S. HRG. 107–995

INTERSTATE WASTE AND FLOW CONTROL

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

S. 1194, A BILL TO IMPOSE CERTAIN LIMITATIONS ON THE RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE, TO AUTHORIZE STATE AND LOCAL CONTROLS OVER THE FLOW OF MUNICIPAL SOLID WASTE

S. 2034, A BILL TO AMEND THE SOLID WASTE DISPOSAL ACT TO IMPROVE CERTAIN LIMITS ON THE RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE

MARCH 20, 2002

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ONE HUNDRED SEVENTH CONGRESS
SECOND SESSION

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C O N T E N T S

MARCH 20, 2002

OPENING STATEMENTS

Baucus, Hon. Max, U.S. Senator from the State of Montana 5
Buyer, Hon. Steve, U.S. Representative from the State of Indiana 34
Clinton, Hon. Hillary Rodham, U.S. Senator from the State of New York 12
Jeffords, Hon. James M., U.S. Senator from the State of Vermont 1
Levin, Hon. Carl D., U.S. Senator from the State of Michigan 33
Smith, Hon. Bob, U.S. Senator from the State of New Hampshire 33
Specter, Hon. Arlen, U.S. Senator from the State of Pennsylvania 2
Voinovich, Hon. George V., U.S. Senator from the State of Ohio 7
Warner, Hon. John W., U.S. Senator from the Commonwealth of Virginia 10

WITNESSES

Allan, Leslie, deputy commissioner for Legal Affairs, New York City Department of Sanitation 20
Prepared statement 46
Anderson III, Harold J., chief counsel, Solid Waste Authority of Central Ohio 18
Prepared statement 38
Responses to additional questions from:
Senator Clinton 45
Senator Smith 41
Burnley, Robert G., director, Virginia Department of Environmental Quality .. 15
Prepared statement 34
Hess, David, secretary, Pennsylvania Department of Environmental Protection 17
Prepared statement 36
Parker, Bruce, president and chief executive officer, National Solid Waste Management Association 22
Prepared statement 47
Responses to additional questions from:
Senator Clinton 53
Senator Jeffords 52
Senator Smith 52

ADDITIONAL MATERIAL

Letter, Edward R. Hamberger, Association of American Railroads 66
Map, NSWMA Research Bulletin 02–01, Interstate Shipment of Municipal Solid Waste in 2000 (CRS, 2001) 51
Statements:
Doughty, Joyce, director, Fairfax County Division of Solid Waste Disposal & Resource Recovery 64
DuBoff, Scott M., on behalf of the Local Government Coalition for Environmentally Sound Municipal Solid Waste Management 54
Lennon, Mark and Patrick Pinkson-Burke, Planning and Community Assistance Section, Waste Management Division, New Hampshire Department of Environmental Services 60
McMahon, Michael E., chairman, New York City Council Committee on Sanitation and Solid Waste Management 66

Page

Text of bills:
S. 1194, Solid Waste Interstate Transportation and Local Authority Act of 2001 68–115
S. 2034, Municipal Solid Waste Interstate Transportation and Local Authority Act of 2002 116–177

INTERSTATE WASTE AND FLOW CONTROL

WEDNESDAY, MARCH 20, 2002

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

The committee met, pursuant to notice, at 10:05 a.m., Hon. James M. Jeffords (chairman of the committee), presiding.

Present: Senators Jeffords, Baucus, Clinton, Warner, Voinovich, and Specter.

OPENING STATEMENT OF HON. JAMES M. JEFFORDS, U.S. SENATOR FROM THE STATE OF VERMONT

Senator JEFFORDS. The hearing will come to order.

I would like to begin today by thanking all of the witnesses that are participating in today's hearing. The issues of interstate waste and flow control engender strong, divergent views. I acknowledge the challenges that my friends from Montana and Pennsylvania face. I also recognize that my friends from New York and New Jersey confront the opposing pressures.

The issues pit our Constitution's Commerce Clause and the economic benefits resulting from the free flow of goods against the States' rights and the desire of local communities to decide their own fate. There is no right side and there is no easy answer. These are issues that neither the courts nor Congress have been able to solve. Unfortunately, I do not bring a magic solution myself to the concerns being raised today. There is no doubt that these issues are important enough to warrant a thorough discussion.

While I am pleased that we could fulfill the wishes of several committee members by conducting this hearing, I also recognize that we have a long way to go before we reach greater agreement. Until such time, we remain stymied by the issues that our witnesses will raise today in their testimony.

In the context of today's discussion, it is also important to recognize two issues that merit the committee's further attention: waste reduction and recycling. In Vermont, solid waste plans must demonstrate high level of recycling, and trash districts can charge fees to help pay for recycling programs. Pennsylvania's recycling efforts, as outlined in Mr. Hess' testimony, also serve as a model for other States that they should look at and hopefully follow.

