

**TRANSPORTATION AND FLOW CONTROL OF
SOLID WASTE**

HEARING
BEFORE THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

ON THE OVERSIGHT OF LAWS REGULATING THE INTERSTATE TRANS-
PORTATION OF SOLID WASTE AND TO CONSIDER ENACTING LAWS
PROVIDING FOR THE FLOW CONTROL OF MUNICIPAL SOLID WASTE

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MARCH 18, 1997
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TRANSPORTATION AND FLOW CONTROL OF SOLID WASTE

TUESDAY, MARCH 18, 1997

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room 406, Senate Dirksen Building, Hon. John H. Chafee (chairman of the committee) presiding.

Present: Senators Chafee, Smith, Allard, Sessions, Baucus, Lautenberg, Reid, and Lieberman.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Good morning. I want to welcome our distinguished panelists here today.

I just want to say, we've worked on this in past years. I thought the legislation we came out with last year was good. I know there's some suggestion that there be what we call a negative presumption—no imports can take place unless the local community says so.

That presents some difficulties to me. But we're going to listen to the witnesses, and we'll get started.

[The prepared statement of Senator Chafee follows:]

STATEMENT OF HON. JOHN CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

We are here this morning to once again focus on two important public policy issues related to the management of municipal solid waste. Both issues touch on one of the most important powers that our Constitution delegates to the Congress—the power to regulate commerce among the States. I welcome all of our witnesses today, and especially Senators Coats, Levin and Specter; and two House Members from New Jersey, Representatives Franks and Pascrell.

The two public policy issues before us today are flow control of municipal solid waste ("MSW") and regulation of interstate transportation of MSW. Flow control legislation would allow a political entity to require disposal of MSW at a designated MSW management facility. This creates a revenue stream to pay off the bonds which financed the facility. The goal of interstate waste legislation is to regulate the flow of MSW between exporting States and importing States.

Flow control and interstate waste are the two different sides of the same coin—restrictions on the free flow of MSW. The Supreme Court has consistently held, in a line of cases stretching back to the famous *Philadelphia v. New Jersey* case in 1978, that MSW is an article of commerce. This means that any State or local law that regulates the movement of MSW must be evaluated in light of Commerce Clause jurisprudence.

Before hearing from the other members of the committee and our witnesses, I would like to make a few points. I will start with interstate waste. Senator Coats has made the issue of controlling the interstate movement of MSW one of his high-

est priorities since he first entered the Senate 8 years ago. I sympathize with the plight of the importing States. I know that the concerns of importing States are heightened due to the planned closure of New York City's Fresh Kills landfill in 2001. This facility currently accepts 13,000 tons per day of trash, or about 4 million tons per year.

Once again in this Congress, as in the last Congress, I have made the passage of interstate waste legislation one of my highest priorities. I once again will work with Senator Coats and other Senators from both importing States and exporting States to try to reach an accommodation between the respective needs of both groups.

Though I have not introduced a bill on this issue, I believe that last year's bill remains a very viable compromise on interstate waste. That bill, S. 534, passed out of this committee unanimously in 1995 and passed the Senate in May 1995, on a vote of 94-6. Language identical to S. 534 again passed the Senate by unanimous consent in July 1996 as an amendment to the fiscal year 1997 Energy and Water Appropriations bill. As we all know, that provision was dropped in the conference on that bill.

As we start anew on resolving the interstate waste issue, I would strongly caution anyone who seeks to "better the deal" from what we passed twice in the last Congress on interstate waste. I will oppose legislation that tilts the scales too heavily in favor of the importing States at the expense of exporting States, like my own State of Rhode Island.

One of the most problematic provisions to "strengthen" the bill, from the importing States' perspective, is the so-called "presumptive ban." This would create a statutory presumption against the lawful shipment of MSW across State lines. Let me be clear on this issue: a presumptive ban is unacceptable and goes too far to restrict the free movement of commerce among the States.

The Commerce Clause of the Constitution came about because of the need to check local jealousies in matters of protecting home markets. I believe that when we legislate to restrict free movement of commerce in a national market, we should tread very lightly. The creation of a "presumption" against commerce is probably the most severe restraint on free movement we could impose short of an outright ban. This means the "default" position is closed borders and no movement.

I believe this is precisely backwards—any "default" position should allow free movement *unless* the importing State acts. A presumptive ban is far more than is needed by importing States to address the problems they now face due to unpredictable waste imports. More importantly, it is far too great a limitation to place on free movement of commerce. I agree the States should have the right to say "no" to imports but a presumptive ban goes too far.

The resolution of the flow control problem also directly implicates the commerce power. Federal legislation granting States or local governments the power to impose flow control would grant State or local governments the power to create local waste monopolies. Flow control proponents argue that the Supreme Court decision in the 1994 *Carbone* case places at risk their facilities, solid waste management programs, and credit.

In the *Carbone* opinion, Justice Kennedy, writing for the majority, reminds us that "The central rationale for the rule against discrimination is to prohibit State or municipal laws whose object is local economic protectionism, laws that would excite those jealousies and retaliatory measures the Constitution was designed to prevent." Justice O'Connor, in her concurring opinion, reminds us that the Constitution leaves it within Congress' power to impose legislation that alters the preference for free movement of articles in commerce.

In the last Congress, our bill, S. 534, contained a title on flow control. The original philosophy on flow control was twofold. First, we sought to protect State and local officials who, prior to *Carbone*, assumed their flow control laws were constitutional and issued bonds based on that erroneous assumption. Second, we imposed a sunset provision that eliminated flow control when the bonds were paid off or at the end of a facilities useful life, but in any case not longer than 30 years after passage.

We deviated from this fairly clear-cut starting point as members sought to protect facilities or systems in their States that fell outside the definitions. From our starting point, we layered on protection for additional facilities or systems in markup, between markup and floor consideration, and finally during floor consideration. There were still Senators with unsatisfied needs at final passage who would have sought further expansion in conference. At the end of that process, the original narrow intent of S. 534 was all but lost to well-intentioned efforts to protect local economic interests.

Two more years have passed since we approved S. 534's flow control provisions. We are now 3 years removed from the *Carbone* decision. I believe it is time to reex-

amine the issue of flow control in light of the experience of the last 3 years to determine if the legislation is still needed and what the proper scope of any legislation should be.

The flow control panel today will reveal that there are two compelling and competing local interests at stake, in addition to the national interest on regulating interstate commerce. State and local flow control laws were widely used until *Carbone* as a tool to guarantee that projected amounts of waste and revenues would be received at a waste management facility. The revenue is used to pay off the bonds that financed construction of the facility. Revenues are also used for other related purposes like funding recycling programs or household hazardous waste collection programs. In some cases, the bonds were issued on an assumption that flow control was constitutional, even though that assumption turned out to be wrong.

The competing local interest is that waste disposal is cheaper under a competitive system than it is under a government-created monopoly. Reimposition of flow control, in the view of these parties, amounts to a hidden tax on those that are forced to dispose at a facility charging above-market rates.

Since the *Carbone* decision, CRS reports that 18 MSW bond issues have been downgraded. Fifteen of these downgrades occurred in the first 12 months after the *Carbone* decision, and relatively few have occurred in the 2 years since we last took testimony on this subject. Testimony received from Standard & Poor's, which rates approximately 40 percent of the MSW bond issues, states that:

The downgrades that have occurred are a result of increased competitive pressure which has led to an overall decline in credit quality. These ratings are not solely based on the absence of Federal flow control. However, in all four cases [of ratings downgrades], the high fixed costs associated with waste-to-energy facilities have limited financial flexibility and resulted in high tipping fees which are above those of alternative disposal facilities.

If we are going to take the dramatic step of granting Federal permission for the creation of local trash monopolies that burden interstate commerce, I want to be sure that we are fixing an acute current problem. I also want to be sure that the cure is not worse than the problem we seek to solve.

Justice Kennedy wrote in *Carbone*: "The Commerce Clause presumes a national market free from local legislation that discriminates in favor of local interests." I agree. I said 2 years ago in my opening statement that "I will tread cautiously with respect to interfering in the waste market." This is still my view.

Senator CHAFEE. Senator Lautenberg, do you have a statement?

**OPENING STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. Yes, Mr. Chairman.

This is a subject that's had great interest in the State of New Jersey. Mr. Chairman, I in the last Congress, once the Supreme Court declared in the *Carbone* decision that flow control laws were unconstitutional, this committee passed, and the Senate approved, an amended bill to grandfather State flow control systems and to allow Governors to restrict the transportation of trash into their States.

However, despite efforts by a unified New Jersey delegation, the House failed to act. In the face of this gridlock, States and communities across our country have tried to adjust to the new post-*Carbone* reality. As more time has passed, and governments have modified their policies, the issues facing the Congress have evolved significantly and are now very different than those that existed in the last Congress.

In the past, I even led filibuster in the Senate to allow New Jersey and other States to transport municipal solid waste across State lines, at least until we could achieve self-sufficiency. At the same time, after the *Carbone* decision, I insisted that should Congress grant States the right to restrict interstate transport of waste, it should also grandfather existing flow control systems that

New Jersey and other States established to provide for adequate intra-State disposal.

Now, given what's happened in the real world in the past 2 years, these debates seem somewhat stale. In the absence of any definitive Congressional action, communities in many States that have flow control are now taking advantage of a more competitive, free market system.

In New Jersey, the situation has been a little more complicated. A Federal court in the State declared the State's flow control system unconstitutional pursuant to *Carbone*, but stayed its decision for 2 years, in anticipation of congressional action.

Yet despite the stay keeping flow control in effect, there has been considerable leakage, as we say, out of the State. Many incinerators and landfills have lowered their tipping fees and prices have gone down for consumers. Mr. Chairman, communities in New Jersey are trying to adjust to the *Carbone* decision. The genie, however, is out of the bottle. The possibility of reinstating flow control in 1997 may have a very different impact than the question we faced in 1994 and early 1995.

In many places, the reinstatement of flow control would mean that waste disposal costs would increase for consumers. A free marketplace is bringing benefits to local communities. At the same time, the situation is putting many disposal facilities dependent on flow control into financial difficulty and we can't ignore that fact, either.

Meanwhile, Governors and Senators continue to argue the case for interstate restrictions on waste transport. The cross currents in this debate will be reflected in the testimony of our witnesses today. I understand our colleagues, Senator Levin and Senator Coats, remain committed to restrictions on interstate waste transport, although these restrictions seem in my view to have no solid economic or environmental rationale.

Two of my colleagues from New Jersey, who are here now, Congressman Pascrell and Congressman Franks, reflect the dilemmas in our State. Mr. Pascrell, a Democrat, and former mayor, supports the free market, because he has seen the benefits it's brought to his city. Mr. Franks, Republican, supports a regulated intra-state market, because his district has facilities built under the flow control regime.

I recognize the validity of both of their concerns, and we'll listen to the debate with interest while reserving judgment. The public policy decision we make or fail to make will have significant long-term ramifications.

I look forward to today's testimony to help clarify the situation. I thank you, Mr. Chairman.

Senator CHAFEE. Thank you. As I mentioned before Senator Baucus and Senator Reid arrived, I am anxious to move along. We've got quite a few witnesses here. I'd like to, if anybody has an opening statement, we certainly look forward to have it put in the record. Senator Reid, do you have any comments?

**OPENING STATEMENT OF HON. HARRY REID, U.S. SENATOR
FROM THE STATE OF NEVADA**

Senator REID. I'll follow the admonition of the chair. I am here for a number of reasons. One, I'm a member of the committee. And Mr. Chairman, also, I have followed the travails of Senator Coats over the years. And I wanted to have a first row seat to watch his performance here today.

[Laughter.]

Senator CHAFEE. Well, he's had a lot of experience at it.
Senator Baucus.

**OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR
FROM THE STATE OF MONTANA**

Senator BAUCUS. I have a statement, Mr. Chairman. And I do so, Mr. Chairman, because this is such an important matter, and one that I've been involved with for many years, in fact, three or four Congresses. And I just think it's time, frankly, we get this matter behind us so that we can show Congress actually can do something.

Senator CHAFEE. Well, as you know, we passed it here. It's the House that didn't pass it.

Senator BAUCUS. That remains another subject, Mr. Chairman, which I will not, in deference to you, get into at this moment.

But it is time we finally get this passed through both Houses of Congress and the conference report adopted by both Houses.

Mr. Chairman, it's a very simple issue. Boiled down to its essence, the question is, should a State, should a local community—I'm speaking now of the interstate transport of garbage, not flow control—have the right to say “no” to garbage being transported from some other State into that State. That's the central question.

I believe the answer to that question should be yes, that it is irresponsible for a community, a State, to ship that State's garbage out of State. It's just a variation of the “not in my backyard” syndrome. It's that simple. We want to encourage communities to recycle, take care of their own garbage. We also want to allow communities to say “no” to the transportation of garbage into their own State. It's just a very simple matter.

I know there are some equities back and forth, because some companies want to transport garbage, and we have different population densities in different parts of the country.

But the bill that I introduced on this subject yesterday goes a long way toward resolving that balance. I hope, Mr. Chairman, we can finally get this issue behind us after all these years. It will also deal with flow control, which is a little bit more contentious, and a little bit more difficult to deal with.

But with respect to the garbage issue, I just very much hope that finally, both Houses can pass a bill, and the conference report is adopted by both Houses.

[The prepared statement of Senator Baucus follows:]

STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Mr. Chairman. Thank you for holding this hearing on the question of interstate garbage shipments.

I regard this as a very simple question. Should a State, or a town, have the right to decide whether it wants to host a big garbage dump for waste from other States? Or should States and towns have nothing to say about it?

To me the answer is simple. People should have the right to say “no.” And we need to give them that right.

Many States are looking to put their garbage somewhere else. In New York, for instance, the closing of the Fresh Kills landfill means that some 5 million tons of garbage each year needs a new home. The State can take only a fraction of that waste. So the rest, about 4 million tons a year, has to go out-of-state. To Pennsylvania, New Jersey, Ohio or beyond.

Now I want to single out New York. Many other great cities have similar troubles. For example, a few years ago Miles City, Montana faced the prospect of becoming a dumping ground for Minneapolis trash. The 5,000 citizens of Miles City had no say at all in whether a “mega-landfill” would go up right in their back yards to take care of garbage from a city nearly eight hundred miles away.

Trash disposal is tough. But simply dumping one city’s garbage problems on unsuspecting, perhaps unwilling towns hundreds of miles away is wrong. It is unfair. Every town in America should have the right to say “No.”

But as my colleagues know, they don’t have that right. State laws restricting out-of-state garbage have consistently been overturned in court as a violation of the Commerce Clause of the Constitution. So we need a national law to preserve this basic part of self-determination—the right to decide whether or not a community wants to accept out-of-state garbage.

I’ve introduced a bill which I think achieves that objective. But it also strikes a balance. It will work for every community, in every State. It is very similar to the bill the Senate and House nearly passed about 3 years ago.

I hope that following this hearing, the committee will have a business meeting to consider my bill. We need to get moving on this issue.

Mr. Chairman, that is why I thank you for holding this hearing. And let’s get to work.

Senator CHAFEE. Thank you, Senator Baucus.
 Senator Boxer’s statement will be placed in the record.
 [The prepared statement of Senator Boxer follows:]

STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE
 STATE OF CALIFORNIA

Mr. Chairman, thank you for calling this hearing today to revive this important discussion concerning disposal of our nations’ waste.

As you know, Congress has come very close in the last few years to passing interstate waste and flow control legislation. I am hopeful that with your leadership, we will be able to act quickly to finally resolve these issues which have caused much unnecessary litigation and economic hardship throughout the nation.

In my State of California, counties are required to meet aggressive recycling and waste reduction goals—there was a 25% reduction by the beginning of the 1995 and there must be a 50% reduction by the turn of the century. To meet these ambitious goals, California counties must aggressively manage their municipal solid waste.

However, California communities do not use flow control authority to do this. Instead, they rely on contracts with private waste companies to ensure that their garbage goes to a designated recycling plant or other waste facility. They also believe that the Supreme Court’s decision in *Carbone v. Clarkstown* does not restrict such contracts.

Many California counties have contacted me to voice their concern about potential impacts Federal legislation may have on their ability to meet the State’s solid waste goals. They fear that the bill will unintentionally restrict their ability to employ contractual agreements to direct waste to particular waste facilities.

As you may recall, I was unable to support final passage of legislation introduced last session. The legislation did not adequately address the needs of many California cities and counties which have incurred debt in order to achieve California’s ambitious integrated waste management requirements.

I intend to follow this issue closely and will work to preserve the ability of California’s counties to meet their waste management responsibilities.

Thank you again, Mr. Chairman and Senator Baucus, for the hard work that you have put into resolving these complex waste questions. I welcome our witnesses today, and look forward to hearing their testimony.

Senator CHAFEE. Now we have a distinguished group before us, and I would ask Senator Coats if he would please proceed.

**STATEMENT OF HON. DAN COATS, U.S. SENATOR FROM THE
STATE OF INDIANA**

Senator COATS. Mr. Chairman, thank you very much. I very much appreciate the opportunity to testify this morning.

This is not an issue new to anybody on this panel, and certainly not new to those of us down here at the witness panel. Many, many States are affected by this matter. It's an important issue to my State, as members of the panel know, it's something I addressed attention to very early in my Senate career. We've had some interesting battles over the years to try to finalize this legislation.

The irony is that we have worked through a number of difficult issues and come to a bipartisan, in fact overwhelming consensus here in the Senate, in terms of how we ought to proceed. There's been give and take on both sides. That's part of the legislative process. Nobody got exactly what they wanted. But we were able to forge compromises, and I think, workable legislation in the past, and I see no reason why we can't do that again.

I agree with Senator Baucus in saying that enough is enough, let's get this thing done and prove that we can actually address an issue that's important to an awful lot of people and an awful lot of State authorities across the country.

Now, there's fresh impetus, I guess, and I'll use a pun, fresh impetus for us to move because of the announcement by the city of New York that they're going to be closing the Fresh Kills landfill. That has immense implications for all individuals outside of New York, particularly those States and areas most close to it. The State of New York has had an 87 percent decline in landfills since 1986. So their capacity to receive an extraordinary amount of volume, it's going to be about 13,000 tons of solid waste per day, when they close Fresh Kills, the capacity of these out of New York City receiving sites to absorb this kind of volume just doesn't exist. We're talking figures approaching 5 million tons of garbage on an annual basis.

My State, like others, continues to be impacted adversely by out-of-state trash. We've been a net importer of waste for over 6 years. Last year we received the largest amount of out-of-state trash, over 1.8 million tons, of any year of those six. But until the Congress acts and passes legislation, as we all know, there's nothing that we can do about it in terms of placing reasonable restraints and restrictions on how that trash comes into our State.

Last year, as I said, we passed, we enacted legislation in the Senate. We came close, but close doesn't count. We're now moving into a new Congress with a new major threat facing us with the closing of Fresh Kills landfill. Appropriately named, I guess, Fresh Kills. The problem is, by the time the waste gets to Indiana, it's not fresh. And it creates a problem for us.

We had 94 Senators support the legislation that this committee drafted last year. I want to thank the Chairman and thank the ranking member and thank the members of the panel for working expeditiously last year to forge a compromise piece of legislation that earned the support of 96 Senators. I also want to thank the Chairman for his expeditious scheduling of this issue in this Congress, and his willingness to move forward to, once again, put in place legislation that can address the problem.

I've reintroduced legislation. I've made some modest modifications in response to inquiries we've had from Governors and from importing States in terms of things they think they need in this legislation. I'm more than happy to work with the committee in trying to forge a consensus on how we should move forward.

My colleagues, Senator Specter and Senator Levin, really represent a great number of Senators from importing States that want to work with us in this regard.

Finally, with respect to flow control, let me just state that has not been a major concern of mine. I wanted to address the solid waste issue just on the matter of solid waste. I understand that flow control is an issue that is related to this, and we forged a compromise on that last year. Hopefully, we can address the concerns that Senator Lautenberg and that other States raised relative to flow control and the changes, some of them court ordered changes, that have taken place in the last 2 years.

Let me finally state that as I conclude my remarks, I am not arguing for an outright ban on all waste shipments between States. There are examples of effective and efficient cross border waste management.

However, we must give States a role in making waste management decisions. Because without congressional authority, we will be unable to even sit at the table to state our case for determining our own environmental destiny relative to our ability to dispose of trash. There are many States and many communities that can and want to make arrangements with out-of-state haulers. I think that's appropriate.

I also think it's appropriate, however, that a State have the ability to put some reasonable regulations on there so that it can ensure that its own waste disposal needs are not overwhelmed by unwanted imports from out of State.

Again, I commend the committee for taking expeditious action on this, and I look forward to working with you in the days ahead, hopefully not years ahead, but days ahead, as we move forward on this legislation.

Thank you, Mr. Chairman.

Senator CHAFEE. Thank you, Senator Coats. I just want to briefly say, yes, we want to move forward on this, as I told you when you and I have had conversations. From what you said, you support what we did last year, indeed, you voted for it. But obviously, you could have voted for it, and still had some reservations. But that S. 534, you still support.

Senator COATS. Well, I do. I would like to work with the committee, I think it provides the foundation for how we proceed this year. We work, obviously no one was 100 percent satisfied with that legislation, because it tried to bring together two competing needs.

I have in the meantime, as I stated, heard from a number of Governors and States relative to issues that they would like us to address. I don't think they are issues that can't be worked on. I would like to present those to the committee. I could detail those for you if you want, but I'm happy to work with your staff and give that information to you.

There are some modest changes that I think are important to importing States that we can incorporate in this bill without jeopard-

izing the support from the importing States. I know they have some concerns on flow control changes, and I think we can just put them all in play and work on a new bill that brings these minor modifications, but essentially preserves what we did last Congress.

Senator CHAFEE. Thank you. What I'd like to do, if you can stay, Senator, for a few minutes, what's your situation?

Senator COATS. Well, we have a closed Intelligence hearing relative to the Lake situation at 10 o'clock that all of us, it's sort of a command performance that we've been asked to attend.

Senator CHAFEE. That may be moot.

Senator COATS. Well, I thought it was moot, and I was just given a note that it's—

Senator CHAFEE. Does anybody have a question of Senator Coats?

[No response.]

Senator CHAFEE. All right, thank you, Senator.

Senator Specter.

**STATEMENT OF HON. ARLEN SPECTER, U.S. SENATOR FROM
THE COMMONWEALTH OF PENNSYLVANIA**

Senator SPECTER. Thank you very much, Mr. Chairman. I appreciate an opportunity to appear here this morning to set forth my views and I know my full statement will be made a part of the record, I will summarize it.

I think that when Senator Coats says the garbage doesn't smell very good by the time it gets to Indiana, he vastly understates the issue. It doesn't smell very good ever. It's a long way from New Jersey to Indiana, but it goes through Pennsylvania and New York, and then he stops, as Senator Coats points out. But I recollect more than a decade ago, the garbage trucks piled up outside of the highways in Scranton when my late colleague Senator Heinz and I first started to move on this issue.

I'm very hopeful that we will get this legislation passed early in the Senate, try to get our colleagues in the House to move ahead on it as well. We came within a hair's breadth of having it done in 1994. I remember the day very well, without getting into too many of the particulars, we were practically in agreement in the Senate cloakroom. I went to catch the train, confident that the arrangement had been worked out, and got a recall message and came back to the Senate cloakroom. It did not work out.

It is a matter which requires our attention. Because the Supreme Court of the United States has said that on constitutional grounds, the States may not control interstate commerce. So it's up to the Congress. We have the authority to do it. And we really should act on that.

The situation in Pennsylvania is a very serious one. Wherever I travel, I hear objections on it. In 1993, we had some 3.9 million tons of out-of-state municipal and solid waste. It rose to 4.3 in 1994 and 5.2 in 1995, and a record 6.3 in 1996.

Senator REID. Six point three what?

Senator SPECTER. Six point three million tons.

Senator REID. Did you get any?

Senator COATS. There's still some left over for Indiana, even after the 6.3 million tons.

Senator SPECTER. Pennsylvania is a large State, Senator Reid.

The issue of flow control is a difficult one. We have competing interests there. My sense is that we worked it out about as well as we can, although there may be some issues which need to be revisited. The bill that we passed in the 104th Congress has a compromise set of ingredients that allowed a Governor to unilaterally freeze out-of-state waste in 1993 levels at landfills and incinerators that receive waste in 1993. It included an important State ratchet providing that a Governor could—

Senator CHAFEE. Senator, you're discussing last year's bill?

Senator SPECTER. Right. Just the highlights of it, including an important State ratchet providing that a Governor could restrict waste imported for any one State in excess of 1.4 million tons in 1996, down to 550,000 tons in 2002 and thereafter, providing a concrete incentive for the large exporting States to get a handle on their solid waste management immediately.

I thank the chair and the committee for scheduling an early hearing, and am hopeful we can move ahead. Right now, we do have floor time in the Senate where we could take it up and perhaps at some leisure. We don't have the leisure later on, when we have tight time agreements, but have the kind of debate if we need it to move ahead and pass the legislation.

I thank the chair and the members for listening.

Senator LAUTENBERG. Before we—I recognize Senator Coats has time constraints.

Senator COATS. Well, Senator Baucus just gave me a note saying it was canceled. I just had a note 5 minutes before saying it was on.

Senator BAUCUS. I just checked about 2 minutes ago.

Senator COATS. I think your information is more current than mine, so I have a little time here.

Senator CHAFEE. So you can stay, Senator.

Senator SPECTER. Mr. Chairman, I'm going to have to ask to be excused.

Senator CHAFEE. Let me just ask you one question before you go, Senator Specter. First, Pennsylvania is the largest single importing State in the country, which you're aware of. You've got a lot of stake in this, obviously.

Second, from your comments, I gather that you are, yes, you'd like changes if they could be made, but I take it you would find S. 534, which we did last year, acceptable?

Senator SPECTER. I would, Mr. Chairman. I think there can always be improvements. And like Senator Coats, I am contacted by very many people who have a lot of changes. But I think the time has come to act if we're to really address this issue.

Senator CHAFEE. Yes, we recognize every change you do roils up somebody on the other side.

Senator SPECTER. And it passed by big numbers, and it accommodated most of the interests of most of the States.

Senator CHAFEE. I thought so, likewise. The Senator has to go. Does anybody have a question?

Senator LAUTENBERG. I would just like to note, if I might, Mr. Chairman, about the dilemma that we face here, as we look at the possibilities of legislation. Pennsylvania, for instance, ships out

800,000 tons, and many of our States have the same exact parameter, where some comes in and some goes out. Of course, the number of import, of tons imported to Pennsylvania are substantially larger. But this is a problem that doesn't get easily solved.

I would ask either one of you, if your Governor had the right to tell the owner of a licensed landfill that he could no longer accept out-of-state garbage, might that look like takings under the view of many here, when property is condemned to eliminate economic opportunity in association with that property, if it meets all the tests, zoning, etc.?

Senator COATS. Well, I'll start with that, and then let my colleagues address it also. If we want to have a situation in this country where no State has the right to address matters that degrade its environment, and just simply absolutely leave it to the free market, then we might as well cancel the Clean Air Act. We might as well cancel all environmental rules on the books that give any kind of State authority and power to make reasonable restraints against the free market system in the interest of improving their environment.

We see this as a major environmental issue in the State of Indiana. Our State legislature passed and the Governor signed legislation that put us on one of the most progressive courses of dealing with our environmental laws in Indiana of any State in the Union. We have an aggressive set of legislation and laws that require recycling, that require waste reduction. We've taken responsibility for our own environmental future.

Yet all of that effort is overwhelmed if we have no say whatsoever in the amount of material that in effect overwhelms our ability to control our own environmental destiny. As I said in my statement, we're not stating that we are placing an outright ban on out-of-state waste. That's where I started the legislation, and I think I've come a long way since then.

We are allowing States and communities to enter into arm's-length transactions in terms of arrangements to receive waste for economic benefit. But we're simply saying that, the State has to have some ability to say, to put reasonable restrictions on that when it overwhelms the local area, or the State's effort to control, to even have the capacity for its own waste.

Senator SPECTER. If I may respond briefly, I note Senator Lautenberg's comment about Pennsylvania shipping out a little over 800,000 tons, which is a very small amount compared to the more than 6 million which came in last year. We have this long, unguarded border between Pennsylvania and New Jersey. I hope we can retain it, passage over the Ben Franklin Bridge, for example.

On the issue of a taking, I do not think we run into a constitutional problem of taking property without due process of law under the fifth amendment. There are many regulations which are much more stringent than this which could confront taking property. I think this is a reasonable regulation. The Congress does have the authority to restrict interstate commerce, in a sense, every time you impose a restriction there might be considered to be some taking of somebody's rights or somebody's property.

But I think that the kind of legislation we passed in the 104th Congress would pass Constitutional muster easily.

Senator LAUTENBERG. Well, I would for just a minute more like to pursue something that Senator Coats and I have kind of argued this question in the past. I once threatened to send out notices to all of our colleges and our high schools where the players, possible football players, and many of them were really great, were recruited for Notre Dame and otherwise, and I said, don't go there, because they're only going to insult you. But I think we're past that stage now, of the portrayal of the fat guy from New Jersey with a cigar, saying, we're going to dump on——

Senator SPECTER. Oh, don't abandon that threat, Senator Lautenberg——

[Laughter.]

Senator LAUTENBERG. I'm going to give you a little——

Senator COATS. That commercial won awards.

Senator CHAFEE. Let's move on with this.

Senator SPECTER. If you want to reopen that issue, I'm happy to do so. Because it makes great——

Senator CHAFEE. No, I don't think we want to reopen anything like that.

Senator SPECTER [continuing]. Theater, but it doesn't make good legislation.

Senator LAUTENBERG. Mr. Chairman, if I might make this point. We are the beneficiary, let me reverse that, the recipient, of tons of contamination from Indiana and other States west. When you say, when you raise the question, and it's a legitimate question to be raised, but the answer is a little bit, I think, more obscure than a yes or no. Does a State have a right to block contamination that comes from another place to its shores, or to its boundaries.

I say, OK, let's start with Indiana and New Jersey, and erect the kind of facilities that doesn't have that stuff going up in the air and falling down all over our place, no matter what we do to protect ourselves.

The point I make, and I think this is a critical one, in your statement about if no State has the right to protect itself, we get to the fundamental question about whether or not we are a federation, we are a Nation of States, each of whom has some obligation to the other. If we can't work on that basis, heaven forbid. Because I can see New Jersey saying to the trucks that pour across our State from Pennsylvania carrying coal and saying, stay out of here, get rid of your coal some other way. Or other States sending cargo out through our ports, or again, Indiana contributing very substantial amounts of contamination through smoke-stacks that dump pollution on our State.

So you have a problem, Senator Coats. It's not one that can be easily resolved by saying, OK, let's just cut it off in one part and accept the others.

By the way, as a reminder, I'm sure you're aware of this, I looked at the source of the waste that comes to your State: 79 percent from Illinois, 12 percent from Kentucky, 7 percent from Ohio, 2 percent from Michigan. There's hardly any that comes from our area to your State.

So we don't have a direct argument on this, but we do have a very important disagreement.

Senator COATS. Well, Senator, when this issue started, we had a very direct argument, because most of our waste was coming from New Jersey. I'm proud of the fact that by raising my voice and providing legislation in the Senate, which we were able to stop, we were able to convince New Jersey that Indiana shouldn't be the repository of your solid waste. You found other States to dump it in, and we're pleased that you're not coming to Indiana with that waste.

As far as the contamination from electric coal-fired generating plants, you and I both voted for the Clean Air Act, which placed extraordinary financial burden on the industries of Indiana and the taxpayers of Indiana. But both Senator Lugar and I supported that effort, against considerable public opposition within our State. Because we knew rates were going to go up.

All in an effort, based on somewhat sketchy scientific information and since confirmed that perhaps that wasn't the problem with acid rain. Nevertheless, we thought it was an appropriate thing to do to help preserve the environment in a way that you and I both want to preserve it. It was at considerable cost to our State, and I would put up the amount of money that our State, our taxpayers have spent to clean up the environment against what New Jersey has done with its solid waste, and match you easily on that one.

So I think we've done our share. But frankly, Mr. Chairman, just in conclusion here, we don't solve this problem by dredging up old issues. If we're going to get back into a tit-for-tat, as we were 6 or 8 years ago, when we were promised that all New Jersey needed was a few years to clean up its act and then there wouldn't be a problem, I can engage in that kind of back and forth. I think the constructive thing to do here is what I've suggested in my opening statement, and that's put past issues and disputes behind us and move forward with consensus legislation, like we did in the last Congress.

Senator CHAFEE. That's what I'd like to do. I'd like to concentrate on the legislation that's before us, the S. 534 from last year. And what suggestions we have, as that bill passed last year overwhelmingly.

Now, we've been joined by two colleagues. As I mentioned before, we've had the two representatives from New Jersey here. We always say when you're waiting, you know when the pilot says thank you for your patience, that you've sat on the runway for 2 hours. I haven't had any patience at all. But I get thanked for it. So I want to thank you both for your patience here.

Senator SMITH, do you have any comments?

Senator SMITH. Have the witnesses spoken?

Senator CHAFEE. No, they have not.

Senator SMITH. Well, I have a statement that I'd like to make, but I'll be happy to defer to hearing the witnesses, and then I'll make it.

Senator CHAFEE. All right.

Senator SESSIONS.

Senator SESSIONS. Mr. Chairman, I have a statement for the record. I'm interested in listening to the panel.

Senator CHAFEE. All right, fine.

[The prepared statement of Senator Sessions follows.]

STATEMENT OF HON. JEFF SESSIONS, U.S. SENATOR FROM THE STATE OF ALABAMA

I would like to thank the chairman of this committee, Senator Chafee for holding this hearing today to consider the issues of interstate waste and flow control.

I support the free market system and the efficiency, lower costs and other benefits competition brings to the marketplace. The movement of trash should not be an exception so long as the methods of disposal comply with the latest regulations regarding protection of the environment.

It appears to me that prior arrangements for limited flow control by communities who have invested their funds to build state-of-the-art waste to energy plants and environmentally sound landfills could be legitimate exceptions to this rule. Flow control authority was believed to be legal prior to the Supreme court case of *Carbone v. Town of Clarkstown* made on May 16, 1994, which held certain flow control authority to be unconstitutional. The real problem is that the decision threatens the ability of communities to repay bonds issued to fund their solid waste projects.

If the flow of trash needed to raise revenues to support the bond debt of a facility drops, then the community becomes responsible for paying the difference. This is a serious question and it requires careful thought. I look forward to hearing from the witnesses today as we discuss what can be done to deal with this situation.

The Huntsville Alabama Waste Authority has over \$120 million in outstanding debt because of the investment made in its state-of-the-art waste to energy facility. Bonds were issued for the financing of this facility before the *Carbone* decision was rendered by the Supreme Court and the plan relied on flow control authority by Huntsville to provide revenues to finance the facility.

The city of Huntsville believed flow control authority to be legal at the time when they agreed to enter into a contract with the Waste Authority to provide the new facility with a steady stream of trash to support itself. Without the ability to continue compliance with the contract to haul trash to this facility, the project will probably fail and the income necessary to retire the bonds will not exist. In any event, it will be the people of Huntsville who will pay if we do not enact limited flow control authority "grandfathering" protection to help those communities who relied on it to finance their solid waste projects.

I look forward to hearing from the witnesses today as we look for a reasonable approach to solving this problem, fostering competition while at the same time protecting those communities who made sound decisions to control their waste and took on debt based on their most current interpretation of the law.

Senator CHAFEE. Now, Senator Levin.

STATEMENT OF HON. CARL LEVIN, U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator LEVIN. Thank you, Mr. Chairman.

Just very briefly, I want to come and give my very strong support to legislation to give State and local governments authority to regulate flow of solid waste into and out of their jurisdictions. I remember when I was in local government, for 8 years, how excruciatingly difficult it was to make siting decisions and to make determinations as to where we would dispose of waste, how we would dispose of waste, and so forth.

It seems to me, once we have a planning process and a decision-making process like that, made by local government, with all the difficulty and complexity involved therein, that we should not ignore it and not override it totally, but indeed, allow States and local governments to have a say in determining the flow in and the flow out of waste. Otherwise, it is almost impossible to issue bonds for facilities relative to disposal of waste. It is really very difficult if not impossible to get local governments to make siting decisions for the disposal of waste.

The other day, we had a site in my home State, which announced a decision to receive 500,000 tons of trash annually from Canada. Now, Canada is a pretty big place. And the idea that we would take a community that has made very difficult decisions in terms

of waste disposal to suddenly have a private contract entered into with a company in Canada to bring a large amount, at least relative to that site and to that particular area, of waste from Canada into my home State, ignores any fair treatment of local government and State government in the control of their own environment.

So I would hope that we would promptly take up a bill which would permit reasonable controls. Simple price competition is not going to drive good planning in this area of public activity. I think that it's so long overdue that we allow State and local governments back into this arena that I would hope this committee would actively participate in making that happen.

Finally, in answer to Senator Lautenberg's question about takings, I think it's quite clear from the Supreme Court opinions that these activities would not be considered takings, or else the Supreme Court would not have suggested, either impliedly or explicitly that Congress could authorize State and local governments to have this kind of a role. I don't think they would either by implication or explicitly have reached that conclusion if there were a taking involved.

So I would think those Supreme Court opinions, which give Congress the role which we're now exploring, do give us the green light. Before my red light goes on, I'll simply thank the committee for allowing us to testify and for hopefully giving some impetus to legislation that is long overdue, so that our State and local governments are not treated unfairly and in a high-handed way when it comes to the very, very important question of waste disposal.

Thank you.

Senator CHAFEE. Senator, you voted for final passage of S. 534 in 1995. Should we come up with a bill similar to that, would you be supportive of it?

Senator LEVIN. I would. I'd like to see some changes in it, as I think many of us would, that would be improvements from our perspective. But the answer is yes, it would be an improvement over the present situation.

Senator CHAFEE. All right. Do you have any questions of Senator Levin, Senator Lautenberg?

Senator LAUTENBERG. No.

Senator CHAFEE. All right, thank you very much, Senator.

Senator LEVIN. Thank you all.

Senator CHAFEE. Now we have two very distinguished members from the House here. Mr. Pascrell, why don't you proceed. We're glad you're here.

**STATEMENT OF HON. BILL PASCRELL, JR.,
U.S. REPRESENTATIVE FROM THE STATE OF NEW JERSEY**

Mr. PASCRELL. Thank you, Mr. Chairman. Good morning to you, and members of the committee, and to our senior Senator from New Jersey. I'm glad to be here with Congressman Franks. We've worked on, although we're from different sides of the aisle on many issues when we were in the State legislature in New Jersey, we've agreed, we've disagreed, but we've always been civil.

I want to thank you for giving me this opportunity. I look at this issue, Mr. Chairman, from two particular perspectives. No. 1, this is beyond any doubt to me a consumer issue. And No. 2, while we

debate in State legislatures and in the Congress of the United States, State or Federal mandates, I believe that this is an unfunded mandate which exists in the United States of America. It is not funded.

I believe that flow control is a consumer issue. In this instance, the consumer is best served by a system of open competition which results in lower garbage disposal costs.

Before I discuss why I'm opposed to flow control, I believe it is important for me to briefly comment on some background on how I came to adamantly oppose flow control. Prior to being elected to the Congress, I was an Assemblyman in New Jersey for 9 years. I served as Mayor of the third largest city for 7 years, Paterson, NJ. It was during my tenure as Mayor where I gained first-hand experience in paying for flow control.

In 1995, the city of Paterson spent \$11 million of its \$137 million budget on waste disposal. This is roughly 13 percent of the municipal side of the budget. Then we had to send the waste to an incinerator in neighboring Essex County.

These precious dollars that funded this overpriced disposal might have otherwise supported additional fire protection, police, education. The city of Paterson in a lawsuit asserted that if it were allowed to pay market costs for disposal it would have saved approximately between \$169,000 and \$233,000 per month. Due to waste flow control in our State, passed by our State, we have the highest disposal costs in the Nation. This is unacceptable.

Prompted by these experiences and the U.S. Supreme Court's decision, which held that flow control laws violate that constitution we live under, I, along with my former colleague, whom you will hear from later, Assemblyman and Mayor John Rooney, became the founding members in 1995 of the Mayor's Task Force Against Flow Control. Two hundred and forty mayors out of the 530 some in the State of New Jersey joined us.

We all agree that flow control costs our cities tens of millions of dollars each year, that flow control stifles the operation of the free market, and that at the end of the day, there is no reason that New Jerseyans should not enjoy the benefits of the free market and the operation of their solid waste system.

I'm interested over the past few years of those who have pontificated about open markets and free competition, except when it comes to certain issues. These issues impact upon local government. I believe that Tip O'Neill was correct: "all politics is local."

The simple goal of the task force was to ensure that municipalities have the right to send trash to the cheapest waste facility available. Mr. Chairman, the imposition of solid waste flow control is a flawed policy that benefits neither the consumer, the taxpayer, nor the general economy. The only beneficiaries are local government officials and county utility authorities. Flow control is not necessary to enable governments to obtain bonds needed to build waste facilities. With flow control assurances, underwriters are willing to issue bonds for facilities that could prove wasteful and incapable of competing in an open marketplace. I would hope that's what we all want.

If underwriters do not want to support construction of a facility, that's a good thing. It protects taxpayers and consumers from sub-

sidizing what would be a poor investment decision by the local government in the first place. Groups like the New Jersey Environmental Federation and the Sierra Club are also opposed to flow control, adding yet another voice to the already long list of those in opposition.

The fact of the matter is that flow control legislation is simply bad policy. I'm strongly opposed to it. Local governments, small businesses and households are better off without it. We should let the free market determine the lowest price to the benefit of all involved. To borrow a quote from a former colleague, who's Mayor of the city of Jersey City, Brad Schundler, instead of passing flow control legislation, Congress should bury it in the trash heap of discarded ideas.

Mr. Chairman, this issue is a critical one, not only for New Jersey but the entire Nation. No one is suggesting, those of us who oppose flow control legislation, no one is suggesting that a helter-skelter, cavalier system dominate. What we're saying is, the structure that exists now in America is unacceptable to the consumer and unacceptable to the municipal tax rolls throughout the United States.

In conclusion, let me add this. In New Jersey, waste flow laws force us to use disposal facilities designated by the State and the county agencies even though these facilities charge tipping fees far in excess of what we pay or would pay in the free market. We can't justify this. Every year our taxpayers are forced by the system that exists in the State of New Jersey to forego other necessary services in order to pay for the millions of dollars in solid waste disposal costs that we need to incur.

Mr. Chairman, we want to work together to fashion legislation that will provide for a free and open market which will have some structure, so that we do not impugn the integrity of any State. What I've noticed since coming here, Mr. Chairman, is instead of the partisan politics, we've often fallen into the sectional politics in the first 3 months since I've been here. I don't think it's healthy. I don't think it's wise. I don't think it proves anything.

I want to work with you to come up with a solution to this problem. Thank you very much.

Senator CHAFEE. Thank you very much, Representative Pascrell. Yes, indeed, we all want to work and see if we can solve this problem.

Representative Franks, why don't you proceed.

**STATEMENT OF HON. BOB FRANKS, U.S. REPRESENTATIVE
FROM THE STATE OF NEW JERSEY**

Mr. FRANKS. Mr. Chairman and members of the committee, thank you for giving me this opportunity to testify in support of Federal action required to avert a crisis in my home State of New Jersey.

At issue today is a court ruling that if left unanswered could jeopardize the solvency of more than \$1.7 billion in bonds issued by New Jersey counties to construct waste disposal facilities. Without congressional intervention, the burden of repaying this debt will fall on innocent taxpayers. Through no fault of their own, taxpayers could see huge increases in their local property tax bills.

Mr. Chairman, I am not here to argue the pros and cons of flow control. Rather, my objective is to ensure that the taxpayers of New Jersey are not penalized because the Federal courts have invalidated a longstanding State policy. Let me briefly describe how New Jersey finds itself in this untenable position.

Two decades ago, the State faced a solid waste crisis. With most of the State's landfills having reached capacity or forced to close due to the tighter environmental regulations imposed by RCRA, New Jersey was forced to rely heavily on out-of-state disposal. At one point, New Jersey was shipping nearly 55 percent of its trash to other States, and the costs of disposal were skyrocketing.

In response, our State legislature passed the 1978 Solid Waste Management Act, which required each of our 21 counties to develop a plan to dispose of their trash within the State. Counties issued over \$1.7 billion in bonds to finance the construction of incinerators, transfer stations and landfills to comply with the State mandate.

In my district alone, the County of Union issued more than \$300 million in bonds to finance the construction of a waste-to-energy incinerator. The financial scheme under which this and dozens of other facilities were constructed was based on the State's ability to direct all the trash generated in a specific geographic area to a particular disposal facility. The authority to direct the disposal of trash was essential to ensure that county utility authorities would have a guaranteed, steady flow of trash required to pay for the construction of disposal facilities.

Therefore, ever since the late 1970's, flow control authority has been an integral component of New Jersey's solid waste management system. The 1994 *Carbone* decision and the subsequent Atlantic Coast decision have thrown New Jersey's solid waste disposal program into turmoil. The *Carbone* decision declared the practice of flow control to be unconstitutional. The Atlantic Coast decision upheld the *Carbone* ruling and gave our State 2 years after the last appeal to end its practice of directing waste flow.

I recognize that allowing the free market to dictate solid waste decisions is ultimately in the best interests of consumers and taxpayers. However, New Jersey needs time to responsibly make the transition in a manner that will allow us to meet our \$1.7 billion financial obligation.

In light of the recent court decisions, the ability of New Jersey's counties to reimburse bondholders for the construction of waste facilities, as well as the ability to honor contracts with incinerator operators, are in serious jeopardy.

Mr. Chairman, long before the *Carbone* decision, the State of New Jersey had made an enormous investment in its comprehensive solid waste management system. Taxpayers should not be stuck with the tab because the rules have been changed in the middle of the game.

Governor Whitman, the New Jersey Assembly and all 21 of New Jersey's counties are asking for an extension of flow control authority until the debt obligations by the counties to construct disposal facilities have been paid off. I want the committee to know that there is strong support for grandfathering flow control authority for those States that had it in place prior to the *Carbone* decision. In

the 104th Congress, the entire bipartisan New Jersey congressional delegation supported H. Res. 349, and other efforts to give a temporary reprieve from the effects of the Federal court decision.

In addition, the State of New Jersey, New York, Pennsylvania, Ohio, Indiana and Michigan have all agreed on flow control legislation. I urge the committee to pass legislation to grant flow control authority to States like New Jersey so they can repay outstanding debts owed to investors, and then move on to an open competitive system.

I thank you, Mr. Chairman, for this opportunity to testify. I appreciate greatly your leadership over the years on this issue.

Senator CHAFEE. Now, Representative Pascrell, what do you say to that?

Mr. PASCRELL. What I say to it is, there's legislation pending in New Jersey right now that responds to the debt that my good friend Congressman Franks talks about. In fact, part of that debt that he talks about, the \$1.7 billion, has allowed certain counties to bond for facilities that were never built.

The wrong people in this business many times are in jail, Mr. Chairman. Imagine bonding for a capital facility that was never built. Now, that debt is important. It's not going to go away. It's not the debt of the State of New Jersey. It's the debt of the counties and the authorities that have existed under the law in the State of New Jersey.

Senator CHAFEE. Now, wait, you lost me there. I'm not sure what you mean, they bonded to build a facility, an incinerator, let's say. And you say they never built it?

Mr. PASCRELL. That's correct, sir.

Senator CHAFEE. But if they never built it, then they don't have the debt.

Mr. PASCRELL. They do have it, sir.

Senator CHAFEE. Then what they—

Mr. PASCRELL. They floated the bonds, sir.

Senator CHAFEE. What did they do with the money?

[Laughter.]

Mr. PASCRELL. We'd have to have another hearing for that, Mr. Chairman.

[Laughter.]

Mr. PASCRELL. We'd be in the wrong committee.

[Laughter.]

Senator CHAFEE. Well, New Jersey is—well, I'd better watch my tongue.

[Laughter.]

Senator CHAFEE. What about that, Representative Franks?

Mr. FRANKS. Senator, I can only speak to the resource recovery facility, the waste to energy facility that has been built, that is operating, is accepting trash, is operating at full capacity, is operating under the tightest environmental standards in the world, and it's productively dealing with a problem that used to be of enormous difficulty for our State.

Senator CHAFEE. What Representative Franks is saying is this grandfather proposal, which we have considered in other years, and you know, your Governor, all 21 of your counties, are in support of this.

Mr. PASCRELL. Well, I'm here to testify how I perceive it, Mr. Chairman. You'll hear other people testifying from the State of New Jersey as well. I have for the record stated that 240 cities have signed up in support of what we feel is necessary.

Senator CHAFEE. You mean nationally?

Mr. PASCRELL. No, just in the State of New Jersey, Mr. Chairman.

Senator CHAFEE. Two hundred and forty cities?

Mr. PASCRELL. That is correct. That is correct. You're going to hear that again when Assemblyman Rooney speaks before you in a little while. The question of the debt is a critical one, Mr. Chairman. It's not going to go away. It's something that we understand as a State, even though this is incurred by the counties, that we have to address.

Over a 10-year period, this would mean perhaps \$10 per ton for the garbage in the State of New Jersey. It is not an unreasonable fee, considering how much the dollars would come down the cost of reducing or providing for solid waste reduction in New Jersey would save every municipality in the State of New Jersey. That is not unreasonable.

We all understand that, Mr. Chairman. That's not the issue here. The issue is do we need a free market, and we believe we do.

Senator CHAFEE. All right, Senator Baucus.

Senator BAUCUS. Just briefly following up on that line of questions.

Mr. Pascrell, are you against any grandfathering?

Mr. PASCRELL. No, I'm not.

Senator BAUCUS. What about the facility that was built and is operating that Representative Franks referred to?

Mr. PASCRELL. I believe part of that debt is questionable. But I believe that possibly we could use some grandfathering, if that's the question that you're asking me.

Senator BAUCUS. It is.

Mr. PASCRELL. But I think there is some obligation on the part of the State of New Jersey, due to the fact that this is a system that was imposed by the State on the counties in New Jersey.

Senator BAUCUS. What I'm looking for is some compromise here.

Mr. PASCRELL. Yes. It's obvious that we want to compromise. I think it's in everybody's better interest.

Senator BAUCUS. So that's one area where perhaps you could compromise?

Mr. PASCRELL. Yes, sir.

Senator BAUCUS. Any other?

Mr. PASCRELL. No, sir.

[Laughter.]

Senator BAUCUS. Mr. Franks, Representative Franks, do you have any suggestions where you might compromise, where there might be some more common ground?

Mr. FRANKS. Senator, I just want to point out, back in 1988, the Third Circuit Court of Appeals of the Federal Judiciary looked at our system of flow control. They found it to be constitutional. Only when the *Carbone* decision arrived did they turn that third circuit decision on its head.

The rules have been changed. We invested in a system under one set of rules. We moved from sending 55 percent of our trash out of State to now sending 14 percent out of our State.

Senator BAUCUS. Would you agree to some kind of grandfather provision?

Mr. FRANKS. Yes, I think that's a prudent way to go. As we transition to a free and open competitive market, I agree with my friend Mr. Pascrell, that ought to be this committee's objective, in my judgment.

But how we pivot and reach that point, I think it has to be done very carefully.

Senator BAUCUS. Let me be more clear here. So in the future, you believe that there should not be, flow control should not be allowed, States and municipalities cannot enact flow control provisions?

Mr. FRANKS. I simply believe that the indebtedness incurred prior to the *Carbone* decisions should be allowed to be paid off. There should be an open, free, competitive market. It would be to the benefit of all—

Senator BAUCUS. You're pretty close, then.

Mr. PASCRELL. On some issues we are, Senator. And on some issues, we're not. I think the issue of a competitive market is important.

We're talking about a town, not only in New Jersey, where property taxes are running faster than inflation, we need to address that. The only way we can do that is go into our own municipal budgets, whether small towns or large towns, and see how much part of that municipal budget goes through solid waste recovery. I mean, we put a moratorium on facilities in New Jersey. That was passed in 1991, I believe.

Senator BAUCUS. My time has expired. Thank you.

Senator CHAFEE. Senator Lautenberg.

Senator LAUTENBERG. Good to see two friends here in somewhat questionable agreement. I understand where each of you is coming from, therefore I will walk the line that I think is wise and judicious.

Senator BAUCUS. As you always do.

[Laughter.]

Senator LAUTENBERG. That is, Representative Franks, what would happen to disposal costs if in fact we did have a flow control measure put into law?

Mr. FRANKS. If we grandfathered the current flow control mechanism under which the State is currently operating, sir?

Senator LAUTENBERG. Well, you can talk about that. But what I see are neighboring communities, one paying a rate that's substantially less than the other one. How does that get justified? Frankly, I think that the States were treated unfairly by the presumption that flow control was something that was going to exist, and go ahead out and do your share in getting wherever you can in getting rid of the trash that you have in a sensible, environmentally sound way.

But that's past history. Frankly, I think it's something maybe the Federal Government has to take some look at. The building was

done, the bonds were floated, under conditions that were thought to be permanent.

Nevertheless, I think it is realistic to say that rates would raise substantially for the disposal of garbage if we have a flow control condition put into the hopper, even if it grandfathers one community or one county or another. Because the neighboring county, the neighboring community, would have one heck of a problem understanding why they're paying so much to send it to the incinerator, and another community is paying so little to send it to another disposal site.

Mr. FRANKS. Senator, what raised questions in my own mind was, as Senator Specter and Senator Coats were testifying, if an after, in the post-flow-control era, if other States were inviting our trash to their landfills, at what point would the local residents of Indiana and Pennsylvania say, enough is enough, we're not taking any more of New Jersey's garbage. It was 20 years ago that that resentment from our out-of-state shipments caused us to try to identify more in-State disposal capacity.

We now deal with the vast bulk of garbage generated in our State within our State borders. That has been one relative success of flow control authority. Has it been too expensive and inefficient? Yes, it has, in retrospect. We should move to an open and competitive market. But I don't want it to be left as though there has been no progress by the State of New Jersey in terms of dealing with our in-State disposal needs.

Senator LAUTENBERG. Just to close, Mr. Chairman, what goes around comes around. Pennsylvania was dumping millions of tons of their trash in New Jersey. We went to court, to the Supreme Court, to try to stop Philadelphia from shipping its garbage to our State. The Supreme Court said, too bad. It's interstate commerce. You can't interfere with it. And one day, you're absolutely right, one day we'll be looking for ways to get rid of garbage because there will be fewer licenses, there will be more obstructions to the free shipment of material.

Thank you very much, Mr. Chairman.

Senator CHAFEE. Thank you, Senator.

Senator REID. Not here. Senator Smith.

Senator SMITH. Thank you, Mr. Chairman.

Gentlemen, let me just focus a little bit on the issue of the bonds. I remember 2 years ago, we had this same debate that municipalities were going to have to default on the bonds it issued. It's my understanding we've had about 18 downgrades out of some 130, 140 such bonds around the country. The sky didn't fall.

I guess, how do you justify, then, wanting to promote a grandfather, and I think you were very clear on that, Representative Pascrell, but let me ask you, Representative Franks, what is the justification for it? Bond holders take risks, don't they? We haven't seen a mass downgrading. We've seen 18, I don't know if they're all 18 in New Jersey or not. But so what would be the justification for moving in that direction?

Mr. FRANKS. Senator, I'm holding the Wheat First Butcher Singer fixed-income research report on the facility that's in my county. Let me just read to you their outlook: Uncertain. The system is not sustainable in its current form without flow control.

Until an alternative solution is found, a below investment grade level rating is appropriate.

I'd be happy to leave this for the committee. But as people are looking at how we've built our system in the last 20 years, to suddenly remove flow control authority and no longer allow counties to direct waste generated within their boundaries to a particular location, it simply will not allow these facilities to function on an ongoing basis.

Senator SMITH. Well, a year and a half or so ago, we had witnesses, I asked every witness, or almost every witness what the bondholders were told, did the bondholders know that flow control may not be a valid authority for the locality when they bought their bonds? Do you know that, in New Jersey? What were the bondholders told, the investors?

Mr. FRANKS. All I know is that until the *Carbone* decision in 1994, all preceding Federal and State cases had held the flow control authority of New Jersey to be constitutional. So it was against that backdrop that bondholders would have made their purchases.

Senator SMITH. So was there anything in those bonds, was there anything, was there any language in those bonds that said, absolutely that this was the way it was going to be, that it was constitutional?

Mr. FRANKS. Senator, I'm unaware of how any such guarantee could be delivered, given the changing composition of the courts and their changing philosophy.

Senator SMITH. But isn't that the point?

Mr. FRANKS. I don't know how any authority could have looked forward and predicted with precision how courts would have dealt with very difficult constitutional issues like this.

Senator SMITH. I mean, that's the point isn't it? Bondholders take risks.

Mr. FRANKS. Well, Senator, I guess they do take risks, but what level of risk are they expected to take? The vagaries of the marketplace certainly are inherent whenever you make this decision. But—

Senator SMITH. I know. But, last point, Mr. Chairman. The, I mean, when we had this debate a year and a half ago, or when we had, Senator Chafee and I and others put together this bill, this compromise bill, and we did grandfather flow control, and some wanted to go beyond, I think we had 15 or 20 years, some wanted to go beyond that, and we saw, we didn't, I could not seem to get an answer on whether or not these communities thoroughly analyzed the legality of the authority on, in issuing these bonds. If in fact since that time, we have not had massive defaults, and the bonds are sustainable, then I don't see the issue of this great, immediate action being necessary. A year and a half ago, there seemed to be that sense. But we didn't pass a bill. Maybe that was a good thing.

Mr. FRANKS. Senator, there's just one element I want you to look at. That is, that flow control authority still exists today on the ground in New Jersey. There's been no default, because the flow control authority continues to operate. It will operate until a 2-year period after the last appeal is heard. The reason why there's been

no default is because we've been able to take the garbage generated in a particular county and direct it to a particular facility.

Senator CHAFEE. When's that 2 years up?

Mr. FRANKS. We've not defaulted because the revenue stream has been unbroken thus far.

Senator CHAFEE. When's the 2 years up?

Mr. FRANKS. Well, when will the last appeal be heard.

Senator CHAFEE. Oh, I see, you haven't finished the appeal.

Mr. FRANKS. No, sir. So the integrity of the system temporarily is intact.

Senator SMITH. They've also cut their overhead, institute competitive tipping fees. It's the free market. It's the free market that's saving the bonds, I think, not the flow control.

Senator CHAFEE. Thank you, Senator.

Senator Sessions.

Senator SESSIONS. I just have a couple of questions. With regard to, Congressman Pascrell, on Paterson, you're opposing the grandfathering, correct me if I'm wrong, fundamentally because you think it's costing your city and the citizens of it too much to send your waste to an incinerator that could be better landfilled in some other location at less cost.

Mr. PASCRELL. I oppose flow control for the basic reasons that I stated earlier, Senator. And I believe that it leads to consumer increase in prices and higher taxes. And I think I've proven that by the numbers.

Senator SESSIONS. In effect, as it plays out in your city, you're required to send your garbage to a facility that costs you more than you think it ought to cost?

Mr. PASCRELL. Well, we go one better than that, Senator. Because of the flow control in the State of New Jersey, my city, which has what we call a transfer station within it, as part of the State system and county system, cannot use the transfer station. It has to send its garbage by the hauler, whom we hired through competitive bidding, to an incinerator in another county. That incinerator charges my city more money than it costs people from New York State to bring their garbage into New Jersey to that same incinerator.

You know, when you look at the rhyme or reason to this, Senator, there are many issues here. And it is complex. I don't believe it is simple, as was stated before. These are complex issues, and we need to study them. We don't want to hurt anybody here. There needs to be parity.

There has never been any suggestion by those of us who support the elimination of flow control that it's not a phantom debt. It's a real debt, that these counties owe to the bondholders. We understand that. The whole State should be held accountable for that. Whether facilities were built or not, even, we should be held accountable for it.

Senator SESSIONS. Well, in Huntsville, AL, they built an incinerator, and bonds were floated for that. If they lose that source of garbage, I think, Senator Smith, wisdom notwithstanding, I think somebody, those bonds are going to be called. It's a troubling thing to me, the grandfathering seems to be, those who've really invested, who've developed a system, and it's a mistake, if it's a mis-

take, sometimes you enter into a contract, it's a mistake, you have to see it through to the end. Maybe that's where we are.

Mr. Chairman, that's really all I have.

Senator CHAFEE. Thank you, Senator.

Senator Allard.

Senator ALLARD. Thank you, Mr. Chairman. I have just a few questions.

On the average, how long are these bonds extended out? How long is the payoff period, 30 years, 15?

Mr. FRANKS. The forecast that I've seen, Senator, would indicate that the last of the bond indebtedness would be paid off by the year 2010, 13 years from now. On the last of the facilities. It's important to understand, the range of debt, the resource recovery facility in my county has some \$275 million still outstanding. The County of Hunterton, in the rural western part of the State, has bonded for \$300,000. They would be able to pay that off in a relatively short period of time. Under our legislation, the open market would begin to operate in Hunterton County earlier than it would in the County of Union, which would need this additional year for them to pay off the indebtedness.

Senator ALLARD. When would be the payoff date in your county, probably?

Mr. FRANKS. I believe it's 2008, but I'm not certain.

Senator ALLARD. Then you have 2 years beyond that in the law to move it into the free market system. Or no, that would be, that's when the last appeal is heard.

Mr. FRANKS. That's correct.

Senator ALLARD. Let me ask you when the last appeal, you anticipate this appeal process could be strung out for—

Mr. FRANKS. I suspect one or both parties will ultimately take this to the Supreme Court. It would depend upon when the decision was rendered by the Court. I'm not that good a predictor of these things.

Senator ALLARD. Can this process be strung out for 10 years?

Mr. FRANKS. No, I don't believe that there is a likelihood that the Court could take anywhere near that period of time.

Senator ALLARD. Two years? Five years?

Mr. FRANKS. I think the lower end of that scale might be possible.

Senator ALLARD. Maybe 2 or 3 years. Then after that's done, maybe you have 2 years more after that last appeal?

Mr. FRANKS. Correct.

Senator ALLARD. So we're already halfway through and most of these projects are paying off those bonds. Just trying to deal with averages and how we might impact some.

So it's a relatively short span. There's only about 5 years where you're going to have those bonds downgraded, or are they downgraded now? I guess they're downgraded now.

Mr. FRANKS. They have been downgraded now.

Senator ALLARD. They have been downgraded now.

Mr. FRANKS. Yes.

Senator ALLARD. What I'm getting at, you're going to have maybe just 5 years on the bond life there where it's going to be a real problem for you, isn't it? If we had legislation, if we created just

a short window and put some time restraints on that, maybe that would get you into the free market system. But I don't want to, wouldn't want to see this abused. Maybe that is somewhere we can work on a compromise. I think that's a good observation.

Are there surpluses that develop in some of these authorities? Are there surpluses that develop there where we could say, well, if there's a surplus developing, maybe we can require a paydown of the bond early, even take more of these projects out of the system if we set a date?

Mr. PASCRELL. Senator, there are no surpluses. Some of these authorities have become cash cows. If you say it the way it is, you have asked an honest question, I'm trying to give you an honest answer.

Senator ALLARD. They overcharge for the fee, and if the city collects this fee, then the fees can be directed for other purposes in support of the services?

Mr. PASCRELL. That's correct.

Senator ALLARD. OK. Thank you, Mr. Chairman.

Senator CHAFEE. Thank you, Senator.

I do want to point out that in the next two panels, we will have mayors and county commissioners and so forth who will be able to address these issues also.

Senator Lieberman.

Senator LIEBERMAN. Mr. Chairman, I heard you and therefore have no questions.

[Laughter.]

Senator CHAFEE. Thank you very much.

I want to thank the panel and thank you gentlemen very much for coming.

We now have a new panel coming forward. Mayor Rooney, Commissioner Johnson, Mr. Leff from Connecticut, Mr. Grover Norquist, president, Americans for Tax Reform, and Mr. John Broadway of Virginia.

Now, I do understand that Senator Grams was here and was going to introduce—come forward, Senator. I know you wanted to introduce Mr. Johnson to us, and we'd be delighted to hear your comments.

Senator ALLARD. Mr. Chairman, I wonder if I might be recognized, and I ask unanimous consent that my opening statement be made a part of the record.

Senator CHAFEE. Definitely.

[The prepared statement of Senator Allard follows:]

STATEMENT OF HON. WAYNE ALLARD, U.S. SENATOR FROM THE
STATE OF COLORADO

Thank you Mr. Chairman. First of all Mr. Chairman I want to congratulate you for chairing the subcommittee that has the opportunity to deal with Superfund *and* flow control and interstate waste. You cut a shrewd deal with the other subcommittee chairs over jurisdictions.

More seriously though, flow control and interstate waste are important issues to many States and local governments. However, while I normally agree that we should respect decisions made at the local level, in this case I believe we should carefully examine the actions they have taken. By enacting flow control laws and interstate waste laws State and local government's are interfering with the free market. If their reasons aren't compelling we shouldn't ratify their actions.

The issue of flow control is the most disturbing. In this instance localities can completely subvert the free market process, if they are allowed to pass flow control

laws. While I understand that there are financial considerations to flow control, I have yet to be convinced they are compelling enough to pass laws restricting free trade.

Thank you Mr. Chairman, I look forward to today's hearing.

Senator CHAFEE. Senator Grams, why don't you sit right up there.

We want to welcome you, and you go to it.

STATEMENT OF HON. ROD GRAMS, U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator GRAMS. Thank you very much, Mr. Chairman.

I don't have any questions or issues. I don't want to cause this hearing any problems.

But I just wanted to be here, and it is my privilege to introduce a very important person at this hearing today. In the interest of time, I want to make this statement very short.

Mr. Chairman and other members of the committee, I come before you today not just to commend the committee for focusing its attention on this very important issue, but also to introduce a friend and a colleague who has worked tirelessly on the flow control issue, but nationally and in our State of Minnesota.

As chairman of the board of commissioners in Hennepin County, MN, and the future president of the National Association of Counties, Randy Johnson has devoted many years of his service to addressing this very important issue. Randy's additional service as chairman of the Environmental Task Force for the Urban Consortium helps make him a national authority on environmental public policy. Hennepin County, which includes the city of Minneapolis and its suburbs, has the responsibility to manage a comprehensive recycling and integrated solid waste management program. I am positive that Randy's service in Hennepin County will be of considerable benefit as this committee deliberates the issue of solid waste management.

So once again, Mr. Chairman, I want to thank you very much for your efforts to address this very important issue. It is my privilege to introduce to this committee chairman of the board of county commissioners, Randy Johnson.

Senator CHAFEE. Well, thank you very much, Senator, for taking the trouble to come here. We appreciate it.

Senator Smith, did you have a comment you wish to make?

OPENING STATEMENT OF HON. ROBERT SMITH, U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator SMITH. Yes, Mr. Chairman. I just wanted to make a couple of comments as part of an opening statement, to say that you and I worked very hard 2 years ago I think to accommodate a lot of interests on both interstate waste and flow control, trying to balance many different interests. Even though I had some strong reservations about the use of flow control, S. 534 that we introduced did attempt to narrow, to provide a narrow grandfather of flow control authority to municipalities that relied on its power to fund waste energy and landfill disposal facilities.

During the full markup we even broadened the grandfather authority to accommodate member concerns. We took the bill to the

floor, accommodated other member concerns, and I think it passed by a vote of 94 to 6. Then the House of Representatives did not act on the bill, probably because they felt that the free market ought to take its course. As I look back on that, maybe the House was right.

You know, we received information that the sky was falling, we had witnesses testify that if we didn't act immediately to protect municipalities we were going to have massive defaults on bonds, and then 2 years later, we find that the sky is not falling. I alluded to this in the questions a moment ago.

But the truth of the matter is, as we can see, we have some written testimony from Standard & Poors, these bonds have remained stable. There are, although New Jersey does have still the flow control, there are areas of the country that no longer have flow control, and these facilities have not defaulted.

So I think the supporters of flow control have a tougher case this year, at least with me. Last Congress, I did support grandfathering a limited number of flow control facilities. Because I was influenced, frankly, by the testimony of a number of these local governments and the issues regarding the bonds. But I was never convinced, nor was were my questions ever answered as to what these bondholders were told and what they weren't told. I didn't get an answer again this morning.

Despite our good intentions, those who supported flow control were not satisfied with some of the common sense provisions, and even tried to further widen the limited grandfather than we had.

So I think the issue, there are two issues here, Mr. Chairman, one is flow control and one is interstate waste. And I think having them together is perhaps taking on more than we can deal with. For more than 10 years, this committee has heard dozens of witnesses on interstate waste say that landfills were filling up faster than we could replace them, if we didn't act immediately we'd have a national garbage crisis on our hands. And in response to this, again, we did do some interstate waste reforms in S. 534.

Now here we are back again 2 years later with additional data. We know more than we knew then. I've looked at some of that information from around the country, and it becomes pretty obvious that there may have been some overstatement, to put it mildly, regarding not only interstate waste but also flow control.

Solid waste is still being transported in interstate commerce. Many States are importing as well as exporting. Landfill space is not the scarce commodity it was presented to be, and tipping fees are falling. The free market, to the consternation of many, is working, Mr. Chairman.

So I look forward to hearing the testimony. I'm trying to keep an open mind. But it's becoming more and more difficult, because I think the evidence is not very convincing to me.

Thank you, Mr. Chairman.

[The prepared statement of Senator Smith follows:]

STATEMENT OF HON. BOB SMITH, U.S. SENATOR FROM THE STATE OF
NEW HAMPSHIRE

Once again, we find ourselves here talking about interstate waste and flow control. Frankly, I am disappointed that we are here today.

Two years ago, Senator Chafee and I worked very hard to put together an interstate waste and flow control bill that attempted to balance the many parties interested in these issues. Despite my strong reservations about the use of flow control, the legislation that Senator Chafee and I introduced, S. 534, attempted to provide a narrow grandfather of flow control authority to municipalities that had relied on this power to fund waste-to-energy and landfill disposal facilities. During the full committee markup, we broadened this grandfather authority to accommodate individual member concerns, and similarly did so on the Senate floor. Our bill contained interstate waste provisions that not only capped waste exports, but would have ratcheted these exports down over a series of years. We did not accept all the changes sought by members, but I believe that Senator Chafee and I bent over backward to be accommodating. Although the final bill passed the Senate by a vote of 94-6, the House of Representatives took a more free market approach to these issues, and S. 534 languished in the other body for the remainder of the Congress.

To be honest, I believe that the legislation that passed the Senate had significant flaws, particularly in regards to flow control, and perhaps the House was right after all. However, at the time, I felt it was important to quickly address these issues, and it had been my hope that a Conference with our House counterparts would have resulted in a streamlined solution to these problems. Nevertheless, this did not happen. Today, one of my primary concerns is that the rationale for passing this type of legislation has not gotten any better, and in the case of flow control, it has gotten worse. I really question whether it makes any sense to spend any time on these issues here in the Senate, until we have better assurances that the House will be willing to move on these matters.

I would like to make a few specific comments about the two issues we are here today to discuss. The first is the issue of flow control. This is an issue where some groups took a "sky-is-falling" approach. During the last Congress, we had witnesses who testified that we had to act "*immediately*" to protect municipalities from having to default on bonds they had issued to fund their waste-to-energy facilities, landfill construction and recycling efforts. Now we are here two years later, and, surprise, surprise, the sky has *not* fallen. While only about 18 downgrades have taken place nationwide—almost all in 1995—widespread municipal defaults did not occur. As we can see from the written testimony of Standard and Poors, these bonds have remained stable because municipalities have reacted in a fiscally prudent manner: they have instituted competitive tipping fees, cut their overhead costs, and sought alternative streams of revenue. That is the way the free market should work, and that is the way it has worked. Yet, despite these facts, we will again have witnesses today who will claim that we have to act quickly to protect these bonds.

Frankly, the supporters of flow control have a much tougher case to prove this year. Last Congress, I supported grandfathering a limited number of flow control facilities because I was influenced by the testimony of a number of local governments. Despite our good intentions, lobbyists who supported flow control were not satisfied with our common sense provisions, and worked hard to organize a number of harmful amendments to widen the limited grandfather that we had in S. 534. This effort not only created a number of significant flaws in our legislation, but I believe it also contributed to the ultimate demise of that bill. It is because of this experience, that I am wary of efforts to provide *any* grandfathering authority *whatsoever*.

The second issue I want to talk about is the interstate transportation of solid waste. Not only do I believe this issue can be discussed separately from flow control, but I think this issue is not so clear cut. For more than ten years this committee has heard dozens of witnesses who have testified that this was a significant national problem, that landfills were filling up faster than we could replace them, and that if we did not act immediately, we would have a national garbage crisis on our hands.

In response to these pleas, this committee considered and reported a number of bills, including S. 534, that would attempt to tackle this issue. Now we are back here with two year's worth of additional data. As I reviewed the information from around the country, it became obvious to me that some folks may have overstated their case a few years ago when they said we needed to act quickly. While solid waste is still being transported in interstate commerce, many States are both importing as well as exporting garbage. Landfill space is not the scarce commodity it was presented to be and tipping fees are falling.

Nonetheless, on the horizon we see the closing of the Fresh Kills landfill that could change the equation, perhaps significantly. Attempts to control the interstate transportation of solid waste also raises the dilemma over what is the most appropriate level of government to place control over these issues. Should it be at the State level, or should local communities be empowered to determine whether they

want to have solid waste facilities within their borders? I look forward to hearing the testimony of our New York witnesses, and I hope they will be able to give us some insight into how they are going to deal with the more than four million tons of solid waste generated annually in the city. In addition, I hope all of the witnesses will share their views regarding who should have the ultimate control over where solid waste materials are placed.

I want to thank the witnesses for coming today and I look forward to your testimony.

Senator CHAFEE. Thank you very much. Now we'll have Mayor John Rooney of Northvale, NJ.

All of your statements will go into the record. Each witness will have 5 minutes.

Did you have a comment?

Senator LAUTENBERG. I just want to welcome Mayor Rooney, Mr. Chairman, and to tell you that he was among the leaders in the mayor community, mayoralty community in New Jersey looking for relief for residents. And while we didn't necessarily agree on the approach, he was a forceful leader in his view, and I'm pleased to see him here testifying today.

Senator CHAFEE. Well, thank you, Senator.

Mayor Rooney, you've got 5 minutes. Go to it. Your statement will be in the record.

**STATEMENT OF HON. JOHN E. ROONEY, MAYOR,
NORTHVALE, NJ**

Mayor ROONEY. Thank you, Mr. Chairman.

One of the things I'd like to do is deviate a little bit from my testimony, and I'll make up for that in time. There have been some statements made today that I'd like to either emphasize or correct. One of the things that Senator Baucus had said was basically shutting down the different States from interstate commerce. Senator Lautenberg answered that very well by the fact that New Jersey tried to do this.

The one thing that didn't come out loud and clear is why do we have a problem in New Jersey today. We have a problem in New Jersey because Philadelphia filled up our South Jersey landfills and New York City filled up our North Jersey landfills. So we're out looking for space. So that's one of the problems.

Senator Coats said that he's a net importer of garbage for 6 years. Well, New Jersey has been a net importer of garbage for over 60 years. And that's why we have the problem that we do today.

Also, my former colleague in the Assembly, former Assemblyman Pascrell, Congressman now, stated about how much we actually lose because of flow control in New Jersey. I've calculated the numbers based on the average and based on the real costs of garbage. It comes out to over \$1 million a day in New Jersey that we pay in excess fees for disposal.

So that's what this is all about. That's why I'm here.

Also, Congressman Franks said the New Jersey Assembly was asking for flow control. That's incorrect. The New Jersey Assembly has not taken a position. As a matter of fact, over 30 of my colleagues in the Assembly have signed on to bills ending flow control in New Jersey. We have our own solutions in hand. There are a couple different versions of it. But it's our solution.

A couple of things. There's one thing that kind of scares me. It's when somebody says, I'm from Trenton and I'm here to help. Well, something that scares me even more is when they say, I'm from Washington and I'm here to help. So please, don't help us.

Now, what I want to do is give you a little background. I am the Mayor of Northvale. It's a little, bitty town nestled in the northern valley of New Jersey. The next town from me is Tappan, NY. I'm right on the border, I'm 3 miles from the Hudson River. I have under 5,000 population. We have 1.1 square miles.

We're paying, right now, \$103.38 a ton to dispose of our garbage because of flow control. I recently went out for bid to try to see what the free market was like. The price I got was \$63 a ton. But that's not the low. You can see by New York City's rates, but they have a lot of tonnage, of \$43 a ton. If I look at Bergen County, my own county, they're mandated to go to the Union County incinerator: Mr. Franks' facility. We pay \$80 a ton to Union. We pay \$16 a ton processing fee, because we must deliver it to North Arlington and pay a host community fee, too, and we pay another \$12 a ton to re-transport it to Union County. So \$116 a ton.

Bergen County is mandated to do 192,000 tons to Union County. The balance of it we can go in the free market. Do you know what the bids are in the free market? Forty-two dollars and 75 cents a ton. That's what the real world of garbage is.

So I'm here to say, and also to give you a little bit of other background, I'm also in the State legislature, as my former colleague said. I was also Commissioner on the Bergen County Utilities Authority. I was there for 5 years, 1983 to 1988.

I'm also the chairman of the Mayor's Task Force Against Flow Control. We now have over 240 mayors signed on against flow control. And somebody said, well, we have 567, why not 567? It's because of discrimination. Some of our mayors are discriminated against. Me, I'm paying \$103.38. Somerset County mayors are paying \$125. We're on the Task Force.

But if you take the commissioner of the DEP's own county, Burlington County, they only pay \$49 a ton. Why the hell would they want to oppose this legislation? They don't. They want to keep flow control. Their mayors are interested in keeping flow control.

That's the disparity in New Jersey. If we had rate averaging and we all paid the average of \$96 a ton for our garbage, we would have everybody against flow control. But we don't. We have pockets.

But I must tell you that 7 of the 10 large city mayors are on our side. Over half the population of New Jersey is represented by the mayors that I've talked about.

To give you a good example of how flow control can really hit you between the eyes, in 1988, I was doing construction in my home. February 1988, I had a 10 yard dumpster sitting in my driveway.

I got a call from the hauler, he said, John, if I take that Friday, it costs you \$350. If you wait until Monday, it costs you \$1,300. That's what flow control has done to New Jersey.

Carbone gave us an opportunity to go out and seek lower rates. We said, this is great, this is something that we can use, that money in our budget to provide other services. Actually not to cut services. Everybody is trying not to cut services.

I go back to the \$63 a ton. If I was able to do that this year, I would have had a 40 percent reduction in my rates for garbage disposal. Would any of you up there like to go to your constituency and say, I'm going to save you 40 percent of this item in the budget, and I'm not going to reduce your services one bit? How would you like to take that to your constituency?

I know I can run on it. I'm sure everyone else can. But no, we have to look at a situation that's going to grow and grow, just like topsy.

Also on this litigation that we've formed against flow control, we've got other people supporting this. The Environmental Federation and the Sierra Club, amazingly, they're on our side. They're opposing flow control. We also have Hands Across New Jersey, this is a citizens grass roots movement, Common Cause, New Jersey Business and Industry Association, the Chemical Industry Counsel, United Taxpayers of New Jersey, the New Jersey Chamber of Commerce, and the New Jersey League of Municipalities.

Senator CHAFEE. OK, Mayor, if you would wind up now, please.

Mayor ROONEY. That 5 minutes went quickly.

The point of the issue is that just recently we saw New York City go out for garbage disposal. Forty-three dollar a ton, the real world of garbage. That garbage is going to come to New Jersey. It's going to come to the city of Newark to the incinerator at \$43 a ton. The city of Newark pays \$72 a ton for the same facility.

Is that fair? No, it's not.

The other issue is the bonds. I can discuss that ad nauseam. I can tell you exactly what the issues are on whether the bonds are going to go belly up. I can tell you about the issues of why one county spent over \$100 million on the bonds and never put a shovel in the ground.

This is what's happening under flow control. We had a facility in Bergen County that they, they were 2,400 tons a day when I was there as a commissioner. That is what we were projecting for the incinerator. They're now getting 600 tons.

When they had to build a transfer station, do you know what they did? They built a 5,000 ton facility, 5,000 tons a day. Why? Because they could. Where does that 800-pound gorilla sit?

Senator CHAFEE. Now, Mayor, we've cut you.

[Laughter.]

Senator CHAFEE. Commissioner Johnson.

STATEMENT OF HON. RANDY JOHNSON, CHAIR, BOARD OF COUNTY COMMISSIONERS, HENNEPIN COUNTY, MN; AND PRESIDENT-ELECT, NATIONAL ASSOCIATION OF COUNTIES

Mr. JOHNSON. Thank you, Mr. Chairman and members of the committee. I'm Randy Johnson, and I'm chair of the Hennepin County, Minnesota Board of Commissioners. That's Minneapolis and suburbs. I'm also president-elect of the National Association of Counties. NACO represents the 3,000 counties in the United States.

We appreciate being invited to participate in this hearing. I, too, will depart from my prepared testimony which is being entered into the record. In view of previous statements, I think it's important that we look at the issues that are really not before us right now.

The issue is not whether flow control is a good idea or a bad idea in the abstract for disposal of garbage. It's not whether a free market approach to collecting garbage, which is the expensive part of this whole process. It's not whether a free market approach to collecting garbage is better than a municipal government monopoly approach.

It's not whether facilities to which garbage has been sent pursuant to flow control are environmentally superior to other facilities. And it's not whether flow control facilities will cost more or less over an extended time than other facilities.

The issue before us now is whether local governments, who in good faith built facilities, or in most cases contracted with the private sector to build and operate facilities under competitive bid procedures, shall be able to meet their debt obligations without sharply increasing local taxes.

That's why we are asking for a narrow grandfather for those local governments to be able to pay off their bonds and live up to their contractual obligations.

Now, the question has come up nobody's defaulted yet, the sky isn't falling down, perhaps Congress should continue to do nothing. NACO had never predicted, and when I testified before, I never predicted that defaults were inevitable. Local governments in this country go to great extremes, very expensive extremes, to avoid the "third rail" of defaulting on bonds. As we all recall, New York City was in dire straits several decades ago, and yet never defaulted.

But we have had very serious consequences, and default is not impossible. Here are some of the impacts. National Credit Rating Agencies have downgraded credit ratings for 17 local and State solid waste authorities since the Supreme Court threw out a flow control ordinance in the *Carbone* case 3 years ago. Moody's has downgraded 15 issues. Approximately half were downgraded to "junk bond" status. Standard and Poor's downgraded four issues. Two are now classified as junk bonds. Fitch downgraded three issues to junk bond status.

In addition to downgrades, Moody's has eight additional bond issues under credit review. As litigation increases and the cases work their way through the courts, more downgrades are likely. The total outstanding debt that has either been downgraded or put on a credit watch for potential downgrading by the rating agencies since *Carbone* is over \$2.3 billion.

What does it mean? It means that the next time local governments try to go to the bond market to borrow funds for other public projects, like bridges and roads, or schools, they may be unable to find any market for those bonds. For those local governments who are able to find buyers of their debt, the interest rate will be significantly higher, and local taxpayers will make up the difference.

But it's not only downgrades that we're concerned about. We're seeing other detrimental and expensive effects from Congressional lack of action on flow control.

Attached to my testimony is our Think Again sheet, which outlines and details a number of local governments and what they have had to do over the last 3 years to try to avoid defaulting. My county, for example, has been sued by four businesses and some individuals in a class action regarding our flow control ordinance.

A year ago, the Federal court certified a class consisting of virtually every Hennepin County commercial and residential waste generator. The Court already found the ordinance violated the Commerce Clause of the Constitution, because as *Carbone* held, only Congress has the authority to decide who will regulate garbage that crosses State lines.

Now in May, we will begin trying the second phase of the Hennepin County case, the exact amount of the alleged damages. Plaintiffs are claiming \$154 million, nearly one half of Hennepin County's total annual property tax levy. To add insult to injury, if the court allows this case to proceed to final judgment because Congress has not acted, Hennepin County taxpayers will also have to pay millions of dollars in plaintiffs attorneys fees. Other lawsuits have been filed, more are threatened.

One of my concerns is that Hennepin County will become the poster county for the rest of the country. We will reach the first decision; this case is farther along than the others. We would like Congress to act before that case reaches final judgment.

In other counties, similar difficult impacts are occurring, in Florida, Maryland, New York, North Carolina, Iowa, and Virginia, all have already had to increase local taxes and phaseout recycling programs. We're also seeing that the loss of flow control allows waste haulers in some communities to continue to reduce their costs, but they do not pass the savings on to the waste generators.

The debate over flow control is not really a disagreement between the public sector and the private sector. Local governments acted in good faith under the laws that our States adopted. We attempted, did the best we could to interpret Federal law. We built and entered into competitively bid contracts to build facilities that are now being undercut by what we think are temporarily cheap landfills and some other facilities.

Similar to the electric utility restructuring debate, however, what we're seeking is a way to cover our stranded investments in these facilities. It is only equity that we are asking for, nothing more. We're asking for a narrow grandfather for those cities and counties and local governments who acted in good faith. We tried to solve local problems in the way that they have traditionally been solved in this country, at the local level on a local basis.

We urge you not to tie our hands. We urge you to pass a narrow grandfather bill so that we do not have to explain to our local taxpayers why Congress has forced us to increase local taxes.

Thank you very much, Mr. Chairman and members of the committee.

Senator CHAFEE. Thank you very much, Mr. Commissioner.

Mr. David Leff, assistant commissioner for Policy and Planning, Connecticut Department of Environmental Protection.

Senator Lieberman, he's your esteemed constituent.

Senator LIEBERMAN. Yes, he is, and a neighbor to your esteemed constituents, Mr. Chairman.

I was with David Leff yesterday in New Haven, where we talked about brownfields legislation. I'm delighted he's here for the Department and for Governor Roland. We welcome him and look forward to his testimony.

Thank you.

Senator CHAFEE. Thank you. Go to it, Mr. Leff. If you would restrict your comments to the 5 minutes, we'd appreciate it.

**STATEMENT OF DAVID K. LEFF, ASSISTANT COMMISSIONER,
CONNECTICUT DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Mr. LEFF. Yes, sir. Thank you, Senator Lieberman.

Senator Chafee, members of the committee, I bid you good morning. My name is David Leff, I'm an assistant commissioner with the Connecticut Department of Environmental Protection. With me today, behind me is Robert Wright. He's the acting president of the Connecticut Resources Recovery Authority, which has financed and built four of Connecticut's six resource recovery plants.

I want to thank you for having me here this morning to talk about the effect of a lack of flow control on the State of Connecticut, and to tell you why the *Carbone* decision is having a negative impact on our State.

Over a decade and a half ago, Connecticut realized that it could no longer use the traditional landfill for disposal of waste. We were reaching capacity of our landfills. They were polluting our water, including our drinking water. There were new sites that were unacceptable to the public. As responsible officials, we did not want to foist our problem on other States. We decided that we were going to try to be self-sufficient in our disposal of solid waste.

Waste-to-energy facilities seemed a very good idea at the time. Not only would they take care of our garbage, but through the generation of electricity from solid waste they would avoid the need for use of imported oil.

But these projects are expensive: in Connecticut, \$750 million of bonded debt for six facilities. At the time the projects were developed, fixed costs were to be paid from a combination of energy revenues and tipping fees. In order to allow project financing to go forward, and it was necessary for project financing to go forward, long-term waste contracts had to be entered into with the facilities, guaranteeing a minimum tonnage. These are the so-called put or pay contracts.

In my State, 137 of Connecticut's 169 towns have such contracts. That represents 86 percent of our population. Without flow control, haulers are free to dispose of the waste of committed towns to other facilities. Less waste means that member town tipping fees go up while the desperate need to attract spot market waste drives spot market prices ever lower. It is a very vicious cycle.

This puts an unexpected financial burden on our municipalities. It could ultimately lead to the destruction of these facilities which dispose of our solid waste in an environmentally sensitive and progressive manner. It also discourages recycling, because as towns seek to increase the amount of waste they deliver to facilities, they are loathe to take paper and other recyclables out of the waste stream and put them back to productive use by re-use, instead sending them off to be burned.

Why has the system not collapsed 3 years after *Carbone*? This is a slow downward spiral. In this case, the world doesn't end with a bang, it ends with a whimper.

Also, many haulers held off diverting waste until they saw whether Congress would act. Now that Congress has not acted, diversion of waste is accelerating. Connecticut State and municipal officials have dealt with solid waste in a forward looking and responsible manner. But the *Carbone* decision has changed the rules in the middle of the game.

That is fundamentally unfair. These facilities were built using reasonable economic and legal assumptions. Those assumptions ought to last for the life of the bonds and the life of the contracts involved.

Thank you very much.

Senator CHAFEE. Thank you very much, Mr. Leff. We appreciate that.

And now Mr. Grover Norquist, president of Americans for Tax Reform.

**STATEMENT OF GROVER G. NORQUIST, PRESIDENT,
AMERICANS FOR TAX REFORM**

Mr. NORQUIST. Mr. Chairman, members of the committee, my staff has proposed a real bang-up written testimony here that I commend to your reading at another point. But to stay within the 5 minutes, I'd just like to address a few of these issues.

First, under truth in testimony, Americans for Tax Reform receives no Federal funds, State funds, county or taxpayer funds. And for purposes of this discussion, no support from any interested industries.

But I am interested in this as a taxpayer organization. We work with taxpayer groups in New Jersey that have been mentioned, United Taxpayers of New Jersey, and Hands Across New Jersey. We've heard from political leaders in New Jersey about the upward pressure on taxes because of flow control. Flow control is a tax. It is a tax to support inefficient government enterprises, and it is a tax that is levied on consumers and on taxpayers.

If the enterprises—incinerators to burn garbage or landfills to dispose of garbage—were efficient, they would not be asking for legal protection in forcing consumers in their direction. These institutions should either be sold into the private market or, if they want to remain in the hands of the Government and not go out and loot taxpayers, they should go and get market prices for their goods.

The whole world is moving toward free markets, freedom of contract, freedom of movement, toward freer trade around the globe. I have gone to Poland, Bulgaria, Eastern Europe, advising some of those countries on how to move to a free market. If when I was in Bulgaria, somebody said, hey, we've got this great plan, it's called flow control, isn't this a good idea, I would have said, no. Get rid of that. That belongs to another era. Move to the free market.

It seems to me that if we're advising the rest of the world to move toward a free market and away from State-ism that we ought to at least not go in the wrong direction ourselves.

I'm very concerned about this legislation. I was opposed to flow control or bans or limits on interstate commerce before these hearings. But having heard the earlier panel in this one, I'm even more concerned. I thought the Constitution was a good idea. I think the

Takings Clause is a good idea. I think the Commerce Clause was a good idea.

I understand Patrick Henry's concern that moving from the Articles of Confederation to the Constitution might raise some problems, but I really did think that the Commerce and the Takings Clause were tremendous improvements over the Articles of Confederation. I think to throw those out is a big mistake, that we don't all grow our own wheat in our own backyards, our own counties or our own States. We don't get our own coal from our own counties or our own backyards or our own State. We don't bury our dead in our own cities and towns.

I don't understand why you'd want to put those kinds of restrictions by State, and if not by State, why not by county, and if not by county, why not by city. Why not get rid of the free market altogether. It seems to me that moving toward more State control, government control of this, in order to subsidize inefficient government-run entities is the exact wrong direction to go. Having listened to the earlier discussions in the earlier panel, I thought it was a bad idea before. I think it's a truly horrible idea and destructive idea now.

At Americans for Tax Reform, we do rate tax votes and because this is a tax on consumers, specifically designed to subsidize failed and failing and costly government enterprises, the kind that we tell the politicians to get out of the business of doing that, we're going to be rating this vote as a bad vote on the tax issue itself in this year.

Bad ideas in the private sector go bankrupt. Bad ideas when the Government runs them, they want to stick an I.V. in the taxpayers to fund it. It's a big mistake. I would urge you to defeat this legislation. And I stayed within the green.

Senator CHAFEE. You certainly did, and you made your point clearly.

Mr. John Broadway, Virginia State director, National Federation of Independent Business. We welcome you here, Mr. Broadway, and go to it.

STATEMENT OF JOHN BROADWAY, STATE DIRECTOR, VIRGINIA, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. BROADWAY. Thank you, Mr. Chairman.

On behalf of 600,000 members of the NFIB across the United States, and over 11,000 in the Commonwealth of Virginia, I'm glad to have an opportunity to present the views of small business.

By way of introduction, NFIB is the Nation's largest business association. About 50 percent of our members are in the service and retail industries. About 25 percent are in manufacturing and construction, and the rest in businesses ranging from agriculture to wholesale services. Our typical member has about five employees and grosses about \$350,000 annually.

The vast majority of small businesses are customers of waste disposal services, NFIB also represents a number of small haulers and recyclers. Consequently, any efforts to maintain and expand the use of flow control ordinances negatively affects the small business community. Flow control ordinances force waste disposal customers to use Government mandated waste management facilities and cre-

ate monopolies, which small business owners, and in fact all customers, will most likely pay higher costs.

By their very nature, monopolies give an advantage to one entity at the expense of all others. Because monopolies don't have to face free market competition, customers have no power to bargain for better rates and service.

Flow control ordinances have their most obvious impact on price. In communities where there are no such ordinances, both large and small haulers, processors and recyclers compete for market share. By contrast, where these ordinances do exist, prices are artificially set, and in some instances, as you've already heard this morning, prices are artificially set, and they in fact may be inflated to pay for other Government services. These monopolies limit choice and place a very real tax on small business.

Another impact of these ordinances is inefficiency. Government-backed facilities don't have to seek business to stay in business. They are guaranteed a return on their investment, there's no incentive to improve the disposal facility, to implement new technology or to attempt to cut costs. And certainly, there's no incentive to pass on savings to their involuntary customers.

As I mentioned at the outset, we also represent a number of haulers and recyclers. With flow control ordinances in place, it's highly unlikely that these small businesses will be able to compete for long-term contracts. They will, in effect, be shut out from having any opportunity to provide such services.

We do not agree with the proposition that waste management requires flow control. Such management by local governments can be performed through regulating the quality of service, not by performing it themselves or by establishing long-term exclusive contracts.

In fact, there is a good example of this process taking place presently in Virginia. A few years ago, the city of Richmond and several surrounding localities formed the Central Virginia Waste Management Authority. One of their goals has been to maximize existing private waste management company participation.

The director of that authority, Kevin Burns, has written an article on this subject, and I would like to just quote three sentences from his article in which he says:

Unlike most other regional authorities, this authority has implemented all of its programs through private service contracts for recycling and other waste management services. The result has been the development of an integrated regional waste management program. The public's investment in contract services has stimulated the creation of private competition jobs and the private tax base.

Now, regrading the subject of the grandfathering clause. While small business owners do not support the concept of flow control ordinances, we're not insensitive to the problems in many communities that do in fact have these facilities in place. If the committee does approve flow control legislation, we would strongly urge that only a strictly limited provision be established relative to a grandfathering clause. We do not believe that communities with ongoing programs should be mandated to live under flow control into eternity.

In conclusion, I would just state that NFIB urges the committee to consider the negative consequences of establishing long-term mo-

nopolies that force small businesses to purchase services from a single supplier. We do not believe it's in the best interest of the Nation or the small business community.

Senator CHAFEE. Thank you very much, Mr. Broadway.

Just a couple of brief questions. I don't understand why the rates on these facilities are so high. Is there a suggestion, Mayor Rooney, that they're inflating their charges, that because they've got a captive market that they are charging way more than what the going rate—I'm going to ask you, Commissioner Johnson, the same question. Because there seems to be a suggestion here that when these places have flow control that they are outlandish in their charges.

Mayor.

Mayor ROONEY. Actually, when these facilities were mandated way back in the 1970's, actually it occurred in the 1980's, when we had to go out and build the incinerators, most of them were done with no big contracts. And county authorities who have autonomous, anonymous people on them, they just decided to go out and pick whoever showed them the best plant in Europe or somewhere else in the world.

That's how some of these plants were chosen. They were overbuilt, they were just not competitively done. The bonding was done without any competitive—in fact, I questioned the bonding at the time. There was a commission of 1 and ½ percent for the bond issues that went out, when the actual market value was about ¾ percent on issues that size.

So they did nothing that was competitive. They were free operators, as the 800-pound gorilla was, you know, anything he wants, he's got. And we couldn't even protest.

Senator CHAFEE. OK. Commissioner Johnson, what do you say to all this?

Mr. JOHNSON. Mr. Chairman and members of the committee, modern waste-to-energy plants, modern compost facilities, cost more than burying garbage in the ground in the short run. As Mayor Rooney himself said, local governments were mandated to do this. We were mandated to do it by State law. Many of us thought that that's what the intent of RCRA was.

Most of the plants, and I can't speak for every single plant and facility in the country, most of these plants were indeed competitively bid. The bonds were sold in a competitive sale. Pollution control requirements from State agencies, as well as the EPA, are very strict on these facilities. Extremely strict and very expensive.

Senator CHAFEE. I understand that. But the suggestion from the testimony is that the prices they're charging are way over where they could be. In other words, I guess Mayor Rooney said they are awash with cash.

Mr. JOHNSON. Mr. Chairman, I hear that. But I can tell you that's not the case in my county or in any other facility with which I'm familiar. Now, one of the things that we were told to do was run these like a business. That involves providing reserved funds, which a business would do. That's not awash in cash. That's just prudent management. I'm not aware—

Senator CHAFEE. My time is up.

Mr. JOHNSON [continuing]. Of facilities being awash in cash.

Senator CHAFEE. Mayor Rooney, very briefly now.

Mayor Rooney. Yes, very briefly. There's a good example, when flow control ended in New York, the Hempstead Incinerator at that time was charging approximately \$103, \$104 a ton, getting no garbage. Today without flow control, that facility is between \$60 and \$65 a ton, getting all the garbage it can handle. They've been made to be competitive and they can be competitive, and they're operating fine.

Senator CHAFEE. Senator Baucus.

Senator BAUCUS [assuming the chair]. Thank you, Mr. Chairman.

Mr. Johnson, this is not a question for you on flow control, rather a subject of the next panel, interstate waste. As I understand it, you're going to be chairman of the National Association of Counties. It's further to my understanding that the organization in the past has favored interstate legislation, that is, to allow local communities to have more control of their own destiny, and that is, limit to some degree out-of-state garbage into those counties, is that accurate?

Mr. JOHNSON. Yes. Senator Baucus, NACO's position is to support an interstate waste bill. We think that's important as part of State decisionmaking. We think that a lot of the problems that are connected with exporting waste can be ameliorated if we have flow control so local governments can take care of their own garbage. I mean, we're willing to do this.

But we do support an interstate bill.

Senator BAUCUS. Thank you.

Mr. Norquist, do you favor a grandfather provision in flow control?

Mr. NORQUIST. No.

Senator BAUCUS. No grandfather whatsoever?

Mr. NORQUIST. If you're charging above market rates for the taking of garbage, that doesn't solve any problem. What they ought to do is either sell off the facility, privatize it, reduce the debt that they entailed, or go to market-based prices. The other says, we're going to take money from taxpayers to pay off the bondholders, and we're going to do that by gouging consumers and taxpayers. That doesn't solve any problems.

Senator BAUCUS. What about those communities that relied on the law and built a facility?

Mr. NORQUIST. That were forced to do that by the law?

Senator BAUCUS. They built the facility, relying upon then-current law, before the *Carbone* decision.

Mr. NORQUIST. Before the *Carbone*—

Senator BAUCUS. A lot of people around here talk about, let the local community decide what it wants to do, you know, local control, and that's what the local folks decided to do.

Mr. NORQUIST. Right. But local control starts with individuals running their own lives and making their own decisions. The county getting together and saying to people, we've captured you as consumers, and we're going to make you pay the rates that we want. Of course, government monopolies charge too much and are wasteful, from Afghanistan to Zaire, from 2000 years ago—

Senator BAUCUS. Whoa, wait a minute. We're not talking about Zaire and Afghanistan right here. We're talking only about the

United States of America. So I'm just curious, so you do not favor any kind of grandfather provision?

Mr. NORQUIST. No.

Senator BAUCUS. You oppose any grandfather whatsoever?

Mr. NORQUIST. Yes.

Senator BAUCUS [assuming the chair]. Thank you.

Senator Lautenberg.

Senator LAUTENBERG. Thank you very much, Mr. Temporary Chairman.

[Laughter.]

Senator BAUCUS. Any time.

Senator LAUTENBERG. We seize the initiative.

Senator BAUCUS. Right, absolutely. Speaking of Zaire.

[Laughter.]

Senator LAUTENBERG. Mayor Rooney, good to see you, and you know that I share your view that the residents, taxpayers ought to pay as little as they have to. The problem is that we got into a situation because of the fear and the worry that one day the borders were going to be shut down on us.

Now, what happens? You've heard Senator Coats and Senator Levin and Senator Specter talk about restricting interstate garbage transfer. Lots of members agree with them. What happens if you're forced to stay in New Jersey and we have no choice? Then what do we do?

Mayor ROONEY. Well, it's, we've wasted millions and millions of dollars for the last 8 years, 9 years or so that basically that hasn't happened and that there was lower alternatives out there. I'm hoping that this doesn't happen, that the interstate ban doesn't happen and that States will take their fair share, as New Jersey did. The only reason we have no landfill space available is because of New York City and Philadelphia.

Senator LAUTENBERG. I'm with you, so—

Mayor ROONEY. There are States and there is industry out there that believes that they can have an industry of garbage, of landfill and garbage. But there's also other things that could happen. Under flow control, we have this mandated system that's extremely high. It can be better without flow control. If we got rid of flow control, they would be forced to be more competitive. I'll give you an example of New York, the incinerator, where—

Senator LAUTENBERG. They would be better off lowering their rates and having some revenue—

Mayor ROONEY. Right.

Senator LAUTENBERG [continuing]. Than not have any revenue and just waiting for the free market to bury them in bankruptcy.

Mayor ROONEY. What's happened under flow control is that we've created an underground economy. We've created a diversion. We almost have prohibition out there, where it's more profitable to divert garbage than it is to send it to the proper facility. So that's what's been happening. The diversion in all of these States is just tremendous. That's bad for all of us. It costs our taxpayers those dollars.

Senator LAUTENBERG. I think the principal thing, because of the limited time here, is that I want all to recognize that there is a link that most see between flow control and interstate transfer of trash. I would caution you that we could arrive at a situation which

would invite terrible retaliation. If someone's going to say, you can't ship garbage, and you heard me say before, you can't ship coal, you can't ship other stuff, it would be awful.

So I think at some point, and one of the things I would tell you, Mr. Norquist, that distressed me in your testimony, is that you referred to almost a political or some economic ideology without once approaching what we do about the problem. This is a very complex issue. No one enjoys having their trash carted out-of-state. It's something that we are forced to do.

We used to take it in New Jersey, we went to the Supreme Court, perhaps you heard me say it before, Supreme Court denied us any restraint there. As Mayor Rooney said, we're filled up because of what happened in those States. It's going to come back to us.

But I like it when a witness says, OK, here's the problem, here's what we think, and not a lecture on what kind of economics system ought to prevail.

Thank you.

Senator CHAFEE [resuming the chair]. Senator Sessions.

Senator SESSIONS. Well, I like the economic system Mr. Norquist talked about.

I do, I'm somewhat troubled by the impact I think it will have in at least one area of Alabama that they've entered into reliance on the Government that certain things would be appropriate. In theory, I think you're probably correct, that we could, other forces would take over and it may just be as well to do one way or the other, not have grandfathering. But I think for the disruption and the turmoil it would cause, it may not be necessary.

Let me ask this. I thought it was interesting, the Senator from New Jersey talked about it, I find it difficult to justify under the commerce clause absolute blocking of the transfer of any substance in America, that you feel like, and I think I understood you to agree with that.

Mr. NORQUIST. Yes. I didn't realize that the commerce clause was a matter of debate here, or wasn't the American approach to how we handle it. I didn't know it was an economic theory or something. I thought it was kind of important.

Senator SESSIONS. Things like nuclear waste, I think it's perfectly rational, almost irrational for this Nation not to identify a location in this country to place nuclear waste and set about to do it. You take the places that would be most conducive to that, and you use that land or property for it.

We've done that with regard to Nevada, and we can't seem politically to have the will to follow through. It amazes me how much it's costing this Nation in terms of tax on citizens and the utility rates, because this Nation doesn't have the will to follow through on a perfectly rational plan to dispose of nuclear waste.

Mr. Leff, you mentioned something, I'm not quite sure I understood it, but it was that the spot market, the tipping fees for garbage are dropping?

Mr. LEFF. Yes.

Senator SESSIONS. To me, that is a thing to rejoice. You seemed, you were suggesting that it was not a good thing. I think that

would be wonderful, as long as we're not disposing of it in an unsafe way.

Mr. LEFF. Well, what happens is that haulers will divert a member town's waste to another facility and be able to command a lower price on the spot market. The reason that the spot market prices have gone down is because the facilities are competing for some amount of waste at any price because they're not getting the waste that's guaranteed to them under the contracts.

If we were to restore flow control in Connecticut, it would lower the tipping fees for 86 percent of our population.

Senator SESSIONS. You think it would lower the costs?

Mr. LEFF. Yes, it would. It would, because then the waste that is supposed to go to the particular facilities would go to those facilities, and they would be getting more waste and it would spread the fixed costs over a greater number of tons of waste.

Senator SESSIONS. Any other comments on that?

Mayor ROONEY. I think it's the opposite. Because last year, the rates were about the lowest. They've come back up. Right now, as far as Groves Landfill in Pennsylvania, just over the border from New Jersey, it was down as low as \$26 a ton last year, now I understand it's up to about \$36 a ton. So we see it going up in the Pennsylvania landfills, and I differ with the opinion.

Senator SESSIONS. Well, it's a very, very difficult issue, and it's important for the Nation. Mr. Chairman, that's all I have.

Senator CHAFEE. Thank you, Senator.

Senator Lieberman.

Senator LIEBERMAN. Thank you, Mr. Chairman.

This has been an interesting and important discussion. As Mr. Leff's testimony indicated, this is a very important issue to Connecticut. Not only Mr. Norquist has invoked the interest of taxpayers here today. The problem here is, which taxpayers? In other words, the interest of taxpayers has been both on behalf of reinserting flow control and the interests of taxpayers has been invoked as beneficiaries of no flow control.

So it obviously depends on which taxpayers. It happens, if your taxpayers are part of an area which hooked into a contract to build a waste to energy facility, which was thought to be the progressive thing to do—I was thinking about something Senator Sessions said. I'm not taking it out of context, I don't mean to, but the old legal concept of action and reliance, there's a certain sense here in which a lot of communities around the country acted in reliance on what was the world at that time, which was changed, and made financial commitments.

These are big plants, you had to have a clear revenue flow, not to mention the garbage flow. But that came with the revenue. When the *Carbone* decision of the court changed that, suddenly the revenue wasn't there.

So I want you to go back, let me first say, in response to Senator Smith's question about, and it's a very important question Senator Smith raised, in terms of the Congress' response to this problem. Because here's somebody, Senator Smith worked very hard with Senator Chafee to fashion a compromise. And as he said, he was told over and over again, that in regard to this problem, the sky

is falling. Here we are, 2 years later, and it doesn't look like the sky is falling.

But I want to ask you, from your testimony, to invoke Senator Smith's metaphor, it sounded to me as if you were saying, Commissioner Leff, that the sky was falling, but a little more slowly than we had thought it might. Correct?

Mr. LEFF. Yes. I would liken it to a slowly descending fog, rather than a ceiling plaster collapsing on you. There was a hope out there that Congress would act shortly after the *Carbone* decision and many haulers maintained that as well. They were waiting to see, and the diversion recently has increased.

Senator LIEBERMAN. So what are the consequences? In other words, we've had one project in our State downgraded, another is on an unstable credit watch. What actually has happened on the ground? What are the consequences to those changes?

Mr. LEFF. Let me if I may defer to Mr. Wright, from the Resource Recovery Authority.

Mr. WRIGHT. You've had two things occur. First, if you take the Bridgeport facility, what's happened there is the towns have done the responsible thing, and rather than ignore their obligations, they've raised their tip fees. So that the towns that are committed, at least for the residential waste, which actually shows up at the plant, the tip fees continue to rise, and as a consequence, the amount of waste continues to drop, causing further increases in the tip fee and further drops in the deliveries.

So it's spiraling up until at one point it may become intolerable.

The other thing that's happened is you've had a couple of communities, Madison and Guilford have actually sued to try and get out of their obligations. Ultimately, that litigation was settled. But that is a threat that hangs over all the projects, that the municipal security that's provided for all these projects may be yanked out by a superior court judge one day. I don't expect that those are a good case, but you don't know what will happen once that's thrown into the legal system.

Senator LIEBERMAN. Thanks, my time is up.

And just to draw a conclusion, Mr. Chairman, briefly, from what you've said, I believe the response explains in your answer earlier, Mr. Leff, the quandary that Senator Sessions posed. In fact, and again, it's because 86 percent of our State is covered by waste to energy facilities, and the contracts going with them. The absence of flow control has raised tipping fees. The reassertion of flow control, in our case, because of the system we bought into in the State, will lower tipping fees, and therefore, lower taxes at the municipal level.

Mr. LEFF. You are absolutely correct, Senator.

Senator LIEBERMAN. Thank you.

Senator CHAFEE. If I understand, that's because currently, in the spiral effect, some of it's going out-of-state or going some place else, and whereas, if it was all, if flow control continued, then the volume would bring down the tipping fee. Is that the point you're making?

Mr. LEFF. Absolutely, yes.

Senator CHAFEE. Fine. Thank you. Thank you very much.

Now, we want to thank this panel, it's been a very fine panel. And we'll go to the next panel, and if you'd come forward, please. That's Mr. Seif from the Pennsylvania Department of Environmental Protection; Mr. John Cahill from New York; Mr. Randy Mastro from New York City; Mr. David Olson, Dakota Resource Council; and Mr. Tony Ciofalo, on behalf of the Allied Waste Industries.

Now, gentlemen, regrettably, I am unable to stay. Senator Baucus is kind enough to indicate that he would handle the hearing. I have staff here, plus we'll have copies of your testimony and the record will show. So I'm very interested, I sincerely apologize, because I'll have to leave into your testimony.

Mr. Seif.

STATEMENT OF JAMES M. SEIF, SECRETARY OF ENVIRONMENTAL PROTECTION, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. SEIF. Good morning, Mr. Chairman. Thank you. This is my second appearance here.

Senator CHAFEE. Yes, you're getting to be a regular. You can get a commuter ticket.

Mr. SEIF. A tribute not to my eloquence, but to your patience, I'm sure.

You remember the movie: "If you build it, they will come." That is Pennsylvania's experience. Pennsylvania in 1987 had basically the status of a backward nation: 1,100 unlined landfills, no State plan, no county plans, virtually no recycling, only 18 months of capacity left in our State. The free market had done its thing, I'm afraid.

In 1988, we invested an enormous amount of capital, including political capital, which is what it takes to solve these kinds of problems, in passing and implementing our Act 101. We now have 67 rational county plans, only 51 landfills, all state-of-the-art, double lined, recycling at 20 percent and rising toward our statutory goal, and I hope beyond, of 25 percent.

We had capacity for up to 10 years as a result of these expensive steps. I say had, because at that point, our reward for a good deed set in. The numbers appear on page 4 of my written testimony. They are mind-numbing in their volume. They numb the olfactory sense as well.

What do we want? Well, we don't want more regulation from Washington. We don't want any money from Washington. We don't want a ban, or the right to impose a ban. We don't want you to change the natural economic trash sheds of the Nation to fit State borders where they don't quite fit. We don't suggest that New York City become self-sufficient in trash or food production any more than we think Somerset, PA should have a stock exchange or an opera.

What we do want is for the Congress to accept the court's invitation to give us the capacity to protect ourselves, protect our investment, and to give all States the capacity and the will to grow a system that is at least somewhat like ours, and at least as successful. Specifically, on page 7, the elements are set forth of what we would like to see. The bill passed last year has those essential elements,

though I would agree with Senator Lautenberg that conditions continue to change, and it may be that we should be in discussions with the House and others, other States, on some of the provisions.

Pennsylvania is upstream of the Chesapeake Bay. We are doing our best to act responsibly toward it. We are downstream of the air pollution caused elsewhere in the Nation. And we are downstream of the trash stream. As the real estate agents say, location, location, location. I guess we measure up in that regard.

But it's not just location, it's the fact that we achieved efficient, risk-free, from the environmental sense, efficient landfilling capacity. We built it, and they came. We don't want to unbuild it, we would just like to see others build it. We would like the right to adopt, especially through community and local community action, some protections on our investment, some protections on the environment of Pennsylvania.

We will look forward to working with you to realize that opportunity.

Senator BAUCUS [assuming the chair]. Thank you, Mr. Seif.

Our next witness is Mr. Cahill, commissioner, New York State Department of Environmental Conservation.

STATEMENT OF JOHN CAHILL, COMMISSIONER, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Mr. CAHILL. Thank you, Senator.

Thank you for giving New York State the opportunity to express our interests and concerns on this very important issue.

I think it's appropriate to start off to give an overview of what New York State has been doing on the issue of flow control and interstate waste. In 1988, New York State passed laws which established a hierarchy that prioritizes waste reduction and re-use and recycling as the proper ways to handle our solid waste.

One of the things that I've noticed that has been missing this morning in discussion is the importance of waste reduction, recycling as appropriate tools in solid waste management. Since 1988, recycling has more than quadrupled in the State of New York, from 2 million tons per year in 1988 to over 8.5 million tons in 1995. New York State is leading the Nation in recycling, in that we have a recycling rate of 35 percent compared to the nationwide average of 24 percent.

Some solid waste still must be incinerated or landfilled. Approximately 80 percent of New York State's waste is disposed in New York State's borders. The remaining 20 percent goes to facilities in Pennsylvania, New Jersey, Connecticut, Massachusetts, Virginia, West Virginia, Ohio, Indiana, and Illinois. Most of the waste sent out-of-state goes to private facilities, many with host community agreements. The remainder supplements the capacity from municipal landfills, thus reducing the burden on local taxpayers.

With respect to the issue of flow control, in contrast to most States, New York has had a history of municipal development and operation of solid waste disposal facilities. Our laws have put the burden on local governments to recycle and reduce solid waste. This has led to a need for flow control to create economically viable, environmentally sound solid waste management systems. The issue of flow control is critical to many communities in New York State.

One of the previous speakers mentioned the Hempstead facility, which is in Nassau County, as having truly benefited from the flow control. The reason for that is simply that there is a continuous large waste stream from lower New York. I would compare that to our Warrensburg, Washington County facility in upstate New York, in a rural area along the Canadian border. They took the initiative about a decade ago to build an up to the top of the line resource recovery facility, on the expectations that flow control would be in effect and would allow them to control their waste.

These two counties, Washington and Warren, as I mentioned, small, rural communities, who will do anything to make sure their communities do not go into default. The fact that they haven't been in default at this time I think is a tribute to their perseverance and their dedication as local community leaders.

However, while they may not be in default now, it seems as though that will be inevitable, unless there is some grandfathering provision under the flow control.

With respect to New York City's approach to solid waste management, I will defer most of the comments to Mr. Mastro on this. But last year, Governor Pataki signed legislation to close Fresh Kills landfill in Staten Island. Fresh Kills is the largest unlined landfill in the Nation. It was built in 1942, with the intent that it would last a couple of years and that it would be built to simply above grade.

Well, here we are 55 years later, it's still operating and now encompasses 2,200 acres of marine wetland in Staten Island, and is the only remaining uncommitted, unlined landfill left in New York State. Failure to close Fresh Kills would only delay the implementation of more effective operations for waste reduction and recycling. New York State is not coming here hat in hand, looking for Federal help. Indeed, Governor Pataki last year showed tremendous leadership in pursuing and promoting a clean water, clean air bond act, which provides over \$100 million for New York City solid waste efforts.

In particular, \$75 million will be made available to New York City for Fresh Kills closure, and an additional \$25 million the Governor has committed for New York City to improve its recycling efforts. An additional \$19 million in 1972 Environmental Quality Bond Act funds, have been earmarked for New York City.

Senator BAUCUS. I have to ask you to wrap up your testimony.

Mr. CAHILL. We believe, Senator, with respect to the free market should control the issue of interstate waste. We believe that host community agreements are absolutely essential. We look forward to working with the States and working with the Congress with respect to this important issue.

Senator CHAFEE [resuming the chair]. Thank you very, very much.

That's a good lead-in to you, Mr. Mastro. You're next.

STATEMENT OF RANDY M. MASTRO, DEPUTY MAYOR FOR OPERATIONS, CITY OF NEW YORK; ACCOMPANIED BY JOHN DOHERTY, COMMISSIONER, DEPARTMENT OF SANITATION

Mr. MASTRO. Thank you very much, Senator, and members of the committee.

It's my pleasure to be here on behalf of Mayor Guiliani to address these very important issues. If I may make the City's position very clear. We have submitted written statements, but at the outset, I wanted to say that the City strongly opposes any presumptive ban on interstate waste shipments, but strongly favors the use of host community agreements for that waste which is exported.

I know there have been specific questions raised about Fresh Kills and our closure of Fresh Kills. So I wanted to discuss that plan on the City and State's part and give you some of the particulars on that in my limited time today.

It's in keeping with these principles, which include our belief that the free market, coupled with host community agreements, is the best way to ensure a reasonable, fair pricing structure, as well as a good neighbor policy, that the city has not predetermined with the closure of Fresh Kills, where its solid waste will be disposed. This Mayor and this Governor, supported by a bipartisan consensus of the State legislature, decided to close Fresh Kills by December 31, 2001.

But this will be a phased-in approach, each year diminishing the landfilling and use of Fresh Kills over that 5-year period. We have insisted, consistent with these principles, that each bidder for export of a city's residential waste have all requisite environmental permits and a host community agreement, verifying that the receiving jurisdiction has approved the operation of the facility and agreed to accept the solid waste to be imported, often the result of some direct financial benefit to the receiving jurisdiction.

The city will begin this diminution of landfilling at Fresh Kills with the export of up to 1,800 tons per day of residential waste from the Borough of the Bronx by July 1997. In this regard, it is significant that the city received six competitive bids for this waste. The bidders proposed seven different end locations in five different States; two of those locations being within the State of New York. It's encouraging that we have bids within the State, and we will continue to work with and urge the State to develop even more capacity, in part because transportation is a major element of export costs.

But I should also add that in receiving these bids, we received three times the capacity in these bids for that which is needed to export these 1,700 to 1,800 tons per day from the Bronx.

We did not stop there. We are expanding our recycling program and our waste reduction initiatives in an effort to reduce the amount of waste that will eventually need to be exported. In this regard, I should note that we've added more than \$320 million to our city's financial plan to address the closure of Fresh Kills in an environmentally sound approach. It was not an environmentally sound approach for New York City to have all of its residential waste going to one location, surrounded by a heavily populated area of Staten Island. I think everyone recognizes that. We're trying to pursue environmentally sound approaches for New York City and New York State's long-term future, as well as the Nation's long-term future.

So in that regard, we're putting our money where our mouths are and spending more city funds to increase recycling. We've increased our recycling budget by more than \$76 million to try to reduce the

amount of waste that the city has over the next 5-year period as we diminish the use of Fresh Kills in anticipation of closure.

I should add that we are the only large city in America that requires 100 percent of its households to recycle, including those in multi-family dwellings. We recycle at a higher percentage of household waste than any other large city in America. So we not only require it of 100 percent of our households, but among household waste, we recycle a higher percentage of our household waste than any other major city in America.

We're going to continue to spend even more to recycle new materials, to increase education and outreach, to foster better compliance, to have new equipment to improve recycling efficiency, and to also include programs relating to residential backyard composting and other new initiatives to potentially expand recycling.

Senator BAUCUS. I'll have to ask you to wrap up, too, please.

Mr. MASTRO. Certainly. In short, we are taking the steps not only to address exportation, but at the same time, to reduce the amount of waste that we produce in anticipation of Fresh Kills' closure. It is our expectation that by advancing waste reduction and recycling over the next 5 years, the city will reduce the amount of export. But we are confident that the capacity and desire to accommodate this waste exists. I reiterate that our city's residential waste will only be sent to communities that have agreed to receive it through host community agreements.

Thank you very much.

Senator BAUCUS. Thank you very, very much.

Mr. Olson, you're next.

STATEMENT OF DAVID L. OLSON, DAKOTA RESOURCE COUNCIL, WESTERN ORGANIZATION OF RESOURCE COUNCILS

Mr. OLSON. My name is David L. Olson. My family and I operate a family grain farm south of Minot, ND. I am here to testify on behalf of myself and my community, and as a member and officer of the Souris Valley Chapter of Dakota Resource Council, one of the six groups that make up the Western Organization of Resource Councils.

My expertise on the interstate transportation of solid waste comes from my observation of the effects it has had on my community. I live just a few miles from the Echo Mountain Landfill, operated by Municipal Services Corporation. Since the early 1990's, I have been able to witness daily the transporting of tons of out-of-state waste being offloaded from the rail head at Sawyer, ND, and then trucked to and dumped at the Echo Mountain Facility. The Sawyer dump receives 150,000 tons of waste a year, including municipal solid waste and industrial waste from many different States around the country.

In spite of the fact that many North Dakotans had strong reservations about the wisdom of siting the Echo Mountain facility in old coal spoils south of Sawyer, the lack of Federal legislation allowing States and local governments to control the flow of out-of-state waste into their landfills made it impossible to regulate garbage coming into our community.

We were successful in securing construction modifications that offered additional protection for some water supplies. We were also

able to require the presence of a full-time, on-site inspector at the facility. But we lacked the necessary tools to be able to make the most fundamentally important siting decision. Since the facility was sited, those very things occurred which many of us predicted, including illegal disposal of hazardous waste and failure to produce economic development.

From the beginning, MSC assured the local community and the State legislature that its site never was intended nor would become a hazardous waste site. However, in 1995, we learned that MSC had in fact allowed approximately 198 barrels of hazardous waste to be buried. The waste contained levels of barium several times higher than allowed by law. General Motors was the generator of the waste, and the waste was contained in metal barrels. When the health department discovered the barium, they informed GM the barrels would have to go. Of course, GM maintained the barrels would be too expensive to dig up, and to its credit, GM did finally agree to remove some, but not all of the barrels of barium.

Less than 3 months after this situation was resolved, GM announced it was ending its contract with MSC. Subsequently, MSC has lost its major contract for incinerator ash. There are now only six employees at the facility. Employees may decline even further as cells close. Needless to say, the vast economic benefit to the community that MSC promised never came to pass, and it appears slim it ever will.

Area landowners like myself got together early in the 1990's and speculation was rampant as to how a mega facility like the Sawyer dump would affect all of us in the area and how it would affect the whole of North Dakota. North Dakotans are a fairly pragmatic people. We were interested enough to contact other States where MSC's parent company conducted business.

A couple of strongly needed things came out of our research and practical experience. The interstate waste bills that the Senate has passed over the years are a start. But there are three additional points that I urge you to consider. Most of these points are addressed in the interstate waste bills that Senator Baucus and Senator Conrad have introduced, and I urge you to refer to them.

First, there's a strong need for North Dakota and other States to have a presumptive ban, like the one in Senator Baucus' bill. Second, you realize these huge facilities impact so much more than just the host community. A State should be given authority to control mega landfills. One way to do this, which we endorse, is to let States use a permit cap to moderate out-of-state waste shipments.

And finally, in the past, some waste companies and States have wanted to exempt incinerator ash from this legislation. We think ash, which goes to the same landfills as solid waste, should be covered by the same laws. Only Congress can give us the right to decide for ourselves next time whether garbage disposal is the kind of economic development we want to try. It is certainly not my intent or the intent of our organization to block the siting of out-of-state waste facilities in communities and States where citizens can make that determination through democratic channels.

Senator BAUCUS. I'm going to have to ask you to wrap up.

Mr. OLSON. In summary, we can be empathetic to New York, New Jersey, Connecticut. They do have waste problems. But in

waste legislation, we would at least like to come to the table and have some saying the siting of future waste facilities in our State, which we do not have now.

Thank you.

Senator BAUCUS. Thank you very much.

Finally, Mr. Ciofalo.

STATEMENT OF ANTHONY CIOFALO, VICE PRESIDENT, CORPORATE AND GOVERNMENT AFFAIRS, ALLIED WASTE INDUSTRIES, AND CHAIRMAN, ENVIRONMENTAL INDUSTRY ASSOCIATIONS

Mr. CIOFALO. Good morning. On behalf of the National Solid Waste Management Association, I do thank you for the opportunity to testify.

NSWMA members collect, recycle and dispose of America's waste in all 50 States. Our members range in size from one or two truck operations to multi-State companies. We have invested hundreds of millions of dollars to safely and economically manage America's garbage and recyclables. We have created thousands of jobs in the process.

Two years ago, I testified before this committee. I started my testimony by saying, today, all over America, trash got picked up, so did recyclables, disposal systems met environmental regulations, the system works.

Senators that statement is equally true today. The system continues to work. Americans continue to benefit from the most environmental protected and cost effective solid waste management system in the world. We accomplish this through a combination of State and Federal environmental and public health protection regulations in a competitive, free market system.

However, if Congress acts to restrict the interstate movement of waste, or to re-impose flow control, prices will rise with no corresponding public health safety or environmental benefits. Attached to my written testimony are the results of NSWMA's latest survey of interstate solid waste shipments. What did we learn?

First, 49 States exported some of their solid waste for disposal, and 45 States were importers. Second, the amount that moved across State lines for disposal in 1995 represents less than 10 percent of the solid waste disposed of in subtitle (d) facilities.

Third, the great majority of these shipments occurred between neighboring States. This should not be a surprise. Markets do not recognize State or county lines. Waste sheds are markets. Solid waste moves most efficiently to local markets, many of which happen to be located in a neighboring State.

We also know that solid waste disposal capacity has increased dramatically over the last 10 years. In 1986, only 25 States had more than 10 years of disposal capacity. In 1996, 38 States had more than 10 years of disposal capacity. As a result of new Federal and State environmental protection and health regulations, the days of small open burning dumps are over. These regulations require careful siting and environmental controls such as liners and leachate collection systems. Sites will be monitored well after they close.

Yet meeting these new requirements in a cost-effective manner results in a large, highly engineered landfill. Development costs of these landfills can easily be \$500,000 per acre. These costs demand facilities that can achieve economies of scale, facilities that will serve a larger geographic area.

Moreover, these facilities create jobs for local residents and the communities receive major financial benefits from host community agreements. They use per-ton fees to build schools and roads and other public facilities and to lessen the local and State tax burden upon their communities.

Just as we oppose restrictions on interstate transportation of solid waste, we also oppose restrictions of the interstate transportation of solid waste. Flow control is wrong for all of the reasons that interstate restrictions are wrong. The facts are clear: flow control establishes expensive, local monopolies. EPA's report to Congress made it clear. Flow control has no relationship to environmental protection or increased levels of recycling.

So the only issue remaining for flow control proponents is the fear that solid waste facility bonds will collapse without Congressional action. Yet the reality is that only a very small percentage of these facility bonds have been downgraded, and those facilities continue to meet their bond payments.

Flow control proponents claim that taxes have been levied to meet bond payments. What really happens is that the hidden taxes and inflated tipping fees, which are paid unknowingly by residents and businesses, have been replaced with honest, out in the open financing. Flow control facilities have lowered their tipping fees, eliminated all unneeded expenses, slimmed down and become cost-competitive.

Finally, flow control does not guarantee that enough waste will be delivered to a disposal facility. The history of these facilities is clear: increased recycling and economic recessions cut into the amount of trash available for disposal. The bond industry knows this. Well before the *Carbone* decision, bond prospectuses warned that the garbage may not exist in the flow control area and that the tip fee would have to be raised and guarantee enough revenue.

Senator I urge you to say "no" to monopolies. At this historic time when Americans is taking apart electric monopolies, don't take a step backwards and create garbage monopolies. I urge you to restrict flow control and the restrictions on interstate transportation of waste.

Thank you for the opportunity to present our testimony.

Senator BAUCUS. Thank you, Mr. Ciofalo, very much.

Mr. Olson, you said you favor a presumptive ban. Why is that?

Mr. OLSON. Well, it would help States like North Dakota, where we've been in the past, I think, fairly well ill-prepared for the volume of waste moving into western States like ours. And with a presumptive ban, that would help the State health department and the State as a whole regulate some of the out-of-state waste.

Senator BAUCUS. Do the residents there know about a potential landfill? Do they receive adequate warning or notice? Or, on the other hand, did a lot of them wake up one day and find, oh, my gosh, there was a big landfill here? I'm just kind of curious what that whole process was.

Mr. OLSON. OK, I can be short and to the point. One day I opened the local newspaper, and on 3 pages on the inside, there was a 1-inch column. It said that there was a large industrial waste company bringing waste into a standing facility at Sawyer, ND. That's the first anybody knew about it.

As more of us asked questions and started calling the State health department, then more information started coming out into the newspaper. But the site was already bought. The site was already in the construction phase. And things were going on there. It was already in the works. It was a done deal.

Senator BAUCUS. There was not an agreement, then, with the local community, the town, or was there?

Mr. OLSON. Well, there was an implied consent on the part of a local community. But as you know, in North Dakota, you can have towns of 100 people, and 500 people surrounding that small community. The small community supported the concept, from the employment aspect of it.

Senator BAUCUS. So you lacked the decisionmaker, or the Governor to be able to designate a decisionmaker to be a wider area, then, not just the local town, is that correct? I see Mr. Seif nodding his head.

Mr. SEIF. The community has to be defined correctly, and it has to understand that it's out-of-state waste or in-State waste, it has to be an informed consent to be issued by the right people.

Senator BAUCUS. Mr. Mastro and Mr. Cahill, what's wrong with all that? You say you're in favor of exporting only waste where there's a host community agreement, if I understood you correctly.

Mr. MASTRO. That's correct.

