

ML - Dept. of Health v. Jersey City

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5/9/86

Transcript of Oral Opinion

ML 0007075

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: MORRIS COUNTY
DOCKET NO. C-3447-87

DEPARTMENT OF HEALTH, :
STATE OF NEW JERSEY, :
 :
Plaintiff, : Stenographic Transcript
VS : of:
CITY OF JERSEY CITY, : ORAL OPINION
-----X

DATE: May 9, 1986
PLACE: Morris County Courthouse
Morristown, New Jersey

B E F O R E: HON. JACQUES H. GASCOYNE, J.S.C.

TRANSCRIPT ORDERED BY: Office of the Public Advocate

DEBORAH A. NUTTING, C.S.R.
OFFICIAL COURT REPORTER
MORRIS COUNTY COURTHOUSE
MORRISTOWN, NEW JERSEY

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THE COURT: We now come to a decision by the Court with reference to what conditions the Court could impose in lifting the sewer ban, because as of today the sewer ban will be lifted.

As I have expressed on many occasions, it would be inconceivable to just lift the sewer ban and say go at it fellows. Just would not make any sense simply because it would defeat the very purpose for which the new plant has been built.

By that I mean this: A primary purpose, as far as the plant was concerned, was to take care of health hazards, number one. There is no question that that must be of concern to the Court because it was on this representation that approval ultimately was received.

I think it might be appropriate if I reviewed briefly the various suggested plans that the Court should put in operation. After I had an opportunity to speak to Mr. Sirota, and I have to all very much in candor put on the record that I searched or caused a search to be made of his records.

I recall having read them, but I did not

1 recall specifically what Rockaway Township
2 recommended to the Court. And as a result of my
3 conference with him at side bar, he refreshed my
4 recollection. And Mr. Sirota, you have my
5 permission to interrupt if I misstate what
6 Rockaway Township recommended.

7 It was Rockaway Township's recommendation
8 that allocation be made to take care of health
9 hazards. And then the rest be on a first come,
10 first serve basis.

11 As a result of my review of that
12 proposal, I came to the conclusion that this
13 would put Rockaway Township in an unfair
14 advantage over the other municipalities because
15 based on the statistics that I have before me,
16 it's aparent that Rockaway Township at this
17 juncture could utilize every gallon that is now
18 available. I, therefore, reject that particular
19 plan.

20 The second plan that I want to review
21 this afternoon is the plan as submitted by the
22 Public Advocate's office. I am probably going
23 to spend more time on this aspect than on any
24 other aspect simply because of the volume
25 contained in the Public Advocate's brief.

1 The first and foremost the Public
2 Advocate suggests that 2 million gallons be put
3 in reserve to take care of Mount Laurel
4 obligations of the various municipalities. I
5 reject that argument. I reject it basically for
6 two reasons, and then I'll detail it at greater
7 length as I proceed.

8 Number one, it ignores the fact that to
9 do that I would have to deprive three
10 municipalities of gallonage that are not the
11 subject matter of any Mount Laurel litigation.
12 Number one.

13 Number 2, and the one that bothers me
14 more than perhaps that, is the fact that we've
15 been operating ever since I took over some 13,
16 perhaps 14 years ago, on the proposition that
17 there would be waiting lists created in each
18 municipality. This went into effect long prior
19 to the last release by the Court of gallonage
20 for distribution to the municipalities.

21 If I were to adopt the Public Advocate's
22 recommendation, obviously, the people who have
23 been waiting would be deprived of any use of the
24 gallonage. I don't mean all of them. The vast
25 majority. And what I've been doing now over the

1 years would become absolutely meaningless.

2 I think if anybody has "a vested right,"
3 it should be the people who have waited the
4 longest. We have been operating on the
5 proposition that two groups had vested rights.
6 One we took care of quite a few years ago.

7 Those are the ones who had -- let me
8 backtrack. That involved developers. Who had
9 development in progress at the time that the ban
10 went into effect in August of 1968. And had in
11 response to the requirements in essence provided
12 parts of the sewer system.

