on February 1, 1978, in continuous violation of that Order.

5. On July 21, 1978, an Order of the Bureau of Air Pollution Control, DEP, was issued to A-to-Z. This Order is attached hereto as Exhibit "D".

6. Since August 5, 1978, A-to-Z has failed to obtain a Permit to Construct, Install or Alter Control Apparatus or Equipment, and has not otherwise complied with the Order of the Bureau of Air Pollution Control, DEP, as issued on July 21, 1978, in continuous violation of that Order.

WHEREFORE, the DEP prays that this Court issue its Order:

- (a) enforcing the Order of the Bureau of Air Pollution Control, DEP, of February 1, 1978;
- (b) enforcing the Order of the Bureau of Air Pollution Control, DEP, of July 21, 1978;
- (c) requiring A-to-Z to cease its violations of N.J.A.C. 7:27-8.3(a) and 7:27-8.3(b);
- (d) holding A-to-Z liable for maximum penalties pursuant to N.J.S.A. 26:2C-19;
- (e) awarding attorneys fees and costs of suit; and
- (f) granting such other relief as the Court deems just and equitable.

SIXTH COUNT

1. The DEP adopts by reference each of the statements made in the First through Fifth Counts.

2. A-to-Z has been organized by John Albert (hereinafter, "Albert") and Eugene Conlon (hereinafter, "Conlon") as their alter ego for the purpose of operating the subject chemical resource recovery facility.

3. A-to-Z has been organized by Albert and Conlon as their instrumentality for the purpose of operating the subject chemical resource recovery facility.

4. A-to-Z has never had and does not now have any genuine or separate corporate existence but has been used and exists for the

sole purpose of permitting Albert and Conlon to transact their individual business under corporate guise.

5. Albert and Conlon exercise direction and control over the management, operation and decision-making processes at A-to-Z.

6. Albert and Conlon, as the alter ego of A-to-Z, are and have been conducting, managing and controlling affairs of A-to-Z since its incorporation as if it were their own individual business.

7. The acts and omissions of A-to-Z are the individual acts and omissions of Albert and Conlon.

WHEREFORE, the DEP prays that this Court issue its Order:

(a) enjoining Albert and Conlon from accepting any waste material at the chemical resource recovery facility located at Block 597.02, Lot 9, in the City of New Brunswick, New Jersey;

(b) requiring Albert and Conlon to close the subject chemical resource recovery facility;

(c) requiring Albert and Conlon to identify the total number, contents and quantity of drums, storage tanks, and tank trucks presently located at the subject facility;

(d) requiring Albert and Conlon to identify all materials which have leaked or spilled from containers of materials stored at the facility, and to state the quantity of such materials;

(e) requiring Albert and Conlon to remove all chemical waste materials from the subject facility to an authorized special waste facility;

(f) requiring Albert and Conlon to excavate and remove all chemical materials which have leaked or spilled from containers of materials stored at the subject facility;

(g) requiring Albert and Conlon to notify the Solid Waste Administration within twenty-four (24) hours of any shipments of waste materials;

(h) requiring Albert and Conlon to post a performance bond to assure compliance with said order;

(i) holding Albert and Conlon liable for maximum penalties pursuant to N.J.S.A. 13:1E-9;

(j) holding Albert and Conlon liable for maximum penalties pursuant to N.J.S.A. 23:5-28;

(k) requiring Albert and Conlon to cease their violations of N.J.A.C. 7:27-8.3(c) and 7:27-8.3(b);

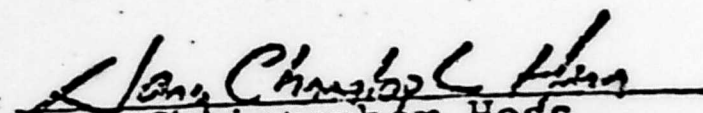
(l) holding Albert and Conlon liable for maximum penalties pursuant to N.J.S.A. 26:2C-19;

(m) awarding attorneys fees and costs of suit; and

(n) granting such other relief as the Court deems just and equitable.

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for Plaintiff
Department of Environmental
Protection of the State of
New Jersey

BY:


Gary Christopher Hess
Deputy Attorney General

DATED:

FILED

JAN 12 1979

DAVID D. FURMAN, J.S.C.

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for Plaintiff
Department of Environmental
Protection of the State of
New Jersey
36 West State Street
Trenton, New Jersey 08625

BY: GARY CHRISTOPHER HESS
Deputy Attorney General
(609) 292-4353

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MIDDLESEX
DOCKET NO.

DEPARTMENT OF ENVIRONMENTAL)
PROTECTION OF THE STATE OF)
NEW JERSEY,)

Plaintiff,)

Civil Action

-vs-

A TO Z CHEMICAL RESOURCE)
RECOVERY, INC., a corporation)
of the State of New Jersey,)
JOHN ALBERT, and EUGENE CONLON,)

Defendants.)

ORDER TO SHOW CAUSE
WITH TEMPORARY RESTRAINTS

This matter being opened to the Court on January 12, 1979
before the Honorable *David D. Furman*, by John J. Degnan,
Attorney General, Steven A. Tasher and Gary Christopher Hess,
Deputy Attorneys General, appearing, attorney for the plaintiff,
Department of Environmental Protection of the State of New Jersey

and it appearing from the affidavit of Ronald J. Buchanan, Ph.D., Carl F. Ochs, Jr., and George R. Weiss, that A to Z Chemical Resource Recovery, Inc. (hereinafter, "A-to-Z") is operating a chemical waste facility located in the City of New Brunswick, New Jersey, without an approved engineering plan and an approved registration statement as required by the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and it further appearing that A-to-Z's operation of this facility has created a real and present danger to the citizens of the State of New Jersey; and it further appearing that irreparable harm will occur unless the injunctive relief requested is granted, and good cause being shown for the making of this order:

IT IS on this 12 day of January, 1979,

ORDERED that A to Z Chemical Resource Recovery, Inc., and such of its officers, agents, employees and other persons in active concert or participation with A-to-Z as receive actual notice of this order, be restrained from accepting any additional chemicals or chemical waste at the subject facility; and it is further

ORDERED that A to Z Chemical Resource Recovery, Inc., and such of its officers, agents, employees and other persons in active concert or participation with A-to-Z as receive actual notice of this order, employ a sufficient number of employees or other agents to continuously supervise the A-to-Z facility so as to insure that unauthorized individuals are denied access to the A-to-Z facility; and it is further

ORDERED that the Department of Environmental Protection be permitted to immediately conduct inspections, sampling and testing of the chemical² wastes stored at the facility as the Department may deem necessary.

ORDERED that A to Z Chemical Resource Recovery, Inc., and such of its officers, agents, employees and other persons in active concert or participation with A-to-Z as receive actual notice of this order, refrain from allowing any future discharge of any chemicals or chemical wastes onto the soil, floor, or ground area at the subject chemical facility; and it is further

ORDERED that A to Z Chemical Resource Recovery, Inc., and such of the officers of A to Z Chemical Resource Recovery, Inc. as receive actual notice of this order, affirmatively prevent further discharge of chemicals or chemical wastes at the A-to-Z facility by closing or sealing all leaking valves attached to process or storage tanks at the A-to-Z facility, ~~by removing all exposed pipes of chemicals and chemical wastes now being stored outside at the A-to-Z facility~~, by covering and sealing all open drums containing chemicals and chemical wastes at the A-to-Z facility, by closing hatches on all process or storage tanks at the A-to-Z facility; and it is further

ORDERED that A to Z Chemical Resource Recovery, Inc., John Albert and Eugene Conlon, show cause before the Superior Court of New Jersey, Chancery Division, Middlesex County, at the Court House in New Brunswick, New Jersey, on January 26, 1977 at 9:00 A.M., or as soon thereafter as counsel may be heard, why relief should not be granted in accordance with the demands of the Complaint, and it is further

ORDERED that a copy of this Order to Show Cause With Temporary Restraints, the Complaint, the affidavit of Ronald J. Buchanan Ph.D., the affidavit of Carl F. Ochs, Jr., and the affidavit of George R. Weiss, be served upon the defendants, such service to be made either by ordinary or certified mail, or by personally serving a copy of the Complaint and Order to Show Cause upon each of the defendants within days from the date hereof. Said personal service may be made by a representative of the Office of the Attorney General. Each of the defendants shall file its answers with the Clerk and serve the required copies upon Deputy Attorney General Gary Christopher Hess, 36 West State Street, Trenton, New Jersey 08625, within twenty (20) days after the service of this order, and if a defendant fails to do so, judgment by default may be rendered against said defendant for the relief demanded in the Complaint.

ORDERED that defendants may move to vacate the instant temporary restraints upon two days' notice to counsel for plaintiff.

Donald D. Furman, J.S.C.

J.S.C.

DATED: *January 12, 1979*

CONSENT ORDER
FILED MARCH 2, 1979

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for Plaintiff
Department of Environmental
Protection of the State of
New Jersey
36 West State Street
Trenton, New Jersey 08625

FILED
MAR 2 1979
DAVID D. FURMAN, J.S.C.

BY: GARY CHRISTOPHER HESS
Deputy Attorney General
(609) 292-4353

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MIDDLESEX CO.
DOCKET NO. C-1799-78

DEPARTMENT OF ENVIRONMENTAL
PROTECTION OF THE STATE OF
NEW JERSEY,)

Plaintiff,)

-vs-

Civil Action

CONSENT ORDER

A TO Z CHEMICAL RESOURCE
RECOVERY, INC., a corporation
of the State of New Jersey;
JOHN ALBERT, and EUGENE CONLON,)

Defendants.)

This matter being opened to the Court on February 9, 1979 by
John J. Degnan, Attorney General of New Jersey, Gary Christopher Hess
Deputy Attorney General, attorney for plaintiff Department of En-
vironmental Protection of the State of New Jersey, on the adjourned

return date of an Order to Show Cause with Temporary Restraints issued by the Court on January 12, 1979, and Richard A. Kesselman, Esq., appearing on behalf of the defendants A to Z Chemical Resource Recovery, Inc., John Albert, and Eugene Conlon, and the parties having consented to the issuance of this Order, and good cause being shown for the making of this Order;

IT IS on this 2d day of March, 1979,

ORDERED that the defendants cease accepting any additional chemicals or chemical waste at the chemical waste facility located at Block 597.02, Lot 9, in the City of New Brunswick, Middlesex County, New Jersey, and immediately close the subject facility; and it is further

ORDERED that the defendants submit the following information to the plaintiff Department of Environmental Protection of the State of New Jersey on or before March 9, 1979:

- a. the total number, contents and quantity of drums located at the subject facility;
- b. the total number, contents and quantity of storage tanks located at the subject facility;
- c. the total number, contents and quantity of tank trucks located at the subject facility;
- d. the identity and quantity of any other materials which have leaked or spilled from containers stored at the subject facility; and

e. a schedule which shall provide for the removal of all chemical waste materials from the subject facility by April 10, 1979; and it is further

ORDERED that the defendants remove all chemical waste materials from the subject facility to an authorized special waste facility by April 10, 1979; and it is further

ORDERED that the defendants excavate and remove, by April 10, 1979, all chemical materials which have leaked or spilled from containers stored at the subject facility; and it is further

ORDERED that all containers used to remove the chemicals and chemical wastes are to be properly labelled, and all shipments of chemical waste materials are to be accompanied by the appropriately completed special waste manifest; and it is further

ORDERED that the defendants shall notify the Department of Environmental Protection of the State of New Jersey within twenty-four hours of the time of any shipment of waste materials from the subject facility; and it is further

ORDERED that the defendants employ a sufficient number of employees or other agents to continuously supervise the subject facility, as previously ordered by the Court, until such time as all chemicals and chemical wastes have been removed from the subject facility; and it is further

ORDERED that the defendants refrain from allowing any fu-

ture discharge of any chemicals or chemical wastes onto the soil, floor or ground area at the subject facility, as previously ordered by the Court; and it is further

ORDERED that the defendants continue to affirmatively prevent further discharges of chemicals or chemical wastes at the subject facility by closing or sealing all leaking valves attached to process or storage tanks at the subject facility, by covering and sealing all open drums containing chemicals and chemical wastes at the subject facility, and by closing hatches on all process or storage tanks at the subject facility, as previously ordered by the Court; and it is further

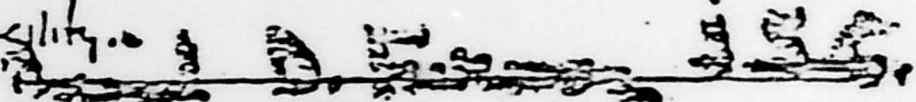
ORDERED that, after the chemicals and chemical wastes at the facility have been identified by the defendants, the plaintiff Department of Environmental Protection of the State of New Jersey will promptly identify special waste facilities which are authorized to receive such chemicals and chemical wastes for disposal; and it is further

ORDERED that, within forty-five days of submission by defendants of on-site soil borings, monitoring well data and background water quality data pursuant to the requirements of the Department of Environmental Protection's Division of Water Resources in support of the application for registration of the subject facility as a special waste facility, the plaintiff Department of Environmental Protection of the State of New Jersey shall act upon said application for registration; and it is further

ORDERED that, the plaintiff Department of Environmental Protection of the State of New Jersey having moved for the assessment of penalties as set forth in the complaint in this

action, decision on said motion is reserved; and it is further

ORDERED that the defendants have leave to move on or prior to March 26, 1979 for an extension of time to remove all chemical wastes, materials from the subject facility to an authorized special waste facility and to excavate and remove all chemical materials which have leaked or spilled from containers stored at the subject facility.


DAVID D. FURMAN, J.S.C.

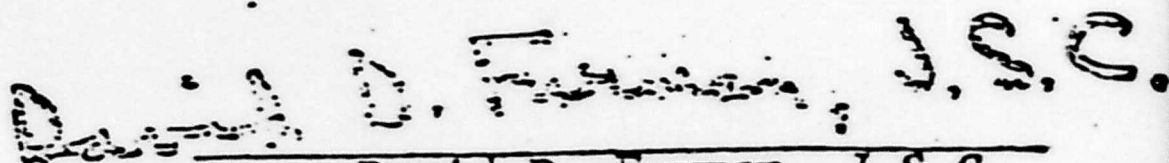
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2K
DATED: March 2
~~February 15~~, 1979

This matter being opened to the Court before the Honorable David D. Furman, Judge of the Superior Court, on April 12, 1979 by Richard Kesselman, Esquire, attorney for defendants, A to Z Chemical Resource Recovery, Inc., John Albert and Eugene Conlin, in the presence of John J. Degnan, Attorney General of New Jersey, by Gary Christopher Hess, Deputy Attorney General, attorney for plaintiff, upon the motion of the defendant for an order extending the period for the disposal of the chemicals and barrels on the premises of A to Z Chemical Resource Recovery, Inc. for an additional thirty (30) days, and the Court having considered the motion papers, supporting and opposing affidavits, and arguments of counsel, and good cause appearing,

IT IS on this 1 day of May, 1979,

ORDERED that the motion of defendants to extend the period for the disposal of the chemicals and barrels on the premises of A to Z Chemical Resource Recovery, Inc. for an additional thirty (30) days be and hereby is denied; and it is further

ORDERED that the defendants, A to Z Chemical Resource Recovery, Inc., John Albert and Eugene Conlin comply with the Order as issued in this action on March 2, 1979 forthwith.


 David D. Furman, J.S.C.

DATED:

ORDER FOR THE APPOINTMENT OF A RECEIVER:
FREEZING THE CORPORATE ASSETS AND PERMITTING
DISCOVERY - FILED AUGUST 24, 1979

24a

FILED

AUG 24 1979

DAVID D. FURMAN, J.S.C.

JOHN J. DEGNAN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff
36 W. State Street
Trenton, New Jersey 08625
By: RONALD P. HEKSCH
Deputy Attorney General
(609) 292-1557

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MIDDLESEX COUNTY
DOCKET NO. C-1799-78

DEPARTMENT OF ENVIRONMENTAL)
PROTECTION OF THE STATE OF)
NEW JERSEY,)

Civil Action

Plaintiff,)

ORDER FOR THE APPOINTMENT OF
A RECEIVER; FREEZING THE
CORPORATE ASSETS, AND PERMITTING
DISCOVERY

v.)

A TO Z CHEMICAL RESOURCE)
RECOVERY, INC., etc., et al.,)

Defendants.)

This matter having been presented to the Court by
John J. Degnan, Attorney General of New Jersey, by Gary Christopher
Hess and Ronald P. Heksch, Deputy Attorneys General, attorneys for
plaintiff, New Jersey Department of Environmental Protection (NJDEP),

and the Court having considered the arguments of counsel as well as the briefs, affidavits and exhibits submitted by the State in support of its Motion for Supplemental Relief in Aid of Litigant's Rights and the brief and affidavits submitted in opposition thereto, and it appearing to the Court that the defendants continue to store chemical wastes on their property located at Block 597.02, Lot 9, in the City of New Brunswick, Middlesex County, New Jersey, in drums which are deteriorating and leaking in violation of two previous Orders of this Court dated March 2, 1979 and May 2, 1979, and, further, have not adequately inventoried said chemical wastes, noticed the NJDEP when some of these waste materials have been removed and properly manifested the removed chemicals; and good cause appearing,

IT IS on this 17 day of August 1979,

ORDERED that a receiver be appointed for the purpose of supervising the facility owned and operated by defendants in the City of New Brunswick, which is the subject matter of this litigation, for the purpose of effecting a complete cleanup of the instant facility, remedying all violations of law set forth herein and in the previous Orders of this Court and the NJDEP.

IT IS FURTHER ORDERED that the defendants, their agents and employees, are immediately enjoined from interfering with the

actions of said receiver and from entering onto the property of the facility at any time without the approval of the receiver, and from operating the facility in any manner.

IT IS FURTHER ORDERED that all assets of any kind of A to Z Chemical Resource Recovery, Inc. are to be immediately turned over or otherwise transferred to the possession and control of the said receiver and that no disposition, transfer, release or other disposal of any of said assets shall be made subsequent to Tuesday, August 7, 1979 at 12:00 noon, except as directed and approved by the receiver.

IT IS FURTHER ORDERED that all books, records, journals, manifests, vouchers and bills of lading pertaining to the operation of the defendants' facility shall be immediately turned over to said receiver.

IT IS FURTHER ORDERED that full cooperation is to be immediately extended to said receiver by the defendants as well as by the NJDEP in furtherance of the mandate of this Court.

IT IS FURTHER ORDERED that the receiver in this matter shall provide the Court with periodic progress reports pertaining to the performance of the activities set forth herein.

IT IS FURTHER ORDERED that upon completion of the instant cleanup program, said receiver will submit a final report to the Court.

IT IS FURTHER ORDERED that the defendant A to Z Chemical Resource Recovery, Inc. will pay for all costs associated with the performance of the activities set forth in this Order.

IT IS FURTHER ORDERED that plaintiff may engage in whatever discovery it feels appropriate in order to ascertain the assets of the individual and corporate defendants herein. Same shall be conducted within two (2) weeks of the date hereof.

IT IS FURTHER ORDERED that either party may move before this Court on short notice for any additional required relief.

David D. Furman, J.S.C.

J.S.C.

JOHN J. DEGNAN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff
36 West State Street
Trenton, NJ 08625
By: RONALD P. HEKSCH
Deputy Attorney General
(609) 292-1557

FILED
SEP 13 1979
DAVID D. FURMAN, J.S.C.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MIDDLESEX COUNTY
DOCKET NO. C-1799-78

DEPARTMENT OF ENVIRONMENTAL)
PROTECTION OF THE STATE OF)
NEW JERSEY,)

Civil Action

Plaintiff,)

ORDER DESIGNATING JOINT RECEIVERS

v.)

A TO Z CHEMICAL RESOURCE)
RECOVERY, INC., etc., et al.,)

Defendants.)

This matter having been presented to the Court by
John J. Degnan, Attorney General of New Jersey, by Gary Christopher
Hess and Ronald P. Heksch, Deputy Attorneys General, attorneys
for plaintiff, New Jersey Department of Environmental Protection,

and the Court by Order dated August 17, 1979 having ordered that a receiver be appointed for the purpose of supervising the facility owned and operated by defendants in the City of New Brunswick, which is the subject matter of this litigation, for the purpose of effecting a complete cleanup of the property in question and remedying any and all violations of the law that exist thereon and requiring defendants to pay the costs associated with said cleanup and receivership, and good cause appearing,

IT IS on this 11 day of September 1979,

ORDERED that the firm of Dames and Moore and Frank J. Rubin, Esq. be appointed as joint receivers in this matter.

David D. Furman, J.S.C.
David D. Furman, J.S.C.

ORDER OF THE SUPERIOR COURT APPELLATE
DIVISION DENYING MOTION FOR LEAVE TO
APPEAL - FILED ON ORDER ON
OCTOBER 19, 1979 MOTIONS/PETITIONS

30a

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OF THE STATE OF NEW JERSEY

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. AM-43-79
MOTION NO. M-266-79
BEFORE PART G

VS.

A TO Z CHEMICAL RESOURCE
RECOVERY INC., ETC., ET AL

JUDGES: MATTHEWS
ARD
POLOW

ORIGINAL FILED
OCT 19 1979
ELIZABETH McLAUGHLIN
Clerk

MOVING PAPERS FILED	SEPTEMBER 21, 1979
ANSWERING PAPERS FILED	OCTOBER 15, 1979
DATE SUBMITTED TO COURT	OCTOBER 16, 1979
DATE ARGUED	
DATE DECIDED	OCTOBER 18, 1979

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS
HEREBY ORDERED AS FOLLOWS:

MOTION/PETITION FOR
LEAVE TO APPEAL

GRANTED	DENIED	OTHER
	X	

SUPPLEMENTAL:

I hereby certify that the foregoing
is a true copy of the original on file
in my office.

Elizabeth McLaughlin

Clerk

FOR THE COURT:

Robert A. Matthews
P.J.A.D.

WITNESS, THE HONORABLE ROBERT A. MATTHEWS, PRESIDING
JUDGE OF PART G, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION,
THIS 18 DAY OF OCTOBER 1979.

18

Elizabeth McLaughlin
CLERK OF THE APPELLATE DIVISION

This matter having been presented to the court by John J. Degnan, Attorney General of New Jersey, by Ronald P. Heksch, Deputy Attorney General, attorney for plaintiff, Department of Environmental Protection of the State of New Jersey, in the presence of Larry Brown

DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY,
 Plaintiff,
 v.
 A TO Z CHEMICAL RESOURCE RECOVERY, INC., et al.,
 Defendants.

ORDER DISCHARGING JOINT RECEIVERS AND AUTHORIZING THE PLAINTIFF TO CLEAN UP DEFENDANTS' FACILITY
 CIVIL ACTION

SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION, MIDDLESEX
 DOCKET NO. C-1799-78

JOHN J. DEGNAN
 ATTORNEY GENERAL OF NEW JERSEY
 Attorney for Plaintiff
 36 West State Street
 Trenton, NJ 08625
 By: RONALD P. HEKSCHE
 Deputy Attorney General
 (609) 292-1557

DAVID D. FURMAN, J.S.C.

JUN 6 1980

FILED

ORDER DISCHARGING JOINT RECEIVERS AND
 AUTHORIZING THE PLAINTIFF TO CLEAN UP
 DEFENDANTS FACILITY - FILED JUNE 6, 1980

JUN 17 1980

REC'D

CORRECTION

W

***PRECEDING IMAGE HAS BEEN
REPEATED
TO ASSURE LEGIBILITY OR TO
CORRECT A POSSIBLE ERROR***

REC'D

JUN 17 1980

Handwritten signature and initials

ORDER DISCHARGING JOINT RECEIVERS AND
AUTHORIZING THE PLAINTIFF TO CLEAN UP
DEFENDANTS FACILITY - FILED JUNE 6, 1980

31a

FILED

JUN 6 1980

DAVID D. FURMAN, J.S.C.

JOHN J. DEGNAN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff
36 West State Street
Trenton, NJ 08625
By: RONALD P. HEKSCH
Deputy Attorney General
(609) 292-1557

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MIDDLESEX C
DOCKET NO. C-1799-78

DEPARTMENT OF ENVIRONMENTAL
PROTECTION OF THE STATE OF
NEW JERSEY,

Plaintiff,

v.

A TO Z CHEMICAL RESOURCE RECOVERY,
INC., et al.,

Defendants.

Civil Action

ORDER DISCHARGING JOINT RECEIVE
AND AUTHORIZING THE PLAINTIFF T
CLEAN UP DEFENDANTS' FACILITY

This matter having been presented to the Court by John J. Degnan, Attorney General of New Jersey, by Ronald P. Heksch, Deputy Attorney General, attorney for plaintiff, Department of Environmental Protection of the State of New Jersey, in the presence of Larry Bronso

Esq., attorney for defendants A to Z Chemical Resource Recovery, Inc. and John Albert; Ralph Mayo, Esq., attorney for the defendant Eugene Conlon, and Frank Rubin, Esq. and Bernard Archer of Dames and Moore, Joint Receivers, and the Court having considered the arguments of counsel as well as the brief and affidavits submitted in support and opposition to plaintiff's motion to relieve the joint receivers and authorize the plaintiff to perform or arrange to perform, at its discretion, all acts which the defendants were directed to perform pursuant to the previous orders of this Court dated January 12, 1979, March 2, 1979 and May 2, 1979, and holding said defendants jointly and severally liable to the plaintiff for all costs associated therewith and, further, relieving the joint receivers heretofore appointed by this Court by Orders dated August 17, 1979 and September 11, 1979; and good cause appearing,

IT IS on this 6 day of

May

1980.

ORDERED that Frank Rubin, Esq. and Dames and Moore, the joint receivers appointed by Orders of this Court dated August 17, 1979 and September 1979 are hereby discharged from any future duties and responsibilities as receivers, and

IT IS FURTHER ORDERED that the plaintiff, Department of Environmental Protection of the State of New Jersey, is hereby authorized to clean up the facility owned by the defendant A to Z Chemical Resource Recovery, Inc. located at Block 597.02, Lot 9, in the City of New Brunswick, Middlesex County, New Jersey, and remedy all violations of the law that exist thereon with moneys from the New Jersey Spill Compensation Fund pursuant to the "Spill Compensation and Control Act

N.J.S.A. 58:10-23.11 et seq. and amendments thereto, P.L. 1979,
c.346, and

IT IS FURTHER ORDERED that the plaintiff, Department of Environmental Protection of the State of New Jersey, may amend its complaint at the completion of the aforementioned cleanup, or sooner if it sees fit, to allege a cause of action under the "Spill Compensation and Control Act" and the amendments thereto, seeking reimbursement for moneys expended in cleaning up the property which is the subject of this litigation and/or the imposition of treble damages, and

IT IS FURTHER ORDERED that defendants' motion to vacate the defaults heretofore entered is denied, subject to their right to file an answer to any amended complaint filed by plaintiff, and

IT IS FURTHER ORDERED that the joint receivers, Frank Rubin, Esq. and Dames and Moore, shall be entitled to fees in the amount of \$1,550⁰⁰ and \$2,104⁰⁰, respectively. A lien shall be imposed on the real property of the defendant A to Z Chemical Resource Recovery, Inc. in the aforementioned amounts plus the amount of fees heretofore approved by this Court. Said lien(s) shall have a priority, and

IT IS FURTHER ORDERED that Dames and Moore is hereby authorized to continue in the role of consultant and any fees and expenses incurred in this function will be assessed against the defendants on notice with a right to be heard.

David D. Ferguson, J.S.C.

David D. Ferguson, J.S.C.

ORIGINAL
FILED

MAR 31 1981

Dr. Louis ...

JAMES R. ZAZZALI
Attorney General of New Jersey
Attorney for the State of New Jersey
State House Annex
Trenton, New Jersey 08625

By: RONALD P. HEKSCH
Deputy Attorney General
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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIV. - MIDDLESEX COUNTY
DOCKET NO. C-1799-78

DEPARTMENT OF ENVIRONMENTAL PRO-
TECTION OF THE STATE OF NEW JERSEY
and SPILL COMPENSATION FUND,
DEPARTMENT OF TREASURY, STATE OF
NEW JERSEY,

Plaintiffs,

v.

A TO Z CHEMICAL RESOURCE RECOVERY,
INC., a corporation of the State
of New Jersey; JOHN ALBERT;
EUGENE CONLON; JERSEY SANITATION
CO., INC., a corporation of the
State of New Jersey; HERITAGE
BANKNORTH, n.a., a banking assoc-
iation organized and existing
under the laws of the United
States of America; HERBERT M.
TANZMAN, and PETTIBONE CORPOR-
ATION, a corporation of the
State of New Jersey,

Defendants.

Civil Action

AMENDED COMPLAINT

Plaintiffs, Department of Environmental Protection of the State of New Jersey, with principal offices at John Fitch Plaza, City of Trenton, County of Mercer, New Jersey, and State of New Jersey, Department of the Treasury, Spill Compensation Fund, with principal offices at 135 West Hanover Street, City of Trenton, County of Mercer, New Jersey, by way of amended complaint, say:

FIRST COUNT

1. Plaintiff, State of New Jersey, Department of Environmental Protection (hereinafter "DEP"), is an agency within the State of New Jersey empowered to enforce the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the rules and regulations promulgated thereunder, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and the rules and regulations promulgated thereunder, N.J.S.A. 23:5-28, and is further empowered by N.J.S.A. 13:1D-9e to "...institute legal proceedings for the prevention of pollution of the environment and abatement of nuisances in connection therewith and shall have authority to seek and obtain injunctive relief and the recovery of fines and penalties...."

2. Defendant A to Z Chemical Resource Recovery, Inc. (hereinafter "A to Z") is a corporation organized under the laws of the State of New Jersey.

3. Defendants John Albert and Eugene Conlon are the owners and/or operators of A to Z.

4. A to Z is the operator of a chemical waste storage and disposal facility located at Block 597.02, Lot 9,

in the City of New Brunswick, Middlesex County, New Jersey. A to Z has been the operator of this facility since prior to August 8, 1977.

5. In the operation of its facility, A to Z had stored several thousand drums containing various chemicals and chemical wastes at the aforementioned facility. In the operation of its facility, A to Z had installed and utilized two process tanks of approximately 10,000 gallon capacity each, and five storage tanks of lesser capacity. In the operation of its facility A to Z had also used three tank trucks located at its facility for the storage of chemicals and chemical wastes. A to Z had stored chemicals and chemical wastes in bins, in open piles, and five-gallon pails at the aforementioned facility. Some of the aforementioned chemicals and chemical wastes continue to be stored at the facility in question and need to be removed and disposed of properly.

6. The chemicals and chemical wastes which have been and are now being stored at the A to Z facility include: a mixture of nitric and sulfuric acids; lime; methanol; latex residues; paint sludges; various flammable solvents; waste adhesives; an unidentified gray-white odorous liquid; an unidentified brown odorous liquid; an unidentified clear, odorous and highly alkaline liquid; an unidentified clear, odorous liquid; solvent based rubber adhesives; water based rubber adhesives; and, plasticizer, resin, monomer or elastomer residues. Many of these materials are classified as hazardous substances by DEP.

7. On January 10, 1978, July 11, 1978, July 12, 1978, August 7, 1978 and on various other dates not known to plaintiff but well known to A to Z, A to Z has used the process tanks located at its facility to dilute acids and other chemicals.

8. In the operation of its facility, A to Z had stored the aforementioned chemicals and chemical wastes in 55-gallon drums, many of which were leaking, open, broken, unsealed, toppled over, bulging, and otherwise inadequate to retain the chemicals and chemical wastes contained in them. As a result spills, leaks and other discharges of chemicals and chemical wastes from these drums have covered much of the area at the facility in the vicinity of the drums.

9. In the operation of its facility A to Z had stored a gray-white odorous liquid in both of its 10,000 gallon capacity process tanks on the site. Both of these tanks had been filled to capacity. Five lesser capacity tanks were also filled with unknown liquid chemicals and chemical wastes. The hatches on four of these tanks had been opened. The entire top had been cut off the fifth tank. The fifth tank was, in addition, exposed to the weather because there was no roof on that portion of the building in which it was located. Each of the aforementioned tanks has a valve on the bottom which can be easily opened. Several of these valves had been observed dripping.

10. Rainfall and surface water entering onto the A to Z site mixes with and picks up the chemicals and chemical

waste materials which have been discharged and have contaminated the soil. This contaminated material has and is seeping into the potable groundwaters underlying the site. The subject facility is located within one-half mile of approximately 30 wells. A marsh is located approximately 75 yards from an area where drums are being stored by A to Z at its facility. This marsh is exposed to chemicals and chemical wastes transported by surface water runoff from the A to Z facility. Moreover, the A to Z facility is drained by Mile Run, a tributary of the Raritan River.

11. Additionally, the A to Z facility is in a populated area. There are residences and an apartment complex located nearby. Moreover, it is located within one-half mile of the McKinley School and the Raritan Valley Workshop for Retarded Children. Children routinely walk through and play in the A to Z facility. No fencing or other security was provided by A to Z to insure that children or other unauthorized individuals were denied access to the facility.

12. Much of the material present and/or stored at the A to Z facility was flammable, toxic chemicals and chemical wastes with a low flash point. This material could be easily ignited and if this occurred a hazardous, toxic plume would spread and contaminate the surrounding environment.

13. The presence and/or storage of the chemicals and chemical wastes in the manner described above and their discharge into the surrounding properties, the surface water and the groundwater of this state constitutes a direct, immediate and potential threat to the environment and, further,

violates N.J.S.A. 13:1E-1 et seq. and N.J.A.C. 7:26-1.1 et seq.

14. Moreover, pursuant to N.J.S.A. 13:1E-1 et seq., no person may engage in the operation of a waste disposal and/or storage facility without receiving approval from the DEP. The A to Z facility is not a properly authorized solid waste disposal and/or storage facility, nor has its owners and/or operators obtained the permits and approvals from the DEP necessary to operate such a facility as required by N.J.S.A. 13:1E-5 and N.J.A.C. 7:26-2.2(a).

15. On December 13, 1977, the DEP issued a Cease and Desist Notice concerning the subject facility.

16. On July 20, 1978, the DEP issued an Administrative Order concerning the subject facility.

17. Despite issuance of the aforementioned Cease and Desist Notice of December 13, 1977 and the DEP's Administrative Order of closure dated July 20, 1978, A to Z continued to operate the subject chemical waste storage and disposal facility.

18. Pursuant to N.J.S.A. 13:1E-9(b) and N.J.S.A. 13:1E-10, the Commissioner of the DEP is authorized to institute an action or proceeding in the Superior Court for injunctive relief and other relief, including damages, against any facility which operates in violation of N.J.S.A. 13:1E-1 et seq. or in violation of any code, rule, regulation or order promulgated or issued pursuant to that Act.

19. N.J.S.A. 13:1E-9 further provides that any person who violates the provisions of said Act or any code,

rule or regulation pursuant thereto shall be liable to a penalty of not more than \$25,000 per day.

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WHEREFORE, plaintiff DEP demands judgment on this count ordering A to Z Chemical Resource Recovery, Inc. and its owners and operators to:

(a) comply with the Cease and Desist Notice of the DEP dated December 13, 1977;

(b) comply with the Administrative Order of the DEP dated July 20, 1978;

(c) pay actual damages;

(d) pay punitive damages;

(e) pay maximum penalties as provided by law;

(f) post a performance bond to assure compliance with the law;

(g) pay attorneys fees and costs of suit, and

(h) such other relief as the court deems just and proper.

SECOND COUNT

1. Plaintiffs repeat all the allegations contained in the First Count of the amended complaint and incorporate same herein with the same force and effect as if fully stated.

2. Defendant Jersey Sanitation Co., Inc., is a corporation organized under the laws of the State of New Jersey.

3. Defendants John Albert and Eugene Conlon are the owners and/or operators of Jersey Sanitation Co., Inc.

4. Jersey Sanitation, Co. picked up from various persons and transported to the A to Z facility, the chemicals and chemical waste found at that site.

5. Jersey Sanitation Co., Inc., knew or should have known, that A to Z was not licensed to store and/or dispose of the chemicals and chemical waste it transported to the site.

6. Additionally, Jersey Sanitation Co., Inc., knew or should have known of DEP's Orders that A to Z cease operating in violation of the law and take steps necessary to correct its past unlawful conduct.

7. Despite the aforementioned Jersey Sanitation Co., Inc., intentionally continued to transport chemicals and chemical wastes to the A to Z facility.

8. Jersey Sanitation Co. aided and abetted A to Z's unlawful operation of its facility in violation of N.J.S.A. 13:1F-1 et seq. and N.J.A.C. 7:26-1.1 et seq.

WHEREFORE, plaintiff DEP demands judgment on this count ordering Jersey Sanitation Co., Inc. and its owners and operators to:

- (a) pay actual damages;
- (b) pay punitive damages;
- (c) pay maximum penalties as provided by law;
- (d) pay attorneys fees and cost of suit; and
- (e) such other relief as the court deems just and

proper.

THIRD COUNT

1. Plaintiffs repeat all of the allegations of the First and Second Counts of the amended complaint and incorporate same herein with the same force and effect as if fully stated.

2. Plaintiff State of New Jersey, Department of Treasury, Spill Compensation Fund (hereinafter "Spill Fund"), is a Division within the Department of Treasury created pursuant to N.J.S.A. 58:10-23.11i to carry out the purposes of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., among which is responsibility for cleanup and removal costs associated with the discharge of hazardous substances as provided in N.J.S.A. 58:10-23.11f.

3. Inspections of the A to Z facility by DEP personnel indicated that hazardous chemical substances were being stored and/or disposed of at the site in question and that this activity was resulting in the leakage and discharge of these substances into the waters of the State or onto lands from which they might flow or drain into said waters in violation of N.J.S.A. 58:10-23.11 et seq.

4. Moreover, the hazardous chemical substances found at the A to Z facility were not satisfactorily stored or contained and, further, said substances were highly flammable, explosive, presented a substantial risk of imminent damage to the public health and/or safety, and/or presented an imminent risk of severe damage to the environment, by reason of the fact that said substances were highly toxic and stored in a manner from which their discharge was imminent.

5. On or about January 12, 1979, plaintiff DEP filed an Order to Show Cause with Temporary Restraints and Verified Complaint seeking to have defendants A to Z, John Albert and Eugene Conlon take appropriate action to remedy

the hazardous conditions that existed at the A to Z facility. Despite numerous orders by this court requiring the aforementioned defendants to cease operations on this site and clean up and remove the hazardous substances thereon, in a manner approved by the DEP, said defendants failed to do so. Thereafter, at DEP's request, a receiver was appointed to cleanup the site, at the aforementioned defendant's expense. The court appointed receiver was also unable to effectuate a cleanup. This being the case, DEP moved for an order discharging the receiver and authorizing it to cleanup defendants' facility pursuant to N.J.S.A. 58:10-23.11 f .

6. By reason of the aforementioned plaintiff Spill Fund was required pursuant to N.J.S.A. 58:10-23.11 f to expend considerable monies (\$546,325.07) to eliminate the discharge at the A to Z facility and to minimize the harm being caused by the storage and/or disposal of hazardous chemical wastes thereon by cleaning up the site. Moreover, the plaintiff Spill Fund is expected to expend additional funds in cleaning up the site.

7. The aforementioned expenses were incurred and will be incurred by the plaintiff Spill Fund because the defendants', A to Z Chemical Resource Recovery, Inc., John Albert, Eugene Conlon and Jersey Sanitation Co., Inc., refused and continue to refuse, despite numerous requests, to undertake said cleanup.

8. The defendants A to Z Chemical Resource Recovery, Inc., John Albert, Eugene Conlon and Jersey Sanitation, Co., Inc., are individually, jointly and severally liable for all

costs of cleanup and removal incurred by plaintiffs pursuant to N.J.S.A. 58:10-23.11g(c).

9. Moreover, by reason of said defendants' refusal to comply with directives that they cleanup and remove the discharge in question, they are also liable in an amount equal to three times the cost of such removal pursuant to N.J.S.A. 58:10-23.11f(a).

WHEREFORE, plaintiffs demand judgment against A to Z, John Albert, Eugene Conlon and Jersey Sanitation, Co., Inc., requiring them to pay:

- (a) all costs which the Spill Fund has incurred or will incur in connection with cleanup of these premises;
- (b) an amount equal to three times the cost of said cleanup and removal;
- (c) punitive damages;
- (d) attorneys fees and costs of suit, and
- (e) such other relief as the court deems just and proper.

FOURTH COUNT

1. Plaintiffs repeat all of the allegations of the First, Second and Third Counts of the amended complaint and incorporate same herein with the same force and effect as if fully stated.

2. As a result of the discharge of hazardous substances at the A to Z facility and the unlawful storage

and/or disposal of said substances at this facility, plaintiff Spill Fund was required to expend considerable monies to eliminate the hazardous conditions that existed. To date the plaintiff Spill Fund has expended \$546,325.07 to cleanup and remove the hazardous substances involved and it is expected that said plaintiff will incur additional expenses in the future.

3. N.J.S.A. 58:10-23.11(f) provides in part that any expenditures made by the administrator of the plaintiff Spill Fund pursuant to the Spill Compensation and Control Act will constitute a first priority claim and lien paramount to all other claims and liens upon the revenues and all real and personal property of the discharger.

4. On March 27, 1981 the Spill Fund filed a lien with the Middlesex County Clerk's Office in the amount of \$546,325.07 against the defendants A to Z, John Albert and Eugene Conlon. Same was recorded in Deed Book 3183 at page 319.