Senator BAUCUS. So why not first make sure that there is a proper agreement? Isn't it more likely to be a proper agreement if there's a presumptive ban until the local community itself decides affirmatively that this is what it wants? Because in that situation, arguably anyway, they can be more fully informed of what's going on, and time to think about this, be better able to examine the costs and the benefits of all this.

Why isn't that better? I say that in part because there are host community agreements, and then, as you know, there are host community agreements. Some just speak to fees, maybe others, and just a whole wide variety. So when you say host community agreements, that doesn't really solve the problem. The real question is, what should the terms of the host community agreements include?

Assuming that we have host community agreements, and it's assumed further that we're talking about fair, legitimate host community agreements, whatever that means, and I think most people know what that is, why not, what's the difference between whether the ban is presumptive or not presumptive? Because still, we're going to have the local community agree. What difference does it make?

Mr. MASTRO. We are requiring, in connection with the exportation of the city's residential waste, host community agreements, and we are verifying, and in fact have been contacted by governmental entities who have expressed an interest from the State of Connecticut, from the State of Pennsylvania, other jurisdictions, about exportation of the city's residential waste. So we are verify-

ing that there are real community host agreements. That's what you need to be a qualified bidder in our process.

However, a presumptive ban is really in our view very bad policy. It raises the potential for politicizing a process that shouldn't be politicized. Free market forces are working. They're working in New York City, which I should add I heard the representatives from New Jersey who were here, and the mayor from New Jersey who was here talk about their high costs of solid waste disposal. They as a State may have the highest cost in the Nation, but the city of New York has had the highest cost in the Nation. But our ability now for the first time to generate competition has caused our prices to go down.

Senator BAUCUS. My time is about to expire—just did. One very quick question.

Mr. Seif, what are some of the ranges of terms in host community agreements, and what do you think a reasonable set of provisions should be? So when we say host community agreements, we all know what we're talking about here.

Mr. SEIF. The right synonym for agreement is contract. A contract should have consideration—the community gets something—and the community needs to be defined, and the State should do that. In our case, county would be appropriate.

We also need to have an understanding on the part of the community and its proper authorities, however they are constituted, of what's coming, how long will it come. Is there a State, proper State regulation and permit, as there would be in our case. And all those elements. It's not just one day last week, a company got the mayor to agree to a deal and then it happens. It has to be a stakeholder type process that can be pointed to in the future.

Senator BAUCUS. My time has expired.

Senator SESSIONS.

Senator SESSIONS. Thank you.

I'm thinking of a little slogan I twisted one time, and it was something like this, oh, what a tangled web we create when we first start to regulate. Things get more and more complicated. I heard the explanation of Connecticut. They entered into, they have a lot of different agreements and laws, and they want to dispose of waste in any way they want to. If they want to pay the price for that, fine. But you can't bind the whole world to make it fit into their scheme of things, I think.

Let me just say this, or ask a number of questions. With regard to disposal in a State, the commerce clause is an important part of our Constitution. It is an essential part of the growth and health of the economy of this Nation. Resources need to move rapidly between various parts of the Nation and back and forth, and I suppose that applies to waste, also.

However, it seems to me that the courts will allow the States or localities to place reasonable controls on interstate commerce. Mr. Seif, with regard to that, it wouldn't be wrong for Alabama or North Dakota to have reasonable restraints on how they will accept garbage, reasonable fees and costs, reasonable regulations to monitor, and which you could require the landowners to pay all of that, would it? I mean, that is not, as your understanding, being eliminated by the Supreme Court opinion?

Mr. SEIF. No, the Court goes on to invite the Congress to set up such reasonable possibilities.

Senator SESSIONS. What about States? Can they do that?

Mr. SEIF. The States should, when the Congress gives us permission, accept that invitation to set up only reasonable standards, not bans and not silly requirements and not the Arizona Mud Flap case and all that. But a right to protect our investment.

Senator SESSIONS. I guess, you say the Congress, the Congress could act. I'm sure there will be some action by this Congress. But the State can still protect itself with reasonable controls, isn't that right, under the *Carbone* decision?

Mr. SEIF. In the absence of Congressional permission to do something more explicit, no State has succeeded, and many have tried, including Pennsylvania, to establish various ways to control what comes in. All those ways have been struck down in other forums, either courts or administrative proceedings. The fact is, it doesn't work. We have to discriminate, in no way—

Senator SESSIONS. Your local trash has to be subject to exactly the same conditions of disposal as the out-of-state trash?

Mr. SEIF. That's right, and trash is trash, and that's appropriate from a technical point of view. The point is, if a community spends an enormous amount of money, political capital and so on to produce a landfill for itself and 20 years of capacity, and then finds out it's only 5 years of capacity because we built it and everyone came, then we have been—

Senator SESSIONS. Well, but they wouldn't be required to take any outside trash, would they?

Mr. SEIF. Well, how can I—

Senator SESSIONS. I mean, if you build a landfill for your city or county, you wouldn't be required to accept trash from another State or city?

Mr. SEIF. When the Secretary denies a permit to trash coming from out-of-state, the permit action is overturned in courts because I have acted contrary to interstate commerce. I cannot ban out-of-state trash.

Senator SESSIONS. Well, that's on the assumption that the creators of that landfill presumably felt they had the authority themselves to do it. But if you created it exclusively for your purposes, you wouldn't be required to accept any more, would you?

Mr. CIOFALO. Well, I think you're probably right in that, Senator. If we're talking about a municipally-owned landfill, and they designate that waste comes in from their municipal jurisdiction, I think you're right in that.

Senator SESSIONS. What about a private one in which you contract with a city?

Mr. CIOFALO. I think a private one, a private landfill, privately owned landfill, I think then indeed the interstate commerce clause does enter in.

Mr. OLSON. It may not. In North Dakota right now, Senator, there's a case that will be tried that an out-of-state waste company wants to dump in the city landfill. The city says, look, it's not properly lined. It's not fit to take industrial waste from an Air Force Base. We can't accept it. And they're going to end up getting it shoved down their throat.

Senator SESSIONS. Well, let me pursue that. Let's say a private landfill desires to receive, and that's often the case, I suppose, you get a permit for a landfill, and they desire to receive trash from out-of-state or some other municipality within the State. It's hard to stop that under the commerce clause as being interpreted now, is that correct?

Mr. OLSON. Yes.

Senator SESSIONS. So if you're going to have regulations on it, it's got to apply to both the local disposal and your interstate disposal?

Mr. SEIF. Absolutely. That's as it should be.

Senator SESSIONS. All right. Now, if a city could, if it creates its own landfill, it could presumably limit that to its own needs. But if it contracts with a private landfill, that may be more difficult to do.

Mr. SEIF. Yes.

Senator BAUCUS. I have a question for you, Mr. Ciofalo. Have waste companies generally been entering into host community agreements with importing States?

Mr. CIOFALO. Yes, Senator. I think that's very typical of the industry in general. I know for my company, we have 46 landfills in 22 States. I can tell you that we have host community agreements with all of them. Certainly all of our subtitle (d) larger facilities.

Senator BAUCUS. The figure I have is that about 19 million tons moves across State lines every year. Is that about right?

Mr. CIOFALO. I think the total universe is about 200 of solid waste generating in the United States in 1995, was 280 million, and of which about 25 million—

Senator BAUCUS. Say 25 roughly. How much of that 25 million is being imported to a landfill or incinerator where there's a host community agreement? What percent, roughly, today?

Mr. CIOFALO. I don't know a percentage, Senator.

Senator BAUCUS. Rough guess?

Mr. CIOFALO. I think it's very high. I think it would be in probably the 80 to 90 percent range.

Senator BAUCUS. Next question is, is there capacity, I mean, let's say New York, let me get my figures here. As I recall, about 13 million tons?

Mr. CIOFALO. You're talking about Fresh Kills? Thirteen thousand tons a day.

Senator BAUCUS. And New York State capacity, well, New York is now, what capacity is there in New York today?

Mr. CAHILL. Well, Senator, if I could just answer that. Two years ago, we undertook a revision to the regulations concerning landfill sitings in the State of New York, which increased the capacity in New York State by 50 million tons. So we have recognized the need for New York State to also look at increasing its capacity to address in-State and out-of-state waste. Because it should be noted that New York States does actually import.

Senator BAUCUS. Most States do.

Mr. CAHILL. Yes. Our revisions have, to our regulations, has made it easier for siting and has created an additional 50 million ton capacity.

Senator BAUCUS. My real question is the degree to which New York waste that's going to be exported can easily be exported sub-

ject to host community agreements, when I don't know if 80 percent's correct or not, but let's assume it's correct, it sounds a little high to me, frankly. The degree to which New York can easily export its balance and add to very significantly the amount of waste that is not subject to host community agreements. Again, the point being, the question being, how easily can New York export all of its waste, and do what New York wants to do, that is, subject to host community agreements?

Mr. MASTRO. As I said before, Senator, we are going to start exporting up to 1,800 tons per day of the residential waste in the Borough of the Bronx. We've received six bids siting seven different locations, two of them within the State of New York. Those bids constituted more than three times the capacity needed. In other words, just those bids for that Bronx exportation were three times more than the 1,800 tons per day that we're seeing to export under that contract.

I have to add one other thing. There are currently 13,000 tons per day of waste going to Fresh Kills that we are intending to reduce the amount of waste through recycling and waste reduction programs. We believe we can have some substantial impact on that number over time, through increased recycling and waste reduction. But there will still be a need for some export.

Senator BAUCUS. What about Pennsylvania? How much of the volume being exported currently to Pennsylvania is subject to host community agreement?

Mr. MASTRO. I don't know the answer of how much is being imported to Pennsylvania.

Mr. CAHILL. I think it's important to note—

Senator BAUCUS. Could you provide that to us, please?

Mr. MASTRO. Certainly, Senator.

Mr. CAHILL. I think it's also important to note, Senator, that in the report that was released by Governor Pataki and Mayor Guiliani back in November 1996, with respect to how the State and city were going to handle Fresh Kills' closure, it would require, all the shipments out-of-state would require host community agreements. So I think prospectively the answer's been addressed in that report, which I certainly would like to provide you.

Senator BAUCUS. One question, too, Mr. Cahill, your predecessor, when I asked him by what year would New York be self-sufficient or contain all of the, deal with internally within the State, all of the garbage, the trash that it generates, the answer I got was by about December 31, 2001.

Mr. CAHILL. I hope you won't bind me by my predecessor's comments.

Senator BAUCUS. That was Tom Jorling who made that comment, made that statement, made that assertion, said New York could handle all of its garbage by the first of 2002.

Mr. CAHILL. Well, I think New York State has made a tremendous effort as far as waste reduction and recycling. Again, we're leading the Nation in that regard. We have taken steps over the last several years to improve siting requirements.

Senator BAUCUS. Do you have a target date when you will be self-sufficient?

Mr. CAHILL. No, there's not a target date. I think we'd like to do it as soon as we can. But we realize in the short term there's going to be a need for importation of New York State——

Senator BAUCUS. Was there a change in policy in between you and Mr. Jorling?

Mr. CAHILL. No, I think what we've always been trying to achieve waste reduction and recycling and how that fits into the State's need to export waste. So there hasn't been any change in the priorities of the State. I don't know in what context Commissioner Jorling made that statement. But frankly, it would be unrealistic to think that we would not be exporting some waste by the year 2001.

Senator BAUCUS. I just generally believe that, first of all, very much understand and agree with the interstate transport of trash. I mean, that's here, that's fine and it's part of the market.

But I also think that a State has an obligation to take care of its own trash as much as possible, even more recycling, even more waste reduction. And I understand New York City does a good job. But let's be honest about it, that's New York City. I mean, it's much easier to recycle New York City, the collection process is much easier there than it is in areas that are spread way out. Washington, DC has a terrible time setting up a meaningful recycling program.

But I just urge you to take care of your own waste as much as possible.

Mr. MASTRO. Certainly, Senator. We'll continue to make efforts to increase recycling. But even heavily concentrated cities like Philadelphia, Chicago, others don't do anywhere near the job that we do in recycling already. We've made a substantial financial commitment to increase that recycling.

Senator BAUCUS. And 12,000 tons a day is a lot of trash.

Senator Sessions.

Senator SESSIONS. You mentioned six bids. Would you share with me the range or percentage differences from your low to highest bids?

Mr. MASTRO. Sure. And the six bidders, they ranged anywhere from the low 40's up to the high 60's. There have been previous estimates that this could cost as much as \$75. So all the bids came in below that. They ranged geographically, as I said, two of the bids were for New York facilities. One was in Connecticut, one in New Jersey, one in Pennsylvania and one in Virginia. The bidders offered three times the capacity of what we will need for that particular project.

It's because of that free market and that ability to have interstate exportation that we were able to substantially reduce our costs compared to what we estimated they would be. We have been living in the city that has had the highest carting costs of any place in the Nation. Our commercial carting historically plagued by organized crime cartel control of that industry, which we are now breaking and seeing prices fall.

But New York City has had the highest carting costs in the country, historically. We're finally seeing that change, thanks in part to the ability to have interstate export.

Senator SESSIONS. Dr. David Verner, Alabama, Montgomery, helped you, I think, break some of that exorbitant cartage fees. I respect the work that he did in that regard.

Well, I think that's good to see that. Because every dollar that you spend is a cost applied to the citizens of New York and they don't need to pay more than they ought to pay to dispose of their garbage.

I also think, you know, when you think about disposing of your own, it would be unrealistic to ask Manhattan to dispose of all of its garbage, I think, when there are other places in the country that it could be done cheaper and more practically.

Mr. Chairman, I am delighted to listen to these issues. It's new for me to be a part of this committee and to hear the complexity and the importance of handling our waste products in a way that's at least cost to the taxpayers and most beneficial to the environment.

Thank you very much.

Senator BAUCUS. Thank you, Senator Sessions.

I'd like to tell Mr. Cahill the context of Commissioner Jorling's statement. It was at a hearing before this committee, it was 1990. And I'm in error. I said that he said that by December 31, 2001, I was wrong, he said by the turn of the century.

Mr. CAHILL. Are you talking about this century or the next one?

Senator BAUCUS. I think this one.

[Laughter.]

Senator BAUCUS. Because this hearing was still in this century, so turn of this century.

Well, we thank everybody very much. The record will be kept open for 7 days. Thank you.

[Whereupon, at 1:32 p.m., the committee was adjourned, to be reconvened at the call of the chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF HON. DAN COATS, U.S. SENATOR FROM THE STATE OF INDIANA

Mr. Chairman and members of the committee, I appreciate the opportunity to testify this morning. I am pleased that this committee, once again, has turned its attention to an issue important to Indiana. This is a matter that several members of the committee are very familiar with. Interstate transportation of waste came to my attention early in my Senate career. Ever since that time, I have fought to give States and communities the right to impose reasonable restraints on out-of-state trash.

As the Senate and House have struggled since the 101st Congress to enact solid waste legislation, shipments across borders have continued. Large exporters have continued to ship outrageous amounts of waste across State lines. One such State, New York has not opened new home-State landfills to meet its waste disposal needs. In fact, New York has seen an 87 percent decline in landfills since 1986. Now, we read the announcement that New York City is planning to close the Nation's largest, and New York City's sole landfill, *Fresh Kills*. It is almost certain that no new landfill will be sited within New York City. Over 13,000 tons of trash per day will be searching for a home. Nearly 5 million tons annually.

Large importers, like Indiana, continue to be adversely impacted by out-of-state trash. Indiana has been a net importer of waste for over 6 years. Last year, we received our largest amount of out-of-state trash—over 1.8 million tons. But until Congress acts, Indiana's hands are tied—Indiana cannot control what comes across its borders and into its landfills.

Congress has come close to enacting laws, but close does not count. This year, with the impending closure of Fresh Kills, Congress *must* complete its work and send legislation to the President.

During the 104th Congress, I supported the Senate bill. Working with Senators Chafee, Smith and Baucus, legislation was crafted that earned the support of 96 Senators. Later in the congressional session, it was approved by unanimous consent. Many came to the table with divergent positions, but we were able to work out an agreement. Unfortunately, we were unable to secure passage in the House. So here we are again—for the fifth straight Congress.

As the Senate, again, addresses the problem of solid waste, I plan to introduce legislation that includes the framework of the consensus, Senate bill, but which adds a few provisions that are necessary for importing States. (A letter that I received from our State environmental commissioner details the need for strengthening measures.)

First, importing States need waste controls on future waste shipments—not just existing levels. According to the report of the Fresh Kills Task Force (which was charged with exploring New York City's solid waste disposal options): "It is necessary to plan for the possible exportation of *all* residentially generated waste (13,000 tons per day) out of the city." Besides exportation, New York is also exploring the options of recycling and waste prevention, but it is unlikely these two options will greatly reduce the amount of waste that must be diverted from Fresh Kills. At best, it is unclear how New York City will replace this lost capacity. But it is safe to assume that the city will export this waste to traditionally large importing States such as Indiana, Ohio, Michigan, Pennsylvania and Virginia, and other States. These States, already struggling under the weight of out-of-state waste, need tools to address this additional, incoming waste. These tools, specifically needs language and permit caps, would ensure that new landfills are not being built primarily for out-of-state waste. States need the authority to reserve disposal capacity for their own waste.

Second, the definition of *host community agreement* must be narrowed. In the last Congress, the Senate bill allowed a host community agreement to override all actions by a Governor. Since host community agreements were broadly defined, a Governor's ability to reduce out-of-state waste was limited. To eliminate this problem, we need to make sure that all *future* host community agreements explicitly authorize the amount of out-of-state waste to be received at the facility.

Third, importing States should be given the opportunity to freeze, and begin to reduce, volumes of out-of-state trash. This allows exporting States access to facilities, while guaranteeing the importing States can reasonably understand the volumes they will be expected to receive. This freeze and reduction will encourage exporters to look for home-State capacity. It will also protect the importing States' disposal capacity for local and regional waste management needs.

Finally, others will testify about flow control this morning. I have not been directly involved with the details of this issue, but I support the two issues being linked. It is clear that if these two issues are de-linked, neither will pass. We must address both solid waste and flow control, if we are able to pass a bill this Congress.

Let me stress, as I conclude my remarks, that I am not arguing for an *outright* ban on all waste shipments between States. There are examples of effective and efficient cross-border waste management. However, we must give States a role in making waste management decisions. Without congressional authority, States will remain unable to reduce unwanted waste transports. States, communities and residents, whose backyards are out-of-state dumping grounds, must have a say in the process.

Again, I commend you, Senator Chafee, and my colleagues on the committee, for moving expeditiously on this issue. I look forward to working with the committee to ensure that we afford real protection to importing States while allowing exporters sufficient time to make their own waste management decisions.



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We make Indiana a cleaner, healthier place to live

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March 17, 1997

The Honorable Dan Coats
U.S. Senator
404 Senate Russell Office Building
Washington, DC 20510

Dear Senator Coats:

I am writing to offer the State of Indiana's comments on the issue of state and local controls on shipments of out-of-state waste, which is the subject of the hearing the Senate Committee on Environment and Public Works is conducting tomorrow.

During the 1990s, Indiana has spent a significant amount of time and resources to develop and implement a comprehensive State Solid Waste Management Plan. In addition, a network of local Solid Waste Districts now exist which are working hard to reduce the amount of waste for disposal in Indiana. These districts are also responsible for assuring that adequate waste disposal capacity exists to serve their local and regional waste management needs.

As a net importer of solid waste for many years, it is disheartening to see that the effort of states like Indiana continue to be adversely impacted by waste from states which have not developed adequate capacity. After achieving a significant reduction of East Coast shipments directly into Indiana a few years ago, we are now experiencing a new influx of out-of-state waste from other locations. In 1996, more than 1.8 million tons of out-of-state waste was dumped in our state.

Indiana is keenly interested in seeing Congress give all states the tools they need to assure that those who do take responsibility for their waste management needs are not taken advantage of by those who do not. Specifically, Indiana prefers the bill you plan to introduce over the version of S. 534 that passed the U.S. Senate in the 104th Congress because it will:

- * Include clearer and narrower exemptions to the authorities given to states and localities to ban or limit out-of-state waste shipments to solid waste disposal facilities, thus making those authorities more effective.

Senator Coats

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- * More carefully and clearly define such terms as "host community agreement" and "specific authorization".
- * Provide all states with the authority to deny permits for major modifications of existing facilities as well as new waste facilities which do not demonstrate a local or regional need, clarifies such denials do not violate the commerce clause of the U.S. Constitution.
- * Provide for improved annual percentage limitations on out-of-state waste at new or expanded disposal facilities.

I applaud the leadership shown by you, Senator Chafee, the Chairman of the Committee on Environment and Public Works, and Senator Baucus, the ranking member, in seeking to have Congress act on legislation that addresses the controversial and complicated aspects of out-of-state waste. I am hopeful that the committee will give serious consideration to the improvements included in your interstate waste bill. Please do not hesitate to contact me for further assistance with your efforts.

Sincerely,

Michael O'Connor

Michael O'Connor
Commissioner

STATEMENT OF HON. ARLEN SPECTER, U.S. SENATOR FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr. Chairman and members of the committee, I appreciate the opportunity to testify before you today on the critical issue of interstate shipments of solid waste, which is a top environmental priority for me and for millions of Pennsylvanians. As you are aware, Congress came very close to enacting legislation to address this issue in 1994, and the Senate passed interstate waste and flow control legislation in May, 1995 by an overwhelming 94-6 margin, only to see it die in the House of Representatives. I am confident that with the strong leadership of my good friends and colleagues, Dan Coats, Chairmen Chafee and Smith, and Max Baucus, we can get quick action on a strong waste bill and put the necessary pressure on the other body to conclude this effort once and for all.

As you are aware, the Supreme Court has put us in the position of having to intervene in the issue of trash shipments. In recent years, the Court has struck down State laws restricting the importation of solid waste from other jurisdictions under the Interstate Commerce clause of the U.S. Constitution. The only solution is for Congress to enact legislation conferring such authority on the States, which would then be Constitutional.

It is high time that the largest trash exporting States bite the bullet and take substantial steps toward self-sufficiency for waste disposal. The legislation passed by the Senate in the 103d and 104th Congresses would have provided much-needed relief to Pennsylvania, which is by far the largest importer of out-of-state waste in the nation. According to the Pennsylvania Department of Environmental Protection, which is ably headed by one of your other witnesses today, Secretary Jim Seif, 3.9 million tons of out-of-state municipal solid waste entered Pennsylvania in 1993, rising to 4.3 million tons in 1994, 5.2 million in 1995, and a record 6.3 million tons from out-of-state in 1996. Most of this trash came from New York and New Jersey, with New York responsible for 2.8 million tons in 1996 (up from 2.3 million tons in 1995) and New Jersey exporting 2.4 million tons to Pennsylvania (up from 1.8 million tons in 1995), representing 83 percent of the municipal solid waste imported into our State.

This is not a problem limited to one small corner of my State. Millions of tons of trash generated in other States finds its final resting place in more than 50 landfills throughout Pennsylvania.

Now, more than ever, we need legislation which will go a long way toward resolving the landfill problems facing Pennsylvania, Indiana, and similar waste importing States. I am particularly concerned by the developments within the past year in New York, where Governor Pataki and Mayor Giuliani announced the impending closure of the City's one remaining landfill, Fresh Kills in 2001. I am advised that 13,200 tons per day of New York City trash are sent there and that Pennsylvania is a likely destination once Fresh Kills begins its shutdown.

On several occasions, I have met with county officials, environmental groups, and other Pennsylvanians to discuss the solid waste issue specifically, and it often comes up in the public open house town meetings I conduct in all of Pennsylvania's 67 counties. I came away from those meetings impressed by the deep concerns expressed by the residents of communities which host a landfill rapidly filling up with the refuse of millions of New Yorkers and New Jerseyans whose States have failed to adequately manage the waste they generate.

Recognizing the recurrent problem of landfill capacity in Pennsylvania, since 1989 I have pushed to resolve the interstate waste crisis. I have introduced legislation with my late colleague, Senator John Heinz, and then with Dan Coats and cosponsors from both sides of the aisle which would have authorized States restrict the disposal of out-of-state municipal waste in any landfill or incinerator within its jurisdiction. I was pleased when many of the concepts in our legislation were incorporated in this committee's reported bills in the 103d and 104th Congresses and supported both measures strongly during floor consideration.

Some may wonder why there is a need for Federal legislation to empower States to restrict cross-border flows of garbage. Simply put, Pennsylvania and other States that were in the forefront of solid waste management have ended up as the dumping ground for States that have been unwilling to enact and enforce realistic long-term waste management plans. Although I am advised that these States are making some progress, some continue to ship increasing amounts of waste to Pennsylvania landfills.

I urge the committee to report legislation as soon as possible that will lead to significant reductions in the amounts of out-of-state waste imported into Pennsylvania and other States. I believe that the bill in the 104th Congress had the right ingredients: it allowed a Governor to unilaterally freeze out-of-state waste at 1993 levels

at landfills and incinerators that received waste in 1993 and included an import State ratchet providing that a Governor could restrict waste imported from any one State in excess of 1.4 million tons in 1996, down to 550,000 tons in 2002 and thereafter. These provisions would provide a concrete incentive for the largest exporting States to get a handle on their solid waste management immediately.

Mr. Chairman, I also want to encourage the committee to include provisions addressing the issue of waste flow control authority. During the 103d Congress, we encountered a new issue with respect to municipal solid waste—the issue of waste flow control authority. On May 16, 1994, the Supreme Court held (6–3) in *Carbone v. Clarkstown* that a flow control ordinance, which requires all solid waste to be processed at a designated waste management facility, violates the Commerce Clause of the United States Constitution. In striking down the Clarkstown ordinance, the Court stated that the ordinance discriminated against interstate commerce by allowing only the favored operator to process waste that is within the town's limits.

As a result of the Court's decision, flow control ordinances in Pennsylvania and other States are considered unconstitutional. Therefore, it is necessary for Congress to enact legislation providing clear authorization for local governments to utilize waste flow control.

I have met with county commissioners who have made clear that this issue is vitally important to the local governments in Pennsylvania and my office has, over the past 3 years received numerous phone calls and letters from individual Pennsylvania counties and municipal solid waste authorities that support waste flow control legislation. Since 1988, flow control has been the primary tool used by Pennsylvania counties to enforce solid waste plans and meet waste reduction/recycling goals or mandates and many Pennsylvania jurisdictions have spent a considerable amount of public funds on disposal facilities, including upgraded sanitary landfills, state-of-the-art resource recovery facilities, and co-composting facilities. In the absence of flow control authority, I am advised that many of these worthwhile projects could be jeopardized and that there has been a fiscal impact on some communities where there are debt service obligations related to the issuance of revenue bonds for the construction of waste management facilities.

The committee has, in the past, devised appropriate legislation which protected the ability of municipalities to plan effectively for the management of their municipal solid waste while also guaranteeing that market forces will still provide opportunities for enterprising companies in the waste management industry. I urge the committee to take the same approach in the 105th Congress and to report flow control legislation to the full Senate as soon as possible.

Thank you again for the opportunity to share my views, and I would be glad to answer any questions the committee might have.

STATEMENT OF HON. CARL LEVIN, U.S. SENATOR FROM THE STATE OF MICHIGAN

Mr. Chairman, as you know, I strongly support moving legislation to give State and local governments the authority to regulate the flow of solid waste into and out of their jurisdictions.

Before June 1, 1992, the State of Michigan's Solid Waste Management Act provided that solid waste generated in another county, State, or country, did not have to be accepted for disposal unless authorized in the receiving county's management plan. This planning process worked very well. It provided certainty and assured available disposal capacity on a county or regional basis for the long term by authorizing limitations on the amount of waste that could be imported. On June 1, 1992, the Supreme Court, in the Fort Gratiot case, decided that this part of the Michigan Act was a violation of the Commerce Clause, in the absence of Congressional authorization. This decision has created chaos and undermined sound planning.

Recently, the city of Toronto announced a decision to sign a 5-year contract with Browning-Ferris International (BFI) to dump 500,000 tons of trash annually at the Arbor Hills, Michigan landfill which BFI operates in Salem Township, Washtenaw County. That represents approximately 40 or more truckloads per day. This makes a mockery of local efforts to plan for local waste disposal needs.

In 1996, according to the Michigan Department of Environmental Quality, Michigan imported waste from 10 States and Canada. Canada appears to be the major exporter in terms of volume. It is vital that any legislation empower States and affected local governments to regulate incoming out-of-country in the same way as out-of-state waste. That is why I have coauthored similar provisions in past bills.

In 1994, 35 States had laws on the books containing provisions authorizing some or all of their political subdivisions to exercise flow control authority over solid waste within their jurisdictions. Clearly, this was a recognition that the waste man-

agement facilities and programs that local or regional governments had committed to and invested in required flow control authority to ensure their continued economic viability. The Supreme Court decision, in the *Carbone* case, threw local government flow control plans into chaos. The Supreme Court has said Congress can pass legislation to allow local and regional governments to act. If we truly believe that State and local governments have a rational role in a Federal process, then act we must.

I have been contacted by numerous counties in Michigan that are seeking re-institution of the authority eliminated by the Supreme Court decision. Kent County issued approximately \$90 million in bonds to pay for an integrated waste management facility, and depends on exercising its flow control authority to repay those bonds. Emmet County has spent millions to develop a transfer station, recycling processing facility and a household hazardous waste center. Jackson, Oscoda, Montmorency, and many other Michigan counties and cities have similar stories. Congress cannot ignore the negative effects that the *Carbone* decision has had on the credit ratings or the viability of investments in waste recovery facilities and programs of numerous local governments around the country.

Since the Fort Gratiot decision in 1992, I have supported the return of some measure of the original authority over waste to local governments and States. I believe these governments have the responsibility and the ability to most effectively plan for the management of solid waste. The private sector, in this case, is less concerned about the long-term environmental and safety risks imposed by the disposal of waste than the short-term economic gain they receive in obtaining cheap disposal prices. Simple price competition does not drive good planning in an area of public activity where feelings run high, and understandably so, as is the case in landfill or waste disposal facility siting and operation.

My State should not become a dumping ground dotted with landfills spilling over with waste from other States or countries that refused to actively and responsibly manage and control the generation of waste within their borders. And, that is what appears to be happening. Does Canada have less land available for landfills than Michigan?

Common sense and a decent respect for our Federal system require action now on both interstate transportation and flow control of solid waste.

STATEMENT OF HON. BILL PASCRELL, JR., U.S. REPRESENTATIVE OF NEW JERSEY

Good morning Mr. Chairman, members of the committee, and the senior Senator from New Jersey. Thank you for giving me the opportunity to testify on this important issue. I am pleased to be here this morning to share my views with the committee on why I am opposed to Federal legislation that would allow States to control the flow of solid waste. Fundamentally, I believe that flow control is a consumer issue, and in this case the consumer is best served by a system of open competition which results in lower garbage disposal costs.

Before I discuss why I am opposed to flow control legislation, I believe it is important for me to briefly comment on my background and how I came to adamantly oppose flow control legislation. Prior to being elected to Congress, I was an Assemblyman in the New Jersey State Legislature for 10 years (from 1987 to 1997) and served as the Mayor of Paterson for 7 years (from 1990 to 1997). It was during my tenure as the Mayor of New Jersey's third largest city where I gained first hand experience in paying for flow control. In 1995, the city of Paterson spent \$11 million of its \$137 million budget on waste disposal—roughly 8 percent of our budget, and we had to send the waste to an incinerator in neighboring Essex County. These precious dollars that funded this overpriced disposal might have otherwise supported additional fire protection, police, education and other important municipal services. And the city of Paterson in a lawsuit, *Carbone v. Shinn*, asserted that if it were allowed to pay market costs for disposal it would have saved \$169,000 to \$237,000 per month. Regrettably, due to waste flow control New Jersey has the highest disposal costs in the nation—\$96 per ton.

Prompted by these experiences and the U.S. Supreme Court's decision in *Carbone v. Clarkstown*, which held that flow control laws violate the U.S. Constitution, I along with a former colleague who is with us today, Assemblyman and Mayor of Northvale, John Rooney, became the founding members in 1995 of the Mayors' Task Force Against Flow Control because New Jersey maintained that its system of flow control was different from *Carbone*. The Task Force included mayors from 7 of the States 10 largest cities. We all agreed that flow control costs our cities tens of millions of dollars each year, that flow control stifles the operation of the free market,

and that at the end of the day there is no reason that New Jerseyans should not enjoy the benefits of the free market in the operation of their solid waste system.

The simple goal of our task force was to ensure that municipalities have the right to send trash to the cheapest waste facility available. Mr. Chairman the imposition of solid waste flow control is a flawed policy that benefits neither the consumer, the taxpayer, nor the general economy. The only beneficiaries are local government officials and county utility authorities. And flow control is not necessary to enable governments to obtain bonds needed to build waste facilities. With flow control assurances, underwriters are willing to issue bonds for facilities that could prove wasteful and incapable of competing in an open market place. If underwriters do not want to support construction of a facility, that's a good thing. It protects taxpayers and consumers from subsidizing what would be a poor investment decision by the local government in the first place. Last, groups like the New Jersey Environmental Federation and the Sierra Club are also opposed to flow control—adding yet another voice to the already long list of those in opposition to flow control legislation.

The fact of the matter is that flow control legislation is simply bad policy. Mr. Chairman, I am strongly opposed to Federal flow control legislation. Local governments, small businesses, and households are better off without it. We should let the free market determine the lowest price, to the benefit of all involved. To borrow a quote from my former colleague, Brett Schundler, "Instead of passing flow-control legislation, Congress should bury it in the trash heap of discarded ideas."

Thank you for this opportunity to share my views with you.

STATEMENT OF HON. BOB FRANKS, U.S. REPRESENTATIVE OF NEW JERSEY

Mr. Chairman, and members of the committee, thank you for giving me the opportunity to testify in support of Federal action required to avert a crisis in my home State of New Jersey.

At issue today is a court ruling that, if left unanswered, could jeopardize the solvency of more than \$ 1.7 billion in bonds issued by New Jersey counties to construct waste disposal facilities.

Without Congressional intervention, the burden of repaying this debt will fall on innocent taxpayers. Through no fault of their own, taxpayers could face huge increases in their local property tax bills.

Mr. Chairman, I am not here to argue the pros and cons of flow control. Rather, my objective is to ensure that taxpayers of New Jersey are not penalized because the courts have invalidated a long-standing State policy.

Let me briefly describe how New Jersey finds itself in this untenable situation.

Two decades ago, the State faced a solid waste crisis. With most of the State's landfills having reached capacity or forced to close due to the tougher environmental regulations imposed by the Resource Conservation and Recovery Act, New Jersey was forced to rely heavily on out-of-state disposal facilities. At one point, New Jersey was shipping nearly 55 percent of its trash to other States, and the costs of disposal were mushrooming.

In response, the State Legislature passed the 1978 Solid Waste Management Act, which required each of our 21 counties to develop plans to dispose of their trash within the State. Counties issued over \$1.7 billion in bonds to finance the construction of incinerators, transfer stations, or landfills to comply with the State mandate. In my district alone, the County of Union' issued more than \$300 million in bonds to finance the construction of a waste-to-energy incinerator.

The financial scheme under which this and dozens of other facilities were constructed was based on the State's ability to direct all the trash generated in a specific geographic area to a particular disposal facility. The authority to direct the disposal of trash was essential to ensure that county utility authorities would have a guaranteed, steady flow of trash required to pay for the construction of the disposal facilities. Therefore, ever since the late 1970's, flow control authority has been an integral component of New Jersey's solid waste management system.

The 1994 *Carbone vs. Clarkstown* decision and the subsequent *Atlantic Coast* decision have thrown New Jersey's solid waste disposal program into turmoil. The *Carbone* decision declared the practice of flow control to be unconstitutional. The *Atlantic Coast* decision upheld the *Carbone* ruling and gave our State 2 years after the last appeal to end its practice of directing waste flow.

I recognize that allowing the free market to dictate solid waste decisions is ultimately in the best interests of all consumers and taxpayers. New Jersey, however, needs time to responsibly make the transition in a manner that will allow us to meet our existing \$1.7 billion financial obligation.

In light of the recent Federal court decisions, the ability of New Jersey's counties to reimburse bondholders for the construction of waste facilities, as well as the ability to honor contracts with incinerator operators, are in serious jeopardy.

The court decisions are already having an effect on the financial stability of utility authorities. Last September, "Standard and Poors" lowered its rating on \$416 million of solid waste system revenue bonds issued by two agencies, the Union County Utilities Authority and the Pollution Control Financing Authority of Camden County, from single 'A' minus to double 'B'.

Mercer County announced last year that it is stopping construction of its trash incinerator—after investing \$100 million in the project. The county decided it was too risky to proceed with the project because of the uncertainty over flow control.

And some counties are already considering property tax increases to pay for the debt incurred from carrying out this State mandate to manage their own waste.

Mr. Chairman, long before the *Carbone* decision, the State of New Jersey had made an enormous investment in its comprehensive solid waste management system. Taxpayers should not be stuck with the tab because the rules have been changed in the middle of the game.

Governor Whitman, the New Jersey Assembly and all 21 of New Jersey's counties are asking for an extension of flow control authority until all the debt obligations incurred by the counties to construct disposal facilities have been paid off. During the last Congress, we tried to pass legislation to grant this temporary reprieve. The Senate passed S. 534. As you know, however, its companion bill, H. Res. 349, failed to pass the House. It failed because of the ongoing dispute over provisions affecting the interstate transport of solid waste.

This year, I have sponsored legislation in the House to grandfather flow control programs existing before the *Carbone* decision. Two weeks ago, I introduced legislation that contained the same language as S. 534 and H. Res. 349 on interstate waste and flow control. H.R. 942 contains the Senate's interstate waste language and the flow control language of last year's House bill. The other measure, H.R. 943, contains the House's flow control language as a stand-alone bill, with a modification to include construction and demolition debris. I would like to submit these proposals for the committee's consideration.

I want the committee to know that there is strong support for grandfathering flow control authority for those States that had it in place prior to the *Carbone* decision. In the 104th Congress, the entire bipartisan New Jersey Congressional delegation supported H. Res. 349 and other efforts to grant a temporary reprieve from the effects of the courts' decisions.

In addition, the States of New Jersey, New York, Pennsylvania, Ohio, Indiana, and Michigan have all agreed on flow control legislation.

I urge the committee to pass legislation to grant flow control authority to States like New Jersey, so that they can repay outstanding debts owed to investors, and move on to a competitive system.

Thank you for this opportunity to testify. I will be happy to answer any questions that you have.

STATEMENT OF JOHN E. ROONEY, MAYOR, NORTHVALE, NJ

Good morning Mr. Chairman, members of the committee. Thank you for the opportunity to address this committee on the issue of flow control. I am opposed to any Federal legislation that allows States to control the flow of solid waste thereby squelching competition and raising the cost of garbage disposal.

I will explain the reasons that this body does not need to enact flow control legislation. First, I would like to let you know who I am and why I so fervently oppose flow control.

I am the Mayor of Northvale, New Jersey. Northvale is a suburban community nestled in the far northeastern corner of New Jersey. I have been Mayor there for 15 of the last 20 years. I am also a member of the New Jersey General Assembly. I have been honored to serve my district for the past 14 years. From 1983 to 1988 I served as a commissioner of the Bergen County Utilities Authority, the agency in my county responsible for the oversight and now participation in the solid waste industry.

I also come here today with yet another hat, that is, Chairman of the Mayors' Task Force Against Flow Control. The Mayors' Task Force was formed shortly after the U.S. Supreme Court's decision in *Carbone v. Clarkstown*. As this committee well knows, the Court in *Carbone*, resting "upon well-settled principles of our Commerce Clause jurisprudence" held that flow control laws violate the U.S. Constitution,

which prohibits individual States from hoarding an article of commerce—in this case, garbage—to the exclusion of other States.

Mayors like myself saw this decision as a rare opportunity for lower property taxes. Garbage disposal ranks near the top of most municipalities' budget items. This is true in New Jersey where as a result of waste flow control we have the highest disposal costs in the nation—\$96.00 per ton. If I may, I would like to share an anecdote which illustrates just how perverse an effect waste flow control has had in New Jersey.

In February 1988 at the beginning of the waste flow control era, I was having some construction done on my house that resulted in a considerable amount of debris requiring a 10 yard dumpster. The hauler informed me that if he took the container by Friday my cost would be \$350.00; however if I waited until Monday, after flow control took effect, my cost would be \$1,300.00.

No longer were municipalities or businesses permitted to choose the disposal facility that made the most economic sense for them. Everyone had to deliver their waste to the "favored" government facility. Ironically, the facility in my county simply shipped the waste to a landfill which the rest of us were prohibited from doing business with. Remember flow control is not about preventing some environment insult, rather it is about economics (I refer you to portions of the executive summary of a March 1995 EPA report on Flow Control which is submitted with my testimony).

After *Carbone*, communities throughout New Jersey thought rate relief was in sight. However, the State persisted in its stance that New Jersey's system of waste flow control was distinguishable from *Carbone*. I, along with three other Mayors joined a Federal Lawsuit to end waste flow in New Jersey. The Judge told us we had no legal standing to remain in the suit. We had no where to turn. We were compelled to form a coalition, the Mayors' Task Force, to convey to the State and Federal Government the position of communities; the view from the front line; the view from the pocket book.

The Mayors' Task Force started as a few concerned Mayors. Although we were not given much of a chance to mount an effective grassroots campaign by many of the so-called experts. We have come a long way. Our ranks number nearly 250 Mayors from across the State representing 3.5 million of our residents. We are democrats and republican alike. While we include Mayors from 7 of the largest 10 cities in the State, we also include Pine Valley Borough, population 19.

We have also been joined by others who are concerned, including The New Jersey Environmental Federation, an umbrella organization of several environmental groups. Other groups supporting our cause include Hands Across New Jersey; Common Cause; New Jersey Business and Industry Association; the Chemical Industry Council; United Tax Payers of New Jersey; the New Jersey Chamber of Commerce; and the New Jersey League of Municipalities.

These groups and the Mayors' Task Force all see waste flow control for what it really is—a garbage tax that feeds the bureaucratic monoliths called county utility authorities. These utility authorities maintain a stranglehold over towns like mine by forcing us to use their product and only their product. This government intervention where it does not belong simply adds another layer to an already bloated bureaucracy.

Today is a time where politicians talk of reducing bureaucracy and balancing budgets. Federal legislation to permit flow control puts us on a diametrically opposite path. Flow control allows the government to grow by allowing county utility authorities to charge artificially high tipping fees, in Bergen County \$103 per ton (the national average is \$34 per ton). This tipping fee plays havoc with my budget forcing me to divert badly needed funds for infrastructure, police and public safety to garbage disposal.

Let's analyze Bergen County's rate of \$103 per ton. Bergen was mandated to send 192,000 tons of waste to the Union County Incinerator at \$80.00 per ton. Bergen pays \$24.00 per ton to "process" its garbage at the Bergen County transfer station and \$12.00 to ship it to Union—\$116.00 per ton. The balance of Bergen's waste which was bid in the free market obtained a price of 42.75 for transportation and disposal.

Recently I sought a non flow control alternative for Northvale's disposal. I was immediately threatened by the State with fines of up to \$50,000 per day for daring to violate this unconstitutional law. I was thus prevented from implementing a bid of \$63.00 per ton, nearly a 40 percent savings with a stroke of the pen. How would this body like to find a budgetary item that could be cut 40 percent immediately without cutting services.

Suffice it to say you would all have great job security. Now, think if you had the 40 percent savings at your fingertips and someone took it away. If you pass flow

control legislation, that's what you will do to my community and 566 others in New Jersey alone.

It's been nearly 3 years since flow control was declared unconstitutional and no bonds have defaulted. Rather, the facilities are learning to compete. New York City recently received bids for disposal at a cost of \$43.00 per ton from a facility located in Newark, New Jersey, while Newark itself is forced to pay the same facility \$72.00 because of flow control.

There has been no case made that county facilities have to be bailed out by the taxpayer. And make no mistake, that is what flow control legislation would be doing. They may not call it a tax; they may tell you that no money needs be spent by passing this legislation; they may even tell you that the sky will fall without this legislation. But you will be bailing out yet another government flop.

Look at the evidence. To whom does the artificially high tipping fees flow to in the long run, not the hauler, not even the business—no, its the same people who always pay it—the taxpayer.

The Mayors' Task Force advocates the following. Communities, and businesses, must be allowed to contract with the most cost effective yet environmentally sound vendors of their choosing. We must be free of the government restraints which Federal flow control legislation will perpetuate.

New Jersey presently has several bills in the legislature dealing with a post flow control world. While differing in approach the bills in the New Jersey Assembly recognize that the financial integrity of existing solid waste facilities need some degree of protection, however if Federal legislation is enacted and the present system of flow control is allowed to remain intact it will continue to have the same deleterious effect on the taxpayers. The approach I advocate is one where we put in place a mechanism to pay off existing debt but simultaneously force the county facilities to compete. In other words, I want to cut our losses.

Mr. Chairman, members of the committee, this issue is about nothing more than political turf. It pits the county and State governments against the municipal government. It allows the voracious appetite for hidden tax dollars to be spent by groups of bureaucrats, who are typically appointed rather than elected. I like my fellow Mayors must stand in front of my constituents, and explain why services at the community level are being cut, while at the county level, the bureaucracy keeps expanding.

Article I, section 8 of the Constitution, the Commerce Clause, is there precisely for the reasons we find ourselves here today. The power to impede the flow of interstate commerce among the States lies with the Congress. This body must see through the smoke and mirrors, and not allow the balkanization of this nation because of a battle over turf.

On May 16, 1994 the United States Supreme Court removed the noose from our necks, I respectfully and sincerely ask that you do not replace it.

The roots and benefits of interstate commerce are embodied in the words and teaching of the United States Constitution. At the founding of this nation we were cautioned about erecting economic barriers between the States. A healthy respect for the wisdom of our nations' founders warrants that we are cautioned now.

Thank you for this opportunity to present my views in opposition to Federal flow control legislation.

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United States
Environmental Protection
Agency

Solid Waste and
Emergency Response
(5305)

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March 1995



Report to Congress on Flow Control and Municipal Solid Waste

EXECUTIVE SUMMARY

WHAT DID CONGRESS ASK EPA TO DO?

In September 1992, Congress directed the Environmental Protection Agency (EPA) to develop and submit a Report to Congress on flow controls as a means of municipal solid waste (MSW) management. Congress asked EPA to:

- ◆ present a comparative review of States with and without flow control authority;
- ◆ identify the impact of flow control ordinances on protection of human health and the environment; and
- ◆ identify the impact of flow control on the development of State and local waste management capacity and on the achievement of State and local goals for source reduction, reuse and recycling.

WHAT ARE FLOW CONTROLS?

Flow controls are legal authorities used by State and local governments to designate where MSW must be taken for processing, treatment or disposal. This waste management approach requires waste to be delivered to specific facilities such as waste-to-energy (WTE) facilities, materials recovery facilities (MRFs), composting facilities, transfer stations and/or landfills. The facilities can be either publicly or privately owned. One of the direct effects of flow control is that designated facilities are assured of receiving a guaranteed amount of MSW and/or recyclable materials. If the designated facilities charge a "tipping fee" for receipt of the MSW/recyclables, flow control assures a source of revenue to meet their capital and operating costs.

WHAT FACTORS ENCOURAGE USE OF FLOW CONTROLS?

Use of flow controls took hold in the late 1970s. State and local governments began using flow controls primarily to support the development of new MSW capacity, particularly if it required large capital investment (e.g., financing of WTE facilities). Flow controls assisted State and local governments in financing these facilities by ensuring long-term receipt of enough waste to generate sufficient revenues to pay facility debt service and other costs.

Also influencing use of flow controls were State goals and mandates for increased recycling or diversion of specific wastes (e.g., yard trimmings) from landfills. Flow control was one mechanism used by local governments to generate needed revenues to pay for programs and to direct waste to recycling/composting facilities. This enabled them to respond to State recycling goals and mandates.

As local governments expanded waste management services, flow controls were utilized as a mechanism to ensure funding for various components of their solid waste management systems such as source reduction programs, household hazardous waste collection, and public education. These services typically do not lend themselves to collection of revenues as do facility-based components (e.g., tipping fees at transfer stations, WTE facilities and landfills). The most frequent rationale for adopting flow control is to assure the financial viability of waste management facilities by providing a reliable, long-term supply of waste. This assurance can be instrumental in securing capital to finance the construction of a facility.

Flow control also may facilitate solid waste planning and management. State and local governments can plan for the appropriate type, number, and size of facilities to handle the long-term generation of waste within a specific area.

HOW DID EPA APPROACH THE CONGRESSIONAL REQUEST?

In an effort to analyze the issues posed by Congress, EPA

- ◆ held public meetings to obtain information from interested stakeholders;
- ◆ examined States' solid waste management laws to compare flow control authorities across the United States; and
- ◆ performed a market analysis of the four primary MSW management segments (i.e., composting, recycling, combustion and landfills) to assess the role of flow control in ensuring MSW management capacity and in attaining goals for source reduction, reuse and recycling.

The approach provided EPA with a *national* view of the need for flow controls. The Agency recognizes that local circumstances may differ substantially from the national perspective. Each State and local government needs to consider local conditions and alternatives when determining the need

for flow control. If a State or local government has relied on flow control to achieve certain ends, sudden elimination of flow control may disrupt ongoing solid waste practices.

WHAT ARE THE FINDINGS?

Congressional Question: *Present a comparative review of States with and without flow control authority.*

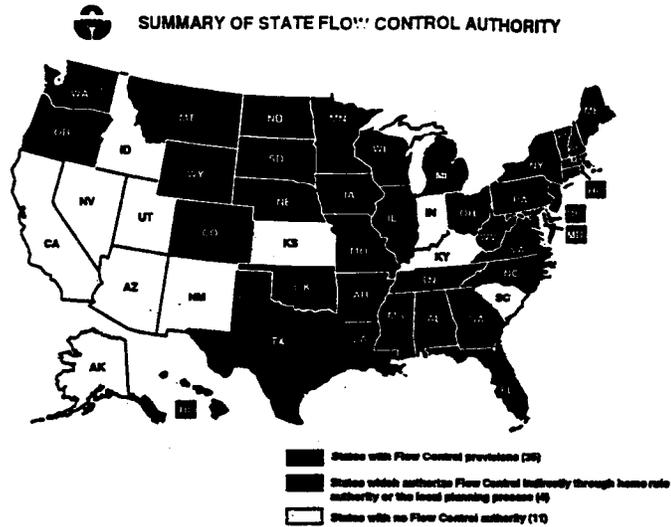
Finding: *Thirty-five States, the District of Columbia, and the Virgin Islands authorize flow control directly; four additional States authorize flow control indirectly through mechanisms such as local solid waste management plans and home rule authority; eleven States have no flow control authority.*

Discussion: No primary source of information was available which identified States with and without flow control authority or those local governments implementing flow control within the States. Developing a complete picture of the nationwide scope of flow control laws would be an extremely complex task due to the differences among State laws, the dynamics of the solid waste industry, and the variability of infrastructures among local governments across the nation. EPA determined that a comparative review of State flow control authorities could be presented by (1) reviewing State statutes and regulations, and (2) developing case studies to illustrate how local MSW programs are implemented with and without flow controls.

As shown in Exhibit ES-1, 35 States, the District of Columbia, and the Virgin Islands explicitly authorize flow control. However, not all jurisdictions exercise this authority. For example, Illinois has authority to implement flow control, but there is no evidence that local governments within the State currently use it. Also, a number of States impose administrative requirements which must be met before local governments can implement flow control, such as demonstrating a need for flow control, holding public hearings, and/or first attempting to negotiate contracts with the private sector. Of the 35 States which authorize flow control, 23 (and the District of Columbia) limit some or all recyclable materials from coverage under flow control.

Four States authorize flow control indirectly through mechanisms such as home rule (MA, MD) or the State/local solid waste management planning process (MI, TX). In a home rule State, municipalities may exercise power over local issues to the extent not prohibited or regulated by the State. Using home rule authority, municipalities may establish flow controls over their solid waste. In

EXHIBIT ES-1



Michigan and Texas, municipal solid waste planning documents determine capacity needs and can authorize flow control as part of the plans' requirements.

Eleven States (AK, AZ, CA, ID, IN, KY, KS, NV, NM, SC, UT) have no flow control authority.

Congressional Question: *Identify the impact of flow control ordinances on protection of human health and the environment.*

Finding: *Protection of human health and the environment is directly related to the implementation and enforcement of federal, State, and local environmental regulations. Regardless of whether State or local governments administer flow control programs, States are required to implement and enforce federally approved regulations that fully protect human health and the environment. Accordingly, there are no empirical data showing that flow control provides more or less protection.*

Discussion: In the United States, approximately 80 percent of MSW is managed in landfills and combustors. Landfills and municipal waste combustors are controlled by State and federal regulations which are implemented through facility permitting and compliance assurance programs. These programs are designed for the express purpose of protecting human health and the environment and require the same level of control whether or not the waste is subject to flow controls.

In recent years, States have begun regulating composting and recycling facilities to protect human health and the environment, without regard to whether the materials are subject to flow controls. Further, our market analysis shows that only a small percentage of recovered materials managed by the composting and recycling segments is affected by flow control ordinances. Also, many States that authorize flow control explicitly exclude certain recyclables from flow control restrictions.

Congressional Question: *Identify the impact of flow control on the development of State and local waste management capacity and on the achievement of State and local goals for source reduction, reuse, and recycling.*

Finding: *Flow controls play a limited role in the solid waste market as a whole. Flow controls are not typically utilized by landfills or composting facilities. Less than 3 percent of the recycling market is subject to flow controls; however, approximately 19 percent of the materials handled by existing MRF-based recycling programs are supported by flow controls. Flow controls play the largest role in the waste-to-energy market where at least 58 percent of the throughput is supported by flow controls.*

Although flow controls have provided an administratively efficient mechanism for local governments to plan for and fund their solid waste management systems, there are alternatives. Implementation of these alternatives by communities currently relying on flow controls could be disruptive and take time.

Accordingly, there are no data showing that flow controls are essential either for the development of new solid waste capacity or for the long term achievement of State and local goals for source reduction, reuse and recycling.

Discussion: EPA conducted a market analysis to determine whether market intervention in the form of flow controls is needed to ensure adequate capacity or to achieve State and local recycling goals. Our analysis addressed discrete market segments (i.e., composting, recycling, combustion, and landfills) that both work together and compete to perform the complete job of solid waste management

RESPONSE BY MAYOR J.E. ROONEY TO ADDITIONAL QUESTION ASKED BY SENATOR
CHAFEE

Question. I understand that New Jersey's Bergen County incurred \$100 million in solid waste debt but built only one transfer station, but no landfills or incinerators. Was the balance of that \$100 million spent wisely, and if not, who should now bear the costs of dealing with poor investments? Should all of New Jersey's citizens bear it equally, or just those in affected jurisdictions?

Response. Bergen County built a facility to process 5,000 tons per day of solid wastes when they knew their maximum available waste—based on their planned, but never built incinerator's "put or pay" provisions—was 2,000 tons per day. They also have 4 private facilities approved under the current Solid Waste Management Act, and several others that are not approved, handling the county's total garbage. The actual current tonnage at this "Taj Mahal" transfer station is less than 1,000 tons per day.

If "Flow Control" ended today, the cost of garbage would drop from \$103.38 to between \$40 and \$50 per ton in Bergen County. Our 70 municipalities could pay their \$121 Million in debt through a 10 year bond issue at a approximately \$20 per ton tax or "user fee" on their garbage and still save their taxpayers 3–4 tax points or \$45–60 per household.

If a statewide solution were approved, it would have the same monetary effect of \$20 per ton for the State's "true" bonded indebtedness of \$1.2 Billion. This approach has not been acceptable to those counties with little or no debt. Conversely, the county-wide approach is not acceptable to those counties with incinerators because their costs might exceed \$50 per ton. The correct solution is probably a hybrid of both with a State subsidy for the 4 incinerator counties and a county by bounty solution for the rest of the State.

There are currently 8 different bills in our legislature dealing with all aspects of this issue. We are nearing a consensus and the only thing holding up a final decision is the timing of when the stay will be lifted.

As I stated at your hearing, we are near a solution, "Please, don't help us!"

ADDITIONAL INFORMATION SUPPLIED BY MAYOR J.E. ROONEY TO QUESTIONS FROM
SENATOR LAUTENBERG

In the event the stay is lifted, most certainly, I and my fellow mayors will send our garbage to the lowest cost facility. However, at the present time in Bergen County, that facility is the *Bergen County Utility Authority*.

The State mandated Bergen to deliver 192,000 tons per year to Union County at \$80 per ton. Bergen also has a contract with Chambers Environmental for landfill disposal for the balance of their waste, bid and negotiated in the "free market" at \$42.75 per ton. When the Union County contract is eliminated, most Mayors would be happy to work with Bergen County to pay off this debt by adding another \$20 per ton (for 10 years) to the Chambers contract, thereby, saving their taxpayers 3–4 tax points or \$45 to 60 per household.

Senator Coats and Senator Levin talk about restricting interstate garbage but, apparently without a coalition of those legislators who want flow control, there is neither flow control nor an interstate ban. Over 240 New Jersey Mayors have signed petitions against flow control. For our delegation to support the interstate ban would be a sellout of New Jersey's interests. After all, New Jersey's landfills are full because, for years we were the dumping ground for New York City and Philadelphia.

Additionally, the only interstate band discussed so far has been a voluntary one. The only effect this would have would be limiting to the available supply of landfill space, thereby driving up the national cost of disposal forcing thousands of mayors across the country to experience what we in New Jersey have found—that political interference always results in higher taxes.

On the theoretical chance that we would be forced to stay in New Jersey, *without flow control*, we would at least be assured that *competitive* alternatives would be available, instead of the State-mandated fiascoes that we have witnessed over the last 20 years.

As I have stated in almost every debate and forum on this issue, "Any politician in favor of flow control, is in favor of higher property taxes".

STATEMENT OF RANDY JOHNSON, CHAIR, BOARD OF COUNTY COMMISSIONERS,
HENNEPIN COUNTY, MINNESOTA

I am Randy Johnson, Chair of the Board of Commissioners of Hennepin County, Minnesota, and President-elect of the National Association of Counties. NACo represents the over-3000 counties in the United States.

We appreciate being invited to participate in this hearing, although once again we find that the panel is skewed toward witnesses that are apparently opposed to local governments making decisions about local issues and repaying of the real issues surrounding flow control, rather than some oft-repeated slogans like “government monopoly versus free markets”, leads clearly to the conclusion that our position is sounder public policy and minimizes the Federal government role in local government.

Counties are involved with solid waste flow control for two primary reasons. First, trash disposal has been a traditional, fundamental public health and safety function of local governments in this country for more than two centuries—even before the Constitution was adopted. Citizens demand and expect that safe disposal of garbage will be assured by their local government. When garbage piles up on the streets because of collection problems or landfills leak into water supplies, it is the local governments that take most of the heat.

Secondly, most States mandate that we handle garbage and trash. States mandated recycling quotas, mandated long-range planning requirements, mandated items that must be excluded from landfills and incineration, and mandated consumer education programs. In short, we must deal with trash by State law.

While we are not here today to complain about State mandates, it is important for you to understand that in nearly every case, we didn’t ask our State legislatures for these mandates. We did ask for the financial tools to carry out those mandates. Flow control was one of those tools.

When these mandates were imposed, not every county chose to adopt flow control as a tool for financing their waste management system. In fact, less than 20% of the municipal garbage and trash stream in the United States is—or ever has been—subject to any type of flow control. Any argument that flow control grossly interferes with the profits of business or has an impact on the economy, is simply not supported by the facts.

Those counties and cities that were given flow control authority—like my county—and those counties that were mandated by State law to exercise that authority—like counties in New Jersey—undertook a series of programs to carry out our responsibilities to manage the garbage generated within our own borders. We tried to solve local problems at the local level.

There is one other point that I want to make at this time. Municipalities that object to flow control requirements exercised by their counties over garbage generated by cities and towns should take their concerns to their own State legislatures, not to the Congress of the United States. It is the State government, not the Federal government, that divides up the responsibilities between cities and counties in each State. This Congress should not be interfering in State disputes among local units of government.

A great deal of investment in public infrastructure has taken place in the local governments that used flow control as a method to finance facilities. Since 1980, over \$20 billion in State and local bond issues were sold for solid waste facilities. Unless legislation is promptly enacted by this Congress, many communities face severe financial consequences. Attached to my testimony is a list of just some of the problems that we are learning about from around the country. The list gets longer every day that Congress postpones action.

Here are some of the impacts. The national credit-rating agencies downgraded debt ratings for 17 local and State solid waste authorities since the Supreme Court threw out a New York flow control ordinance three years ago. Moody’s downgraded 15 issues, of which approximately half were downgraded to “junk bond” status. Standard and Poor’s downgraded 4 issues, 2 of which were classified as “junk bonds”. Fitch downgraded 3 issues to “junk bond” status.

In addition to the downgrades, Moody’s has 8 additional bond issues under credit review. As litigation increases and the cases work their way through the courts, more downgrades are likely.

The total outstanding debt that has either been downgraded or put on a credit watch for potential downgrading by the rating agencies since the *Carbone* case is over \$3.3 billion by local public agencies.

What does this mean? It means that the next time these governments try to go to the bond market to borrow funds for other public projects—like jails or bridges or schools—they may be unable to find any market for the bonds. For those that

are able to find buyers of their debt, the interest rate will be significantly higher, by as much as 10–20 percent for mandated governmental programs. This additional cost will be borne by local taxpayers—businesses as well as residents.

But it is not only downgrades that we are concerned about. We are seeing other detrimental and expensive effects from the Congress' lack of action on flow control legislation. In my county, we have been sued by four businesses and some individuals in a class action suit regarding our flow control ordinance. A year ago the Federal court certified a class consisting of all Hennepin County commercial and residential waste generators—that is virtually every person in the County! The court already found that the ordinance violated the Commerce Clause based on the *Carbone* decision, and permanently enjoined its enforcement.

Now we will begin trying the second phase of the case—the exact amount of the alleged damages. Plaintiffs are claiming \$154 million—nearly one-half of Hennepin County's total annual property tax levy. To add insult to injury, if the court allows this case to proceed to final judgment because Congress has not acted, Hennepin County taxpayers will also have to pay millions of dollars in plaintiffs' attorneys' fees! Other lawsuits have been filed and more are threatened.

In other counties, similarly difficult impacts are occurring. In Dade County, Florida, 280 employees were fired, water and sewer rates were raised by 12%, recycling programs were cut, enforcement of illegal dumping was reduced, and other environmental programs were cut back.

Other counties in Florida, Maryland, New York, North Carolina, Iowa, and Virginia have had to increase local taxes and/or fire employees. Cuts in recycling programs, or new fees to pay for recycling are occurring all over. The progress that we have made in recycling and waste reduction over the last decade in these communities is being lost.

Another important trend that we see happening from the loss of flow control is that waste haulers are paying less to dump trash and local taxpayers are picking up the tab. In fact, we have evidence to show that although the disposal cost to waste haulers is going down, they are not necessarily passing these savings on to their customers. In Falmouth, Maine, for example, the city raised its residential rates by 50 percent and reduced its commercial disposal rates for businesses. Did the businesses see those savings? On the contrary—the private haulers just pocketed the savings. So the businesses and residents of some communities are paying twice—once to the waste hauler for the same service at the same price and again to the county in higher taxes or fees to pay for the disposal facilities.

The debate over flow control has never been a disagreement between the public sector and the private sector. Local governments acted in good faith, under the laws that our States adopted. We built, or in most cases, entered into to competitively-bid public-private partnerships to build facilities that are now being undercut by temporarily cheap landfills and temporarily cheap landfill prices. We are simply trying to cover the public investment in the facilities that we were mandated to build.

Similar to the electric utility restructuring debate, we are seeking a way to cover our “stranded investments” in these facilities. It is only equity that we are asking for, nothing more.

We hope that this committee sees the value in supporting legislation that will allow us to continue to pay off our bonds and manage our systems that way the our citizens want us to manage them. We urge you not to tie our hands and make us have to explain to taxpayers why Congress is forcing us to increase local taxes. Thank you.

ATTACHMENT

THINK THE LACK OF FLOW CONTROL HASN'T HURT ANYBODY?

THINK AGAIN

Without Flow Control, Public Officials Around the Country Face Severe Problems

- *Dade County, Florida* lowered disposal fees by more than 20%, fired 280 employees, renegotiated contracts, restructured debt, sharply reduced capital expenditures, increased taxpayers' surcharge 12% on water and sewer bills, as well as increasing the cost of carting services, cut recycling efforts, delayed development of two household chemical collection facilities, downsized the illegal dumping task force, and cut the county's mulching program. *Despite Dade County's significant reduction in tip fees, cost savings, and revenue enhancements, the County's bond rating was lowered by the national rating companies.*

- *Virginia's Southeastern Public Service Authority (SPSA)* lost more than 50% of its general cash balance, fired 50 employees, increased the user fee for disposal and instituted a new fee for recycling. *SPSA's bonds were downgraded bonds due to lack of flow control.*
- *Hennepin County, Minnesota* faces more than \$150 million in court-imposed judgments stemming from a class-action lawsuit by waste haulers challenging the County's flow control authority. *Taxes could more than double to cover the County's liability.*
- *Atlantic County and surrounding counties in New Jersey* lost more than \$2 million dollars in revenues. Staff was cut by eight percent. Development of a recycling center stopped. *Bonds used to finance solid waste facilities and services have been downgraded in Union County, and Camden County to non-investment ("junk bond") status.*
- *The City of Falmouth, Maine* has been compelled to raise its residential rates by more than 50% while reducing commercial disposal rates in order to entice haulers of commercial waste to use the town's facility. *Almost \$3 million per year in disposal fees have been shifted from commercial haulers to residential taxpayers, yet businesses have seen no reduction in their waste hauling fees because private haulers are pocketing the savings.*
- *Iredell County, North Carolina*, has lost nearly \$300,000 in cash revenues.
- *Charles County, Maryland* lost 40% of its facility revenues, fired employees and cut recycling efforts. It faces the potential of having to subsidize its landfill with tax revenues.
- *Lee County, Iowa* relied upon flow control to organize a 4-county interstate solid waste authority to share the debt of \$8.9 million for a disposal site. Three of the counties have now abandoned the authority, leaving the stranded debt to be paid by a population of 40,000 people. *To repay the bonds the county has been forced to impose a waste management fee, the burden of which falls mainly on small businesses which pay an average of \$240 year.*
- *Skagit County, Washington* was forced to close its revenue producing waste-to-energy plant, leaving the County with a bonded indebtedness of \$12 million for which they have no revenue source other than local taxes.
- Since the Carbone decision in mid-1994, the Waste System Authority of *Eastern Montgomery County, Pennsylvania* has been forced to shift the cost of waste disposal from the commercial ratepayers to residential taxpayers to cover the costs of the bond payments. *Municipalities will see their rates increased by \$1,170,000 in 1997 to replace \$3.8 million in lost disposal fees from waste haulers.* If commercial waste continues to leave the area for cheap landfills, municipalities will have to cover the revenue shortfall of \$5.5 million, or approximately \$129/ton.
- *The loss of flow control in Savannah, Georgia* costs city taxpayers over \$1.3 million every year and increases the amount of garbage taking up valuable landfill space instead of being converted into energy. The city estimates that every day's delay of passage of Federal flow control legislation is costing each Savannah taxpayer \$3,561.
- *New Hanover County, North Carolina* stopped development of a recycling facility and raised taxes while transferring nearly \$10.5 million from general funds to cover the more than \$18 million in lost revenues.
- *Warren and Washington Counties, NY* face up to a \$2 million shortfall in revenues from the district's waste-to-energy plant as a result of reduced tipping fees, adopted to compete with cheap landfills. To raise enough money to meet debt service payments on the plant, *the counties plan to raise taxes, however such an increase will violate State tax caps and subject the counties to a legal challenge from the local taxpayers association.*
- *Lee County, Florida* increased property taxes on an emergency basis to cover \$7.8 million in lost revenues, representing 30% of its solid waste department's operating budget. *Property owners face a special assessment over the longer-term.*
- *Eau Claire County, Wisconsin* has lost 80 percent of the tonnage at their solid waste facility that was used to guarantee the bonds to finance the facility. This loss will cost the county, whose population is only 85,000, roughly \$1 million per year over the next six years in taxes to pay off the debt used to finance the facility.
- *The Town of Babylon, New York* lost \$2 million in 1995 alone—6% of its total town budget. The town was forced to lay off 70 employees. Babylon created a commercial garbage district to offset losses, and was sued by haulers. *The lawsuit cost the town nearly \$5 million in lost revenues and legal expenses.*
- *Whatcom County, Washington* was ordered by a Federal arbitrator to pay \$75,000 in damages to a local hauler who refused to meet the county's recycling performance targets under the flow control ordinance. As a result, the County has ceased providing incentives to private haulers for recycling.

- *The bond rating of the solid waste authority of St. Lawrence County, New York was lowered as the authority faces a \$1 million short-fall this year. The County will need to borrow up to \$3 million to subsidize the authority.*
- *The Metro Waste Authority of Des Moines, Iowa has lost nearly \$1 million in waste stream revenue to nearby landfills that have cheaper rates, resulting in a downsizing of the Authority by 35%.*
- *Calvert County, Maryland cut recycling efforts and employee hours by 30% to avoid layoffs due to lost revenues.*
- *Citrus County, Florida delayed capital expenditures as it faces losing up to 60% of its waste stream to out-of-county landfills.*
- *A radical drop in the usage of the county-operated landfills, and resulting funding shortage, forced Prince George's County, Maryland to impose new fees for recycling on county taxpayers. The backlash from the new fees helped pass a taxpayer-let ballot initiative that requires any new county fees to be approved by referendum.*
- *St. Lucie County, Florida lost 30% of its landfill revenues and fired eleven employees.*
- *The bond ratings of the waste-to-energy facility of Mercer County, New Jersey were downgraded to a B rating (a "junk" bond rating) after Federal courts declared the State's flow control law to be unconstitutional. The county Board of Freeholders was forced to cancel the \$200 million facility, leaving county taxpayers with the dilemma of how to pay off the bonds.*
- *Dutchess County, New York taxpayers paid \$5 million more in property taxes in the last year-and-a-half in addition to their garbage bills due to the loss of waste volume.*
- *Seven metropolitan Minnesota counties have seen an increased reliance on out-of-state landfills. After a decade of progress in managing waste within their own region and diverting waste from landfills by use of recycling and resource recovery facilities, from a 1993 landfilling rate of 11%, the counties report that landfilling has reversed direction and is now over 18%.*
- *Oneida and Herkimer Counties in New York face a lawsuit threatening to scuttle the counties' integrated waste management system and force property taxpayers to pay off \$47 million in bonds.*
- *Nassau County, Florida lost 20% of its facility revenues.*
- *Montgomery, Otsego, and Schoharie Counties in New York stopped recycling collection services and face dismantling the entire solid waste management system. The bond insurer for the counties' facilities stated that future actions "could totally destroy the established belief in the municipal bond market."*
- *Huron County, Ohio has lost one-third of the tonnage previous delivered to its facility.*
- *Prince William County, Virginia is losing \$1.8 million annually in revenues. To make up for the loss, citizens are now required to pay higher fees for special services. Programs to reclaim old landfill space for recreation areas, promote recycling, and expand recycling programs have been reduced or eliminated.*
- *Wright County, Minnesota has closed an innovative high-tech composting facility, financed with taxpayer-funded bonds. Twenty-five employees have lost their jobs and the cost of paying off the bonds will be born by a special yearly assessment on all property owners.*
- *Warren County, New Jersey issued debt to build a waste facility, entering into an agreement with Huntington and Somerset Counties to supply waste to the facilities. If these counties cannot exercise flow control, the burden of the debt service will fall entirely on Warren County residents, increasing their total indebtedness by 400%. The added costs would force a 30% increase in the county-purpose tax burden and the debt-per-capita ratio would skyrocket from one of the lowest in the State of New Jersey to one of the highest.*

2/19/97

Summary of Flow Control Related Solid Waste Bond Rating Changes

In response to the U. S. Supreme Court's decision on flow control in 1994's *C & A Carbone v Clarkstown, New York*, three major credit rating agencies have been reevaluating the credit of outstanding municipal solid waste bonds issued to finance transfer stations, landfills, recycling programs, and waste to energy facilities. Currently, solid waste bonds which rely on flow control and were issued prior to *Carbone* receive no legislative protection from the 1994 ruling; the absence of legislative grandfathering severely jeopardizes their credit. Many outstanding solid waste bond issues have been downgraded, including several to non-investment grade. Presented below is a table summarizing the categories which differentiate between investment and non-investment grade ratings for each rating agency. Ratings in the non-investment grade category are viewed by the capital markets as speculative with a significant risk of non-repayment.

	Moody's	Standard and Poor's	Fitch
Investment Grade	≥ Baa	≥ BBB-	≥ BBB-
Non-Investment Grade	≤ Ba1	≤ BB+	≤ BB+

The compilation of the present credit status and future credit outlook of these bonds provides several highlights.

- As a result of the *Carbone* decision, municipal solid waste issuers have been facing litigation and declines in waste streams that have increased the vulnerability of solid waste systems which rely on legalized flow control. Consequently, Moody's has reviewed downward 15 outstanding municipal solid waste ratings, of which approximately half were downgraded to non-investment grade. Standard & Poor's has downgraded four outstanding ratings, of which two were downgraded to below investment grade, and Fitch has downgraded three outstanding municipal solid waste bond ratings to below investment grade. A combined total of 17 distinct issuers have been downgraded thus far as a result of the uncertainty surrounding legal flow control since the *Carbone* decision.
- In addition to the above downgrades, Moody's rating agency has additional solid waste bond issues under credit review. As litigation increases and cases work their way through the courts, and as waste streams continue to decline, more downgrades are likely. The final outcome of these pending credit reviews depends in part on the result of Federal legislation regarding flow control. Currently Moody's has categorized the outlook of 19 ratings as "unstable" without the enactment of a federal law that grandfather's flow control.
- For any municipal solid waste issuer that currently has a below investment grade rating, the issuer has substantially diminished public market access, and in most cases will have no access. Issuers who have received an unstable credit outlook are also likely to have diminished public market access at any reasonable cost. The table below summarizes the total par amount of outstanding bonds that have been affected by rating activity since the *Carbone* decision.

	Moody's	Standard and Poor's	Fitch	Total
Downgraded	\$ 1,242,562,154	\$ 649,614,000	\$ 506,800,000	\$ 2,398,976,154
Unstable / Credit Watch	\$ 973,360,000	_____	_____	\$ 973,360,000
Total Outstanding Debt Affected	\$ 2,215,922,154	\$ 649,614,000	\$ 506,800,000	\$ 3,372,336,154

- If any of these issuers were to default on their outstanding bonds due to an inability to enforce legal flow control, the cost of future borrowings and of solid waste disposal in these jurisdictions would significantly increase.
- While certain alternatives to legalized flow control are possible to implement in particular circumstances, it is unlikely that these alternatives are feasible for most municipal solid waste issuers.
- As a result of the uncertainty surrounding flow control, the market value of the affected outstanding municipal solid waste bond issues has decreased by up to 20%, representing a potential market value reduction of \$674,467,231 for the municipal solid waste sector.
- This decrease in market value could increase the cost of borrowing by 10 to 20 percent for a variety of government mandated environmental programs. This increase in borrowing costs is due to investors' concerns about changing governmental policies regarding these environmental programs, and their effects on the credit of both outstanding solid waste bond issues as well as bond issues for other environmental infrastructure projects.

2/18/97

Impact of Plan, Control Legislation on Solid Waste Credit Ratings

Moody's Investor Service, Inc. Credit Rating - Downgraded

State	Agency	Amount	Rating	Facility	Rating	Date	Notes
CT	Connecticut Resource Recovery Authority	\$75,240,000	A	WTF Facility	Baa1	4/11/95	Unfavorable with flow control
	Amesbury Refilling, 30 Project						Unfavorable without a
FL	Florida Resource Recovery Authority	\$18,000,000	A	WTF Facility	Baa1	4/12/95	Favorable with flow control
	SE Connecticut Project Municipal Service Fee						Unfavorable without a
MD	Dade County Solid Waste Revenue Bonds	\$7,000,000	A	Collection Landfill, WTF Facility	Baa1	3/29/95	Stable
	Montgomery County Solid Waste Revenue Bonds	\$14,450,000	A	Collection Landfill, WTF Facility	Baa1	3/15/96	Unfavorable with flow control
MI	Prince Georges County Solid Waste Management System Revenue Bonds	\$25,840,000	A	Collection Landfill, Recycling	Baa1	3/21/95	Dispersed due to flow control uncertainty, stable w/ legislation
	Wayne County Solid Waste Management System Revenue Bonds	\$1,270,000	Baa	WTF Facility	Baa1	3/22/96	Unfavorable due to flow control uncertainty, stable w/ legislation
NJ	Atlantic County Utilities Authority	\$51,440,000	Baa	Transfer Station, Recycling Center, Batts, Waste Landfill	Baa	2/17/95	Under Immediate Review
	Camden County Pollution Control Financing Authority	\$193,750,000	Baa1	WTF Facility, Recycling Program	Baa1	2/17/95	Under Immediate Review
NY	Orange County Improvement Authority - Solid Waste Revenue Bonds	\$35,997,154	Baa1	Transfer Station	Baa1	3/21/96	Under Immediate Review
	Rockland County Utilities Authority	\$11,100,000	Baa1	Transfer Station, Landfill Station	Baa1	2/17/95	Under Immediate Review
PA	Warren County Pollution Control Financing Authority	\$55,650,000	A	Landfill, WTF Facility, Recycling Program	A	2/17/95	Under Immediate Review
	Lehigh Valley Regional Authority	\$165,850,000	Baa	WTF Facility	Baa	12/2/95	Stable
VA	Roanoke County Solid Waste Management Authority	\$179,450,000	A1	WTF Facility	A1	2/15/95	Favorable with flow control
	Stafford County Solid Waste Management Authority	\$271,180,000	Aa	WTF Facility	Aa	3/13/95	Unfavorable without a
VA	Stafford County Solid Waste Management Authority	\$271,180,000	Aa	WTF Facility	Aa	3/13/95	Under Immediate Review
	Stafford County Solid Waste Management Authority	\$271,180,000	Aa	WTF Facility	Aa	3/13/95	Favorable with flow control

Based on information provided by Moody's Investor Service, Inc.

Impact of Flow Control Legislation on Solid Waste Credit Ratings

2/18/97

Headly's Investors Service, Inc. Credit Ratings - Pending

State	Agency	Agency Address	Agency Phone	Agency Fax	Agency Website	Agency Email	Agency Filing	Agency Status	Agency Rating	Agency Outlook
CA	South Napa Waste Management Authority Revenue Bonds	1330 1st St	707/253-1000	707/253-1000	www.southnapa.com	info@southnapa.com	1995	AA	Stable	Stable with legal flow control, Unfavorable without it
CA	City of Long Beach, L.L. Revenue Recovery Facility Authority - Transfer Revenue Bonds	2500 Broadway	562/593-1000	562/593-1000	www.longbeach.com	info@longbeach.com	1995	AA	Stable	Stable with legal flow control, Unfavorable without it
CA	Western Piedmont Waste Management Authority Revenue Bonds	10000 Piedmont Blvd	916/435-1000	916/435-1000	www.westernpiedmont.com	info@westernpiedmont.com	1995	AA	Stable	Stable with legal flow control, Unfavorable without it
CT	Connecticut Resources Recovery Authority Municipal Solid Waste Transfer Station	1000 Main St	860/439-1000	860/439-1000	www.crra.com	info@crra.com	1995	AA	Stable	Stable with legal flow control, Unfavorable without it
CT	Connecticut Resources Recovery Authority Municipal Solid Waste Transfer Station	1000 Main St	860/439-1000	860/439-1000	www.crra.com	info@crra.com	1995	AA	Stable	Stable with legal flow control, Unfavorable without it
FL	Florida Power & Light Company Solid Waste Transfer Station	10000 W. US Hwy 1	352/439-1000	352/439-1000	www.fpl.com	info@fpl.com	1995	AA	Stable	Stable with legal flow control, Unfavorable without it
MA	Massachusetts Municipal Solid Waste Transfer Station	1000 Main St	617/439-1000	617/439-1000	www.massmunicipal.com	info@massmunicipal.com	1995	AA	Stable	Stable with legal flow control, Unfavorable without it
NE	Nebraska Municipal Solid Waste Transfer Station	1000 Main St	402/439-1000	402/439-1000	www.nebraska.com	info@nebraska.com	1995	AA	Stable	Stable with legal flow control, Unfavorable without it
NJ	New Jersey Municipal Solid Waste Transfer Station	1000 Main St	908/439-1000	908/439-1000	www.nj.com	info@nj.com	1995	AA	Stable	Stable with legal flow control, Unfavorable without it
NY	New York Municipal Solid Waste Transfer Station	1000 Main St	516/439-1000	516/439-1000	www.ny.com	info@ny.com	1995	AA	Stable	Stable with legal flow control, Unfavorable without it
NC	North Carolina Municipal Solid Waste Transfer Station	1000 Main St	919/439-1000	919/439-1000	www.nc.com	info@nc.com	1995	AA	Stable	Stable with legal flow control, Unfavorable without it
OR	Oregon Municipal Solid Waste Transfer Station	1000 Main St	503/439-1000	503/439-1000	www.or.com	info@or.com	1995	AA	Stable	Stable with legal flow control, Unfavorable without it
PA	Pennsylvania Municipal Solid Waste Transfer Station	1000 Main St	610/439-1000	610/439-1000	www.pa.com	info@pa.com	1995	AA	Stable	Stable with legal flow control, Unfavorable without it
UT	Utah Municipal Solid Waste Transfer Station	1000 Main St	801/439-1000	801/439-1000	www.ut.com	info@ut.com	1995	AA	Stable	Stable with legal flow control, Unfavorable without it
WA	Washington Municipal Solid Waste Transfer Station	1000 Main St	206/439-1000	206/439-1000	www.wa.com	info@wa.com	1995	AA	Stable	Stable with legal flow control, Unfavorable without it

Headly's Investors Service, Inc. Credit Ratings - Pending

2/1/997

Impact of Flow Control Legislation on Solid Waste Credit Ratings

Standard and Poor's Corporation Credit Ratings - Downgraded

State	Agency	Amount	Facility	Rating	Date	Rating Outlook	
FL	Dade County Solid Waste Revenue Bonds	\$52,684,800	Landfill, WTE Facility Recycling Program	A	BBB+	5/27/96	Stable
NJ	Camden County Pollution Control Financing Authority	\$169,775,000	WTE Facility Recycling Program	BBB+	BB	6/13/94	Stable
	Union County Utilities Authority	\$247,700,000	WTE Facility Recycling Program	A-	BB	2/5/96	Stable
PA	Lancaster County Solid Waste Management Authority Resource Recovery System	\$179,455,000	WTE Facility Recycling Program	A	BBB	7/4/94	Negative

Fitch Investors Service, L.P. Credit Ratings - Downgraded

State	Agency	Amount	Facility	Rating	Date	Rating Outlook	
NJ	Atlantic County Utilities Authority	\$87,700,000	Transfer Station Recycling Center Bally Waste Landfill	A-	BB	2/21/95	Uncertain
	Camden County Pollution Control Financing Authority	\$171,300,000	WTE Facility Recycling Program	A-	BB	2/21/95	Uncertain
	Union County Utilities Authority	\$247,800,000	WTE Facility Recycling Program	A	BB	2/5/96	Uncertain

Based on information provided by Standard Poor's Corporation and Fitch Investors Service, L.P.

ADDITIONAL RESPONSES BY RANDY JOHNSON TO QUESTIONS FROM SENATOR CHAFEE

Waste-to-energy (WTE) facilities may have higher fixed costs when compared to some landfills, leading some critics to argue that they are “less competitive”. The argument fails to recognize that Federal policy established by the Environmental Protection Agency during the prior two administrations supported the generation of energy from waste over landfilling because of the wiser use of resources and superior public benefits. In addition, at some WTE facilities, the “tipping” fees include an amount to repay costs of other related debt and expenditures, such as recycling facilities, composting facilities and programs, household hazardous chemicals separation programs, and others—all of which under Federal environmental policy are considered preferable to landfilling. Accordingly, cost competition should not be the sole fact in determining the desirability of a particular waste management facility.

It is also important to understand that merely because no local government has yet to default on its bonds, does not mean that they have adjusted “better” to the changed economic situation. It is essential for a county or city to maintain its access to the municipal bond market to continue to perform its governmental functions. The stigma associated with a downgrade or default is so great that there is extreme pressure on a local government to take remedial actions to maintain its credit rating. These remedial actions have been documented in credit reports issued by Standard and Poor’s. They include raising property taxes, reductions in capital expenditures, imposition of new fees, water and sewer bill surcharges, surcharges on other services, drawdowns of unrestricted reserves, reductions in other governmental services and programs, loans from other governmental funds, cancellation of environmental projects and delay of maintenance on existing facilities.

If ratings remain stable, it will be because of the many difficult and unjustifiable changes that will continue to be made by local governments in response to Congress’ inaction. In addition to hardships already cited, affected local governments are increasingly encountering litigation and the threat of litigation, along with the payment of legal and other expenses, the need to renegotiate contracts with municipalities, higher financing costs, and others (see attached). Such “adjustments” may improve the profit margins of private sector waste companies, but they do not necessarily serve the taxpayers, the public interest, or environmental protection.

The focus on the “issue-specific” credit ratings that Standard and Poor’s and other rating agencies have provided is important, but I would emphasize that this information is limited with respect to a specific bond issue for a project and not the governmental entity, per se. The ratings take into account the ability of a system to set and increase rates for a project, the flexibility the system has to establish new fees and revenue sources, and the revenues that are pledged for repayment. While increased taxes and fees, and other “adjustments” necessitated by the lack of flow control authority are causing financial hardships as described above, the rating for the specific project would not be expected to change if the local government is able to make those adjustments, however painful, and those adjustments were factored into the initial ratings analysis for the facility.

The argument that flow control results in “above average tipping fees” is based on an unfair comparison. Flow control tipping fees assessed at a specific disposal facility typically include the costs of other solid waste facilities and programs. Therefore, the tipping fees are sometimes higher than those charged at another similar/“average” facility not encumbered with these additional costs. As noted by EPA in its *Report to Congress on Flow Control and Municipal Solid Waste* (March 1995, at ES-57), “[w]hen the [flow control-based] tipping fee is broken down into its component parts, prices are usually comparable for facilities [non-flow controlled] sited in similar locations and built about the same time” (citing Moody’s Public Finance, *Perspective on Solid Waste*, August 16, 1993, p. 3) Accordingly, in order to make the tipping fee at the flow controlled facility “competitive”, reducing costs actually means abandoning funding of the other solid waste facilities and programs, or more typically, shifting those costs to the taxpayers instead of the waste haulers.

In addition, flow control is not solely a question of local tax policy. Rather, the use of approaches such as flow control has been encouraged as a matter of Federal solid waste management policy. For example, in EPA’s *Variable Rates in Solid Waste: Handbook for Solid Waste Officials*, Vol. I—Executive Summary 2 (June 1990), EPA discourages the use of property taxes to fund solid waste management because doing so would not “giv[e] residents any incentives to reduce their waste. In fact, with the property tax method, residents never even see a bill, and generally have no idea how much it costs * * * (page 2, emphasis in original).

See also William K. Reilly, Administrator, USEPA, Statement Before the Subcommittee on Environmental Protection, Senate Committee on Environment and Public Works (September 17, 1991) in which he discouraged the use of property taxes to recover the cost of municipal solid waste (MSW) management because the true cost of MSW management is "hidden" if property taxes are used.

Nor does flow control "artificially" increase prices or impose a higher cost for a given category of services. In this connection, it should be noted that two of the witnesses who opposed flow control at the March 18 hearing (Messrs. Broadway and Norquist) referred to a study prepared for Browning-Ferris Industries (BFI) by National Economic Research Associates (NERA) to support the claim that tipping fees are higher for communities that rely on flow control in comparison to non-flow control jurisdictions. The BFI-NERA document, however, is inaccurate, invalid and uses distortion to portray flow control as more expensive. The Department of Environmental Services of the State of New Hampshire evaluated the BFI-NERA document and found, contrary to the document's authors, that in two of the three case studies presented, waste disposal at a flow-controlled facility is actually *less* expensive than at similar private facilities. The New Hampshire DES' conclusions regarding the BFI-NERA study are as follows:

The NERA study is flawed in its assumptions, reporting results, and conclusions. Misleading use and reporting of statistics undermines the validity and credibility of the results reported from NERA's economic analysis. In both its modeling and case study analysis, NERA confounds tipping *prices* with the actual *cost* of providing MSW disposal, a decision which has the inevitable effect of creating an apparent price advantage for privately operated facilities. Erroneous assumptions about the cost of transporting MSW to alternative disposal facilities unfairly deflate the reported cost of using these facilities. Meanwhile, omitting the cost of integrated waste management services provided by public, flow-controlled facilities unfairly inflates the reported "tipping fees" charged by these facilities, and results in a false comparison of disposal costs at the public compared to the private facilities (which offer no such services).

Moreover, contrary to the implication of this question, local governments generally cannot "cut costs" for MSW management without cutting services. The fact is that flow control-based tipping fees often recover, in addition to MSW disposal costs, the costs of environmentally protective waste management services such as recycling and household hazardous waste collection—services that "generally do not lend themselves to the generation of their own revenues". EPA *Report to Congress on Flow Control and Municipal Solid Waste* (March 1995, at ES-11). While raising local taxes to fund such programs may be a new *de facto* Federal policy forced upon local government, it is disingenuous to ignore the Federal policies encouraging alternatives to landfills and diversion programs, and the State mandates that require local governments to provide such services.

I do not agree that flow control has no impact on the protection of human health and the environment merely because Federal landfill regulations are in place. Prior to the mid-70's, more than 90 percent of municipal solid waste was landfilled. In 1976, in the Resource Conservation and Recovery Act, Congress found that "land is too valuable a resource to be needlessly polluted by discarded materials." Subsequently, the Environmental Protection Agency issued guidelines that declared that landfills are the least environmentally-preferable method of handling solid waste, and should be utilized only after all other alternatives are exhausted.

Local governments throughout the country embarked on a mission to divert waste from landfills to the maximum extent possible. Through waste separation facilities, recycling programs, composting facilities, educational initiatives, and energy recovery facilities, billions of dollars have been spent to decrease America's reliance on landfills. These efforts have made a significant impact, reaching a national goal of 25% source reduction and recycling. For the first time in decades, the number of operating landfills in the United States has dropped below 4,000.

Disposing of MSW in landfills—even those landfills regulated under Subtitle D requirements—is no guarantee of environmental protection and public health. Subtitle D provides minimum requirements for siting, operating, monitoring, corrective action, and closure and post-closure. However, even the best landfill liner and leachate collection system will ultimately fail due to natural deterioration, according to EPA.

In the *Criteria for Municipal Solid Waste Landfills* that accompanied the Subtitle D regulation, EPA stated that "once the [landfill] unit is closed, the bottom layer of the landfill will deteriorate over time, and consequently, will not prevent leachate transportation out of the unit [into the groundwater.]" Leakage from landfills into

groundwater carries with it chemicals contained in household hazardous wastes and small-quantity generator wastes from commercial operations.

Air emissions from landfills also can negatively affect health and the environment. Landfill gas is about half methane and half carbon dioxide with minimal amounts of other gases, including benzene and vinyl chloride. Non-methane hydrocarbon emissions are also significant contributors to ozone loading in non-attainment areas. EPA requires certain large landfills to control such gases, but even those landfills will capture, at maximum, only about 75%–80% of the generated gas, according to EPA's analyses.

There is no doubt that some landfills are more environmentally protective than others. A double-composite liner composed of plastic sheeting and compacted soil will provide a higher level of environmental protection than a landfill with a single liner. A methane emission collection system is likely to minimize air quality problems compared to a facility that merely flares off the gases. Yet the Subtitle D regulations mandate compliance with only the minimum requirements, requirements that many older landfills, and some newer landfills, have difficulty meeting. Under a "free market" system, waste naturally flows to landfills that provide the least environmental protection because it is always cheaper to use management methods that barely meet environmental standards than to create new systems, or alternatives to landfills, that provide significantly more environmental protection.

States and local governments which have invested heavily in systems and programs which minimize the amounts and types of wastes sent to landfills fear that the progress that they have achieved is in jeopardy. If the policy of the United States is reversed; if the goal of finding alternatives to burying waste is no longer viable; if the emphasis on innovative approaches to diversion—approaches which do not produce profits—is over, States and local governments have wasted many years and billions of dollars. More importantly, public health and environmental protection will be ill-served by such a change in direction.

ADDITIONAL RESPONSES BY RANDY JOHNSON TO QUESTION FROM SENATOR
LIEBERMAN

Opponents of flow control fail to understand that any perceived "inefficiencies" (by which they mean higher tipping fees) associated with flow control facilities is based on an inaccurate comparison with the tipping fees at landfills. As noted elsewhere in these answers, local governments provide far more than mere burial of trash. New technologies and innovative alternatives to landfill disposal are admittedly more expensive and experimental than landfills; that is why such technologies have been encouraged and utilized primarily by the public sector and financed with tipping fee surcharges.

While some landfills may provide somewhat higher levels of environmental protection than others, there is little if any incentive for landfills to attain greater "efficiencies" because landfills sited since the Subtitle D regulations must meet the same minimal standards. The Federal government does not require that such landfills be upgraded or improved to exceed the standards. (See answer to previous question.) Even if a private landfill can cut its costs of operation, there is no assurance that any significant cost savings are passed along to the consumer as long as the then-current tipping fee is set at a level that the market will tolerate. To do otherwise is contrary to a profit-based system.

ADDITIONAL RESPONSE BY RANDY JOHNSON TO QUESTION FROM SENATOR BOXER

Question. Much of this debate has focused on the economic impact of flow control. I have heard from private companies from California and across the country that flow control limits competition, creates inefficient local monopolies, increases disposal costs, and interferes with the free market. I have heard from almost every California county, and many California cities, that the flow control is vital to their ability to manage solid waste. What do you think? Does flow control limit competition and increase garbage management costs? What effect would a failure to authorize flow control have on the economies of municipal solid waste disposal?

Response. It is important to understand that in many States in this country, counties and other local governments are mandated by State law to handle garbage and trash. In addition, State legislatures establish recycling and/or waste reduction quotas, to be met by legislatively-mandated deadlines. In California's case, local governments incur financial penalties for not meeting the State's recycling targets and deadlines.

California and many other States also impose bans on the disposal of specific materials in landfills and incinerators, leaving recycling or reduction as the only option generally available to local governments. In addition, services such as household hazardous chemicals collection, and yard waste diversion are frequently mandated by State law on counties and municipalities.

The necessity of recycling and reduction of solid waste—a mandate that falls squarely on the shoulders of municipalities and counties, not private waste haulers—is the major reason why it is inaccurate to compare the costs of comprehensive solid waste management systems with the costs of a private operator merely burying trash in the cheapest location available.

Any discussion of the cost differential between comprehensive waste management services provided by a public entity utilizing flow control, and private facilities that charge a low disposal fee (and provide no other services), must be an “apples-to-apples” comparison. Local government fees generally recover, in addition to disposal costs, the costs of State-mandated waste services—services which do not lend themselves to generation of their own revenues. Disposal costs are only a small part of the picture, but if *only* disposal costs are compared, prices are usually comparable for public and private facilities sited in similar locations and built about the same time. (citing Moody’s Public Finance, *Perspective on Solid Waste*, August 16, 1993, p. 3)

Flow control is not only competitive, in fact, it enables many small trash hauling companies to survive and flourish. When a county or city enters into a franchise agreement or long-term contract with a private hauler, each hauler pays the same disposal fee at the flow-controlled disposal or recycling facility. Thereby, the small hauler is able to compete with the large vertically-integrated waste companies that own their own landfills, transfer stations and trucks. Flow control has provided a “level playing field” for the small haulers, who know that they have a disposal site with a set price, rather than at prices controlled by the industry giants.

There is already strong evidence that the future of small businesses in the solid waste marketplace are in jeopardy, causing concern for competitiveness in the waste industry. The January 1995 issue of *World Waste* reported that since 1990 the two largest waste companies in the United States had acquired over 1,000 smaller waste haulers and landfill operators. The trend is continuing at a record pace. In 1994 alone, one of those two companies reported that it had acquired 115 additional small waste companies. If local governments are not allowed to manage solid waste in their communities, the giants of the industry will continue their march toward a cartel of companies that can manipulate the marketplace, control prices and eventually eliminate competition altogether.

Congress’ failure to authorize flow control is already having an effect on the economics of municipal solid waste flow control. In order to retain a portion of the revenues to repay the debt issued for solid waste facilities such as transfer stations, recycling center, landfills, and waste-to-energy incinerators counties and cities have been forced to lower the fees collected at the facilities. In some cases, the lower fees have mitigated the exodus of trash haulers who otherwise would be delivering their loads to distant less-expensive landfills or out-of-state facilities. As a result, the reduced revenues have forced local governments to find other methods of repaying their bonds—in several cases those methods have included increasing local taxes (see attached).

In other cases, local governments have found it necessary to cut back on recycling services, composting programs, household hazardous chemical collection programs, environmentally-sound closure of old landfills, and other innovative waste reduction programs. Such programs are not income-producing, therefore without “subsidies” from waste disposal fees or local tax-supported revenues, they are activities that many local governments simply cannot afford. When comprehensive MSW systems have to “compete” with a private company—whose only interest is burying trash in the ground at the cheapest site available—the progress made in America since the late 70’s toward diverting waste from landfills is in jeopardy.

ADDITIONAL RESPONSES BY RANDY JOHNSON TO QUESTIONS FROM SENATOR
LAUTENBERG

Waste-to-energy facilities and garbage combusters are economical under the terms in place at the time of their development. Local jurisdictions and solid waste authorities entered into contracts and agreements relying on their legally-upheld flow control authority to commit their solid waste to a site for 20–30 years in return for

long-term assurance that environmentally-safe disposal was available at a price certain. As noted in the statement of the Government Finance Officers Association (GFOA) to the committee, the prices that were negotiated years ago were "sound". Waste-to-energy facilities were built in a competitive marketplace that required vendors to assume the risk of providing a 20-year minimum disposal location at an agreed-upon price that was, in most cases, competitively bid.

Communities relied upon their authority to control the flow of solid waste—authority that was upheld by the courts on numerous occasions. Public officials and bond holders had no reason to believe flow control authority was in jeopardy. "There is no discussion of any legal challenges to flow control because during this period of time [when project bonds were sold], there had been no attacks of the practice on Commerce Clause grounds," notes the GFOA statement. The lack of certainty for trash disposal and the inability to budget based on the increasing cost of waste management were much greater risks to communities at the time. Public officials responded by significantly minimizing their risks through long-term contracts and agreements, assuring reliable and responsible waste disposal.

With regard to the question about Hennepin County's fees at the waste-to-energy plant, it is important to understand that the \$95/ton tipping fee charged by the County supported the County's comprehensive environmental program, of which converting waste to energy was just one piece. The plant itself did not charge \$95/ton; the charge was imposed by Hennepin County to pay for the *entire* program which included the transportation of solid waste to two different plants. The transportation and processing costs for these plants was, in fact, \$65/ton. The additional amount supported a comprehensive integrated environmental program which includes the following:

- a household hazardous waste (HHW) collection program at two permanent facilities open five days a week;
- neighborhood HHW collection programs in the Spring and Fall
- tree recycling program
- commercial materials exchange program to reduce waste
- commercial hazardous waste licensing and inspection program
- education and training program for hazardous waste generators
- consumer electronics program to dismantle and recycle televisions and VCR's
- household battery collection and recycling program;
- fluorescent light tube collection and recycling program; and
- public education on proper handling of all these wastes.

The total cost for one of the most comprehensive environmental programs in the nation was borne by the tipping fee and paid by the waste haulers prior to the *Carbone* decision. Following that decision, Hennepin County shifted the costs to their citizens to pay for the same programs. The tipping fee was lowered and additional revenues were collected by a service fee, collected by waste haulers from their customers, as a percentage of collection and disposal costs, and paid to Hennepin County. In addition, a solid waste service fee was collected as separate "line item" on the property tax statement of homeowners and businesses.

Despite their objections to paying for the services they receive, the City of Minneapolis from the beginning of the County program has received direct benefits from the environmental facilities and activities. The City has benefited from the household hazardous waste program, the commercial hazardous waste inspection and training program, and the collection of household batteries, fluorescent light tubes, tires, oil, and consumer electronics.

While the costs have been shifted to a different set of tax and fee-payers, Minneapolis residents are still paying for the County's comprehensive environmental program. They are paying through a \$41/ton tipping fee, plus a service fee of 6½ percent on the collection and disposal of solid waste, plus a solid waste fee of .019 percent of the taxable market value of property. These three sources of revenue are supporting the same programs that were previously paid for with the \$95/ton tipping fee. The County continues to provide outstanding environmental services to the citizens of Hennepin County, including the residents of Minneapolis. The attached list shows the scope and results of the County's programs.

STATEMENT OF GROVER G. NORQUIST, AMERICANS FOR TAX REFORM

I. INTRODUCTION

Chairman Chafee, members of the committee, and ladies and gentlemen in the audience, thank you for the opportunity to address you.

My name is Grover Norquist and I am the president of Americans for Tax Reform (“ATR”). As you may know, ATR is an organization comprised of individuals, corporations, and associations that favor lower taxes, less regulation, and a smaller Federal Government. We do not accept any Federal grant money nor do we benefit from specific Federal programs.

I come before you today to speak briefly about the free market, taxes and flow control legislation.

II. AMERICANS FOR TAX REFORM OPPOSES FLOW CONTROL

Americans for Tax Reform believes that flow control promotes wasteful and inefficient practices at the expense of free market principals. It is anti-competitive, anti-taxpayer, and anti-growth. How else would one define the practice of permitting local governments to set up government-run trash disposal monopolies that virtually eliminate private-sector competition?

In essence, flow control dictates where municipalities and businesses send their waste, and then artificially sets prices for disposal at above-market rates. These additional expenses are passed directly on to consumers in the form of higher costs for goods and services. In effect, flow control is a stealth tax. It is critical to remember that such costs will not be borne solely by corporate America—individuals, families, senior citizens and persons on fixed incomes will all shoulder the tax burden of flow control, and the larger government bureaucracy that it requires.

Moreover, the concept of flow control goes against free market principles. As you may know, the Supreme Court struck down local flow control regulations in 1994 in the case of *Carbone v. Clarkstown, NY*. The Court found that State-mandated flow control infringed upon interstate commerce. ATR believes that any interference with unrestricted movement of goods and services undermines the free market, and therefore, harms the American taxpayer.

At a time when Congress is empowering communities and individuals, in such cases as welfare reform and agricultural policy, the last thing our elected officials should consider is concentrating more power in the hands of elected officials. One cannot reconcile a theoretical commitment to a leaner and smarter government with the concept of a State-run monopoly that precludes private sector competition.

III. THE COSTS OF FLOW CONTROL

ATR is proud to join with other champions of the free market on this issue. As Jersey City Mayor Brett Schundler so eloquently put it, flow control legislation “would institutionalize one of the worst excesses of the ‘big government knows best’ mentality that has long dominated Congress We’re forced to spend money on waste disposal that we would rather use for schools or police.”

We’ve also seen a broad and diverse business coalition form around this issue. Representing organizations such as the National Federation of Independent Business, the National Restaurant Association, the National Association of Manufacturers, and the Association of Builders & Contractors, the Coalition Against Oppressive Flow Control has written: “Small business owners strongly oppose flow control because it would allow local governments to dictate where small business must send their waste and it allows these governments to set monopoly prices.”

In another statement, the National Association of Manufacturers says: “flow control embodies the worst of all government monopolies—a hidden tax in the form of higher prices, reduced efficiency, a more intrusive government and a stifled free market.”

And finally, Karen Kerrigan of the Small Business Survival Committee has explained: “Flow control is nothing short of centralized State planning that harms individuals, families, and businesses. It raises taxes, increases the size of government and hurts American consumers.” I couldn’t agree with them more.

Perhaps as a way of summary, let me present four arguments against flow control. In so doing, I also hope to answer the Chair’s questions about what happens to communities in the absence of such regulation.

(1) *Flow control is nothing but a trash tax.* ATR firmly believes that a vote to reinstate the practice of flow control is a vote to raise taxes. Flow control is a stealth tax—a hidden burden imposed on families and businesses by artificially inflating the price of waste collection. The American people already pay too much in taxes. We do not need yet another tax increase. Voters know that taxes on businesses are ultimately borne by consumers and taxpayers in the form of higher prices, lower economic growth, and fewer jobs. ATR will work to make sure that the American people understand the harm done to them if flow control is enacted.

(2) *Flow control costs jobs.* We know that flow control means small business can no longer shop around for the best price for its trash collection. Consequently, entre-

preneurs face higher prices and have less money to pay their workers or hire new ones. Moreover, with scarce resources being diverted to pay increased "garbage taxes," there is less money for businesses to invest in their own communities. That means fewer private-sector jobs.

(3) *The cost of waste disposal is declining thanks to free market principles already in place.* In the 3 years since local flow control was suspended, the price of waste collection has dropped. Contrary to the dire predictions of unelected bureaucrats, communities are not just surviving, but actually growing without flow control in place. The free market has forced inefficient government agencies that used to rely on flow control to become more efficient. This has led to lower costs for homeowners and small businesses. For example, people under the regulation of Virginia's Southeastern Public Service Authority have seen prices cut by over 20 percent. Within Hennepin County, Minnesota, disposal prices have been slashed by 50 percent, from a high of \$95/ton to \$41/ton. In contrast, a study by the National Economic Research Associates reveals that flow control can actually increase the cost of waste collection by as much as 40 percent.

(4) *Flow control impedes market-oriented environmental and recycling efforts.* The EPA has found that flow control fails to facilitate recycling or create other environmental benefits. I never thought that I would be united with Greenpeace, the Sierra Club, and the Audubon Society, but on this issue we agree. According to one environmental activist: "Flow control laws discourage environmental innovation . . . Congressional authorization of flow control could inhibit the development of alternative waste management options, including market-driven recycling efforts. Flow control laws unnecessarily inhibit the ability of recyclers and other ecological entrepreneurs to compete in the marketplace."

IV. CONCLUSION

As many of you know, I have relentlessly fought over the years for a smaller Federal Government and lower taxes. There could hardly be a better example of how Washington could threaten these principles than today's fight over flow control. The lines are clearly drawn in this battle. On one side are the flow control proponents advocating a government-sanctioned monopoly. On the other side are the champions of the free market, American consumers, and the millions of small businesses across our nation. The choice could not be clearer.

Americans for Tax Reform strongly urges this committee to protect American taxpayers and strike a blow for the free market. We urge you to oppose anti-competitive, anti-small business and anti-taxpayer programs such as the proposed flow control regime.

STATEMENT OF JOHN BROADWAY, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Good morning. On behalf of 600,000 members of the National Federation of Independent Business (NFIB), and 11,000 members in Virginia, I appreciate the opportunity to present the views of small business owners on the subject of flow control.

By the way of introduction, NFIB is the nation's largest business association representing a broad cross section of American businesses. About 50 percent of our membership is in the service and retail industries, about 25 percent are in manufacturing and construction, and the rest are in businesses ranging from agriculture to wholesale services. NFIB's typical member has five employees and grosses about \$350,000 in revenue annually.

OVERVIEW

The vast majority of small businesses are customers of waste disposal services. However, NFIB also represents a number of small waste haulers and recyclers. Consequently, any efforts to maintain and expand the use of flow control ordinances negatively affect small business owners. The reasons are quite simple. Flow control ordinances, which force waste disposal customers to use government-mandated waste facilities, create monopolies under which small business owners will most likely pay higher costs and receive inferior service.

Monopolies, by their very nature, give an advantage to one entity at the expense of all others. It makes little difference whether the local government or a separate entity with a long-term contract run the waste disposal facility. Because monopolies don't have to face free market competition, customers have no power to bargain for better rates and service.

CONCERNS OF SMALL BUSINESS OWNERS

Flow control ordinances have the most obvious impact on price. Currently, in communities where no ordinances exist, haulers, processors, and recyclers compete for market share. As a result, customers can purchase disposal and recycling services that are efficient, safe and cost effective. On the other hand, where ordinances do exist, prices are artificially set to ensure a specific payout, and in some instances the prices are inflated to pay for other municipal services as well. These monopolies limit choice and place a very real tax on small business.

This tax burden, often referred to as a tipping fee, is not inconsequential. Studies conducted by the NFIB Education Foundation indicate that typical NFIB members take out of their businesses less than \$40,000 annually to support themselves and their families. Clearly, the price of any service, and particularly one that is as non-discretionary as waste disposal, can be a significant expense for a small business. In fact, a study by the National Economics Research Associates found that flow control increases disposal costs by an average of 40 percent. When small business owners are required to use a government-mandated disposal operation that faces no price or quality competition, they are virtually guaranteed poorer service and higher prices.

A second impact of monopolistic flow control ordinances is inefficiency. Instead of building disposal services to respond to need, flow control ordinances result in facility-driven systems. Government-backed facilities do not need to seek business to stay in business: they are guaranteed a return on their investment. There is no incentive to improve the disposal facility, to implement new technology, to attempt to cut costs, or to pass any savings on to the customer.

In addition, because these facilities are built without regard to market conditions, they are often oversized, built to receive volumes of waste considerably in excess of volumes projected in a free market environment.

Flow control ordinances can also negatively affect environmental quality. Small business owners want the ability to ensure that their waste is being properly disposed. They and their families live in their communities—they drink the water and they breathe the air. In addition, they face enormous liability for the waste they generate if it is not disposed of responsibly. As the committee is aware, NFIB has been very active this Congress and in the past in the Superfund debate because of the serious problems small business owners face in dealing with past disposal problems.

With respect to flow control ordinances, waste generators may be forced to send their waste to facilities that are environmentally unsafe, leaving them with potentially huge liabilities. Waste generators should be able to control their own liability and their quality of life by choosing the facility that has the safest standards.

NFIB also represents a number of small haulers and recyclers. With flow control ordinances in place, it is highly unlikely that these small businesses would be able to compete for long-term contracts. They will, in effect, lose any opportunity to provide these services or fill new niches in the market as new technologies develop.

Arguments are made that counties and municipalities need flow control ordinances to plan for present and future waste management. While such planning may be desirable, there are better ways to manage it than by interfering in free markets. It is a myth that waste management requires flow control. Such management by local governments can be performed through regulating the quality of service, not by performing it themselves or by establishing long-term exclusive contracts.

I think a good example of that is going on in Virginia right now. A few years ago, the city of Richmond and 12 surrounding counties and other independent cities formed the Central Virginia Waste Management Authority. One of their goals from the beginning has been to maximize the existing private waste management companies.

In fact, the director of the authority, Kevin Burns, has written "Unlike most other regional authorities, this authority has implemented all of its programs through private service contracts for recycling and other waste management services. The result has been the development of an integrated regional waste management program. The public investment in contract services is stimulated with the creation of private competition, jobs and a private tax base."

PENDING LEGISLATION

It should be made clear from my testimony that small business owners do not support flow control ordinances. However, they are not insensitive to the plight of many communities that have on-going facilities in place. If the committee must pass some flow control legislation, NFIB strongly urges that only a strictly limited grandfather provision be established. Specifically, we do not believe that communities that

currently have on-going programs should be destined to live under flow control ordinances into eternity. Once the currently operating facility's useful life is finished, any grandfathered flow control ordinance should end. And certainly, any community that had passed an ordinance and was merely in the planning stages of building a facility should not be protected from the free market.

Small business owners face many hurdles in maintaining their businesses, creating jobs, and generating revenue for their communities. They should not be faced with added costs and poorer service that results from monopolistic flow control ordinances. NFIB urges the committee to consider the negative consequences of establishing long-term monopolies that force small businesses to purchase services from a single supplier. It is not in the best interests of small businesses or the nation as a whole.

Thank you for the opportunity to be here today. I would be happy to answer any questions.

STATEMENT OF DAVID K. LEFF, ASSISTANT COMMISSIONER, CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Good morning. My name is David Leff. I am Assistant Commissioner of the Connecticut Department of Environmental Protection. I am accompanied today by Robert Wright, Acting President of the Connecticut Resources Recovery Authority. The Authority has been responsible for the financing and development of four of Connecticut's six waste to energy projects. Thank you for this opportunity to provide testimony on the significant impact which the U.S. Supreme Court decision in the matter of *C&A Carbone, Inc. v. Town of Clarkstown* has had on the solid waste management system in the State of Connecticut.

By Connecticut statute, each municipality must make provision for the safe and sanitary disposal of solid waste generated within its boundaries. More than a decade ago, it became clear that this could no longer be achieved through the use of traditional municipal landfills. Stricter environmental regulations, limited geologically appropriate sites, and public opinion prevented the siting of new municipal solid waste landfills as old landfills were rapidly reaching their capacity. In order to fulfill their statutory obligations, the municipalities, with the help of the State Department of Environmental Protection and the Connecticut Resources Recovery Authority, created interlocal agreements to develop sufficient waste-to-energy facilities to serve the State's needs, approximately 2.2 million tons per year of statewide capacity. The premise of this integrated waste management system of transfer stations, waste-to-energy facilities and residue landfills was that it is a State's responsibility to be as self-sufficient as possible in its waste disposal practices.

As you know, waste-to-energy projects are not inexpensive. Their development required the issuance of hundreds of millions of dollars of revenue bonds secured by the full faith and credit of the municipalities associated with each project. The bonded indebtedness for Connecticut's six waste-to-energy facilities is now about \$750 million.

At the time that the projects were developed, the municipalities anticipated that the fixed costs of paying off the bonds could be paid through a combination of energy revenues, disposal or "tipping" fees from member towns committed to the projects, and from towns and haulers which used the projects on a periodic or "spot" basis. This was a reasonable expectation since per capita waste generation was increasing, Connecticut's population was growing, and demand for disposal capacity was high, driving the cost of "spot" tipping fees well above the level of member tipping fees.

It was in this context that the municipalities signed long-term "put-or-pay" contracts to guarantee payment of the bonds issued for the projects. Through these contracts, they committed to delivering a minimum annual tonnage of municipal solid waste to their respective projects and to pay the difference in tipping fees if they failed to deliver that minimum amount. To ensure that they would never fall below their minimum tonnage commitments, the municipalities passed flow control ordinances, requiring that municipal solid waste generated within their borders be disposed at the waste-to-energy facility to which they were contractually committed. The ordinances vary from municipality to municipality, but their basic structure was to assure that adequate waste was delivered to meet the "put-or-pay" commitments.

One hundred and thirty-seven of Connecticut's 169 municipalities, representing 86% of its population, have long-term "put-or-pay" contracts with one of the State's waste-to-energy facilities. Five municipalities continue to use Connecticut's three remaining municipal solid waste landfills. The other municipalities either send their

municipal solid waste out-of-state or utilize one of Connecticut's waste-to-energy facilities on a spot market basis.

For almost a decade, these waste-to-energy projects have enabled the municipalities to fulfill their statutory solid waste disposal obligation in an environmentally superior manner. And when the State passed its Mandatory Recycling Act in 1987, these projects provided a basis for the development of a new recycling infrastructure, including several materials recovery facilities. As of fiscal year 1995, Connecticut recycled about 23% of its municipal solid waste, with a statutory goal of reaching 40% by the year 2000. The State sent 59% to waste-to-energy projects in State, landfilled 17% in State, and disposed of only 1% out-of-state. In short, Connecticut had carefully established an environmentally responsible and comprehensive municipal solid waste management system.

By the early 1990s, Connecticut's economy had slowed significantly, and its population stopped growing, so the anticipated increase in solid waste generation did not occur. In addition, the recycling rate rapidly increased from less than 10% to about 23% after 1991. This meant that there was less Connecticut waste requiring disposal than had been projected when the waste-to-energy projects were designed and developed. Despite these changes, most municipalities continued to meet their contractual commitments to deliver waste to their respective projects.

The *Carbone* decision dramatically changed the economics of Connecticut's waste-to-energy projects and put the State and the municipalities contracted to the projects at great risk. Without flow control, haulers have more disposal options, so Connecticut's waste-to-energy facilities have had to lower their spot market tipping fees to compete for spot tonnage. Since the 1980s, the spot market rates have dropped 30-50% in Connecticut. Lower spot market revenues combined with unchanging energy revenues meant that member tipping fees have had to increase so that the fixed costs of the waste-to-energy facilities could be paid. This put an additional and unexpected burden on the municipalities.

The increasing differential in tipping fees provided a further incentive for those haulers who paid the tipping fees directly to divert member town waste from the waste-to-energy facilities to which the towns were committed. The *Carbone* decision legitimized this diversion and created a vicious cycle. The less member waste that was delivered to the projects, the higher the member tipping fee had to be to cover the projects' fixed costs. The higher the member tipping fee, the greater the incentive to divert waste to a less expensive disposal facility. As of fiscal year 1996, more than half of the Connecticut municipalities with minimum tonnage commitments did not meet them. In some cases, the shortfall was quite small and in some projects the overages of other member towns made up the shortfall so individual municipalities were not penalized.

The diversion of member waste from Connecticut's waste-to-energy facilities was at first gradual probably because private haulers believed that Congress would enact legislation to authorize flow control, at least in States whose solid waste management systems depended on it. During the last year, however, haulers have become more aggressive in redirecting waste to other facilities because Congress has not taken action. Even those projects which were meeting their commitments in fiscal year 1996 are experiencing substantial decreases in tonnages delivered to their facilities. For example, the Bristol Resource Recovery Facility Operating Committee, an interlocal which developed a 237,250 tons per year facility serving 14 municipalities, has recently documented a 20% loss in tonnage. This facility has never experienced such a shortfall and attributes it to the diversion of waste by private haulers to other disposal facilities. The Operating Committee estimates that this reduction will result in an annual loss of revenue from tipping fees and reduced energy production of approximately \$450,000.

The Housatonic Resource Recovery Authority (HRRRA), which is a quasi-public solid waste management authority in the Danbury area, reported that tonnage decreased 41% during the month of February alone. HRRRA attributes the reduction to a new hauler taking waste to a facility other than the one to which the Housatonic municipalities are committed. If this situation continues, the municipalities will fall well below their annual put-or-pay commitment. The HRRRA has stated that it is not aware of any reduction in disposal costs being passed on to consumers by virtue of the hauler using a facility with a lower tipping fee.

A spokesperson for the Southeastern Regional Resource Recovery Authority, which helped develop a 251,485 tons per year waste-to-energy facility Southeastern Connecticut, notes that if municipalities have to tax their citizens to pay penalties for not delivering their annual tonnage minimums, residents will actually end up paying twice—once to their individual haulers and once through their municipal taxes.

A further consequence of this situation is that there is no longer incentive for municipalities to promote their recycling programs because increasing recycling tonnages would further exacerbate their difficulty in meeting put-or-pay waste-to-energy commitments. Although every one of Connecticut's municipalities has a curbside recycling program in place, the State's recycling rate has remained flat at 23% for the last three years. Municipalities which had recycling coordinators are laying them off, and initiatives to encourage increased business and institutional recycling are on hold.

An effective and environmentally desirable system which was built in good faith by responsible public officials is being destroyed by the lack of flow control legislation. This is clearly not consistent with the solid waste management hierarchy adopted by Connecticut or the Federal government. And it has the potential to do great financial damage to Connecticut's municipalities and to the State as a whole. Moody's Investors Service has already downgraded \$109,340,000 of bonds issued to support the Southeastern Connecticut Project. The seventeen municipalities which have guaranteed the revenues for this project are now confronted with a possible significant reduction in access to public financing and increased finance costs. Moody's has currently placed \$152,840,000 in bonds issued for CRRA's Bridgeport 821,250 tons per year facility on its "unstable-credit watch" category.

The National Association of Counties, National League of Cities, Governmental Finance Officers Association, Solid Waste Association of North America, American Public Works Association, Local Government Coalition for Environmentally Sound MSW Management, and the National Coalition for Flow Control sent a letter dated February 26, 1997, to Congress which documented other cases resulting from the loss of flow control and requested Federal flow control legislation. Connecticut is concerned that action must be taken soon to protect municipalities which acted in good faith to manage their solid waste disposal from the type of financial crisis faced by Orange County, California.

If the municipalities are unable to meet their contractual commitments to their waste-to-energy facilities and are forced to default on the approximately \$750 million in bonds which financed them, municipalities and the State will suffer even greater financial consequences. But this will happen only after severe hardship for the municipalities, and it will add a tremendous burden to a State which is only now seeing signs of economic recovery after a long, long period of recession.

Connecticut supports the premise that the management of solid waste should continue to be a function of State, regional, and local government, and our municipalities are taking appropriate measures to manage their problems. But the future without flow control is not bright. Last session the State of Connecticut supported S. 534, known as the Interstate Transportation of Municipal Solid Waste Act of 1995, which would have provided Connecticut municipalities with adequate flow control protection. We urge the Senate to pass similar enabling legislation this session which supports Federal flow control.

RESPONSES BY DAVID K. LEFF TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

Question 1. On page 3 of your testimony, you discuss how growth projections in Connecticut did not turn out to accurately predict the future because of the recession in the Northeast. How much of Connecticut's current problem is due to loss of flow control as opposed to inaccurate predictions of future growth rates?

Response. The problem is primarily due to lack of flow control. All solid waste facilities in Connecticut are required to submit quarterly tonnage reports to the Department of Environmental Protection which include the source, type and amount of waste handled by each facility and, in the case of transfer stations, the destination of waste shipped for disposal. Reports from two private transfer stations located in Southwestern Connecticut, one of which began handling municipal solid waste in 1996, clearly demonstrate that waste which prior to the *Carbone* decision was being disposed in Connecticut is now increasingly flowing out-of-state. This waste export phenomenon is clearly unrelated to the fact that Connecticut's population did not increase as quickly as projected. The chart below illustrates the point. It includes the amounts and percentages of municipal solid waste generated in Connecticut and shipped out-of-state by these two facilities.

Two Private Regional Transfer Stations in Southwestern Connecticut (BFI section of Stratford TS and NRS Norwalk TS*)

Fiscal Year	Total MSW Handled	MSW Disposed Out of State	Disposed Out of State (In percentage)
½1997	71,745	67,755	94.4
1996	102,973	80,067	77.8
1995	34,627	22,296	64.4
1994	42,917	12,085	28.2
1993	30,940	2,219	7.2

*NRS Nonwalk Transfer Station did not begin to accept municipal solid waste until FY 1996.

Connecticut anticipated in its 1991 Statewide Solid Waste Management Plan that the State's population would increase 9.2% from 1985 to the year 2010 but that there would be no increase in solid waste generation due to source reduction education and the State's mandatory recycling requirements. In fact, there has been a slight decline in the State's population and the annual waste generation rate has remained flat at about 0.9 tons per capita since fiscal year 1993.

Question 2. You and others imply that any windfall due to below-market tipping fees does not accrue to taxpayers. Who then benefits—the general fund of the municipality, which uses it for other civic purposes? The haulers? Others?

Response. The primary benefit is to the haulers. While some of these savings may be passed on to their customers, anecdotal evidence suggests that they are not routinely passed on. And if their customers are taxpayers in a municipality which is not meeting its contracted minimum tonnage commitment to a waste-to-energy facility, the customers may actually pay twice: once to the hauler for collection and again through their taxes to pay any municipal penalty, tax dollars which might have been available for other civic purposes if the municipality's tonnage commitment had been met.

Question 3. At the hearing on March 18, the statement was made that “the sky has not fallen” as a result of the *Carbone* decision. You have testified that Moody's has downgraded \$109,340,000 in bonds issued to the Southeastern CT Project, and has placed an additional \$152,840,000 in bonds issued for Bridgeport in its unstable credit watch category. Your testimony cites potential “severe hardship” for the municipalities. Could you elaborate on the practical impacts for municipalities and taxpayers of actions by financial services to downgrade bond ratings or place bonds in an unstable credit watch category?

Response. The downgrading of municipal bonds or regional bonds backed by municipalities may negatively impact a municipality's overall credit rating and make the costs of bonding for other essential projects such as schools and fire houses increase. This clearly increases costs for both the municipalities and their taxpayers.

Question 4. Mr. Broadway of NF1B has testified that, with flow control ordinances, waste generators may be forced to send their waste to facilities that are environmentally unsafe—rather than to facilities with strong environmental standards. What is your response?

Response. The municipalities which have adopted flow control ordinances in the State of Connecticut are contracted to send the municipal solid waste generated within their borders to one of the six waste-to-energy facilities operating in the State. Each facility is fully permitted and is subject to routine inspections by the Air, Waste and Water Management Bureaus of the Connecticut Department of Environmental Protection. All of these facilities are required to meet applicable State and Federal environmental standards. In addition, these facilities are entirely consistent with the State and Federal waste management hierarchies which prefer waste disposal through energy recovery to landfilling. To suggest that Connecticut's facilities do not have strong environmental standards or are environmentally unsafe is simply untrue. Shipment of Connecticut waste to out-of-state facilities which Connecticut cannot regulate is more likely to result in environmental degradation than the continued compliant and efficient operation of the State's waste-to-energy facilities.

Question 5. Can you elaborate on how flow control has supported environmentally sound alternatives to waste disposal (e.g., recycling, source reduction) in Connecticut, and the impacts of *Carbone* in this regard?

Response. As noted in my testimony on March 18, 1997, until the *Carbone* decision, flow control ordinances adopted by Connecticut's municipalities were the foundation for an integrated regional system of solid waste management including recy-

cling centers, transfer stations, waste-to-energy facilities, and landfilling of residuals. Flow control made it possible to construct and maintain this system by guaranteeing a sufficient flow of waste to the waste-to-energy facilities to assure that their fixed costs would be covered and that the system as a whole could be operated. As of fiscal year 1995, the year after the *Carbone* decision was issued, Connecticut recycled about 23% of its municipal solid waste, with a statutory goal of reaching 40% by the year 2000, sent 59% to waste-to-energy projects in State, landfilled 17% in State, and disposed of only 1% (38,808 tons) out-of-state. As noted above, since the *Carbone decision*, increasing amounts of Connecticut municipal solid waste have been being shipped out-of-state for disposal. In fiscal year 1996, Connecticut recycled about 23% of its municipal solid waste, sent 56% to waste-to-energy projects in-State, and filled 14% in-State, and disposed of about 7% (190,581 tons) out-of-state.

The regional authorities which were originally formed to develop the waste to energy projects provided the structure for developing regional recycling facilities, administering regional recycling programs, and educating the public about source reduction. Several of the regional recycling programs are at least partially subsidized by the waste-to-energy projects. In the two largest recycling regions, encompassing most of the State's population, the costs of operating the recycling facility are incorporated into the tipping fee at the waste-to-energy facility, thus providing municipalities and haulers with an incentive to recycle more and dispose less solid waste. In addition, inspections at the regional transfer stations and waste-to-energy facilities help enforce Connecticut's mandatory recycling requirements. When waste is shipped out of State, such enforcement is much more difficult. Finally, flow control ordinances for recyclables ensure that the recyclables go to the regional recycling facility on a regular basis rather than only when the market for recyclables is low. It is well known that recycling markets vary dramatically over time. It is not practical or fair for municipalities to bear the costs of providing and maintaining recycling facilities which are only used by haulers when they need to get rid of low-value recyclable materials.

Question 6. Mr. Broadway testified that facilities with flow control are built to receive waste considerably in excess of waste volumes projected in a "free market." Is this assertion an accurate reflection of the situation in CT?

Response. This is not an accurate statement for Connecticut where the waste-to-energy facilities were built to accommodate the waste predicted to be generated in the State. Each of the State's six facilities was designed with enough guaranteed capacity to meet peak demand of the municipalities associated with the project. In order to avoid excess capacity, Connecticut's legislature passed a statute (CGS 22a-208d) prohibiting the Department of Environmental Protection from issuing a permit for a new waste-to-energy facility or the expansion of an existing waste-to-energy facility if that new facility or expansion would create substantial excess capacity in the State.

Question 7. Mr. Broadway, on behalf of the NFIB, has testified that flow control ordinances increase inefficiency because no incentive exists to improve the disposal facility, to implement new technology, to attempt to cut costs, or to pass any savings along to the consumer. What is your response?

Response. Five of Connecticut's six waste-to-energy facilities are managed by public boards of directors on which municipal and State officials sit, and facility financial information is a matter of public record. These boards of directors have a great interest in system efficiency and operational costs because they are answerable to the taxpayers. Any increase in facility tipping fees in Connecticut is cause for considerable public debate. In addition, in many cases the municipalities pay the tipping fees directly. An opportunity to reduce the tipping fees represents an opportunity to lower municipal taxes or undertake other needed municipal projects.

Question 8. Some witnesses at the March 18 hearing contended that flow control is monopolistic and anticompetitive. What is your response to these contentions?

Response. The question in Connecticut is whether the regional solid waste management system is anti-competitive; and the answer is that it is not because five of the State's six waste-to-energy facilities and all of their associated recycling plants, transfer stations and landfills were developed by public entities using accepted public bidding processes. One of the major entities which helped to create this solid waste management system is the Connecticut Resources Recovery Authority which is specifically required by statute to contract with the private sector for all phases of design and implementation (CGS 22a-268). Furthermore, by Connecticut statute, the burden of providing for solid waste disposal rests with the municipalities (CGS 22a-220). Connecticut's regional, integrated solid waste management sys-

tems were created by groups of municipalities which took seriously their statutory obligation to provide safe and sanitary management for solid waste generated within their borders. The municipalities committed their municipal solid waste and their full faith and credit to these systems during the 1980s when landfills were reaching capacity and no other disposal options appeared to be available. Their goal was to ensure long-term and environmentally appropriate waste disposal through waste-to-energy projects. They were public entities operating appropriately in the public realm to satisfy their legal responsibilities. They should not now be compromised for reasonable decisions they made ten years ago.