13 The second group were the ones who -- and
14 this continued right up until the present --
15 who presented health hazards. So that as far as
16 gallonage is concerned, there were only in
17 essence two groups who had vested rights, and
18 that was taken out of the Court's reserve.

19 As we progressed, others qualified to go
20 to the Court's reserve. Such places as
21 hospitals, nursing homes, etcetera. Randolph
22 and Denville both came in with reference to
23 obtaining gallonage not only as far as
24 Denville's expansion of St. Claire's but also
25 for the housing for the elderly.

1 So we've been able to maintain a certain
2 amount of flexibility but a very limited amount
3 of flexibility because I had to adopt a policy
4 that restricted all new construction. The only
5 new construction that would qualify were those
6 who had vested rights as I've already described.

7 Let me go over the Public Advocate's
8 brief pretty much step by step. The Public
9 Advocate argues before me that the RVRSA owes an
10 obligation, just as the municipalities do, to
11 protect the rights of lower income persons under
12 the Mount Laurel decision.

13 I don't read either Mount Laurel I, II,
14 or III that way. The way I read Mount Laurel is
15 that the municipalities, because they have the
16 right to zone, have this obligation. The Public
17 Advocate points out to me that in certain
18 instances some of that has been applied to sewer
19 authorities.

20 Those cases, or that case, is clearly
21 distinguishable from what I have before me. In
22 essence what I have before me is sui generis. I
23 don't know of any sewer ban or any ban that has
24 lasted the length of time and had the problems
25 that this particular ban had.

1 I defy anyone to find anyone, any case
 2 where a sewer ban has been in effect for almost
 3 18 years. I defy anyone to find the trials and
 4 tribulations that the Authority has had to go
 5 through in order to get this plant built.

6 What I've just said perhaps acts as a
 7 preface to what I will touch upon later on. The
 8 Public Advocate argues that the low income
 9 should have priority over every other aspect of
 10 the society.

11 At the risk of sounding like I don't
 12 agree with the Public Advocate's position that
 13 something should be done about low income
 14 housing, I'm not involved in that. It's a
 15 concept that I think that if you'll examine the
 16 record, I enunciated long before Mount Laurel I
 17 was concerned.

18 Just so that the record is perfectly
 19 clear, I sat on prerogative writs in this county
 20 for almost 15 of the 18 years that I've been on
 21 the bench. Harding Township happens to be the
 22 case. I see some nodding of heads. You know
 23 exactly what I'm talking about. Because I
 24 knocked down Harding Township's zoning ordinance
 25 on the basis of exclusionary zoning. And this

1 was on the same premise long before
2 Mount Laurel I ever came down.

3 So that at the risk of saying that no
4 consideration or being interpreted as saying no
5 consideration should be given with reference to
6 the low income people, I feel that, yes,
7 consideration must be given, but not on a first
8 priority basis.

9 I feel that as far as people who have
10 been waiting, for example, are concerned,
11 certainly, they've undergone deep deprivation as
12 severe as the people who have been deprived of
13 housing. These people have not been able to
14 develop their lands. Some of it undoubtedly
15 will be developed along a line that may in some
16 instances, although not all, qualify for the low
17 and medium income obligations.

18 This now brings me to CP-1 applications.
19 As far as the CP-1 applications are concerned or
20 approvals are concerned, the Public Advocate
21 argues before me that the CP-1 application
22 should not be vested. I don't understand the
23 CP-1 to be that way.

24 I understand pursuant to statute, and
25 don't hold me to this, that once you've received

1 approval that it's good for a period of two
2 years. Whether you want to call this as vested
3 or quasi vested, be my guest, but at least it's
4 vested for a two-year period if that's the
5 correct statutory period.

6 So I feel that insofar as any
7 municipality has approval of CP-1 they have to
8 have a priority as well. To do otherwise would
9 put those developers, those municipalities in a
10 position where I could well have an equitable
11 estoppel.

