Township of Bensalem

Joseph DiGirolamo
Mayor

October 5, 2007

The Honorable Corrine Brown, Chair
Subcommittee on Railroads, Pipelines and Hazardous Materials
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Congresswoman Brown:

Thank you for your kind invitation to testify before the Committee on Transportation and Infrastructure's Subcommittee on Railroads, Pipelines and Hazardous Materials in regard to Railroad-Owned Solid Waste Transload Facilities. As I present this testimony, such a facility is attempting to locate within the Township of Bensalem, Pennsylvania, and as the Mayor of Bensalem for the past 14 years, I know, first-hand, the impact that this proposed facility will have on my community, specifically on our plans to redevelop and revitalize our waterfront along the Delaware River.

A little over two years ago, plans were submitted to the Township for the construction of a trash transfer station. This proposed facility was to be located on property that is a little more than a thousand feet from the Delaware River, and fronts on S.R. 09001, a single-lane roadway known as "State Road." [i] To the rear of the proposed facility are the Northeast Corridor rail tracks, and the plan proposed the extension of a rail spur from those tracks to serve this facility. This proposed facility, which would accept up to 2,000 tons per day of construction and demolition debris, would be visited by up to 26 trash trucks per hour (each arriving and leaving the site) on this single-lane roadway for up to 12 hours a day (6:00 AM – 6:00 PM), with waste loading activities involving rail cars occurring for 16½ hours a day (4:00 AM – 8:30 PM). The trucks traveling to and from the trash facility are projected to haul up to 10 tons of debris each, and they will be traveling along our riverfront, past historic mansions, residential homes and the new housing, restaurants and public parks to be located within the Riverfront Revitalization District in which this proposed trash facility would be located.

As you will see and hear, the facility and its planned operations are wholly in conflict with years of planning involving our Township waterfront, and are wholly in conflict with the Township Zoning Ordinance, the Township Land Development and Subdivision Ordinance, the Bucks County Municipal Waste Management Plan and

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various Statutes and Regulations of the Commonwealth of Pennsylvania and the Pennsylvania Department of Environmental Protection.

The proposed facility was never approved by the Township, and the required permit for the facility was denied by the Pennsylvania Department of Environmental Protection. [ii] The proposed facility is at the center of appeals pending before the Township Zoning Hearing Board, the Court of Common Pleas of Bucks County, and the Commonwealth Court of Pennsylvania, and has also been the subject of a hearing before the Pennsylvania Environmental Hearing Board.

In June, 2007, the Township learned that a Verified Notice of Exemption had been filed with the Surface Transportation Board by an entity identified as J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey ("SRNJ"). This Notice of Exemption stated that SRNJ was in the process of developing a transportation terminal transloading facility located on a line of railroad in Bensalem Township, and further stated that they had an Operating Agreement and Property Lease for the very same property that is the subject of the pending trash transfer application, i.e., the site on State Road.[iii] I was told that, simply because this facility may now be owned or leased by a rail carrier, it will be allowed to locate in my community and operate almost completely unregulated, even though this facility will violate numerous State and local regulations pertaining to its operation.

As you will hear, this is not simply a case of a town saying "not in our back yard," but rather, is a disheartening and very real slap in the face to a community that has undertaken a thoughtful study of how to best redevelop and revitalize a significant natural and economic resource, our Delaware River Waterfront, and that has invested significant resources, financial and otherwise, in a redevelopment plan that is, as I speak, underway, but in danger of being completely "derailed" by the operator of this transload facility and its rail carrier partner, as they attempt to exploit existing Federal laws and do an end run around years of planning and opposition to this facility at every level of State and local government.

The Township of Bensalem is located in Bucks County, Pennsylvania. Our community of nearly 60,000 residents and 23 square miles in Southeastern Pennsylvania has approximately four miles of waterfront along the Delaware River. In the first half of the 20th century, our waterfront, much like those in Philadelphia and extending north toward the former U.S. Steel Fairless Hills Steel Works, was largely developed for manufacturing, industry, and shipping. Beginning in the 1970's, and continuing to today, our region's economy has transitioned away from heavy industry; the Fairless Hills Steel Works shut down; major industrial businesses along the Delaware Riverfront throughout Bucks County have either scaled back operations or completely shut down or relocated; and the Delaware Riverfront in Bucks County, and especially in Bensalem Township, is today little used for freight and shipping purposes. Today, few, if any, large cargo vessels ever travel to the Bucks waterfront.