Question 9. New Jersey has five incinerators. It appears from the testimony of both Mr. Leff and Mr. Johnson that incinerators, not landfills, are in financial jeopardy because of the lack of flexibility and high debt spawned by flow control. As you know, many environmental groups are opposed to flow control because they claim that flow control makes viable uneconomical incinerators. Standard & Poor's seem to agree that those are the facilities most likely to be thrown in default by the loss of flow control. Do you think incinerators are just not economical without flow control?

Response. Connecticut has taken the position that it should be responsible for managing as much of the waste generated within its borders as possible and that it should support the solid waste management hierarchy which prefers waste-to-energy disposal over landfilling. During the last decade no new MSW landfill has been sited in Connecticut due to strict State and Federal facility standards, the State's lack of geologically suitable sites and public opposition to such facilities. During the same period, six waste-to-energy facilities have become operational and have formed the foundation for Connecticut's waste disposal system. Flow control is essential to these waste-to-energy facilities because they require a consistent daily flow of waste in order to operate efficiently and generate the power required by their utility customers. Unlike landfills, these facilities cannot slow down or shut down for extended periods of time. They typically operate seven days a week as close to design capacity as possible to produce electricity for the grid. If the Fresh Kills landfill closure proceeds as scheduled, flow control ordinances may become less important for a time because there will be tremendous competition for any disposal capacity in the vicinity of New York City, but for the present, flow control is essential to preventing the export of Connecticut waste from the Connecticut facilities to which it is committed by contract.

Question 10. Don't high cost waste-to-energy plants lead to less recycling with or without flow control?

Response. Relatively high tipping fees, regardless of the type of disposal facility, encourage source reduction and recycling by providing municipalities with a beneficial way to avoid disposal costs. Low tipping fees have the opposite effect. Furthermore, as described in the response to question 5 above, recycling and waste-to-energy facilities in Connecticut are integrally connected through regional authorities, operational fee subsidies, and public education and enforcement efforts. With flow control, Connecticut's recycling rates steadily increased from 1990 through 1994. Since the *Carbone* decision, the recycling rate has remained flat at 23%. With waste flowing out-of-state and away from their designated facilities, municipalities have not had an incentive to promote recycling because it would exacerbate their tonnage commitment shortages and potentially incur penalty payments. Instead they have been laying off municipal recycling coordinators and have been unenthusiastic about implementing volume based collection/disposal fees which would encourage both source reduction and recycling.

STATEMENT OF JAMES M. SEIF, SECRETARY, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Good morning, Mr. Chairman and members of the committee. My name is Jim Seif and I am Secretary of the Pennsylvania Department of Environmental Protection (DEP). On behalf of Governor Ridge, I want to thank you for the opportunity to speak with you about the issue of unwanted municipal solid waste coming into our Commonwealth for disposal.

Pennsylvania's No. 1 Federal environmental legislative priority this year is to see Congress pass effective legislation allowing States to control unwanted imports of municipal solid waste.

While other States choose to ignore their responsibilities to take care of their own waste, Pennsylvania did not. We made the hard decisions to set up the nation's

most comprehensive curbside recycling program and built a waste disposal infrastructure that meets the highest environmental standards.

What was our reward? To see waste from other States fill up the disposal capacity we created by asking our citizens to recycle. And waste from other States goes to our landfills because other States refused to issue permits for landfills in their States.

Unfortunately, the trend for municipal waste exporting is getting worse not better. Municipal waste imports into Pennsylvania increased by 1.2 million tons in 1996 to 6.6 million. Pennsylvanians generate about 9 million tons of waste a year.

How bad is the problem for Pennsylvania? The Congressional Research Service report entitled "Interstate Shipment of Municipal Solid Waste: 1996 Update," shows Pennsylvania is the largest net importer of municipal waste. In fact, Pennsylvania imports over three times as much municipal waste as the State in second place. We receive "nearly one-third the national total for interstate waste shipments," according to the CRS Report.

We have worked closely with three other major importing States—Indiana, Michigan and Ohio—over the last 3 years to deal with the problem of interstate waste, and we will continue to be part of that bipartisan four-State coalition. Last year Governor Ridge, along with 23 other Governors urged Congress to enact interstate waste legislation.

PENNSYLVANIA'S MUNICIPAL WASTE MANAGEMENT SUCCESS STORY

The Commonwealth's system for managing municipal waste has four key elements:

- tough standards for waste disposal and resource recovery facilities that are protective of human health and the environment;
- county waste planning that ensures a minimum of 10 years of disposal capacity;
- the largest curbside recycling program in the nation,
- a mixture of county designated flow control and free market concepts.

Through the efforts of Pennsylvania's public and private sectors, we now have a stable solid waste infrastructure that benefits all of our citizens.

We are self-sufficient and we have balanced our need to ensure adequate waste disposal capacity for Pennsylvania's citizens with the desire to preserve the rural heritage and natural beauty of William Penn's woods.

It wasn't always so. In the mid-1980's Pennsylvania faced a municipal waste crisis. Disposal rates were increasing rapidly as disposal capacity was shrinking.

At one point, Pennsylvania had only 12 to 18 months of disposal capacity left in the entire State. Pennsylvania's old, substandard, unlined landfills and town dumps—numbering over 1,100—were being shut down by the State because of their environmental inadequacy. And no new facilities were being opened because neither the private nor public sector was willing to invest in new disposal facilities in a State that had an uncertain permitting process and no comprehensive planning. As a result, Pennsylvania was exporting significant amounts of waste to New Jersey and other States.

At the same time, there were few organized State or local government recycling efforts. Recycling was something left to a few innovative communities and the Boy Scouts and church groups at make-shift drop-off centers in shopping malls.

That all changed in 1988, when Pennsylvania took the first step toward self sufficiency by enacting the Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101).

The Act assigns counties the responsibility for waste planning, requires recycling, authorizes programs to encourage waste reduction, requires government to set the example and purchase products made with recycled content, provides funding for host municipality inspectors, and requires landfills and other facilities to pay host community fees. It also imposed new safeguards at waste management facilities in Pennsylvania, building on the authority given the Department in the Solid Waste Management Act of 1980 to set environmental protection standards for landfills, incinerators and other waste facilities.

Before Act 101, there was no comprehensive waste planning done at any level of government in Pennsylvania. Now, all 67 counties have municipal waste management plans in place that review waste generation levels, consider currently permitted and pending municipal waste disposal facilities and their relative locations, and adopt strategies to ensure a minimum of 10 years disposal capacity. Counties have taken a variety of approaches to assuring future capacity, from directing waste to particular facilities to having a menu of disposal facilities available.

As of today, Pennsylvania has 51 permitted double-lined landfills and 7 resource recovery incinerators. At the present rate of disposal, these facilities should provide

disposal capacity for the next 10–15 years. If the rapid increase of out-of-state waste continues, however, this hard-won disposal capacity will be taken from us.

Pennsylvania has made tremendous strides to improve statewide recycling. Ten years ago, Pennsylvania had fewer than 75 curbside recycling programs and recycled only 2 percent of its municipal waste. Today Pennsylvania leads the Nation in the number of curbside recycling programs with 864. Combined with the 253 drop-off programs, recycling is now available to 8.7 million residents and businesses in 1,355 communities, who together recycled over 2 million tons in 1996—20 percent of Pennsylvania's municipal waste. Pennsylvania's educational outreach efforts have won regional, national and international acclaim, including a 1992 United Nations Award for excellence in communicating a priority issue. Last year, Pennsylvania was the host State for the 15th annual National Recycling Congress in Pittsburgh.

Recycling programs at the local level are financed in part by the State's Recycling Fund, which is supported by a \$2 per ton fee on municipal waste received at waste disposal facilities. To date, this fund has provided over \$180 million to local and county governments to support their recycling and planning efforts. Pennsylvania has also provided more than \$35 million in low interest loans and technology grants to industry to assist it in developing new recycled products.

More than 85 Pennsylvania companies manufacture recycled products, and the Commonwealth leads the Northeast in the number and percentage of manufacturing jobs related to recycling.

State government has also done its part to increase recycling. Pennsylvania has established recycling programs at all State agencies and has steadily increased its procurement of recycled products, which in turn helps to create new markets. In fiscal year 1995/96, Pennsylvania purchased \$40 million in products containing at least 10 percent recycled content, a 20 percent increase over the previous fiscal year. In 1995, 4,500 tons of materials were recycled in the Capitol Complex in Harrisburg.

With regard to setting environmental standards, after working to close over 1,100 municipal waste dumps that were unsafe, out-dated and unprotective, Pennsylvania adopted new municipal waste landfill and resource recovery incinerator regulations that are among the toughest in the nation. Pennsylvania requires all municipal waste landfills to have double liners, leachate collection and treatment and specifically approves all streams of non-hazardous residual waste going to facilities to make sure they can handle it safely.

UNWANTED MUNICIPAL WASTE IMPORTS—"IF YOU BUILD IT, THEY WILL COME"

One large unintended consequence of building a world class municipal waste infrastructure is that the amount of waste being imported into Pennsylvania has increased steadily and shows no sign of slowing down. We built it, and with no controls, they came. In 1987, Pennsylvania's waste imports were less than 3 million tons. Ten years later, Pennsylvania is importing over 6.6 million tons of waste to municipal waste facilities from 29 States. Exhibit 1, shows how dramatically our waste imports have increased—over 130 percent since 1989.

As import levels have risen, so too has the level of concern among many Pennsylvanians who fear that our State is rapidly becoming a dumping ground.

Pennsylvanians' fears about increasing levels of unwanted municipal waste imports were greatly heightened in May of last year, when New York City announced that it intended to close the Fresh Kills Landfill in Staten Island by 2001. That will add 4.7 million tons of waste per year to the waste market. Governor Ridge recently expressed his concerns to Governor Pataki and Mayor Guiliani about their Task Force report which recommends continued reliance on out-of-state facilities to resolve New York City's trash problem.

These concerns also can be seen in editorials and letters to the editor from all parts of the Commonwealth. For example, a recent editorial in the Scranton Tribune dated December 5, 1996 stated: "We are sick of being a garbage dump for other States. Let New York State find a place within its borders for New York City's garbage." The Sunbury Daily Item on January 17, 1997 stated: "It's not right that officials in New York solve their waste problems by shipping huge quantities of garbage to Pennsylvania. After all our landfills are limited too. If we fill them with New York's garbage, where will we dispose of garbage generated by Pennsylvania's 12 million people?"

In many of our communities, while residents are willing to accept the burdens associated with disposing of their own trash, such as truck traffic, noise, odors and other nuisances, they find it simply unacceptable that other States appear either unwilling or unable to take some of the same actions we took to handle their own trash. Moreover, our citizens feel that all of their efforts to increase recycling are being lost in a sea of rising waste imports.

Waste imports since 1988 were four times the amount of waste recycled by all Pennsylvanians. The total tonnage of waste recycled since Act 101 went into effect in 1988 is approximately 8 million tons. Total imports in that same time period were in excess of 32 million tons.

PENNSYLVANIA'S RESPONSE

States recognize that we presently do not have the power to impose limits on any municipal waste being imported into the Commonwealth. In numerous decisions dating back to 1978, the U.S. Supreme Court has ruled that the transport and disposal of municipal waste is interstate commerce protected by the Constitution and that States do not have the authority to limit the flow of waste across State lines, until Congress grants them that authority.

In the last 2 years in numerous letters, and on visits to Washington to meet with congressional leaders, Governor Ridge has asked Congress to give us that authority.

In addition, responding to the concerns of their constituents, Pennsylvania's House and Senate passed separate resolutions in June 1996 calling on the Congress to approve legislation authorizing states to restrict the amount of solid waste imported from other States (Exhibit 2). We expect similar actions this year.

In January 1997, the Citizens Advisory Council to the Pennsylvania DEP, sent a letter to Pennsylvania's Congressional delegation urging them "to work aggressively to pass Federal legislation that would provide an equitable framework to require each State to be responsible for providing capacity within its borders for the disposal of its citizens' waste, and giving States authority over importation of out-of-state waste." (Exhibit 3).

Despite all of our efforts, Federal interstate waste legislation did not make it through the last Congress.

At this point, Pennsylvania has done all that it can do with regard to minimizing the impacts that municipal waste, whether generated in-State or out-of-state, has on our communities.

Last month, my Department released new policies in response to an Executive Order issued by Governor Ridge on August 29, 1996. That order required my Department and the Pennsylvania Department of Transportation to (1) evaluate all existing municipal waste landfills, resource recovery and transfer facilities to make sure they are not causing environmental or traffic safety problems; and (2) conduct a review of our municipal waste program to see how DEP could more effectively analyze new permit applications in terms of traffic impacts, volumes of waste accepted and their general environmental impact.

With the help of DEP's Solid Waste Advisory Committee and other groups, the Department recently issued new policies in the following areas:

- *Traffic Safety.* DEP now has developed a more detailed procedure, developed in cooperation with the Department of Transportation, to review the potential traffic safety impacts of new or expanded municipal waste disposal facilities and transfer stations, that will be based in part on the studies done at existing facilities.

- *Waste Volumes Accepted.* DEP has developed a specific procedure to set daily volume limits on municipal waste facilities to reduce environmental and safety hazards.

- *Environmental Assessments.* DEP is now using a more comprehensive environmental assessment process for identifying community and environmental impacts such as incompatible land uses and impacts on other natural and cultural resources like scenic rivers and historic sites, as recommended by a stakeholders group that I and our County Commissioners Association convened to recommend improvements to Act 101.

All pending and future applications for increases in disposal capacity or waste volumes will now be reviewed by DEP in accordance with the new policies and procedures developed under the Governor's Order.

DEP will be working closely with host counties and host municipalities affected by permit applications to assess the problems created by proposed facilities.

In addition to these steps, DEP, the Department of Transportation, State Police and the Public Utility Commission will be continuing random inspections of waste trucks on our Interstate highways and at landfills and resource recovery facilities to make sure they meet our safety and environmental rules. The surprise inspections we conducted last year resulted in citing 689 waste truck drivers for 905 violations. A total of 2,632 waste trucks were inspected at nine separate locations around the State. A disproportionately large percentage of the violations were found to exist on trucks hauling waste from out-of-state. We proposed as part of our budget this year a new initiative that would allow communities to hire their own waste truck inspectors to supplement our own inspection program.

Our inspection program complements the Operation Waste STAR (Safer Trucks and Roads) driver safety education program announced last year by the Pennsylvania Waste Industry Association. This new voluntary program requires participants to do a 57-point safety check of their truck every day it is used. The association gives trucks that pass the inspection a star sticker to display.

As part of our truck inspection effort, I have notified my counterparts in the states that send waste to Pennsylvania of our inspection program and have asked them to notify waste haulers in their States of our initiative. In addition, I recently signed a mutual aid agreement with Robert Shinn, the Commissioner of New Jersey's Department of Environmental Protection, that commits both of our States to continue random independent vehicle inspections and to conduct joint operations with State police and other agencies.

As I noted above, Pennsylvania believes that it has taken all the actions that it legally can to protect its citizens from out-of-state waste. But it's clearly not enough. We need congressional action, and we need it now more than ever.

WHAT WE ARE NOT ASKING FOR

I want to make clear that Pennsylvania is *not* interested in turning our backs on the legitimate needs of our neighbors. We recognize that every State has its own unique set of values and needs that reflect fiscal and political constraints in dealing with waste issues, but we don't want to be thought of as the first option for disposing of waste from other States either.

We are also not asking for Federal money or for more Federal regulations. We are simply asking for the tools we need to protect our communities from unreasonable amounts of unwanted municipal waste from other States.

WHAT WE ARE ASKING FOR

Simply put, if the Supreme Court says that States need Congressional authorization to regulate the flow of trash across State lines, then Pennsylvanians, including the Governor, the members of our General Assembly, and our Citizens Advisory Council, say that it's time for Congress to give us that authority.

Pennsylvania seeks to protect the fiscal, political, social and community investment that has been made in our solid waste infrastructure—an investment that has allowed us to move from ground zero to a world class, environmentally safe waste management system in less than a decade.

We are asking Congress to give States, like Pennsylvania, the tools that will allow State and local governments to place reasonable limits on unwanted municipal waste imports. In particular, we are asking for authority to allow individual communities to say that they do not have to accept out-of-state garbage if they don't want to. There are local governments in Pennsylvania that have already signed host community agreements that specifically authorize the import of out-of-state garbage. These agreements should be honored. On the other hand, if the local government decides that it does not want waste brought in from other States, Congress should protect those wishes as well.

We are looking forward to working with the committee and its staff to develop interstate waste legislation that does the following:

- allows States to impose a freeze on out-of-state waste at 1993 levels
- authorizes States to reduce or ratchet down the levels of waste imports where there are no host community agreements
- prohibits waste imports at facilities that did not receive waste in 1993 until the affected local government approves its receipt
- allows States to deny a permit for disposal facilities based on need
- allows States to impose a percentage cap on the amount of waste that a new facility or major modification of an existing facility could receive.

In addition to supporting controls on interstate waste, Pennsylvania also requests that Congress authorize the use of flow control ordinances to direct waste to particular waste disposal facilities, especially when it is needed to protect public investments. The issues of interstate waste and flow control have historically been tied together and we see no reason to break them apart. If Pennsylvania's neighbors, such as New Jersey, had the ability to enforce flow control, there would be significant benefits to the Commonwealth because it would help these States to keep their waste within their borders.

HOW WE WILL USE THE TOOLS CONGRESS GIVES US

I can assure you that we have no intention of using any of the new tools that Congress may give us to act punitively toward any State or community that has sent waste to Pennsylvania.

Despite our growing alarm over the closure of Fresh Kills, we have continued to pursue a meaningful and constructive dialog with our counterparts in New York. Last July, leaders from our General Assembly, along with my Deputy Secretary for Special Projects met with New York State environmental officials and legislators in Albany to try to build a consensus between the importing and exporting States on Federal legislation. Governor Ridge and Governor Pataki have discussed the issue. I believe mutually acceptable legislation can be enacted.

While we are grateful that the Senate is moving forward, we continue to be concerned about the inability of the House to move a bill. The Senate passed S. 534 not once, but twice, in the last Congress but the House failed to follow your lead.

The Pennsylvania experience—this 10-year successful effort—need not be unique; others can do it too. But if the lesson of that success is simply that any State in the lead gets to be a safety valve for others lagging behind, if it reduces others' incentives to even make the effort, and if Congress looks the other way, no other success stories can be told. Worse yet, Pennsylvania will bear the costs of others' failures.

We are happy to work with the committee to build consensus and to help get a bill that can be signed into law at the earliest possible date.

Thank you.

EXHIBIT 1

IMPORTATION OF MUNICIPAL WASTE BY TONS, 1989 THROUGH 1996

31497

ORIGIN	1989	1990	1991	1992	1993	1994	1995	1996
ALABAMA	0	0	0	0	0	0	181	0
ALASKA	0	0	0	0	0	0	0	0
ARIZONA	0	0	0	116	0	0	0	0
CALIFORNIA	3,043	47,234	292,217	292,217	225,482	65,274	21,968	21,138
CANADA	122	64	3,728	1,831	1,133	1,906	21,662	111,883
CONNECTICUT	0	0	0	0	47,241	44,314	31,276	24,072
DISTRICT OF COLUMBIA	0	0	67,603	181,313	178,986	173,620	271,117	230,698
DELAWARE	0	0	21	0	6	17	0	0
FLORIDA	0	0	2	12	0	0	0	0
GEORGIA	0	0	0	0	0	0	0	0
HAWAII	0	0	0	0	0	0	0	0
ILLINOIS	0	0	0	0	0	0	0	0
INDIANA	0	0	0	0	0	0	0	0
IOWA	0	0	0	0	0	0	0	0
KANSAS	0	0	0	0	0	0	0	0
KENTUCKY	0	0	0	0	0	0	0	0
KY	0	0	0	0	0	0	0	0
LOUISIANA	0	0	0	0	0	0	0	0
LOUISIANA	0	0	0	0	0	0	0	0
MAINE	0	0	0	0	0	0	0	0
MASSACHUSETTS	4,516	17	12	570	690	8	649	572
MARYLAND	0	10,437	20,733	68,716	198,208	269,060	532,063	624,990
MAINE	0	0	0	0	0	0	0	0
MICHIGAN	0	0	0	0	0	0	0	0
MINNESOTA	0	0	0	0	0	0	0	0
MISSOURI	0	0	0	0	0	0	0	0
MISSOURI	0	0	0	0	0	0	0	0
NEVADA	0	0	0	0	0	0	39	0
NEW HAMPSHIRE	0	0	0	0	0	0	0	0
NEW JERSEY	2,515,387	2,400,092	1,871,494	1,892,200	1,903,531	1,377,837	1,870,999	2,511,874
NEW YORK	676,962	864,219	1,037,994	1,346,961	1,515,732	2,388,118	2,491,762	2,979,360
NORTH CAROLINA	0	0	0	0	188	433	67	84
OHIO	1,785	3,845	3,714	4,570	4,166	4,496	8,196	68,932
OKLAHOMA	0	14	0	0	0	0	0	0
PUERTO RICO	0	0	0	0	0	0	0	0
RHODE ISLAND	0	0	0	0	0	0	45	0
SOUTH CAROLINA	0	0	1	0	0	0	0	0
TENNESSEE	0	0	0	0	0	0	0	0
VERMONT	1	41	9	6,032	5,894	3,992	5,335	5,386
VERMONT	0	0	0	0	0	0	14	0
WASHINGTON	0	0	0	0	0	0	0	0
WISCONSIN	0	0	0	0	0	0	0	0
WEST VIRGINIA	4	227	10,375	56,937	53,986	17,533	18,748	45,467
99 **	0	0	0	0	0	0	0	0
TOTAL	3,201,821	3,281,270	3,082,341	3,844,494	4,135,655	4,352,678	5,420,180	6,622,666

999999 9LS
** NON-PENNSYLVANIA WASTE OF UNKNOWN ORIGIN

DATA FROM PA DEP ORIGIN AND DESTINATION SUMMARY

EXHIBIT 2

Senate of Pennsylvania



HARRISBURG, PA.

OFFICE OF THE SECRETARY

In the Senate, June 17, 1996

- Whereas, The Supreme Court of the United States has issued a series of decisions holding that the Commerce Clause of the Constitution of the United States prohibits states from restricting the importation of solid waste from other states; and
- Whereas, Over the past several years owners and operators of solid waste landfills and resource recovery facilities located in this Commonwealth have increased significantly the amount of solid waste that they accept from other states; and
- Whereas, According to statistics compiled by the Department of Environmental Protection, the percentage of solid waste disposed of in this Commonwealth that is imported from other states has increased in each of the past five years; and
- Whereas, According to statistics compiled by the Department of Environmental Protection, in 1995 imported waste made up 35.4% of the solid waste disposed of in landfills and resource recovery facilities located in this Commonwealth; and
- Whereas, New York State and New York City recently announced plans to close by the year 2001 the Fresh Kills landfill located on Staten Island, which currently accepts 13,000 tons of waste per day from New York City, and the city's sanitation director stated that the city would consider sending its waste to landfills in Pennsylvania, among other places; and
- Whereas, The present and projected future levels of solid waste that owners and operators of landfills and incinerators located in this Commonwealth import from other states poses potential environmental, aesthetic and traffic problems and is unfair to citizens of this Commonwealth, particularly citizens living in areas where landfills and resource recovery facilities are located; and
- Whereas, In 1988 the Commonwealth adopted a law designed to reduce the need for additional landfills and incinerators by requiring and encouraging recycling of certain materials; and
- Whereas, It is within the power of Congress to delegate authority to the states to restrict the amount of solid waste they import from other states; and
- Whereas, Legislation has been introduced in both houses of Congress, and passed by the United States Senate, that would give states authority to impose reasonable restrictions on the amount of solid waste imported from other states; and
- Whereas, Passage of such legislation by Congress may hinge upon the success of negotiations between certain states that import and export trash; and

Whereas, Recently Governor Ridge and the governors of four other states wrote to the Honorable George Pataki, Governor of New York, expressing their desire to reach an accord on authorizing states to place reasonable limits on the importation of solid waste; and

Whereas, The failure of Congress to act will harm the Commonwealth by allowing the continued unrestricted flow of solid waste generated in other states to landfills and incinerators located in this Commonwealth; therefore be it

Resolved, That the Senate memorialize Congress to approve legislation authorizing states to restrict the amount of solid waste they import from other states; and be it further

Resolved, That the Senate memorialize the Governor of New York to support legislation giving states the authority to place reasonable restrictions upon the amount of solid waste imported from other states; and be it further

Resolved, That copies of this resolution be transmitted to the Honorable George Pataki, Governor of New York, the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

I certify that the foregoing is a true and correct copy of Senate Resolution No. 138, introduced by Senators John E. Peterson, Robert C. Jubelirer, Edward W. Helfrick, Roy C. Offenberg, Jeffrey E. Piccola, Frank A. Salvatore, Robert D. Robbins, Harold F. Mosier, Jr., Anthony B. Andruszski, Jim Szelach, Terry L. Punt, Patrick G. Stapleton, Melissa R. Hart, Michael A. O'Pake, J. Doyle Corman, Joseph M. Uliano, James F. Rhoades, Raphael G. Musto, Jay Costa, Jr., Noah W. Wenger, Daniel E. Delp, Robert M. Tomlinson and Richard R. Kasunic, and adopted by the Senate of the Commonwealth of Pennsylvania the seventeenth day of June in the year of our Lord, one thousand nine hundred and ninety-six.



Mark R. Corrigan
 Mark R. Corrigan, Secretary

EXHIBIT 3

"THIS LETTER WAS SENT TO PENNSYLVANIA'S CONGRESSIONAL DELEGATION"



to the Department of Environmental Resources
 5th Floor • Market Street State Office Building • P.O. Box 3239 • Harrisburg, PA 17105-3239 • 717-737-6321

RECEIVE

97 JAN 24 PM 1

SECRETARY'S OF

January 23, 1997

(SEE ATTACHED LIST)

Dear :

I am writing on behalf of the Citizens Advisory Council to the Pennsylvania Department of Environmental Protection about an issue with which we have long been involved, the amount of municipal waste imported into Pennsylvania. Our concern with waste importation was reignited last year by New York's announcement of plans to close the Fresh Kills Landfill and proposal to export more municipal waste to Pennsylvania and other states. It continues to be a major issue at each of our regional meetings during which we listen to testimony about environmental issues and concerns in the various regions of Pennsylvania. We ask for your action on this issue which is critical to Pennsylvania's future.

Council has a long-standing position that all states should shoulder responsibility for meeting their own disposal needs. Pennsylvania has taken the initiative to become self-sufficient in meeting the municipal waste disposal needs of our own citizens and has established stringent controls and standards for municipal waste disposal in order to protect public and environmental health. Our counties are empowered to plan for municipal waste disposal and set aggressive recycling goals to minimize the amount of waste requiring disposal. As a result, over 7 million Pennsylvanians now recycle.

In the first three quarters of 1996, Pennsylvania accepted over 5.8 million tons of waste from 20 states and Canada, a 17% increase over the same period in 1995. The projected increase for all of 1996 is well over a million tons more than in 1995; the increase alone is more than most states import in total. The total projected amount for 1996 (at least 7.9 million tons) represents a 133% increase from the amount imported in 1989.

This increased volume of waste places a burden on Pennsylvania's citizenry by decreasing the lifetime of existing capacity available for use, disrupting our municipal waste planning process, and increasing the adverse effects associated with such facilities, e.g., truck traffic, highway degradation, air emissions, odor, noise, etc. While there are existing contracts and bond issues that need to be addressed, Pennsylvania should not be a dumping ground for other states' wastes. The citizens of a targeted municipality should be able to determine the future of their community as it relates to waste imports.

We recognize that this is not a new issue. In past years, Pennsylvania has made several attempts to control the amount of municipal waste being imported from other states and nations. Each time, however, these attempts have been unsuccessful because of purported conflicts with the Interstate Commerce Clause of the US Constitution. Obviously, Congress must take action to allow those states who are dealing with their own waste in a responsible fashion to limit importation.

Council urges you to work aggressively to pass federal legislation that would provide an equitable framework to require each state to be responsible for providing capacity within its borders for the disposal of its citizens' waste, and giving states authority over importation of out of state waste.

Thank you for your attention to this critical matter. Please call Susan Wilson, Council's Executive Director at 717-787-4527 should you have any questions.

Sincerely,

Brian Hill
Chairperson

cc: Governor Ridge
Secretary Seif
Mike McCabe, EPA Regional Administrator
Senator Roger Madigan
Senator Raphael Musto
Representative Robert Reber
Representative Camille George

BH:SW:dln

¹ The Council is a legislatively created advisory committee charged with reviewing all environmental issues, legislation, regulations, policies and programs relating to Pennsylvania.

RESPONSES BY JAMES M. SEIF TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

Question 1. Do you have any estimates of how much Fresh Kills waste you are likely to receive?

Response. In 1996, New York exported 3,273,000 tons of waste to municipal waste facilities in Pennsylvania. This was an increase of 521,000 tons over 1995. Since most of this waste comes from New York City there is a reasonable expectation that the amount of waste will increase again when Fresh Kills closes. The exact number of tons will depend on which companies are successful in obtaining hauling contracts with the City.

Question 2. I believe we should tread lightly when we legislate to restrict the free flow of commerce. Some importing States claim they need a presumptive ban—that in the absence of State and local action, borders should be closed. Why is it not sufficient for the States to have the right to say “no”, as we agreed twice last year in our interstate waste bill?

Response. Pennsylvania has agreed with legislation proposed under which host municipal agreements would be the basis for any presumptive ban. Most importing facilities in Pennsylvania have agreements with their host municipalities, so the effect of a presumptive ban in Pennsylvania would be to limit waste not to close the borders.

Question 3. If someone, not a governmental body, builds a properly permitted landfill in your State and then the State limits the landfills’ “customers” by limiting out-of-state trash that can go to that landfill, what arguments would Pennsylvania make to a claim that restricting the market is a governmental taking under the Fifth Amendment?

Response. A limitation upon the use of private property in the manner suggested in the question does not effect a taking if it substantially advances legitimate State interests, *Lucas v. South Carolina Coastal Commission* 505 U.S. 1003, 1023-1024, 112 S.Ct. 2886, 2897 (1992), citing *Nolan v. California Coastal Comm’n*, 483 U.S. 825, 834, 107 S. Ct. 3141, 3147 (1987), or stated another way, if it is imposed under the police power to protect the public health, safety and welfare. *Lucas*, 505 U.S. at 1023, 112 S.Ct. at 2897; *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470, 488, 107 S.Ct. 1232, 1243 (1987). The exception to this rule is when the limitation denies the property owner of all of the economically viable use of his land not otherwise inherently proscribed in the title to the property. *Lucas*, 505 U.S. at 1019, at 1247, citing *Agins v. Tiburon*, 447 U.S. 255, 260, 100 S.Ct. 2138, 2141 (1980)

In analyzing whether a property owner has been deprived of all of the economically viable use of his land, the courts do not look at individual “strands” of rights of property ownership, but at the entire “bundle” of rights. *Keystone*, 480 U.S. at 499, 107 S.Ct. at 1248, citing *Andrus v. Allard*, 444 U.S. 51, 100 S.Ct. 318 (1979). The United States Supreme Court held, for instance, that a mine owner who claimed it could not extract 2 percent of the coal from its mines because of Pennsylvania’s Subsidence Act did not suffer a compensable taking because significant amounts of coal could still be mined. *Keystone*, 480 U.S. at 499, 107 S.Ct. at 1249.

Limiting one source of a landfill’s potential customers would not deny the landowner the economically viable use of its land. Other customers, waste types, and land uses would still be available. There are a significant number of potential customers within Pennsylvania: Pennsylvanians alone generate approximately 9.5 million tons of waste per year. A landfill operator could compete for these customers. Additionally, more than just municipal waste may be accepted by a municipal waste landfill. In particular, residual waste may be accepted. Pennsylvanians generate approximately 54 million tons of residual waste per year for which the landfill operator could compete. In the unlikely event that an operator could not find any other customers in these ways, it could put the land to other uses. The property upon which a landfill is located is generally larger than the area permitted for use as a landfill, and the area permitted for use as a landfill is generally larger than the area actually used as a landfill. Hence, economic viability of the entire “bundle” of rights would not realistically be denied the land owner.

Consequently, limiting a landfill’s customers by limiting out-of-state waste that can go to a landfill would not be a governmental taking under the Fifth Amendment.

Question 4. If we gave the same rights that Pennsylvania wants to keep out garbage to Nevada, to keep out nuclear waste, what would your State do with its nuclear wastes?

Response. The comparison of municipal waste to nuclear waste assumes that the availability of geologic formations suitable for the disposal of nuclear waste is as universal among the States as the geologic formations suitable for the disposal of

municipal waste. Virtually every State in the United States has geologic formations which, with the right design criteria, can support the disposal of municipal waste. Unfortunately, this is not true for nuclear waste. Lack of proper, convenient disposal has led to the storage of nuclear wastes onsite at a number of sites in a number of States. Pennsylvania is involved in a project with the goal of siting a low-level nuclear site that will be used by other States, but this has never been part of our municipal waste analysis.

STATEMENT OF JOHN P. CAHILL, ACTING COMMISSIONER, NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Chairman Chafee and members of the Senate Environment and Public Works Committee, thank you for providing me with the opportunity to testify on behalf of the State of New York. I appreciate greatly the opportunity that you have afforded me to present the State's viewpoint on flow control and interstate waste issues.

I also wanted to take the opportunity to introduce myself. Governor Pataki appointed me as the Acting Commissioner of the Department of Environmental Conservation on January 1, 1997. The Governor has charged me with the protection of New York State's environment, balanced with the need to develop the State's economy. This is a challenge that I am undertaking enthusiastically.

NEW YORK STATE'S COMMITMENT

Senator Chafee, flow control and interstate waste issues are of great importance to New York State. I appreciate the committee's invitation to provide New York's perspective during your decision-making process.

New York State has an unparalleled commitment to the reduction, reuse and recycling of solid waste generated within the State's borders. New York's Environmental Conservation Law establishes a hierarchy which prioritizes waste reduction, reuse and recycling methods of solid waste management, forming the basis for the State's solid waste management efforts.

In New York State, the Solid Waste Management Act of 1988 helped turn the tide of solid waste management in the State by including a comprehensive scope of requirements, programs and policies for State and local governments to follow in the management of solid waste. It established a Bureau of Waste Reduction and Recycling and a State Solid Waste Management Board; defined local planning units; authorized grant programs for planning, recycling, and local resource reuse and recovery; and set up a State technical assistance program. Most important, it set forth the State's waste management hierarchy: waste reduction, reuse/recycling, resource recovery, and landfilling. This statute created a fundamental change in the way municipalities viewed, and now implement, solid waste management.

In New York State, the recycling of solid waste materials has increased from approximately 2.0 million tons in 1988 to over 8.5 million tons in 1994. This level is continuing to increase. The Environmental Protection Fund, created by New York State in 1993, demonstrates our commitment to implementing the State mandated solid waste hierarchy by providing funds annually for a variety of local waste reduction and recycling activities.

In fact, New York has a recycling record of which we justifiably can be proud. As Governor Pataki recently noted in a Natural Resources Defense Council article, New York has achieved a recycling rate of 35%—well above the national rate of 24%, and above the U.S. Environmental Protection Agency's expectations. And the Governor is committed to even greater recycling in coming years through State support of local recycling efforts.

However, New York faces the same challenge as States throughout the country, where some solid waste must still be incinerated for energy recovery or landfilled. And New York State, acting through its local governments, has made every effort to responsibly handle this residual solid waste within our own borders.

Approximately 80 percent of the waste that is not recycled is disposed of within the State. The remaining 20 percent (approximately 4.0 million tons) is exported to facilities in other States. Privately owned and operated facilities, many with host community agreements, manage the majority of this waste stream. The remainder is handled by municipalities, which use the disposal fees collected from New York to reduce the burden on their own taxpayers.

Since the mid-1980s, New York has been actively closing environmentally unsound landfills. Their threat to public health and the environment could no longer be ignored. In their place, municipalities were developing new, environmentally sound facilities. Recognizing its responsibility to assist municipalities with the costs of landfill closures, New York State first created the Environmental Protection Fund

that I mentioned earlier, to help fund closure costs. Recognizing that this \$100 million a year fund—which finances other environmental activities, including waste reduction and recycling—could not adequately address the State’s share of all local needs for landfill closure funds, Governor Pataki advanced, and the voters approved, a Clean Water/Clean Air Bond Act that provides an additional \$50 million in landfill closure grants to local governments. Between these two funding sources, we believe that the State will provide sufficient funds to local governments to ensure that all landfills that must be closed, will be closed.

Loss of flow control, as I will discuss below, is presenting a major obstacle to our waste management structure. The financial assistance that the State can provide, cannot absorb or provide relief for the localities in New York State that already have incurred substantial debt because they believed that flow control was a legally and financially sound mechanism. Congressional action, I believe, is our only avenue to help New York’s municipalities once again to be self-supporting with respect to the financial mechanisms needed to properly manage their waste streams.

FLOW CONTROL

Local governments in New York, like those in other States, faced serious financial consequences as a result of the *C&A Carbone v. Town of Clarkstown* U.S. Supreme Court decision in 1994. Prior to this decision, over a billion dollars in local debt had been issued for the planning, design and construction of environmentally sound landfills and waste-to-energy facilities in New York State. The State has supported and assisted our local governments to meet their financial obligations since the Supreme Court struck down these flow control ordinances. To do so has been a great challenge.

The State of New York has had a history of municipal development and operation of solid waste disposal facilities, in contrast to most other States, where private landfills have served communities. As attention to the environmental impacts of solid waste disposal grew, the costs of developing such facilities skyrocketed. Added to that was the obligation of our municipalities to provide for waste reduction and recycling efforts—our law puts that burden on local government, not private entities. This situation led to the need for flow control in order to create economically viable and environmentally sound solid waste management systems that, through bond financing, State assistance, and local funds, provided everything from education to recycling to final disposal. The costs of such systems, as you are well aware, are substantial. The loss of flow control represented a major change in direction for New York’s system.

Nearly three years after the *Carbone* decision, assistance from Congress is still urgently needed to help New York State’s communities cope with the financial and environmental responsibilities of proper solid waste disposal. Restitution of flow control in municipalities which previously had it would provide assurance to bond counsels and relief to local governments. It would bring a substantial portion of our current exports back into New York, where full-service municipal facilities have found themselves at an economic disadvantage against private enterprise with respect to tipping fees. In addition, it would help New York avoid future problems with solid waste disposal that may affect other States, and would assure increased investment by municipalities in waste reduction and recycling efforts.

The *Carbone* decision resulted in the exportation of approximately an additional one million tons annually of municipal solid waste generated in New York State, and a shift in disposal from local, municipally owned facilities to more competitive private facilities that did not bear the municipalities’ burden of costs and thus, could afford lower tipping fees. If flow control is re-instituted for those communities that initially had it, localities can once again manage solid waste within their own borders at more competitive tipping fees.

While flow control legislation is important to New York, I wish to direct the majority of my comments to an even more sensitive issue, the exportation of solid waste from New York State, particularly New York City, and how it relates to the recent agreement between the City and the State to close the Fresh Kills Landfill. Although some private carters or municipalities elsewhere in New York State are responsible for a portion of our exports, we recognize that the primary concern of other States, and their Congressional representatives, has been the exportation of commercially generated solid waste from New York City. With the closure of Fresh Kills, residentially generated solid waste will be added to this mix of exports.

NEW YORK CITY’S NEW APPROACH TO SOLID WASTE MANAGEMENT

Last June, Governor Pataki, along with Mayor Guiliani and the New York State Legislature, made a commitment to close this country’s largest landfill by January

1, 2002—a decision that was long overdue. Fresh Kills has a lengthy history. It was built in 1948 upon environmentally fragile marine wetlands. When opened, it covered 1,500 acres, and was not intended to go higher than the surrounding grade level, and was expected to be in use for only a few years. Instead, after 48 years, it has grown to 2,200 acres with heights approaching 200 feet. The Fresh Kills Landfill, due to its longstanding inadequacies, has contributed to the degradation of air and water quality; and its construction preceded State requirements to line landfills. Let me make this clear: the problem with Fresh Kills was *not* the waste going into the facility; rather, it was the facility itself.

On top of the commitments made to assist municipalities across New York State, the Clean Water/Clean Air Bond Act earmarks \$75 million to assist New York City with the environmentally sound closure of the Fresh Kills Landfill. While it is unquestioned that there will be major public health and environmental benefits from closing the Fresh Kills Landfill, some people still ask: why let the City close its only remaining landfill? The answer is simple. Every day that the City continues to dispose of waste at Fresh Kills prolongs the pollution of Staten Island and the surrounding waters of New York Harbor, and delays the implementation of more effective waste reduction, recycling and waste disposal strategies.

In less than a year, we've seen a task force of State, City, Federal and environmental interests convened by Governor Pataki and Mayor Giuliani unanimously release a report pledging to implement dozens of proposals for replacing Fresh Kills. Since the Task Force report was released last November, New York City already has begun to refocus and expand its recycling and waste reduction programs, adopting each and every recommendation of the Task Force, with budgetary and staff commitments to back it up. Junk mail, mixed paper and bulk metals are being added to the City's existing recycling program, and the City, with guidance from the State, is preparing over a dozen pilot programs and other field-oriented studies that will shape another round of waste reduction and recycling program improvements in early 1998.

Governor Pataki and Mayor Giuliani also have stressed the need to encourage growth in the recycling industry, to strengthen recycling's cost effectiveness and the overall economy of the metropolitan area. Successful corporate recruitment efforts such as the Visy Paper recycled cardboard plant recently constructed on Staten Island will enable recycling to play an increasing role in future waste management plans. When the Visy plant goes on line this June, it will create a market for paper the City previously could only have dreamed of, and will provide 400 permanent jobs.

The State also has provided economic development assistance to New York City's local development corporations and private entities, to facilitate the development of new waste reduction and recycling techniques. We firmly believe that, in the future, other large cities will look to New York for advice and assistance on innovative recycling, composting and waste reduction efforts.

To allow for an orderly transition away from dependence on Fresh Kills, the City will decrease the tonnage of solid waste going to the Landfill steadily, year by year, until it reaches zero at the end of 2001. The remaining amount of trash that has not been captured by waste reduction and recycling initiatives, the City will send to environmentally sound disposal facilities operating with the agreement of the surrounding community.

In fact, the Fresh Kills Task Force Report contains an essential commitment of the City: to dispose only at permitted landfills that have entered into "host community" agreements signifying the acceptance of the facility by the community involved. The inclusion of this commitment by the City was crucial to our neighboring States and New York's other communities. Governor Pataki views these commitments as fundamental to preserving the fairness of the Fresh Kills closure process.

CLEAN WATER/CLEAN AIR BOND ACT

The State believes that it must assist the City in these efforts. For that reason, when Governor Pataki proposed the Clean Water/Clean Air Bond Act in 1996, he included in it \$100 million for City solid waste management. As I mentioned earlier, \$75 million is provided to help the City finance the closure of the Fresh Kills Landfill, and \$25 million is available for capital costs of waste reduction and recycling projects, the largest single recycling commitment ever made in the State. The voters of the State approved this commitment, demonstrating their strong support for responsible solid waste management in New York City. In addition, \$19 million in 1972 Environmental Quality Bond Act aid has been converted to make it available for further recycling grants. Finally, the State's Environmental Protection Fund pro-

vides an annual funding stream for solid waste projects across the State, including such important efforts as public education and outreach.

SOLID WASTE EXPORTS

Governor Pataki recognizes the importance of State assistance to ensuring that local governments, including New York City, meet the State's solid waste hierarchy. Financial support is only one means of assistance. The Governor is working in partnership with New York City to develop appropriate solid waste management techniques while we work towards the post-Fresh Kills era.

My agency, the New York State Department of Environmental Conservation, works closely with City officials on a daily basis to determine the most appropriate means to manage the City's waste flow.

Even with these waste reduction and recycling initiatives and the financial commitments of the State, New York recognizes the unfortunate necessity to export a portion of the residential solid waste collected by New York City that would otherwise have been disposed at the Fresh Kills landfill. The commercially generated waste from New York is already disposed of separately, often going to facilities in other States.

New York State understands the burden other States are bearing, and is willing to work toward limitations on our waste exports, provided they are accomplished in a predictable, reasoned fashion. We can support legislation that will provide a reasoned, predictable framework, without which private developers are unwilling to make long-term investments to assist in our disposal needs. This includes no presumptive ban against interstate waste shipments, and upholding willing host community agreements.

In addition to our support for such a measure, I want to point out that New York has, and will continue to, take action to develop new disposal capacity in State—not only to assist New York City, but also other local governments in this State. Our efforts to develop new capacity include:

- In its 1993 amendments to its solid waste management regulations, DEC modified its landfill siting requirements to allow more flexibility in how the landfill siting process will be conducted. Rather than require applicants to evaluate numerous alternative locations to find the most appropriate site, specific siting criteria were added that are adequate for the protection of both human health and the environment, making it more feasible to locate landfill sites in the State. DEC believes that this approach to siting will result in significant reductions in the amount of time and money necessary to site a landfill.

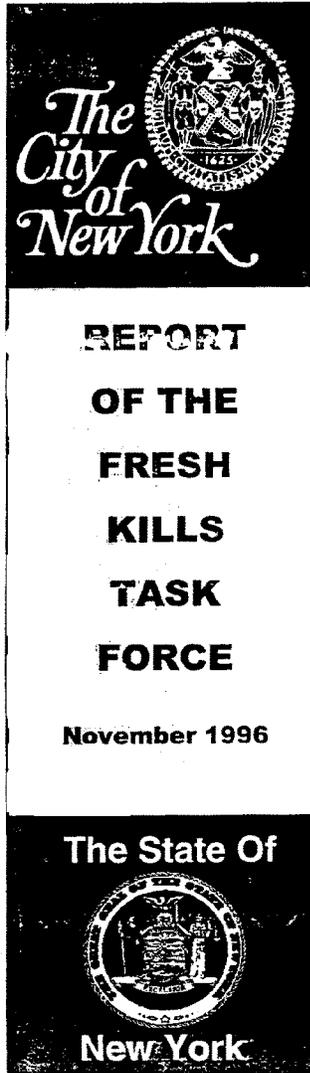
- During 1995 and 1996, DEC issued permits for the construction of approximately 50 million tons of additional landfill capacity. In addition, several major new landfill projects and expansions are being pursued presently by the public and private sector.

- In late 1994, the Onondaga County Resource Recovery Agency's Waste to Energy Facility commenced operations, thereby eliminating exports of solid waste from the Syracuse area to other States.

New York is making every effort to ensure, first and foremost, that solid waste is reduced, reused or recycled *instead* of becoming a waste product. Every effort is being taken to dispose of waste in-State. Finally, where waste exports remain a necessity, we are willing to commit to reasonable restrictions that do not include a presumptive ban on interstate waste transports.

Again, please bear in mind that waste exported from New York State is sent primarily to *willing* host communities. This issue is of paramount importance to the State. We believe that our waste exports should be sent only to those communities willing to receive it, and are willing to work with interested municipalities to develop these agreements. To exemplify this commitment, New York City and the State have made the commitment to require any facility accepting residential solid waste exported by the City to have a host community benefit agreement in place.

Senator Chafee, I want to express to you and the other members of the committee my personal willingness to work with you on flow control/interstate waste legislation. I want to thank you, not only for the time you have allotted me today, but also for your willingness to listen to New York's needs in the past, and today, on this issue.



**A Plan to Phase
Out The Fresh Kills
Landfill**



**RUDOLPH W. GIULIANI
MAYOR**

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**Fresh Kills Task Force Report
Executive Summary
November 1996**

1.0 EXECUTIVE SUMMARY

1.1 Program Highlights

The City of New York will embark on a new course of action in the management of its solid waste in the wake of the decision to close the Fresh Kills Landfill by December 31, 2001. Fresh Kills is a 2,200 acre landfill located on the west shore of Staten Island. It has been the sole repository of the City's 13,000 tons per day of residential waste since 1991. In June 1996, Mayor Rudolph W. Giuliani and Governor George E. Pataki established a joint Task Force to explore the various options available to the City to manage its solid waste without utilizing the Fresh Kills Landfill, and to develop an accelerated plan for its closure. For nearly six months, the Task Force researched available solid waste management options, explored cost implications, and determined the applicability of these options to a city as large and densely populated as New York City. The *Fresh Kills Task Force Report* provides the results of that research as well as recommendations and a plan for proceeding to restructure the solid waste management system in New York City.

During the course of the Task Force's work, Staten Island Borough President Guy V. Molinari was a major force behind the commitment to close Fresh Kills. He contracted with Sadat Associates, Inc. Under this contract, Sadat Associates, Inc. drafted a report, "*Solid Waste*

Management Alternatives Analysis for New York City Waste". The Sadat Report recommended many initiatives that the Task Force has adopted. Indeed, after reviewing the Sadat Report, the Task Force adopted a more aggressive stand on reducing the amount of waste going to Fresh Kills. As reflected later in this Report, the tonnage amounts of waste going to Fresh Kills will be reduced by as much as 20 percent by the end of 1997; and the City has established a strategy and timeline for the reduction of waste going to Fresh Kills each year until it closes. That timeline provides for an annual reduction in tonnage going to Fresh Kills until it closes in 2001. Furthermore, following the review of the Sadat Report, the issue of composting received considerably more emphasis, including the City's agreement to develop a backyard and institutional composting pilot program for possible implementation before the end of 1997. Finally, the Task Force embraced the Sadat Report's recommendation to engage the other Borough Presidents and the City Council in the planning of borough-based waste management plans. The Task Force appreciates the scope of issues addressed by the Sadat Report and commends the Staten Island Borough President for providing this invaluable resource.

The City has not waited for the issuance of the Task Force Report to initiate actions that will result in an appreciable diminution of waste landfilled at Fresh Kills. By the end of 1996, the Department of Sanitation (DOS) will issue a bid for the exportation of waste from the Bronx. The contract(s) that result from this bid are necessary as the Bronx marine transfer station is in need of an infrastructure overhaul. These contracts will begin July 1, 1997, with the 1,700 - 1,800 tons per day of waste generated in the Bronx sent to destinations other than Fresh Kills. Regardless of the location of the end destination, a contractor will be required to demonstrate the existence of a Host Community Agreement which ensures that the community has agreed to the

existence of the facility, and may be receiving a benefit for hosting it. The City has agreed to restore funding for the mixed paper and bulk metal recycling collection program in Staten Island and the Bronx, and to expand it to Manhattan effective March 1, 1997. The mixed paper and metal bulk demonstration program increased the overall collection of paper and metal, glass, and plastic (MGP) recyclables by 20 percent in Staten Island and 30 percent in the Bronx. It is anticipated that the increased recycling collection in Manhattan will be even higher than in the pilot boroughs. If it succeeds as anticipated, the City has agreed to expand mixed paper and bulk metal recycling to the remaining boroughs by the end of 1997. This citywide expansion has the potential to nearly double the recycling of paper in the City by up to 700 tons per day. The City recently began implementing a Mayoral Directive to reduce City agency waste. The City's goal is to reduce its own waste by an additional 100 tons per day. Thus, by the end of 1997, the amount of waste going to Fresh Kills should fall below 11,000 tons per day, and the total reduction could reach 20 percent below current levels.

FRESH KILLS PHASE DOWN DURING 1997

Tons per day currently going to Fresh Kills: 13,000 tpd

Potential avoided tonnages:

Bronx Export	1,700 -- 1,800 tpd
Increased Recycling ¹	350 -- 700 tpd
City Agency Waste Reduction	50 -- 100 tpd
Potential Total Diversion by late 1997:	<hr/> 2,100 -- 2,600 tpd

Tons per day going to Fresh Kills 1997: 10,400 -- 10,900 tpd

Thus, by the end of 1997, the City could achieve a 20 percent reduction in the amount of waste going to Fresh Kills each day.

In addition to restoring and expanding mixed paper and bulk metal collections, the City restored \$6 million to the recycling budget in its recent November Budget Modification, and intends to increase the recycling budget further in the January Plan. The \$6 million restoration includes funds for continued education and outreach for the alternate week recycling program, and additional funds for recycling and processing to permit the City to meet its current obligations and to expand recycling through proposed pilots. In addition, the City has agreed to immediately begin a pilot program that, in accordance with Federal regulations, will collect and recycle chlorofluorocarbons (CFCs) from appliances discarded by the public. Finally, funding for borough self-help bulk sites has been restored. In so doing, the City recognizes that the self-help

¹ Increased recycling will include the restoration of mixed paper and bulk metal collection to Staten Island and the Bronx and its expansion to Manhattan, along with the addition of the aseptic and polycoated materials to be collected with the metal, glass, and plastic recyclables. It could also include expansion of such collections to Brooklyn and Queens by the end of 1997.

bulk sites provide the means for New York City residents to dispose of items that might otherwise go directly into the waste stream.

In undertaking these initial steps to restructure its solid waste management system, the City has made clear its commitment to a combined effort of waste reduction, recycling, and disposal. The key elements of this approach are defined as follows: (1) waste reduction is the prevention of waste by changes in consumer practices -- avoiding certain purchases and buying commodities with a longer life cycle -- and corporate practices -- through changes in packaging; (2) recycling is the reuse of a commodity or the processing of the used product into a material that can be remanufactured; and (3) disposal occurs when waste has neither been reduced nor recycled and must, therefore, be discarded.

In implementing its waste reduction strategy, the City has taken an important first step by issuing Mayoral Directive 96-2 on Waste Prevention in City agencies. City agencies and institutions currently produce approximately 321,000 tons per year of waste, which is about eight percent of the total collected by the City. The Mayoral Directive requires all City agencies to institute waste prevention steps, including but not limited to, double-sided copying, setting computer printers to the double-sided default, using the electronic mail system rather than hard copies for the review and editing of documents and message sending, and faxing through the computer wherever possible. In addition, agencies are to initiate changes in their procurement procedures to prolong the life of products whenever possible and to reduce unnecessary packaging. Furthermore, the Mayoral Directive establishes an Inter-Agency Task Force chaired by the Mayor's Office of Operations to coordinate cross-agency efforts to reduce the City's waste stream. In conjunction

with the issuance of the Directive 96-2, all City employees were provided a copy of a 16-page manual on how to prevent waste in the course of one's daily tasks. Furthermore, to insure that the Directive is followed and that waste is in fact prevented, an indicator for waste reduction will be established in the Mayor's Management Report (MMR), a Charter-mandated report produced by the Mayor's Office of Operations and published each January and September. The MMR is a performance measurement tool and should be an effective means for tracking the compliance of each agency with the Mayoral Directive. Although the Directive itself does not establish waste reduction targets, the City aims to achieve a 50 - 100 ton per day reduction in City agency waste generated by the end of 1997. The full text of the Mayoral Directive is attached as Appendix A.

In addition to the Directive and the Inter-Agency Task Force on Waste Prevention, the Mayor has charged the Mayor's Office of Operations with the responsibility to review and analyze the legislative and administrative recommendations in the *Fresh Kills Task Force Report* in anticipation of proposing an appropriate legislative or administrative package. Furthermore, the City has agreed to restore funding that will allow DOS to continue research initiatives in waste prevention, including the WasteLe\$\$ program. Finally, the City has agreed to explore the opportunities for yard and food waste composting as a waste prevention measure, both on the institutional as well as the residential levels. Of note, the City is already operating two composting facilities, one on Staten Island and the other at Riker's Island.

The City has made fiscally prudent choices about recycling. As previously stated, the City has recently added \$6 million to its budget for recycling processing, education programs, a CFC pilot, and the self-help bulk site restoration. Moreover, the City is now committed to restoring

and expanding its mixed paper and bulk metal recycling, which should substantially increase total recycling. The City converted to alternate week recycling in September 1996, and some argued for restoration of the weekly schedule, which would have cost \$7 million. Under the alternate week schedule, recycling productivity has actually increased as much as 20 percent, as have the actual tonnages collected in comparison to the same period last year.

RECYCLING COMPARISONS

	October 1995 (weekly collection)	October 1996 (alternate week collection)
Tons per recycling truck	4.9	6.1
Total recycling tons collected	31,319	34,244

Although some were concerned that alternate week collection would hurt the recycling program, these numbers demonstrate otherwise. Nevertheless, the City has agreed to continue to monitor the alternate week collection rates to determine whether this positive trend continues.

As further evidence of its commitment to cost effectiveness, the City has agreed to the restoration of funding for mixed paper and bulk metal collection in Staten Island and the Bronx, and will expand its collection to Manhattan effective March 1, 1997. As a result of the earlier demonstration program, overall collection of paper and MGP recyclables increased by 20 percent in Staten Island and 30 percent in the Bronx. It is anticipated that the increased recycling collection in Manhattan will be even higher than in the pilot boroughs. Beginning March 1997, the mixed paper collected will be deliverable by contract to the Visy Paper plant on Staten Island,

and the City will receive a minimum of \$10 per ton for the paper delivered. The City has agreed to expand the mixed paper initiative citywide by the end of 1997, should the expectations of this initial phase be realized. The expansion of mixed paper and bulk metal recycling citywide could decrease the tonnage disposed of at Fresh Kills by as much as 700 tons per day by the end of 1997.

While the City has initiated an education and outreach program to encourage household recycling, the curbside recycling program has had a citywide diversion rate of approximately 14 percent for three years running. One way to increase productivity and reduce the overall incremental costs of the recycling program is to increase the level of participation. To explore the variables that affect participation, the City has agreed to hire a consultant to study the participation patterns across the City and recommend ways to increase participation through, among other means, improving educational efforts, altering collection scenarios, or increasing enforcement. Similarly, the City has agreed to pilot supplemental municipal solid waste processing.

To the extent that waste reduction and recycling initiatives decrease the waste to be disposed, the reliance on disposal will similarly diminish. The Task Force has recommended and the City has agreed that each borough should have the opportunity to participate directly in developing borough-specific recommendations for waste management. Thus, the Borough Presidents and the City Council are being invited to work with the Giuliani Administration to develop borough-based plans which take into account the City's overall responsibility for solid waste and fiscal management. The borough-based working groups will be convened by December 30, 1996, and

each borough's proposed plan will be due by April 30, 1997. The City will then conduct a careful and thorough review of these proposals. The City has agreed that by December 31, 1997, or the early part of 1998, if necessary, it will develop an overall waste management strategy for the continued diminution of waste going to Fresh Kills. In addition to its commitment to develop a comprehensive strategy for the reduction of waste going to Fresh Kills, which will include further waste reduction and increased recycling, the City has agreed to the Task Force's recommendation to establish a timeline of goals for phasing out the use of Fresh Kills over the next five years, in anticipation of closure by December 31, 2001. The City aims to reduce tonnage disposed at Fresh Kills by the end of each year as follows:

FRESH KILLS PHASE DOWN DURING 1997

<u>Year Ending:</u>	<u>Tons Per Day:</u>
1996	13,000 tpd
1997	10,900 tpd ²
1998	8,500 tpd
1999	6,500 tpd
2000	4,000 tpd
2001	0 tpd

As an indication of its commitment to closure, the City agrees that it will achieve a reduction to no more than 4,000 tons per day disposed at the Fresh Kills Landfill by December 31, 2000. The City will issue a Request-for-Proposals (RFP) for waste disposal, as needed, to reach the

² This number could fall to 10,400 tpd if the waste reduction and recycling initiatives implemented during 1997 achieve their maximum potential.

reduction targets, after reducing total waste through waste prevention and increased recycling during 1997. The disposal contract(s) developed -- essentially requirements contracts -- will provide a safety net that allows the City to achieve the targets identified in the preceding chart. The City will enter into transport contracts with the private-sector waste industry for any waste that needs to be exported out of the City for disposal. The destinations for disposal may be waste-to-energy facilities, incinerators, or public or private landfills. Any disposal facility receiving waste exported from the City will be required to have a Host Community Agreement with the community where the facility is located. A Host Community Agreement essentially ensures that the locale has agreed to the existence of the facility and may be receiving a benefit in exchange for 'hosting' it. With respect to solid waste disposal, the Bronx will be made self-sufficient next year, thereby reducing tonnage going to Fresh Kills by 1,700 -- 1,800 tons per day.

It is clear to the Task Force that the City is receptive to the implementation of new initiatives and is prepared to embark on new approaches to solid waste management to ensure the closure of the Fresh Kills Landfill. All of the relevant parties are steadfast in their commitment to close the Fresh Kills Landfill by the end of 2001. With the implementation of the findings and recommendations in this Report, the Task Force believes that the City will be able to implement a solid waste management strategy which does not rely on Fresh Kills Landfill for the disposal of residential waste after 2001.

1.2 Chapter Summaries

1.2.1 Introduction

In this first chapter, the Report details the establishment of the Fresh Kills Task Force by both Mayor Rudolph W. Giuliani and Governor George E. Pataki as a result of the decision to close the Fresh Kills Landfill by December 31, 2001. The Task Force was comprised of representatives from the Mayor's Office, the Governor's Office, and City and State agency staff with expertise in the areas of government operations, solid waste management, the environment, health, transportation, land use and economic development. Additionally, Staten Island Borough President Guy V. Molinari and Congresswoman Susan Molinari also served on the Task Force, as did environmentalists James Tripp of the Environmental Defense Fund and Barbara Warren of the Staten Island Citizens for Clean Air. The Environmental Protection (EPA) Agency did not participate in the decision to close Fresh Kills. However, EPA has committed to provide technical assistance on issues pertaining to source reduction, recycling, and closure operations. The Task Force began meeting in June 1996, and engaged in weekly meetings as well as subcommittees and working groups.

The Task Force determined the need for input from the private sector and, to accommodate this information-gathering, issued two separate Requests for Expression of Interest (RFEI): the first issued through DOS, focused on disposal options with a preference for proposals indicating a means for reusing the City's existing marine transfer station system; and the second, issued through the City's Economic Development Corporation (EDC), focused on the recycling

industry, particularly the manufacturing of recycled materials. Multiple responses were received to each of the RFEIs and are summarized in the Recycling and Management of Unrecycled Waste chapters of the main Report. Essentially, the Task Force learned that there is considerable interest in the private industry for partnering with the City in the management of solid waste, and significant flexibility in how those partnerships can be formed to best serve the City's needs.

During the early phase of the Task Force's work, it became apparent to the members that a hierarchy for the recommendations in development needed to be established to reflect the fiscal and practical realities of their implementation. Toward that end, a four-level rating system was developed and will be repeated in each of the sections to follow. The four levels are:

- Implemented already
- Implement immediately
- Implement or expand in the near-term, if study has positive results
- Conduct additional review and analysis

The ratings outlined above will be referred to in the sections which address the specific solid waste management options explored by the Task Force. However, for those not familiar with the history of landfilling in the City and the Fresh Kills Landfill in particular, the Introduction Chapter of the *Fresh Kills Task Force Report* provides a brief background. In addition, the Introduction provides a detailed description of the scope of the City's solid waste management program, as well as a description of national and state solid waste management methods.

1.2.2 Waste Reduction

As stated, waste reduction is the preventive side of waste management. It concentrates on the prevention of waste through, at a minimum, changes in packaging and purchasing. In addition, although it is often discussed as a separate concept, backyard composting is essentially a waste reduction measure. Despite the fact that waste reduction is always featured first in the hierarchy of waste management, comparative to recycling and other post-consumer disposal methods, waste reduction has seen little concentrated effort in the implementation of solid waste management plans nationally. Many argue that waste prevention efforts are difficult to measure and therefore do not receive the degree of attention and resources that the more tangible programs enjoy. While this may indeed be true generally, as the City moves toward the closure of Fresh Kills, it is important for the City to introduce measures that will minimize as much as practicable the 13,000 tons per day of waste currently generated.

The Task Force's principal recommendations in the Waste Reduction area are as follows:

WASTE REDUCTION RECOMMENDATIONS

- **In September 1996, the Mayor issued Mayoral Directive 96-2, requiring City agencies to begin immediately reducing the amount of waste generated. In addition to specific daily practices and procurement strategies, the Directive established an Inter-agency Task Force to provide waste reduction assistance and otherwise ensure compliance with the Directive. (Implemented already.)**
- **The Task Force has recommended and the City has agreed to establish indicators to measure City agency compliance with the Waste Reduction Directive so that initial results can be published in the 1998 Preliminary Mayor's Management Report. (Implement immediately.)**
- **The Task Force has recommended and the City has agreed to continue and expand the DOS waste prevention research and pilot projects, including waste composition audits of city agencies and the two Science Applications International Corporation (SAIC) contracts. (Implement immediately.)**

- The Task Force has recommended and the City has agreed to explore the feasibility of requiring City agencies and institutions to pay for the waste management services received from DOS as an added incentive to reduce waste. (Conduct further review and analysis to determine if a pilot is warranted.)
- The Task Force has recommended and the City has agreed to review and make recommendations regarding the legislative and administrative initiatives outlined in this section. A Report will be produced during 1997.
- The Task Force has recommended, and the City has agreed, that the City conduct further analysis to determine whether to add food-waste composting to its solid waste management system, either through an institutional-based system or through backyard composting. Depending on the results of the analysis, the City could expand composting to include both methods. (For development and implementation, if the study has positive results, possibly by the end of 1997.)
- The Task Force has recommended and the City has agreed to develop cost estimates specific to waste reduction initiatives with funding sources considered for development, and if possible, implement by the end of 1997. (Produce report by December 31, 1997.)
- The Task Force recommended and the City has agreed to accept EPA's offer to convene technical assistance roundtable meetings with the City. Representatives of various City, State, local, and private organizations who have studied or implemented waste reduction strategies will share information and experiences at these meetings.

1.2.3 Recycling

The City of New York has implemented a residential curbside recycling program that is larger in scope and magnitude than any other program in the country. Since September 1993, all 7.3 million residents of the City have received residential curbside collection of newspapers, magazines, corrugated cardboard, telephone books, plastic (PETE & HDPE), metal (ferrous and aluminum), glass containers and foil. The curbside recycling program includes services to all New York City households, in both single family and multi-family residences, and in low and high-rise residential buildings. Three million households are served. In fact, when compared to cities with a population exceeding one million residents, New York City has the most extensive

residential recycling program in terms of number of people served, the percentage of households served, the quantity of tonnage diverted, as well as the percentage of tonnage diverted. This is true despite the fact that the City has the greatest number and density of multi-family, particularly high-rise, residential buildings of any large United States city. This disproportionate percentage of multiple dwellings results in an equally disproportionate volume of rental housing as compared to owner-occupied housing, a trend that is not as evident in the nation's other cities. This combination of demographic factors provided an extraordinary challenge to the successful implementation of a citywide residential curbside recycling program.

As strong as New York City's commitment to recycling has been, the closure of the Fresh Kills Landfill will require additional recycling efforts. New York City's institutions, agencies, residents and visitors discard over 13,000 tons of material each day. By recycling increased amounts of this material, the City could reap significant benefits. It would avoid some of the increased disposal costs associated with the Fresh Kills' closure, create jobs and tax revenues from recycling businesses, and benefit those manufacturing end users of recycled components. And, as the City will be considering some out-of-city sites for waste disposal once Fresh Kills closes, recycling becomes an opportunity to lessen waste that may be disposed. However, the recycling program must also be cost effective.

The Recycling chapter in the Fresh Kills Task Force Report outlines in a detailed manner the history of the City's recycling program, including the potential for recycling market development and expansion in the post-Fresh Kills era. The Report also details the economic realities of the City's recycling program in the current waste management system. A number of changes to the

recycling program, however, will actually increase the value as well as the volume of materials diverted from the waste stream. Most notable will be the restoration of funding for the collection of mixed paper and bulk metal in Staten Island and the Bronx, and its expansion to Manhattan by March 1, 1997. If as successful as expected, the program will be implemented citywide by the end of 1997. As previously mentioned, it is anticipated that the expansion of mixed paper and bulk metal collection citywide by the end of 1997 could realize increased recycling diversion of as much as 700 additional tons per day. In addition to the mixed paper and bulk metal program, DOS has begun retesting the two-bin collection trucks to determine which recycling routes are most appropriate for this type of collection vehicle. Thirty additional two-bin trucks are expected to be delivered over the next few weeks.

The Task Force recognizes that while recycling will be a significant part of the City's solid waste management program as Fresh Kills moves toward closure, the marketability of the collected materials must be improved if possible. This "value-added" concept should cut the overall cost of the recycling program by reducing the processing fees the City currently pays to the recycling centers to which it delivers these materials. The RFEI that was recently issued through the City's EDC was intended to explore, in the private sector, what opportunities exist to increase recycling manufacturing in the City; and what amenities need to be considered to foster this development. The responses to this RFEI are summarized in the Report's Recycling chapter.

The Report concludes that it is necessary to expand the recycling program based on both the economics and outcomes of the pilots.

The Task Force's principal recommendations in the Recycling area are as follows:

RECYCLING RECOMMENDATIONS

- **The Task Force has recommended and the City has agreed to further analyze the responses to the RFEI on recycling, with the expectation that the City's Economic Development Corporation and the Empire State Development Corporation will provide some level of assistance to manufacturing companies using recycled materials willing to locate in or near the City, as the City has already done with Pratt Industries/Visy Paper on Staten Island. (Implement immediately.)**
- **The Task Force has recommended and the City has agreed to restore funding for mixed paper and bulk metal to Staten Island and the Bronx and to expand such collection to Manhattan by March 1, 1997. (To be implemented in three boroughs in March 1997, and if working as expected, expanded to Queens and Brooklyn for implementation by the end of 1997.)**
- **The Task Force has recommended and the City has agreed to retest the two-bin collection trucks for metal, glass, and plastic and paper. (Implemented in November 1996 as a pilot, if it works as expected it will be expanded to the appropriate recycling routes by the end of 1997.)**
- **The Task Force has recommended and the City has agreed to issue an RFP for a comprehensive consultant study on recycling participation rates citywide to include recommendations for means to enhance diversion.(Implement immediately.)**
- **The Task Force has recommended and the City has agreed to continue to monitor participation rates attributable to alternate week recycling collection, and determine conclusively whether that change has had an adverse effect on levels of recycling. (Implement immediately.)**
- **The Task Force has recommended and the City has agreed to expand recycling opportunities in public places, particularly parks, and possibly pilot advertising on the containers as a cost offset. (Implement in near term, if a structured study produces anticipated results.)**
- **The Task Force has recommended and the City has agreed to pilot supplemental municipal solid waste processing in targeted districts. (Implement in the near term.)**
- **The Task Force has recommended and the City has agreed to review the possibilities of adding textiles to the recycling program and expanding yard waste composting citywide as appropriate. (Conduct additional review and analysis.)**

- The Task Force has recommended and the City has agreed to study the advisability of instituting a quantity-based user fee to increase recycling participation rates as well as encourage waste reduction. (Conduct additional review and analysis.)
- The Task Force has recommended and the City has agreed to study the methodology it uses to assess recycling and waste prevention costs, and to plan future recycling and waste prevention programs based on that study.
- In accordance with the passage of the Clean Water/Clean Air Bond Act of 1996, the City will develop proposals for accessing the \$25 million set aside for New York City recycling infrastructure needs.
- The Task Force has recommended and the City has agreed to develop a Final Plan for recycling, to include cost estimates and funding mechanisms, based on studies and pilot projects undertaken as a result of this Report, to be issued by March 1998, or earlier as necessary, and to revise the City's Solid Waste Management Plan accordingly.

1.2.4 Management of Unrecycled Waste

The third and final waste management alternative is the disposal of unrecycled waste. Presently it is necessary to plan for the possible exportation of all residentially generated waste (13,000 tons per day) out of the City, in order to ensure that the selected infrastructure will be adequate to fully meet the disposal needs. To the extent that actual waste reduction and recycling initiatives decrease the disposable waste, the reliance on disposal will similarly diminish. However, it should be noted that even with substantial gains through waste reduction and recycling efforts, a significant amount of waste will need to be disposed.

In this Report, exportation is considered to be the disposal of waste outside the City of New York under transport contracts with the private sector waste industry. This waste may be disposed of within New York State or beyond state borders, and the destinations will be either public or

private landfills, incinerators, and/or waste-to-energy facilities. All disposal facilities receiving waste exported from New York City will be required to document that the appropriate permits are in place and that the operators of these facilities have Host Community Agreements.

A Host Community Agreement is a formal, binding agreement between a waste management facility owner/operator and the jurisdiction in which it is located that provides for the operation of the particular facility. The existence of a Host Community Agreement is an important and necessary component of any exportation contract.

Recognizing that the final waste management system will likely be a hybrid system with a variety of components, the Task Force has explored a number of options which promote waste transport in a manner that is fiscally sound and acceptable to the local communities.

The Task Force considered the following:

- Retrofitting the Fresh Kills Landfill to serve as a citywide marine transfer station (This option is rejected and will not be further considered).
- A single island-based transfer station that would serve as the point at which all the City's residential waste would be processed for shipment to an end destination. (This option is rejected as impracticable since no feasible island site has yet to be identified.)
- A single land-based transfer station sited on the waterfront which will accept barges from the marine transfer stations for processing the waste into trucks and rail cars that will be shipped to disposal facilities. (This option is improbable due to difficulties in identifying and siting a single location.)
- Exporting waste from existing marine transfer stations.
- Borough-based transfer stations intended to allow each borough to become self-determinative in the disposal of the residential waste generated in that borough.

Each of these options is further discussed in Chapter IV: Management of Unrecycled Waste.

The Task Force's principal recommendations in the management of unrecycled waste area are as follows:

MANAGEMENT OF UNRECYCLED WASTE RECOMMENDATIONS

- The City will begin its program of borough-based solid waste management in the borough of the Bronx by exporting the borough's 1,700 - 1,800 tons per day effective July 1, 1997.
- The Task Force has recommended and the City has established an annual plan for the phasing out of Fresh Kills beginning in 1997, based on the enhanced recycling and waste reduction efforts described above, as well as appropriate disposal options. The RFPs necessary to achieve this level of diminution will be crafted during 1997, and will reflect, to the extent practicable, the borough-based plans.
- The Task Force has recommended and the City has agreed to establish borough-based working groups in cooperation with the Borough Presidents and the City Council to work with the Administration in developing plans for the management and disposal of the solid waste from each individual borough. The City agrees that the proposals developed should reflect, to the extent practicable, the potential for waste reduction and recycling enhancements, as outlined earlier, to decrease the amount of waste to be disposed. The proposals developed in connection with each borough should take into consideration the entire citywide solid waste management system and the City's fiscal picture. These proposals should be submitted for review by April 30, 1997.
- The City has agreed to develop and announce, based on the plans developed by each borough, an overall waste management strategy for the diminution of waste to Fresh Kills by December 31, 1997, or early 1998, as necessary. These plans, which will include waste reduction and recycling initiatives, will be used, to the extent practicable, to achieve the proposed annual tonnage goal reductions established by the City.

- **The Task Force has recommended and the City has agreed to review the first RFEI submissions and issue an RFP to retain a financial consultant to explore the potential for the City to acquire out-of-city landfill capacity and to develop alternative financing options for the City's solid waste management system after the closure of Fresh Kills on December 31, 2001.**

1.2.5 Operation, Closure and Post-Closure Measures

This Report also includes a chapter outlining plans for the operation of Fresh Kills over the next five years and implementation of closure and post-closure measures. It must be noted that the work on this Chapter of the Report occurred early in the process and, therefore, did not have the full input of the environmentalists who contributed so much to the other Chapters of this Report.

The specific areas addressed include such operational requirements as: landfill grading plans, landfill operations and maintenance, environmental monitoring, landfill gas/landfill gas recovery, new Federal landfill gas regulations, the DOS landfill gas control/collection program, air permits, such closure issues as conceptual closure plan, the final closure plan, the use of clean fill for contouring and final grading, and the treatment plant and stormwater basin discharges.

In general, landfill activities can be segregated into three categories: operations (on-site waste transport, disposal, environmental monitoring, etc.), closure (emplacement of a landfill cover, vegetation, etc.), and post-closure (cover maintenance, continued environmental monitoring etc.).

The Landfill is currently operated under a 1990 Order on Consent between DOS and the NYSDEC. The State and the City concur that the operational and closure requirements prescribed by the 1990 Order on Consent are being complied with.

The cessation of landfill operations at the Landfill in the course of the next five years will have a substantial impact on existing operation and closure plans for the operating sections.

Procedurally, with the new date for landfill closure, the City and State have agreed that NYSDEC will suspend its review of the Fresh Kills Landfill Part 360 Permit Application. This will allow time for development of a mechanism for operation of the Landfill and ongoing closure work until December 31, 2001, as well as assure that closure and post-closure activities are performed in conformance with strict standards. Once this mechanism has been agreed upon, the City will withdraw its Part 360 Permit Application.

The City is also in the process of contracting for the collection and beneficial reuse of landfill gas by the end of 1997.

The Task Force's principal recommendations in these areas are as follows:

CLOSURE RECOMMENDATIONS

- **The Task Force has recommended and the City and State have agreed to work with the Staten Island Borough President's Office and the Staten Island Solid Waste Advisory Board (SWAB) on all matters related to the closure of Fresh Kills.**
- **In September 1996, the City suspended the Permit Application with DEC in contemplation of withdrawing the application in the near term once the existing Consent Order is amended to reflect early closure of the Landfill.**
- **In controlling the odors associated with the Landfill, DOS has negotiated a concession agreement with a firm that will collect the methane gases emitted from all sections of the Landfill and in turn sell this gas as a fuel to an end user. This gas collection system should be fully operational by mid 1998; as an interim measure, the Department is prepared to flare the gas by Spring 1997, thereby significantly reducing the odors associated with the Landfill through 1997, pursuant to permit.**

- **The Task Force has recommended and the City has agreed to implement a phase down of the reliance on Fresh Kills beginning in 1997.**
- **The Task Force has recommended and the City has agreed to devise an updated operation and closure plan and renegotiate the Consent Order with DEC to embody this plan.**
- **In accordance with the passage of the Clean Water/Clean Air Bond Act of 1996, the City will develop proposals for accessing the \$75 million set aside for projects associated with the final closure and capping of Fresh Kills.**
- **In consultation with the appropriate parties, the City will comply with all Federal, State, and City requirements for all closure and post-closure activities.**
- **The City will close the Fresh Kills Landfill by December 31, 2001.**

2.0 INTRODUCTION

2.1 Task Force Membership

The Fresh Kills Task Force was established by Mayor Rudolph W. Giuliani and Governor George E. Pataki on May 29, 1996, as one condition of the joint agreement to close the Fresh Kills Landfill by December 31, 2001. The Fresh Kills Landfill Closure Task Force consists of representatives from the following offices: the Mayor's Office, the Mayor's Office of Operations, the City's Departments of Planning, Health, Environmental Protection, and Sanitation, the City's Office of Management and Budget, the City's Economic Development Corporation, the City's Law Department, Staten Island Borough President Guy V. Molinari; the Governor's Office, the State's Departments of Environmental Conservation, Transportation, and Health, the Empire State Development Corporation, and Secretary of State, United States Congresswoman Susan Molinari of Staten Island, the Federal Environmental Protection Agency, and environmentalists James Tripp and Barbara Warren, who joined the Task Force in mid-September.

The Fresh Kills Task Force was presented with a two-fold mandate: (1) develop an accelerated plan for closure of the Fresh Kills Landfill, and (2) outline viable alternative disposal options for the City's 13,000 tons of daily residential waste. The Task Force approached this mandate by establishing working subcommittees and working groups on budget, health, general operations and land use. Task Force subcommittees maintained a weekly meeting schedule with small ad hoc sessions convening regularly.

The Task Force Report, the culmination of meetings which began on June 26, 1996, sets forth in summary form assessments of the various solid waste management options -- reduction, recycling, and disposal strategies -- that together could be employed to replace the Fresh Kills Landfill in an environmentally sound, reliable, and cost-effective manner by the mandated date.

It also identifies the principle legislative issues that are associated with each strategy.

In exploring various waste management options, Task Force members were aware of the difficulty in comparing New York City's waste management program to that of programs in the next largest U.S. cities. To assist in understanding the City's waste management options, the Task Force developed two Requests for Expressions of Interest (RFEI). The first, developed in conjunction with and released through the Department of Sanitation (DOS), targeted the export of some of the City's waste, with an emphasis for proposals reutilizing the City's existing marine transfer stations. The second, developed in conjunction with and released by the Economic Development Corporation (EDC), requested proposals for improving the cost structure of the City's recycling program through new economic development initiatives. The responses to these RFEIs will be addressed in the respective chapters of the Report.

During the course of the Task Force's work, numerous variables were taking place with potential to alter the City's approach to solid waste management. These include flow control and interstate waste legislation at the Federal level, and the Clean Water/Clean Air Bond Act of 1996 at the State level. The 104th Congressional Session closed without passage of interstate waste

legislation and the State Environmental Clean Water/Clean Air Bond Act of 1996 passed on the November 5th ballot.

2.2 Hierarchy of Recommendation Ratings

During the early phase of the Task Force's work, it became apparent to the members that a hierarchy for its recommendations should be established to reflect the fiscal and practical realities of their implementation. A four-level rating system was developed and will be repeated in each of the following sections. The four levels are:

- **Implemented already**
- **Implement immediately**
- **Implement or expand in the near-term, if study has positive results**
- **Conduct additional review and analysis**

2.3 Background

For those unfamiliar with the history of the Fresh Kills Landfill, the following section provides a brief historical background.

The Fresh Kills Landfill was established in 1948 on the site of a coastal wetland on Staten Island's western shore. When opened, it covered 1,500 acres, and was not intended to go higher

than the surrounding grade level, and was expected to be in use for a few years. Instead, after 48 years, it had grown to 2,200 acres with heights approaching 200 feet. At one time, the City had approximately 90 active landfills; however, since 1979 the City has closed five of its six remaining landfills and all six of its remaining incinerators. When Edgemere Landfill in Queens closed in 1991, Fresh Kills became the City's sole municipal landfill for 3.9 million tons of waste annually. The six-day-a-week, 24-hour-a-day landfill now covers 2,200 acres, equivalent in size to almost three Central Parks.

In 1947, prior to its actual opening the following year, Mayor William O'Dwyer announced that the landfill would be open for only two years. Since that time, the City has made several unfulfilled promises to the residents of Staten Island to close the Landfill. In addition, throughout its existence legal actions have been pursued by Staten Island residents and local elected officials. In 1995, Borough President Molinari initiated preparation for a lawsuit against the City and State of New York, based on the Federal Clean Air Act and the Fair Share Provisions of the City Charter. By early 1996, Congresswoman Susan Molinari, and Councilmembers John Fusco and Vito Fossella, joined the Borough Presidents as plaintiffs. Additionally, Councilmember Vito Fossella introduced legislation in the City Council (Intro. # 733) requiring that the Fresh Kills Landfill be closed by January 1, 2002. State officials from Staten Island showed support for the Intro. # 733 by introducing similar legislation on the State level. On May 29, 1996, before passage of the proposed bills, Mayor Giuliani and Governor Pataki announced a December 31, 2001 closure date at a press conference in the borough of Staten Island. Subsequently, the Governor signed into State Law this legislation, assuring the landfill closure by January 1, 2002.

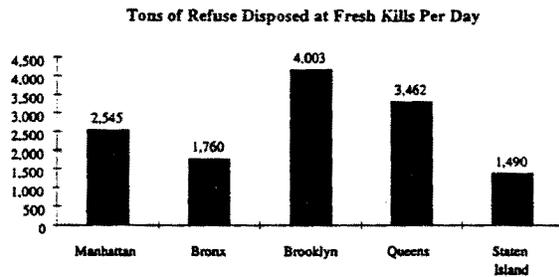
2.3.1 Current Waste Management System

In accordance with New York City's Solid Waste Management Plan (SWMP), non-recycled residential waste is presently landfilled at Fresh Kills. Required by the State Environmental Conservation Law, this long-range waste management plan was adopted in October 1992. As part of the planning process, the City consulted with the City Council, the State Department of Environmental Conservation (NYSDEC), the Citywide Recycling Advisory Board (CRAB), the Borough Solid Waste Advisory Boards (SWABs), as well as additional environmental groups. The Final Update and Plan Modification Report, approved by the City Council in February 1996 and NYSDEC in April 1996, outlines the City's waste management strategy through the year 2002. Although released prior to the May 29, 1996 closure announcement, the Update addresses the need to decrease reliance on the Landfill and to initiate the exportation of a portion of residential waste. The Task Force, cognizant of the effort and series of approvals required as part of the SWMP process, chose to follow these recommendations whenever possible.

In discussing a decreased reliance on Fresh Kills, the updated SWMP outlines DOS's ongoing investigation of the exportation of a portion of municipal solid waste (MSW). This report includes: evaluating current disposal fees at out-of-City facilities and recent bids received by other solid waste districts for landfill disposal; examining the economics of using rail service to transport solid waste to out-of-City disposal facilities; exploring use of the existing marine transfer barge system to transport solid waste to out-of-City disposal facilities; evaluating a combination of barge, rail and/or transfer trailers to transport waste; determining available private sector waste transfer station capacity; and examining the feasibility of acquiring out-of-

City landfill capacity. Each of these items was researched by the Task Force, as were SWMP provisions regarding recycling and waste reduction. The Task Force Report recommends the acceleration of certain SWMP recommendations, alters others, and seeks to achieve an overall balance between appropriate solid waste management practices and the need to close an essential resource in the present system. It is the conclusion of the Fresh Kills Task Force that a fiscally and environmentally sound closure strategy will require City implementation of a broad spectrum of management solutions. In order to understand these proposed solutions, it is necessary to describe the City's current waste management system.

At present, around 13,000 tons of waste are brought to the Fresh Kills Landfill per day, broken down by borough as follows:

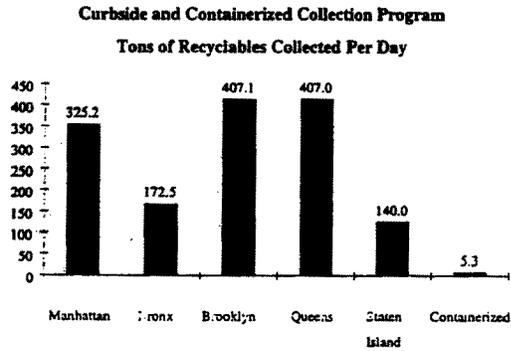


When viewed by origin, the daily tonnage is approximately 84 percent residential; 7 percent street and lot cleaning; 7 percent City agency (excluding DEP); and 0.5 percent from other public institutions. In addition, 2 percent of the tonnage comes from organizations which pay a tipping fee to dispose of their waste, including the Department of Environmental Protection and private

carters. It should be noted that between 6,000 - 8,000 tons per day of the City's commercial waste is currently exported by private carters, largely to landfills in neighboring states.

DOS administers the largest municipal recycling program in the U.S., serving 7.3 million residents in both single and multi-family homes and low and high-rise residential buildings. In Fiscal 1996, DOS collected and diverted a total of 454,000 tons of recyclables, or an average of 1,457 tons per day in its curbside and containerized program. During this period, DOS's citywide diversion rate for the curbside program was 13.8 percent. When items such as abandoned vehicles and construction material are included, which are not part of the curbside program but whose collection DOS coordinates, the diversion figure is 23.9 percent.

The curbside recycling program consists of the collection of commingled metal, glass, and plastic (MGP) in one truck (647 truckshifts per week), and newspaper, corrugated cardboard, magazines, catalogs, and phone books in a second truck (746 truckshifts per week). The collection of both materials groups takes place every other week, with the exception of certain densely populated areas in Manhattan and Brooklyn where weekly collection occurs. Containerized bins (69 truckshifts per week for paper and 47 for MGP) are used to store recyclables at not-for-profit institutions and large residential complexes.



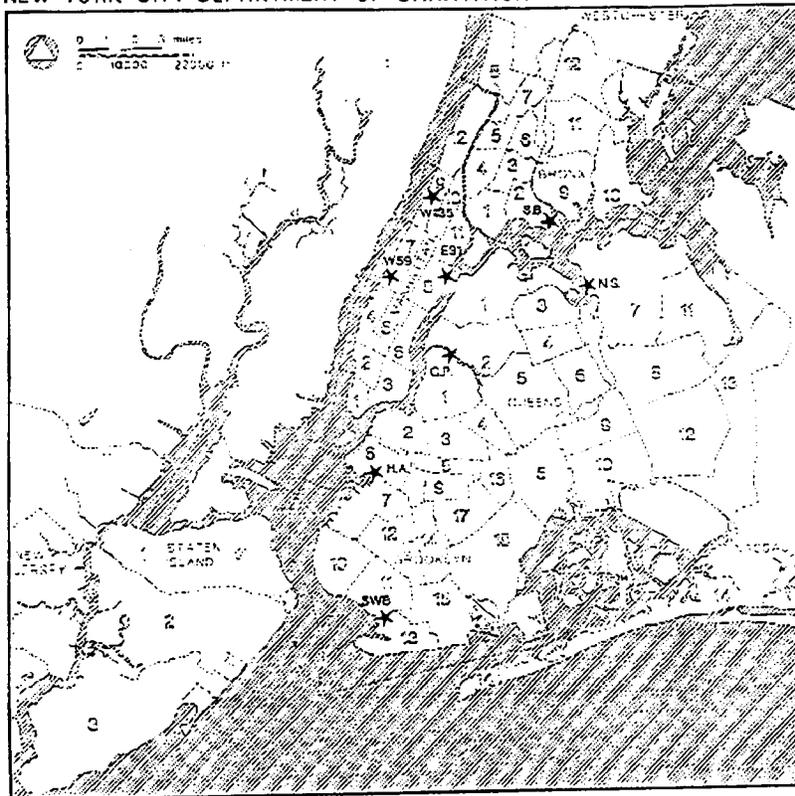
Once recyclables are collected curbside or from containers, they are brought for sorting and processing to one of four MGP, or five newspaper material recovery facilities (MRF). All nine privately operated facilities hold contracts with DOS.

In addition to material accounted for in its curbside and containerized program, DOS also coordinates the recycling of the following items: 1,215 tons per day of City construction material that is brought to Fresh Kills, processed, and used as road and cover material at the site; 68 tons per day from abandoned vehicles recovered by DOS and its towing contractors and sold to scrap dealers; and 12 tons per day of material brought to DOS's four residential self-help bulk drop-off sites, where residents may deliver free of charge items such as appliances and furniture. The self-help bulk sites also receive material collected through the vacant lot cleaning program. In addition, DOS coordinates the composting of leaves, Christmas trees, and commercial yard and food waste.

2.3.2 Collection/Marine Transfer Systems

DOS operates approximately 5,000 collection truck routes per week to remove the City's municipal waste. Roughly 12,000 of the 13,000 tons per day disposed of at Fresh Kills arrive via barge from eight marine transfer stations. DOS collection trucks on Staten Island bring their loads directly to the Landfill. An average of 18 to 20 barges per day arrive, with each barge carrying 600 - 700 tons, or 60 - 70 truck loads of waste.

NEW YORK CITY DEPARTMENT OF SANITATION



The marine transfer stations are situated at the following locations:

Bronx - South Bronx (Hunts Point)

Brooklyn - Greenpoint, Hamilton Avenue (Red Hook), Southwest Brooklyn (Bensonhurst)

Manhattan - East 91st Street, West 59th Street, West 135th Street

Queens - North Shore (College Point)

The barges are towed, up to four at a time, by one of five tug boats operated by a private vendor under contract to DOS. Entering by way of the Great Fresh Kills, the boats bring the barges past the mechanical litter containment device known as the superbloom to one of four unloading facilities. At this point, the waste is removed from each barge by a hydraulic crane and placed into a containment area. The waste is then transferred by a front-end loader and placed into a rubber-tired dump truck, which transports it to an active landfill bank. The waste is unloaded, compacted, and covered with soil.

2.4 Solid Waste Management

As the City moves forward with the closure plan, it is important to have an understanding of solid waste management from a broader perspective. State law contains extensive guidelines for solid waste management. The "Solid Waste Management Act of 1988" (Chapter 70 of the New York State Laws of 1988) created a waste management hierarchy to promote reduction of solid waste and recovery and reuse of secondary materials, and to encourage New York's citizens to conserve and reuse, rather than discard, useful materials. Materials that could not be reused or recycled would, under the hierarchy, be best managed by waste-to-energy incineration. All other materials not managed by one of these preferred strategies would be landfilled.

The Solid Waste Management Act of 1988 amended several sections of the Environmental Conservation Law (ECL) as well as the General Municipal Law (GML) 120-aa. General Municipal Law 120-aa was specifically amended to require that municipalities "adopt a local law or ordinance to require that solid waste which has been left for collection or which is delivered by the generator of such waste to a solid waste management facility, shall be separated into recyclable, reusable or other components for which economic markets for alternate uses exist."

In 1989, the City of New York enacted such a law -- Local Law 19 -- requiring the City to implement source-separation recycling programs for residential, institutional, and commercial waste and setting forth specific tonnage requirements for solid waste collected and disposed of by DOS.

2.4.1 Waste Reduction

A strong emphasis must be placed on waste reduction, the practice of reducing waste before it is generated. New York State established a waste reduction goal of eight percent to ten percent (and a recycling goal of 40 - 42 percent) within its 1987 SWMP, to be achieved by 1997. Examples of waste reduction include designing products or packages to reduce the quantity or toxicity of materials used, and lengthening the life of products to postpone disposal. As no collection is required, and with the exception of the funds necessary to initiate the program and educate the public, waste reduction imposes limited costs upon a municipality.

Waste reduction requires an increased awareness by individuals and businesses regarding waste management alternatives. While topping the State's and the Environmental Protection Agency's (EPA) list of MSW management options, (assigning it to a higher level of importance than recycling), waste reduction is not always maximized by the private sector and by most states and localities. In fact, most states have failed to include specific source reduction targets in their solid waste management plans, primarily due to the difficulty in identifying which materials need to be reduced, the method for reduction, and the measurements for success. Nevertheless, the savings from source reduction can be substantial.

As is further developed in CHAPTER II: WASTE REDUCTION, it is important that the City identify components of its waste stream, and use the information to create private sector partnerships for the development of reduction programs. Several different approaches exist. These include: voluntary actions by the public, legislative changes designed to reduce packaging and other potential wastes, administrative and procurement initiatives at the local agency level, and implementation of a waste collection system where, if feasible, residents may be charged based on the amount of waste put out for collection (less their recyclables when properly separated from the remainder of the waste).

2.4.2 Recycling

In 1994, the EPA reported a national recycling and composting rate of 24 percent (up from 21 percent in 1993), one percent under the national goal. The goal of 25 percent had been reached by 1996, and a new goal of 35 percent to be achieved by 2005 has now been established. Also, in

1994, New York State reported a statewide recycling rate of 32 percent. During this period, paper and paperboard accounted for more than half of all MSW recovered, with the composting of yard trimmings contributing the next largest fraction. New York City tracks the national average in terms of paper and paperboard. Given the climate and housing density, however, yard waste accounts for only two percent of all waste (including commercial) generated. This places the City at a disadvantage when recycling rates are compared without adjusting for these demographic and geographic differences. In addition, the City's recycling program collects from 100 percent of all households, a service not provided in any other city with a population over one million. In a review of major city recycling programs, the Task Force was unable to identify a municipality which collected recyclables from residential dwellings in excess of four units. In a demographic comparison of New York City and 28 other cities, the percentage of housing with five units or above averaged 30 percent, as opposed to a 62.4 percent rate in New York City. These are significant differences between the City's recycling stream and those of other municipalities, differences which are not often taken into account when comparing and reporting diversion rates.

To enhance the existing diversion rate, effective March 1, 1997, the City will restore funding for mixed paper and bulk metal recycling collection in Staten Island and the Bronx as well as expand it to Manhattan. The pilot programs on mixed paper and bulk metal in Staten Island and the Bronx realized an increased materials diversion rate of 20 percent and 30 percent, respectively. It is anticipated that mixed paper diversion in Manhattan will exceed each of the pilot boroughs. The potential to expand mixed paper and bulk metal to the remaining boroughs is achievable by the end of 1997 and, if it should occur as anticipated, has the potential to nearly double paper

recycling in the City. If the City is able to recycle the 700 TPD of mixed paper and bulk metal and reduce its city agency waste by 100 tons per day, within one year the City will have markedly reduced the amount of waste going to Fresh Kills.

In addition to the plan to restore and expand mixed paper and bulk metal collections, the City restored \$6 million to the recycling budget during the November Budget Modification, and intends to increase the recycling budget further in the January Plan. The \$6 million restoration will go toward continued education and outreach for the alternate week recycling program, and additional funds for recycling processing. This will afford the City the needed flexibility to meet its current obligations and the demands to be realized from the proposed pilots. In addition to education and processing, the City will begin a pilot program that, in accordance with Federal regulations, will collect and recycle chlorofluorocarbons (CFCs) from appliances discarded by the public. Finally, funding for the borough self-help bulk sites has been restored. The City recognizes that while the tonnages diverted through the self-help bulk sites may be small relative to other initiatives, they provide a necessary opportunity for New York City residents to dispose of items that might otherwise go directly into the waste stream. In addition to these immediate actions, the City has agreed to implement a number of pilots and further study several initiatives that have the potential to significantly increase waste reduced or recycled.

2.4.3 Alternate Waste Disposal Capacity

Once waste reduction and recycling have reduced the solid waste stream, remaining waste is either incinerated or landfilled. In general, three options exist for the disposal of municipal solid waste. The first two involve incineration at waste-to-energy facilities, where steam may be

produced from incinerated waste, or where waste is used as a supplemental fuel in a coal-burning power plant. The third and final option is landfilling.

Despite the common perception that landfill space is a diminishing resource, the EPA reports that in 1995 there were 3,558 landfills operating in the U.S. In the 1980's, numerous municipalities chose to close their landfills due to more stringent Federal and state regulations, designed to protect air quality, water quality, ground water, and public health and safety. These factors contributed to a shortage of landfill capacity, which was alleviated as waste companies successfully obtained permits to open large, private, modern landfills. Today, 38 states report having more than ten years of remaining disposal capacity, in comparison with only 25 states in 1986.

In a 1995 survey commissioned by the Municipal Waste Management Association and the United States Conference of Mayors, the 255 cities surveyed reported an increase in their landfill life expectancy from 16 years of capacity to approximately 22 years. In addition, 46 cities (18 percent) reported their intention to allow expansions of existing landfills, and 30 cities (12 percent) indicated that they are in the process of planning or permitting new landfill capacity. There is 4,184 tons per day of capacity in waste-to-energy facilities within a 365-mile radius of New York City. An additional 1,013 tons per day of capacity is available beyond 365 miles.

In 1994, 61 percent of the MSW generated in the United States was managed by landfills, 15 percent by combustion facilities, and 24 percent by recycling and composting. Landfilling is expected to continue to be the predominant MSW management method. Although the

percentage of MSW disposed of through landfilling is decreasing, the actual tonnage is expected to increase through the year 2000. This increase is due largely to an increase in population. Tonnage may increase as a result of population trends; per capita waste generation, however, is expected to remain stable through the year 2000 at 4.4 lbs. per person per day.

Prior to the Task Force Report's release, the City has initiated actions for waste disposal that will result in an appreciable diminution in the amount landfilled at Fresh Kills. By the end of 1996, DOS will issue a full-service bid for the exportation of waste from the Bronx. The contract(s) that are developed as a result of this bid will begin July 1, 1997, with 1,700 - 1,800 tons per day of waste generated in the Bronx exported to destinations other than Fresh Kills. The combination of the Bronx export with the mixed paper and bulk metal program and the city agency waste reduction initiative is estimated to reduce the daily tonnage sent to Fresh Kills by 2,100 - 2,600 tons per day, or up to 20 percent by the end of 1997. Furthermore, the City has agreed to establish goals that reduce the amount of waste going to Fresh Kills each year until it closes in 2001.

FRESH KILLS PHASE DOWN DURING 1997

Tons per day currently going to Fresh Kills: 13,000 tpd

Potential avoided tonnages:

Bronx Export	1,700 -- 1,800 tpd
Increased Recycling ³	350 -- 700 tpd
City Agency Waste Reduction	50 -- 100 tpd
	<hr/>
Potential Total Diversion by late 1997:	2,100 -- 2,600 tpd

Tons per day going to Fresh Kills 1997: 10,400 -- 10,900 tpd

Thus, by the end of 1997, the City could achieve a 20 percent reduction in the amount of waste going to Fresh Kills each day.

2.5 Options for Waste Management Funding Enhancements

In addition to the City's annual budget, a number of other sources can provide funding for several of the activities recommended by this report.

The Federal Government has not generally provided solid waste management funding, although it has supported a number of pilot projects and studies in the area of waste reduction and recycling. In addition to accessing available funds in those areas, the City and the State will push

³ Increased recycling will include the restoration of mixed paper and bulk metal collection to Staten Island and the Bronx and its expansion to Manhattan, along with the addition of the aseptic and polycoated materials to be collected with the metal, glass, and plastic recyclables. It could also include expansion of such collections to Brooklyn and Queens by the end of 1997.

for Federal waste reduction and recycling funding as part of the Congressional reauthorization for the Resource Conservation and Recovery Act (RCRA), expected to be undertaken in 1997. Congress has been sensitive to limiting unfunded mandates, and we can make a strong case for Federal funding for these activities under a reauthorized RCRA.

The State has a variety of assistance programs available to New York City in developing waste management programs. A recent legislative conversion of funds has made \$10 million from the 1972 Environmental Quality Bond Act available to the City for the capital costs of recycling programs. The Environmental Protection Fund provides annual appropriations for municipal waste reduction and recycling programs, and should be viewed by the City as an ongoing source of funding. In fact, a number of City projects have already been designated for EPF funds. The Clean Water/Clean Air Bond Act of 1996 provides \$100 million for the City's solid waste program: \$75 million toward the costs of closure of the Fresh Kills Landfill, and \$25 million (out of a statewide total of \$50 million) for recycling projects. In addition, the State's Environmental Facilities Corporation can make low-interest loans available to the City for projects that protect the waters of the State, including landfill closure work.

The City must work to maximize its access to available State funding. Possible capital/programmatic initiatives considered by the Task Force include waste reuse and/or hazardous waste management centers, composting facilities, backyard and institutional composting bins, and recycling trucks, among others.

The following chapters of the Report will address the solid waste management options as they apply to New York City. In addition, the concluding chapter will examine the issue of the physical closure and monitoring of the Fresh Kills Landfill.

3.0. WASTE REDUCTION

3.1 Background

Waste reduction is the preventive side of waste management. It concentrates on the prevention of waste through, at a minimum, changes in packaging and purchasing. In addition, although it is often discussed as a separate concept, composting is essentially a waste reduction measure. Despite the fact that waste reduction is always featured first in the hierarchy of waste management, comparative to recycling and other post-consumer disposal methods, it has not been the subject of Federal legislation. It is possible that Federal activity may increase when Congress reviews the reauthorization of the Resource Conservation and Recovery Act (RCRA), also referred to as the "Solid Waste Act". The City's Federal legislative agenda specifically calls for the establishment of Federal minimum content requirements for product and packaging manufacturers. During the interstate transport debate in the 103rd Congressional session, the City supported the proposal of recycled content requirements for newsprint. As it has in the past, the City will lobby for the inclusion of waste reduction (including legislation that promotes durability and product stewardship) and recycling market development initiatives in the RCRA reauthorization bill. It is the Task Force's understanding that the City agrees waste reduction is an important first step in managing the enormous amount of waste created each day.

On the State level, the City supported legislation creating the Waste Reduction and Management Institute at the State University of New York at Stony Brook in 1995. The institute advises local, State and Federal agencies on waste reduction programs and can assist New York City

accordingly. In the past two State legislative sessions ('93 - '94, '95 - '96), the City has supported the "Environmentally Sound Packaging Act" (A.2573-B and S.1534-A), and is optimistic that it will be passed in the forthcoming State legislative session. The bill would require manufacturers to incorporate waste reduction concerns into the design and manufacture of their products.

Approximately 30 percent of the solid waste stream is packaging materials. New York City residents are major consumers of goods shipped from other states. With the current focus on waste export, an issue for discussion must be the impact of excessive packaging on the City's level of disposal. Thus, appropriate Federal legislation must be considered. This and other legislative proposals are detailed below.

3.2 Current City Efforts

On the City level, Mayoral Directive 96-2 on Waste Reduction in City agencies was promulgated on September 27, 1996. The legislation builds on an earlier waste prevention directive in a number of significant areas. It is especially important as City agencies annually produce 321,175 tons, institutions in the City produce 20,710 tons, and State agencies add an additional 1,536 tons. New sections in the Directive address procurement, utilization of the Department of Citywide Administrative Services (DCAS) surplus program, yard waste reduction, decrease of waste from reports and publications, and creation of an inter-agency task force that would meet on a regular basis to share information and results. The Directive provides that cost savings measures found to be feasible and widely applicable will be promulgated as directives to all

agencies. Subsequent to issuance of the new sections, the Mayor's Office will establish indicators to monitor compliance reporting, and will begin tracking performance by City agencies in the Mayor's Management Report (MMR). In addition to measuring performance, the Mayoral Directive establishes an awards-based incentive program for City agencies. At the request of the Task Force, the City has agreed to study the possibility of requiring City agencies to pay for the solid waste management services provided by DOS. It is anticipated that this could have a significant influence on waste reduction efforts. The full text of the Mayoral Directive is attached as Appendix A.

In July 1995, DOS hired a consultant to analyze the purchasing practices of several City agencies. The results will include a list, updated every three years, of frequently purchased goods that are waste-reduction friendly and economically advantageous, and will be used by the Interagency Task Force established as a result of the Mayoral Directive to consider procurement changes.

In addition, DOS is exploring the possibility of amending the New York State Penal Law to permit the reuse of and/or recycling of counterfeit property, particularly clothing, seized by the Police Department. Currently, section 165.74 of the Penal Law requires that such property be destroyed and the NYC Police Department pays approximately \$100 per ton to dispose of counterfeit goods at an upstate incinerator. Any amendments will have to address manufacturers' legitimate concerns that counterfeit clothing not be put back on the streets.

3.3 Other Local Efforts

Existing State laws require that waste reduction programs be planned and implemented as a first priority in a municipality's solid waste management program. In response to this law, DOS has initiated several waste reduction projects in order to save businesses money, as well as reduce the amount of residential waste. In July 1995, with the help of a consultant, DOS began the New York City WasteLeSS program, in which it selected individual businesses from nine different business sectors to receive on-site waste reduction technical assistance. When the program is completed, each case study will be used as a model to businesses in that industry. In March 1996, as part of this program, DOS sponsored a roundtable discussion with a number of local businesses, including local utility companies, to discuss the advantages of using two-way envelopes.

An additional component of the Waste LeSS program is a restaurant food-waste reduction initiative, whereby DOS and its consultant are recommending to a number of food service establishments ways they can reduce the amount of extras, such as napkins and straws provided to customers, which impacts the quantity of residential waste the City has to collect. The recommendation of the Task Force is that the City continue its commitment to the WasteLeSS program, and enhance it where appropriate.

Waste reduction initiatives have become second nature to cost-conscious businesses, demonstrating the potential for savings. Through packaging reductions, for example, Baxter Healthcare Corporation has eliminated 6.5 percent, or 11.6 million pounds, of packaging and cut

costs in excess of \$5.9 million. Cadbury Beverages, Inc. has reduced packaging by 50 million pounds and saved over \$300 million per year through various reduction activities. IBM estimated a 1992 savings of \$14.2 million from source reduction and reuse of various packaging materials and containers. Keebler Company has reduced packaging by 12.7 million pounds and saved \$2.6 million. Source reduction of packaging has produced savings of \$20 million for the 3M Company. Coors Brewing Company's source reduction efforts have reduced the amount of packaging disposed in excess of 960,000 tons per year. Johnson & Johnson reduced in excess of 11 million pounds of packaging, and Procter & Gamble achieved an overall average source reduction of 5.5 percent per unit usage of product, or approximately 95 million pounds. General Motors' Cadillac Division is saving \$90,000 per day by switching to reusable containers.

The City has worked with the Direct Marketing Association (DMA) to reduce unsolicited direct mail advertising. Eighty-four thousand residents have been assisted in becoming registered with DMA's Mail Preference Service to remove their names from most national mailing lists, saving an estimated 600 tons per year of third-class mail. The "Junk Mail Bandit" program is the most recent attempt to reduce unsolicited mailings by placing in public libraries and the offices of elected officials, a point-of-purchase type display, whereby individuals can take a postcard that enables them to have their name removed from direct marketing mailing lists. The City is also conducting seminars targeted to small businesses which use direct mail advertising. These seminars discuss techniques to refine and cull direct mail lists.

The City has also:

- participated in a USEPA-funded waste prevention and anti-littering project with Business Improvement Districts;

- provided assistance to the Long Island Business Development Corporation's Industrial Waste Recycling and Prevention program to expand the waste assessment, reduction and materials exchange programming services for manufacturing, transportation and wholesale trade firms in western Queens;
- developed a Reusable Materials Matchmaking Service to facilitate transactions of reusable materials, such as industrial scraps, transport packaging, and other items for which recycling markets are limited but for which there exists significant potential for reuse of these items;
- funded efforts to collect and donate useable food that would otherwise be disposed of by restaurants, hotels, and other sources;
- funded efforts by the Transportation Alternatives' "Recycle-A-Bicycle" reuse project;
- funded the Environmental Action Coalition's waste prevention educational activities in a public housing project;
- co-sponsored a series of workshops with the U.S. Postal Service to provide detailed waste prevention and recycling information, including waste assessments;
- conducted a "Waste Prevention and Buy Recycled Workshop" to provide information on specifications and policies that promote waste prevention and recycled purchasing for businesses, institutions, and government agencies;
- funded the Materials for the Arts program which encourages the reuse and recycling of secondary materials;
- continued to study the economic viability of and feasibility for promoting an increase in the use of two-way envelopes by large mailers of bills, license renewals, subscription solicitations and other similar mailings;
- contracted with the Cornell University Waste Management Institute and Cooperative Extension to study the extent to which shoppers in low-income neighborhoods can save money when incorporating waste prevention and recycling objectives into their purchasing practices, and;
- prepared and disseminated waste prevention materials targeting the residential sector as an ongoing activity.

3.4 Legislative or Administrative Initiatives

To support the research currently underway and the demonstration projects to be undertaken in the area of waste reduction, the Task Force concludes that further analysis of the initiatives outlined below is necessary to increase awareness of and participation in waste prevention activities. Such study of these ideas will be coordinated by the Mayor's Office of Operations working with the appropriate City agencies and Mayoral offices in the review of each of the proposals. A report on the proposals that should move forward, and the anticipated outcome relative to the reduction in the City's waste stream, will be prepared under the direction of the Mayor's Office of Operations. The City has agreed to review the proposals for the appropriate legislative or administrative action.

The Task Force believes that the following waste reduction initiatives warrant further consideration for enactment as either legislation or administrative regulations. The proposals highlight the important role Federal, State and local legislators have in addressing the issues confronting the City's solid waste management. Local legislative and programmatic options are not sufficient. Initiatives are needed at all levels of government to help the City reduce the amounts of waste generated.

Federal initiatives in particular are needed to help New York City, and other major municipalities, reduce the amount of waste generated. One of the most significant means of reducing waste is to minimize packaging that is shipped with goods consumed by businesses and individual consumers. For individual states to implement packaging restrictions or minimum

content standards would make it difficult for the industry to stay competitive. Standard regulations for packaging and minimum recycled content need to be pursued at the Federal level, and the City and State are willing to join discussions on how this might be accomplished.

The Task Force found that the following proposals require further review for possible enactment as a local law or regulation:

1. Dry Cleaner Proposal

DOS estimates that more than 3,500 tons of disposable clear plastic polybags used to protect customers clothes, and over 12,500 tons of hangers, are disposed of annually by New York City residents. The Task Force recommends that consideration be given to the enactment of local legislation requiring dry cleaners to accept used hangers and provide customers with the option of using reusable bags.

Research has been conducted with positive results in this area. In a 1995 waste reduction case study conducted in the East Village, Chris French Cleaners encouraged customers to return used hangers, thereby decreasing its annual order by 120 cases, saving \$3,600, and removing 4,800 pounds from the waste stream. In addition, the store persuaded 75 percent, or 440 of its regular customers, to switch to reusable garment bags, reducing its orders for polybags by 90 rolls, or 1,890 pounds, per year, a savings of \$2,250. The results were accepted by the Neighborhood Cleaner's Association, the primary trade association representing dry cleaners in New York City, and published in their September 1995 newsletter.

DOS estimates that if each New York City dry cleaner were required to take back hangers and provide a reusable dry cleaning bag, the industry would save \$5 million annually, and divert in excess of 2,500 tons from the waste stream. For those cleaners whose customers prefer to continue polybag use, the Textile Care Allied Trade Association (TCATA) has established a program to provide for their collection.

2. Grocery Store Proposal

Grocery bags account for approximately 12,000 tons of annual residential waste in New York City. The Task Force recommends that following a more thorough review, legislation be enacted requiring groceries to post signs encouraging shoppers to take a bag only when needed and to bring their own. The legislation would also require stores to provide shoppers with a discount (i.e., 2 cents per bag) for each bag they forego at the check-out counter. ShopRite reports saving \$175,000 annually on the cost of bags by offering this discount to customers. As part of the local law, a City-sponsored public education campaign would promote public awareness of the legislation and how it benefits the City.

3. Restaurant Proposal

Disposable items distributed by fast-food and other take-out restaurants are an unnecessarily large component of the City's residential waste stream, with restaurants often automatically providing "extras" such as napkins, disposable cutlery, condiments, and other items not always

needed by customers. The Task Force concluded that legislation should be considered requiring restaurants to post signs requesting customers to take extras only when needed, and to indicate when they do not.

Analyses conducted by a DOS consultant indicate that if all Chinese restaurants were to reduce the amount of extras distributed to customers by 25 percent, one and a half tons per year of waste per establishment would be diverted from the waste stream. If extrapolated to all New York City's 15,000 restaurants, 22,500 fewer tons of a residential waste would require annual disposal.

4. Unwanted Direct Mail Proposal

Credit card and mail order companies routinely sell or trade mailing lists of their customers to direct marketing firms which use the information to send unsolicited mailings to the public. The DMA reports that 14 percent of all third-class direct mail ("junk mail") is discarded without being opened or read. New York City residents are mailed nearly 125,000 tons per year of third-class direct mail, much of which is unwanted. Therefore, the Task Force concluded that further consideration should be given to local legislation requiring credit card and mail order companies to first receive permission from card holders before distributing their information to marketing companies. A good example of how waste reduction initiatives can be directed at the average citizen is DOS's "Junk Mail Bandit" program, which provides a postcard addressed to DMA, which assisting an individual in removing his or her name from mailing lists.

5. Waste Reduction and Recycled Content Proposal for Billings and other Mailings

In addition, the Task Force concluded that the City should consider legislation requiring credit card, insurance, cable TV, and utility companies, and any other organization that sends more than a specified number of mailings per year, to print bills on both sides of the page, and use recycled paper and "two-way" envelopes. The savings to both industry and the City from this legislation may be substantial. For instance, the use of two-way envelopes alone would reduce companies' envelope purchasing and postage costs, increase response rates, require less inventory space and processing labor, and decrease the amount of waste collected by thousands of tons a year.

Several New York City-based companies have implemented some of these recommendations with great results. NYNEX reports saving \$4 million in postage costs and 914 tons of paper per year since beginning utility bill printing on both sides of the page. The company has also saved money on its recent switch to printing phone bills on recycled paper.

6. Leave-It-On-The-Lawn Program for Grass Clippings

Many cities and states throughout the country prohibit residents from leaving grass clippings out for collection, as they do not believe the material requires disposal. Grass clippings left on lawns add valuable nutrients to the soil, reduce the need for chemical fertilizers, conserve water, and eliminate the additional labor required from bagging. Nearly 78,000 tons of grass clippings are generated in the City annually, accounting for approximately two percent of the waste collected by DOS. Therefore, the Task Force concludes that despite earlier attempts at implementing a

similar program in the City, a "leave it-on-the lawn" program be reconsidered based on experiences with the City's Housing Authority (NYCHA).

In 1994, NYCHA began implementation of a "leave-it-on-the-lawn" program at public housing developments. When fully implemented in 1998, this program will reduce up to 16,000 tons of grass clippings per year. Eliminating this material from collection offers the potential for significant savings in waste reduction costs. It should also be noted that DOS could implement this ban through a Department rule change.

7. Local Proposals for Problem Wastes and Excess Packaging

If not passed on the Federal level, the Task Force recommends further review be initiated as to the possible enactment of local legislation requiring manufacturers of problem wastes such as large appliances, tires, and nickel-cadmium batteries, to take back their goods. The legislation would ensure that businesses which profit from hard to recycle or dispose of goods, share in some or all of the waste management costs.

The Task Force also suggests that the further study of legislation allowing customers to leave secondary packaging (such as the boxes for tubes of toothpaste) behind at the store where they purchased the product be implemented. This is currently allowed in Germany as part of its manufacturer responsibility law. The local law would also require stores to post signs informing customers of this service. Such legislation would be an incentive for manufacturers and retailers

to work together to reduce secondary packaging, saving the City and its taxpayers the cost to dispose of or recycle these items.

The passage of legislation and implementation of administrative regulations is not a simple or typically expedient process, therefore the legislative proposals contained herein cannot be expected to effect waste reduction efforts immediately. However, it is important that they be evaluated to aid in the reduction of the City's waste stream.

3.5 Food and Yard Waste Composting

The City promotes backyard composting and yard waste reduction in all five boroughs through the Botanical Gardens. The City has also engaged in outreach efforts to reduce yard waste, such as through the distribution of educational materials promoting voluntary "leave-it-on-the-lawn" practices at backyard composting demonstration sites. The New York City Housing Authority began implementing a "leave-it-on-the-lawn" program in 1994 at public housing developments. This program, when fully implemented, will reduce waste up to 16,000 tons of grass clippings per year.

In addition to educational and legislative efforts underway or suggested for further analysis, composting may be an appropriate waste prevention measure in some areas of the City.

Food wastes account for 13 percent of New York City's waste stream. Yard waste accounts for an additional two percent. Household food waste, and leaf and yard waste can be composted efficiently in relatively simple backyard composting bins. This organic waste is reduced in the

proportion of eight-parts-to-one in as little as two weeks with a properly maintained compost mix. The resultant compost is then a material easily used on the lawns and in the gardens of the respective household. Composting can, therefore, have significant impacts on the reduction of the waste stream that must otherwise be collected and processed for recycling or export. In addition to the potential for backyard composting, the possibility of a centralized institutional (schools, hospitals, prisons) food-waste composting program may have significant implications for the reduction of the City's waste stream. In fact, at the present time, the City has established two composting facilities: (1) on Staten Island, a 17,000 ton maximum capacity facility within the Fresh Kills Landfill, and (2) a 15 ton maximum facility on Riker's Island. The Staten Island facility is currently composting an average of 8,168 tons, while the Riker's Island facility, which opened in October 1996, is utilizing six tons of compost capacity. The Task Force concluded that the solid waste management opportunities inherent in composting warrant further exploration. And the City has agreed to determine whether it can expand its waste reduction program to include both backyard composting and centralized institutional food waste composting. Yard waste composting is also under consideration and is being treated in the recycling chapters.

Finally, the City's plans for waste reduction should take into account the proposals made by the Borough Presidents and City Council during the planning process outlined in Chapter IV.

3.6 WASTE REDUCTION RECOMMENDATIONS

- **In September 1996, the Mayor issued Mayoral Directive 96-2, requiring City agencies to begin immediately reducing the amount of waste generated. In addition to specific daily practices and procurement strategies, the Directive established an Inter-agency Task Force to provide waste reduction assistance and otherwise ensure compliance with the Directive (Implemented already).**

- **The Task Force has recommended and the City has agreed to establish indicators to measure City agency compliance with the Waste Reduction Directive so that initial results can be published in the 1998 Preliminary Mayor's Management Report (Implement immediately).**
- **The Task Force has recommended and the City has agreed to continue and expand the DOS waste prevention research and pilot projects, including waste composition audits of city agencies and the two Science Applications International Corporation (SAIC) contracts (Implement immediately).**
- **The Task Force has recommended and the City has agreed to explore the feasibility of requiring City agencies and institutions to pay for the waste management services received from DOS as an added incentive to reduce waste. (Conduct further review and analysis to determine if a pilot is warranted.)**
- **The Task Force has recommended and the City has agreed to review and make recommendations regarding the legislative and administrative initiatives outlined in this section. A Report will be produced during 1997.**
- **The Task Force has recommended, and the City has agreed, that the City conduct further analysis to determine whether to add food-waste composting to its solid waste management system, either through an institutional-based system or through backyard composting. Depending on the results of the analysis, the City could expand composting to include both methods. (For development and implementation, if the study has positive results, possibly by the end of 1997.)**
- **The Task Force has recommended and the City has agreed to develop cost estimates specific to waste reduction initiatives with funding sources considered for development, and if possible, implement by the end of 1997. (Produce report by December 31, 1997.)**
- **The Task Force recommended and the City has agreed to accept EPA's offer to convene technical assistance roundtable meetings with the City. Representatives of various City, State, local, and private organizations who have studied or implemented waste reduction strategies will share information and experiences at these meetings.**

4.0. RECYCLING

4.1 Overview

The City of New York has implemented a residential curbside recycling program that is larger in scope and magnitude than any other program in the country. Since September 1993, all 7.3 million residents of the City have received residential curbside collection of newspapers, magazines, corrugated cardboard, telephone books, plastic (PETE & HDPE), metal (ferrous and aluminum), glass containers, and foil. The curbside recycling program includes services to all New York City households, in both single family and multi-family residences, and in low and high-rise residential buildings. Three million households are served. In fact, when compared with cities exceeding one million residents, New York City has the most extensive residential recycling program in terms of number of people served, the percentage of households served, the quantity of tonnage diverted, as well as the percentage of tonnage diverted. This is true despite the fact that the City has the greatest number and density of multi-family, particularly high-rise, residential buildings of any large U.S. City. This disproportionate percentage of multiple dwellings results in an equally disproportionate volume of rental housing as compared to owner-occupied housing, a trend that is not as evident in the nation's other cities. This combination of demographic factors provided an extraordinary challenge to the successful implementation of a Citywide residential curbside recycling program.

For the record, it must be noted that in a review of other major cities with populations over one million people, New York City is the only municipality to provide curbside recycling services to

100 percent of the households. In fact, the following chart indicates how well New York City compares to these other major cities:

CITY	POP.	HSHLDS.	% OF HSHLDS. SERVED	% of WASTE RECYCLED	TONS RECYCLED
New York	7,300,000	2,992,169	100% (a)	13.8 %	454,000
Los Angeles	3,500,000	1,299,963	47% (b)	7.4%	69,580
Houston	1,600,000	450,483	16% (c)	5.0%	20,000
San Diego	1,100,000	431,722	16% (d)	8.3%	23,552
Philadelphia	1,600,000	674,899	84% (e)	6.3%	43,278

- a) Services single family homes and residential multi-unit dwellings.
- b) Services only provided to residential buildings with four dwellings or less.
- c) Services only single family homes.
- d) Curbside recycling only provided to single family homes.
- e) Services only homes with six units or less.

As strong as New York City's commitment to recycling has been, the closure of the Fresh Kills Landfill will require additional recycling efforts. New York City's institutions, agencies, residents, and visitors discard over 13,000 tons of material each day. By recycling increased amounts of this material, the City may reap significant benefits. It would avoid some of the increased disposal costs that will go into effect after Fresh Kills' closure, create jobs and tax revenues from recycling businesses, benefit those manufacturing firms which will be the end users of recycled components, and demonstrate its commitment to engineering a sound, comprehensive management strategy to replace the Fresh Kills Landfill. However, recycling must also be cost effective to be sustained in New York City. For recycling to receive due consideration among dozens of competing city services, several factors must be kept in mind.

The value of the program in 2001, in terms of gross revenues from the sale of recyclables, depends on reasonable assessments of the value of the recyclables to reprocessors and end users at that time. Numerous recycling markets have grown much stronger since 1988, when a new generation of state and local laws began increasing the supply of materials to a point that has drawn more reprocessing and end user businesses, thereby creating a more stable demand. We have seen this in New York City with siting and construction of Visy Paper on Staten Island, and the feasibility study currently being completed for the recycled paper mill proposed by the Bronx Community Paper Company to be built in the South Bronx. While the Task Force is encouraged by these recent developments, similar progress in reprocessing or manufacturing of MGP will depend upon positive results from the studies and other projects discussed below.

The operational costs of the recycling program depend largely on the cost to collect these materials. Without an increase in collection efficiencies, such as higher diversion rates and optimal utilization of collection trucks, collection costs will continue to impact the net value of the recycling program. The Task Force has looked at the issues of participation rates and collection strategies, and includes recommendations that may positively impact the efficiencies.

While it is clear that higher diversion rates and continued market growth are both necessary to a sustainable recycling program, experience in New York City has not yet demonstrated the direct correlation between education and outreach and diversion rates that is evident in other cities. This raises the question of how the City's education and outreach program can be made more effective, and which strategies have demonstrably increased participation in other jurisdictions.

Included in the answers are both increased enforcement and quantity-based user fees. The Task Force has looked at each issue as is indicated in this section.

The indirect benefits of recycling must also be assessed, including: tax revenue generated by capital construction, the sale of recyclables expanded, and wages collected by recycling employees; and, as the City will be considering some out-of-City sites for waste disposal once Fresh Kills closes, recycling becomes an opportunity to lessen waste that may be disposed of in other communities. An enhanced recycling program sends those communities the message that the City intends to manage as much of its own waste as possible.

The remainder of this chapter describes plans for an enhanced recycling program, and for development of a modified SWMP incorporating the advancements in recycling.

4.2 Background

In April 1989, the New York City Council passed Local Law 19, the New York City Recycling Law, which established legal numerical targets for recycling tonnage. In addition, NYSDEC, pursuant to state law, requires localities to prepare a solid waste management plan. The New York City SWMP was adopted by the City, submitted to the State, and approved in October 1992. Although the SWMP committed the City to a wide array of solid waste management initiatives and pilots, including the implementation of curbside recycling by September 1993, it did not specify a required tonnage to be recycled.

Initially, recycling was an alternative implemented by the City to diminish the size and cost of the proposed resource recovery program⁴, and to reduce the demand for scarce landfill capacity so as to preserve capacity at Fresh Kills. The agreement to close Fresh Kills Landfill by December 31, 2001, coupled with the realization that a waste diversion program such as recycling does not, in its formative years, necessarily save a community money, is reason to reevaluate the City's residential curbside recycling program. Serving as an accepted guide to recycling programs, General Municipal Law (GML) 120-aa requires the implementation of a source-separation program where economic markets exist for all materials included in the program. The GML 120-aa defines an "economic market" to exist when, "the full avoided costs of proper collection, transportation and disposal of source-separated materials are equal to or greater than the cost of collection, transportation and sale of said materials less the amount received from the sale of said material." To take a comprehensive approach to this economic issue, the City is working on market enhancements, collection efficiencies, and participation rate improvements, as is indicated below.

The 1992 SWMP had projected that the City would realize a net savings from recycling. As demonstrated in the 1995 SWMP Update, the City's experience with implementation of the curbside recycling program has not yet realized net savings. Consequently, the key milestone modifications to the 1992 SWMP proposed by the City Administration, adopted by the City Council, and approved by the State DEC as part of the 1995 SWMP Update, were expressly designed to improve the cost-effectiveness and productivity of curbside

⁴ In response to the solid waste management crisis, the City proposed a series of waste to energy facilities be built in each of the boroughs. There was considerable opposition to the siting of these incinerators and recycling was viewed as a means to reduce reliance on them.

recycling collection. The agreement to close the Fresh Kills Landfill and to eliminate the proposed Brooklyn Navy Yard waste-to-energy facility as an alternative, thrusts recycling further to the forefront in the discussion of solid waste management options. The City must now focus on evaluating the cost-effectiveness of the curbside recycling program and determine how to improve its productivity. Also, the Task Force has recommended and the City has agreed to study the methodology it uses to assess recycling costs and waste prevention and accordingly plan future recycling and waste prevention programs.

4.3 Overview of Recycling Markets and Economic Development Opportunities

Like all commodities, prices for recyclable materials are sensitive to supply and demand conditions and fluctuate significantly over time. These fluctuations follow the general conditions of the State and national economy, where demand for material changes in relation to its overall strength and resultant demand for finished and semi-finished products. Recyclables' pricing also depends on overseas economic conditions as foreign countries represent significant sources of demand for several materials recovered and processed in the U.S.

Price volatility is also a function of investments in production capacity. In the paper and plastics markets, it is not uncommon for large amounts of capacity to be built in response to periods of strong demand. Once that capacity comes on-line however, it can have a significant impact on the direction of prices. In the case of plastics, recent capacity expansions in virgin resin production have depressed prices for both virgin and recycled

resins, as the supply of these materials has increased faster than demand. By contrast, most of the current capacity expansions in the paper industry will depend on recovered paper feedstocks. In this case, demand for recovered paper may outpace supply, pushing prices upward. In either case, markets tend to find an equilibrium where changes in supply and demand closely track one another. Even equilibrium is temporary, as this cycle tends to repeat itself.

Despite the fluctuations of recyclable commodity pricing, a growing demand exists for recovered material by the paper industry as well as by new companies. These companies make new products from recycled materials such as glass aggregate, stamped and molded rubber products, landscaping materials made from various organic streams, and plastic lumber. The growing reliance of U.S. and New York State manufacturers on recyclable materials represents a steady, diverse, and dependable marketplace for these materials. This is expected to continue as more communities adopt mandatory recycling laws, increase resident participation rates, and manufacture's substitute virgin materials with ones of lower cost.

The best way to obtain strong market prices for recyclables is to keep their quality high. This is achieved through educating the public and by gradual improvements in processing.

4.4 Estimating the Economic Development Impacts of Increased Recycling

Seizing recycling economic development opportunities requires actions that will capture the

The economic development opportunity of recycling lies in developing the local industrial capacity to convert collected materials into more valuable products. This is likely to involve the development or attraction of new enterprises to the region. But in locales with established manufacturing bases, it will also involve convincing individual companies to substitute locally produced recyclable materials for the virgin feedstocks they purchase from outside the region.