5. Defendant Heritage Bank-North, holds a mortgage on the A to Z property in the amount of approximately \$105,000.

6. The defendants Heritage Bank-North, Herbert Tanzman and Pettibone Corporation, are judgment creditors of the defendant A to Z Corporation.

WHEREFORE, plaintiff Spill Fund demands judgment against all defendants declaring that all past and future expenditures by the Spill Fund for cleanup of the site constitutes a first priority claim and lien paramount to all other claims and liens upon the revenues and all real and personal property of the defendants A to Z, John Albert, Eugene Conlon and Jersey Sanitation Co., Inc., plus interest and costs

FIFTH COUNT

46a

1. Plaintiffs repeat the allegations of the First, Second, Third and Fourth Counts of the amended complaint and incorporate same herein with the same force and effect as if fully stated.

2. Since on or about August 8, 1978, defendant A to Z has continuously stored hazardous, deleterious, destructive and poisonous substances in such a manner that these substances do in fact flow and can be washed into the ground and surface waters of the state in violation of N.J.S.A. 23:5-28.

3. Any person violating N.J.S.A. 23:5-28 is liable for penalty of not more than \$6,000 for each offense.

4. Defendant A to Z and Jersey Sanitation Co., Inc., have continuously violated N.J.S.A. 23:5-28.

WHEREFORE, plaintiffs demand judgment on this count ordering defendants A to Z, Jersey Sanitation Co., Inc., John Albert and Eugene Conlon to:

(a) pay a penalty of \$6,000 for each violation of N.J.S.A. 23:5-28;

(b) post a performance bond to insure compliance with the directives of this court;

(c) pay attorneys fees and costs of suit, and

(d) such other relief as the court deems just and proper.

SIXTH COUNT

1. The plaintiffs repeat all of the allegations of the First, Second, Third, Fourth and Fifth Counts of the amended complaint and incorporate same herein with the same force and effect as if fully set forth.

2. The DEP is empowered pursuant to N.J.S.A. 58:10A-1 et seq. to proceed for penalties and injunctive relief against any person who discharges any pollutants in a manner which does not conform to the requirements set forth in said statute.

3. The discharge of hazardous substances into the soil, ground and surface waters in and about the A to Z facility is a discharge of pollutants in violation of N.J.S.A. 58:10A-1 et seq.

4. Defendants A to Z, Jersey Sanitation Co., Inc., John Albert and Eugene Conlon, have failed to take the steps necessary to eliminate said unlawful discharge and correct conditions giving rise to same.

5. Any person violating N.J.S.A. 58:10A-1 et seq. is liable for a penalty of not more than \$10,000 per day for each such violation and each day that said violation continues constitutes a separate and distinct offense.

WHEREFORE, plaintiff DEP demands judgment on this count ordering defendants A to Z, Jersey Sanitation, Inc., John Albert and Eugene Conlon to:

- (a) cease violating N.J.S.A. 58:10A-1 et seq.;
- (b) pay a penalty of \$10,000 for each violation of N.J.S.A. 58:10A-1 et seq.;
- (c) pay attorneys fees and costs of suit, and
- (d) such other relief as the court deems just and proper.

SEVENTH COUNT

1. The plaintiffs repeat all the allegations contained in the First, Second, Third, Fourth, Fifth and

Sixth Counts of the amended complaint and incorporate same herein with the same force and effect as if fully set forth.

2. The discharge, disposal and/or storage of hazardous and deleterious substances on the A to Z facility constitutes a nuisance which is injurious to the public health, safety and welfare and the environment of the State of New Jersey.

WHEREFORE, plaintiffs demand judgment on this count ordering defendants A to Z, Jersey Sanitation Co., Inc., John Albert and Eugene Conlon to:

- (a) take action approved by the DEP necessary to abate the nuisance alleged;
 - (b) pay actual damages for the aforesaid nuisance;
 - (c) pay punitive damages for the aforesaid nuisance;
 - (d) awarding attorneys fees and costs of suits,
- and
- (e) granting such other relief as the court deems just and proper.

EIGHTH COUNT

1. Plaintiffs repeat the allegations of the First, Second, Third, Fourth, Fifth, Sixth and Seventh Counts of the amended complaint and incorporate same herein with the same force and effect as if fully stated.

2. A to Z has not obtained a Permit to Construct, Install or Alter Control Apparatus or Equipment for any of the process tanks installed at A to Z's facility.

3. On February 1, 1978, an Order of the Bureau of Air Pollution Control, DEP, was issued to A to Z.

4. Since April 1, 1978, A to Z has failed to obtain a Permit to Construct, Install or Alter Control Apparatus or Equipment, and has not otherwise complied with the Order of the Bureau of Air Pollution Control, DEP, as issued on February 1, 1978, in continuous violation of that Order.

5. On July 21, 1978, an Order of the Bureau of Air Pollution Control, DEP, was issued to A to Z.

6. Since August 5, 1978, A to Z has failed to obtain a Permit to Construct, Install or Alter Control Apparatus or Equipment, and has not otherwise complied with the Order of the Bureau of Air Pollution Control, DEP, as issued on July 21, 1978, in continuous violation of that Order.

WHEREFORE, plaintiffs demand judgment on this court ordering defendants A to Z, Jersey Sanitation Co., Inc., John Albert and Eugene Conlon to:

(a) cease their violations of N.J.A.C. 7:27-8.3(a) and 7:27-8.3(b);

(b) pay maximum penalties pursuant to N.J.S.A. 26:2C-19;

(c) awarding attorneys fees and costs of suit, and

(d) granting such other relief as the court deems just and equitable.

NINTH COUNT

1. Plaintiffs repeat the allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Counts of the amended complaint and incorporate same herein with the same force and effect as if fully stated.

2. A to Z was organized by John Albert and Eugene Conlon as their alter ego for the purpose of operating the subject chemical waste storage and disposal facility.

3. A to Z was organized by John Albert and Eugene Conlon as their instrumentality for the purpose of operating the subject chemical waste storage and disposal facility.

4. A to Z has never had and does not now have any genuine or separate corporate existence but has been used and exists for the sole purpose of permitting John Albert and Eugene Conlon to transact their individual business under corporate guise.

5. John Albert and Eugene Conlon exercise complete direction and control over the management, operation and decision-making processes at A to Z.

6. John Albert and Eugene Conlon, as the alter ego of A to Z, are and have been conducting, managing and controlling affairs of A to Z since its incorporation as if it were their own individual business.

7. The acts and omissions of A to Z are the individual acts and omissions of John Albert and Eugene Conlon.

8. John Albert and Eugene Conlon used the corporate guise of A to Z to violate the law.

WHEREFORE, plaintiffs demand judgment against John Albert and Eugene Conlon holding them personally liable, jointly and severally, for any and all costs, damages, actual and punitive, penalties and other relief assessed against A to Z as a result of the allegations in this amended complaint.

TENTH COUNT

1. Plaintiffs repeat the allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth

Counts of the amended complaint and incorporate same herein with the same force and effect as if fully stated.

2. Jersey Sanitation Co., Inc., was organized by John Albert and Eugene Conlon as their alter ego for the purpose of operating a waste hauling business and for transporting chemicals and chemical waste to the A to Z facility.

3. Jersey Sanitation Co., Inc., was organized by John Albert and Eugene Conlon as their instrumentality and never had and does not now have any genuine or separate corporate existence but has been used and exists for the sole purpose of permitting John Albert and Eugene Conlon to transact their individual business under the corporate guise.

4. John Albert and Eugene Conlon exercise direction and control over the management, operation and decision-making processes at Jersey Sanitation Co., Inc.

5. John Albert and Eugene Conlon, as the alter ego of Jersey Sanitation Co., Inc., are and have been conducting, managing and controlling the affairs of Jersey Sanitation Co., Inc., since its incorporation as if it were their own individual business.


6. The acts and omissions of Jersey Sanitation Co., Inc., are the individual acts and omissions of John Albert and Eugene Conlon.

7. John Albert and Eugene Conlon used the corporate guise of Jersey Sanitation Co., Inc. to violate the law.

WHEREFORE, plaintiffs demand judgment against John Albert and Eugene Conlon holding them personally liable, jointly

and severally, for any and all costs, damages, actual and punitive penalties and other relief assessed against Jersey Sanitation Co., Inc., as a result of the allegations in this amended complaint.

JAMES R. ZAZZALI
Attorney General of New Jersey
Attorney for the State of New Jersey

By 

Ronald P. Heksch
Deputy Attorney General

**ORIGINAL
FILED**

APR 30 1981

ANSWER, CROSS-CLAIM AND JURY DEMAND
FILED APRIL 30, 1981

2986

RICHARD M. PISACANE, ESQ.
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(201) 785-2213

Richard M. Pisacane

Attorney for Defendant, Jersey Sanitation Co., Inc.

DEPARTMENT OF ENVIRONMENTAL PRO-
TECTION OF THE STATE OF NEW JERSEY
and SPILL COMPENSATION FUND,
DEPARTMENT OF TREASURY, STATE OF
NEW JERSEY,

Plaintiffs,

-v-

A TO Z CHEMICAL RESOURCE RECOVERY,
INC., a corporation of the State
of New Jersey; JOHN ALBERT; EUGENE
CONLON; JERSEY SANITATION CO., INC.,
a Corporation of the State of New
Jersey; HERITAGE BANKNORTH, n.a.,
a banking association organized
and existing under the laws of the
United States of America; HERBERT M.
TANZMAN, and PETTIBONE CORPORATION,
a corporation of the State of New
Jersey.

Defendants

)
)
) SUPERIOR COURT OF NEW
) JERSEY
) CHANCERY DIV.-MIDDLESEX
) COUNTY
) DOCKET NO. C-1799-78

)
) Civil Action

)
) ANSWER, CROSS-CLAIM and
) JURY DEMAND

AS TO THE FIRST COUNT

1. It is without sufficient information to formulate a belief as to the truth or validity to paragraph's 1 through 19 of the Complaint and leaves Plaintiff to its proof therein.

2. Since this Count does not pertain to this Defendant, this Defendant does not affirmatively aver as to its contents.

AS TO THE SECOND COUNT

1. This Defendant repeats each and every answer to the allegations of the First Count of the Complaint as though set forth herein and verbatim.
2. It admits the allegations of Paragraph 2.
3. It denies the allegations of Paragraph's 3, 4, 5, 6, 7, and 8.

AS TO THE THIRD COUNT

1. This Defendant repeats each and every answer to the allegations of the First and Second Counts of the Complaint as though set forth herein and verbatim.
2. It is without sufficient information to formulate a belief as to the truth or validity of Paragraph's 2, 3, 4, 5, and 6 of the Complaint.
3. Denies allegations of paragraph 7 and further states that Defendant (Jersey) has no legal obligation to clean up the site alleged.
4. Denies the allegations of Paragraphs 8 and 9 .

AS TO THE FOURTH COUNT

1. This Defendant repeats each and every answer to the allegations of the First, Second and Third Counts of the Complaint as though set forth herein and verbatim.
2. Denies allegations of Paragraph 2.

3. It is without sufficient information to formulate a belief as to the truth or validity of Paragraph's 3, 4, 5, and 6.

AS TO THE FIFTH COUNT

1. This Defendant repeats each and every answer to the allegations of the First, Second, Third and Fourth Counts of the Complaint as though set forth herein and verbatim.

2. It is without sufficient information to formulate a belief as to the truth or validity of Paragraphs 2 and 3 of the Complaint and therefore leaves Plaintiff to its proof therein.

3. Denies allegations of Paragraph 4.

AS TO THE SIXTH COUNT

1. This Defendant repeats each and every answer to the allegations of the First, Second, Third, Fourth and Fifth Counts of the Complaint as though set forth herein and verbatim.

2. It is without sufficient information to formulate a belief as to the truth or validity of Paragraph's 2 and 3 of the Complaint and therefore leaves Plaintiff to its proof therein.

3. Denies allegations of Paragraph's 4 and 5.

AS TO THE SEVENTH COUNT

1. This Defendant repeats each and every answer to the allegations of the First, Second, Third, Fourth, Fifth

and Sixth Counts of the Complaint as though set forth herein and verbatim.

2. Denies the allegations of Paragraph 2.

AS TO THE EIGHTH COUNT

1. This Defendant repeats each and every answer to the allegations of the First, Second, Third, Fourth, Fifth, Sixth and Seventh Counts of the Complaint as though set forth herein and verbatim.

2. It is without sufficient information to formulate a belief as to the truth or validity of Paragraphs 2, 3, 4, 5, and 6 of the Complaint and therefore leaves the Plaintiff to its proof therein.

AS TO THE NINTH COUNT

1. Since this Count does not pertain to the Defendant, Jersey, Sanitation, no averment is made as to its content.

AS TO THE TENTH COUNT

1. This Defendant repeats each and every answer to the allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Counts of the Complaint as though set forth herein and verbatim.

2. It denies the allegations of Paragraph's 2, 3, 4, 5, 6, and 7.

FIRST SEPARATE DEFENSE

The Complaint fails to state a cause of action for which relief may be granted.

SECOND SEPARATE DEFENSE

Jersey Sanitation is a separate and distinct legal entity from the other Defendants, as such the subject matter of the Complaint and statutory authority alluded therein are not applicable or binding on this Defendant.

THIRD SEPARATE DEFENSE

Any action taken by the Defendant's John Albert and Eugene Conlon on behalf of the Defendant, Jersey Sanitation, as alleged in the Complaint, were unauthorized and out of the sphere of their authority and therefore, there is no obligation or liability of the Defendant, Jersey Sanitation, covering the subject matter of the Complaint.

FOURTH SEPARATE DEFENSE

Plaintiff fails to state a claim for which relief may be granted under N.J.S.A. 58:10-23.11 Et Seq. N.J.S.A. 13:1D-9e against the Defendant Jersey Sanitation.

FIFTH SEPARATE DEFENSE

The acts or omissions alleged in the Complaint are the acts of third parties over which this Defendant has no control

SIXTH SEPARATE DEFENSE

Unclean hands.

SEVENTH SEPARATE DEFENSE

Estoppel.

CROSSCLAIM

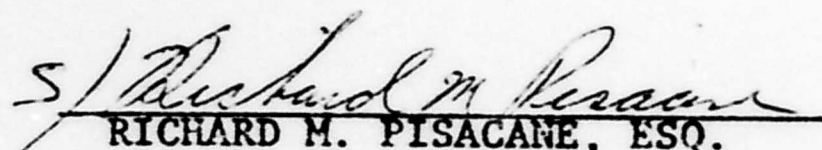
Defendant, Jersey Sanitation, by way of crossclaim against Defendants, A To Z Chemical Resource Recovery, Inc., John Albert, Eugene Conlon, Heritage Banknorth, Herbert M. Tanzman and Pettibone Corporation, say:

1. If the allegations of the Plaintiff are proven true in regards to the activity of the Defendants, A To Z, John Albert and Eugene Conlon and as a result money damages are awarded to the Plaintiff, against the crossclaim, such actions were without the knowledge or authority of Jersey Sanitation.

WHEREFORE, the Defendant demands judgement against these Defendants and indemnification against any and all money damages awarded to the Plaintiff.

2. The Defendant, Jersey Sanitation, demands contribution for any and all damages awarded against the other party Defendants.

DATED: April 29, 1981.


RICHARD M. PISACANE, ESQ.

JURY DEMAND

Since the major subject matter of the Complaint demands for money damages, this Defendant avers that it is entitled to trial by jury of its peers and demands the same.

RICHARD M. PISACANE, ESQ.

DATED: April 29, 1981.

Attorney(s): RICHARD M. PISACANE, ESQ.
Office Address & Tel. No.: 205 Route 46, Totowa, New Jersey 07512
(201) 785-2213

Attorney(s) for Defendant, Jersey Sanitation Co., Inc.

Department of Environmental Protection
of the State of N.J. & Spill Plaintiff(s)
Compensation Fund, vs.
Dept. of Treasury, State of N.J.

Jersey Sanitation Co., Inc., Defendant(s)
et al

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
Docket No. C-1799-78

CIVIL ACTION

A copy of the within Notice of Motion has been filed with the Clerk of the County of
at New Jersey

Attorney(s) for

The original of the within Notice of Motion has been filed with the Clerk of the Superior Court in Trenton, New Jersey.

Attorney(s) for

Service of the within

is hereby acknowledged this day of 19

Attorney(s) for

I hereby certify that a copy of the within Answer was served within the time prescribed by Rule 4:6.

RICHARD M. PISACANE, ESQ.
Attorney(s) for Defendant, Jersey Sanitation Co., Inc

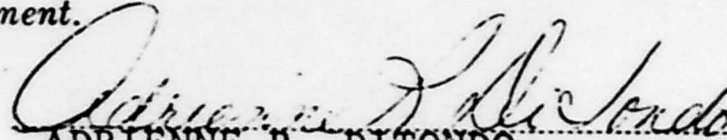
PROOF OF MAILING: On April 29, 1981, I, the undersigned, mailed to
Ronald P. Heksch, Deputy Attorney General,
Attorney(s) for Plaintiff
at 36 W. State Street, Trenton, New Jersey 08625
by regular mail, return receipt requested, the following:

ANSWER, CROSSCLAIM, and JURY DEMAND

R. 1:5-3 The return receipt card is attached to the original hereof.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: April 29, 1981.


ADRIENNE R. DITONDO
Secretary to Richard M. Pisacane, Esq.

IRWIN I. KIMMELMAN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs
Richard J. Hughes Justice Complex
CN 112
Trenton, New Jersey 08625

By: Ronald P. Heksch
Deputy Attorney General
(609)292-1557

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MIDDLESEX COUNTY
DOCKET NO. C-1799-78

DEPARTMENT OF ENVIRONMENTAL)
PROTECTION OF THE STATE OF)
NEW JERSEY, et al.,)
)
Plaintiffs,)
)
v.)
)
A TO Z CHEMICAL RESOURCE)
RECOVERY, INC., et al.,)
)
Defendants.)

Civil Action

NOTICE OF MOTION FOR SUMMARY
JUDGMENT ON COUNTS 1, 2, 3,
5, 6, 7, 8, 9, AND 10 OF
THE AMENDED COMPLAINT AND
FOR THE APPOINTMENT OF A
RECEIVER FOR JERSEY SANITATION
CO., INC.

TO: CLERK OF THE COURT

RICHARD M. PISACANE, ESQ.
205 Route 46
Totowa, New Jersey 07512

LARRY BRONSON, ESQ.
540 Kennedy Boulevard
Bayonne, New Jersey 07002

RALPH MAYO, ESQ.
73 Paterson Street
New Brunswick, New Jersey 08903

RICHARD LEVAO, ESQ.
Shanley and Fisher
95 Madison Avenue
Morristown, New Jersey 07960

NICHOLAS W. McCLEAR, ESQ.
Wilentz, Goldman & Spitzer
900 Route 9, Box 10
Woodbridge, New Jersey 07095

ALAN WASSERMAN, ESQ.
Bressler, Blaustein & Wasserman
Parkway Towers
Route 1, South
P.O. Box 597
Woodbridge, New Jersey 07095

EUGENE CONLON
1430 Oak Ridge Drive
North Brunswick, New Jersey

PLEASE TAKE NOTICE that the undersigned attorney for plaintiffs, Department of Environmental Protection of the State of New Jersey and Spill Compensation Fund, Department of Treasury, State of New Jersey will move before the Honorable Richard S. Cohen, Judge of the Superior Court, Chancery Division, Middlesex County, at the Courthouse, New Brunswick, New Jersey, on June 3, 1983, at 9:00 in the forenoon or soon thereafter as counsel may be heard for summary judgment against the defendants A to Z Chemical Resource Recovery, Inc., John Albert, Eugene Conlon, and Jersey Sanitation Co., Inc. on Counts 1, 2, 3, 5, 6, 7, 8, 9 and 10 of the amended complaint and for the appointment of a receiver for the defendant Jersey Sanitation Co., Inc.

In support of this motion plaintiffs will rely upon the certification of Ronald P. Heksch, Esq., Robert Hunt and Ferdinand Metzger annexed hereto and the brief and appendix submitted herewith.

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Plaintiffs

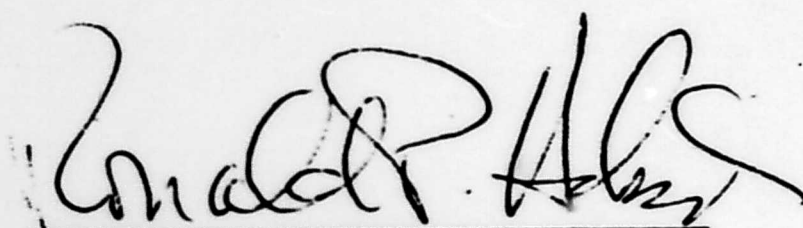
By: 

Ronald P. Heksch
Deputy Attorney General

DATED: 5/10/83

CERTIFICATION

Pursuant to R.1:6-4 the original of the within motion was filed with the Clerk of the Superior Court in Trenton and a copy was filed with the Honorable Richard S. Cohen in New Brunswick, New Jersey. A copy of the within motion, attached certifications and brief and appendix in support thereof was also mailed to Judge Cohen, all counsel involved in this matter and Eugene Conlon.



Ronald P. Heksch
Deputy Attorney General

DATED: 5/10/83

CERTIFICATION

I, Ronald P. Heksch, hereby certify the following:

1. I am a Deputy Attorney General employed by the State of New Jersey, Department of Law and Public Safety, Division of Law, and am presently entrusted with handling the within litigation.

2. Eugene Conlon was originally represented in this matter by the law firm of Montefusco & Kesselman. On or about December 17, 1979 they filed a Substitution of Attorney indicating that Mr. Conlon would be represented by Ralph Mayo, Esq., 73 Paterson Street, New Brunswick, New Jersey. Mr. Mayo filed an answer on behalf of Mr. Conlon to the original complaint filed by the State in this matter. On April 6, 1981, subsequent to filing the Amended Complaint, a copy of same was forwarded to Mr. Mayo. By letter dated April 8, 1981 Mr. Mayo advised me that he no longer represented Mr. Conlon and said that he would forward the Amended Complaint to him. On April 10, 1981 I forwarded a copy of the Amended Complaint along with a summons to the Middlesex County Sheriff's Office for the purpose of effectuating personal service on Mr. Conlon. Despite numerous attempts (nine) between April 16, 1981 and May 7, 1981, the sheriff was unable to effectuate personal service because he received no answer at Mr. Conlon's last known address, namely, 999 Hidden Lake Drive, Apartment 7B, North Brunswick, New Jersey. Thereafter, on or about May 14, 1981 I forwarded a copy of the

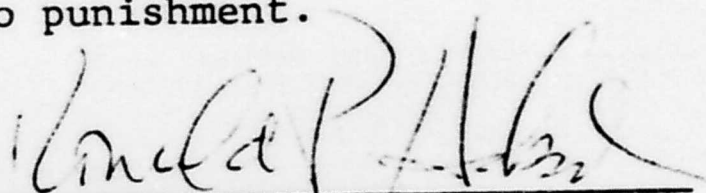
summons and Amended Complaint to Mr. Conlon by certified and regular mail at the aforementioned address. The certified mail package was returned to me unclaimed; however, the regular mail package was not.

3. Annexed hereto is a copy of a "Special Waste Manifest" No. A36118 showing that on May 30, 1978 Jersey Sanitation transported thirty-seven (37) drums (a total of 1,850 gallons) from National Starch and Chemical Company in South Plainfield, New Jersey to the A to Z facility in New Brunswick, New Jersey. The attached manifest is typical of those prepared by defendants Jersey Sanitation and A to Z from the middle of May 1978 to the middle of July 1978 evidencing similar such shipments. In all, approximately thirty-five (35) such manifests were filed with DEP showing that approximately 1,275 drums of chemical wastes, much of which is categorized as hazardous waste by the New Jersey Department of Environmental Protection, were transported by Jersey Sanitation to the A to Z facility in New Brunswick.

4. In answers to interrogatories Jersey Sanitation Co., Inc. admits to having transported chemical wastes to the A to Z facility which is the subject matter of this litigation "throughout the year 1979 and the beginning of 1980" (see attached answer to interrogatory #13).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements

made by me are false I am subject to punishment.


Ronald P. Heksch

DATED: 5/10/83

A

SPECIAL WASTE MANIFEST

A 36118

4.0010

SECTION I TO BE COMPLETED BY THE SPECIAL WASTE GENERATOR

Plant Identification Number 48010 Pick-Up Date 5/30/78
 Company Name NAT STARCH & CHEMO. DAY YR.
 Pick-Up Address 1735 W. FRONT ST PLFD N.J.
 Name of Hauler JERSEY SANITATION Address E. BRUNSWICK NJ
 Name of Facility A TO Z CHEM Address N. BRUNSWICK NJ
 Emergency Spill Phone Nos.: 609-292-5560 or 609-292-7172

Handling Instructions:

Flammable

Waste Type	Number of Containers	Physical State	Hazard ID.	Total Quantity Identify units in pounds or gallons use P for pounds and G for gallons	Pounds or Gallons	SECTION V TO BE COMPLETED BY THE SPECIAL WASTE FACILITY OPERATOR
						Rejected Amount
1. Acid Solution						
2. Alkaline Solution						
3. Arsenic Residues						
4. Catalyst Residues						
5. Cyanide Residues						
6. Chlorinated (Dioxin, Furan) Residues						
7. Etching, Pickling, & Plating Residue						
8. Explosive Residue						
9. Filter Clays, Filter Aids						
10. Ester, Alcohol, Ether, Ketone, Glycol Residues						
11. Heavy Metal Residue						
12. Organic and Heavy Metal Residue Mixture						
13. Latex Residue						
14. Peroxide						
15. Oil and Oil Sludges, Emulsions						
16. Paint and Pigment Residues						
17. Pesticides						
18. Pharmaceutical Wastes (Drugs, etc.)						
19. Lacramators, Amines, Mercaptans, Amide						
20. Plasticizer, Resin, Monomer, Elastomer Residues						
21. PCB, PBB Contaminated Materials						
22. Solvent, Halogenated Organic						
23. Solvent, Mixed				37 L F 1850 Gal	G	
24. Still Bottoms						
25. Radioactive Residue						
26. Tetraethyl Lead Residues						
27. Other (See Instructions)						
28.						
29.						
30.						

I certify that the above information is correct to the best of my knowledge.
 Date 5/31/78 Signature and Title M. M...

SECTION II TO BE COMPLETED BY THE SPECIAL WASTE HAULER

I certify that the described quantity of material (s) listed in Section I was collected by me. State VT Number SKK 702
 Date 5/30/78 Signature R.P.D. Vehicle License Plate Number VT SKK 702

SECTION III TO BE COMPLETED BY THE SPECIAL WASTE HAULER

Name of Hauler Jersey Sanitation Address E.B. N.J.
 I certify that the described quantity of material (s) listed in Section I was hauled by me to the Special Waste Facility named in Section I
 Date 5/30/78 Signature R.P.D. Vehicle License Plate Number VT SKK 702

SECTION IV TO BE COMPLETED BY THE SPECIAL WASTE FACILITY

Name of Facility A to Z Chem Address Edison W. E.B. N.J.
 Registration Number 2175017 Date Waste Received 5/30/78 Accepted Rejected
 I certify that the hauler stated above delivered the waste described in Section I to this Facility
2004B Date 5/30/78 Signature and Title John Albert
 (A-Z illegal site EL)

13. State whether or not Jersey Sanitation Co., Inc. 69a
ever transported chemical wastes to the facility of the defendant
A to Z Chemical Resource Recovery, Inc. located at Block 597.02,
Lot 9, City of New Brunswick, New Jersey. If so, state:

- (a) The generator of the waste or the person who gave it to Jersey Sanitation Co., Inc.;
- (b) The type of waste transported;
- (c) The amount of waste transported; and
- (d) When it was transported to the A to Z Chemical Resource Recovery, Inc. facility in question.

YES.

- (a) National Starch
- (b) (to be supplied)
- (c) (to be supplied)
- (d) Throughout the year 1979 and the beginning of 1980.

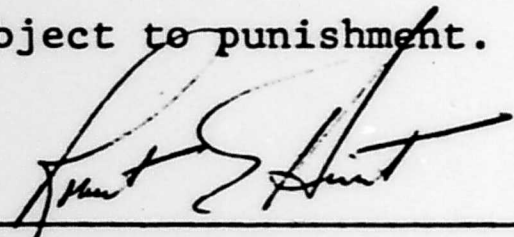
CERTIFICATION

I, Robert E. Hunt, hereby certify the following:

1. I am the Administrator of the New Jersey Spill Compensation Fund.

2. To date the New Jersey Spill Compensation Fund has spent \$1,327,410.15 as a result of cleanup and removal activities conducted by the New Jersey Department of Environmental Protection on the property of A to Z Chemical Resource Recovery, Inc. which is the subject of this litigation.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false I am subject to punishment.



Robert E. Hunt

DATED: 5/9/83

CERTIFICATION

I, Ferdinand Metzger, hereby certify the following:

1. I am employed by the New Jersey Department of Environmental Protection, Division of Waste Management, Hazardous Site Litigation Administration, Bureau of Site Management, as a Site Manager. I was the on-site coordinator for the cleanup and removal activities conducted by the New Jersey Department of Environmental Protection at the A to Z Chemical Resource Recovery, Inc. property which is the subject of this litigation.

2. During the course of cleanup at the A to Z site a total of 8,392 drums of waste material were identified. Twenty-six hundred drums contained a water base adhesive and were identified as non-toxic. The vast majority of the remainder contained substances which are defined as hazardous under state and federal law.

3. Additionally, 21,750 gallons of bulk liquid were also found on the site in various storage bins and tanks. These liquids also contained a variety of substances which are defined as hazardous under state and/or federal law.

4. Finally, 200 cubic yards of soil contaminated with hazardous substances was also found at the site.

5. Attached hereto is a copy of a memo setting forth the toxic materials found at the A to Z site.

6. The following is a description of the present status of the A to Z cleanup:

a. All 55-gallon drums of hazardous substances have been removed from the site and properly disposed of.

b. All hazardous liquids contained within the bins and tanks have been removed and properly disposed of.

c. The 200 cubic yards of grossly contaminated soil has been removed and properly disposed of.

d. The 2,600 drums of water base adhesive have been removed and properly disposed of.

e. Four monitoring wells have been installed, sampled and analyzed to assess groundwater quality.

7. Cleanup and removal activities at the A to Z site have essentially been completed with the exception of a final round of groundwater sampling to determine if there is any lasting impact on the groundwater as a result of the disposal of hazardous and solid waste there.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false I am subject to punishment.


Ferdinand Metzger

DATED: 27/83

National Starch Flammable Liquid: Flash point 75°F

Toluene	38,100 ppm	NJ Hazardous Substance
Ethylbenzene	23,600 ppm	NJ Hazardous Substance
Bis(z-ethylhexyl) phthalate	226.3 ppm	EPA Priority Pollutant
Lead	3.5 ppm	NJ Hazardous Waste
Mercury	174 ppb	NJ Hazardous Waste

National Starch Solid Material: Flash point 400°F - nonflammable

Pentachlorophenol	40.39 ppm	NJ Hazardous Substance
Butyl Benzylphthalate	1320.0 ppm	NJ Hazardous Substance
Toluene (liquid layer only - on solid material)	370,000 ppm	NJ Hazardous Substance
Trichloroethylene	420 ppm	NJ Hazardous Substance
Lead	2.2 ppm	NJ Hazardous Substance
Cyanide	773 ppb	NJ Hazardous Substance

Non Generator Drums

Liquid paint - ph 4.25 Flash point >78°F - flammable

Trace metals ppb range:	Copper	NJ Hazardous Substance
	Nickel	NJ Hazardous Substance
	Silver	NJ Hazardous Substance
	Zinc	NJ Hazardous Substance

Solid paint waste (chips) ph 5.14 - nonflammable

Cadmium	200 ppm	NJ Hazardous Substance
Copper	36 ppm	NJ Hazardous Substance
Total Cyanides	5.8 ppm	NJ Hazardous Substance
Nickel	990 ppm	NJ Hazardous Substance
Zinc	41 ppm	NJ Hazardous Substance
4 Chloro-3-methyl phenol	61 ppm	NJ Hazardous Substance
Di-n-butyl phthalate	2500 ppm	NJ Hazardous Substance
Butyl benzyl phthalate	8900 ppm	NJ Hazardous Substance
Total Xylene	88 ppm	NJ Hazardous Substance

Non Generator Tar Sludge - ph 4.56 Flash point < 200°F - nonflammable

Copper	25 ppm	NJ Hazardous Substance
Nickel	25 ppm	NJ Hazardous Substance
Zinc	27 ppm	NJ Hazardous Substance
Chromium	9 ppm	NJ Hazardous Substance
Methylene Chloride	130 ppm	NJ Hazardous Substance

Tank #1 Non Generator, Bulk Liquid pH 5.32 Flash Point <200°F - nonflammable

Chromium	2.6 ppm	NJ Hazardous Substance
Zinc	36 ppm	NJ Hazardous Substance
Hexachlorobutadiene	610 ppm	NJ Hazardous Substance
Methylene chloride	179 ppm	NJ Hazardous Substance
Toluene	320 ppm	NJ Hazardous Substance

Tank #2 Non Generator, pH 6.10 Flash Point <200°F - nonflammable

Copper	6.0 ppm	NJ Hazardous Substance
Lead	44 ppm	NJ Hazardous Substance
Nickel	110 ppm	NJ Hazardous Substance
Silver	23 ppm	NJ Hazardous Substance
Thallium	25 ppm	NJ Hazardous Substance
Zinc	83 ppm	NJ Hazardous Substance
Benzene	490 ppm	NJ Hazardous Substance
Toluene	520 ppm	NJ Hazardous Substance
Ethyl Benzene	130 ppm	NJ Hazardous Substance
Total Xylene	510 ppm	NJ Hazardous Substance

Tank #3 Non Generator, pH 4.40 Flash Point >80°F - flammable

Trace inorganic metals. ppb range		NJ Hazardous Substance
2-Chlorophenol	73 ppm	NJ Hazardous Substance
Phenol	610 ppm	NJ Hazardous Substance
4-Chloro-3-methyl phenol	290 ppm	NJ Hazardous Substance
Bis(z-ethylhexyl) phthalate	65000 ppm	NJ Hazardous Substance
Butyl benzyl phthalate	21000 ppm	NJ Hazardous Substance
Benzene	190 ppm	NJ Hazardous Substance
Tetrachloroethylene	21000 ppm	NJ Hazardous Substance
Toluene	28000 ppm	NJ Hazardous Substance
Ethyl benzene	650 ppm	NJ Hazardous Substance
Total Xylene	2200 ppm	NJ Hazardous Substance

Tank #5 Non generator, pH 8.67 Flash Point <200°F - nonflammable

Trace inorganic metals low ppm range		NJ Hazardous Substance
Total phenols	25 ppm	NJ Hazardous Substance
Methylene Chloride	310 ppm	NJ Hazardous Substance

Tank #6 Non Generator, pH 5.0 Flash Point 95°F - flammable

Chromium	3.8 ppm	NJ Hazardous Substance
Lead	14.0 ppm	NJ Hazardous Substance
Zinc	44 ppm	NJ Hazardous Substance
Plus other trace inorganics in ppm range		NJ Hazardous Substance
Phenol	280 ppm	NJ Hazardous Substance
2, 4 Dimethylphenol	84 ppm	NJ Hazardous Substance
Total phenol	100 ppm	NJ Hazardous Substance
bis(z-ethylhexyl) phthalate	460 ppm	NJ Hazardous Substance
Butyl benzyl phthalate	510 ppm	NJ Hazardous Substance

List of chemicals in air (cont.)

Pyrene	430 ppm	NJ Hazardous Substance
Chloroform	110 ppm	NJ Hazardous Substance
1,1,1 - Trichloroethane	580 ppm	NJ Hazardous Substance
Trichloroethylene	390 ppm	NJ Hazardous Substance
Tetrachloroethylene	190 ppm	NJ Hazardous Substance
Toluene	350 ppm	NJ Hazardous Substance
Ethyl benzene	340 ppm	NJ Hazardous Substance
Total Xylene	800 ppm	NJ Hazardous Substance

RICHARD M. PISACANE, ESQ.

205 ROUTE 46

TOTOWA, NEW JERSEY 07512

(201) 785-2213

ATTORNEY FOR

Defendant, Jersey Sanitation, Inc.

2986

Plaintiff

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OF THE STATE OF NEW JERSEY, et al.,

vs.

Defendant

A to Z CHEMICAL RESOURCE RECOVERY,
INC, et al

SUPERIOR COURT OF
NEW JERSEY

CHANCERY DIVISION
MIDDLESEX COUNTY
Docket No. C-1799-78

CIVIL ACTION

CERTIFICATION OF
RICHARD KATZ

I, RICHARD M. KATZ, of full age do hereby certify as follows:

1. I am a stockholder in Jersey Sanitation, Inc. and own 8.25 percent of the outstanding stock of the company. I have been a stockholder since 1958 and am making this certification in opposition to Plaintiff's Motion for Summary Judgment, as well as the appointment of a receiver for Jersey Sanitation.

2. Contrary to count 10 par 2 of the Complaint filed by the Plaintiff, Jersey Sanitation is not the alter ego of John Albert or Gene Conlon, but is a separate corporate entity which was incorporated in 1956. (See attached copy of Certificate of

Incorporation marked hereto as Exhibit "A")

3. I have knowledge of this since my father who is now deceased, Mr. George Katz, was one of the founders of the corporation. The corporation, since its inception, was in the business of solid waste collection in Middlesex County, and over the years has held municipal contracts in New Brunswick, South Amboy, and East Brunswick, and has the municipal door-to-door collection in Franklin Township. They have also done industrial and commercial solid waste collection only.

4. Prior to the latter part of 1972 and early part of 1973, neither Gene Conlon nor John Albert had any interest in Jersey Sanitation. As a matter of fact, we did not even know these individuals up until that time. But in the latter part of 1972, both Eugene Conlon and John Albert who I am led to understand, grew up and lived in the East Brunswick, Middlesex County area, were allowed to purchase twenty-five (25%) percent each of the outstanding stock of Jersey Sanitation Co. The purposes of allowing such a purchase, was so that my father, George Katz, as well as Frank Stamato, Sr., who was the other major stockholder of the company, would no longer have to go to Middlesex County to manage the company, but that the full time management of the company would be held by Gene Conlon and John Albert. As a matter of fact, they entered into exclusive employment contracts, the terms and conditions of which are more fully described in the affidavit of Frank Stamato, Jr. which I

have reviewed and is also attached as part of this answering certifications to the motion of the Plaintiff.

5. The other stockholders of the corporation are as described by our accountant in his certification also attached hereto, but consist of other members of my family including my father before he became deceased.

6. Though I did not sit on the Board of Directors of Jersey Sanitation, over the years I have attended a number of meetings with my father, George Katz, who was a member and therefore, I have some knowledge and recollection of what had transpired at some of these meetings.

7. Since both Mr. Albert and Mr. Conlon had restrictive employment contracts which precluded them from engaging in any other business, except that of Jersey Sanitation, we had no reason to believe that they were engaged in any other activity besides solid waste collection for Jersey Sanitation. As a matter of fact, I had no knowledge of the existence of A to Z until there were Subpoenas served by both the Federal Grand Jury and the State Grand Jury for the records of A to Z, as well as Jersey Sanitation. At that time our attorney informed us that these Subpoenas had been served upon Mr. Conlon and Mr. Albert. To the best of my recollection, this was some time in 1979 and 1980.

8. At that time we were led to believe by both Mr. Albert and Mr. Conlon, that Mr. Conlon was the one who was spending time at Chemical Control and a corporation which we now know to be A to Z. Based upon this, the Board of Directors

as well as the Stockholders had a joint meeting and decided that he was in violation of his employment covenant and therefore, forced him to resign as an officer and director of the corporation, as well as entered into an agreement with him to purchase his stock. (See copy of agreement attached hereto and marked as Exhibit "B").

9. Since we were somewhat concerned as to what his activities were, please note art.2 at p.4 of the agreement, which indicates that we would expect him to hold us harmless from any of his activities dealing with hazardous waste. Our company never was in the business of disposal of hazardous waste nor collection. It should also be noted that at that time we had no reason to believe that Mr. Albert also was involved, for we relied upon his representations that he was not involved. We of course subsequently learned that these representations of him were untrue.

10. It also should be noted that Jersey Sanitation was almost exclusively involved with solid waste collection. The National Starch Account was such a small part of our business, that we as stockholders and directors never really got involved in questioning or asking Mr. Albert who was then running the company, or Mr. Conlon concerning it. (See copy of accountant's affidavit which indicates the percentage of business the National Starch hazardous waste account was to the total Jersey Sanitation revenues in the years applicable). Subsequently

to buying out Mr. Conlon, we then learned after a Federal Grand Jury had indicted both Albert and Conlon, as well as Jersey Sanitation, that Mr. Albert was also involved with a company called Chemical Control, as well as A to Z, and it was at this time that I, as a shareholder, and the other shareholders, as well as the directors, learned that Mr. Albert and Mr. Conlon were the sole exclusive stockholders of A to Z who were taking the National Starch account waste material to the A to Z site and disposing of it. We also subsequently learned that they were paying themselves through Jersey Sanitation for this. As the accountant indicates in his affidavit, we paid large sums of money to A to Z to properly dispose of the National Starch's hazardous waste. We as shareholders and directors of course had no knowledge of not only the involvement of Conlon and Albert, but of the fact that A to Z was not a licensed operation. Since Mr. Albert and Mr. Conlon were managing the company, we left this under their control assuming, which we properly should have, that they would do everything lawfully.