12 They've gone forward in anticipation and
13 in reliance on the issuance of the CP-1
14 approval. So that from my point of view, it
15 would seem to me that certainly some
16 consideration must be given to those who have
17 received CP-1 approvals.

18 The Public Advocate argues before me that
19 effectively what I will be doing if I don't
20 recognize and allocate the 2 million gallons for
21 low income housing, that I will in essence be
22 precluding any such development. This is just
23 not so since as I understand it that some of the
24 municipalities have proceeded with their CP-1 in
25 developing areas that may well fall within the

1 category of developability with reference to
2 meeting the Mount Laurel obligations.

3 To put it another way, one of the things
4 that troubled me is that in essence I would not
5 be leaving the fulfillment of Mount Laurel
6 obligations up to the municipalities if I were
7 to follow the Public Advocate's recommendation.
8 That would be up to the RVRSA or to this Court.
9 I don't conceive Mount Laurel to indicate that
10 it should be left up to the RVRSA to determine
11 whether or not a certain allocation will fulfill
12 Mount Laurel obligations.

13 The municipalities are under mandate from
14 the Court to fulfill their obligation, and it
15 would seem to me that if gallonage is allocated
16 for growth as suggested by the RVRSA, certainly
17 that could be used to fulfill that obligation.

18 In the event any of the CP-1 approvals
19 covers areas that will be rezoned to fulfill
20 Mount Laurel obligations, it will be for the
21 municipality to determine that. I don't want to
22 continue in the sewer business. I've done my
23 penance. I want out. I want to make that
24 perfectly clear.

25 I think that the Public Advocate argues

1 before me correctly to put it on a first come,
2 first serve basis might well achieve the very
3 thing that the Public Advocate fears.

4 And I've already covered the first come,
5 first serve basis at least for the time being.
6 I'll get to expansion in that later on.

7 The Public Advocate accuses this Court
8 and the RVRSA of showing favoritism, and I'm now
9 referring to -- unfortunately the pages aren't
10 numbered. It's the second page after Magnitude
11 of Municipal Growth Reserve. Part of that I've
12 already covered because that refers to the CP-2.

13 One of the things that everyone has to
14 recognize as far as this Court is concerned,
15 it's very easy to say you have handled this
16 particular piece of litigation, but as a
17 concomitant with that, it must be fully
18 recognized that there has been much other
19 litigation decided because of the sewer ban.

20 Let me give you some illustrations of
21 that. I know in two municipalities, Randolph
22 and Rockaway Township, there was an attack on
23 the zoning ordinance with reference to whether
24 or not dry lines should be required. There were
25 other municipalities that were sitting on the

1 side lines as well.

2 And I ruled while sitting on prerogative
3 writs that this was fair and reasonable and
4 could be compelled of the developers because in
5 both of these areas it was anticipated, and I'm
6 going back long before we got down from 12
7 million gallons per day -- from 24 million
8 gallons per day to 12 million -- it was
9 anticipated that this area might well be an area
10 subject to sewerage. And, therefore, dry lines
11 were not unreasonable.

12 This sewer ban has had an impact on a
13 tremendous number of prerogative writs that I've
14 had to hear arising out of this particular ban.
15 This is one of the reasons in order to fully
16 appreciate exactly how I am exercising my
17 discretion or why I am exercising my discretion
18 in the manner in which I am doing, it is
19 absolutely necessary to have a full
20 appreciation, to have sat here for the number of
21 years that I've sat here, to hear the cases that
22 I've heard, to hear the reports that I've heard,
23 to review the EPA reports that I have reviewed.
24 The DEP reports that I have reviewed, the
25 various litigations that have arisen out of

1 this.

2 Wharton, for example, where we got into
3 litigation as to whether or not I would release
4 gallonage out of the Court's reserve if they
5 came up with a pilot program with reference to
6 water savers.

7 This litigation, in essence, created the
8 foundation for the BOCA Code requirements that
9 now require water-saving devises. We were the
10 pilot for that. The litigation that arose as a
11 result of an injunction over the strenuous
12 protests of Mr. Snyder I might add with
13 reference to the funds. The litigation that we
14 had to go through in order to determine what was
15 the appropriate gallonage to be allocated for
16 one-family houses, for garden apartments, for
17 townhouses, etcetera, etcetera.