To better understand the specific post-Fresh Kills economic development potential of recycling in the New York City area, the Task Force, through EDC, issued a RFEI in early October soliciting from the recycling industry proposals regarding the infrastructure, financial needs and institutional arrangements necessary to create an environment conducive to manufacturing of recycled materials in New York City. It was largely due to the decision to release this RFEI that the Task Force requested an extension of the October 1, 1996 deadline. The Report today is a much more definitive document as a result of the additional time spent researching the issues. The responses to the RFEI resulted in a number of proposals involving the expansion of existing MRFs and/or creation of new recycling industrial parks along waterfront property with access to rail and barge. Some respondents included plans to perform intermediary, and even final, processing, whereby the recycled (or recovered) material would be converted to a finished product. In addition, a number of respondents proposed changes to DOS's collection procedures for recyclables and MSW. Nonetheless, several of these submissions complement recycling collection pilot projects recommended by the Task Force. The responses to this RFEI were due November 12, 1996.

A study done by Roy F. Weston, Inc. for The Northeast Recycling Council shows that 62,500 people are employed in recyclables processing and manufacturing in New England, New York, and New Jersey. Twenty-nine percent of those jobs were in processing and 71 percent were in manufacturing. Over \$4.2 billion of value is added to recyclables in the region through processing and manufacturing. A key finding of the study was that New York State has the largest number of recycling employees, with about 22,000, or 35 percent of the regional total.

The increasing marketability of recyclables described above and overall tonnages available within New York City has led to two breakthrough proposals which may nearly double recycling revenues and jobs. Pratt Industries, the parent company to Visy Paper, encouraged both by local and State economic development agencies, and by the first State brownfields clean up agreement in New York City, is currently building a 100 percent recycled liner board mill on Staten Island which will create 628 new jobs, \$2.6 million in annual City tax revenues, and \$107 million in total direct and indirect economic activity. Similar results are anticipated from the Bronx Community Paper Company's recycled paper mill planned for the South Bronx.

While these two projects illustrate the enormous impact that can be derived from a few large-scale recycling-based manufacturing projects, much of the actual and potential investment in recycling-based enterprise takes place at a much smaller scale. Again, most of the 154 recycling companies currently operating in the City are small to medium-sized

businesses. Small business operations built around materials recovery offer tremendous opportunities for increased entrepreneurial activity, job growth, and disposal cost savings to businesses.

Further market development may mean thousands of additional jobs over the next five to ten years. In 1994, the Institute for Local Self-Reliance (ILSR) developed an estimate of the potential economic development impact (jobs and revenues) of a scrap-based manufacturing industry that could be sustained by a city of one million residents. At a 25 percent recovery rate (less than the national average), New York City could sustain a scrap-based manufacturing sector roughly three times the one estimated by ILSR. Using the ILSR model, the City could sustain 90 manufacturing operations that would employ 5,940 individuals and generate about \$2.261 billion in gross annual revenues. Currently, the City is at approximately ten percent of its capacity to host scrap-based manufacturing operations (about ten plants, not including Visy Paper or Bronx Community Paper Company).

Economic and social benefits exist to many of these enterprises. An example of a start-up enterprise founded on the principles of sustainable development, job training for the unemployed and waste reduction is Big City Forest. Big City Forest is a local development corporation in the South Bronx that reclaims wood from pallets generated by businesses city wide. In addition to its core business, the company operates a training program on behalf of the City, providing public assistance recipients with training on how to reclaim waste wood and how to operate traditional wood-working equipment. To date, Big City Forest has effectively trained and placed 100 employees in local wood shops throughout the City.

4.5 Restructuring the Recycling Program

However, if the City's recycling program is to be cost-effective, it must be restructured.

Therefore, while it can be argued that the City's solid waste stream contains tons of materials which are theoretically recyclable, it must be demonstrated that such materials are economically (and therefore practically) recyclable in order to provide a sound basis for the formulation of recycling policies and programs, particularly those funded with scarce public dollars. Finally, aggressive market development must be seen as central to the program's success.

4.5.1 Metal, Glass, and Plastic

The economic analysis undertaken as part of the 1995 SWMP Update (see pages 3 - 30 and 3 - 31) demonstrated that the City's curbside MGP recycling program does not meet the State definition of economic markets. Specifically, the curbside MGP recycling program results in high incremental costs to the City. Even with significant increases in market prices for these materials, the City must undertake a more detailed evaluation of the curbside recycling program strategies to determine which program changes could be implemented to make MGP collection more cost-effective. Approximately two-thirds of the materials presently processed, primarily broken mixed glass, has no market value. While mixed glass adds significantly to the volume of tonnage collected, its lack of value adds significantly to the program's costs. The high incremental costs of the commingled MGP collection program reflect the low productivity of MGP collection routes, high processing costs, and the lower net value realized from the sale of the material.

Considerable discussion within the Task Force centered on the issue of glass recycling and the inherent problems it presents. Several other major cities around the country have eliminated glass from their recycling program for many of the same reasons that New York City finds this material troublesome. Aside from the varied colors of glass and the necessity to color sort, and a labor-intensive processing activity, given the manner in which New York City collects its MGP, breakage is inevitable and further contamination from inadequately rinsed containers reduces the value of glass. Several initiatives presently underway at DOS are seeking to reduce the costs of recycling glass by developing the technology that will enable glass to be processed into usable materials. DOS has been actively investigating new technologies for reusing glass as a means to increase the value it collects. One of the most promising initiatives is a project at Columbia University, sponsored by New York State Energy Research and Development Authority. The Columbia project is exploring the use of crushed glass in concrete and other building materials.

Despite the inherent difficulties in the recycling of glass products, the Task Force is optimistic that some value-added uses may be developed. However, should the technologies in development prove unsuccessful, alternate decisions may be necessary. Therefore, to facilitate further-decision making relative to the collection of MGP, DOS should provide a complete analysis of the MGP composition in the recycling waste stream, including percentages of the individual materials. With this information EDC, together with the Empire State Development Corporation, should conduct a complete market analysis -- both short and long term -- to include the collection, processing, and residue costs affiliated with each commodity to include textiles as discussed later in this chapter. The City has agreed to conduct these analyses.

In cooperation with these economic development initiatives, DOS must reevaluate and seek to improve the cost-effectiveness of the commingled MGP collection program, including reevaluating collection methods, consideration of further source separation, or the development of technologies and markets.

In September 1996, DOS implemented alternate week recycling in all areas other than the most densely-populated districts in Manhattan, Brooklyn, and the Bronx. All of Staten Island, and some districts in Queens, have been on an alternate week schedule since 1991, with the remainder of Queens going on that schedule in September 1993. Although some assert that the change to alternate week recycling collection would hurt the recycling program, experience to date shows that this has not been the case. The City has made recycling collection more productive and therefore more economically prudent. Despite the switch to alternate week collection, recycling productivity nonetheless increased 20 percent in September and October, compared to the same period one year earlier, when more frequent pick ups were made. Although this is limited data, the tonnage numbers thus far have not declined in comparison to the 1995 numbers, but have, in fact, increased. The Task Force members have thus reserved further comment on the change in collection frequency until such time as a more complete period for review has occurred to determine whether this positive trend continues.

RECYCLING COMPARISONS

	October 1995 (weekly collection)	October 1996 (alternate week collection)
Tons per recycling truck	4.9	6.1
Total recycling tons collected	31,319	34,244

On the collection side, DOS has concurred with the Task Force that retesting two-bin collection trucks is warranted. Thirty two-bin collection trucks have been purchased and the first to arrive has been assigned to Queens. As the other trucks arrive in the next few weeks, each will be added to a designated route and the overall efficiencies will be measured over a six month pilot. The field test of these newly designed two-bin trucks will include the effect on collection costs and the identification of communities in which these vehicles are most effective. The pilot will assess how two-bin truck maintenance costs compare to those of conventional collection trucks and assess capital costs, life-cycle and out-of-service rates. DOS will report on the findings of the pilot, to include recommendations for implementation to appropriate routes by July 1997. If the pilot works as expected, two-bin trucks will be purchased routinely to replace retired trucks.

The current productivity agreement between DOS and its employees demonstrates a commitment to enhance collection efficiencies. The agreement requires waste collection trucks to meet a citywide average of 10.1 tons per truckshift. The City's Financial Plan reflects an increase to 11.3 tons per truckshift. The citywide average is a compilation of the tonnage targets for each individual route. In Manhattan, where stops are closer together and the amount of waste at each stop greater, truckshift targets are therefore higher, while in less dense areas like Staten Island

these targets may be lower. The targets are also adjusted to reflect the levels of waste that are put out for collection on second and third collection days.

4.5.2 Mixed Paper

Unlike MGP, a significant percentage of mixed paper is now believed to be marketable. The mixed paper potentially recyclable by households represents an estimated 9.5 percent of the residential wastestream. The fluctuating price of recycled paper over the past several years demonstrated the potential value but also the volatility of this commodity in the world-wide marketplace. With the construction of the \$250 million Visy Paper waste-paper recycling plant on Staten Island underway, the City attracted not only a major economic development project, but a guaranteed local market for a large percentage of the curbside collection's recycled paper. The terms of the agreement between the City and Visy Paper established a long-term contractual relationship, which replaces market volatility with market stability for both parties.

The first phase of the mixed paper collection program instituted in Fiscal 1996 as a pilot on Staten Island, in the Bronx, and in Community Board #6 in Brooklyn, demonstrated positive results. The pilot, consisting of the addition of bulk metal and mixed paper to the curbside recycling program in these areas, yielded extremely positive results: a 20 percent overall increase in paper tonnage, and a 30 percent overall increase in metal tonnage, in addition to providing DOS with a better understanding of the operational and fiscal impacts of adding those materials Citywide. While officially terminated with the Fiscal 1997 budget (July 1996), residents of

Staten Island and the Bronx largely continued to separate mixed paper properly, and DOS continued to collect it as part of the curbside program in these communities.

Due to the Visy Paper project and other EDC initiatives currently in formative stages, continued curbside collection of recycled paper makes programmatic and economic sense. Furthermore, expansion of the paper program to include Citywide mixed paper collection would likely result in long-term cost savings to the City and will increase overall diversion rates. Thus, at the recommendation of the Task Force, the City Administration has agreed to restore funding for mixed paper and bulk metal collection in Staten Island and the Bronx and to expand the collection of these materials to Manhattan effective March 1, 1997. Because the mixed paper collected in these boroughs is deliverable by contract to the Visy Paper plant scheduled to come on-line in March 1997, the expansion of mixed paper in this manner is economically sound. If the tonnage diverted in these three boroughs meets expectations, mixed paper and bulk metal collection will be added in Brooklyn and Queens by the end of 1997. While the expansion of mixed paper and bulk metal in Staten Island and the Bronx resulted in 20 percent and 30 percent increases in the collected materials respectively, it is anticipated that these numbers could be even more significant, particularly for the Manhattan paper stream. The Task Force is encouraged that its work has contributed to the City's decision to restore mixed paper and bulk metal to the recycling program, and views this as an early indication of the City's willingness to respond aggressively to waste management programs that demonstrate an economic return.

4.5.3 Tonnage Goals

As noted above, the City is required to recycle by State law. The amount to be recycled – the tonnage targets – is actually mandated by Local Law 19 of 1989. To that end, to maximize collection rates, the City has designated a broad array of recyclables for collection, including relatively low value commodities such as green and brown glass. The existence of the state Bottle Law⁵ combined with exceptionally well developed scavenging operations has left the City's recycling program without much of the highest valued commodity, aluminum cans. It is a fact that in New York City, aluminum represents less than one percent of MGP collections, while in non-bottle bill areas aluminum cans can be four to five percent of the collections. More than 50 percent of the MGP materials collected by the City is mixed color glass. At this point, there is no positive market value for mixed colored glass, although the studies discussed above may change this.

With three years of recycling experience to consider, and the financial analysis of the program demonstrating that recycling is not cost neutral, recycling must be retooled. One manner of reengineering this program is to read the tonnage mandates in the context of the economics of recycling rather than just the collection rate. However, as economic markets are developed or further strengthened, the City should promote the increased diversion of those specific materials, not only Citywide, but on a collection-district-by-collection-district basis. Furthermore,

⁵ The NYS Bottle Law requires that a consumer pay a five cent deposit at the point of purchase that is refunded when the bottle and/or can is redeemed at an authorized bottle redemption point. Many redeemable bottles and cans that are placed in the recycling containers or general waste are removed by scavengers seeking the deposit.

increased opportunities for participating in recycling efforts should be considered beyond household or curbside recycling.

Therefore, in addition to changes in the City's residential and curbside recycling program, the Task Force reviewed recycling opportunities in public spaces citywide. If recycling activities were promoted in City parks, not only would these program components assist in diverting additional materials, but they would also provide a significant public relations, education, and advertising opportunity for the recycling program, and potentially for local merchants. Key aspects of such a program would include:

- initiate more visible promotions;
- use larger and more attractive containers at increased locations throughout the City's parks, and later at other public spaces;
- design the containers to both promote the program and provide advertising space for local "sponsor" merchants.

The City is already developing a "streetscape protocol" whereby advertising on approved street furnishings (i.e., kiosks, newspaper stands, bus shelters) will be permitted. Recycling bins could be added to this program.

As review of the literature demonstrates, notwithstanding the program in public places, the City is relatively unique in providing recycling services to 100 percent of the households. Most cities, large and small, restrict recycling to single family dwellings or at most to those of four dwelling units or less. Sixty-four percent of the City's housing stock is in buildings with more than four

dwelling units. In some large cities, all waste collection – general waste and recycling – for multi-unit dwellings is handled by the commercial haulers rather than the municipality.

4.5.4 Additional Materials

Textiles

During the considerable discussions on the issue of recycling in a post-Fresh Kills era, one aspect of a restructured program was the inclusion of materials which exist in the waste stream but are not presently recycled. One such material is textiles. Textiles comprise approximately five percent of the residential waste stream and two percent of the institutional waste stream in New York City. The collection of this material posed concern for DOS, which naturally must maximize collection productivity for materials requiring special handling, such as textiles. The recycled value of textiles is enhanced when they arrive in a dry, uncontaminated condition. This is difficult to achieve if textiles were collected with MGP, or although less problematic, mixed paper. Thus, the Task Force suggested that while adding this material to the curbside program should be reviewed, it is possible that in lieu of curbside collection, some number of collections annually could be developed with the actual collection being a drop-off site, private collection service, or some variation on this theme. The City has indicated its willingness to review the addition of textiles to the recycling program.

Yard Waste

In addition to the waste prevention proposal to ban grass clippings from the waste stream, the Task Force considered the possibility of increasing composting of leaves and yard waste in

boroughs beyond Staten Island as appropriate. This may mean that certain DOS districts do not receive this service, as the volume of material does not warrant such collection. One suggestion for underwriting the cost of this program would be to use the resulting compost to improve the Parks Department's ballfields, and increase the permit fees accordingly. As with textiles, the City has agreed to review the expansion of the yard waste and leaf composting program during 1997.

Bulk Metals/Aseptic and Polycoated Paper Containers

Along with the restoration and expansion of mixed paper collection, the collection of bulk metal will be restored and expanded. Much discussion in the Task Force centered on these materials, and it is pleased to learn that the City has already agreed to implement this recommendation. In addition, it should be noted that in order to maximize the efficiency of both the collection and outreach efforts associated with the mixed paper and bulk metal pilot project, DOS had elected to include aseptic and polycoated paper containers (primarily juice boxes and milk cartons) in the expanded mixed paper and bulk metal program.

4.5.5 Increasing Public Participation and Recyclable Diversion Rates

The 14 percent rate for diversion of recyclables from residential waste needs to go up to assure maximal marketing of recyclables, and the greatest feasible reduction in waste disposal needs.

However, as the diversion rate has become static, the City needs to look in new directions for enhancements.

First, the data shows variations in participation rates at all levels on the socio-economic scale. The 1995 SWMP Update noted the relationship between average diversion rates and housing density and income level in the City's 59 collection districts. Evidence shows that districts on the lower end of the income scale have lower than average diversion rates, particularly in areas of high housing density. Curbside collection in these districts is inefficient and costly due to the low diversion rates. DOS has agreed to pilot supplemental municipal solid waste processing, based on the outcome of the review, to determine (1) the percentage recovery of total recyclables in the waste stream, (2) the operational costs compared with conventional source-separated collection and processing, and (3) the marketability of recovered products.

In addition, the diversion rates at the middle and high income levels vary significantly in the levels of compliance. The curbside program's diversion rates for Fiscal 1995 varied across the City's collection districts in a range from 4.5 percent to 24.4 percent, for an overall average of 13.8 percent. In the middle income level, \$25,000 - \$34,000, representing 31.5 percent of the total population, the diversion rates range from a low of 9.3 percent to a high of 20 percent, for an average of 13.7 percent. In the high income level, more than \$34,000, representing 37.2 percent of the total population, the diversion rates are a low of 10.8 percent to a high of 25 percent, for an average of 18.5 percent. More uniform levels of diversion would stabilize the collection costs as well as reduce the overall reliance on exportation.

Considerable effort and time was expended by the Task Force membership on grappling with the myriad of issues that affect recycling participation. There did not appear to be any one explanation for the variation in participation rates across the City. Several suggestions were made for demonstration projects that might increase participation in targeted areas. However, in addition to the potential to pilot mixed-waste processing, the Task Force concluded that additional information and a better understanding of the factors affecting participation was needed before additional pilots could be designed or implemented. The Task Force members recommended and the City has agreed that a consultant should be retained to examine the variables that affect participation rates, and to analyze what specific plans might be implemented to increase diversion by district. Discussion among Task Force membership suggested that such efforts as targeted education, stepped-up enforcement, implementation of a youth-services recycling job corps or assistance from not-for-profit environmental organizations, or revisions to the collection system might be effective.

To date, the City has expended considerable outreach and education resources in support of implementing the Citywide recycling program. During the implementation phase, the City spent an average of \$5 million per year on recycling-related public education, culminating in the \$7 million expended in Fiscal 1994, to bring the entire City on to the program. The Task Force understands that this substantial public education effort, far in excess of any attempt by other municipalities, was a primary factor in DOS achieving a citywide diversion rate of approximately 14 percent – a diversion rate that has remained remarkably consistent over time. Understanding that the level of annual spending set aside for public education during the implementation period of the program cannot be sustained at those same levels, the Task Force recognizes the

importance of maintaining and building upon the public education ground already achieved -- as reflected in the 14 percent diversion rate -- by the City's earlier efforts. Future public education outreach efforts will be less comprehensive in scope, but more carefully targeted, to reach communities and focus messages on areas where problems in participation have been identified. It is the expectation of the Task Force that the consultant services referred to above will aid in this effort.

Thus, while it was strongly maintained by members of the Task Force that an aggressive outreach and education program on recycling must be sustained, we need to better understand the variables affecting diversion rates and the solutions that exist. It is hoped that a consultant will be able to clarify and quantify some of these questions, to enable future education and outreach efforts to be more effective. Therefore, the Task Force has recommended and the City has agreed to hire a consultant to perform this comprehensive study, with results to be provided by the end of 1997.

The need for education, information, and clarity of purpose notwithstanding, the City needs to rely on the analytical studies and demonstration projects identified in this section, coupled with the experience to date, to develop a recycling program that is both efficient and cost-effective. Therefore, the Task Force concluded that before a definitive program is agreed upon to enhance recycling participation and diversion rates, all relevant information from the aforementioned studies and pilots, including a thorough cost comparison of post-closure disposal costs, must be assembled and considered.

Within the context of such a comprehensive review, the issue of appropriate incentives for enhanced participation, as well as recommendations for privatization and enhanced enforcement initiatives, should be explored. The Task Force strongly urges that this review be conducted in partnership with DOS, the Office of Management and Budget (OMB), and EDC, but that some organizations external to these agencies, such as the Task Force, play a coordinating role. Once this review is completed, a Final Report on recycling issued by the City, with cost estimates and funding mechanisms, should be promulgated by December 31, 1997, or early 1998, as necessary. This report should be used to produce a modification to the City's SWMP.

4.5.6 Solid Waste Management Plan

The City's SWMP provides that the majority of residential waste which cannot be recycled or composted will be sent to Fresh Kills through the year 2002, and into the foreseeable future. With the closure of Fresh Kills, these waste management practices, and the SWMP, will change.

Pursuant to 6 NYCRR 360-15.11(b), a municipality must modify its SWMP if there is:

- (1) a significant change in the method of managing all or any significant portion of the solid waste generated in the municipality or planning unit;
- (2) a significant change in the management or administration of the municipality or planning unit; or
- (3) a change of more than one year to any significant component of the SWMP implementation schedule.

As the City now intends to dispose of the majority of its residential waste stream differently than it had projected (i.e., it will completely cease sending waste to Fresh Kills after 2001), the City will be required to modify its SWMP. Modifications to the SWMP are subject to both City Council and DEC approval. (The City has previously modified its SWMP in 1995 to reflect changes in its policies regarding incineration and recycling.) A proposed modified SWMP should be submitted by March 1998, based on the initiatives proposed in this Report. Finally, the City's plans for recycling should take into account the proposals made by the Borough Presidents and the City Council during the planning process outlined in Chapter IV.

4.6 RECYCLING RECOMMENDATIONS

- **The Task Force has recommended and the City has agreed to further analyze the responses to the RFEI on recycling, with the expectation that the City's Economic Development Corporation and the Empire State Development Corporation will provide some level of assistance to manufacturing companies using recycled materials willing to locate in or near the City, as the City has already done with Pratt Industries/Visy Paper on Staten Island (Implement immediately).**
- **The Task Force has recommended and the City has agreed to restore funding for mixed paper and bulk metal to Staten Island and the Bronx and to expand such collection to Manhattan by March 1, 1997. (To be implemented in three boroughs in March 1997, and if working as expected, expanded to Queens and Brooklyn for implementation by the end of 1997.)**
- **The Task Force has recommended and the City has agreed to retest the two-bin collection trucks for metal, glass, and plastic and paper. (Implemented in November 1996 as a pilot, if it works as expected it will be expanded to the appropriate recycling routes by the end of 1997.)**
- **The Task Force has recommended and the City has agreed to issue an RFP for a comprehensive consultant study on recycling participation rates citywide to include recommendations for means to enhance diversion.(Implement immediately.)**

- **The Task Force has recommended and the City has agreed to continue to monitor participation rates attributable to alternate week recycling collection, and determine conclusively whether that change has had an adverse effect on levels of recycling. (Implement immediately.)**
- **The Task Force has recommended and the City has agreed to expand recycling opportunities in public places, particularly parks, and possibly pilot advertising on the containers as a cost offset. (Implement in near term, if a structured study produces anticipated results.)**
- **The Task Force has recommended and the City has agreed to pilot supplemental municipal solid waste processing in targeted districts. (Implement in the near term.)**
- **The Task Force has recommended and the City has agreed to review the possibilities of adding textiles to the recycling program and expanding yard waste composting citywide as appropriate. (Conduct additional review and analysis.)**
- **The Task Force has recommended and the City has agreed to study the advisability of instituting a quantity-based user fee to increase recycling participation rates as well as encourage waste reduction. (Conduct additional review and analysis.)**
- **The Task Force has recommended and the City has agreed to study the methodology it uses to assess recycling and waste prevention costs, and to plan future recycling and waste prevention programs based on that study.**
- **The Task Force has recommended and the City has agreed to develop a Final Plan for recycling, to include cost estimates and funding mechanisms, based on studies and pilot projects undertaken as a result of this Report, to be issued by March 1998, or earlier as necessary, and to revise the City's Solid Waste Management Plan accordingly.**
- **In accordance with the passage of the Clean Water/Clean Air Bond Act of 1996, the City will develop proposals for accessing the \$25 million set aside for New York City recycling infrastructure needs.**

5.0. MANAGEMENT OF UNRECYCLED WASTE

5.1 Overview

While waste reduction and recycling are discussed above as preferred management options, they will only lessen the need for future disposal capacity, not eliminate that need, when Fresh Kills closes.

In general, three different disposal options exist for municipal solid waste. Two of these involve incineration of waste to produce energy, through (1) a dedicated waste-to-energy (WTE) facility, where steam is produced from the incinerated waste, and (2) a facility where waste is used as a supplemental fuel in a coal-burning power plant. The third disposal option is landfilling.

It is necessary to plan for the possible exportation of all residentially-generated waste (13,000 tons per day) out of the City, in order to ensure that the selected infrastructure will be adequate to fully meet the disposal needs. To the extent that actual waste reduction and recycling initiatives decrease the disposable waste, the reliance on disposal will similarly diminish. However, it should be noted that even with substantial gains through waste reduction and recycling efforts, a significant amount of waste will be exported out of the City for disposal.

In this Report, exportation is considered to be the disposal of waste outside the City of New York under transport contracts with the private-sector waste industry. The destinations will be either public or private landfills, incinerators and/or waste-to-energy facilities. Sufficient current

capacity exists to manage the closure of Fresh Kills Landfill. All disposal facilities receiving waste exported from the City will be required to document that appropriate permits are in place. As well, all operators of these facilities will be required to have Host Community Agreements.

A Host Community Agreement is a formal, binding agreement between a waste management facility owner/operator and the jurisdiction in which it is located that provides for the operation of the particular facility. The existence of a Host Community Agreement is an important and necessary component of any exportation contracts. Host Community Agreements provide some form of benefit to the community from the operator of the facility. Such benefits could take a variety of forms, including dedication of a portion of each facility to the community, or an agreement to fund infrastructure improvements or other public works.

In addition, it is important that the approach to exportation and the necessary contracts for the handling of this waste reflect both the environmental and economic concerns of the City Administration, the affected communities within New York City, and the communities where the waste management facilities are located. To that end, the Task Force has explored a number of options that promote waste transport in a manner which is fiscally sound and acceptable to the local communities. Furthermore, based upon the research of the Task Force, the final waste management plan will likely be a hybrid waste management system rather than one that is simply consistent across borough lines.

5.2 Management Options Considered

The Task Force considered the following disposal options:

- Retrofitting the Fresh Kills Landfill to serve as a citywide marine transfer station.
- A single island-based transfer station that would serve as the point at which all the City's residential waste would be processed for shipment to an end destination.
- A single land-based transfer station sited on the waterfront which will accept barges from the marine transfer stations for processing the waste into trucks and rail cars that will be shipped to disposal facilities.
- Exporting waste from existing marine transfer stations.
- Borough-based transfer stations intended to allow each borough to become self-determinative in the disposal of residential waste generated in that borough.

Each of these options is further discussed in the following pages. It is important to note that Task Force members were not unanimous about which of these options or variations upon these options should be ultimately selected. Each of the options has both its strong points and points that may generate concern.

5.2.1 *Island-Based Transfer Station*

At the outset, the Task Force examined the single island-based transfer station option to handle the 13,000 tons per day of residential waste generated in the City. If an island-based location could be identified, then the current collection and marine transfer system could continue largely unaffected, as the barges would be floated to this facility for off-loading. The waste could then

be compacted into containers, and floated to a rail head or intermodal facility for transport to final disposal sites.

The Task Force members, under the leadership of the Department of City Planning (DCP) and DOS, conducted an in-depth analysis of the various islands (See Appendix B) that exist in New York City waters. The appended chart indicates the islands that were reviewed, including the size, current uses, environmental concerns, ownership issues, and the final evaluation of each. It was apparent fairly early in the process that a single island-based facility would not be a viable alternative. It was, therefore, abandoned by the Task Force. This decision was based on numerous factors including the environmental sensitivity of many of the islands, the small size of others (at least 50 acres of usable land was needed), incompatibility with current uses, location in channels with severe currents, and finally, the prohibitive capital costs of the necessary waste management infrastructure and the resultant additional expense budget costs associated with an island-based operation.

The focus then shifted to a land-based waste management system with a strong interest in reusing existing marine transfer stations. With the elimination of the island-based transfer station, the issue of community impact became a more significant consideration for the Task Force. As such, the ability to continue to use the existing marine transfer station system was of paramount interest to the Task Force.

5.2.2 Marine-Transfer Station

The marine transfer station system involves eight waterfront transfer stations in which DOS collection trucks dump into a barge at the end of each shift. Each barge holds about 670 tons of waste, or the equivalent of 60 or 70 collection trucks. The marine transfer stations are located in each of the boroughs with the exception of Staten Island, where collection trucks unload directly at the Fresh Kills Landfill. The system of marine transfer stations has existed for many years and represents an opportunity to avoid the need for siting additional transfer stations. Each transfer station handles the waste from a clearly delineated watershed, and the system allows for backup when one station is off-line for repairs or routine maintenance. Thus, there is compelling reason to preserve this system.

However, few potential end destinations are on waterfront property and City barges, as constructed, are intended for in-harbor transport only. As a result, it was apparent that reliance on the marine transfer system was conditioned on the private vendors being able to accept waste in this manner, then process it at some other location for transport to disposal facilities. To determine the private sector's interest in the use of the existing system, as well as to explore other waste management options, DOS on behalf of the Task Force, issued a RFEI for conceptual plans defining recycling, disposal and/or other type of services' for the current 13,000 tons per day of residential waste. The RFEI was released on August 1, 1996, and generated a wide array of responses, with varying levels of specificity. The majority of more detailed proposals outlined either truck to landfill, truck to rail, barge to rail, or barge to ocean-going barge transfer of a portion of New York City's waste. Many of the respondents suggested various combinations of

these approaches, with either modifications to their existing stations, the City's marine transfer system, or the siting and construction of entirely new facilities. While the majority of the companies proposed to handle only the City's waste, some suggested facilities which would conduct different types of mixed waste processing would require changes to DOS's collection system. Respondents also identified both in-state and out-of-state end destinations for the waste, indicating that landfill or waste-to-energy capacity was currently available or could be made available as needed.

The responses to the RFEI should enable DOS to utilize the information received in the 32 responses to develop a series of RFPs that may in fact result in actual contracts for the disposal of the City's residential waste.

While the City will continue to explore the proposals submitted in response to the RFEI, particularly those that are borough specific, it will simultaneously develop a waste management plan taking into consideration known transfer capacity.

5.2.3 Fresh Kills as a Transfer Station

The Task Force therefore continued to explore other options as discussed in this Report for the disposal of the City's residential waste. It is important to note that the option of modifying the Fresh Kills Landfill infrastructure to provide transfer station operations to accommodate more than Staten Island generated waste has similarly been withdrawn. It is the position of the Task Force that the Staten Island community has endured the Fresh Kills Landfill for far too long for

the City to now operate the facility as a citywide transfer point. Thus, the option of creating a single citywide Fresh Kills Landfill transfer facility was eliminated.

5.2.4 Land-Based Waterfront Transfer Station

The Task Force then looked at the potential to site a land-based waterfront transfer station that would have the capacity to accept the City's barges enroute from the existing marine transfer stations. These barges would be unloaded on site and the waste-packed into containers for transport by rail, truck, and/or ocean-going barge to an end destination. The upland portion of the site would need to be at least 50 acres, preferably with rail access. A small number of such sites exist within the City. Although this is not the preferred option of the Task Force, with the 'right' mix of host community benefits this option might ultimately be successful.

5.2.5 Borough-Based Planning

Finally, the Task Force has explored the possibility that each borough could indeed become self-determinative in managing the residential waste that it produces. By virtue of this responsibility, the boroughs become significant players in waste reduction and recycling efforts as a means of off-setting the amount of waste to be disposed. The actual method(s) of waste management would likely vary by borough. The Task Force believes that this option represents a unique opportunity for input from the boroughs, and is deserving of further review within the citywide context of residential waste management.

The Task Force was cognizant that the issues involving waste transfer stations, including the siting of new or the expansion of existing waste transfer stations, the reuse of the marine transfer stations independently or together with land-based transfer stations, and the broader issues of enforcement and odor, are not easily addressed. The Task Force also acknowledges that commercial transfer stations are not located in all of the boroughs at this time. Task Force members are cognizant that there is litigation pending with regard to transfer-station-siting regulations. The Task Force believes that the Charter-mandated principle of 'fair share' should be applied in decisions regarding the siting or expansion of transfer facilities.

While the Task Force has not specifically addressed all of the myriad issues involving transfer stations -- for either existing or potentially new facilities -- it urges that this matter be addressed in accordance with the recommendations in this section. To that end, the Task Force determined that any development of disposal needs as part of the City's waste management system should involve the direct input of the Borough Presidents and City Council through the Office of the Council Speaker. Therefore, on the issue of disposal, and to the extent that waste reduction and recycling initiatives impact the amount to be disposed, the Task Force concluded that each Borough President, together with the City Council, should work with the Administration. Under the auspices of the Mayor's Office of Operations, the Borough Presidents and the City Council should determine how each individual borough could best contribute to the management of solid waste, and how that approach would be integrated into the overall Citywide SWMP.

5.3 Bronx Export

It has been previously announced that DOS will be issuing a bid for the exportation of waste from the Bronx prior to the end of 1996. This exportation of waste will be initiated on July 1, 1997. As a result, the amount of waste landfilled at Fresh Kills will decrease by approximately 1,700 - 1,800 tons per day. To this number will be added the tonnage diverted to the recycling stream by the restoration and expansion of the mixed paper and bulk metal program. It is likely that by the end of 1997 the tonnage amounts arriving at Fresh Kills will be under 11,000 tons per day.

FRESH KILLS PHASE DOWN DURING 1997

Tons per day currently going to Fresh Kills: 13,000 tpd

Potential avoided tonnages:

Bronx Export	1,700 -- 1,800 tpd
Increased Recycling ⁶	350 -- 700 tpd
City Agency Waste Reduction	50 -- 100 tpd
	<hr/>
Potential Total Diversion by late 1997:	2,100 -- 2,600 tpd

Tons per day going to Fresh Kills 1997: 10,400 -- 10,900 tpd

Thus, by the end of 1997, the City could achieve a 20 percent reduction in the amount of waste going to Fresh Kills each day.

⁶ Increased recycling will include the restoration of mixed paper and bulk metal collection to Staten Island and the Bronx and its expansion to Manhattan, along with the addition of the aseptic and polycoated materials to be collected with the metal, glass, and plastic recyclables. It could also include expansion of such collections to Brooklyn and Queens by the end of 1997.

The purpose for moving aggressively with the exportation of waste from the Bronx is two-fold: (1) the Bronx marine transfer station is in need of significant structural repair and will need to be off-line for those repairs to occur, and (2) by exporting 1,700 - 1,800 tons per day, rather than shifting it to other marine transfer stations for shipment to Fresh Kills, the City not only gets exportation started, it also will be able to reduce a 'digging shift' at Fresh Kills, as the Bronx waste is essentially an increment equal to the work completed in an eight-hour shift.

However, the fact that the Bronx waste will be exported effective July 1, 1997 does not preclude the borough from exploring alternative waste management proposals. In order to preserve the opportunity for the borough to suggest alternate waste management practices, DOS will propose a three-year term in the export contract(s) that will enable sufficient time for restructuring the disposal options without affecting the closure of Fresh Kills.

5.4 Planning Process and Timeline

Given the complex timelines for the siting and regulatory processes associated with the different solid waste disposal options, it is necessary that borough-specific work be commenced immediately. Therefore, the Task Force suggests the borough-based working groups, which may include such groups as the Citywide Recycling Advisory Board (CRAB) or the borough Solid Waste Management Boards (SWABs), be convened by December 30, 1996, with the expectation that proposals for management of solid waste will be developed by April 30, 1997.

Once the borough proposals are received and the review of the plans completed, the City will develop and announce a disposal strategy and timetable for the diminution of waste flowing to Fresh Kills, a process that will have been started with the Bronx exportation, by December 31, 1997. The City will use the plans that it develops by December 31, 1997 to achieve the tonnage goals established in the chart on page 97.

The City anticipates a gradual decrease in the amount of tons landfilled at Fresh Kills each year, rather than a flat line followed by a significant drop in the year 2001. Toward that end, the City has committed to a timeline that diminishes the amount of waste going to Fresh Kills each year. Although a percentage of these diminishment goals will be achieved through expanded waste reduction and increased recycling efforts, the City will enter into requirements contracts to provide for disposal of the remaining waste which has not been reduced or recycled, in accordance with the chart on the next page:

PROPOSED MAXIMUM SHIPMENTS TO FRESH KILLS

<u>Year Ending:</u>	<u>Tons Per Day:</u>
1996	13,000 tpd
1997	10,900 tpd ⁸
1998	8,500 tpd
1999	6,500 tpd
2000	4,000 tpd
2001	0 tpd

As an indication of its commitment to closure, the City agrees that it will achieve a reduction to no more than 4,000 tons per day disposed at the Fresh Kills Landfill by December 31, 2000. As stated previously, sufficient current incineration and landfill capacity exists in the region to manage the closure of the Fresh Kills Landfill.⁹ As also stated previously, any waste disposal facility receiving waste now going to Fresh Kills must have a host community agreement.

According to the Task Force's review, for short-distances, truck hauling may be the most economical method of transferring waste. This may change as the City redevelops some of its rail lines. At distances beyond 1,500 miles, barging becomes the most economical mode provided the disposal facility or the transporter has access to marine unloading facilities. Thus, agreeing upon a transfer/transport system requires consideration of the management options

⁸ This number could possibly be reduced to 10,500 tpd if the waste reduction and recycling initiatives implemented in 1997 achieve the maximum potential.

⁹ An alternate source of information and recommendations is the Sadat Report commissioned by the Borough President. Summaries of this Report are available upon request from the Mayor's Office of Operations.

likely to be chosen. However, sufficient capacity and varied transport options currently exist to minimize impacts on the infrastructure, community and environment. In summary, this suggests that the transfer strategies that are developed should be those that are most compatible with both the local community needs and those of the locations selected for disposal. Furthermore, both waste staging and shipment could be managed by either the City or a private operator. These are the primary issues that will need to be resolved by the Borough Presidents, the City Council, and the City Administration.

The potential tonnages per borough that would need to be disposed, assuming current waste management practices, are indicated in the following chart:

Tonnage Anticipated for Disposal in 2001:⁹

Manhattan	2,545 TPD
Brooklyn	4,005 TPD
The Bronx	1,760 TPD
Queens	3,462 TPD
Staten Island	1,490 TPD

To the extent that a borough can be successful at reducing its waste and improving recycling diversion rates, the waste to be disposed of would decline. Through its work, the Task Force has realized that the development of a waste management plan to handle the disposal of waste from each borough must consider such variables as the viability of marine transfer station reuse,

⁹ The numbers reflect current levels of landfill disposal. They do not reflect any decreases affiliated with waste reduction or increases in recycling diversion.

existing private capacity, reasonable capacity level for new transfer stations, waste collection vehicle travel times, assurances that peak demand¹⁰ and back-up capacities are available, and availability of appropriately zoned land in assemblages of at least six acres and preferably eight to ten acres¹¹. Sufficient truck and rail access is preferred. The Task Force has collected much of this data and will make it available, along with the responses to the August 1, 1996 RFEI, to the borough working groups.

Three of the five boroughs¹² presently have privately-owned putrescible solid waste transfer stations that have excess capacity, representing an opportunity to avoid the siting of a new city-owned facility should the borough working group include this as an option. The Task Force recommends that to the extent possible and appropriate, available permitted capacity should be used before new stations are sited. Also, if feasible, waste should be compacted and containerized to reduce the number of transfer vehicles needed. However, it is important to note that use of private transfer stations cannot be based solely on available permitted capacity, but should take into account the physical size and geographic location of the facility, and truck access and queuing conditions. To the extent that these variables are applied, the existing excess private capacity that is appropriate for contract will be diminished from the available permitted capacity.

¹⁰ The TPD numbers indicated per borough are averages that were derived using data collected during FY'96 and that on certain days and during certain peak seasons of the year the amounts of solid waste disposed may be as much as 30 percent higher or lower.

¹¹ A facility of at least six acres is necessary to handle 1,000 tpd of solid waste allowing for onsite queuing of vehicles. At least eight to ten acres is necessary for a facility that would handle 1,500 tpd.

¹² Staten Island and Manhattan do not currently have private putrescible solid waste transfer stations.

Finally, the Task Force has explored the cost structures associated with solid waste management during the phasing out and post-closure of Fresh Kills. The City's costs of solid waste management will likely increase significantly as a result of the closure plan. Therefore, it is the recommendation of the Task Force that the City hire a financial consultant to explore in-depth the financing options available to the City, including review of the City purchase of landfill or landfill capacity.

Following six months of intensive work on the part of the Task Force members, the Report represents only the first major step in what will be essentially a five-year process. The Fresh Kills Landfill provided a resource which largely allowed an 'out of sight, out of mind' philosophy to accompany solid waste disposal in the City. With the closure of the Landfill, it is appropriate that each borough, and the City Council, be partners with the Administration in determining the solid waste management options best suited to the individual borough. It is critical to note again that any borough management must be integrated into the City's overall solid waste management framework.

The City as a whole is now experiencing dramatic positive changes in the waste industry with the recent establishment of the Trade Waste Commission. The efforts of this Commission in altering the way the carting industry does business in New York City have been effecting real reform, not only in reducing private collection costs, but also in the management and costs associated with transfer and transport of solid waste. Moreover, they have generated new competition in the New York City market, including the entry of several major national firms, that previously avoided this area. It is safe to say that the waste industry in New York City is an evolving

market, and it is timely that the borough working groups, together with the Administration, will seek to take advantage of this fluid system to develop those strategies that most effectively and economically manage the residential waste produced in this City.

5.5 MANAGEMENT OF UNRECYCLED WASTE RECOMMENDATIONS

- The City will begin its program of borough-based solid waste management in the borough of the Bronx by exporting the borough's 1,700 - 1,800 tons per day effective July 1, 1997.
- The Task Force has recommended and the City has established an annual plan for the phasing out of Fresh Kills beginning in 1997, based on the enhanced recycling and waste reduction efforts described above, as well as appropriate disposal options. The RFPs necessary to achieve this level of diminution will be crafted during 1997, and will reflect, to the extent practicable, the borough-based plans.
- The Task Force has recommended and the City has agreed to establish borough-based working groups in cooperation with the Borough Presidents and the City Council to work with the Administration in developing plans for the management and disposal of the solid waste from each individual borough. The City agrees that the proposals developed should reflect, to the extent practicable, the potential for waste reduction and recycling enhancements, as outlined earlier, to decrease the amount of waste to be disposed. The proposals developed in connection with each borough should take into consideration the entire citywide solid waste management system and the City's fiscal picture. These proposals should be submitted for review by April 30, 1997.
- The City has agreed to develop and announce, based on the plans developed by each borough, an overall waste management strategy for the diminution of waste to Fresh Kills by December 31, 1997, or early 1998, as necessary. These plans, which will include waste reduction and recycling initiatives, will be used, to the extent practicable, to achieve the proposed annual tonnage goal reductions established by the City.
- The Task Force has recommended and the City has agreed to review the first RFEI submissions and issue an RFP to retain a financial consultant to explore the potential for the City to acquire out-of-city landfill capacity and to develop alternative financing options for the City's solid waste management system after the closure of Fresh Kills on December 31, 2001.

6.0. OPERATION, CLOSURE, AND POST-CLOSURE

6.1 Introduction/Summary

At the outset, it is necessary to state that this chapter was largely drafted prior to the time when the environmentalists were appointed to the Task Force, and therefore was not a product of the members of the Task Force.

The Fresh Kills Landfill is located on the western shoreline of Staten Island, adjacent to the Arthur Kill. The Landfill consists of four separate landfill areas (called "sections") that are contained within a total property area encompassing approximately 2,200 acres. Two of the four landfill sections (Sections 2/8 and 3/4) were closed in the early 1990's and no longer receive solid waste. The remaining two sections (Section 1/9 and 6/7) are currently used by DOS for disposal of New York City's waste. The Landfill is currently operated under a 1990 Order on Consent between DOS and the NYSDEC.

Among other things, the Order on Consent has provided for the development by DOS of specific operational, investigative, mitigative, and closure tasks at the Landfill pursuant to a set schedule. Furthermore, as amended, it includes the requirement that DOS submit a complete Part 360 Solid Waste Management Facility Permit Application by March 15, 1996, which was accomplished by that date.

In general, landfill activities can be segregated into three categories: operations (on-site waste transport, disposal, environmental monitoring, etc.), closure (emplacement of a landfill cover, vegetation, etc.), and post-closure (cover maintenance, continued environmental monitoring, etc.). The City is now in compliance with the operational and closure requirements prescribed by the 1990 Order on Consent.

The cessation of landfill operations at the Landfill in the course of the next five years will have a substantial impact on existing operation and closure plans for the operating sections.

Procedurally, with the new date for landfill closure, the City and State have agreed that NYSDEC will suspend its review of the Fresh Kills Landfill Part 360 Permit Application. This will allow time for development of a mechanism for operation of the Landfill and ongoing closure work until December 31, 2001, as well as assure that closure and post-closure activities are performed in conformance with strict standards.

An additional change is the need to revise the landfill grading plan in order that final grades at closure are sufficient to promote surface runoff and minimize infiltration. Due to the immense area of the Landfill, changes in the placement of waste must be designed and implemented to insure that these grades are achieved by the anticipated landfill closure date.

6.2 Operation

6.2.1 *Interim Operating Authority*

With the agreement to cease operating the Landfill on December 31, 2001, and the subsequent amendment of Section 27-0706 of the Environmental Conservation Law, a mechanism is necessary to ensure proper interim operation of the Landfill closure in accordance with all applicable regulatory standards and post-closure monitoring for at least 30 years after 2002.

A modification to the existing Order on Consent would obligate New York City to continue to follow all applicable regulations, and ensure compliance with closure provisions mandated in the Order on Consent. The Order on Consent provides a clearly laid-out method for its modification, including the opportunity for public comment. This process has been effectively used five times since the Order was executed in 1990.

Upon execution of the modification to the existing Order on Consent, the City of New York will officially withdraw its Part 360 Permit Application for the Fresh Kills Landfill.

6.2.2 Operational Requirements

6.2.2.1 Landfill Grading Plans

The 2,200 acre Landfill complex (Figure 1) is divided into four sections: Section 1/9 covers an area of approximately 462 acres and was planned to rise to an elevation of 412 feet; Section 6/7 covers an area approximately 309 acres and was planned to rise to an elevation of 259 feet. Section 3/4 and Section 2/8 have reached their final elevations and are closed for solid waste disposal. Section 3/4 has an area of 131 acres and a final elevation of 171 feet, and Section 2/8 has an area of 147 acres and a final elevation of 151 feet. (Figure 1)

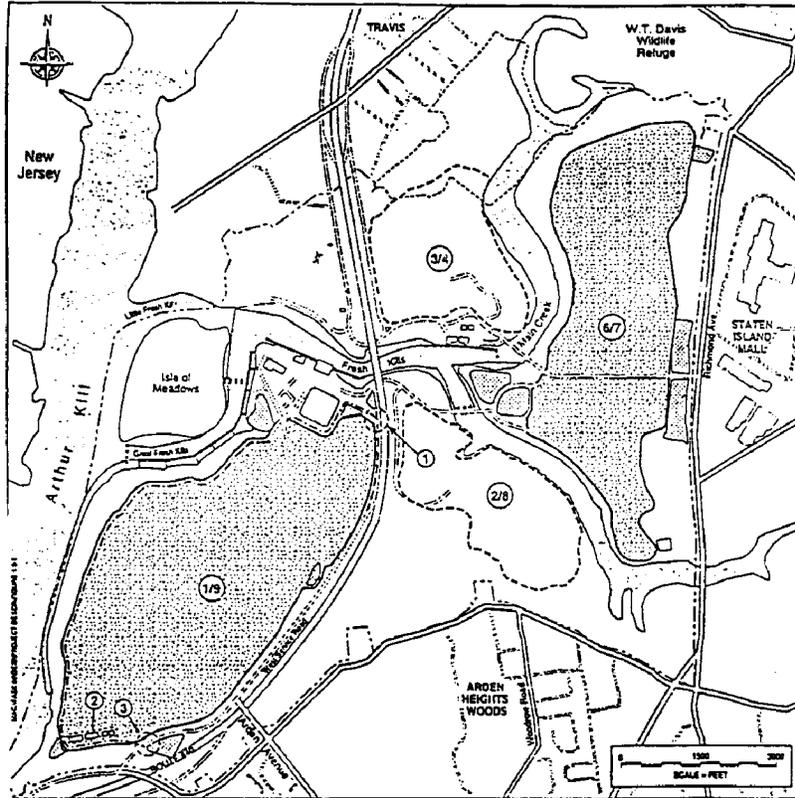
Landfill Sequence of Fill Plans (fill progression plans) were developed by DOS under the Order on Consent, and are included as part of the Fresh Kills Landfill Permit Application. These plans provided direction on how to adjust the existing topography of the Landfill to meet slope and grading standards set forth in the Part 360 solid waste regulations; the sequence for the placement of waste to meet these requirements; and the final elevations of each of the landfill Sections. The fill progression plans (Figure 2) consist of six phases for Section 1/9 and four phases for Section 6/7 and are structured such that, at the completion of any of the phases, the Landfill would meet regulatory standards for closure construction.

To accommodate earlier closure of the Landfill, changes in the fill progression plans are necessary. These changes (Figure 3) would principally include termination of the latter phases of the fill progression plans. During the time leading up to December 31, 2001, the actual quantity

of waste sent to the Landfill will diminish to ensure that waste acceptance ceases by the mandated closure date. Due to this decrease in waste loads, additional adjustments will be made to the remaining phases of the fill progression plans to ensure appropriate grades when landfilling ceases. The most notable change, as a result of the 2001 mandated closure date for the Landfill, will be a significant reduction in the planned final heights of these sections - Section 1/9 is likely to reach a height that is fully 150 feet less than originally planned, while Section 6/7 is likely to rise an additional 30 feet above its current height in a limited portion.

By developing a revised final grading plan based on the existing fill progression plans, only minor modifications will be needed to existing engineering plans for closure construction. More importantly, current plans for drainage and final cover construction can continue without protracted delays for major engineering and design changes. The Task Force recommends that DOS continue to conduct an annual review and adjustment, if necessary, on the Fill Progression and Grading Plans.

Figure 1:



SEE FIGURE LK-1 FOR CLOSE-UP OF CENTRAL PORTION OF THIS FIGURE.

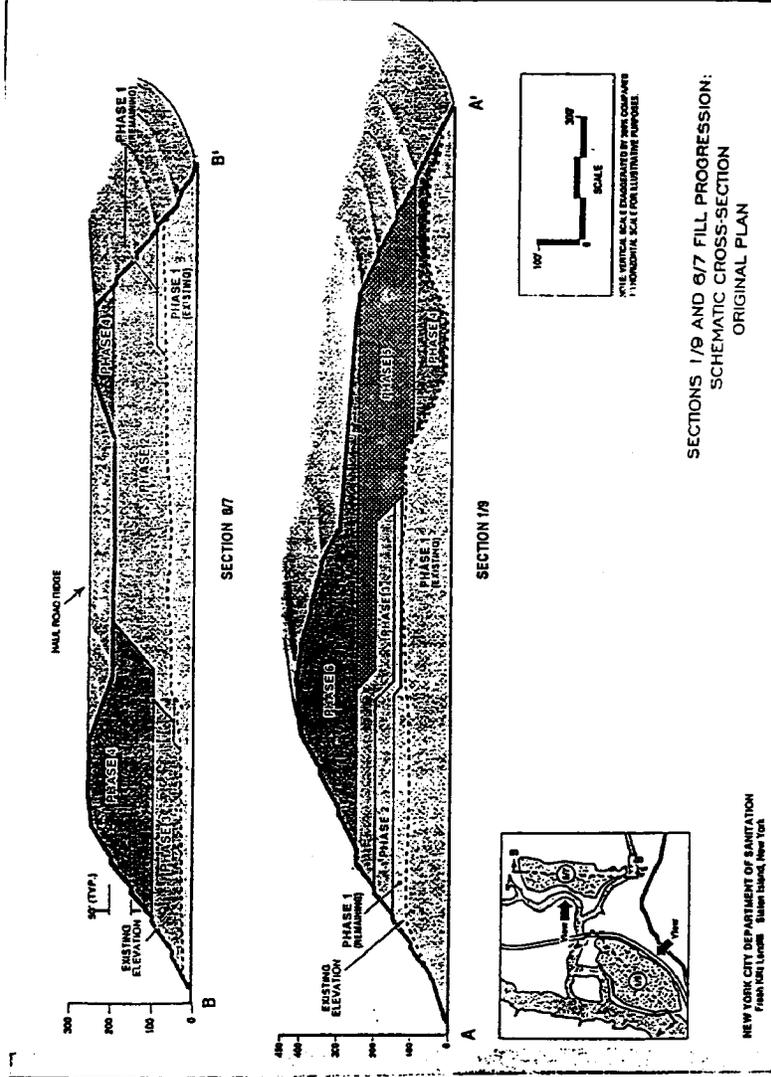
- OPERATIONS AND FACILITIES AT THE FX LANDFILL COMPLEX**
- ACTIVE LANDFILL SECTIONS
 - INACTIVE LANDFILL SECTIONS
 - STORMWATER BASINS
 - FRESH KILLS COMPLEX BOUNDARY
 - CITY OF NEW YORK BOUNDARY
 - MARSH FENCING
 - MANUAL LITTER CONTAINMENT BOOTH
 - PROPOSED PERIMETER ROAD (CONCEPTUAL PLAN)
 - PROPOSED EXTENSION OF WEST SERVICE ROAD (CONCEPTUAL PLAN)
 - LANDFILL EXIT - PROPOSED PERIMETER ROAD WEST SERVICE ROAD
 - FRESH KILLS LANDFILL LEACHATE TREATMENT PLANT
 - LANDFILL ENTRANCE - PROPOSED PERIMETER ROAD VETERANS ROAD

NOTES:
 (1) NORTHERN PORTION OF SECTION SH OWNED BY NYC DEPT. OF PARKS AND RECREATION
 (2) LANDFILL COMPLEX BOUNDARY SHOWN FOR ILLUSTRATIVE PURPOSES ONLY. FOR DETAILED PROPERTY BOUNDARY SEE REFERENCE TO THE DRAWING PEA.

**FIGURE 1
 FRESH KILLS LANDFILL
 SITE PLAN**

NEW YORK CITY DEPARTMENT OF SANITATION
 Fresh Kills Landfill Staten Island, New York

Figure 2:



SECTIONS 1/9 AND 6/7 FILL PROGRESSION:
SCHEMATIC CROSS-SECTION
ORIGINAL PLAN

6.2.2.2 Landfill Operations and Maintenance

Typically, pursuant to Part 360 requirements, the Operations and Maintenance (O&M) Plan for a landfill describes all of the facility's pertinent methods of operation and related procedures and requirements such as landfill disposal methods, personnel requirements, machinery and equipment, and landfill operational controls. An O&M Plan for the Landfill was developed under the Order on Consent to provide detailed performance standards and procedures.

As the quantity of waste disposed at the Landfill diminishes over the next several years, staffing, equipment, and operational procedures will also change. In recognition of this fact, the O&M Plan includes a mechanism for accommodating and reporting such changes in landfill operations through the development of an annual update subject to NYSDEC review. Appended to the O&M Plan, the annual update sets forth the specific changes in staff and equipment levels and operational procedures made during the previous year, and demonstrates how specified performance standards are continuing to be met. The Task Force recommends that DOS continue to utilize the annual update mechanism to ensure that sufficient manpower, equipment, and other resources are employed to perform the tasks necessary to the operation, closure, and post-closure of the Landfill.

6.2.2.3 Environmental Monitoring

Environmental monitoring of a variety of media is currently performed within a NYSDEC-approved Long-term Monitoring Program for the Landfill. Environmental media include ground

water, surface water, sediment, and leachate. Sampling is performed on a regular basis at a frequency that varies between media, within media, and among sampling stations. The Long-term Monitoring Program was developed under the Order on Consent and represents the product of six years of environmental investigation by DOS.

6.2.3 Other Considerations

6.2.3.1 Landfill Gas

All landfills generate landfill gas. The landfill gas generation rate depends on the amount of wet, decomposable waste, and other largely uncontrollable factors such as the amount of rainfall at the landfill and landfill depth. Landfill gas that is not combusted or recovered will find its way into the atmosphere (vented, flared, or diffused).

6.2.3.2 Part 360 Landfill Gas Control Requirements

Part 360 establishes requirements for the control of landfill gas. The Order on Consent does not require DOS to actively collect landfill gas, but does require it to minimize landfill gas migration.

In compliance with the Order on Consent and Part 360, DOS has accomplished landfill gas control through the construction of perimeter stone-filled trenches which allow the passive venting of landfill gas to the atmosphere.

6.2.3.3 New Federal Landfill Gas Regulations

In March 1996, pursuant to the Clean Air Act, the EPA issued New Source Performance Standards under 40 CFR Part 60 Subpart WWW ("NSPS"). The NSPS regulations require that new large landfills install landfill gas control systems. At the same time, EPA issued Emission Guidelines for control systems to be installed at existing landfills. By Federal definition, Fresh Kills, a large existing landfill, will be subject to the regulations that NYSDEC will promulgate to implement the Federal Emission Guidelines in Subpart WWW. With regard to gas recovery and related operations, the City recognizes that emission offset requirements may need to be met for non-attainment air pollutants (most notably carbon monoxide, NMOC, and nitrogen oxide as ozone precursors). In addition, prevention of significant deterioration requirements may have to be met for attainment of air pollutants (i.e., sulfur dioxide).

The Emission Guidelines require NYSDEC to promulgate implementing regulations requiring the installation of landfill gas control systems at existing landfills, which will reduce the non-methane organic compound ("NMOC") emission 98 percent by weight or to a concentration of less than 20 parts-per-million by volume. It is anticipated that NYSDEC implementing regulations will be promulgated by fall 1997. They will require that landfills submit designs for the control systems to NYSDEC by fall 1998, and that these systems be installed by December 2000.

6.2.3.4. Landfill-Related Studies

Studies conducted by various agencies at the City, State and Federal level to characterize emissions from the Landfill and health impacts on neighboring communities are listed below:

- a. NYSDEC Toxics Network - NYSDEC operates an air toxic monitoring network in and around the Landfill (six Landfill, three perimeter and three neighborhood sites). A 1997 report by the Federal Agency for Toxic Substances and Disease Registry (ATSDR) concluded that there was not a public health concern in the first six months of data. ATSDR is continuing to evaluate the data generated, as well as EPA emission characterization work conducted at the Landfill.

- b. New York City Department of Health Cancer Study - A recent DOH study of Staten Island cancer incidences found that cancer rates for the years 1979 - 1988 in the communities in the vicinity of the Fresh Kills and Brookfield Avenue Landfills were not significantly statistically higher than the cancer rates in the rest of Staten Island.

- c. New York State Department of Health Worker Exposure Study (NYSDOH) - In November 1996, NYSDOH presented its findings in a study of DOS employees. The study, which began in 1994, surveyed approximately 500 DOS employees, of which half worked at the Fresh Kills Landfill. The surveyed workers were asked whether they experienced symptoms in a variety of categories, such as neurological, hearing, and respiratory.

The findings of the study (except for the hearing symptoms) are consistent with those found by other published studies of sanitation workers. The study found that work-related dermatological, neurological, hearing, and respiratory symptoms, and sore and itching throats were reported by employees working at the Fresh Kills Landfill more often than by off-site employees. The hearing symptoms were associated with the operating of heavy machinery. The dermatological and respiratory symptoms, such as skin rashes or flu-like symptoms, and the sore and itching throats, were associated with working at the Landfill.

d. The 1993 Staten Island/New Jersey Urban Air Toxic Assessment - Completed under the auspices of the Federal EPA, the study assessed air contaminant concentrations in ambient air and a limited number of homes. No single monitoring site was consistently associated with the highest concentrations. Automobiles and refineries were found to be major source categories, with no individual dominant sources identified.

e. Staten Island Odor Study (1983) - The 1983 NYSDEC Regional Air Program undertook an investigation of Staten Island odor origins and impacts. The study associated specific odors with specific sources, many of them located in New Jersey. While the Landfill was identified as a major odor source, the study found that odors from a number of Staten Island facility sources were mistakenly attributed to the Landfill.

None of the studies demonstrate a direct link between the Landfill and community health. The Task Force recommends that the NYSDEC air toxics monitoring program continue in order that an ongoing comparison can be made between ambient air levels prior to and after the Landfill-

wide gas collection system discussed below goes into operation. The City concurs and has agreed to fund this program.

6.2.3.5 Landfill Gas Recovery

A significant portion of the gas generated at the Landfill is already recovered and sold to Brooklyn Union Gas. The City is currently negotiating with a private entity to establish a contract to result in landfill-wide gas collection, recovery, and sale as quickly as possible in order to control odors and meet air emission standards. The concession contract is expected to be entered into before the end of 1996. The Task Force supports the City's efforts to implement active landfill gas recovery in compliance with applicable permitting requirements, rules, and regulations, before the end of 1997.

6.3 Closure

6.3.1 Conceptual Closure Plan

The permit application which DOS submitted on March 15, 1996, for the continued operation of the Landfill, included a Conceptual Closure Plan for Sections 1/9 and 6/7. The closure plan included projected final elevations and drainage systems. As described previously in the discussion of Landfill Grading Plans, the final elevation of these Sections will be reduced to reflect the significant reduction in waste to be disposed at the Landfill as a result of the 2001 Landfill closure date. This will be done by truncating some of the later phases of landfilling.

thereby allowing for the continued retrofitting of drainage improvements and final cover placement on completed side slopes in accordance with completed engineering plans.

The cessation of landfilling at the end of 2001 enables DOS to establish an aggressive schedule for closure construction. Whereas the capital construction plan for final cover was projected to advance at approximately 75 acres per year from 1998 through 2001, more areas are now projected to be available for final cover work. This will allow construction to advance at a considerably faster rate -- 100 to 125 acres per year during that time period. This accelerated rate of cover construction will continue after cessation of landfilling operations until the entire site has been properly covered and secured.

6.3.2 Final Closure Plan

While the fill progression plans can provide clear direction for final cover and drainage construction on the side slopes for the next several years, the actual quantity of waste that is directed to the Landfill will establish the final heights, grades, and shapes of the Landfill. Closure construction plans for these actual heights will be addressed through the Final Closure Plan. The Plan will be more detailed than the Conceptual Closure Plan as it consists of the actual engineering plans and schedules for the remainder of final closure work. In accordance with regulatory requirements, the Final Closure Plan will be submitted and approved by NYSDEC in the weeks prior to the last scheduled receipt of waste at the Landfill.

As indicated above, Sections 3/4 and 2/8 are closed for disposal of solid waste. Plans for closure construction for Sections 3/4 and 2/8 were prepared and approved under the Order on Consent. At present, installation of final cover consisting of 40 mil geomembrane, 24 inches of barrier protection soil, and six inches of top soil is being placed on top of the disposed waste, along with the retrofitting of stormwater drainage systems. It is expected that this work will be completed by the end of 1996.

6.3.3 Other Considerations

6.3.3.1 Use of Clean Fill for Contouring and Final Grading

Differential settlement, decomposition and secondary compression of the Landfill waste will alter the grades of the landfilled waste. Such changes in the grades will require regrading and placement of additional fill material prior to construction of final cover. In order to avoid additional waste disposal in these areas, grades will be corrected by filling the depressed areas with appropriate fill material. A primary source for such fill is the City's Interagency Cover Program, which provides excavated subsoils, concrete, and asphalt from City public works projects. These materials will continue to be provided after cessation of landfilling operations to supply construction fill materials for closure construction. The use of these materials shall be addressed in the final closure plan.

6.3.3.2 Treatment Plant and Stormwater Basin Discharge

Under current conditions, landfill Sections 1/9 and 6/7 are estimated to generate a total leachate volume of approximately 900,000 gallons per day (gpd). A small percentage of this leachate (about 65,000 gpd) is currently being collected in the southeast portion of Section 1/9 and treated in an on-site Leachate Treatment Plant. This facility began operation in January 1994, and has a maximum leachate treatment capacity of 150,000 gpd. Expansion of the on-site Leachate Treatment Plant is currently underway and will provide treatment capacity for an additional 900,000 gallons of leachate each day. The capacity (1,050,000 gpd) of the expanded Leachate Treatment Plant will be sufficient to treat all of leachate collected at the Landfill. Construction of a landfill-wide leachate collection system began in Summer 1996. This system will be built along the entire perimeter of each landfill Section, and will consist of an outer containment wall (made principally of clay), an inner network of perforated collection pipe installed below the water table for leachate collection, and conveyance pipes (force mains that allow pumpage of leachate to the on-site Leachate Treatment Plant). DOS expects to complete the construction of this system in Spring 1998.

Additionally, a stormwater drainage system is under construction to collect the run-off from the covered slopes of the Landfill. The stormwater drainage system at the Landfill consists of proper grading, stormwater collection elements, conveyance systems, stormwater control basins, and monitored discharge outfalls. Stormwater control basins 1) allow the sediment run-off from the stormwater drainage system to settle before the stormwater is discharged to the waterway; 2)

provide controlled and monitorable points of water discharge; and 3) reduce peak run-off during storm events.

6.4 Post-Closure

6.4.1 End Use Alternatives

After the final cover has been placed, the Landfill will provide a large open area with the potential for various end uses. Landfill post-closure related stewardship will need to continue, such as the collection and treatment of leachate, the collection and control of the landfill gases, and environmental monitoring.

While these post-closure commitments will continue for 30 years after the cessation of landfill operations, areas of the Fresh Kills Landfill complex could provide alternate public uses and access during this post-closure care period. Potential end uses compatible with the Landfill closure requirements include the development of urban landscapes and open spaces, as well as active and passive recreation areas. Plans will be developed in close consultation with the communities of Staten Island. It is anticipated that the implementation of End Use Plans will be phased in during the post-closure period.

6.5 CLOSURE RECOMMENDATIONS

- **The Task Force has recommended and the City and State have agreed to work with the Staten Island Borough President's Office and the Staten Island Solid Waste Advisory Board (SWAB) on all matters related to the closure of Fresh Kills.**

- In September 1996, the City suspended the Permit Application with DEC in contemplation of withdrawing the application in the near term once the existing Consent Order is amended to reflect early closure of the Landfill.
- In controlling the odors associated with the Landfill, DOS has negotiated a concession agreement with a firm that will collect the methane gases emitted from all sections of the Landfill and in turn sell this gas as a fuel to an end user. This gas collection system should be fully operational by mid 1998; as an interim measure, the Department is prepared to flare the gas by Spring 1997, thereby significantly reducing the odors associated with the Landfill through 1997, pursuant to permit.
- The Task Force has recommended and the City has agreed to implement a phase down of the reliance on Fresh Kills beginning in 1997.
- The Task Force has recommended and the City has agreed to devise an updated operation and closure plan and renegotiate the Consent Order with DEC to embody this plan.
- In accordance with the passage of the Clean Water/Clean Air Bond Act of 1996, the City will develop proposals for accessing the \$75 million set aside for projects associated with the final closure and capping of Fresh Kills.
- In consultation with the appropriate parties, the City will comply with all Federal, State, and City requirements for all closure and post-closure activities.
- The City will close the Fresh Kills Landfill by December 31, 2001.

7.0 CONCLUSION

The Fresh Kills Task Force brought together the key stakeholders from City, State and Federal governments, as well as other elected officials and environmentalists, to consider the many difficult issues involved in closing the Fresh Kills Landfill. While the Task Force's work may be done, the release of its Report is a beginning, rather than an end. Now, the City will be implementing recommendations in this Report and achieving results that are real and substantial and immediate in terms of waste reduction, increased recycling, and waste disposal.

There is still much work to be done, and the lines of communication must remain open. While generally supporting the findings and recommendations contained in this Report, individuals and agencies represented on the Task Force may have differing perspectives on specific items. For these reasons, the Task Force has recommended and the City has agreed to work with each of the Borough Presidents and the City Council to establish borough-based coordinating groups in order to have more community input and each of the Borough Presidents can make borough-specific recommendations. Moreover, the Task Force recommends that the City continue to call upon Task Force members and other experts for guidance in the coming months and years as it implements these changes and moves closer to the closure of the Fresh Kills Landfill.

The City and State have demonstrated to the Task Force their commitment to close Fresh Kills. The City's plan to reduce the waste sent to Fresh Kills by the end of 1997 by as much as 20 percent, and its commitment to reduce such waste by at least 50 percent by the end of 1999, coupled with their commitment to increased recycling and waste reduction, are all proof that it is moving swiftly to implement these changes. With this solid foundation, the Task Force is confident that the City will meet its commitment to close Fresh Kills by December 31, 2001.

APPENDIX A



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

DIRECTIVE TO ALL HEADS OF AGENCIES AND DEPARTMENTS

NO. 96-2

September 27, 1996

WASTE PREVENTION AND EFFICIENT MATERIALS MANAGEMENT POLICIES

City agencies can enhance efficiency and reduce costs by implementing waste prevention policies and by instructing and motivating personnel to practice waste prevention initiatives. By enhancing efficiency and reducing costs, waste prevention policies and initiatives enable the city to focus its limited budgetary resources more directly on the provision of services.

Waste prevention is also an environmentally sound and cost-effective approach for reducing the City's solid waste stream and costs associated with waste management. Establishing practices within City government to minimize waste generation and to reuse goods and supplies can set an example for other public entities and the private sector.

Pursuant to this Directive, City agencies shall adopt and implement waste prevention and efficient materials management policies, and shall report annually regarding their current and proposed activities in this area. As used throughout the Directive, waste prevention means a reduction in the quantity and/or toxicity of solid waste through practices such as: reusing products or packaging; using durable products, including products that offer extended warranties; avoiding or reducing the use of products or packaging by purchasing products in bulk or in concentrate or by other means; avoiding or reducing the use of products or packaging that contain toxic constituents, or eliminating or reducing toxic constituents in products or packaging; and other measures that prevent waste.

The Department of Sanitation's City Agency Waste Prevention Guide should be consulted to assist agency compliance with this Directive.

Section 1. Office Paper Waste Prevention and Reuse

All City agencies shall adopt and implement office paper waste prevention and reuse measures which shall, at a minimum, include the elements set forth below.

(a) Double-sided printing and copying

(i) Agencies shall print and copy documents, including letters and memoranda, on both sides of the page whenever feasible. Agencies are also encouraged to use reduced format printing and copying, and reduced font sizes, when appropriate. Copier default settings should be set for double-sided production, where feasible.

(ii) All documents that are reproduced by a reproduction services unit shall be printed on both sides of the page unless there is a specific reason why a document must be one-sided (e.g., rules of a court or order of a state agency).

(iii) Agencies shall post operating instructions for double-sided reproduction on, or directly above, all photocopiers, unless procedures for double-sided copying are provided on the photocopier's operating panel.

(iv) Agencies shall post signs on or near photocopiers and recycling bins for white paper reminding staff to copy on both sides of the page. Agencies may use their own signs, or obtain them from the Department of Sanitation (212-837-8089).

(b) Common access and circulation of information

(i) Whenever feasible, office-wide memoranda shall be placed in a common area for review by agency staff (e.g., posted on an office bulletin board or placed in a reference binder) as a substitute for distribution of individual copies to employees.

(ii) Documents addressed to more than one person should be routed via intra-office mail whenever feasible. Agency staff are discouraged from reproducing circulated documents and maintaining duplicate files.

(iii) Information should be circulated via E-mail, including local area network communication systems, whenever feasible.

(c) Facsimiles

(i) The use of cover and confirmation pages for faxes is discouraged.

(ii) A faxed document should not also be sent to the fax recipient in hard copy form except upon request of the recipient.

(iii) The use of computer fax programs that enable the user to fax documents from the computer without the need to print a hard copy is encouraged.

(d) Mailings

(i) Agencies should avoid using envelopes for bulk mailings by affixing mailing labels directly to folded correspondence whenever feasible.

(ii) Agencies that send bulk mailings requiring routine responses, such as billings and license renewals, shall use reusable two-way envelopes whenever use of such envelopes is cost-effective.

(iii) Agencies shall periodically review active mailing lists to remove duplicate, unwanted or incorrect names and addresses.

(e) Food service products

Use of durable or reusable food service items, such as cups, plates, and eating utensils, is encouraged.

(f) Unwanted mail

Agencies shall encourage staff to contact organizations sending them unwanted or duplicate office mail to request that they be removed from the mailing lists of such organizations.

(g) Reuse of paper products

(i) Agencies shall reuse paper discards that have been used on only one side whenever feasible (e.g., for draft printouts, draft copies, and notepads).

(ii) Recyclable paper shall be placed in agency recycling bins only after it has been used on both sides, whenever feasible.

(iii) Kraft envelopes, file folders, corrugated boxes, and similar office paper products shall be reused whenever feasible.

(iv) Reusable office envelopes shall be used for all intra-agency mailings and, where appropriate, for inter-agency mailings.

(h) Requests for Proposals

(i) Agencies shall include the following statement in requests for proposals: "As a waste prevention measure, proposers are strongly urged to print and/or copy responses on single-spaced, double-sided pages."

(ii) Agencies should limit the number of copies of responses to requests for proposals required from proposers. Absent special circumstances, the required number of copies should be equal to the number of individuals on the proposal evaluation committee, plus additional copies for the agency head and agency chief contracting officer.

(i) Electronic Mail

Agencies shall use E-mail whenever feasible to communicate within the agency through local area networks or other computer systems, and across agencies through CityMail, which is the electronic mail and document exchange system administered by the Department of Information Technology and Telecommunications. Agencies that use E-mail should include their E-mail address on new letterhead and business cards when these supplies are renewed. Where feasible, agencies are encouraged to install local area networks or other computer systems to facilitate electronic communication. Documents sent by E-mail should not be followed by a hard copy except upon request of the recipient.

(j) Reports and Publications

Agencies shall implement all feasible measures to reduce paper consumption and achieve cost savings in the printing and distribution of reports, documents, studies or publications prepared by the agency and its consultants. These measures may include, without limitation:

- (i) using uncoated recyclable paper, or recycled paper, of a size that will minimize paper use and waste, for the printing of the text and cover pages;
- (ii) limiting use of photographs;
- (iii) printing in as few colors as possible;
- (iv) avoiding covers unless necessary and appropriate for the protection of the document;
- (v) reviewing distribution lists to eliminate duplicate, unwanted, or incorrect names and addresses;
- (vi) reducing mailings by mailing in combination with other reports, documents, studies or publications.

(k) Forms

Forms should be printed from a personal computer whenever feasible. Forms should be stored in minimum quantities in keeping with set minimum and maximum inventory levels.

Section 2. Procurement

(a) Waste Prevention Measures. All agencies shall review and revise their procurement specifications and policies to incorporate money-saving waste prevention measures to the maximum extent feasible. Measures to assess as general policies or on a case-by-case basis include: requiring vendors supplying goods to eliminate or reduce packaging; requiring suppliers to provide reusable packaging, such as pallets, crates, drums, and other packaging material, and to take back the reusable packaging when new shipments are delivered; procuring equipment that

facilitates conservation of paper, such as duplex printers, duplex copiers, and E-mail; requiring contractors to submit proposals, studies, and reports on single-spaced, double-sided pages; purchasing durable and reusable products, and those with extended warranties; buying items such as cleaning products in concentrated form to reduce packaging; minimizing purchase of items containing toxic constituents; and other appropriate measures.

(b) Vendor Surveys. All agencies shall conduct oral or written vendor surveys of some or all vendors supplying goods to the agency to identify cost-saving waste prevention measures that vendors may be willing to undertake. Examples include: eliminating or reducing packaging; providing packaging that is more reusable; taking back reusable packaging when new shipments are delivered; providing products with reduced toxicity; and other measures. Agencies should use the results of surveys in assessing opportunities for reducing procurement costs and preventing solid waste.

(c) Department of Citywide Administrative Services. Within 6 months of issuance of this Directive, the Department of Citywide Administrative Services (DCAS), in consultation with the Department of Sanitation, shall submit to the Interagency Task Force, established pursuant to Section 6 of this Directive, a plan for incorporating feasible waste prevention measures into its procurement practices. The waste prevention measures shall be implemented within 18 months of the effective date of this Directive. Waste prevention measures may include, but need not be limited to, those set forth in subsection (a) of this section. The plan shall include a schedule for implementing each of the waste prevention measures.

Subsequent to submitting its plan, DCAS shall report annually to the Interagency Task Force on the status of plan implementation and the waste prevention measures adopted, including undertaking its best efforts to report on the calculated or estimated quantity of waste prevented and money saved, or projected to be prevented and saved, as a result of plan implementation. The waste prevention plan shall be updated each year as may be appropriate.

(d) Mayor's Office of Contracts. Within 6 months of issuance of this Directive, the Mayor's Office of Contracts (MOC), in consultation with the Department of Citywide Administrative Services and the Department of Sanitation, shall submit to the Interagency Task Force, established pursuant to Section 6 of this Directive, a plan for incorporating feasible waste prevention measures into its procedures applicable to the procurement of services by City agencies.

The waste prevention measures shall be implemented within 18 months of the effective date of this Directive. Waste prevention measures may include, but need not be limited to, those set forth in subsection (a) of this section. The plan shall include a schedule for implementing each of the waste prevention measures.

Subsequent to submitting its plan, MOC shall report annually to the Interagency Task Force on the status of plan implementation and the waste prevention measures adopted, including undertaking its best efforts to report on the calculated or estimated quantity of waste prevented and money saved, or projected to be prevented and saved, as a result of plan implementation. The waste prevention plan shall be updated each year as may be appropriate.

Section 3. Maximize Participation in DCAS Surplus Program

Agencies shall to the maximum extent practicable use the DCAS Surplus Program to discard goods or to obtain reusable goods. For more information on the Surplus Program, consult the Department of Sanitation's City Agency Waste Prevention Guide or call the DCAS Salvage Program at 212-669-8548.

Section 4. Lawn and Yard Waste

Agencies that maintain lawns shall to the extent feasible leave grass clippings on the lawn to degrade naturally. In addition, such agencies shall whenever feasible compost their own leaves and other yard waste, including grass clippings that are not left on the lawn. For information and technical assistance on composting, call the Department of Sanitation at 212-837-8089.

Section 5. Other Waste Prevention Measures

In addition to any other requirements of this Directive, agencies shall review their operations in order to identify additional opportunities for waste prevention, including reuse of goods and supplies, and shall adopt and implement appropriate and feasible waste prevention measures.

Section 6. Waste Prevention Coordinators and Interagency Task Force

(a) Task Force Established. There is hereby established an Interagency Task Force on Waste Prevention and Efficient Materials Management Policies (the "Task Force"). The Task Force shall report to the First Deputy Mayor. The Director of the Mayor's Office of Operations, or his or her designee, shall chair the Task Force. The Task Force shall consist of representatives from the Mayor's Office of Operations, the Department of Citywide Administrative Services and the Department of Sanitation. Agency Waste Prevention Coordinators designated pursuant to subsection (b) of this section shall participate on the Task Force at the direction of the chair.

(b) Waste Prevention Coordinators. Each agency shall designate a Waste Prevention Coordinator. The Waste Prevention Coordinator shall be responsible for coordinating compliance with this Directive within his or her agency and shall serve on the Task Force at the direction of the chair in accordance with subsection (a) of this section.

(c) Functions of the Task Force. The functions and duties of the Task Force shall include monitoring compliance with this Directive and may include identifying additional waste prevention and efficient materials management policies that may be adopted and implemented by agencies.

Section 7. Submission of Annual Reports

(a) Each agency shall report annually on waste prevention measures that have been adopted and implemented pursuant to this Directive as set forth in Appendices 1 and 2.

(b) Each agency shall submit its annual report to the Director of the Mayor's Office of Operations no later than September 1 for the prior fiscal year.

(c) The name, title, address and telephone number of the Waste Prevention Coordinator for the agency, designated pursuant to Section 6 of this Directive, shall be identified in each agency's annual report.

(d) When feasible, the annual report should be submitted via CityMail.

Section 8. Effective Date

This Directive shall take effect immediately.


RUDOLPH W. GIULIANI
MAYOR

APPENDIX 1REPORTING REQUIREMENTSMandatory Reporting Requirements

1. Each City agency shall submit a written report ("Report") to the Mayor's Office of Operations each year by September 1 for the prior fiscal year. Reports shall be submitted to: Director, Mayor's Office of Operations, 20th Floor, 100 Church Street, New York, New York 10007, or through CityMail to OPSLAN.AGYRPT.
2. Each Report shall be signed by the agency head, or his or her authorized representative, certifying that the agency has undertaken its best efforts to fully comply with the Mayoral Directive on Waste Prevention and Efficient Materials Management Policies, along with the name, address, title and telephone number of the agency Waste Prevention Coordinator.
3. Each Report shall include a description of how the agency promoted and monitored compliance with the Directive. Measures to promote and monitor compliance may include, but need not be limited to: distributing a memo to all Bureau/Division heads to inform them of the requirements of the Directive and to require compliance; posting waste prevention signs at copy machines and recycling bins at all office locations; conducting spot compliance inspections; conducting written surveys of agency managers and staff on compliance with the Directive; requiring submission of reports by all Bureau/Division heads; holding meetings or seminars to inform key managers and staff of the requirements of the Directive; appointing an agency waste prevention planning group to oversee compliance; and/or other measures.

Optional Reporting Requirements for Annual Award

To the extent feasible, each agency shall report on the amount of waste prevented, and the associated cost savings, for each waste prevention measure undertaken by the agency, including any not specifically required by the Directive. A brief description of the measure undertaken, the rationale for undertaking the measure, and the method for calculating or estimating the savings, should also be included. Please do not describe your agency recycling programs, e.g., separation of materials for recycling as required by the City.

Annual Award. Agencies that provide responses to the optional reporting requirements will be eligible for an annual award/certificate to be awarded by the Mayor's Office. Responsive agencies may also be featured in subsequent versions of the Waste Prevention Guide for City Agencies.

-APPENDIX 2-

SAMPLE REPORT TO MAYOR'S OFFICE OF OPERATIONS
ON AGENCY COMPLIANCE WITH MAYORAL DIRECTIVE

Certification

The Department of XYZ has undertaken its best efforts to fully comply with the Mayoral Directive on Waste Prevention and Efficient Materials Management Policies.

Signature and Title of Agency Head or Authorized Representative Date

Methods for Promoting and Monitoring Compliance with the Directive

1. Commissioner _____ designated an agency Waste Prevention Coordinator _____ (name, title, address, telephone, fax, e-mail) and an agency Waste Prevention Planning Group on _____ (date) consisting of _____ (names/titles) to facilitate compliance with the Directive.
2. Commissioner _____ issued a memorandum discussing waste prevention as a cost saving strategy and setting forth the agency's commitment, along with a copy of the Directive and the Waste Prevention Guide for City Agencies. The memorandum with attachments was sent to all Bureau/Division heads on _____ (date) instructing them to comply with the Directive and to designate a Bureau/Division Waste Prevention Coordinator.
3. The Agency Waste Prevention Coordinator solicited suggestions from the Waste Prevention Planning Group at a meeting held on _____ (date).
4. The Agency Waste Prevention Coordinator submitted a written plan on _____ (date) for approval by Deputy Commissioner _____ containing recommendations for promoting waste prevention.
5. An employee award/recognition program was established by _____ (name, title) on _____ (date).
6. Signs for placement above copy machines and recycling bins to promote waste prevention were distributed by _____ (name, title) on _____ (date) to all offices.
7. The Agency Waste Prevention Coordinator conducted spot checks at _____ (number) offices on _____ (date) to help ensure that waste prevention signs are posted at offices throughout the agency.
8. The Agency Waste Prevention Coordinator sent out a memorandum on _____ (date) to all Bureaus and Divisions requesting descriptions of waste prevention measures undertaken and information on the amount of waste prevented and cost savings achieved

as a result of implementing specific waste prevention measures required by the Directive, or in addition to those required by the Directive. Methods for calculating the savings were also requested to be provided.

9. The Agency Waste Prevention Coordinator compiled the required information for reporting to the Mayor's Office, and drafted a single report in accordance with Section 7 and Appendices 1 and 2 of the Mayoral Directive on Waste Prevention and Efficient Materials Management Policies for approval by the Commissioner or his/her authorized representative.

After the report is approved by the Commissioner or his/her authorized representative for submission to the Mayor's Office of Operations, the Agency Waste Prevention Coordinator must submit the approved Report by September 1 for the activities conducted during the prior fiscal year.

Optional Information -- Must be Submitted to be Eligible for Annual Mayoral Waste Prevention Award

More than one agency may receive a Mayoral award. A sample format, highlighting just a few examples and the type of information to be supplied with the award application, is as follows:

1. Reusable Two-Way Envelopes. The ABC Division purchased 200,000 reusable two-way envelopes to use for sending out billings. These envelopes weigh 30% less than the envelopes previously provided, eliminating an estimated _____ pounds of waste, and saving _____ dollars in purchasing costs.
2. Electronic Mail. Four Divisions, made up of a total of 2200 employees, are now equipped with E-mail. An informal, verbal survey of staff within these offices indicates that most staff are sending approximately 500 memos per year via E-mail. Assuming that each memo is an average of 2 pages in length, 500 memos x 2 sheets of paper = 1,000 sheets = _____ pounds. Multiplying by our 2200 employees, we estimate that the use of E-mail saved an estimated _____ sheets of paper during the course of the year, weighing a total of _____ pounds. The estimated purchasing cost savings of not having to purchase the _____ sheets of paper is _____ dollars per year.
3. Vendor Survey. Upon conducting a short written survey of 100 vendors, we received three suggestions for preventing waste that were adopted by the agency. The suggestions were _____, _____, and _____. We decided to pursue these suggestions because they were operationally feasible and would not cost the agency any extra money. Although the measures will not result in any immediate reduction in purchasing costs for the agency, each measure is estimated to eliminate _____ tons of waste each year, and will free up XXX cubic yards of storage space that can now be used for other purposes.

Agencies should include as many detailed examples as they can to increase the likelihood of receiving an award.

APPENDIX B**Survey of Islands within the City of New York
for potential use as a Solid Waste Containerization Facility**

MANHATTAN	Land Use	Zoning	Size (acres)	Comments
Franklin D. Roosevelt	Residential, Commercial, Park	R7-2	147	The island also contains some historic structures.
Governor's	Coast Guard Station	R3-2	175	Approximately half of the island has been designated an Historic District.
Randall's	Park and city facilities	Park, M3-1	195	Randall's and Ward's Islands are effectively one island that contains city parklands, a fire department training facility, the Ward's Island Sewage Treatment Plant, and a State Hospital.
Ward's	Park and city facilities	R6, M3-1, Park	255	(See above)

QUEENS	Land Use	Zoning	Size (acres)	Comments
Broad Channel (West)	Residential Community	R3-2	appr. 50	This is a residential community made up primarily of single family homes that were converted from summer to year-round use.

STATEN ISLAND	Land Use	Zoning	Size (acres)	Comments
Isle of Meadow	Vacant	M3-1	101	Part of the Fresh Kills State Designated Significant Coastal Fish and Wildlife Habitat. Under DOS jurisdiction.
Prall's	Parkland	M3-1	88	DPR maintains the island as a bird sanctuary, which is a rookery for some of the Harbor Herons species.
Shooter's	Parkland	M3-1	51	DPR maintains the island as a bird sanctuary, which is a rookery for some of the Harbor Herons species.

BROOKLYN	Land Use	Zoning	Size (acres)	Comments
White	Parkland	None	73	In the center of Marine Park. It is the chosen site of the grasslands restoration project that is mitigation for the Gateway Estates Project.

THE BRONX	Land Use	Zoning	Size (acres)	Comments
City	Resid.	R5-2, C3, M1-1	est. +/-150	Residential island, 1.25 miles long at its longest point.
Hart's	City facilities	R6, M2-1	110	This is the only Potter's field for the city. It is estimated that more than one million persons have been interred on the island. Approximately 1,500 persons are interred per year.
Riker's	Prison	C8-2	415	Largest prison facility in the United States.

Sources: DCP, *Borough Plans for the Waterfront*, 1993 and 1994
The Encyclopedia of New York City, 1995
 TPL, *The Harbor Herons Report*, 1990
 USGS, *Flushing Topographic Quadrangle*, 1979
 USGS, *Mount Vernon Topographic Quadrangle*, 1979
The Green Book 1994-1996

STATEMENT OF RANDY M. MASTRO, DEPUTY MAYOR FOR OPERATIONS FOR THE CITY OF NEW YORK

Mr. Chairman, Senator Baucus, Senator Moynihan, and members of the committee, my name is Randy Mastro and I am New York City's Deputy Mayor for Operations. With me today is John Doherty, Commissioner of the City's Department of Sanitation.

On behalf of Mayor Giuliani, I am pleased to have this opportunity to address this committee on an issue so important to New York City's day-to-day operations: the interstate transport of solid waste. I understand that the decision by Mayor Giuliani and Governor Pataki to close the City's Fresh Kills Landfill has prompted some to question whether Congress should revisit limiting the transport of municipal solid waste across State lines.

The Congressional debate surrounding waste export long preceded the City's decision to close Fresh Kills. It would, therefore, not be fair to cite the closure of Fresh Kills as reason for the passage of interstate waste legislation.

The decision to close Fresh Kills by December 31, 2001 merely expedites the City's plan to embark on a new, more environmentally sound course, in the management of its solid waste. We want this committee to know that we will do so responsibly and appropriately, with due respect for our neighbors.

Through export of the City's residential waste, we are seeking nothing more than the ability to exercise the right that has already been exercised by cities and States across the country—responsible, efficient and environmentally sound solid waste management through the private sector. Municipal solid waste is a commodity in interstate commerce. The proposed business partnerships arising from NYC's waste export will benefit importer and exporter alike. Clearly, there are many other jurisdictions which share our approach, since 47 of the 50 States actually export waste, and 45 States are importers.

As a result, many jurisdictions already require the execution of Host Community Agreements before exported waste can be received. The Fresh Kills closure plan recognizes the importance of such agreements. It requires that our municipal solid waste be disposed of only at Host Community Agreement sites. There seems to be no need for legislation to require us to do that which we already require of ourselves.

Although the closure of Fresh Kills affects only the City's residential waste, the private market is as essential to the management of that waste as it is to commercial waste. Commercial waste has been exported from New York City by the private sector for several years. For many communities and States, solid waste is an important revenue stream. We believe that each local community should have the right to accept or reject the disposal of solid waste—not by Federal legislation but by locally-decided Host Community Agreements.

In developing Host Community Agreements, importing communities will negotiate benefits most suited to their needs. At the same time exporting communities will rely on private-sector bidding to select the vendor offering the best overall price. Clearly, senders and receivers will enter into business arrangements that are in their own best interest.

In keeping with these principles, New York City has not pre-determined where its solid waste will be disposed. Instead, the City has taken steps to assure that each bidder have all requisite environmental permits and a Host Community Agreement verifying that the receiving jurisdiction has approved the operation of the facility and agreed to accept the solid waste to be imported, often resulting in a direct financial benefit to the receiving jurisdiction. Further, the existing authority of States in permitting solid waste facilities in accordance with accepted regulatory mandates and local zoning ordinances, suggests that there is less reason for intervention in the form of Federal export restriction legislation.

When the Mayor and the Governor decided to close the Fresh Kills Landfill by December 31, 2001, a commitment was made to stop shipping garbage to Fresh Kills by that date. There will be a phased-in diminution of landfilling at Fresh Kills. The City will begin with the export of up to 1800 tons per day of residential waste from the borough of the Bronx by July 1997. The City has received 6 competitive bids for this waste. The bidders propose seven different end destinations in five different States. Two of those seven sites are within the State of New York. The bidders, in combination, offered three times the capacity needed for this wastestream. It is encouraging that the bids include disposal sites within the State. We will urge the State to develop even more capacity, in part because transportation is a major element of the export cost.

Once again, it is private sector demand that will shape the future availability of disposal sites. Indeed, according to a recent article in the *New York Times*, officials

from New Jersey and Connecticut have said that they would welcome New York's waste because it makes good economic sense. Robert E. Wright, president of the Connecticut Resource Recovery Authority, which oversees and partially owns incinerators in the State, told the *New York Times*: "I guess we probably have a more favorable eye on New York than some more distant States." The *New York Times* further reported: "In New Jersey where counties have spent millions of dollars to build incinerators, local officials generally are eager for any guaranteed flow of trash. If anything, imported garbage at a plant like the Newark incinerator's is more desirable than local trash because the city gets a 10 percent share of the fee charged."

The cost of building environmentally-sound disposal sites, and ensuring their compliance with EPA standards, has fostered the creation of large, well-run, state-of-the-art regional facilities. These facilities typically are efficient and offer a favorable disposal cost structure. Cost and efficiency will continue to drive the private sector. And the free market will continue to serve those communities willing to accept a disposal facility in exchange for some host benefit, such as revenue, lower taxes, and even lower local disposal fees.

New York City will enter the private disposal market in a responsible manner, armed with the benefits already derived from an ambitious recycling program. We are the only large city in America that requires 100% of its households to recycle, including those residents in multi-family dwellings, and we recycle a higher percentage of household waste than any other large city in America. Nevertheless, we are going to do even more. In the City's recent financial plan, the Mayor has included over \$76 million additional dollars for the expansion of recycling programs, including new materials, increased education and outreach, consultant review of initiatives that might foster better compliance, new equipment to improve recycling efficiency, increased enforcement as appropriate, and residential backyard composting aimed at reducing the waste that is generated.

This year alone, with new initiatives tied to Fresh Kills closure, the City expects to increase recycling by 350–700 tons per day. Including construction and demolition debris, the City currently recycles more than 4,000 tons per day or 26% of its wastestream. Thus, with these new recycling initiatives we aim to increase our recycling program by nearly 20%.

Moreover, we are aggressively pursuing waste reduction strategies to reduce the daily tonnages of waste by 50–100 tons per day by the end of this year. For example, the Mayor recently issued a directive to all city agencies to reduce the waste generated and to establish measurement indicators by which the agencies will be held accountable.

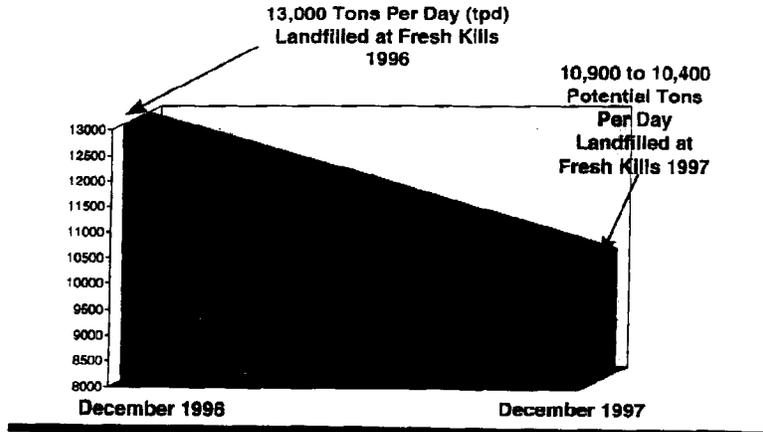
New York City residents are huge consumers of goods manufactured and shipped from other States. And the waste generated by packaging materials is significant. For that reason, Federal legislation limiting packaging or requiring manufacturers to use some percentage of recycled content in their packaging material would have a tremendous—and measurable—impact on the quantity of exported solid waste. However, despite our best efforts at waste reduction and recycling, a substantial portion of our waste will still require disposal outside the City.

It is our expectation that by advancing waste reduction and recycling initiatives over the next five years, the City will reduce the amount of export. We are confident that the capacity and desire to accommodate this waste exists, and I reiterate that our City's residential waste will only be sent to communities that have agreed to receive it through Host Community Agreements.

Again, on behalf of Mayor Giuliani, I would like to express my appreciation for this opportunity to explain New York City's position and to underscore our interest in continuing to work with the committee and its staff on solid waste management legislation. New York City and New York State have decided to close the Fresh Kills Landfill by December 31, 2001. We will implement that decision in accordance with all environmental regulations and in a responsible and appropriate manner, with due respect to our neighbors. By requiring Host Community Agreements, we believe that we will accomplish that aim.

I and Commissioner Doherty will be happy to answer any questions you may have. Thank you.

Diminution of Waste Going from Fresh Kills in 1997

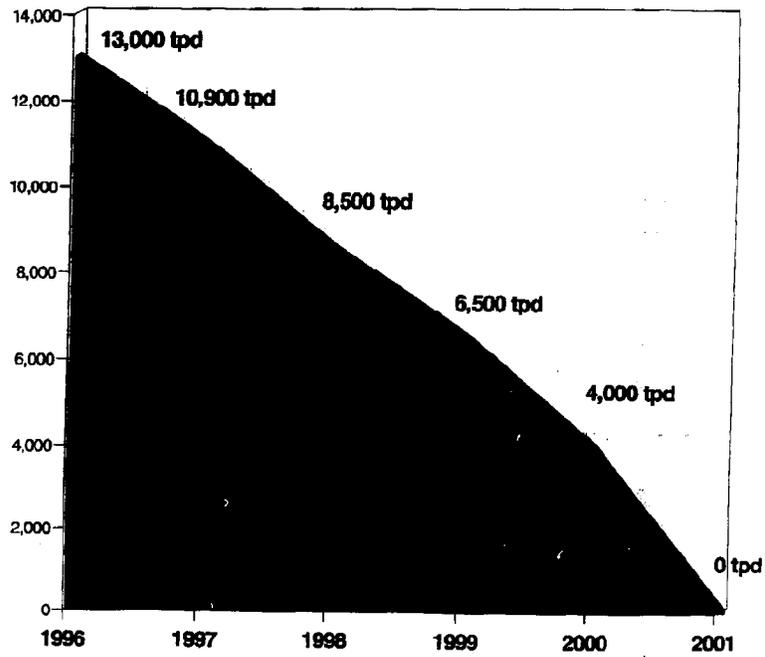


Potential Avoided Tonages

Bronx Export	1,700 to 1,800 tpd
Increased Recycling	350 to 700 tpd
City Agency Waste Reductions	50 to 100 tpd

**Potential Avoided Diversion by Late 1997:
2,100 to 2,600 tpd**

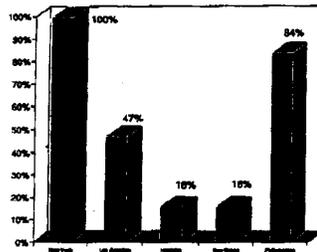
Diminution of Waste Going from Fresh Kills - Tons Per Day (tpd) 1996 to 2001



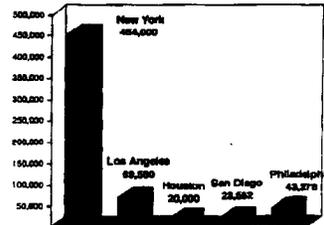
Comparison of Recycling Program in Five Large Cities

City	Population	Households	% of Households Served	% of Waste Recycled	Annual Tons Recycled
New York	7,200,000	2,292,188	100% (a)	13.8%	484,000
Los Angeles	3,600,000	1,299,983	47% (b)	7.4%	68,580
Houston	1,800,000	450,483	18% (c)	5.0%	20,000
San Diego	1,100,000	431,722	18% (d)	8.3%	25,552
Philadelphia	1,600,000	674,556	84% (e)	6.5%	43,278

- a) Services single family homes and residential multi-unit dwellings.
- b) Service only provided to residential buildings with four dwellings or less.
- c) Services only single family homes.
- d) Curbside recycling only provided to single family homes.
- e) Services only homes with six units or less.



Percent of Households Served



STATEMENT OF DAVID L. OLSON, WESTERN ORGANIZATION OF RESOURCE COUNCILS

My name is David L. Olson. My family and I operate a family grain farm south of Minot, North Dakota. I'm here to testify on behalf of myself and my community, and as a member and officer of the Souris Valley Chapter of Dakota Resource Council, one of six citizen groups that make up the Western Organization of Resource Councils.

My expertise on the interstate transportation of solid waste comes from my observation of the effects it has had on my community. I live just a few miles from the Echo Mountain Landfill, operated by Municipal Services Corporation (MSC), a subsidiary of Laidlaw. It receives the largest amount of out-of-state waste of any North Dakota landfill.

Since the early 1990's, I have been able to witness daily the transporting of tons of out-of-state waste being off loaded from the rail-head at Sawyer, and then trucked to and dumped at the Echo Mountain dump. The waste dumped at Sawyer includes municipal solid waste and industrial waste from many different States around the country, as well as Mexico and Canada. The Sawyer dump receives an average of 405 tons of waste in one day, or 150,000 tons a year. That's 30% of the amount of waste that the entire State generates in a year, and it's 30% more than the amount of waste the entire State of North Dakota manages to recycle in a year.

In spite of the fact that many North Dakotans had strong reservations about the wisdom of siting the Echo Mountain facility in the old coal spoils south of Sawyer, the lack of Federal legislation allowing States and local governments to control the flow of out-of-state waste into their landfills made it very difficult to prevent unwanted garbage from coming into our community. We were successful in securing construction modifications that offered additional protection to our water supplies. We were also able to require the presence of a full-time on-site inspector at the facility. But we lacked the necessary tools to be able to make the most fundamentally important decision: Did we want a mega-dump facility in our community or not?

Since the facility was sited, those very things occurred which many of us predicted, including illegal disposal of hazardous waste and failure to produce economic development.

From the beginning, MSC assured the local community and the entire State that its site was never intended as, nor would it become a hazardous waste site. MSC officials testified here at the Capitol and promised that they understood and would strictly abide by North Dakota Health Department regulations, especially those pertaining to hazardous waste.

Furthermore, they stated that all customers of theirs, the generators of waste would know of MSC's compliance with all North Dakota Health Department laws. Unfortunately, this did not hold true.

In late 1995, we learned that MSC had, in fact, allowed approximately 198 barrels of hazardous waste to be buried. The waste contained levels of barium several times higher than allowed by law. General Motors was the generator of the waste identified as hazardous, which was contained in metal barrels. When the Health Department discovered the barium, they informed GM the barrels would have to go. Of course GM maintained the barrels would be too expensive to dig up, and tried to avoid compliance with the law. GM also claimed the site in question was "almost" a hazardous waste site because of its construction characteristics. The waste in question remained in the ground as months and months of negotiation went on between GM, MSC, private citizens and the Health Department. To its credit GM did finally agree to a modified removal, removing some, but not all of the barrels of barium. GM and MSC both paid fines for their illegal activities, and GM made an additional voluntary contribution to the State's university system.

Less than three months after this situation was resolved, GM announced it was ending its contract with MSC. Subsequently, MSC has also lost its major contract for incinerator ash. There are now only six employees at the facility. Employees may decline even further as cells close. Needless to say, the vast economic benefit to the community that MSC predicted in its promotional materials never came to pass, and it appears slim if ever will.

Area land owners like myself got together early in the 1990's and speculation was rampant as to how a mega-facility like the Sawyer dump would affect all of us in the area and how it would affect the State as a whole? North Dakotans are a fairly pragmatic people. We were interested enough to contact other States where MSC's parent company conducted business. We contacted health and environmental departments in some of those States. Since North Dakota was new at the mega-dump business we wanted to try to help ward off for North Dakota, waste disposal problems that other States already encountered.

A couple of strongly needed things came out of our research and practical experience. The interstate waste bills that the Senate has passed in the past are a start, but there are three additional points that I urge you to consider. Most of these points are addressed in the Interstate Waste bills that Senator Baucus and Senator Conrad have introduced, and I urge you to refer to them.

First, there is a strong need for North Dakota and other States to have a "presumptive ban," like the one in Senator Baucus' bill. This would ban imports unless the government of the host community okayed the shipments by signing a "host community agreement" with the waste company. Perhaps the most frustrating aspect of our experience with MSC was that we did not have the right to decide whether they could come to the community or not. We will not have that right in the future unless the bill that you pass includes a "presumptive ban." Without it, we are forced to rely on the governor to honor our wishes to stop an unwanted mega-dump.

Second, you realize that these huge facilities impact so much more than just the host community. A State should be given authority to control mega-landfills. One way to do this, which we endorse, is to let States use a "permit cap" to moderate out-of-state waste shipments by requiring that a portion of every landfill's capacity be reserved for use by the host State. As more and more landfills close, every State will be looking for space to dispose of its own waste, both today, and in the years to come. A "permit cap" will help ensure that the host State's needs are met.

Finally, in the past some waste companies and States have wanted to exempt incinerator ash from this legislation. Common sense dictates no one would argue that waste that is shredded or compacted should be exempted from this bill so why should incinerated waste be exempted? Most ash goes to the same landfills as solid waste. We think it should be covered by the same laws.

In closing, perhaps the most frustrating aspect of our experience with MSC was that we did not have any right what-so-ever to decide if they should come to the community or not. Since the courts have ruled that hauling of garbage between States is a form of interstate commerce, only Congress can give us the right to decide for ourselves next time whether garbage disposal is the kind of economic development we want to try. It is certainly not my intent, or the intent of our organization, to block the siting of out-of-state waste facilities in communities where citizens can make that determination through democratic channels. But we do firmly believe that communities need and deserve the right to control their own destinies and make their own decisions whether to say yes or no when a multi-national corporation approaches them to host an out-of-state waste facility. Thank you.

DAKOTA RESOURCE COUNCIL,
Dickinson, ND, June 3, 1997.

Hon. JOHN CHAFEE AND MAX BAUCUS,
U.S. Senate, Washington, DC.

DEAR SENATOR CHAFEE AND SENATOR BAUCUS: Thank you for the opportunity to respond to your questions about interstate transportation of solid waste. I apologize for not getting back to you sooner, but we are in the middle of planting season, which is a very busy time on our farm.

I understand that Senator Chafee is beginning the process of drafting interstate waste legislation. I appreciate that you have both made this legislation a priority for your committee, and hope that you will schedule action soon.

I am unable to respond to Senator Boxer's questions because I have no experience with flow control, and because Dakota Resource Council and the Western Organization of Resource Councils have no position on it.

In response to Senator Chafee's question, the reason why last year's Senate Interstate Waste bill, S. 534, would not protect rural communities like mine is twofold. First, it would not, as you suggest, clearly give communities the right to say "no". What it would give us is the ability to request that a Governor say "no." While I hope that most governors would respect the wishes of the host community, keeping this authority one step removed from local officials brings a potential for abuse that is unacceptable to rural citizens. The responsibility of deciding to import waste must rest as close to the affected citizens as possible—in the hands of local officials.

My greater concern, however, is not which level of government is given the right to say "no," but process by which the decision to import or not is made. My experience is that it is extremely difficult for concerned citizens to find out what is going on in time to influence the decisionmaking process. S. 534 would do little to change this.

As I testified before your committee in March, my neighbors and I did not find out about the landfill that was proposed in our town until local officials and property owners had been approached by the waste company and given their endorsement to the project. The decision was all but final before we knew the first thing about it. The company still had to go through the State permitting process, but local opposition to the landfill was countered by support from our representatives.

Please don't suggest as an alternative that we exercise our right as citizens of a democracy to recall and replace officials whose actions we disagree with. This option is unsatisfying and ineffective. We have replaced several of these people with individuals who better represent our concerns, but the damage has been done. The permits have been granted, the landfill is here, and it will remain there forever. (This word has special meaning to those of us in family agriculture.) Perhaps we should have foreseen a situation like this and elected people who could resist the waste company's promises of jobs and taxes, but none of us can predict the future, and I've met few officials who can walk away from promises of economic development being pitched by professionals.

What we need is a process that levels the playing field as much as possible. Citizens should be informed and given the opportunity to speak before officials formally commit their votes, not after. Of all the Interstate Waste bills I and our group have reviewed, only the presumptive ban will provide this.

S. 534 would require that citizens be notified in advance and given an opportunity to comment if their elected representatives want to sign a host community agreement, or if they want to ban imports, but it would also allow companies and officials who want to rubber stamp a proposed facility with little public input to do so—all they have to do is forego a host community agreement. This may sound irrational to you, but I have no doubt that it can and will happen if S. 534 is enacted—despite the waste companies' assurances that host community agreements are now the norm and will continue to be used.

Of course, no procedure set up by Congress can guarantee that abuses of the public trust will never happen, but I strongly believe that the presumptive ban would at least let us make sure that our officials know how their constituents feel before they commit their votes.

Senators, we out here in western North Dakota have been trying for seven years to take what we feel is a common sense approach to waste importation by working with the waste company once we realized we couldn't beat it. This is not what we wanted, but we had no choice under current law. Our reward has been empty promises and illegal dumping. Giving up land forever to another State's waste is a lot to ask of anyone. Leveling the playing field through a presumptive band is the only just approach. I strongly urge you to include a presumptive band in the bill you bring up in your committee. Thank you again for the chance to respond, I await your decision.

Sincerely,

DAVID OLSON.

STATEMENT OF ANTHONY CIOFALO, VICE PRESIDENT, CORPORATE AND GOVERNMENT
AFFAIRS, NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION

A. INTRODUCTION

Mr. Chairman, I am speaking today on behalf of the National Solid Wastes Management Association, part of the Environmental Industry Associations, which represents some 2,000 companies across the United States that provide products and services for a better environment. NSWMA members collect and process recyclables; own companies that turn recyclables into new products; own and operate compost facilities; and collect and dispose of municipal and other nonhazardous solid wastes. In these remarks, I will use the term solid waste to refer to this universe of wastes.

NSWMA members range in size from small, "mom and pop shops" with three or four trucks to large corporations with national operations. This industry, like others, is in a period of consolidation; many companies have merged or been acquired. As a result, our association has seen an increase in the number of members that are large, publicly traded, integrated companies—that is, they provide a menu of hauling, recycling, transfer and disposal services. These companies compete aggressively. But, so do our smaller, independent members, which still account for the majority of our members. Small companies are surviving through service flexibility and responsiveness. In some cases, when a small waste service company is bought or merged into a larger one, the former owner may depart and start yet another hauling or recycling company, and start growing again.

Altogether, the industry that we represent is dynamic, competitive, and customer-oriented. Our members take great pride in their ability to provide efficient, cost-effective, and environmentally protective services.

Almost exactly 2 years ago, NSWMA came before this committee to address the issue of interstate movement of waste and flow control. Mr. Chairman and members of this panel, today I can repeat to you what we advocated 2 years ago, because the message has lost none of its force. In fact, it has gained relevance. The message is this: restricted borders have no legitimate place in the management of solid waste. It makes neither economic nor environmental sense to give States the right to keep out other States' solid waste. It makes neither economic nor environmental sense to give communities the right to monopolize the management of solid waste created within their borders. These restrictions and controls are contrary to the trend toward bigger, better, more environmentally sound facilities, and they are contrary to the trend toward more innovative, flexible, waste management technologies and practices.

One of the most visible, important trends in U.S. policy over the past 20 years has been the deregulation of monopolistic industries and the restructuring of these industries into competing, open markets. Banking, natural gas transportation, airlines, telecommunications—one by one, the market barriers have been dismantled, the providers of products and services turned loose to compete for customers, and consumers given the right to choose their provider. The benefits have been lower prices and greater innovation. Just think of the changes that followed the dismantling of AT&T's monopoly on telephones: today, we have faxes, pagers and cell phones; all manner of identifying, routing and saving calls; E-mail; and so on. Just as important, consumers can purchase only those services that they want and need, knowing for each individual service how much they will pay. Economic deregulation and competition unquestionably offer enormous benefits.

This year, Congress is set to tackle perhaps the greatest monopoly of them all: the \$200 billion U.S. electric utility industry. While I am not qualified to comment on the specifics of electricity restructuring, I expect yet another round of significant consumer benefits. But, here is the most important analogy between the waste services industry and the electricity industry: how can it be logical or fair for Congress to contemplate opening from coast to coast the borders of the huge electric utility industry, which has been thoroughly monopolized for decades, and, at the same time, take seriously the desire of a few States to close their borders to solid waste imports, or give special rights to a handful of solid waste service monopolies so that they may continue to use flow control to exploit their customers with hidden taxes for years on end? How can interstate restrictions and flow control serve the needs of citizens and businesses or enhance the viability of the industry that provides efficient, environmentally protective services? How can this be anything but a giant waste of time? For Congress to deregulate electric utilities and reregulate waste movements would be like going into a restaurant, ordering a heart-healthy meal and a club soda, and topping it off with double chocolate layer cake and cookie dough toffee crunch ice cream. It's not what the doctor ordered.

Most of what you are hearing about the alleged need for Federal intervention in these issues is being driven by a relatively small group of States and communities. In fact, it is often driven by one level of government wishing to impose its will on another level of government. For example, a State government may wish to stop solid waste imports even when the imports provide economic benefits to local communities in the State. Or, a county government will require flow control against the will of a city, town, or village within that county. There are examples of this in many States, including New York, New Jersey, Pennsylvania, Maryland, and Minnesota.

Throughout the United States, trash is picked up every day. Recyclables are sent to market every week. The job is getting done, and it is getting done without passports, border guards, import taxes, or other restrictions on commerce. The few communities and States that believe they need help really do *not* need help in this matter. Consumers *definitely* do not need the kind of "help" being proposed.

Now, I would like to comment more specifically on these matters. I will begin with the interstate movement of solid waste.

B. INTERSTATE MOVEMENT OF NONHAZARDOUS SOLID WASTE

1. Interstate Solid Waste Movements Are Part of the Trend Toward Better Waste Management

Nonhazardous solid waste does not cross State borders randomly. It moves through an extensive and intricate web of transactions. This movement is part of a decades-long trend that has created a nationwide solid waste management infra-

structure offering multiple options for protection of human health and the environment, conservation of resources, and economic efficiency. Let me explain.

We learned the hard way how dangerous and damaging uncontrolled dumping can be. As part of the nation's environmental awakening, Congress and the States passed laws to improve the management and disposal of wastes. These laws and the regulations that followed gave communities new options such as source reduction, composting, and recycling, and they created a framework of stringent environmental protection for combustion and land disposal facilities.

No longer is it acceptable to dump wastes in the most convenient gully or openly burn trash. Comprehensive Federal rules, supplemented in many States by even tougher State standards, require today's municipal solid waste landfills to be carefully sited, designed, built, operated, closed, and cared for decades after closure. Every step in the development process must be planned. The goal is to keep wastes and their byproducts isolated in order to protect groundwater and the surrounding environment.

As a result, we have the best, most highly engineered solid waste landfills in the nation's history. They protect health and the environment—today and into the future. However, these landfills are expensive to build and operate, so they are built big for economies of scale, that is, to keep costs down. They often serve huge geographic or metropolitan areas. Some can receive several thousand tons of trash each day.

As these large, highly engineered landfills have replaced generally smaller, local and less protective ones, we have seen a drop in the total number of facilities. Indeed, we don't need as many. The U.S. Environmental Protection Agency estimated that the Nation had some 20,000 landfills in the late 1970's. In our 1995 survey, we counted fewer than 2,900 landfills taking municipal solid wastes. Still, these facilities provide the Nation more than adequate disposal capacity, as I will explain later in these remarks.

The point is that while we still have plenty of municipal solid waste landfills to serve the nation, we have fewer local facilities. Solid wastes must travel farther on average to reach disposal, and that travel can involve crossing State lines.

There are side benefits of today's bigger, better, less numerous landfills. One is that fewer NIMBY siting battles take place. A more important one is that economies of scale, along with competition among facilities, really do keep costs in line. The tipping fee, or disposal fee, at the landfills that our members own and operate averaged just over \$30 per ton in 1995, according to our survey data. A ton of trash is more than the average individual creates in a year, by the way. Of course, there is more to waste management than disposal, and household bills will reflect other costs such as hauling and recycling. But, it should be comforting to citizens and businesses to know that competition and economies of scale keep solid waste disposal affordable even as regulations and a commitment to quality by owners and operators keeps it safe and environmentally protective.

We believe the facts show that solid waste landfills offer the public a good deal: environmental protection at reasonable prices.

2. What the Data Show About Interstate Solid Waste Movement

The solid wastes that cross borders today for disposal include not only municipal trash of the sort that we produce at home and in the offices and cafeterias of our businesses, industries and institutions, but also such wastes as construction and demolition debris, automobile salvage residues, combustion ash, and other non-hazardous wastes.

In 1995, the most recent year for which NSWMA collected interstate movement data, we found the following facts:

- About 25 million tons of solid waste crossed State lines for disposal.
- By far the majority of States both exported and imported such wastes. Forty-nine States and the District of Columbia exported some portion of their wastes for disposal in other States. Only New Mexico did not. Forty-five States imported some portion of their solid wastes.
- 248 different and regular waste interactions occurred between States. We define an interaction as the movement of solid waste between two States or with one of our neighboring countries as an import or an export.
- Of these interactions, 146 (almost 60 percent) involved movement to neighboring States.

Comparing the total amount of solid wastes disposed in the Nation with the amount that moves in interstate commerce shows that only a small fraction actually crosses State lines. According to Chartwell Information Publishers, an independent publishing company that monitors solid waste disposal facilities, the Nation annu-

ally disposes of about 280 million tons of solid waste in non-captive facilities. By this estimate, less than 9 percent of the total moved across State lines in 1995.

To summarize the data on interstate movement, we can see that only a relatively small amount of solid waste crossed State lines in 1995, and these shipments were headed to facilities that must comply with extensive Federal, and in many cases, State regulations to protect health and the environment. Furthermore, most of this interstate movement is occurring between neighboring States.

The picture we see is not a disposal system out of whack, but rather an orderly, efficient and geographically reciprocal management process that works day-in and day-out the same way as other free markets work. It underscores the Founding Fathers' notion of a national economic union—the *United States*—and the constitutional need for a Commerce Clause to protect this most basic and successful democratic vision.

I have explained that interstate movement of wastes is related to the interdependence of States at a time when we have learned to build bigger and better landfills. Now I would like to discuss some additional reasons why interstate waste movements occur and make some related points. But first, permit me to try to defuse this issue a bit. What is it that really bothers opponents of interstate movement of trash? Surely, truck and rail movements of garbage are no more cause for concern than are movements of the raw materials of production—oil, chemicals, minerals, and the like. For the most part, all types of material travel safely and securely in interstate commerce every day. I suggest that few people would even be able to tell the contents of a long-haul truck transporting solid waste along a highway to its final destination.

And, what about the traffic on the nation's streets and highways? What causes more congestion and produces more air emissions: all of the trash that is moved, or all of the automobiles that we drive? I think the answer is obvious, yet few people seriously advocate banning cars from the roads.

3. Interstate Waste Movements are a Function of Geography

Many U.S. cities are situated on or near State borders. Think of Charlotte, Chicago, Kansas City, New York, Philadelphia, St. Louis, and Washington, DC., to name a few. These cities have spheres of influence that extend in all directions. They have interdependent relationships with their surrounding communities, providing work, entertainment, and other benefits to people who live outside the city limits, including those in the neighboring State. We do not prohibit commerce between cities and their suburbs across State lines. We do not ban commuter traffic between cities and adjacent States. Why should we ban exports of solid waste from these cities into the areas that benefit from the city in so many ways? As I indicated, much of the waste movement across State borders occurs between neighboring States. From my perspective, it makes no more sense to bar interstate movement of solid waste than to bar interstate movement of other kinds of goods. Indeed, my company does not think of waste collection and disposal in terms of "States"—we plan and operate on the basis of "markets"—that is, geographic regions that are defined by what makes economic sense.

Philadelphia deserves particular mention on this point. In 1978, the U.S. Supreme Court handed down the landmark decision prohibiting States from trying to interfere with cross-border shipments of trash. That decision stopped New Jersey from banning imports from Philadelphia. Today, the tables are turned, and Pennsylvania is lobbying to close the door on waste imported from New Jersey and other States. Obviously, the citizens of New Jersey won when their State government lost in court 18 years ago. We believe that, like New Jerseyans, Pennsylvanians will benefit equally from open borders.

4. Host Benefits Come From Interstate Movements

Few people think of benefits from imported solid waste, and yet another important reason why waste moves across State lines is because it is *invited in*. Many communities view waste disposal the same as other industrial activity—as a source of jobs and income. These communities agree to host a landfill that will import solid waste because they have structured arrangements in which they receive "host benefits" from the incoming waste. The benefits are often calculated as a dollar amount paid on each ton disposed. These benefits have been used to support an enormous range of services such as school programs, senior-citizen programs, emergency services, street improvements, and other important community activities. Let's not forget that every dollar in public funds a community can raise on its own is one less dollar for which it must ask the State or Federal Government.

The Reason Foundation, a non-profit public policy research and education organization, has studied host benefits at landfills and concluded that, "Top-down siting

of facilities simply is not acceptable to local residents. Host-community benefits introduce market-like decisionmaking processes that allow local citizens to make choices about whether, where, and how a disposal facility is sited.” The Reason Foundation reports that six States have legislation to encourage or require compensation and/or citizen participation in siting. Of course, host benefits don’t make much sense if waste is not coming from outside the immediate community.

5. *Capacity Assurance Has Nothing To Do with Interstate Movements*

I want to address a concern about safeguarding the authority of State governments to prescribe how much disposal capacity their communities need to have. Imports of solid waste do not undermine these kinds of State requirements. Communities have the option to add capacity beyond a prescribed amount, if they wish, in order to receive host benefits from waste imports.

Furthermore, survey data shows that imports of solid waste are not depriving States of adequate capacity. According to EIA surveys, the Nation had more solid waste disposal capacity in 1995 than it has had in the past 10 years. Fully 38 States reported more than 10 years of disposal capacity in 1995, compared to only 21 States that reported that much in 1992 and 25 in 1986.

Again, what has happened is that new and better solid waste landfills were sited and built—even in States that were importing solid waste. For example, Pennsylvania is sensitive to imports, yet it increased its statewide landfill capacity from less than 5 years in 1986 to more than 10 years in 1995. Clearly, solid waste imports have not undermined this State’s disposal capacity.

I mentioned earlier that there are different categories of waste that cross borders. Another category that I did not mention, but which also crosses borders, is hazardous waste. If States began closing borders to all sorts of waste, many exporters of hazardous wastes would have to construct new in-State hazardous waste facilities—not necessarily a popular public process. And, what about radioactive waste? Do States really want to be self-sufficient in managing these kinds of wastes? What about recyclables? Do States want to stop taking advantage of global markets in recyclables and reuse everything that they generate?

When we hear calls for restricted borders in the name of self-sufficiency, we need to pause and reflect on what might happen. A Federal right unilaterally to stop waste imports could cause adverse reactions in neighboring States. A State that closes its border to imports could find its exports unwelcome. States could become embroiled in a war of attrition, each cutting off any imports of any type of waste from anywhere else—and each being forced to manage all of its own.

Waste disposal is no different from any other kind of industrial activity. It requires freedom of commerce. Not every community needs to have its own disposal site when it has access to competing facilities that safely accommodate solid waste regionally.

In summary, only a small amount of solid waste moves between States. The movement is mostly between neighboring States. Solid wastes move for a number of very legitimate reasons, including proximity of disposal sites, lack of immediate local disposal capacity, and economics. As politically inviting as it may be, Congress should not allow States to ban the movement of solid waste any more than it should allow finished goods from one State to be banned from another State.

C. FLOW CONTROL OF SOLID WASTE

1. *Flow Control Is Inefficient and Raises Prices*

Flow control is an enormously expensive and inefficient way to manage garbage. It creates a monopoly where all local wastes must be sent for recycling or disposal. It insulates the designated facility from competition—that is, from the need to operate efficiently and with the needs of consumers in mind. As a result, flow control raises prices and hinders innovation, yet it does nothing to advance the goals of integrated waste solutions or protection of public health and the environment.

Flow control causes rates for various services to be bundled together so that consumers have no idea how much they are paying for each individual service. They have no way of knowing if they are paying too much or too little, or even whether they are getting the services they want and need. For example, through county-wide flow control, residents in a municipality can end up paying for suburban curbside recycling that does not even serve them. Businesses can end up paying for services they do not use, such as household hazardous waste collection. Subsidies like these in other industries such as telecommunications were among the primary reasons for the movement to deregulate.

Flow control is essentially a hidden tax. Its main purpose is to provide back-door tax revenue to those lucky enough to direct the flow.

2. Both Public and Private Sectors Have Been Harmed by Flow Control

During the years that flow control was in effect, that is, before the U.S. Supreme Court's *Carbone* decision in 1994 that found it interfered with the constitutional right to interstate commerce, powerful evidence was building of the harm produced by this monopolistic practice. Nor did the evidence come solely from private-sector companies deprived of markets, although that obviously has always been a great concern to us. It came from the public sector as well. We were able to collect testimony from a number of mayors and other public officials who had first-hand experience paying for flow control. (By the way, one of these mayors is now Congressman William Pascrell of New Jersey.) We heard how millions of dollars had to be diverted from municipal budgets to fund overpriced disposal. We heard how these precious dollars might otherwise have supported additional fire protection, police, education and other urgent municipal services. We heard how municipalities were paying for services they did not even receive. Here are examples of the hardships imposed by flow control:

- New Jersey, the most extensively flow-controlled State in the country, also has the nation's highest tipping fees, averaging more than \$90, \$11 per ton higher than the next highest State average. New Jersey's tipping fees exceed competitive market prices by \$110 million per year, according to U.S. District Court Judge Joseph E. Irenas in a ruling against the State's flow control regulations. In other words, New Jersey imposes a \$110-million tax on citizens and businesses through the tipping fee.

- The Hudson County Improvement Authority in New Jersey uses flow control to pay off \$130 million in bonds for an incinerator that will never be built. The county monopoly spent over \$55 million in planning, engineering studies and administrative expenses for a project that was canceled.

- In Hennepin County, Minnesota, where Minneapolis is located, the waste-to-energy plant was charging \$95 per ton of waste disposed when the actual cost of operating the facility was \$45–50 per ton. Minneapolis officials became so frustrated having to pay what amounted to \$4 million in taxes for virtually no benefit that they used the threat of hauling the city's trash out of State to win a lower tipping fee. Of course, without the legal authority of the *Carbone* decision, Minneapolis would not have had this leverage.

- In Ohio, solid waste districts planned to use flow control and district fees to collect and spend some \$1.2 billion for solid waste activities over a 9-year period. Most of those funds would have gone into district-owned or district-operated recycling programs in competition with pre-existing, private-sector recycling operations.

3. Loss of Flow Control Authority Did Not Harm Integrated Waste Management Systems

It is clear that the *Carbone* ruling was a blessing to towns and cities that felt highjacked by flow control ordinances. It gave them breathing room and, in many cases, leverage to win lower tipping fees. However, *Carbone* led to many dark and foreboding pronouncements on the part of flow control advocates. Let me cite a few from news reports at the time:

- “the world of municipal solid waste management is turned upside down.”
- “integrated municipal solid waste management will take a major step back . . .”
- “the losers . . . are likely to be many operators of such environmentally popular options as MRFs, recycling programs, composting facilities and household hazardous waste activities. . . .”
- “there will be chaos and confusion in the management of municipal solid waste.”

I will not bother to debunk in detail all of the exaggerated claims. The common message was that the world as we knew it was about to end—that flow control was integral to modern, integrated waste management, and without it all of our carefully built programs would unravel. These assertions have since been demolished by research and real-life experience. EPA delivered the mortal blow in a report to Congress 2 years ago, after 18 months of study. The agency found that public health and environmental regulation, not flow control, protects health and the environment. It found no data to suggest that flow control ensured disposal capacity or was necessary to achieve the goals of source reduction and recycling. In fact, it found that flow control played an altogether limited role in the solid waste market.

A perverse irony of flow control is that it was used in ways that did not benefit the environment. In Rhode Island and Illinois, Superfund sites were designated under flow control mandates. In Ohio, flow control was imposed in a way that would have directed waste *away* from many facilities meeting Ohio Best Available Technology (BAT) standards and *into* facilities not meeting those standards. Generators

in most Ohio solid waste districts used BAT landfills before designation took effect, yet after the initial designations were made, fewer than half of Ohio's districts had selected BAT-type landfills.

What power does local government have, without flow control, to set goals and enforce standards? Local government can ensure proper management of wastes without having to provide the actual waste service or dictate how the market will work. No one disputes that local government must set housing codes, but this does not mean that government must build the houses. No one disputes that government has a role in protecting public health and safety, but this in no way implies that government must limit the number of hospitals, or flow patients to particular doctors, nurses, and clinics. Flow control is the environmental equivalent of a government-backed monopoly on housing or health care.

4. Flow Control Is Not Necessary To Protect Bond Holders

Today, the primary claim of flow control advocates is not the imminent failure of integrated waste management, but rather the imminent failure of investor-grade ratings on bonds used to finance flow-designated facilities. Bear in mind that we are now nearly 3 years past *Carbone*. "Imminent" is not the word that springs to my mind to describe the predicament that faces these former waste monopolies today. What, in fact, has been going on the past 34 months?

According to flow control advocates, Moody's Investors Service has downgraded the bonds of 15 flow control facilities. Yet, all but one downgrade occurred within the first year after *Carbone*. In other words, in the nearly 2 years since May 1995, Moody's downgraded only one more facility's bonds.

And, what about the ratings on the bonds to begin with? Most of the downgraded bonds were either A or Baa. They were not triple-A, which is the rating that is given to the most secure investments. Even under flow control, waste facilities had risk. This point was made in the Official Statement from the Mercer County Improvement Authority's 1992 Solid Waste Facility Bond Prospectus. I quote:

There can be no assurance that in any given Fiscal Year the total tonnage (and/or cubic yardage) of solid waste which is generated within the Region will be equal to or greater than the projected tonnage (and/or cubic yardage) upon which the Authority's Tipping Fees were based . . . As a result of the following circumstances and other conditions and factors over which the Authority exercises no control, the aggregate revenues received by the Authority from its solid waste operations in a given Fiscal Year may be less than the amounts necessary for the Authority to meet its obligations to pay debt service and maintain reserves with respect to the 1992 Bonds and to pay the Authority's other expenses.

Last September, another bond rating company, Standard & Poor's, issued an update on flow control financing in its municipal edition of *CreditWeek*. The report put it this way: "Will there be rating upgrades if flow-control ordinances are reinstated through congressional legislation? The answer is no." Let me emphasize that: "*The answer is no.*" S&P makes the point that virtually all facilities that previously benefited from flow control have made the adjustment to a competitive market. In fact, S&P made this point all along. Again, to quote from last September's *CreditWeek*,

Standard & Poor's has previously stated that few ratings would be affected by the lack of flow control. The relative stability of solid waste system ratings over the past 2 years has been due in large part to the fact that many have displayed characteristics that insulate them from the loss of flow control.