Recognizing this change in the economy, and witnessing first-hand the gradual but steady loss of industry along our Delaware Riverfront, Bensalem Township began to analyze how to best redevelop and revitalize this riverfront area. As early as the Township's 1988 Comprehensive Plan, the Township stated that:

> *"The final purpose of the Proposed Land Use Plan is to recognize the Township's abundant natural resources, opportunities, and amenities, and to capitalize on these resources. The Plan proposes the development and redevelopment of the Delaware River-riverfront land, the redevelopment of the Lower Street Road Area, and the phasing out of existing heavy and light industrial zoning in portions of the industrial corridor south of I-95 and north of Station Avenue.*

The Comprehensive Plan goes on to state that:

> *"[T]he trend towards smaller family size and two-wage earner families seeking more luxurious surroundings, oftentimes in high density, high amenity surroundings is anticipated to continue.*
>
> *"A number of undeveloped sites in Bensalem Township lend themselves to this form of housing, which generally involves a mix of residential dwelling unit types, including townhouses, cluster single-family, attached and detached dwellings surrounded by substantial amounts of common open space, dining, clubhouse, and other similar types of sports and recreational facilities.*
>
> *"Also included in this category of developments are more luxurious mid-rise developments appropriately located adjacent to recreation facilities."*

Finally, our 1988 Comprehensive Plan goes on to state, as part of a detailed investigation of the area in which the trash transfer facility is proposed:

> *"This large area, located on both sides of Street Road extends from I-95 to the Delaware River. The area is locally known as the Lower Street Road Area of Bensalem Township, and it is an area with numerous problems and vast potential.*
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> *"A range of difficulties presently exist within the area, including inadequate thoroughfares with a heavy volume*

of traffic which utilizes the Lower State Road and Street Road Corridor and extreme tensions between inappropriate land uses, including residential single-family and mobile home juxtaposed to heavy and light industrial and commercial development. Other portions of the area are impacted by wetlands.

"Several large undeveloped properties exist in the industrial area which extends from the mainline Conrail/Amtrak system to State Road. To the south of State Road is located a mix of land uses which include large-lot, single-family residential development fronting on the Delaware River, a small office complex with river frontage, a light industrial trucking facility, and an aging summer resort-private country club composed of individually owned single and multi-family vacation dwellings.

"In terms of potential, this Planning Area contains strategic locational resources rarely found in an urban area. Within the Lower Street Road Corridor is the potential for riverfront development on the Delaware River within close proximity to a major East Cost regional limited access highway (I-95). Commuter rail and a passenger railroad stop exists at the Street Road Amtrak station location.

"Finally, the difficulties cited above, the street pattern, along with the condition of buildings within some portions of the district lend themselves to redevelopment and would qualify the area as a State redevelopment project should the Township elect to pursue the redevelopment of the entire Lower Street Road area.

"This entire planning area is recommended for detailed site planning with the objective of assembling land for new more intensive development purposes than presently exist. It is doubtful that the objectives of transforming land uses and providing a Delaware River riverfront development can be accomplished without public financial and land assemblage participation and precise detailed site and land use planning.

"The Comprehensive Plan suggests that the Township establish mechanisms which will provide for the public acquisition of property and the assemblage of land and provisions of improvements to the area, including street widening, thoroughfare relocation, intersection redesign, and the creation of buffer spaces between industrial and nonindustrial uses.

"The total building of Lower Street Road from the I-95 off/on ramp to State Road is recommended in the form of a landscaped urban boulevard. The rebuilding of the Street Road and State Road intersection is proposed, and the development of the land fronting on the Delaware River for mixed use office, marina, mid-rise housing, restaurant, and recreation complex surrounded by specialty shops is envisioned for the riverfront portion of the Lower Street Road Corridor.