18 This particular case has been the subject
19 matter, and I have not taken the time to sit
20 down and calculate the number of court hours
21 that have been put in, but I'm willing to bet
22 that it's taken more than two years full-time
23 Judge hearing nothing but this when you
24 accumulate all the hours.

25 So that with reference to those instances

1 in which pursuant to Court order, not only from
2 this Court but on appeal where this Court was
3 affirmed, the users have been -- or the
4 potential users have been required to put in dry
5 lines. Certainly to some extent rights have
6 been vested because it was initially the
7 developer who had to put out the money to do
8 this. And it was the purchaser who really paid
9 the freight so to speak.

10 Next the Public Advocate's office argues
11 that something should be done with the
12 requirement that the RVRSA do some planning
13 either with reference to the expansion of the
14 plant or with reference to alternate sources of
15 treatment.

16 I gather the Public Advocate doesn't
17 realize that this has already been done with
18 reference to the alternate. That is using
19 Parsippany. There's litigation that arose out
20 of that. And one of the things that came out of
21 that was that in order to do that, the fees that
22 the municipality would have to pay that in turn
23 would have to be passed onto users would become
24 exorbitant.

25 The reason for that is relatively simple.

1 Because the plant must dump the water into the
2 Rockaway River. So, in order to accomplish the
3 alternate source, and Parsippany is the only
4 alternate source that I can think of, it would
5 have to go down, the effluent would have to be
6 shipped down to Parsippany for treatment and
7 then returned back up to the RVRSA for discharge
8 into the Rockaway River.

9 If it weren't to operate that way, DEP
10 would have a real problem. I'll put that as
11 kindly as I can, because as part and parcel of
12 this sewer ban, and I intend to include this as
13 part of my order, DEP required a let down in the
14 Jersey City Reservoir whenever we hit drought
15 stages.

16 Why was that? In order to keep good,
17 clean water or as clean as possible flowing in
18 the Rockaway River. Which brings to mind
19 another thought as to why the need of a real
20 appreciation to sit here for these years and
21 hear this, the story about tomato plants growing
22 in the riverbed of the Rockaway River.

23 That shows how fertile the Rockaway River
24 was when the sewer ban went into effect. One of
25 the things that I observed on the opening is the

1 clarity of the water now being discharged. I
2 was invited -- they told me it was fit to drink,
3 and I was invited to sample it. And I said only
4 if you advise me that it's either vodka or gin
5 and you put an olive or an onion in it. That's
6 along the facetious line.

7 But it is only to illustrate that the
8 water now being discharged does not lend itself
9 to growing tomato plants in the Rockaway River
10 along its banks. That portion is not said
11 facetiously because one of the things I will do
12 in a few moments will clearly indicate why that
13 observation as to the tomato plants was made.

14 This Court, anticipating this very
15 problem over a year -- I think it was over a
16 year ago or a little over a year ago, stated
17 that so that the municipalities could do their
18 planning knowing full well that many of them
19 were already subject to Mount Laurel obligations
20 and that some of them might well be subject
21 to -- the rest of them would be subject to Mount
22 Laurel obligations. The only question was how
23 much.

24 This Court instructed the RVRSA to start
25 putting plans together as to what would be

1 available. The RVRSA complied with the Court's
2 request, and as you know we had three meetings
3 in which this was discussed.

4 This Court did something that's rather
5 unusual. It in essence held a public meeting so
6 that citizens who have been affected by the
7 RVRSA could have some input.

8 The Public Advocate at this time also
9 made a motion or after that, but in and about
10 this time, made a motion to intervene. This was
11 strenuously opposed by several of the
12 municipalities.

13 I permitted the intervention because I
14 felt that this Court was entitled knowing full
15 well that the Public Advocate was going to take
16 a position that this Court owed an obligation to
17 allocate so that the Mount Laurel obligations
18 could be met, granted that motion but made it
19 perfectly clear that it expected and wanted
20 answers to some of the questions that this Court
21 had.