According to S&P, "one of the primary indications of success in the post-*Carbone* environment is management's awareness of industry change and its ability to adapt to the business environment." Indications of what S&P calls "strong management" are efforts to maximize alternative revenue streams, cost reductions and contract renegotiations, increased focus on appropriate cost structures, unbundling of rates and services, and reduction of stranded costs.

S&P even announced that it was changing its approach to evaluating solid waste credits to reflect the realities of competition, just as it had done with public power and investor-owned utilities. According to the report, "The deregulation and increased competition facing the public power industry closely parallels the events that have occurred in the solid waste industry." Let's not undo our successes in weaning ourselves from flow control, not when we have shown how to open the doors of competition to the far larger electric utility industry.

5. *Flow Control Cannot Guarantee Trash Or Ensure A Successful Operation*

As a waste company executive, I believe strongly that the ability to operate in a competitive market is a far greater predictor of business success than a so-called guaranteed flow of business. The reason is that no one can guarantee the workings of a market—not even a highly monopolized market. The evidence shows that even when the iron jaws of flow control were operating, they could not guarantee that designated waste facilities would always have an adequate supply of trash. For example, it is pretty clear that the explosive rise of curbside recycling and the recession in the early 1990's reduced the amounts of trash that designated waste facilities were counting on. Other disposal facilities that competed in the free market also felt the pinch, but since they were built to compete—for example, by lowering their prices or improving customer service—they were far better able to handle the rise and fall of the trash tide.

Evidence also points to some designated facilities' having been oversized to begin with. Apparently, the guarantee of trash gave the designers of these facilities delusions of unlimited business. Even when studies indicated the limits of the local trash supply, they added disposal capacity, hoping somehow to be able to grow into it. This is acceptable when you are competing, not when you are being subsidized.

The dilemma of uncertainty that faces central planners was effectively described in a Feb. 4, 1997 *Washington Post* article. The article described how a "trash shortage" is playing havoc with municipal budgets in the Washington metropolitan area. Among the reasons for the shortage identified in the article were private-sector landfills that compete on the open market, but also identified were recycling programs and other efforts to reduce trash. The article reported that 12 of 18 members of a Fairfax County, Virginia citizens advisory committee on solid waste quit in January because the county Board of Supervisors ignored warnings years ago that the county would have difficulty repaying the \$250 million in bonds it sold to build an incinerator at Lorton. A question asked by one of the remaining advisors who sympathized with the quitters was why the county had gotten into the trash business to begin with. It is a question that I would hope Members of Congress seriously ask. Why not leave the business of managing trash up to the experts?

Inability to meet facility designs with adequate amounts of garbage is an international issue. News reports recently have cited garbage shortages at German incinerators because of recycling and changing waste generation habits.

6. *New Jersey Is A Good Example Of Flow Control's Failures*

Let's look more closely at one of the States crying the loudest for Federal flow control authorization. New Jersey is a State that instituted not only statewide flow control but statewide utility regulation of the waste services industry. What did it accomplish? It managed to force literally hundreds of small waste hauling companies out of business because of complex and expensive transactional costs, thus reducing the number from some 2,500 to slightly more than 600. It managed to make landfills almost impossible to site. It created massive bureaucracies in the form of waste authorities. It produced a system that dictates where all garbage must go for disposal, yet which ironically allows hundreds of thousands of tons to leave the state each year for disposal elsewhere. It produced a system that periodically must offer out-of-state sources of trash cheaper rates for disposal than in-State sources can find. Do not be fooled by claims that New Jersey has used regulation of waste disposal effectively. New Jersey's system is itself wasteful. No wonder the State feels nervous about its reliance on flow control.

Why is it that flow control has been opposed by the New York State Conference of Mayors and Municipal Officials, by a majority of mayors in New Jersey's biggest cities, and by mayors and public works directors in other States? Why has it been opposed by the National Association of Manufacturers, the National Federation of Independent Business, the New Jersey State Chamber of Commerce, the Associated Builders and Contractors, the International Council of Shopping Centers, and other business and industry groups? Why has it been opposed by the Competitive Enterprise Institute, the National Taxpayers Union, and other advocates of better, smaller government? Why has it been opposed by the Sierra Club, the Natural Resources Defense Council and other environmental groups? The answer is that flow control, any way you look at it, simply is not good government. It interferes with the objectives of an enormous range of interests. Not many issues manage to annoy so many.

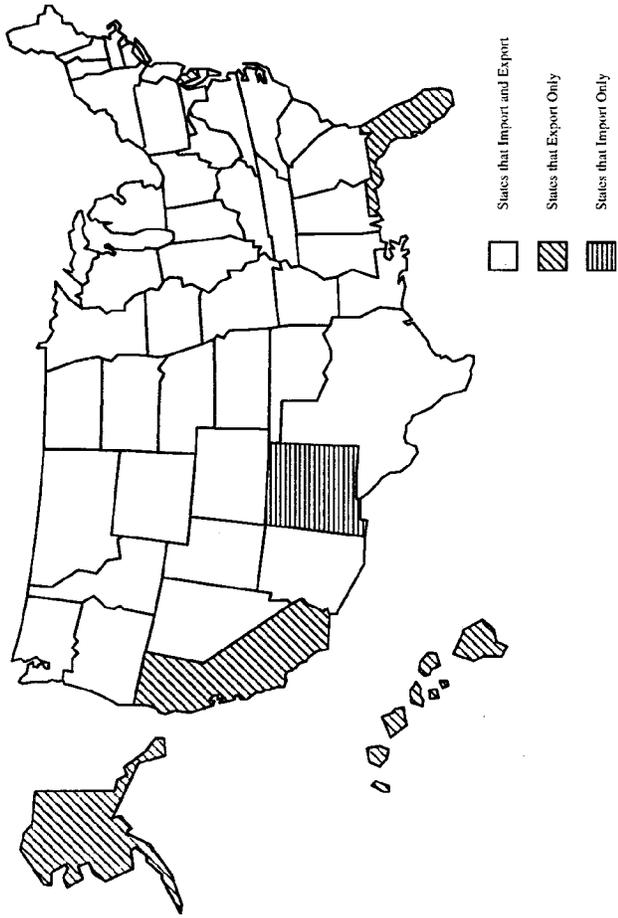
The cry for help on flow control is coming from a very few sources who happen to cry loudly. It is coming from a few local governments that made poor business decisions and now need to be bailed out. They should not be bailed out.

We deregulated telephones, banks, airlines, and other industries. We are moving ahead in electricity. Let's not force waste services to swim upstream against today's currents and become a network of flow monopolies. If we do, the day will come when

the inexorable pressures of the market start tearing the system apart. Let's avoid the pain by saying today that the free market will be allowed to remain open.

In conclusion, Mr. Chairman, flow control and interstate restrictions are wasteful, expensive and unnecessary. I urge the committee to reject any legislation embodying those concepts. I appreciate the opportunity to have offered this testimony.

Imports and Exports of Waste



INTERSTATE SOLID WASTE MOVEMENT IN 1995

STATE	IMPORTS FROM:	EXPORTS TO:
Alabama	Georgia	Georgia, Kentucky, Mississippi, Pennsylvania, Tennessee
Alaska		Washington
Arizona	California, Nevada, Texas, Utah, Mexico	New Mexico, Utah
Arkansas	Mississippi, Missouri	Illinois, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, Texas
California		Arizona, Nevada, Oregon, Texas, Utah, Washington
Colorado	Kansas, Nebraska, Utah, Wyoming	Kansas, Nebraska, New Mexico, Texas
Connecticut	New York	Illinois, Massachusetts, Michigan, New Hampshire, New York, Ohio, Pennsylvania, Rhode Island
Delaware		Kentucky, Pennsylvania, Virginia
District of Columbia		Pennsylvania, Virginia
Florida		Georgia
Georgia	Alabama, Florida, Maryland, North Carolina, South Carolina, Tennessee, Virginia	Alabama, Michigan, Pennsylvania, South Carolina, Tennessee
Hawaii		Washington
Idaho	Oregon, Washington	Montana, Oregon, Washington
Illinois	Arkansas, Connecticut, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Washington, West Virginia, Wisconsin	Indiana, Kentucky, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Wisconsin
Indiana	Illinois, Iowa, Kansas, Kentucky, Michigan, Missouri, New Jersey, New York, Ohio, Wisconsin, Vermont	Illinois, Kentucky, Michigan, Ohio, Wisconsin
Iowa	Minnesota, South Dakota	Illinois, Indiana, Minnesota, Nebraska, Wisconsin
Kansas	Colorado, Missouri, Nebraska, Oklahoma	Colorado, Illinois, Indiana, Missouri, Pennsylvania, Texas
Kentucky	Alabama, Arkansas, Delaware, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin	Illinois, Indiana, Ohio, Pennsylvania, Tennessee
Louisiana	Arkansas, Michigan, Texas	Kentucky, Mississippi, Texas
Maine	Massachusetts, New Jersey, New Hampshire, Rhode Island, Vermont	Massachusetts, New Hampshire, Pennsylvania, Rhode Island
Maryland	New York, Pennsylvania, Virginia	Georgia, Kentucky, Pennsylvania, Virginia, West Virginia, Wisconsin
Massachusetts	Connecticut, Maine, New Hampshire, New York, Rhode Island, Vermont	Kentucky, Maine, New Hampshire, New York, Pennsylvania, Vermont
Michigan	Connecticut, Georgia, Illinois, Indiana, Minnesota, New Jersey, Ohio, Pennsylvania, Texas, Virginia, Wisconsin, Canada	Illinois, Indiana, Kentucky, Louisiana, North Dakota, Ohio, Pennsylvania, Wisconsin
Minnesota	Illinois, Iowa, North Dakota, Wisconsin	Illinois, Iowa, Michigan, North Dakota, South Dakota, Texas, Wisconsin
Mississippi	Alabama, Arkansas, Louisiana, Tennessee	Arkansas, Kentucky, Tennessee
Missouri	Arkansas, Illinois, Kansas	Arkansas, Illinois, Indiana, Kansas, Kentucky, Tennessee
Montana	Idaho, North Dakota, South Dakota, Wyoming	North Dakota
Nebraska	Colorado, Iowa, South Dakota	Colorado, Illinois, Kansas, Wyoming
Nevada	California, Utah	Arizona, Pennsylvania, Utah
New Hampshire	Connecticut, Maine, Massachusetts, Rhode Island, Vermont	Maine, Massachusetts, New York, Pennsylvania
New Jersey	New York	Illinois, Indiana, Kentucky, Maine, Michigan, Ohio, New York, Pennsylvania, Texas, Virginia, West Virginia

INTERSTATE SOLID WASTE MOVEMENT IN 1995

STATE	IMPORTS FROM:	EXPORTS TO:
New Mexico	Arizona, Colorado, Texas	
New York	Connecticut, Massachusetts, New Hampshire, New Jersey, Ohio, Pennsylvania, Vermont, Canada	Connecticut, Illinois, Indiana, Kentucky, Maryland, Massachusetts, New Jersey, Ohio, Pennsylvania, Vermont, Virginia, West Virginia
North Carolina	South Carolina, Tennessee, Virginia	Georgia, Kentucky, Pennsylvania, South Carolina
North Dakota	Michigan, Minnesota, Montana, South Dakota	Minnesota, Montana, South Dakota
Ohio	Connecticut, Illinois, Indiana, Kentucky, Michigan, New Jersey, New York, Pennsylvania, West Virginia, Canada	Illinois, Indiana, Kentucky, Michigan, New York, Pennsylvania, West Virginia
Oklahoma	Arkansas	Kansas, Kentucky, Texas
Oregon	California, Idaho, Washington	Idaho, Washington
Pennsylvania	Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, Nevada, New Jersey, New York, North Carolina, Ohio, Rhode Island, South Carolina, Virginia, Vermont, West Virginia, Canada, Puerto Rico	Illinois, Kentucky, Maryland, Michigan, New York, Ohio, Virginia, West Virginia
Rhode Island	Connecticut, Maine	Maine, Massachusetts, New Hampshire, Pennsylvania
South Carolina	Georgia, North Carolina	Georgia, Kentucky, North Carolina, Pennsylvania
South Dakota	Minnesota, North Dakota	Iowa, Montana, Nebraska, North Dakota
Tennessee	Alabama, Arkansas, Georgia, Kentucky, Mississippi, Missouri, Virginia	Georgia, Illinois, Kentucky, Mississippi, North Carolina, Texas
Texas	Arkansas, California, Colorado, Kansas, Louisiana, Minnesota, New Jersey, Oklahoma, Tennessee, Wisconsin, Mexico	Arizona, Louisiana, Michigan, New Mexico
Utah	Arizona, California, Nevada, Wyoming	Arizona, Colorado, Nevada, Wyoming
Vermont	Massachusetts, New York	Indiana, Maine, Massachusetts, New Hampshire, New York, Pennsylvania
Virginia	Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania	Georgia, Kentucky, Maryland, Michigan, North Carolina, Pennsylvania, Tennessee, West Virginia
Washington	Alaska, California, Hawaii, Idaho, Oregon, Antarctica, Canada	Idaho, Illinois, Oregon
West Virginia	Maryland, New Jersey, New York, Ohio, Pennsylvania, Virginia	Illinois, Kentucky, Ohio, Pennsylvania
Wisconsin	Illinois, Indiana, Iowa, Maryland, Michigan, Minnesota	Illinois, Indiana, Kentucky, Michigan, Minnesota, Texas
Wyoming	Utah, Nebraska	Colorado, Montana, Utah
Antarctica		Washington
Canada		Michigan, New York, Ohio, Pennsylvania, Washington
Mexico		Arizona, Texas
Puerto Rico		Pennsylvania



NATIONAL SOLID WASTES
MANAGEMENT ASSOCIATION

April 28, 1997

The Honorable John Chafee
The Honorable Max Baucus
Environment and Public Works Committee
United States Senate
Washington, D.C. 20510-6175

Dear Senators Chafee and Baucus,

In your April 1, 1997 letter, you asked me to answer the following question:

"In your statement, you oppose both flow control and interstate as unnecessary interferences with interstate commerce. You compare the situation to the electric utility industry. You are right that Congress is contemplating de-monopolizing probably the most monopolized industry to make the electricity industry more efficient and create lower costs for consumers. However, one of the most controversial issues is what the industry calls, "stranded costs": who pays for the inefficient costs due to their old monopoly status?"

My statement about electric utility deregulation was made in the context of the benefits consumers across America will experience when deregulation turns inefficient monopolies into competitive companies. Regulation has long protected the electric utility industry from the rigors and benefits of competition.

By contrast, the solid waste industry has long been competitive and market oriented. Flow control with its attendant inefficiencies and high cost is a relative newcomer to solid waste management. Fortunately, the Supreme Court's decision in the Carbone case effectively prevented solid waste from becoming a monopoly.

As to stranded costs, I will be the first to say that I am not an expert on stranded costs in the electric industry. It is possible that those costs have been exaggerated. We have learned, after all, that the threat of bond default was greatly exaggerated for flow control facilities. In May, 1995, after downgrading 14 flow control facility bonds, Moody's Investors Service warned, "additional downgrades are likely without a Congressional solution." In the almost two years since that statement was made, Moody's has only downgraded one additional offering. They have never cited one instance of a missed bond payment.

Moreover, I see a significant distinction between bonds for electric utility bonds and bonds for flow controlled solid waste facilities. When investors bought electric utility bonds they had no reason to believe that the utility would be de-monopolized and forced to operate competitively.



Flow control facility bonds are different. Investors who read the bond prospectuses and have even minimal knowledge of solid waste, knew that waste generation is uneven over the years and is subject to fluctuations based on the strength of the economy and the level of recycling. Prospectuses issued several years before the Supreme Court decision warned investors that even with flow control, sufficient levels of garbage might not exist to meet the facility's revenue requirements.

As to "who pays", I am not convinced that any flow control facility is in serious financial danger. In the three years since the Supreme Court decision, these facilities have learned to compete and to survive without flow control. The rigors of the marketplace forced them to operate leaner and more efficiently.

However, let's assume a worst case scenario. Let's assume a facility defaults on its bonds. What then? As you know, the state of New Jersey still enforces its statewide flow control system. NSWMA testified earlier this year at legislative hearings in Trenton on life after flow control. We endorsed a three part plan:

- unbundle costs so that taxpayers can see the costs of each component of the flow control system;
- require a competitive tip fee;
- conduct independent Audits of the system's finances to find ways to cut costs and become competitive.

NSWMA also testified that if a facility is truly bankrupt, taxpayers will have to pay. We have acknowledged this in the past. However, any default is highly unlikely. Moreover, under flow control, taxpayers were unknowingly paying outrageously high tipping fees at flow controlled facilities that had no incentive to be cost-effective. Without flow control, taxpayers are benefitting from lower, more competitive tipping fees. In those rare cases where taxes could be raised to pay for bonds, taxpayers will still pay less overall for solid waste management than they paid under flow control.

Restoration of flow control will not guarantee any additional protection to facility bonds. Restoration of flow control does not guarantee that an area will create enough waste to meet a facility's needs. All that restoration of flow control will do is to allow the facilities to be managed with no regard for efficiency or competition, just like any other monopoly.

I hope this answers your question. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,



Tony Ciofalo

STATEMENT OF HON. KENT CONRAD, U.S. SENATOR FROM THE STATE
OF NORTH DAKOTA

Mr. Chairman, thank you for this opportunity to testify before the Senate Environment and Public Works Committee. I greatly appreciate you holding this hearing to discuss interstate shipments of waste, and I commend you for holding this hearing so early in the 105th Congress. This is not a new issue to this committee or to the Senate, and the problem only grows more and more serious as we delay passing this important legislation.

According to the Congressional Research Service, an estimated 16 million tons of municipal solid waste travels across State lines each and every year. And the problem will only grow in the future. Last May, New York City Mayor Rudolph Giuliani and New York Governor George Pataki announced an agreement to close the city's last landfill, the Fresh Kills landfill. Without additional landfill space in New York, an additional 4 million tons of municipal solid waste will be on the interstate market every year after Fresh Kills closes on December 31, 2001. That will mean about a 25 percent increase in the amount of municipal solid waste traveling across State lines every year.

Landfills across the country are filling up, and communities are searching for new places to send their garbage. They are looking at places like North Dakota, where the air, water, and soil have not been spoiled by pollution and where local communities may be willing to take tremendous amounts of money in exchange for landfill space. Whether they want this imported waste or not, States and surrounding communities are almost powerless to stop the flow of garbage across their borders. Further, residents of local communities that agree to accept out-of-state waste often do not have all the information they need to make an informed choice to open their landfill space to imported garbage.

Mr. Chairman, out-of-state waste has already come to my State of North Dakota. We have been accepting industrial waste from General Motors plants from all across the country—34 States I am told—although GM has recently begun phasing out the North Dakota landfill to send their waste to another facility in another State. We also import municipal solid waste incinerator ash from Minnesota. And one waste company tried for many years to open a superdump in North Dakota that would take nearly twice as much municipal solid waste as the entire State of North Dakota produces. My State is not unique in its situation; this is happening all across the country. In fact, many States import significantly more waste than North Dakota.

Mr. Chairman, the residents of my State and citizens across the country are tired of being powerless to regulate interstate waste. In fact, just last year North Dakota's voters approved an initiated measure that was designed to deter imports of other States' waste into North Dakota. That measure was ruled unconstitutional by the U.S. District Judge. In the Judge's decision, he wrote, "The reality appears to be that trash is trash, and any law classifying it into home-grown vs. foreign will not work."

We all know, Mr. Chairman, that unless Congress acts to give States and localities the authority to regulate and reject interstate waste, this situation will continue.

I have introduced legislation to give States the authority to regulate and reject municipal solid waste from other States in each of the past three Congresses. Just 3 weeks ago I introduced S. 384, which is very similar to the legislation I introduced in the 103rd and 104th Congresses.

S. 384 is really very simple. First, it gives States the authority to regulate interstate waste. If a State wants to reject new solid waste shipments, my bill would allow that.

Second, it requires that affected local governments formally approve of any waste import. This gives the communities the ability to veto proposed shipments of out-of-state waste.

Third, it provides an opportunity for the area surrounding the host community to be involved in a decision to accept out-of-state waste. A decision on siting a solid waste landfill, especially one that will take large amounts of imported waste, must be a collective one, and a small community alone should not be able to make a decision that will affect a much larger area.

Finally, my bill requires that waste companies publicly release all the relevant information about their proposed landfill before a community makes a decision on it. This information should include estimated environmental impacts and mitigation, economic impacts, planned expansion, financial disclosure, and records of past violations by the owner and operator of the proposed disposal site. Waste companies hold up the promise of jobs and economic incentives, but they do not want to reveal the

potential risks involved in their plans. In many cases, they may not even reveal their overall plans until it is too late to stop them. One practice I have seen involves having a local developer purchase a site and get a permit to dispose of modest amounts of solid waste. The big interstate waste company then buys out the local party and aggressively expands the site's permit. The local community doesn't have a chance. This isn't fair and cannot be allowed to continue. Communities must be able to make informed choices.

Mr. President, we have been working on the interstate waste problem in the Senate for many years now. The problem has not gone away and it will not go away without congressional action. The trash is still moving, and States and communities are almost powerless to stop it. It is time to enact strong interstate waste legislation into law.

Thank you again, Mr. Chairman, for the opportunity to present this testimony at today's hearing.

STATEMENT OF HON. SLADE GORTON, U.S. SENATOR FROM THE
STATE OF WASHINGTON

Mr. Chairman, I want to commend you for holding this hearing on solid waste issues. The number of Senators and House members scheduled to testify this morning on behalf of their State's interests in this area is a true indication of the importance of this issue. The mutual interest of so many of my colleagues also tells me that Washington State is by no means alone in its desire to have specific needs addressed in any comprehensive legislation resolving the many problems associated with the movement of solid waste.

In recent years, our local communities in Washington State have shouldered the enormous responsibility of managing solid waste to protect public health and the environment, minimize financial costs and legal liabilities, and offer prudent services such as recycling. We have developed integrated systems to accomplish these important goals, and flow control—the legal authority given to States and local governments to designate where municipal solid waste must be taken—is an important part of this process.

While Washington State is by no means alone in its dependence on local flow control agreements prior to the Supreme Court's 1994 *Carbone* decision, our State has authorized flow control in different ways, and its jurisdictions have implemented flow control in a variety of ways. In addition to highlighting some of these differences, I also hope to stress the need to avoid any "one-size-fits-all" solutions to this problem.

Washington State counties with the notable exception of Seattle, take the lead in providing solid waste planning, management, and disposal services. Counties acquire the waste collected in the incorporated cities and towns through interlocal agreements between the county, each city, and town located within that county. Cities are able to direct waste to the county system either by contracts with private haulers or flow control ordinances. Because solid waste management tends to be the responsibility of counties rather than cities and towns in Washington State, these larger jurisdictions have a number of facilities, and therefore do not require waste to be brought to a particular facility. Instead, counties direct that waste to be brought to any facility within the county system.

King County, the most populous county in my State, has a solid waste system which consists of two landfills and seven transfer stations, all of which are owned and operated by the King County Solid Waste Division. The County utilizes its flow control authority to direct municipal solid waste to any disposal facility within its system. The King County Solid Waste Division does not incur debt on a facility by facility basis, but instead incurs debt for general system Improvements that affect multiple facilities.

Another practice used in my State is that of the city of Seattle. The City uses both its solid waste contracting authority and flow ordinances to all non-recycled waste generated in the City to Union Pacific's Seattle Intermodal Facility. At that point, compacted solid waste in sealed containers is transferred from truck to train for delivery to Waste Management's Columbia Ridge Landfill in Arlington, Oregon. Although the City directs waste to a private railyard, the City has invested significant resources to modify two different public transfer stations.

Seattle's long-term disposal contract requires the City to (1) direct all the City's waste to a privately operated landfill and (2) invest significant amounts in transfer station facilities. If that contract were not enforceable, the City estimates that its monthly rates would be roughly \$2 per month higher for every resident in the City. In addition, the City's ability to equitably finance its federally required expenditures

to close two previously used landfills at a net capital cost of \$76 million would be jeopardized if its flow control ordinance could not be enforced through a transition period.

In addition to the strong role of local governments in solid waste management decisions in my State, the State legislature has also taken an active interest in this issue. In December 1989, the legislature enacted the "Waste Not Washington Act." This law requires Washington State communities to implement solid waste reduction plans to achieve a solid waste reduction goal of 50 percent for 1995. The law made local governments responsible for planning and implementing solid waste management programs, including recycling and disposal options.

The result of the legislature's efforts in this area has been one of the most progressive and successful recycling programs in the nation. The city of Seattle, for example, had a residential recycling rate of 49 percent in 1995. Specific commodity recycling rates are even higher—newspaper is at 75 percent; yard waste is at 85 percent, with a 92 percent residential rate. In short, the Washington State law has led to some of the lowest cost recycling systems in the country and the lowest cost disposal systems in the Pacific Northwest.

The final area where our State is particularly unique in its management of solid waste is the way we pay for our facilities. Many of our communities have financed their facilities through the use of general obligation bonds or bonds which were a call or a lien on taxpayers through the property that they own in particular counties. Previous attempts to grandfather flow control agreements that predate the 1994 Supreme Court decision have failed to address the use of "general obligation bonds"—only focusing on revenue bonds.

Another heavily populated county in my State, Snohomish County, has financed improvements to its solid waste system through a combination of revenue bonds and general obligation bonds. The decision in each case was made based on prevailing rates, market conditions, and the County's debt capacity. But in all cases even when general obligation bonds were being backed by the full faith and credit of the County, solid waste revenues were expected to be used to repay those bonds. Thus flow control language which only protects revenue bond investments would only partially protect Snohomish County's commitments. As of 1995, Snohomish County had issued \$26.7 million in general obligation bonds for a variety of solid waste activities to be paid back in the year 2007.

Clearly, a one size solution that addresses the *Carbone* decision will not work in Washington State. Because of the unique way in which Washington State and other States have implemented flow control authority—Congress must take a broader approach. Any legislation addressing the need to grandfather the practice of flow control prior to the 1994 Supreme Court decision must include the concept of solid waste systems, and therefore make the bill applicable to political subdivisions in Washington State.

Comprehensive flow control legislation must also address State attempts to undertake recycling programs in accordance with its adopted waste management plan. We must preserve and encourage existing State laws like the one enacted in my State which has led to substantial increases in recycling rates.

Any future attempts to grandfather flow control agreements must not focus exclusively on revenue bonds and must adequately address the use of general obligation bonds. Washington State communities should not be penalized simply because they elected one type of financing mechanism over the other.

Finally, any future legislation relating to flow control must clarify that nothing within is intended to have any effect on the current or future authority of cities to franchise, license, or contract for municipal solid waste collection, processing, or disposal. The flow control legislation initially considered by the Senate in the 104th Congress contained language that arguably could have invalidated this authority, which has been upheld by several Federal appeals court decisions since the *Carbone* decision. I am aware that many cities and counties across the Nation share our concern on this matter.

Failure to include these reforms in a comprehensive flow control package will lead to the failure of local jurisdictions in my State to meet outstanding bond and contract obligations, increased costs to local governments and citizens, and the possible reductions of valuable services such as recycling.

Mr. Chairman, I was very disappointed that our efforts to incorporate Washington State's concerns in a comprehensive bill addressing solid waste matters were not accepted by the Senate last year. All we are asking for is the continuation of a flow control regime which may very well be the most successful of any State in the United States.

One size does not fit all when we are legislating in a field which States and localities have played a dominant role. In Washington State's case, one size certainly

does not fit all when we are dealing with a State that has been as progressive and successful with its flow control program. I hope your committee will be willing to work with Senator Murray and me on these very important matters to our constituents. Thank you.

PATTY MURRAY
WASHINGTON

COMMITTEES:
APPROPRIATIONS
BUDGET
LABOR AND HUMAN RESOURCES
SELECT COMMITTEE ON ETHICS
VETERANS' AFFAIRS

United States Senate

WASHINGTON, DC 20510-4704

Statement for the Record on
The Importance of Interstate Waste Legislation
by Sen. Patty Murray
for the Senate Committee on the Environment and Public Works
on March 18, 1997

I would like to add my voice to many others from the across the country that the federal government must address the flow of interstate waste and must do so quickly. Mr. Chairman, I regret that I was unable to participate in this important hearing in person.

When the United States Supreme Court ruled on the *Carbone* case in 1994, it threw many local governments into a tailspin. They had made long-term financial and other decisions based on the continuation of the rules of interstate waste regulation in effect at that time. Now, many fear that private solid waste haulers will take waste to disposal facilities that may be less expensive than local government facilities. While this may appear to benefit consumers, those consumers are often the same taxpayers who financed the bonds to build the local government facilities. The rules of the game changed mid-stream on local governments and they need a resumption of federal authority on waste control to allow them to meet their financial and other obligations.

One rather simple way to solve the problem faced by many jurisdictions in Washington state is to support flow control authority for those governments that acquired debt prior to the *Carbone* decision only until that debt is repaid. I understand this position is generally supported by the primary parties involved in the flow control debate.

This is a complex issue, Mr. Chairman. I simply want to add my name to the substantial list of our colleagues concerned about this issue who urge this congress to take action on interstate flow of waste. I look forward to working with you. Please do not hesitate to call upon me or my staff to help resolve this vital issue.



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STATEMENT OF HON. CHARLES S. ROBB, U.S. SENATOR FROM THE
COMMONWEALTH OF VIRGINIA

Mr. Chairman, when I first introduced legislation 3 years ago to give local governments control over interstate waste, I thought it provided a compromise that would allow us to resolve this issue quickly. While I still believe this legislation provides an excellent solution to the problem of unwanted interstate trash, the resolution has not come about quickly or easily.

Therefore, I have reintroduced the Local Government interstate Waste Control Act in the 105th Congress, hoping that we can finally empower localities and prevent them—literally—from being dumped on without their consent. The heart of the legislation is allowing local governments to decide for themselves whether to accept trash from another State. Local governments are charged with the responsibility of finding a place to put the garbage their communities generate. They are also responsible for land use planning. It seemed logical, therefore, to allow local governments the right to say “no” to those who want to build unwanted waste disposal facilities in the community. It seems logical as well to give them the right to say “yes” to out-of-state trash, if they can condition the disposal in a way that benefits the locality.

Unfortunately, under existing law a locality cannot ban waste generated out-of-state. Under the Commerce Clause of the Constitution, only Congress is allowed to regulate commerce among the States. And the Supreme Court has ruled quite clearly that even the interstate transportation and disposal of trash qualifies for protection from unauthorized State or local interference under the Commerce Clause. If, however, Congress delegates to localities the authority to regulate commerce in garbage, then local governments could either choose to ban trash from out-of-state, or they could choose to accept out-of-state waste, but impose conditions. Such conditions may include requiring the landfill developer to accept all of the locality’s waste for little or no charge, to provide a recycling program for the community, or to pay the local government a percentage of the revenue generated by the landfill. While not every community may be willing to host a private landfill, it should remain an option for those that do. And the option to say “no” provides the leverage a locality needs to bargain effectively when it decides to say “yes” to a landfill developer.

The legislation I’ve introduced accomplishes the goal of empowering localities by providing that no interstate waste can be disposed of in a locality unless the local government has given its consent affirmatively. I believe this is a more effective method of dealing with the problems associated with out-of-state waste, because it goes to the heart of the issue. Interstate disposal of trash is a problem only when the interstate garbage is unwanted. My legislation guarantees that out-of-state waste does not go where it is not wanted. And where it is wanted, it provides a place at the bargaining table for the community that chooses to accept it.

This solution to the issue protects communities without overly restricting interstate commerce. By not allowing walls to be built up around entire States, it has the advantage of avoiding the Balkanization of the States with regard to this article of commerce, which is a situation the Founding Fathers sought to avoid through the Commerce Clause of the U.S. Constitution.

I hope we can resolve this issue this year, and I hope we can use as a basis legislation that delegates to local governments the right to prohibit unwanted out-of-state garbage from their communities. I would like to commend the committee for holding this hearing, and I would especially like to commend Senator Baucus, who introduced similar legislation last Friday. I look forward to working with him and any others who believe the solution to this problem rests with those who have historically been given the authority to decide how to deal with trash—local governments.

I’d like to say one final word regarding flow control. As I have stated repeatedly in the past, I believe that Congress needs to provide protection for communities who relied on flow control prior to the Supreme Court’s ruling in *C & A Carbone v. Clarkstown*, 511 U.S. 383 (1994).

While I believe that competition in waste disposal is appropriate over the long term, there are many communities who borrowed funds to construct waste disposal facilities relying on flow control to assure repayment. These local governments acted in good faith based on the law as it existed at the time.

There are local governments in Virginia that have local revenue bonds issued before the Supreme Court’s ruling for existing facilities which could be irreparably harmed without some protection enacted by Congress. Time is working against these communities, and I would urge this committee to support a flow control bill that protects localities with existing facilities and existing debt.

PAUL D. WELLSTONE
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COMMITTEES:
LABOR AND HUMAN RESOURCES
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STATEMENT OF SENATOR PAUL WELLSTONE BEFORE
THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

MARCH 18, 1997

Mr. Chairman and Mr. Baucus, I thank you for the opportunity to provide a statement for this hearing today. I also appreciate you holding this hearing to discuss an issue which is of great importance to communities across America: solid waste flow control. This issue is of great importance to the state of Minnesota, and many counties in my state face dire financial circumstances because of their lack of ability to exercise flow control.

As you know, many counties built solid waste disposal facilities prior to the 1994 Supreme Court decision on flow control through issuance of bonds. State and local governments have long been responsible for how solid waste will be managed, but Federal actions obviously influence how state and local governments have approached their solid waste problems. State and local governments met the mandate of the Resource Conservation and Recovery Act (RCRA) by adopting approaches to solid waste that emphasized recycling, composting, incineration, and waste reduction as part of that responsibility. But with the Supreme Court's ruling, these counties are now saddled with debt and face the threat of litigation by private waste haulers.

Minnesota counties have issued more than \$300 million in bonds for resource recovery facilities, and 17 counties have relied on flow control for these facilities. Even though no counties have yet to default, the situation is increasingly critical for these counties, and Congressional action is necessary to head off this calamity.

Hennepin County, Minnesota alone faces over a \$100 million judgment in a lawsuit by a private waste hauler, if the award is upheld on appeal. Other such lawsuits are feared in other counties.

The combined debt of Minnesota counties associated with flow control totals nearly \$400 million, which many experts believe is understated since the debt obligations are self-reported. I am submitting to the Committee a table prepared by the Association of Minnesota Counties that illustrates each Minnesota county's debt obligations associated with flow control.

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The bottom line is that counties, acting on good faith and in accordance with relevant laws, incurred large debt obligations to address their solid waste problems. Now, Congress must act to assist these counties. If Congress does not act, communities across America and in Minnesota will face higher taxes and fees, and cutbacks in recycling programs.

Mr. Chairman and Mr. Baucus, the rules have been changed in the middle of the game. Now, citizens in my state, and citizens across the country, are being forced to pay. I urge you to consider legislation to address this pressing problem.

Minnesota Counties: Solid Waste Debt Obligations

COUNTY NAME	DEBT
AITKIN	\$0.00
ANOKA	\$70,250,000.00
BECKER	\$0.00
BELTRAMI	\$0.00
* BENTON	\$0.00
BIG STONE	\$7,500,000.00
* BLUE EARTH	\$0.00
BROWN	\$0.00
CARLTON	\$1,255,000.00
CARVER	\$0.00
CASS	\$1,800,000.00
CHIPPEWA	\$0.00
CHISAGO	\$0.00
CLAY	\$0.00
CLEARWATER	\$0.00
COOK	\$0.00
COTTONWOOD	\$920,000.00
CROW WING	\$5,000,000.00
* DAKOTA	\$0.00
DODGE	\$275,000.00
FARIBAULT	\$5,000,000.00
FILLMORE	\$722,742.00
FREEBORN	\$0.00
GOODHUE	\$17,000,000.00
GRANT	\$0.00
HENNEPIN	\$129,045,000.00
HOUSTON	\$0.00
HUBBARD	\$0.00
ISANTI	\$0.00
ITASCA	\$0.00
JACKSON	\$500,000.00
KANABEC	\$18,075,000.00
KANDIYOHI	\$3,900,000.00
KITTSON	\$1,400,000.00
KOOCHICHING	\$2,100,000.00
* LAC OUI PARLE	\$0.00
LAKE OF THE WOODS	\$0.00

(*) INDICATES COUNTIES THAT HAVE NOT ISSUED BONDS BUT ARE FINANCIALLY AFFECTED BY LOSS OF FLOW CONTROL

Minnesota Counties: Solid Waste Debt Obligations

COUNTY NAME	DEBT
LAKE	\$0.00
* LE SUEUR	\$0.00
* LINCOLN	\$0.00
* LYON	\$0.00
MCLEOD	\$0.00
MAHNOMEN	\$0.00
MARTIN	\$7,900,000.00
MARSHALL	\$0.00
MEEKER	\$0.00
MILLE LACS	\$13,640,000.00
MORRISON	\$0.00
MOWER	\$0.00
* MURRAY	\$0.00
NICOLLET	\$220,000.00
* NOBLES	\$0.00
NORMAN	\$0.00
OLMSTEAD	\$40,500,000.00
OTTERTAIL	\$0.00
PENNINGTON	\$790,000.00
PINE	\$0.00
* PIPESTONE	\$0.00
POLK	\$4,422,735.00
POPE-DOUGLAS	\$3,900,000.00
RAMSEY/WASHINGTON	\$22,300,000.00
RED LAKE	\$0.00
* REDWOOD	\$0.00
RENVILLE	\$0.00
RICE	\$775,000.00
* ROCK	\$0.00
ROSEAU	\$0.00
SCOTT	\$11,000,000.00
* SHERBURNE	\$0.00
* SIBLEY	\$0.00
ST. LOUIS	\$11,000,000.00
* STEARNS	\$0.00
* STEELE	\$0.00

(*) INDICATES COUNTIES THAT HAVE NOT ISSUED BONDS BUT ARE FINANCIALLY AFFECTED BY LOSS OF FLOW CONTROL

Minnesota Counties: Solid Waste Debt Obligations

COUNTY NAME	DEBT
STEVENS	\$800,000.00
SWIFT	\$700,000.00
TODD	\$0.00
TRAVERSE	\$0.00
WABASHA	\$0.00
WADENA	\$0.00
WASECA	\$83,000.00
* WATONWAN	\$0.00
WILKON	\$0.00
WINONA	\$0.00
WRIGHT	\$9,393,000.00
YELLOW MEDICINE	\$370,000.00
TOTAL DEBT OBLIGATION	\$392,536,477.00

(*) INDICATES COUNTIES THAT HAVE NOT ISSUED BONDS BUT ARE FINANCIALLY AFFECTED BY LOSS OF FLOW CONTROL

BILL LUTHER
SIXTH DISTRICT, MINNESOTA
ANOKA, WASHINGTON AND CENTRAL DAKOTA COUNTIES

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March 27, 1997

Senator John Chafee
Chairman

Senator Max Baucus
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Baucus:

I write to thank you for convening this hearing and for examining this issue of restoration of municipal solid waste flow control authority. Flow control is a top priority for county governments throughout Minnesota and across the nation. The establishment of legal flow control authority is particularly important for Washington, Anoka, and Dakota Counties in my district.

In response to the Resource Conservation and Recovery Act and other environmental legislation passed by Congress in the 1980s, counties nationwide proceeded in good faith to adopt flow control ordinances as a means to provide revenue for newly constructed and environmentally friendly waste disposal plants. These plants were constructed to comply with federal legislation and to reduce the use of more traditional, less environmentally friendly disposal methods, such as landfills.

In May 1994, an unexpected Supreme Court decision ruled flow control ordinances invalid without further Congressional action. This has led to administrative and litigation nightmares for everyone involved – counties, haulers, and taxpayers.

Thank you for your continued efforts to address this important matter. I truly appreciate the leadership and hard work exercised by the Senate Environment and Public Works Committee in considering this issue.

Sincerely,

BILL LUTHER
Member of Congress

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UNITED STATES
HOUSE OF REPRESENTATIVES

STATEMENT FOR THE RECORD
REPRESENTATIVE DAVID MINGE
FLOW CONTROL HEARINGS
THE U.S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
MARCH 18, 1997

Dear Mr. Chairman Chafee and Senator Baucus:

On behalf of the people of Minnesota, I commend you for convening this hearing and for taking up the issue of solid waste flow control. The management of solid waste flow is an issue of serious concern to many local governments across the country. The Second Congressional District of Minnesota has been particularly affected.

The Resource Conservation and Recovery Act (RCRA) passed by Congress in 1976 required states to meet certain health and environmental standards in the disposal of municipal waste. Minnesota responded to the directives of Congress and enacted a Comprehensive State Solid Waste Management Plan. When Congress halted funds for state plans in 1980, many states continued disposing their waste in landfills. Minnesota, however, continued the development and implementation of its plan, which exceeds the minimal standards originally mandated by Congress. Our plan is widely considered a model for the rest of the country.

In order to comply with federal mandates, communities in Minnesota borrowed more than \$400 million to build environmentally-sound disposal sites for municipal waste. To ensure sufficient revenues to meet their bond obligations, many local officials designated that municipal waste must be disposed at their facilities.

These same Minnesota counties are now being penalized for complying with and exceeding RCRA mandates. A good illustration of the problem local officials face without flow control legislation is in Wright County, Minnesota. Twenty-five employees lost their jobs when Wright County was forced to close its innovative, high-tech composting facility. Without flow control legislation, this facility will remain closed and the cost to pay off the bonds for this facility will be paid by a special yearly assessment on all property owners.

Opponents of flow control claim that the free market will result in economically-efficient and environmentally-sound waste disposal. The economics which drive haulers to challenge the use of flow control reflect a short-term focus on tipping fees at landfills and ignore the long-term

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costs of clean up and environmental degradation. The only way to ensure long-term availability of environmentally-sound waste management options and to encourage waste reduction, reuse and recycling is by granting the power of flow control.

State and local governments in Minnesota took the initiative in good faith and responded to Congress' directives for managing solid waste. Their efforts are at risk if Congress fails to give them the power of flow control. I urge you to consider enactment of flow control legislation this year.

**Standard & Poor's Ratings Services
Written Testimony Submitted to the
United States Senate Committee on Environment and Public Works
March 18, 1997**

Standard & Poor's would like to thank the United States Senate Committee on Environment and Public Works for its invitation to submit written testimony and is pleased to provide information on its bond credit ratings for solid waste and resource recovery debt. We hope this information is useful to the Committee in its deliberations.

Standard & Poor's credit ratings for solid waste and resource recovery debt are issue-specific credit ratings. Issue-specific credit ratings provide a current opinion of creditworthiness with respect to a specific bond issue. This opinion may reflect the creditworthiness of guarantors, insurers or other forms of credit enhancement on the obligation and may take into account statutory and regulatory preferences. An issue-specific credit rating such as those maintained on solid waste and resource recovery revenue debt does not reflect the general obligation of a community or of the issuer of the debt.

Bond ratings for solid waste projects reflect primarily the underlying economics of a particular project and its competitiveness. Standard & Poor's criteria for assessing the credit of bonds issued for solid waste financings focus on four interrelated factors, all of which capture elements of the competitive position. These factors are:

- * Security provisions of the specific financing;
- * The service area economy;
- * Operations; and
- * Project finances and costs.

Any special concerns related to solid waste management in each state are included in the analysis of these factors. Areas that could differ from state to state are rate regulation, environmental laws, the power to franchise haulers, and the level of government responsible for implementing solid waste disposal plans. Unique features applicable to credit quality will be reviewed on a case-by-case basis.

Standard and Poor's has 57 ratings on about \$5 billion of solid waste and resource recovery revenue bonds. In addition, Standard & Poor's has ratings on solid waste and resource recovery revenue bonds which are enhanced with bond insurance. It should be noted that Standard & Poor's does not rate the debt of every municipal solid waste system.

We have addressed each of the specific questions which were raised in the Committee's request as follows:

- 1a. For bonds issued prior to the Carbone decision, what was Standard and Poor's evaluation of the legal issues and potential uncertainty regarding the constitutionality of state-imposed flow control laws; and did this understanding change over time?*
- 1b. Did ratings of bonds issued prior to the Carbone decision reflect any uncertainty on this important Federal constitutional question? (i.e., Did Standard & Poor's already discount the ratings as-issued to account for uncertainty in the constitutionality of state flow control in the absence of federal legislation?)*

Standard & Poor's has historically considered competitive position and project economics as important credit rating factors in its analysis of solid waste and resource recovery debt. The fact that competitive analysis had already been factored into Standard & Poor's ratings is one of the primary reasons that relatively few ratings were downgraded as a direct result of competitive pressures brought on by the Carbone decision.

Prior to the Carbone decision, the existence of local flow control ordinances was not enough to ensure strong credit quality, due in part to the transportability of the waste flow. Despite the ordinances, municipal solid waste systems with high costs and resultant uncompetitive tipping fees faced increased risk from illegal diversion

of waste. In addition Standard & Poor's recognized the uncertainty of flow control ordinances as local-level litigation began to take place in the years preceding the landmark Carbone decision.

2. *What has happened to credit ratings of solid waste bonds in the nearly three years since the Carbone decision? Is the 1997 situation consistent with your expectations or predictions in the immediate aftermath of Carbone?*

In the nearly three years since the Carbone decision, there have been four downgrades of affecting about \$460 million of solid waste/resource recovery revenue bonds rated by Standard & Poor's:

- Lancaster County Solid Waste Management Authority, PA
- Dade County, Florida
- Camden County Pollution Control Financing Authority, NJ
- Union County Utilities Authority, NJ

While this represents a significant dollar amount of debt, it should be noted that the majority of Standard & Poor's solid waste ratings have remained stable. This has been consistent with Standard & Poor's expectations. The relative stability in solid waste ratings has been due to the fact that many systems rated by S&P have displayed characteristics that have insulated them from the loss of flow control including:

- competitive tipping fees.
- alternative revenue streams.
- general fund support from the municipality.
- municipally controlled collection, and/or.
- the absence of nearby competing disposal options.

As noted previously, Standard & Poor's does not rate every solid waste system

3. *In your September 16, 1996 Creditweek Municipal report, Standard & Poor's posed the question: "Will there be rating upgrades if flow-control ordinances are reinstated through congressional legislation?" The report answered "no." The report also stated that rating upgrades would be few, based on the high risk profile of the industry. What downgrades have actually occurred, and how many of the downgrades are due solely to the absence of federal legislation authorizing state-imposed flow con-*

trol, or are there other economic factors at work?

The downgrades that have occurred are a result of increased competitive pressure which has led to an overall decline in credit quality. These rating actions are not solely based on the absence of federal legislation to restore flow control. However, in all four cases, the high fixed costs associated with waste-to-energy facilities have limited financial flexibility and resulted in high tipping fees which are above those of alternative disposal facilities. In some instances reactive (rather than proactive) management has also been a factor.

4. *About \$2 billion of flow-control related debt is in New Jersey. In that state, a federal court stay has slowed down the imposition of the post-Carbone economic system. Do you predict an increase in downgrading and defaults once that stay is lifted?*

The strength of future solid waste ratings in New Jersey will depend upon each system's ability to develop a viable plan to become competitive with alternative waste disposal facilities (including out-of-state). Standard & Poor's currently rates the revenue bonds of three New Jersey solid waste systems:

Camden County Pollution Control Financing Authority (rated 'BB' stable outlook), Union County Utilities Authority (rated 'BB' stable outlook), and Hudson County Improvement Authority (rated 'BBB-' negative outlook).

The federal court stay provides these systems with a window of opportunity to bring tipping fees in line with competing facilities. This is a significant challenge given the high fixed costs associated with the waste-to-energy facilities in Camden County and Union County. If the systems' increased competitiveness is not achieved, future downgrades and defaults are a possibility.

For more discussion of Standard & Poor's rating approach in this area we have attached an article from September 16, 1996 entitled "Solid Waste Ratings in the Face of Competition". We have also included a September 18, 1996 press release describing rating actions taken on two New Jersey solid waste authorities and an article from November 11, 1996 entitled "The Impact of Carbone: A Tale of Two Solid Waste Rat-

ings", which provides insight on Standard & Poor's rating approach.

Standard & Poor's is a worldwide organization of professionals that provides analytical services and operates under the basic principles of independence, objectivity and disclosure. A rating does not constitute a recommendation to

purchase, sell, or hold a particular security. In addition, a rating does not comment on the suitability of an investment for a particular investor. Standard & Poor's recognition as a rating agency ultimately depends on investors' willingness to accept its judgment.

CREDIT COMMENTS

THE IMPACT OF CARBONE: A TALE OF TWO SOLID WASTE RATINGS

In 1994, the U.S. Supreme Court's ruling in *Carbone vs. Clarkstown* eliminated regulatory flow control and stripped away the regulatory protections that insulated many solid waste systems from market competition.

The Carbone decision's impact on ratings has been varied. (See *Solid Waste Special Report, CreditWeek Municipal*, dated Sept. 16, 1996.) Although the vast majority of solid waste issuers have kept their ratings in the wake of Carbone, a handful of issuers have suffered downgrades.

Why have some issuers suffered credit deterioration? A case study comparing two similar systems, Lancaster County Solid Waste Management Authority, Pa., and adjacent York County Solid Waste and Refuse Authority, Pa. demonstrates that in the absence of regulatory flow control, project economics have come into greater focus in determining credit quality.

RATING HISTORY

Initially, both Lancaster and York were rated 'A' and both systems shared many similarities. Factors supporting the 'A' ratings for both issuers included flow control ordinances that ensured stable wasteflows as well as project economics. Standard & Poor's affirmed the 'A' rating with a stable outlook on York County, citing the strong coverage and reserves and competitive tip fees. In 1994, Standard & Poor's downgraded Lancaster County to 'BBB' in the aftermath of Carbone and placed a negative outlook on the rating reflecting increased financial pressures due to competitive issues and uncompetitive tip fees.

SIMILARITIES

An initial look at York County's and Lancaster County's solid waste systems and economies provide a similar profile:

- Both have similar service areas in South Central Pennsylvania characterized by manufacturing employment, population growth, moderate unemployment, and average wealth.
- Both compete in the same market, surrounded by the same competitively priced landfills.
- Both are solid waste systems built in the late 1980s under the same economic assumptions, and utilize resource recovery facilities as their primary waste disposal mode.
- Both resource recovery facilities are of roughly similar size.

- Both counties operate landfills; and
- Both systems rely on revenues from the sale of electric energy.

However, there remain key differences that have become more prominent rating factors in the absence of flow control rules.

THE DIFFERENCE IN RATINGS

The difference in the two ratings stems largely from differences in the ability to control wasteflows and the cost profiles of the two issuers.

These differences include:

- York has a large percentage of its wasteflow under contracts where the municipality or contractor pays York directly, for disposal, whereas Lancaster does not.
- York has held tip fees down and increased margins, whereas, Lancaster has had consistently slim debt service coverage and charges above market tip fees, and
- Lancaster has consistently higher operating and debt service costs per ton due to the costs associated with building and operating its landfill. These costs pressure its finances.

In the absence of legislated flow control, contractual wasteflow agreements insulate York from wasteflow losses. However, York faces the exposure of dependence on one contract wasteflow for a 18% of revenues in 1995. This has contributed healthy surpluses, and helped to keep overall tip fees in line with competitors. Lancaster has interlocal agreements with the municipalities it serves, but private haulers pay most disposal fees, and therefore it has a less certain revenue stream in the long term. Lancaster also has a higher operating cost profile and debt levels which exacerbate the risks posed by a less certain revenue stream. However, management has been proactive, particularly in attracting spot and specialty waste from outside the county.

ECONOMIC FLOW CONTROL

York County Solid Waste & Refuse Authority entered into contracts to ensure wasteflow when it built its resource recovery plant. As a result, it has been able to maintain wasteflows, cost effective tip fees, and financial strength. Lancaster, which operates in the same environment, but without contracted wasteflows, has had to work harder to maintain wasteflows and tip fees and to aggressively attract specialty waste.

Fifty percent to 60% of York's waste is delivered under contracts that require direct payment

CHANGES IN ASSUMPTIONS AND LAW

Changes in industry assumptions and laws provide context for Standard & Poor's ongoing credit assessment of the two system ratings. The Carbone decision led to a higher risk profile and increased competitive pressure on York and Lancaster, and York was more prepared to do so than Lancaster. Both York and Lancaster's facilities were built with the assumption that Pennsylvania and local laws would guarantee the delivery of county waste. In the late 1980s, initial project plans were also based on the assumption that disposal options would

become more limited and that disposal costs would rise. Reflecting this, Lancaster's 1988 base case financial projections assumed tip fees of \$77 in 1996. In fact, disposal options have actually remained competitive. The early 1990's economic downturn and recycling lowered demand for waste disposal. The Carbone decision invalidated legislated flow control. As a result, the assumed \$77 per ton would have been unsustainable with nearby landfills charging fees in the mid \$50 per ton range.

for disposal to the county. Most of the contract waste comes from county municipalities. York also contracts with Modern Landfill, one of Lancaster's principal competitors, for Modern to provide 110,000 tons of waste annually on a put-or-pay basis through 2000. Modern provided 26% of York's throughput in 1995 at an escalating tip fee—currently at above market rates. For York, the contract with Modern provides a steady revenue stream, healthy annual surpluses, and large reserves that help to maintain its competitive \$56 fee and that may be used for rate stabilization or to retire debt after the contract terminates. While the contract termination in 2000 poses a challenge as it provided 18% of authority revenues in 1995.

In contrast, Lancaster's market is dominated by private haulers that collect, deliver, and pay disposal fees for the majority of the waste delivered. While most of the Lancaster municipalities voluntarily direct haulers under interlocal agreement to dispose at the county facilities, these haulers generally pay the county for disposal—opening a risk that haulers will seek the most cost effective disposal after their contracts expire in 1998. Currently, other nearby disposal sites offering tip fees at \$50-\$60 per ton. After the Carbone decision, Lancaster lowered its fee from \$69 to \$53 to maintain flows, using reserves to subsidize its tip fees. Lancaster also instituted a series of successful marketing programs to attract waste including rebates for short-term contracts. Although it has maintained flows, Lancaster's lower tip fee was not financially feasible, leading to the restoration of its above-market \$69 fee, and the sys-

tem faces the challenge to maintain wasteflows with an uncompetitive rate. The lack of long-term direct-pay agreements with either haulers or municipalities creates the current risk for Lancaster's rating and will pose continued challenges.

The relative stability of wasteflows and revenue streams contributes strongly to the difference in the two ratings. Because of its contract with Modern Landfill, which includes annual tip fee increases, York County's debt service coverage has been relatively strong at 1.3 times (x) in 1993 to 1.85x in 1995. York has built a large \$40 million reserve to use either to lower debt or stabilize rates in the long term.

DEBT LEVELS AND OPERATING COSTS

Two contributing factors to the difference in the two authorities' ratings are debt levels and operating costs. While both entities have high debt levels, Lancaster's somewhat higher operating and debt costs put more pressure on its rating given its less certain wasteflows.

Lancaster's debt is 20% higher, at \$166 million, than York's reflecting the cost of constructing its landfill. While debt per ton of resource recovery capacity is higher (\$106,000/ton vs. \$89,000/ton) at Lancaster, overall debt per ton handled in 1995 was \$365 for Lancaster and \$353 for York, indicating a comparably cost effective use of facilities at both authorities. Because of the higher volume of waste handled and debt service at the low end of an escalating debt service schedule, the Lancaster system's debt service cost per ton is \$41 (including debt service for landfill bonds), and is only slightly higher than York's at \$38 per ton in 1995. However, debt service will escalate by 17% by 2000, adding additional pressure to finances.

Lancaster's higher system operating cost per ton pressures its tip fees upward. Operating cost per ton is \$43 reflecting landfill and transfer station expenses while York's, with minimal landfill costs is only \$39. The cost of operating a landfill and transfer station contributes over \$3 million per year (\$4 per ton) to Lancaster's expenses. York has avoided these costs. By using its existing landfill as an ashfill and sending unprocessable and bypass waste to Modern Landfill per its agreement, York did not have to build a new landfill in the early 1990s. Its current ashfill will be closed in 1997, but York will likely be able to find an economical disposal alternative without

Comparative Statistics 1995	York	Lancaster
Current rating/outlook	A/Stable	BBB/Negative
Original rating/outlook	A/Stable	A/Stable
Total revenues (mil. \$)	38,199	35,977
Operating expenses (mil. \$)	13,703	19,783
Net revenues (mil. \$)	24,496	18,450
Total debt (mil. \$)	122,535	186,235
Debt service coverage (x)	1.85	0.99
Total waste flow (tons/year)	346,741	454,800
Tiping fee (\$/ton)	56	69
Operating cost/ton (\$)	39	43
Debt service cost/ton (\$)	38	41
WTE facility debt/non capacity (\$)	89,000	108,000

* Rating on \$6.01 million solid waste system revenue bonds series 1992† Total debt includes \$119 million solid waste revenue bonds series 1985 rated AA (guaranteed by York County).

CREDIT COMMENTS

landfill in the early 1990s. Its current ashfill will be closed in 1997, but York will likely be able to find an economical disposal alternative without the expensive construction and permitting process of a landfill.

Lancaster's high costs, coupled with pressure to keep Lancaster's tip fees below originally projected levels, have resulted in constantly lower coverage of 1.1x-1.2x since 1992. Also, as a result of subsidizing tip fees in 1995, Lancaster's reserves have declined to an adequate \$6 million, but provide little long-term cushion.

CONCLUSION

Lancaster's rating illustrates the impact of increased competition control has caused project economics to weaken at a time when they have

come into greater focus. With a comparably less competitive cost structure, which was established under much different assumptions, Lancaster faces the challenges of supporting the structure with a less certain revenue stream. Lancaster's rating, at 'BBB' with a negative outlook, reflects the uncertain future of the revenue stream. However, by securing its wasteflow through contracts and minimizing its reliance on a regulated market, York County has been able to preserve its tip fees at a competitive \$56/ton and build up reserves. With its more stable revenue stream, which is not without its own risks, York has been able to maintain its rating at 'A' with a stable outlook.

Gordon Murray 212-268-1864

Jeff Pangeri 212-268-8933

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STANDARD & POOR'S **PRINT**

CREDITWEEK

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SOLID WASTE RATINGS IN THE FACE OF COMPETITION

The increased competition in the solid waste industry has resulted in relatively few rating actions. In fact, only four rating actions have been primarily attributed to the impact of competitive pressure:

- Lancaster County Solid Waste Management Authority, Pa., to 'BBB', outlook negative, from 'A';
- Dade County, Fla., to 'BBB+' from 'A';
- Camden County Pollution Control Financing Authority, N.J., to 'BBB+', rating placed on CreditWatch with negative implications; and
- Union County Utilities Authority, N.J., to 'A-', rating placed on CreditWatch with negative implications.

The forces unleashed by the 1994 U.S. Supreme Court's invalidation of waste-flow control in *CARBONE vs. the Town of Clarkstown, N.Y.*, and the failure of Congress to restore flow control, have prompted changes in the way many systems operate. The resulting rise in competition also has altered Standard & Poor's approach to evaluating solid waste credits.

Key to the evolution in Standard & Poor's approach is a greater focus on a system's ability to operate effectively as a business entity in a competitive environment. In order to better evaluate this component of the rating analysis, Standard & Poor's will begin assigning business positions to its solid waste ratings (see box). Business positions already have been successfully introduced in the public power and investor-owned utility sectors that have also experienced rapid deregulation and increased competition.

Generally speaking, solid waste ratings are expected to remain stable; however, rating changes may take place as solid waste systems either adapt or fall prey to the business challenges of the new environment.

The question has been asked, "Will there be rating upgrades if flow-control ordinances are reinstated through congressional legislation?" The answer is no. Perhaps such legislation would help stabilize certain credits that are most exposed to competitive pressure by providing a window of opportunity to lower tipping fees. However, ratings will continue to reflect underlying project economics and competitiveness—with or without flow control. Rating upgrades would be few, based on the high risk profile in the industry, and limited to systems with a demonstrated ability to succeed in this more competitive environment.

RATINGS STABILITY

Standard & Poor's has previously stated that few ratings would be affected by the lack of flow control. The relative stability of solid waste system ratings over the past two years has been due in large part to the fact that many have displayed characteristics that insulate them from the loss of flow control. These characteristics include:

- Competitive tipping fees.
- Alternative revenue streams.
- Municipally controlled collection.
- General fund support, and/or
- An absence of nearby competing disposal options.

Furthermore, Standard & Poor's historically has factored competitive position and project economics into its ratings, even before the U.S. Supreme Court flow control decision in *CARBONE*. Of the ratings that were affected, the high fixed costs associated with waste-to-energy facilities have limited financial flexibility and caused high (uncompetitive) tipping fees. In some instances, reactive, rather than proactive management also was a factor in the rating downgrade.

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SOLID WASTE BUSINESS POSITIONS

Standard & Poor's will be extending its business position (BP) assessments to the municipal solid waste/resource recovery sector. The BP will provide additional information about the ability of issuers to maintain credit ratings in the increasingly competitive solid waste industry. In addition, it will provide investors with a useful tool for differentiating between systems.

The BP, which has already been applied in the public power and investor-owned utility sectors, will evaluate the ability of a solid waste system to effectively compete in the evolving marketplace. Specific guidelines will be introduced in the coming weeks. The broad framework is similar to that used in the BP assessments of public power issuers. The deregulation and increased competition facing the public power industry closely parallels the events that have occurred in the solid waste industry.

Business positions were first introduced for investor-owned utilities in 1993, followed by public power in 1995. The solid waste BP will be a subset of the general rating factors reviewed in the assignment of a credit rating.

Several factors will be evaluated on a qualitative and quantitative basis to determine business position as follows:

- **Management.** Assessments of the management team's ability to adapt and respond in the business environment, considering strategies for ensuring an adequate waste flow and revenue stream. The impact of the political environment on the decision-making process will also be considered.
- **Operations.** Assessment of system or project operating conditions, efficiency, and capital needs. This includes collection, landfill, waste-to-energy and recycling facilities as well as service contracts. Emphasis will be placed on arrangements and relationships with private haulers.
- **Competitive position/project economics.** A review of current and projected tipping fees or user charges in comparison with alter-

native or competing facilities. Consideration will be given to fee structures, household costs and methods of cost recovery. This section will evaluate the viability of waste flow diversion.

- **Markets.** This section primarily considers the waste flow available from the service area or customer base, looking at historic trends and projected availability of waste. Characteristics of the waste stream (residential vs. commercial) and the impact of recycling on flow will also be evaluated.

- **Regulatory environment.** A measure of the impact of the external pressure brought on by regulation and environmental mandates. This section considers how the cost of compliance may hinder a system's ability to compete.

Each factor will be scored for each issuer with consideration as to the interrelationship of the factors. The scores will be weighted according to the relative importance to each issuer as determined by characteristics that might be unique to an issuer. The total score will determine a rank in categories ranging from "Above Average" to "Below Average."

The BP excludes the review of historical financial performance, legal structure, and certain demographic information, all of which are important rating factors. They are not, however, business characteristics that directly influence a system's ability to compete in the marketplace, or its overall operational well-being.

Standard & Poor's will be publishing a more detailed credit comment next month that will outline the solid waste business position criteria, as well as the implementation plan. This will be followed by an informational teleconference. Initial business positions are projected to be assigned for about 15-20 large issuers in late 1996 or early 1997, with additional assignments to follow during the normal review process.

INDUSTRY CHANGES

Clearly, the loss of regulated flow control has had a profound effect on the industry, and has resulted in various changes and management responses. The most prominent of which have contributed to the stability of ratings, including:

- Business-like management approach.
- Alternative flow control measures, such as economic flow control and contractual flow control and
- Sharpening of disposal costs.

MANAGEMENT

One of the primary indications of success in the post-Carbone environment is management's awareness of industry change and its ability to

adapt to the business environment. Strong management has been evidenced by various factors, not the least of which is the ability to meet the market price for the more vulnerable waste streams and ability to attract additional waste streams. Other strong indications of good management include success in some of the following:

- Efforts to maximize alternative revenue streams;
- Cost reduction/contract renegotiations;
- Increased focus on appropriate cost structures, unbundling of rates and services, and
- Reduction of stranded investments.

While some of these concepts, such as unbundling of rates and stranded investment, have been

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discussed frequently with regard to public power, the challenges for solid waste systems are equally important. Management must anticipate and react to new difficulties, but it cannot ignore its day-to-day objectives, such as meeting recycling goals and complying with environmental mandates.

ALTERNATIVES TO FLOW CONTROL

Economic flow control is one way to ensure an adequate stream of waste. Economic flow control exists when the disposal cost is below the cost of diverting waste to an alternative facility. Therefore, depending on the nature of a system's legal structure and revenue stream, tipping fee competitiveness (current and projected) generally is the most important determinant of creditworthiness and business position. A good example is Pinellas County, Fla., where the \$37.50 per ton tipping fee is very attractive as compared to the only nearby competing facility in Tampa, at \$71.00 per ton.

Some municipalities have controlled the flow of waste through exclusive contracts with haulers. The model for this approach, which has been upheld in the courts, seems to be the Town of Babylon, N.Y. The town became a market participant in taking over responsibility for waste collection and entering into a contract with a single hauler. Disposal costs were recovered through assessments on the generators of the waste (including commercial property through establishment of a commercial collection district), while the contracted hauler receives free disposal at the Babylon facility, thereby taking away the incentive to divert waste.

Contractual flow control also can be achieved through the creation of a joint power authority by an agreement among the participating cities, counties, and agencies. In almost all cases, the joint powers agreement requires all members to commit all waste collected within its boundaries, except for small quantities or self haul and recyclables, to the designated solid waste system. In most cases, where there are contracts between authority members and private haulers, the haulers must agree to deliver all waste to the authority's disposal facility.

Typically, any withdrawal from the authority requires mitigation of financial impacts to the authority. The agreement is evaluated based on its provisions. Joint power authorities are very common in California and have provided increased waste flow and revenue security.

SHIFTING DISPOSAL COSTS

Shifting the cost of disposal away from the haulers to the households and businesses has been a successful method for reducing the incen-

tive to divert waste. Among those that recently have implemented user charges are Prince Georges County, Md. and Davis County, Utah Solid Waste Management & Energy District.

User charges frequently are assessed directly to the tax bill, providing a more reliable revenue stream than tipping fees from private haulers. Systems with large service areas often receive disposal revenues directly from municipal participants through intermunicipal agreements. The municipalities, in turn, may recover costs through the tax base.

Under these scenarios, the structure provides good insulation from competition. However, this is not always enough to ensure a high bond rating. Uncompetitive disposal costs can still impact creditworthiness, as political pressure brought on by higher taxes may hinder a system.

STANDARD & POOR'S APPROACH

As previously stated, widespread rating actions are not likely; however, additional downgrades are not out of the question. The assignment of business positions, while not expected to prompt a significant number of rating actions, may bring certain business aspects of a municipal system into greater focus and provide more insight into future ratings.

In a few instances, the full impact of competition has not yet been absorbed. In some areas, private haulers, which were continuing to practice business as usual while waiting for possible congressional legislation or local court action may now be more inclined to shop around for lower-cost disposal. In New Jersey, as part of a federal court ruling, the state franchise system of flow control will remain intact for at least two more years, after such time haulers will be able to divert waste to less costly disposal sites. However, despite the two-year window, credit quality will be heavily impacted by the ability of a municipal system to prepare for the long-term challenges.

The long-term view of the rating is what ties credit quality so closely to overall project economics and expected competitiveness. This perspective works both ways, as a competitive threat may only exist in the short term. For example, a private landfill that is scheduled to close may temporarily offer very low spot market tipping fees, as regulatory compliance costs are much lower than a recently built landfill. A rating is not likely to be lowered in such a circumstance if the competitive disadvantage is short-term and if the municipality can manage the temporary threat without long-lasting repercussions.

*Howard Spumberg 212-208-8096
Brad Driver, San Francisco 415-765-5014*

SPECIAL REPORT

**CHARLESTON COUNTY, SOUTH CAROLINA
FOSTER WHEELER CHARLESTON RESOURCE RECOVERY PROJECT INC.**

 Analysts: Jeffrey Panger 212-208-8935
Howard Saurberg 212-208-8096

RATING AFFIRMED

OUTLOOK: STABLE

LONG TERM



OUTSTANDING RATING

 \$75 million resource recovery revenue bonds
series 1987A A

RATIONALE The rating on Charleston County, S.C.'s bonds reflects the following risks:

- An expected 8%-25% increase in user fees for fiscal 1998 and up to 52% increase over the next decade, and
 - Some revenue uncertainty related to the unresolved issue of U.S. Navy termination payments related to steam sales.
- Offsetting these risks are the following strengths:
- The county's levy of user fees on all owners of real property in amounts sufficient to meet debt service costs, which serves to insulate the facility from competitive pressures;
 - A diverse stream of revenue pledged to debt service in addition to the user fees;
 - A strong underlying service area that continues to produce stable waste supply; and
 - Solid financial operations and manageable capital needs.

The closure of the Charleston Naval Base and Shipyard, the metropolitan area's leading employer, is not expected to have a credit impact on the bonds. The naval base has always disposed of its processible waste out-of-county, limiting exposure to potential decline in waste supply. Further, economic growth and diversification within the county (AA' G.O. debt) during the past three years has largely offset potential economic dislocation resulting from the phased closure of the base. Prior to its closure, the base had purchased

all of the steam from the waste-to-energy facility; however, the navy has a contractual obligation to either continue to purchase steam or exercise a termination clause, making a lump sum payment to offset the lost energy revenue and additional capital costs incurred by the county as a result of the closure.

A diverse revenue stream featuring user fees charged to all property owners has provided *de facto* economic flow control and helped stabilize waste supply to the facility. Financial operations are solid, with a working capital balance exceeding \$15 million. Net available revenue covered debt service 1.7 times in fiscal 1995. Capital needs are manageable, at \$26 million over the next five years, and are largely associated with financing closure costs for the solid waste system's landfill.

OUTLOOK The outlook is based on a diverse and stable revenue stream featuring user fees and limited exposure to the economic effects of the base closure.

FACILITY OVERVIEW The bonds were issued to finance the construction of a 644-ton-per-day resource recovery facility owned and operated by a subsidiary of Foster Wheeler Corp. The facility was placed into operation in 1989. The bonds are secured by a diverse stream of revenues, including user fees. The user fees are included on the property tax bills of all single-family properties and on separate bills for all multifamily and non-residential properties within the county. User fees, which increased 65% in fiscal 1994, have been held stable during the past two years at a moderate \$79 per single-family household; they account for nearly 60% of total revenue. However, user fees are expected to increase to \$85-\$99 for fiscal 1998, and to as high as \$120 over the next 10 years.

The U.S. Navy, which is obligated to make minimum payments to the facility for the purchase of steam, is exploring the exercise of a termination clause in the contract. Under the clause, the Navy would need to make a termination payment, the amount of which would be dependent on the Navy's success in locating a replacement customer, subject to credit qualification, to purchase the steam. To date, the Navy has been unable to locate a suitable substitute customer, and it is currently unclear whether the Navy will exercise the termination clause.

Additional revenue sources include the sale of electricity to Carolina Power & Light, which is obligated to purchase available energy and capacity. The county does not charge tipping fees at the resource recovery facility for MSW from private haulers and from municipal haulers delivering within allocated levels as prescribed by waste supply agreements between municipalities and

Charleston County, S.C., Solid waste and resource recovery statistics

Financial statistics	Year ended Dec. 31		
	1995	1994	1993
Total revenues (mil. \$)	26,945	25,512	20,245
Energy revenues (mil. \$)	4,911	5,237	5,198
Revenue from tipping fees (%)	1	N/A	N/A
Revenue from energy sales (%)	18	N/A	N/A
Revenue from other sources (%)	60	N/A	N/A
Operating expenses (mil. \$)	13,031	12,522	10,825
Net revenues (mil. \$)	13,914	12,990	9,420
Total debt (mil. \$)	79	79	79
5-year CIP (mil. \$)	26	N/A	N/A
Debt service coverage (x)	1.73	1.63	1.21
Operating statistics			
Total waste flow (tons/year)	227,064	217,834	223,780
Throughput (tons/year)	220,697	220,764	224,794
Residential waste (%)	24.1	N/A	N/A
Commercial/industrial waste (%)	N/A	N/A	N/A
Recycled (%)	1	1	1
Estimated landfill life (years)	11	N/A	N/A
Ash disposal capacity (years)	15	N/A	N/A
Energy generation (mwh/yr)	46,902	46,590	39,332
Energy revenue (cents/mwh)	4.05	4.11	3.76
Availability factor (%)	99	99	99
No. of haulers	1	N/A	N/A
Waste collected by private haulers (%)	51	N/A	N/A
Tipping fee (\$/ton)	56	56	56

N/A—Not available

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public service districts, and the county. Above the allocated amounts, tip fees are charged and are competitive at \$52.50 per ton. Accounting for insignificant portion of total revenue, the limited reliance on tip fees provides de facto economic flow control. This has led to stable waste supply over the past several years at 220,000 tons per year

to the facility, 20% above the minimum requirement under the county's service agreement with Foster Wheeler. Waste is delivered fairly evenly by municipal and private haulers; the list of leading haulers remains largely unchanged and the top five account for 79% of total waste delivered to the facility.

COMMERCE REFUSE-TO-ENERGY AUTHORITY, CALIFORNIA

Analysts: Edward R. McGlaughlin 212-208-1741
Jeffrey Panger 212-208-8935

RATING AFFIRMED

OUTLOOK: STABLE

LONG TERM



OUTSTANDING RATING

\$11.25 million refuse-to-energy revenue bonds taxable series 1990A BBB

RATIONALE The rating on Commerce Refuse-to-Energy Authority, Calif.'s (CREA) bonds reflects the following credit risks:

- The authority's dependence on energy sales (at an above-average price) for over 70% of total revenues, and
 - A very competitive waste disposal market.
- Also reflected in the rating is the following credit strength: operational and financial support of the Los Angeles County Sanitation District No. 2 in keeping tipping fees at the facility competitive.

CREA operates in a very competitive waste disposal market; its tip fees are sensitive to the costs of the numerous alternative disposal options. Accordingly, the district and CREA entered into an agreement that specifies the district's obligation to keep CREA's ability to attract sufficient waste at the prescribed levels. This agreement between the district and CREA entreats the district to set neutral tipping fees at the facility. If CREA adopts these fees, then the district will

reduce the amount charged to CREA for operating and maintaining the facility to eliminate any projected deficit. Neutral rates are economically competitive rates that would attract an adequate quantity of waste to the facility. The attraction of an adequate quantity of waste is of critical importance, as the facility relies upon heavily concentrated energy revenues (paid to CREA from a very favorable contract with Southern California Edison Co.) for 74% of total revenues. The facility has operated well, which is significant as the facility receives a majority of its energy revenue during the four summer months.

OUTLOOK The agreement between the district and CREA reflects the district's support in assuring an adequate level of revenues to meet CREA's debt service payments. Ratings maintenance is expected.

FACILITY OVERVIEW The Commerce facility, operating since the spring of 1987, incorporates mass burn technology with a single refuse-to-energy steam generator capable of burning 360 tons per day of industrial and municipal waste at an average heating value of 5,350 British thermal units per pound. Waste flow control ordinances were originally in place with the issuance of these bonds. However, as a result of the new agreement, these ordinances become secondary. The new agreement makes disposal of waste at the Commerce plant as economically attractive as most of the other privately operated facilities (primarily transfer stations) located near the city.

The attraction of sufficient waste is a major concern as energy revenues typically account for nearly 75% of CREA's revenues. Energy generated by the facility's 12.5 MW turbine generator is sold to Southern California Edison Co. (SCE) and priced at levels quite favorable to the authority—escalating to 12.6 cents per kWh in 1996 from the original 6.4 cents in 1987, after which payments will be made at SCE's then avoided cost, or a floor price of 9 cents per kWh, whichever is higher. As a result of the nature of this arrangement and because of the dependence on facility operation for electric revenue sales, a prolonged facility outage could lead to significant revenue losses during the peak operational summer months.

The district has identified the facility's main competition as area transfer stations rather than the larger landfills. It is from among these transfer

Commerce Refuse-to-Energy Authority, Calif. solid waste and resource recovery statistics

	--- year ended June 30 ---		
	1995	1994	1993
Financial statistics			
Total revenues (000 \$)	12,914	14,061	12,848
Energy revenues (000 \$)	9,464	9,855	8,777
Revenue from tipping fees (%)	23	25	26
Revenue from energy sales (%)	76	74	74
Operating expenses (000 \$)	5,743	5,910	5,510
Net revenues (000 \$)	7,171	8,151	7,338
Total debt (000 \$)	46,880	49,445	52,955
Total assets (000 \$)	54,450	58,001	58,937
5-year CIP (000 \$)	1,300	N/A	N/A
Equity (%)	10	10	6
Debt/assets (%)	86	85	90
Debt service coverage (x)	1.2	1.37	1.23
Operating statistics			
Total waste flow (tons/year)	99,720	106,986	95,665
Throughput (tons/year)	99,720	106,986	95,665
Residential waste (%)	60	50	50
Commercial/industrial waste (%)	40	50	50
Estimated landfill life (years)	9	N/A	N/A
Ash disposal capacity (years)	N/A	N/A	N/A
Energy generation revenue	66,126	72,348	73,550
Energy revenue (cents/kwh)	12.6	11.8	10.9
Availability factor (%)	8	9	89
No. of haulers	57		
Waste collected by private haulers (%)	95		
Tipping fee (\$/ton)	30	34	34
N/A —Not available			

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stations that the facility is deriving the neutral rate. Ranging from \$28.31 per ton at the county's South Gate Transfer Station to as high as \$36 per ton at various other facilities, CREA currently charges \$34 per ton.

Financial performance has been adequate, pro-

ducing coverage of the required 1.25% since 1988. The agreement will ensure the ability of the facility to keep rates stabilized over the life of the bonds and importantly gives CREA the financial flexibility to produce the required coverage levels.

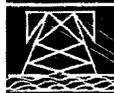
DADE COUNTY SOLID WASTE SYSTEM, FLORIDA

Analysts: David Bodek 212-208-1813; Fred Haddad 212-208-8385

RATING AFFIRMED

OUTLOOK: STABLE

LONG TERM



OUTSTANDING RATING

\$52.684 million special obligation revenue bonds series 1985A and 1986 BBB+

RATIONALE The rating on Dade County Solid Waste System, Fla.'s bonds reflects substantial diversions of waste to disposal and resource recovery facilities with lower fees, a related decline in financial margins, a plan that will only partially rehabilitate the waste stream, and projections of further coverage erosion.

Between 1991-1994, the county raised disposal fees to \$59 per ton from \$33 per ton. Coincident with these increases, haulers and municipalities diverted waste to less expensive facilities, and the county experienced a 44% decline in waste. Dade received 1.3 million tons in 1995, down from 1990's 2.4 million tons. Net revenues coverage of parity debt declined during this period to 1.46 times (x) in 1995 from levels that exceeded 2x. Combined coverage of parity debt and industrial development bonds (IDBs) of Montway Dade Ltd., the operator of Dade's waste-to-energy facility, was 1.34x in 1995, down from 1994's 1.87x.

Dade implemented a \$45 tip fee to partially rehabilitate the waste stream. The incentive fee produced 17 interlocal agreements with municipalities that have committed to deliver waste to

the county and contracts with two large private haulers. The interlocal agreements and contracts are projected to restore the waste stream to 1.6 million tons per year in 1997, an amount 20% below 1992's tonnage, when the tip fee was \$45 per ton. Yet 90% of 1997's projected waste stream will represent committed tons, compared with 1992's 46%.

Other principal components of the county's plan include a short-lived decrease in debt service associated with a restructuring of existing debt; a sharp reduction in capital expenditures and financing needs attributable to the reduced waste stream; the use of contracted disposal capacity to extend the life of existing facilities; a water/sewer bill surcharge; a surcharge on carting services; and an increase in Dade's share of the revenues earned by the county's private collector of recyclables.

The reduced tip fees temper the benefits of the debt restructuring, cost savings, and revenue enhancements. Dade projects parity debt coverage by net revenues will decline to 1.29x and 1.2x in 2000 and 2001, respectively. Fixed-charge coverage will be thin in those years at 1.13x and 1.09x.

OUTLOOK The several components of the strategic plan will produce a more orderly erosion of

Dade County, solid waste system statistics, Fla.

Operating statistics	1995		1994		1993		1992		1991		1990		1989	
	1995	1994	1993	1992	1991	1990	1989	1988	1987	1986	1985	1984	1983	1982
Tiping fees (\$/ton)	59	59	59	45	45	33	27							
Total waste flow (tons/year)	1,271,220	1,514,999	1,778,077	2,052,090	2,289,274	2,401,149	2,291,343							
% change	(16.1)	(14.7)	(13.5)	(10.4)	(4.7)	4.8	N/A							
Tons collected by the county	670,336	687,837	596,926	781,179	759,193	758,141	735,439							
(% of total)	52.7	45.4	33.6	38.1	33.2	31.6	32.1							
Recycling percentage	31.0	30.0	27.0	26.0	22.0	17.0	15.0							
Soot market diversions (tons/year)	944,000	700,000	495,000	191,386	N/A	N/A	N/A							
% change	34.9	41.4	158.6	N/A	N/A	N/A	N/A							
Tonnage delivered to WTE facility	883,018	941,604	924,862	878,558	755,420	N/A	N/A							
Was the Plan or Plan satisfied?	Yes	Yes	Yes	No	Yes	N/A	N/A							
---Fiscal year ended Sept. 30---														
Historical & projected finances	2001	2080	1999	1998	1997	1996	1995	1994						
Net revenues (\$000s)	23,979	19,527	23,377	28,504	32,773	37,535	35,853	54,227						
Revenue bonds annual debt service (\$000s)	19,989	15,980	16,629	15,796	15,084	24,814	24,575	25,544						
Annual debt service on IDBs (\$000s)	22,732	19,990	16,458	16,854	15,344	11,675	8,702	6,878						
Coverage of parity debt service (x)	1.20	1.29	1.41	1.80	2.17	1.51	1.46	2.12						
Fixed charge coverage of revenue bonds and IDBs (x)	1.09	1.13	1.20	1.39	1.58	1.33	1.34	1.88						
Tonnage*	1,613,000	1,801,000	1,589,000	1,673,000	1,661,000	1,533,000	1,271,220	1,514,999						
Committed tons/total tons (%)*	N/A	N/A	N/A	91.4	81.3	90.0	89.6	58.9						

*Dade County projected revenue bond debt service of \$14.2 million in fiscal 1996. The debt restructuring that would have reduced fiscal 1996's revenue bond debt service is not expected to occur before the end of the fiscal year.

N/A—Not available; N/A—Not applicable. *Committed tons represent tons that are either collected by the county or that are attributable to interlocal agreements with municipalities or contracts with private haulers.

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financial margins than might have otherwise occurred. May 1996's rating downgrade reflects heightened credit concerns associated with declining debt service coverage and risks related to a plan dependent on the successful interaction of its several components.

COMPREHENSIVE PLAN The major thrust of Dade county's plan to address its declining waste streams is a lower tip fee to induce municipalities and private haulers to commit to deliver waste to the county under contracts. This should increase 2000's waste stream about 25% over 1995's 1,271,220 tons. Even with the additional waste coverage margins, already significantly below historical levels, that will continue to decline because revenue enhancements and cost savings included in the plan, the margins are not sufficient to offset the effects of the reduced tip fee.

To mitigate some of the rate reduction's impact, operating expenses are being reduced through staff reductions and other measures. Revenue enhancements include surcharges that private haulers must collect as a condition of maintaining county permits. Surcharges on water and sewer bills will pay for landfill remediation and closure costs. Although the surcharges and other new revenue sources will increase the solid waste system's revenues by about 10%-12% over each of the next five years, expenses are projected to increase faster than revenues. Until 2001, net revenues are projected to continue to decline from 1993's level at an average annual rate of 9%, which will cause coverage levels to fall below their current diminished levels, even with a planned debt restructuring.

The anticipated debt restructuring will reduce annual debt service obligations to a level that is about 40% below 1995's debt service. The debt service savings, however, will be short-lived, and by 2002, annual debt service will increase to within 8% of 1995's levels. Coverage will decline 18% between 1995 and 2001 from 1.46x to 1.2x. After 2001, net revenues and debt service coverage are projected to increase.

The interlocal agreements are critical to restore its waste stream. They are projected to provide

about 24% of 1997's waste stream. The municipal signatories to the contracts have covenanted to direct waste to the county's disposal facilities in return for a \$45 tip fee that cannot be increased for three years. After the moratorium expires, the incentive tip fee can only be increased by a CPI inflator, but not by more than 5% in any year. Decreases in the CPI may also be reflected in rate reductions under the agreements. The three year moratorium on rate adjustments represents a significant credit risk because 25%-30% of the projected waste stream, which includes waste delivery commitments under the interlocal agreements and the contracts with private haulers, will be exempt from any price adjustments that may be needed during the three-year period.

Miami, one of 17 municipalities that entered into interlocal agreements, is projected to account for approximately 10% of the total waste stream through 2000. While the terms of all the agreements are 20 years, the agreement with Miami permits it to discontinue its delivery, if it opens a composting facility in 1999. Dade's projections assume that the loss of waste from Miami will be offset by residual waste from the composting facility and increased levels attributable county growth, but failure to offset the Miami loss could have significant implications for the system's already deteriorating financial margins.

Other components of the plan include a renegotiated recycling contract with a private hauler that should provide additional recycling revenues, the use of contracted disposal capacity to extend the life of the county's existing landfill facilities, an increased use disposal facilities by county agencies, and an ordinance prohibiting unincorporated areas from leaving the collection and disposal system upon incorporation.

The diminished waste stream, the contracted disposal facilities, and the use of water/sewer bill surcharges to finance remediation and closure projects, have enabled the county to approximately halve the \$450 million capital program that had been projected two years ago. Debt financing for the remaining capital projects includes \$92 million of debt over the next five years.

SPECIAL REPORT

DAVIS COUNTY SOLID WASTE MANAGEMENT & ENERGY RECOVERY SPECIAL DISTRICT, UTAH

Analysts: Howard Spumberg 212-208-8096, Brad Driver, San Francisco 415-765-5014

RATING AFFIRMED

OUTSTANDING RATING

OUTLOOK: STABLE

LONG TERM



\$45.05 million solid waste management revenue
refunding bonds series 1993 BBB+

RATIONALE The rating on Davis County Solid Waste Management & Energy Recovery Special District, Utah reflects relatively high costs which are likely to increase as the sizable capital improvement plan (CIP) is implemented. The CIP could reach \$32 million through 2001 depending on EPA regulated emissions requirements for the district's 400 ton per day waste-to-energy plant.

The rating is supported by the district's use of household user charges and commercial fees that insulate the system from increased competition in the industry, and enable the district to charge a reduced tipping fee at the facility. During 1995, the district began implementing a \$10 per month (for one container) disposal charge on all residents in the district. Hauliers are not charged a tipping fee for residential waste. Residential waste accounts for about 46% of the total waste

stream. In April 1996, the district implemented a commercial program, whereby private hauliers pay \$2 per billable yard for commercial waste, in addition to a reduced tipping fee of \$25 per ton (lowered from \$62.00 per ton). The \$25 tipping fee is about average for the state's competing disposal facilities. Revenues, which are estimated at \$13 million for 1996, are budgeted to increase by about 25% for 1997, due in large part to the commercial program. Debt service coverage was healthy at 1.94 times for fiscal 1995, and liquidity position is very strong with over 400 days' unrestricted cash and investments.

OUTLOOK The stable outlook reflects expectations of maintaining a good financial position while implementing capital improvement needs.

OPERATIONS The district was formed by 17 municipalities to build and finance a 400 ton per day waste-to-energy plant. The district also operates the Layton landfill. The facility, which is operated by the district, generates steam which is sold to the U.S. Government for use as energy at Hill Air Force Base. Steam revenues represent about 19% of the total revenue stream. Plant operations have been good. However, capital improvement needs could reach \$32 million through 2001, depending upon the outcome of a dispute with the EPA centered around the facilities requirements to meet new emissions standards. If the facility is categorized as a "large" plant by the EPA, about \$15 million will be required to comply with regulations. Additional costs are required for landfill and ashfill improvements. The district is currently developing a new cell at the Layton landfill, which will provide disposal capacity up to a maximum of 30 years.

Davis County Solid Waste Management & Energy Recovery Special District Utah solid waste and resource recovery statistics

	—Fiscal year ended June 30—		
	1996c	1995	1994
Total revenues (\$000s)	13,315	13,015	11,179
Energy revenues (\$000s)	2,379	2,500	1,974
Revenue from tipping fees (%)	76.88	74.39	76.12
Revenue from energy sales (%)	17.87	19.21	17.66
Operating expenses (\$000s)	4,915	4,627	4,423
Net revenues (\$000s)	8,400	8,388	6,756
Total debt (\$000s)	N/A	46,650	48,250
Total assets (\$000s)	N/A	\$1,452	48,553
5-year CIP (\$000s)	N/A	32,300	N/A
Equity (%)	N/A	N/A	N/A
Debt/assets (%)	N/A	90.67	99.38
Debt service coverage (x)	1.69	1.94	1.59

c—Projected N/A—Not available

HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY, NEW YORK

Analysts: Howard Spumberg 212-208-8096, Steve Gortler 212-208-8304

RATING AFFIRMED

OUTSTANDING RATING

OUTLOOK: STABLE

LONG TERM



\$253.015 million resource recovery revenue
bonds (American REF-FUEL Co. of
Hempstead project) series 1996 A-

RATIONALE The rating on Hempstead Industrial Development Agency, N.Y.'s debt reflects the underlying credit strength of the town of Hempstead and the town's strong contractual obligation and economic incentive to make waste disposal payments. The agency financed the construction of a 250-ton-per-day resource recovery facility operated by American REF-FUEL Co. of Hempstead, a 50% partnership of Browning-Ferris Industries Inc. (BFI, A-) and Air Products & Chemicals Inc. (A-, negative outlook). In addition,

the rating considers the following factors:

- The relatively competitive tipping fees at the resource recovery facility, and
- The strong historical financial and operating performance.

A higher rating is precluded by the project's dependence upon energy revenues under a contract with Long Island Lighting Co. (LILCO; about 42% of total revenues), with a floor price in excess of the market price of power, and reliance upon waste from the town of Brookhaven at above-market disposal costs to meet the town's put-or-pay minimum. Under the service agreement, the town is obligated to pay a service fee, which includes a debt service component, for a minimum of 540,000 tons per year. The town obligation is absolute and unconditional and not

SPECIAL REPORT

subject to annual appropriation, provided that service is provided at the facility. The fee is an operating expense of the town and is financed through property taxes, mitigating concern about flow control. The cost of disposal to the town is a very competitive \$41 per ton. The town's underlying credit strength is characterized by:

- A large, primarily residential base, benefiting from proximity to New York City;
- Stagnant tax base growth;
- Above-average wealth and income indicators;
- Good general fund financial management; and
- A high tax and overall net debt burden.

Plant operations have been very successful since commercial operations began in 1989, as evidenced by an average annual availability factor of 95% from 1990-1995. Debt service coverage has exceeded 2.40 times (x) since 1993, with an estimated coverage of 2.82x for fiscal 1996.

OUTLOOK The outlook reflects the expected availability of waste flow to the facility and the strong financial margins.

LEGAL STRUCTURE/KEY AGREEMENTS

The bonds are secured by a first lien on the facility net revenues, which are primarily a combination of disposal fees (Hempstead service fees and company-marketed waste) and energy sales. The town of Hempstead is obligated to pay an annual disposal fee for 540,000 tons of waste (put-or-pay). The fee is an operating expense of the town and is collected through property taxes. It is not subject to appropriation and is unconditional as long as service is provided at the facility. Under the service agreement, the town's obligations include:

- Delivering all acceptable waste to the facility;
- Providing disposal of ash and nonprocessable waste, and
- Paying the service fees (includes fixed per ton fee, pass-through costs, proportionate adjustment for uncontrollable circumstances, guaranteed minimum tonnage payments, energy make-up, Brookhaven fees, and various other credits adjustments).

The company obligations are as follows:

- Process/dispose of town and Brookhaven Waste;
- Operate and maintain the facility;
- Comply with regulations, and The company's obligations are secured by the company support agreement, which is a several, but not joint, obligation of both Air Products and BFL. Air Products has announced its intention to sell its interest in the company. However, pursuant to the company support agreement, it can only substitute its parent support obligations if it will have no adverse impact on the rating. Electric output is sold under contract to LILCO. LILCO is obligated to take entire net output at a purchase price equal to avoided costs with a fixed floor (6-11 cents per kwh) and a fixed ceiling (7.5-22 cents per kwh). The floor energy price is above the market cost of power, presenting some concern given the pace of industry deregulation and a proposed takeover of LILCO by the Long Island Power Authority.

Hempstead Industrial Development Agency N.Y. solid waste and resource recovery statistics	—Fiscal year ended Sept. 30—			
	1996	1995	1994	1993
Financial statistics				
Total revenues (mil. \$)	92.10	85.50	81.30	78.00
Energy revenues (mil. \$)	40.20	36.20	33.70	32.00
Revenue from tipping fees (%)	49.9	50.9	53.6	55.0
Revenue from energy sales (%)	43.6	42.3	41.5	41.0
Revenue from inc. income & other resources (%)	6.4	6.7	4.9	4.0
Operating expenses (mil. \$)	18.10	17.20	16.70	17.00
Net revenues (mil. \$)	74.00	68.30	64.60	61.00
Total debt (mil. \$)	N/A	205.10	270.80	275.80
Total assets (mil. \$)	N/A	366.50	370.22	380.10
5-year CIP (mil. \$)	N/A	5.30	N/A	N/A
Debt/assets (%) N/A	72	73	73	73
Debt service coverage (x)	2.82	2.61	2.43	2.4
Operating statistics				
Total waste flow (thousand tons/year)	953	953	963	967
Throughput (thousand tons/year)	953	958	965	965
Residential waste (%)	50	51.1	56.6	16.5
Commercial/industrial waste (%)	17	17	15.4	39
Energy revenue (cents/kwh)	7.14	6.57	6.17	6.00
Availability factor (%)	95.0	95.6	95.0	94.7
No. of hours	235	235	235	235
Tipping fee (\$/ton)				
Hempstead	41	40.6	40.01	39.35
Brookhaven	100	96.61	88.63	81.83
Other	46.4	52.03	55.96	54.65

—Projected N/A—Not available

SPECIAL REPORT

LANCASTER COUNTY SOLID WASTE MANAGEMENT AUTHORITY, PENNSYLVANIA

Analysts: Emete Hassan 212-208-1668, Howard Soumberg 212-208-8096

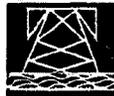
RATING AFFIRMED

OUTSTANDING RATING

\$168.24 million resource recovery system revenue bonds series 1988, 1988A, 1991A, and taxable 1991B BBB

OUTLOOK: NEGATIVE

LONG TERM



RATIONALE The rating on Lancaster County Solid Waste Management Authority, Pa.'s (LCSWMA) bonds reflects the following risks:

- Financial pressures facing the authority due to increased competition,
- The long-term challenge to maintain current waste flow given the high tipping fee of \$69 per ton, and
- Slim annual debt service coverage of 1.0 times (x) in 1995.

increase in tonnage due to the additional \$10 per ton.

The county's 1,200-ton-per-day resource recovery facility was built and is operated by Ogden Martin System with electricity sold to Metropolitan Edison Co. In July 1995, the plant was struck by lightning, which triggered a series of events that led to an explosion. The facility was inoperative for 15 days, and capacity was reduced for 84 days. The lost revenue and additional expenses were fully recovered by business interruption insurance and payment from Ogden Martin Systems of Lancaster Inc. The financial position was not impaired, and there was no credit impact.

Financial performance has been adequate, with coverage decreasing to 1.0 times (x) annual debt service in 1995, from 1.17x in 1994. Liquidity of approximately \$6 million continues to provide near-term flexibility.

OUTLOOK The outlook continues to reflect the near-term challenges the authority faces as a result of its uncompetitive regional position and the potential diversion of waste flow given the recent increase in tipping fees.

SYSTEM OPERATIONS/COMPETITION Ogden Martin Systems operates the resource recovery facility under a 20-year service agreement that includes a guaranteed minimum tonnage delivery of 312,000 annually. As a result of the explosion, the solid waste throughput at the facility in 1995 declined 16% as the availability factor dropped to 76.7% from 87.1% in 1994. However, revenues remained constant through insurance reimbursements and payments from Ogden. The electric contract with Metropolitan Edison is for 25 years and has averaged 6 cents per kwh for the past four years. Electrical revenue represents 33% of total revenue in 1995. The operation also consists of a 1,450-ton-per-day transfer station and the Frey Farm landfill.

The authority's operation has significant competition, with two incinerators and five landfills within 10 miles of the county borders. The most significant competition is the Modern landfill in York county operated by Waste Management Inc. and the Berks County landfill operated by Browning Ferris Inc. The authority's tipping fee of \$69 per ton, the highest in south-central Pennsylvania, was reduced to \$59 per ton two years in response to the lack of flow control. Although they were able to sustain market share, it might be lost with the 19% increase in the tipping fee. One hundred percent of the municipal solid waste to the authority is supplied by private haulers.

Lancaster County Solid Waste Management Authority Pa., solid waste and resource recovery statistics

	—Year ended Dec. 31—		
	1995	1994	1993
Financial statistics			
Total revenues (mil. \$)	35,877	37,286	38,823
Energy revenues (mil. \$)	11,753	12,069	12,846
Revenue from tipping fees (%)	65.7	66.2	65.9
Revenue from energy sales (%)	32.7	32.4	33.1
Revenue from other sources (%)	1.6	1.5	1.0
Operating expenses (mil. \$)	19,783	19,883	19,457
Net revenues (mil. \$)	16,094	17,403	19,366
Total assets (mil. \$)	166,235	174,150	179,465
Total liabilities (mil. \$)	210,195	219,843	223,320
5-year DIP (mil. \$)	17,165		
Equity (%)	4.0	13.0	12.0
Debt/assets (%)	79.1	79.2	80.4
Debt service coverage (x) ADS	0.99	1.15	1.06
Operating statistics			
Total waste flow (tons/year)	454,800	436,600	394,900
Throughput (tons/year)	296,764	354,173	378,344
Residential waste (%)	30.5	32.8	34.7
Commercial/industrial waste	42.9	49.2	55.2
Recycled (%)	29.4	26.7	24.8
Estimated landfill life (years)	23		
Energy generation (kwh/yr)	189,211,568	202,041,528	216,101,142
Energy revenue (cents/kwh)	6.04	5.97	5.94
Availability factor (%)	76.7	87.1	91.8
No. of haulers	50	N/A	N/A
Waste collected by private haulers (%)	100	N/A	N/A
Tipping fee (\$/ton)	59	53	69

N/A—not available

The risks are offset by management's proactive response to increased competition in a nonflow control environment through meeting the market with tipping fee reductions in the past two fiscal years, and aggressive marketing activity in order to attract waste on the spot market and under short-term contracts.

The authority was able to maintain the level of municipal waste flow within the county by decreasing the tipping fee to \$59. In addition, all private haulers were offered an additional \$6 per ton rebate for short-term contracts that secure the delivery of their tonnage. Tipping fees have been raised back to 1993 levels in response to needed liquidity, presenting exposure to a potential de-

SPECIAL REPORT

PINELLAS COUNTY, FLORIDA

Analysts: Mark Glottety 212-208-1352, Jodi Hecht 212-208-1727

RATING AFFIRMED

OUTLOOK: STABLE

LONG TERM



OUTSTANDING RATING

\$82.8 million resource recovery revenue bonds series 1996 A+

RATIONALE The rating on Pinellas County, Fla.'s resource recovery bonds reflects the following strengths:

- Extremely competitive tipping fees of \$37.50 per ton.
- Good coverage of annual debt service and adequate liquidity, and
- A short maturity of the bonds (2006).

These strengths are offset by the system's management contract with Wheelabrator Pinellas Inc., which ends in 2003 while bond maturity is 2006.

The county's low \$37.50 per ton tipping fee and the prohibitive cost of transportation due to the county's geographic location mitigates concern over the loss of waste due to the invalidation of flow control laws. The nearest waste to energy facility is in Tampa and has tipping fees of \$71.00 per ton. In addition, there is little competition from landfills in the area. The county's tipping fee is projected to remain very competitive relative to other disposal options.

Financial operations at the facility have been good as coverage of annual debt service has ranged between 1.13 times (x) and 1.57x since 1992. The system's liquidity position is more than adequate with over \$6 million in unrestricted cash and investments. This translates to over 90 days' worth of operating expenses. All electric power generated is sold to Florida Power Co. (FPC), and in 1995 the facility began selling their capacity to produce power to FPC, therefore significantly increasing the amount of electric revenues received.

Bond proceeds will be used to retrofit the 3,150 tons per day facility with scrubbers to meet clean air act regulations.

The construction timeframe is approximately 36-44 months. Future capital spending beyond the current program is limited to routine repairs and maintenance.

OUTLOOK The stable outlook reflects the competitive tipping fees, good financial operations, and short maturity of these bonds.

SOLID WASTE SYSTEM The county's solid waste management department owns and operates the solid waste disposal and resource recovery system.

The system is comprised primarily of a 3,150 ton per day resource recovery plant, with a 75 MW electric generating facility and the Bridgeway Acres Landfill, together with such ancillary facilities as a scale-house, recycling drop-off centers, and an artificial reef program for large construction and demolition debris. The county also is responsible for the post closure maintenance of the offsite Toytown Landfill.

Responsibility for waste collection rests with the 24 municipalities in the county and, in the unincorporated areas, with the private sector. Florida has mandated that 30% of waste flows must be recycled. The county is exceeding this goal with a recycling rate of 42%. The reduction in waste flow due to recycling is not anticipated to adversely affect the system's operating or financial performance given the county's ample availability of waste.

The county has contracted for the operation of the resource recovery plant with Wheelabrator Pinellas and the landfill with Pinellas Environmental Inc. All electricity is sold to FPC. In 1995, the county began selling its capacity, as well as energy, to FPC under an amended power purchase contract. Landfill capacity is adequate for at least 20 years, well beyond the life of the bonds. Capital improvements through 2001 is dominated by the addition of scrubbers to meet federal emissions requirements.

Pinellas County Fla. solid waste and resource recovery statistics

Financial statistics	—Fiscal year ended Sept. 30—			
	1996 ^a	1995	1994	1993
Total revenues (mil. \$)	55,740	52,806	43,860	47,618
Energy revenues (mil. \$)	18,064	16,398	8,220	9,371
Revenue from tipping fees (%)	60.6	62.9	75.3	72.5
Revenue from energy sales (%)	32.4	31	18.7	20.7
Revenue from other sources (%)	7	6.1	6	6.8
Operating expenses (mil. \$)	27,394	24,097	23,166	22,252
Net revenues (mil. \$)	28,346	28,709	20,694	25,366
Total debt (mil. \$)	170,736	120,177	129,612	138,341
Total assets (mil. \$)	273,185	229,863	227,796	233,439
5-year CIP (mil. \$)	141,090	107,132	N/A	N/A
Equity (%)	37	44.6	40.1	36.2
Debt/assets (%)	59	52.3	56.9	59.3
Debt service coverage (x)	1.55	1.57	1.13	1.38
Operating statistics				
Total waste flow (tons/year)	N/A	N/A	1,697,980	1,733,534
Throughput (tons/year)	900,000	893,965	865,647	923,217
Recycled (%)	44	47	47.6	46.7
Estimated landfill life (years)	20	20	20	20
Energy generation (mmwhr)	344,799	339,687	341,658	368,378
Energy revenue (cents/mwh)	1.8	1.86	2.41	2.68
No. of hours	24	24	24	24
Tipping fee (\$/ton)	37.5	37.5	37.5	37.5

^aCapacity and energy sales. N—Projected N/A—Not available

The county's solid waste management department owns the facility while Wheelabrator Pinellas acts as the plant operator. There is some concern regarding the mismatch between the ending term of the management contract and bond maturity. The county expects that it will have a new agreement in place prior to the termination date.

SPECIAL REPORT

PRINCE GEORGE'S COUNTY, MARYLAND

Analysts: Gordon Murray 212-206-1864, Howard Spumberg 212-208-8096

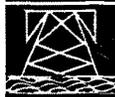
RATING AFFIRMED

OUTSTANDING RATING

\$42.3 million solid waste management system revenue bonds series 1993 A

OUTLOOK: STABLE

LONG TERM



RATIONALE The rating on Prince George's County, Md.'s bonds reflect the following risks:

- A large capital plan to be funded by debt, and
 - A reduced financial position.
- Offsetting these risks are the following strengths:
- A more reliable revenue stream resulting from the decision to charge solid waste fees on tax bills.
 - A strong service area economy ('AA-' G.O. debt), and
 - A strong legal package, including the county obligation to pay operation and maintenance expenses from its general fund in the event of a deficiency.

8% decline in revenues during 1995 and a net loss in fiscal 1995. To offset the revenue shortfall, management drew down unrestricted reserves in fiscal years 1994 and 1995 to a minimal at \$136,000 at fiscal year ending June 30, 1995. The fund also took a \$4 million short-term loan from the general fund to offset losses. However, the new waste fees resulted in an estimated 25% increase in revenues for fiscal 1996, and Standard & Poor's expects that improved fiscal 1996 cash flows will restore reserves to an acceptable level.

A concern is the size of the system capital improvement plan, which is relatively large at \$86 million over the next five years. The capital improvement plan will be funded entirely with G.O. debt to be repaid by system revenues. However, management is considering amending the plan to lower its cost.

OUTLOOK The outlook reflects Standard & Poor's expectation that the new method of charging solid waste fees will be reflected in improved audited financial results in fiscal 1996 and later years.

OPERATIONS AND FEES Prince George's County operates two landfills—Brown Station and Sandy Hill, that have useful lives of 20 years and three years, respectively. The system contracts with a materials recovery facility located within the county to carry out its recycling program. About 5% of county waste is recycled.

Prior to 1995, the county relied on a number of haulers and municipal contracts to bring waste to its facilities, and through 1994, the system facilities were the designated waste disposal sites for the county. However, after the Carbone decision in May 1994, the county began to experience losses of tonnage to other facilities that were charging lower tip fees than the county's tip fee of \$72 per ton. Annual tonnage declined 10% to 556,000 tons in 1995, from 616,000 tons in 1994, and resulted in a 8% drop in revenues.

To offset the loss of tonnage and revenues, the county made three changes. It implemented a program of annual waste fees charged to all county residences on July 1, 1995. The county now also contracts for all residential waste collection and serves 120,000 county single-family and town homes. It directs all contract collectors to take waste to the county landfills. To attract commercial waste, tip fees were lowered to \$49. As a result, the county has had some success at attracting commercial waste during fiscal 1996.

The new program results in more reliable and secure revenue stream and a diminished reliance on tip fees. Residents have generally accepted the new fee structure, which has a series of components. The base fee for all county residential dwellings is \$50 per year (\$4.16 per month), and additional charges—including fees for bulky trash, recycling, and collection—can bring the annual cost up to \$319, or \$26 per month, for a

Prince George's County, Md., solid waste and resource recovery statistics

Financial statistics	—fiscal year ended June 30—				
	1997d	1996b	1995	1994	1993
Total revenues (\$000s)	68,828	62,809	49,790	54,264	51,322
Energy revenues (\$000s)*	N/A	N/A	N/A	N/A	N/A
Revenue from tipping fees (%)	22	25	49	39	36
Revenue from energy sales (%)†	N/A	0	0	0	0
Revenue (other) (%)	72	68	52	61	3
Operating expenses (\$000s)	55,471	58,679	54,033	51,682	46,006
Net revenues (\$000s)	13,357	4,130	(4,243)	2,582	5,316
Total debt (\$000s)	N/A	N/A	69,917	56,811	59,162
Total assets (\$000s)	N/A	N/A	145,762	135,158	139,858
5-year CIP (\$000s)	N/A	86,101	N/A	N/A	N/A
Equity (%)	N/A	N/A	N/A	N/A	N/A
Debt/assets (%)	N/A	N/A	48	42	42
Debt service coverage (x)	2.23	2.39	N/A	0.51	1.78
Operating statistics					
Total waste flow (tons/year)	525,000	569,929	556,642	615,646	686,551
Throughput (tons/year)†	N/A	N/A	N/A	N/A	N/A
Residential waste (%)	0	0	0	0	0
Recycled (%)	0	5	5	5	5
Estimated landfill life (years)	C	20	20	20	20
Net disposal capacity (tons/year)†	C	0	0	0	0
Energy generation (mwh/y)	N/A	N/A	N/A	N/A	N/A
Energy revenue (cents/ton)	N/A	N/A	N/A	N/A	N/A
Availability factor (%)	C	0	0	0	0
No. of haulers	N/A	N/A	N/A	N/A	N/A
Waste collected by private haulers (%)	N/A	N/A	N/A	N/A	N/A
Tipping fee (\$/ton)	49	49	72	72	N/A

*Include for systems with waste-to-energy facilities. u—unaudited. d—projected.

The county experienced a 11% tonnage decline in fiscal 1995, as waste was diverted to other disposal sites. To remedy the situation, it implemented a program of charging solid waste fees to all residences in the county. The new program results in a more reliable and secure revenue stream and a diminished reliance on tip fees. An estimated 68% of revenues were generated by the residential waste fees in fiscal 1996. Prince George's also has expanded its residential collection service area to the whole county, except municipalities. Resulting annual charges are high at \$319 (\$26 monthly) for a single-family dwelling for collection and disposal.

Although the county met all bond covenants in fiscal 1995, the decline in tonnage resulted in an

SPECIAL REPORT

single-family home. The new program has stabilized waste flows, and annual tonnage rose 2% in fiscal 1996. However, the county is budgeting fiscal 1997 and 1998 revenues based upon \$25,000

tons to be conservative, and this level is about 100,000 tons lower than anticipated in 1993 and represents a conservative budgetary approach.

SOUTHEASTERN PUBLIC SERVICE AUTHORITY, VIRGINIA

Analysts: Edward R. McGlade 212-208-1741,
Seth Letman 212-208-1356

RATINGS AFFIRMED

OUTLOOK: STABLE

LONG TERM



OUTSTANDING RATING

\$50.885 million regional solid waste system
senior refunding bonds series 1993 A-

RATIONALE The rating on Southeastern Public Service Authority, Va.'s bonds reflects the following credit strengths:

- The strong credit quality and economic stability of the participating members, and
- The continued security provided under the member disposal agreements.

Offsetting factors include the following credit risks:

- The loss of commercially generated waste due to increased competition, and
- Historically marginal financial operations.

The authority entered into long-term disposal agreements with each of its six participating cities and two counties. The agreement calls for each entity to dispose of at least 95% of the waste under its direct control to the authority's system, whose tip fees are operating expenses of the members under various general and enterprise fund arrangements. The authority is a regional waste disposal provider encompassing the two counties and six independent cities of southeastern Virginia. Of the members, Norfolk ('AA' G.O. rating), Virginia Beach ('AA'), and Chesapeake ('AA') account for 80% of the total population of

the authority's service area and reflect the strong credit quality of the members. Employment is dominated by the U.S. Navy, which operates the largest shipyard in the country.

The authority has experienced a significant decline in commercial waste received at its facilities. In 1995, commercial waste is down 33% from pre-Carbene levels. Two of the largest private haulers have begun to take waste to their own facilities and have reduced the amount that they deliver to the authority by approximately one-half. The authority has raised its integrated tip fee to \$48.50 in order to maintain the current level of marginal financial performance. In addition, the authority operating in a business like manner has reduced the tip fee for waste delivered directly at the refuse derived facility to \$25 per ton in order to attract and maintain some commercial waste. Coverage of annual debt service on the senior lien bonds in 1995 was adequate at 1.6 times (x). However, total coverage of all bonds was marginal at 1.0x. With increasing debt service in 1997, along with the decline in commercial waste flow, the authority faces some financial pressures.

OUTLOOK The outlook reflects the continued security provided by the member disposal contracts in offsetting increased competition and the loss of commercial waste. However, inability to stabilize the commercial waste flow may place increased pressure on system operations and finances, and could lead to a rating downgrade.

OPERATIONS The authority has a diverse mix of waste disposal facilities, including nine transfer stations, a regional landfill, and a 2000-ton-per-day refuse derived fuel plant. The refuse derived fuel is burned at a power plant that provides steam and electric generation at the U.S. Navy shipyard. The authority took over operations at the power plant in 1990, and since then, the amount of refuse derived fuel burned at the plant has increased. The authority is installing a bulk waste shredder at the front end of the refuse derived fuel plant in order to be able to process more of the waste received at the facility, thereby reducing the amount of waste that needs to be landfilled. The importance of this is that it gives the authority additional time in making the decision on whether to open an additional cell at the regional landfill or use other waste disposal options. Currently, the ash and residue from the power plant is delivered to Virginia Beach's city-owned landfill, which is operated by the authority. The authority has indicated that this landfill may also need to be expanded in the future.

Southeastern Public Service Authority, Va. solid waste and resource recovery statistics

Financial statistics	Year ended June 30		
	1995	1994	1993
Total revenues (000\$)	57,267	54,626	50,254
Energy revenues (000\$)	12,055	9,336	10,355
Revenue from tipping fees (%)	62	N/A	N/A
Revenue from energy sales (%)	6	N/A	N/A
Operating expenses (000\$)	35,253	31,903	30,030
Net revenues (000\$)	22,009	22,723	20,224
Total debt (000 \$)	231,964	235,295	241,436
Total assets (000\$)	216,286	229,253	238,153
5-year CIP (000\$)	8,447	N/A	N/A
Equity %	(25)	(19)	(17)
Debt/assets (%)	107	103	101
Debt service coverage (x)	1.61	1.64	1.87
Operating statistics			
Total waste flow (tons/year)	879,636	929,170	958,021
Throughput (tons/year)	454,917	394,014	473,879
Residential waste (%)	58	57	51
Commercial/industrial waste (%)	38	44	46
Recycled (%)	N/A	N/A	N/A
Estimated landfill life (years)	17	N/A	N/A
Ash disposal capacity (years)	19	N/A	N/A
Energy generation (mwh/year)	177,280	192,980	193,828
Energy revenue (cents/mwh)	1.8-2.2	1.8-2.2	1.8-2.2
Availability factor (%)	75	75	80
No. of haulers	6	7	7
Waste collected by private haulers (%)	35	35	35
Tipping fee (\$/ton)	48.5	34	34
N/A—Not available; N/A—Not applicable			

SPECIAL REPORT

YORK COUNTY SOLID WASTE & REFUSE AUTHORITY, PENNSYLVANIA

Analysts: Gordon Murray 212-208-1864
Howard Saumberg 212-208-8096

RATING AFFIRMED

OUTLOOK: STABLE

LONG TERM



OUTSTANDING RATING

\$6.01 million solid waste system revenue bonds series 1992
A

RATIONALE The rating on York County Solid Waste & Refuse Authority, Pa.'s (YCSWRA) bonds reflects the following risk:

- Dependence on electric revenues for 30%-35% of revenues, and
- Reliance upon a short-term contract for up to 18% of revenues.

These weaknesses are offset by the following strengths:

- Financial flexibility due to healthy margins and large cash balances.
- Good management and consistently good operations, and
- Competitive municipal tip fees.

The rating also encompasses \$122.5 million of authority debt that is rated 'AA-' based on the guaranty of York County.

Revenues have grown annually as a result of contract escalations in the price per ton paid by some customers and escalating contract prices for energy. The revenues, combined with consistent operations and conservative management, have enabled the system to amass \$40 million in cash and investments, which provide significant flexibility. Coverage has been solid at over 1.2 times (x) coverage since 1990 and strong at 1.85x in 1995. However, continued strong coverage depends upon contract revenues, and after a current 110,000 tons per year contract expires in 2000,

revenues and coverage may be less robust.

YCSWRA operates a waste-to-energy plant and an ash monofill, and contracts with Modern Landfill (Waste Management Inc.) to dispose of unprocessable waste. Modern also provides 110,000 tons annually (26% of throughput in 1995) of processible waste via a put-or-pay agreement through 2000. Because of escalation in its contract, Modern pays rates that are above the market rate for the area.

The authority relies primarily on interlocal contracts with 66 of 72 county municipalities to direct county waste (65% of total flows in 1995) to the system. None of the agreements have been contested. Fees for 65% of total tonnage are paid directly to the county by municipalities and Modern. Annual waste flows has varied from 346,000-389,000 tons since 1991, and county generated tonnages have stabilized at about 210,000-225,000 tons (55%-65% of total tonnage) since 1993.

YCSWRA's competitive \$56 municipal tip fee is projected to remain through 2000. The system is nearby to other landfills, resource recovery facilities, and a state border, yet most of YCSWRA's waste flow has been maintained by the interlocal agreements and other contracts.

OUTLOOK The outlook reflects YCSWRA's competitive municipal tip fee and its large cash balances that provide financial stability.

OPERATIONS The authority's overall operations have been strong during the past five years. The resource recovery plant has had healthy availability factors at 77%-87% in the past four years. During the past two years, improvements have been made to the boilers that make them more efficient. The system is in compliance with permits, although the authority does face the challenge of finding a new ashfill to replace the Hopewell Township facility that will be filled to capacity in 1997. Management is exploring a number of viable alternatives and will determine the most cost-effective choice in the next year.

Waste flows have been stable as a result of interlocal agreements and the Modern contract, which provided 97% of waste in 1995. To date, none of the interlocal agreements have been challenged, partly due to the maintenance of a \$56 per ton tip fee that management expects to maintain through 2000. While total throughput has varied slightly from 345,000 tons in 1995 to 387,000 tons in 1993, county generated municipal waste, about 55%-65% of the total, has been stable at 220,000-225,000 tons since 1992. Waste supplied under the Modern contract and spot waste have varied the most, varying from 70,000-104,000 tons annually since 1992. However, revenues paid by Modern to the authority have not been affected because of the put-or-pay agreement.

Revenues have continued to grow as a result of escalating rates in waste contracts that provided

York County Solid Waste Recovery Authority, Pa.

Financial statistics	—Fiscal year ended Dec 31—			
	1990	1994	1993	1992
Total revenues (\$000s)	38,199	34,629	34,087	30,337
Energy revenues (\$000s)	11,516	12,582	12,886	10,545
Revenue from tipping fees (%)	62	59	59	60
Revenue from energy sales (%)	30	36	38	35
Revenue other (%)	8	5	3	5
Operating expenses (\$000s)	13,703	15,142	15,917	13,264
Net Revenues (\$000s)	24,496	19,487	18,170	17,072
Total debt (\$000s)	122,526	125,866	128,956	131,815
Total assets (\$000s)	145,133	138,457	140,144	141,415
5-year CIP (\$000s)	N/A	N/A	N/A	N/A
Equity (%)	N/A	N/A	N/A	N/A
Debt/assets (%)	84	91	92	93
Debt service coverage (x)	1.85	1.48	1.44	1.37
Operating statistics				
Total waste flow (tons/year)	346,741	375,750	389,120	360,888
Throughput (ton/year)	345,000	375,000	387,000	355,000
Residential waste (%)	24.1	24.4	23.1	27.3
Commercial/industrial waste (%)	N/A	N/A	N/A	N/A
Recycled (%)	N/A	N/A	27.6	N/A
Estimated landfill life (years)	N/A	N/A	N/A	N/A
Ash disposal capacity (years)	N/A	N/A	N/A	N/A
Energy generation (mwh/yr)	16,003	183,142	211,591	179,934
Energy revenue (cents/ton)	6.89	6.5	6.09	5.86
Availability factor (%)	77	85.4	87.3	81.7
No. of haulers	N/A	N/A	N/A	N/A
Waste collected by private haulers (%)	N/A	N/A	N/A	N/A
Tipping fee (\$/ton)	56	56	56	54
N/A = Not available				

SPECIAL REPORT

24%-32% of tonnage since 1992. These sources provided about 50% of revenues in fiscal 1995. Additionally, escalations in the rate paid under the electric revenue contract also have contributed to revenue growth. These sources of revenues will continue to grow through 2000, when the modern contract terminates and electric revenues per kWh decline 15%. As a result of changes in the contracts after 2000, the authority projects

slightly declining or flat revenues and lowered coverage in 2005, 2010, and 2014. After 2000, the authority may have to raise its tip fee to offset a potential falloff in revenues. Still, expense budgeting is conservative, using an assumption of 292,000 tons per year. This budgeting method has contributed to the authority's large surplus and allows for some flexibility in setting rates.

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HEADLINE: S&P Lowers New Jersey Counties' Solid Waste Debt

NY -- Standard & Poor's CreditWire 9/18/96 -- Standard & Poor's, acting on its earlier signals to the market that revenue bonds issued by two New Jersey solid waste authorities faced downgrades to noninvestment grade ratings, today lowered the ratings on bonds issued by Union County Utilities Authority and the Pollution Control Financing Authority of Camden County.

Having completed its review, Standard & Poor's said both agencies will have difficulty lowering their tipping fees to targeted levels, while their annual debt service costs will be rising significantly.

As noted in separate releases, Standard & Poor's today has lowered the rating on \$147.7 million in Union County Utilities Authority's solid waste system revenue bonds series 1991 A & B to double-'B' from single-'A'-minus. At the same time, Standard & Poor's has lowered the rating on \$168.2 million solid waste disposal and resource recovery system revenue bonds series 1991 A-D to double-'B' from triple-'B'-plus.

With the rating downgrades, Standard & Poor's has removed the issues from CreditWatch; the stable outlooks are predicated on the authorities' being able to implement an economic flow control plan within the court-granted two-year time-frame in which the state's system of flow control can continue.

Since the U.S. Supreme Court's decision, *Carbone versus Town of Clarkstown, N.Y.*, overturning flow control ordinances, municipal solid waste authorities have had to increase their focus on maintaining competitive tipping fees. In the aftermath of the decision, Standard & Poor's said that the court's decision would not prompt widespread downgrades because most systems had competitive rates, could impose alternative user fees, benefited from some form of general fund support, and lacked competition from nearby facilities.

However, the Feb. 5 CreditWeek Municipal identified the Camden County and the Union County authorities as two that would be affected by the court's decision.

In Union County's case, the downgrade also cites The City of Elizabeth's intention to find other disposal options. With the authority projecting a need for its tipping fees to increase to \$99.46 by 1999, in step with rising debt service costs, Standard & Poor's "believes that the authority will have extreme difficulty reducing its tipping fee without some type of subsidy the state or county. Should the authority fail to implement a plan and Elizabeth leave the system, the loss of its revenue would put extreme pressure on the authority's financial margins."

Camden County's system needs to reduce its projected tipping fee by \$34 per ton to remain competitive at market rates. "The expense savings plan, as outlined, is primarily contingent upon the authority renegotiating its ash disposal agreement with Waste Management, the host community benefit fee with the Township of Pennsauken, and the operation and maintenance charge with Foster Wheeler," Standard & Poor's notes. Similarly, Camden's system also may depend on state or county support. -- CreditWire

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**COMMITTEE ON THE ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
WASHINGTON, D.C.**

***SOLID WASTE FLOW CONTROL AND MUNICIPAL BOND
CREDIT RATINGS***

Submitted by:

**Chee Mee Hu, Vice President/Assistant Director
Charles E. Emrich, Assistant Vice President
Revenue Specialties Group
Public Finance Division
MOODY'S INVESTORS SERVICE, INC.**

March 18, 1997

Moody's Investors Service is privileged to assist the United States Senate Committee on Environment and Public Works in its efforts to analyze the impact the loss of solid waste flow control on local ordinances and systems with debt outstanding. As a credit rating agency, it is not Moody's policy to influence legislative matters, however we are happy to share some of our observations and thoughts on solid waste flow control and municipal bond credit ratings. The following comments were structured to address questions posed by committee members to Moody's in the letter dated March 11, 1997. The first section outlines our approach to evaluating solid waste revenue bond ratings. The second and third sections review the impact of the *Carbone* decision on debt outstanding while the last section discusses the credit ratings of some of the solid waste systems in New Jersey.

In summary, pre-*Carbone*, Moody's considered solid waste flow control ordinances to be valid and legally binding. Moody's conducted an extensive review of solid waste credit ratings in 1995, and downgraded fourteen ratings and assigned unfavorable outlooks to nineteen others. Attached is a copy of that study, entitled *Moody's Solid Waste Rating Surveillance and Rating Outlook*. Since that report was published, two credit ratings have been upgraded and two have been lowered. Finally, subsequent to the *Carbone* decision, the ratings for the unenhanced revenue bonds of five authorities in New Jersey remain below investment grade due to the loss of legal flow control. Our assumption is that the management of those systems will take actions to obviate the loss of legal flow control during the two-year stay.

I. CREDIT RATING ANALYSIS OF SOLID WASTE SYSTEMS

Role of the Rating Agency

Moody's Investors Service assigns credit ratings to all types of debt instruments. A credit rating is an independent assessment of an issuer's ability and willingness to make full and timely debt service payments. Our ratings range from the highest category of **Aaa** --bonds that we believe carry almost negligible amount of investment risk-- to **C3**, which is the lowest class of bonds with extremely poor prospects of ever attaining an investment grade standing. Typically, ratings of **Baa3** and higher are considered to be investment grade.

Revenue bonds are typically secured by the net revenues, that is, gross revenues less operating and maintenance expenses, of the respective enterprise systems. The credit analysis is focused largely on determining the relative strength of the enterprise and its ability to generate sufficient net revenues over the life of the bonds. General obligation bonds, in contrast, are secured by a government unit's unlimited taxing authority and full faith and credit. Revenue bonds, like other bonds, may include a credit enhanced feature such as bond insurance or letters of credit. In the case of credit enhancement bonds, the rating is based on the credit provider's ability to make the debt service payments. Also, some bonds are double barrel, that is, the security includes a pledge of defined operating revenues and the full faith and credit taxing power of the issuer.

Moody's currently maintains credit ratings on over ninety solid waste issues representing nearly \$7 billion of debt outstanding. The average credit rating for unenhanced revenue bonds is an **A**, but the range of ratings is from **A1** to **B**. Also,

Moody's rates a broad range of solid waste systems from landfills, to consolidated systems that include collection and disposal activities, waste-to-energy plants, landfills and recycling facilities.

The Credit Rating Analysis

When conducting a credit analysis for a solid waste revenue bond, Moody's evaluates a variety of factors that affect the net revenue of the system. These factors include, but are not limited to, project feasibility, system operations, financial position, debt profile, legal structure, and management.

The project feasibility considers the size and scope of the system as well as the economics of its service area. Moreover, we undertake an in-depth analysis of the volume, type and stability of the waste stream and agreements with local governments and other interested parties that directly impact the level and continuity of the waste flow. The rating process incorporates the system's competitive position with respect to neighboring facilities, in addition to analysis of political, regulatory, and environmental factors.

The system's historic and projected operations are a key factor. We analyze the type of system --collection, disposal or integrated-- and the condition of facilities, including asset maintenance, historical and future performance levels, capacity and technologies utilized. Service agreements with facility operators and sales agreements with energy purchasers are also important credit factors.

Financial performance is carefully examined. A detailed examination of historical, current and projected financial operations are conducted, focusing on trends and fluctuations of revenues, expenses and cash flows. A system's rate setting methodology

and ability to increase fees and charges is also considered. Likewise, the amount, structure, and type of debt outstanding is considered, as well as the capital program and future borrowing plans. Legal provisions, such as flow of funds, debt service coverage and other covenants are reviewed to determine the level of bondholder security.

Finally, management is crucial. Not only is the experience and commitment of the project team management important, but its willingness and ability to respond quickly to changing market conditions and its ability to respond to political pressures are reflected in the credit rating.

These factors, and any other factor that we believe affects the issuer's ability and willingness to service debt payments on time and in full, are all analyzed. However, because all solid waste systems are unique, the weight given to each factor may differ, depending on the circumstances.

II. SOLID WASTE RATINGS AND THE *CARBONE* DECISION

In May 1994, in *C.A. Carbone v. Clarkstown, New York*, the United States Supreme Court ruled that a flow control ordinance in Clarkstown, New York, which directed all waste to a town-designated transfer station was unconstitutional on the grounds that the local law violated the dormant interstate commerce clause of the Constitution that protects free trade between states. Prior to the *Carbone* decision, Moody's viewed the state and local flow control laws and ordinances as valid, binding and enforceable.

Since the *Carbone* decision, our views on flow control have been modified. Project fundamentals have become more important criteria in our credit analysis of solid waste management systems.

Surveillance Report of Solid Waste Systems

In response to *Carbone*, Moody's undertook an extensive review of our solid waste ratings. In the spring of 1995, we examined seventy-six credits affecting \$4.5 billion in debt, including unenhanced, enhanced and county guaranteed bonds.

As a result of the review, Moody's downgraded fourteen credit ratings. These downgrades were rooted in the declines in waste streams, financial deterioration and litigation that have increased the vulnerability of fundamentally non-competitive solid waste systems that were fundamentally less competitive than other operations within the market area. The downgrades included one that was lowered from **Aa** to **A1**; one from **A1** to **A**; five from **A** to **Baa1**; one from **Baa** to **Ba1** and six from **Baa** or **Baa1** to **Ba**. Five of six ratings that were downgraded to **Ba** were on the stand-alone, uninsured solid waste revenue bonds issued by authorities located in the State of New Jersey. Bonds with **Ba** are judged to have speculative elements; their future cannot be considered as well assured. Often the protection of interest and principal payments may be moderate at best, and thereby problematic.

Furthermore, as a result of the review, nineteen other credits were assigned an unstable outlook because of potential vulnerabilities related to loss of flow control.

III. SOLID WASTE RATING: THE LAST TWO YEARS

Moody's continues to actively monitor all of our solid waste ratings. Since the publication of the report, two ratings were upgraded, nine were confirmed, two were downgraded and three initial ratings were assigned.

Credit Ratings That Have Strengthened

Two credit solid waste revenue bond ratings were recently upgraded. The rating for the Town of Hempstead Industrial Development Agency, New York (American REF-FUEL Company, Hempstead Project) bonds was raised from **Baa1** to **A3**. The rating was raised largely because the facility has exceeded performance expectations since 1989 resulting in solid financial performance and good debt service coverage level.