11. At no time, I would like to emphasize to the Court as a shareholder, was Mr. Conlon or Mr. Albert authorized to do anything improper or illegal. It would be ludicrous to think that we would allow this since Jersey Sanitation was a profitable solid waste collection company the size of approximately Two Million (\$2,000,000.00) Dollars at one time. It is apparent now that Mr. Albert and Mr. Conlon through their greed, have

attempted to use our company to profit through A to Z and also a company known as Chemical Control.

12. It also should be noted that when we found out of Mr. Albert's involvement, a joint meeting of the Board of Directors and Shareholders forced him to resign as an officer and director. We of course decided that we were not about at this time to buy out his interest in Jersey Sanitation, since our accountant discovered that the company was no longer economical since both he and Mr. Conlon had almost destroyed the profitability of the corporation through their involvement of the many activities which were subsequently discovered. It should be noted that Mr. Conlon was paid \$190,000.00 for his interest in the stock to get rid of him, which in retrospect, was a bad decision. We of course at that time did not know the ramifications of the activities of Albert and Conlon.

13. I make this affidavit to emphasize also to the Court, that we as stockholders and directors of Jersey Sanitation were harmed by Albert and Conlon, and that I have an economic interest in this company which should not be further harmed due to the ultra vires activities of the former managers and stockholders. It should also be noted that not only was Mr. Albert and Mr. Conlon running the company, but Mr. Albert had both his sisters working in the office of the company. Therefore, our communication as to what was going on depended upon what Mr. Albert and Mr. Conlon wanted to tell us. It also should be noted by the Court that after we got rid of Mr. Albert and Mr.

Conlon, we had no one to manage the company and some of the stockholders and directors had to go down to Jersey Sanitation since his firing to attempt to manage the company. As a result of the activities of Mr. Conlon and Mr. Albert, the corporation has been involved in much litigation, both criminal and civil dealing with their activities, but as a practical matter they have cost us substantial legal fees and have brought the company to the position where it is no longer profitable. Then we discovered that Mr. Albert and our company were indicted due to his activities and an anti-trust criminal litigation brought by the State. In order to avoid a protracted trial which would cost us an excess of \$50,000.00 in legal fees, a determination was made that since we were deciding to go out of business due to the ruining of the company by Mr. Albert and Mr. Conlon, it would be more practical to plead in that case and to indicate to them that if we get a small fine we would give up our license. This is exactly what happened and what the Plaintiff was referring to in his motion. However, the giving up of the license should not be taken as an indication that Jersey Sanitation does not have assets. They do have some liquid assets. However, as my attorney advised me, since we do not feel that the Plaintiff will be successful in this litigation, he should not be allowed to have a pre-judgment execution on our assets or a receiver appointed. Our attorney has also informed me that an appointment of a receiver for utility is only under the statute he quoted, which was for when a utility is an active

utility and the public good is involved. This is not the case here.

14. Based upon the foregoing, it is respectfully requested to the Court that the Court can see clearly that Jersey Sanitation was only another victim of Mr. Albert and Mr. Conlon, and not an accomplice for the alter ego of Mr. Albert and Mr. Conlon. Therefore, it is respectfully submitted that the Motion of the Plaintiff should be denied.

15. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

s/ Richard Katz

RICHARD KATZ

DATED: June 9, 1983.

CERTIFICATE OF INCORPORATION
OF
JERSEY SANITATION CO., INC.

THIS IS TO CERTIFY , that we, DOMINIC J. D'AMICO, VIRGINIA DI IANNI and MARY J. SYLVESTER, do hereby associate ourselves into a corporation, under and by virtue of the provisions of "An Act Concerning Corporations (R.S. 14:2-1)" and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names:

FIRST: The name of the corporation is JERSEY SANITATION CO., INC.

SECOND: The location of the principal office in this State is at 269 Parker Avenue, in the City of Clifton, County of Passaic and State of New Jersey.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served is LOUIS P. BERTONI.

THIRD: The objects for which this corporation is formed are:

1. To carry on a business as scavenger, garbage collectors, of new and old metals, rags, papers, scrap iron, scrap metal, new and used rubber; for the purpose of salvaging junk for iron, metal and kindred articles therein contained, and to do any and all acts necessary and proper appertaining to the conduct of a scavenger, garbage collecting, waste paper, rags and materials yard business; to carry on the business of collecting, removing and disposing of all ashes, offal, garbage, paper and rubbish in various municipalities, in and out of the State of New Jersey, together with the right to carry on a business of disposition of all ashes, offal, garbage, paper and

EXHIBIT "A"

rubbish; to carry on the business of collecting refuse of animal or vegetable matter, including condemned food and to carry on the business of transporting, removing waste paper, tin cans, bottles, rags and ordinary household refuse, exclusive and inclusive of ashes, garbage, branches, cuttings and christmas trees.

2. To supply receptacles for the collection of garbage, refuse, ashes, offal, garbage, paper, rubbish, animal or vegetable refuse and condemned food.

3. To establish, maintain and conduct a dump in any locality, and to that end carry on in any desirable place the business of maintaining a dump for pecuniary profit or for the welfare of the corporation.

4. To engage in the business of retail routes for the collection of gargage, refuse, ashes, offal, garbage paper, rubbish, animal or vegetable refuse and condemned food in various municipalities in and out of the State of New Jersey.

5. To purchase, hold, take over, maintain, sell, enter into, leases, contracts, mortgages and generally deal in all types of contracts in any form whatsoever pertaining to the collection of garbage, refuse, ashes, offal, paper, rubbish, animal or vegetable refuse and condemned food and the maintenance of a dump.

6. To purchase, operate or lease trucks and vehicles of all types and description for the carrying on of said business.

7. To purchase, hold, or take over, buy, sell, lease, mortgage, and own realestate and personal property of any kind, nature and description for the benefit of the corporation. To town garage buildings, offices, to occupy the same, lease, sell and mortgage the same.

8. To borrow and loan money for the carrying on of the business, developing dumps, obtaining of garbage

-3-

collection routes, and deal generally with the business of scavenger, collection of garbage, maintenance of dump or dumps, the salvaging of material, rubber, metals, paper and the like and sell the same for profit.

9. To issue bonds, debentures or obligations of the company from time to time for any of the objects or purposes of the company, and to secure the same by mortgages, chattel mortgages, deeds, deeds of trust, leases, or pledge, or lien on any or all of the real and personal property, rights, privileges and franchises of the company wheresoever situated, acquired and to be acquired, and to sell or otherwise dispose of any or all of the same, all in such manner and upon such terms as the Board of Directors may deem proper.

10. To do any or all of the things in this certificate set forth as objects, purposes, powers, or otherwise, to the same extent and as fully as natural persons might or could do, and in any part of the world, as principals, agents, contractors, trustees or otherwise.

11. To do all and everything necessary, suitable, convenient, or proper for the accomplishment of any of the purposes, or the attainment of any one or more of the objects herein enumerated, or incidental to the powers herein named, or which shall at any time appear conducive or expedient for the protection or benefit of the company, either as holders of or interested in any of the property or otherwise, with all the powers now or hereafter conferred by the laws of this State upon corporations under the Act hereinbefore referred to.

12. It is the intention that the objects and powers specified and clauses contained in this paragraph, except where otherwise expressed in said paragraph, be no wise limited or restricted, by reference to or inference from the terms of any other clause of this charter, but that the objects and powers specified in each of the clauses of this paragraph shall be

regarded as independent objects and powers.

13. To carry on any other business which may, in the discretion of the Directors seem advantageous and capable of being carried on in conjunction with the above or calculated directly or indirectly to enhance the value of the corporation's property rights.

14. To enter into, make, perform and carry out^{89a} contracts of every sort and kind, with any person, firm, association, corporation, private, public or municipal or body politic, and with the government of the United States, or any state, territory or colony thereof, or any foreign government.

15. To purchase, lease or otherwise acquire all kinds of personal property which the corporation may deem necessary and convenient for the purpose of its business.

FOURTH: The authorized capital stock of this corporation shall be divided into One Thousand (1000) shares, having no nominal or par value.

The said shares of stock, without nominal or par value may be issued or sold from time to time, and for such consideration and upon such terms as may from time to time be fixed by such corporation.

FIFTH: The names and post-office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of which three hundred (300) shares is the amount of stock with which this company will commence business, are as follows:

<u>NAME</u>	<u>POST OFFICE ADDRESSES</u>	<u>NO. OF SHARES</u>
DOMINIC J. D'AMICO	49 North 14th Street Newark, New Jersey	100
Virginia Di Ianni	143 West First Street Clifton, New Jersey	100
MARY J. SYLVESTER	129 East 23rd Street Paterson, New Jersey	100

SIXTH: The period of existence of this corporation is unlimited.

IN WITNESS WHEREOF, we have hereunto set our hands seals, this 15th day of March, One Thousand Nine Hundred and Fifty-six.

Signed, Sealed and delivered in the presence of

Irene K. Gallik
Irene K. Gallik

Dominic J. D'Amico (L.S.)
Dominic J. D'Amico

Virginia Di Ianni (L.S.)
VIRGANIA DI IANNI

Mary J. Sylvester (L.S.)
MARY J. SYLVESTER

A

STATE OF NEW JERSEY)
) SS:
COUNTY OF PASSAIC)

BE IT REMEMBERED, that on this 15th day of March, One Thousand Nine Hundred and Fifty-six, before me, A Notary Public of New Jersey, personally appeared DOMINIC J. D'AMICO, VIRGINIA DI IANNI and MARY J. SYLVESTER, who, I am satisfied, are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

Irene K. Gallik
Irene K. Gallik

IRENE K. GALLIK
NOTARY PUBLIC OF N. J.
My Commission Expires June 24, 1960

THIS AGREEMENT, made this 13 day of March January, 1979, by and between Eugene Conlon, Sr., residing at 999 Hidden Lake Drive, Apt. 7C, North Brunswick, New Jersey 08902, hereinafter referred to as "Seller" and Jersey Sanitation Co., Inc., having an office at Edgeboro Road, East Brunswick, New Jersey 08816, hereinafter referred to as "Jersey" and J & B Disposal Co., Inc., with an office at Edgeboro Road, East Brunswick, New Jersey 08816, hereinafter referred to as "J & B", and the following individual stockholders: John Albert, George Katz, Audrey Katz, Carolyn Katz, Richard Katz, Frank Stamato, Sr., Frank Stamato, Jr., Patsy Stamato, Jacqueline Quazzo, hereinafter referred to as "Stockholders":

W I T N E S S E T H:

WHEREAS, the Seller warrants and represents that he is the owner of 150 shares of the outstanding capital stock of Jersey and 50 shares of the issued and outstanding stock of J & B, both of which are corporations of the State of New Jersey.

WHEREAS, the Seller is desirous of selling the 150 shares of Jersey as well as the 50 shares of J & B, which he presently holds together with all of his rights, title and interest in and to any claim or interest in and to the aforesaid corporations; and

WHEREAS, J & B and Jersey are agreeable to acquiring said stock and any outstanding interest of the Seller in and to the Corporations; and

WHEREAS, the parties have agreed to the terms and conditions under which the aforesaid stock and interest will be sold and have agreed that, any agreement to the contrary, the within agreement sets forth all of the terms and conditions with respect to said acquisition; and

WHEREAS, there are stockholders agreements governing the sale and transfer of corporate stock for both corporations dated March 28, 1972 and said stockholders having consented to this sale by Seller to the two corporations;

NOW, THEREFORE, for and in consideration of the sum of One (\$1.00) Dollar, each in hand paid to the other, and other good and valuable consideration, in addition to the mutual covenants herein contained, the parties hereto agree as follows:

1. The Seller agrees to sell and the Purchasers agree to purchase from Seller, the capital stock of Jersey, now owned by the Seller consisting of 150 shares, no par value, and the capital stock of J & B, now owned by the Seller consisting of 50 shares, no par value, (which certificate numbers are more particularly set forth in Schedule A), together with any and all claims and interest against the corporations for the total sum of \$190,000. with the appropriate credits and as outlined as follows

A. Deducted from the purchase price shall be the amount of the outstanding loan owed to the corporations by the Seller which is in the approximate amount of \$17,500.

B. The parties agree that the Seller shall receive dividends and/or one share of the income from both corporations for the prior year in the approximate sum of \$17,500. in order that the net income realized to him shall be \$190,000. In the event the dividends do not equal \$17,500. then any excess of the loan over the dividends shall be added to the purchase price in order that Seller may pay the corporate loans in the amount of \$17,500. and still receive the net sum of \$190,000 at time of closing. This paragraph contemplates that the dividends distributed for earned income for the prior year shall be tendered at time of closing in order that it may be applied to the corporate loans so that the Seller will have a net check of \$190,000. tendered to him at time of closing. Further, the parties contemplate and intend there shall be no other deductions of any kind and the Seller shall realize \$190,000. at that time.

C. Said \$190,000. shall be payable as follows:

\$5,000. upon execution of this Agreement which sum shall be held in escrow by Ralph Mayo, Esq., attorney for Seller pending closing.

\$185,000. at time of closing.

2. Simultaneously, at the time of closing, the Seller

shall deliver to the purchasers in exchange for the purchase price referred to in Paragraph 1 herein, the stock certificates for the shares of the Capital Stock of both Jersey and J & B, referred to herein, free and clear of all encumbrances, charges and restrictions endorsed by a separate stock assignment in blank together with a general release running through the corporations. All parties acknowledge that they do not specifically release each other for past activities of the corporation or corporations and are free to pursue any and all remedies available to them in the event of any discovery of prior actions that would give rise to a suit.

3. Simultaneously therewith Seller shall also resign as both officer and/or director of the corporations in the event he has not already done so and shall execute the appropriate documents concerning same.

4. As a further inducement to the purchasers, the Seller further agrees to return to the corporations the automobile he is presently using in a good condition, free of damage, normal wear and tear excluded as well as any and all credit cards issued to him.

5. The Seller hereby covenants and agrees that he will not re-establish, reopen, be engaged in, nor in any manner whatsoever become interested in, directly or indirectly, either as

employee, owner, partner, agent or stockholder, director or officer of a corporation or otherwise, in any business, trade or occupation similar to the one presently engaged in by Jersey Sanitation, and J & B Disposal, in the State of New Jersey, for a period of five (5) years from the closing date.

6. The closing shall take place one week from the P.U.C. approval at the office of Pisacane & Avigliano, Esqs., 205 Route 46, Totowa, New Jersey.

7. The within agreement is contingent upon the corporation receiving acceptance of a mortgage application in the amount of \$190,000., at the prevailing interest rate, for a period of five (5) years with a ten (10) year payout. Said approval must be obtained or waived by the purchasers within twenty (20) days of the execution of this agreement. This agreement is further contingent upon the receiving of the approval of the Board of Public Utility Commission for the obtaining of the aforementioned loan. If the Board of Public Utility Commission does not approve the loan within forty (40) days of the signing of the agreement, or if the corporation is unable to obtain the aforesaid mortgage loan, the within agreement shall be declared null and void without any further liability of any of the parties to each other.

8. All notices shall be given in writing by certified

or registered mail and shall be to the addresses as set forth herein until such party to which the notices are being sent delivers to the other party a written change of address.

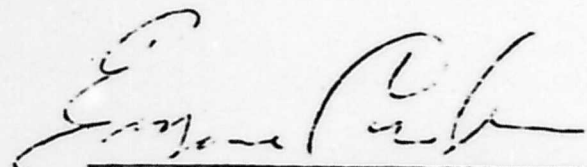
9. This agreement may not be changed or terminated orally by either party and may be amended only by a written agreement executed by both parties hereto.

10. This agreement and the rights and privileges and duties and objections provided herein shall inure to the benefit of and be binding upon the respective parties hereto, their heirs, executors and administrators, successors or assigns.

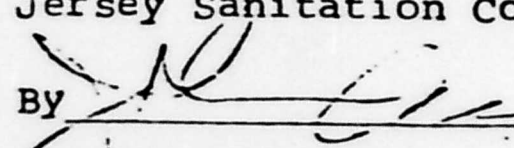
11. All of the covenants, conditions, warranties and representations contained herein shall survive the closing of the within transaction.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, or caused these presents to be properly executed by their proper corporate officers and have caused the corporate seal to be hereunto affixed, the day and year first above written.

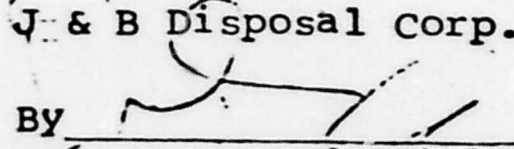
Witness:



Eugene Conlon, Sr. L.S.

Jersey Sanitation Co., Inc.
By 

Pres.

J & B Disposal Corp.
By 

Pres.

Secretary

Secretary

CONSENT OF STOCKHOLDERS:

John Albert

John Albert

George Katz

George Katz

Audrey Katz

Audrey Katz

Carolyn Katz

Carolyn Katz

Richard Katz

Richard Katz

Frank Stamato, Sr.

Frank Stamato, Sr.

Frank Stamato, Jr.

Frank Stamato, Jr.

Patsy Stamato

Patsy Stamato

Jacqueline Quazzo

Jacqueline Quazzo

CERTIFICATION OF FRANK STAMATO, JR.
DATED JUNE 9, 1983

2986

RICHARD M. PISACANE, ESQ.

205 ROUTE 46
TOTOWA, NEW JERSEY 07512

(201) 785-2213
ATTORNEY FOR

Defendant, Jersey Sanitation, Inc.

Plaintiff

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OF THE STATE OF NEW JERSEY, et al

vs.

Defendant

A TO Z CHEMICAL RESOURCE RECOVERY,
INC., et al

SUPERIOR COURT OF
NEW JERSEY

CHANCERY DIVISION
MIDDLESEX COUNTY

*Docket No.*C-1799-78

CIVIL ACTION

CERTIFICATION OF
FRANK STAMATO, JR.

I, Frank Stamato, Jr., of full age do hereby certify
as follows:

1. I am a stockholder and director of Jersey Sanitation
Co., Inc. I have reviewed the certification of Richard Katz
which is submitted herein and wish to adopt all of the averments
that he has made in his certification as mine as though under
oath and to being true and accurate.

2. All during the time which I have sit on the
Board of Directors of Jersey Sanitation, at no time was there

any discussion by Mr. Albert or Mr. Conlon to us when they reported to us concerning their ownership in the company known as A to Z. As a matter of fact, though we had a license for the collection of hazardous waste, this was never really discussed at any directors meeting until problems had arisen and it was drawn to our attention by our attorney through Subpoenas submitted to the corporation, since this was an insignificant amount of the business done. We were more concerned with our municipal contracts which are substantial revenue to the company. When Mr. Albert and Mr. Conlon came into the company, the purpose in allowing them to buy in was so that we could have someone in the area run and manage the company on a day by day basis. As a matter of fact, in order to avoid any problems with them having any other interests, we made them sign an exclusive employment contract, whereby they were restricted from having any other employment or interest in any other corporation. (See attached copy of said employment contract and marked hereto as Exhibit "A")

3. It therefore can plainly be seen that we had no reason to believe that they were involved in any other activity. We were also isolated from knowing this since not only were they the officers of the corporation running it, but Mr. Albert's relatives were in the office working. When we first became aware of Mr. Conlon's involvement in the company known as Chemical Control through Subpoenas through the Grand Jury, we had a

special meeting of the Board of Directors, and at that time decided that Mr. Conlon must go since we could not have any outside activities or involvements. As a matter of fact, we had our attorney write a letter to the Board of Public Utility Commissions indicating that this was one of the reasons why we were getting rid of Mr. Conlon and that there was no involvement of Jersey Sanitation. (See copy of letter attached hereto and marked as Exhibit "B")

4. We of course at that time had no reason to know that Mr. Albert was involved. Though we had questioned him and asked him and he adamantly denied any involvement in any other business besides Jersey Sanitation. We subsequently learned that we had an account known as National Starch for the collection of hazardous waste. We of course authorized this since Mr. Albert assured us at Board of Directors meetings that he was doing everything properly and properly disposing of it. He of course failed to mention to us that he was disposing it at a site that he owned with Mr. Conlon, known as A to Z, nor that they did not have any license.

5. Contrary to the allegations of the Plaintiff in his Complaint as well as his Brief, A to Z is not the alter ego of Jersey Sanitation, but Jersey Sanitation is the victim of Albert and Conlon's illegal and unauthorized activities. They have acted ultra vires they have almost turned a profitable company into a non-existent company, and they have cost both myself as well as the other shareholders of the company a great deal of money, as well as costing us our investment.

6. In regards to the Attorney General's allegation in his Complaint, which I have reviewed, concerning the transportation of other hazardous waste besides National Starch to the site; We have no knowledge of this and we deny it, and we further aver that he has not proved through his answers to interrogatories or any certifications brought before the Court that Jersey Sanitation is responsible for the same.

7. We respectfully submit to the Court that we, the remaining stockholders of Jersey Sanitation, have an interest in the Company which should be protected by the Courts and we are not responsible for the unlawful and ultra vires acts of Albert and Conlon which we had no knowledge of. It is obvious through these certifications submitted herein, that they have cost us a great deal of money. It is also obvious from the Employment Contract which they entered into with us that we had no reason to believe that they would enter into any other activities besides the running of Jersey Sanitation for solid waste collection. Of course, it also should be noted that when we did find out about the activities of Mr. Albert, it was then too late to get rid of him since he had already just about destroyed the company's profitability, and we were not about to invest money to buy-out someone who has harmed the company as we did with Conlon. In hindsight and retrospect, if we knew this was going

to happen and we knew the extent of the involvement with Albert, we would have never bought out Mr. Conlon. It also should be noted that as a result of the buy-out of Conlon, we, myself and the other stockholders had to personally sign and guaranty a mortgage to the Valley National Bank in order to pay off Conlon. Now we find ourselves in a position of not only having to pay Conlon who was one of the culprits along with Albert, but be in a position that we might have to pay again since the State is now attempting to have a receiver appointed and have a judgment rendered against us in activities in which we were not involved. (Attached hereto and marked as Exhibit "C" is a copy of mortgage referred to herein).

8.. Based upon the foregoing, the Court can see that there are disputes as to the material facts involving the capability of Jersey Sanitation in this law suit and therefore the Motion for Summary Judgment should be denied.

9.. In regards to his motion for an appointment of receiver, Jersey Sanitation as of June 30, 1983 will not be an active solid waste utility, therefore the public good is not involved and it is my understanding that only in those situations can an equitable or statutory receiver be appointed. What the Plaintiff is attempting to do here is to get an execution before judgment which is improper. He has not shown any fraud on our part or any attempt to conceal assets. Therefore, it is respectfully submitted that that portion of his Motion also should be denied.

10. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Frank Stamato Jr
FRANK STAMATO, JR.

DATED: June 9, 1983

ARTICLES OF AGREEMENT made this 28th day of March, 1971, by and between JERSEY SANITATION CO., INC., a New Jersey corporation, with its principal office located at 284 Main Street, Lodi, New Jersey, (herein the "Employer") and JOHN ALBERT, residing at 319 Dallas Road, North Brunswick, New Jersey, (herein the "Employee").

W I T N E S S E T H:

In consideration of the mutual covenants herein contained and for the good and valuable consideration to which reference is hereinafter made, the parties hereto covenant and agree as follows:

1. EMPLOYMENT AND DUTIES

The Employer hereby employs the Employee, and the Employee hereby accepts employment with the Employer in an executive capacity.

2. PERFORMANCE

The Employee agrees to devote all of his time and his best efforts to the performance of his duties as an Employee of the Employer and/or J & B DISPOSAL CORP.

3. TERM

This agreement shall be for a three (3) year

period, but this agreement may be terminated or extended upon the mutual consent of the parties.

4. COMPENSATION

For all the services to be rendered by the Employee in any capacity hereunder, including but not limited to services as an Officer, Director, Member of any committee, or any duties assigned to him by the President or the Board of Directors of the Employer, the Employer agrees to pay to the Employee a salary at the rate of \$20,000.00 per annum. In addition, the Employee may receive such additional sums as the Board of Directors of the Employer may decide.

Notwithstanding anything to the contrary contained herein, the Employee recognizes that the financial requirements of the Employer in the ordinary course of its business are superior to any stated rate of compensation for an Employee, and accordingly Employee agrees to accept as compensation any such lesser sum, but in no case less than \$10,000.00, as the Board of Directors of the Employer may decide at the regular annual meeting of the Board of Directors on or after the date of this agreement, and to execute all

documents incidental and necessary to effectuate any such modification, if the need for the same arises.

5. TERMINATION FOR CAUSE

Notwithstanding any other provision or provisions in this agreement to the contrary, the Employee's services may be terminated if the Employee has: (a) participated in any fraud or dishonesty towards the Employer; (b) committed substantial damage to the property of the Employer; (c) committed any substantial act inimical to the Employer; (d) wrongfully disclosed or revealed substantial trade secrets.

6. NOTICES

Any notice required or permitted to be given by this agreement shall be in writing and shall be delivered personally to the party or sent by certified mail, return receipt requested, to the address appearing at the beginning of the agreement. Notices are deemed given when mailed.

7. WAIVER OF BREACH

The waiver by the Employer of a breach of any provision of this agreement shall not operate or be construed as a waiver of any subsequent breach by the Employee.

8. RIGHTS AND OBLIGATIONS OF THE EMPLOYER

The rights and obligations of the Employer unde

this agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Employer.

9. LAW GOVERNING THIS AGREEMENT

The Law governing this agreement shall be the Laws of the State of New Jersey.

10. ENTIRE AGREEMENT

This instrument contains the entire Employment Agreement of the parties. It may not be changed orally, but only by an agreement in writin signed by the party against whom enforcement of any waiver, change, modification, extension and discharge is sought.

11. FRINGE BENEFITS

The Employee shall be entitled to all fringe benefits which are given to other Officers and Directors who are currently on the same date being given employment contracts by the Employer.

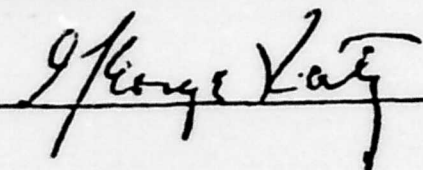
IN WITNESS WHEREOF, and intending to be bound thereby, the parties have hereunto executed this agreement as of the day and year first above written.

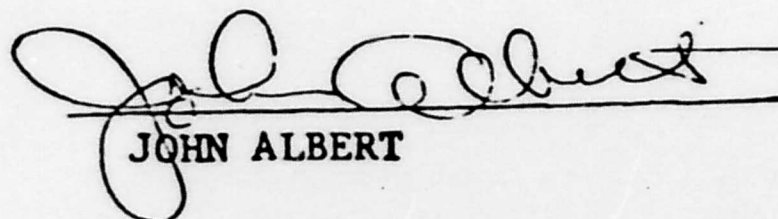
ATTEST:



Signed, Sealed and Delivered
in the Presence of

JERSEY SANITATION CO., INC.

BY  _____
President

 _____ L.S.
JOHN ALBERT

E

ARTICLES OF AGREEMENT made this 28th day of March, 1971, by and between JERSEY SANITATION CO., INC., a New Jersey corporation, with its principal office located at 284 Main Street, Lodi, N. J., (herein the "Employer") and EUGENE CONLON, residing at 7 Cromwell Ct., Piscataway, N. J., (herein the "Employee").

W I T N E S S E T H :

In consideration of the mutual covenants herein contained and for the good and valuable consideration to which reference is hereinafter made, the parties hereto covenant and agree as follows:

1. EMPLOYMENT AND DUTIES

The Employer hereby employs the Employee, and the Employee hereby accepts employment with the Employer in an executive capacity.

2. PERFORMANCE

The Employee agrees to devote all of his time and his best efforts to the performance of his duties as an Employee of the Employer and/or J & B DISPOSAL CORP.

3. TERM

This agreement shall be for a five (5) year

E. A.

period but this agreement may be terminated or extended upon the mutual consent of the parties.

4. COMPENSATION

For all the services to be rendered by the Employee in any capacity hereunder, including but not limited to services as an Officer, Director, Member of any committee, or any duties assigned to him by the President or the Board of Directors of the Employer, the Employer agrees to pay to the Employee a salary at the rate of \$20,000.00 per annum. In addition, the Employee may receive such additional sums as the Board of Directors of the Employer may decide.

5. TERMINATION FOR CAUSE

Notwithstanding any other provision or provisions in this agreement to the contrary, the Employee's services may be terminated if the Employee has: (a) participated in any fraud or dishonesty towards the Employer; (b) committed substantial damage to the property of the Employer; (c) committed any substantial act inimical to the Employer; (d) wrongfully disclosed or revealed substantial trade secrets.

6. NOTICES

Any notice required or permitted to be given

by this agreement shall be in writing and shall be delivered personally to the party or sent by certified mail, return receipt requested, to the address appearing at the beginning of the agreement. Notices are deemed given when mailed.

7. WAIVER OF BREACH

The waiver by the Employer of a breach of any provision of this agreement shall not operate or be construed as a waiver of any subsequent breach by the Employee.

8. RIGHTS AND OBLIGATIONS OF THE EMPLOYER

The rights and obligations of the Employer under this agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Employer.

9. LAW GOVERNING THIS AGREEMENT

The Law governing this agreement shall be the Laws of the State of New Jersey.

10. ENTIRE AGREEMENT

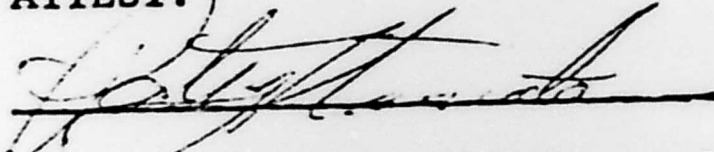
This instrument contains the entire Employment Agreement of the parties. It may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension and discharge is sought.

11. FRINGE BENEFITS

The Employee shall be entitled to all fringe benefits which are given to other Officers and Directors who are currently on the same date being given employment contract by the Employer.

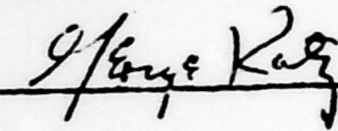
IN WITNESS WHEREOF, and intending to be bound thereby the parties have hereunto executed this agreement as of the day and year first above written.

ATTEST:



Signed, Sealed and Delivered
In The Presence Of

JERSEY SANITATION CO., INC.

By: 
_____ President


_____ EUGENE CONLON

May 30, 1979

Mr. Felix Forlenza
Chief Regulatory Commissioner
Public Utility Commission
1100 Raymond Boulevard
Newark, NJ 07102

Re: In the matter of the Petition of Jersey Sanitation Co., Inc. for the incurrence of an indebtedness and the issuance of a note in excess of 12 months and for the issuance of a mortgage on real property of the utility.
Docket No. 794-313

Dear Mr. Forlenza:

This is to confirm our most recent conversation in which I indicated to you that on March 30, 1979 I filed a Petition on behalf of Jersey Sanitation Co., Inc. for the purpose of seeking Board approval to finance the buy out of a minority stockholder of our corporation, namely Eugene Conlon, Sr. It has been over two months and I have not had any response on this matter. The only time I received a response that there was a problem with our Petition was when I spoke to Mr. Zarillo and yourself approximately two weeks ago at which time it was explained to me by Mr. Zarillo that the staff was questioning whether or not a solid waste utility should have the authority to purchase the outstanding stock of a minority stockholder. This is to further confirm that I indicated to you the urgency of this matter and will attempt to outline the same in this letter.

Mr. Felix Forlenza
Page 2
May 30, 1979

It has come to the attention of the other stockholders of the corporation that Mr. Conlon is allegedly involved with a company known as Chemical Control Co. located in Elizabeth who presently has legal difficulties. Without making a judgment of the extent of his involvement, the corporation and remaining stockholders which I represent wish me to express to the Board that they consider his involvement with the company as undesirable and as a result of which wish me to express to both the Commission and yourself our utmost concern in expediting this matter so that we can no longer have any financial business with this individual.

It has not been explained to me the difficulty that the staff may be having with this Petition which I frankly do not understand. We have submitted all of the financial data. More specifically, current financial statements showing the fiscal solvency of the company and its growth since Mr. Conlon has resigned as director and officer. I know of no Board regulation, rule or statute which is contrary to our request in the within Petition. Our client wishes us to formally put the Board on notice that we are requesting their assistance so that they may terminate the stockholdings of what they consider an undesirable stockholder.

I further wish to draw to your attention that our contract calls for the obtaining of P.U.C. approval by June 22, 1979. If we do not receive our approval by that date, Mr. Conlon has the right to exercise his option of not selling his stock.

We respectfully hope that this Honorable Board does not put us in this untenable position.

Very respectfully submitted,

Richard M. Pisacane

RMP/dml

cc: George H. Barbour, President
Richard B. McGlynn, Commissioner
Edward H. Hynes, Commissioner
Louis Gaeta, Director
Anthony Zarillo, Executive Director
Frank Stamato, Sr.
George Katz

b

bcc: Ralph Mayo, Esq.

THIS MORTGAGE, made the _____ day of August, in the year
 One Thousand Nine Hundred and Seventy-nine
 Between JERSEY SANITATION CO., INC., FRANK STAMATO, JR., PATSY STA
 residing in the Township of East Brunswick in the County of Middlesex
 and State of New Jersey, herein designated as the MORTGAGOR; and VALLEY NATIONAL BANK,
 a banking Corporation of the United States of America, with its principal office located at 615 Main
 Avenue, in the City of Passaic, County of Passaic and State of New Jersey, herein designated as
 MORTGAGEE.

WITNESSETH: That to secure payment in lawful money of the United States of America of the princi-
 pal sum of ONE HUNDRED NINETY THOUSAND and 00/100 (\$190,000.00) DOLLARS
 and interest thereon at the rate of $\frac{1}{2}$ percent over Valley National Bank's floating
 set forth in a promissory Note of even date herewith, given by the Mortgagor to the Mortgagee, providing a
 for the payment of the principal and interest in manner following: ed

Beginning September 13, 1979, Ninety-five (95) equal monthly
 payments of \$1,979.17 plus interest at the rate of $\frac{1}{2}$ percent
 over Valley National Bank's floating prime rate adjusted
 daily, with a final payment of \$1,978.85 plus interest due
 and payable on August 13, 1987.

The Mortgagor has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell
 and convey to the Mortgagee, and to its successors and assigns forever;

ALL the following tract or parcel of land and premises situate, lying and being in the Township of
 East Brunswick, County of Middlesex, State of New Jersey, being more
 particularly described as follows:

Beginning at a point in the lands of Edgeboro, Inc., said beginning
 point being distant from the northwesterly corner of a tract of land
 conveyed by Edgeboro, Inc. to Lock Joint Pipe Co., and recorded in the
 Middlesex County Clerk's Office in Book 2271 at Page 110 by the followi-
 course:

Northwesterly along the prologation of the northeasterly line of said Lock Joint Pipe Co. tract north fifty-four degrees, eleven minutes thirty seconds west fifty and no one hundredths feet (N 54° 11' 30" W 50') to the point of beginning, thence from said beginning point running (1) south thirty-five degrees forty-eight minutes thirty seconds west (S 35° 48' 30" W) ten feet (10') to a point, thence; (2) north fifty-four degrees eleven minutes thirty seconds west (N 54° 11' 30" W) three hundred and thirteen and four one-hundredths feet (313.04') to a point thence (3) north thirty-six degrees forty-two minutes ten seconds east (N 36° 42' 10" E) two hundred eighty and three one-hundredths feet (280.03') to a point, thence; (4) south fifty-four degrees eleven minutes thirty seconds east (S 54° 11' 30" E) three hundred eight and sixty-seven one-hundredths feet (308.67') to a point, thence; (5) south thirty-five degrees forty-eight minutes thirty seconds west (S 35° 48' 30" W) two hundred and seventy feet (270') to the point of beginning.

Excepting from the above, the property conveyed to the Township of East Brunswick for the widening of Edgeboro Road, dated April 14, 1964, recorded May 8, 1964 in Book 2457 page 649.

This Mortgage is a first Mortgage.

TOGETHER with all and singular the buildings, improvements, ways, woods, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; AND ALSO all the estate of the Mortgagor, both in law and in equity, of, in and to the premises herein described, and every part and parcel thereof, with the appurtenances.

EXHIBIT "C"

ACQUIESCENCE by Mortgagee of any payments hereunder, after default, or the failure of Mortgagor, in any one or more instances, to insist upon strict performance by the Mortgagor of any terms and covenants of this Mortgage or to exercise any option or election herein conferred, shall not be deemed to be a waiver or relinquishment for the future of any such terms, covenants, elections or options.

WHEREVER used herein, the words "Mortgagor" or "Mortgagee" shall be deemed to include succeeding owners of the mortgaged property or holder of this mortgage, respectively, regardless of the means of acquisition thereof and the word "Note" shall include all Notes secured hereunder.

WHEREVER in this instrument any party shall be designated or referred to by name or general reference, such designation is intended to and shall have the same effect as if the words "heirs, executors, administrators, personal or legal representatives, successors and assigns" had been inserted after each and every such designation. All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto, and their heirs, executors, administrators, personal or legal representatives, successors and assigns.

IN ALL references herein to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.


THE undersigned Mortgagor hereby acknowledges receipt of a true copy of the within mortgage, without charge.

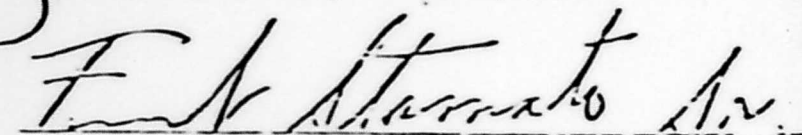
IN WITNESS WHEREOF, the Mortgagor has signed and sealed this mortgage, or if a Corporation, has caused this mortgage to be signed by its proper corporate officers and its corporate seal to be affixed the day and year first above written.

WITNESSETH:

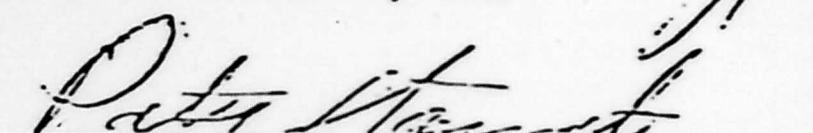
JERSEY SANITATION CO., INC.

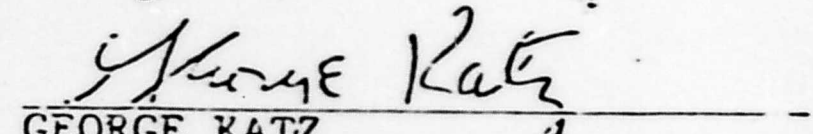

PATSY STAMATO, Secretary

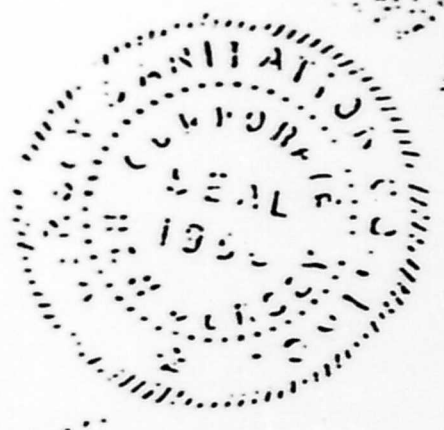
BY 
JOHN ALBERT, President


FRANK STAMATO, SR.


FRANK STAMATO, JR.


PATSY STAMATO


GEORGE KATZ



PREPARED BY: Richard M. Pisacane

State of New Jersey,
County of Passaic

} ss.:

BE IT REMEMBERED, that on this 13th day of August before me the
One Thousand Nine Hundred and Seventy-Nine subscriber, An Attorney at Law of New Jersey personally appeared John Albert, Frank Stamato, Sr., Frank Stamato, Jr., Patsy Stamato and George Katz

who, I am satisfied, are the mortgagors mentioned in the within instrument, to whom I first made known the contents thereof, and thereupon that they signed, sealed, and delivered the same as they acknowledged their voluntary act and deed, for the uses and purposes therein expressed.

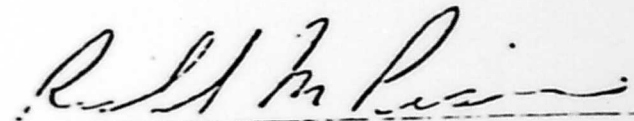
Handwritten marks: a checkmark and a stylized 'U'.

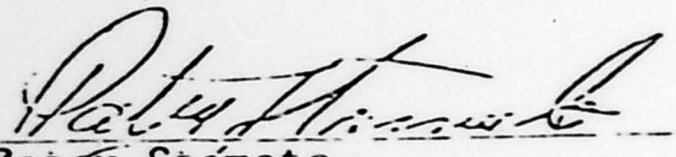
Handwritten signatures and initials.