"The development of vacant land in the area into light industrial flex space and office use is proposed and the redevelopment through public acquisition of properties in the Clive Avenue and Moore Avenue portions of this Planning Area is recommended, Along with the acquisition and reorganization of residential and Nonresidential land uses fronting on State Road.

"The achievement of the planning recommendations for this area encompassing all of Lower Street Road and portions of State Road is of vital importance to the Township since the tax ratables which are envisioned from new office mixed use and light industrial development would provide a significant stabilization of the Township's tax base.

"Only through detailed planning and the establishment of a process which will resolve the existing deficiencies in the area and capture the locational advantages which exist can the Township achieve the significant benefits of this development proposal."

In 2002, the Township updated its Comprehensive Plan. In its updated Comprehensive Plan, the Township referenced a report entitled *A Blueprint for the Future.* This Report was issued in February, 1997, by the Bucks County Economic Development Task Force, and was summarized as follows:

"One of the concerns outlined was the over-reliance on efforts at attracting large-scale industrial and manufacturing firms, many of which have left Bucks County. The new challenge is to encourage a mix of industries and commercial ventures in concert with maintaining the commitment to maintaining the County's environmental features and open space. This commitment goes hand-in-hand with the desire to revitalize abandoned and under-utilized industrial and commercial parcels throughout the County."

The 2002 Comprehensive Plan also referenced the Township's 1996 Open Space Land Acquisitions Plan, noting that, among the goals outlined in that Open Space Plan,

are the protection of critical habitats along the Delaware River and the development of strategies to create greenway corridors throughout the Township.

The Comprehensive Plan also describes the existing residential development south of the proposed trash transfer site on the Delaware Riverfront as follows:

> *"Along the Delaware River waterfront are a variety of residential uses. The southwestern corner of the Township, where Poquessing Creek and the Delaware River meet, is Salem Harbour, an upscale apartment development with a marina and recreational open space. Also near the waterfront is a mix of small close-knit communities such as Torresdale Manor, Cornwells Manor and Echo Beach. ... Torresdale Manor and Cornwells Manor provide modest single-family residences, ... [and Echo Beach] is characterized by smaller single-family residence lots. Between Torresdale Manor and Echo Beach is a large area of estates. Many of these properties were built in the mid- to late-1800s.*
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> *"A mix of residential and industrial uses characterizes the Delaware River waterfront. This area offers potential to provide a variety of housing units, both senior citizen and commuter-oriented, to take advantage of this resource and its location in the region. Any development of the waterfront must preserve existing residential neighborhoods and their existing character, which contributes to the suburban atmosphere of Bensalem."*

In referencing back to the 1988 Comprehensive Plan, the 2002 Comprehensive Plan states as follows:

> *"The 1988 Plan also recommended utilizing Bensalem's physical amenities, especially the Delaware River waterfront. The goal was to provide greater accessibility while preserving the environment and natural resources. These recommendations were designed to capitalize on the Township's location and to develop underutilized parcels in a manner sympathetic to the environment of Bensalem Township.*
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> *"Several of the issues outlined in the 1988 Plan are relevant to the present. Determining the development and redevelopment of parcels along the Delaware River waterfront is a primary issue for the Township. Bensalem also continues to have the goal of shifting the tax burden away from residential property owners to commercial development. Open space and recreation issues discussed in this Plan were cited in 1988, declaring the need to preserve the environment and natural resources along*

the Delaware River. Now this goal is relevant to the whole Township."

Under the goals and objectives set forth in the 2002 Comprehensive Plan are the following:

> *"4. The Township should encourage the preservation of open space in environmentally sensitive areas, including the Delaware River waterfront. Development that allows greater accessibility to these resources in concert with preserving the environment should be encouraged. ...*
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> *"8. Expand the existing recreation zoning district to include parks, public commercial recreation facilities, waterfront and stream corridors, greenways and other protected open space. Currently, the above land uses are scattered among various zoning districts."*

In February, 2005, the *Bucks County Waterfront Revitalization Plan* was completed and presented to the Redevelopment Authority of Bucks County, the Bucks County Planning Commission, the County of Bucks, and six municipalities that share and adjoin the Delaware Riverfront in Lower Bucks County, including Bensalem Township. The Plan was formulated following over a year's worth of meetings, interviews, work sessions and public forums, and it provides a vision, plan of action and concrete implementation steps for the enhancement of the Delaware Riverfront and adjacent land to lead to a "rebirth" of the Riverfront. As background, the Plan states as follows:

> *"The Delaware River plays a number of important roles in the lives of the waterfront communities in Lower Bucks County. It is a vast natural resource that supports diverse natural habitat and recreational pursuits. The river also has a historic and contemporary identity as a maritime and economic resource that helped to create prosperous communities and an extensive array of manufacturing and heavy industrial uses on the riverfront. In recent years, however, this industrial image of the river has begun to change. A shrinking national manufacturing sector has reduced the viability, number and intensity of heavy industrial uses, leaving behind large tracks of vacant and underutilized land – some of which may have significant industrial contamination.*
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> *"This Plan seeks to improve access to the riverfront and promote targeted economic development in the study area. The study area includes portions of Bensalem Township, Bristol Borough, Bristol Township, Falls Township, Morrisville Borough, and Tullytown Borough."*

One focus of the Waterfront Revitalization Plan is to "enliven the river's edge by increasing and improving public access to the Delaware River. One key sector along the riverfront is in Bensalem Township, from Pen Ryn Manor to the Neshaminy State Park. It should note that the proposed transfer station is located within this area. The Plan proposes the construction of a ribbon park that would include a public riverwalk, consisting of bicycle/pedestrian path and appropriate furniture and amenities along the length of the Delaware River. To date, the Township has already begun plans for such a riverwalk, including Ordinance provisions that require developers to provide space for a riverwalk within any riverfront development plan. Several proposed plans already include this riverwalk. The Plan also recommends enhanced riverfront gateways, corridors and wayfinding systems, and again, all approved or proposed plans for development of the riverfront, at this time, include local riverfront corridors for public access to the river, public parking for riverfront access and river vistas visible from State Road and Street Road in the Township. Finally, in regard to public access to the river, the Plan proposes additional community parks, open space, active recreation, public marinas and boat ramps along the riverfront Again, plans already approved or proposed to the Township include public marinas, dedicated open space and park/recreation facilities along the river's edge.

The area identified in the Waterfront Revitalization Plan as the "Bensalem Township Opportunity Area" includes the area of the proposed trash transfer facility. The Plan states, in part, as follows:

> *"This plan envisions a waterfront development stretching from the Echo Beach neighborhood to Neshaminy State Park, composed primarily of mixed residential development. Parcel consolidation is recommended and needed to implement this plan. A new 300-slip marina will be the focal point, surrounded by the mixed-use development. Special design treatments will give Street Road a "boulevard" identity. A new public park at the end of Street Road would enhance public access to the Delaware River, and a riverwalk will offer recreational access along the entire shoreline. This park concept should be incorporated into proposed developments for this area.*
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> *"This area should be redeveloped with mixed density residential units. Mixed-use office and commercial units should be located along State Road. State Road and Street Road should be remade into address streets. The recommendations under "Incorporate Design with Development" on pages 26-27 describe these address streets, architectural and height guidelines, and parcel consolidation recommendations that development in the Bensalem Opportunity Area should incorporate.*

"The Bensalem Zoning Ordinance currently provides for R-55 - Planned Residential Community District. This district appears to permit a mix of residential uses and densities. It also permits 'clubs, clubhouses, marinas, dining and lodging facilities...parking and security facilities, and such other conditional uses as may be necessary to promote the overall purpose of the R-55 district.' This district may be a good starting place for Bensalem Township, but it will need modifications.

In September, 2005, the Township followed the advice of the Waterfront Revitalization Plan and did, in fact, revise and rename the existing R-55 Zoning District to the R-55 Riverfront Revitalization District. At the same time, the Township rezoned approximately 500 acres of area along and adjacent to the Delaware River Waterfront to this R-55 zoning classification. The subject property was included in this rezoning. The rather daunting task of rezoning approximately 500 acres, consisting of over 250 different properties and tax parcels, was begun by the Township almost immediately following the issuance of the Riverfront Revitalization Plan in February, 2005, and was completed in September, 2005.