The other upgrade was the New York State Environmental Facilities Corporation Bonds, 1989 Series A from **Baa** to **Baa1**. That upgrade was based, in part, on the Town of Huntington's service agreement obligation that provides the ultimate security for the bonds, and adequate waste deliveries to the facilities. Both Hempstead and Huntington benefit from strong service agreements and inter-municipal agreements that direct sufficient waste flow to the projects. This form of contractual flow control (per the *SSC Corp. V. Town of Smithtown et al*) ensures baseline viability.

Furthermore, the credit rating for the solid waste revenue bonds of Dade County, Florida, is an example of improving performance post-*Carbone*. The rating of those bonds was lowered during our 1995 surveillance review from **A** to **Baa1** and assigned an unfavorable outlook. The downgrade was due to high tipping fees that led to significant diversion of waste outside the system, resulting in significant declines in revenues. The

outlook for the rating was changed to stable in December 1996, due in large part to management's ability to improve the system's competitiveness through lowered tipping fees that enticed local municipalities and haulers to sign long-term contracts to deliver their waste to the county's facilities. These contracts, along with the county's own collection efforts, increase committed waste to 90% for 1997, up from 40% in 1991. Also, the system is diversifying its revenue stream so it is not solely reliant on tipping fees. Again, business competitiveness and contractual obligations were critical to improved credit position.

Other solid waste systems have seen their credit ratings strengthened because management established some form of economic flow control. They have been able to lower their tipping fees to improve their competitive position, and have implemented or broadened the use of special assessment taxes or user fees. These charges are typically assessed on real property, because the owner derives a special benefit from a government activity, like the disposal of solid waste. To date, special assessments have been upheld in various courts. Our analysis includes the assessee's ability to make the payment and the political implications of having such a charge. The Westchester County Resource Recovery project is an example of a solid waste system that enjoys the benefits of ad valorem assessments on a strong socio-economic service area, adding to its other strong credit factors.

Credit Ratings That Have Weakened

Two credit rating downgrades have also occurred since we published the report: the solid waste revenue bonds for Sarasota County, FL, and the Mercer County Improvement Authority, NJ, revenue bonds. The former was lowered from **A** to **Baa1** because of a large increase in debt levels and system vulnerability with respect to rates and tonnage declines. Tonnage has declined significantly in the past several years, in part due to extensive recycling, with some recent stabilization evidenced except for commercial flows that continue to decline. Tipping fees are above average relative to competing facilities. The Sarasota system consists of private franchised refuse and recyclable collection, one transfer station and a landfill, among other components.

The Mercer County Improvement Authority (MCIA) resource recovery bonds were lowered in December 1996 from **Ba** to **B**. Bonds that are rated **B** generally embody some highly speculative characteristics where assurance of interest and principal payments or maintenance of other terms of the indenture or contractual obligations over any long period may be small. Over the last eight years, the MCIA issued approximately \$190 million in revenue bonds for the construction of a waste-to-energy facility as an integral part of the county's long-term solid waste management program. On November 7, 1996, however, the Board of Freeholders of Mercer County rejected amendments to the county's solid waste plan that were necessitated by the loss of legal flow control. As a result, the project cannot be built as planned. The MCIA and the county face timing and political constraints that raise questions regarding the ability of the MCIA, in and of itself, to meet debt service requirements on the revenue bonds. Also, the spectre of intervention

by the state through the Local Finance Board exemplifies the possible inability of the MCIA to support its solid waste debt in the long term. MCIA is currently in the process of issuing debt that is guaranteed by the county, the proceeds of which would be used to redeem the resource recovery revenue bonds

Credit Implications For General Obligation Bonds

It is important to note, however, that general obligation bondholders are not necessarily insulated from the solid waste problems. Some counties have guaranteed portions of the solid waste revenue bond debt or entered into deficiency make-up agreements to provide additional security to solid waste revenue bondholders. Counties most vulnerable are those with authorities that have issued a sizable amount of solid waste debt and that charge a relatively high tipping fee as a result of these fixed debt service costs. Further, exacerbating the problem in some cases is that facilities may be sized inappropriately for its service area.

Also, ratings on other general obligation bonds have been lowered in part due to the solid waste problems of their respective systems. Moody's downgraded the general obligation credit rating of Mercer County, NJ from Aa1 to Aa because the problems of the solid waste issue reflected the county government's difficulty in reaching a unified and timely solution. The ability of both branches of county government to cooperate and solve other problems that may face the county has become a concern. Other counties in New Jersey could face similar problems if they experience difficulty managing solid-waste concerns while meeting bondholder obligations.

The credit rating of San Diego County was lowered from **A** to **Baa1**, in part because of solid waste problems. County officials canceled plans to transfer the solid waste system to a local authority in November 1996. The county, however, still faces significant obstacles including: funding the system's near term capital needs; the planned early closure of its San Marcos landfill following an unfavorable court ruling in September 1996; and the growing competition for the county's solid waste. Although tipping fees have been reduced in an attempt to be competitive, the system still faces significant hurdles and it has become apparent that these will continue to impinge on the county's general resources.

IV. SOLID WASTE RATINGS IN THE STATE OF NEW JERSEY

The solid waste systems in the State of New Jersey are of particular concern. Moody's currently rates nearly \$800 million of debt of solid waste issuers in that state. Approximately \$450 million of that debt is unenhanced, the balance is either insured or is county guaranteed. Those issuers are: Atlantic County Utilities Authority, Camden County Pollution Control Financing Authority, Mercer County Improvement Authority; Passaic County Utilities Authority; and, Warren County Pollution Control Financing Authority. The rating for the Mercer County Improvement Authority was lowered to **B**. The solid waste revenue bonds issued by these authorities are backed by solid waste system revenues generated primarily by currently non-competitive tip fees. This renders these systems vulnerable to waste diversion absent enforceable flow control laws. The ratings on the county guaranteed portion of the debt reflects the county's general obligation rating, while the insured portion reflects the insurer's claims making ability.

The of the July 15, 1996 ruling by the United States District Court in New Jersey regarding *Atlantic Coast Demolition & Recycling, Inc. et al. v. The Board of Chosen Freeholders of Atlantic County, et al.*, overturned the state's statutory flow control system. This ruling enjoined the enforcement of state flow control regulations after a two year period, assuming the decision is not appealed. The state's flow control regulations were deemed unconstitutional by the court to the extent that these regulations discriminated against interstate commerce by depriving out-of-state disposal facilities the opportunity to compete for New Jersey disposal business.

Following the ruling, solid waste systems throughout New Jersey will have to consider alternatives to mitigate the loss of legal flow control. These systems will have to institute mechanisms that preserve system viability and avert a credit deterioration. The authorities have about two years to modify their systems to compete in an environment absent of legal flow control. The **Ba** ratings we have outstanding includes the assumption that management will be able to modify the project to compete effectively post-*Carbone*. One of our concerns, however, is that the ruling is being appealed. If the stay is shortened, then management may not have sufficient time to implement the necessary changes to compete effectively, thereby putting adverse pressures on the credit ratings.

V. CONCLUSION

Moody's is often asked if credit ratings would be upgraded if congressional flow control legislation were enacted grandfathering systems that issued pre-*Carbone* debt. We would have to carefully examine the legislation and understand it fully before it can be

seriously factored into the ratings. Our analysis would look at how the legislation stabilizes the system's waste stream, the period it covers, and the political will to enact and uphold such an act. A stabilized waste stream would probably strengthen the credit rating. However, each credit rating will be examined on a case-by-case basis.

Moody's **Municipal** Credit Report

SPECIAL
Moody's Solid Waste Rating Surveillance and Rating Outlook

May 1996

Credit Risk Increases in a Post-Carbone World
Foreword

As part of Moody's ongoing surveillance of solid waste bonds, we have examined 76 ratings. These reviews provide a case-by-case analysis of credit fundamentals, including the economy, finances, administration, and debt, and an assessment of the potential credit risk for outstanding solid waste bondholders of solid waste systems were compelled to operate in a "free-market" environment without the monopoly on waste afforded by legal flow control laws. This report presents the results of our reviews, an outlook for solid waste ratings, and the status of Congressional flow control legislation. In addition to credit outlooks, the issuer rating index includes a list of all ratings reviewed, brief credit comments, publication dates of recently issued full credit comments, analyst contacts, issuer contacts, system types, debt outstanding, and Cusip numbers.

Overview and Outlook
Aftermath of Carbone Decision: Credit Risk Increases

- Moody's has downgraded 14 ratings as the result of declines in waste streams, financial deterioration, and litigation that have increased the vulnerability of noncompetitive solid waste systems. Additional downgrades are likely without a Congressional solution as cases work their way through the courts nationwide or as haulers finally decide it is safe to ignore existing flow control laws. If a federal law is enacted that "grandfathers" flow control, Moody's will upgrade solid waste ratings that have benefited in the past from a legal monopoly on waste.
- Legal securities, such as deficiency make-up pledges of system operating expenses, are not a cure-all for loss of waste and declining revenues. A complete breakdown of a solid waste enterprise would affect the credit position of some municipal guarantors of solid waste enterprise debt.
- Financial flexibility and management responsiveness are critical in cases where competition has become a credit factor in an assessment of a solid waste system. The general credit outlook for solid waste revenue bonds without a legal monopoly on waste is higher risk and lower ratings—absent double-barrelled securities that provide credit enhancement. The enforceability of economic forms of flow control such as

waste generation fees and municipal hauling monopolies is a credit consideration of growing importance, given the legal challenges after the Supreme Court's decision on Carbone.

(For rating outlooks and comments on individual issuers, see Issuer Index in this report.)

Moody's undertook this review project in response to the 1994 U.S. Supreme Court decision on flow control in *C. & A. Carbone v. Clarkstown, New York* and the current absence of a Federal Law protecting or "grandfathering" legal flow control. The ratings detailed in the report are primarily secured by lease and revenue securities. A segment of the revenue bonds reviewed is additionally secured by back-up guarantees and deficiency make-up agreements with municipalities.

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Surveillance Results

- 62 Ratings Confirmed - Debt Affected: \$3.4 billion
- 14 Ratings Downgraded - Debt Affected: \$1.1 Billion
- No Upgrades

The following rating changes were made during the surveillance project:

Issuer	Moody's Rating	Rating Date
Connecticut		
Conn. Res. Rec. Auth. American Refuel, Southeastern Project	Baa1 (revised from A)	4/12/95
Conn. Res. Rec. Auth. Southeastern Conn. Proj. Municipal Svc. Fee	Baa1 (revised from A)	4/12/95
Florida		
Dade County Solid Waste Rev.	Baa1 (revised from A)	3/1/95
Maryland		
Prince George's County Solid Waste Management System Rev.	Baa1 (revised from A)	3/21/95
Michigan		
Central Wayne County Sanitation Auth. Incinerator Rev.	Ba1 (revised from Baa)	3/16/95
New Jersey		
Atlantic County Utility Auth.	Ba (revised from Baa)	2/17/95
Camden County Pollution Control Finance Auth.	Ba (revised from Baa1)	2/17/95
Mercer County Improvement Auth. Solid Waste Rev.	Ba (revised from Baa1)	2/17/95
Passaic County Utility Auth. Solid Waste Rev.	Ba (revised from Baa1)	2/17/95
Warren County Pollution Control Fin. Auth. Landfill Rev.	Ba (revised from A)	2/17/95
New York		
St. Lawrence County Solid Waste Auth. Solid Waste Disp.	Ba (revised from Baa)	2/27/95
Pennsylvania		
Lancaster County Solid Waste Management Auth.	A (revised from A1)	2/13/95
Virginia		
Fairfax County Economic Development Auth. Res. Rec. Rev. 88A	A1 (revised from Aa)	3/17/95
Southeastern Public Service Auth. Sr. Lien Solid Waste Rev.	Baa1 (revised from A)	3/21/95

Some ratings that were downgraded in conjunction with this project could be upgraded subsequent to the approval of a federal law that would protect legal flow control. The ability of an issuer to recapture its former rating level will depend on the timing and content of any new law. Ratings that were downgraded for reasons unrelated to concerns over the loss of flow control or that exhibited increasing credit weaknesses even before the *Carbone* decision may not regain their former credit strength with the passage of a federal law. Moody's will review ratings for potential upgrades on a case-by-case basis if a flow control law is enacted. (Note: for the purposes of this review, the definition of legal flow control broadly includes a local ordinance directing waste to a project in New York or franchise law in California or New Jersey, in which municipalities and authorities can designate haulers or disposal sites.)

In evaluating solid waste credits post-*Carbone*, Moody's did not assume the complete absence of legal flow control. Although *Carbone* was a broadly worded decision, most systems are continuing to operate as if their flow control ordinances remain intact, pending a legal challenge that directly affects them. Therefore, downgrades were limited to systems that have already experienced material litigation that directly affects them or some other form of credit weakness, such as a loss of waste or financial deterioration.

Competition and Absence of Adequate Flow Control—Major Factors in Most Downgrades

In the majority of downgrades, competition and the corresponding loss of waste have been important rating considerations. In general, as we examined the 76 credits that form the basis of this study, we found that one of the following elements could be found in each rating downgrade:

- Litigation
- Loss of waste
- Financial deterioration

Flow Control—A History of Litigation. The U.S. Third Circuit Court of Appeals, which encompasses the states of New Jersey, Pennsylvania, and Delaware, ruled in *Atlantic Coast Demolition & Recycling v. Atlantic County Board of Freeholders and Pollution Control Financing Authority et al.* that a district court erred in holding that New Jersey's flow control regulations (which provide county solid waste systems in the state with the authority to direct waste to designated facilities) do not discriminate against interstate commerce.

In reversing the lower court's ruling, the appellate court cited the U.S. Supreme Court's ruling in *C. & A. Carbone v. Town of Clarkstown*. In *Carbone*, the Supreme Court struck down a local flow control law as violating the dormant commerce clause of

the Constitution. The appellate court remanded the case to the district court to determine whether New Jersey's flow control law can pass the stricter legal test applied in *Carbone*. In order to prevail, the state must now demonstrate that flow control serves a legitimate public purpose and that this purpose could not be served as well by means that do not discriminate against interstate commerce.

In Moody's determination, the Court's ruling in *Atlantic Coast* creates additional risk for New Jersey solid waste revenue bonds. In the absence of Congressional protection of legal flow control, a competitive environment is a much more realistic possibility for New Jersey systems, which in some cases charge tip fees that are more than twice the price level at landfills in Pennsylvania.

Immediately after the *Atlantic Coast* ruling, Moody's downgraded all five solid waste revenue bond ratings in the state to **Baa** from their previous investment-grade level. The security on these bonds primarily constitutes a pledge of system revenues.

Legal Security—No Cure-All for Loss of Waste and Declining System Revenues. A deficiency make-up of system revenues or even a general obligation guarantee of debt service does not automatically mean that credit quality would be unaffected by the substantial weakening of a solid waste enterprise. The timing and sufficiency of the guarantee and the ability of the obligor to fulfill the back-up commitment must also be considered.

For example, in New York State, St. Lawrence County's Solid Waste Management Authority's rating was downgraded from **Baa** to **Ba** as a result of a diversion of waste attributable to a non-competitive tip fee. This bond possessed a double-barreled security. As the enterprise weakened, bondholder security shifted from system revenues to the county's contractual obligation under a service agreement. The county's general obligation bond rating is **Baa**. Although it appears that the county possesses the resources to meet the commitment to pay debt service on the solid waste bonds, the subsidy still must be budgeted and implemented on a timely basis. The distinction between the county's rating and the authority's rating stems from the loss of waste and projected drawdown of enterprise cash reserves as well as the contractual obligation of the county, which is considered weaker than the county's general obligation, unlimited tax (ULT) security.

Declining Waste Levels and Weakened Financials Prompt Downgrade. Declining waste levels and weakened financial operations were cited as the major factors in the downgrade of Prince George's County Solid Waste Management System (Maryland) from **A** to **Baa1**. This rating action was based on loss of waste and a weakened financial position, despite the county's legal pledge to use General Fund resources or other available funds to pay operating costs if system revenues prove insufficient. Prince George's County's general obligation rating is **Aa**.

The rating distinction here reflects the weakening of the system and the fact that the timing and extent of a county subsidy were not clearly delineated under county deficiency-makeup covenants, leaving unanswered questions about when necessary revenues would be transferred. Prince George's County's General Fund operations are also under increased financial pressures that have no relation to the solid waste system.

Financial Flexibility—A Key Element in Measuring Degrees of Risk. The Economic Development Authority of Fairfax, Virginia, and Southeastern Public Service Authority (SPSA) both experienced declines in waste. The ratings on these issuers were lowered to **A1** and **Baa1**, respectively, from **Aa** and **A**, representing increased risk in implementing a business plan to promote competitiveness. The effect of a loss of waste on revenues is expected to be tempered by management responses, such as subsidizing commercial fees and aggressively pursuing alternate waste streams.

While the uncertainty of successful implementation is reflected in the rating downgrades, Moody's views positively the ability of both systems to adjust pricing or attract alternate waste sources. By contrast, this flexibility is not immediately practicable for most of the New Jersey systems, which have higher overhead and extremely non-competitive tip fees to adjust. Tip fees for New Jersey systems affected by the rating downgrades average about \$110 per ton.

SPSA is expected to increase its residential fee from \$34 per ton to \$63 per ton while lowering the fee for the more vulnerable commercial waste to \$30-\$34 per ton from \$41 per ton.

The Fairfax tip fee is still a fairly competitive \$48 per ton. Fairfax is taking steps to increase its waste volume by pursuing out-of-county waste.

Financial Position Weakened, but Responsiveness Reflected in Credit Standing. Moody's considers Lancaster, Pennsylvania, to be an interesting case study. In this situation, management's responsiveness had a favorable effect on the assigned rating because it prevented the situation from worsening. As a result of a decline in revenues and credit risks tied to the resolution of the flow control issue, Moody's downgraded the authority's credit rating from **A1** to **A**.

At the same time, we noted management's proactive approach to the risk of losing flow control. Management lowered tip fees to attract more waste to the facility. This strategy has only been partially successful because waste volume has not increased to a level that, given the lower price now charged at the gate, balances out lower costs with increased volume. While Moody's considers Lancaster's management's strategy commendable, nevertheless this system still carries risks that are reflected in the lower rating and unfavorable outlook.

Pending Challenges to Flow Control Authority

Important cases are currently pending before the U.S. Court of Appeals for the Second Circuit (encompassing the states of New York, Connecticut, and Vermont) that involve challenges to flow control authority in the towns of Babylon and Smithtown, New York. The cases currently pending include *A.A. & M. Caring et al. v. Town of Babylon*; *USA Recycling, Inc. et al. v. Town of Babylon et al.*; and *S&C Corp. v. Town of Smithtown et al.*. The legal arguments in the Second Circuit cases differ from *Athletic Coast* as does the type of flow control law in question. Flow control is centralized in New Jersey through state law, which gives counties the power to control their own solid waste management. In New York, flow control is imposed locally. The town of Babylon's legal defense argument contends that the case is not about flow control, but rather municipal police power that has been used to establish a commercial garbage district and that has the authority to assess taxes to pay for the town's integrated waste system.

Babylon is a participant in a waste-to-energy project located within the town boundaries. Smithtown is a contractual participant in a waste-to-energy project located in the town of Huntington, New York. Debt of the Babylon system is currently rated **Baa1**, while that of the Huntington facility is rated **Baa**. Both ratings are under review.

If the Second Circuit rules against the towns and impedes their ability to control waste going into the solid waste systems, credit quality could suffer if the towns do not develop effective plans for remediation. If Babylon's proposed commercial waste district, which would eliminate gate tip fees and bill businesses directly, is overturned, the town would reportedly haul commercial waste with its own trucks.

New York solid waste systems such as Babylon and Huntington are not off at the same competitive disadvantage as the New Jersey systems, however. Well before the *Carbone* decision was handed down, the Babylon and Huntington facilities both lowered tip fees. The Babylon system's tip fee for commercial waste is \$78 per ton, while the Huntington fee is \$65 per ton. These rates do not reflect spot-market rates, which fluctuate frequently. Moody's will closely monitor developments in these systems and for all the New York solid waste issuers for vulnerabilities posed by litigation.

Given the precedent set by *Carbone*, failure to uphold flow control laws at any U.S. Circuit federal appellate court has and will be considered a material credit event for systems that rely on legal flow control. New York systems such as Oneida-Herkimer, St. Lawrence County, North County Development Authority, and Ulster County Resource Recovery Agency all have some form of deficiency make-up pledge of system reve-

nues under service contracts with municipalities. These back-up pledges, as noted, do not, however, eliminate risk entirely if the enterprise weakens significantly due to waste declines.

Contractual Forms of Flow Control. Contractual forms of flow control are a separate but important legal issue that will continue to have credit implications for solid waste bondholders, beyond the debate over interstate commerce and statutory flow control. Solid waste system service contracts, in which municipalities guarantee waste deliveries, are often a major consideration in a rating assessment. The contracts, if fulfilled, assure that the system is guaranteed a reliable stream of waste flow and revenues. In certain cases, a municipality's failure to fulfill contractual payments has contributed to a weakening of the solid waste system rating.

Two towns in Connecticut, Guilford and Madison, are currently disputing and partially withholding contractual payments owed to the Connecticut Resource Recovery Authority's Southeastern waste-to-energy project in Preston. Solid waste bonds issued through the CRRA-Southeastern project were recently downgraded from **A** and are currently rated **Baa1** due primarily to concerns over system operating performance and the contractual dispute with the towns. The CRRA-Southeastern bonds are additionally secured by a special capital reserve fund that is backed by the State of Connecticut.

The counties of Warren and Washington in New York State have disputed and failed to make contractual payments owed under service contracts with a waste-to-energy system in Washington County. Solid waste bonds issued through the Warren and Washington Counties Industrial development Agency have been rated **B** since 1992 as a result of strained financial operations and the counties' failure to fulfill contractual commitments to the facility.

Solid Waste Credit Outlook in A "Post-Carbene" World

What is the Rating Outlook If Congressional Flow Control Bill Becomes Law?

If the Congressional flow control bill now under review is signed into law, Moody's thinks we may see the following:

- Some ratings may be upgraded to their former levels—although some may not. (For ratings and outlooks on individual issuers, please refer to the Issuer Index.)
- The bill that will most likely emerge from Congress would offer a very narrow "grandfathering" of legal flow control for most systems that rely on it. The language in the law would have to be studied closely to gauge the credit implications for individual issuers.

Moody's will re-examine systems that rely on legal flow control to assess the benefit of legal flow control protection.

What is the Credit Outlook If Approval of a Federal Flow Control Law Is Delayed?

If an acceptable flow control law (which at least would protect existing projects) is not enacted until 1996 or later, the delay could carry negative consequences for ratings on systems that have already experienced waste losses or are vulnerable to substantial waste losses. For systems under pressure, reserves may be depleted, which could also affect future credit quality.

Moody's will continue its surveillance of solid waste ratings before and after adoption of a flow control law.

General Credit Outlook For Systems Without Legal Flow Control—Higher Risk and Lower Ratings

- Further credit deterioration is likely without an acceptable flow control law. Of the 76 ratings reviewed, 33 have unfavorable rating outlooks, mostly related to a potential loss of legal flow control.
- Litigation at the federal appellate level could also render existing flow control laws unenforceable in a delayed-legislation scenario leading to an acceleration of waste losses.
- Flow control for new projects appears to be "off the table" as a point of Congressional consideration. This development will have significant credit implications for future solid waste financing not protected by the proposed flow control law. Introducing competition into an assessment of credit quality will generally translate into increased risk and lower ratings.
- The absence of legal flow control for new projects could create speculative credit risk for financial structures that merited investment-grade credit quality before the *Carbone* decision.

Can Moody's assign investment-grade ratings to solid waste revenue bonds without legal flow control? The debt issued by solid waste systems operating without legal flow control could be rated at an investment-grade level if:

- A sound operating history is established.
- A sensitivity analysis of waste losses and price adjustments is provided that demonstrates flexibility to adjust prices and insure waste flows.
- The current price is competitive, given existing competition.
- The legal enforceability of economic forms of flow control such as tip fee subsidization and municipal hauling is verifiable.

Moody's notes that the enforceability of economic forms of flow control may be uncertain. This uncertainty could be recognized as a negative in the rating especially if a system could not remain viable without the structure. Direct billing instead of gate fees, and municipal hauling monopolies could, for example, insure sufficient waste streams if legally enforceable. These structures have already been subject to legal challenge.

In a world without legal flow control, key credit questions to be answered are:

Is there clear legal authority to subsidize the enterprise?

Could legal challenges to economic forms of flow control undermine system viability?

Despite the majority opinion in *Carbone* suggesting tax subsidies to finance facilities, a post-*Carbone* case in Ohio found that a generator fee imposed to achieve economic flow control was deemed to violate the interstate commerce clause and that it was thereby unconstitutional.

EPA Report to Congress On Flow Control and Municipal Waste

Before deliberating on flow control legislation, Congress commissioned a study by the Environmental Protection Agency (EPA) to:

1. Present a comparative review of state with and without flow control authority
2. Identify the impact of flow control ordinances on protection of human health and the environment
3. Identify the impact of flow control on the development of state and local waste management capacity

The report's findings concluded that 39 states have some form of flow control authority, while 11 do not, and that flow control laws play a larger role in the waste-to-energy market where at least 58% of the throughput is supported by flow controls. The EPA also found that implementation of alternatives to legal flow could be disruptive and take time. The report stated that no empirical data exist to show that flow control authority provides either more or less protection for human health and the environment.

In the case in question, *Mul-American Waste Systems, Inc. v. Fisher*, a U.S. District Court judge in southern Ohio found that the effect of the fee was to eliminate competition because the fee was being implemented to lower the system tip fee to zero. The court applied *Carbone* as legal precedent and issued a temporary restraining order against the use of the generation fee.

- *Management's responsiveness will be the most critical rating factor in the post-*Carbone* era.* Some systems will have more latitude in their ability to lower rates and attract more waste. The degree to which efforts to become more competitive are successful will also depend on where the present competition is now and from where future competition may come. Permitting and siting new transfer stations and landfill space is difficult, but not unreasonable over the longer time span in which bond amortization must be placed.

Outline of Senate Bill: S. 534 (Passed by the Full U.S. Senate on May 16, 1995)

Municipal Solid Waste Flow Control Act of 1995

Flow control as defined under the act includes: a "law, ordinance, regulation, or other legally binding provision."

The flow control segment of the proposed law grandfathered entities with flow control provisions in place prior to May 15, 1994, with the following caveats:

- Facility must be designated. If not built prior to May 15, 1994, then permits must be obtained, contract for construction in place, or revenue bonds sold prior to May 15, 1994.
- Flow control will remain in effect for 30 years. While focused on protecting outstanding bonds, the bill would provide prospective flow control authority in New Jersey and elsewhere.
- Bonds issued for maintenance and environmental compliance needs are covered, but bonds issued to expand facility are not covered. Landfill expansion is limited to land already owned, permitted, or under option to purchase.
- Waste generators may request an exemption from the flow control provisions to: 1) provide a higher level of environmental protection; or 2) reduce their potential future liability.

■ *Demonstrated fulfillment of legal guarantees will be closely monitored.* The credit quality of a system revenue bond guaranteed by a county or city, for example, could be bolstered by the fulfillment of the guarantee, while, at the same time, weakening the credit standing of the guarantor should the system fail completely.

The House of Representatives is currently considering its own flow control legislation.

The current flow control section of the Senate bill is only *outlined* in this report. A *credit assessment* will be appropriate after a final version of legislation is passed and signed into law.

Flow Control Litigation: Some Recent History

In May 1994, the U.S. Supreme Court ruled in the case of *Carbone v. The Town of Clarkstown, New York*, that a flow control ordinance in Clarkstown, New York, which directed all waste, both town-generated and imported, to a town-designated transfer station was unconstitutional on the grounds that the local law violated the dormant interstate commerce clause of the Constitution that protects free trade between states. The majority opinion was exceptionally broad, indicating an intent to forestall further challenges to the issue, but it also recognized the ability of Congress to pass legislation that could confirm the legality of flow control.

Following the *Carbone* ruling, numerous legal challenges to local and statutory flow control laws have been filed in several states. Because flow control is usually established by state or local governments, flow control laws may differ from state to state. Legal interpretations on the Constitutional validity of these laws can also vary. Various court rulings promulgated since the *Carbone* decision was reached have both upheld and overturned local flow control laws.

Pending Legislation

Full Congressional approval of an acceptable bill that would protect solid waste bondholders is still uncertain. The Senate bill that was approved on May 16 would grandfather facilities that relied on legal flow control prior to the U.S. Supreme Court decision. This bill combines flow control legislation with legislation on interstate waste. A bill protecting existing flow control laws failed to win passage in the last Congress.

Guide to Moody's Issuer Rating Index

The index of the ratings surveyed breaks out credits by the following:

- Rating Outlook and Comment
- Analyst
- System Type
- Rating and Last Rating Date
- Debt Outstanding
- Cusip
- Issuer Contact Name and Phone Number

In cases where a system is reliant on flow control, but where no direct evidence shows that it is being legally or practically challenged, we have noted the potential credit risk and maintained ratings unless other credit factors weakened bondholder protection. This report includes a listing of all the ratings reviewed, rating changes, system descriptions, issuer contact names and phone numbers, a brief individual comment, and a rating outlook of favorable, stable, or unfavorable.

In cases where legal flow control is not a credit issue, it is noted in the outlook. Table I contains abbreviated comments on all 76 ratings and references the publication dates of recently published full credit comments. Table II contains information on tip fees.

Tables

I. Solid Waste Index

II. Tip Fees

Solid Waste Issuer Index

Issuer	System Type	Rating	Last Rating Date	Uninsured Debt Outstanding (\$000)	Debt Insured ⁽¹⁾	Culp
Arkansas						
Little Rock Waste Disposal Rev.	residential collection, landfill	A1	3/29/95	17,450	0	537457
California						
Mojave Desert and Mountain Solid Waste Joint Powers Auth.	materials recovery facility (MRF), landfill	Baa1	11/14/94	6,720	0	608414
Nevada County-Nevada Co. Bldg. Co. Cits. of Parli. Ser. '91	transfer station	Baa	4/3/95	22,575	0	641264
South Napa Waste Management Auth. Revenue	landfill	Baa1	3/31/95	13,930	0	83888P
S.E. Res. Rec. Fac. Auth. Lease Rev. Bds. (City of Long Beach)	waste-to-energy (WTE) facility	A	3/30/95	151,925	0	841495
Western Placer Waste Mgmt. Auth. Revenue	landfill, MRF under construction	Baa1	4/3/95	29,815	0	726014
Connecticut						
Conn. Res. Rec. Auth. Southeastern Conn. Regional Resource Rec. Munic. Svc. Fee Rev.	WTE facility	Baa1	4/12/95	14,100	0	207755
Conn. Resources Recovery Auth. American Ref-Fuel Comp. Southeastern Conn. Proj.	WTE facility	Baa1	4/12/95	95,240	0	207755

⁽¹⁾ Insured issues include both primary and secondary market issues as of 3/31/94. Secondary market insurance may not be reflected in Moody's Bond Record.

Issuer Contact	Moody's Contact	Rating Outlook	Comment/Description of Bond Security
John Pryor (501) 371-4806	Gary Mescher (212) 553-4133	stable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues; a household sanitation fee for waste collected by the city covers debt service by a comfortable margin and is competitive with private facilities. ▪ The city charges private haulers a tip fee to use the city landfills in the county. ▪ The volume of waste continues to grow and has consistently been above projected tonnage. (Comment published 3/29/95.)
John C. Davis (619) 853-5450	Elizabeth Bauch (212) 553-1735	stable	<ul style="list-style-type: none"> ▪ Debt service is secured by net system revenues of participating municipalities. ▪ Participating municipalities collect service fees directly from property owners; fee billed on utility bills. ▪ Satisfactory rate covenant, additional bond tests. ▪ Conservative projections; service fee impact is expected to be modest. ▪ Materials recovery facility uses standard design and technology. (Comment published 11/1/94.)
H. Douglas Latimer (916) 265-7040	Elizabeth Bauch	stable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Half of system revenue is derived from parcel charges, the balance from tip fees. ▪ Fiscal agent holds unexpended proceeds of 1991 bond issue. ▪ Improved financial operations and debt service coverage. ▪ Parcel charges set to approximate debt service. (Comment published 4/4/95.)
Jill Pahl (707) 253-4471	Elizabeth Bauch	stable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues. ▪ Satisfactory financial position. ▪ Contractual flow control structure has allowed the authority to increase its tip fees significantly without waste losses. ▪ Lawsuit filed by vendor was dismissed. (Comment published 4/3/95.)
Richard Hilde (310) 570-6845	Elizabeth Bauch	stable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Debt service is secured by city's General Fund lease pledge, which is subject to abatement. ▪ Facility operations are satisfactory; waste volume is sufficient. ▪ General Fund pledge provides potential subsidy for system. ▪ Conditional rating prefix removed. (Comment published 4/4/95.)
Edward McCarthy (916) 889-7591	Elizabeth Bauch	stable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues. ▪ Historically strong financial performance; projections are satisfactory. ▪ Flow control is based on contracts among various parties. ▪ Rate covenant is satisfactory, and there is no additional borrowing. (Comment published 4/5/95.)
David Baxter (203) 549-6390	Maryellen Reynolds (212) 553-4415	favorable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Special reserve fund backed by the State of Connecticut enhances security, but unresolved bankruptcy issues remain. ▪ Municipal service fee and project bonds are secured by system revenues and service contracts with towns. ▪ Lack of competitive tip fee, narrow fiscal margins, and pending competition from nearby plant pose credit concern. ▪ Legal concerns: two towns are in dispute over service contracts; litigation is ongoing. (Comment published 4/13/95.)
David Baxter	Maryellen Reynolds	See Comment immediately above.	See Comment immediately above.

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Solid Waste Issuer Index (continued)

Issuer	System Type	Rating	Last Rating Date	Uninsured Debt Outstanding (\$000)	Debt Insured ¹	Corp. Culp.
Connecticut (cont'd)						
Conn. Resources Recovery Auth. Municipal Service Fee Sub. Use (Bridgeport Proj.)	WTE facility	Baa1	2/1/95	29,025	0	207755
Conn. Resources Recovery Auth. Bridgeport Resco Co. Ser. A & B (BP Proj.) (Bridgeport Proj.)	WTE facility	A	2/1/95	(188,811)	0	207755
Conn. Resources Recovery Auth. Resource Rec. Rev. Wallingford Res. Rec. Proj. Rev. '91 Ser. One Sub.	WTE facility	A	1/4/95	49,913	0	207765
See: Bidet Operating Committee B.B., Conn. Devel. Auth.—Refunded	WTE facility, landfill	A	4/4/95	68,004	0	129853
Delaware						
Delaware Solid Waste Auth. Solid Waste Rev.	landfill	A	2/16/95	87,245	\$5,430	246412
Florida						
Broward County Solid Waste Disp. Rev.	landfill	A	1/19/95	17,840	\$13,150	107462
Broward County Resource Recovery Rev. (Broward Waste Energy Co. L.P., No. Proj.)	collection, landfill, WTE facility	A	3/30/95	221,100	0	115064
Broward County Resource Recovery Rev. Ser. '84 (B&S Broward Co. L.P., No. Proj.)	collection, landfill, WTE facility	A	3/30/95	247,035	0	113064
Dade County Solid Waste Rev.	collection, landfill, WTE facility	Baa1	3/1/95	144,383	\$52,115	233562

¹Insured by MBIA, secondary market; ²Insured by FICO, new issue market; ³All insurance on secondary market; \$1.4 million FICO and \$46.6 million MBIA

Issuer Contact	Moody's Contact	Rating Outlook	Comment/Description of Bond Security
David Baxter	Maryellen Reynolds (212) 553-4415	See Comment immediately below.	See Comment immediately below.
David Baxter	Maryellen Reynolds	stable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Bondholder security for project bonds depends on project viability. ▪ Municipal service fee and project bonds are secured by net system revenues and service contract with towns; electric revenues are pledged only to project bonds. ▪ Vendor's sound financial performance provides historically ample debt service coverage for project bonds. ▪ Plant is seasoned and operating performance sound. (Comment published 2/6/95.)
David Baxter	Maryellen Reynolds	unfavorable credit outlook; unrelated to flow control	<ul style="list-style-type: none"> ▪ Security provisions rely on towns' contractual obligations and system's net revenues. ▪ Narrow debt service coverage. ▪ Long-term ash disposal remains a concern. ▪ Volume of municipal members' waste has increased. ▪ Plant is seasoned. ▪ Lucrative long-term energy contract may pose vulnerability, if challenged. (Comment published 1/4/95.)
Jonathon S. Bilmes (203) 585-0419	Robert Stanley (212) 553-0334	stable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues are secured in part by service contracts with member towns. ▪ Tip fee is competitive. ▪ Financial operations continue favorable trend. ▪ Future borrowing plans are flexible. (Comment published 4/7/95.)
N.C. Vasuki (302) 739-5361	Monique Jn-Marie (212) 553-4430	stable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues consisting primarily of tip fees. ▪ Established statewide landfill system remains stable. ▪ Waste volume is steady and projected to increase in 1995. ▪ Satisfactory financial operations. ▪ Large future borrowing should be manageable. ▪ Tip fee is competitive. (Comment published 3/21/95.)
Tom Jenkins (407) 633-2001	John Incorvaia (212) 553-0501	stable	<ul style="list-style-type: none"> ▪ Pledge of system's gross revenues, which include assessments collected on tax bills. ▪ Strong debt service supported by reliable revenue structure. ▪ Competitive rate structure expected to continue. ▪ Landfill operation is established, with steady waste stream. (Comment published 3/27/95.)
Phil Allen (305) 357-7130	John Incorvaia	stable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues, which include assessments collected on tax bills. ▪ Steadily increasing waste stream from both in- and out-of-county sources. ▪ System revenues afford good support for resource recovery bonds. Both systems serve the same service area. Different vendor guarantees on North and South Project Bonds (Comment published 3/30/95.)
Phil Allen	John Incorvaia	stable	See Comment immediately above.
Diane A. Camacho (305) 592-1776	Kristen Reifsnnyder (212) 553-1419	unfavorable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues, a portion of county's guaranteed entitlement funds, and non-<i>ad valorem</i> revenues ▪ High tip fee has led to significant diversion of waste outside the system, resulting in significant declines in revenue. ▪ High fixed costs limit the system's financial flexibility. ▪ Additional revenue sources and a rate stabilization fund alleviate near-term system revenue losses. ▪ Lack of a long-term strategy jeopardizes the system's continued ability to meet its financial obligations. (Comment published 3/3/95.)

Solid Waste Issuer Index (continued)

Issuer	System Type	Rating	Last Rating Date	Uninsured Debt Outstanding (\$000)	Debt Insured <input type="checkbox"/>	Custp
Florida (cont'd) Lake County Resource Rec. Incl. Devel. Ref. Rev. (NRG/Rec. Group Proj.) Ser. 93A & B	collection, landfill, WTE facility	Baa	1/19/95	77,070	0	508253
Palm Beach Co. Solid Waste Auth. Solid Waste Rev. (Special Asses.)	transfer station, landfill, WTE facility	A	1/5/95	229,862	<input checked="" type="checkbox"/> 182,781	696560
Pinellas County Resource Recovery Rev.	collection, landfill, WTE facility	A1	1/23/95	7,760	<input checked="" type="checkbox"/> 122,620	723185
Sarasota County Solid Waste Rev.	collection, landfill	A	1/19/95	14,450	0	803313
Georgia						
Athens-Clarke Co. Solid Waste Management Auth. Revenue	collection, landfill	A1	1/23/95	4,840	0	47057
Clayton Co. Solid Waste Management Auth. Lease Rental	solid waste landfill disposal	Aa	2/17/95	7,020	0	184171
Cobb County Solid Waste Management Authority	co-composting center	Aa1	3/17/95	26,975	0	190826
Liberty Co. Solid Waste Mgmt. Auth. Revenue	transfer station	Baa	2/1/95	2,715	0	530398
Savannah Res. Recovery Devel. Auth. Revenue	WTE facility	A1	12/27/94	49,820	0	804875

Issued in new issue market by MBIA: \$170.8 million; secondary market issues insured by AMBA and FQIC. Insured by MBIA in new issue market.

Issuer Contact	Moody's Contact	Rating Outlook	Comment/Description of Bond Security
Barbara Lehman (904) 343-9808	John Incorvaia (212) 553-0501	unfavorable	<ul style="list-style-type: none"> ▪ County service fee payments, which contain a capital component backed by county's non-<i>ad valorem</i> revenues, pass through trustee; bonds are ultimately the vendor's obligation. ▪ Bondholder security depends on project viability. ▪ The facility is vulnerable to possible waste diversion. ▪ Tip fee is relatively high. (Comment published 3/30/95.)
Donald Lockheart (407) 640-4000	Maria Matesanz (212) 553-7241	stable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues, which include unlimited special assessment fees on both residential and commercial customers comprising approximately 68% of operating revenues, while tip fees comprise only 15%. ▪ Effective fiscal 1995, the authority has entered into interlocal agreements with 33 of 37 county municipalities to ensure continued delivery of residential waste. ▪ Service area has strong socioeconomic characteristics, including sustained population growth, and above-average resident wealth and income levels. (Comment published 4/5/95.)
Robert Van Deman (813) 892-7565	Kristen Reifsnnyder (212) 553-1419	unfavorable credit outlook unrelated to flow control	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues, which include tipping fees, special assessments, and electric revenues. ▪ Currently favorable competitive position. ▪ Capital needs are potentially significant and would increase tip fees, which are currently low. (Comment published 3/30/95.)
Peter Ramsden (813) 951-5165	John Incorvaia (212) 553-0501	unfavorable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues. ▪ Good revenue structure, despite rising costs, with assessment providing 57% of revenues. ▪ Sizable capital requirements will be a significant challenge. (Comment published 3/27/95.)
Bob Snipes (706) 613-3020	Kristen Reifsnnyder (212) 553-1419	stable	<ul style="list-style-type: none"> ▪ Debt service is backed by an unconditional general obligation pledge of counties. ▪ No reliance on legal flow control. (Comment published 3/30/95.)
C. Crandle Bray (404) 477-3211	Gary Mescher (212) 553-4133	stable	<ul style="list-style-type: none"> ▪ Rating reflects county's unconditional obligation to make debt service payments. ▪ The authority competes successfully against private facilities on a purely economic basis. ▪ The solid waste system is self-supporting. (Comment published 4/25/95.)
James Virgil Moon (404) 528-1505	David Alter (212) 553-4572	stable	<ul style="list-style-type: none"> ▪ Strong legal security for the bonds is based on the unconditional obligation of the county. ▪ Conservative financial management. ▪ County's primary economic base is in the Atlanta metropolitan statistical area. (Comment published 3/17/95.)
Joseph Brown (912) 876-2164	David Alter	stable	<ul style="list-style-type: none"> ▪ Strong legal provisions and unconditional obligation of the county. ▪ County's socioeconomic statistics are below average. ▪ Landfill operations are modest. (Comment published 3/17/95.)
Richard Evans (912) 651-6440	David Alter	stable	<ul style="list-style-type: none"> ▪ The authority's lease rental obligations are ultimately secured by a city general obligation pledge. ▪ The city partly subsidizes its above-average tipping fee. ▪ Continued General Fund support of the system is likely. ▪ Waste stream has generally been stable, and competition is limited. (Comment published 3/31/95.)

Solid Waste Issuer Index (continued)

Issuer	System Type	Rating	Last Rating Date	Uninsured Debt Outstanding (\$000)	Debt Insured <input type="checkbox"/>	Cusip
Iowa Des Moines Solid Waste Rev.	landfill, transfer station	A	1/24/95	40	0	250130
Idaho Bannock County Cfs. of Part. (Solid Waste Dep. Fac. Proj.)	landfill	A	11/3/94	7,240	0	66661
Indiana Indianapolis Adjustable Fixed Rate Res. Rec. Rev. (Garden Martin Sys. of Indianapolis, Inc. Proj.) Ser. A, B, & C	WTE facility	A	11/17/94	105,700	0	455356
Kentucky Danville Multi-City Rev. Lease Rev. (City of Glasgow Solid Waste Fac. Rev. Proj.) Fixed Rate Ser. '92E	collection, landfill	Baa1	1/24/95	1,970	0	236672
Louisiana St. Landry Par. Solid Waste Dep. Dist.	collection, landfill	Baa	1/24/95	1,320	0	791029
Maryland Montgomery County Solid Waste Rev.	collection, WTE facility	A	3/23/95	8,660	<input checked="" type="checkbox"/> 40,440	613367
Northeast Maryland Waste Dep. Auth. Montgomery Co. Proj.-Proj. Solid Waste Rev. Ser. '93A and Ser. '93B (callable)	collection, WTE facility	A	3/23/95	359,980	0	664257
Prince George's County Solid Waste Mgmt. Sys. Rev.	collection, landfills, recycling	Baa1	3/21/95	32,595	<input checked="" type="checkbox"/> 36,945	74172M

Insured in new issue market by AMBAC. Insured in new issue market by FSA.

Issuer Contact	Moody's Contact	Rating Outlook	Comment/Description of Bond Security
Martin K. Frederickson (515) 283-4921	Tom O'Donnell (212) 553-0575	stable	<ul style="list-style-type: none"> ▪ Pledge of first lien on system's net revenues. ▪ Solid-waste fund operations are sound. ▪ Final maturity is June 1, 1995; no additional revenue bond issuance expected. ▪ Ample waste stream. (Comment published 3/16/95.)
Pat Wilson (208) 236-7210	Jerry Caden (212) 553-0329	stable	<ul style="list-style-type: none"> ▪ Debt service is backed by county's limited general obligation pledge. ▪ Long-term contract with underlying cities offers dependable revenue stream. ▪ Private haulers have minor role in landfill's operation. ▪ Most revenues are derived from billing residents directly. (Comment published 3/16/95.)
Mike Carter (317) 327-5678	Yaffa Rattner (212) 553-4429	stable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues. ▪ Supreme Court ruling on flow control should not affect operations because of competitive pricing. ▪ Net revenues have historically surpassed original projections. ▪ No reported borrowing plans. (Comment published 11/30/94.)
Charles Honeycutt (502) 651-5131	Kristen Reifsnyder (212) 553-1419	stable	<ul style="list-style-type: none"> ▪ The legal pledge securing the bonds is the net revenues of the sanitation and landfill fund. ▪ System does not rely on legal flow control to attract waste. (Comment published 3/30/95.)
Gary Bonvillain (318) 826-5211	Kristen Reifsnyder	stable	<ul style="list-style-type: none"> ▪ Debt service payments secured by sales taxes; a tip fee could be implemented if needed. ▪ System does not rely on legal flow control. (Comment published 3/30/95.)
Timothy Firestine (301) 217-2042	Monique Jo-Marie (212) 553-4430	stable	<ul style="list-style-type: none"> ▪ Montgomery County Solid Waste revenue bonds and Northeast Maryland Waste Disposal Authority bonds are parity obligations payable from system waste fees. ▪ County had no legal flow control; solid waste fee key to rating. ▪ County has competitive tip fee and steady waste flow. ▪ System's financial operations continue to be satisfactory. ▪ County voters approved a system-benefits charge. When charge is implemented in 1996 the system will rely less on tip fees. ▪ Resource recovery facility is scheduled for early completion, and is financed through Northeast Maryland Waste Disposal Authority. ▪ The facility is larger than required to meet county's waste disposal needs. (Comment published 3/23/95.)
Timothy Firestine	Monique Jo-Marie	stable	See Comment immediately above.
Richard W. Bradley (301) 952-3742	Monique Jo-Marie	stable	<ul style="list-style-type: none"> ▪ Solid waste system's financial operations are under stress, and waste levels are declining. ▪ New service charge is an option. ▪ Uncertainties exist regarding implementation of county deficiency make-up of insufficient system fees. ▪ County voters approved \$60 million of general obligation debt for system needs. (Comment published 3/23/95.)

Solid Waste Issuer Index (continued)

Issuer	System Type	Rating	Last Rating Date	Uninsured Debt Outstanding (\$000)	Debt Insured [¶]	Culp
Massachusetts						
Greater New Bedford Reg. Refuse Management Dist.	landfill	Baa1	4/20/95	11,615	0	392217
Mass. Ind. Finance Agency Resource Rec. Rev. (Mass. REFUSETECH, Inc. Proj.) Ser. '93A	WTE facility	Baa1	4/4/95	113,990	[¶] 69,000	575912
Michigan						
Central Wayne Co. Sanit. Auth. Incinerator Rev.	WTE facility	Ba1	3/17/95	19,050	0	155861
Missouri						
Grosse-Pointes-Clinton Refuse Disp. Auth. Incinerator Rev.	WTE facility	A	8/29/94	3,290	0	399010
North Carolina						
Kent County Refuse Disp. Sys. Rtdg. (G.O. Ind. Iss)	WTE facility, transfer station, landfill	Aa1	4/13/95	88,245	0	490311
Ohio						
Southeastern Oakland Co. Res. Rec. Auth. Revenue	transfer stations, composting, landfill, recycling facility	A	2/8/95	300	0	841875
Montana						
Helena Solid Waste Transfer Station Rev.	transfer station	A	11/3/94	2,760	0	42314A

[¶] Insured in new issue market by PSA.

Issuer Contact	Moody's Contact	Rating Outlook	Comment/Description of Bond Security
Edith DeMello (508) 993-2604	Karl Jacob (212) 553-4833	stable	<ul style="list-style-type: none"> ▪ UTL pledge of member towns supports debt service payment. ▪ District assessments and a competitive tip fee mitigate flow control concerns. ▪ Credit standing of the participating communities is critical to the rating. ▪ System tip fees are competitive.
Sтивен M. Rothstein (617) 443-1303	Karl Jacob	stable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues, which are in part supported by contracts with towns. ▪ Oversized plant and dependence on spot market waste remain vulnerabilities. ▪ Total waste stream has stayed fairly constant. ▪ Long-term service contracts of participating communities remain a key to the rating. (Comment published 4/5/95.)
J. Erik Schaeffer (313) 292-8877	Yaffa Rattner (212) 553-4429	stable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues is backed by towns' general obligation, limited tax security. ▪ Authority has a history of missed rate covenants. ▪ Financial position of the weakest of the five member municipalities is expected to stabilize. ▪ Tonnage decreased slightly in fiscal 1994; however, officials report that the Supreme Court's flow-control ruling was not the cause. ▪ Capital costs associated with the 1990 Clean Air Act may result in increased costs to member municipalities. (Comment published 3/16/95.)
James Douglas Taylor (810) 792-2750	Yaffa Rattner	stable	<ul style="list-style-type: none"> ▪ Unlimited general obligation pledge of underlying municipalities provide satisfactory legal security. ▪ Modest amount of debt retired in eight years; potential capital needs. ▪ Residential service area and socioeconomic indices are above average. ▪ Financial performance is satisfactory. (Comment published 8/31/94.)
Curt Kempainen (616) 336-3694	Yaffa Rattner	stable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Limited tax pledge of participants secures bonds. ▪ For fiscal 1994, the solid waste system continues its history of being self-supporting without county subsidy. ▪ The county facility operates under legal flow control with its six participating municipalities. ▪ There is a potential problem with the long-term viability of these contracts. ▪ Future borrowing is expected as a result of the 1990 Clean Air Act amendment. (Comment published 4/14/95.)
Tom Waffin (810) 288-5150	Yaffa Rattner	stable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues. ▪ Bonds mature in 1997; funds on hand sufficient to repay outstanding debt. ▪ Satisfactory financial operations. (Comment published 3/21/95.)
Shelby Laine (406) 447-8412	Jerry Calko (212) 553-0329	stable	<ul style="list-style-type: none"> ▪ First lien on gross revenues of city's solid waste transfer station. ▪ Resident sanitation assessments offer predictable revenue stream. City collects virtually all commercial waste. (Comment published 3/16/95.)

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Solid Waste Issuer Index (continued)

Issuer	System Type	Rating	Last Rating Date	Uninsured Debt Outstanding (\$000)	Debt Insured (I)	Culp
Montana (cont'd)						
Lewis & Clark Cos. Solid Waste Fac. Rev.	landfill	A	11/3/94	3,620	0	527652
Nebraska						
Grand Island Area Solid Waste Agency Solid Waste Deposit Rev. (Grand Island Svc. Agmt.)	landfill	A	1/13/95	4,360	0	385626
New Jersey						
Atlantic Co. Util. Auth. (form. Sew.) Solid Waste Rev.	transfer station, bulky waste landfill, recycling center, composting facility	Ba	2/17/95	93,140	0	48509
Camden Co. Impr. Auth. Solid Waste Dep. Rev. (Landfill Proj.) (Co. Gtd.)	landfill, WTE facility	A1	4/20/95	14,840	0	13281T
Camden Co. Poll. Control Fin. Auth. Solid Waste Res. Rec. Rev.		Ba	2/17/95	169,775	0	132814
North Carolina						
Cape May Co. Munic. Util. Auth. Solid Waste Rev. Service Contract	landfill, transfer station, bulky waste sorting, and recycling facility	A1	4/20/95	5,530	40,280	139535
Gloucester Co. Impr. Auth. Solid Waste Rev. (Landfill Proj.) (Co. Gtd.)	landfill	A1	5/4/95	26,430	0	37970M
Mercer Co. Impr. Auth. Solid Waste Rev. (Co. Gtd. Ser. '92)	transfer station	Aa1 (under review)	5/19/94	42,472	(I) 2,696	587844
Mercer Co. Impr. Auth. Co. Gtd. Jr. Lien Solid Waste Rev. Jr. Lien Ser. '90	transfer station	Aa1 (under review)	5/19/94	25,418	0	587844
Mercer Co. Impr. Auth. Solid Waste Rev. (Resource Rec. Proj.)	transfer station	Ba	2/17/95	39,997	(I) 150,000	587844

(I) Insured by MBIA in secondary market. (II) Insured by FGIC in new issue market.

Issuer Contact	Moody's Contact	Rating Outlook	Comment/Description of Bond Security
Tim Burton (406) 447-8311	Jerry Caden (212) 553-0329	stable	<ul style="list-style-type: none"> ▪ First lien on gross revenues of county landfill. ▪ Long-term contract with City of Helena offers reliable revenue stream. ▪ County resident and commercial sanitation assessments also stabilize the revenue base. (Comment published 3/16/95.)
Russell Huntari (406) 482-2106	Jerry Caden	stable	<ul style="list-style-type: none"> ▪ Pledge of first lien on solid waste landfill system's gross revenues. ▪ Legal protections allow rolling coverage. ▪ New landfill to comply with federal Subtitle D requirements. ▪ Local economy vulnerable. (Comment published 3/16/95.)
Bud Buetner (308) 385-5444 ext. 260	Mark Taylor (212) 553-1024	stable	<ul style="list-style-type: none"> ▪ Pledge of system revenues and unlimited property and franchise taxes. ▪ Deficiency pledge with unlimited property tax is key to rating. ▪ Subtitle D compliant, with no capital needs for landfill. (Comment published 3/16/95.)
Maria Mento (609) 348-5500	Karl Jacob (212) 553-4833	favorable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues. ▪ Litigation poses heightened credit risk for revenue bonds. ▪ Authority is at a competitive disadvantage with the current fee structure. ▪ Even with legal flow control, financial position has been narrowly balanced. (Comment published 3/20/95.)
John Londres (609) 541-1171	Laura Carter (212) 553-1434	stable	<ul style="list-style-type: none"> ▪ Sufficiency and timing of county guarantee provides above-average credit protection. (Comment published 3/15/95.)
John Londres	Laura Carter	favorable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues ▪ Litigation poses heightened credit risk for revenue bonds. ▪ Strained finances prior to court decisions. ▪ Missed rate covenant two out of last three years. ▪ Waste flow remains stable. ▪ Surveillance is ongoing. (Comment published 4/4/95.)
George Maniakis (609) 465-9926	Aileen Kelly (212) 553-7782	stable; county guaranteed	<ul style="list-style-type: none"> ▪ Sufficiency and timing of county guarantee provides above-average credit protection. (Comment published 3/15/95.)
Louis C. Joyce (609) 848-4002	Laura Carter (212) 553-1434	stable; county guaranteed	See Comment immediately above.
Bob Prunetti (609) 989-6694	Marci H. Tavashi (212) 553-7166	stable with county credit position unchanged	<ul style="list-style-type: none"> ▪ Solid waste revenue bond rating is guaranteed by the county, whose rating is currently under review.
Bob Prunetti	Marci H. Tavashi	stable with county credit position unchanged	See Comment immediately above.
Bob Prunetti	Marci H. Tavashi	favorable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues. ▪ Litigation poses heightened credit risk for bonds. ▪ Authority is at a competitive disadvantage with high fees. ▪ Waste-to-energy plant construction is delayed pending congressional action on legal flow control authority. ▪ Financial stress increases as capitalized interest expires in 1996.

Solid Waste Issuer Index (continued)

Issuer	System Type	Rating	Last Rating Date	Uninsured Debt Outstanding (\$000)	Debt Insured [Ⓚ]	Culp
New Jersey (cont'd)						
Pascack Co. Util. Auth. Solid Waste Rev.	recycling, transfer stations, never completed incinerator	Ba	2/17/95	33,340	0	702770
Pascack Co. Util. Auth. Solid Waste Service Contract	recycling, transfer stations, never completed incinerator	A1 (under review)	2/25/94	57,291	16,518	702766
Salem Co. Util. Auth. Solid Waste Rev. Service Contract	landfill	A	4/20/95	1,555	[Ⓚ] 9,605	794105
Union Co. Util. Auth. Solid Waste Proj. (Co. Gkd.)	WTE facility	Aaa (under review)	11/12/93	35,020	0	906365
Warren Co. Pollution Control Fin. Auth. Landfill Rev.	landfill, WTE facility, recycling	Ba	2/17/95	18,830	[Ⓚ] 6,225	935110
New Mexico						
Alamogordo Otero/Lincoln Co. JPA Env. Svc. Gross Rec. Tax Proj. Rev.	landfill	Baa1	2/17/95	3,845	0	11455
Santa Fe Refuse Disposal Sys.	landfill	A	1/17/95	2,585	0	802127
New York						
Babylon Ind. Devel. Agency Res. Rec. Rev. 1985	WTE facility	Baa1 (under review)	12/19/90	84,700	0	56212
Hempstead I.D.A. Fixed Rate/Conv. Res. Rec. Rev. ('85 American Ref-Fuel Co. of Hempstead Proj.)	WTE facility	Baa1	2/2/95	265,090	0	424677
N.Y. State Environmental Foc. Corp. (Huntington Proj.)	WTE facility	Baa (under review)	5/10/94	165,855	0	649900

[Ⓚ] Insured by MBIA in new issue market. [Ⓚ] Insured by MBIA in secondary market, series dated 9/1/92.

Issuer Contact	Moody's Contact	Rating Outlook	Comment/Description of Bond Security
Nicola DiDonna (201) 881-4405	Laura Carter (212) 553-1434	favorable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues. ▪ Competitive disadvantage was apparent before court decisions. Operating contracts pose vulnerabilities—in force pursuant to state order on year-to-year basis. ▪ Continued litigation regarding landfill sites and canceled incinerator project present added potential liabilities; ongoing surveillance. (Comment published 3/31/95.)
Nicola DiDonna	Laura Carter	under review	Under review. County guaranteed.
John Evans (609) 935-9500	Laura Carter	stable, county guaranteed	<ul style="list-style-type: none"> ▪ Sufficiency and timing of county guarantee provides above-average credit protection.
Jeffrey Calahan (908) 351-8770	Marci H. Tavashi (212) 553-7166	stable with county credit position unchanged	<ul style="list-style-type: none"> ▪ Solid waste bonds are guaranteed by the county, whose rating is currently under review.
Aixa Aklan (908) 453-2174 ext. 224	Marci H. Tavashi	favorable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Net revenue pledge of landfill is a component of system tip fee. ▪ Despite sizable cash reserves, the system's long-term viability is threatened by noncompetitive rates. ▪ Litigation poses heightened credit risk for revenue bonds. (Comment published 3/17/95.)
Maurice Gutierrez (505) 439-4217	Orlie Prince (212) 553-7733	stable	<ul style="list-style-type: none"> ▪ Bonds are secured by both environmental services' gross receipts tax and net revenue of landfill facility. ▪ No competing landfills. ▪ Economy is limited. (Comment published 3/28/95.)
Joe Gonzalez (505) 984-6621	Orlie Prince	stable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues. ▪ Need for additional landfill space reflects lack of competition. ▪ Favorable tonnage growth supports net system revenues. ▪ Revenue bonds retire rapidly. ▪ No additional revenue bond borrowing is expected. (Comment published 3/28/95.)
Leonard Fries (516) 422-5444	William Hogan (212) 553-4553	under review	<ul style="list-style-type: none"> Under review. Comment not published. ▪ The Town of Babylon is in litigation in the Second Circuit Federal Court in a case involving a challenge to the town's flow-control plan and police power enforcement of flow control. Upcoming refunding issue in June 1995.
Mike Greene (516) 489-5000	Marcy Block (212) 553-1057	stable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Pledge of vendor lease rental payments, which come from town service fee, spot market fees, and electric revenues. ▪ Well-managed operations. ▪ Relative competitiveness combined with property tax support. ▪ High reliance on spot market could be a future vulnerability. (Comment published 2/2/95.)
Len Marchese (516) 754-4900	Marcy Block	under review	<ul style="list-style-type: none"> Under review. Comment not published. ▪ The Town of Smithtown, which has a contractual obligation to deliver waste to Huntington's WTE facility, is involved in a Second Circuit Federal Court case involving a challenge to police authority to control town's waste flow.

Solid Waste Issuer Index (continued)

Issuer	System Type	Rating	Last Rating Date	Uninsured Debt Outstanding (\$000)	Debt Insured <input type="checkbox"/>	Cusip
New York (cont'd)						
North Country Devel. Auth. Solid Waste Disp. Rev.	landfill	Baa	12/29/94	27,130	0	658792
Oneida-Herkimer Solid Waste Mgmt. Auth. Service Agreement Rev.	transfer station, incinerator, MRF	Baa	12/17/94	47,940	0	682496
Onondaga Co. Res. Rec. Agency System Rev.	WTE facility	Baa1 (under review)	11/13/94	4,270	0	682756
Onondaga Co. Res. Rec. Agency Project Rev.	WTE facility	Con. (Baa) (under review)	11/11/92	178,050	0	682756
St. Lawrence Co. Solid Waste Auth. Solid Waste Disp.	transfer station	Ba	2/27/95	7,210	0	791104
Ulster Co. Res. Rec. Agency	landfill	Baa	11/22/94	28,050	0	903777
Warren & Washington Cos. Ind. Devel. Agency Adirondack Res. Rec. Rev. Bds.	WTE facility, contract for landfill use	B (under review)	12/17/93	86,780	0	934653
North Carolina						
Coastal Regional SW Mgt. Authority (Catawba, Craven, and Pamlico Counties)	landfill	A	1/4/95	25,765	0	190515

Issuer Contact	Moody's Contact	Rating Outlook	Comment/Description of Bond Security
John Donaghy (315) 785-2593	Marcy Block (212) 553-1057	stable with flow control law; unfavorable without it	<ul style="list-style-type: none"> ▪ System is currently self-supporting; bonds backed by pledge of system's net revenues and municipalities' pledge under service contract to make up deficiencies in system fees. ▪ System currently has adequate coverage of debt service requirements. ▪ Continued waste declines and high price structure could weaken credit quality. ▪ If enterprise is weakened, county and city subsidies would need to be demonstrated. ▪ Landfill permit restrictions could impede system's future competitive position. (Comment published 3/17/95.)
Hans Arnold (315) 733-1224	Marcy Block	stable with flow control law; unfavorable without it	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues and counties pledge under service contract to make up deficiencies in system fees. ▪ System is currently self-supporting. ▪ Full subsidy of debt service could be onerous for obligors. ▪ Financial operations are currently stable; debt service coverage adequate. ▪ Lack of a long-term solution to waste disposal remains a credit weakness. ▪ Oneida and Herkimer Counties pledge deficiency make-up under service contract. (Comment published 3/21/95.)
Paul J. O'Connor (315) 453-2866	William Hogan (212) 553-4553		Under review. Comment not published.
Paul J. O'Connor	William Hogan		Under review. Comment not published.
John Morrison (315) 393-7889	Marcy Block (212) 553-1057	stable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues and county's pledge under service agreement to make up deficiencies in system fees. ▪ County contractual obligation is key to rating, although timing of subsidy is uncertain. ▪ After the <i>Carbone</i> ruling, the waste stream declined significantly. ▪ A large operating deficit is projected for fiscal 1995. (Comment published 3/1/95.)
Charles P. Shaw (914) 336-0600	Marcy Block	stable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues and county's contractual obligation to make-up deficiencies in system fees. ▪ County deficiency make-up under service contract is weakened by county's tenuous financial position. ▪ Operating results for agency are satisfactory. ▪ Debt service will increase substantially in 1995. ▪ No significant waste declines reported. (Comment published 11/28/94.)
Steven Blakeslee (518) 798-0847	William Hogan (212) 553-4553	stable	<p>Under review</p> <ul style="list-style-type: none"> ▪ Pledge of system's net revenues, which include counties' contractual obligations to pay service fee. ▪ This rating was lowered to Baa in July 1992 and then to B in December 1992. Counties' fulfillment of contractual obligations and system financial performance was problematic even before the <i>Carbone</i> decision in May 1994. Flow-control enforcement was also problematic prior to the Supreme Court ruling.
Richard Hemphill (919) 636-6603	Patricia McGuigan (212) 553-4443	unfavorable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues. ▪ Authority has capital and financial pressures. ▪ Recent improvement noted in solid waste collections follows significant waste declines. ▪ Board's responsiveness to implementing availability fee is uncertain. ▪ Three-county authority landfill serves interim needs. (Comment published 3/31/95.)

Solid Waste Issuer Index (continued)

Issuer	System Type	Rating	Last Rating Date	Uninsured Debt Outstanding (\$000)	Debt Insured <input type="checkbox"/>	Cusip
North Carolina (cont'd)						
High Point, NC	landfill	A1	2/8/95	4,740	0	429762
Iredell County, NC	landfill	A	1/4/95	9,615	0	462676
Oregon						
Metro (form. Metro. Service Dist.) Waste Disposal Rev.	landfill	A	3/30/95	32,750	0	592532
Pennsylvania						
Chester Co. Solid Waste Auth. Gtd. Solid Waste Rev.	landfill	Aa	12/27/94	28,745	0	165633
Clinton Co. Solid Waste Auth. Gtd. Rev. Ser. '93	landfill	Baa	12/27/94	8,070	<input type="checkbox"/> 6,170	187531
Greater Lebanon Refuse Auth. Solid Waste Rev.	landfill	Baa	4/17/95	13,145	0	39212E
Harrisburg Auth. Gtd. Resource Rec. Fac. Rev. Bds.	WTE facility	Baa	5/1/95	40,665	0	41473E
Lancaster Co. Solid Waste Mgmt. Auth. Res. Rec. Sys. Rev. Bds.	WTE facility	A	2/13/95	179,455	0	514057

Issuer Contact	Moody's Contact	Rating Outlook	Comment/Description of Bond Security
W. A. Gear (910) 883-3237	Patricia McGuigan (212) 553-4443	stable	<ul style="list-style-type: none"> ▪ Bonds secured by sales tax pledge in addition to system revenues. ▪ Economic flow control is effective. ▪ The system's finances and operations are favorable. (Comment published 3/31/95.)
Susan Blumenstein (704) 878-3040	Patricia McGuigan	stable	<ul style="list-style-type: none"> ▪ Economic flow control; strong legal pledge, which includes tip fees and assessments, support rating. (Comment published 3/31/95.)
Jennifer Sims (503) 797-1700	Elizabeth Bauch (212) 553-1735	stable with flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues. ▪ Satisfactory financial operations provide strong debt service coverage. ▪ Legal flow-control structure is critical to the system's viability; legal challenge to franchise system or loss of waste could weaken credit quality. (Comment published 3/31/95.)
Craig Day (610) 273-3771	Craig Atwater (212) 553-0327	stable, county guaranteed	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues is backed by county guarantee of debt service reserve fund. ▪ County guarantee is the key to authority's rating. ▪ County demonstrates high quality credit strengths, including sizable and growing tax base, high wealth indices, and modest debt levels. ▪ Flow-control ordinance has been upheld to date. (Comment published 4/24/95.)
Colleen S. Xethakis (717) 769-6977	Craig Atwater	stable with flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues is backed by county guarantee of debt service. ▪ Authority's rating is based on performance of the revenue enterprise and on county's guarantee to pay debt service. ▪ Authority's financial performance has been satisfactory. ▪ Tip fee is competitive. ▪ County's credit factors are only adequate. (Comment published 4/24/95.)
Michael Pavelek (717) 867-5790	Maryellen Reynolds (212) 553-4415	stable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues. ▪ Landfill tipping fee is currently competitive. ▪ Operating and financial performance is satisfactory, as is debt service coverage. (Comment published 4/17/95.)
Daniel Lispi (717) 255-6455	Aileen Kelly (212) 553-7782	unfavorable	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues; city's general obligation pledge provides ultimate security; full draw on authority's bond guarantee could erode credit quality. ▪ Financial operations of the authority have been mixed. ▪ Major challenges facing the system; significant capital needs to address. (Comment published 5/5/95.)
Herb Flosdorf (717) 397-9968	Yaffa Rattner (212) 553-4429	favorable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ▪ Pledge of system's net revenues. ▪ Management takes a proactive approach to the potential loss of legal flow control. ▪ Future credit risks tied to resolution of legal viability of flow control. ▪ Decreased tipping fees affect financial operations as debt service costs continue to rise. ▪ Future borrowing plans are affected by flow control status; refunding of outstanding landfill debt is possible. (Comment published 2/22/95.)

Insured by AMBAC, new issue market.

Solid Waste Issuer Index (continued)

Issuer	System Type	Rating	Last Rating Date	Uninsured Debt Outstanding (\$000)	Debt Insured ⁽¹⁾	Cusip
Pennsylvania (cont'd)						
Mifflin Co. Solid Waste Auth. Solid Waste Rev.	landfill	Baa	12/27/94	6,837	0	598543
York Co. Solid Waste & Refuse Auth. Gtd. Rev. Ser. '85, Dtd. 8-20-87	WTE facility	A	12/27/94	128,950	0	986410
South Carolina						
Charleston Co. Res. Rec. Rev. (Foster Wheeler Charleston Res. Rec. Inc. Proj.) Ser. '87A	WTE facility	A	3/27/95	78,400	0	160077
Utah						
Davis Co. Solid Waste Mgmt. & Energy Rec. Spec. Serv. Dtd. Solid Waste Rev.	WTE facility	Baa	3/14/95	50,605	0	239021
Virginia						
Fairfax Co. Economic Devel. Auth. Res. Rec. Rev. Ser. '88A (Ogden Martin Sys. of Fairfax Inc. Proj.)	WTE facility	A1	3/17/95	237,180	0	303822
Southeastern Public Serv. Auth. Sr. Lien Solid Waste Rev.	landfill, transfer stations, refuse-derived fuel facility	Baa1	3/21/95	50,885	⁽¹⁾ 167,548	842056

⁽¹⁾ Insured by MBIA, new issue market, senior lien revenue bonds.

Issuer Contact	Moody's Contact	Rating Outlook	Comment/Description of Bond Security
Stephen Tucker (717) 242-3301	Craig Atwater (212) 553-0327	stable with flow control; unfavorable without it	<ul style="list-style-type: none"> ■ Pledge of system's net revenues. ■ Satisfactory security provisions, acceptable rate covenant, adequate reserve requirement. ■ Increases in waste stream attest to facility's importance and its fairly competitive tip fee. ■ Debt service coverage has increased slightly. ■ Reliance on private haulers poses credit vulnerability without legal flow control. (Comment published 4/2/95.)
William Ehrman (717) 845-1066	Craig Atwater	stable with flow control; unfavorable without it	<ul style="list-style-type: none"> ■ Pledge of authority's net revenues and York County's guarantee of debt service. ■ System's operations have been satisfactory. ■ Tip fee is competitive. ■ Without legal flow control, the system could be vulnerable to competition. ■ Bonds have acceptable security provisions, and debt service is covered at satisfactory levels from enterprise net revenues. County exhibits acceptable credit factors, but impact of authority's debt on the county would be major. (Comment published 4/24/95.)
Harold L. Bisbee (803) 723-6731	Ed Krauss (212) 553-0822	stable	<ul style="list-style-type: none"> ■ Pledge of system's net revenues, which include user fees and revenues from energy sales. ■ Solid waste user fees, which are billed directly to property owners, provide primary security. ■ Assessment has so far survived legal challenges. ■ Financial operations are favorable, and plant performance is good. ■ Large and diverse economic base. ■ Effect of Charleston Naval Base closing on solid waste enterprise seems manageable. (Comment published 3/28/95.)
Legrand W. Bitter (801) 771-3032	Jerry Caden (212) 553-0329	unfavorable; flow control poses a vulnerability	<ul style="list-style-type: none"> ■ Pledge of solid waste system's net revenues. ■ The district has the highest tip fee in the state, operating at high risk with respect to "free market" competitive pressures. ■ Financial operations show net revenues exceeding consulting engineer's projections. ■ New district landfill site is adjacent Box Elder County. ■ Affluent and stable economy, though Hill Air Force Base poses a future vulnerability. (Comment published 3/16/95.)
Fity Kham (703) 324-3120	Ed Krauss (212) 553-0822	stable	<ul style="list-style-type: none"> ■ Pledge of system's tip fees, electric sales, and its ability to assess user fees on property owners. ■ Reduced flexibility, despite still-satisfactory financial performance. ■ Plant technical performance is good. ■ Fluctuations in waste deliveries. ■ Adequate landfill capacity is available. (Comment published 3/20/95.)
Darwood S. Clarling (804) 420-4700	Ed Krauss	favorable with flow control; unfavorable without it	<ul style="list-style-type: none"> ■ Pledge of system's net revenues. ■ Large losses of solid waste and revenues experienced without flow control. ■ Short-term remedial steps have been taken to stabilize finances. ■ System's operating performance is still satisfactory at current rating level. (Comment published 3/22/95.)

Solid Waste Issuer Index (continued)

Issuer	System Type	Rating	Last Rating Date	Uninsured Debt Outstanding (\$000)	Debt Insured <input type="checkbox"/>	Culp
Washington Lewis Co. Solid Waste Disp. Dist. 1 (Waste Disp. Sys. Rev.)	transfer station	Baa1	3/31/95	9,815	0	527910

Issuer Contact	Moody's Contact	Rating Outlook	Comment/Description of Bond Security
Bob Berg (206) 740-1370	Elizabeth Bauch (212) 553-1735	stable with legal flow control; unfavorable without it	<ul style="list-style-type: none"> ■ Pledge of district's net revenues. ■ District is authorized to impose excise tax in addition to tip fees. ■ Local entities agree to direct solid waste to district facilities for disposal for the life of the bonds. ■ Higher tip fee has resulted in no loss of tonnage. ■ District's closure liability is limited; no other significant capital requirements. ■ Legal challenge to flow control structure could lower credit quality. (Comment published 4/3/95.)

Current Solid Waste Tip Fees

Issuer	Tip Fees Per Ton	Issuer	Tip Fees Per Ton
Arkansas		Kentucky	
Little Rock	\$15.50	Danville Multi-City	\$29.70
California		Louisiana	
Mohave	\$35.50	St. Landry Parish	\$0
Nevada County	\$63.53	Maryland	
South Napa County	\$60.47	Montgomery County	\$59.00
S.R.R.F.	\$36.00	Northeast Maryland	\$59.00
Western Placer	\$43.89	Prince George's County	\$72.00 residential \$60.00 commercial
Connecticut		Massachusetts	
SCRRA	\$87.00	Greater New Bedford	\$40.00
CRRA-Bridgeport Resco	\$78.00	N.E.S.W.C. (Mass. Refuse Tech)	\$89.00
CRRA-Wallingford	\$74.00	Michigan	
Bristol	\$57.50	Central Wayne County	\$51.30
Delaware		Grosse-Pointes-Clinton	\$55.00
Delaware	\$58.50	Kent County	\$59.51
Florida		Southeastern Oakland County	\$50.00
Brevard County	\$24.66	Montana	
Broward County-North	\$75.87 in county \$32.00-\$52.00 out-of-county average	Helena	\$41.50
Broward County-South	\$66.27 in county	Lewis & Clark Counties	\$22.50
Dade County	\$59.00 at landfill \$9.00 at transfer station	Richland County	\$15.00
Lake County	\$84.15	Nebraska	
Palm Beach County	\$40.00	Grand Island	\$24.00
Pinellas County	\$37.50	New Jersey	
Sarasota County	\$42.34 commercial \$34.53 municipal	Atlantic County	\$121.69 municipal \$106.24 bulky and industrial
Georgia		Camden County	\$90.77
Athens-Clarke County	\$31.50	Cape May County	\$95.40
Clayton County	\$26.00	Gloucester County	\$61.84
Cobb County	\$40.00	Mercer County	\$117.00
Liberty County	\$32.50	Passaic County	\$106.83
Savannah	\$37.31	Salem County	\$69.45
Iowa		Union County	\$71.50
Des Moines	\$25.00	Warren County	\$113.76
Idaho		New Mexico	
Bannock County	\$.60 per cubic yard	Alamogordo	members \$13.50 nonmembers \$22.50
Indiana		Santa Fe	\$17.29
Indianapolis	\$25.00		

Issuer	Tip Fees Per Ton ¹	Issuer	Tip Fees Per Ton ²
New York		Pennsylvania (con't)	
Babylon	\$78.00	Greater Lebanon	\$53.64
Hempstead	\$65.00 commercial	Harrisburg	\$64.00
Huntington	\$65.00	Lancaster County	\$59.00
North Country Development Authority	\$53.00 municipal \$40.00 other	Mifflin County	\$49.50
Oneida-Herkimer	\$86.00	York County	\$56.00
Onondaga County	\$99.00	South Carolina	
St. Lawrence County	\$100.00	Charleston County	\$0 at plant \$25.00 at landfill
Ulster County	\$57.00	Utah	
Warren & Washington Counties	\$85.00	Davis County	\$62.00
North Carolina		Virginia	
Coastal Regional	\$42.00 at landfill \$54.40 at transfer station	Fairfax County	\$48.00
High Point, NC	\$30.00	S.P.S.A.	\$41.00 commercial \$34.00 municipal
Iredell County, NC	\$27.00	Washington	
Oregon		Lewis County	\$95.00
Metro	\$75.00		
Pennsylvania			
Chester County	\$57.00		
Clinton County	\$57.50		

¹ Issuer names are abbreviated.

² System tip fees are based on tonnage unless otherwise noted; spot market fees may differ.

³ Bonds are secured by sales tax revenue. A tip fee could be implemented if necessary.

STATEMENT OF THE AMERICAN FOREST AND PAPER ASSOCIATION AND THE PAPER RECYCLING COALITION

The American Forest & Paper Association (AF&PA) and the Paper Recycling Coalition (PRC) appreciate the opportunity to submit this statement for the hearing record on the issue of municipal solid waste flow control. The U.S. paper industry is interested in this matter because of its potential to negatively impact paper recycling and materials recovery.

The American Forest & Paper Association is a national trade association representing the U.S. forest products industry. The United States is the world's leading producer and consumer of forest products and a vital component of the nation's economy, representing more than 7 percent of all U.S. manufacturing capacity. Our members produce more than 80 percent of the pulp, paper and paperboard in this country. The forest products industry ranks among the top ten employers in 40 States, directly employing some 12.6 million people with an annual payroll of approximately \$43.5 billion.

The Paper Recycling Coalition (PRC), was formed in 1990 by manufacturers of 100 percent recycled paper and paperboard to further the development of sound public policy which supports private industry's role in recycling and improving the public's understanding of the paper recycling process. The nine member companies of the PRC utilize approximately five million tons of recovered paper annually in manufacturing 100 percent recycled paper and paperboard products.

We recognize that the Senate Environment and Public Works Committee is evaluating the appropriate role, if any, for new flow control authority. Should the committee advance legislation to grant authority to impose flow control, it should be clearly targeted to address only those concerns associated with municipal solid waste. In order to ensure that recycling activities are not adversely affected, any flow control legislation should recognize that:

- any materials that have been separated from waste otherwise destined for disposal (either at the source of the waste or at processing facilities) or that have been managed separately from waste destined for disposal should not be subject to local government municipal solid waste flow control either for past or prospective programs;
- flow control over recovered materials would undermine significant private commercial activity in an area which has not historically fallen under government control or regulation;
- local governments can presently direct the flow of recyclable materials once the owner or generator of those recyclable materials freely and voluntarily transfers ownership of those materials to the local government by placement in a municipal collection program;
- flow control or interstate waste authority should cover only municipal solid waste. Non-hazardous industrial wastes are not part of municipal solid waste and therefore should not be subject to local government flow control, nor should recovered materials from non-hazardous industrial waste be subject to flow control.

BACKGROUND

The U.S. paper industry has been recycling paper for over 300 years. Over the last decade, as interest in recycling spread, our use of recovered fiber has increased 74 percent. Recycled paper is a vital raw material source for the industry. Today, 37 percent of the entire U.S. paper industry's raw material is comprised of recovered paper (43 million tons), up from 25 percent in 1988. In the year 2000, recycled paper is expected to supply 40 percent of the all fiber used to make new paper and paperboard products.

While the growth in industry utilization of recovered fiber has occurred at the same time that local governments instituted municipal recycling programs, the vast majority of paper recovery still takes place in private or commercial programs. Residential curbside collection programs account for less than 20 percent of all paper recovery. In order to sustain the growth in recycling, it is imperative that our industry continue to have open market access to recovered paper that has made current growth possible.

Long ago, the paper industry developed the infrastructure to utilize recycled paper, in the absence of mandates or other artificial constraints. The paper industry relies on suppliers which include a private network of small independent businesses that act as collectors, packers, and brokers. Paper is collected from commercial establishments, warehouses, offices, institutions and through private or charitable organizations including schools and churches. Municipal collection programs are just one part of the collection infrastructure. The paper is then, to the extent necessary, cleaned, processed and graded prior to delivery to a paper mill. Between

1993 and the year 2000, we estimate \$10 billion of capital investment will have been made to process recycled paper and paperboard into new products.

To publicly demonstrate our commitment to maximizing recycling and minimizing the amount of paper destined for landfill disposal, the paper industry set a voluntary goal to recover 50 percent of all paper in the year 2000 for reuse and recycling. The 50 percent goal was set after the industry had achieved an earlier goal to recover 40 percent of all paper—two years ahead of schedule. In 1996, 44.8 percent of all paper was recovered.

The challenge ahead is to continue to supply recovered paper and specifically to expand recovery of those grades of paper most in demand by U.S. papermakers. Maintaining reliance on market forces to determine access to, and use of recovered paper supplies will be absolutely essential to continuing the progress already underway in U.S. paper recovery and recycling.

PAPER INDUSTRY'S PRINCIPLES REGARDING FLOW CONTROL

The paper industry supports policies that ensure manufacturers unfettered access to their recovered paper as a raw material.

Recovered Paper—received from residential and commercial collection programs—is the source of 37 percent of the paper industry's raw material. These materials are commodities, bought and sold on the open market like thousands of other commodities. They are neither solid waste nor municipal solid waste and should not be regulated as such. If paper does not enter, or is diverted or removed from, the solid waste stream, it becomes a commodity raw material and should not be regulated as a solid waste or subject to local government flow control.

Second, the ownership of recovered materials conveys the same rights of ownership of other personal property. The owner of a bale of corrugated cartons, or bundle of newspapers must have the same rights as the owner of a bushel of wheat when deciding on the destination of the material. In other words, the owner of a recovered material has the right to sell, donate, transport, or contribute that material to whomever, or in whatever way he or she chooses. And, to the extent that government should not limit the rights of ownership, it should not restrict commerce in such materials by restricting rights to purchase or transport recovered materials. In no case should local government mandate that recovered materials be transferred to the government or its recycling agent. This is not to imply that the industry opposes voluntary curbside recycling programs which the industry supports and relies on as a source of raw material. The industry believes that once the owner/generator voluntarily transfers ownership by placing the materials for public collection either directly or under contract through an agent, the government can assume ownership of recyclables. At that point local government has the authority to control the flow of its recovered materials in whatever manner it chooses, and thus negates the need for Federal flow control authority over recovered materials.

FREE MARKET RESULTS IN GREATLY INCREASED RECYCLING RATES OF ALL TYPES OF PAPER

- In 1996, 63 percent of all newspapers published in the United States were recovered for recycling.
- Use of recovered paper by printing-writing paper manufacturers is now growing about twice as fast as recovered paper use by the industry at-large (5.9 percent vs. 2.9 percent).
- Nearly three-quarters (73 percent) of all corrugated boxes were recovered for recycling in 1996. And, with growing demand for this material by domestic manufacturers, the challenge is to recover even more.
- Recovery of paper and paperboard packaging is at an all-time high. According to the U.S. Environmental Protection Agency's most recent data, 45.2 percent of paper and paperboard packaging used in this country was recovered in 1994.

INCREASING SUPPLIES OF RECOVERED PAPER RESULTS IN INCREASED MANUFACTURING CAPACITY

- Since 1988, consumption of recovered paper at U.S. mills has jumped more than 74 percent.
- Recovered paper consumption at U.S. mills continues to grow at twice the rate of growth of total production capacity—by any measure a significant change in raw material sourcing.
- Today, well over 400 domestic paper mills recycle some recovered paper, and about 200 depend entirely on it for their raw material requirements. Almost without exception, U.S. paper companies are using at least some percentage of recovered paper for their fiber.

These statistics present powerful evidence of the paper industry's commitment to recycling, and its ability to perform based upon a free market in recovered paper. In order to meet the industry's voluntary goal to recover 50 percent of all paper in the year 2000, we must continue to have open access to the volume, quality and diversity of this material.

Paper, like other commodities, is subject to the laws of supply and demand. Government flow control policies which prohibit or restrict the industry's ability to obtain the right amount and type of raw material jeopardize existing and future investment in paper recycling.

SUMMARY

The paper industry believes local economic conditions, not laws or regulation, should be allowed to dictate the flow, price and quality of recovered materials as they do of other commodities. The tremendous growth in the recovery of paper for recycling has proven the validity of this approach. With unrestricted access to their raw material, paper mills will continue to increase their reliance on recovered fiber. In the year 2000, the paper recovery rate is expected to grow to 50 percent, from 28.2 percent in 1986. Government interference in this dynamic commodity market will severely jeopardize the future growth of paper recycling. Flow control over recovered materials would be harmful as it replaces an efficient and effective market with non-market forces which do not reflect or understand the recovered materials markets or the needs of the paper recycling industry. The American Forest & Paper Association and Paper Recycling Coalition appreciate the opportunity to present our views on flow control and stand ready to assist the committee as you attempt to craft legislation to address this issue.

STATEMENT OF ASSOCIATED BUILDERS AND CONTRACTORS

Associated Builders and Contractors (ABC) thanks the Senate Environment and Public Works Committee for the opportunity to submit a statement on proposals that would authorize State and local governments to enact solid waste flow-control laws.

ABC is a national trade association representing over 19,000 contractors, sub-contractors, material suppliers, and related firms from across the country and from all specialties in the construction industry. ABC's diverse membership is bound by a shared commitment to the merit shop philosophy of awarding construction contracts to the lowest responsible bidder through open and competitive bidding. This practice assures taxpayers and consumers the most value for their construction dollar. With 80 percent of the construction performed today by open shop contractors, ABC is proud to be their voice.

In May 1994, the U.S. Supreme Court ruled in *C.A. Carbone Inc. v. Town of Clarkstown, New York*, that flow control law are unconstitutional—as an article of interstate commerce, solid waste cannot be restricted by the States without explicit congressional authority. As a result of the Supreme Court's decision, some local governments are seeking legislation to authorize flow control. While it may have been justified in some circumstances, flow control nevertheless is a process which allows local governments to monopolize the waste system and precludes competition from lower-cost facilities.

Flow control is anti-business and free market. It denies businesses the opportunity to shop among competing waste haulers, by allowing local governments to monopolize waste disposal services. As an industry which inherently generates large volumes of solid waste, builders and contractors are significantly affected by the price of waste disposal. The construction industry is concerned that expanded flow control authority will unnecessarily impede free markets in the waste management industry and result in substantial cost increases.

In fact, a study by the National Economic Research Associates estimated that flow control increases disposal costs by an average of \$14 per ton, or 40 percent. By artificially inflating the cost of waste collection, flow control impose a substantial hidden tax increase on small businesses.

ABC sees no need for any action. Since the Supreme Court struck down flow-control laws, local officials have alleged that municipalities that had issued bonds to build landfills and incinerators on the assumption that they could guarantee a steady flow of waste to those facilities could find their debt repayments at risk and their bond ratings downgraded. These dire predications, however, have not come to fruition. According to the Moody's Investor Service, fewer than 15 percent of bonds related to flow control have been downgraded since *Carbone*. Those bonds that have been downgraded were far less than top-graded bonds to begin with, and a number

of the bonds' downgraded were tied to forces in the solid waste industry that were unrelated to lack of flow control.

Associated Builders and Contractors strongly urges you to oppose expansion of flow control authority. Again, ABC appreciates this opportunity to submit a statement for the record.

MAR 24 1997

Statement
Submitted on Behalf of

BOARD OF CHOSEN FREEHOLDERS
OF THE COUNTY OF WARREN, NEW JERSEY

For The Printed Record Of The
March 18, 1997
Senate Environment and Public Works Hearing on
State and Local Control of Waste Transport

Submitted by:

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Title Chief Financial Officer
Address Dumont Administration Building
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**BOARD OF CHOSEN FREEHOLDERS
OF THE COUNTY OF WARREN**
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March 18, 1997

Honorable Senator John H. Chafee, Chairman
Senate Committee on Environment and Public Works
415 Hart Senate Office Building
Washington, DC 20510

Dear Senator Chafee:

We have been informed that the US Senate Committee on Environment and Public Works is considering the need for legislation to allow existing waste disposal facilities that rely on flow control to continue operating under a grandfather exemption. The prospect of legislative relief is welcome news to local governments such as ours, who responded to the solid waste disposal crisis in the mid 1980's in a responsible and pro-active manner. Ironically, it is those same units that now face the prospect of serious fiscal stress because of their well-intended actions. Flow control legislation for existing facilities is essential for many of these facilities to survive.

The Warren County Pollution Control Financing Authority, hereafter referred to as the authority, was created pursuant to New Jersey's Solid Waste Management Act. Under the state's law, counties were required to develop and implement a comprehensive system for managing the solid waste generated in the county. Warren joined with Hunterdon and Somerset Counties and adopted a plan whereby the Warren Authority would construct an energy from refuse resource recovery (EFR) and sanitary landfill facility. The capacity of the facility was limited to meet the solid waste disposal needs of the three counties and restrict the importation of third party waste. Waste flow control assured the financial success of the plan and was a key condition in securing financing for the project.

The project was financed through the sale of \$130,000,000.00 in revenue bonds issued by the authority. Revenues from the solid waste disposal tip fees were pledged to pay the debt service and operating expenses of the facility. In order to ensure that sufficient revenues were generated, the state imposed a system of waste flow controls which required that all solid waste generated within the service area governed by the agreement be disposed of in the facility designated in the plan. The authority currently charges a tip fee of approximately \$99 per ton. Revenues generated by the facility have been adequate to cover debt service and operating costs since the facility began operations in 1988. The revenues are used also to support household hazardous waste disposal, recycling and environmental programs.

There are three landfill facilities and three transfer stations located within a thirty mile radius of the Warren County facility. Municipal solid waste disposal costs at these competing facilities average between \$40 and \$50 per ton. Currently, fees are below \$40 per ton and the market is extremely competitive. Federal and State Court decisions have ruled that solid waste flow control is unconstitutional and illegal. As stated previously, Warren County's Resource Recovery Facility depends on the guaranteed waste stream to generate enough income to remain solvent. If flow control is eliminated, the loss of waste and associated revenue to competing facilities could cause severe fiscal stress on the authority, conceivably bankruptcy. Inevitably, these are matters that the court will have to decide and you can be sure that the litigation cost will be staggering.

The authority is exploring ways to become competitive with privately owned solid waste disposal facilities. Their efforts are focusing on identifying ways to reduce costs by evaluating programs, renegotiating the service agreement with the facility operator, and restructuring debt. Given the facilities's capacity, it will be very difficult to reduce the costs sufficiently to compete without concessions and some form of subsidy. Due to the uncertainty of useful life of the facility at the time of construction, the debt issued to finance the facility was structured to mature in a relatively short time frame (20 years). After nine years of operation, it appears that the useful life of the facility will be substantially longer than originally anticipated. Therefore, the estimated life of the facility exceeds the debt maturity by a considerable number of years. Given the current solid waste disposal market conditions however, it is unlikely that the debt can be restructured without additional guarantees from the counties.

One proposal under discussion in the state assembly is the possibility of imposing fees on the waste generators included in the County's plan. One problem with this proposed legislation is that the fees are optional, not

mandatory. As indicated previously, the Authority has issued the debt and Hunterdon and Somerset Counties are supplying waste under agreements to our facility. If all three counties do not impose the fee and pay their proportionate fair share, the burden of paying the shortfall in operating and debt service cost will fall entirely on Warren County residents. This is hardly an equitable solution considering the terms of the original agreements.

The commissioner of the New Jersey Department of Community Affairs has stated that the department will not allow a default on authority debt. If necessary, the Local Finance Board can dissolve the authority and the "outstanding debt of the authority will become a legal obligation of the county." In order to appreciate the impact of the additional debt, consider that Warren County currently has approximately \$28,000,000 in outstanding bonds. The Authority's current outstanding debt at 1/1/97 is \$82,600,000. If the county were forced to assume responsibility for all of the authority's debt, our total indebtedness will increase 400% to \$110,600,000. Assuming none of the debt will be self-liquidating, the county's net debt to equalized tax base valuation could increase from 0.44% to 2.02%. It should be noted that the statutory debt to equalized tax base limit for New Jersey Counties is 2.0%. Needless to say, the county will be unable to issue additional debt for the foreseeable future if such action was taken. This will surely limit our ability to meet the obligations and capital needs of our residents.

The county's 1997 annual operating budget is about \$67,000,000. Debt service in the 1997 budget is approximately \$4,370,000. Debt service on the Authority debt will be \$10,600,000 in 1997. The added expense of the Authority debt will increase the county operating budget by 16% over the current level and could cause the tax rate to increase by more than 21 cents. This represents a 30% increase in the county purpose tax burden. Our debt per capita ratio will skyrocket from one of the lowest in the state, to the highest! Clearly, the financial hardship caused by such a move on the part of the DCA would be substantial.

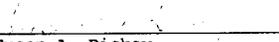
As the governing body of Warren County, New Jersey, the Board of Chosen Freeholders has a responsibility to protect the interests of our residents. We believe that we have acted in a responsible manner on this issue. Warren, Hunterdon and Somerset counties developed, and implemented, a state approved plan to solve a potentially serious environmental and health problem. It is unfortunate that the recent turn of events has created a dilemma which will result in a serious fiscal crisis. The public, investors, and bond insurers with a financial interest in the facility have a great deal at stake in the legislation under consideration. Congress can, and should, act to provide relief to existing facilities and protect the interest of all parties. It is unjust that any party or group of parties should suffer financially because of a change in interpretation of the law.

4.

Warren County complied with the state mandate to resolve the solid waste disposal problem of the 1980's. We reacted in a proactive manner and devised a long term disposal system that was agreed to by all parties. The Authority relied on flow control and the assurances of the participants involved in the plan. As a result, a substantial financial commitment has been made and an environmentally safe disposal facility has been constructed. Flow control for the duration of the term of the agreements will allow the facility to continue to meet its financial obligations and place the burden on the individuals that benefitted from the use of the facility. It is unfortunate that the residents of this county will shoulder a disproportionate burden if the rules change and waste flow control becomes unenforceable. Grandfather legislation will assure solvency and require all parties to live up to the commitments made when the agreements were entered into. The Board of Chosen Freeholders appreciates the opportunity to share our plight with you and urge you to assist us in finding a fair and equitable solution to the problem.

Sincerely,


 Ann M. Stone
 Director
 Board of Chosen Freeholders


 Susan A. Dickey
 Deputy Director
 Board of Chosen Freeholders


 Stephen J. Lance
 Freeholder
 Board of Chosen Freeholders

Copy to:

Senator Robert Torricelli
 Senator Frank Lautenberg
 Congresswoman Marge Roukema
 Congressman Robert Frank
 Assemblyman William J. Pascrell
 Assemblyman John E. Rooney
 Senator William E. Schluter
 Assemblyman Leonard Lance
 Assemblywoman Connie Myers
 Pollution Control Financing Authority of Warren County

George Marinakis, Executive Director
Charles M. Norkis, Deputy Director

Daniel Riley, Chairman
George W. Betts, Vice Chairman
William G. Burns, Jr.
Beech N. Fox
John J. Pantalone
Carol Strickland
John Vasser, Jr.



Cape May County Municipal Utilities Authority

Post Office Box 610, Cape May Court House, New Jersey 08210
609-465-9026

March 12, 1997

OVERNIGHT MAIL

The Honorable John H. Chafee, Chairman
Senate Committee on Environment and Public Works
410 Senate Dirksen Office Building
Washington, DC 20510-6175

RE: Committee Oversight Hearing Regarding
Interstate Waste and Solid Waste Flow Control

Dear Senator Chafee:

The Cape May County Municipal Utilities Authority (CMCMUA/Authority) is the designated implementing agency for solid waste management in Cape May County, New Jersey. On behalf of the CMCMUA, I am enclosing a statement to be presented to the Members of the Senate Environment and Public Works Committee. As you will see from the enclosed Statement, Cape May County has made a significant commitment of public resources and finances in the development of a comprehensive solid waste management program. The loss of solid waste flow control authority now places both the County Solid Waste Management Plan and the Authority's finances at risk.

I would be pleased to present the enclosed Statement directly to the Members of the Senate Environment and Public Works Committee at the Oversight Hearing which the Committee has scheduled for March 18, 1997. However, if this is not possible, the CMCMUA requests that a copy of the enclosed Statement be provided to each of the Members of the Committee and that the Authority's comments be included in the public record for this Hearing.

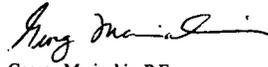
Recycled Paper

Cape May County Municipal Utilities Authority
The Honorable John H. Chafee, Chairman
March 12, 1997
Page 2

The CCMUA appreciates your personal effort in bringing this matter forward for discussion and the interest of the Members of the Senate Environment and Public Works Committee in reviewing and, hopefully, addressing this important matter.

Very truly yours,

CAPE MAY COUNTY
MUNICIPAL UTILITIES AUTHORITY



George Marinakis, P.E.
Executive Director

GM:taf
Enclosure
cc: Senator Frank Lautenberg
CCMUA Authority Members

STATEMENT OF GEORGE MARINAKIS, EXECUTIVE DIRECTOR, CAPE MAY COUNTY
MUNICIPAL UTILITIES AUTHORITY

Cape May County represents the southern most extension of the State of New Jersey and, as the name implies, the County is a peninsula with water bodies on three sides: the Atlantic Ocean to the east and south and the Delaware Bay to the west. The County's extensive beaches, wetlands and waterways attract many tourists and provide an excellent base for commercial and recreational fishing, water sports, campgrounds, bird watching and other wildlife related activities. Tourism and commercial fishing represent the largest industries in the County, which experiences a dramatic change in population from a base of approximately 100,000 year-round residents to a summer population estimated to be in excess of 600,000.

The New Jersey Solid Waste Management Act (N.J.S.A. 13:1 E-1 et seq.), as amended in 1975, directed each county in the State of New Jersey to develop a Solid Waste Management Plan in order to ensure the availability of reliable long-term disposal capacity for all solid waste generated within the county. This Act further stressed the importance of incorporating within each County Plan a commitment to maximizing the recycling of recoverable materials within the waste stream and also stressed the importance of minimizing any adverse impact on the natural and human environment of the most densely populated State in the Nation.

In response to the requirements, goals and objectives of the Solid Waste Management Act, the Cape May County Board of Chosen Freeholders authorized the preparation of the County's original Solid Waste Management Plan and in 1980 designated the Cape May County Municipal Utilities Authority (CMCMUA/Authority) as the agency to proceed with the financing and implementation of the County's adopted and State-approved Plan. Since that time, the CMCMUA has aggressively pursued and implemented a comprehensive and balanced solid waste management system to serve the residents of and visitors to Cape May County. This integrated approach, which includes waste reduction, source separation and recycling, waste reclamation, and sanitary landfilling, has enabled the Authority to establish a system which meets the needs of the local environment as well as the people it serves. In 1991, Cape May County's efforts were recognized when the CMCMUA received a variety of honors for the development and implementation of this comprehensive solid waste management system, including four prestigious recycling awards. These awards include the National Recycling Coalition's first-place award as the best regional recycling program in the Nation, regardless of population. A first-place award from the Solid Waste Association of North America as being the best regional recycling program in the United States or Canada, serving populations up to 100,000. An Environmental Quality Award from the United States Environmental Protection Agency for a comprehensive solid waste management system and the New Jersey Department of Environmental Protection's designation as the best regional recycling program in the State.

The CMCMUA's Solid Waste Complex is located on a 454 acre site and is comprised of a wide variety of recycling and solid waste facilities that are all owned by the Authority. All of these facilities, with the exception of the Intermediate Processing Facility which receives and processes source separated recyclables, are operated by the CMCMUA. The facilities and services provided by the CMCMUA include:

- A secure sanitary landfill with adequate capacity to satisfy the waste disposal needs of Cape May County for the next 30-40 years.
- A solid waste transfer station.
- A county-wide source separation program in which all 16 Cape May County municipalities participate.
- An Intermediate Processing Facility which receives, sorts, processes and upgrades source separated recyclables collected by the municipalities to improve their marketability.
- A bulky waste sorting and recycling operation in which corrugated cardboard, wood and scrap metals are removed from mixed bulky waste, including construction and demolition debris, for recycling.
- A cooperative program for receiving street sweepings and catch basin clean-out materials.
- A "white goods" and CFC recovery operation wherein source separated white goods are accepted for recycling and CFC refrigerants are also recovered and recycled.
- Wood pallets are processed into a marketable woodchip product.
- Source separated tree trunks and stumps are chipped and converted into root mulch and topsoil.
- Christmas trees are chipped to produce a mulch.
- Source separated leaves and grass clippings are composted.

- Source separated automobile and truck tires are accepted and delivered to a recycling facility where they are processed for reuse.
- Automotive and marine batteries are accepted for recycling.
- Used motor oil is accepted for recycling.
- Source separated household hazardous waste is accepted for subsequent disposal at a hazardous waste facility.
- After satisfying the needs of local charities, used clothing is stored and delivered to a textile recycling business.
- Technical and promotional assistance is provided to municipalities, businesses, institutions, residents and visitors to expand source reduction, reuse and recycling activities.
- A Litter Abatement Partnership Program which encourages roadside and community clean-up activities is conducted jointly with the County and participating municipalities.
- Enforcement of mandatory recycling requirements for “designated recyclables” which are not allowed to be disposed of at the County’s solid waste facilities.

It should be noted that the CMCMUA’s primary source of revenue for the above-noted solid waste and recycling activities is derived from the tipping fee charged for the disposal of solid waste at the Authority’s Sanitary Landfill. Recognizing the relatively minor amount of revenue derived from the sale of the materials and/or products that are recycled it, therefore, should also be recognized that, with the exception of the CMCMUA’s Sanitary Landfill itself, all of the above noted facilities, programs and services are in whole, or in part, subsidized from the revenues derived from the CMCMUA’s solid waste disposal fees.

Cape May County has mandated the recycling of 20 different materials which have been defined as “designated recyclables” and further recommends the recycling of 13 additional materials. The landfill prohibition on the disposal of designated recyclables, as well as an extensive promotional and educational program, substantially contributes to the overall success achieved in recycling Cape May County’s solid waste.

In 1995, the CMCMUA landfilled a total of 118,778 tons of solid waste while, at the same time, the Authority’s facilities recycled 50,209 tons of materials. Reported 1995 figures indicate that a total of 215,402 tons of material, or approximately 64 percent of all solid waste generated within Cape May County was recycled through a combination of CMCMUA and private sector facilities (Reference attached chart which summarizes the total quantity of Cape May County solid waste recycled 1987–1995). Unfortunately, recycling tonnage figures are not yet available from private sector facilities for 1996. However, it can be reported that the CMCMUA’s facilities recycled 51,533 tons of material during 1996, while landfilling a total of 124,637 tons during the same period; thus indicating a sustained high level of participation and recycling success during the past year.

A strong commitment and a great deal of work was required in order to achieve the results noted above. The planning, siting studies, land acquisition, design, permitting, financing and construction of the various solid waste and recycling facilities provided for in the Cape May County Solid Waste Management Plan also required a significant financial commitment. Revenue Bonds totaling approximately \$48 Million were issued by the CMCMUA in order to finance this effort on behalf of County residents and businesses. This significant investment was made in response to the requirements of the New Jersey Solid Waste Management Act, the waste management planning objectives of the Federal Government as set forth in the Resource Conservation and Recovery Act (RCRA) and also in light of relevant waste flow control decisions rendered by the United States District Court prior to the United States Supreme Court’s May 14, 1994 Ruling in the case of *Carbone vs. Town of Clarkstown, New York*. In other words, Cape May County’s Solid Waste Management Plan and the financial investment required to implement this very effective waste management strategy was made in good faith reliance and with a clear expectation that the debt incurred by the CMCMUA when it issued its Revenue Bonds could be repaid through the exercise of flow control authority.

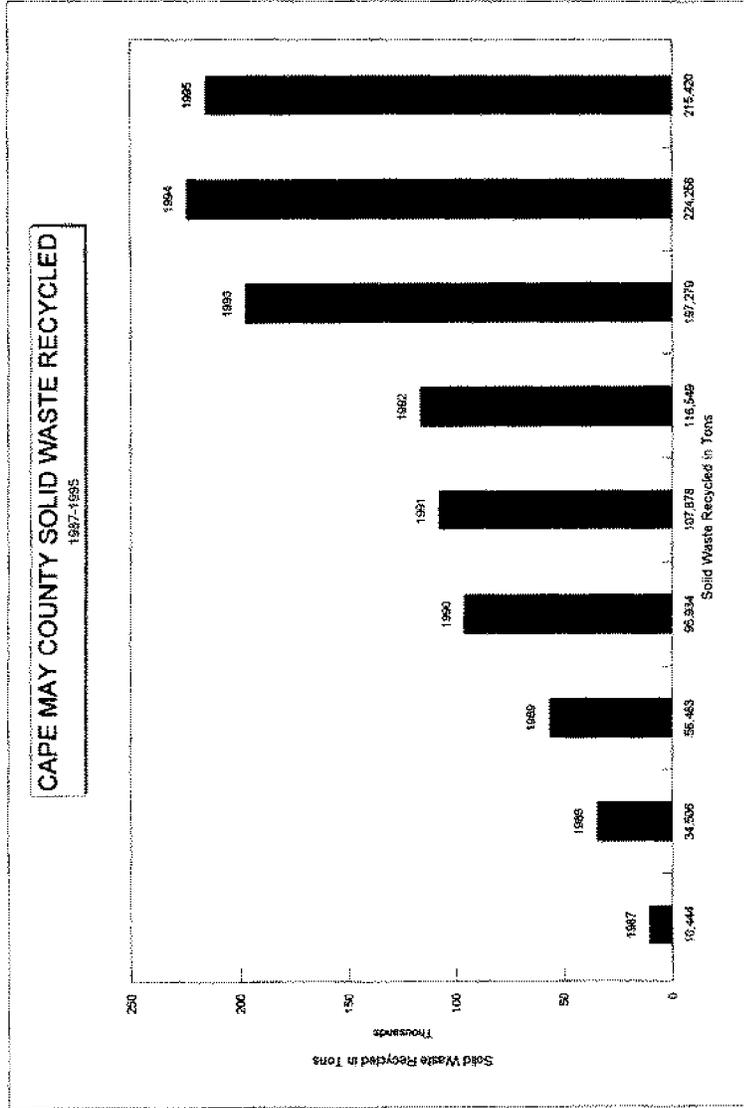
The loss of waste flow control authority resulting from the United States Supreme Court decision in the *Carbone* Case will not only undermine the financial integrity of Cape May County’s solid waste management system but will also undermine the County’s ability to sustain the comprehensive solid waste management system which has been assembled in response to the County’s unique needs. The appeal of low cost disposal options at out-of-state facilities, which are essentially offering a lower cost disposal option by straight landfilling, will undoubtedly reduce the quantity of solid waste and, therefore, revenue received at the CMCMUA’s solid waste facilities. As a result, the various programs and/or services which are outlined above

and which are subsidized in whole or in part from the revenues derived from the CMCMUA's solid waste disposal fees, may have to be eliminated.

Although each county in the State of New Jersey has proceeded with the development and implementation of solid waste strategies consistent with their own needs, the various solid waste management districts throughout New Jersey have, reportedly, incurred a debt totaling approximately \$1.8 Billion in planning and implementing these facilities and services. In the case of the CMCMUA, this Authority currently has a total outstanding solid waste debt of approximately \$40 Million.

The CMCMUA urges the members of the Senate Environment and Public Works Committee to recognize the inequity created by the loss of waste flow control authority resulting from the United States Supreme Court's Ruling. Public bodies that have responded in good faith to legislative priorities and/or mandates and who have relied upon prior judicial decisions regarding waste flow control should not continue to be left stranded by the absence of Federal legislation which would "grandfather" waste flow control authority to the extent required for such public bodies to address their financial obligations.

The CMCMUA urges prompt congressional approval of the Federal legislation which is needed to address this problem.



CAPE MAY COUNTY MUNICIPAL UTILITIES AUTHORITY, COMPREHENSIVE SOLID WASTE
MANAGEMENT PROGRAM OVERVIEW

The Cape May County Municipal Utilities Authority (CMCMUA) provides solid waste disposal services to approximately 100,000 year-round residents and over 500,000 additional summer visitors to Cape May County each year. The CMCMUA's Solid Waste Complex is located on a 454 acre site and is comprised of a wide variety of recycling and solid waste facilities that are all owned by the Authority. All of these facilities, with the exception of the Intermediate Processing Facility which receives and processes source separated recyclables, are operated by the CMCMUA.

A brief description of the major facilities and programs that comprise the County's solid waste management system is presented below.

SECURE SANITARY LANDFILL

The CMCMUA's Sanitary Landfill (SLF) is a state-of-the-art, double-lined landfill located in the northern section of the County. This facility, which began operations in May 1984, currently has 52 acres dedicated to landfilling (Phase I, Cells 1A, 1B and 1C) and provides leachate collection and storage with subsequent treatment at one of the Authority's four (4) regional wastewater treatment facilities. The CMCMUA's Sanitary Landfill is expected to be expanded to serve both the short- and long-term disposal needs of Cape May County. Specifically, the Authority plans to fully utilize the capacity of the existing landfill cells, including the currently active Cell 1C. Thereafter, the Authority plan to develop new cells on 42 adjacent acres within the existing site, and will maximize recycling efforts to enable Cape May County to maintain solid waste self-sufficiency for the next 30-40 years.

TRANSFER STATION

The CMCMUA also owns and operates a solid waste transfer station. This facility which began operations in July 1984 provides convenient hauling services and minimizes truck traffic from the southern half of the County to the CMCMUA's Sanitary Landfill.

COUNTY-WIDE SOURCE SEPARATION PROGRAM

All sixteen (16) Cape May County municipalities and the Authority participate in a joint source separation and recycling program. For convenience and to encourage greater participation, municipalities provide curbside collection of two (2) categories of source separated materials; mixed paper, which includes newspaper, corrugated, kraft grocery bags, magazines, office paper, and junk mail; and commingled cans and bottles, including clear, green and brown glass, aluminum, tin and aerosol cans, and PET and HDPE plastic containers. These source separated materials are collected from residents, businesses and institutions that are now all required to recycle. These materials can either be dropped off at the Authority's Transfer Station, or they can be delivered directly to the CMCMUA's Intermediate Processing Facility.

INTERMEDIATE PROCESSING FACILITY

The CMCMUA also owns and, under Contract with a private Operator, operates an Intermediate Processing Facility (IPF) which receives and processes source-separated recyclables. The IPF, which began commercial operations in April 1990, is a highly sophisticated and mechanized recycling facility which was modified in 1993 to increase peak processing capacity to 375 tons per day of recyclables. Source separated recyclables are received, at no charge, 6 days per week from municipalities, private haulers, businesses and residents. The IPF sorts, processes and upgrades accepted materials to improve marketability. All recyclable materials processed through the IPF are currently marketed.

BULKY WASTE SORTING/RECYCLING FACILITY

Mixed bulky waste received for disposal at the Authority's Solid Waste Complex, including construction and demolition debris, is inspected and sorted to reclaim corrugated cardboard, wood and scrap metals for recycling. Wood recovered from Bulky Waste, along with source separated wood that is accepted at a reduced rate at the Solid Waste Complex, is processed into a landfill cover material.

STREET SWEEPING AND CATCH BASIN CLEANOUT

The Authority accepts street sweepings and catch basin cleanout materials which are subsequently reused for landfill cover, at no cost, as a way of encouraging and

promoting this activity in support of local and county initiatives directed toward improving water quality.

“WHITE GOODS” AND CFC RECOVERY

Bulky household metals are accepted at no cost for recycling at the Bulky Waste Sorting/ Recycling Facility. In accordance with Federal and State air quality regulations, CFC refrigerants are also recovered from refrigerators and air conditioners prior to their being recycled.

WOOD PALLET RECYCLING

Source separated wood pallets are accepted at no cost and are processed through a tub grinder. The resulting woodchips are either used as a bulking agent in the CMCMUA Wastewater Program's Sludge Composting Facility or they are colored to produce a marketable and popular landscaping material sold under the trade name “Second Harvest”.

TREE TRUNKS AND STUMPS

Source separated tree trunks and stumps received by the Authority are chipped and converted into root mulch and top soil and sold to private landscapers or the public.

CHRISTMAS TREE RECYCLING PROJECT

Decoration-free natural trees are received at no cost and chipped, with the resulting mulch distributed to the general public at no charge.

GRASS CLIPPINGS AND LEAF COMPOSTING PROJECT

Source separated uncontaminated leaves and grass clippings are accepted without charge and composted at the Authority's Solid Waste Complex. The composted product is screened and sold locally.

TIRE RECYCLING

To provide an outlet for the proper disposal of used tires, source-separated loads of car and truck tires are accepted by the CMCMUA and delivered to an out-of-county facility for processing and reuse, rather than landfilling these materials.

AUTOMOTIVE AND MARINE BATTERIES

Automotive and marine batteries are accepted at no cost by the Authority for recycling.

USED MOTOR OIL RECYCLING

In an effort to discourage improper disposal, the Authority accepts without charge used motor oil at its solid waste facilities for recycling. Most municipalities have also established collection points to receive used motor oil.

HOUSEHOLD HAZARDOUS WASTE

The Authority conducts programs in the spring and fall of each year to divert potentially dangerous materials from the regular solid waste disposal system. Under this program, household hazardous wastes are received from residents, schools, public agencies and businesses. With the exception of large quantity generators, these materials are accepted without charge.

USED CLOTHING RECYCLING

The used clothing recycling and reuse drop-off program is a cooperative effort of the County Sheriffs Department, local public works departments and the CMCMUA. Source separated used clothing is accepted free at municipal drop-off sites. The Cape May County Sheriff's Department collects bags of used clothing from the municipal drop-off sites and, after the needs of local charities have been met, delivers the excess to the Authority. Used clothing is marketed by the Authority to a Philadelphia area textile recycling business.

RECYCLING PROMOTION/EDUCATION

Extensive technical and promotional assistance is provided to municipalities, businesses, institutions, residents and visitors to expand source reduction, reuse and recycling activities. Promotional and technical assistance is provided to private busi-

nesses that face unique recycling challenges due to the large influx of summer vacationers. A comprehensive recycling education program has also been implemented in local schools. These services are provided by the CMCMUA without charge.

LITTER ABATEMENT PARTNERSHIP PROGRAM

Under a partnership agreement with participating municipalities, the Authority accepts, without charge, during any four (4) days within a calendar year, any bulky wastes which are collected as part of a scheduled residential bulky waste collection service. Also accepted by the CMCMUA, without charge, are roadside litter and other debris collected by the County Road Department along County roads and by participating municipal public works or road departments along local roadways.

ENFORCEMENT

Unique and effective recycling enforcement strategies have been implemented by municipalities and the Authority that include substantial fines, refusal to pick up solid waste, monetary surcharges, and a ban on landfilling of 20 designated recyclables. The landfill ban includes all of the materials designated for recycling at the Cape May County IPF, as well as leaves, used motor oil, white goods, scrap metals and lead acid batteries. In addition, the Authority actively enforces NJDEP waste flow regulations so as to assure the Authority's revenue stream used to support the various recycling activities noted above is not compromised.

CAPE MAY COUNTY CONFERENCE OF MAYORS

RESOLUTION 97-1

WHEREAS, on March 20, 1997 at a meeting of the Cape May Conference of Mayors it was brought to the attention of the members that the Honorable John Rooney, Mayor of Northvale, New Jersey and Assemblyman of the 39th District of New Jersey, had presented testimony on March 18, 1997 before the Senate Environment and Public Works Committee on behalf of "The Mayors Task Force Against Flow Control"; and

WHEREAS, during his testimony Mr. Rooney represented that he was speaking on behalf of the 240 New Jersey Mayors who have gone on record as opposing flow control authority, and urged the Senate Environment and Public Works Committee to reject any proposed legislation which would grant an extension of flow control authority, including a limited authorization to "grandfather" flow control authority for the remaining period of any outstanding debt; and

WHEREAS, Mr. Rooney circulated a list of mayors he claimed rejected the proposed legislation on which evidently appeared the names of certain Cape May County Mayors; and

WHEREAS, the Cape May County Conference of Mayors took a vote at the aforementioned March 20, 1997 meeting as to the position of its members on this issue and unanimously made the following determination;

NOW, THEREFORE, BE IT RESOLVED by the Cape May County Conference of Mayors that they wish to advise the members of the Senate Environment and Public Works Committee that they were not consulted regarding their position on this issue and *do not wish to be identified with the opponents of waste flow control* and question the position regarding waste flow control of other New Jersey Mayors included on Mr. Rooney's list.

Motion: Avalon Mayor Martin L. Pagliughi

Seconded: Cape May Mayor Thomas M. Phelan

Dated: March 20, 1997



Mayor Michael J. Voil, President

OFFICE OF THE MAYOR
33 Mechanic Street
Cape May Court House
New Jersey 08210
(609) 486-6732
Fax: (609) 485-4458



MICHAEL J. VOIL
Mayor

**MIDDLE
TOWNSHIP**

March 21, 1997

The Honorable John H. Chafee, Chairman
Senate Committee on Environment and Public Works
410 Senate Dirksen Office Building
Washington, DC 20510-6175

RE: Solid Waste Flow Control

Dear Senator Chafee:

It is my understanding that on March 18, 1997, the Honorable John Rooney, Mayor of Northvale, New Jersey and Assemblymen of the 39th District of New Jersey, presented testimony before the Senate Environment and Public Works Committee on behalf of "The Mayors Task Force Against Flow Control". During his testimony, Mr. Rooney represented that he was speaking on behalf of the 240 New Jersey Mayors who have gone on record as opposing flow control authority. Also, on behalf of this group, Mr. Rooney urged your Committee to reject any proposal legislation which would grant an extension of flow control authority, including a limited authorization to "grandfather" flow control authority for the remaining period of any outstanding debt.

It is also my understanding that Mayor Rooney has circulated a list of New Jersey municipalities whose Mayors have expressed their opposition to flow control and are represented by "The Mayors Task Force Against Flow Control". As Mayor of Middle Township, which is one of the communities included on Mr. Rooney's list of municipalities opposing waste flow control, I wish to advise you and the other Members of the Senate Environment and Public Works Committee that I was not consulted regarding my position on this issue and, furthermore, wish to advise you that I do not wish to be identified with the opponents of waste flow control.

Recognizing that my position on this matter was misrepresented to your Committee, it is likely that the position regarding waste flow control of other New Jersey Mayors included on Mr. Rooney's list was also misrepresented.

Very truly yours,
A handwritten signature in dark ink, appearing to read "Michael J. Voil".
Mayor Michael J. Voil



City of Sea Isle City

DIRECTOR
DEPARTMENT OF REVENUE AND FINANCE

LEONARD C. DESIDERIO

MAYOR

4416 LANDIS AVENUE

SEA ISLE CITY, NEW JERSEY 08243

CITY HALL 609-263-4461

FAX 609-263-6159

March 21, 1997

The Honorable John H. Chafee, Chairman
Senate Committee on Environment and Public Works
410 Senate Dirksen Office Building
Washington, DC 20510-6175

RE: Solid Waste Flow Control

Dear Senator Chafee:

It is my understanding that on March 18, 1997, the Honorable John Rooney, Mayor of Northvale, New Jersey and Assemblymen of the 39th District of New Jersey, presented testimony before the Senate Environment and Public Works Committee on behalf of "The Mayors Task Force Against Flow Control". During his testimony, Mr. Rooney represented that he was speaking on behalf of the 240 New Jersey Mayors who have gone on record as opposing flow control authority. Also, on behalf of this group, Mr. Rooney urged your Committee to reject any proposed legislation which would grant an extension of flow control authority, including a limited authorization to "grandfather" flow control authority for the remaining period of any outstanding debt.

It is also my understanding that Mayor Rooney has circulated a list of the New Jersey municipalities whose Mayors have expressed their opposition to flow control and are represented by "The Mayors Task Force Against Flow Control". As Mayor of Sea Isle City, which is one of the communities included on Mr. Rooney's list of municipalities opposing waste flow control, I wish to advise you and the other Members of the Senate Environment and Public Works Committee that I was not consulted regarding my position on this issue and, furthermore, wish to advise you that I do not wish to be identified with the opponents of waste flow control.

Recognizing that my position on this matter was misrepresented to your Committee, it is likely that the position regarding waste flow control of other New Jersey Mayors included on Mr. Rooney's list was also misrepresented.

Very truly yours,

CITY OF SEA ISLE CITY

Leonard C. Desiderio, Mayor



William Pikolycky,
Mayor

Borough of Woodbine

Franklin and Monroe Streets
Post Office Box 444
Woodbine, New Jersey 08270
Telephone: (609) 861-5301
Fax: (609) 861-2529

March 21, 1997

The Honorable John H. Chafee, Chairman
Senate Committee on Environmental and Public Works
410 Senate Dirksen Office Building
Washington, DC 20510-6175

RE: Solid Waste Flow Control

Dear Senator Chafee:

It is my understanding that on March 18, 1997, the Honorable John Rooney, Mayor of Northvale, New Jersey and Assemblymen of the 39th District of New Jersey, presented testimony before the Senate Environment and Public Works Committee on behalf of "The Mayors Task Force Against Flow Control". During his testimony, Mr. Rooney represented that he was speaking on behalf of the 240 New Jersey Mayors who have gone on record as opposing flow control authority. Also, on behalf of this group, Mr. Rooney urged your Committee to reject any proposed legislation which would grant an extension of flow control authority, including a limited authorization to "grandfather" flow control authority for the remaining period of any outstanding debt.

It is also my understanding that Mayor Rooney has circulated a list of the New Jersey municipalities whose Mayors have expressed their opposition to flow control and are represented by "the Mayors Task Force Against Flow Control". As Mayor of the Borough of Woodbine, which is one of the communities included on Mr. Rooney's list of municipalities opposing waste flow control, I wish to advise you and the other Members of the Senate Environment and Public Works Committee that I was not consulted regarding my position on this issue and, furthermore, wish to advise you that I do not wish to be identified with the opponents of waste flow control.

Recognizing that my position on this matter was misrepresented to your Committee, it is likely that the position regarding waste flow control of other New Jersey Mayors included on Mr. Rooney's list was also misrepresented.

Very truly yours,

A handwritten signature in black ink, appearing to read "Wm Pikolycky".

William Pikolycky,
Mayor

Borough of Wildwood Crest

Commissioners:**JOHN J. PANTALONE**
Mayor—Public Safety**CHARLES GUHR**
Revenue & Finance**JOYCE P. GOULD**
Public Works & Buildings

March 21, 1997

The Honorable John H. Chaffee, Chairman
Senate Committee on Environment and Public Works
410 Senator Dirksen Office Building
Washington, DC 20510-6175

RE: Solid Waste Flow Control

Dear Senator Chaffee:

It is my understanding that on March 18, 1997, the Honorable John Rooney, Mayor of Northvale, New Jersey and Assemblyman of the 39th District of New Jersey, presented testimony before the Senate Environment and Public Works Committee on behalf of "The Mayors Task Force Against Flow Control". During his testimony, Mr. Rooney represented that he was speaking on behalf of the 240 New Jersey Mayors who have gone on record as opposing flow control authority. Also, on behalf of this group, Mr. Rooney urged your Committee to reject any proposed legislation which would grant an extension of flow control authority, including a limited authorization to 'grandfather' flow control authority for the remaining period of any outstanding debt.

It is also my understanding that Mayor Rooney has submitted a list of the New Jersey municipalities whose Mayors have reportedly expressed their opposition to flow control. Hopefully, I am not included on this list. In the past, Mayor Rooney has circulated a list of Mayors who have signed on as members of another task force, the "Task Force for Lower Taxes", and represented that each of the Mayors listed were opposed to flow control. Although I fully support the goal of lower taxes and, therefore, signed on as a supporter of this organization, I was never consulted regarding my position on flow control and I never authorized the use of my name as a Mayor opposed to flow control. I have previously objected to Mr. Rooney's use of my name and my municipality as opposed to flow control. In this regard, I have both written to, and discussed the matter with, Mayor Rooney. A copy of my earlier correspondence in this regard is enclosed.

As the Mayor of the Borough of Wildwood Crest, I wish to advise you and the other Members of the Senate Environment and Public Works Committee that I do not wish to be identified with the opponents of waste flow control. On the contrary, I am very concerned about the adverse effect that the loss of flow control authority will have on the programs, services and revenue required to sustain the comprehensive solid waste management system that has been developed in Cape May County.

6101 PACIFIC AVENUE P.O. BOX 529 WILDWOOD CREST, NEW JERSEY 08260
PHONE (609) 522-7788 • FAX (609) 522-6692

The Honorable John H. Chaffee, Chairman
March 21, 1997
Page 2

Since my position on this matter has been misrepresented in the past, I urge your Committee to recognize that it is quite possible that the position regarding waste flow control of other New Jersey Mayors, included on Mr. Rooney's latest list, was also misrepresented.

Very truly yours,

A handwritten signature in cursive script that reads "John J. Pantalone". The signature is written in black ink and is positioned above the printed name and title.

John J. Pantalone, Mayor
Borough of Wildwood Crest

Borough of Wildwood Crest

Commissioners:

JOHN J. PANTALONE
Mayor—Public Safety

CHARLES GUHR
Revenue & Finance

JOYCE P. GOULD
Public Works & Building

July 11, 1995

Mayor John Rooney
411 West Avenue
Northvale, N.J. 07646

Dear Mayor:

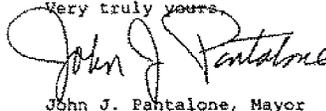
Please be advised that I am in receipt of your letter, which did contain my name as a "Supporter" of your position with respect to opposition of the State or County having the ability to direct municipal solid waste to a designated facility.

And although I am a major proponent of a "Task Force for Lower Taxes", this perhaps being the reason I may have inadvertently provided my support to your cause initially, I must now request that you remove my name from your list due to the basis under which your position for Lower Taxes is premised. Given our circumstances in Cape May County, it is not in the best interests of my constituents to oppose flow-control.

I will be happy to discuss the rationale behind my position regarding this issue in greater detail, as necessary, at your convenience.

Thanking you in advance for your understanding and cooperation in this regard, I am,

Very truly yours,



John J. Pantalone, Mayor

6101 PACIFIC AVENUE P.O. BOX 529 WILDWOOD CREST, NEW JERSEY 08260
PHONE (609) 522-7788 • FAX (609) 522-6692

STATEMENT OF THE GOVERNMENT FINANCE OFFICERS ASSOCIATION

INTRODUCTION

This written statement is submitted on behalf of the Government Finance Officers Association (GFOA), a professional association of 13,500 State and local government officials who manage the financial resources of our nation's States, cities, counties, towns, districts, and authorities. GFOA strongly supports a grandfather provision that would, at a minimum, restore flow control for those jurisdictions that acted in good faith and relied on existing flow control statutes to finance solid waste facilities. GFOA urges Congress to pass a flow control bill this year and end the uncertainty surrounding this issue.

As a matter of policy, GFOA believes flow control is an important financing tool. Flow control has permitted governments to raise sufficient revenues to manage comprehensive waste management programs through charges on those who use a facility rather than the general taxpayers of a community. This method of financing permits revenues to be collected by beneficiaries of the system within the service area, which may encompass a county and several other separate taxing jurisdictions. Therefore, GFOA has supported Federal legislation authorizing the use of flow control so that governmental entities could continue to carry out their responsibility to manage solid waste within their boundaries.

GFOA is deeply troubled that Members of Congress are now questioning the need for flow control legislation that would grandfather certain existing facilities because of the lack of severe financial emergencies, such as defaults, during congressional consideration of flow control legislation. GFOA assures Members of Congress that the need for legislative action has not diminished. Communities, individual and business taxpayers, and bondholders are all affected by the lack of flow control.

In this statement, GFOA responds to several issues that have been raised by Members of Congress and others concerning the need for flow control authority. These are:

- the reason for the lack of bond defaults and other severe financial emergencies,
- the meaning of issue-specific credit ratings,
- characteristics of projects secured by flow control, and
- disclosure to bondholders about flow control.

