



SOLID WASTE

For more than 14 years, Riker Danzig has provided legal counsel concerning solid-waste matters to a variety of clients, including private concerns and an authority. These matters often include issues related to regulatory law, hazardous waste laws and waste disposal laws, among other environmental laws. We served as counsel to the subsidiary of Wheelabrator Environmental Systems Inc. that developed the successful Gloucester County New Jersey resource waste-to-energy facility. We represented Wheelabrator before the New Jersey Board of Public Utilities (BPU) to establish a regulatory framework for oversight of single asset waste-to-energy facilities developed under private initiative. With the assistance of experts, we sponsored a unique process whereby the evaluation of the reasonableness of the facility's rates was based upon the review of the 20-year economic life rather than upon rate base and expenses at any particular point in time. The BPU adopted our analysis in its Generic Order issued on February 22, 1984. The firm also assisted Wheelabrator and the county in successfully defending against a legal challenge to the county plan amendment that included the proposed facility site. In addition, we handled the real estate work associated with the purchase of the site.

Subsequently, the firm assisted in negotiating and securing BPU approval of the financing arrangements related to the facility and in dealing with the New Jersey Departments of Environmental Protection and Transportation to secure necessary permits and approvals. We also negotiated and secured approval of the host community benefit agreement. Finally, the firm negotiated the stipulation that resulted in a BPU rate order for the facility. The firm continues to represent Wheelabrator before the Department of Environmental Protection (DEP) in matters relating to rates and interpretations of the Air Permit and to advise the company with respect to such matters as mixed waste flow rules and other DEP rulemaking proposals. In 1992, we represented Wheelabrator in an appeal that resulted in a reported decision affirming the rights of a franchise holder to solid waste generated in its franchise area, *Morris County Transfer Station v. Franks Sanitation, Inc.*, 260 N.J. Super. 510 (App. Div. 1992). In 1995, we represented Wheelabrator in a waste flow enforcement proceeding against a hauler violating Wheelabrator's franchise.

We also represent subsidiaries of Ogden Projects, Inc. that operate the Warren County and Union County waste-to-energy facilities, assisting them in matters pertaining to A-901 approvals and McEnroe approvals before the DEP

and litigation in federal court with respect alleged violation the Air Permit at Ogden's Warren County waste-to-energy facility.

Our experience goes well beyond waste-to-energy facility implementation. Since 1987, we have represented the Cumberland County Improvement Authority in connection with securing regulatory approvals associated with the authority's landfill facility, which opened in October 1987. In those proceedings, we secured approval from the BPU of a new rate structure that included Cell Replacement and Equipment Replacement Funds. These funds provided a "funded depreciation" under which cash is collected in advance for the anticipated costs of adding new cells to the landfill and for purpose of replacing equipment. The concept enables the public entity, which is not operating for a profit, to accumulate the monies needed to build each successive cell or to purchase replacement equipment without the need of continuously seeking access to the bond markets to sell relatively small amounts at relatively high cost. We assisted the authority in drafting the rules and regulations for its landfill facility, drafted its tariff and convinced the BPU to grant a franchise to the authority. In 1991, we secured an emergency interim rate increase for the authority landfill. We also secured BPU and DEP approvals of long-term financings of the authority. We continue to represent the authority in various solid waste matters.

We represented a subsidiary of Chambers Development Company, Inc. (now U.S. Waste Services Inc.) in Morris County, which constructed and operates two state-of-the-art transfer stations. We successfully defended the subsidiary against six lawsuits brought by various parties, covering a range of issues from the validity of the Master Performance Permits of the transfer stations (*Mount Olive Tp. v. D.E.P.*, 225 N.J. Super. 94 (App. Div. 1988)) to allegations that the bid laws were not complied with in connection with the lease of public land for transfer station activities and has secured BPU and DEP approvals of rates. In so doing, we negotiated a Settlement Agreement and Amendment to Settlement Agreement with the County of Morris and others on behalf of the client, and secured approval of the latter from the DEP in 1991 and subsequently an amended settlement agreement. We represented the Chambers subsidiary in its efforts to assist the county and its Municipal Utilities Authority in securing approval from the DEP of a second amended settlement agreement. We also represented Chambers Waste Systems of N.J., Inc. in litigation concerning contamination and clean up of a site purchased from a prior owner who failed to disclose these conditions. We successfully represented Chambers in a recent appeal before the Third Circuit, involving a lawsuit alleging that the Passaic County Utilities Authority breached its long-term disposal contract with Chambers. The court reversed the District Court's finding of summary judgment against Chambers, and directed the parties to proceed with fact discovery. Although the firm was brought into the case at the appellate stage, we have now been asked to serve as lead counsel in the litigation.

In December 1992, Peter N. Perretti, Jr. was appointed trustee over seven Union County solid waste collection companies that were the subjects of a civil forfeiture proceeding. Assisted by Edward K. DeHope, as trustee's attorney, Mr. Perretti successfully monitored the operations of these haulers until the last of the civil forfeiture

actions in which they were involved ended in December 1993.

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