In 2006, a new Zoning District, our MXD-Mixed Use Development District, was also implemented to foster Delaware Riverfront Development. This Zoning Classification was put in place following nearly two-year's worth of study, drafting and revision, and it is being utilized today for the development of approximately 40 acres of waterfront property into the "Waterside" Project. Waterside is a great example of the redevelopment I have been speaking about. In the late 1990's, Elf Atochem closed its chemical manufacturing facility that was situated on 20 acres of Delaware Riverfront property. Bensalem Township and the Bucks County Redevelopment Authority knew that if this site was resold for industrial use, all plans for the redevelopment of the waterfront would be lost. Thanks to the actions of the Township and County, the site was purchased by Mignatti Company, who, in cooperation with the EPA, PaDEP, the County Redevelopment Authority, and the Township, among others, undertook a nearly $7,000,000.00 clean-up of this environmentally hazardous site. Mignatti obtained surrounding land, as well, and underwent a lengthy planning and approval process with the Township Council, the Township Planning Commission and the County Planning Commission. Today, they are preparing to break ground on the Waterside project, which will include approximately 500 units of townhouse and condominium housing on the Waterfront (including a seven-story mid-rise building), retail shops, restaurants, and a marina. Most importantly, the site will have all of its land on the water's edge open to the public, as approximately 10 acres of open space and greenway have been set aside on the site for public access and use.

Sadly, the Waterside site is directly across State Road from the proposed trash transfer station, and will be the greatest (though not the only) beneficiary of all the truck traffic and noise pollution the proposed facility will generate.

I should note also that in 1989, in response to Commonwealth Act 101 of 1988, the Bucks County Commissioners adopted the Bucks County Municipal Waste Management Plan. This Plan was approved by the Pennsylvania Department of Environmental Protection in March of 1991. The Plan was intended as a 10-year plan to provide guidance for solid waste management in the County. An update and revision of the Plan was begun in May, 2003, and following review and input from all of the municipalities in the County, the Plan revision was approved by the Bucks County Commissioners and by the Pennsylvania DEP in 2006. The Plan neither authorizes, nor provides for, the proposed trash transfer station, nor any similar facility, within Bensalem Township, particularly along the Delaware River Waterfront.

It is also important to note that this proposed trash facility is within 300 yards of Holy Ghost Preparatory School , in violation of restrictions set forth under Pennsylvania Statutes and the Pennsylvania Code. Similarly, while not within the 300-yard siting prohibitions of the Pa DEP, the facility is also within close proximity to the Andalusia historic homes, including the Andalusia Mansion and Pen Ryn Mansion, both of which are national historic landmarks, and to the St. Katharine Drexel Shrine, a significant tourist and pilgrimage destination on the grounds of the Sisters of the Blessed Sacrament Convent, founded by St. Katharine Drexel.

I give you all of this lengthy (and perhaps, repetitive) background to drive home the point that Bensalem Township's opposition to the proposed railroad solid waste transload facility is not a "knee-jerk" reaction, but one that results from years and years of study, planning and implementation for our waterfront, the results of which are now coming to fruition.

All of these efforts, however, suddenly face the possibility of being for naught. I am told that under the current state of the law, SRNJ and its affiliates can operate the proposed trash facility free and clear of all local and state regulation by virtue of their claimed status as a rail-carrier. The years of planning and implementation set forth at length, above, our local land use regulations, the County Solid Waste Management Plan and various Pennsylvania Statutes and Environmental Protection Regulations are, we are told, all meaningless if this rail-carrier wishes to construct the trash transfer facility that has, up to this point, been properly denied. I am not advocating any specific, pending bills or any specific amendments to existing Federal laws, but rather, I am pleading with Congress to please take whatever actions are needed to stop this "travesty of justice" from happening in, and to, my community.

It is important for me to stress that I am not, nor have I ever been, opposed to the presence of the rail facilities located in Bensalem Township. The Township and the railroads have been long and good neighbors. In fact, I am an advocate for public transportation, including commuter rail transportation.