Finally, GFOA is joined in this statement by 32 finance officers from 23 States who represent jurisdictions that have experienced financial hardships as a result of the loss of flow control or who believe it is incumbent on Congress to restore flow control authority for those jurisdictions that made long-term financial commitments in reliance on flow control authority.

THE REASON FOR THE LACK OF BOND DEFAULTS AND OTHER SEVERE FINANCIAL EMERGENCIES

There is a mistaken impression that flow control legislation is not needed because governments are not failing to make debt service payments on their solid waste facility bonds or filing for bankruptcy. This does not mean, however, that jurisdictions are not experiencing severe financial hardships. Default and bankruptcy are options of last resort and are not actions entered into unless all other financial alternatives have been exhausted. Governments provide services that are essential to the general welfare of communities and they need continued access to the municipal bond market to perform their essential functions. If they default on their bonds or file for bankruptcy, they will be denied future access to the bond market.

In the lengthy history of State and local debt financing, defaults have occurred rarely. The confidence of the municipal bond market is essential and municipal issuers make every effort to honor their debt obligations. As a result, debt repudiation is very uncommon. Since 1839, there have been less than 10,000 defaults by State and local government issuers. Almost half of those defaults occurred during the Great Depression. In 1937, Federal legislation was passed to permit governments to file for bankruptcy protection. Since then, only 437 units of government have sought such protection. Furthermore, for some governments, bankruptcy is not even an option because Federal law now requires that State statutes specifically authorize a bankruptcy filing. At this time, governments in approximately 60 percent of the States are not even authorized to file for bankruptcy under Chapter 9 of the Federal bankruptcy laws.

The stigma of a default or bankruptcy and the difficult question of access to the bond market thereafter place extreme pressure on issuers of municipal debt to do everything in their power to repay their debt. Therefore, governments that relied on flow control have taken various remedial actions to maintain their fiscal stability and prevent a financial emergency. Remedies necessarily cause financial hardships

for affected jurisdictions because already-scarce resources must be diverted to the repayment of outstanding debt. The following is a list of actions that have been taken by governments to maintain their credit ratings, prevent further downgrades in their credit ratings and avoid default or bankruptcy:

- the restructuring of existing debt to reduce the amount of annual debt service payments that need to be paid to bondholders,
- reductions in other capital expenditures,
- modifications in the use of a facility to extend its expected life,
- the imposition of new fees on all real property owners,
- water and sewer bill surcharges,
- the imposition of surcharges on other services,
- staff reductions,
- reductions in other governmental services and programs,
- drawdowns of unrestricted reserves,
- loans from other governmental funds to offset revenue losses,
- cancellation of future projects, and
- delay of maintenance on existing facilities.

In addition to the financial hardship caused by these actions, affected governments have been adversely affected by

- the threat of litigation and legal expenses for litigation,
- the need to renegotiate contracts with municipalities and private haulers,
- the payment of legal, underwriting and other expenses associated with restructuring troubled debt,
- higher financing costs caused by downgrades,
- taking over the debt of troubled issuers,
- bumping up against tax and expenditure limitations, and
- bumping up against debt limits.

The flow control problem has not gone away. Many governments still rely on flow control while litigation is pending to determine whether their particular State law or local ordinance is unconstitutional. Therefore, these jurisdictions have not yet had to deal with the full impact of the *C&A Carbone, Inc., et al v. Town of Clarkstown, NY*, decision. For some governments that are already trying to adjust to reduced tipping fees and the diversion of waste to other facilities, the situation is becoming even more urgent as they are running out of stop-gap measures and the further delays or even abandonment by the Congress is an ever-increasing possibility.

THE MEANING OF ISSUE-SPECIFIC CREDIT RATINGS

GFOA is concerned that there has been some confusion about the meaning of solid waste credit ratings. In its written statement to the committee on Environment and Public Works, Standard and Poor's provides important information about solid waste credit ratings, explaining they are issue-specific as contrasted with issuer ratings. Issue-specific ratings provide a current opinion of creditworthiness with respect to a specific bond issue for a project and not a governmental entity. Such factors as the security provisions of the specific financing, the service area economy, system operations, and project finances and costs are the basis for assessing the credit of these bonds. An issue-specific credit rating does not reflect the creditworthiness of a government. To determine the credit-worthiness of a government, an analysis is performed that focuses on a review of the government's debt and financial performance, its management, and the local economy.

Issue-specific ratings only evaluate a specific project, such as a solid waste facility, and include a review of that project's financial operations. The rating takes into account the ability of the system to set and increase rates for the project, the flexibility it has to establish new fees and revenue sources, and the revenues that are pledged to the repayment of the bonds. While revenue increases and other financial adjustments necessitated by the lack of flow control are causing financial pain in affected governments, that would not necessarily mean that ratings for the project would be expected to change, because the ability to make these financial adjustments was factored into the ratings analysis.

Furthermore, governments that are not the issuers of bonds also have been affected by the loss of flow control because of the agreements they entered into with the issuers of solid waste bonds. Even though these participating governments are having to make higher payments to cover the debt service on bonds or are experiencing other financial hardships, these financial consequences do not affect the rating on the bonds issued to finance the facility. Bond ratings tell only part of the story. Even in the absence of ratings changes, there can be severe financial hardships.

CHARACTERISTICS OF PROJECTS SECURED BY FLOW CONTROL

During the recent Senate hearing on flow control, several comments were made concerning the selection, financing and operation of projects. This statement provides additional information about these various topics.

It was suggested that flow control is not necessary because it permits underwriters to support facilities that are poor investments. Governments, not underwriters, issue bonds and assume the serious financial obligation to repay the debt over the life of the bonds. The preparation and approval of a bond issue is a complex process involving both appointed and elected public officials and many outside professionals, including financial advisors, bond lawyers and other counsel, engineers, trustees, rating analysts, bond guarantors and underwriters. The sale of debt requires the preparation of detailed disclosure documents, detailed feasibility studies, complex agreements between other jurisdictions and the private sector, various certifications, and governmental approvals. To suggest that underwriters ramrod inappropriate projects through this process oversimplifies the complexity and expense involved in bringing a bond issue to market.

Additionally, GFOA believes that it is important to provide some historical perspective about flow control. In the 1980's, there were shortfalls in disposal capacity and flow control was viewed as an innovative solution to a public-policy problem—the disposal of waste. The shortfalls caused fees at existing facilities to rise to the levels that were commonplace before the *Carbone* decision. The fees that were set to sustain new facilities were viewed as sound financial options, even though today they may seem unjustified. As the supply curve shifted and more options for waste disposal became available, users of the facilities sought to employ the least cost option, thus providing the impetus for challenging flow control.

It has been suggested that the sale of solid waste bonds on a negotiated basis rather than a competitive basis was a questionable practice. As a matter of practice, a large number of bonds have been sold on a negotiated basis in recent years. While GFOA recommends the competitive method of sale rather than a negotiated sale in many instances, it recognizes that conditions may warrant a negotiated sale. Solid waste transactions, in fact, did exhibit some of these conditions as they were complex transactions and the debt was not backed by an issuer's full faith and credit or a strong, known or historically performing revenue stream. Moreover, the use of the negotiated sale process was expected to reduce borrowing costs because the underwriter would be familiar with the details of the transaction, having been an active participant in the planning process.

During the recent Senate hearing, the committee was informed of an unidentified project for which bonds had been issued, but construction had not occurred. This development is a rather unusual occurrence in the municipal market, which could have serious financial repercussions for an issuer. Presumably, the issuer would "call" the bonds at the first opportunity and pay off the bondholders before the bonds matured, because of the borrowing costs that are being incurred. There are several Federal tax and securities law provisions that need to be considered in this context. Current Federal tax law provisions permit an issuer to invest bond proceeds that are not spent for construction purposes, but the law also requires the issuer to rebate to the Federal Government any investment earnings above the bond yield. (These earnings are called arbitrage earnings.) As a result, there is no financial incentive to issue bonds for a project that is not likely to go forward. Additionally, issuers incur significant borrowing costs that cannot be recovered by investment of the bond proceeds, so the issuer is actually "out of pocket" for the expenses.

Another consideration is the fact that Federal securities laws provide that State and local governments have a duty to produce disclosure documents that do not contain misstatements or omissions of "material" facts. Failure to meet these requirements could result in a Securities and Exchange Commission enforcement action or private litigation. Proceeding with a project that is not viable and using bond proceeds in a manner inconsistent with the way in which the disclosure documents describe their use could invite an SEC investigation.

At the hearing, it was suggested that solid waste issuers are "awash with cash" because of the high fees that were charged. As we have explained above, the economics of the industry at the time many of these facilities were financed justified the rate levels that were established. Additionally, from a financing perspective, it is important to remember that some regional solid waste authorities that sold solid waste bonds were independent entities that did not have taxing authority, so they were completely dependent on the revenues earned by the system. As a result, it is necessary for them to establish reserves for debt service coverage or replacement of property and to have resources on hand to respond to such contingencies as tech-

nology failures, economic downturns, business closures and other events affecting the operations of the facility.

DISCLOSURE TO BONDHOLDERS ABOUT FLOW CONTROL

Since the 1970's, the GFOA has prepared and updated disclosure guidelines for issuers of State and local government securities that set forth the items that should be included in the official statements of municipal bond issuers. Among the items that are highlighted for so-called enterprise facilities such as solid waste, are the sources of revenue to pay the debt service and any legal matters such as any pending judicial, administrative or regulatory proceedings that may significantly affect the enterprise's ability to perform its obligations to the holders of the securities being offered.

During the Senate's recent flow control hearing, the question of bondholder disclosure was raised. Attached to this statement are several examples of official statement disclosures concerning issuers' ability to control the flow of solid waste and State law enabling legislation. It will be noted that these documents are for transactions before 1988. After this time period, the pace of solid waste financings that relied on flow control declined dramatically because the supply of disposal options had increased and such projects were not financially feasible. There is no discussion of any legal challenges to flow control because during this time period there had been no attacks on the practice on Commerce Clause grounds. There is some discussion of whether flow control laws were anticompetitive and violated antitrust laws. However, by the mid-1980's, the courts had clarified that if there was State enabling legislation authorizing flow control, there would be no antitrust violation. Therefore, the bondholders who purchased flow control bonds did not receive any warning about the risk that their bonds might decline in value because of the possibility of the invalidation of flow control authority. This disclosure was not warranted at the time because flow control was a legally permitted financing tool of unquestioned status.

CONCLUDING COMMENTS

The U.S. Supreme Court's *Carbone* decision changed the rules in the middle of the game for many communities that relied on flow control. The relief that governments are now seeking to prevent greater financial instability is a reasonable request that will prevent the imposition of further burdens on governmental units whose financial condition has been imperiled; taxpayers who are paying higher taxes, fees, and surcharges; and bondholders who have seen a diminution in the value of their securities. It would be unfair to deny this request.

To suggest that a vote for a limited grandfather exception is a vote for a tax increase demonstrates a complete lack of understanding of our system of public finance. Without flow control, many governments are having to impose new taxes, fees or surcharges on general taxpayers to avoid the untenable—a default or bankruptcy. In effect, assets are being diverted to waste haulers from local taxpayers. Ironically, because of the small number of large firms that control landfills, transfer stations and other facilities in many areas, customers may not benefit from lower fees. The ability of firms to control market prices means the market is not purely competitive and the demise of flow control will not guarantee more price competition and greater consumer protection.

The Federal Government and State and local governments are partners in our Federal system. The Federal Government should be helping local governments to live up to the financial commitments that were made when flow control was the law of the land. Unlike other Federal actions that are needed to help governments, the passage of flow control legislation does not even cost a dime. Flow control does not affect every government, but that should not be the measure of its importance. Just because it is not front page news does not mean it is not of great significance.

Mr. Chairman and members of the committee, GFOA reiterates its support for a grandfather provision and appreciates this opportunity to submit a written statement. The Association would be happy to provide additional information, as needed.

ADDITIONAL SUPPORT FOR FLOW CONTROL LEGISLATION

The Government Finance Officers Association is joined in its written statement by finance officers from throughout the United States. They represent jurisdictions that are experiencing financial hardships brought about by the lack of flow control authority or who believe it is incumbent upon the Congress of the United States to restore flow control for those governmental units that made long-term financial commitments based on that authority. They are:

Robert P. Schaeffler
 Robert P. Schaeffler, Deputy Director
 Onondaga County Resource Recovery Agency
 Onondaga County, New York

John Hatze
 John Hatze, Administrator
 Sussex County Municipal Utilities Authority
 Sussex County, New Jersey

Richard L. Roe
 Richard L. Roe, Finance Director
 Eau Claire County, Wisconsin

Mary Greer
 Mary Greer, Finance Director
 City of Greer, South Carolina

M. Phillip Amodeo
 M. Phillip Amodeo, Commissioner of Finance
 Dutchess County, New York

James B. Pyers
 James B. Pyers, Director of Finance
 City of Wooster, Ohio

Susan Bassi
 Susan Bassi, Senior Controller
 Olmsted County, Minnesota

Lou D. Hoffman
 Lou D. Hoffman, Treasurer
 City of Albuquerque, New Mexico

Donald L. Phillips
 Donald L. Phillips, Chairman
 Craven County Commissioners
 Craven County, North Carolina

Erroll G. Williams
 Erroll G. Williams, Assessor
 Orleans Parish Board of Assessors
 New Orleans, Louisiana

John D. Kenney
 John D. Kenney, Assistant State Comptroller
 State of Maryland

Charles L. Houck
 Charles L. Houck, Chief Financial Officer
 County of Warren, New Jersey

Robert Booker
 Robert Booker, Ed. D,
 Chief Financial Officer/ Auditor and Controller
 County of San Diego, California

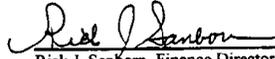
Roger Black
 Roger Black, Director, Management Services
 Salt Lake City Corporation
 Salt Lake City, Utah

Michael B. Brown
 Michael B. Brown, City Manager
 City of Savannah, Georgia

Antoinette J. Anderson
 Antoinette J. Anderson, Director of Finance
 City of Milford, Connecticut

Hargovind S. Patel
 Hargovind S. Patel, City Comptroller
 City of Newburgh, New York

Daniel C. Parsons
 Daniel C. Parsons, Auditor to the Treasurer
 City of St. Louis, Missouri



Rick J. Sanborn, Finance Director
City of Mt. Pleasant, Michigan



John I. Payne, Deputy Treasurer
Clark County, Washington



Johnnie E. Tripp, Chairman, Coastal Regional
Solid Waste Management Authority and
Commissioner, Pamlico County, North Carolina



Thomas C. Setchell, CPA, County Treasurer
LaSalle County, Illinois



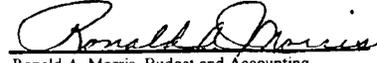
Durwood S. Curling, Executive Director
Southeastern Public Service Authority of
Virginia



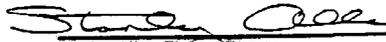
James R. Ufer, Acting Director of Budget and
Finance
Hennepin County, Minnesota



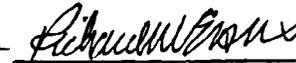
Michael P. O'Keefe, Finance Director
Village of Villa Park, Illinois



Ronald A. Morris, Budget and Accounting
Manager
New Castle County, Delaware



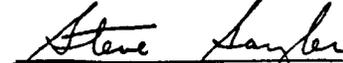
Stanley Allen, Finance Director
Bucks County, Pennsylvania



Richard M. Evans, Finance Director
City of Savannah, Georgia



Richard A. Schnuer, Finance Director
City of Champaign, Illinois



Steve Saylor, Finance Director
Jefferson County, Alabama



Thomas G. Marcoux, Finance Director
Town of York, Maine



Theodore F. O'Neill, Executive Director
Chester County Solid Waste Authority
Chester County, Pennsylvania

Attachments

Attachments

NEW ISSUE

In the opinion of Bond Counsel, interest on the Series 1985 Bonds is exempt from federal income taxes under existing statutes and court decisions, except as set forth under "Tax Exemption" herein, and from taxes on interest income directly imposed by Public Act No. 83-1 of the June, 1983 Session of the General Assembly of the State of Connecticut.

\$73,520,000

Connecticut Development Authority
Solid Waste and Electric Revenue Bonds
(Ogden Martin Systems of Bristol, Inc. Project — 1985 Series)

Dated: September 1, 1985**Due: July 1, as shown below**

Interest on the Series 1985 Bonds is payable semiannually on January 1 and July 1 of each year, commencing January 1, 1986, by check mailed to the registered owner thereof as of the record date (June 15 and December 15 of each year). Principal of the Series 1985 Bonds is payable, upon presentation and surrender, at the principal corporate trust office of The Connecticut Bank and Trust Company, N.A., Hartford, Connecticut, as Trustee and Paying Agent. The Series 1985 Bonds will be issued as fully registered bonds without coupons in denominations of \$5,000 or any integral multiple thereof.

The Series 1985 Bonds are subject to optional and mandatory redemption prior to maturity as described herein.

The Series 1985 Bonds are being issued to finance the major portion of the costs of the acquisition, construction and installation of a mass burn solid waste disposal, electric power generating and resource recovery facility (the "Facility") in the City of Bristol, Connecticut through the lending of the proceeds thereof by the Authority to Ogden Martin Systems of Bristol, Inc. (the "Company"), an indirect subsidiary of Ogden Corporation. The Facility will be constructed by the Company pursuant to the Project Agreement and operated pursuant to a Service Agreement both as further described herein. The performance of the obligations of the Company under the Project Agreement and Service Agreement are guaranteed by Ogden Corporation under a Guaranty Agreement.

Under the Service Agreement, the Service Fee (a component of which is an amount equal to debt service on the Series 1985 Bonds) is an obligation of the City of Bristol, the Town of Berlin, the Town of Burlington, the City of New Britain, the Town of Plainville, the Town of Plymouth, the Town of Southington and the Town of Washington (such eight municipalities being collectively referred to as the "Contracting Communities") to which each has pledged its full faith and credit. Should any Contracting Community default in its obligation to pay the Service Fee, the other Contracting Communities shall have a joint and several obligation to continue to pay the aggregate Service Fee. If the Company does not perform its obligations under the Service Agreement, and Ogden Corporation fails to perform such obligations pursuant to its Guarantee, the Contracting Communities have certain rights to terminate the Service Agreement and upon termination would no longer be obligated to pay the Service Fee.

The Series 1985 Bonds are special obligations of the Authority, payable by the Authority solely out of the revenues or other receipts, funds or moneys of the Authority pledged therefor or otherwise available to the Trustee for the payment thereof, including those derived under a Loan Agreement between the Authority and the Company, and certain other revenues, rights and property constituting the Trust Estate. The Trust Estate includes the pledge and assignment by the Company of the Service Fees received from the Contracting Communities for the services provided under the Service Agreement described herein.

Neither the State of Connecticut nor any municipality thereof is or shall be obligated to pay the principal of or the premium, if any, or interest on the Series 1985 Bonds and neither the faith and credit nor the taxing power of the State of Connecticut or any municipality thereof is pledged to such payment. The Authority has no taxing power.

\$19,100,000 Serial Bonds

<u>Year</u>	<u>Amount</u>	<u>Rate</u>	<u>Price</u>	<u>Year</u>	<u>Amount</u>	<u>Rate</u>	<u>Price</u>
1989	\$ 745,000	7¾%	100%	1996	\$1,320,000	9¼%	100%
1990	800,000	8	100	1997	1,445,000	9.70	100
1991	870,000	8¼	100	1998	1,585,000	9.80	100
1992	935,000	8½	100	1999	1,740,000	9.90	100
1993	1,020,000	8¾	100	2000	1,910,000	10	100
1994	1,110,000	9	100	2001	2,100,000	10	100
1995	1,205,000	9¼	100	2002	2,315,000	10	100

\$8,425,000 10% Term Bonds Due July 1, 2005 @ 99.25%**\$45,995,000 10% Term Bonds Due July 1, 2014 @ 98.50%****(Plus Accrued Interest)**

The Series 1985 Bonds are offered when, as and if issued and received by the Underwriters, subject to prior sale, withdrawal or modification of the offer without notice, and subject to the approval of legality by Hawkins, Delafield & Wood, New York, New York, Bond Counsel, and subject to certain other conditions. Certain legal matters will be passed upon for Ogden Corporation and for the Company by Schnader, Harrison, Segal & Lewis, Philadelphia, Pennsylvania, and by Raia and Riege, P.C., Hartford, Connecticut. It is expected that the Series 1985 Bonds in definitive form will be available for delivery in New York, New York, on or about September 18, 1985.

Salomon Brothers Inc**Kidder, Peabody & Co.****Incorporated****Shearson Lehman Brothers Inc.****Allen & Company, Incorporated**

September 12, 1985

After making the payments required by the above clauses, the balance remaining in the Revenue Fund shall be retained in the Revenue Fund for application to subsequent monthly payments therefrom.

DESCRIPTION OF SOLID WASTE PRACTICES

General

Historically, the Contracting Communities have used landfills to dispose of solid waste. There has been a growing awareness in the Contracting Communities of the environmental and siting problems associated with landfill disposal methods. Landfilling has become an increasingly difficult solution as the primary disposal method in and for the Contracting Communities. As the Contracting Communities have become increasingly urbanized, land areas that were environmentally and economically suitable for sanitary landfills have rapidly diminished. It had become apparent that the Contracting Communities can no longer rely on conventional landfilling as their only method of solid waste disposal. The City, as the host community, took an active role in planning and implementing the Facility for the disposal of its and the surrounding communities' Acceptable Waste. In May 1984, the City publicly advertised, in local, regional and national newspapers, a solicitation for qualifications from private firms for the ownership, design, construction, operation and maintenance of a solid waste resource recovery and electric power generating facility to serve the City and surrounding communities. After evaluating the proposals submitted to the City, the City entered into negotiations with the Company.

Solid Waste Control

On July 1, 1983, an Act Concerning Solid Waste Management (P.A. 83-120) became law in the State of Connecticut. This Act provides that each municipality shall make provisions for the safe and sanitary disposal of all solid wastes which are generated within its boundaries, and enables the legislative body of a municipality to designate the area where solid waste generated within the municipality shall be disposed. The Contracting Communities have covenanted in the Project Agreement and in the Service Agreement to designate the Facility, prior to the Effective Date, as their disposal area and to maintain that designation for the term of the Series 1985 Bonds.

In addition, pursuant to the Inter-Community Agreement, each Contracting Community has agreed to pass an ordinance on collection and disposal of solid waste to implement the above Act which ordinance is to provide that all persons engaged in the business of collecting, transporting or disposing of solid waste generated within the boundaries of such Contracting Community must register with such Contracting Community as a solid waste collector (subject to fines or penalties for failure to so register) and, commencing July 1, 1988, every solid waste collector and every other person disposing of solid waste generated within the Contracting Community shall dispose of all Acceptable Waste at the Facility.

Existing Waste Collection and Disposal in the Contracting Communities

1. *Town of Berlin*

The Town of Berlin's solid waste is either collected by private haulers or hauled by the generator. There is no solid waste landfill within the Town. The Town contracts with one collector to collect the solid waste from all residences and Town owned buildings and haul it to the New Britain transfer station, and the Town is billed by the City of New Britain on a per ton basis (currently \$27/ton) and raises the funds to pay the collector and the City of New Britain through ad valorem taxes. All other private haulers are paid directly by their customers and there is no requirement that they use the New Britain transfer station.

NEW ISSUE

\$237,180,000

Fairfax County Economic Development Authority
(Virginia)Adjustable Tender Resource Recovery Revenue Bonds, Series 1988 A
(Ogden Martin Systems of Fairfax, Inc. Project)

Dated: Date of Delivery

Due: February 1, 2011

The Series A Bonds are being issued to (i) finance a portion of the design, acquisition, construction and testing of a 3,000 ton per day waste-to-energy facility (the "Facility") to be located in Fairfax County, Virginia and to be operated by Ogden Martin Systems of Fairfax, Inc. (the "Company"), (ii) provide capitalized interest on the Series A Bonds for a 30-month period, (iii) fund the Series A Debt Service Reserve Fund for the Series A Bonds, and (iv) pay certain costs in connection with the issuance of the Series A Bonds. The Series A Bonds are being issued by, and represent limited obligations of, the Fairfax County Economic Development Authority (the "EDA"), pursuant to a Trust Indenture (the "Trust Indenture") between the EDA and Citicorp Bank, Richmond, Virginia, as Trustee (the "Trustee").

Payment of the principal and purchase price of and premium, if any, and interest on the Series A Bonds will be made solely from funds paid to the Trustee pursuant to an Installment Sale and Security Agreement dated as of February 1, 1988 (the "Installment Sale Agreement") between the EDA and the Fairfax County Solid Waste Authority (the "Public Owner"), and from certain moneys held by the Trustee and, except for premium, if any, on the Series A Bonds, from funds drawn under an irrevocable direct-pay letter of credit (the "Letter of Credit") issued by

 **The Mitsubishi Bank, Limited**

acting through its New York Branch (the "Bank"). The Letter of Credit will permit the Trustee and Chemical Bank, New York, New York, as Tender and Paying Agent for the Series A Bonds (the "Tender and Paying Agent") to draw up to (a) an amount equal to the aggregate principal amount of the Series A Bonds outstanding, plus (b) an amount equal to 185 days' accrued interest on the Series A Bonds calculated at the rate of 15% per annum. At the option of the Public Owner and subject to certain conditions precedent, an irrevocable letter of credit or other credit facility issued by an institution other than the Bank may be substituted for the Letter of Credit (an "Alternate Credit Facility"). The Letter of Credit provides that the Bank's obligations thereunder will expire on the earliest of (i) February 25, 1995 (the "Stated Expiration Date"), (ii) the 15th day following receipt by the Trustee and the Tender and Paying Agent of a notice of termination given by the Bank with respect to the Letter of Credit by reason of the occurrence and continuance of an event of default under the Reimbursement Agreement (as hereinafter defined), or (iii) the occurrence of certain other events (relating to payment in full of the Series A Bonds and the substitution of an Alternate Credit Facility) described in the Letter of Credit. The Letter of Credit does not provide for drawings thereunder to pay premium on the Series A Bonds.

The Series A Bonds are subject to mandatory and optional redemption prior to maturity, and under certain circumstances will be subject to purchase by the Public Owner, as described herein.

The initial Interest Rate Period for the Series A Bonds shall be the Short-Term Interest Rate Period (described herein) consisting of consecutive and coincident Short-Term periods ranging from 1 to 270 days, during which each Series A Bond will bear interest at a fixed rate of interest (a "Short-Term Interest Rate") as more fully described herein. The Series A Bonds will continue to bear interest at the Short-Term Interest Rate unless, upon the circumstances and subject to the conditions set forth herein, including the delivery of a favorable opinion of Bond Counsel, the Interest Rate Period for the Series A Bonds is changed to a Daily Interest Rate Period, Weekly Interest Rate Period, Short-Term Interest Rate Period or Long-Term Interest Rate Period (a period of more than 270 days). If the Interest Rate Period for the Series A Bonds is changed, including the change from the initial Short-Term Interest Rate Period, the Series A Bonds will be tendered for mandatory purchase subject to the right of a registered owner of Series A Bonds (the "Owner" or "Owners") to waive such purchase and retain such Series A Bonds, as described herein.

During a Daily Interest Rate Period or a Weekly Interest Rate Period, upon the circumstances and conditions set forth herein, an Owner of a Series A Bond shall have the right to demand that such Series A Bond or authorized principal portion thereof be purchased as described herein.

The Series A Bonds will be issuable in fully registered form in denominations of \$100,000 or any integral multiple of \$5,000 in excess of \$100,000, provided that any Series A Bonds subject to a Long-Term Interest Rate Period shall be issuable in denominations of \$5,000 or any integral multiple thereof.

Interest on the Series A Bonds will be payable on each Interest Payment Date during each Interest Rate Period as described herein.

Principal of and premium, if any, and interest on the Series A Bonds at maturity or redemption shall be payable at the corporate trust office of the Tender and Paying Agent. Interest on the Series A Bonds will be payable except for Series A Bonds then subject to a Short-Term Interest Rate or upon maturity or redemption of the Series A Bonds by check or draft mailed to the Owners thereof or, upon request, to Owners of \$1,000,000 or more of Series A Bonds bearing a Daily Interest Rate or Weekly Interest Rate, by wire transfer. The purchase price of and interest on the Series A Bonds then subject to a Short-Term Interest Rate shall be payable in immediately available funds in the manner directed by the Owners thereof only upon presentation and surrender of such Series A Bonds at the corporate trust office of the Tender and Paying Agent.

The Series A Bonds are being issued pursuant to the Trust Indenture, under which the EDA currently intends to issue at least one other series of bonds, at one or more times, in an aggregate amount of up to \$14,900,000 to finance certain costs of the Facility not eligible for financing by tax-empt bonds. This additional series of bonds will (i) be offered separately from the Series A Bonds, (ii) be entitled to the benefit of a separate irrevocable letter of credit (which will not be available as security for the Series A Bonds), and (iii) not be entitled to the benefit of the Letter of Credit.

In the opinion of Kutak, Rock & Campbell, Washington, D.C., Bond Counsel, under existing law interest on the Series A Bonds is excluded from gross income for federal income tax purposes, but is a preference item for purposes of the alternative minimum tax imposed on corporations and individuals. Bond Counsel's opinion is subject to compliance by the EDA, the Public Owner and the Company with the requirements of the Internal Revenue Code that must be satisfied subsequent to the issuance of the Series A Bonds for interest thereon to be or continue to be excluded from gross income for federal income tax purposes. The income from the Series A Bonds is exempt from all taxation by the Commonwealth of Virginia or any political subdivision thereof.

Price: 100%

The Series A Bonds are not a debt of Fairfax County, the EDA, the Public Owner, the Commonwealth of Virginia or any other political subdivision thereof, within the meaning of any constitutional, charter or statutory debt limit or restriction. The full faith and credit of Fairfax County, the EDA, the Public Owner, the Commonwealth of Virginia or any other political subdivision thereof is not pledged to the payment of the Series A Bonds. The obligations of the Public Owner are limited obligations payable solely out of Solid Waste System Revenues, as described herein. The Series A Bonds are limited obligations of the EDA payable solely from and secured solely by a pledge of Revenues derived by the EDA under the Installment Sale Agreement and by other funds pledged under the Trust Indenture. The EDA has no taxing power.

The Series A Bonds are offered when, as and if issued and received by the Underwriters, subject to the approval of legality by Kutak, Rock & Campbell, Washington, D.C., Bond Counsel. Certain legal matters will be passed upon for Fairfax County by David T. Stitt, Fairfax County Attorney and Piper & Marbury, Baltimore, Maryland, special counsel to Fairfax County, and for the Fairfax County Solid Waste Authority by David T. Stitt, Fairfax County Attorney and Piper & Marbury, Baltimore, Maryland, special counsel to the Fairfax County Solid Waste Authority. Certain legal matters will be passed upon for the Fairfax County Economic Development Authority by its counsel,

Lawson & Kipp, Fairfax, Virginia. Certain legal matters will be passed upon for the Company and Ogden Corporation by their counsel, Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pennsylvania, and Dickstein, Shapiro & Munn, Vienna, Virginia.

The validity of the Letter of Credit will be passed upon for The Mitsubishi Bank, Limited, New York Branch, by Mudge, Rose Guthrie Alexander & Ferdon, New York, New York, and as to matters of Japanese law by Braun Moriya Hoshino & Kubota, Tokyo, Japan. Certain legal matters will be passed upon for the Underwriters by their counsel, Mintz, Levin, Cohn, Ferns, Glovsky and Popeo, P.C., Boston, Massachusetts. It is expected that the Series A Bonds in definitive form will be ready for delivery in New York, New York, on or about February 25, 1988.

Smith Barney, Harris Upham & Co.

Merrill Lynch Capital Markets

February 23, 1988

Incorporated

A-3

The Project's operational sequence is described by the Company as follows:

After being weighed, unprocessed Acceptable Waste will be delivered to a storage pit. From the storage pit, the Acceptable Waste will be lifted by overhead cranes and fed to the charging hoppers and chutes of each of four combustion units. Each combustion unit will have a design capacity of 750 tons of Acceptable Waste per day and will operate independently of the others. Acceptable Waste will be moved by gravity from the charging hopper through the chute and be metered onto the grates of each combustion unit by a hydraulically operated ram feeder.

The Acceptable Waste then moves down an inclined stoker grate, where reverse-reciprocating grate bars provide continued mixing which assists in attaining thorough burnout of the Acceptable Waste. Forced draft combustion air will be supplied to the underside of the grate bars in volumes that will be controlled to meet combustion conditions of each burning zone. This close control of a volume and distribution will promote uniform combustion. Additional combustion air will be introduced above the grate through nozzles located in the front and rear walls of the furnaces. The resulting intense flame turbulence will reduce the escape of unburned gases from the furnaces.

As the hot gases move through the boiler section of each furnace, water in the boiler tubes will be heated, and steam will be generated. The steam will be directed to two turbine generators to produce electricity. Exhaust steam from the turbine generators will be condensed in a water-cooled condenser. The electricity produced will flow to electrical switchgear and then over an interconnection line into the Virginia Power distribution system. After leaving the steam generators, the combustion gases will pass through dry-flue gas scrubbers and fabric filter baghouses for removal of hydrogen chloride, sulphur dioxide, other acid gases and particulates prior to discharge through the stack.

Bottom ash and grate sifting will discharge into a water-filled ash discharger for quenching and then to an ash-removal system, which will move the cooled ashes through equipment designed to remove ferrous materials to a residue storage area for final disposal at a sanitary landfill. This ash removal system will be designed to handle any size material that can be processed in the furnace units. Ash from the air pollution control equipment will be collected separately and conveyed to the ash discharger system to be handled and disposed of with the bottom ash.

The principal components of the Facility will be the waste storage area, the waste charging system, the proprietary stoker grate system, the boilers, the dry-flue gas scrubbers, the fabric filter baghouses and the turbine generators. Auxiliary equipment will be provided at a level of redundancy consistent with practices common within the power generating industry.

The stoker grate system will be designed and furnished by Martin GmbH. Martin GmbH has more than twenty (20) years of experience in the design, engineering, construction and operation of systems for solid waste combustion and energy generation. Today there are more than 110 plants with Martin GmbH combustion units in operation, including the 3,000 Ton Per Day facility located in Pinellas County, Florida; the 1,500 Tons Per Day facility located in North Andover, Massachusetts; the 1,125 Tons Per Day facility located in Tulsa, Oklahoma; the 1,200 Tons Per Day facility located in Hillsborough County, Florida; and the 550 Tons Per Day facility located in Marion County, Oregon. In addition, subsidiaries of Ogden Martin are currently constructing facilities including: the 2,362 Tons Per Day facility located in Indianapolis, Indiana; the 975 Tons Per Day facility located in Alexandria, Virginia; the 650 Tons Per Day facility located in Bristol, Connecticut; the 800 Tons Per Day facility located in Stanislaus County, California; the 750 Tons Per Day facility located in Babylon, New York; the 625 Tons Per Day facility located in Kent County, Michigan; and the 1,650 Tons Per Day facility located in Haverhill, Massachusetts. The Alexandria and Bristol facilities are in the start-up phase of construction. The design of the Facility will be similar to the design of the large installations at the Pinellas and North Andover facilities, except that the Facility will have higher boiler steam pressures and temperatures which will allow for greater efficiency of thermal conversion.

SOLID WASTE COLLECTION AND FLOW CONTROL IN THE COUNTY

Solid waste collection in the County is provided by municipal collection crews and private waste haulers. Municipal solid waste is disposed of at the I-95 Landfill, which is adjacent to the Facility Site.

The County estimates that in 1987 it collected approximately 15% of the solid waste generated in the County. The County's Department of Public Works collects residential solid waste from approximately 35,000 single family homes, duplexes, and townhouses from several areas within the County on a weekly basis. The County also provides collection of solid waste from schools and parks, as well as other municipal agencies. Homeowners may also deliver waste to a County transfer station or directly to the I-95 Landfill. The County reported in 1987 that private haulers in the County collected the remaining 85% of the solid waste in the County. This consists of primarily commercial and industrial waste and wastes from the remaining residences. In addition to the municipal and private collection services provided within the County, many companies maintain permits allowing them to transport their own waste to the County's disposal facilities.

The delivery to the Facility of the Guaranteed Annual Tonnage is fundamental to the operation of the Facility. If the County or the Public Owner does not deliver, or cause to be delivered, the Guaranteed Annual Tonnage, the County or the Public Owner has the obligation not only to pay the Company the Tipping Fees which would have been due, but also to make up the reduction in energy revenues, if any, payable to the Company under the Power Purchase Agreement.

The County has direct control of the solid waste which it collects and also control of the waste disposed of at its transfer station. The Commonwealth of Virginia has enacted legislation regarding solid waste flow control that provides, "the governing bodies of counties that have adopted the urban county executive form of government may adopt ordinances requiring the delivery of all or any portion of the [solid waste] generated or disposed of within such counties to waste disposal facilities located therein or to waste disposal facilities located outside of such counties if the counties have contracted for capacity at or service from such facilities. Such counties may provide in such ordinance that it is unlawful for any person to dispose of his [solid waste] in or at any other place." Section 15.1-730.1 of the Code of Virginia, 1950, as amended.

In June 1987, the County amended Chapter 109, Section 109-2-18 of the Code of the County of Fairfax to make it unlawful for any person in the County to dispose of his solid waste in or at any other facility except facilities designated by the County.

SUMMARY OF CONCLUSIONS OF R. W. BECK AND ASSOCIATES

R. W. Beck and Associates, Waltham, Massachusetts, has been retained as Independent Engineer to prepare a report with respect to the Facility (the "Report"). The Report is included herein as Appendix A.

Presented below are the principal conclusions of the Independent Engineer, as set forth in the Report, with respect to the Facility.

In the preparation of the Report and the opinions presented therein, the Independent Engineer has made certain assumptions with respect to conditions which may exist or events which may occur in the future. While the Independent Engineer believes that these assumptions are reasonable for the purpose of the Report, they are dependent upon future events, and actual conditions may differ from those assumed. In addition, the Independent Engineer used and relied upon certain information provided to it by sources it believes to be reliable. The Independent Engineer believes the use of such information and assumptions is reasonable for the purposes of the Report. However, some assumptions may vary significantly due to unanticipated events and circumstances. To the extent that actual future conditions differ from those assumed therein or provided to the Independent Engineer by others, the actual results will vary from those forecast. The Report summarizes the work of the Independent Engineer up to the date of the Report. Thus, changed conditions occurring or becoming known after such date could affect the material presented to the extent of such changes. For a list of the principal considerations and assumptions made by the Independent Engineer and the principal information provided by others, see the Report.

The following are only the conclusions of the Independent Engineer, whose Report should be read in its entirety for a complete understanding of the subject matter contained therein. Based on the review and analyses and the assumptions set forth in the Report, the Independent Engineer is of the opinion that:

NEW ISSUE**DATES*/Daily Adjustable Tax-Exempt Securities**

In the opinion of Bond Counsel, interest on the Series 1985 Bonds is exempt from federal income taxes under existing law, except as set forth under "Tax Exemption" herein. Bond Counsel is further of the opinion that interest on the Series 1985 Bonds is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof.

\$88,900,000

**TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY
(New York)**



**Resource Recovery Revenue Bonds, Series 1985
(Ogden Martin Systems of Babylon, Inc. Project)**

**Dated: Initially, the Date of Delivery****Price: 100%****Due: January 1, 2019**

The Series 1985 Bonds are special and limited obligations of the Town of Babylon Industrial Development Agency. The Series 1985 Bonds and the interest thereon are payable solely out of the revenues and assets of the Agency pledged therefor or otherwise available to National Westminster Bank USA, New York, New York, the Trustee, Paying Agent and Bond Registrar for the payment thereof, including certain of those derived under a Facility Lease Agreement between the Agency and Ogden Martin Systems of Babylon, Inc. The Bonds are additionally secured by payments made under an irrevocable direct-pay Letter of Credit issued initially by

UNION BANK OF SWITZERLAND, NEW YORK BRANCH

The Letter of Credit will be issued in an amount equal to (i) the aggregate original principal amount of the Series 1985 Bonds, plus (ii) 210 days interest at an interest rate of 15% per annum, plus (iii) .25% of the aggregate original principal amount of the Series 1985 Bonds (which is available to pay any discount, up to such amount, at which Bonds are remarketed) plus (iv) 3% of the aggregate principal amount of the Series 1985 Bonds (which is available to pay premium on Series 1985 Bonds called for optional redemption during a Fixed Rate period). The Letter of Credit will permit the Trustee to draw thereunder, in accordance with the terms thereof, to pay (i) principal of, premium, if any, and interest on the Series 1985 Bonds, (ii) the purchase price of the Series 1985 Bonds tendered to the Company or to the Trustee and not remarketed, and (iii) amounts in respect of purchase discount upon a remarketing of the Series 1985 Bonds. The initial Letter of Credit, unless extended, will expire on December 31, 1991, or at such earlier or later time, as described herein. The Series 1985 Bonds will be subject to mandatory redemption if the initial Letter of Credit is to expire unless the Company provides an alternate Letter of Credit or other credit facility, or unless, under certain circumstances, the owners of the Series 1985 Bonds otherwise elect to retain their Series 1985 Bonds.

The Series 1985 Bonds are subject to mandatory and optional redemption by the Agency prior to maturity, and under certain circumstances will be purchased on the demand of the owners, as described herein. The Series 1985 Bonds are subject to mandatory redemption on the fifth Business Day of August 1986 in the event that certain conditions to the disbursement of the proceeds of the Series 1985 Bonds have not been met by July 1, 1986.

The Series 1985 Bonds shall be issued in the principal amounts and shall bear interest from their initial date of delivery to, but excluding, the respective initial interest rate period ending dates at the respective interest rates specified below:

	<u>Amount</u>	<u>Initial Period Ending Date</u>	<u>Rate</u>
Series 1985A	\$30,400,000	March 18, 1986	6.30 %
Series 1985B	29,500,000	February 19, 1986	6½
Series 1985C	29,000,000	March 18, 1986	6.30

Until the respective initial interest rate period ending dates, the owners of the Series 1985 Bonds will have no right to put their Series 1985 Bonds, and the Agency will have no right to redeem the Series 1985 Bonds at its option. On and after the initial interest rate period ending date indicated above, the Series 1985A, 1985B and 1985C Bonds will bear interest at a Daily Rate as described herein. Interest on the Series 1985 Bonds bearing interest at a Daily Rate shall accrue to, but not including, the first calendar day of each month and shall be payable on the fifth Business Day of the following month. The Series 1985 Bonds may bear interest thereafter at the Daily Rate, the Variable Rate, the Commercial Paper Rate, the Adjustable Rate or the Fixed Rate as determined from time to time in accordance with the indenture. If the method of determining the interest on the Series 1985 Bonds is changed, the Series 1985 Bonds will be called for redemption subject to the right of an owner to waive redemption and retain the called Series 1985 Bonds.

The Series 1985 Bonds are being issued for the purpose of financing a portion of the costs of acquiring, constructing, equipping, installing, testing and start-up of a mass burn solid waste disposal, resource recovery and electric generation facility which will be located in and will serve the Town of Babylon, New York.

The Series 1985 Bonds will be issuable in fully registered form in denominations of \$100,000 or any integral multiple thereof, except that, if and when the Series 1985 Bonds bear interest at an Adjustable Rate or a Fixed Rate, they shall be issuable in denominations of \$5,000 or any integral multiple thereof.

Principal of and premium, if any, on the Series 1985 Bonds shall be payable at the principal corporate trust office of the Trustee. Interest on the Series 1985 Bonds will be payable by checks mailed to their registered owners, or, at certain times, at the option of any owner of not less than \$1,000,000 in aggregate principal amount of the Series 1985 Bonds, by wire transfer.

The Series 1985 Bonds do not constitute a debt or indebtedness of the State of New York, the Town of Babylon, New York, or any other municipality of the State of New York, and shall not constitute or give rise to a pecuniary liability of the Town of Babylon, New York or a charge against the Town's general credit or taxing power. The Agency has no taxing power.

The Series 1985 Bonds are offered when, as and if issued by the Agency and accepted by the Underwriters, subject to prior sale, withdrawal or modification of the offer without notice, and subject to the approval of legality by Nixon, Hargrave, Devans & Doyle, New York, New York, Bond Counsel. Certain legal matters will be passed upon for the Company and Ogden Corporation by Kaye, Scholer, Fierman, Hays & Handler, New York, New York; for the Town of Babylon, New York by Nixon, Hargrave, Devans & Doyle, Washington, D.C.; for the Town of Babylon Industrial Development Agency by Glazer & Franklin, Copague, New York; for Union Bank of Switzerland by Howard, Darby & Levin, New York, New York and by Hencki, Reber & Wickli, Zurich, Switzerland; and for the Underwriters by Hawkins, Delafield & Wood, New York, New York. It is expected that delivery of the Series 1985 Bonds in definitive form will be made in New York, New York on or about December 20, 1985.

Salomon Brothers Inc**Shearson Lehman Brothers Inc.**

The date of this Official Statement is December 17, 1985

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* Service Mark of Salomon Brothers Inc

under the Public Utilities Regulatory Policies Act of 1978 and the regulations thereunder. Upon any such certification, the Facility is exempt from the Public Utility Holding Company Act of 1935 and from certain state laws and regulations governing electric utility rates and financial organization. Receipt of FERC certification of the Facility as a Qualifying Facility is a Disbursement Condition.

State. Receipt of any required approvals of the New York State Public Service Commission is a Disbursement Condition.

Environmental Matters and Permits

State Environmental Quality Review Act. The construction of the Facility requires the preparation of an environmental impact statement pursuant to the New York State Environmental Quality Review Act ("SEQRA"). A final environmental impact statement was prepared by the Agency after due notice and a public hearing on October 15, 1985 and was accepted by the Town of Babylon as the lead agency pursuant to State regulations implementing SEQRA. The Agency and the Town have reviewed the final environmental impact statement and on October 30, 1985 concluded that: (1) the final environmental impact statement sets forth all potential environmental impacts of the Facility, (2) the Facility and accompanying programs incorporate mitigative measures to minimize potential adverse impacts, and (3) development of the Facility represents sound public policy consistent with the environmental, social and economic policies of the Town.

Permits and Approvals. The construction and operation of the Facility requires the issuance of various State permits and approvals. These include a Prevention of Significant Deterioration of Air Quality Permit ("PSD") by the New York State Department of Environmental Conservation ("NYSDEC") pursuant to a delegation under the Federal Clean Air Act, and an Air Pollution Control Permit by the NYSDEC pursuant to the State Environmental Conservation Law. These permits impose specific monitoring requirements, emission limitations and operating conditions. The Company has applied for such permits from the NYSDEC, and the administrative hearing process has commenced. The issuance of such permits by the NYSDEC is a Disbursement Condition.

WASTE FLOW CONTROL AND ANTITRUST CONSIDERATIONS

The Flow Control Enabling Act declares it to be the policy of the State to displace competition with regulation or monopoly public service with respect to the collection, transportation, delivery, storage, processing and disposal of solid waste in the Town of Babylon, and empowers the Town of Babylon specifically to adopt a local solid waste management law (1) to manage on a town-wide basis all solid waste generated within the Town of Babylon, (2) to exclusively control all solid waste and the energy and materials derived therefrom (including the collection, transportation and delivery of solid waste to a designated resource recovery facility in the Town of Babylon, and (3) to provide for the establishment and collection of charges for waste handling or disposal services.

A flow control law has been proposed for enactment by the Town (the "Proposed Local Flow Control Legislation"). The Proposed Local Flow Control Legislation would provide generally that (1) solid waste generated within the Town shall be disposed of only by refuse collectors licensed by the Town, (2) Acceptable Waste shall be disposed of only at the Facility or a Disposal Site provided for in the Project Agreement or the Service Agreement, (3) nothing contained therein is intended to interfere with source separation or recycling programs and (4) the Town is obligated to include within its budget and appropriations, and to establish user and service charges, necessary to fulfill its obligations under the Project Agreement and the Service Agreement. A public hearing was scheduled by the Town on December 3, 1985, with respect to the Proposed Local Flow Control Legislation, and the Town expects that the Proposed Flow Control Legislation will be enacted by the Town in December 1985 substantially to the effect proposed.

In the opinion of Nixon, Hargrave, Devans & Doyle, the Flow Control Enabling Act pertaining to the Town of Babylon constitutes a clearly articulated and affirmatively expressed policy to displace competition with regard to the site to which all of the Town of Babylon's solid waste shall be delivered for disposal, and that in view of such policy the Proposed Local Flow Control Legislation, which would designate the Facility as the site to which solid waste generated within the Town of Babylon shall be delivered for disposal, does not violate the antitrust laws of the United States or of the State of New York.

LITIGATION

The Town has commenced condemnation proceedings to acquire part of the proposed 10 acre Facility Site. An action has been brought by the owner and user of a 2 acre parcel within the proposed Facility Site seeking to restrain the Town from any further proceedings in connection with the acquisition of such parcel and the construction of the Facility based, among other things, on the Flow Control Enabling Legislation. Another defendant in the same condemnation action has raised a defense on similar grounds referring to the litigation just mentioned and on the grounds mentioned in the immediately following paragraph. The Town and the opposing landowners are engaged in settlement discussions and the Town is pursuing the litigation, and no assurance can be given as to the outcome of the litigation. In the event the opposing landowners are successful and the disputed parcels are unavailable to the Town, it may be necessary to locate other parcels adjoining the proposed Facility Site in order to construct the Facility as contemplated by the Project Agreement. No assurance can be given as to the availability of any such adjoining parcels to the Town. The availability of the Facility Site and the absence of litigation are certain of the Disbursement Conditions which must be met by the Town, the Company and the Bank in order for the Construction Date to occur. The Series 1985 Bonds are subject to mandatory redemption in the event the Construction Date does not occur by July 1, 1986, in which event the Letter of Credit will be drawn upon to effectuate such redemption. See "Introduction—Plans of Financing—Mandatory Redemption for Failure to Meet Disbursement Conditions".

In such action, petitioners have also sought similar relief in connection with the determination of the Town in accepting the final environmental impact statement with respect to the Facility. Based on the petition in such action, Bond Counsel is of the opinion that the petitioners' claim challenging the acceptance of the final environmental impact statement is without merit.

On December 4, 1985, the Town Board of the Town commenced a proceeding in State Court seeking a declaratory judgement invalidating a petition which sought to subject the resolution authorizing the condemnation of a portion of the Facility Site to a permissive referendum. The hearing on the suit was held on December 10, 1985 and a decision has been rendered in favor of the Town. The action may be subject to appeal. Bond Counsel is of the opinion that the condemnation resolution is not subject to a permissive referendum.

Other than as described above, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending against or affecting the Agency, the Town, the Company or Ogden Corporation wherein an unfavorable decision, ruling or finding would materially and adversely affect the validity or enforceability of the Series 1985 Bonds or the agreements relating to the Facility to which any of the foregoing is a party.

NEW ISSUE

AMBAC INSURED, STANDARD & POOR'S: AAA/A-1+

In the opinion of Bond Counsel, interest on the Series 1984 Bonds is exempt from all present Federal income taxes under existing statutes and court decisions, except for interest on any Series 1984 Bond during such period as such Series 1984 Bond is held by a substantial user of the Facility or a related person as provided in Section 103(b) of the Internal Revenue Code of 1954, as amended, and except as provided in "Tax Exemption" herein. In the opinion of Bond Counsel, interest on the Series 1984 Bonds is exempt from personal income taxation by the State of Oregon under existing statutes.

\$57,325,000

MARION COUNTY, OREGON
Floating/Fixed Rate Solid Waste and Electric Revenue Bonds
Series 1984
(Ogden Martin Systems of Marion, Inc. Project)

The Series 1984 Bonds are being issued to finance, through the lending of the proceeds thereof by Marion County, Oregon to Ogden Martin Systems of Marion, Inc., a subsidiary of Ogden Corporation, the major portion of the cost of a project consisting of the acquisition, construction and installation of a mass burn solid waste disposal, electric power generating and resource recovery facility in Marion County, Oregon.

Payment of the principal and interest on the Series 1984 Bonds at their stated maturity or sinking fund installment payment dates (but not upon Special Bank Redemption or other redemption, tender for purchase, or acceleration) will be insured by a municipal bond insurance policy to be issued by AMBAC Indemnity Corporation simultaneously with the delivery of the Series 1984 Bonds.

Pursuant to an Indenture of Trust between Marion County, Oregon (the "County") and First Interstate Bank of Oregon, N.A., Portland, Oregon, as trustee (the "Trustee") dated as of September 1, 1984 (the "Indenture"), the Series 1984 Bonds will be purchased, on demand of the owners thereof, on any Business Day occurring before the date on which the Series 1984 Bonds commence to bear interest at a fixed rate, upon delivery of seven days' irrevocable written notice to Chemical Bank, New York, New York, as depository agent, all as set forth in this Official Statement. In the event of the insufficiency of other available funds for such purchase, Chemical Bank, New York, New York, as standby bond purchaser, has agreed to purchase such Series 1984 Bonds at par, plus accrued interest, to the extent provided in a certain Standby Bond Purchase Agreement dated as of September 1, 1984 among the County, the Company and said Bank.

Series 1984 Bonds initially issued under the Indenture will be dated their date of authentication and delivery and will bear interest from that date until payment of the principal amount thereof shall have been made or provided for in accordance with the provisions of the Indenture, whether at maturity, upon redemption, acceleration or otherwise. For the period from and including the date of the first authentication and delivery of the Series 1984 Bonds to and including October 2, 1984, the Series 1984 Bonds will bear interest at the rate of 6.90% per annum. Thereafter during the Variable Rate Period, the Series 1984 Bonds will bear interest at the Variable Rate payable on the first Wednesday of each month or, if that day is not a Business Day, on the Business Day immediately following such day and on the Conversion Date as defined below. The first Interest Payment Date will be November 7, 1984. Notwithstanding the foregoing, any Series 1984 Bonds held by the Bank pursuant to the Standby Bond Purchase Agreement shall bear interest at the Bank Rate. A Fixed Rate can be established for the Series 1984 Bonds at the option of the County upon the giving of not less than 15 Business Days' notice to the Bondholders of the date for the establishment of such Fixed Rate (the "Conversion Date"), whereupon the Series 1984 Bonds will bear interest at such fixed rate, payable semiannually on each April 1 and October 1 thereafter until the principal of, and premium, if any, and interest on, the Series 1984 Bonds shall have been paid in full or provision shall have been made for the payment thereof in accordance with the Indenture. All Series 1984 Bonds (other than those held by said Bank) will be deemed tendered for purchase on the Conversion Date by the holders thereof. See "THE SERIES 1984 BONDS — Description".

During the period prior to the Conversion Date, the Series 1984 Bonds will be issuable in the form of fully registered bonds without coupons in denominations of \$100,000 and integral multiples of \$5,000 in excess of such amount. On or after the Conversion Date, Series 1984 Bonds will be issued as fully registered bonds without coupons in denominations of \$5,000 and any integral multiple thereof.

The Series 1984 Bonds do not constitute obligations or debts of the State of Oregon, Marion County, Oregon, or any municipality, county, political subdivision, governmental unit or agency of the State of Oregon, but are limited and special obligations of Marion County, Oregon payable by Marion County, Oregon solely from the Revenues and assets pledged therefor.

Neither the faith and credit nor the taxing power of the State of Oregon, any political subdivision thereof, or of Marion County, Oregon, is or shall be pledged to the payment of the principal of, premium, if any, or interest on the Series 1984 Bonds.

PRINCIPAL AMOUNTS AND MATURITIES
\$19,435,000 Serial Bonds @ 100%

Principal Amount	Maturity	Principal Amount	Maturity	Principal Amount	Maturity
\$1,415,000	October 1, 1990	\$1,725,000	October 1, 1993	\$2,110,000	October 1, 1996
1,510,000	October 1, 1991	1,845,000	October 1, 1994	2,255,000	October 1, 1997
1,615,000	October 1, 1992	1,975,000	October 1, 1995	2,410,000	October 1, 1998
				2,575,000	October 1, 1999

\$15,815,000 Term Bonds, Due October 1, 2004 @ 100%

\$22,075,000 Term Bonds, Due October 1, 2009 @ 100%

The Series 1984 Bonds are offered when, as and if issued and received by the Underwriters, subject to prior sale, to withdrawal or modification of the offer without notice, and to the approval of legality by Preston, Thorngrenson, Ellis & Holman, Seattle, Washington, Bond Counsel. Seattle Northwest Securities Corporation acted as financial advisor to Marion County, Oregon. Certain legal matters will be passed upon for Marion County, Oregon by Marion County Legal Counsel. Certain legal matters will be passed upon for Ogden Corporation and Ogden Martin Systems of Marion, Inc. by their counsel, Schnader, Harrison, Segal & Lewis, Philadelphia, Pennsylvania, and Miller, Nash, Wiener, Hager & Carlsen, Portland, Oregon. Certain legal matters will be passed upon for the Underwriters by their counsel, Hawkins, Dalafeld & Wood, New York, New York. It is expected that the Series 1984 Bonds in definitive form will be available for delivery to the Underwriters in New York, New York on or about September 20, 1984.

Shearson Lehman/American Express Inc.

Allen & Company Incorporated

September 20, 1984

A-9

Salomon Brothers Inc

Bank and to be redeemed, together with interest accrued thereon to the date of redemption. The AMBAC Policy will not insure the Special Bank Redemption payments set forth in this paragraph.

Mandatory Purchase Upon Expiration of Standby Bond Purchase Agreement. The Series 1984 Bonds are subject to mandatory purchase in whole by the Bank pursuant to the Standby Bond Purchase Agreement at the expiration of the Standby Bond Purchase Agreement, at a purchase price equal to the principal amount thereof, together with accrued interest thereon to the date of purchase, in the event that (i) the Bank has given notice that it will not renew the Standby Bond Purchase Agreement, (ii) the County has not provided an Alternate Liquidity Credit Facility, and (iii) the Conversion Date shall not have occurred. The Trustee shall give written notice of such mandatory purchase by registered or certified mail, postage prepaid, not less than fifteen (15) Business Days prior to the date set for such mandatory purchase, to each Holder of the Series 1984 Bonds, which notice shall state that all Series 1984 Bonds (other than those Series 1984 Bonds purchased and held by the Bank pursuant to the Standby Bond Purchase Agreement) shall be deemed to have been tendered by the Holders thereof for purchase by the Bank on the date set for such mandatory purchase. If, thirty (30) days prior to the expiration of the Standby Bond Purchase Agreement, the County shall not have (i) provided an Alternate Liquidity Credit Facility, or (ii) caused the occurrence of the Conversion Date, the County shall direct the Trustee to give notice of the mandatory purchase described in this paragraph.

Notice of Redemption

When the Trustee receives notice from the County of its election to redeem Series 1984 Bonds, the Trustee will mail notice of such redemption, by certified or registered mail, to the registered owners of all Outstanding Series 1984 Bonds at their addresses shown on the registration books of the County maintained by the Trustee. Notice having been so given and sufficient moneys having been delivered to the Trustee, interest will cease to accrue on the Series 1984 Bonds to be redeemed on and after the redemption date. Any notice of redemption exercised upon the option of the County shall indicate that such redemption is conditioned upon the deposit of sufficient moneys to effect such redemption on the redemption date.

SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 1984 BONDS

General

The Series 1984 Bonds will be secured by, among other things, a pledge of Revenues. A major portion of the Revenues will be derived from (a) the Service Fee, required to be paid by the County to the Company for the disposal of solid waste delivered pursuant to the Service Agreement, and (b) the Electricity Revenues, to be paid by PGE to the Company pursuant to the Electricity Agreement for the sale by the Company and the purchase by PGE of electricity generated by the Facility.

The obligation of the County to pay the Service Fee and other obligations arising under the Service Agreement are generally special and limited obligations of the County, payable only out of the amounts deposited by the County in the Resource Recovery Account established under the Service Agreement.

The Solid Waste Ordinances permit the County to franchise collectors and establish rates for the collection of solid waste in the County other than solid waste generated within cities which regulate their own collections. Furthermore, pursuant to the Solid Waste Ordinances, the County regulates the transportation and disposal of all solid waste generated within the County or brought into the County for disposal. Pursuant to the Solid Waste Ordinances, the County will establish rates for collection and disposal in amounts sufficient to provide funds in satisfaction of the County's obligation to make payments, including the Service Fee, under the Service Agreement.

The security for the Series 1984 Bonds will include (a) the assignment and pledge by the County to the Trustee, pursuant to the Indenture, of substantially all of the right, title and interest of the County in and to the Revenues, the Loan Agreement, the Standby Bond Purchase Agreement, the Service Agreement (except for Issuer Unassigned Rights) and the Trust Deed including the Company's

Based on the amounts of solid waste disposed of from July 1983 through June 1984, minus the 20,000 tons from outside the County and based on an estimated 1983/1984 County population of 207,500, the per capita generation rate is 4.3 pounds of solid waste per day. This per capita generation rate is lower than previous estimates for the County. Three factors which could contribute to the low per capita generation rate are (1) Oregon's "Bottle Bill," which adds a deposit on beverage containers, (2) backyard burning and composting of yard wastes (i.e., grass, tree limbs, twigs, etc.) and (3) the omission of demolition wastes.

The Facility will be designed to process Acceptable Waste, a term which includes all material found in normally collected residential solid waste and in most types of commercial and light industrial solid waste. The Facility will not be required to accept noncombustible construction material, demolition debris, bulky noncombustible materials, hazardous wastes, or other materials which are likely to affect the operation of the Facility adversely. Such materials are now, in general, disposed of separately from Acceptable Waste because of special handling requirements and regulatory restrictions.

Solid Waste Control

Pursuant to the Solid Waste Ordinances, the County may direct any solid waste generated, collected, or transported within the County to a disposal facility designated by the County. The Solid Waste Ordinances also allow the County to regulate, license, franchise, and designate disposal, transfer, and resource recovery sites or facilities. The County may deny an application to establish, modify, or extend a disposal facility if the County has contracted to supply solid waste to a resource recovery facility and may require all haulers using a franchised resource recovery facility to be franchised. The County also sets the disposal fee at all disposal or resource recovery facilities in the County (except in certain limited circumstances).

The Solid Waste Ordinances also provide a means to regulate persons who collect or transport solid waste within the County. Under the Solid Waste Ordinances, a commercial hauler must be franchised in order to collect solid waste in the County. The County is responsible for franchising all collection within the County (except within an incorporated area which has its own franchise program). In addition, the County is responsible for franchising transfer and disposal operations within the County and can also require a franchise from any commercial hauler who wishes to bring waste from outside the County or from within an incorporated area in the County, which has its own franchise program, for disposal at a facility within the County.

Pursuant to the Solid Waste Ordinances, the County has designated the Facility, in the Service Agreement, as the resource recovery facility for the County's Acceptable Waste, to the extent of the Guaranteed Tonnage.

In the event a franchisee fails to provide or threatens to fail to provide collection, disposal, or transportation services, the Solid Waste Ordinances authorize the County to provide such services, or to use the facilities or equipment of such franchisee to provide such services, or to terminate such franchisee's franchise.

Certain geographic elements of the Facility may also provide an incentive to private haulers and others to use the Facility. The Facility is conveniently located in the County and has excellent access to Interstate Highway 5, a major transportation route. The central location of the Facility will reduce transportation costs for some haulers. Moreover, vehicles using the Facility will travel on paved roadways and a paved, enclosed tipping floor rather than on the unimproved surface of a landfill, which can cause delays and damage to vehicles.

THE FACILITY

Description of the Facility

The Facility will receive, store, and burn Acceptable Waste and produce electricity. The Company is required to operate the Facility in accordance with applicable permit and environmental standards.

NEW ISSUE

AMBAC Insured,
Standard & Poor's: AAA

In the opinion of Bond Counsel and Special Tax Counsel, interest on the Series 1985 Bonds is exempt from all present Federal income taxes under existing statutes and court decisions, except for interest on any Series 1985 Bond during such period as such Series 1985 Bond is held by a substantial user of the Facility or a related person, as provided in Section 103(b) of the Internal Revenue Code of 1954, as amended. See "Tax Exemption" herein.

\$33,900,000

Tulsa Public Facilities Authority
(Tulsa, Oklahoma)
Solid Waste, Steam and Electric Revenue Bonds
Series 1985
(Ogden Martin Systems of Tulsa, Inc. Project)

Dated: Date of delivery

Due: May 1, 2007

The Series 1985 Bonds are being issued to finance the major portion of the cost of a third combustion unit (the "Third Unit") and associated modifications to a mass burn solid waste disposal, steam and electric power generation and resource recovery facility in the City of Tulsa (the "City"). The Third Unit will be designed, constructed, owned and operated by the facility owner, Ogden Martin Systems of Tulsa, Inc., a subsidiary of Ogden Corporation.

AMBAC Indemnity Corporation ("AMBAC") will deliver upon issuance of the Series 1985 Bonds a binder pursuant to which AMBAC will be irrevocably obligated to issue a policy of insurance guaranteeing the payment when due of principal of, sinking fund payments and interest on the Series 1985 Bonds. The policy is to be delivered upon the earliest of a Nonpayment Date (as defined in the policy) or the date on which bond proceeds are disbursed from the 1985 Construction Account.

The Series 1985 Bonds are issued pursuant to a Bond Indenture (the "Bond Indenture"), dated as of May 1, 1984, and a Second Supplemental Bond Indenture (the "Supplemental Indenture"), dated as of December 1, 1985, by and between the Tulsa Public Facilities Authority (the "Authority") and The First National Bank and Trust Company of Tulsa, Tulsa, Oklahoma (the "Trustee"). The Bond Indenture and the Supplemental Indenture are herein referred to collectively as the "Indenture".

On May 1, 1986, and on each May 1 and November 1 thereafter, until the Term Rate Conversion Date, as described herein, unless, at the option of the Authority, the Series 1985 Bonds are changed to a different Interest Rate Mode, as described herein, the Series 1985 Bonds shall be purchased at a purchase price equal to the unpaid principal amount thereof unless an owner of such Series 1985 Bonds shall deliver to Citibank, N.A. (the "Tender Agent"), at its principal office for such purpose in New York, New York, a notice (i) not later than the April 14th preceding any May 1 interest payment date, and (ii) not later than the October 14th preceding any November 1 interest payment date, which states, among other things, (x) the aggregate principal amount and bond numbers of the Series 1985 Bonds owned by such owner and (y) that such owner desires to retain ownership of all or a specified portion of such Series 1985 Bonds for the ensuing interest payment period. All Series 1985 Bonds with respect to which the notice has not been delivered as described in this paragraph by 5:00 P.M., New York City time, on the appropriate April 14 or October 14, as the case may be, shall be deemed tendered for purchase and be purchased at said purchase price on such interest payment date. See "Purchase of Series 1985 Bonds — Determination Date Purchase" herein. The Series 1985 Bonds may bear interest pursuant to one of five alternative interest rate modes: a Semi-annual Rate, an Annual Rate, a Two-Year Rate, a Three-Year Rate, or a Term Rate, all as described herein. See "The Series 1985 Bonds — Change in Interest Rate Mode" herein.

In the event of an insufficiency of other funds for purchase of the Series 1985 Bonds upon their tender as described above, The Mitsubishi Trust and Banking Corporation of New York, New York (the "Bank"), as standby bond purchaser, has agreed to purchase such Series 1985 Bonds at par, to the extent provided in a certain Standby Bond Purchase Agreement dated as of December 1, 1985, between the Authority and said Bank.

The Series 1985 Bonds will be dated their date of authentication and delivery and will bear interest from such date until payment of the principal amount thereof shall have been made or provided for in accordance with the provisions of the Indenture, whether at maturity, upon purchase, redemption or acceleration or otherwise. Interest on the Series 1985 Bonds (except interest payable at maturity) is payable (i) on each May 1 and November 1, commencing on May 1, 1986, (ii) on the Term Rate Conversion Date (except as described herein) and (iii) on the Determination of a Change in the Interest Rate Mode, by check or draft mailed to the person whose name appears on the registration books of the Authority maintained by the Trustee in its capacity as Bond Registrar (the "Registrar") or, at the option of an owner of an aggregate principal amount of Series 1985 Bonds at least equal to \$1,000,000, by wire transfer. Principal of the Series 1985 Bonds and interest due at maturity are payable to the registered owner thereof upon presentation and surrender thereof to the Registrar at its principal corporate trust office in Tulsa, Oklahoma. In the case of an optional or a mandatory tender, the purchase price of the tendered Series 1985 Bonds will be payable at the principal office for such purpose of the Tender Agent. The Series 1985 Bonds will be issuable as fully registered Series 1985 Bonds without coupons in denominations of \$5,000 and any integral multiple thereof.

From and including the date of authentication and delivery of the Series 1985 Bonds until but not including May 1, 1986, the Series 1985 Bonds will bear interest at the rate of 6 3/4% per annum. Thereafter, the Series 1985 Bonds will bear interest at the Adjustable Rate (see "The Series 1985 Bonds — Interest on the Series 1985 Bonds" herein) until the date on which the Adjustable Rate is converted to a Term Rate. See "The Series 1985 Bonds — Term Rate" herein. The Series 1985 Bonds are subject to mandatory tender on a Change in the Interest Rate Mode and the Term Rate Conversion Date. See "Purchase of Series 1985 Bonds — Purchase Upon Change in the Interest Rate Mode" herein. The Series 1985 Bonds are also subject to mandatory and optional redemption prior to maturity. See "Redemption of Series 1985 Bonds" herein.

The Series 1985 Bonds do not constitute obligations or debt of the State of Oklahoma, Tulsa County, Oklahoma, the City of Tulsa, Oklahoma, or any municipality, county, political subdivision, governmental unit or agency of the State of Oklahoma, or personal obligations of the Trustees of the Authority or general obligations of the Authority, but are limited and special obligations of the Authority payable solely from the revenues and assets pledged therefor. Neither the faith and credit nor the taxing power of the State of Oklahoma, Tulsa County, Oklahoma, the City of Tulsa, Oklahoma, or any municipality, county, political subdivision or governmental unit or agency of the State of Oklahoma, is or shall be pledged to the payment of the principal of or interest on the Series 1985 Bonds. THE AUTHORITY HAS NO TAXING POWER.

The Series 1985 Bonds are offered when, as and if issued and received by the Underwriters, subject to prior sale, to withdrawal or modification of the offer without notice, and to the approval of legality by Jones, Givens, Cotcher, Doyle & Bogan, Inc., Tulsa, Oklahoma, Bond Counsel. Certain tax matters will also be passed upon by Hawkins, Delafield & Wood, New York, New York, Special Tax Counsel. Certain legal matters will be passed upon for the Authority by the City Attorney's office of the City of Tulsa, Oklahoma, for the Underwriters by their counsel, Hawkins, Delafield & Wood, New York, New York and for the Company by their counsels, Schnader, Harrison, Segal & Lewis, Philadelphia, Pennsylvania and Conner & Winters, Tulsa, Oklahoma. It is expected that the Series 1985 Bonds in definitive form will be available for delivery to the Underwriters in New York, New York on or about December 24, 1985.

Stifel, Nicolaus & Company

Incorporated

A-12 Shearson Lehman Brothers Inc.

December 24, 1985

the tons of Acceptable Waste now being deposited in local landfills. Based on the data obtained from this on-going study during the months of July, August and September 1985 and from data obtained from the city of Albuquerque, New Mexico on the seasonal variations in tonnage generation in that city in 1983 and 1984, it is estimated that 317,000 tons of Acceptable Waste are currently generated annually within the City.

Solid Waste Collection and Disposal

TARE has the legal responsibility to provide collection, removal, transportation and disposal of all collectable residential solid waste on behalf of the citizens of the City and has the right to regulate the removal, transportation and disposal of commercial solid waste within the City. The City currently operates, under contract with TARE, its own municipal collection system which collects approximately twenty-five percent of the City's residential waste. This waste is disposed of by landfilling. Under the terms of the City Agreement, the City will perform solid waste collection, removal, transportation and disposal as directed by TARE, and will provide other services to TARE in return for an annual fee to be paid by TARE to the City. The remaining seventy-five percent of collectable residential waste is collected by TRI, pursuant to a contract with TARE which extends through July 1988 with options to renew every five years thereafter. TRI was established by its member solid waste haulers in the Tulsa area to facilitate contracting with TARE for solid waste collection and disposal. TRI members currently dispose of the waste in local landfills. However, the Solid Waste Ordinances and a provision in their contract with TARE requires TRI members to dispose of waste at a facility designated by TARE. Commercial and industrial waste in the City is collected by private haulers, which have private contractual arrangements with their respective commercial and industrial users.

Residential and commercial waste generated in other incorporated and unincorporated portions of Tulsa County is collected primarily by private haulers.

Solid Waste Availability and Control

Pursuant to the terms of the Service Agreement, upon the Third Unit Effective Date, TARE is obligated to deliver or cause to be delivered 292,000 tons of Acceptable Waste to the Facility annually and pay a Service Fee equal to the debt service on the Bonds plus the Operation and Maintenance Expense plus certain pass through costs less certain credits for Energy Revenues and revenues from materials recovered, if any.

The Solid Waste Ordinances provide for the establishment of the amount of the User Fee for the collection of residential waste in the City according to a formula which generally includes, among other things, the same elements of expenses and revenue credits as are included in the calculation of the Service Fee. The Solid Waste Ordinances provide for automatic adjustment of User Fees at least annually and as often as monthly, according to a formula designed to insure sufficient revenues to TARE, and, in addition provide that the City may appropriate additional money or raise (but not decrease) the User Fees above the automatic adjustment as the City deems appropriate.

TARE is currently authorized by the Solid Waste Ordinances to direct the disposal of all collectable residential waste collected in the City to the Facility. TARE estimates that the City and TRI, as agents of TARE pursuant to agreements between TARE and the City and between TARE and TRI, collect approximately 150,000 tons per year of residential Acceptable Waste, which is available for disposal at the Facility. This represents approximately 50% of the Guaranteed Tonnage and approximately 46% of the estimated amount of all Acceptable Waste generated within the City. The remaining 142,000 tons per year of Acceptable Waste required to meet TARE's obligation to deliver the Guaranteed Tonnage are expected to be obtained from delivery of commercial waste generated within the City and delivery of residential and commercial waste generated in adjacent communities in Tulsa County and surrounding areas.

It is TARE's intention to develop and implement a waste assurance program which incorporates legal and economic methods of flow control prior to commercial operation of the Facility.

STATEMENT OF INTEGRATED WASTE SERVICES ASSOCIATION

The Integrated Waste Services Association ("IWSA") is pleased to submit testimony before the Senate Environment and Public Works Committee. IWSA is a national trade association representing the waste-to-energy industry. Our Association encourages the use of waste-to-energy technology as a key component of community programs to handle solid waste. IWSA members include American Ref-Fuel Company, Foster Wheeler Power Systems Company, Katy-Seghers, Montenay Power Corporation, Ogden Martin Systems, Inc., Westinghouse Electric Corporation, and Wheelabrator Environmental Systems Inc., as well as 50 other associate members including local governments and firms involved in solid waste management. Together, our members represent 66 of the 114 waste-to energy facilities nationwide. IWSA member facilities process approximately 83,000 tons of waste each day and generate enough energy to meet the electricity needs of more than one million households.

IWSA supports the need for legislation that transitions local governments that relied on the ability to control waste within their boundaries as a basis for incurring legally binding financial obligations. We believe a narrowly crafted bill is required to establish a transition period spanning the time when local governments relied on flow control to the current market-based system. Such transitional legislation that provides for bonds to be paid off and for legally binding contracts to be performed would mitigate the hardships that will otherwise be experienced by communities. The legislation should cover only those bonds and contracts issued upon reliance of flow control and only for such time as necessary to pay off those original instruments and such environmental retrofits as are required by the Clean Air Act Amendments of 1990 and financed by a date certain. We believe that the compromise legislation of January, 1996, supported by a wide array of stakeholders, accomplishes these purposes and we commend it to you for your consideration.

Flow control statutes and ordinances were developed at the turn of the century to assist local governments with their task of managing transport and disposal of household trash. The term "flow control" has been used to define the statutes and ordinances that local governments enacted allowing them to deliver to a designated facility all municipal solid waste generated within the jurisdiction. Flow control laws were used most often to manage the handling, transport, recycling, treatment and disposal of trash. In 1994, the U.S. Supreme Court handed down a decision in *C&A Carbone v. Clarkstown* that struck down the use of flow control authority as counter to the Commerce Clause and therefore unconstitutional. Unless and until the Congress acts, flow control is now unavailable to those local governments that relied on it in good faith.

Until the Supreme Court decision, local governments used flow control to ensure that sufficient trash was available over a period of years as needed for the issuance of long-term bonds used to finance solid waste management programs such as recycling, landfills, composting, household hazardous waste collection, and waste-to-energy plants. Approximately \$4 billion in debt currently is outstanding that was issued to finance waste-to-energy facilities based upon reliance of local government's flow control authority.

More than \$2 billion worth of debt has been downgraded due to the lack of flow control authority. You will hear a lot about the fact that local governments have not defaulted on their bonds. This is true. The ability to borrow money to pay for essential services surely is too important to local officials to allow defaults. To avail themselves of the bond market, local governments have cut jobs, levied taxes, and slashed programs and still face a higher cost of borrowing money. In fact, the downgrading of solid waste bonds has impacted the borrowing power of all municipal debt.

Government default has never been and should not now be the starting pistol that triggers congressional action. We ask that the Congress consider instead the issue of equity and a community's good faith reliance on flow control by providing a basis for local governments to discharge their obligations.

Flow control should not be an issue that pits local government against the marketplace. Instead, it is an issue that requires an equitable solution for those who relied in good faith on flow control. Flow control is not a philosophical question. It is a question of equity. Fairness would dictate that when the rules are changed in mid-stream, there is offered some protection to those who are caught off shore.

Thank you for your consideration of our views.

MAR 31 1997

ISLIP RESOURCE RECOVERY AGENCY 401 MAIN STREET, ISLIP, NEW YORK 11751 (516) 224-5644



March 17, 1997

Honorable John H. Chaffee, Chairman
Senate Committee on Environment and Public Works
410 Senate Dirksen Office Building
Washington, D.C. 20510-6175

Re: Flow Control Authority

Dear Senator Chaffee:

This statement is presented for inclusion in the record of testimony before the Senate Committee on Environment and Public Works during its hearing on flow control and interstate waste, scheduled for March 18, 1997.

The lack of action by Congress to enact legislation authorizing the restoration of flow control authority to local governments which have made significant investments on behalf of taxpayers in environmentally sound recycling and solid waste infrastructure would have the effect of penalizing those taxpayers whose local governments have done the right thing by acting responsibly to comply with state and federal mandates.

In the nearly three years since the decision of the U.S. Supreme Court in Carbone v. Clarkstown, experience has shown that the lack of resolution of this issue is having significant negative impacts on the fiscal integrity of local governments and their ability to continue funding recycling and other environmental programs.

Many of these local governments have invested in waste-to-energy facilities which offer the secondary benefit of converting refuse to electricity, thereby conserving fossil fuels and reducing America's dependence on foreign oil. Decisions to construct these facilities were made based on the belief and understanding that government had not only the responsibility to ensure the environmentally sound management of solid waste in order to protect public health and safety, but the inherent authority to direct that the waste which the facilities were constructed to process be delivered to those facilities for processing.

The decision of the U.S. Supreme Court in Carbone v. Clarkstown has placed billions of dollars of taxpayer investment at risk. I am requesting that legislation be enacted without delay that is similar to that passed by the Senate in 1996 (Senate bill on



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interstate and waste flow control No. S534). Unfortunately, the House of Representatives did not enact similar legislation, and, as a result, local governments - and their taxpayers - which have invested in solid waste infrastructure to comply with federal and state mandates, have been left unprotected.

Our concern is heightened with the pendency of new federal mandates generated through the 1990 amendments to the Clean Air Act, which will require local governments to undertake hundreds of millions of dollars in new (mandated) spending for additional emission controls.

It would be unfair and punitive for the federal government to continue to impose these unfunded mandates on local taxpayers without restoring flow control authority to local governments which had such authority prior to the Supreme Court's decision. This authority is necessary in order for local governments to fund these mandated improvements.

Thank you for the opportunity to address the Committee.

Sincerely,



PETER A. SCULLY
President

PAS:ld

[From Waste Age, January 1997]

FLOW CONTROL UNCERTAINTY UPSETS INVESTMENT RATINGS OF TWO COUNTY
WASTE AUTHORITIES

[By Sarah Halsted]

Due, in large part, to market uncertainty created by a decline in systems that guarantee waste flow, Moody's Investor Service (New York City) has been watching and rating the progress of investments made by several county solid waste authorities.

Two authorities in particular—New Jersey's Mercer County Improvement Authority (MCIA) and Florida's Dade County Solid Waste System—have felt the impact of Moody's observations and of a recent Federal district court decision, *Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, et al.*, which effectively dismantled the flow control system in New Jersey (see *Waste Age*, August 1996, p. 8).

Ratings are extremely important to any business because crediting is one factor determining yield on a bond, says Charles Emrich, assistant vice president of Moody's. Downgrading creates a higher interest rate, makes bonds riskier, and increases the cost of borrowing.

Although it has not yet been downgraded, MCIA has been placed on "surveillance watch," according to Chee Mee Hu, manager of a revenue specialties group for Moody's.

MCIA is on shaky ground, particularly after the Mercer County Board of Freeholders recently rejected amendments proposed by the authority necessary to complete the construction of its 10-year-old waste-to-energy project. The amendments were necessitated by the demise of flow control ordinances, and, in order for the amendments to be accepted, both the freeholders and the Department of Environmental Protection had to offer their approval.

Initially, MCIA wanted to build the incinerator to meet State mandates and had relied on flow control to maintain and operate the project.

Without a guaranteed waste stream, however, and because of the freeholders decision, MCIA is now left with approximately \$190 million in outstanding solid waste revenue bonds. Almost \$40 million of the bonds are uninsured and are currently rated "Ba," meaning the bonds are considered "speculative" by Moody's. The remaining \$150-million bonds are insured by FGIC and have an "Aaa" rating, Moody's highest-quality investment grade.

One of MCIA's key proposed amendments was to have a private company, Ogden Martin, assume ownership of the project after its construction. It is for this reason, among others, that Anthony Carabelli, president of the Board of Freeholders, voted the amendments down.

Estimating the cost of financing the project for 20 years to be half a billion dollars, Carabelli says the cost was far too great, particularly since Ogden Martin would own it in the end. "The conditions of the contract, when the project is built, say it would turn to Ogden Martin's [ownership]," making the proposal unreasonable, Carabelli says. Ogden Martin would end up paying only 20 percent to the freeholders' 80 percent, yet "it would be [Ogden's] incinerator—why should we pay for someone else's ownership?"

Carabelli also says he took the financial difficulties five other New Jersey incinerators are facing into consideration when he made his decision. The other incinerators "are wanting for garbage and would be only too happy to have our garbage," he says.

Only 20 percent of the garbage to be collected in the proposed incinerator would have been collected from other areas—yet another reason Carabelli voted against the plan.

Mercer County still has a 2-year contract with the Groves Landfill in Pennsylvania.

According to Emrich, analysts are currently in discussion with MCIA to determine its future course. MCIA is facing very real and immediate problems, though, with a debt service payment due in the spring and no interest to pay it, says Mee Hu. "It's a very tight situation, we're basically seeing a very tight outlook, very negative," she says.

On the other hand, Moody's analysts are far more optimistic about the future of Dade County's Solid Waste System. The county, which already has an incinerator up and running, has "gotten its act together," says Emrich.

Dade County, which faced diversion rates of 700,000 tons per year in 1994, and even greater diversion rates of 940,000 tons in fiscal 1995, incurred a loss in gross

disposal revenue of approximately \$41.3 million in fiscal 1994, and a loss of approximately \$53 million in 1995, according to Emrich.

The system, which consists of a resource recovery facility, landfills, and transfer stations, initially relied on a guaranteed waste flow. The termination of flow control ordinances abruptly put an end to the flow, leaving the Dade County system with uncompetitive tip fees. As a result, Moody's downgraded it slightly from an "A" (upper medium grade) rating to a "Baal" (strong medium grade) rating in May of last year.

In response to the downgrading, but mostly because of an increase in waste diversion, Dade County implemented a business strategy, a main part of which was the lowering of tip fees from \$59 per ton to \$45 per ton. This new competitive edge allows Dade County to attract local municipalities and haulers to sign long-term contracts, once again ensuring a guaranteed waste flow.

The fees are fixed for 3 years and will be adjusted by the rate of inflation thereafter, capped at 5 percent. According to Moody's, contracts have increased the amount of committed waste to 90 percent for 1997, up from about 40 percent in 1991.

As another part of its strategy, Dade County is diversifying its revenue stream by receiving revenue from a portion of the utility service fee, and introducing a disposal fee on haulers in the unincorporated areas of the county. Expenses are fixed and advance at 2.6 percent per year, according to Moody's.

As a result of these strategic changes, Dade County's credit quality is expected to improve, Emrich says.

[From The Smithtown News, February 27, 1997]

WASTE FLOW DRYING UP!

COMMERCIAL GARBAGE REVENUE OFF \$125,000

[By David Ambro]

Despite optimistic projections included in the 1997 budget by Supervisor Patrick Vecchio, the flow of commercial solid waste to the Town of Smithtown has dropped dramatically.

The Town controls the flow of residential solid waste through a municipal refuse district and contracts with garbage carters. There is, however, no commercial garbage district but in the past the Town implemented flow control legislation, which mandated that the garbage be delivered to the incinerator. The United States Supreme Court, however, recently struck down garbage flow control legislation. The court ruling left Smithtown with no way to control municipal refuse.

Despite the lack of flow control legislation, Supervisor Vecchio included the same level of commercial solid waste revenue in the 1997 budget as in 1996, about \$2.7 million. He based the projection on a meeting he had with garbage carters, who reportedly agreed to deliver Smithtown's solid waste to the incinerator.

So far, however, the flow of commercial garbage to Smithtown is well below anticipated revenue. During the Town Board work session Tuesday, February 25, Councilman Michael Hollander asked Town Comptroller Anthony Minerva for an update of the commercial waste flow situation.

"It was a disastrous month," said Mr. Minerva about January. He told Mr. Hollander that the Town brought in about \$125,000 below the projected amount on the commercial waste revenue line.

After the work session, Mr. Minerva told *The News* that he feels the loss of revenue was a direct result of the flow control legislation being struck down. He said that within the next few months, the Town Board will likely begin to consider implementation of a municipal commercial garbage district.

During an interview after the meeting, Supervisor Patrick Vecchio said that he plans to discuss the situation with the Town Board next week, and that he is still researching certain aspects of the situation. The Supervisor said that he will ask the town Board to explore certain creative alternatives to restore the revenue from the commercial garbage.

[From The Smithtown News, March 6, 1997]

BUSINESSES FACE TOWN TRASH FEE

\$1.9 MILLION BUDGET GAP PROJECTED FROM COMMERCIAL WASTE SHORTAGE

[By David Ambro]

In an effort to head off a projected multi-million dollar loss of revenue from commercial garbage disposal, the Smithtown Town Board may begin to charge businesses a solid waste disposal fee modeled on a system in Tulsa, Oklahoma.

Under the provisions of the plan, each commercial property in the Town will be individually evaluated to determine its annual volume of solid waste and the fee charged to the business will be based on that volume. The fee will cover the disposal of the commercial garbage at the bi-town incinerator and the business owners will then have to renegotiate with the individual garbage carter to pay only for the collection costs but not for the disposal costs.

Smithtown Supervisor Patrick Vecchio, who is pushing the Tulsa plan, said that it is more equitable than other alternatives, such as a commercial refuse district or simply passing along the revenue shortfall to the taxpayers.

"I believe that it is a forthright, uninvolved method to pay the fair cost of commercial garbage generation, which is currently being diverted away from the [incinerator] plant and costing taxpayers—commercial and residential—taxes they ought not pay," Supervisor Vecchio said. "This plan should result in a fairer shake for the taxpayers."

The supervisor said that a Town Board majority supports implementation of the Tulsa system in Smithtown. Before the plan can be implemented, a public hearing will have to be held but one has not yet been scheduled.

According to Supervisor Vecchio, the Town is losing over \$100,000 a month in revenue from commercial solid waste disposal. He said that the question now becomes how to make up that lost revenue without burdening the taxpayers. He said that the Tulsa plan has been tested and proven to work in a city of over 500,000 people.

In Babylon, the Town created a commercial garbage district to ensure flow control of garbage to its incinerator. Under that system, the Town taxes business owners and enters into contracts with carters for service, much like the Smithtown residential district.

Supervisor Vecchio said that a commercial refuse district similar to the one imposed in Babylon takes much longer to implement (than would the Tulsa system) and creates numerous inequities among the commercial property owners. For example, he said that a shoe repair store with a very low volume of garbage, and a deli with a very high volume of garbage, both operating from similar sized stores, are charged the same amount. Under the Tulsa plan, according to the Supervisor, the fee charged to a business will be more closely associated to the waste flow.

At its meeting Tuesday, March 4, the Smithtown Town Board voted 4-1 to send three Town officials to Tulsa, Oklahoma, to review the system. Going on the trip will be Town Solid Waste Coordinator John Trent, Town Comptroller Anthony Minerva and Town Systems Analyst Nicholas DiMattei. Councilman Michael Fitzpatrick was also approved for the trip but will only go if Mr. DiMattei, whose wife is about to give birth, is unable to attend.

Councilwoman Jane Conway cast the lone vote in opposition to the Tulsa trip. "It's just a waste of money in my opinion. International business is conducted through teleconferences so I don't see the need to travel to Tulsa to find out about their system," Councilwoman Conway said during an interview after the meeting.

Councilwoman Conway said that the Tulsa plan is contained in an ordinance, a copy of which was provided to Town officials this week. She said that rather than sending employees to Tulsa, the Town Board should make its decision based on a review of the legislation and that little else can be derived from a trip to the city.

In addition to her concerns about the trip, Councilwoman Conway said that she has some concerns about the Tulsa plan itself. She said that many local businesses have contracts with their carting company that may be difficult to change. The commercial solid waste fee, she said, may then become an additional cost to many local businesses.

According to information provided to the Town Board last week by Mr. Trent, it is projected that at the present rate the Town will receive about half the amount of commercial solid waste in 1997 as it did in 1996. If that trend holds, which Town officials fear it will, the Town will be left with a \$1.8 million revenue shortfall by the end of the year.

Commercial garbage carters are presently charged \$65 per ton to dump the solid waste at the bi-town incinerator. Smithtown uses the commercial solid waste as a revenue to offset expenses. The decline in commercial solid waste has been steady for the past 6 years but in the past 3 years there has been a radical drop in the amount of commercial waste coming to Smithtown. The drop off is believed to have resulted in a State Supreme Court ruling, which deregulates the industry and strikes down municipal flow control legislation.

From 1992 to 1995, the commercial garbage delivered to the Town during the month of January ranged from 3,400 to 3,900 tons. In 1996 the volume dropped drastically to 2,600 tons and in 1997 only 1,126 tons of commercial garbage came to the Town.

Mr. Trent projects that at the present rate by year's end the Town will receive only 14,339 tons of commercial waste, down from 27,862 in 1996 and from 38,881 in 1995, 47,777 in 1994, 51,015 in 1993 and 53,845 in 1992.



JEFFERSON SMURFIT CORPORATION

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April 3, 1997

Honorable John H. Chafee
Member of the Senate

Re: Comments on Interstate Waste/Flow Control Legislation -
Sen. Chafee (E & PW Committee)

Dear Senator Chafee:

Thank you for allowing Jefferson Smurfit Corporation (JSC) to provide comments for the record on the Interstate Waste/Flow Control subsequent to your hearing on March 18th, which I attended.

JSC is one of the nation's leading producers of paperboard packaging and is the largest U.S. producer of recycled newsprint. In addition, Smurfit Recycling, a division of JSC, is the U.S.'s largest collector and marketer of recovered paper (wastepaper). Needless to say, "flow control" over recyclable paper could substantially impede our access to this valuable raw material and, hence, cause us great concern.

Happily, your S.534 from last session generally exempted recyclables from both the "grandfather" and the "prospective" provisions. We actively supported your bill and, in fact, provided language amendments in the early drafts.

For 1996, the paper industry recovered for recycling 45% of the paper products consumed in the U.S. This kept 43 million tons of paper out of landfills and incinerators. The comparable numbers for 1992, just 4 short years ago, were 38% recovery rate, and 34 million tons recovered. What drove these substantial increases - a free market access to those materials, unencumbered by state and local flow control authority.

The paper industry has set a voluntary goal of 50% recovery by the year 2000. If flow control is imposed in any form over recovered paper, the paper industry will not meet its 50% goal.

Sincerely,

Edwin P. Hurley
Manager-Legislative Affairs

EPH/as

STATEMENT OF JEFFERSON SMURFIT CORPORATION

Jefferson Smurfit Corporation (JSC) is a leading manufacturer of paper and paperboard products whose predominant raw material is recovered paper (waste-paper). Additionally, one of their divisions, Smurfit Recycling Company, is the largest collector and marketer of recovered paper in the Nation (if not the world as a private enterprise). Annually, JSC collects in excess of 4.5 million tons, 2 million of which is consumed internally while the balance is sold to other paper mills as a raw material or exported. Examples of JSC's paper packaging are cereal boxes, toy boxes, corrugated cardboard containers, and industrial paper tubes. Also, JSC is the largest U.S. producer of recycled content newsprint.

Jefferson Smurfit supported S. 534 from last session and, if new legislation is drafted, it should be the starting point. While it generally provided the exemption for recyclable materials, some of the language should be clarified.

We support, in full, the written comments provided the committee by the American Forest and Paper Association (AF&PA).

JSC would support legislation that builds on, and refines the principles set forth in, S. 534 which would recognize:

- any materials that have been separated from waste otherwise destined for disposal (either at the source of the waste or at processing facilities) or that have been managed separately from waste destined for disposal should not be subject to local government municipal solid waste flow control either for past or prospective programs;
- flow control over recovered materials would undermine significant and long term private commercial recovery activity in an area which has not historically fallen under government control or regulation;
- presently, local governments can direct the flow of recyclable materials once the owner or generator of those recyclable materials freely and voluntarily transfers ownership of those materials to the local government by placement in a municipal collection program;
- flow control or interstate waste authority should cover only municipal solid waste. Non-hazardous industrial wastes are not part of municipal solid waste and therefore should not be subject to local government flow control.

JSC and other paper manufacturers can increase their recycled paper capacity only in an environment that ensures unfettered access to their recovered paper as a raw material. That access is driven by two broad principles.

Recovered Paper—received from residential and commercial collection programs—is the source of 37 percent of the paper industry's raw material. These materials are commodities, bought and sold on the open market like thousands of other commodities. They are neither solid waste nor municipal solid waste and should not be regulated as such. If paper does not enter, or is diverted or removed from, the solid waste stream, it becomes a commodity raw material and should not be regulated as a solid waste or subject to local government flow control.

Second, the *ownership of recovered materials* conveys the same rights of ownership of other personal property. The owner of a bale of cardboard boxes or bundle of newspapers must have the same rights as the owner of a bushel of wheat when deciding on the destination of the material. In other words, the owner of a recovered material has the right to sell, donate, transport, or contribute that material to whomever, or in whatever way he or she chooses. And, to the extent that government should not limit the rights of ownership, it should not restrict commerce in such materials by restricting rights to purchase or transport recovered materials. In no case should local government mandate that recovered materials be transferred to the government or its recycling agent. This is not to imply that JSC opposes voluntary curbside recycling programs which we support and rely on as a source of raw material. We believe that once the owner/generator voluntarily transfers ownership by placing the materials for public collection either directly or under contract through an agent, the government can assume ownership of recyclables. At that point local government has the authority to control the flow of its recovered materials in whatever manner it chooses, and thus negates the need for Federal flow control authority over recovered materials.

STATEMENT OF THE LOCAL GOVERNMENT COALITION FOR ENVIRONMENTALLY SOUND MUNICIPAL SOLID WASTE MANAGEMENT

Dear Mr. Chairman: This statement is submitted by the Local Government Coalition for Environmentally Sound Municipal Solid Waste Management (Coalition) for inclusion in the record of the Environment and Public Works Committee's March 18, 1997 hearings that addressed, among other things, municipal solid waste (MSW)

flow control legislation (this statement is also being supplied in computer disk format). As a preliminary matter, we should note that the Coalition is an ad hoc consortium of cities, counties, solid waste management authorities and related associations concerned with MSW flow control legislation and other critical MSW management issues. The Coalition's members are dedicated to integrated municipal solid waste management that provides full protection for public health and the environment, and reliable, long-term municipal waste management solutions at reasonable and stable costs for their respective communities.

This statement addresses two separate matters that are before the committee in connection with flow control legislation. The first is the pressing need for—and very strong equitable arguments justifying—Federal legislation to “grandfather” uses of flow control authority in effect prior to the Supreme Court’s decision in the *Carbone* case (*C&A Carbone, Inc. v. Town of Clarkstown, New York*, 114 S.Ct. 1677 1994). Such legislation is needed to relieve the adverse financial impacts already sustained by a number of communities and to avoid further consequences for those communities and others. Second, we respond to criticisms offered at the committee’s March 18 hearing regarding decisions made long ago by a number of communities to rely on flow control authority in addressing their diverse MSW2 management needs.

I. THE NEED FOR FEDERAL LEGISLATION TO GRANDFATHER EXISTING USES OF FLOW CONTROL AUTHORITY

Various witnesses testified at the March 18 hearing regarding the need for Federal legislation that would grandfather uses of flow control in effect at the time of the *Carbone* decision (e.g., witnesses Johnson, Leff and Cahill). Indeed, even the witnesses who opposed flow control as a general matter recognized (with one exception) that grandfathering legislation is appropriate because of the changes brought about as a consequence of *Carbone*. In fact, the need for legislation to grandfather such past uses of flow control is indistinguishable from the “stranded investment” issue that has been widely recognized as requiring legislative relief in connection with restructuring of the electric utility industry. As explained by the witnesses who testified in support of flow control, the consequences that communities throughout the country are now facing due to the absence of Federal legislation include precipitous declines in waste deliveries and resulting bond downgrades, increased taxes to offset declines in tipping fee revenue, termination of recycling and other environmentally essential programs, employee layoffs and terminations and ever-increasing upward pressure on tipping fees as the unavoidable fixed cost burden of waste management infrastructure (e.g., recycling, composting, waste-to-energy, etc.) is shared by fewer users (further elaboration regarding these adverse consequences is provided in the testimony of witnesses Johnson, Leff and Cahill and need not be belabored here).¹

Despite these adverse impacts, it was nevertheless suggested in the March 18 hearing record that Federal flow control legislation may not be necessary because the financial impact to date (that is, the extent of bond downgrades to date and the absence of bond defaults) has not been sufficiently severe to require legislative action. The number of bond downgrades (17 in total) is significant, however. Moreover, 19 additional solid waste bond issues have been rated “unstable—credit watch” by Moody’s Investors Service due specifically to the absence of flow control legislation. Furthermore, the absence of flow control legislation is also affecting credit-supported solid waste bonds that are secured by general obligations guarantees or bond repayment insurance (in addition to previous reliance on flow control authority). On an overall basis, approximately one-half of all solid waste bond issues are in one of the three risk categories outlined above and would benefit from legislation that grandfathers pre-*Carbone* uses of flow control authority. Indeed, Moody’s testimony to this committee notes that the probable benefit of the stabilized waste stream that would result from legislation to grandfather pre-*Carbone* uses of flow control will be to strengthen credit ratings.²

¹ In addition, because flow control authority is a tool that facilitates a community’s ability to develop long-term MSW management solutions at stable prices, flow control assists in addressing the concerns of waste importing States, as witnesses Seif and Cahill each testified. See Cahill testimony at 3 (“The *Carbone* decision resulted in the exportation of approximately an additional one million tons annually of municipal solid waste generated in New York State. . . . If flow control is re-instituted for those communities that initially had it, localities can once again manage solid waste within their own borders at more competitive tipping fees”).

² It should also be noted that focusing on the number of bond downgrades or the absence of bond defaults is to disregard the fact that local governments will do everything within their abil-

Continued

Finally, and of particular significance, flow control is a stranded investment issue (local governments are seeking grandfather legislation only—we are not seeking authority for new uses of flow control). The need for such grandfather legislation is a matter of basic equity: the *Carbone* decision changed the rules “in the middle of the game” and grandfathering legislation that provides a reasonable transition is essential. It must be emphasized that the situation confronting local governments as a result of *Carbone* is indistinguishable from the circumstances electric utilities face as a result of industry restructuring. The bipartisan electric utility restructuring legislation that has already been introduced in Congress (as well as additional legislative proposals that are anticipated) provide (or are expected to provide) reasonable assurance that utilities will be able to recover stranded investment that is a consequence of industry restructuring. In addition, at least eight States have already adopted legislation that accomplishes the same result. No electric utility will be required to sustain a bond downgrade, or worst yet a bond default, as a condition precedent to legislative protection that allows electric utilities to recover their stranded investment. Local government is equally deserving of protection on the same basis—that is, without being forced to sustain even more bond downgrades and bond defaults.³

II. VARIOUS WITNESSES’ CRITICISMS OF FLOW CONTROL ARE UNFOUNDED

As explained above, local government is asking for legislation merely to grandfather past uses of flow control authority, and thereby allow a reasonable transition to respond to the consequences of the *Carbone* decision. Such legislation is amply justified as a matter of equity and independent of the different policy viewpoints—favorable and unfavorable—regarding the past use of flow control presented during the committee’s March 18 hearing. Nevertheless, the criticism of flow control offered by witnesses at the hearing is not supported by the facts, and we respond to that criticism below.

A. *Flow Control Is Not Anti-Competitive*

Several witnesses claimed that flow control is anti-competitive. E.g., witnesses Rooney, Broadway and Norquist. These claims are without basis. Contrary to the witnesses’ assertions, the tipping fees—user fees—charged for municipal solid waste management services in communities that rely on flow control are based on cost and are often the result of competitive bidding in the private marketplace for the necessary waste management services. Those fees recover the costs of various solid waste management services—recycling, household hazardous waste collection, composting, public education, resource recovery (waste-to-energy), etc. Moreover, flow control proponents agree that such tipping fee-derived revenues should not be used to cross-subsidize non-solid waste management services (the flow control legislation overwhelmingly approved by the Senate during the last Congress, S. 534, expressly so provided with the full agreement of flow control proponents).

Nor is flow control anti-private enterprise. To the contrary, communities that rely on flow control also rely to the maximum extent possible on private enterprise for their waste management infrastructure. The difference is that flow control allows the affected communities to achieve long-term cost stability for waste management services and significantly less exposure to the vagaries of the marketplace. See n.6, below. The members of the Coalition submitting this statement are a case in point. The clear majority of the recycling/waste management facilities with respect to which our members exercise flow control authority are privately owned and/or operated. For example, the integrated waste management system that serves the city of Indianapolis consists of a waste-to-energy plant, an ash monofill, a composting facility, a materials recovery (recycling) facility, three transfer stations and a land-fill. All of these facilities are privately owned and operated with the exception of the ash monofill, which is publicly owned and privately operated. National trends are fully consistent. In fact, as the U.S. Environmental Protection Agency has recently emphasized, “it is noteworthy that the private sector has an ownership or

ity to avoid a downgrade or the truly debilitating impact of a bond default. The preferred policy outcome here is surely not one in which due to the absence of flow control authority local governments are forced, as examples, to terminate recycling programs or lay off employees, or increase taxes in order to subsidize recycling (in the latter situation, the absence of flow control authority is a hidden tax).

³Needless to say, local government investment in waste management infrastructure was taken in direct response to State (and Federal) mandates rather than as a type of entrepreneurial activity. There can be no justification for protecting investors against market risk in the context of electric utility restructuring, while declining to protect taxpayers and the public in the flow control context where the actions in question were taken in response to governmental mandates and for protection of public health and the environment.

operational role for 84 percent of WTE [waste-to-energy] throughput, including most of the larger WTEs." See U.S. Environmental Protection Agency, *Report to Congress on Flow Control and Municipal Solid Waste*, EPA 530-R-95-009 (March 1995, at III-58) (cited below as "*Report to Congress on Flow Control*"). State and regional statistics show the same pattern. For example, the Pennsylvania Waste Industries Association, which represents private companies engaged in the operation of landfills, transportation of solid waste, recycling and related services, estimated in 1995 that its members provide 75 percent of all of the municipal waste processing and disposal services within Pennsylvania. A key factor here has been complementary public-private relationships for which flow control is a principal component.⁴

It also bears emphasis that the local governments that rely on flow control adhere to competitive bidding requirements that make cost a prime consideration in selecting among alternative waste management facilities or vendors. The fact that some communities that rely on flow control authority may have higher tipping fees than certain non-flow control communities is the former's own choice (as well as a cost that the flow control-reliant community alone will bear), and was made for reasons that the affected community and its elected officials considered fully justified (e.g. maximize recycling, minimize unproductive use of land resources and minimize potential Superfund liability). Specifically, their higher fees resulted because the community had decided to invest in more costly and capital intensive waste management infrastructure, such as advanced materials recovery facilities (MRFs) or resource recovery/waste-to-energy facilities.⁵ Such facilities cost more—over the short-run—than other alternatives.

B. Flow Control Does Not Cost More

Nor does flow control "artificially" increase prices or impose a higher cost for a given category of service. In this connection, it should be noted that two of the witnesses who opposed flow control at the March 18 hearing (Messrs. Broadway and Norquist) referred to a study prepared for Browning-Ferris Industries (BFI) by National Economic Research Associates (NERA) to support the claim that tipping fees are higher for communities that rely on flow control in comparison to non-flow control jurisdictions. The BFI-NERA document, however, is invalid and laden with distortion that portrays flow control as more expensive. It bears emphasis that the State of New Hampshire, Department of Environmental Services, evaluated the BFI-NERA document and found, contrary to the document's authors, that in two of the three case studies presented by BFI-NERA waste disposal at a flow-controlled facility is actually less expensive than at competing private facilities. The New Hampshire DES' conclusions regarding the BFI-NERA document are particularly noteworthy:

The NERA study is flawed in its assumptions, reported results, and conclusions. Misleading use and reporting of statistics undermines the validity and credibility of the results reported from NERA's economic analysis. In both its modeling and case study analysis, NERA confounds tipping prices with the actual cost of providing MSW disposal, a decision which has the inevitable effect of creating an apparent price advantage for privately operated facilities. Erroneous assumptions about the cost of transporting MSW to alternative disposal facilities unfairly deflate the reported cost of using these facilities. Meanwhile, omitting the cost of integrated waste management service provided by public, flow-controlled facilities unfairly inflates the reported "tipping fees" charged by these facilities, and results in a false comparison of disposal costs at the public compared to the private facilities (which offer no such services). . . .

The NERA study ignores or misinterprets these critical aspects of solid waste management. In doing so, it vacates any standing it might otherwise claim as

⁴See, *Report to Congress on Flow Control* at III-58: Some of the largest WTE facilities represent public-private partnerships. Without the involvement and support of the public sector, this market segment would be much smaller.

⁵See *Report to Congress on Flow Control* at ES-7 ("For the recycling segment, flow control has been an important factor for MRFs, particularly MRFs that require substantial capital investments"). See also *id.* at III-46 and 47 (emphasis supplied):

"The use of flow controls to guarantee waste flows to WTE facilities is significant; approximately 58 percent of WTE throughput (from 61 facilities) is guaranteed by flow control. One reason for this high percentage is the substantial debt service entailed by the large initial capital investment required to construct WTE facilities [footnote omitted]. WTE facility operators and owners need to ensure adequate, long-term supplies of waste and operate at high capacity utilization rates (e.g., 85 percent) in order to generate sufficient tipping fee revenues to meet debt service payments. Data show a strong association between magnitude of capital costs and use of flow controls by WTEs."

a meaningful contribution to the ongoing debate about flow control and broader waste management issues in this country.

Attachment 1, p. 4 (emphasis in original).⁶

Finally, it is true that flow control-based tipping fees often recover, in addition to MSW disposal costs, the costs of environmentally essential waste management services such as recycling and household hazardous waste collection that “generally do not lend themselves to generation of their own revenues”. *Report to Congress on Flow Control* at ES-11. It is particularly important to note in this connection, however, that “[w]hen the tipping fee is broken down into its component parts, prices are usually comparable for facilities sited in similar locations and built about the same time.” *Id.* at 57 (citing Moody’s Public Finance, *Perspective on Solid Waste*, August 16, 1993, p. 3).⁷ Moreover, the approach of combining the costs of other solid waste management programs in a composite fee charged for disposal of MSW is fully consistent with well established Federal policy. See U.S. EPA, *Variable Rates In Solid Waste: Handbook For Solid Waste Officials*, Volume I—Executive Summary 2, EPA 910/9-90-012a (June 1990) (discourages use of general taxes to fund solid waste management because no incentive to reduce waste volume is provided and encourages volume-based user fees).

III. CONCLUSION

The Coalition appreciates the opportunity to present the foregoing views to the Committee on Environment and Public Works. We respectfully urge the committee to proceed expeditiously with legislation that will grandfather uses of MSW flow control authority in effect prior to the Supreme Court’s *Carbone* decision. We pledge our full efforts to work with the committee to achieve that objective.

⁶As an example of the erroneous nature of the BFI-NERA document, no attempt is made to compare tipping fees on a consistent basis; instead, spot market tipping fees are apparently averaged together with tipping fees under long-term contracts without distinguishing the two. The difference between long-term and spot market tipping fees, however, is extremely important when analyzing the impact of flow control. In fact, a principal reason why local governments rely on flow control is to facilitate long-term agreements for the development and financing of waste management facilities, as well as to avoid the short-term fluctuations—which are at times considerable—in spot market prices. The error underlying the BFI-NERA document is perhaps most poignantly demonstrated by the claim (at 18) that in Medina, Ohio flow control “prevents waste generators from saving approximately \$20 per ton.” To make that claim the BFI-NERA document compares the cost of a modern recycling facility with the cost of waste disposal at landfills in the region. Without belaboring the obvious, it costs more to recycle rather than landfill waste, and that has nothing to do with flow control.

⁷In a typical non-flow jurisdiction, on the other hand, the only cost that tipping fees would recover is the cost of disposal, which is only a small part of the picture.

"THE COST OF FLOW CONTROL"

**CRITICAL REVIEW
OF THE NATIONAL ECONOMIC RESEARCH ASSOCIATES ANALYSIS
(MAY 1995)
COMMISSIONED BY BROWNING-FERRIS INDUSTRIES**



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November 1995

**"THE COST OF FLOW CONTROL":
CRITICAL REVIEW OF THE NATIONAL ECONOMIC RESEARCH ASSOCIATES ANALYSIS
(MAY, 1995) COMMISSIONED BY BROWNING-FERRIS INDUSTRIES**

INTRODUCTION

Browning-Ferris Industries (BFI) recently commissioned National Economics Research Associates (NERA) to estimate the costs (if any) passed onto consumers as a result of flow control. The resulting study, "The Cost of Flow Control," was released in May 1995.

The study, which concludes that, in general, flow control adds significantly to the cost of solid waste management in the U.S., has been given wide circulation, and has been used to support a number of arguments against flow control (e.g., Woods and Aquino, "Late Breaking News," *Waste Age*, June 1995, page 12). Because of the interest of New Hampshire's Congressional delegation in this issue – and in particular New Hampshire Senator Bob Smith's sponsorship of flow control legislation – the N.H. Department of Environmental Services (DES) undertook a critical review of the assumptions, methodologies, results, and conclusions of the NERA study. DES's analysis finds that the NERA study is flawed in a number of areas. These flaws cast serious doubt, and in some cases appear to reverse, the NERA conclusions about the economic impacts of flow control.

In presenting these results, it is not DES's intention to advocate for or against a specific position in the flow control debate. Instead, the Department hopes that its analysis of the NERA report will contribute to a full, fair, and accurately grounded debate about the merits of flow control, which is perhaps the most important solid waste issue which will be considered by Congress and the nation in this or the coming year.

CRITIQUE

Costs Compared in Public (Flow-Controlled) vs. Private Facilities

The study accurately points out that flow control is used by local governments for two primary reasons: (1) to protect financial investments in solid waste facilities, and (2) to generate revenue that finances integrated waste management (IWM) programs (e.g., recycling, public education, household hazardous waste collection, composting, and others). Having recognized that public facility tipping fees typically fund IWM programs while private facility fees do not, the NERA study ignores both the cost and waste management implications of this fact in its econometric model and case studies.

The public typically views IWM programs funded through tipping fees as a "free" addition to locally provided waste management service. As a result, they tend to use these programs more heavily than if recycling, HHW collection, composting, and other IWM programs were billed on a fee-for-service basis. This behavior leads to increased diversion of materials to recycling and composting programs, to a typically significant reduction in the volume of waste requiring ultimate disposal (which extends facility life, and/or reduces the number of disposal facilities required to serve a given population), and to the diversion from disposal facilities of many of the most toxic constituents in MSW.

The private facilities cited in the NERA study, on the other hand, do not offer any of these IWM services. Their "tipping fee" is exactly that – the cost to dump rubbish into a landfill or into the pit of an incinerator.

To yield an accurate comparison of tipping fees at public, flow-controlled disposal facilities against those at private facilities, the NERA model and case studies should have identified and eliminated the costs of IWM programs at the flow-controlled facilities, or added the cost of comparable IWM programs to the reported tipping fees at private facilities. Failing to do so, NERA's econometric analysis and case studies have ignored what is probably the single most important variable that differentiates public, flow-controlled facilities from private disposal sites. The study compares apples to watermelons, and the comparison is invalid.

The Difference Between Cost and Price

A second flaw in the economic calculations reported by NERA is that they fail to differentiate between tipping *prices* and the actual costs incurred by private firms to construct and operate disposal facilities. The study notes that "disposal charges are ... falling as disposal facilities compete for more business" (a fact largely attributable to the success of publicly-funded and operated source reduction and recycling programs). However, such decreases in the *price* of MSW disposal do not reflect a change in the underlying cost to provide disposal services; on the contrary, the costs to construct and operate a disposal facility in compliance with RCRA and other regulations are almost certainly increasing. The distinction can be critical, because while public facilities must set prices to cover all relevant capital and operating costs (including those of associated IWM programs), private facilities typically set prices to maintain cash flow and market share – and are often willing and able to operate at a short-term loss in order to insure longer term success. Thus, although the *prices* charged by public and private facilities may differ, it is unlikely that underlying costs vary as much – the private facility tipping fees quoted in the NERA report may understate the actual costs of operating these facilities profitably. This situation may change, perhaps dramatically, when disposal markets change and the private facilities see the opportunity to recoup additional costs and increase profits.

Reporting of Statistical Output

A third significant flaw in NERA's report is its treatment of the statistical output of its econometric model. In tables and figures which compare tipping fees with and without flow control at different facility types, NERA reports price differences as if they were statistically certain, but gives no information at all about the actual statistical reliability of these results. For example, the study reports a "statistically significant" relationship between flow control and tipping fees, but provides no information about whether other variables analyzed had a similar or greater impact on tipping fees, nor upon its use of the term "statistically significant" in this case. At a minimum, the study should have reported R-squared values, confidence intervals, and probability values for all of the independent variables used in its regression analysis. Going further – especially given the sweeping nature of its conclusions regarding the cost impacts of flow control – NERA should have provided the complete statistical output of its model (similar to that provided in its "Regression Output Example") to allow readers to make an independent analysis of the statistical validity and implications of NERA's reported results.

Calculation of Mileage Costs for MSW Transportation

In its case study analysis, NERA's calculation of disposal costs at private facilities include a calculation of the cost to transport MSW to each facility cited. This calculation is flawed in two respects:

First, the reported costs are based on one-way transportation to the disposal facility. Because solid waste vehicles rarely backhaul a revenue generating load, these are inaccurate – round-trip costs are the true (and universally reported) measure of the cost to transport MSW to

a disposal facility. All transportation costs to private disposal facilities reported in the NERA study should therefore be doubled.

Second, NERA's cost data are based on mileage figures (\$0.057/ton-mile) published in April, 1991, and are outdated. More recent data suggest that the cost per mile of transporting solid waste by highway in the United States (in 22-ton trailer loads) ranges from approximately \$1.45 per mile to as much as \$2.10 per mile, with an average of approximately \$1.77 per mile. This equates to a value of \$0.081 per ton-mile, 42% greater than the figure used in the NERA study (Paul Ligon, Tellus Institute, Boston, MA, telephone communication, June 16, 1995). This cost tends to increase with shorter hauls, and increases proportionately with loads smaller than 22 tons.

THE CASE STUDIES

To evaluate the impacts of these flawed assumptions on the results and conclusions of the NERA study, we recalculated their reported costs using more complete tipping fee data and current transportation costs. Although all three of the public, flow-controlled facilities reported that their "tipping fees" cover a wide range of IWM programs in addition to MSW disposal (Table 1), only one facility (The Onondaga County, NY Resource Recovery Authority, or OCRRA) was able to provide separate budget data for these ancillary programs. Our analysis therefore concentrates on this facility.

The Onondaga County (NY) Resource Recovery Authority (OCRRA) (Table 2) operates a waste-to-energy incinerator and recycling center that have been operational since November, 1994. OCRRA charges \$99/ton for waste brought to its facility. Based on current budget figures, eleven percent of this disposal fee, or \$10.89/ton, is dedicated to an integrated waste management program that includes recycling, battery collection, household hazardous waste collection, and public education. In addition, the monthly proceeds from the sale of electricity are returned to haulers in the form of a rebate. This rebate has varied from a minimum of \$5.50 per ton to as much as \$15.50 per ton. In recent months the rebate has been \$7.50 per ton. With these corrections, the "tipping fee" at OCRRA -- that is, the charge to dispose of rubbish that is directly comparable to the tipping fees NERA cites for alternative disposal facilities -- is \$80.61 per ton (with current rebate levels).

The "competing" disposal facilities cited by NERA are private facilities. The tipping fees at these facilities cover disposal only, and do not include the suite of IWM services offered by OCRRA. In addition, at least one of these facilities (the Charles Point Resource Recovery facility) requires a plant upgrade to bring it into compliance with state and federal environmental requirements, while the OCRRA facility is in full compliance with these laws and regulations (K. Markussen, NY Dept. of Environmental Conservation, personal communication). Using the appropriate round-trip mileage to these facilities and the more up-to-date average hauling cost of \$0.081 per ton mile, the average disposal costs at the alternative facilities increases to \$89.47/ton (compared to the \$73.69 reported by NERA), with a range of \$76.34/ton to \$106.87/ton. Only one of the seven alternative facilities cited by NERA in fact offers a total fee (for disposal plus hauling) that is less than OCRRA's current \$80.61, and OCRRA's tipping fee is in fact \$8.86 less than the average of the seven alternative private facilities. This savings stands in stark contrast to the supposed \$19.81 average tipping fee penalty reported in the NERA study.

The remaining two facilities analyzed by NERA (Metro Park East Landfill and Transfer Station, Des Moines, IA, and Medina County Materials Recovery Facility, OH) were unable to

provide complete accounting data on the cost of the integrated waste management services included in their disposal fees. However, based on the range of IWM services they offer (Table 1), one can assume that the portion of their disposal fees devoted to IWM are similar to that reported by OCRRA, and that the "tipping" portion of their disposal fees should be reduced accordingly. Even without complete accounting data from these facilities, however, one can reach the following two conclusions:

At the Des Moines public facility, NERA reports a savings to users of \$4.26 per ton compared to competing private disposal facilities. When more accurate transportation cost estimates are included in the analysis, this savings increases to \$15.19 per ton, even without accounting for the portion of Des Moines costs attributable to IWM (Table 3). If these additional cost elements were subtracted from the Des Moines "tipping fee," the savings to users of this facility would be even greater.

At the Medina County public facility, NERA reports a cost penalty to users of \$20.99 per ton compared to disposal costs at competing private facilities. More accurate transportation cost data, combined with a recent reduction in the Medina County facility's disposal fee, cut this cost differential by more than half, to \$8.70 per ton. Given the extent of integrated waste management services included in the Medina County MRF disposal fee (see Table 1), one can infer that this cost differential would be eliminated or reversed if IWM costs were excluded from the "tipping fee" reported by NERA.

CONCLUSION

The NERA study is flawed in its assumptions, reported results, and conclusions. Misleading use and reporting of statistics undermines the validity and credibility of the results reported from NERA's econometric analysis. In both its modeling and case study analysis, NERA confounds tipping prices with the actual cost of providing MSW disposal, a decision which has the inevitable effect of creating an apparent price advantage for privately operated facilities. Erroneous assumptions about the cost of transporting MSW to alternative disposal facilities unfairly deflate the reported cost of using these facilities. Meanwhile, omitting the cost of integrated waste management services provided by public, flow-controlled facilities unfairly inflates the reported "tipping fees" charged by these facilities, and results in a false comparison of disposal costs at the public compared to the private facilities (which offer no such services). Omission of any discussion of these services in the NERA report also ignores the valid societal goals that are supported by source reduction, recycling, HHW collection, and other aspects of integrated waste management, and the duty of public authorities to respond to public (and frequently legislative) mandates to provide these services.

The NERA study ignores or misinterprets these critical aspects of solid waste management. In doing so, it vacates any standing it might otherwise claim as a meaningful contribution to the ongoing debate about flow control and broader waste management issues in this country.

TABLE 1
INTEGRATED WASTE MANAGEMENT COSTS COVERED BY "TIPPING FEES"
AT PUBLIC, FLOW-CONTROLLED FACILITIES CITED IN THE NERA STUDY

FACILITY	COSTS INCLUDED IN "TIPPING FEE"
Onondaga County (NY) Resource Recovery Authority ¹	MSW Disposal; Ash Disposal; Recycling; Household Battery Collection; Household Hazardous Waste Collection; Public Education (Note: Proceeds from sale of electricity are also returned to haulers as a rebate -- see text)
Des Moines (IA) Metro Park East Landfill and Metro Park Transfer Station ²	MSW Disposal; Recycling; Household Hazardous Waste Collection; Composting; Public Education; Setaside for Future Construction of New Landfill
Medina County (OH) Material Recovery Facility ³	Collection of Recyclables; Operation of MRF; Collection, Transportation, and Disposal of MSW at Private Incinerator; Battery Collection; Household Hazardous Waste Collection; Composting; Public Education; Setaside for Future Construction of New Landfill

Notes: ¹ Source: Andy Brigham, OCRRA, personal communication, June 14, 1995

² Source: Landfill Manager, Des Moines Metro Park East Landfill, personal communication, June 12, 1995

³ Source: Ken Holtz, Medina County MRF, personal communication, June 20, 1995

Table 2

**TABLE 2
COMPARATIVE DISPOSAL COSTS: ONONDAGA COUNTY, NY
AND COMPETING PRIVATE FACILITIES**

Name of Disposal Facility	Type	Disposal Fee	Cost per	Roundtrip	Total Cost (\$/ton) 3-(4x5)	NERA
		Only (\$/ton)	Ton/Mile (\$)	Distance (miles)		Total Cost (\$/ton)
		see note 1 3	see note 2 4	see note 3 5		see note 4 7
1 Onondaga County Res. Recovery Fac.	IN	\$80.61	0.081	0	\$80.61	\$83.50
2 Charles Point R&R Facility Inc.	IN	\$53.75	0.081	370	\$83.72	\$84.28
3 Modern Landfill	LF	\$58.26	0.081	300	\$82.56	\$66.78
4 Energy from Waste/Am. Ref-Fuel, Niagra	IN	\$60.00	0.081	300	\$84.30	\$68.52
5 WMI/High Acres Sanitary LF	LF	\$65.00	0.081	140	\$76.34	\$68.86
6 Am. Ref-fuel WTE Inc.	IN	\$69.00	0.081	420	\$103.02	\$80.93
7 Adirondack Resource Recovery Facility	IN	\$65.00	0.081	270	\$106.87	\$92.67
8 Average Disposal costs at Alternate Facilities					\$89.47	\$73.69
9 Disposal Savings from Flow Control (Row 8 - Row 1)					\$8.96	(\$19.81)

Sources and Notes

Based upon the NERA study entitled "The Cost of Flow Control", dated May 3, 1986.

1. Tipping fee at Onondaga is actually \$89.00/ton. This includes recycling services, composting, battery program, and HHW collections. These programs are 11% of the total budget. If removed, the tipping fee is lowered to \$88.11/ton. In addition, Onondaga rebates the sale of electricity back to the users every month. This has ranged from a minimum of \$5.50/ton to a high of \$15.80/ton. The current rebate of \$7.50 would lower the tipping fee to \$80.61 for actual disposal fees only—and to \$81.50 for all services. (per private conversation with Andy Brigham, OCRAA, 8/14/95)
2. All other facilities are privately owned and offer minimal integrated waste management services.
3. Per conversation with the Teltus Institute in Boston, hauling costs in the US range from \$1.45/m to \$2.10/m depending upon local labor, insurance, and operating costs. This is based round trip mileage. The average cost would be \$1.775/22 tons, or \$0.081/ton/mile. June 16, 1986.
4. Round trip mileage based upon the doubling of miles listed in the NERA case studies.
5. The final column list the total costs that NERA calculated. This is provided for comparison purposes only.

Table 3

TABLE 3
COMPARATIVE DISPOSAL COSTS: DES MOINES, IA
AND COMPETING PRIVATE FACILITIES

Name of Disposal Facility	Type	Cost per Ton/Mile		Roundtrip Distance (miles)	Total Cost (\$/ton) 3+(4x5)	NERA Total Cost (\$/ton)
		Tipping Fee (\$/ton) see note 1	Ton/Mile (\$) see note 2			
		3	4	5	6	7
1 Metro Park East Landfill	LF	\$25.00	0.081	0	\$25.00	\$25.00
2 Delaware Co. Sanitary Landfill	LF	\$7.50	0.081	270	\$29.37	\$15.17
3 North Des Moines Sanitary Landfill	LF	\$18.00	0.081	60	\$18.86	\$15.70
4 Cerro Gordo Co. LF N. Iowa	LF	\$18.00	0.081	220	\$33.82	\$22.25
5 Dickson Co Sanitary LF	LF	\$18.00	0.081	300	\$42.30	\$26.52
6 Tri-County Disposal TS	TS	\$18.00	0.081	320	\$43.92	\$27.09
7 Ames-Story Environmental Corp. LF	LF	\$28.71	0.081	60	\$33.57	\$30.41
8 Palo Alto Co. Sanitary LF	LF	\$28.00	0.081	240	\$47.44	\$34.82
9 Winnebago Co. Sanitary LF	LF	\$30.00	0.081	260	\$51.06	\$37.39
10 Cass Co. Sanitary LF	LF	\$50.00	0.081	140	\$81.34	\$53.98
11 Average Disposal costs at Alternate Facilities					\$40.19	\$28.26
12 Savings from Flow Control (Row 11 - Row 1)					\$15.19	\$4.26

See note 5

Sources and Notes

Based upon the NERA study entitled "The Cost of Flow Control", dated May 3, 1985.

1. Tipping fee at Metro Park East is actually \$25.00/ton. This fee includes recycling services, composting, a battery program, and H-W collection. These programs are inseparable from the tipping fee. This facility is publicly owned. (per conversation with Des Moines Metro Park East LF Mgr. 6/12/85). All other facilities are privately owned and operated and do not offer integrated waste management.
2. Per conversation with the Tetra Institute in Boston, hauling costs in the US range from \$1.45/mi to \$2.10/mi depending upon local labor, insurance, and operating costs. This is based upon round trip mileage. The average cost/mi would be \$1.775/22 tons, or \$0.081/ton/mile. June 16, 1985.
3. Round trip mileage based upon the doubling of miles listed on the NERA case studies.
4. The final column lists the total costs that NERA calculated. This is provided for comparison purposes only.
5. This is the minimum savings. Metro LF disposal fees include the cost of flow control. If these costs were excluded from the Metro disposal fees, the actual "tipping fees" for disposal only would be less than \$25.00/ton, and the savings would be even greater when compared with the competing private facilities.

Table 4

TABLE 4
FLOW CONTROL IN MEDINA COUNTY, OH PROVIDES INTEGRATED SERVICES AT THE
EXTRA COST OF \$9.70/TON (INCLUDES COMPOSTING, RECYCLING, AND HHW)

Name of Disposal Facility	Type	Tipping Fee (\$/ton)	Cost per Ton/Mile (\$)	Roundtrip Distance (miles)	New Total Cost (\$/ton) 3+(4x5)	NERA Total Cost (\$/ton)
1	2	3	4	5	6	7
1 Medina County MRF	TS	\$52.50	0.081	0	\$52.50	\$58.00
2 American LF	LF	\$25.00	0.081	80	\$32.29	\$27.56
3 Mahoning LF	LF	\$25.00	0.081	120	\$34.72	\$28.41
4 City of East Liverpool LF	LF	\$26.01	0.081	140	\$37.35	\$29.99
5 RC Miller TS	TS	\$28.71	0.081	70	\$34.38	\$30.70
6 BFA/Carbon Limestone Sanitary LF	LF	\$30.00	0.081	100	\$38.10	\$32.84
7 BFA/Lorain Co. LF	LF	\$34.47	0.081	40	\$37.71	\$35.61
8 Laidlaw/Cherokee Run-Bellefontaine LF	LF	\$30.00	0.081	220	\$47.82	\$36.25
9 Athens-Hocking LF	LF	\$30.00	0.081	240	\$49.44	\$36.82
10 Laidlaw/Williams Co. LF	LF	\$31.00	0.081	280	\$53.68	\$38.96
11 WMI/Evergreen Recycling/Disposal LF	LF	\$35.55	0.081	180	\$50.13	\$40.88
12 Roylston Rd Sanitary LF	LF	\$43.50	0.081	30	\$45.93	\$44.35
13 Northern OH Waste TS	TS	\$46.60	0.081	30	\$49.03	\$47.45
14 Doherty LF	LF	\$47.50	0.081	140	\$68.84	\$51.48
15 Average Disposal costs at Alternate Facilities					\$43.80	\$37.01
16 Extra Cost of Integrated Waste Mgt (Row 1 - Row 15)					\$9.70	\$20.99

Sources and Notes

Based upon the NERA study entitled "The Cost of Flow Control", dated May 3, 1995.