22 One of the questions was what has the
23 Public Advocate been doing over the years when
24 we were going through the regular reduction from
25 24 million gallons per day down to what we are

1 now, 12 million gallons per day.

2 That answer was supposed to be
3 returnable -- I forget the precise date -- but
4 long before April 11, 1986 when I finally got a
5 response from the Public Advocate. To this day,
6 I had nothing before me as to what the Public
7 Advocate has done so that the municipalities
8 which it has subjected to litigation, could meet
9 its Mount Laurel obligation.

10 The closest thing I got was a letter from
11 the Public Advocate's office that came in
12 yesterday that they attended two meetings, one
13 in '79 I believe and one in '80 something.
14 Early part of '80. What went on? I don't know.

15 I have no documentation before me. The
16 Public Advocate I think to really fully
17 appreciate what went on in this courtroom over
18 the years, seems to me should have had a
19 representative here so that the Public Advocate
20 would have a more intelligent basis in which to
21 argue its position to the Court.

22 You have to be here in order to get a
23 feel for what has been going on. You can't
24 absorb this in a vacuum. It's not a matter of
25 osmosis. You have to be here. You have to hear

1 the complaints of people who beg for 150 gallons
2 so I can put a new bathroom on my house and take
3 care of my aged parents. Public Advocate never
4 showed up.

5 Unfortunately, the RVRSA and the
6 municipalities find themselves in a position of
7 being whipsawed between two State agencies, DEP
8 and the Public Advocate's office where in order
9 to do what one wants you have to defy the other.

10 Let me be more specific in that. A
11 review of all the literature, reports, etcetera,
12 that I have received from EPA, the reason for
13 ~~the cut back from 24 million gallons down to its~~
14 present size, was solely based on ecological
15 matters that the EPA and DEP found that the area
16 to be serviced by the RVRSA ecologically could
17 not and should not handle anymore gallonage than
18 12 million gallons per day for the population
19 for the growth in this area.

20 How can you take care of the growth of
21 what the Public Advocate wants on the other hand
22 with this ruling? That's what I mean when I say
23 that the RVRSA has found itself caught between a
24 rock and a hard place. If I am to accept the
25 Public Advocate's argument, as I have said, in

1 order to really fully appreciate the exercise of
2 my discretion with reference to what I've done,
3 you have to have sat here over the years. You
4 have to hear the litigation that I heard.

5 And it is for this reason as part of my
6 findings of fact I am incorporating by reference
7 everything that has arisen out of this piece of
8 litigation since its inception in August of
9 1968, some thousands of files, some hundreds of
10 thousands of pages of transcript that has gone
11 into this because unless you've sat here you
12 can't appreciate it.

13 I incorporate by reference the documents
14 that I've had to review and I hope are still
15 readily available. Although after we had four
16 file cabinets full of RVRSA files we started to
17 transfer them over to the County Clerk's office,
18 to show the volume involved in this.

19 I have to incorporate by reference also
20 the reports that were made to me by Mr.
21 Maraziti, and that is fully documented, of what
22 transpired during the course of congressional
23 hearings in Washington.

24 It has been reported to me, and I think
25 accurately, that the RVRSA has been referred to

1 as the Morris County nightmare. I think that
2 that is about as kind as you can put it because
3 it's been more than that. It's been a hardship
4 on thousands and thousands of people. I've sat
5 here and I've watched corporations go into
6 bankruptcy because of an inability to develop
7 the lands.

8 So it is for this reason that I say
9 everything that I've touched either directly or
10 indirectly is incorporated by reference. The
11 litigation I referred to, although I didn't I
12 will now, with reference to service charges
13 coming out of Randolph as a result of this.

14 Because, again, unless you've sat here,
15 and I have probably heard more than anybody, and
16 that includes Mr. Maraziti, although he's been
17 with this longer than I have, but he has not had
18 an opportunity to hear all the collateral
19 issues, the collateral cases arising out of this
20 that I've had to hear.