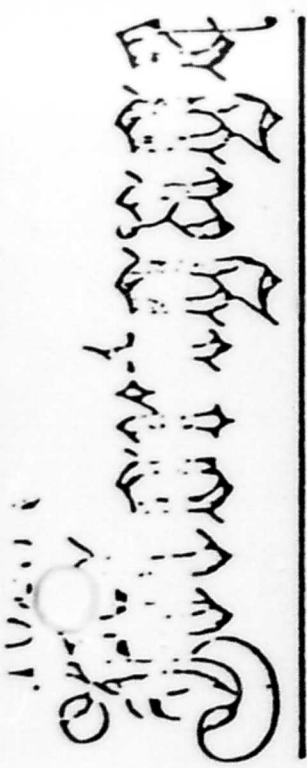
BE IT REMEMBERED, That on this 13th day of August Nineteen hundred and Seventy-nine before me the subscriber, An Attorney at Law, personally appeared PATSY STAMATO who being by me duly sworn on his oath, says that he is the Secretary of Jersey Sanitation Co., Inc. the Mortgagor named in the foregoing Instrument; that he well knows the corporate seal of said corporation; that the seal affixed to said Instrument is the corporate seal of said corporation; that the said seal was so affixed and the said Instrument signed and delivered by JOHN ALBERT

who was at the date thereof the President of said corporation, in the presence of this deponent, and said President, at the same time acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, and as the voluntary act and deed of said corporation, by virtue of authority from its Board of Directors, and that deponent, at the same time, subscribed his name to said Instrument as an attesting witness to the execution thereof.

Sworn and Subscribed before me
at
the date aforesaid


Richard M. Pisacane
An Attorney at Law of New Jersey


Patsy Stamato



JERSEY SANITATION CO., INC.,
FRANK STAMATO, SR., FRANK
STAMATO, JR., PATSY STAMATO,
GEORGE KATZ

10

VALLEY NATIONAL BANK

Dated: August 13, 1979

Received at the
of the 205 ROUTE 46 011
the TOWANA, NEW JERSEY 07512
A.D., 19, at o'clock
in the noon recorded in
BOOK of MORTGAGES for
said County, on page

RECORDED
COUNTY CLERK
NEW BRUNSWICK, N.J.
79 AUG 16 11:50
BOOK 2622 PAGE 865
THOMAS J. DEYNEUX
COUNTY CLERK

CERTIFICATION OF RON DE FILIPPIS
DATED JUNE 9, 1983.

2986

RICHARD M. PISACANE, ESQ.
205 ROUTE 46
TOTOWA, NEW JERSEY 07512
(201) 785-2213
ATTORNEY FOR Defendant, Jersey Sanitation, Inc.

Plaintiff

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OF THE STATE OF NEW JERSEY, et al

vs.

Defendant

A to Z CHEMICAL RESOURCE RECOVERY,
INC., et al

SUPERIOR COURT OF
NEW JERSEY

CHANCERY DIVISION
MIDDLESEX COUNTY

Docket No. C-1799-78

CIVIL ACTION

CERTIFICATION OF
RON DeFILIPPIS

I, Ron DeFilippis, of full age, do hereby certify as follows:

1. I am a member of the firm of Mills & DeFilippis, Certified Public Accountants, and am the accountant for Jersey Sanitation, Inc. I am also responsible for filing the annual report with both the Board of Public Utility Commission, as well as the Secretary of State of the State of New Jersey on behalf of the corporation. To my knowledge in the filing of

these annual reports, Jersey Sanitation is in no way a subsidiary or a part of a company which I have been told is known as A to Z. In the reports filed by me also with the Secretary of State as well as the Board of Public Utility Commission, up until 1973 Mr. Conlon and Mr. Albert did not own any stock in Jersey Sanitation Company. Subsequently through 1973 they owned 25% each of the stock of Jersey Sanitation. The remaining stock was held by the parties in the exhibit which I am attaching hereto and marked as Exhibit "A".

2. I have also been asked to make an analysis of the amount of money which was received on an account known as National Starch on the books and records of Jersey Sanitation, as well as an analysis of the cost for disposal paid for by Jersey Sanitation. My review of the books have indicated that Jersey Sanitation paid to A to Z Chemical Corporation in 1978, \$55,117 it received on the account known as National Starch.

3. The National Starch account amount to less than ten (10%) percent of the total revenue of Jersey Sanitation for the year 1973 & 1979. The total revenue of Jersey Sanitation was in 1978, \$1,087,069. and 1979 \$1,118,612. and this was exclusively solid waste collection except for the National Starch account from my reading of the books and records of the company.

4. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

1st Ron DeFilippis
Ron DeFilippis

DATED: June 9, 1983.

JERSEY SANITATION CO., INC.

<u>STOCKHOLDERS</u>	<u>%</u>
Eugene Conlon	25%
John Albert	25%
Patrick Stamato	8.33%
Frank Stamato, Sr.	.5%
Jacqueline Stamato	7.83%
Frank Stamato, Jr. as custodian for Nina Stamato	8.33%
George Katz	6.25%
Audrey Katz	6.25%
Carolyn Katz	6.25%
Richard Katz	6.25%

Copy of the within pleading
has been filed with the court.
RICHARD S. COHEN, J.S.C.

FILED *June 30, 1983*
Chancery of
RICHARD S. COHEN, J.S.C.

IRWIN I. KIMMELMAN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs
Richard J. Hughes Justice Complex, CN 112
Trenton, New Jersey 08625
By: RONALD P. HEKSCH
Deputy Attorney General
609-292-1557

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MIDDLESEX COUNTY
DOCKET NO. C-1799-78

DEPARTMENT OF ENVIRONMENTAL)
PROTECTION OF THE STATE OF)
NEW JERSEY, et al.,)

Civil Action

Plaintiffs,)

SUMMARY JUDGMENT

v.)

A TO Z CHEMICAL RESOURCE)
RECOVERY, INC., et al.,)

Defendants.)

This matter having been presented to the court by
Irwin I. Kimmelman, Attorney General of New Jersey, attorney
for plaintiffs, Department of Environmental Protection of the
State of New Jersey and the Spill Compensation Fund, Department
of Treasury, State of New Jersey, Ronald P. Heksch, Deputy

Attorney General, appearing, in the presence of Richard M. Pisacane, Esq., attorney for defendant Jersey Sanitation Co., Inc., no one appearing on behalf of the defendants A to Z Chemical Resource Recovery, Inc. and John Albert, and the court having considered the arguments of counsel as well as the certifications, briefs and exhibits submitted in support of and in opposition to plaintiffs' motion for summary judgment and for the appointment of a receiver for the defendant Jersey Sanitation Co., Inc., and good cause appearing,

IT IS on this 30th day of June, 1983,
ORDERED that summary judgment be entered against Jersey Sanitation Co., Inc. in the amount of \$1,327,410.15.

IT IS FURTHER ORDERED that summary judgment be entered against the defendants A to Z Chemical Resource Recovery, Inc. and John Albert, jointly and severally, in the amount of \$3,982,230.45.

IT IS FURTHER ORDERED that pursuant to N.J.S.A. 58:10-23.11f(f) the aforementioned judgment shall constitute a first priority claim and lien paramount to all other claims and liens upon the revenues and all real and personal property of the defendants Jersey Sanitation Co., Inc. and John Albert.

IT IS FURTHER ORDERED that pursuant to N.J.S.A. 13:1E-9 penalties in the amount of \$300,000 be assessed against the defendant Jersey Sanitation Co., Inc. and, further, pursuant to N.J.S.A. 58:10A-10 penalties in the amount of \$500,000 be assessed against the said defendant.

IT IS FURTHER ORDERED that pursuant to N.J.S.A. 13:1E-9 penalties in the amount of \$300,000 be assessed against the defendant A to Z Chemical Resource Recovery, Inc. and, further, pursuant to N.J.S.A. 58:10A-10 penalties in the amount of \$500,000 be assessed against the said defendant.

IT IS FURTHER ORDERED that pursuant to N.J.S.A. 13:1E-9 penalties in the amount of \$300,000 be assessed against the defendant John Albert and, further, pursuant to N.J.S.A. 58:10A-10 penalties in the amount of \$500,000 be assessed against the said defendant.

IT IS FURTHER ORDERED that as of 11 a.m. on June 17, 1983, Jersey Sanitation Co., Inc. spend no further moneys except for the purpose of paying current and ongoing wage claims of its employees and operating expenses required to allow it to complete its contractual obligations with the generators it collects solid waste from until the end of June 1983, until further order of this court. No wage claims of any employees who are stockholders in the defendant, Jersey Sanitation Co., Inc., or related to stockholders of Jersey Sanitation Co., Inc. shall be paid. Additionally, no past wage claims shall be paid until further order of this court.

IT IS FURTHER ORDERED that no disposition, transfer, release or other disposal of any of the assets of Jersey Sanitation Co., Inc. shall be made subsequent to 11 a.m. on June 17, 1983 except as directed and approved by this court.

IT IS FURTHER ORDERED that by Thursday, June 23, 1983, defendant Jersey Sanitation Co., Inc. shall provide this court and plaintiffs' attorney with documentation of plans for the liquidation and disposition of assets as a result of the planned dissolution of said corporation.

IT IS FURTHER ORDERED that counsel for plaintiffs and Jersey Sanitation Co., Inc. shall appear before this court on June 24, 1983 at 9:00 a.m. to discuss defendant's plans for dissolution and the need for the appointment of a receiver.

IT IS FURTHER ORDERED that the application of the defendant, Jersey Sanitation Co., Inc., for a stay of this order pending appeal is denied except that in the event that said defendant files an appeal plaintiffs shall be precluded from executing on this judgment until such time as said appeal has been adjudicated.



Richard S. Cohen, J.S.C.

Copy of the within pleading
has been filed with the court.
RICHARD S. COHEN, J.S.C.

FILED *Aug 1, 1983*
Chambers of
RICHARD S. COHEN, J.S.C.

2986

RICHARD M. PISACANE, ESQ.

205 ROUTE 46
TOTOWA, NEW JERSEY 07512
(201) 785-2213

ATTORNEY FOR Defendant, Jersey Sanitation Co., Inc.

Plaintiff

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OF THE STATE OF NEW JERSEY, et al.,

vs.

Defendant

A TO Z CHEMICAL RESOURCE RECOVERY, INC.,
et al.

SUPERIOR COURT OF
NEW JERSEY

CHANCERY DIVISION
MIDDLESEX COUNTY

Docket No. C-1799-78

CIVIL ACTION

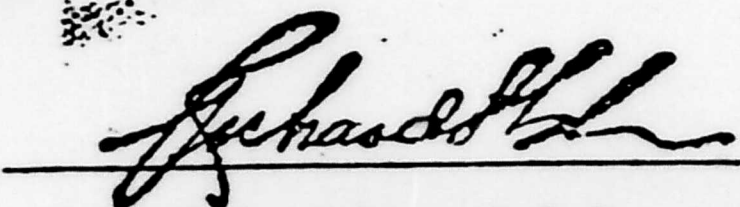
AMENDED JUDGMENT

This matter having been presented to the court by
Irwin I. Kimmelman, Attorney General of New Jersey, attorney
for plaintiffs, Department of Environmental Protection of the
State of New Jersey and the Spill Compensation Fund, Department
of Treasury, State of New Jersey, Ronald P. Heksch, Deputy
Attorney General, appearing, in the presence of Richard M.
Pisacane, Esq., attorney for defendant, Jersey Sanitation Co.,
Inc., and no one appearing on behalf of the defendants A to Z
Chemical Resource Recovery, Inc. and John Albert, and the court
having considered the arguments of counsel as well as the
certifications, briefs and exhibits submitted in support of and

in opposition to Plaintiffs' motion for summary judgment and the court on June 30, 1983 having issued an order of summary judgment on behalf of the State of New Jersey Department of Environmental Protection against the defendant, Jersey Sanitation Co., Inc., and it having been brought to the attention of the Court through counsel for Jersey Sanitation Co., Inc., Richard M. Pisacane, that the Order entered by the court was incomplete and did not contain the complete decision of the court in this matter, in that counsel for the Department of Environmental Protection failed to add the Order of the Court, that the Order of Summary Judgment shall be a final judgment appealable by Jersey Sanitation Co., Inc., as of right and the court after having this being brought to its attention, having reviewed the transcript and record of the prior proceedings and having agreed with counsel for Jersey Sanitation Co., Inc., that the Order of June 30, 1983 was incomplete,

IT IS on this 1st day of Aug., 1983,
ORDERED that the summary judgment order entered and signed on June 30, 1983 is hereby amended and that that order is hereby to be considered as a final judgment against the defendant, Jersey Sanitation Co., Inc.

IT IS FURTHER ORDERED that all of the other findings and orders of the summary judgment entered on June 30, 1983 is hereby affirmed, except as amended herein.


Richard S. Cohen, J.S.C.

NOTICE OF APPEAL
FILED SEPTEMBER 15, 1983

128a

ORIGINAL FILED
SEP 15 1983
ELIZABETH McLAUGHLIN
Clerk

REC'D.
APPELLATE DIVISION

SEP 15 1983

Elizabeth McLaughlin
Clerk

4247

NOTICE OF APPEAL

PLEASE PRINT OR TYPE

SUPERIOR COURT OF NEW JERSEY - APPELLATE DIVISION

TITLE OF ACTION AS CAPTIONED BELOW:

ATTORNEY OF RECORD

Plaintiff,
Department of Environmental
Protection of the State of
New Jersey

NAME Richard M. Pisacane, Esq.
ADDRESS 205 Route 46
Totowa, New Jersey 07512
PHONE NO. (201) 785-2213

- vs -

Defendant,
A to Z Chemical Resource
Recovery Inc., et al

ATTORNEY FOR Defendant, Jersey Sanitation Co.,
ON APPEAL FROM: Inc.
Superior Court of New Jersey, Chancery Div.
TRIAL COURT/STATE AGENCY Middlesex Court
C-1799-78
TRIAL DOCKET OR INDICTMENT NUMBER
Honorable Richard S. Cohen J.S.C.
TRIAL COURT JUDGE
CIVIL () CRIMINAL () JUVENILE ()

NOTICE IS HEREBY GIVEN THAT Jersey Sanitation
APPEALS TO THE SUPERIOR COURT OF N. J., APPELLATE DIVISION, FROM THE JUDGMENT () ORDER ()

OTHER (SPECIFY) () _____

ENTERED IN THIS ACTION ON June 30, amended 19 83 IN FAVOR OF Plaintiff, Dept. of Environ-
August 1, 1983 mental Protection, et al

IF APPEAL IS FROM LESS THAN THE WHOLE, SPECIFY WHAT PARTS OR PARAGRAPHS ARE BEING APPEALED:
N/A

ARE ALL ISSUES AS TO ALL PARTIES DISPOSED OF IN THE ACTION BEING APPEALED? YES () NO ()

IF NOT, IS THERE A CERTIFICATION OF FINAL JUDGMENT ENTERED PURSUANT TO R. 4:42-2? YES () NO ()

PRIORITY UNDER R. 1:2-5 YES () NO () APPLICABLE SECTION UNDER THE RULE _____

IN CRIMINAL, QUASI-CRIMINAL, AND JUVENILE CASES... NOT INCARCERATED () INCARCERATED ()
CONFINED AT N/A
GIVE A CONCISE STATEMENT OF THE OFFENSE AND OF THE JUDGMENT, DATE ENTERED AND ANY SENTENCE OR
POSITION IMPOSED N/A

1 NOTICE OF APPEAL HAS BEEN SERVED ON:

NAME	DATE OF SERVICE	TYPE OF SERVICE
TRIAL COURT JUDGE <u>Honorable Richard S. Cohen J.S.C.</u>		Reg. Mail
TRIAL COURT CLERK STATE AGENCY <u>W. Lewis Bambrick, Clerk Superior Court</u>		Reg. Mail
ATTORNEY GENERAL OR GOVERNMENTAL OFFICE UNDER R. 2:5-1 (h)		
OTHER PARTIES:		
NAME AND DESIGNATION	ATTORNEY NAME, ADDRESS & TELEPHONE NO.	DATE OF SERVICE
Dept. Env. Prot., Pltf.	Ronald P. Heksch D.A.G., CN 112, Trenton, NJ 08625	9/14/83
(SERVE THIS PARTY WITH TRANSCRIPT)		
A to Z, Defs.	Larry Bronson, Esq., 540 Kennedy Blvd., Bayonne, NJ 07002	9/14/83
John Albert, Def.	Larry Bronson, Esq., 540 Kennedy Blvd., Bayonne, NJ 07002	9/14/83
Eugene Conlon, Def.	Ralph Mayo, Esq., 73 Paterson St., New Brunswick, NJ 08903	9/14/83

I HEREBY CERTIFY THAT I HAVE SERVED A COPY OF THIS NOTICE OF APPEAL ON EACH OF THE PERSONS REQUIRED AS INDICATED ABOVE.

September 14, 19 83

Richard M. Pisacane
Richard M. Pisacane, Esq.
SIGNATURE OF ATTORNEY OF RECORD

PRESCRIBED TRANSCRIPT REQUEST FORM HAS BEEN SERVED ON:
(ALSO INDICATE IF SOUND RECORDED)

NAME	DATE OF SERVICE	AMOUNT OF DEPOSIT
ADMINISTRATIVE OFFICE OF THE COURTS CHIEF COURT REPORTING SERVICES		
COURT REPORTER'S SUPERVISOR CLERK OF COUNTY OR AGENCY <u>Louis B. Finkel, Supervisor</u>	9/14/83	
COURT REPORTER <u>Stanley Grabon</u>	9/14/83	\$100.00

I HEREBY CERTIFY THAT I SERVED THE PRESCRIBED COURT TRANSCRIPT REQUEST FORM ON EACH OF THE ABOVE PERSONS AND PAID THE DEPOSIT AS REQUIRED BY R. 2:5-3(d).

September 14, 1983

Richard M. Pisacane
Richard M. Pisacane, Esq.
SIGNATURE OF ATTORNEY OF RECORD

3 I HEREBY CERTIFY THAT:

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- () A MOTION FOR ABBREVIATION OF TRANSCRIPT HAS BEEN FILED WITH THE COURT OR AGENCY BELOW.
- () A MOTION FOR FREE TRANSCRIPT HAS BEEN FILED WITH THE COURT BELOW.

19

SIGNATURE OF ATTORNEY OF RECORD

JERSEY SANITATION CO. INC. [Name of party requesting transcript]
 _____ [Address of party requesting transcript]
RICHARD M. PISACANE, ESQ. [Name of attorney for party requesting transcript]
205 Route 46, Totowa, N.J. 07512 [Address of attorney for party requesting transcript]

DEPT. OF ENV. PROTECTION, STATE OF NJ [Name(s) of plaintiff(s)]
 v. etal
A TO Z CHEMICAL RESOURCE RECOVERY, INC. [Name(s) of defendant(s)]

C-1799-78 [Lower Court docket no./ind. no./compl. no.]
Superior Court, Chancery, Middlesex [Court from which appeal taken]
County

To: Stanley Grabon [Name of Court Reporter]*
Middlesex County Court House [Address of Court Reporter]
New Brunswick, N.J. 08903
 _____ [Trial Court Clerk (if sound recorded)]
 _____ [Address of Trial Court Clerk (if sound recorded)]

It is hereby requested that you prepare for use on appeal an original and _____ copies of the following:

Date(s) of Proceeding	Type of Proceeding (e.g., trial, sentencing, hearing on petition for post conviction relief)	Name of Judge
<u>June 17, 24 and</u>	<u>Hearing on Notice of</u>	<u>HONORABLE RICHARD S. COHEN J.S.C.</u>
<u>July 8, 1983</u>	<u>Motion for Summary Judgment and Appointment of Receiver granted for Plaintiff</u>	_____
_____	_____	_____

Herewith is deposit for transcript in the amount of _____

7/14/83
 [Date]

Richard S. Cohen
 [Signature of pro se party or attorney requesting transcript]

cc: Clerk, Appellate Division, Superior Court** (The Clerk's copy shall be attached to the notice of appeal - R.2:5-1(f))
 Administrative Office of the Courts
 Attn: Chief, Reporting Services

Louis B. Finkel [Reporter supervisor for the county]
 _____ [Other attorneys and pro se parties]

*Note: If more than one reporter recorded a portion of the proceeding, a separate form shall be completed for each such reporter.

**Note: Where transcript is to be prepared for use in the Supreme Court rather than the Appellate Division, the copy shall be forwarded to the Clerk of the Supreme Court.

A-267-83T2

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-267-83T2

FILED
APPELLATE DIVISION

JAN 17 1984

DEPARTMENT OF ENVIRONMENTAL)
PROTECTION OF THE STATE OF)
NEW JERSEY, et al.,)

Plaintiffs-Respondents,)

v.)

A TO Z CHEMICAL RESOURCE)
RECOVERY, INC., et al.,)

Defendants-Appellants.)

Civil Action

Elizabeth W. Laughlin
Clerk

On Appeal from a Judgment
of the Superior Court
of New Jersey, Chancery
Division, Middlesex County

Sat Below:
Cohen, J.S.C.

BRIEF AND APPENDIX OF PLAINTIFFS-RESPONDENTS,
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND
NEW JERSEY SPILL COMPENSATION FUND

JAN 17 4 49 PM '84
FILED
CLERK

BRIEFING STATUS

Appellant's Brief 12/12/83
Ready NO
Cross Appeal NO
Accelerated NO
Interlocutory NO

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Tax

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PROCEDURAL HISTORY

The original complaint filed by the New Jersey Department of Environmental Protection (hereinafter "DEP") on January 12, 1979 alleged that A to Z Chemical Resource Recovery, Inc. (hereinafter "A to Z"), John Albert and Eugene Conlon violated N.J.S.A. 13:1E-1 et seq., N.J.S.A. 58:10A-1 et seq., N.J.S.A. 23:5-28, N.J.S.A. 26:2C-19 and the rules and regulations promulgated pursuant thereto as a result of their owning and operating an unlicensed chemical waste disposal facility in the City of New Brunswick, New Jersey. Moreover, the complaint alleged that they were responsible for creating and maintaining a nuisance. DEP sought injunctive relief as provided by the cited statutes, abatement of the nuisance created and maintained by defendants, and maximum statutory penalties (Aa1 to Aa12).^{*} By Order to Show Cause with Temporary Restraints issued on January 12, 1979, the original defendants were restrained from accepting any additional chemicals or chemical wastes at their facility and, further, from allowing any additional discharges of chemicals or chemical wastes onto the soil and floor in and about the site (Aa13).

On February 9, 1979, the adjourned return date of the Order to Show Cause, a hearing was conducted. Thereafter, on March 2, 1979, an order was entered requiring the defendants to: cease accepting any additional chemicals or chemical wastes at the New Brunswick facility; immediately close same; submit information to the DEP, on or before March 9, 1979, identifying the total number

^{*}Aa makes reference to the appendix of defendant-appellant Jersey Sanitation Co., Inc., submitted with its brief.

and contents of the drums, storage tanks, and tank trucks at their site, and identifying other materials which had leaked or spilled from the containers located there (Aa17). They were also ordered to submit a plan for the removal of all chemical waste materials from the subject facility by April 10, 1979 and, subject to DEP approval, to implement said plan (Id).

10 Subsequently, defendants moved to extend the time by which they were to remove the chemicals from the A to Z facility. The court below denied said motion and by order dated May 1, 1979 provided that A to Z, John Albert and Eugene Conlon were required to comply forthwith with the March 2, 1979 order (Aa22).

20 Defendants' failure to comply with the March 2, 1979 order continued and on June 26, 1979, on application by DEP, the trial court issued an Order to Show Cause for Supplemental Relief in Aid of Litigants Rights. On August 17, 1979, subsequent to a hearing, the court ordered that a receiver be appointed for the purpose of effectuating a complete cleanup of defendants' facility and remedying all violations of the law (Aa24). Further, the order
30 directed that all of the assets and records of A to Z were to be transferred to the receiver. On September 11, 1979, Frank J. Rubin, Esq., and the engineering firm of Dames and Moore were appointed as joint receivers (Id.). Defendants moved for leave to appeal the August 17, 1979 order. Said motion was denied by the Superior
40 Court, Appellate Division (Aa30).

Thereafter, it became clear that the cost of cleaning up the property in question was well in excess of the assets that the joint receivers were able to locate. Thus, despite efforts by the

receivers, conditions at the facility remained essentially the same. This being the case, DEP applied to the court below for an order appointing it to perform a cleanup of the site and further, to discharge the joint receivers. On June 6, 1980, an order was entered relieving the joint receivers of any further responsibilities in this matter and authorizing the DEP, with money from the New Jersey Spill Compensation Fund (hereinafter "Spill Fund"), established pursuant to the "Spill Compensation and Control Act," N.J.S.A. 58:10-23.11 et seq., to remedy all violations of the law that existed at defendants' facility as a result of the disposal of chemical wastes there (Aa31). Said order also granted DEP permission to amend its complaint at the completion of the aforementioned cleanup, or sooner if it saw fit, to allege a cause of action under the Spill Act (Id.).

On March 31, 1981, DEP filed an amended complaint (Aa34) which reiterated the statutory and common law violations alleged in the original complaint and, additionally, asserted a claim against the defendants A to Z, John Albert, and Eugene Conlon for all costs which the Spill Fund incurred in connection with the cleanup of the facility in question and, further, treble damages as provided by N.J.S.A. 58:10-23.11f(a). The amended complaint also asserted a claim against Jersey Sanitation Co., Inc., a company which John Albert and Eugene Conlon owned and operated, similar to that asserted against the original defendants, as a result of that company's involvement with the transportation and disposal of the chemical wastes found at the A to Z site. Additionally, Count 4 of the amended complaint sought a declaration that all past and future

expenditures by the Spill Fund for cleanup of the A to Z site constitute a first and priority claim and lien paramount to all other claims and liens against the real and personal property of the defendants.

10 On May 10, 1983 plaintiffs filed a motion for summary judgment against A to Z, John Albert, Eugene Conlon and Jersey Sanitation Co., Inc., seeking \$3,982,230.45, which represents three times the amount of money spent to date by DEP and the Spill Fund in cleaning up the A to Z facility in New Brunswick, New Jersey. Additionally, plaintiffs' motion sought the imposition of penalties pursuant to the statutes cited in the amended complaint. Plaintiffs also sought an order requiring defendants to pay three times 20 the amount of any further cleanup and removal costs incurred by DEP and the Spill Fund at the A to Z site (Aa61 to Aa75). Jersey Sanitation Co., Inc., was the only defendant who filed papers in opposition to the State's Motion (Aa 76 to Aa 122).

30 The matter was argued before the trial court on June 17, 1983. Following the arguments of counsel the court rendered an oral opinion from the bench finding in plaintiffs' favor and against defendant Jersey Sanitation Co., Inc., in the amount of \$1,327,410.15. Defendants A to Z and John Albert were held jointly and severally liable for \$3,982,230.15. Additionally, each defendant was individually assessed penalties in the amount of \$800,000 40 (\$300,000 pursuant to N.J.S.A. 13:1E-9 and \$500,000 pursuant to N.J.S.A. 58:10A-10). Finally, the court froze the assets of Jersey Sanitation Co., Inc. (Aa125 to Aa126). Subsequently, on June 20,

1983 the trial court supplemented its oral opinion with a written letter to all counsel wherein the judge elaborated on the considerations which led to the rulings he had issued from the bench on June 17th (Ra1).*

On June 30, 1983 a written order for summary judgment was entered by the court below (Aa 123). On August 1, 1983 an amended order was entered making the June 30, 1983 judgment final as to Jersey Sanitation Co., Inc. (Aa127). The current appeal by Jersey Sanitation Co., Inc. followed.

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* Ra makes reference to the appendix of plaintiffs-respondents, Department of Environmental Protection of the State of New Jersey and the New Jersey Spill Compensation Fund, annexed hereto.

STATEMENT OF FACTS

This matter involves a chemical waste disposal facility operated by John Albert, Eugene Conlon, A to Z and Jersey Sanitation Co., Inc., in the City of New Brunswick. A to Z is a New Jersey corporation established by John Albert and Eugene Conlon for the sole purpose of owning and operating the facility in question.

10 Jersey Sanitation Co., Inc., is a New Jersey corporation which had been in the business of transporting and disposing of solid and hazardous wastes (T31-23; T33-16; Aa77-12 to 16; Ra2; Ra5 to Ra10). During the time periods relevant here John Albert and Eugene Conlon owned fifty percent of the stock in this company (Ra2). Moreover, they were officers and directors of the company and responsible for

20 its daily operation (T32-2 to 10; Aa77-16 to 22; Aa81-21; Aa100-10; Ra2; Ra15 to Ra19).

Hazardous waste disposal by A to Z, Jersey Sanitation, Co., Inc., John Albert and Eugene Conlon commenced sometime prior to August 8, 1977 (Ra24).*

30 A to Z was notified by DEP on several occasions of the necessity for obtaining state approval before commencing waste disposal operations at the subject facility (Ra30 to Ra35). Notice to A to Z was in fact notice to Jersey Sanitation Co., Inc., inasmuch as the individuals involved with the former company were 50% owners, president and vice president, and operators of the latter company. Additionally, one of the notices sent

40 to John Albert and A to Z was sent to Jersey Sanitation at its principal place of business on Edgeboro Road, East Brunswick, New

* The property in question was purchased by A to Z from Heritage Bank North on or about July 22, 1977.

Jersey (Ra32). Despite these notices Jersey Sanitation Co., Inc. continued to take thousands of drums of toxic and chemical wastes to the A to Z site and the latter accepted them for disposal (Aa65 to Aa68; Ra20).

10 Throughout 1977 and 1978 chemical wastes were received and stored in drums, in storage tanks, in tank trucks and in numerous other bins, pails and open piles located at the site (Ra27 to Ra28; Ra37 to Ra38; Ra42 to Ra43). Many of the drums containing chemicals and chemical wastes were leaking, open, unsealed, toppled over, and otherwise haphazardly stored in a manner which permitted their contents to be unlawfully released into the environment (Ra27 to Ra28; Ra37 to Ra39; Ra43 to Ra44; Ra47 to Ra52; Ra54 to Ra57).
20 The chemical wastes stored and/or disposed of at the site included, but were not limited to: toluene, lead, mercury, cyanide, cadmium, copper, nickel, zinc, 4 chloro - 3 methyl phenol; xylene, methylene chloride, thallium, benzene, ethyl benzene. All of these substances are considered hazardous by DEP (Aa73 to Aa75).

30 Spills and leaks of the hazardous wastes in question had covered much of the area where the drums were stored (Ra27). Rainfall and surface waters mixed with and picked up these chemical wastes and transported them and/or were capable of transporting them into the waters of the state (Ra28 to Ra29). The property in question was not fenced or otherwise secured (Ra45). A to Z had
40 failed to utilize guards, watchmen or other employees to insure that children or other unauthorized individuals were denied access to this site and it was the practice of A to Z to leave the facili-

ty totally unsupervised for days at a time (Ra27; Ra37; Ra47; Ra49; Ra54; Ra56). As a consequence, children routinely walked through the site (Ra39; Ra45).

When it became clear that the original defendants below had no intention of responding to the various administrative directives issued them and, further, planned to continue using the A to Z facility in an unlawful manner, DEP initiated this action by filing an Order to Show Cause With Temporary Restraints and a Verified Complaint on January 12, 1979. Subsequently, several orders were entered by the trial court requiring those defendants to cease operations at the site in question and inventory and remove, with DEP approval, the hazardous wastes located there. Despite these judicial directives A to Z, Albert and Conlon, failed to adequately inventory the wastes in question, failed to notice the DEP when waste materials were removed, failed to properly manifest the chemicals and chemical wastes which were removed, and continued to store large numbers of full and partially full drums of hazardous wastes at the facility. Inspections conducted in May and July 1979 indicated that approximately 8,000 drums containing chemical wastes continued to be stored at the facility (Ra59; Ra63). New spillage from leaking, deteriorating and broken drums was observed during this period (Ra58 to Ra59). Additional drums had fallen, been knocked over or collapsed causing thier contents to escape (Ra59).

As a result of these defendants' noncompliance with the trial court's orders, joint receivers were appointed to supervise the subject facility and to effectuate complete cleanup of the

site.* However, it became apparent that the cost of cleaning up the property was well in excess of the assets that the receivers were able to locate. The receivers were unsuccessful in getting A to Z, Albert and Conlon, to undertake any cleanup or remedial action on the property and requested that the Spill Fund be used to remedy the conditions at the site.

10 Thereafter, DEP applied for and received an order from the court below permitting the state to perform the cleanup with moneys from the Spill Fund. DEP commenced cleanup on the site in April 1980. The majority of the cleanup work was completed by March 1982. The cost of the cleanup to date is \$1,327,410.15 (Aa 70).

20 In June 1983, in an oral decision supplemented by a letter opinion, the lower court found A to Z, John Albert and Jersey Sanitation guilty of violating the "Solid Waste Management Act," N.J.S.A. 13:1E-1 et seq., the "Spill Compensation and Control Act," N.J.S.A. 58:12-23.11 et seq. and the "Water Pollution Control Act" N.J.S.A. 58:10A-1 et seq.** Specifically with regard to the

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* It should be noted that defendants John Albert, Eugene Conlon, A to Z and Jersey Sanitation, as a result of the conduct set forth in plaintiffs' complaint along with similar conduct at the Chemical Control site in Elizabeth, New Jersey, were convicted in federal court of conspiring to defraud various individuals by fraudulently representing to them that they were lawfully disposing of hazardous waste that these individuals paid them to dispose of, when in fact they unlawfully disposed of them at the A to Z site and elsewhere. United States of America v. John Albert, et al., United States District Court, District of New Jersey, Criminal No. 80-350.

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** Eugene Conlon requested that the motion for summary judgment as to him be adjourned until after he was released from jail at the end of 1983. The court agreed to do so and no judgment has yet been entered against him.

appellant herein, Jersey Sanitation Co., Inc., the lower court held that the company was responsible for illegally transporting and disposing of a substantial portion of the hazardous wastes found at the A to Z facility (T33-19 to 25). Moreover, the lower court found Jersey Sanitation Co., Inc., to be a discharger of hazardous substances in violation of both N.J.S.A. 58:10-23.11 et seq. and N.J.S.A. 58:10A-1 et seq. (T35-4 to 15; Ra2 to Ra4). In other words the company was responsible for conduct that had resulted in hazardous substances being released into the waters of the State and/or being placed in a position where they were likely to flow or drain into said waters (Id.). The court found the treble damages provisions of N.J.S.A. 58:10-23.11f(a) not to be applicable to the company because of the absence of proof that it had been directed to clean up and remove its discharge prior to DEP doing so (Ra3). However, the company's unlawful activities also made it liable for statutory penalties (T36-7 to T37-14; Ra4).

Finally, the lower court rejected the contention of Jersey Sanitation Co., Inc., that its unlawful activities were the unauthorized acts of John Albert and Eugene Conlon accomplished without the knowledge of some of the owners and that therefore the company should not be liable under the statutes in question (T31-23 to T37-15; Ra1 to Ra4). The lower court found Albert and Conlon to be 50% owners of the company as well as its executive officers (president and vice president), and also two of five of the corporation's directors (Id.). Additionally, they were responsible for running the daily affairs of the company during the time it was engaging in illegal conduct (Id.). The trial judge held that where

such individuals use their company's equipment and employees to
- illegally transport and dispose of hazardous substances, the cor-
poration is liable for both cleanup costs and statutory penalties
(Id.). Summary judgment was thus entered against Jersey Sanitation
Co., Inc., for the money expended to date by the Spill Fund in
cleaning up and decontaminating the A to Z property. Additionally,
10 the company was assessed \$800,000 in statutory penalties. For the
reasons which follow it is respectfully submitted that the judgment
below was entirely proper.

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ARGUMENT

IT IS UNDISPUTED THAT JERSEY SANITATION CO., INC., ILLEGALLY DISPOSED OF AND DISCHARGED HAZARDOUS WASTES IN VIOLATION OF N.J.S.A. 13:1E-1 ET SEQ., N.J.S.A. 58:10-23.11 ET SEQ. AND N.J.S.A. 58:10A-1 ET SEQ. AND, THUS, THE TRIAL COURT PROPERLY ENTERED SUMMARY JUDGMENT AGAINST THE COMPANY FOR THE AMOUNT EXPENDED IN CLEANING UP AND REMOVING ITS UNLAWFUL DISCHARGE AND FOR STATUTORY PENALTIES.

10 It is well established that summary judgment may be granted when there are no issues of material fact bearing on the relief requested. R. 4:46-2. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67 (1954). As long as "... the supporting papers show palpably that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a

20 judgment as a matter of law, a judgment shall be entered in his favor." Applestein v. United Board & Carton Corp., 35 N.J. 343, 350 (1961). The party against whom summary judgment is sought must not only demonstrate the existence of a factual dispute, but the defending party "... is required to demonstrate by competent evidential material that a genuine issue of material fact exists."

30 Heljon Management Corp. v. DiLeo, 55 N.J. Super. 306, 312 (App. Div. 1959).

40 In the instant case no issue of material fact exists. It is undisputed that John Albert, Eugene Conlon and A to Z owned and operated an unlawful hazardous waste disposal facility in New Brunswick, New Jersey. Moreover, it is uncontroverted that John Albert, Eugene Conlon and Jersey Sanitation Co., Inc., a company they operated and owned a 50% interest in, illegally disposed of hazardous wastes at the A to Z facility. As a direct result of

10 this unlawful activity the wastes in question threatened to pollute ground and surface waters in and about the site. After being unable to get defendants below to abate the dangerous conditions they created, DEP, with money from the Spill Fund, cleaned up and removed the hazardous wastes at the A to Z site. This being the case DEP and the Spill Fund were entitled, as a matter of law, to a judgment against Jersey Sanitation Co., Inc., for the amount expended plus statutory penalties.

20 By enacting the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Legislature unequivocally prohibited the disposal of solid or hazardous waste unless done in a manner expressly approved by DEP. All disposal facilities in the state must be approved by DEP and it is unlawful to dispose of solid and hazardous waste at a facility which is not so approved. N.J.S.A. 13:1E-4; N.J.A.C. 7:26-2.1; N.J.A.C. 7:26-3.4(b). Persons failing to comply with the statute and the rules and regulations promulgated thereunder are subject to substantial penalties. N.J.S.A. 13:1E-9; N.J.A.C. 7:26-7.8(a). It is undisputed that the disposal of hazardous wastes by Jersey Sanitation Co., Inc., at the A to Z site violated the statute and regulations in question. Thus, the company was properly penalized by the trial court pursuant to N.J.S.A. 13:1E-9.

40 Additionally, Jersey Sanitation Co., Inc., was responsible for the unauthorized discharge of hazardous substances in violation of N.J.S.A. 58:10-23.11 et seq. and N.J.S.A. 58:10A-1 et seq., and is therefore liable for the money spent by DEP and the Spill Fund in cleaning up and removing said discharge and, further,

is liable for penalties pursuant to these statutes. By enacting the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Legislature unequivocally prohibited the discharge* of hazardous substances into the environment. N.J.S.A. 58:10-23.11c. Moreover, the Legislature provided for the cleanup and removal of hazardous waste discharges by DEP with money from the Spill Fund. N.J.S.A. 58:10-23.11f. Any persons who are in any way responsible for a discharge which DEP cleans up with Spill Fund money are strictly liable, jointly and severally, without regard to fault for all cleanup and removal costs.** N.J.S.A. 58:10-23.11g(c).

Similarly, the "Water Pollution Control Act," N.J.S.A. 58:10A-1 et seq., makes it unlawful to discharge any pollutants into the ground and/or surface waters of the state without DEP approval. N.J.S.A. 58:10A-6. Any person violating this statute is liable for a penalty of not more than \$10,000 per day for each such violation and each day that said violation continues constitutes a

* "Discharge" is defined as "... any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substance into the waters of the State or onto lands from which it might flow or drain into said waters, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State;" N.J.S.A. 58:10-23.11b(h).

** "Cleanup and removal costs" are defined as "... all costs associated with a discharge incurred by the State or its political subdivisions or their agents or any person with written approval from the department in the (1) removal or attempted removal of hazardous substances or, (2) taking of reasonable measures to prevent or mitigate damages to the public health, safety, or welfare, including but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources;" N.J.S.A. 58:12-23.11b(d).

separate and distinct offense. N.J.S.A. 58:10A-10e. Moreover, DEP regulations provide that:

Any generator, hauler, facility operator or any other person who discharges or is responsible for discharge of hazardous wastes on the land or in the waters of the State of New Jersey or at any place other than an approved special waste facility shall be subject to penalties pursuant to N.J.S.A. 58:10A-1 et seq. [N.J.A.C. 7:26-7.8(b)].

10 In the present case it is undisputed that Jersey Sanitation Co., Inc., was a person responsible for the discharge of hazardous substances which DEP cleaned up with money from the Spill Fund. Jersey Sanitation Co., Inc., transported chemical wastes to the A to Z site, an unlicensed, unregistered facility, for disposal. Moreover, the company unlawfully disposed of hazardous wastes
20 at the A to Z site in a way which resulted in their being leaked or spilled onto the ground in a manner which allowed them to run off into the waters of the State or where they were likely to flow or drain into said waters. Defendant's discharge was unauthorized in contravention of N.J.S.A. 58:10-23.11c and N.J.S.A. 58:10A-6.

30 Inasmuch as DEP exercised its discretion pursuant to N.J.S.A. 58:10-23.11f and cleaned up the discharge at the A to Z property with Spill Fund money, Jersey Sanitation Co., Inc., is jointly and severally, strictly liable, for the costs involved. N.J.S.A. 58:10-23.11g(c). Additionally, the company was responsible for the discharge of hazardous substances without DEP approval
40 in violation of N.J.S.A. 58:10A-6 and N.J.A.C. 7:26-7.8(b). Thus, it is subject to penalties of \$10,000 for each day of violations pursuant to N.J.S.A. 58:10A-10. The illegal discharge here was ongoing from the date it was first discovered by DEP until cleanup

activities commenced at the A to Z site, almost three years later. This being the case the trial court's imposition of penalties of \$500,000 pursuant to N.J.S.A. 58:10A-10 was entirely proper and more than justified by the facts.