I am the founder and President of "TMA Bucks," the Bucks County Transportation Management Association. I fought hard to maintain and continue the presence of an Amtrak stop in my Township, at the Cornwells Heights Train Station,

when it was in danger of being discontinued last year. The Cornwells Heights Station is also the site of one of the largest park-and-ride facilities in the region, and is utilized by commuters to Philadelphia, Trenton and New York City. TMA Bucks further provides "reverse commute" bus service, picking up passengers at commuter rail stations throughout Bucks County and carrying them to jobs at business parks and other locations not immediately adjacent to rail service.

Quite simply, my concern remains with changes to policies, laws and regulations that allow any entity that owns a section of track to declare itself a rail-carrier and, thus, in the process, be completely exempted from compliance with carefully thought-out zoning and land use controls and regulations in the establishment of a trash facility that will put hundreds of tractor trailers on a road that cannot handle them and will all but destroy years of planning for the reclamation and redevelopment of 500 acres of unused and underused waterfront property .

In closing, you hold the fate of my community and its residents in your hands. This is not hyperbole. Rather, it is a fact. As I have testified, years of planning are just now beginning to come to fruition, and a renaissance is underway. This reclamation, redevelopment, and revitalization of the Delaware River Waterfront is at a crossroads with the emergence of this rail-operated trash transfer facility. If it can locate in my Township, unregulated and free and clear of any zoning or land use controls, years and years of hard work will be lost. Millions of dollars of investment into the redevelopment and cleanup of contaminated lands, and hundreds, if not thousands, of man hours of study, planning and, most importantly, caring, about the future of Bensalem will have been spent for nothing. This certainly cannot be what the law intends, but it is what the law allows. Please do what ever is necessary to keep this from happening in my community, and others who face a similar fate.

On behalf of the proud residents of Bensalem Township, thank you for your kind consideration of my testimony, and for the welfare of my community.

Respectfully,

Honorable Joseph DiGirolamo
Mayor
Bensalem Township, Pennsylvania

[1] In June 2005, HJH, LLC submitted an application to the Township of Bensalem for preliminary land development, subdivision and conditional use approval of a proposed trash transfer facility to be located at

2522 State Road in Bensalem Township. A permit application for a municipal waste transfer station for this site was submitted to the Pennsylvania Department of Environmental Protection in May, 2005. A sister company, Waya Ventures, LP, was, at the time of the application for the trash transfer station, already operating a trash container business from this site without valid permits or zoning approval from the Township. The container business is, at this time, the subject of a pending appeal before the Township Zoning Hearing Board.

Based upon the testimony of the witnesses presented by HJH and the documents submitted in support of their application, it is anticipated that the proposed trash transfer facility would have construction and demolition debris brought to the facility by truck. The trucks would be weighed, would then dump their loads, and then would proceed out the same driveway they came in, exiting by the same road they came in, State Road. State Road is the only road that serves this facility, and it is located in the middle of the Riverfront Revitalization District, where at some points the road is less than 1,000 feet from the River's edge. After the construction and demolition debris is dumped, it would then be sorted and loaded onto rail cars that would be stacked on a rail spur serving the trash transfer facility, until such time as those rail cars are hauled away to their ultimate destination.

[ii] In May 2006, the Pennsylvania Department of Environmental Protection suspended review of the permit application and issued a letter to HJH as a pre-denial of its permit application based on siting criteria. This suspension was tantamount to a denial of the permit, and the suspension was appealed by the property owner to the Pennsylvania Environmental Hearing Board. At the hearing before the Pennsylvania Department of Environmental Protection, the Township opposed the issuance of a permit to HJH because of the impact it will have on the Township. Among the reasons cited was the fact that the proposed facility is located within 300 yards of a school, park or playground, in violation of 53 P.S. §4000.511 and 25 Pa. Code §279.202(a)(6). The proximity of this facility to Holy Ghost Preparatory School, as well as its conflict with our local comprehensive plans and zoning ordinances, particularly the Riverfront Revitalization District and the Waterfront Revitalization Plan, were the basis of the requested denial of the permit. The Environmental Hearing Board upheld the suspension by PA DEP.

[iii] The Verified Notice of Exemption and Notice of Lease and Operation of Rail Line was filed before the Surface Transportation Board at FD-35053, and is captioned J.P. Rail, Inc. d/b/a/ Southern Railroad Company of New Jersey