21 I'm sure that I -- what I'm about to do
22 anybody can accuse me of abusing my discretion.
23 If you think I'm trying to make it difficult for
24 you to prove it, you're absolutely right.

25 Because you can't have the feel for it.

1 And, unfortunately, sometimes I have a
2 tendency to get rather emotional about it,
3 particularly when you had to sit here and turn
4 people down. When you look up to heaven and
5 pray to God that you could say yes and still
6 have to say no.

7 We now come down to the question of what
8 I should do. As I said, I feel strongly that
9 nothing I do is going to please everyone. If
10 everyone is displeased then I've done a good job
11 I suppose. The plan that makes the most sense
12 to me is the one that was presented by the
13 RVRSA.

14 There is no question that there are
15 shortcomings in that plan. I don't adopt the
16 plan in toto. As far as allocation is
17 concerned, and I took a real hard look in
18 particular because initially I had trouble with
19 the CP-1 approvals. And I came very close to
20 throwing that back in the pot to have them
21 distributed among the municipalities.

22 I decided that that would be
23 inappropriate because as a result of additional
24 study, additional reading and consideration of
25 what would be the most equitable, I came to the

1 conclusion that first of all, the primary
2 consideration should be gallonage to take care
3 of the health problems. The next should be CP-1
4 because to some extent, and I honestly can't say
5 to what extent, both of these are going to run
6 hand in hand undoubtedly with Mount Laurel
7 obligations.

8 The question then comes up with reference
9 to the CP, how long a time for the utilization
10 of this gallonage. And I suppose it wouldn't be
11 limited to the CP-1's. But anything, although I
12 have troublesome times separating the health
13 problems and the health hazards from the CP-1's
14 because again there are going to be situations
15 where they overlap.

16 Mr. Buzak on behalf of Randolph and
17 Denville recommended the Year 2000. Mr.
18 Maraziti on behalf of the RVRSA recommended
19 1990.

20 In considering what would be the
21 appropriate length of time, I felt that 1990 was
22 too short a period of time with reference to the
23 CP-1's in particular. That is something that
24 you just can't accomplish overnight. I felt the
25 Year 2000 would be erring on the other end.

1 So I picked another year, not necessarily
2 in the middle, which I felt would be more
3 realistic. I picked 1993 for no other good
4 reason other than it's an odd year I suppose.

5 To say '91 wouldn't be anymore realistic
6 if I say '90 is unrealistic. And '93 seems to
7 fit into where a municipality and everyone else
8 can do what is required in order to fulfill CP-1
9 obligations.

10 I would expect that this goes beyond the
11 planning stage. By that I mean just the
12 planning for the CP-1's and the approval. I
13 would expect that by 1993 construction would
14 have been started if not completed. And it's
15 with that contingency that I select 1993.

16 If it goes beyond that time I feel that
17 the RVRSA should then hold a hearing to
18 determine whether or not any extensions should
19 be appropriate. Except for limited matters, I
20 do not and will not retain jurisdiction. I may
21 retain jurisdiction only for the purposes of
22 interpreting any order which may be entered.

23 Obviously, I have to retain jurisdiction
24 in order to see that the order is fulfilled, or
25 if the order should be modified for any good

1 cause shown I would have to retain jurisdiction.

2 So that as far as the various
3 municipalities are concerned, gallonage will be
4 distributed pursuant to the recommendation of
5 the RVRSA. As far as unused gallonage is
6 concerned, if it is unused it will revert and go
7 into a general pool which will then become on a
8 first come, first serve basis.

9 That to me makes sense because it acts as
10 an impetus for the municipalities to do what
11 they should be doing. It's sometimes referred
12 to as use it or lose it. Nobody is going to sit
13 on gallonage and deprive others of use.

8
14 As I indicated earlier, with respect to
15 the let down, I am going to require that as DEP
16 deems appropriate. As you all know there comes
17 certain times where we run into a drought and
18 DEP has deemed it appropriate to require let
19 downs on a periodic basis to assure that the
20 Rockaway River continues to flow. So that will
21 be continued in effect.