10 In response to the undisputed facts in this case and the clear unequivocal provisions in the statutes and regulations in-
volved, Jersey Sanitation Co. Inc., in order to avoid liability,
contends that its unlawful conduct was the result of the unauthor-
20 ized ultra vires acts of Albert and Conlon. Additionally, it argues that since it was not a party to this litigation at the time DEP commenced cleanup, the company cannot be responsible for repay-
ing the Spill Fund money that DEP expended. For the reasons which
follow it is clear that the company's position is without merit.

It is well established that a corporation is liable for the unlawful, tortious acts of its officers and agents if those acts were conducted within the scope of their employment. Niegel v. Seaboard Finance Co., 68 N.J. Super. 542, 556-557 (App. Div. 1961); Davis v. The Trust Company of N.J., 26 N.J. Misc. 111 (Sup. Ct. 1948).
30 Additionally, a corporation may be held liable for exemplary as well as compensatory damages if the employee who committed the wrongful act giving rise to the claim for damages was so high in authority as to be considered an executive of the corporation. Winkler v. Hartford Acc. & Ind. Co., 66 N.J. Super. 22,
40 25 (App. Div. 1961). Finally, a corporation when sued for a tort cannot as a defense allege that the act out of which the tort arose was ultra vires. N.Y., L.E. & W.R.R. v. Haring, 47 N.J.L. 137 (E. & A. 1885).

In the case sub judice it is undisputed that John Albert and Eugene Conlon were fifty percent owners of Jersey Sanitation Co., Inc., during the time that the company was transporting and illegally disposing of hazardous chemicals at the A to Z facility (Ra2). Additionally, they were officers, president and vice president, of the company during this time period as well (T32-2 to 5; 10 Ra15 to Ra19). The employment contracts they had with the company provided that they were to be employed "in an executive capacity" (Aa105-15; Aa109-15). They were two of five members of the corporation's Board of Directors (Ra3). Of perhaps greatest significance is the fact that the owners and operators of Jersey Sanitation Co., Inc., admit that Albert and Conlon were brought into the 20 company, which is in the waste hauling and disposal business, for the sole purpose of conducting its daily affairs and that during the relevant time period here they ran the company (Aa77-16 to 22; Aa81-21; Aa100-10; Ra21-13). Having delegated the daily affairs of the company to Albert and Conlon, Jersey Sanitation Co., Inc., cannot and should not now be allowed to argue that their hauling and 30 disposal practices were unauthorized. This is especially true where , as is the case here, the conduct complained of took place almost continuously over several years and did not stop until the State shut the A to Z facility down. While the current owners and operators may not have known about their company's unlawful conduct 40 they cannot be allowed to bury their heads in the sand and then argue that the corporation should be allowed to avoid liability because they did not know what was going on.

By reason of the aforementioned it is clear that the unlawful conduct of John Albert and Eugene Conlon in transporting hazardous waste from a customer of Jersey Sanitation Co., Inc. and others to the A to Z site in the company's vehicles was well within the scope of their authority and further, that in doing so they were acting as agents for Jersey Sanitation Co., Inc. Moreover, 10 Albert and Conlon were so high in authority within the company that Jersey Sanitation Co., Inc., is barred from denying liability for conduct engaged in by them on the company's behalf. Thus, the trial court's holding that the corporation was liable for its unlawful conduct while John Albert and Eugene Conlon were operating it was entirely proper.

20 Additionally, Jersey Sanitation Co., Inc. contends that it was not advised as to the proposed remediation and the spill violations prior to the DEP cleanup of the A to Z facility and therefore cannot be held liable under N.J.S.A. 58:10-23.11 et seq. Given the corporation's involvement in creating the hazardous 30 situation on the property in question it is ludicrous for it to argue that it was unaware of the conditions there or the proposed cleanup action. This is especially true where, as in the case here, the owners and operators of A to Z were also 50% owners of Jersey Sanitation Co., Inc., and also officers and directors of that company. However, even assuming arguendo that Jersey Sanitation Co., Inc., was unaware until the filing of the amended com- 40 plaint of its responsibility in this matter it cannot avoid liability for the money expended by the Spill Fund or for statutory penalties. N.J.S.A. 58:10-23.11f(a) provides that "[w]henver any

hazardous substance is discharged, the department may, in its discretion act to remove or arrange for the removal of such discharge ...". There is nothing in the statute that requires DEP to give a discharger prior notice of an intended cleanup and removal operation. Only if DEP intends to seek three times the cost of cleanup must it first direct the discharger to clean up his discharge. N.J.S.A. 58:10-23.11f(a). Where the actual cost of cleanup is sought DEP may act on its own and then look to the discharger for reimbursement. At that point the discharger is entitled to a hearing. In the instant case Jersey Sanitation Co., Inc., was afforded such a hearing in the proceedings before the trial court.

Similarly, there is no due process requirement that a discharger be advised beforehand of DEP action. So long as the discharger is afforded an opportunity to be heard at some point in the proceedings the requirements of due process have been satisfied. Nickey v. Mississippi, 292 U.S. 393, 54 S.Ct. 743, 78 L.Ed. 1328 (1934); Horsman Dolls, Inc. v. Unemployment, etc. of N.J., 7 N.J. 541, 551 (1951).* In the instant case Jersey Sanitation was afforded a hearing by the trial court prior to the entry of summary judgment. Thus, none of its rights were violated.

*It should be noted that in the proceedings below Jersey Sanitation Co., Inc. submitted nothing to challenge the need for the cleanup and removal action conducted by DEP at the A to Z site or the amount of money spent. Moreover, inasmuch as Albert and Conlon were owners and operators of Jersey Sanitation Co., Inc., during the relevant time period involved here, and were fully cognizant of DEP's cleanup plans, the company also had notice of these activities and could have acted to mitigate the damages it had caused. Jersey Sanitation Co., Inc., failed to act and cannot now be heard to argue that it was prejudiced by DEP's cleanup and removal activities.

Finally, the fact that the State was unable to prove with exactitude the proportionate share of harm caused by Jersey Sanitation Co., Inc., is of no moment in light of the statutory provision providing for joint and several liability. N.J.S.A. 58:10-23.11g (c). Moreover, the trial court found that the majority, if not all, of the waste found at the A to Z site was transported there by Jersey Sanitation Co., Inc. (T33-19 to T33-25). There is ample, undisputed evidence in the record to support this finding (Aa66 to Aa67; Ra20; Ra22-24 to Ra23-5). Moreover, Jersey Sanitation Co., Inc., presented no evidence below to refute these findings and thus, the trial court properly ruled against it on this issue. Heljon Management Corp. v. DiLeo, supra.

By reason of the above it is clear that there was no issue of material fact regarding the illegal disposal and discharge of hazardous wastes at the A to Z facility by Jersey Sanitation Co., Inc., and thus, the trial court properly found that company liable for the money expended by the Spill Fund in cleaning up and removing the discharge and correctly penalized it pursuant to N.J.S.A. 13:1E-9 and N.J.S.A. 58:10A-10.

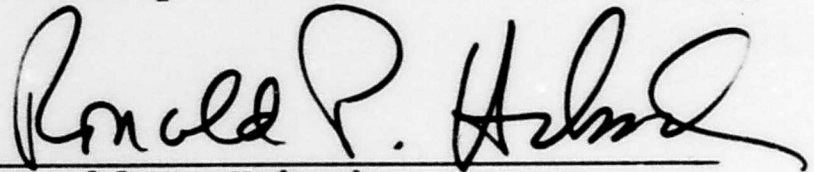
CONCLUSION

For the foregoing reasons it is respectfully requested that this Court sustain the summary judgment entered against Jersey Sanitation Co., Inc.

Respectfully submitted,

IRWIN I. KIMMELMAN
Attorney General of New Jersey

10

By: 
Ronald P. Heksch
Deputy Attorney General

DATED: January 17, 1983

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30

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NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS
SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION

CHAMBERS OF
RICHARD S. COHEN
JUDGE



MIDDLESEX COUNTY COURT HOUSE
NEW BRUNSWICK, NEW JERSEY 08903

June 20, 1983

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June 20, 1983

RE: Department of Environmental
Protection of the State of
New Jersey, et al v.
A to Z Chemical Resource
Recovery, Inc., et al
Docket C-1799-78

Gentlemen:

On Friday, June 17, I rendered judgment against defendants Albert, A to Z, and Jersey Sanitation under the Spill Fund Act and other legislation concerning water pollution and toxic wastes. Since a reviewing court may desire it, I will set forth here some of the considerations that led me to the judgment I entered. This is intended to supplement rather than supplant what I said on the record on June 17.

There is no dispute about the following facts: John Albert and Eugene Conlon were the owners of a combined 50% of the Shares of Jersey Sanitation. They were brought into the corporation, whose business was waste disposal, in order to conduct its day to day operations. They were two of the five directors. Jersey Sanitation had a contract with National Starch to dispose of toxic wastes. Such activity is closely regulated by the State. Abuse of regulations governing the manner of disposal can create and in recent years has created grave public health dangers in many areas of the state.

Instead of disposing of the wastes properly, Jersey Sanitation's officers transported them to a site owned by A to Z, a corporation owned by them, and did nothing further with them. The transportation was in Jersey Sanitation trucks, and was ostensibly in fulfillment of Jersey Sanitation's contract with National Starch. Jersey Sanitation was paid for the removal of the material from National Starch. Apparently Albert and Conlon caused Jersey Sanitation to pay A to Z for the ultimate disposal

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of the material.

Albert and A to Z are plainly subject to a judgment of three times the cost of removal by DEP after ignoring DEP's vaild order to them to remove the material from A to Z's land. In addition, they are plainly subject to maximum penalties under two separate statutes. I did not impose penalties for the full period for which they are liable becuase of the treble judgment under the Spill Fund Act and because, as a matter of practical fact, there is no reason to suppose that either the corporation or Albert will ever be able to satisfy these judgments, let alone any greater ones.

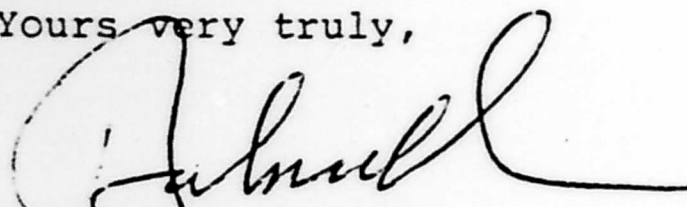
Jersey Sanitation's situation is different in three respects. The first is that, even though it is a discharger under the statutory definition, it was not notified by DEP of any duty on its part to clean up the A to Z site. For that reason, treble damages may not be imposed on Jersey Sanitation. Second, although we know that a substantial portion of the toxic waste on the A to Z site was brought by Jersey Sanitation trucks from National Starch, and we know that the rest was transported in Jersey Sanitation trucks, we do not know whether Jersey Sanitation received any revenue from the other contributors. That does not relieve Jersey Sanitation of any responsibility for the rest of the deliveries, but it does affect the quality of its blameworthiness. A corporation whose executive officers and 50% shareholders use corporation equipment and employees to transport toxic waste from corporate customers and others is responsible for cleanup costs and statutory penalties. Third, it must be assumed, for the purpose of this motion, that the other shareholders and directors of Jersey Sanitation did not know what the officer were doing. That is not to say that a corporation whose president, vice president, 2 of 5 directors, and the holders of half the corporate stock commit serious offenses with corporate equipment, customers, employees and contracts can avoid culpability on the thesis the corporation had no knowledge and on the claim, however valid, that the officers were acting for their own benefit. There may be a very good claim over, but as to the public there is liability. Having said all of that, it is still to be considered that the other stockholders did not know what was taking place in the

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company whose affairs they entrusted to Albert and Conlon.

In fixing the level of penalties imposed on Jersey Sanitation, I had in mind all of the factors described above. In addition, I centrally considered the gravity of the offenses involved and the potential health hazards that could have been created. In addition, I considered what I was able to gather from the record before me about the financial situation of Jersey Sanitation. At one time it was an active and prosperous operation. It has since contracted a good deal, I am sure, but that may well be due to the absences of Albert and Conlon or the consequences of their activities or the result of substantial distributions to shareholders over the course of the relevant years. If there is further information on that score, or on the financial situation of Jersey Sanitation generally, that counsel thinks I should know, I would entertain a motion for reconsideration on that basis. It should, of course, be accompanied by the financial information counsel believes should be considered.

Yours very truly,



Richard S. Cohen
J. S. C.

RSC/cja

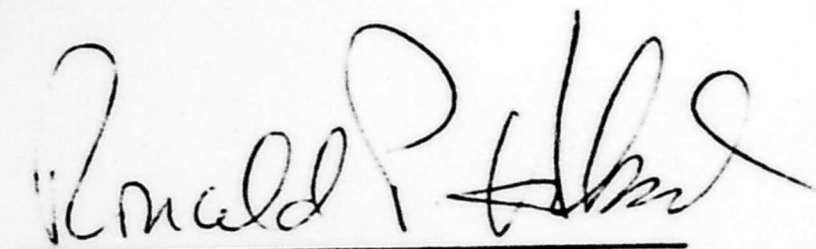
CERTIFICATION

I, Ronald P. Heksch, hereby certify the following:

1. I am a Deputy Attorney General employed by the State of New Jersey, Department of Law and Public Safety, Division of Law, and I am presently entrusted with handling the within litigation.

2. Attached hereto are true copies of excerpts from the deposition of John Albert taken on September 18, 1979; true copies of excerpts from the testimony transcript of John Albert during the trial of United States of America v. John Albert, et. al., United States District Court, District of New Jersey Criminal No. 80-380; Copies of annual reports for the defendant Jersey Sanitation Co., Inc. for the years 1976, 1978, 1979 and 1980 provided me by the New Jersey Secretary of State's Office, and portions of answers to interrogatories by Jersey Sanitation Co., Inc.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false I am subject to punishment.



Ronald P. Heksch
Deputy Attorney General

DATED: 5/9/83

EXCERPT FROM TESTIMONY OF JOHN ALBERT in USA v. JOHN ALBERT, ET AL. - APRIL 21, 22, 1981

1 the State of New Jersey?

2 A Yes, licensed by the Public Utilities and
3 the DEP.

4 Q I believe you mentioned a contract with the
5 City of New Brunswick.

6 THE COURT: Mr. Bronson, the jurors are
7 waving at you again.

8 MR. BRONSON: By the end of the case I will
9 get it right.

10 Q I believe you mentioned that you had a contract
11 with the City of New Brunswick, is that correct?

12 A Yes, sir.

13 Q Was that concerning garbage?

14 A Yes, garbage, solid waste.

15 Q Was that through public bidding that you got
16 the contract?

17 A Yes, sir.

18 Q How long did ythe company stay as J & B
19 Disposal?

20 A As J & B Disposal the contract in New Brunswick
21 ended in '75 and J & B had no more garbage contracts.
22 J & B Disposal was pretty much merged with Jersey
23 Sanitation around 1978-'79.

1 Q And when did you become involved with Jersey Sanitation?
2 A When at what time, did Jersey Sanitation have a location
3 in the State of New Jersey?

4 A Yes, sir.

5 Q And what was that location?

6 A Edgeboro Road, East Brunswick, New Jersey.

7 Q Would you describe the facility you had at
8 Jersey Sanitation?

9 A It is a large building on about four acres
10 of property. It has an office downstairs, a large
11 executive office upstairs, an area in the back where
12 the trucks are maintained, which would hold around
13 20 trucks inside, and we did the service there, our
14 office facility was there, and we had three acres of
15 vacant land where we parked trucks and things like that.

16 Q With respect to Jersey Sanitation, when you
17 became a member of Jersey Sanitation -- strike that.

18 A When you became involved with Jersey Sanitation--
19 tion, in what way did you become associated with that
20 company?

21 A Well, what was my job?

22 Q No, what was your interest in the company?

23 A Fifty percent -- 25 percent. I am sorry.

24 Q Were there any other stockholders that you
25 were aware of when you became involved?

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A Myself, Mr. Conlon, the Earl Condit and
Stamate family.

Q Do you know how much Mr. Conlon's interest
was in that company when you and he acquired some
interest in it?

A Approximately 25 percent.

Q And with respect to that company, back in
1978 when you became involved in that company ---strike
that.

Are you sure you became involved in that
company in 1978?

A No, sir. We became involved in Jersey
Sanitation around 1973.

Q How long did you stay in some capacity in
Jersey Sanitation?

A I was an officer up until around six, seven
months ago.

Q Are you an officer today?

A No, sir.

Q Do you work for that company today?

A Yes, I do.

Q In what capacity do you work for the company?

A I pretty much am in charge of the men on
the street, handle any problems for any of the cities
that we do the garbage for, City of East Brunswick,

(The jury entered the courtroom.)

(Witnesses are present.)

3
4 **J O H N A L B E R T,** having previously been sworn,
5 resumed the stand and testified as follows:

6
7 **CONTINUED CROSS-EXAMINATION**

8 **BY MR. NUCCIARONE:**

9 Q Mr. Albert, in any event after this merger
10 with Jersey Sanitation, did you indicate that you had
11 a 25 percent interest in Jersey Sanitation at that time
12 or is that now?

13 A At the time we merged with Jersey Sanitation?

14 Q Yes.

15 A I had a 25 percent interest.

16 Q That is the same now or more?

17 A No, now it is more. It is a third now.

18 Q When the merger took place who had the
19 other 75 percent interest in Jersey Sanitation?

20 A Mr. Conlon, the Katz family and the Stamat
21 family.

22 Q How much did Mr. Conlon have?

23 A I believe 25 percent, the same as myself.

24 Q When you say Katz family, who do you mean?

25 A Well, they designated different stock to

Albert - cross - Nucciarone

1 Different members of the family. That is who I meant,
2 Katz family.

3 Q How much did they have? 25 also?

4 A Had a total of 25 percent but it was maybe
5 4, 6 percent each person.

6 Q Split up among members of the family?

7 A I believe so.

8 Q The other 25 percent was split up among the
9 Stanatos; is that correct?

10 A Yes.

11 THE COURT: You are both whispering. Who
12 was it split up among?

13 MR. NUCCIARONE: The Stanatos.

14 Q Is that correct, Mr. Albert?

15 A Yes, I believe it is.

16 Q You now have a third; is that correct?

17 A Yes, I do.

18 Q The Katz family has another third, is that
19 correct?

20 A Yes.

21 Q The Stanato family another third? Is that
22 correct?

23 A Yes.

24 Q When you mentioned before you are still on
25 the Board of Directors of Jersey Sanitation?

1 A I am a stockholder.
2 Q You are not on the board of directors?
3 A I guess I am considered board of directors.
4 I am a third partner. I am on the board of directors.
5 Q One member of the Katz family is on the
6 board of directors?
7 A Yes, I believe so.
8 Q Who is that?
9 A Who is that? Mr. Katz.
10 Q You know his first name?
11 A George. I'm sorry.
12 Q A member of the Stanato family, one or more
13 members of that family is on the board of directors?
14 A Yes.
15 Q Who is that or who are they?
16 A Pat Stanato or Frank Stanato. I'm not sure.
17 Q Either one?
18 A One or the other.
19 Q You indicated before that you had a contract
20 requiring that you devote full loyalty to Jersey
21 Sanitation; is that correct?
22 A That period of time was this?
23 Q This was, I assume, and correct me if I am
24 wrong, after the time of the merger?
25 A Yes, I did.

3 Q How long was that contract in effect or
4 is it still in effect?

5 A Still in effect.

6 Q That contract required that you devote
7 your time to Jersey Sanitation; is that correct?

8 A That is correct.

9 Q Mr. Conlon and yourself were involved in
10 Jersey Sanitation. Let me focus in on the years 1977
11 and 1978. Is that fair to say?

12 A Yes.

13 Q Mr. Katz was not at the premises that often?

14 A No, he was not.

15 Q Mr. Patsy Stanato was not on the premises
16 that often?

17 A He came periodically.

18 Q What do you mean periodically?

19 A He came and signed checks.

20 Q How often?

21 A Once a week.

22 Q Mr. Frank Stanato, did he come often to
23 Jersey Sanitation?

24 A Different occasions.

25 Q Approximately how many times a week or a
month?

 A I don't know offhand. Just whenever we

needed him or something, had a discussion.

Q Is it fair to say- then, Mr. Libert, that you and Mr. Conlon during 1977 and 1978 were responsible for the management of Jersey Sanitation Company?

A Partly.

Q And Mary Karvelas, your sister, worked there as well?

A Yes, she did.

Q She was responsible for what went on in the office. Is that fair to say?

A Pretty much.

Q How many other clerical people were there aside from your sister, and this is full-time clerical people.

A At which time?

Q 1977 and '78.

A Two.

Q Was she in charge of them or did she oversee those two?

A Well, they both had their jobs to do.

Q What were Mary's responsibilities during 1977 and 1978?

A She ran the office.

Q What do you mean by run the office.

A Any clerical, any type of work that came to

the office she handled.

Q She received telephone calls, I assume?

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- 25

A She answered the phone on occasion.

Q And made telephone calls?

A She had a right to if she wanted to. I

didn't limit her.

K1

5041-7150-00

01 FILING MONTH

STATE OF NEW JERSEY

OFFICE OF SECRETARY OF STATE

ANNUAL REPORT BY DOMESTIC OR FOREIGN CORPORATION

THIS REPORT IS FOR THE CALENDAR YEAR OF 1976 ONLY

NOTICE: EVERY CORPORATION IN NEW JERSEY MUST FILE AN ANNUAL REPORT WITH THE SECRETARY OF STATE EACH CALENDAR YEAR. FAILURE TO COMPLY MAY SUBJECT THE CORPORATION TO A \$200.00 PENALTY.

ALL CORPORATIONS—MUST FILE THIS REPORT WITHIN 30 DAYS OF FILING MONTH INDICATED ABOVE. BELOW REGISTERED AGENT AND REGISTERED OFFICE ARE OF RECORD IN THIS OFFICE.

JERSEY SANITATION CO INC
MURRAY A LAIKS
77 PASSAIC AVE
PASSAIC N J 07055

03-19-56

DO NOT STAPLE, FOLD, OR CR. MUTILATE

275536
PAY THIS AMOUNT
FILING FEE \$15.00

JAN 16 1976

SECRETARY OF STATE

Make checks payable to
SECRETARY OF STATE
STATE HOUSE
TRENTON, N. J. 08625

IMPORTANT: A CHANGE IN EITHER REGISTERED AGENT OR REGISTERED OFFICE WILL BE
NOTIFIED BY CHECK WITH THIS REPORT — SEND SELF-ADDRESSED ENVELOPE.

INDICATE MAIN BUSINESS ADDRESS IN NEW JERSEY. IF THAT ADDRESS IS OTHER THAN THE REGISTERED OFFICE,
FOR ALL CORPORATIONS SHALL INDICATE ADDRESS OF MAIN BUSINESS OFFICE IN STATE OF INCORPORATION.

NAMES OF DIRECTORS	STREET	CITY	ZIP CODE	OFFICE INDICATE
Gene Conlon	999 Hidden Lake Dr.	North Brunswick, N.J.		Pres.
John Albert	319 Dallas Rd.	North Brunswick, N. J.		V.P.
Patsy Stamato	65 Vincent Dr.	Criston, N. J.	07012	Sec.
Frank Stamato Sr.	140 Hepburn Dr.	Criston, N. J.	07013	Treas.
Frank Stamato Jr.	25 Ramsay Rd.	Montclair, N. J.		Asst.
George Katz	6 Horizon Rd.	Ft. Lee, New Jersey		Dir.

THE NEXT ANNUAL MEETING OF THE STOCKHOLDERS FOR ELECTION OF DIRECTORS IS APPOINTED TO BE HELD

ON January DAY OF 1st 1977

THE UNDERSIGNED CERTIFIES THAT THE CORPORATION IS IN COMPLIANCE WITH
14A: 5-23 OF THE NEW JERSEY STATUTES WITH REGARD TO BOOKS AND RECORDS,
RIGHT OF INSPECTION.

ALL REPORTS MUST BE
SIGNED
BY THE MY HAND

1/13/76

John Albert V.P.

5042-7150-00

STATE OF NEW JERSEY

ANNUAL REPORT BY GO WASTE COLLECTION CORPORATION

THIS REPORT IS FOR THE CALENDAR YEAR OF 1978 ONLY

ANY COMPANY IS REQUIRED TO FILE THIS REPORT WITH THE STATE TREASURER OF NEW JERSEY AND TO PAY THE FILING FEE TO A DESIGNATED BANK

ALL INFORMATION ON THIS REPORT MUST BE TRUE AND CORRECT TO THE BEST OF YOUR KNOWLEDGE AND BELIEF AND MUST BE SUPPORTED BY APPROPRIATE RECORDS

JERSEY SANITATION CO INC
MURRAY A LAIKS
77 PASSAIC AVE
PASSAIC N J

6 6 2 APR 1978

03-10-5

3029

5136

ALL INFORMATION ON THIS REPORT MUST BE TRUE AND CORRECT TO THE BEST OF YOUR KNOWLEDGE AND BELIEF AND MUST BE SUPPORTED BY APPROPRIATE RECORDS

32 Edgemoor Rd. East Brunswick 08816

999 Middle Rd. East Brunswick

919 Dallas Rd. East Brunswick

15 Vincent Ct. Edison N.J.

116 Hopwood Rd. Edison N.J.

1000 1st St. Edison N.J.

4/4/78

[Handwritten Signature]

5041-7190-00 014

STATE OF NEW JERSEY

NJ 390435

ANNUAL REPORT BY DOMESTIC OR FOREIGN CORPORATION

THIS REPORT IS FOR THE CALENDAR YEAR OF 1979 ONLY

0-7-91

JERSEY SANITATION CO., INC. 3364
RICHARD M. PIRAGANE
205 ROUTE 40
TOTONA NJ 07512

FEB 27 1980

ALL CORPORATIONS MUST FILE THIS REPORT WITH THE STATE TREASURER AND PAY THE TAXES DUE ON THE REPORT AND ON THE TAXES DUE ON THE REPORT.

NAME	STREET	CITY	ZIP CODE	PHONE
	Edgemoor Rd. E. Brunswick	N.J.	07816	
	" " " "	"	"	President
	" " " "	"	"	Vice President
	Route 40 Totona	N.J.	07644	Secretary
	" " " "	"	"	

1-1-80
 49179
 Richard M. Piragane
 President

5041-7150-00 CORPORATION NUMBER 01 STATE 03/10/25
 NOTICE NUMBER STATE OF NEW JERSEY 7-10-81

STATE OF NEW JERSEY
 OFFICE OF SECRETARY OF STATE
ANNUAL REPORT DELINQUENCY NOTICE

THIS REPORT IS FOR THE YEAR(S) INDICATED: 1981

NOTICE: THE CORPORATION LISTED BELOW HAS FAILED TO FILE AN ANNUAL REPORT. FAILURE TO FILE WITHIN 30 DAYS OF THE MAKING OF NOTICE NUMBER TWO WILL SUBJECT THE CORPORATION TO A PENALTY OF \$200.00 FOR EACH DELINQUENT YEAR AND THE SERVING OF A JUDICIAL ORDER AGAINST THE CORPORATION IN THE SUPREME COURT OF NEW JERSEY. FILE THIS NOTICE IN LIEU OF THE ANNUAL REPORT.

REGISTERED
 ADDRESS
 OFFICE → JERSEY SANITARY CO.
 ON RECORD → RICHARD M. PESCHKE
 IN THIS → 25 ROUTE 48
 OFFICE →

OCT 15 1981
 SECRETARY OF STATE

PLEASE FILE WITH EACH DELINQUENT YEAR \$15.00
 SECRETARY OF STATE
 MAIL TO:
 SECRETARY OF STATE
 STATE HOUSE
 TREASURY BLDG.
 2ND FLOOR
 PLASMA BLDG. 310
 CONVENTION CENTER
 ON YOUR CHECK
 800721 M
 8048721

PLEASE CHECK THIS BOX IF THERE HAS BEEN A CHANGE IN THE OFFICE ADDRESS SINCE THIS NOTICE WAS ISSUED. COMPLETE AND RETURN TO THE SECRETARY OF STATE.

ALL INFORMATION REQUESTED MUST BE ENTERED, INCLUDING FULL ADDRESS AND ZIP CODE. PRINT OR TYPE ALL INFORMATION EXCEPT SIGNATURES.

NAME OF DIRECTOR	ADDRESS	CITY	ZIP CODE	OFFICE POSITION
John Albert	319 Callas Rd.	N. BRUNSWICK	08902	Pres.
Patsy Stanito	65 Vincent Dr.	CLIFTON	07013	Secy.
Tommy...	43...	DR. E. BRUNSWICK	08916	ASST. Secy.

IF AN ANNUAL MEETING OR ELECTION OF DIRECTORS IS APPOINTED TO BE HELD, THE DATE AND PLACE THEREOF SHOULD BE INDICATED.

Handwritten signature: Mary Karolan

1. Set forth the names, addresses, and positions of all persons having knowledge of any relevant facts pertaining to this action.

John Albert
319 Dallas Road
North Brunswick, NJ 08902

Mary Karvelas,
43 North Drive,
East Brunswick, New Jersey

Gene Conlön
999 Hidden Lakes Dr. Apt 7C
North Brunswick, NJ 08902

John Albert was past president and employee of Jersey Sanitation Co. and is no longer an officer of the Corporation but is presently a stock holder.

Mary Karvelas, is a secretary of Jersey Sanitation.

Employees and officials of the Plaintiff, State of New Jersey, Department of Environmental Protection, names and addresses are not as of yet known since answers to Interrogatories have not been returned by the Plaintiff.

Ronald Stamato, presently Vice-president of Jersey Sanitation.
c/o Frank Stamato & Co.
Route 46
Lodi, New Jersey

Frank Stamato Jr., Director of Jersey Sanitation Co.
c/o Frank Stamato & Co.
Route 46
Lodi, New Jersey

All other parties which a continued investigation might disclose.

13. State whether or not Jersey Sanitation Co., Inc. ever transported chemical wastes to the facility of the defendant A to Z Chemical Resource Recovery, Inc. located at Block 597.02, Lot 9, City of New Brunswick, New Jersey. If so, state:

- (a) The generator of the waste or the person who gave it to Jersey Sanitation Co., Inc.;
- (b) The type of waste transported;
- (c) The amount of waste transported; and
- (d) When it was transported to the A to Z Chemical Resource Recovery, Inc. facility in question.

YES.

- (a) National Starch
- (b) (to be supplied)
- (c) (to be supplied)
- (d) Throughout the year 1979 and the beginning of 1980.

Stamato - Direct

21

1 daily operations of Jersey Sanitation?

2 A At one point George Katz was, at one point Patsy
3 Stamato was. Which point in time I can't remember.
4 I do remember that each at their own point in time
5 had direct responsibility for daily operations.

6 Q Did that change after 1972 when Conlon
7 and Albert got involved?

8 A That's correct. Conlon and Albert had the
9 direct responsibility for daily operations.

10 Q Now, this was part of this contract that
11 we're talking about?

12 A That's correct.

13 Q They were given authority for the daily
14 operation of Jersey Sanitation?

15 A That's correct.

16 Q Did they also hold corporate titling,
17 President, Vice-President?

18 A Yes, they did.

19 Q Was that the title they had, President
20 and Vice President?

21 A I think so, yes.

22 Q Then for the entire period of 1972 until
23 1980?

24 A I think so, yes.

25 Q They were members of the Board of

1 bought out.

2 MR. HEKSCH: Do the documents reflect
3 consideration?

4 MR. PISACANE: Yes.

5 DIRECT EXAMINATION CONTINUED:

6 Q Do you recall what that was?

7 A Approximately \$190,000.

8 Q Now, there was no attempt to buy out Mr.
9 Albert?

10 A There was a small attempt but my recollection
11 was that they felt Mr. Conlon was the real
12 instigator of those actions which were not condoned
13 and which were the subject of the antagonisms and
14 hard feelings which it brought. So basically we
15 felt he was the chief instigator of those actions
16 and it was financially impossible to buy out both.
17 It was determined it would be difficult financially
18 to buy out both. We just got rid of who we felt was
19 the chief instigator.

20 Q Who got the stock?

21 A It went treasury.

22 Q Excuse me?

23 A It was bought in by the company.

24 Q There is no -- Jersey Sanitation doesn't
25 deny, does it, that there was hazardous waste hauled

1 by Jersey Sanitation from National Starch taken down
2 to A to Z facility in New Brunswick?

3 MR. PISACANE: You mean deny that that's
4 a fact now?

5 No, we don't dispute that.

6 THE WITNESS: From my own knowledge I
7 can't say it's true.

8 MR. PISACANE: We've discussed that since.

9 DIRECT EXAMINATION CONTINUED:

10 A I won't say definitely. I have no knowledge
11 that it's a fact. It's been represented and I guess
12 since we've been convicted it's established as a fact.

13 Q And you have nothing to refute that fact?

14 A I have nothing to refute that, no.

15 Q It's Jersey Sanitation's position that
16 this was unauthorized activity by Mr. Conlon and Mr.
17 Albert, outside the scope of the employment contract
18 and outside their duties and functions?

19 A That's correct.

20 Q Going back to the stock. This document,
21 P-1 for identification, would you go to Page 4,
22 Paragraph 7 makes reference to any loans made by
23 Jersey Sanitation to John Albert and Eugene Conlon.
24 Are you aware of any?

25 A No, I'm not aware of any.

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for Plaintiff
36 West State Street
Trenton, New Jersey 08625

BY: GARY CHRISTOPHER HESS
Deputy Attorney General
(609) 292-4353

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MIDDLESEX CO.
DOCKET NO.

DEPARTMENT OF ENVIRONMENTAL
PROTECTION OF THE STATE OF
NEW JERSEY

Plaintiff,

Civil Action

-vs-

A TO Z CHEMICAL RESOURCE
RECOVERY, INC., et al.,

AFFIDAVIT OF
RONALD J. BUCHANAN, Ph.D.

Defendants.

STATE OF NEW JERSEY) -
) SS.
COUNTY OF MERCER)

RONALD J. BUCHANAN, Ph.D., of full age, being duly sworn according to law, upon his oath deposes and says:

1. I have been appointed to the position of, and perform the duties of Chief, Bureau of Hazardous and Chemical Wastes, Solid Waste Administration, New Jersey Department of Environmental Protection. I have performed the duties of Chief of the Bureau of Hazardous and Chemical Wastes since October, 1976.

2. In the performance of my duties as Chief of the Bureau of Hazardous and Chemical wastes, I am familiar with a chemical resource recovery facility located at Block 597.02, Lot 9 in the City of New Brunswick, Middlesex Cour

New Jersey. This facility is operated by A to Z Chemical Resource Recovery, Inc. (hereinafter "A to Z"). A to Z commenced its operation of this facility sometime prior to August 8, 1977.

3. By mailgram dated August 12, 1977 from Beatrice S. Tylutki, Director, Solid Waste Administration, A to Z was notified that operation of the subject chemical resource recovery facility required the approval of the Solid Waste Administration, and that it was necessary for A to Z to receive an approved registration and engineering plan prior to accepting any waste material at this facility. By this mailgram, A to Z was also notified that if it undertook any activity prior to receiving such authorization, it would be subject to a penalty of \$3,000.00 per day. A copy of this mailgram is attached hereto as Exhibit A.

4. On September 22, 1977, in the performance of my duties as Chief, Bureau of Hazardous and Chemical Wastes, I inspected the subject facility and observed that approximately 1,000 drums of various chemical waste were then being stored by A to Z at that location.

5. By letter dated October 24, 1977, from Beatrice S. Tylutki, Director, Solid Waste Administration, to Mr. John Albert, A to Z Chemical Resource Recovery, Inc., A to Z was again notified that its operation of accepting waste materials for future disposal could not be conducted without an appropriate registration and approved engineering design. By that letter, A to Z was also notified that the Solid Waste Administration had not received A to Z's application for such a registration. This letter is attached hereto as Exhibit B.

6. A to Z thereafter submitted a "Registration Statement for a Solid Waste Facility", bearing the purported date of September 16, 1977, attached hereto as Exhibit C.

7. By letter dated November 22, 1977 from Frank Coolick, Principal Environmental Engineer, Solid Waste Administration, to Mr. John Albert, President, A to Z Chemical Resource Recovery Corporation, A to Z was notified that the engineering design submitted was deficient. By this letter, A to Z was also notified that in order for the Solid Waste Administration to completely review the design, A to Z would have to delineate a contingency plan for spillage prevention and cleanup, submit a flow diagram of its chemical waste blending operation, and describe material transfer and processing equipment used at the facility. This letter is attached hereto as Exhibit D.

8. On December 13, 1977 a Cease and Desist Notice was issued to A to Z by the Department of Environmental Protection. This notice is attached hereto as Exhibit E. As indicated therein, A to Z was then operating a chemical resource recovery operation without having obtained the necessary permits from the Department of Environmental Protection. A to Z was thereby directed to immediately cease such operation until such time as the necessary permits were obtained.

9. Despite the issuance of the Cease and Desist Order of December 13, 1977, A to Z continued to operate the subject chemical resource recovery facility without obtaining the necessary permits and approval. A to Z submitted additional information concerning its facility under cover of a letter dated December 20, 1977 from Thomas C. Riley, Jr. This information included a Spill Prevention Control and Countermeasure Plan which purported to set forth the actions that A to Z would take to prevent discharge of chemical waste and to contain and clean up such discharges when they occurred.

10. On July 12, 1978, an inspection by representatives of the Solid Waste Administration disclosed that A to Z was storing approximately

3,000 drums of various chemicals, including latex residues, paint sludges, and various solvents at the subject facility. There were at that time numerous spills of chemical waste at the facility. Six large process tanks were in place and two process tanks were filled with chemicals. Three tank trucks and one trailer were parked on the site. A quantity of lime was present at the facility and workers were observed unloading drums for use at the facility.

11. On July 20, 1978 an Administrative Order was issued by the Department of Environmental Protection ordering A to Z to cease accepting waste and close its facility. A to Z was further ordered to submit information concerning the number, contents and quantity of drums, storage tanks and tank trucks, to identify the materials which had leaked or spilled from containers stored at the facility, and to provide a schedule for removal of the chemical waste materials from the site. A to Z was also ordered to excavate and remove all chemical materials which had leaked or spilled from containers stored at the site, and to pay penalties pursuant to that Order. This Administrative Order is attached as Exhibit F. The Order was accepted on behalf of A to Z by John Albert, President of A to Z, on July 21, 1978.

12. Despite receipt of this Administrative Order by A to Z, inspections by representatives of the Department of Environmental Protection, Solid Waste Administration, disclosed that throughout August, September and October 1978 several thousand drums containing various solid, semi-solid, liquid and chemical wastes continued to be stored at the subject facility. An inspection on September 28, 1978 revealed that chemicals had been spilled on almost the entire ground area in the vicinity of the drums. The total number of drums present on October 19, 1978 was estimated to be 7,500. During this

period, the drums were being stored in open, unprotected and unpaved areas, as well as in warehouses and on concrete pads. Many of the drums present at the site were knocked over, leaking, open or loosely sealed. Waste from the drums had leaked and was leaking into the underlying soil.

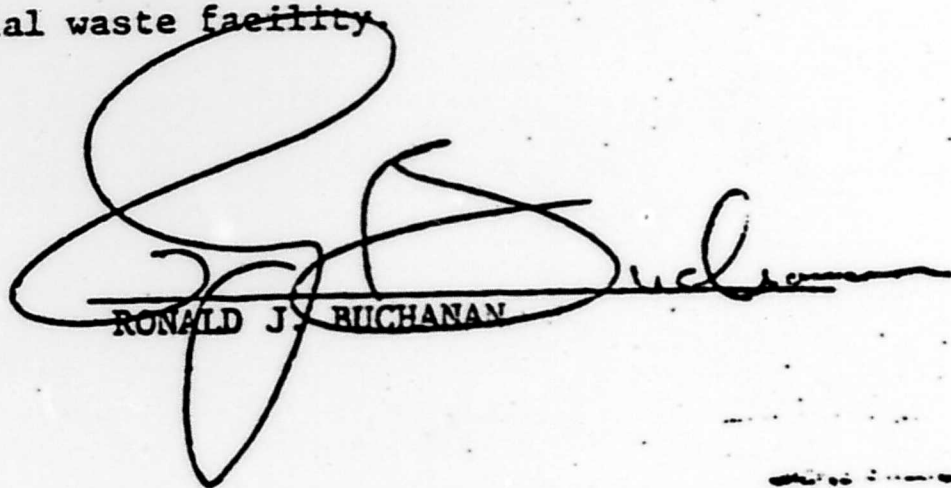
13. At present, rainfall and surface water entering onto the A to Z site mixes with and picks up the chemical waste materials which have contaminated the soil. This contaminated material may seep into the groundwaters underlying this chemical waste facility. The subject facility is situated with the City of New Brunswick, and is located within one-half mile of approximately thirty water wells. In addition, this chemical waste facility is located within one-half mile of both the McKinley School and the Raritan Valley Workshop School for Retarded Children. The risk presented by this facility is further compounded by A to Z's failure to construct a fence or, to my knowledge, retain guards or watchmen to prevent entry by children or unauthorized individuals.