1. Tipping fee of Medina Co. MRF as of 7/1/85 is actually \$52.50/ton. This includes recycling services, composting, battery program, public education, and HHW collections. These programs are inseparable from the tipping fee. This facility is publicly owned. All other facilities are privately owned and operated and offer minimal integrated waste management services.
2. Per conversation with the Texas Institute in Boston, hauling costs in the US range from \$1.45/mi to \$2.10/mi depending upon local labor, insurance, and operating costs. This is based upon round trip mileage. The average cost/mi would be \$1.775/22 tons, or \$0.081/ton/mi. June 16, 1988.
3. Round trip mileage based upon the doubling of miles listed in the NERA case studies.
4. The final column list the total costs that NERA calculated. This is provided for comparison purposes only.

STATEMENT OF THE NATIONAL COALITION FOR FLOW CONTROL

This statement is submitted by the National Coalition for Flow Control¹ in support of legislation reinstating flow control authority for certain State and local governments. Specifically, we urge that flow control authority should be authorized for those municipal governments that relied on the ability to control the disposal of waste within their jurisdiction when committing taxpayer dollars to fund waste-to-energy, landfill and related transfer and disposal facilities. This limited legislation is necessary to restore a measure of control to local authorities who must balance the demands of protecting human health and the environment while maintaining their ability to borrow money and repay their debts. The Coalition believes strongly that such governments should not suffer because the rules of the game were changed in midstream.

Waste collection has traditionally been a responsibility of local governments. Twenty years ago, through the authority of Resource Conservation Recovery Act, Congress charged the States with the task of developing comprehensive solid waste management plans. Most States adopted waste disposal, recycling and minimization requirements. Local governments, responding to these mandates, sought long-term solutions to the impending waste management problem. Over thirty States adopted the use of flow control as a tool to help finance advanced, environmentally sound, solid waste management systems. Flow control statutes and local ordinances allowed communities to direct where waste created within their jurisdiction would be disposed. Prior to the Supreme Court's 1994 *Carbone* decision, the courts had repeatedly upheld local government authority to utilize flow control.

Relying on the enforceability of local flow control laws, communities have issued over \$20 billion in bonds since 1980 to finance the building of modern, efficient, waste management facilities. Building these facilities is the best long-range means to serve the waste management needs of thousands of communities while adhering to environmental standards. Often the revenues from flow controlled waste management facilities also support recycling and public education on the need for waste management.

Underpinning the decision to enter the public finance markets and borrow significant amounts of money was the certainty that flow control authority guaranteed a dedicated stream of waste that made the construction of large centralized systems (which benefited from economics of scale) economical. Thus communities could adopt a "user fee" system by which tipping fees at a landfill or waste-to-energy plant are borne by the users of the facility. User fees, rather than taxes, are regarded as the most equitable way of paying for a facility. The Environmental Protection Agency has encouraged this practice as a means fairly distributing the cost of reducing total waste and encouraging recycling. In further reliance on flow control power, many municipalities have signed long-term "put or pay" contracts that obligate them to supply a certain amount of solid waste to their local landfill or incinerator. If they fail to deliver the agreed minimum amount, they must pay the difference in tipping fees. With flow control, such an outcome was precluded. Without it, municipalities may have to pay for trash disposal twice; once where it is actually handled, and again pursuant to "put or pay contracts".

Waste authorities throughout the country were dealt a stunning blow in May 1994 when the Supreme Court ruled in the *Carbone* case that flow control ordinances were invalid on the ground that, absent congressional authorization, they violated the Interstate Commerce Clause of the Constitution. The decision destroyed the ability of local communities to manage their waste in the manner they deemed most effective and threatened their ability to repay their public debt. The inequity of this course of action was pointed out by House Speaker Gingrich in a recent statement to the National Association of Counties:

No city or county which has already signed the bonds and has already built and made the investment should be left in the lurch. We should grandfather them and take care of them. We have to learn to make changes in this country in an orderly way where we don't bankrupt people who did everything right under the old rules, and they then have no transition to the new rules.

Since *Carbone*, communities throughout the country have suffered grave harm. Over \$3.3 billion in municipal bonds have been downgraded or put on a credit watch since the *Carbone* decision. The result is that these jurisdictions may not be able to access the bond market in the future for essential public facilities. If they can

¹The members of the Coalition include Lancaster, Montgomery and York counties, Pennsylvania; Atlantic County, New Jersey; the Great River Regional Waste Authority, Fort Madison, Iowa; and the City and County of Honolulu, Hawaii.

obtain debt financing, the costs to local taxpayers will be much higher (by as much as 10–20 percent, according to the National Association of Counties).

Some opponents of flow control point out that, contrary to the dire predictions, few communities or projects which relied on flow control have gone into default. This is misleading. Communities, obviously, do not want defaults and have taken drastic measures to avoid them. Some are dipping into reserve funds to make up for lost tipping fees. Others have instituted employee lay-offs, reductions in services, or have raised taxes. While most communities and waste management facilities have been able to survive using a combination of these stop-gap measures, this should not be construed to mean that they do not need flow control. These measures are not long-term solutions to the problem. If Congress does not reauthorize flow control more severe economic consequences, particularly in the form of increased taxes to residential and commercial users, are likely to follow. Here are some specific examples of the direct impact of the lack of flow control from our membership:

- In Montgomery County, Pennsylvania, in 1989, the solid waste authority entered into agreements to build, own and operate a state-of-the-art 1,200 ton per day mass burn solid waste facility. In order to finance the facility, the Montgomery County Industrial Development Authority issued bonds and each of the 24 member municipalities agreed to send their waste to the facility. Each passed municipal waste flow ordinances which required each municipality to pay its share of the total projected waste commitment, regardless of whether the waste is actually delivered to the facility.

The Waste Management System Authority of Eastern Montgomery County, Pennsylvania (WSA) issued \$107 million in bonds to finance two transfer stations and a 1200 ton-per-day resource recovery facility for the benefit of its 24 member municipalities. Since the loss of flow control, WSA's revenues have fallen \$3.8 million, and it expects them to fall a further \$2.6–2.9 million in 1997. These lost revenues (from fewer tipping fees) are being made up out of reserves which may be exhausted by the end of this year. Furthermore, WSA stands to lose an additional 150,000 tons of commercially generated municipal solid waste in 1998, representing an additional loss of over \$4 million in revenues that must be made up by the municipalities and their residents.

- Since the *Carbone* decision, Atlantic County, New Jersey, has had to eliminate 61 staff positions, and the Authority may have to eliminate its recycling, household hazardous waste collection, composting, paint recycling, and public education programs. Moody's investment service has downgraded Atlantic County's bonds because it found the County was "vulnerable to the loss of legal flow control."

- In Lancaster County, Pennsylvania, the Solid Waste Management Authority serves a population of 450,000 people. After incurring over \$193 million in debt, the Authority has lost \$7.85 million in fees and has drawn down on their reserves in order to make up the lost tipping fees. Both Moody's and Standard & Poor's have downgraded their municipal bond ratings, which may not allow them to refinance their debt because of a lack of investment quality grade bonds.

- Henry, Louisa and Lee Counties in Iowa joined with Hancock County, Illinois in May 1992, to form the Great River Regional Waste Authority to manage waste from all four counties in an efficient and environmentally sound manner. Since the *Carbone* decision, the Authority has been forced to find alternative means to repay the \$8.9 million in outstanding debt. Now two of the four counties comprising the Authority have dropped out, leaving the burden of the debt on the remaining two counties. The risk of higher taxes is very real for the remaining counties.

- The City and County of Honolulu serves 900,000 customers at its waste-to-energy and landfill facilities which began operation in 1990 and were constructed at a total cost of \$280 million. The loss of flow control authority makes waste-to-energy facilities less sustainable in a small, isolated State which will be more dependent in the future on this less land intensive technology.

There is a simple solution to these problems. The Supreme Court ruling emphasized that "absent congressional authorization" municipal flow control ordinances were invalid. Congress can and should act to remedy the situation. Both the 103d and 104th Congresses came close to reauthorizing flow control authority. These bills failed in part because opponents of flow control cast the debate as anti-free market. In fact, less than 20 percent of the municipal solid waste in the United States has ever been subject to flow control. The bills also suffered due to controversy over the attached Interstate Waste title which, although a separate issue, has long been linked to flow control. A separate bill which restores flow control authority only to those facilities which relied on flow control to finance their waste management facilities would be largely free of these concerns.

The National Coalition for Flow Control urges this committee to take action now to protect communities which have built waste management facilities and issued

bonds in reliance on the law and now find themselves facing economic disaster through no fault of their own. By adopting legislation similar to S. 534 (104th Congress) the Senate will protect taxpayers, residents, permit local governments to meet their financial obligations and promote environmentally sound waste management practices.

STATEMENT OF PSA, THE BOND MARKET TRADE ASSOCIATION

PSA, The Bond Market Trade Association is pleased to offer its views on recent developments related to flow control and the need for congressional attention to the issue. PSA represents securities firms and banks that underwrite, trade and sell debt securities, both domestically and internationally. PSA's membership includes nearly all major underwriters of and dealers in State and local government bonds. Our members have underwritten and currently make markets in all outstanding debt which is supported by flow control. We have been active in advocating congressional action on the issue for several years. We are disappointed that despite numerous attempts, the issue is not yet resolved. However, we remain hopeful that problems raised by recent developments can be addressed this year. We thank Chairman Chafee for convening this hearing and we appreciate the opportunity to present our views.

PSA does not attempt to defend flow control as a policy. Flow control has been criticized as anti-competitive and monopolistic, and these arguments have some merit. We do not suggest that flow control be perpetuated any longer than is absolutely necessary. However, for many years flow control was an accepted and widely used practice. Many local governments around the country entered into very long-term financing arrangements and contracts under the assumption that they would be able to practice flow control for at least as long as their exposure under these arrangements. Now, of course, these local governments are at serious risk. There is a possibility that some, or even many, could suffer economically as a result of the loss of flow control authority. We believe that Congress has an obligation to provide affected localities with very limited flow control authority for a period long—enough so that those who are facing serious problems as a result of the Supreme Court's actions can end the practice of flow control in a managed and orderly way. After that, we recognize fully that all flow control authority would end forever.

FLOW CONTROL AND MUNICIPAL BONDS

As you know, flow control refers to the ability of local governments to require that municipal solid waste generated within a jurisdiction be processed at a designated disposal site, transfer station, recycling facility or other waste processing facility. Flow control authority was important to local government solid waste programs in part because it made financing for capital facilities possible at affordable rates. Flow control authority ensured investors and others that a particular facility would generate a sufficient level of waste disposal—and would earn sufficient fee revenue from that disposal activity—to pay debt service on bonds. With flow control authority, a local government was usually able to obtain “investment grade” ratings from bond rating agencies, ensuring a reasonable cost of capital financing. Flow control was also utilized in numerous jurisdictions to help ensure the sufficiency of revenue for facilities owned or operated by private companies.

When the U.S. Supreme Court ruled in 1994 on the case of *C&A Carbone, Inc. v. Town of Clarkstown, N.Y.*, striking down the policy of flow control as unconstitutional, many market analysts predicted extremely negative outcomes. A number of outstanding bond issues were downgraded by one or more credit rating agencies, indicating that the credit quality of outstanding debt supported by flow control had deteriorated significantly. Local governments began scrambling to explore alternatives to flow control in anticipation of their eventual loss of flow control authority.

Today, nearly 3 years after the *Carbone* decision, many of the pressures that market participants feared have intensified. Many bond issues are in technical default.¹ Credit downgrades continue. Investors in flow control bonds have experienced severe

¹“Technical” default occurs when a bond issuer fails to comply with one or more requirements under a bond indenture, even though the issuer remains current on debt service payments. Often, technical defaults occur when issuers fail to maintain debt service coverage ratios. This is the reason for technical defaults on flow control bonds. Debt service coverage ratios stipulate that a bond issuer's revenue available for debt service must exceed some multiple of the actual debt service obligation. For example, a debt service coverage ratio of 1.25 means that an issuer's revenue available to pay debt service must total at least 125 percent of the debt service actually owed. If revenues fall short, the issuer is in technical default.

deterioration in the prices of their portfolios. Communities have begun to tap other sources of funds to meet their debt service obligations. All this has happened during a time when many local governments are still able to enforce flow control ordinances, either because their cases are still pending in the judicial system or because courts have granted transition periods during which flow control is still permitted. Perhaps the most illustrative example is the State of New Jersey.

Some time ago, the State of New Jersey established a goal of self-sufficiency in its solid waste disposal. This goal was established in part because the State had become dependent on out-of-state disposal facilities to receive solid waste generated within New Jersey, and there was concern that eventually Congress would significantly restrict the interstate transportation of municipal solid waste. As a result, at the State's direction, many local governments in New Jersey established solid waste authorities and issued bonds to build environmentally sound local waste disposal facilities, in most cases incinerators. In order to cover operation and maintenance expenses and to service the debt necessary to design and build these facilities, the per-ton disposal, or "tip," fees had to be set at levels considerably higher than at alternative disposal sites, which consisted largely of nearby out-of-state, privately owned and managed landfills. The only way the New Jersey facilities could support their above-market fees was through the exercise of flow control.

A Federal court decision last year in *Atlantic Coast Demolition & Recycling, Inc., et al. v. Board of Chosen Freeholders of Atlantic County et al.* reaffirmed the Supreme Court's *Carbone* decision and ruled that New Jersey's system of solid waste management is unconstitutional because it relies on flow control. The decision gave the State until July 1998 to restructure its solid waste disposal system and stop practicing flow control. For the time being, New Jersey localities are still able to enforce flow control ordinances. However, the court's deadline is approaching quickly. The State must establish an alternative source of funding to retire the billions of dollars of debt that was incurred in order that New Jersey could become self-sufficient in its solid waste disposal. One of the approaches under consideration would empower local governments to impose "environmental investment charges," or garbage taxes, on local businesses. The new taxes could be imposed on all residences and businesses that generate solid waste to raise sufficient revenue to pay off outstanding debt.

It is unfortunate and ironic that New Jersey, the State which spearheaded the growing trend of cutting burdensome State taxes as a way to spur economic development, may have to impose a new tax in order to maintain its local governments' payment obligations. It is also ironic that the cost of providing solid waste disposal services will ultimately be borne by the same citizens and businesses which had been paying above-market disposal fees as a result of flow control—under the proposal being considered, they will pay the cost as a tax rather than as inordinately high tip fees. Ultimately, all the costs of New Jersey's investment must be paid. In the absence of flow control and under current competitive pressures, New Jersey's disposal facilities cannot survive by charging the above-market fees which they have to date. Market level fees would not generate sufficient revenue to cover operation, maintenance and debt service expenses. The only alternative would be for New Jersey's local governments to default on outstanding debt. In the mean time, bond investors continue to lose money because the considerable uncertainty regarding the outcome of the debate has driven down the prices of flow control bonds.

CONGRESSIONAL ACTION NEEDED

PSA still believes that the simplest way to address the problems associated with the loss of flow control authority is for Congress to permit local governments with contracts or debt outstanding to practice flow control only long enough to retire their obligations. This approach was embodied in compromise flow control legislation which was brought before the House of Representatives in the last Congress and, unfortunately, did not pass under suspension of the rules. The compromise proposal considered in the House in 1995 was the product of many hours of discussion among representatives of solid waste disposal companies, our industry, representatives of local governments and, of course, Members of Congress and their staffs. The compromise legislation represented a balanced, measured approach designed to give local governments an opportunity to phase out their practice of flow control in a reasonable and managed way.

The compromise acted upon in the House in the last Congress would permit local governments with bonds outstanding or "put-or-pay" contracts in place at the time of the *Carbone* decision to practice flow control only until their obligations were satisfied. It would provide no "prospective" flow control authority. It would limit the uses of revenues generated through the practice of flow control. It would prohibit

local governments from imposing flow control on classes of waste which were not subject to flow control at the time of the *Carbone* decision. In general, it would provide safeguards to ensure that no local government abused its limited authority to enforce flow control ordinances. This approach has the support of key members of the solid waste industry as well as local government representatives and other market participants, including PSA. The legislative language acted on by the House in 1995 was recently reintroduced by Congressman Bob Franks as H.R. 943, the Municipal Solid Waste Flow Control Act of 1997.

SUMMARY

PSA is grateful for the effort and attention which Chairman Chafee and other members of this committee have paid to the issue of flow control over the past several years. We particularly appreciate, for example, Chairman Chafee's and Chairman Smith's work in the last Congress on S. 534, the Municipal Solid Waste Flow Control Act of 1995, which was passed by the Senate 2 years ago. We supported that effort, and we were disappointed when the House failed to act on it. However, we believe that in the current climate, an approach such as that embodied in S. 534 would likely not emerge successfully from the legislative process. A more measured approach to the flow control problem such as H.R. 943 would provide local governments with the tools necessary to address problems raised by the *Carbone* decision and, we believe, would represent more palatable policy.

Today, local governments find themselves in very difficult financial situations over which they have little control. We do not seek to perpetuate flow control any longer than is absolutely necessary. However, congressional action is needed to ensure an orderly transition away from a system based on practice once considered perfectly acceptable. We urge the committee to act quickly on flow control legislation. We would support a bill which granted local governments limited flow control authority tied to outstanding obligations such as that provided in H.R. 943. We are grateful for the opportunity to present our views, and we would be happy to work with members and staff of this committee as the debate over flow control legislation progresses.

MAR 19 1997



American Public Works Association
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(Internet) apwadi@aol.net

March 18, 1997

The Honorable John H. Chafee, Chairman
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510-6125

Dear Senator Chafee:

Thank you for your interest in and your efforts to resolve the important issue of waste flow control.

I am the County Manager for Polk County, Iowa, and I submit the enclosed statement regarding flow control on behalf of the American Public Works Association. Please include my statement in the record for the Committee's March 18, 1997 hearing.

Federal legislation to return waste flow control to local governments is overdue. In the past three years, the 1994 Carbone ruling has forced communities across the country to cut alternative, environmentally-sound disposal services like recycling and composting, and to impose tax and fee increases to repay financial obligations made in good faith prior to Carbone.

The Carbone decision changed the rules in the middle of the game. Now, without flow control, local governments like mine are left with the public mandate to implement cost-effective, environmentally-safe waste disposal for our citizens - but without proper authority to plan and manage the process.

Please make reinstating waste flow control to local governments a top priority for your Committee this year. Thank you very much for your interest and attention.

Sincerely,

Tere Caldwell Johnson
Chair, Solid Waste Management Committee

TCJ/sao

Public Works in the Public Interest

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STATEMENT OF TEREED CALDWELL-JOHNSON, CHAIR, SOLID WASTE MANAGEMENT
COMMITTEE, AMERICAN PUBLIC WORKS ASSOCIATION

Chairman Chafee, Mr. Baucus and Distinguished Members of the Senate Environment & Public Works Committee: My name is Tereed Caldwell-Johnson, and I am the County Manager for Polk County, Iowa and the former Executive Director of the Des Moines Metro Waste Authority. Today I make this statement on behalf of the American Public Works Association (APWA). APWA is the largest membership organization of the Nation's local public works agencies and professionals who help to maintain the nation's infrastructure. Our members have the responsibility for applying limited public resources to ensure that the roads and bridges we use every day are maintained and safe. We ensure that the water you drink is clean and safe, the trash and recyclables collected, the landfills maintained the often invisible, but essential, services that contribute to quality of life in our cities, counties and towns.

First, I want to thank you, Mr. Chairman, for holding this hearing on a subject of critical importance to many communities across the Nation. As you know, local government waste flow control has been in legal jeopardy since May 1994 when the U.S. Supreme Court, in *Carbone v. Town of Clarkstown (N.Y.)*, ruled that a local ordinance that required trash haulers to use the town's designated disposal facility violated the Commerce Clause of the U.S. Constitution. This decision had the effect of changing the rules in the middle of the game. Local governments had entered into legally binding flow control arrangements prior to the Court's decision, in part to spur recycling, composting and other waste reduction activities. They made significant financial commitments based on these arrangements, including issuing bonds to construct new, technologically advanced, environmentally safe facilities. To repay these obligations without flow control authority, communities have had to impose tax and fee increases, make staff reductions, and impose cutbacks in other programs—all as a result of Congress' failure to pass flow control legislation in the nearly 3 years since *Carbone*.

As the body of professionals charged with implementing State and Federal laws which require planning for integrated, safe, environmentally sound and fiscally viable solid waste management systems, the American Public Works Association urges you to take action on waste flow control legislation this session. Let me tell you why.

Members of APWA report to me that, in addition to decreased revenues, they are faced with expensive lawsuits or the threat of lawsuits by, for example, haulers seeking a refund of the portion of tip fees deemed by them to be above the level necessary for the operation of the facility—even going back to pre-*Carbone* days. In at least one case, the threat of such a lawsuit was used as a negotiating tool in contract negotiations.

Local governments who responded to the perceived landfill capacity shortage a decade back by building state-of-the-art waste-to-energy facilities are now faced not only with an inability to repay bonds through flow-controlled tip fees, but also with imminent clean air retrofits.

What is the inevitable result to these very real circumstances? I foresee a "Price is Right" approach to solid waste decisionmaking, which discourages long-term environmental and holistic considerations in favor of short-term economic expediency. This approach transforms the federally recommended solid waste hierarchy (which prefers source reduction, minimization and diversion and lists landfilling as a last resort) from a cornerstone of integrated solid waste planning to merely a "Figure 3-1" in some out of print EPA publication. Members of APWA don't want to see that happen.

If you are wondering why we care, I'll remind you that, unlike the private sector, in most areas of the United States, local general purpose governments have been charged with ultimate responsibility to manage the municipal solid waste generated within their boundaries. Some States have codified that responsibility. Other States have vested that responsibility with regional or statewide agencies and assigned those public entities the responsibility for managing the municipal waste generated within boundaries established in the legislation. Without flow control, local governments retain the responsibility without the authority.

In order to fulfill their obligation, the planning efforts undertaken by the responsible public agencies must consider the utilization of all elements of integrated solid waste management. The planning program must take into account the environmental, economic and political elements of waste management program alternatives including the use of various types of public/private cooperative activities and the availability of existing facilities and infrastructure.

Municipal waste management programs, whether they be implemented at the local, regional or State levels, start at the storage container located in the home,

school, office or plant and continue through the collection, transportation, processing and final disposal phases. Most local municipal programs focus primarily on the residential waste stream, with the private sector supplying the services to other generators. In some instances, however, the public sector agency exercises control over the entire municipal waste stream by providing service to all generators through the use of public employees and publically owned equipment and/or facilities, through contracting of services for all generators or through the licensing of haulers, processors and disposers.

Since the details of each particular program are heavily dependent on the demographics, physiographics, financial capabilities and staff expertise available in a given area, current programs vary significantly in those details. Examples of variation of municipal waste management programs being implemented include:

- Public ownership and operation of all required equipment and facilities.
- Public ownership and operation of collection equipment and contract for private operation of publicly owned transfer, processing (materials recovery, composting, waste-to-energy) facilities and/or disposal (landfill) facilities.
- Public ownership and operation of collection equipment and contract for use of privately owned and operated transfer, processing facilities and/or disposal facilities.
- Private ownership and operation of all required equipment and facilities through service contract with the public sector.
- Private ownership and operation of all required equipment and facilities through direct contracts between the individual generator and the private sector supplier.

A review of these approaches clearly indicates that the capabilities of the private sector both environmentally and financially—have been and will continue to be integral elements of solid waste management programs undertaken by the public sector. Under any of the options, however, appropriate Federal and State laws should ensure that the environment and public health are protected.

Regardless of the system employed, the amount of waste handled in any single program has a great impact on the economics of that system. Larger volumes can provide economy of scale benefits through the implementation of area wide programs involving both large and small municipalities. Such benefits could have a positive impact on the financing of capital costs, on the cost of day to day operations and on the more efficient utilization of personnel and equipment. This is particularly true today as the environmental sophistication and resultant capital and operating costs associated with modern waste management equipment and facilities have soared. Therefore, any Federal proposal regarding flow control must assess both the retrospective and prospective impact of those proposed actions.

From a retrospective standpoint, many capital-intensive solid waste management projects require that local governments deliver a minimum amount of waste to a specific facility through binding contractual commitments or reliance on existing flow control authority. The owners/operators of such facilities, whether they are public or private sector entities, rely on income to cover development, financing and operating costs. The resulting investment losses due to a lack of flow control puts the burden on small businesses and taxpayers.

Because of the need for a bill that will allow affected communities to repay their significant outstanding liabilities incurred prior to *Carbone*, we support legislation limited to the objectives of “grandfathering” such pre-existing obligations.

Thank you.

MAR 19 1997



KATHERINE K. HANLEY
CHAIRMAN

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
BOARD OF SUPERVISORS
OFFICE OF THE CHAIRMAN

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March 13, 1997

The Honorable John H. Chafee
506 Senate Dirksen Office Building
Constitution Avenue and First Street, NE
Washington, D.C. 20510

Dear Senator Chafee:

Fairfax County continues to urge the passage of solid waste flow control legislation. The County's commitment to the environment and to providing the required infrastructure to our constituents, resulted in the development of a waste to energy facility which began operation in 1990. With this facility and our recycling program which now recycles 36 percent, the County landfills less than 1 percent of its waste.

Similar to many other jurisdictions, Fairfax County operates its solid waste system on a revenue fund basis. Therefore, the waste to energy facility was financed with revenue bonds, and these bonds were issued in reliance on solid waste flow control. Flow control was implemented in accordance with state law and after a public hearing in the County.

Flow control uncertainty places the County in an extremely difficult position, with the Fairfax County Resource Recovery Revenue bonds downgraded after the 1994 Supreme Court decision on flow control which led to this uncertainty. There are \$228,000,000 in Facility Revenue Bonds still outstanding. The only resolution of this issue is through federal legislation.

The Honorable John H. Chafee
Page 2

Fairfax County asks for swift action to pass legislation confirming the County's solid waste flow control ability. We request that this letter be placed in the record of the March 18, 1997, hearing on Flow Control and Interstate Waste to be held by the Senate Environment and Public Works Committee.

Sincerely,


Katherine K. Hanley
Chairman

KKH/ps

cc: Fairfax County Board of Supervisors
Anthony H. Griffin, Acting County Executive
John W. di Zerega, Acting Deputy County Executive
for Planning and Development
Richard J. Gozikowski, Acting Director, Department of Public Works

STATEMENT OF THE SOLID WASTE ASSOCIATION OF NORTH AMERICA

The Solid Waste Association of North America (SWANA) is a non-profit professional association comprised of approximately 6,400 local government and private sector professionals dedicated to advancing the practice of environmentally and economically sound municipal solid waste management. SWANA's guiding principle is that local governments must ultimately be responsible for the management of municipal solid waste within their jurisdiction. However, local government need not own or operate the system to meet that responsibility. This principle has long been recognized by the courts, embodied in the Resource Conservation and Recovery Act (RCRA) and incorporated in State solid waste laws. In response, local governments invested in solid waste management facilities for use by their communities. Most did so at a time when private sector alternatives were non-existent. Many local governments financed these facilities in good faith reliance on waste flow control authority to recover the costs of such investments.

With the U.S. Supreme Court's decision in *C&A Carbone v. Town of Clarkstown, New York*, 114 S. CT. 1677 (1994), invalidating local governments' flow control authority, the rules for local government changed leaving stranded the investments they made. These local governments are now facing significant hardships as they struggle to repay the bonds without flow control authority, ranging from having to increase property taxes to a weakened ability to obtain credit in the market for funding of other infrastructure projects.

SWANA believes fairness and the need to restore economic stability dictates that Congress should grant those local governments, who were left with stranded debt in the wake of the *Carbone* decision, authority to exercise flow control for the limited purpose of repaying their outstanding bonded indebtedness. Such legislation would facilitate a smooth transition to the post-*Carbone* era of greater free markets and less regulation in the management of municipal solid waste.

THE REGULATORY FRAMEWORK PRIOR TO CARBONE

Historically, it has been local government's responsibility to protect human health and the environment under State granted police powers. The U.S. Supreme Court has long recognized that local government management of municipal solid waste, or local government supervision of private service contractors providing this service, is a valid exercise of these police powers. See, e.g., *California Reduction Co. v. Sanitary Reduction Works of San Francisco*, 199 U.S. 306 (1905). The public has relied on local governments to manage for the collection and disposal of municipal solid waste and it will undoubtedly continue to rely on local governments to ensure that its wastes will be disposed of in a manner which protects the general welfare.

Congress recognized this traditional role of local governments when it passed RCRA in 1976. Under the Act, States and their local governments were directed to close open dumps and develop and implement long term plans for the management of solid waste generated within their respective boundaries. RCRA encouraged resource recycling including converting waste to energy. The US Environmental Protection Agency (EPA) adopted a national policy, reflecting what many States and local governments were already doing in the wake of RCRA, which established a hierarchy for municipal solid waste management. The hierarchy encouraged integrated solid waste management by which programs for waste reduction should be implemented first, followed by composting and recycling, energy production from waste, and landfilling the remaining wastes only as the last resort. In response to these Federal mandates and policies, consequent State mandates (including mandatory recycling/diversion levels), and, at the time, an absence of mature private sector alternatives, many local governments financed the construction and operation of integrated systems of waste management facilities and programs—such as waste reduction, composting, and household hazardous waste collection among others—to ensure that there would be long term capacity for managing municipal solid waste.

In order to generate the capital necessary to finance the solid waste management facilities, most local governments issued municipal bonds in an amount that has been estimated at \$20 Billion nationwide. These bonds were issued on the premise that local governments could regulate the flow of solid waste to the facilities so that tipping fees could be assessed to generate sufficient revenues to repay the bonds. In part, local governments relied on certain provisions in RCRA which indicated that Congress expected local governments to implement some form of flow control. (See, e.g., 42 USC Sec. 6943(a)(5) (not prohibiting local governments from negotiating and entering into long-term contracts for the supply of solid waste to resource recovery facilities), and 42 USC Sec. 6948(d)(3)(C) (endorsing creation of local government authorities having the power to secure the supply of waste to a project)).

(Typically, the local governments set tipping fees to recover costs of the integrated system and assessed those fees at one designated facility within the system. If the designated facility was a waste-to-energy (WTE) plant or a landfill, this approach to assessing "system" tipping fees allowed other WTE plant or landfill owners, who needed to recover only the cost of their specific facility, to argue that their tipping fees were considerably lower. This difference in tipping fees at comparable facilities has been used to argue that flow control results in greater disposal costs. However, this argument, although accepted by many as true, unfairly ignores that it is clearly based on an "apples to oranges" comparison.)

In exercising flow control, local governments also relied on 90 years of Federal court decisions, beginning with the California Reduction case, that rejected private waste companies' challenges to local government control over solid waste based on antitrust, property "takings" and interstate commerce discrimination arguments. Specifically, in the decade following adoption of RCRA, Federal courts in New Jersey, Ohio and Delaware each found flow control regimes to not violate the Constitution's Commerce Clause. During this same period, the private solid waste management industry reached maturity, large private regional landfills were constructed, and commerce in solid waste became a billion dollar business. By the early 1990's, the tide in the courts turned against local governments' exercise of flow control culminating with the Supreme Court's decision in *Carbone*. Today, it appears that the Federal policy favoring integrated systems of solid waste facilities is being replaced by an emphasis on the cheapest disposal option: large regional landfills benefiting from economies of scale. To this extent, compliance with the Federal solid waste hierarchy is jeopardized.

STRANDED INVESTMENTS IN THE WAKE OF CARBONE

What is currently occurring to many local governments in the aftermath of the *Carbone* decision is in many ways similar to the current struggle to deregulate the electric utility industry. In both cases there is a shift from a regulatory regime based on monopolistic practices to a highly competitive and deregulated arena. Additionally, in both cases, there is significant stranded investment that is created by the shift to a free market.

In the case of electric utility deregulation, the electric utilities which were relied upon to make investments to ensure an ample power supply to their customers, are now not assured that these customers will remain to help repay the investments since they are free to shop for other electricity providers. Accordingly, to avoid severe and disruptive economic consequences, Federal and State regulators and policymakers have authorized the utilities to require these customers to assist in repaying the utilities' existing debts over a reasonable amount of time.

The concept of protecting stranded investments makes sense for several reasons. First of all it appeals to a sense of fair play. Those investments were made in good faith under the State and Federal regulatory regime that was in effect at the time. Second, allowing recovery of stranded investments, provides a smooth transition for these existing facilities to operate in a market place with changed ground rules. Third, spreading these stranded investments over the entire customer base results in an equitable and least painful allocation of costs, so no single party bears an undue share. Finally, the recovery period is temporary and is restricted to a reasonable period of time. Eventually these investments will be paid off and the need for protection will end.

SWANA believes that the same rationale which has been applied to the electric utility sector to allow recovery of stranded costs, should be applied to local governments that relied on flow control ordinances to finance investments in solid waste management facilities. Those local governments that, prior to the *Carbone* decision, issued bonds for such investments should be allowed to repay those bonds over the remaining bond financing period by using waste flow control. SWANA supports Federal legislation which would authorize these local governments to exercise flow control for this limited purpose and limited duration.

WHY CONGRESS NEEDS TO ACT

In the *Carbone* decision, Congress was invited to enact legislation to clearly indicate that States and local governments could exercise flow control. However, Congress' failure to do so in the 3 years since *Carbone* has resulted in three major credit rating agencies reevaluating the credit of the billions of dollars in outstanding municipal waste bonds which were issued to finance construction of solid waste management facilities. Eighteen of these bonds have been downgraded, including several to non-investment grade. For the local governments with below investment grade rating, their access to the public market to fund capital projects has either been

eliminated or greatly diminished. For the 21 bond issues that received an unstable credit watch, the cost of future borrowing, by the respective local governments, will certainly increase.

Those who believe that these local governments do not need Federal legislation authorizing flow control have cited the fact that no local government has yet to default on its bonds. However, they fail to acknowledge that the local governments have taken drastic and painful steps to avoid bond defaults at all costs. These steps have included raising property taxes, dipping into other infrastructure accounts, cutting of recycling programs and other environmentally sound solid waste management services, transferring general fund revenues, and laying off scores of employees. Without restoration of flow control authority to repay the bonds, additional financial hardships and adverse environmental consequences are expected with the potential for bond defaults looming larger and larger. We have attached a summary of adverse impacts in *some* of the communities which have been affected by the *Carbone* decision.

Some have also argued that Federal flow control legislation is not needed because some local governments have been able to use alternative constitutional means to ensure that solid waste is delivered to the facilities financed by the bonds. However, the ability of a specific local government to undertake alternatives depends on the scope of authority it was granted under State laws. The hodge podge of State laws, and the time consuming nature of efforts in the States to provide relief to local governments saddled with investments stranded by *Carbone*, underscores the need for timely Federal legislation which uniformly restores to those local governments flow control authority to repay their debts.

Congress has cited the need to end litigation as a primary reason for its drive to reform the Federal Superfund law. Likewise, Congress should end the costly litigation to which local governments that previously exercised flow control are now subject, by validating that flow control authority through enactment of Federal legislation. Local governments and private parties have spent millions of dollars on legal fees since the *Carbone* decision. In addition, in a growing number of these lawsuits, punitive damages are being sought from the local governments. For Example, Hennipen County, Minnesota has already paid \$17 million in such damages and faces a potential damage award in excess of \$154 million.

CONCLUSION

The regulatory regime that local governments operated under prior to *Carbone* was based on Federal and State laws, policies, and court decisions which encouraged the use of waste flow control. It is only fair that local governments which incurred debt pursuant to the prior regulatory regime be given a reasonable period of time to transition to the new "deregulated" arena and recover that debt. Otherwise, these local governments will be subject to significant financial hardships and economic dislocations. Accordingly, SWANA urges Congress to act responsibly by granting those local governments, who were left with stranded debt in the wake of the *Carbone* decision, authority to exercise flow control for the limited purpose of repaying that debt.

MAR 23 1997

CITY OF BALTIMORE
KURT L. SCHMOKE, Mayor



DEPARTMENT OF PUBLIC WORKS
GEORGE G. BALOG, Director
600 Abel Weisman Municipal Building
Baltimore, Maryland 21202

March 17, 1997

The Honorable John H. Chafee
Chair
Senate Environment &
Public Works Committee
SD-410, U.S. Senate
Washington, D.C. 20510

Dear Senator Chafee:

This is in regard to the Senate Committee on Environment and Public Works Hearing to be held on Tuesday, March 18, 1997.

Please accept the enclosed statement as part of the Hearing Record. As Chair of the American Public Works Association's Urban Forum, it is important to our members that local governments be able to retain authority for controlling the flow of waste in their communities.

Very truly yours,

GEORGE G. BALOG
DIRECTOR

Enclosure
GGB/MMC

STATEMENT OF GEORGE G. BALOG, CHAIR, URBAN AFFAIRS COMMITTEE, AMERICAN PUBLIC WORKS ASSOCIATION

Chairman Chafee and Distinguished Members of the Committee on Environment and Public Works: My name is George G. Balog and I am Director of the Baltimore City Department of Public Works, one of the largest Public Works Departments in the Country. I am writing in my capacity as Chair of the American Public Works Association's (APWA) Urban Forum in support of local government authority to control the flow of waste.

The APWA is the largest membership organization of municipal public works agencies and private consultants who help maintain the nation's infrastructure. Our members are entrusted with use of limited public resources to ensure that the roads and bridges we use every day are maintained and safe. We ensure that the water you drink is clean and safe, that trash and recyclables are collected, the landfills maintained—the often invisible services that keep our cities, counties and towns running safely and smoothly.

These invisible services require a huge investment of time, effort and funds in order to support the kind of services our citizens have come to expect and demand. Nowhere is this more evident than in the management of our Solid Waste Stream.

No longer are we simply "picking up the trash." We have incorporated special bulk services, curbside recycling to reduce our trash stream, used regional approaches for disposal plants and composting facilities, sponsored community clean-ups, added an arsenal of new equipment and fostered public information campaigns to educate and motivate our citizens. With shrinking General Fund budgets, innovation is no longer just a dream, its a necessity.

Our communities are faced with stringent Federal and State Environmental Rules and Regulations. In addition, finding appropriate markets for recyclables or waste disposal facilities has not been easy nor always affordable. Many communities have had to make long-term financial commitments in or to facilities which ensure the facilities' financial and operational stability. Flow control has been the logical outgrowth of such conditions.

Since the May, 1994 U.S. Supreme Court decision in *Carbone v. Town of Clarkstown (N.Y.)*, legally binding flow control and related financial arrangements have been thrown into disarray. These arrangements were negotiated and entered into in good faith. For many local governments, these were the only means available to meet environmental standards, goals and their fiscal responsibilities. We believe these efforts should be recognized and "grandfathered" in Federal Flow Control Legislation.

In the city of Baltimore, we have a carefully managed Solid Waste Program that includes: municipal collection of solid waste; a privately owned waste-to-energy plant that burns our municipal waste according to contract-minimum amounts; a City owned and operated landfill which accepts the incinerated waste ash from the waste-to-energy plant as well as other public and private wastes; and private companies which accept recyclables collected by City forces under competitively bid contracts. This balance of public and private cooperation is necessary in order to effectively and responsibly manage the 2,600 tons of solid waste generated every day in Baltimore City.

Local governments carry the burden of safe collection and disposal of Solid Waste for their communities. It is a task which Public Works Departments accept and have been doing quite well for many years. It is a sensible arrangement. But over the years, environmental protection measures mandated by State and Federal Government—much of which has been unfunded—and goal driven programs to reduce waste streams through recycling, makes the job of Solid Waste Management more difficult, more expensive and more complex.

While we recognize the unquestionable authority Congress has in regulating Interstate Commerce, we in APWA's Urban Forum would like Congress to recognize local governments' unique needs in managing Solid Waste. Federal Flow Control Legislation that authorizes local governments to designate facilities where locally generated municipal solid waste is managed will allow for dependable supplies of waste and predictable sources of revenue to make possible reasonable and responsible Solid Waste Management Programs.

We, as Public Works professionals, urge Congress to move quickly and positively to pass Federal Flow Control Legislation. Please help make local governments' difficult job of Solid Waste Management a more reasonable and effective one.

To that end, I offer the resources of my Agency and my colleagues in the APWA Urban Forum to assist in any way we can in this effort.

Thank you.



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Branford -
Dominic A. Buonocore

Bristol -
*Frank N. Nicastro, Sr.
Secretary*

Burlington -
Theodore C. Scheidel, Jr.

Hartland -
William L. Hodge

New Britain -
*Lucian J. Pawlak
Joseph Carilli (Alt.)
Treasurer*

Plainville -
John P. Bohenko

Plymouth -
David M. Dents

Prospect -
*Robert J. Chatfield
Vice-Chairman*

Seymour -
John A. O'Toole

Southington -
John Weichsel

Warren -
Richard Abrahams

Washington -
*Alan J. Chapin
Chairman*

Wolcott -
Siewen Basco

March 14, 1997

The Honorable John H. Chafec
Chairman, Environment and
Public Works Committee
Room SD-410
United States Senate
Washington, D.C. 20510

RE: Municipal Solid Waste Flow Control Legislation --
INCLUSION OF THIS LETTER IN MARCH 18, 1997
HEARING RECORD REQUESTED

Dear Mr. Chairman:

This letter is submitted on behalf of the Bristol Resource Recovery Facility Operating Committee (BRRFOC) in connection with the upcoming March 18, 1997 hearings before the Environment and Public Works Committee that will address, among other things, municipal solid waste flow control legislation. As explained below, there is a pressing need for federal legislation to grandfather existing uses of flow control authority by local government.

By way of brief background, the BRRFOC is a public agency which consists of 14 communities in Connecticut. The need for federal flow control legislation is a direct consequence of the Supreme Court's decision in the C&A Carbone v. Town of Clarkstown case. The BRRFOC communities' reliance on flow control authority had its origin in a decision in the early to mid-1980s, made to a significant extent based on environmental concerns, to reduce our reliance on landfilling as a primary means of managing MSW. We decided to pursue waste-to-energy/resource recovery as part of an integrated system emphasizing waste reduction and recycling. The BRRFOC now has more than \$66,000,000 in debt outstanding for our modern, environmentally first rate waste-to-energy facility. These bonds are backed by the 14 communities participating in the project. Taxpayers will have to pay the debt service on these bonds if the lack of flow control authority results in revenue shortfalls.

BRISTOL RESOURCE RECOVERY FACILITY
OPERATING COMMITTEE

The Honorable John H. Chafee
RE: Municipal Solid Waste Flow Control Legislation
March 14, 1997
Page 2

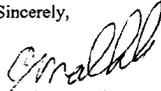
The need for federal flow control legislation is urgent. This is demonstrated by what has been happening to the solid waste bonds of many communities across the United States. As an example of this, Moody's Investors Service (Moody's has been the most active of the rating agencies in terms of reevaluating the creditworthiness of solid waste debt following the Carbone decision) has downgraded as many as 15 solid waste debt issues, and approximately half of those downgrades to below investment grade. Moody's has placed 19 additional solid waste bond issues in the "unstable-credit watch" category due specifically to the absence of federal legislation to "grandfather" flow control authority. As a direct consequence of the absence of federal flow control legislation, communities across the country are having to accelerate depletion of cash reserves, curtail capital expenditures for waste management and other services, terminate recycling and household hazardous waste collection programs, increase local taxes and user fees, and either lay off or terminate considerable numbers of employees.

We are seek legislation that protects communities, like the BRRFOC communities, that had, prior to the Carbone decision, undertaken financial obligations in reliance on flow control authority. Carbone changed the rules "in the middle of the game" and we need legislation that provides a reasonable transition. I should emphasize as well that the legislation we seek would be permissive only, and no local government could exercise flow control authority without approval from the affected state.

Finally, this letter is also being provided to Senator Baucus, Ranking Member of the Environment and Public Works Committee.

In closing, your consideration of BRRFOC's view on this matter is most appreciated.

Sincerely,



Jonathan S. Bilmes, P.E.
Executive Director

JSB:jf

cc: The Honorable Christopher J. Dodd
The Honorable Joseph I. Lieberman
Mr. Duane Nystrom



THE COUNTY OF CHESTER

Commissioners:
Karen L. Martynick, Chairman
Colin A. Hanna
Andrew E. Dinniman

OFFICE OF THE COMMISSIONERS
Courthouse, 2 N. High St., Suite 512
West Chester, PA 19380-3066
(610) 344-6100



March 12, 1997

The Honorable John H. Chafee, Chairman
Senate Committee on Environment and Public Works
410 Senate Dirksen Office Building
Washington, DC 20510-6175

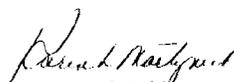
Re: Senate Environment and Public Works Committee Hearing
March 18, 1997 Municipal Waste Flow Control Hearing

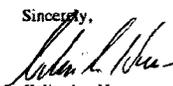
Dear Senator Chafee:

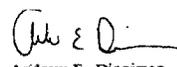
The Chester County, Pennsylvania Board of County Commissioners has endeavored for several months to persuade both the Senate and the House of Representatives to authorize legislation to allow states and local government agencies to implement a comprehensive waste management system that incorporates some degree of "flow control".

We understand that you have scheduled a meeting of your committee to hear discussion on the topic of intrastate municipal waste flow control, in conjunction with interstate municipal waste issues.

We respectfully request that you allow the attached statement to be included in the hearing record.


Karen L. Martynick
Chairman

Sincerely,

Colin A. Hanna
Commissioner


Andrew E. Dinniman
Commissioner

STATEMENT ON
INTRASTATE MUNICIPAL WASTE FLOW CONTROL
PRESENTED BY
THE CHESTER COUNTY, PENNSYLVANIA BOARD OF COMMISSIONERS
TO
THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
TO BE INCLUDED IN THE MARCH 18, 1997 HEARING RECORD

The Chester County Board of Commissioner enacted a municipal waste flow control ordinance on April 2, 1992. The Pennsylvania Department of Environmental Resources required Chester County to enact flow control and indicated that failure to do so would result in a \$10,000 per day State imposed penalty. The County then executed agreements with three local landfills as required by state law to provide long term guaranteed disposal capacity for the County's approximately 380,000 residents and thousands of businesses.

Subsequently, Chester County guaranteed \$41,430,000 in revenue bonds to finance the expansion of the County's primary designated disposal facility to provide the required capacity secured by the County's disposal agreement.

Chester County currently licenses over 100 municipal waste haulers and aggressively enforces its flow control system. The haulers that collect County generated waste are in substantial compliance with the County's flow control system for two reasons: first, because the County's diligent and evenhanded enforcement of its ordinance has created a level and competition-friendly environment for all the haulers; and second, because the County's primary designated landfill has lowered its rates substantially to become market competitive.

Chester County has spent more than \$500,000 of taxpayers' money to-date to enforce the ordinance and to pay legal costs to defend a challenge to the ordinance in the Eastern District Federal Court. The ordinance survived the federal court challenge intact. However, the pressure to overturn the ordinance continues to build as adjacent counties and states abandon their flow control in the face of overwhelmingly expensive legal challenges and unfavorable Court decisions.

If Chester County's ordinance were to be overturned and the County were forced to meet the debt service on the landfill revenue bonds we guarantee, the consequences for all the residents would be of great consequence. County taxes, which are by law solely based on real estate would be over 14%. We would be exposed to claims for potentially millions of dollars in damages from allegedly aggrieved parties as happened in Hennepin County, Minnesota. Our AA credit rating would be lowered, creating increased debt for years to come.

**Senate Committee on Environment and Public Works
March 18, 1997 Hearing on Flow Control
Page 2**

We would be forced to open the door to increased monopolization of the local waste hauling industry, as larger companies that are aggressively pursuing smaller local companies, will be able to better manipulate the market environment and undercut their competition.

We will be unable to promote more advanced and more beneficial, but possibly more expensive privately operated waste management technologies because of the inability to divert a potential commodity from being buried instead of being converted into a value-added product.

For all of these reasons we need the support of Congress to help us maintain control over waste management decisions that are more appropriately made at the local level. We need Congress to recognize that local governments are facing billions of dollars in debt nationwide if it refuses to enact legislation authorizing flow control.

The legislation that has been considered by Congress and is supported by state and local governments is narrowly drawn. It provides a grandfather provision for obligations that were made prior to the 1994 Supreme Court decision and were made to meet governmental responsibilities for the disposal of solid waste.

We need the Congress to help insure the financial integrity of our County by enacting flow control legislation. We seek your immediate assistance with this critical issue.

cc: Senator Arlen Specter
Senator Rick Santorum
Representative Joseph Pitts
Representative Curt Weldon



Dodge County Environmental Quality

22 6th St. East • P.O. Box 337 • MANTORVILLE, MN 55955

PHONE: 507-635-6273 • FAX: 507-635-6265

March 26, 1997

The Honorable John H. Chafee, Chairman
Senate Committee on Environment and Public Works
410 Senate Dirksen Office Building
Washington, DC 20510-6175

RE: Flow Control Legislation

The Honorable John H. Chafee:

Dodge County, Minnesota passed a Waste Flow Control Ordinance in 1986. The Ordinance served as the foundation for our waste prevention system which landfills only 30% of its waste. Most of our waste is incinerated to produce steam and electricity, reducing the demand for other fossil fuels.

Our system cannot compete with landfills (it was not designed to do so). Therefore, without legal flow control authority, we will likely be forced to get into the garbage collection business or subsidize the tipping fee with taxes so we can pay our debt service and meet contract obligations.

Please support flow control legislation that Senators Wellstone and Grams have supported in the past. Please include my letter as a record in the Senate Environment and Public Works Committee hearing on Flow Control and Interstate Waste.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Don Gray".

Don Gray, Chair
Dodge County Board of Commissioners

cc Senator Paul Wellstone
Senator Rod Grams



MAR 10 1997

Dutchess**Dutchess
County
Executive****William R. Steinhilber**
County Executive22 Market Street
Poughkeepsie
New York
12601
(914) 486-2000
Fax (914) 486-2021
or
Fax (914) 486-2001

March 4, 1997

Honorable John H. Chafee, Chairman
Senate Committee on Environment and Public Works
410 Senate Dirksen Office Building
Washington, DC 20510-6175

RE: Interstate/Flow Control Statement

Dear Senator Chafee:

This statement is presented to the Senate Committee on Environment and Public Works for inclusion in the testimony presented at the hearing on flow control and interstate waste, which is scheduled for March 18, 1997.

The homeowners and businesses of Dutchess County have been seriously impacted by the U.S. Supreme Court decision *C.A. Carbone vs. Town of Clarkstown*, which rendered our County flow control ordinance unenforceable. The flow control law in Dutchess County and the Put or Pay Contract with our Dutchess County Resource Recovery Agency (DCRRA) were the underpinning necessary for the Dutchess County Resource Recovery Agency to issue \$40,000,000 revenue bonds to implement our integrated solid waste management system in 1984.

The County has acted responsibly in dealing with its solid waste by systematically closing non-complying landfills, constructing a state-of-the-art resource recovery plant which recovers energy from solid waste and sells steam to IBM and electric to Central Hudson Gas & Electric Corporation, as well as implementing an aggressive recycling and waste reduction program resulting in the recovery of more than 25% of the waste stream here in Dutchess County. None of these programs could have been implemented without the ability of the County to designate specific solid waste management facilities to process our waste and recyclables, therefore, insuring the flow of revenues to pay our debt service and operating expenses. Our system has successfully serviced the residents of our County for approximately ten years by providing environmentally sound solid waste disposal and recycling programs.

The lack of action by Congress to pass flow control legislation that would offset the results of the Carbone case has placed an additional property tax burden on our homeowners and businesses. It has also seriously threatened the viability of our Waste-To-Energy plant and Materials Recovery Facility. In 1995 and 1996 the County government was obligated to pay \$6,500,000 to subsidize debt service payments and operating expenses of our Resource Recovery Agency. The necessity to allocate those funds has a direct impact on our property taxpayers. This subsidy has caused serious negative impacts for the County government in its effort to deliver other necessary mandated federal and state programs. The taxpayer and those in need of service such as the elderly and children, have been the ones who have suffered as County government has had to divert funds from health and human services to subsidize our RRA deficit caused by the Carbone decision.

Honorable John H. Chafee, Chairman
Senate Committee on Environment and Public Works
Page 2

I am specifically requesting that you pass legislation that is similar to that passed by the Senate in 1996 (Senate bill on interstate and waste flow control No. S534). Unfortunately, last year the House of Representatives did not pass similar legislation and therefore, Dutchess County was again left without the power that it needs to control its own destiny. The implementation of this legislation would again empower the County to address its own problems locally and has no fiscal impact on the federal budget.

Dutchess County does not believe that dumping garbage in someone else's backyard is a preferable policy for us. Currently, New York State exports over 3,000,000 tons per year of solid waste to neighboring states and the outlook for the future, once New York City's Freshkills Landfill is closed, is that another 3,000,000 tons per year will hit the roads, waterways and railways destined for Pennsylvania, Ohio, Virginia and who knows where else. Dutchess County needs your help to remain independent, control its own destiny, and to effectively operate its solid waste management system. Your action on this matter is very much appreciated.

Thank you for the opportunity to provide this testimony to the Committee and I hope that you will take appropriate action.

Sincerely,



WILLIAM R. STEINHAUS
County Executive

WRS/sdo

cc: Senator Daniel Patrick Moynihan
Senator Alfonse D'Amato
Congressman Gerald Solomon
Congresswoman Sue Kelly
DCRRA Board
Dutchess County Legislature
Governor George Pataki
C. Scott Daniels, Executive Director, DCRRA
Diane Shea, National Association of Counties

County of Emmet

DEPARTMENT OF PUBLIC WORKS
200 DIVISION STREET
PETOSKEY, MICHIGAN 49770
616 / 348-0640
FAX 616 / 348-0633

March 12, 1997

The Honorable John H. Chafee, Chairman
Senate Committee on Environment and Public Works
410 Senate Dirksen Office Building
Washington, D.C. 20510-6175

RE: Flow Control Legislative Action Needed

Dear Senator Chafee:

Please include the following statement in the hearing record at the Senate Environment and Public Works Committee hearing on Flow Control and Interstate Waste on March 18, 1997:

Emmet County, Michigan has followed the directives of State Act 641 of 1978 regarding the ability to control the flow of waste within the borders of the County. In an effort to reduce waste, conserve natural resources, control costs, and provide County-wide recycling services, the County established a Solid Waste Ordinance in 1991 which includes a provision for Flow Control. This Ordinance was approved by greater than three-quarters of the townships and municipalities in the County.

The results of enforcing flow control in Emmet County have been extremely successful and strongly supported by constituents: Low tipping fees for garbage at the County owned transfer station, a comprehensive and convenient recycling program with drop-off sites and a processing facility, and a permanent household hazardous waste center. All this has been made possible cost-effectively by allowing the County the authority to direct the flow of waste.

The large hauling/disposal companies in the region are lobbying hard to assure that flow control is on its way out, which will increase their profits but hurt the people of Emmet County who voted the Flow Control Ordinance into existence and want to see the benefits of flow control continue in Emmet County.

Flow Control does not hurt the solid waste haulers in the region. It provides a level playing field where they can all compete effectively. Emmet County's transfer station adds a surcharge to all garbage tipped there to support the recycling and household hazardous waste programs provided county-wide. According to a recent survey, Emmet County's Transfer Station has the lowest tipping fee (including the surcharge) of all transfer stations in northern Michigan, even though most provide no additional services to the disposal of garbage.

If Emmet County loses the right to control the flow of garbage, the cost of disposing of garbage, recycling, and all related programs will increase significantly, requiring tax dollars to support a program that is now self-supporting. Please protect the right for Counties to control the flow of waste in the best interests of its constituents.

Millions of dollars have been invested to develop the County's transfer station, recycling processing facility, and household hazardous waste center. All are subject to failure if Flow Control is not protected by the Legislature. The comprehensive solid waste management approach taken here has been a model for rural communities in Michigan for its success and cost effectiveness.

The Honorable John H. Chafee, Chairman
Page 2
March 12, 1997

Emmet County's transfer station facility is the designated facility where solid waste in Emmet County is required to be dumped. And yet it still gets transported to a landfill outside of the County. By competitively bidding the disposal of all of Emmet County's waste in five to ten year contracts, the County gets the best price for the final disposal, and also allows each of the area's private landfills the opportunity to be the recipient of the County's solid waste.

The Emmet County Department of Public Works is the responsible government agency for solid waste management in Emmet County. We have designed and implemented a successful program that reduces waste, encourages recycling, and offers comprehensive resource recovery options. These programs depend on local Flow Control. Support local control so we can continue to get the job done right!

Thank you for your consideration.

Sincerely,



Elisa Seltzer, Director
Department of Public Works

cc: Senator Spencer Abraham
Senator Carl Levin

Sheila Ellis Hibson
DIRECTOR, CONGRESSIONAL RELATIONS

APR 03 1997



ENVIRONMENTAL INDUSTRY
ASSOCIATIONS

March 31, 1997

The Honorable John Chafee
505 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Chafee,

On behalf of Tony Ciofalo and the National Solid Wastes Management Association, I thank you for his opportunity to testify at the March 18 hearings on the impact of restrictions on the movement of solid waste between and within states.

As his testimony noted, Congressional legislation to restore flow control or to enact limits on interstate transportation of solid waste, will only lead to more expensive solid waste services with no corresponding gains in public health or safety. In this letter, I would like to address some of the issues raised during the hearing.

Bonds

Immediately after the Carbone ruling in May, 1994, flow control proponents began warning that their bonds were in danger of default and that investors would suffer losses. One bond rating agency dramatically downgraded the ratings for 14 flow control facility bonds and warned of additional downgradings if Congress didn't act immediately. Now that the sky hasn't fallen, we are told that the "fog" has settled in and that investors and local governments will suffer a long, slow, painful illness.

Yet, reality is far brighter than these gloomy forecasts. Bonds are safe, investors are being paid and the fog is lifting.

In fact, the bond rating agency only downgraded one additional facility's bonds. At the same time, hundreds of solid waste facility bonds remain at their original ratings. Even among the smaller universe of uninsured solid waste facility bonds, only a small minority of flow control facilities have had their bonds downgraded.

Investors are not suffering. None of the downgraded bonds were "AAA" bonds. Of the 15 bonds downgraded by Moody's Investor Service, 13 were originally rated as "A", "Baa" or lower. Investors knew what they were buying. They knew they were purchasing a higher degree of risk in exchange for a higher rate of return on their investment.

Guaranteed Waste Supply

Flow control proponents insist that flow control is necessary to guarantee a sufficient waste supply for their facilities. A Connecticut state official, for instance, testified that flow control is necessary to ensure that Connecticut towns have enough trash to meet their contractual requirements at disposal facilities.

Even when they had legal flow control, many Connecticut communities failed to meet their contractual garbage supply requirements. As Stephen Lynch, president of R. Stephen Lynch & Co., points out, "Well before the Supreme Court's Carbone ruling in May of 1994, significant disadvantages of legally mandated flow control were being experienced by numerous communities. In the late 1980's and early 1990's, as a result of a general economic recession and the growing percentage of waste being recycled, the supply of MSW for incineration or landfill disposal fell short of levels which had been previously projected."

A healthy economy and competitive tipping fees should guarantee that disposal facilities receive enough garbage.

Interstate Waste Restrictions:

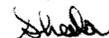
Proponents of restrictions on interstate transportation of solid waste insist that their states need to be protected from the "hazards" of out-of-state waste. They also insist that their disposal capacity is threatened.

Waste is waste. Out-of-state solid waste is no different in composition or environmental threat than in-state solid waste. Both are subject to the same RCRA regulations protecting ground and surface water and air. The origin of the garbage is irrelevant to the environmental protections served by these regulations.

As for the capacity argument, MSW disposal capacity has risen dramatically in the last ten years. In 1985, only 25 states had more than 10 years of disposal capacity. In 1995, 38 states have more than 10 years of disposal capacity.

Americans benefit from the most cost efficient and environmentally safest solid waste management system in the world. It does not need to be fixed.

Sincerely,



Sheila Ellis Hixson
Director, Congressional Relations

STATEMENT OF ANTHONY W. HAYES, DIRECTOR OF PUBLIC WORKS, FALMOUTH, ME

Chairman Chafee and other distinguished members of the Environment and Public Works Committee: I write to you today as a representative of a small community which has been adversely and significantly impacted by the court ruling in the *Carbonne v. Clarkstown* case. Communities are seen as having a legal responsibility to provide some services to its citizens. By law, waste disposal is one of these services. In *Carbonne* the court saw fit to redefine the rules by which municipalities interpreted their responsibilities but also saw that there would be need for Congress to act to mitigate substantial economic harm to some communities.

Before *Carbonne*, area wastes were disposed of at a regionally owned and operated municipal waste to energy plant with commercial waste fees at \$65 per ton. Without flow control we were forced to reduce commercial fees.

After *Carbonne* the same waste is going to the same plant, except at a reduced commercial rate of \$40 per ton. Residential disposal fees have had to increase to \$98 per ton to provide sufficient revenue to the plant to pay long term debt, operating costs, and for pollution upgrades. The losers are the residential customers whose tip fee has increased by more than 50 percent. Businesses have seen no reduction in waste disposal fees from haulers but have seen higher property taxes in the area to help fund residential tip fees which are usually paid for with property tax dollars.

The winners are the waste haulers who have pocketed the tip fee savings.

Almost \$3 million per year in disposal fees have been shifted from commercial haulers to residential taxpayers. This represents a huge windfall for the haulers! No wonder they support the status-quo!

Municipalities and taxpayers must have relief from the financial mess created by a shift in law after the multi-million dollars investment.

While some may feel that the issue of Flow Control has been resolved. I am sure you recognize that is not the case. Just because a story is not front page news does not mean it is not of great significance. Though flow control affects only a portion of the country and only some communities, that impact is severe for many. Falmouth's waste disposal budget increased by nearly 75 percent. If this were an issue impacting all the country, the impact would be more than \$2 billion dollars. Because it does not impact everyone should not be the measure of its importance.

Please return to the near unanimous agreement of several years ago and draft limited grandfathering legislation that addresses the needs of the significant number of citizens impacted by the law court ruling on flow control.

Thank you for the opportunity to comment on this issue.



THE FEDERATION
Of New York Solid Waste Associations

March 14, 1997

The Honorable John H. Chafee, Chairman
Senate Committee on Environment and Public Works
410 Senate Dirksen Office Building
Washington, D.C. 20510-6175

**Statement In Support Of Federal
Solid Waste Flow Control Legislation**

Dear Senator Chafee:

This Federation includes the New York Chapter of the Solid Waste Association of North America, the New York State Association For Solid Waste Management, and the New York State Association For Reduction, Reuse and Recycling, Inc., a combined membership of over 600 solid waste and recycling professionals.

The Federation of New York State Solid Waste Associations strongly supports a federal bill to restore flow control authority to qualified state and local governments. We request that this statement be included in the record for the upcoming hearing by the Senate Environment and Public Works Committee. We also request your support and action to bring a resolve to this critical problem.

In New York State alone, there are 25 communities, many of which are counties or multiple county entities, which have been or are expected to be affected by the flow control issue. Millions of New York State taxpayers are at risk. The aggregate capital investment for solid waste management facilities which used the foundation of flow control exceeds \$1.2 billion.

The awareness of this problem and the need for Congressional action is heightened by the upcoming closure of New York City's Fresh Kills Landfill. This closure will double the quantity of waste exported from New York State (already estimated at 4 million tons annually) and that will certainly push neighboring states to try to block importation. Every Congressional proposal has linked the interstate and flow control issues. In short, flow control is a necessary tool for local communities to manage their solid waste, and it will be even more important with the close of Fresh Kills.

P.O. Box 13461, Albany, New York 12212

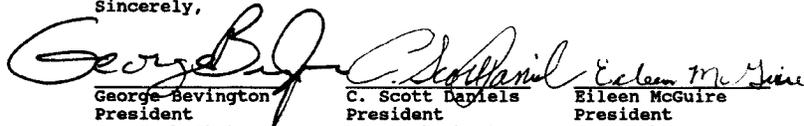
Honorable John H. Chafee
March 14, 1997 - Page 2

Major initiatives in reduction, recycling, waste-to-energy and integrated systems are in jeopardy unless a federal flow control bill is passed. As noted below, there have already been significant financial consequences. And, the award of damages by the federal court in the Hennepin County, Minnesota case is an ominous prospect for New York State communities. The six localities noted below illustrate the breadth and severity of the problem in our state.

- **Dutchess County** - taxpayers paid \$6.5 million more in property taxes in the last 2 years to subsidize the County Resource Recovery Agency.
- **Oneida and Herkimer Counties** - a federal lawsuit threatens to force property taxpayers to pay off \$47 million in bonds.
- **Montgomery, Otsego, and Schoharie Counties** - stopped recycling collection services and face dismantling the entire solid waste management system.
- **Warren and Washington Counties** - face up to a \$2 million shortfall in revenues.
- **Town of Babylon** - lost \$2 million in 1995 alone - 6% of its total town budget.
- **St. Lawrence County** - bond rating lowered as the authority faces a \$1 million short-fall this year. The County will need to borrow up to \$3 million to subsidize the authority.

We recognize that the Senate passed a flow control bill, now nearly two years ago. But we request that you renew your efforts because local governments continue to face increased financial obligations for the elderly and children who have suffered as County governments divert funds from health and human services to subsidize solid waste management.

Sincerely,



George Bevington President New York State Association For Solid Waste Management	C. Scott Daniels President New York Chapter Solid Waste Association of North America	Eileen McGuire President New York State Association For Reduction, Reuse, and Recycling, Inc.
---	---	--



REDUCE • REUSE • RECYCLE

FULTON COUNTY
DEPT. OF SOLID WASTE
P.O. Box 28
JOHNSTOWN, NY 12095

(518) 762-0501
FAX: (518) 762-2859

George Bevington, Director

March 17, 1997

Honorable John Chafee, Chairman
Senate Committee on Environment and Public Works
410 Senate Dirksen Office Building
Washington, DC 20510-6175

Dear Senator Chafee:

It is my understanding that further discussion on the effects of the loss of solid waste flow control authority could possibly occur during the next several weeks. I hope this is the case, since this issue is extremely important to Fulton County and other municipalities across the nation.

Fulton County owns and operates an integrated solid waste system, including several rural transfer stations, a new landfill, and a recycling collection and processing center. This complex system for a small, rural county, (population 55,000), was not cheap. Over \$21 million has been invested during the last decade for the infrastructure and \$5 million is spent annually to operate the system. This investment of public funds has been made to properly manage solid waste. The lack of flow control authority jeopardizes the accomplishments:

- Our integrated system is threatened by the loss of revenue to non-compliant facilities which could result in difficulty paying off bonds.
- A loss of revenue would certainly result in the elimination of garbage subsidized programs, namely our curbside recycling collection system and processing facility.
- Our system is currently NOT subsidized by taxes; if revenue losses occur, the money would undoubtedly be added to the backs of the taxpayers.

Senator Chafee
March 17, 1997
Page 2

Fulton County, and other municipalities, need flow control. Please use your influence in Washington to pass the necessary legislation. I request that this letter be added to the record for the upcoming hearing by your Environment and Public Works Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "George", written in a cursive style.

George Bevington
Director

cc: Senator Alfonse D'Amato
Senator Daniel Patrick Moynihan
Congressman John McHugh



Old Town Hall, Rts. 25 & 111
 Brookfield, CT 06804
 Phone (203) 775-6256
 Fax: (203) 740-9167

March 17, 1997

The Honorable John H. Chafee
 Chairman, Environment and Public Works Committee
 Room SD-410
 United States Senate
 Washington, DC 20510

Re: Municipal Solid Waste Flow Control Legislation --
 INCLUSION OF THIS LETTER IN MARCH 18, 1997 HEARING RECORD
 REQUESTED

Dear Mr. Chairman:

This letter is submitted on behalf of the Housatonic Resources Recovery Authority ("the Authority" or "HRRA") in connection with the upcoming March 18, 1997 hearings before the Environment and Public Works Committee. Those hearings will address municipal solid waste flow control (and interstate waste transportation) legislation. Federal legislation to grandfather existing uses of flow control authority by local government is a critical need for the communities that comprise the Authority.

This urgent need for federal flow control legislation is a direct consequence of the Supreme Court's decision in the C&A Carbone v. Town of Clarkstown case. HRRA's reliance on flow control authority had its origin in a decision made in the early to mid-1980's to reduce significantly our previous reliance on landfilling as a primary means of managing MSW. The HRRA member communities evaluated a broad range of alternatives. After that process was completed, our communities decided to pursue waste-to-energy/resource recovery as part of an integrated system emphasizing waste reduction and recycling.

Today, HRRA faces destruction of the integrated waste management system that our citizens have so diligently developed since the 1980's. A key example is diversion of recyclables -- skimming the most profitable recyclables by haulers has deprived HRRA of a significant portion of the revenues that were pledged as a base component of the financial structure underlying our integrated waste management system. The loss of recycling revenue has already forced HRRA to cancel a forward-looking program to recycle construction and demolition debris. To make matters worse, deliveries of municipal solid waste to HRRA's facilities have, like recyclables, also plummeted due to the absence of federal flow control legislation -- deliveries declined 41% in February 1997 from the February 1996 level.

Our user fee based waste management system cannot continue to operate with the revenue deficits that we are sustaining, and the difference will have to be made up by increased taxes on our citizens.

Without further belaboring this matter, the need for federal flow control legislation is paramount to HRRRA and scores of other similarly-situated communities throughout the United States. Accordingly, we seek legislation that protects the HRRRA communities and other similarly-situated communities that had undertaken financial obligations in reliance on flow control authority prior to the Carbone decision. Carbone changed the rules "in the middle of the game"; we need federal legislation that provides a fair and reasonable transition to the new rules.

Your consideration of HRRRA's views on this matter is certainly appreciated. I should also note that this letter is being provided to Senator Baucus, Ranking Member of the Environment and Public Works Committee.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert Palmer", with a long horizontal line extending to the right.

Robert Palmer
Director
Housatonic Resources Recovery Authority

cc: The Honorable Christopher J. Dodd
The Honorable Joseph Lieberman
Mr. Duane Nystrom

The Solid Waste Disposal Authority of the City of Huntsville

EDDIE L. COKER
Executive Director
JAMES R. LEDBETTER
Chairman
DR. B. JEANNE FISHER
Vice Chairman
EDWARD J. OTTMAN, JR.
Secretary/Treasurer

March 14, 1997

FREEMAN HOUFIELD
Board Member
DOUGLAS C. MARTINSON, SR.
Board Member
S. MICHELLE OWENS
Executive Secretary

The Honorable John H. Chafee
Chairman, Environment and
Public Works Committee
Room SE-410
United States Senate
Washington, DC 20510

RE: Municipal Solid Waste Flow Control Legislation --
***INCLUSION OF THIS LETTER IN MARCH 18, 1997 HEARING
RECORD REQUESTED***

Dear Mr. Chairman:

This letter is submitted on behalf of the Solid Waste Disposal Authority of the City of Huntsville, Alabama ("the Authority") in connection with the upcoming March 18, 1997 hearings before the Environmental and Public Works Committee that will address, among other things, municipal solid waste flow control legislation. As explained below, there is a pressing need for federal legislation to grandfather existing uses of flow control authority by local government.

The need for federal flow control legislation is a direct consequence of the Supreme Court's decision in the C&A Carbone v. Town of Clarkstown case. The Authority's reliance on flow control had its origin in a decision in the mid-1980's, made to a significant extent based on environmental concerns, to reduce significantly our previous reliance on landfilling as a primary means of managing MSW. After a thorough evaluation of alternatives, we decided to pursue waste-to-energy/resource recovery as part of an integrated system emphasizing waste reduction and recycling. The Authority now has more than \$120,000,000 in outstanding debt for our modern, environmentally advanced waste-to-energy facility. Immediately preceding issuance of the bonds, the Authority entered into a 25 year agreement with the U.S. Government to provide energy from combustion of waste to Redstone Arsenal. As a result of this agreement, the U.S. Government avoided a ±\$80,000,000 investment to replace the obsolete steam generating equipment on Redstone.

March 14, 1997

Page Two

The need for federal flow control legislation is urgent. This is demonstrated by what has been happening to the solid waste bonds of many communities across the United States. As an example of this, Moody's Investors Service has downgraded 15 solid waste debt issues -- approximately half to below investment grade. Moody's has placed 19 additional solid waste bond issues in the "unstable-credit watch" category due specifically to the absence of federal legislation to "grandfather" flow control authority. This troubling situation continues to worsen, accelerate depletion of cash reserves, curtail capital expenditures for waste management and other services, terminate recycling and household hazardous waste collection programs, increase local taxes and user fees, and terminate employees.

We seek legislation that protects communities, like the City of Huntsville and the Authority, that had, prior to the Carbone decision, undertaken financial obligations in reliance on flow control authority. Carbone changed the rules "in the middle of the game" and we need legislation that provides a fair and reasonable transition.

In closing, your consideration of the Authority's views on this matter is most appreciated. Also, I will be providing a copy of this letter to Senator Baucus, Ranking Member of the Environmental and Public Works Committee.

Sincerely,



Eddie L. Coker
Executive Director

ELC/mo

cc: The Honorable Richard C. Shelby
The Honorable Jeff Sessions
Mr. Duane Nystrom
SWDA Board of Directors
Scott Duboff, Esq.
Charles Younger, Esq.



COUNTY of ISLE OF WIGHT
THE COURTHOUSE

March 20, 1997

Mr. Duane Nystrom
415 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Nystrom:

On behalf of the Isle of Wight County Board of Supervisors, I am corresponding with you to advise that Isle of Wight County supports the prompt passage of waste flow control legislation.

Isle of Wight County is a member jurisdiction of the Southeastern Public Service Authority of Virginia (SPSA). SPSA is a political subdivision of the Commonwealth of Virginia and was established in 1976 to provide integrated municipal solid waste management services. At the time the eight (8) member local governments joined together to comprehensively manage their solid waste, there was no private sector options available.

Each of the communities has contracted to deliver or cause to be delivered to SPSA at least 95% of the solid waste generated within each member community. These contracts were executed in the early 1980s and provided the necessary financial support for the issuance of municipal revenue bonds by SPSA. An integrated regional waste management system was constructed. The system includes a waste-to-energy plant providing power to the United States Navy, a refuse derived fuel plant, a landfill, eight (8) transfer stations, and an extensive recycling program. SPSA's current revenue bond debt is in the amount of approximately \$260,000,000.

During the early 1990s, eight (8) large private landfills were developed in Eastern Virginia. Following the May, 1994 Supreme Court decision in

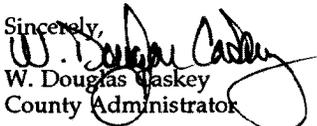
Mr. Duane Nystrom
March 20, 1997
Page 2

Carbone vs. Town of Clarkstown (NY), the diversion of waste to these landfills has caused SPSA to experience a steady and dramatic loss of commercial waste. This loss has exceeded 25% from 1994 to 1996 and the decline continues. This same loss of waste has led to a 43% increase in the tipping fee and a downgrading of SPSA's municipal bonds.

It is important to note that these municipalities in Southeastern Virginia made heavy financial commitments when there were no other options available. They acted responsibly to comply with Federal environmental policy and, in fact, received direct Congressional support in the creation of a waste-to-energy system with the United States Navy. They followed to the letter the waste management hierarchy established by the U.S. EPA in its report, *The Solid Waste Dilemma: An Agenda for Action*. Without flow control legislation, SPSA and its member communities will continue to experience the adverse financial consequences brought about by the diversion of waste.

It is unfair to the communities and the bondholders to have the rules changed in mid-stream. The communities and the bondholders should be protected through the enactment of flow control legislation.

We appreciate the opportunity to submit these comments on this very important matter. Please include this letter as part of the record of the Senate Committee on Environmental and Public Works on the subject of waste flow control and interstate waste.

Sincerely,

W. Douglas Gaskey
County Administrator

WDC:chm

cc: The Honorable John W. Warner
The Honorable Charles S. Robb
Mr. Durwood S. Curling, Executive Director, Southeastern Public
Service Authority of Virginia

SOLID WASTE DIVISION
 Waste-to-Energy Facility
 District Heating and
 Cooling Operations
 Landfill Operations
 Recycling
 Resource Recovery

WATER AND SEWER DIVISION
 Financing
 Construction
 Operation



Board of Public Works

JERRY O. KOJIMAN
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DAVID H. MORREN
 BEV REKENY

CURT A. KEMPPAINEN
 Director

March 17, 1997

The Honorable John H. Chaffee, Chairman
 Senate Committee on Environment and Public Works
 410 Senate Dirksen Office Bldg.
 Washington, D.C. 20510-6175

RE: SOLID WASTE FLOW CONTROL

Dear Senator Chaffee:

This correspondence is a statement for the public hearing before the Senate Committee on Environment and Public Works to be held on March 18, 1997 concerning solid waste flow control. I ask that this statement be included in the hearing record.

On March 12, 1997, the Kent County Board of Public Works (BPW) adopted a resolution to reduce the disposal rate at our Waste-to-Energy Facility (WTE). The rate was reduced because waste haulers threatened to significantly lower their solid waste deliveries to the WTE. A reduction in solid waste deliveries would have serious operational and economic effects. The following will explain how this all came about and the major financial predicament the County is facing.

After the U. S. Supreme Court ruled in *Carbone v Town of Clarkston*, that "flow control ordinances" violated the Commerce Clause of the U. S. Constitution, Kent County had to develop a plan to insure solid waste delivery to the WTE. The County developed and entered into "Interim Delivery Agreements" with most waste haulers in August 1994. The Agreements require haulers to deliver their designated *pro rata* or "quota" share of the WTE's capacity for an interim period (i.e., until Congress enacts flow control legislation). These agreements ensured sufficient waste for the operation of the WTE while forestalling legal challenges to our flow control ordinances under *Carbone*, until Congress enacts flow control legislation. Since they were intended to be only an interim arrangement, the Agreements are terminable by haulers anytime.

Unfortunately, Congress has still not acted on flow control legislation nearly three years after the *Carbone* decision. Last month, Waste Management, Inc. and United Waste (which collectively represent approximately 62% of the waste flow to our WTE) requested the immediate renegotiation of the Interim Delivery Agreements and reductions in their solid waste delivery quota. They have threatened to unilaterally reduce their quota set forth in the Agreement if their demands are not met. This situation places the County in a very onerous position. Our options are limited -- which poses increased risk exposure on our bond indebtedness.

Earl G. Woodworth Building • 1500 Scribner Avenue, N.W. • Grand Rapids, Michigan 49504-3298
 Telephone: (616) 336-3694 Facsimile: (616) 336-3328 E-Mail address: kcdpw@dpw.co.kent.mi.us

**BOARD OF PUBLIC WORKS
OF THE COUNTY OF KENT**

Sen. J. Chaffee
March 17, 1997
Page 2

The BPW had few choices to insure solid waste deliver to the WTE. They could have taken legal action, but in light of earlier court decisions, an attempt to enforce the flow control ordinances would likely not be successful. Meanwhile, waste haulers may stop all deliveries to the WTE.

The only other short-term option was to lower the disposal rate at the WTE (resolution attached). Lowering the rate for the remainder of 1997 will cost the County \$2.2 million. If this problem goes beyond 1997, funds to support the facility may have to be covered from the County General Fund at the expense of other programs.

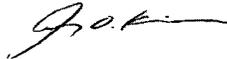
Kent County, in good faith, implemented waste-to-energy as an alternative to solid waste landfills. At that time we received a U. S. Environmental Protection Agency, Urban Policy Grant for this purpose. Now the rules have changed, placing the County in a very difficult financial position.

In addition, November 1, 1997, the County is planning to refinance \$82.5 million in general obligation debt for the WTE in an attempt to lower interest rates and save money. Because rating agencies are asking questions concerning our ability to direct waste to the facility, our credit rating is at risk.

Your support for the immediate passage of flow control legislation is requested.

Sincerely,

KENT COUNTY BOARD OF PUBLIC WORKS



Jerry O. Kooiman
Chairman

c-
Senator Carl Levin
Senator Spencer Abraham
Pat Malone, Chairman, KCBOW



King County

March 14, 1997

The Honorable John H. Chafee
Chair, Senate Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510-6175

Dear Senator Chafee:

King County is aware that the Senate Environment and Public Works Committee has scheduled a hearing on March 18, 1997 to discuss the need for federal legislation to reestablish solid waste flow control authority for local governments. The purpose of this letter is to state for the hearing record that King County wishes to see flow control legislation passed by the 105th Congress.

Flow control authority is an issue of major concern to King County because of the considerable financial impact the lack of flow control authority will have on our ability to provide solid waste management services to the residents of King County. The key reasons why flow control is important to the County are as follows.

- The County provides solid waste transfer and disposal services to approximately one million citizens and businesses located in urban and rural King County, excluding the City of Seattle. These services include comprehensive planning, waste reduction and recycling, and transfer station and landfill disposal.
- Like many local governments, the County has incurred significant debt to provide solid waste management services. The outstanding debt for the County is approximately \$90 million. This debt is paid for through fees charged at disposal sites. If local flow control authority is lost, outstanding debts will remain but may have to be paid, in part, with tax revenue that is currently used to pay for other services.
- The County is also liable for federally mandated landfill closure and post-closure maintenance costs for the Cedar Hills Regional Landfill. The outstanding liability is approximately \$25 million. These costs are also paid for through disposal fees. If the County is unable to generate sufficient disposal fee revenues, the closure costs may also have to be paid with tax revenue that is currently used to pay for other services.



RECYCLE
PAPER

The Honorable John H. Chafee
March 14, 1997
Page 2

In order to meet King County's needs for all of the types of solid waste it manages, a flow control bill must contain three elements:

- Permit flow control to solid waste facilities, or systems of facilities, where flow control was implemented before May 15, 1994;
- Maintain flow control until a local governments' outstanding bond debts are paid and contractual obligations have been fulfilled; and
- Allow flow control to facilities for which construction permits have been obtained, contracts were in effect, bonds were issued, or construction and operating permit applications filed prior to May 15, 1994.

In closing, we thank you for the attention and consideration being given to this important issue. If you have any questions or if you would like additional information, please contact any of us at the numbers below, or Rodney G. Hansen, Solid Waste Division Manager, at (206) 296-4385.

Sincerely,



Ron Sims
King County Executive
(206) 296-4040



Jane Hague
Chair, King County Council
(206) 296-1011



Louise Miller
Chair, Utilities and Natural Resources Committee
King County Council
(206) 296-1003

RS:jl

cc: Senator Slade Gorton
Senator Patty Murray



Marion County

OREGON

BOARD OF COMMISSIONERS

(503) 588-5212

March 14, 1997

**BOARD OF
COMMISSIONERS**

Randall Franke
Gary Heer
Mary Pearmine

**ADMINISTRATIVE
OFFICER**

Ken Roudybush

The Honorable John H. Chafee
Chairman, Environment and
Public Works Committee
Room SD-410
United States Senate
Washington, DC 20510

Re: Municipal Solid Waste Flow Control Legislation --
INCLUSION OF THIS LETTER IN MARCH 18, 1997 HEARING
RECORD REQUESTED

Dear Chairman Chafee:

This letter is submitted on behalf of Marion County, Oregon and addresses municipal solid waste flow control legislation, as well as the upcoming hearings (March 18, 1997) before the Environment and Public Works Committee concerning flow control and interstate waste transportation legislation.

The need for federal flow control legislation is a direct consequence of the Supreme Court's decision in the C & A Carbone V. Town of Clarkstown case. Flow control is a fundamental tool that has allowed Marion County to implement our local decisions as to how to best manage our community's municipal solid waste. This has included not only development of our environmentally advanced waste-to-energy facility, but also a comprehensive, integrated MSW management system that addressed all components of solid waste management--waste reduction, reuse, recycling, composting, combustion with energy recovery and landfilling. It takes all of these components to have a successful program, one that addresses more than just disposal of waste.

Those who oppose flow control have a much narrower, short-term focus--disposal of waste at the best price available today without the long-term financial and managerial responsibility of an integrated system. That viewpoint overlooks the fact that although all of us are quite willing to pay to have our

trash hauled away, many critical municipal solid waste management services, such as recycling, household hazardous waste collection, battery collection and educational programs, cannot produce any revenue and instead impose substantial costs. Flow control allows Marion County and many other similarity situated communities to generate the funds required to support these programs without having to rely on taxes, and our approach is directly encouraged by long established federal policy. *See, e.g.,* U.S. EPA, *Variable Rates in Solid Waste: Handbook for Solid Waste Officials*, Volume I-Executive Summary 2, EPA 910/9-90-012a (June 1990) (discourages use of general taxes to fund solid waste management because no incentive to reduce waste volume is provided and encourages volume based user fees).

Without flow control authority Marion County would lose its ability to provide many programs that are necessary to reduce waste volume and manage our MSW in the most environmentally sound manner. Here are just a few examples of those programs:

- **Master Recycler Program.** This program provides classroom instruction to Marion County residents regarding waste reduction and recycling.
- **Backyard "Composters at Cost"** Marion County has coordinated with landscaping nurseries and various local retailers to sell backyard composters at cost to our residents.
- **"Paint Back"** Marion County has a program for collecting unwanted household paint. The paint is collected and remixed, and then redistributed to local fire departments and police stations for use by the public to paint over graffiti.
- **Recycling Grant Program.** Marion County uses part of our flow control-derived revenues for grants that are awarded to outstanding programs and educational activities that will advance Marion County's waste reduction and recycling policies.

These programs were developed to make long-term gains in our efforts to reduce the amount of waste that has to be disposed by our citizens. Our efforts have already paid off. We are recycling at a 28 percent rate today, and our goal is to reach the 35-40 percent level by the year 2000.

Without further belaboring these matters, Marion County seeks legislation that protects communities that had, prior to the *Carbone* decision, undertaken financial obligations in reliance on flow control authority. Without flow control authority, the excellent progress that Marion County has made for the benefit of

our environment--sizeable reductions in waste generation and significant increases in recycling--will simply not be able to continue.

This letter is being provided to Senator Max Baucus, Ranking Member of the Environment and Public Works Committee.

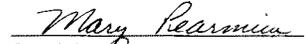
Thank you for your consideration.

Sincerely,

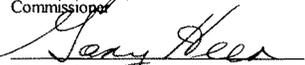
MARION COUNTY BOARD OF COMMISSIONERS



Chair



Commissioner



Commissioner

c: The Honorable Ron Wyden
The Honorable Gordon Smith
✓Mr. Duane Nystrom

463



MECKLENBURG COUNTY
Board of County Commissioners

March 17, 1997

The Honorable John H. Chafee
Senate Committee on Environment & Public Works
410 Senate Dirksen Office Building
Washington, DC 20510-6175

Dear Senator Chafee:

We understand that on March 18, 1997 your committee will be holding a hearing on Flow Control and Interstate Waste. Mecklenburg County, North Carolina has been significantly impacted by the lack of flow control. Enclosed is a summary of this impact that we would like to be included in the hearing record.

We appreciate you taking the time to hold a hearing on this issue which has had an extreme impact on our county.

Sincerely,

A handwritten signature in cursive script that reads "H. Parks Helms".

H. Parks Helms,
Chairman

HPH:CS/vlt

Enclosure

PEOPLE • PRIDE • PROGRESS

720 East Fourth Street • P.O. Box 31787 • Charlotte, North Carolina 28231 • (704)336-2472

Mecklenburg County, N.C. - Impact of No Flow Control

On June 17, 1991, Mecklenburg County entered into an amended and restated contract with BFI, Inc. to provide landfill services for all county waste that was not incinerated or recycled. Mecklenburg County planned to direct all waste to the BFI Landfill and the County incinerator to meet contractual obligations. All of this was in accordance with a County solid waste management plan that was adopted by the county and six municipalities (Charlotte, Huntersville, Davidson, Cornelius, Pineville, and Mint Hill) between 1988 and 1989 and amended in 1990 and 1992. In November 1991, after a public hearing, the county adopted a flow control ordinance and in early 1992 directed all private haulers to take their waste to the BFI Landfill beginning April 1992.

The county was then sued by a local hauler and enjoined from enforcing the flow control ordinance against the hauler. Later in 1992, after months of discussion, BFI filed suit against Mecklenburg County for failure to send all waste to the BFI Landfill. This was followed by months of negotiations and in June 1993 Mecklenburg County entered into a settlement contract with BFI that requires the county pay BFI 60% of the lowest use fee for all county waste that is not delivered to the BFI Landfill and is not recycled or incinerated. This is essentially a "put or pay" contract. Since July 1993, Mecklenburg County has paid BFI more than \$6.5 million in penalties for waste that BFI did not receive. The county's contract with BFI runs through June 30, 2001.

MINNESOTA  OFFICE OF
Environmental Assistance

March 17, 1997

The Honorable John H. Chafee
 Chair, Senate Environment and Public Works Committee
 505 Dirksen Senate Office Building
 United States Senate
 Washington D.C. 20510-3902

Dear Chairman Chafee and Members of the Environment and Public Works Committee:

The State of Minnesota urges you to support the passage of "flow control" legislation to enable Minnesota counties to protect public health and manage waste in the most environmentally responsible manner.

Some time ago, Minnesota took significant steps to curtail the environmental threats posed by landfills. Besides closing most of the state's landfills and implementing successful recycling programs (over 45% of Minnesota's solid waste is recycled), many Minnesota communities developed alternative disposal methods such as composting and waste-to-energy facilities. These facilities handle about one-third of the state's solid waste. Due to the loss of flow control authority, a significant amount of Minnesota's garbage is now going to out-of state landfills instead of to Minnesota's more environmentally responsible facilities. This "flow" of solid waste to out-of state landfills undermines Minnesota's resource recovery policy, creates long-term environmental threats and forces Minnesota communities to subsidize environmentally superior facilities through higher taxes or service fees. Minnesota is being penalized for protecting the environment.

Thus, Governor Arne Carlson asked us to reiterate his Administration's support of federal legislation that would restore the flow control authority to those communities that had entered into legally binding contracts for delivery of municipal solid waste to designated waste management facilities prior to May 15, 1994, although the community may not have been exercising that authority on that date. We emphasize this latter point because Minnesota is a unique situation. In 1993, (prior to the U.S. Supreme Court, *C&A Carbone v. Clarkstown* decision of May 15, 1994) a Minnesota Federal District Court decision finding flow control unconstitutional led a number of Minnesota communities to terminate, suspend, or otherwise not enforce their flow control authorities or contracts before the U.S. Supreme court decided the *Carbone* case on May 15, 1994. Thus, Minnesota communities not utilizing their flow control authority at the time of the *Carbone* decision will be excluded from the benefit of flow control legislation if May 15, 1994, is used as the date to restore flow control authority. Accordingly, we urge you to include in any flow control legislation language that would give these Minnesota communities the same authority as other communities around the country that were unaffected by the 1993 Minnesota Federal Court decision.

The situation for local governments in Minnesota has reached a critical state. In March 1996, a Federal court ruled in favor of a group of 12 waste haulers and processors who claimed that a

Regional offices in Brainerd, Detroit Lakes, Duluth, Marshall and Rochester

520 Lafayette Road N • 2nd Floor • St. Paul, MN 55155-4100 • 612-296-3417 • Toll Free 800-697-3843 • Fax 612-215-0246

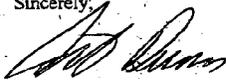
county could be held liable for damages resulting from its enforcement of a designation ordinance (Ben Oehrleins, Inc. v. Hennepin County). In August 1996, a jury implementing the ruling awarded three of the plaintiffs \$7.1 million as compensation for the higher costs that were paid as a result of the county's designation ordinance. The county will have to recover the cost, most likely through fees carried on property taxes. Later in 1996, Wright County was forced to temporarily close their compost facility. Unless the County can guarantee a minimal flow of waste to the facility, the facility will remain closed. The community will lose the environmental and health benefits of the compost facility and will be forced to repay the debt through taxes. In yet another case, a class action suit brought on behalf of waste generators, who lived in Hennepin County between June 1989 and April 1996, and directly paid for garbage removal service, has been filed against Hennepin County. The plaintiff's experts say that Hennepin County stands to lose \$150 million dollars. However, since the waste generators are tax payers, in reality the generators are suing themselves. As these cases demonstrate, the loss of flow control authority has far reaching consequences for local governments.

Although we express support for and the need of flow control for Minnesota's communities, Governor Carlson realizes that restoring flow control authority may not be an appropriate long-term solution. Accordingly, Minnesota will take steps to ensure that the very powerful governmental tool of flow control is not abused and that Minnesota's waste disposal markets remain competitive and primarily in private hands. Toward that end, Minnesota is re-examining its waste management systems and policies to find ways to reduce the state's dependence on this tool.

The passage of flow control legislation has broad support from both the private and public sectors. The American Public Works Association, the Minnesota Association of Counties, the Minnesota Waste Association, the National Association of Counties, the National Association of Cities and the Solid Waste Association of North America have all gone on record in support of flow control. In addition, Arkansas, Delaware, Florida, Indiana, Iowa, Kansas, Maryland, Michigan, Mississippi, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Pennsylvania and Virginia have signed an amicus brief written by the State of Minnesota in support of flow control.

Once again, we urge you to support the passage of flow control legislation that will "grandfather" Minnesota communities. Please feel free to call us at (612) 215-0283 if you have any questions or want additional information regarding Minnesota's waste management system.

Sincerely,



Art Dunn
Acting Director
Minnesota Office of Environmental Assistance



Peder Larson
Commissioner
Minnesota Pollution Control Agency

cc: Governor Arne Carlson
Representative Thomas Bliley, Jr.
Minnesota Congressional Delegation

**THE WASTE SYSTEM AUTHORITY OF EASTERN MONTGOMERY COUNTY**

P.O. Box 311, Stony Creek Office Center, 151 W. Marshall Street,
Bldg. #3, Suite #100, Norristown, Pa. 19401-0311
Phone: (610) 278-3045 - Fax: (610) 278-3713

March 31, 1997

Senator John H. Chafee
United States Senate
Committee on Environment & Public Works
Washington, DC 20510-6175

Dear Senator Chafee:

Thank you for acknowledging my request to testify at the March 18 hearing on flow control and interstate waste. While I did not testify, I did attend the hearing and I did contribute information on Montgomery county's flow control dilemma to the National Coalition for Flow Control's testimony.

Had I been able to testify, I would have told the Committee members that 24 eastern Montgomery County, Pennsylvania municipalities with more than 430,000 residents have already begun to suffer economic hardship as a result of the 1994 United States Supreme Court's ruling on flow control in the Carbone decision. They desperately need Federal flow control legislation to avert a financial crisis in 1998 and to obtain favorable refinancing in 1999.

These communities banded together in the late 1980's to ensure environmentally sound disposal capacity for their municipal waste. Together they secured financing for a \$150 million waste-to-energy plant by committing to direct all the municipal waste generated within their boundaries to the plant at a tipping fee sufficient to cover debt service, operation and maintenance and other expenses. The value of any delivery shortfalls must be paid by these municipalities.

As a result of the Carbone decision, Montgomery County residents will have paid an additional \$6.7 million in subsidies by year-end to keep commercial haulers in the system and avoid renegeing on their contracts. If they could afford it, in 1998 these subsidies could balloon to nearly \$11 million. It is extremely doubtful these municipalities could absorb such an increase. Without Federal flow control legislation, the reward for these communities obtaining waste disposal self-sufficiency could be default.

Morris County Municipal Utilities Authority

P.O. Box 370
 Mendham, New Jersey 07945-0370
 Main No. (201) 285-8383 • Telecopier (201) 285-8397

Solid Waste Division
 (201) 285-8390



Water Division
 (201) 285-8380

March 17, 1997

VIA FAX

Senator Frank R. Lautenberg
 506 Senate Hart Office Building
 Washington, D.C. 20510

Re: Waste Flow Control and Interstate Waste

Dear Senator Lautenberg:

The Senate Environment and Public Works Committee has scheduled a hearing on Waste Flow Control and Interstate Waste for March 18, 1997. Senator Lautenberg, it is extremely important to Morris County and to the State of New Jersey that waste flow control legislation be enacted by Congress immediately. Legislation needs to be enacted that adequately protects outstanding debt and other financial obligations incurred by counties which rely on flow control, and that protects the ability of counties to continue to properly manage solid waste through contracts and franchises. I am concerned that Congressional inaction on waste flow control will result in: stranded facilities; increased taxes to support the facility debt, operation costs, and other publicly demanded environmental services; and, a greater risk of improper disposal practices.

I request that you attend and testify at the March 18th hearing to confirm how important waste flow control is to New Jersey. Your efforts in this regard are appreciated. If you need any information or have any questions, please contact me. Thank you.

Sincerely,

Glenn Schweizer
 Executive Director

GS/mr

cc: Hon. John H. Chafee, Chairman

Offices Located at 300 Mendham Road (Route 24), Morris Township

TOTAL P. 03



HARGOVIND S. PATEL
Director of Finance/Comptroller

CITY OF NEWBURGH

CITY COMPTROLLER'S OFFICE

CITY HALL
NEWBURGH, NEW YORK
12550

Phone (914) 569-7322 FAX (914) 569-7370

March 11, 1997

Senate Committee on Environment and Public Works
Attn: Duane Nystrom
415 Hart Senate Office Building
Washington, DC 20510

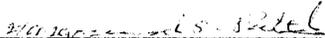
Re: Support of Flow Control Legislation

Dear Sirs:

I have already sent to you information regarding the above subject matter almost ten months ago. However, for your ready reference, enclosed are eight key points supporting flow control legislation.

I urge you to support this legislation.

Respectfully submitted,


Hargovind S. Patel
Faculty Member

Enclosure

HSP/edp

cc: Sen. Alfonse M. D'Amato
Sen. Daniel P. Moynihan
Cathy Spain



HARGOVIND S. PATEL
Director of Finance/Comptroller

CITY OF NEWBURGH

CITY COMPTROLLER'S OFFICE

CITY HALL
NEWBURGH, NEW YORK
12550

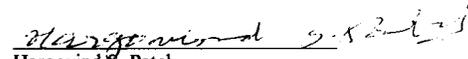
Phone (914) 569-7322 FAX (914) 569-7370

Key Points in Support of Flow Control Legislation

- * The U.S. Supreme Court decision in *Carbone V. Town of Clarkstown (NY)* changed in the rules in the middle of the game for local communities that relied on flow control authority and made significant commitments based on flow control arrangements. These financial commitments need to be protected in a flow control bill. To ignore them is unfair.
- * Flow control legislation is needed because governments are experiencing adverse financial consequences. Some of the impacts are staff reductions; tax and fee increases; bond rating reductions and the threat of additional downgrades; reduced market access and higher financing costs; legal, underwriting and other costs associated with refinancing troubled debt; a reduction in services; the threat of litigation; legal expenses; payment of damage awards; and the transfer of monies from other programs resulting in cutbacks.
- * The federal government and state and local governments are partners in our federal system. The federal government should be helping local government to live up to their financial commitments made when flow control was permitted. Unlike other federal actions that are needed to help local governments, the passage of flow control legislation does not result in a federal revenue loss or have an expenditure impact.
- * The legislation that has been considered by Congress and is supported by state and local governments is narrowly drawn. It provides a grandfather provision for obligations that were made prior to the 1994 Supreme Court decision and were made to meet governmental responsibilities for the disposal of solid waste.
- * The flow control problem is not going away. On the contrary, it is becoming more urgent as governments are running out of stop-gap measures. Contingency funds are being depleted, tax increases are being challenged by citizen groups, and tax and debt limitations are restricting options.
- * Default and bankruptcy are strictly options of last resort for governments. These options have been used infrequently in the public sector and carry a stigma for the affected issuer and can affect other issuers. Unlike business, governments are perpetual entities and need to preserve their credit rating and access to the marketplace.

- * Opponents of flow control argue that markets ought to be allowed to work without government regulation. However, a small number of large firms control landfills, transfer stations and material recovery facilities and, as a consequence, can control prices. The demise of flow control does not necessarily mean more competition.
- * If this law is not passed, it will cause much misunderstanding and confusion for a lot of communities. The financial impact of the law at this time is a significant cash impact. The cost is in the range of \$10,000 - \$50,000 every year. By passing this law, this matter will be very clear and helpful to a number of communities.

On the basis of the above facts, I urge you to support the Flow Control Legislation in the interest of the local communities.


Hargovind S. Patel
Faculty Member

Signature Authorization Form

I authorize the Government Finance Officers Association to list me in its Senate testimony as a government official who supports flow control legislation. I understand the testimony will cover the key points listed above and that similar testimony may be sent to the House of Representatives later in the 105th Congress. I authorize GFOA to add my name to the House testimony.

Instructions for signing this authorization form: We will reproduce your signature on a joint signature page, so please press down hard on your pen. Please type the other information requested below. Do not use abbreviations because what is familiar to you may not be familiar to us. If this form is handwritten, PLEASE print clearly. Fax this form to GFOA at (202) 429-2755 by Monday, March 24th. Thanks for your help!

Signature Hargovind S. Patel

Name (Printed) Hargovind S. Patel

Title City Comptroller

Government City of Newburgh

Address 83 Broadway
Newburgh, New York 12550

Phone (914) 569-7322

Fax (914) 569-7370

E-Mail cityhall@newburgh.ny.frontiercomm.net



Tri-County Solid Waste Office

March 25, 1997

Chairman Chaffee and Senator Baucus
Senate Environment and Public Works Committee
410 Dirksen Senate Building
Washington, D.C. 20510

Dear Chairman Chaffee and Senator Baucus:

We are aware that your committee held hearings regarding federal flow control legislation on March 18, 1997. We are further aware that March 28th is the deadline for submittals into the public record.

At their March 25, 1997 County Board of Commissioner meetings, Le Sueur, Nicollet and Sibley Counties in Minnesota passed the attached resolution in support of flow control. We strongly believe that it is in the best interest for counties who acted in good faith in the development of solid waste facilities to have this tool to assist them in responsibly managing their waste stream while providing the ability to pay off the costs incurred.

To be sure that we meet the deadline for inclusion in the congressional record, we are mailing this hard copy, plus faxing a duplicate of the same items. We have also provided our Minnesota delegation with copies of the resolution. We would encourage your committee to develop a reasonable compromise that will help the process move along.

We appreciate your consideration of our correspondence and request.

Sincerely,

A handwritten signature in cursive script that reads 'William G. Henry'.

William G. Henry
Director



A RESOLUTION IN SUPPORT OF FEDERAL
WASTE FLOW CONTROL LEGISLATION

WHEREAS, the Senate Environment and Public Works Committee has been holding hearings on the need for federal flow control legislation; and

WHEREAS, in compliance with the Federal Resource Conservation and Recovery Act, Minnesota has implemented state statutes to encourage resource recovery of municipal solid waste by local jurisdictions and discourage the disposal of solid waste in landfills; and

WHEREAS, Per these state statutes, Minnesota Counties recognize the need to plan for and practice environmentally sound and responsible methods of managing their solid waste; and

WHEREAS, Minnesota Counties view the responsible management of solid waste as a local responsibility and an environmental, economic, and health issue and not merely interstate commerce; and

WHEREAS, many state and local entities, not only in Minnesota, but nationwide, are suffering a financial burden and the inability to fulfill their responsibility to wisely manage solid waste because of the lack of any meaningful flow control legislation; and

WHEREAS, at the very least, a narrow grandfather of flow control to allow state and local governments to pay outstanding debt on waste facilities without having to increase local taxes would be of considerable benefit; and

NOW, THEREFORE, BE IT RESOLVED, that the Nicollet County Board of Commissioners supports legislation at the federal level that would reinstate waste flow control authority to assist state and local governments in the responsible management of solid waste; and

BE IT FURTHER RESOLVED, that the Nicollet County Board of Commissioners urges all members in the Senate/House from the Minnesota Delegation to support such legislation.



Judy Hanson, Chair
Nicollet County Board of Commissioners

Attest:



Robert Podhradsky
Coordinator/Clerk to the Board

SIBLEY COUNTY BOARD OF COMMISSIONERS

Date: March 25, 1997

Motion by Commissioner Todd Voigt Seconded by Commissioner Leo Bauer

WHEREAS, The Senate Environment and Public Works Committee has been holding hearings on the need for federal flow control legislation; and

WHEREAS, In compliance with the Federal Resource Conservation and Recovery Act, Minnesota has implemented State statutes to encourage recovery of municipal solid waste by local jurisdictions and discourage the disposal of solid waste in landfills; and

WHEREAS, Per these State statutes, Minnesota Counties recognize the need to plan for and practice environmentally sound and responsible methods of managing their solid waste; and

WHEREAS, Minnesota Counties view the responsible management of solid waste as a local responsibility and an environmental, economic, and health issue and not merely interstate commerce; and

WHEREAS, Many State and local entities, not only in Minnesota, but nationwide, are suffering a financial burden and the inability to fulfill their responsibility to wisely manage solid waste because of the lack of any meaningful flow control legislation; and

WHEREAS, At the very least, a narrow grandfather of flow control to allow State and local governments to pay outstanding debt on waste facilities without having to increase local taxes would be of considerable benefit; and

NOW, THEREFORE, BE IT RESOLVED, That the Sibley County Board of Commissioners supports legislation at the federal level that would reinstate waste flow control authority to assist State and local governments in the responsible management of solid waste; and

BE IT FURTHER RESOLVED, That the Sibley County Board of Commissioners urges all members in the Senate/House from the Minnesota Delegation to support such legislation.

	Yes	No	Abstain	Absent
Bach	X			
Voigt	X			
Bauer	X			
Woehler	X			
Schwecke	X			

STATE OF MINNESOTA
 §
 OFFICE OF COUNTY AUDITOR
 COUNTY OF SIBLEY

I, Gene O. Solmanson, Auditor of the County of Sibley, State of Minnesota, do hereby certify that I have compared the foregoing with the original proceedings filed in my office on the 25th day of March, 1997 and that the same is a true and correct copy of part thereof.

Witness my Hand and Seal of Office at Gaylord, Minnesota this 25th day of March, 1997.


 Gene O. Solmanson
 County Auditor

On motion by Stangler, seconded by Culhane and unanimously approved, the following resolution was adopted:

WHEREAS, the Senate Environment and Public Works Committee has been holding hearings on the need for federal flow control legislation; and

WHEREAS, in compliance with the Federal Resource Conservation and Recovery Act, Minnesota has implemented state statutes to encourage resource recovery of municipal solid waste by local jurisdictions and discourage the disposal of solid waste in landfills; and

WHEREAS, per these statutes, Minnesota Counties recognize the need to plan for and practice environmentally sound and responsible methods of managing their solid waste; and

WHEREAS, Minnesota Counties view the responsible management of solid waste as a local responsibility and an environmental, economic, and health issue and not merely interstate commerce; and

WHEREAS, many state and local entities, not only in Minnesota, but nationwide, are suffering a financial burden and the inability to fulfill their responsibility to wisely manage solid waste because of the lack of any meaningful flow control legislation; and

WHEREAS, at the very least, a narrow grandfather of flow control to allow state and local governments to pay outstanding debt on waste facilities without having to increase local taxes would be of considerable benefit; and

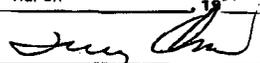
NOW, THEREFORE, BE IT RESOLVED, that the Le Sueur County Board of Commissioners supports legislation at the Federal level that would reinstate waste flow control authority to assist state and local governments in the responsible management of solid waste; and

BE IT FURTHER RESOLVED, that the Le Sueur County Board of Commissioners urges all members in the Senate/House from the Minnesota Delegation to support such legislation.

STATE OF MINNESOTA }
COUNTY OF LE SUEUR } ss.

I, Terry Overn Auditor of said County of Le Sueur, do hereby certify that I have compared the foregoing copy with the original resolution as adopted by the County Board of said County at their meeting held on the 25th day of March 19 97 and recorded in Commissioner Record "Q" on page _____ now remaining on file and on record in my office and that the same is a correct transcript therefrom, and of the whole of such original.

Witness by hand and official seal this 27th day of March 19 97



County Auditor

MAR 10 1997



COUNTY ADMINISTRATION
151 4TH STREET SE
ROCHESTER MN 55904-3710
507/285-8115 FAX 507/285-8106

The Honorable John H. Chafee, Chairman
Senate Committee on Environment and Public Works
410 Senate Dirksen Office Building
Washington, DC 20510-6175

RE: Flow Control Legislation

The Honorable John H. Chafee:

Olmsted County has provided integrated solid waste management services for a two county area since 1986. The Dodge and Olmsted county service areas have implemented waste reduction, recycling, yard waste composting, household hazardous waste, waste to energy and landfilling technologies to serve our waste generators. Olmsted county owns the disposal facilities and the private sector provides recycling and MSW collection services for their customers as directed by local, state and federal laws.

After the Carbone vs. Clarkstown Supreme Court decision, Olmsted County voluntarily suspended its designation ordinance to prevent any violations of the Commerce Clause. **The County still has bond debt in the amount of \$26,000,000. Our system has been in operation since 1986 and the bond debt will not be paid until February, 2007. The public solid waste resource recovery facility debt in Minnesota is estimated at \$240,000,000.** Additional court decisions leave counties that own solid waste resource recovery facilities legally and financially disabled to compete with the profit sector markets that use less expensive landfills as primary disposal facilities. We have only the option of raising property taxes to pay for our systems and protect environmental liability.

Please support flow control legislation that Senators Wellstone and Grams have supported in the past. Please include my letter in the Senate Environment and Public Works Committee hearing on Flow Control and Interstate Waste on March 18, 1997.

Thank you for your support.

Sincerely,

Mike Podulke, Chair
Olmsted County Board of Commissioners

c Senator Paul Wellstone
Senator Rod Grams
tsolidwstadminchafee.doc AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER
BOARD OF COMMISSIONERS

FIRST DISTRICT	SECOND DISTRICT	THIRD DISTRICT	FOURTH DISTRICT	FIFTH DISTRICT	SIXTH DISTRICT	SEVENTH DISTRICT
MIKE PODULKE	CAROL J. KAMPER	PAUL F. WILSON	WILLIAM KUISLE	JAMES M. ROSSMAN	JEAN R. MICHAELS	PAUL E. STELLPFLUG

ONEIDA - HERKIMER SOLID WASTE AUTHORITY

Board Members

James M. D'Onofrio, Chairman
 Robert McLaughlin, Vice Chairman
 Harry A. Hertling, Treasurer
 Alfred A. Barbano, Sr.
 Gerald C. Brodick

Louis R. Cristelli
 Barbara Freeman
 Donald Gross
 Guy Wilcox, M.D.

Hans G. Arnold, Executive Director
 Philip A. Layhill, General Counsel
 Jodi M. Tuttle, Authority Secretary

March 7, 1997

The Honorable John H. Chafee, Chairman
 Senate Committee on Environment & Public Works
 410 Senate Dirksen Office Building
 Washington, D.C. 20510-6175

Re: Statement for the Record on Flow Control and Interstate Waste

Dear Chairman Chafee:

There seems to be a myth circulating through Washington, D.C. that effects from the loss of flow control authority are not significant enough to warrant federal legislation. Nothing could be further from the truth. We at the local level face the very real impacts caused by congressional inaction.

The Oneida-Herkimer Solid Waste Authority owns and operates an integrated system solid waste management system for 320,000 residents in Upstate New York. We do not rely on tax revenues to cover our expenses but rather depend on disposal fees for costs associated with our operation. This system enjoys wide-spread support from our residents as well as the business community. In fact, we have recycled over 200,000 tons of material since 1991. However, since the Carbone case, the system is threatened:

- We currently face a lawsuit brought in federal district court by a few private haulers to strike down our solid waste laws including the recycling provisions.
- We necessarily took action to secure our system, by entering into contracts with waste haulers.
- That action was not cheap, we subsidized lower tip fees for those haulers at a cost of \$3.5 million.
- Our actions are not a long-term solution - not all categories of waste are included, contracts expire, and those funds were desperately needed to support our recycling program.

As you can see, local governments like ours truly face a crisis without flow control. We count on your leadership to pass flow control legislation in the Senate.

311 Turner Street, Suite 401, Utica, NY 13501 (315)733-1224

Printed on Recycled Paper

Honorable John W. Chafee
March 7, 1997
Page.

We also respectfully request that this letter be included into the record for the upcoming hearing by your Environment and Public Works Committee.

Sincerely,



Hans G. Arnold
Executive Director

HGA/aag

cc: Senator Alfonse D'Amato
Senator Daniel Patrick Moynihan
Congressman Sherwood Boehlert



**ONONDAGA COUNTY
RESOURCE RECOVERY AGENCY**

OCRRRA
1170 Freeland Drive Road • North Syracuse, NY 13212-6312
Tel: 315-437-2100 • Fax: 315-453-2872

Mar. 19, 1997

Senate Committee on Environment and Public Works
Attn: Duane Nystrom
415 Hart Senate Office Bldg.
Washington, DC 20510

Dear Mr. Nystrom:

Re: Proposed Legislation on Flow Control

As the Director of Recycling and Waste Reduction for a public benefit corporation that has borrowed \$178 million to finance its integrated solid waste management system, I am concerned about the impact the lack of flow control not only has on the financial stability of the agency, but more especially on the long-term future for recycling.

The tipping fee for the agency underwrites recycling, composting and household hazardous waste collections. Last year the community recycled 460,000 tons and reduced the trash by 62%. To achieve these numbers the agency spent nearly \$1 million in public education and payments to the facilities that process recyclables for the residential recycling stream. We also operated 2 compost sites serving 20,000 users and ran 2 household hazardous waste days for 3,000 households. There is also a year-round collection for household batteries that prevents them from entering the agency's waste-to-energy plant.

Flow control is vital to continuing these programs. It allows their cost to be incorporated into the tip fee. This is necessary until mature markets for recyclables develop nationally and until such time residents are educated to know they must pay to dispose of household hazardous wastes and yard waste.

Congress is the last resort on protecting such projects as OCRRA's. We acted in what we thought was consistent with state and federal regulations, both in terms of the law and the intent of those policies. The grandfathering legislation to protect flow control is needed.

Sincerely,


Suzanne D. LaLonde

Director of Recycling and Waste Reduction



CITY OF PORTSMOUTH, VIRGINIA

Established 1752

Office of the Mayor

(757) 393-8746 • Fax: (757) 393-5378

March 24, 1997

Dr. James W. Holley III
Mayor

Mr. Duane Nystrom
415 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Nystrom:

Please note that the City of Portsmouth supports the prompt passage of flow control legislation. In this letter I have included some relative facts concerning our community and other reasons why we strongly support the concept of waste flow control legislation.

Portsmouth is a political subdivision of the State of the Commonwealth of Virginia and was established in 1752. We are the second most fiscally strained city in the Commonwealth and are one of eight Host Communities that founded the Southeastern Public Service Authority (SPSA). SPSA was founded because there was no one, public or private, which was available to manage solid waste disposal in Eastern Virginia.

Portsmouth is currently under contract to deliver to SPSA 95% of the solid waste generated within the City. Tipping fees paid to SPSA are used to cover more than \$300,000,000.00 of public service debt incurred by the Authority. SPSA's current debt is \$260,000,000.00.

During the early 1990's eight large private landfills were developed in Eastern Virginia. Following the Carbone vs. Town of Clarkstown (NY) decision of the United States Supreme Court (May 1994), the diversion of waste to these landfills caused SPSA to experience a steady and dramatic loss of commercial waste. This loss has exceeded 25% from 1994 to 1996 and the decline continues. This same loss of waste has led to a 43% increase in the tipping fee and the downgrading of SPSA's municipal bonds.

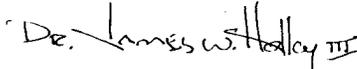
In 1994, SPSA charged a tipping fee of \$34.00 per ton which was the lowest tipping fee in the State of Virginia. Private waste haulers as well as the Public sector shared in this low tipping fee. Since 1994, our tipping fee has increased to \$48.00 per ton. In this situation it is evident that privatization does not always mean lower cost to the taxpayer.

Mr. Duane Nystrom
March 24, 1997
Page 2

It is important to note that municipalities in Southeastern Virginia made heavy financial commitments when they were no other options available. They acted responsibly to comply with Federal environmental policy and in fact received direct Congressional support in the creation of a waste-to energy system with the United States Navy. They followed to the letter the waste management hierarchy established by the U.S. EPA in its report, **The Solid Waste Dilemma: An Agenda for Action.**

In summary, without flow control legislation, SPSA and its member communities will continue to experience the adverse financial consequences brought about by the diversion of waste. It is unfair to communities and the bondholders to have the rules changed in mid-stream. The communities and the bondholders should be protected through the enactment of flow control legislation.

Sincerely,



Dr. James W. Holley III
Mayor

cc: John W. Warner, Senator

MAR 17 1997

**COUNTY OF PRINCE WILLIAM**

1 County Complex Court, Prince William, Virginia 22192-9201
 (703) 792-4640 Metro 631-1703 FAX (703) 792-4637

BOARD OF COUNTY SUPERVISORS
 Kathleen K. Seefeldt, Chairman
 Michelle B. McQuigg, Vice Chairman
 Hilda M. Berg
 Maureen S. Caddigan
 Mary K. Hill
 John D. Jenkins
 L. Ben Thompson
 Edgar S. Wilburn III

Kathleen K. Seefeldt
 Chairman

March 12, 1997

The Honorable John H. Chafee, Chairman
 Senate Committee on Environment and Public Works
 410 Senate Dirksen Office Building
 Washington, D.C. 20501-6175

Dear Senator Chafee:

The Prince William County Board of County Supervisors continues to strongly support federal flow control legislation. We request that our support of flow control legislation be included in the hearing record scheduled on this issue for March 18, 1997.

Prince William County has outstanding revenue bonds obtained to expand and improve our sanitary landfill. We are currently losing approximately \$1,500,000 per year in revenue due to the diversion of County waste to private landfill and transfer stations in Virginia. Without federal flow control legislation which would allow us to ensure waste generated in the County is delivered to County facilities, we are faced with a serious financial burden. Other alternative revenue sources to pay the bonds would have to be developed if flow control is not enacted.

We request your support of flow control legislation which would help Prince William County and localities across the nation meet their financial obligations in a reasonable, straightforward way.

Please contact me if I can provide any additional information.

Sincerely,

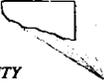
Kathleen K. Seefeldt

cc: Board of County Supervisors
 NACo - Diane Shea
 Director of Public Works
 Assistant County Executive - PH

TIS\st\chafeeflow

March 26, 1997

Chairman Chaffee
 Senator Baucus
 The U.S. Senate Committee on Environment
 and Public Works



**SHERBURNE COUNTY
 ZONING
 ADMINISTRATION**

RE: Letter for Submission to the Record - Flow Control Hearings

Dear Mr. Chairman and Senator Baucus:

On behalf of Sherburne County, I commend you for convening this hearing and for taking up the issue of solid waste flow control. The management of solid waste flow is an issue of serious concern to many local governments across the country, Minnesota counties have been particularly affected.

Many counties built Resource Recovery Facilities at the direction of the Federal Government in full compliance with the law. State and local governments met the mandate of the Resource Conservation and Recovery Act (RCRA) by adopting comprehensive solid waste management systems that emphasized waste reduction, recycling, composting and resource recovery.

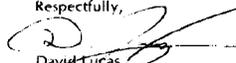
We are now being penalized for our compliance with these mandates, and must now face not only immense debt for the cost of our Resource Recovery Facility, but the costs of litigation by solid waste haulers.

Minnesota Counties have issued approximately \$300 million in bonds for resource recovery facilities, and 17 counties (out of 87) have relied on flow control for these facilities. These facilities are in danger, as is the ability for us to borrow money to build schools or prisons, or borrow money for any purpose.

In 1988, Sherburne County, along with Benton, Stearns, Hennepin, and Anoka Counties entered into a twenty year contract with Northern States Power Company to provide solid waste for their Resource Recovery Facility. The remaining debt service for this facility alone in Minnesota is approximately \$47,370,000. The Elk River Resource Recovery Facility process over 1,500 tons of solid waste per day into a fuel that is burned at a local plant, United Power Association.

The rules have been changed since we negotiated our contract with NSP. We acted in good faith to Federal and State mandates, and now we are being forced to pay. Sherburne County urges you to consider enactment of flow control legislation this year.

Respectfully,



David Lucas
 Sherburne County
 Solid Waste Administrator

13880 Highway 10
 Elk River, MN 55330
 1-800-458-0378 • 241-2906

**TESTIMONY TO THE SENATE COMMITTEE
ON ENVIRONMENT AND PUBLIC WORKS
FROM THE SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA**

The Southeastern Public Service Authority of Virginia (SPSA) supports the prompt passage of flow control legislation. SPSA is a political subdivision of the Commonwealth of Virginia and was established in 1976 by its eight member local governments to provide integrated municipal solid waste management services to the approximately 1,100,000 persons residing in the eight communities. At the time the eight communities joined together to comprehensively manage their solid waste, no private sector options were available.

Each of the communities has contracted to deliver or cause to be delivered to SPSA at least 95% of the solid waste generated within each member community. These contracts were executed in the early 1980s and provided the necessary financial support for the issuance of municipal revenue bonds by SPSA. An integrated regional waste management system was constructed. The system includes a waste-to-energy plant providing power to the United States Navy, a refuse derived fuel plant, a landfill, eight transfer stations, and an extensive recycling program. SPSA's current revenue bond debt is in the amount of approximately \$260,000,000.

During the early 1990s, eight large private landfills were developed in Eastern Virginia. Following the May 1994 Supreme Court decision in *Carbone vs. Town of Clarkstown (NJ)*, the diversion of waste to these landfills has caused SPSA to experience a steady and dramatic loss of commercial waste. This loss has exceeded 25% from 1994 to 1996 and the decline continues. This

same loss of waste has led to a 43% increase in the tipping fee and a downgrading of SPSA's municipal bonds.

It is important to note that these municipalities in Southeastern Virginia made heavy financial commitments when there were no other options available. They acted responsibly to comply with Federal environmental policy and in fact received direct Congressional support in the creation of a waste-to-energy system with the United States Navy. They followed to the letter the waste management hierarchy established by the U.S. EPA in its report, *The Solid Waste Dilemma: An Agenda for Action*. Without flow control legislation SPSA and its member communities will continue to experience the adverse financial consequences brought about by the diversion of waste.

It is unfair to the communities and the bondholders to have the rules changed in mid-stream. The communities and the bondholders should be protected through the enactment of flow control legislation.



SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY
34 SOUTH RT. 94, LAFAYETTE, NJ 07848

March 14, 1997

The Honorable John H. Chafee, Chairman
Senate Committee on Environment and Public Works
410 Senate Dirksen Office Building
Washington, D.C. 20510-6175

Dear Senator Chafee:

This letter is to express the Sussex County Municipal Utilities Authority's support of solid waste flow control legislation and to request your efforts in protecting the public from financial harm in this matter. Please include this letter in the hearing record on Flow Control and Interstate Waste which is scheduled for March 18, 1997.

In 1988, the Sussex County Municipal Utilities Authority issued \$46 Million in Solid Waste Revenue Bonds to provide the residents of Sussex County, New Jersey, with a state of the art sanitary landfill and recycling facilities. These facilities were constructed to fulfill a State of New Jersey requirement that each county was to develop a solid waste management system.

Sussex County, New Jersey, is a predominately suburban/rural area of approximately 525 miles and 136,000 residents. The \$4.5 Million annual debt service has so far been paid through the facility's tip fee. Without flow control legislation each resident will be obligated to maintain the debt service schedule through increased property taxes. This is both unnecessary and unfair.

The lack of flow control will necessitate the reduction or elimination of recycling services, household hazardous waste disposal and other programs which promote resource conservation and environmental protection.

Your efforts in promoting comprehensive solid waste flow control legislation would be greatly appreciated by the SCMUA, the County of Sussex and the State of New Jersey as a whole.

Thank you for your consideration in this matter.

Sincerely,

John Hatzeis
Administrator

cc: Senator Frank Lautenberg
Senator Robert Torricelli
SCMUA Commissioners

le\letters\chafee

Upper Merion Valley Water
Pollution Control Facility
(201) 827-8880
Fax: (201) 827-8867

Administrative Office
(201) 579-6998
Fax: (201) 579-7819

Solid Waste Facility
(201) 579-6998
Fax: (201) 579-7819


UNION COUNTY UTILITIES AUTHORITY

1499 Routes 1&9, North, Rahway, New Jersey 07065

(908) 382-9400

FAX (908) 382-5862

March 19, 1997

Honorable John H. Chafee, Chairman
 Senate Committee on Environment & Public Works
 410 Senate Dirksen Office Building
 Washington, DC 20510-6175

Dear Senator Chafee:

I am the Executive Director of the Union County Utilities Authority.

The Authority operates a state-of-the art resource recovery facility in Rahway, New Jersey which manages the county's solid waste and part of the waste from another county.

By creating the Authority and constructing the facility, Union County complied with state law whose aim was to make each county of New Jersey self-sufficient in managing its solid waste. That law was enacted at a critical period in New Jersey's history when a great many of its existing in-state landfills were filled to capacity and, because of their age, were causing serious environmental problems.

The state-mandated solution was the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.). It required construction of resource recovery plants such as our 1440 ton per day facility and secure landfills to handle ash and other non-processible residue.

In the process of designing, constructing and permitting our facility, over a quarter of a billion dollars of debt service was created. Taxable and non-taxable bonds were sold to finance this project. To pay off the debt that was created, the Solid Waste Management Act established a plan for waste flow control to ensure a steady, uninterrupted supply of refuse. Of course, the fee to dispose of refuse included the debt service due.

With the United States Supreme Court decision in C&A Carbone Inc. vs. Town of Clarkstown, N.Y. and the Atlantic Coast Demolition & Recycling Inc., et al vs. Board of Chosen Freeholders of Atlantic County et al decisions rendered by the New Jersey District Court and now pending before the Third Circuit Court finding waste flow control unconstitutional, and with landfill disposal costs presently cheaper, the dedicated waste stream needed to ensure payment of debt service is now in jeopardy. Without a solution, there exists the real possibility default on bonds will occur. Our bond rating has already been downgraded from A- to BB.

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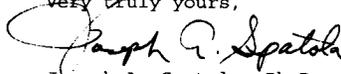
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Without a legislative solution to protect flow control, there may be serious consequences. First, the Authority may not be in a position to cover debt service. Secondly, there could be a disastrous effect on our County taxpayers who may be forced to make up for the lost revenue which would have been provided had flow control remained intact. Lastly, any default will destroy all confidence to invest in needed governmental programs funded through the issuance of bonds. This is not merely a local problem. It is one which requires a responsible, Federal solution.

I am hereby respectfully requesting that this letter be included in the record for the Senate Environment and Public Works Committee Hearing on Flow Control and Interstate Waste, March 18, 1997 to seek national flow control legislation.

Thank You.

Very truly yours,



Joseph A. Spatola, Ph.D.
Executive Director

JAS/mr

c: Congressman Bob Franks
Senator Frank Lautenberg
UCUA Commissioners
Daniel Sullivan, Freeholder Liaison
John Coley, Jr., Esq., General Counsel



**YORK COUNTY
SOLID WASTE and REFUSE AUTHORITY**

2700 Blackbridge Road York, PA 17402 Phone (717) 845-1066 Fax (717) 843-1544

March 17, 1997

The Honorable John H. Chafee
Chairman, Environment
and Public Works Committee
Room SD-410
United States Senate
Washington, DC 20510

RE: **Municipal Solid Waste Flow Control Legislation--
INCLUSION OF THIS LETTER IN MARCH 18, 1997
HEARING RECORD REQUESTED**

Dear Mr. Chairman:

With the beginning of the 105th Congress I am again writing to you on behalf of the County of York, Pennsylvania, the York County Solid Waste and Refuse Authority and the 340,000 citizens that reside within the boundaries of the County and rely on this Authority to provide municipal solid waste management that is safe, efficient and economical. Beginning nearly three years ago, with the 103rd Congress, we have written, phoned and visited our various elected representatives, as well as those serving on committees having jurisdiction over municipal solid waste flow control and interstate waste transportation legislation. We have presented the numerous sound arguments demonstrating the need for flow control, the same arguments which have been echoed by so many others in the past. To date those efforts have been unsuccessful and the problems remain. In spite of our efforts we have apparently failed to convey the magnitude of the larger problem which remains unresolved.

While local governments are charged with the responsibility to protect the health, safety and welfare of their citizens, the Supreme Court's Carbone decision in 1994 eroded our ability to meet that responsibility. In that connection, the legislative process over the past two sessions of Congress has identified a number of the solid waste management systems that have suffered serious harm as a result of the Carbone decision and the loss of flow control. Approximately two dozen systems have reduced recycling programs, cut household hazardous waste programs, laid off employees, raised taxes, or experienced bond rating downgrades--in a number of cases to below investment grade. The only consequence not yet realized is a default on a solid waste bond issue. While the majority of solid waste systems have not yet sustained such disabling impacts and have been able

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J. Chafee
03/17/97

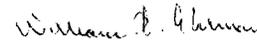
to operate at high levels of service, those systems have now become quite vulnerable. To redress this situation we ask Congress simply to preserve the tools that allow us to fulfill our local responsibilities and protect the many areas that are today faced with stranded investment in waste management facilities. The fate of systems such as ours rests in the hands of Congress. I fear that the real catastrophe associated with the flow control/interstate debate has not yet become apparent and absent prompt congressional action will be scores of not-yet-identified systems that will experience debilitating problems down the road. These systems handle the majority of waste that has been absent from the debate to date. In short, what we see today is merely the "tip of the iceberg." I would welcome the opportunity to discuss further with you what is at stake if our solid waste management systems are placed at risk, and Authority, and others like us are forced to default on our obligations.

I would appreciate hearing from you and I ask for your support in obtaining passage of flow control legislation.

Finally, I will provide a copy of this letter to Senator Baucus, Ranking Member of the Environment and Public Work Committee.

Thank you.

Sincerely,



William A. Ehrman,
Executive Director

WAE/mc

cc: The Honorable Arlen Specter
The Honorable Rick Santorum
Mr. Duane Nystrom