22 I -- in all honesty, I don't know whether
23 or not it's really necessary. I know Mr. Snyder
24 requested it in his paper, and I can see no good
25 reason why the request of DEP, and I feel DEP

1 might well have the authority to do it, but why
2 I shouldn't implement it and save the potential
3 of any additional litigation.

4 In other words, I'll obviate the
5 potential of any future litigation in that
6 regard.

7 I think that covers everything except one
8 thing that was raised by Mr. Sirota in his
9 letter of April 8, 1986. And just so you
10 understand what I did, Mr. Sirota yesterday --
11 no, it was actually Wednesday I called Mr.
12 Maraziti with reference to this. He called me
13 back yesterday to discuss this letter. Because
14 I didn't know what the respected positions were.
15 In other words, I didn't know whether or not Mr.
16 Maraziti agreed with your position or disagreed
17 with your position.

18 He indicated to me that with reference to
19 Paragraphs 5 and 6, that totals 74 thousand
20 gallons, he agreed with Rockaway Township's
21 position. So those will be added to Rockaway's
22 allocation.

23 With reference to Paragraphs 1, 2 and 4,
24 he said that there was still a dispute between
25 the RVRSA and Rockaway Township. I have,

1 therefore, set those for hearing June 6, 1:30,
2 which I hope will be the last time for any RVRSA
3 litigation arising out of the sewer ban.

4 With reference to Number 3, that may not
5 be included. That will not be included simply
6 because you do not have, as I understand it, any
7 CP-1 approvals for these particular ones.

8 I can see no reason why Rockaway Township
9 should be given additional advantage with
10 reference to the contents of Paragraph 3 in
11 light of that. Now, if you do -- if Mr.
12 Maraziti is wrong and you do have CP-1's for
13 those, I'll back off and hear you at the same
14 time.

15 Now, obviously, I haven't read each and
16 every paragraph, but I've referred to the
17 paragraphs. If there's any question, Mr.
18 Sirota, you're free to step up later and take a
19 look because I have side notes that would
20 indicate what is on for hearing, what is not.

21 All right. Are there any questions with
22 reference to the Court's oral opinion?

23 MR. SNYDER: So with respect to the let
24 down, your Honor decided to accept the position
25 advocated by DEP?

1 THE COURT: I sure did. If for no other
2 reason in order to avoid additional litigation.
3 It would seem to me as I already indicated that
4 DEP would have the authority to order it. But
5 I'm not -- I'm not that sure of it. So why get
6 into a legal argument when I can just as easily
7 take care of it now.

8 Mr. Einhorn.

9 MR. EINHORN: Question your Honor. In
10 reference to the unused gallonage, I'm assuming
11 that would mean the gallonage which is not used
12 by 1993.

13 THE COURT: That's right. Will
14 revert -- if you don't use it it will revert
15 back to the RVRSA. If there are no extensions
16 granted, and then that will go into the pool or
17 the pot, whatever you want to call it, on a
18 first come, first serve basis.

19 MR. EINHORN: Two other questions, sir.
20 As I understand it, the recommendations, the
21 amounts of gallonage for each municipality has
22 been adopted by the Court?

23 THE COURT: Just so you understand the
24 reason for that, it's the only thing I have
25 before me that indicates with any specificity --

1 MR. EINHORN: I just want to make sure
2 what you said.

3 THE COURT: --as to what the
4 municipalities have reported as the needs.

5 MR. EINHORN: It will be an amount of
6 gallonage for the RVRSA in which they can take
7 care of health problems as they see them or will
8 that be up to each municipality?

9 THE COURT: It would seem to me initially
10 it would be up to each municipality to do it out
11 of whatever has been allocated to take care of
12 health problems. If it's insufficient, the
13 RVRSA is going to be sitting in the position
14 that I'm sitting and a hearing will have to be
15 held before the RVRSA to see whether or not
16 they'll release gallonage out of the pot that
17 they have.