14. A to Z has not at any time obtained approval for its registration statement from the Department of Environmental Protection, pursuant to N.J.S.A. 13:1E-5. Despite the issuance of the Department of Environmental Protection's Cease and Desist Order of December 13, 1977 and the Department's Administrative Order of Closure of July 20, 1978, A to Z has operated and continue to operate its chemical waste recovery facility.

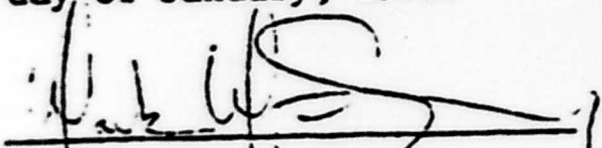
15. Based upon my experience as Chief of the Bureau of Hazardous and Chemical Waste, Solid Waste Administration, and based upon my familiarity with the operation of the subject chemical resource recovery facility, it is my opinion that the continued operation of this facility by A to Z, the continued presence of the thousands of drums of chemical waste at the facility,

and the continued contamination of the soil and potential groundwater contamination by these chemical wastes presents a substantial threat to the well-being of the citizens of Middlesex County. A to Z's operation is an unprotected, open stockpile of thousands of chemical waste drums, some of which are open or leaking and many of which contain hazardous, toxic, and irritant wastes.

16. In my opinion, the threat presented by this facility may be mitigated by, at a minimum, requiring that A to Z cease accepting any more waste at the facility and immediately close it, by requiring A to Z provide the Solid Waste Administration with information concerning the total number, contents and quantity of the drums, storage tanks and tank trucks present at the site, requiring A to Z to identify and state the quantity of all materials which have leaked and spilled from containers stored at the site, and to excavate and remove, under the supervision of the Solid Waste Administration, all chemical materials which have leaked or spilled from containers stored at the site, and to remove, under the supervision of the Solid Waste Administration, all other chemical waste materials present at the site to an authorized special waste facility.


RONALD J. BUCHANAN

Subscribed and sworn to
before me this fifth
day of January, 1979.


Attorney at Law
State of New Jersey

2-048503 E224002 08/12/77 ICS IPMNTZZ CSP TRNB
1 6092929120 MGM IDMT TRENTON NJ 08-12 0328P EST

DEPARTMENT OF ENVIRONMENTAL PROTECTION B S
TYLUTKI
32 EAST HANOVER ST
TRENTON NJ 08608

AUG 15 1977

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

6092929120 MGM IDMT TRENTON NJ 100 08-12 0328P EST
ZIP
A TO Z CHEMICAL RESOURCE RECOVER INC
CARE JERSEY SANITATION
EDGEBORO RD
EAST BRUNSWICK NJ 08816

BASED ON CONVERSATION TO OFFICIALS HAD WITH MEMBERS OF THE SOLID WASTE
ADMINISTRATION STAFF THIS FACILITY DOES NEED THE APPROVAL OF THE SOLID
WASTE ADMINISTRATION DEPARTMENT OF ENVIRONMENTAL PROTECTION THEREFORE
IT IS NECESSARY FOR YOU TO RECEIVE ON APPROVED REGISTRATION AND
ENGINEERING PLAN PRIOR TO ACCEPTING ANY WASTE MATERIAL IF YOUR FIRM
UNDERTAKES ANY ACTIVITY PRIOR TO RECEIVING SUCH AUTHORIZATION YOU WILL
BE SUBJECT TO A PENALTY OF UP TO \$3000 PER DAY

BEATRICE S TYLUTKI
DIRECTOR
SOLID WASTE ADMINISTRATION

1531 EST

MGMCOMP MGM



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SOLID WASTE ADMINISTRATION
TRENTON, 08625

BEATRICE S. TYLUTKI
DIRECTOR

October 24, 1977

Mr. John Albert
A to Z Chemical Resource
Recovery, Inc.
c/o Jersey Sanitation
Edgeboro Road
East Brunswick, NJ 08816

Re: New Brunswick Site

Dear Mr. Albert:

This is to inform you that your operation of accepting waste materials for future disposal may not be conducted without an appropriate registration and approved engineering design. I am concerned about an estimated 1,000 drums of chemical waste currently stored at the New Brunswick site, particularly since we have not received your Firm's application. Moreover, this application should indicate the manner in which said drums will be handled and disposed as well as assurances that such wastes will not be indefinitely stored on-site.

I realize that your waste disposal accounts are important to your economic status, however this accumulation of a large number of drums can cause environmental problems.

Should you have any questions regarding this matter, do not hesitate to contact me directly.

Very truly yours,

Beatrice S. Tylutki, Director
Solid Waste Administration



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SOLID WASTE ADMINISTRATION
TRENTON, 08625

BEATRICE S. TYLUTKI
DIRECTOR

December 13, 1977

Mr. John Albert
A to Z Chemical Resource Recovery, Inc.
c/o Jersey Sanitation
Edgeboro Road
East Brunswick, New Jersey 08816

CEASE AND DESIST NOTICE

Dear Mr. Albert:

RE: Resource Recovery Operation Area located at Triangle Rd., Block 597.02
Lot 9, New Brunswick, Middlesex County

Investigation by an inspector of the Solid Waste Administration dated November 28, 1977 disclosed that you are operating a chemical resource recovery operation without having obtained the necessary permits from the Department of Environmental Protection. This operation must cease and desist immediately until such time as the necessary permits have been obtained.

Failure to comply with the above directive is in violation of N.J.S.A. 13:1E-1 et seq. and N.J.A.C. 7:26-1 et seq. and as such is punishable by a maximum penalty of \$3,000 per day.

The additional engineering design information requested in our letter dated November 22, 1977 must be submitted and approved prior to the commencement of this operation.

Should you have any questions regarding this matter feel free to contact Ronald T. Corcory of my staff at 609-292-9878.

Very truly yours

Ronald J. Buchanan, Ph.D.
Chief
Bureau of Hazardous & Chemical Wastes

RJB:RTC:hjg

cc: Frank Coolick
Bob Patel
DAG Nat Edelstein

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SOLID WASTE ADMINISTRATION
TRENTON, 08625

BEATRICE S. TYLUTKI
DIRECTOR

ADMINISTRATIVE ORDER

(IN THE MATTER OF APPLICATION)
(OF A TO Z CHEMICAL RESOURCE)
(RECOVERY COMPANY TO OPERATE) CLOSURE OF FACILITY:
(A SPECIAL WASTE FACILITY,)
(#77-86, AT BLOCK 597.02, LOT 9)
(IN THE CITY OF NEW BRUNSWICK,)
(MIDDLESEX COUNTY)

WHEREAS, on October 24, 1977 A to Z Chemical Resource Recovery Company applied for a permit to operate a Special Waste Facility at the above captioned location.

WHEREAS, on November 22, 1977 the Solid Waste Administration (SWA) required A to Z Chemical Resource Recovery Company to submit supplemental engineering design information.

WHEREAS, on November 30, 1977 an inspection of the above captioned facility revealed that Applicant had commenced operation without obtaining the necessary permits and approval as required by N.J.S.A. 13:1E-5 and N.J.A.C. 7:26-2.2.

WHEREAS, on December 15, 1977 Applicant was ordered to cease operation of its Special Waste Facility until such time as all necessary permits were obtained. Applicant was also notified that failure to comply with that directive was in violation of N.J.S.A. 13:1E-1 et seq. and N.J.A.C. 7:26-1 et seq. and, as such, was punishable by fines of up to \$5,000 per day. Further, Applicant was advised that the additional engineering design information originally requested on November 22, 1977 was to be submitted and approved prior to the commencement of operations.

WHEREAS, on July 12, 1978 an inspection of the above captioned facility revealed that A to Z Chemical Resource Recovery Company had continued operation in violation of the December 13, 1977 directive and without obtaining the necessary permits and approval.

NOW, THEREFORE, A to Z Chemical Resource Recovery Company IS HEREBY ORDERED to Immediately:

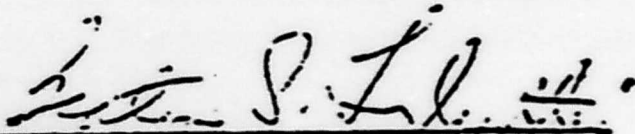
1. Cease accepting waste and close immediately upon receipt of this Order.
2. Within 14 days of receipt of this Order, submit the following information to the Solid Waste Administration:
 - a. Drums - Total number, contents and quantity (expressed in gallons or pounds)
 - b. Storage Tanks - Total number, contents and quantity (expressed in gallons or pounds)
 - c. Tank Trucks - Total number, contents and quantity (expressed in gallons or pounds)
 - d. Identify any other materials which have leaked or spilled from containers of materials stored at the above captioned location and state quantity (expressed in gallons or pounds)
 - e. Schedule for removal such that all chemical waste materials will be removed from site to an authorized special waste facility within 60 days of receipt of this Order.
3. Within 60 days of receipt of the Order, excavate and remove all chemical materials which have leaked or spilled from containers of materials stored at the above captioned location.
4. All containers are to be properly labeled and all shipments of chemical waste materials are to be accompanied by the appropriately completed special waste manifest.
5. Notify the Solid Waste Administration within 24 hours of specific time of any shipments of waste materials.
6. Pay penalties for its violation of N.J.S.A. 15:1E-5 and N.J.A.C. 7:26-2.2 in the amount of \$10,000.00. This penalty is an offer by the SWA to compromise and settle its claim for maximum penalties, pursuant to N.J.S.A. 15:1E-9. Failure by Applicant to pay this penalty settlement within two weeks of receipt of this Order will precipitate referral of this matter to the Attorney General's Office to seek maximum penalties allowed by law.

BE ON NOTICE that failure to comply with all of the requirements of this Administrative Order will subject you to potential penalties of up to \$5,000.00 per day for violation of N.J.S.A. 15:1E-10 and potential penalties of up to \$25,000.00 per day for any discharge of hazardous substances, in violation of N.J.S.A. 58:10-25.11c.

BE ON NOTICE that, pursuant to N.J.S.A. 26:107-107 and N.J.A.C. 7:12-1.3, if A to Z Chemical Resource Recovery Company does not expeditiously remove the discharged hazardous substances, the Department of Environmental Protection may act to remove said discharges, drawing upon money available in the New Jersey Spill Compensation Fund, which may thereafter recover the cost of clean-up and removal activities from the discharger.

July 20, 1978

DATE


Beatrice S. Tytuski, Director
Solid Waste Administration

1/5/75

FILED

JAN 12 1975

DAVID D. FURMAN, J.S.C.

JOHN J. DEGNAN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff
36 West State Street
Trenton, New Jersey 08625
By: GARY CHRISTOPHER HESS
Deputy Attorney General
(609) 292-4353

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MIDDLESEX COUNTY
DOCKET NO.

DEPARTMENT OF ENVIRONMENTAL)
PROTECTION IN THE STATE OF)
NEW JERSEY,)

Plaintiff,)

v.)

A TO Z CHEMICAL RESOURCE)
RECOVERY, INC., et al.,)

Defendants.)

Civil Action

AFFIDAVIT OF
CARL F. OCHS, JR.

STATE OF NEW JERSEY)

COUNTY OF MERCER) SS.

CARL F. OCHS, JR., of full age, being duly sworn according
to law, upon his oath deposes and says:

1. Since January 1978, I have been employed as and performed the duties of an Environmental Specialist, Bureau of Air Pollution Control, New Jersey Department of Environmental Protection. As a result of the performance of my duties as an Environmental Specialist in the Bureau of Air Pollution Control, I am familiar with a chemical resource recovery facility operated by A to Z Chemical Resource Recovery, Inc. (hereinafter "A-to-Z") and located at Block 597.02, Lot 9 in the City of New Brunswick, Middlesex County, New Jersey.

2. On November 30, 1978, in the performance of my duties as an Environmental Specialist, I inspected the facility operated by A-to-Z. At that time I observed several thousand 55-gallon drums, several storage tanks, and several tank trailers. Storage tanks and tank trailers at the site were full of unknown materials. Many of the drums were leaking. Many other drums had been opened, and there was a definite chemical odor permeating the air on the entire site. During the course of my inspection I saw no employees of A-to-Z present at the facility.

3. On December 7, 1978, I reinspected the A-to-Z facility. There were approximately 4,000 to 4,500 fifty-five gallon drums stored at the facility. Many of these drums were rusting and leaking. Some drums that had been stacked had toppled over and the contents had spilled out. Many five-gallon pails filled with

chemical waste were also being stored at the facility. There were also many fiberboard drums being stored. Most of these fiberboard drums were filled with small bottles of waste adhesives; many of these drums were filled with semi-solidified liquids and several were filled with liquid chemical wastes. Almost all of the fiberboard drums had deteriorated from exposure to the elements, and the liquid-filled drums were bulging and many were leaking. In addition, three tank trailers were parked at the facility.

4. During this December 7, 1978 inspection, I observed that a 10,000-gallon tank located outside of the facility was full of an unknown material. Seven more tanks were located inside a building at the facility. Two of these tanks were horizontal. Five tanks were vertical. The horizontal tanks were approximately 10,000 gallon capacity each and apparently were intended to be process tanks. One was equipped with a homemade water scrubber in an apparent attempt to control gaseous emissions. The other tank was uncontrolled. The five vertical tanks were less than 10,000 gallon capacity. The hatches on four of these tanks were open. The entire top of the fifth tank had been cut off. The fifth tank is exposed to the weather because there was no roof on that portion of the building in which it is located. All seven of the tanks were full to capacity. The first and second tank

contained a gray-white odorous liquid with a heavy skin on top. The third tank contained what appeared to be a solvent or a mixture of solvent. The fourth tank contained a brown, odorous liquid. The fifth tank contained an unknown material. The sixth tank contained a clear, odorous, and highly alkaline liquid. The seventh tank contained a clear, odorous liquid. Each of the tanks had a valve on the bottom that can be easily opened. Several of the valves were dripping.

5. During this December 7, 1978 inspection, I observed that there was a concrete dock towards the rear of the facility which appeared to have been used for dumping. The dirt and dumped material had been pushed into several piles in the area. During the course of my December 7, 1978 inspection, I saw no employees of A-to-Z present at the facility.

6. The facility is drained by the Mile Run, a direct tributary of the Raritan River.

7. Since the facility is located in the vicinity of an apartment complex and several residences, children frequently pass through the A-to-Z facility. The facility itself is obviously subject to vandalism. I observed that several fiber drums had been opened and several steel drums appeared to have been tipped over,

apparently during the week between my two inspections.

Carl F. Ochs, Jr.
Carl F. Ochs, Jr.

Subscribed and sworn to
before me this 5TH day
of January 1979.

M. D. Maguire
AN ATTORNEY AT LAW OF
NEW JERSEY

Protection. From December, 1974 to September, 1978, I was employed as and performed the duties of Senior Environmental Specialist in the Bureau of Air Pollution Control, Division of Environmental Quality, New Jersey Department of Environmental Protection.

2. As a result of the performance of my duties as a Senior Environmental Specialist in the Bureau of Air Pollution Control and in the Office of Hazardous Substances Control, I am familiar with a chemical resource recovery facility operated by A to Z Chemical Resource Recovery, Inc. (hereinafter A-to-Z) and located at Block 597.02, Lot 9 in the City of New Brunswick, Middlesex County, New Jersey.

3. . On September 21, 1977, in the performance of my duties as Senior Environmental Specialist, I inspected the facility operated by A-to-Z. At that time, I observed that a minimum of several hundred drums containing chemicals were being stored at that facility. I also observed that large processing tanks were being installed by A-to-Z in a building located on that site.

On November 28, 1977, I again inspected the A-to-Z facility. A tank truck containing a mixture of nitric and sulfuric acids had been parked adjacent to a building on the site. A bin containing a large quantity of lime was being stored within that building, and I was advised by an employee of A-to-Z that two tanks inside the building were being used to store methanol.

4. On January 10, 1978, I again inspected the A-to-Z facility. I observed that a process tank of approximately 10,000 gallon capacity was in place and was being used to dilute acids. A subsequent review of the files of the Bureau of Air Pollution Control disclosed that A-to-Z had not obtained a "Permit to Construct, Install or Alter Control Apparatus or Equipment", pursuant to N.J.A.C. 7:27-8.3(a). An Order of the Bureau of Air Pollution Control, dated February 1, 1978, was issued as a result of this inspection and is attached hereto as Exhibit "A."

5. A letter dated March 10, 1978 from Gene Conlon, Vice President, A-to-Z Chemical Resource Recovery, Inc. to Mr. Herbert Wortriech, Bureau of Air Pollution Control, is attached hereto as Exhibit "B".

6. On July 11 and July 12, 1978, I again conducted inspections of the A-to-Z facility. Two process tanks of approximately 10,000 gallon capacity each were then in place in a building located at the facility, and both of these tanks were at that time being used to dilute chemicals. One tank employed what I would characterize as a "home made" scrubber in an attempt to control gaseous and particulate emissions from the tank. Emissions from the other tank were completely uncontrolled. A review of the files of the Bureau of Air Pollution Control disclosed that A-to-Z had still failed to obtain a "Permit to Construct, Install or Alter

Control Apparatus or Equipment" for either process tank. In addition, there were approximately four to five times the number of chemical drums being stored at the facility than I had observed during my previous inspections. A large number of these drums contained "red label" chemicals, chiefly flammable solvents. Several spills of chemicals were apparent at the site, and many of the drums containing chemicals were leaking. In addition, many of the drums containing chemicals had bulged, apparently as a result of mishandling. There were two tank trailers at the site which had not been parked there during my previous inspections.

7. An Order dated July 21, 1978 was issued by the Bureau of Air Pollution Control as a result of the July 12, 1978 inspection and is attached hereto as Exhibit "C".

8. To my knowledge, A-to-Z has neither applied for any "Permit to Construct, Install or Alter Control Apparatus or Equipment" pursuant to N.J.A.C. 7:27-8.3, removed the process tanks located on the site, or otherwise complied with the Orders issued by the Bureau of Air Pollution Control.

9. On December 5, 1978, I again inspected the A-to-Z facility. Approximately 2,500 drums were then being stored on the ground, unprotected and outside the various structures on the property. I observed one large storage area where the drums were stacked two and three high. Drums were labelled as containing latex residues, solvents and paint sludges. Many of the drums were

broken and leaking and many of the drums had been overturned. Many of the drums had either no covers or the seal on the cover had been damaged. There were so many chemical spills visible at the site that it was virtually impossible for me to count them all. The two 10,000 gallon tanks at the facility had been filled with an unknown chemical mixture. I also saw three additional storage tanks that also contained an unknown amount of unknown chemicals. The two tank trailers were also parked at the rear of the facility and these tank trailers may have contained additional chemicals. I saw no security measures in use at the facility. There is no fence around the property or around the stockpiled drums and tanks. I observed no guards, watchman or any other employees present at the facility. There are several residences located in the area of A-to-Z and I believe that children routinely walk through and play in the A-to-Z facility itself. In my opinion, the unprotected storage tanks and tank trucks, and the exposed toxic and irritant chemicals present at the A-to-Z facility pose an extremely serious threat to these children.

10. In addition, numerous flammable chemicals are presently being stored by A-to-Z in a wholly irresponsible manner. Many drums containing flammable wastes are open; many other drums may easily be opened. These chemical wastes or the fumes from them may be ignited by, for example, a child and the resultant fire could then be fueled by the thousands of chemical waste drums and chemical waste being stored at the facility.

11. In addition to the risk of fire and the risk of direct contact with the toxic, irritant and flammable chemicals now stored at the site by A-to-Z, there has been gross contamination of the soil by these wastes. The material which has spilled and continues to leak onto the soil can be expected to percolate into the underlying groundwater. Moreover, there is a marsh located approximately seventy-five yards from an area of drums being stored by A-to-Z at this facility. Consequently, this marsh is exposed to chemical wastes transported by surface water run-off from A-to-Z's facility.

12. In light of the types of chemicals being stored by A-to-Z, the manner of storage, the proximity and accessibility of the site to children, the risk of fire, the contamination of the soil, and risk of ground and surface water pollution associated with this facility, it is my opinion that A-to-Z's present chemical storage operation poses an extremely serious threat to the well-being of the citizens of Middlesex County.

George R. Weiss
GEORGE R. WEISS

Subscribed and sworn to
before me this 11th
day of January, 1979.

Ray Charles
Attorney at law of
New Jersey

2. In the performance of my duties as Senior Environmental Specialist I am familiar with a chemical resource recovery facility located at Block 597.02, Lot 9, in the City of New Brunswick, Middlesex County, New Jersey. This facility is operated by A to Z Chemical Resource Recovery, Inc. (hereinafter referred to as "A to Z"). A to Z commenced its operation of this facility sometime prior to August 8, 1977.

3. In the performance of my duties as Senior Environmental Specialist, I have been given the responsibility of inspecting hazardous and chemical waste facilities to ascertain their compliance with the regulations of the DEP. In my inspection capacity I have inspected the A to Z facility at the above location.

4. On January 15, 1979, in response to a request by my supervisor, Dr. Ronald J. Buchanan, Chief of the Bureau of Hazardous and Chemical Wastes, I inspected the above-described facility and made a thorough inspection of the site. A copy of my inspection report is attached as Exhibit "A".


5. On January 22, 1979 I was instructed by my supervisor, Dr. Ronald J. Buchanan, to again inspect the above-described facility to compare the conditions at the facility with the observations of my inspection of January 15. A copy of the latest inspection report is attached as Exhibit "B". I observed the following:

- a. on both January 15 and January 22, 1979 there was no restriction on access to the A to Z facility;
- b. on both January 15 and January 22 there was no security, supervisory personnel or other persons present at the A to Z facility;

- c. on both January 15 and January 22, spillage was apparent throughout the site and no change in the condition or sources of such spillage had occurred;
- d. on both January 15 and January 22 I observed 55 gallon drums containing chemical wastes without tops and which were leaking chemical wastes.
- e. on both January 15 and January 22 I observed numerous piles of discolored, apparently chemically saturated, soil-like material;
- f. on both January 15 and January 22 I observed no permanent seals on the valves and hatches on the tanks located at the A to Z facility;
- g. between January 15 and January 22 I observed no change in the condition of the A to Z facility whatsoever.


RONALD T. CORCORY

Subscribed and sworn to
before me this 23rd day
of January, 1979.


J. Mark McQuerrey
Attorney-at-Law
State of New Jersey

MEMO

NEW JERSEY STATE DEPARTMENT OF ENVIRONMENTAL PROTECTION

TO Ron CorcoryFROM George SamjdaDATE January 23, 1979SUBJECT INSPECTION AND SAMPLING AT A to Z CHEMICAL

On January 15, 1979, Ron Corcory, Mike Rosenberg and myself inspected the A to Z Chemical facility on Triangle Road in New Brunswick. During this inspection samples of stored materials were also taken.

The inspection revealed no change in the status of the facility. We counted 8500 + 500 drums stored at the site. Virtually all the drums are stored outside, exposed to weathering. Spills and leaking are evident throughout the facility area. Most of the leaking and spills are from the drum storage. Although other areas of spills appears to have been dumped in bulk.

The large building contains five vertical tanks and two horizontal tanks. It appears that all tanks are filled. Approximately 30 drums and a stock pile of lime are also present in the building. The other building at the site is filled with drums.

Nine samples were taken during this inspection. Five samples were taken of the liquids contained in the large tanks inside the building. Samples 1,2,4, and 5 were taken from the valves of the tanks, while sample 3 was taken from an opening on top of the tank. Sample 8 was taken of a green soil type material apparently dumped in bulk at the site. The remaining samples, #6,7, and 9, were taken from three different drums stored at the site. Sample #6 came from a drum marked manifest number 77014, I.D. 2851. A black solid was taken from this drum. Sample #7 was taken from a drum marked 60280. The material was a white liquid. Sample #9 came from a drum marked 24202. This material was a thick yellowish liquid.

During this inspection the site was abandoned, no one was present at the facility. Security is non existant. Access to the area is completely unhampered.

George Samjda
George Samjda

Michael Rosenberg
Michael Rosenberg

Ron Corcory
Ron Corcory

bad

MEMONEW JERSEY STATE DEPARTMENT OF ENVIRONMENTAL PROTECTIONTO Dr. Ronald J. BuchananFROM Ronald T. CorcoryDATE 1-23-79SUBJECT A-Z Inspection

On 1-22-79, I visited the A-Z site located in New Brunswick, NJ, for the purpose of establishing compliance with the order to show cause dated 1-12-79.

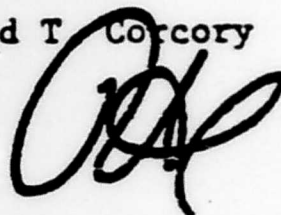
George Smajda of this Administration accompanied me during the inspection.

At this time, the site remains unchanged and basically in the same condition as my last inspection of 1-15-79 conducted with George Smajda and Mike Rosenberg.

My observations are as follows:

1. There was no security or supervision present.
2. Spillage was apparent throughout this site with no remedial action having occurred. A number of 55 gallon drums were without tops, leaking drums remained uncorrected and piles of discolored soil-like material were observed.
3. The valves and hatches on the tanks located inside the Main Building have yet to be permanently sealed.
4. The total number and location of drums appears to remain unchanged.

Ronald T. Corcory



1. I have been appointed to the position of, and perform the duties of, Chief, Bureau of Hazardous and Chemical Wastes, Solid Waste Administration, New Jersey Department of Environmental Protection. I have performed the duties of Chief of the Bureau of Hazardous and Chemical Wastes since October of 1976.

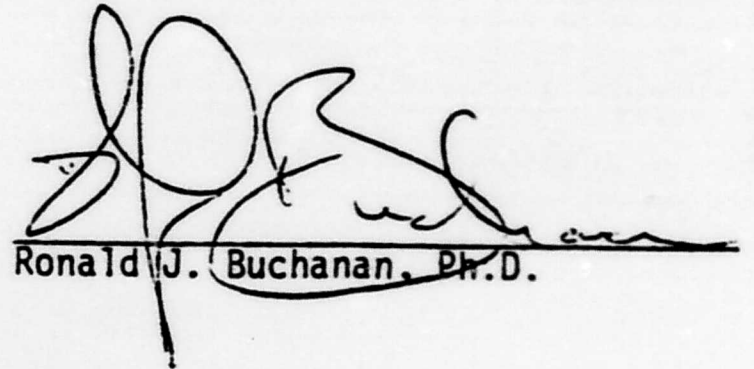
2. In the performance of my duties as Chief of the Bureau of Hazardous and Chemical Wastes, I am familiar with a chemical resource recovery facility located at Block 597.02, Lot 9, in the City of New Brunswick, Middlesex County, New Jersey. This facility is operated by A to Z Chemical Resource Recovery, Inc. (hereinafter known as A to Z). A to Z commenced its operation of this facility sometime prior to August 8, 1977.

3. In the performance of my duties as Chief of Bureau of Hazardous and Chemical Wastes, I made an inspection of the A to Z facility on January 17, 1979. A copy of my inspection report is attached hereto as Exhibit "A".

4. In the course of my inspection of the A to Z site on the above date, I observed the following:

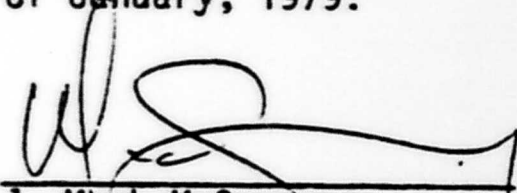
- a. there was no restriction of any kind on my access to the facility;
- b. upon entering the site I observed that there were no employees or other persons present at the facility;
- c. I observed spillage of chemical substances on the ground in several areas of the facility;
- d. there appeared to have been no change in the drums stored at the facility and it appeared that no drums had been removed;
- e. I observed two tank truck trailers with "flammable"

Labels attached. These trailers were parked
on facility property.



Ronald J. Buchanan, Ph.D.

Subscribed and sworn to
before me this *23rd* day
of January, 1979.



J. Mark McQuerrey
Attorney-at-Law
State of New Jersey

MEMONEW JERSEY STATE DEPARTMENT OF ENVIRONMENTAL PROTECTION

TO _____

FROM Dr. Ronald J. Buchanan DATE January 17, 1979SUBJECT Inspection Report A-Z

This date I made a routine inspection of the A-Z site in New Brunswick and observed the following:

1. Access is not restricted.
2. Upon entering the site neither security nor A-Z personnel were present.
3. A blue chemical substance was observed spilled on a 30 sq. ft. area, east side of property.
4. An organish colored substance was observed spilled from a crushed container on the northwest portion of the property.
5. Apparently no drums have been removed from the site (see photos taken this date)
6. Two tank truck trailers labeled "Flammable" were parked on the northwest portion of the property.

A snowstorm terminated this inspection at 11:45 am.

RJB

cc: Beatrice S. Tylutki
Gary Hess.

chemical wastes from the A to Z facility and to otherwise clean up and supervise the facility. The removal and cleanup was ordered to take place by April 10, 1979. In a more recent order of this Court entered on May 1, 1979, the defendants were denied an extension of time to remove the chemical wastes and were ordered to comply with the March 2, 1979 order "forthwith."

4. I personally visited the site on May 4, May 21, and June 7, 1979 in order to ascertain whether or not the defendants were complying with the aforementioned orders of this Court. On all of the aforementioned occasions I observed the following:

(a) The site contained approximately 8,000 steel and fiber drums containing chemical wastes. The condition of the drums is deteriorating rapidly. Numerous drums have fallen, been knocked over or collapsed, causing their contents to escape;

(b) There is a substantial amount of additional spillage occurring from the leaking, deteriorating and broken drums. This is causing additional contamination to the environment. Evidence of this contamination is readily visible. Even some drums that the defendants have placed in a dumpster at the rear of the property have deteriorated and a white liquid has oozed out of the open dumpster and onto the ground.

(c) Inside the building at the site, many bags of lime have broken and the contents have scattered about the floor of the building;

(d) During my visits the site was totally unattended and there was no security whatsoever;

(e) No effort has been made to fence off or isolate the site so that same is readily accessible to children who play in the area; and

(f) During my visit on June 7, 1979 I observed children playing and walking on the site in question.

5. Based on my visits to the site it is readily apparent that the defendants have failed to comply with the orders of this Court requiring cleanup and removal of the chemical wastes located at the facility. Furthermore they have failed to take action necessary to secure the site so that outside third parties do not come in contact with the chemical wastes stored there.

6. Based on my inspections of the site over the past six months it is readily apparent that conditions there have and are getting worse. There is substantially more spillage; more drums are deteriorating; there is more ground contamination occurring and no efforts are being made to clean up and remove the chemical wastes stored there.

7. It is my opinion that unless immediate corrective action is taken, conditions at the site will continue to deteriorate and there will be more spillage and contamination. The aforementioned will continue to threaten the health, safety and welfare of children and others who live, play and work in the area.

Michael Rosenberg
Michael Rosenberg

Subscribed and sworn to

before me this 19th day

of June 1979.

Ronald P. Alford

Attorney at Law
State of N.Y.

JOHN J. DEGNAN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff
36 West State Street
Trenton, NJ 08625
By: RONALD P. HEKSCH
Deputy Attorney General
(609) 292-1557

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MIDDLESEX COUNTY
DOCKET NO. C-1799-78

DEPARTMENT OF ENVIRONMENTAL)
PROTECTION OF THE STATE OF)
NEW JERSEY,)

Plaintiff,)

v.)

A TO Z CHEMICAL RESOURCE)
RECOVERY, INC., etc., et al.,)

Defendants.)

Civil Action

AFFIDAVIT OF
MICHAEL ROSENBERG

STATE OF NEW JERSEY)

COUNTY OF MERCER)

SS.

MICHAEL ROSENBERG, of full age, being duly sworn
according to law, upon his oath deposes and says:

1. I have been employed in the position of Senior Environmental Specialist with the Solid Waste Administration in the New Jersey Department of Environmental Protection (hereinafter "DEP") since March 1977. My duties include inspecting solid waste facilities that handle chemical wastes in order to ascertain whether the facility is in compliance with DEP regulations or orders, and/or with court orders.

2. In order to update my previous affidavit, executed on June 19, 1979, and submitted to this court with plaintiff's Order to Show Cause for Supplemental Relief in Aid of Litigant's Rights, I once again inspected the A to Z Chemical Resource Recovery, Inc. facility located at Block 597.02, Lot 9, in the City of New Brunswick, Middlesex County, New Jersey, on July 24, 1979.

3. Annexed hereto and made a part of this affidavit are a series of pictures which I took, which reflect what I observed during my visit on July 24, 1979.

4. My inspection on July 24, 1979, confirms my previous observations and conclusions regarding the site in question. The amount of drums of chemical waste was the same as observed on previous occasions (7,000 to 8,000). Leaks and spills continued to occur at numerous locations around the site as drums continued to deteriorate. I did note, however, that two tank trucks containing

unknown substances had been removed from the site. This was done without notice being given to the DEP.

5. During my July 24, 1979 inspection I saw nothing that would lead me to alter the opinions and conclusions expressed in my affidavit of June 19, 1979, namely, that conditions at the site are getting worse and unless immediate corrective action is taken said conditions will continue to deteriorate and there will be additional spillage and contamination. This will result in a continuing threat to the health, safety and welfare of persons who live, play and work in the area.

6. In addition to the aforementioned and in response to the material submitted by defendants in opposition to plaintiff's motion, it is important to note that Chelsea Terminals, Inc., a disposal facility in Staten Island, New York, allegedly used by defendants to get rid of chemical wastes located at the New Brunswick site, is not a registered facility as required by New York law (N.Y.E.C.L. § 27-0301, McKinney). The aforementioned statement is based on conversations I had with officials of the New York Department of Environmental Conservation.

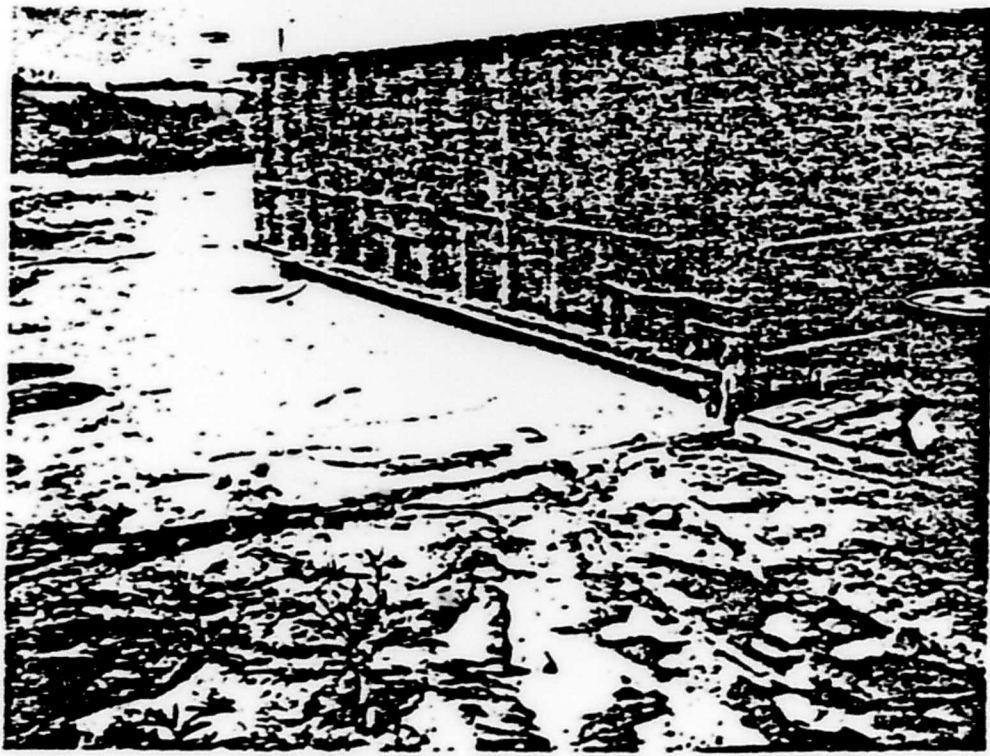
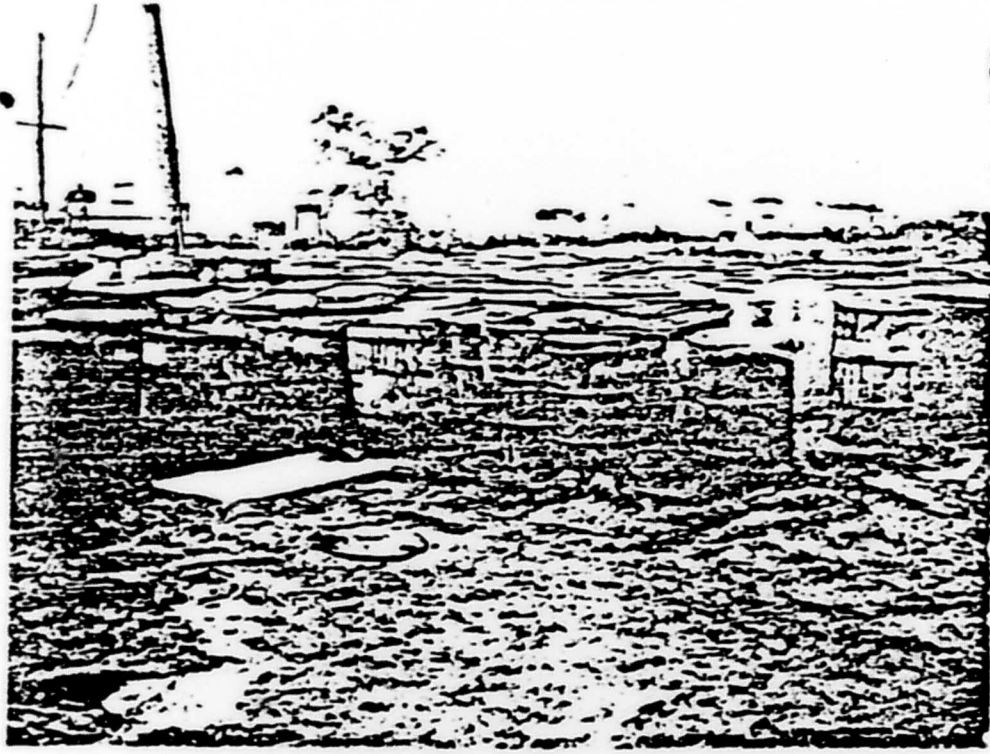
7. Similarly, the L & G Drum Company of Kearny, referred to in paragraph 4 of John Albert's affidavit of July 12, 1979, is not registered by the State of New Jersey as a hauler or disposer of chemical wastes.

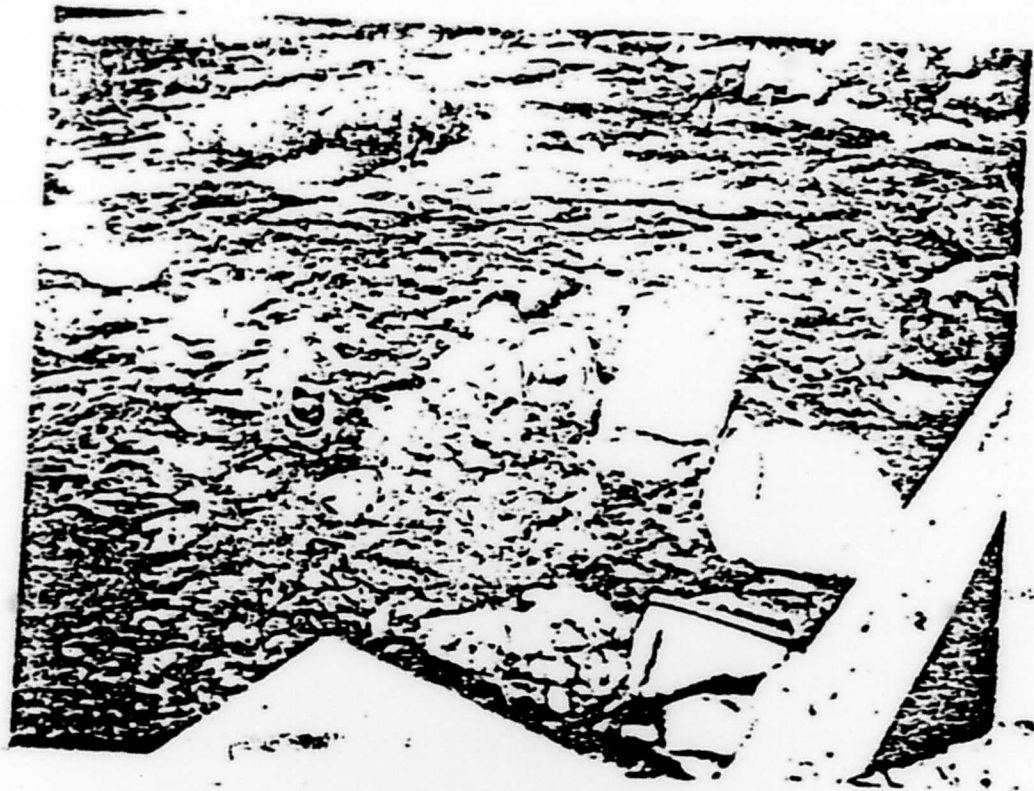
8. Finally, I contacted officials of the Middlesex County Sewerage Authority regarding defendants' proposal to dispose of certain wastes on their property through the sewers and the county's sewage treatment plant and have been advised that defendants have not been issued a permit to discharge into the sewers or plant in question and, further, there have been no contacts between the defendants and the sewerage Authority concerning this disposal plan.