18 In other words, all the gallonage isn't
19 going to go out immediately under the RVRSA
20 plan. And I would assume that the RVRSA will
21 have learned from experience that certain amount
22 of caution -- one of the things -- certain
23 amount of caution is necessary.

24 One of the things I kicked around and
25 decided not to do is, I -- I intended to order

1 at one point the RVRSA to hold either 50
2 thousand or hundred thousand gallons in reserve
3 just against the very contingency that you
4 raise. But I felt it would be more appropriate
5 to let the RVRSA do it. They're in the sewer
6 business, I'm not.

7 MR. EINHORN: One last question if I
8 might, Judge. If a particular municipality is
9 presented with an application which is regional
10 in nature, would that be one in which the
11 municipality or the applicant would be able to
12 apply to the RVRSA for relief?

13 THE COURT: I don't understand what you
14 mean by regional in nature.

15 MR. EINHORN: Hypothetically if somebody
16 comes in --

17 THE COURT: Are you looking for an
18 advisory opinion? If you are, sit down please.

19 Mr. Buzak, I think you had your hand up.

20 MR. BUZAK: The presently outstanding
21 Court orders that people have for 300 gallons or
22 whatever, do they --

23 THE COURT: They're vested.

24 MR. BUZAK: They on whatever date they
25 have.

1 THE COURT: They're vested right within
2 the time limitation as set forth.

3 MR. BUZAK: What happens if they don't
4 use it, does it go to the RVRSA or municipality?

5 THE COURT: Reverts to the RVRSA to be
6 put in the common pool. I hope that's a good
7 choice of words. Any other questions?

8 Mr. Maraziti.

9 MR. MARAZITI: Judge, do I understand
10 then that the resolution adopted by the
11 Authority has in almost all respects been
12 adopted as the Court's policy with the exception
13 of the time limitation established in that
14 resolution?

15 THE COURT: That's right. That's right.
16 Any other questions? All right. Thank you,
17 ladies and gentlemen.

18 Mr. Maraziti, will you present an
19 appropriate order, distribute it to the
20 municipalities as you usually do. I'll expect
21 it on my desk -- is the 16th a week from today
22 unreasonable?

23 MR. MARAZITI: No, your Honor. I'll
24 have it out by then.

25 THE COURT: And as far as objections as

1 to form, I will expect them by the 23rd of May,
2 one week after the order goes out.

3 All right. Thank you.

4 MR. MARAZITI: Thank you, your Honor,
5 for 15 years worth of work.

6 THE COURT: I want to supplement the
7 record. Would you hold it please? In the
8 latest case in which the Supreme Court held with
9 reference to turning these matters over to the
10 council, the Housing Council, as I read that
11 opinion, the Supreme Court held that as far as
12 sewerage is concerned that would be up to the
13 various municipalities.

14 So, I feel this way, that if anyone feels
15 aggrieved in this regard by the allocation, it
16 will go to the appropriate Mount Laurel judge.
17 And in this particular instance, as of right
18 now, Judge Skillman is it. He's still handling
19 despite his going to the Appellate Division.

20 So if the municipalities are not
21 fulfilling their obligations as I read that case
22 you go to Judge Skillman, not to me.

23
24
25

DEPARTMENT OF HEALTH, :
State of New Jersey,

VS : Stenographic Transcript

CITY OF JERSEY CITY, :

of:

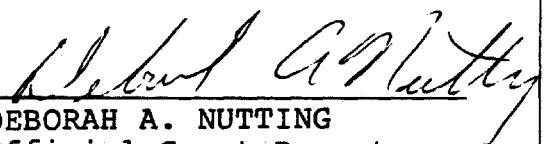
Defendant. :

ORAL OPINION

C E R T I F I C A T E

I, DEBORAH A. NUTTING, a Certified Shorthand Reporter of the State of New Jersey, certify the foregoing to be a true and accurate transcript of my stenographic notes.

p ss



DEBORAH A. NUTTING
Official Court Reporter
Certificate No. 959

Dated: June 3, 1986