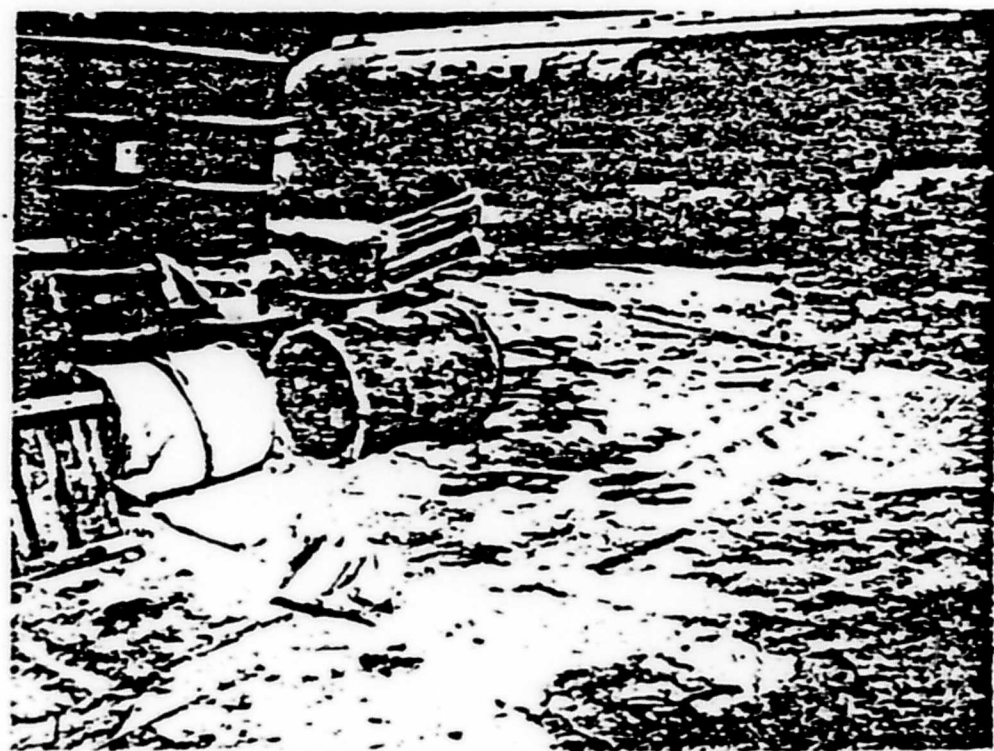
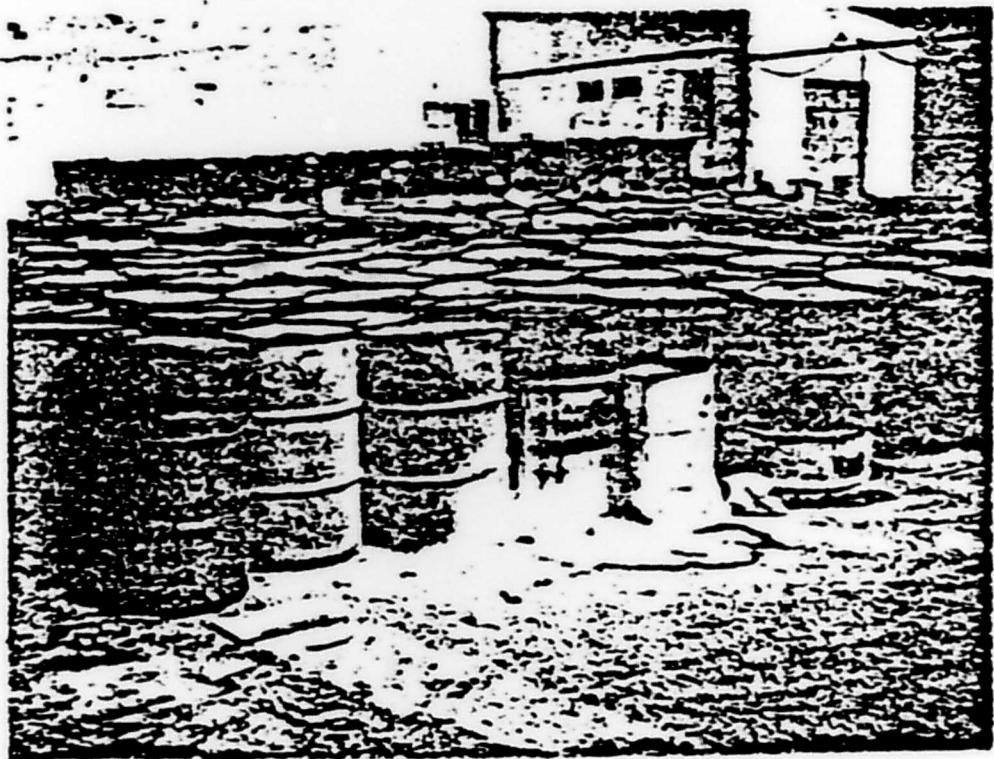
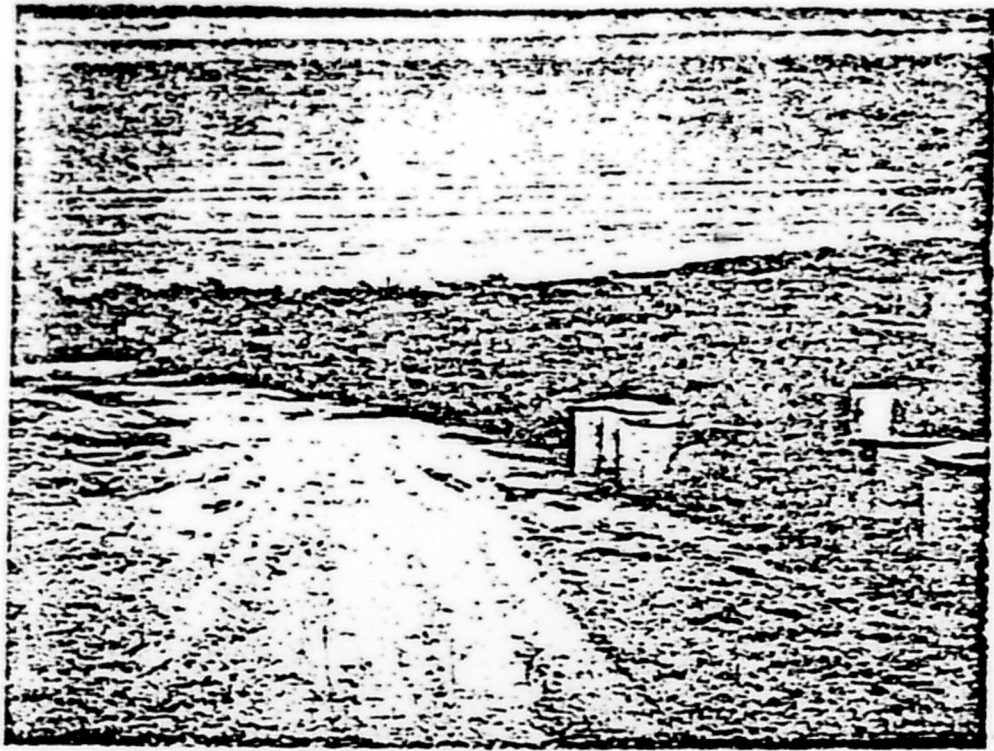
Michael Rosenberg
Michael Rosenberg

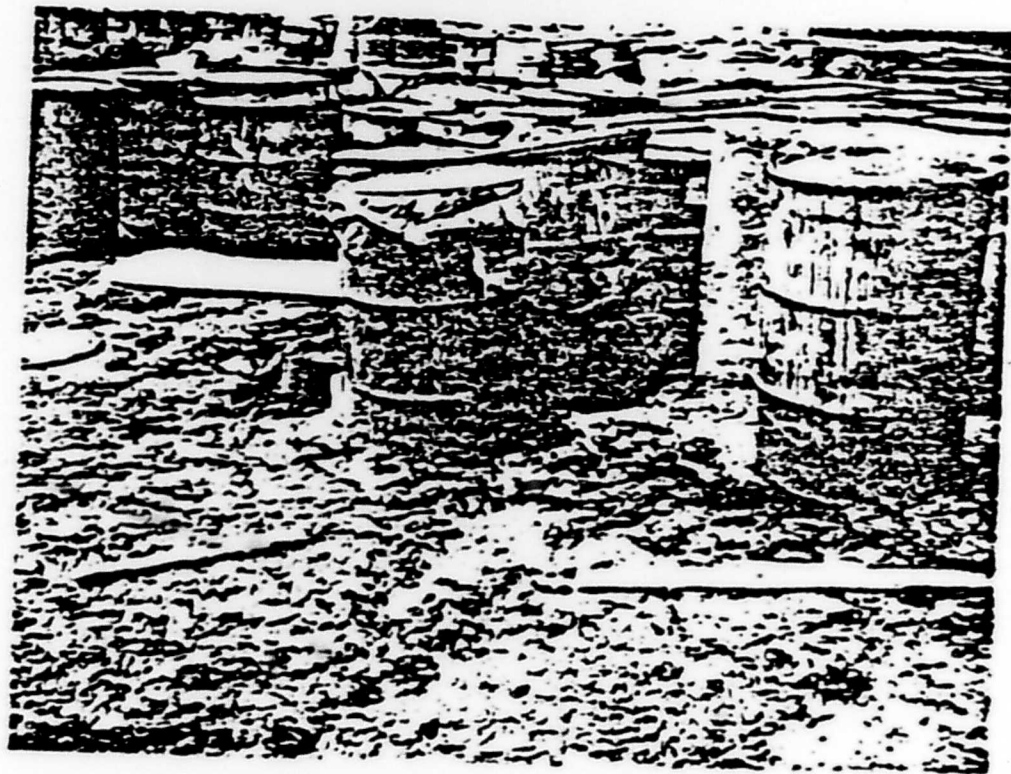
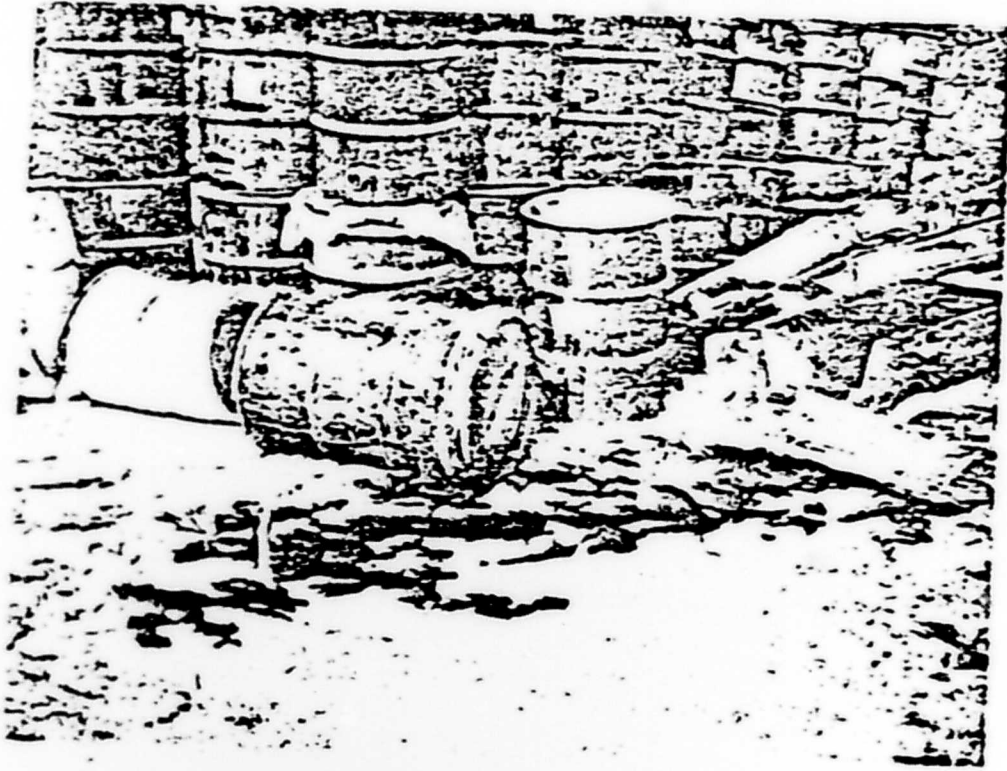
Subscribed and sworn to
before me this ²³30 day
of August 1979.

Nathan M. Edelstein
Attorney at Law
State of New Jersey









opinion affirmed 5/8/84

A-267-8372

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
DOCKET NO. C.1799-78

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STATE OF NEW JERSEY, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION, :

Plaintiff, :

vs. :

A TO Z CHEMICAL RESOURCE :
COMPANY, ET AL, :

Defendants. :

MOTION FOR
SUMMARY JUDGMENT

FILED
APPELLATE DIVISION
SP
SEP 30 1983

Elizabeth McLaughlin
Clerk

Middlesex County Courthouse
New Brunswick, New Jersey
June 17, 1983

B E F O R E: HONORABLE RICHARD S. COHEN, JSC

A P P E A R A N C E S:

Ronald P. Heksch, Esq.
Deputy Attorney General
For Plaintiff

Richard M. Pisacane, Esq.
Attorney for Jersey Sanitation

RECEIVED
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ELIZABETH McLAUGHLIN
CLERK

Stanley Grabon, CSR
Official Court Reporter

CD

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 THE COURT: DEP against A to Z.

2 MR. HEKSCH: Ronald Heksch, Deputy
3 Attorney General, appearing for the Plaintiffs,
4 DEP and Spill Fund.

5 MR. PISACANE: Richard Pisacane on be-
6 half of the Defendant, your Honor, Jersey
7 Sanitation.

8 THE COURT: Mr. Heksch, do I understand,
9 and I think I got the message from my law clerk,
10 that you have no objection to an adjournment
11 of this matter as far as Mr. Conlon is concerned
12 because of the fact that he's not in a position
13 to participate in our litigation at this point?

14 MR. HEKSCH: I do to the extent that,
15 and I think I explained it to your honor's law
16 clerk, that I don't know once his jail term is
17 finished how I'm going to get service on him.

18 THE COURT: That process may be, or
19 that problem may be resolved if you are satis-
20 fied that you have service on him of this motion
21 by simply adjourning the motion for six months.

22 Do you want to do that?

23 MR. HEKSCH: If your honor feels that's
24 appropriate, I will.

25 I don't think it's appropriate. That's

1 my only concern.

2 THE COURT: Tell me why not.

3 MR. HEKSCH: The basis for that is that
4 no answer has ever been filed.

5 In essence, Mr. Conlon is in default,
6 and we can go ahead with the default hearing the
7 same way without notice to him, and then in
8 essence, this is the alternate method that was
9 chosen because of the complexity of the case.

10 I think that I am entitled to a judg-
11 ment as a matter of law, irrespective of his
12 availability or non-availability.

13 I don't think it's necessary. If your
14 honor feels strongly about it, I don't mind put-
15 ting it off for six months.

16 There was an answer filed to the original
17 complaint in this case, and I am not sure that he
18 didn't have an obligation to file the answer to
19 the second amended complaint, and I am talking
20 about Mr. Mayo.

21 There's been no substitution of attorney
22 that was ever filed with regard to that, either.

23 THE COURT: Mr. Mayo ever been relieved
24 as counsel for Mr. Conlon?

25 MR. HEKSCH: That's between them. I

1 don't know.

2
3 THE COURT: It's not between them.
4 It's between them and me or them and this court,
5 at any rate.

6 MR. HEKSCH: Well, I have no knowledge
7 of this court ever relieving Mr. Mayo.

8 THE COURT: I certainly haven't since
9 I've been here. I wonder if Judge Furman had
10 before me.

11 MR. HEKSCH: To the best of my knowledge,
12 he had not.

13 I think there was a letter, and I think
14 it's documented in the pleadings that I filed
15 from Mr. Mayo after service of the amended
16 complaint that he no longer represented Mr. Conlon
17 in this matter; but to the best of my knowledge,
18 and I guess the record speaks for itself, no
19 substitution of attorney has ever been filed or
20 no dismissal or anything of that type.

21 THE COURT: You are correct.

22 MR. HEKSCH: I don't know. It's a
23 little bit complicated.

24 I don't want to put any burden on
25 Mr. Mayo. He's not here. He may have had an
obligation to file an answer.

1 THE COURT: You didn't serve him with a
2 copy of this motion?

3 MR. HEKSCH: Yes.

4 THE COURT: You did?

5 MR. HEKSCH: I served Mr. Mayo, and I
6 served Mr. Conlon in prison.

7 Mr. Mayo I believe wrote to your honor
8 saying that he no longer represented Mr. Conlon.

9 THE COURT: I thought that he had been
10 contacted by Mrs. Conlon, though.

11 MR. HEKSCH: He may have. I don't know.

12 THE COURT: I don't know why I have
13 that impression, but I got the impression that
14 he had been contacted by Mrs. Conlon, and he
15 contacted us and said that I don't represent him.

16 MR. HEKSCH: I'm willing to do what-
17 ever your honor feels is appropriate.

18 I don't anticipate any immediate efforts
19 to collect against Mr. Conlon.

20 I don't know of any assets that he has
21 in the state. I think that it's more that we
22 get a judgment against him, and I would want to
23 pursue that.

24 I don't know how your honor wants to
25 handle it, and I am open to whatever methodology

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you seem to feel appropriate.

THE COURT: There's no indication in the moving papers that alternate relief sought against Mr. Conlon is default. You never had default entered against him on the second amended complaint, have you?

MR. HEKSCH: No. His answer was stricken.

THE COURT: That's correct. I don't think that it would be appropriate to consider today's proceeding as the functional equivalent of a proof hearing on default.

If you want to take that route, you might do that and withdrawing your motion against Mr. Conlon without prejudice, and that might be the best way to handle it.

MR. HEKSCH: Your original suggestion would be more appropriate, to adjourn the motion for six months, and then send him a letter to that effect, and I will pick a date six months hence, which is a motion day.

THE COURT: I understand that he's supposed to be released in October.

I don't know whether that takes account of work time and stuff like that.

1 MR. HEKSCH: I have no idea.

2 THE COURT: Pick a date in October and
3 recite that the matter is adjourned until then,
4 and then advise both Mr. Conlon and Mrs. Conlon
5 and Mr. Mayo.

6 MR. HEKSCH: I'm not sure that I know
7 Mrs. Conlon's address.

8 THE COURT: She wrote to us and gave
9 the address of Apartment 7B, 999 Hidden Lake
10 Drive, North Brunswick.

11 MR. HEKSCH: That may have been where
12 I served it.

13 THE COURT: Let me ask you with respect
14 to Mr. Albert. Has he been represented in the
15 past in this matter?

16 MR. HEKSCH: Yes.

17 THE COURT: And has his attorney ever
18 been relieved?

19 MR. HEKSCH: No. And he also is in
20 jail.

21 THE COURT: I know that.

22 MR. HEKSCH: So that the record is clear.

23 THE COURT: I have got no opposition on
24 his behalf.

25 Have you?

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2 MR. HEKSCH: No. The only opposition
3 that I received, and I confirmed this, was from
4 Mr. Pisacane on behalf of Jersey Sanitation.

5 Given that fact, I would like to not
6 dwell too heavily on the aspects of the case
7 that relate to A to Z, John Albert, and Eugene
8 Conlon.

9 THE COURT: The real problem is whether
10 they were acting on behalf of Jersey Sanitation
11 at the time that they did some or all of the
12 things that they did, I suppose.

13 MR. HEKSCH: If that's a problem, it
14 seems to me --

15 THE COURT: That's certainly one of the
16 problems that Mr. Pisacane raises.

17 MR. HEKSCH: That's correct.

18 And I would suggest to the court that
19 there's an effort on Jersey Sanitation's part to
20 create an issue of fact where none, in fact,
21 exists.

22 I think a review of the record and the
23 certifications and the excerpts of the deposition
24 and answers to interrogatories and so on and so
25 forth indicate clearly that at the time frame in
question, which is the period of 1977 to 1980,

1 Mr. Albert and Mr. Conlon each owned 25 percent
2 of the stock of Jersey Sanitation.

3 They were, and I think it flip-flopped,
4 essentially president and vice president of the
5 company.

6 The contract, the employment contract,
7 which is attached to Mr. Pisacane's papers,
8 indicates that they were acting in an executive
9 capacity, and there's no question, but admitted
10 by everybody to date in the material that was sub-
11 mitted, and I have got it clipped and can refer-
12 ence it if your honor wishes, that they not only
13 were officers, they were directors and responsible
14 for the daily operation of the company.

15 Jersey Sanitation was in the business
16 of hauling hazardous and solid waste. They ran
17 the daily operations, and clearly the type of
18 conduct complained of here, which is the illegal
19 disposal of hazardous waste in the site in New
20 Brunswick, was well within the scope of their
21 authority.

22 They were acting as executives.

23 And I think that the law is clear, and it
24 was cited in the letter memorandum that I submitted
25 to your honor yesterday, that where employees,

1 officers, directors of the corporation act within
2 the scope of their employment or in an executive
3 capacity, the corporation can be held responsible.

4 Mr. Pisacane's pleadings, papers, seem
5 to indicate that they were acting ultra-vires.

6 Obviously, any officer of a corporation
7 that commits a crime or tortious conduct is
8 probably acting somewhat ultra vires.

9 I don't think that any --

10 THE COURT: In violation of its employ-
11 ment contract, anyway.

12 MR. HEKSCH: I would assume so.

13 But still the law is clear that
14 corporations are held accountable for this type
15 of conduct, and I don't -- we're not trying to
16 hold the present stockholders of the corporation
17 liable at this particular juncture.

18 We're trying to hold Jersey Sanitation
19 liable for conduct that took place between 1977
20 and 1980, and at that time it was Mr. Conlon's
21 and Mr. Albert's company for all intents and
22 purposes.

23 The current owners and operators were
24 minor stockholders, and for reasons not clear,
25 buried their heads in the sand and said they

1 didn't know what was going on.

2 Is the corporation bound by the conduct
3 of Albert and Conlon through Jersey Sanitation?

4 And I think it's clear, and I would
5 submit that there's no issue of fact with regard
6 to that matter.

7 If your honor has any other questions
8 related to any other aspects of the motion, I
9 would be glad to address them.

10 I do want to emphasize one thing to the
11 court as it relates to the relief sought, and
12 it goes to the issue of penalties.

13 I think it is important for the
14 imposition of penalties in this matter for two
15 reasons:

16 One, that it set an example for other
17 people that may be involved or contemplated to
18 be involved in this type of conduct.

19 But more importantly, it's my under-
20 standing that penalties, unlike a simple reimburse-
21 ment to the Spill Fund, would not be discharge-
22 able in bankruptcy, and I think that's important
23 to make sure that Albert and Conlon and the other
24 people involved here do not get back in business
25 without paying their dues.

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Thank you, your honor.

MR. PISACANE: Judge, Mr. Heksch submits a 120-page brief and tries to simplify the motion when it should not be simplified.

He's indicating to the court that Jersey Sanitation buried its head in the sand, but there's no evidence of that.

Jersey Sanitation was a company that was in existence since 1956, Mr. Albert and Mr. Conlon brought into the company back in 1974. They each owned 25 percent of the company, and they each had employment contracts.

The board of directors-- they were supposed to report to the board of directors, which was not Albert and Conlon, and there were other people on the board of directors.

They lied to the company.

They defrauded the company.

And as a matter of fact --

THE COURT: I don't think that I know, and maybe I should recall, but I don't, how many members of the board there were.

MR. PISACANE: Various numbers at various times.

At one time there were five: Mr. George

1 Katz, Mr. Frank Stamato, Jr., and Mr. Patsy
2 Stamato, and Albert and Conlon.

3 Prior to Albert and Conlon being
4 involved --

5 THE COURT: I don't care about that,
6 while Albert and Conlon were involved.

7 MR. PISACANE: All right.

8 As a matter of fact, judge, our certifi-
9 cation shows that when we became -- and I say
10 "we", and I mean Jersey Sanitation -- when
11 Jersey Sanitation board of directors became aware
12 of any involvement with hazardous waste -- as
13 a matter of fact, the certification shows they
14 became involved with a company called Chemical
15 Control -- Conlon, and as soon as they became
16 aware of that, they called him to task.

17 As a result, they bought him out. Got
18 rid of him.

19 The certification is showing that.

20 As a matter of fact, you'll see a letter
21 which I'm as counsel, was directed to write to
22 the PUC and tell them to hurry up and approve
23 the buy-out to get rid of what we thought was the
24 bad apple.

25 Having hindsight, we would have seen

1 that Albert was also a bad apple. There was no
2 way of knowing that at that time, judge.

3 As a matter of fact, a mortgage was put
4 on the property of Jersey Sanitation, which was
5 personally -- and this is important now.
6 Mr. Heksch says well, I don't understand how the
7 stockholders would be subject to this, the minority
8 stockholders, he says, since there's no harm done.

9 That's not true. My certification
10 shows that Mr. Frank Stamato, Jr., that a mortgage
11 was put on Jersey Sanitation's property which
12 they personally signed to buy out Conlon.

13 Now, is the court going to sit here
14 today and have the fifty percent, and not minority,
15 but fifty percent stockholders of Jersey
16 Sanitation further harmed? That's not equitable.

17 Mr. Heksch cites a case, and he mis-
18 cites the case, by the way, judge, of Winkler
19 vs. Hartford, Acc., Independent Company, and at
20 Page 29.

21 He takes out dictum of the case, which
22 he states in his brief, and says a corporate
23 employer may be held for exemplary damages if its
24 employee who committed the wrongful act or author-
25 ized or ratified it was so high in authority as to

1 be considered executive in capacity.

2 He takes dictum out of the case that
3 deals with conversion, but he fails to quote the
4 beginning of that paragraph which states as
5 follows:

6 The plaintiff's action is against two
7 corporations for allegedly tortious acts of
8 their employees.

9 Exemplary damages may not be recovered
10 against an employer for the wrongful act of an
11 employee unless the act was specifically author-
12 ized, participated in, or ratified by the master.

13 Also, judge, I call your attention to
14 Re-statement, Second on Agency, which is appropri-
15 ate here.

16 And then Re-statement states as follows
17 in regards to knowledge which is necessary to hold
18 the corporation liable.

19 And then it says that the knowledge of
20 an agent will be imputed to his principal where
21 the agent has the duty to disclose into his
22 principal, or he has the power or actual authority
23 to act for the principal unless the agent was
24 acting adversely to his principal, and where the
25 agent was acting in his own interest, where the

1 agent was acting in the interest of another person,
2 and number three, where the agent was conspiring
3 with a third person to defraud the principal.

4 I don't think there's any question here
5 that Jersey Sanitation was defrauded by Mr. Albert
6 and by Mr. Conlon.

7 I don't think there's any question here
8 that Jersey Sanitation received no benefits.

9 Jersey Sanitation was in the business
10 of solid waste collection.

11 THE COURT: Didn't Jersey Sanitation
12 get a couple of hundred thousand dollars in fees
13 from the National Starch account?

14 MR. PISACANE: They got \$155,000, and
15 it's in our certification, over the period of
16 time, of which there was solid waste collection
17 and hazardous waste collection.

18 That wasn't all for hazardous waste,
19 judge. Fifty percent of that was for the solid
20 waste collection.

21 Of the fifty percent fees that they got
22 from National Starch, approximately fifty-five to
23 sixty thousand dollars, almost all of it went to
24 A to Z for hazardous waste disposal, and another
25 twelve thousand dollars went to Chemical Control

1 for hazardous waste.

2 You take that into consideration with
3 what it cost them to remove men and material, and
4 they made no money, judge.

5 I don't think that's disputed. I don't
6 think Mr. Heksch disputes that.

7 This money went in Albert's pocket and
8 in Conlon's pocket, which we later found out.

9 We have a cross claim against them,
10 judge.

11 I think that really what Mr. Heksch did,
12 and it's interesting to note that the complaint
13 in this matter was originally filed in '79, and
14 in his brief he talks about orders that weren't
15 complied with of the receiver, and talks about
16 a judgment under the Spill Compensation Fund for
17 three million dollars.

18 Judge, we weren't a party to this case
19 until March 31, 1981.

20 Jersey Sanitation had no way of disput-
21 ing the validity of what went on before.

22 Are we now going to be held responsible
23 for proceedings before Judge Furman and your
24 honor that we had not participated in?

25 He attaches to his brief and his

1 certifications, interestingly enough, depositions
2 taken of Mr. Albert.

3 We weren't a party to the litigation at
4 that time.

5 We had no way of cross-examining him.

6 It's interesting to note, if you look at
7 the deposition, Mr. Albert says at 71A of the
8 defendant's brief -- and I looked at this last
9 night, and I found it interesting. I would like
10 to point it out to the court.

11 He was talking at line -- I won't read
12 the whole thing. This is Line 19. They were
13 talking about the buy-out of Mr. Conlon.

14 And then it says, Mr. Albert says I
15 bought him out. Well, that's a lie. He didn't
16 buy him out; Jersey Sanitation bought him out.

17 This just goes to show you the cred-
18 ibility of these people and how Jersey Sanitation
19 was a victim.

20 Interestingly enough, also, judge, is
21 that this is a motion for summary judgment.

22 I think what precipitated this motion
23 and they brought in Jersey Sanitation, the reason
24 they brought them in two years later is they said
25 well, Conlon and Albert probably don't have assets,

1 or if they had any, it went south, if I may coin a
2 phrase.

3 Curiously enough, I wonder what happened
4 to the one hundred ninety thousand dollars in
5 assets that we paid Conlon.

6 Did he look for that? I don't know.

7 Curiously enough, Jersey Sanitation, he
8 says, is a viable company; and it was at the time,
9 and let's make them a party to this suit, since
10 Conlon and Albert were a stockholder, and let's
11 bring them into the suit, and we might get money
12 from them.

13 There's no justification for having a
14 motion for summary judgment or bringing us into
15 the case, judge.

16 As a matter of fact, Albert and Conlon
17 have harmed this company. But I don't want to get
18 into that. I don't think that's before your honor.

19 But then this is his motion for summary
20 judgment; and contrary to what the attorney general
21 tries to do, the burden is upon him to prove and
22 come forward and show that there's no disputed
23 facts.

24 There are many disputed facts, and I
25 will try to outline just a few of them to the

1 court.

2 Interestingly enough, none of the
3 certifications submitted, and I have reviewed
4 them, nor the answers to interrogatories, if
5 you want to call them that, that were submitted
6 by the State, and I haven't made a motion for
7 more specific answers, and so that I won't get
8 into it, but none of that shows that Jersey
9 Sanitation brought all of that hazardous waste
10 to A to Z.

11 The only thing that Jersey Sanitation
12 admits is that they had an account named National
13 Starch, and Albert and Conlon arranged to be paid
14 at that disposal site, and which Jersey Sanitation
15 thought, and they submitted manifests, judge,
16 which they thought was an authorized site.

17 But if you look in the certifications,
18 they list a whole myriad of types of chemicals,
19 a whole myriad of chemicals from different other
20 companies.

21 Have they presented to you one iota of
22 proof showing that Jersey Sanitation brought those
23 items to A to Z? No.

24 Well, Mr. Heksch tries to obfuscate these
25 issues in a lengthy brief in which he lumps all of

1 the defendants together.

2 You cannot do that, judge. That's one
3 disputed fact.

4 The second disputed fact is that A to
5 Z and Jersey Sanitation were two separate, dis-
6 tinct entities.

7 The only link was Albert and Conlon.

8 We know now that they owned A to Z.

9 Jersey Sanitation didn't own it.

10 Mr. Stamato didn't own it, and

11 Dr. Saltzburger, who is a stockholder, and his
12 wife, they didn't own it. And Mr. Katz did not
13 own A to Z.

14 Where is this linkage of Jersey Sanita-
15 tion to be responsible for the Spill Compensation
16 Fund just because they transported some hazardous
17 waste which we don't dispute, judge?

18 He also attempts in his brief to lump
19 all of the conducts of the defendants together.

20 You cannot do that, judge.

21 We dispute that we are, that the conduct
22 of A to Z and the conduct of Albert and Conlon,
23 at A to Z, is the responsibility of Jersey
24 Sanitation.

25 Throughout his brief he keeps referring

1 to the defendants, plural. That cannot be done,
2 judge.

3 Nowhere does he show that Jersey
4 SANitation was responsible for what happened at
5 A to Z; not at all.

6 I can go on, judge, and I am not going
7 to waste the court's time; and I would just like
8 to highlight a few other disputed facts.

9 We dispute that Jersey Sanitation is
10 responsible for discharging of any hazardous or
11 toxic waste in any streams, but as a matter of
12 fact, he hasn't proved, and I haven't seen any
13 papers in my short time in the case, showing
14 that the State has proved that there has been any
15 discharge into the streams.

16 He doesn't show where Jersey Sanitation
17 is responsible for air pollution. There's no
18 affidavit submitted to that.

19 What I am saying to the court, and I am
20 not going to waste any more of the court's time,
21 but it's important to my client.

22 They have a large investment in this
23 company, and the company is in a shambles as it
24 is, judge.

25 THE COURT: Tell me about that. What's

1 going on with the company now? I understand that
2 they have surrendered their license as of the end
3 of this month.

4 MR. PISACANE: Exactly right.

5 What happened is that Mr. Albert --

6 THE COURT: Don't tell me why. What's
7 going to happen then? Are they liquidated?

8 MR. PISACANE: What we're going to do
9 is to pay our bills, pay the creditors.

10 We have a hundred thousand dollar mort-
11 gage which they're personally responsible for,
12 and we want that paid off.

13 We are going to pay the bills that are
14 owed by the company, and then whatever is there,
15 keep it.

16 They don't want to take money out of
17 the company and then be liable under the Fraudulent
18 Conveyance Act of the State.

19 They're not looking to do that. All
20 they're looking to do is to keep the status quo,
21 to pay all their bills. But they also don't want
22 to have to go into their pockets if they have
23 anything, and I don't know what the status of the
24 stockholders is, some of them, to have to pay
25 this mortgage on the property, which should be paid

1 by Jersey Sanitation.

2 We don't want to be responsible for the
3 Spill Compensation Fund, which we shouldn't be.

4 Mr. Heksch is asking for an appointment
5 of a receiver. It's very interesting, and I was
6 at one time in the attorney general's office, and
7 we got receivers appointed.

8 But the only time they were appointed
9 is when there was an ongoing utility, and as a
10 result, the public good was needed to keep this
11 ongoing utility to serve the public.

12 Actually, what Mr. Heksch is asking is
13 for your honor to give him a prejudgment execu-
14 tion.

15 It's not proper. Nowhere does it show
16 in his certifications that there is any reason
17 for this receiver to be appointed.

18 The mere fact that Jersey Sanitation is
19 going out of business, he doesn't show that we're
20 trying to go south with the assets because that's
21 not the case, judge, and I will make that repre-
22 sentation to the court.

23 If the court wants, we'll even submit
24 certifications or testimony under oath.

25 All the stockholders and present directors

1 of Jersey Sanitation want to do is to pay the debts
2 of Jersey Sanitation and not take any money out of
3 the company.

4 I have nothing further to add.

5 THE COURT: Mr. Heksch, I have got two
6 questions for you.

7 Number one. What proofs do we have on
8 the subject of the extent to which the toxic
9 waste on the A to Z premises came from Jersey
10 Sanitation?

11 MR. HEKSCH: There's my certification,
12 which has annexed to it one of thirty-five or
13 thirty-four, and if your honor is interested in
14 reviewing them, waste manifests, hazardous waste
15 manifests that were filled out between May and
16 June of '78 and required by law, and which
17 specify that certain numbers of drums, and I am
18 not sure, and I think it was thirteen or fourteen
19 hundred drums of hazardous waste was taken to the
20 A to Z site by Jersey Sanitation.

21 Number two, in the excerpts of inter-
22 rogatories -- the excerpts of depositions of
23 Mr. Albert that's appended to the brief, and part
24 of the appendix there's an admission by Mr. Albert
25 that he used Jersey Sanitation to haul the waste

1 from National Starch to A to Z, the A to Z site.

2 Number three is in answers to inter-
3 rogatories provided by Jersey Sanitation there's
4 an admission that --

5 And again that's appended to my certifi-
6 cation, and I will find it in a moment.

7 Number thirteen.

8 State whether or not Jersey Sanitation
9 Company, Inc., ever transported chemical wastes
10 to the facility of the defendant, A to Z Chemical
11 Resource Recovery, Inc., located at a certain
12 block and lot in New Brunswick.

13 And then the answer is yes.

14 QUESTION: The generator of the waste.
15 National Starch.

16 Type of waste and amount of waste.
17 Answers to be supplied.

18 When it was transported. The answer
19 is throughout the year 1979 and the beginning of
20 1980.

21 So there are admissions by Jersey
22 Sanitation and admissions by individuals involved
23 with Jersey Sanitation, and Mr. Albert, inter-
24 estingly enough, when his deposition was taken
25 in 1980, he was still employed by Jersey Sanitation.

1 They never fired him and never got rid of him.

2 He was, to the best of my knowledge,
3 employed by them until the time that he went to
4 jail.

5 At the time of Mr. Stamato's deposition
6 last June, he was at the site working. I was
7 looking for a reference as to what his duties
8 and functions were, but I can't find that.

9 I want to comment on what Mr. --

10 THE COURT: One other thing before you
11 get to it.

12 Is treble liability on the Spill Fund
13 Act depending upon having declined to comply with
14 the directive to clean up?

15 MR. HEKSCH: I think there's a require-
16 ment that you be noticed of the problem and be
17 advised that you have an obligation to clean it
18 up, and that you have refused to do that.

19 I think that's true in this case
20 because -- and as it relates to Jersey Sanitation
21 at the time periods in question when Albert and
22 Conlon clearly got that type of notice, and
23 that's in the record, and I think it's appended.

24 THE COURT: Jersey Sanitation itself
25 did not, and was not a party at the time and did

1 not get such a notice?

2 MR. HEKSCH: Not as a separate, distinct
3 entity.

4 But they had constructive notice of
5 their obligations and were fully aware of the
6 situation.

7 I don't know how they can deny
8 knowledge for an obligation to do it.

9 I would like to comment on the paying
10 of the creditors and the reasons for a receiver.

11 As your honor knows, there's a claim,
12 and it's in this case as well, that the Spill
13 Fund has liens paramount and above any other
14 creditors, and Mr. Pisacane has indicated what
15 they want to do with the assets of the corporation
16 is to pay off the creditors, but he doesn't view
17 the New Jersey Spill Fund as one of those.

18 He wants to pay the bank and other
19 creditors, and I am sure there are creditors,
20 and I don't doubt that Jersey Sanitation has a
21 lot of obligations.

22 But we say that our obligation goes
23 first, and we're entitled to that money, and it's
24 questionable after we get ours that there will be
25 anything left for other creditors, and that's why

1 there's a need for a receiver.

2 I don't see anything, by the way, in
3 the papers that were filed in response by
4 Mr. Pisacane to dispute the allegations that
5 Jersey Sanitation took waste to the A to Z site.

6 There's an allegation by Mr. Stamato
7 that he didn't know, and found out subsequently,
8 but certainly no denial, and I think that we
9 carried our burden as far as summary judgment
10 goes to remove any question of an issue of fact on
11 that particular point.

12 MR. PISACANE: You know, judge, in all
13 due respect to the court, Mr. Heksch has a way
14 of making comments and of taking them down as if
15 they're facts proven.

16 First of all, Mr. Albert was fired by
17 Jersey Sanitation in '79.

18 THE COURT: Don't holler. Take it easy.

19 MR. PISACANE: Yes, judge.

20 He has a way of doing these things and
21 going over matters and telling the court that they
22 are facts.

23 THE COURT: What else?

24 MR. PISACANE: The court probably knows
25 better than I that there was over twenty-five

1 thousand or thirty thousand drums on the A to Z
2 site.

3 He has proofs of thirty-five manifests
4 that he's presented to this court. And he has
5 proof of only ~~National~~ Starch.

6 He says one thousand three hundred
7 drums, and I will stipulate it.

8 Does he show you proof what was in
9 those drums or proof at all for this motion indi-
10 cating that that stuff that was in those drums
11 is what caused the problem at A to Z?

12 No, not at all, judge.

13 What happened to the other twenty-five
14 or thirty thousand drums?

15 Have they attempted to tell you what
16 happened to them?

17 He misleads you. He attempts to mis-
18 lead you.

19 Thank you.

20 THE COURT: Anything else?

21 MR. HEKSCH: Just the numbers are not
22 accurate. About eight or nine thousand drums at
23 the site.

24 THE COURT: We do know that's substanti-
25 ally more than was accounted from National Starch.

1 MR. HEKSCH: I think that we know that's
2 more than what was accounted for in the manifests.

3 I think that the manifests cover a
4 period of time that was very limited.

5 There's an admission in the interroga-
6 tories that there was subsequent taking to the
7 site. We don't know how much. They don't give
8 us that information.

9 The other point that should be made is
10 that under the statutes in question, and at least
11 under the Spill Act, there's expressed joint and
12 several liability, and even if it is only
13 thirteen or fourteen hundred out of eight thou-
14 sand, so be it.

15 They're liable for it. I would submit
16 that under the other statute and the common law
17 there's also joint and several liability which
18 warrants the imposition of a judgment.

19 THE COURT: The motion of the State is
20 for judgment on -- judgment for liability of
21 Jersey Sanitation under a number of statutes
22 governing this situation.

23 Jersey Sanitation was a waste hauler
24 which at relevant times was owned twenty-five
25 percent by Eugene Conlon and twenty-five percent

1 by John Albert.

2 They were also president and vice
3 president. And I think that's the reverse order.
4 They were president and vice president of the
5 company.

6 And according to the accounts of the
7 other stockholders in the company, they were
8 brought in to run its day-to-day operations in
9 this area, which the other owners were unwilling
10 to do any longer.

11 Mr. Albert and Mr. Conlon procured a site
12 which they then used for the parking of barrels of
13 toxic wastes. That property was the property of
14 A to Z, which belonged to them, and which had no
15 other relationship between it and Jersey Sanitation.

16 I must assume for the purposes of this
17 motion that the other stockholders were not aware
18 of the existence of the A to Z site, or the fact
19 that Mr. Conlon and Mr. Albert were unlawfully
20 disposing of toxic wastes there.

21 When the DEP asserted enforcement juris-
22 diction over the site, A to Z and Conlon and
23 Albert were defendants and ordered to clean up;
24 and they didn't do so, and the Spill Fund was
25 invoked, and approximately one million three

1 hundred twenty-seven thousand dollars was spent
2 on the cleanup effort.

3 There's no dispute here but that that
4 money was spent, and spent to clean up the site.

5 Subsequently, Jersey Sanitation was made
6 a defendant, and statutory penalties and recovery
7 under the Spill Fund Act were asserted.

8 The major argument made by Jersey
9 Sanitation is that its president and vice president
10 were off on an enterprise of their own, which it,
11 as much as the State, was a victim.

12 That the directors, majority of the
13 board of directors, had no knowledge of what was
14 going on, and that the other stockholders should
15 not be penalized for the activity.

16 It's clear that Conlon and Albert were
17 fifty percent stockholders and were entrusted by
18 the others with running the corporation.

19 That at least in large part the toxic
20 wastes that were unlawfully disposed of at A to Z
21 were disposed of under a contract Jersey Sanita-
22 tion had with National Starch, and the remainder
23 of the toxic wasts were, at the very least,
24 transported there by Jersey Sanitation, whether
25 from National Starch or from somewhere else.

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There's no question but that there's nothing before me to show that Jersey Sanitation's board of directors or stockholders met and approved what was going on.

But the two law breakers were fifty percent owners of the company and were entrusted by the remainder with the day-to-day supervision of its activities.

And in transporting of toxic wastes in Jersey Sanitation trucks, whether from Jersey Sanitation's account or not, Conlon and Albert were acting on behalf of the company, and the company is responsible for that activity.

The State asserts that Jersey Sanitation should pay three times the cost of removal under 58:10-12.11 f.a. That provision imposes treble liability against any discharger who fails to comply with the directive to remove or arrange for the removal of the discharge.

At the time the directive was issued to remove, Jersey Sanitation was not a party to the suit, and the directive was not sent to it.

The directive to Conlon and Albert was only incidentally to the officers of Jersey Sanitation.

1 The fact is that it was directed to them
2 as the active wrongdoers themselves and as the
3 owners of A to Z.

4 On the other hand, it is plain that under
5 58:10-23.11 b.h., Jersey Sanitation is a discharger.

6 It is not necessary that the State show
7 that any toxic waste actually reached the waters
8 of the state. To discharge includes any action
9 or omission resulting in the releasing, spilling,
10 leaking, et cetera, of any hazardous substance,
11 either into the waters of the state or onto lands
12 from which it might flow or drain into said waters.

13 And that condition is certainly satis-
14 fied here, and there is no reasonable argument
15 about that.

16 As a discharger then, Jersey Sanitation
17 is liable under the Spill Fund Act as a person
18 responsible for the discharge; also for the amount
19 of one million three hundred twenty-seven odd
20 thousand dollars, which debt constitutes a first
21 priority claim and lien paramount to all other
22 claims and liens upon the revenues and upon all
23 the real and personal property of Jersey Sanitation,
24 and judgment is entered under the Spill Fund Act
25 in that amount and declaring that that amount

1 constitutes a lien.

2 Statutory penalties are sought. I do not
3 believe that judgment should be entered under the
4 Air Pollution Act.

5 I don't believe a case has been made out
6 as a matter of law under the Air Pollution Act.

7 Under 58:10A-6 and under 13:1E-9,
8 statutory penalties should be imposed. They are
9 expressed as daily penalties; and if one should
10 impose the maximum, the amounts involved are
11 staggering.

12 The determination as to how much to
13 impose is a difficult one. It should take into
14 account that there's no proof before me that the
15 other stockholders of the company were aware of
16 what was going on, and I do take that into account.

17 It also should take into account, however,
18 that the activity involved for which this corpora-
19 tion is responsible was criminal, was extremely
20 prejudicial to the health and safety of the state
21 and its residents, has consequences that are in-
22 calculable into the future in terms of the quality
23 of the environment in which we're going to have to
24 live hopefully for many generations, and it is
25 necessary to exercise the court's power to express

1 the gravity with which every organ of government
2 is obliged to view the consequences of a company
3 that permits its executive officers every lati-
4 tude to indulge in any practice in an extra-
5 ordinarily sensitive business.

6 I think that all of those considerations
7 are best embodied in an award or a judgment under
8 13:1E-9 of three thousand dollars per day penalty
9 for one hundred days, or three hundred thousand
10 dollars.

11 And the penalty under the Water Pollution
12 Control Act, whose maximum is ten thousand dollars
13 a day, in the amount of five thousand dollars a
14 day for one hundred days.

15 With respect to the request for a
16 receiver, I will now order, and the order shall
17 be effective upon my stating it even before a
18 written order is entered, that Jersey Sanitation
19 expend no monies, except for the purpose of paying
20 current and ongoing wage claims of employees who
21 are not stockholders or related to stockholders,
22 and not for any past wage claims, obviously.

23 The company may also make such expendi-
24 tures for current operating expenses as are
25 required to permit it to complete its contract

1 until the end of this month.

2 It will dispose of no other assets or
3 enter into no other transactions without permission
4 of this court.

5 It will also provide this court with
6 such -- with documents of such plans as it has
7 made for liquidation, disposition of assets,
8 winding up of business, and a copy to Mr. Heksch,
9 by next Friday, and we can discuss next Friday
10 at nine o'clock, if that's convenient with you
11 both, whether or not to permit Jersey Sanitation
12 to wind up itself or to impose a receiver on it
13 for that purpose.

14 MR. PISACANE: Obviously, I will be
15 appealing this order, and I am going to request
16 a stay of the imposition of the order pending
17 appeal to keep the status quo.

18 THE COURT: I will in the order oblige
19 the State to take no action to execute on its
20 judgment, but I will not stay my order with respect
21 to ongoing business, disposition of assets and any
22 of the rest of it.

23 MR. PISACANE: I need a clarification
24 on that.

25 As part of the ongoing business, we have

1 a building which we pay a mortgage on. Are we
2 allowed to continue to pay the mortgage?

3 THE COURT: No, sir. No, sir.

4 MR. PISACANE: Then we're going to have
5 a foreclosure by the bank and we have no place
6 to put the trucks.

7 THE COURT: You are not going to have a
8 foreclosure in the next few weeks.

9 MR. PISACANE: I would like to ask
10 another clarification.

11 You ordered a fund payment of one million
12 three hundred twenty-seven thousand dollars. Was
13 that, your honor, based on a prior judgment and
14 disposition in this case?

15 THE COURT: Based upon the proofs on this
16 motion.

17 MR. PISACANE: Proofs on this motion?

18 THE COURT: Yes. Mr. Heksch, you'll
19 prepare the order.

20 MR. HEKSCH: I have one question.

21 Next Friday, is that to be here in person
22 or can we do that over the telephone, or how would
23 you want to do it?

24 THE COURT: You'd better be here.

25 MR. HEKSCH: I have a personal problem,

1 but somebody else will be here in my stead.

2 The second question that I have is you
3 have ruled against Jersey Sanitation. You have
4 not ruled as to Albert.

5 THE COURT: I'm sorry, I lost that in
6 the shuffle.

7 The rulings as to Albert are for all
8 the same reasons, the same except that Albert's
9 liability under the Spill Fund Act is treble
10 liability, and the judgment against him should be
11 in the amount of three million nine hundred eighty
12 thousand -- whatever it is. Three times.

13 MR. HEKSCH: Similarly as to A to Z,
14 and that may be relevant as to the property.

15 THE COURT: Same as to A to Z.

16 MR. PISACANE: May I ask you a question
17 in my ignorance?

18 THE COURT: Yes.

19 MR. PISACANE: How are we supposed to
20 keep the status quo with the bank if we can't pay
21 the mortgage?

22 THE COURT: Mr. Pisacane, don't be cute.

23 MR. PISACANE: I really mean that. I
24 know what's going to happen.

25 THE COURT: I don't think it's going to

1 happen within the next week. If it does, it's
2 not a problem that I created. It's a problem that
3 this judgment simply recognizes.

4 Prepare the order.

5 MR. HEKSCH: Yes. Thank you, your
6 honor.

7 Should the order that I prepare suggest
8 the denial of the stay, or does Mr. Pisacane want
9 to submit something separate on that?

10 THE COURT: It might be easier if you
11 deny the stay except as to execution.

12 MR. HEKSCH: Fine.

13 THE COURT: And the stay is on the
14 representation that a motion -- well, you don't
15 need a motion. Actually, it's not final.

16 MR. PISACANE: It's not?

17 THE COURT: No, sir, because there's still
18 claims out against co-defendants.

19 MR. PISACANE: I have a cross claim
20 against Conlon and Albert.

21 THE COURT: Yes. Well, how do you feel
22 about treating it as a final judgment, Mr. Heksch?

23 MR. HEKSCH: For the purposes of appeal
24 or for the purposes of a stay?

25 THE COURT: Both. I mean one goes with

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the other.

MR. HEKSCH: I would suggest that Mr. --
I don't know how to respond to that at this point.
I haven't thought out the ramifications of either
one.

THE COURT: One of the ramifications is
whether or not Mr. Pisacane has the right to appeal
at this point or whether he has got to apply for
leave to appeal.

MR. HEKSCH: I understand. I'm not sure
what the difference is as it relates to a stay.
It's a stay pending appeal and a stay pending
an interlocutory order, and I don't know if
there's a difference.

MR. PISACANE: The big difference is that
we won't be before the Appellate Division and get
a decision, and I will have to wait until what
happens here until the remaining part of the case,
which is a big factor in this case.

THE COURT: It seems to me that there's
no reason why this matter should not be treated
as a final judgment. Judgment will be entered
finally.

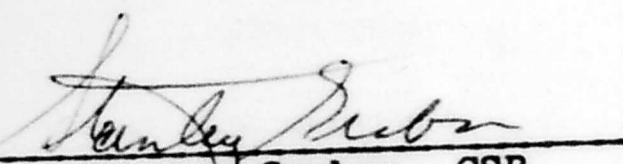
MR. PISACANE: Thank you, judge.

THE COURT: Okay.

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CERTIFICATE

I, STANLEY GRABON, an official court reporter and notary public of the state of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of proceedings as reported stenographically by me at the time and place aforementioned.



Stanley Grabon, CSR
Official Court Reporter

1 **A-267-8372**

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION (Middlesex County)
Docket No. C.1799-78

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STATE OF NEW JERSEY,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Plaintiff, : Motions.

vs.

A to Z CHEMICAL RESOURCE
COMPANY, et al.,

Defendants.

FILED
APPELLATE DIVISION
SP

SEP 30 1983

Elizabeth M. Laughlin
Clerk

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ELIZABETH M. LAUGHLIN
CLERK

Middlesex County Courthouse
New Brunswick, New Jersey
July 8, 1983

B E F O R E: Honorable Richard S. Cohen, J.S.C.

APPEARANCES: Mary C. Jacobson, Esq.,
Deputy Attorney General,
Attorney for the DEP and Spill Fund

Margaret M. Foti, Esq.,
Deputy Attorney General,
Attorney for Board of Public Utilities

Richard M. Pisacane, Esq.,
Attorney for Jersey Sanitation

Nicholas I. Filocco, Esq.,
Attorney for Global

Stanley Grabon, C.S.R.
Official Court Reporter

PENGAD CO., BAYONNE, N.J. 07002 FORM 2046

CTH

1 JULY 8, 1983

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4
5 THE COURT: Why don't we take your motion
6 first.

7 MR. FILOCCO: Your honor, my motion is
8 essentially a motion to seek enforcement of a
9 board's order requiring the defendant in this
10 matter to deposit the sum of approximately forty
11 thousand dollars. The exact sum is subject to
12 further updates, but in any event, a sum of money
13 representing amounts due pursuant to tariffs
14 approved by the Board of Public Utilities.

15 THE COURT: What is the status of pro-
16 ceedings in the administrating agency? Is there
17 something going over there now?

18 MR. FILOCCO: The Board has entered an
19 order requiring Jersey Sanitation to deposit the
20 sum which it disputes in escrow, or in lieu thereof,
21 post a bond.

22 This requirement is documented by order of
23 the board dated June 20, 1983, pursuant to Board
24 Regulations N. J. A. C. 14:3-7.13, and then the
25 Board's general regulatory power pursuant to

1 Title 48.

2 The only issue in question is apparently
3 the amount of the volume of waste that was deposited
4 during the period of time that the new tariff was
5 in effect, which would be decided -- which will
6 be the only issue, as I understand it, remaining
7 before the office of administrative law.

8 In other words, the board ordered that
9 Jersey Sanitation deposit the disputed sum in
10 escrow pursuant to Regulations, with a proceeding
11 before the Office of Administrative Law to deter-
12 mine the remaining issue, which can only be the
13 volume of the waste that was deposited during the--
14 since the effective date of the new tariff.

15 Jersey Sanitation argues that it had an
16 oral agreement which permitted or precluded it from
17 paying the tariffs, and that has been disposed of
18 by the board. It is not an issue.

19 The Board's order specifically disposed
20 of that.

21 Essentially, I am here asking for
22 enforcement of the Board's order, and the reason
23 that I am in this forum is that your honor is
24 entertaining applications or entertaining proceed-
25 ings which will eventually dispose of all of the

1 assets of the defendant corporation.

2 I therefore am here pursuant to
3 Title 48:2-41, and then I understand the Board's
4 attorney is here, and I understand that the Board's
5 attorney supports this application, as does --
6 and the Department of Environmental Protection has
7 no objection to this application seeking enforce-
8 ment of an order of a state agency.

9 THE COURT: Mr. Pisacane?

10 MR. PISACANE: Your honor, first of all,
11 may I apologize. I have very bad allergies, and
12 so that I hope that you can understand me.

13 Counsel has failed to present to the
14 court the true issue that was before the PBU, and
15 misconstrued the Board's statutes.

16 What happened here, your honor, is that
17 Jersey Sanitation had received a notice of dis-
18 continuance from Global based upon what they allege,
19 a discontinuance of service based upon what they
20 allege was back charges owed.

21 Now, in order to stop that notice of
22 discontinuance from taking effect while Jersey
23 Sanitation was in operation, Jersey Sanitation
24 invoked the Board's regulatory power to request a
25 hearing so that this discontinuance would not

1 occur and so they continued to dump at Global.

2 I filed on behalf of Jersey Sanitation
3 a letter petition to the board requesting that
4 pursuant to their statutory authority, they
5 ordered Global to continue to service Jersey
6 Sanitation until that matter was resolved.

7 It was alleged, and it is still alleged
8 that there was an agreement between Jersey
9 Sanitation and Global dating back five years.

10 What the board did in this proceeding
11 was, in order to allow Jersey Sanitation to con-
12 tinue to dump, and that's where the board gets
13 the statutory authority over the utilities, it
14 said Jersey Sanitation, if you want to continue
15 to dump there, you must deposit either surety
16 bond or deposit the forty thousand dollars in
17 escrow, pending a determination as to the dispute.

18 The board didn't make an ex parte
19 determination as to the validity of the dispute
20 between Jersey Sanitation and Global. He's in-
21 correct.

22 But what happened --

23 THE COURT: Jersey Sanitation make that
24 deposit as ordered?

25 MR. PISACANE: No, it didn't. Because

1 this is what happened, judge.

2 Of course, we had the proceedings here,
3 and Jersey Sanitation has stopped dumping at
4 Global. It no longer dumps at Global at all.

5 And, therefore, the matter is moot in
6 regards to the Board of Public Utilities
7 Commission.

8 There's no dumping at Global. Global's
9 remedy is in the Law Division to enforce a debt,
10 or it may proceed with the OAL.

11 The board, if you look at the board's
12 order, it says in Paragraph 3 that Global shall
13 continue to accept Jersey's garbage, provided
14 Jersey pays its bills on a current basis.

15 The board didn't make a finding of fact
16 that Jersey Sanitation owes the forty thousand
17 dollars.

18 As a matter of fact, the board has no
19 jurisdiction with regard to a contract between
20 two parties. It has none at all, judge.

21 And he's not in the right court and,
22 as I indicated to your honor by phone, he's in
23 the wrong court at the wrong time, judge. He
24 doesn't belong here.

25 Of course, the BTU, the Attorney General's

1 going to get up and tell you that they go along
2 with him. Do you know why? Because they had a
3 rate case, and during that rate case Global never
4 mentioned the contract between Jersey Sanitation.

5 Therefore, Global, if they don't get the
6 forty thousand from Jersey Sanitation, they're
7 going to have to pay, and if they don't pay, then
8 there's going to be a short fall in that fund,
9 and sure, the deputy's going to get up and say
10 take the money from Jersey.

11 We've got that pot now. Let's keep
12 pouncing on Jersey Sanitation. Let's take the
13 money from them.

14 That's incorrect. That's not proper.
15 He has no jurisdiction here, judge, and he should
16 be thrown out.

17 As a matter of fact, if you look at his
18 affidavit, more specifically, Paragraph 10, he
19 even says that Global denied -- let me get to
20 the pertinent part.

21 Global then notified Jersey Sanitation --
22 this is sentence two of Paragraph 10 of his affi-
23 davit.

24 On April 13, 1983 its intention to dis-
25 continue service for non-payment of outstanding

1 bills. In response, Jersey Sanitation requested
2 the BPU, by means of an informal letter petition,
3 to conduct hearings of the question of the
4 validity of the prior oral argument.

5 What he fails to tell you is to also
6 prevent from cutting Jersey Sanitation Solid Waste
7 Service off. He doesn't belong here, judge.

8 THE COURT: All right.

9 MS. FOTI: Of course, we are going to
10 join with Global in their motion today. It is the
11 board's position that the board has primary juris-
12 diction over bill disputes. This is a bill dis-
13 pute between Global and Jersey Sanitation to pre-
14 serve the assets, in view of the fact that this
15 company is going out of business, and the Board
16 ordered forty thousand dollars to be placed in
17 escrow, pending the determination of the bill
18 dispute.

19 It did that pursuant to Regulations of
20 the Board, specifically N. J. A. C. 14:3-7.2, and
21 N. J. A. C. 14:3-7.13b.

22 So that as far as the board's order is
23 concerned, it is done pursuant to regulations
24 and pending the determination of the bill dispute.

25 THE COURT: Why should I treat Global as

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anything other than another creditor?

MS. FOTI: Because the monies owed by Jersey Sanitation to Global are monies owed under a tariff that was approved by the Board of Public Utilities.

THE COURT: Why does that make it any different from another creditor?

MS. FOTI: Because it involves two utilities, and it's a bill dispute, your honor.

THE COURT: So what? Why is that different?

MR. FILOCCO: May I be heard on that?

THE COURT: No.

MR. FILOCCO: I'm sorry.

MS. FOTI: The only other thing that I would do is to point to your order, which talks about allowing the assets, allowing payments of the normal operating expenses, and then the monies owed from Jersey Sanitation to Global are normal operating expenses.

THE COURT: No. I forget what the order says exactly, but it was clear to everybody in the case that what I was talking about was those expenses necessary to keep the operation going until the end of June.

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1 It had nothing to do with back bills at
2 all. As a matter of fact, I specifically said that
3 in one way or another, and I can't remember how,
4 that that does not include prior obligations,
5 existing obligations of Jersey Sanitation.

6 MS. FOTI: The only position that we
7 take on that, your honor, in order for Global to
8 continue its operation, it's got to be paid, and
9 then the monies owed to Jersey Sanitation we felt--

10 THE COURT: In what sense? Do you mean
11 if it doesn't get this forty thousand dollars it's
12 going to discontinue its operation?

13 MS. FOTI: Well, it won't have the monies
14 it needs to properly close the landfill, as has
15 been stated before.

16 There will be a short fall in the fund.
17 There's no question about that.

18 These monies were specifically designated
19 for environmental purposes. That's why the board
20 felt there was an urgent situation before it, and
21 wanted to have the dispute, bill dispute heard,
22 as soon as possible, and wanted to preserve the
23 forty thousand dollars owed to Global.

24 THE COURT: Miss Jacobson, how do you
25 feel about all of this?

1 MS. JACOBSON: Your honor, as you know,
2 I wasn't here during the motion for summary judgment,
3 and then Mr. Heksch has been unavailable now.

4 THE COURT: How is he, incidentally?

5 MS. JACOBSON: He seems to be doing
6 better.

7 When I read the paragraph in the order
8 speaking of the operating expenses, it seemed to me
9 as if the request by Global to receive what it
10 was owed then for the dumping purposes fit within
11 the terms of the order.

12 But then, as I say, I wasn't here, and so
13 I will defer to you on what you intended by it.

14 THE COURT: Okay. The intention of my
15 order was not to permit the payment of accrued debts,
16 already incurred debts. That's clearly so.

17 I'm not sure that I understand the State's
18 position. I understand that the BPU has one
19 agenda, and then DEP has another.

20 I would have hoped DEP would have pointed
21 out to the court that to the extent that the money
22 is diverted from the Spill Fund obligation, it will
23 not be available for that, and I am not so sure that
24 the public interest is served better one way or the
25 other. I can't tell.

1 I suppose that they're both urgent public
2 needs, however, that ought to be satisfied. I'm
3 not in a position right now to dispose of the
4 assets of Jersey Sanitation to particular creditors,
5 in any event, and I still have not heard why Global
6 should be treated in any way differently.

7 MR. FILOCCO: Your honor?

8 THE COURT: Treated in any way different
9 than any other creditor, even a judgment creditor.

10 Do you want to address yourself to that?

11 MF. FILOCCO: I apologize for inter-
12 rupting before.

13 I do want to address that issue with
14 reference to the question of the legal status of
15 a utility vis-a-vis a contract creditor, a normal
16 common law creditor.

17 I did cite in Paragraph 12 of the affi-
18 davit submitted the cases of New Jersey Bell
19 Telephone Company versus West Orange. It says,

20 "A tariff required by law to be filled
21 by a public utility is not a mere contract, it is
22 law."

23 THE COURT: If I get a judgment against
24 Jersey Sanitation on Tuesday for failure to pay
25 for the Coke I put in their machine in the garage,

1 and you get a judgment against them for failure to
2 pay a tariff, is your judgment going to be paid
3 before mine by some court of law?

4 Am I secondary to you, a junior to you
5 in some way? I don't think so.

6 MR. FILOCCO: I would think that-- I
7 haven't researched that particular point of law.

8 THE COURT: That's the point that I am
9 getting to. I have no reason to believe that you
10 have got some preference or priority position,
11 and I do know the Spill Fund has one.

12 The legislature was very clear on that
13 one.

14 MR. FILOCCO: I also thought that the
15 letter of Miss Jacobson, and of course I don't
16 know, and she's best able to speak on that, I was
17 under the impression that the DEP was not objecting
18 to an allocation of the amount in reference to the
19 amount in question that the board was concerned
20 about.

21 THE COURT: She's not. She hasn't
22 objected. She says she leaves it to the court,
23 which I think is a proper attitude to take.

24 MR. FILOCCO: I understand, your honor.
25 May I ask that in the event of further proceedings

1 to dispose of Jersey's assets, that specific note
2 be made of this claim, such that further--

3 THE COURT: Well, I'll tell you what I
4 am going to do.

5 You asked for two things in your appli-
6 cation here. One is permission to intervene, and
7 then the other is an order to pay under BPU
8 commissioner's order of June 20.

9 The latter is denied because I simply,
10 number one, am not ready to dispose of the assets
11 of Jersey Sanitation, or number two, to prefer your
12 claim, however valid it may be, to what other
13 valid claims may come in competition for the same
14 funds, and especially against the Spill Fund.

15 The application to intervene is denied
16 without prejudice.

17 If it comes to the point where I'm going
18 to be divvying up assets of Jersey Sanitation,
19 there will be sufficient notice to you and every
20 other creditor of the company so that you can
21 participate on what I conceive to be the proper
22 basis, which is a creditor like everybody else.

23 So that your application is denied.

24 Number two with prejudice and number one without.

25 Now, Mr. Pisacane, I haven't seen too

1 much on paper from you.

2 MR. PISACANE: No, judge. There's nothing
3 to put on paper for you.

4 I did have the meeting on the 29th, but
5 I come to report to you, judge, as to what the
6 status of the corporation is.

7 THE COURT: I would have liked it from
8 someone with personal knowledge and perhaps under
9 oath.

10 MR. PISACANE: If that's what your honor
11 wants, judge, I'll submit a certified statement
12 from the accountant. But we can't be doing all of
13 these things at the last moment because we have
14 problems with paying these people also.

15 THE COURT: The last moment?

16 You asked for an adjournment, and you
17 got one.

18 MR. PISACANE: To the 29th. I had a
19 meeting then. But with the problems that we have,
20 judge, who is going to pay the people to make
21 these certifications?

22 THE COURT: Mr. Pisacane, what I have
23 done is delay acting on what seems to me fairly
24 sensible application to appoint a receiver for the
25 company, and then in order to avoid doing that and

1 involving the necessary judicial time and expense
2 to the stockholders and everybody else involved,
3 I thought a more orderly way of doing it might be
4 useful.

5 But that requires cooperation from
6 Jersey Sanitation, and if I don't get it promptly
7 and fully, I'll appoint a receiver, and then I won't
8 have to worry about it anymore.

9 MR. PISACANE: With all due respect to
10 the court, would you like me to report to you, and
11 then I will do exactly what your honor requests.
12 I will tell the shareholders and the directors that,
13 but may I take the time to give you a picture what
14 is here?

15 THE COURT: Do it very briefly. I don't
16 want a lot of factual detail while you're standing
17 on one foot.

18 MR. PISACANE: Very briefly, judge.
19 There is no more business for Jersey Sanitation.
20 They have a building that has a mortgage on it,
21 and then they have five trucks. Those are the
22 assets, okay?

23 Those are the assets of Jersey Sanita-
24 tion, period.

25 They've paid all the on-going bills.

1 There are some creditors which you ordered not to
2 be paid, and they haven't been paid.

3 There's general creditors like Global.
4 Global is one.

5 There's two fines that haven't been paid.
6 One is a federal fine for a federal conviction for
7 thirty thousand dollars, and the other one is a
8 State anti-trust one for fifty thousand dollars
9 that hasn't been paid. Those are the two.

10 Jersey Sanitation has approximately
11 thirty-five thousand dollars in its account now.

12 Now, what I would like to recommend to
13 the court is that we can probably sell that
14 building, judge, and probably sell the trucks.

15 What I would like to be able to do is
16 to sell the assets and deposit all the money in
17 court, pending our appeal in this matter.

18 But the only dilemma in that is that,
19 of course, there is a mortgage on the building,
20 and then it is the approximate value of around
21 eighty thousand dollars, which I believe is left
22 on the principal.

23 What I would like to do, if the State
24 agrees to it, to allow that mortgage to be paid
25 and to deposit the money in court.

1 Now, if that --

2 THE COURT: I don't understand that.

3 Allow it to be paid and deposit the money in court?

4 MR. PISACANE: You can't sell the build-
5 ing unless you pay the mortgage, judge. Who is
6 going to buy the building without the mortgage
7 being paid?

8 That's the dilemma. If that isn't done,
9 judge, we have a building and we have trucks.

10 THE COURT: You are not talking about
11 on-going mortgage payments. You're talking about
12 paying off the mortgage at the time that the
13 building is sold.

14 MR. PISACANE: That's correct.

15 THE COURT: That's very sensible.

16 MR. PISACANE: I don't think that a
17 receiver is a good alternative because it's only
18 spending more money that may eventually come
19 back to Jersey Sanitation shareholders or to the
20 State because there's nothing really there to
21 manage, except if a person isn't put there to
22 watch that building and watch the trucks, there
23 will be vandalism.

24 THE COURT: Where is this building?

25 MR. PISACANE: East Brunswick, judge.

1 There will be vandalism.

2 Now, during the on-going appeal, what's
3 going to happen to the insurance that has to be
4 paid on the building in case of fire? Liability
5 insurance also.

6 THE COURT: Well, disposing of the
7 building and the truck is a very good idea. One
8 way of doing it is to let the corporation do it,
9 and another way of doing it is to allow a person
10 directly responsible to the court to do it.

11 MR. PISACANE: Right. We have had
12 people who are interested, outside people who are
13 interested in the building, and then, as a matter
14 of fact, we had the building for sale, as I told
15 your honor, prior to this judgment that was
16 entered, and we have had offers of sale.

17 We have had an offer of sale for two
18 hundred forty thousand dollars for the building,
19 which I think is a reasonable price.

20 Of course, when I say "we", the share-
21 holders, excluding Albert and Conlon, the share-
22 holders of Jersey Sanitation have something to
23 preserve here, too, because we feel that -- they
24 feel if they're successful on appeal, that's their
25 assets. That's monies for them.

1 So I think that we have a mutual inter-
2 est with the State in regards to preservation of
3 these assets right now.

4 And for the question of the mortgage
5 being paid, judge, that's the problem. Of course
6 we have another problem. The State has never made
7 the mortgagor, the bank, a party to these proceed-
8 ings.

9 And since they are not a party to the
10 proceedings, and they haven't been heard, we can't
11 control their actions and what they're going to do.

12 That's another dilemma that I present to
13 the court. So we really don't know what to do,
14 judge, and that's the problem.

15 THE COURT: Miss Jacobson?

16 MS. JACOBSON: One of the things that I
17 am concerned with is the status of the first lien.

18 Your order gave the spill fund first lien
19 on all real and personal property of Jersey
20 Sanitation.

21 I hate to think of the legal ramifica-
22 tions in light of the mortgagees and so forth in
23 this kind of a situation.

24 THE COURT: Fun, isn't it?

25 MS. JACOBSON: I would not be prepared to

1 let you know our position finally on that point
2 now. Under the statute, and under your order,
3 we have the first-- we have the first lien.

4 THE COURT: Okay. Well, look, Mr. Pisa-
5 cane makes sense in this respect. It's in no one's
6 interest to have the physical assets of Jersey
7 Sanitation sitting there and deteriorating, not
8 used, the building not occupied.

9 That's a serious problem.

10 MS. JACOBSON: I would agree with that,
11 yes.

12 THE COURT: Are there any liens on the
13 trucks?

14 MR. PISACANE: No, judge. And we can
15 sell those trucks. We have had offers for sale
16 of those trucks.

17 THE COURT: All right. The trucks are
18 one thing. Trucks and money and desks and type-
19 writers and things like that are one thing. They
20 can be disposed of probably as expeditiously as
21 possible by the company itself.

22 I would think that someone would want to
23 take a very hard look at each sale to see whether
24 or not the State is satisfied that full value is
25 being gotten for the trucks or whatever else is

1 being sold, and that can be done, either by having
2 a court officer conduct the whole business or by
3 letting them do it, which might be simpler,
4 certainly cheaper for everybody, and then with the
5 State and Jersey Sanitation agreeing on some
6 mechanism so that each sale is subject to notice to
7 the State, and then the State can have an oppor-
8 tunity to run in here and say hey, they can't sell
9 that truck for three thousand dollars, especially
10 to his mother-in-law.

11 MS. JACOBSON: I think that that would be
12 agreeable to us, as long as if problems develop
13 with that procedure, our motion for receiver
14 could be renewed in the future.

15 THE COURT: Okay. But I think that you
16 have got to set up a detailed way of administering
17 this. Whatever seems sensible between the two of
18 you, I'm sure that would be all right with me.

19 The major problem is going to be the
20 one that counsel mentions, and that is if the
21 building is going to be disposed of, how do we
22 convince the mortgagee, whom I assume is an insti-
23 tutional mortgagee?

24 MR. PISACANE: Yes, it is, judge.

25 THE COURT: That it ought to give a

1 release of the mortgage without getting paid.

2 Now, that may take some convincing. It
3 may well be that given all the circumstances, the
4 State could convince the court that everybody,
5 including the mortgagees' interests, are best
6 served by selling the property and holding at
7 least -- strike that.

8 Holding all of the proceeds in escrow,
9 and the claims of the State and the stockholders
10 and the mortgagees and all the rest be subsequently
11 adjudicated.

12 The mortgagee would have to be made a
13 party, and then we get into that whole problem
14 about mortgages in existence prior to whatever.

15 How old is the mortgage?

16 MR. PISACANE: Well, when we bought out
17 Conlon, as I indicated-- well, I guess it is three
18 years old.

19 THE COURT: A couple of years old?

20 MR. PISACANE: About three years, judge.

21 THE COURT: Before or after the Spill
22 Fund enactment?

23 MR. PISACANE: It was in '79.

24 THE COURT: There's another one of those.

25 MR. PISACANE: Ex post facto.

1 THE COURT: We're still wrestling with a
2 few of those. So I suppose -- who is the
3 mortgagee?

4 MR. PISACANE: Valley National Bank of
5 Passaic. I would think that they would want to
6 have something to say about that. I've told
7 them already about the proceedings.

8 THE COURT: I'm sure they're happy to
9 hear about that.

10 MR. PISACANE: They're waiting to be
11 served with some sort of papers.

12 MS. JACOBSON: Your honor, it seems
13 sensible to me to attempt to have the company sell
14 the assets and place them in the escrow account as
15 they indicated.

16 I would like there to be some written
17 agreement, though, between the two of us.

18 THE COURT: I think that you should have
19 it.

20 MS. JACOBSON: Which we will submit.

21 THE COURT: See what you can do. I do
22 think that there are certain large areas in which
23 the company's interests and the State's interests
24 happen to coincide, and the maximization of the
25 assets may be the most significant of those.

1 But you do have to get that bank in,
2 I'm sure, and you may also want to ask Jersey
3 Sanitation if you could take a look at the books
4 and records and things to see whether or not
5 there's been any disposition of assets over the
6 last years.

7 MR. PISACANE: For the last years?

8 THE COURT: Year or so.

9 I'm not making a ruling. I'm suggesting
10 that she may raise an inquiry.

11 MR. PISACANE: I'm trying to think what
12 this would have to do with this.

13 THE COURT: Frankly, five trucks doesn't
14 sound like a lot of trucks for Jersey Sanitation.
15 That's what brought it to mind.

16 MR. PISACANE: Two trucks used to be in
17 South Amboy and two in East Brunswick, and two
18 for Franklin Township.

19 THE COURT: Two trucks over the whole
20 township?

21 MR. PISACANE: That's correct.

22 THE COURT: I filled up half of those
23 last Thursday. That's amazing.

24 MR. PISACANE: I'm not in the garbage
25 business.

1 THE COURT: I'm in the garbage-producing
2 business in my house. We do an incredibly good
3 job for your clients.

4 MR. PISACANE: It was a good company up
5 until 1973 when certain people became involved in
6 it.

7 THE COURT: Who will remain nameless.
8 See what the two of you can do about
9 disposition of the non-real estate assets. And
10 then I would think that if the State agrees to let
11 Jersey Sanitation dispose of the building subject
12 to its review and possible hollering here about the
13 price and terms, you're going to have to come back
14 and then do a little wrestling match with the
15 mortgage about how to dispose of it without paying
16 them all.

17 MR. PISACANE: There's another problem
18 which I want to draw your attention to because I
19 don't want the court saying to me later that why
20 didn't you know that, and that is that our bank
21 account is with Valley National Bank, and that
22 thirty-five thousand dollars is in that bank and
23 then, we've notified them of our problem, and then
24 it's their attitude, I understand, to just let
25 the money sit there.

1 THE COURT: That's good.

2 MR. PISACANE: That's what they told me,
3 the president of the bank. He's going to let the
4 money sit there.

5 THE COURT: I take it that you are
6 telling me that they have the right to draw on
7 that account?

8 MR. PISACANE: All banks do, judge,
9 under those agreements.

10 THE COURT: Yes. Thank you.

11 MR. PISACANE: They told me so far they
12 won't.

13 THE COURT: Well, that's something that
14 someone may wish to bring officially to my atten-
15 tion, too, for some relief.

16 These things don't get easier.

17 MS. JACOBSON: No, they certainly don't.

18 THE COURT: Absolutely don't.

19 What else can we do today?

20 MR. PISACANE: I have one further prob-
21 lem, judge. The order that I understand that you
22 signed does not indicate that it is a final
23 judgment.

24 THE COURT: It is not.

25 MR. PISACANE: Well, you had indicated

1 that to me in open court so that I may appeal as
2 of right, and that you would consider this as a
3 final judgment.

4 THE COURT: I don't recall saying that,
5 but I'll look at the record. I'll take a look at
6 it Monday.

7 MR. PISACANE: I'll submit an amended
8 order if your honor agrees with it.

9 THE COURT: Give me a call Monday
10 afternoon.

11 Anything else?

12 MR. PISACANE: One further thing, judge.

13 It is very unpleasant for lawyers to
14 discuss, but since Jersey Sanitation assets have
15 been frozen, will the court allow my fees to be
16 paid by those assets?

17 THE COURT: Miss Jacobson, how do you
18 feel about that? We're litigating with someone
19 right now who can't pay his lawyer.

20 MS. JACOBSON: I'm sorry, I missed that.

21 MR. PISACANE: I asked to be paid from
22 the assets of Jersey Sanitation.

23 MS. JACOBSON: I guess he's no differ-
24 ent from any other creditor. Does he get any
25 preference to Global and the Spill Fund? I don't

1 know. I don't see why.

2 MR. PISACANE: The problem that we have
3 here is that you are making the defendant indigent,
4 and then by not allowing his attorney to be paid,
5 and, of course, I won't work without being paid,
6 like any other attorney, and that's the dilemma
7 that we're in.

8 THE COURT: I frankly don't know what
9 to do about that.

10 My original idea of appointing a receiver
11 would have solved all of these interesting problems.
12 I don't know how I could do that.

13 MR. PISACANE: I would be willing to
14 submit affidavits of services to the court for
15 approval.

16 THE COURT: I don't know why I should
17 prefer you to the Spill Fund. I don't know how to
18 do that. I understand your problem. I feel for
19 you, but I don't know how to do that.

20 MR. PISACANE: Well, in your honor's
21 last order you indicated that you would keep the
22 status quo, except for the mortgage, and then
23 pending appeal.

24 And then you are not keeping the status
25 quo pending appeal if Jersey Sanitation is not

1 allowed to pay their attorney to make the appeal.

2 I have another suggestion, and I don't
3 think that the State will go for this, if we are
4 not allowed to pay me, and then the individual
5 remaining shareholders have to come up with out of
6 their pocket to pay me on appeal, and if we are
7 successful in appeal, would the State be willing
8 to indicate that they will be responsible for the
9 payment of all of those monies from the people
10 personally?

11 THE COURT: That would be a new world
12 series record.

13 MR. PISACANE: Just a suggestion.

14 THE COURT: I like it, but I don't think
15 so. Let me think about that one.

16 My initial reaction is that I know of
17 no authority to do that.

18 Miss Jacobson, what is your view on that
19 one?

20 MS. JACOBSON: As I stated earlier, I
21 don't see the difference between Mr. Pisacane's
22 bills and Global's bills.

23 THE COURT: Well, there's something a
24 little bit troublesome about the mere fact that
25 the State asserts the first lien and the court

1 feels, at least at this stage, that that assertion
2 is valid, and then prevents the defendant from
3 litigating it.

4 There's something wrong with that, and
5 it doesn't feel quite right. Let me think about
6 that one.

7 MR. PISACANE: All right, judge.

8 THE COURT: I'm sympathetic with your
9 problem. I'm sympathetic with Jersey Sanitation's
10 problem.

11 It should not be left in a situation
12 which it simply can't assert what may be valid
13 appellate rights.

14 I don't think so; otherwise, I wouldn't
15 have ruled against you, but I was once wrong
16 before. Let me think about that.

17 MR. PISACANE: Thank you, judge.

18 MS. JACOBSON: Your order had indicated
19 that Jersey Sanitation would submit basically what
20 their assets were for dissolution, and I would
21 appreciate having that.

22 THE COURT: I still think that you
23 ought to do that.

24 I think by the middle of next week you
25 ought to do that.

MR. PISACANE: That I can do.

THE COURT: Copy to me and copy to

Miss Jacobson.

MR. PISACANE: Thank you, judge.

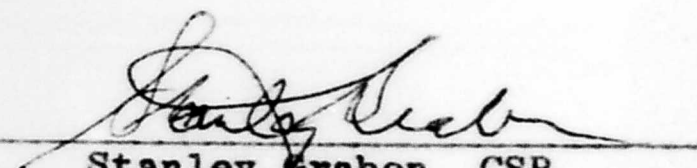
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CERTIFICATE

I, STANLEY GRABON, an official court reporter and notary public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of proceedings as reported stenographically by me at the time and place aforementioned.


Stanley Grabon, CSR
Official Court Reporter

NEW FOLDER BEGINS