This summer I plan to conduct a hearing on recycling. Specifically, I would like to examine legislation to institute a national bottle recycling program as well as Federal activities regarding procurement of recycled content products.

I, unfortunately, will not be able to remain with you this morning. While I hand over the gavel to Senator Baucus, I would like to recognize Senator Specter, who has an opening statement. You may proceed.

[The prepared statement of Senator Jeffords follows:]

STATEMENT OF HON. JAMES M. JEFFORDS, U.S. SENATOR FROM THE STATE OF VERMONT

Good morning. I'd like to begin by thanking all of our witnesses for participating in today's hearing.

The issues of interstate waste and flow control engender strong divergent views. I acknowledge the challenges that my friends from Montana and Pennsylvania face. I also recognize that my friends from New York and New Jersey confront opposing pressures.

These issues pit our Constitution's Commerce clause and the economic benefits resulting from the free flow of goods against States' rights and the desires of local communities to decide their own fate. There is no right side and there is no easy answer. These are issues that neither the courts nor Congress has been able to solve.

Unfortunately, I do not bring a magic solution to the concerns being raised today. There is no doubt that these issues are important enough to warrant a thorough discussion. While I am pleased that we could fulfill the wishes of several committee members by conducting this hearing, I also recognize that we have a long way to go before we reach greater agreement. Until such time, we remain stymied by the issues that our witnesses raise in their testimonies.

In the context of today's discussion, it is also important to recognize two issues that merit this committee's further attention: waste reduction and recycling. In Vermont, solid waste plans must demonstrate a high level of recycling, and trash districts can charge fees to help pay for recycling programs. Pennsylvania's recycling efforts, as outlined in Mr. Hess' testimony, also serve as a model that other States should follow.

This summer, I plan to conduct a hearing on recycling. Specifically, I would like to examine legislation to institute a national bottle recycling program, as well as Federal activities regarding procurement of recycled-content products.

Thank you.

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

Senator SPECTER. Thank you very much, Mr. Chairman. I thank you for convening this hearing on this very important subject.

It is a matter of national importance because there are many States which have been recipients of out-of-state waste, to their disadvantage, and there are many States which need to find outlets for their waste, but there needs to be some orderly control as to what is happening.

I have introduced legislation, the Solid Waste Interstate Transportation and Local Authority Act of 2001, denominated as Senate bill 1194. I understand that my distinguished colleague from Ohio, Senator Voinovich, has introduced legislation just yesterday, which I have not had an opportunity to review, but I have an instinct that we are heading along the same line, and can try to accommodate the interests of our States and the interests of all the States.

I would ask unanimous consent, Mr. Chairman, that my full statement be introduced in the record.

Senator BAUCUS [assuming the chair]. Without objection.

Senator SPECTER. I will summarize it because we have a very distinguished panel of witnesses here.

The problem has arisen because the Supreme Court of the United States has held repeatedly that a State like Pennsylvania or Ohio may not restrict waste, garbage coming into the State, be-

cause of the Interstate Commerce Clause, but the Congress has full authority to legislate on this matter and to grant the States the authority to limit waste to whatever authority the Congress decides ought to be done. There is no bar to that kind of legislation. It does not take a Constitutional Amendment for this legislation to take effect.

There are 37 States which import solid waste, including 13 States represented on this committee: Ohio, Virginia, Oregon, New Jersey, Nevada, New York, New Hampshire, Connecticut, Missouri, Montana, Idaho, California, and Pennsylvania.

The legislation which I have proposed would give the States the authority to legislate on the waste which comes into the State. It became a matter of striking importance to me one day in 1989 when I was in Scranton and there was an enormous semi which was loaded with garbage, and the smell went almost to the Ohio border. It went beyond the New York border, and it went beyond the New Jersey border. I am not sure which, New York or New Jersey, had imported it.

As you might imagine, there's a contested rivalry. Senator D'Amato and I could agree on most things—we had that long unguarded border, southern New York and northern Pennsylvania—but we used to fight like hell when it came to the issue of garbage and trash coming in, and there are differences now, which are understandable, on a State level.

But it seems to me that when we have the issue of flow control which gives municipalities some control over where the trash is going to be disposed of, so that you can have these expensive systems, and there are very tough requirements for liners and methodology for receiving this waste, that it ought to be subject to State control. The States ought to have the authority to delegate some authority to the local government, as we see it, in accordance with principles of federalism.

It is always a challenging matter to figure out what the Founding Fathers had in mind. Once the Supreme Court has spoken, even on a divided Court, that's that, but I have grave doubts that the Founding Fathers thought that New Jersey and New York ought to have free reign to come into Pennsylvania to dispose of their garbage and trash.

Well, that is a very short statement of my views. I hope we can find a way to work it out. In 1994, we came within a hare's breath of having this issue resolved. I was on a train heading back to Pennsylvania on the last day of the Session, when the Conference Report was supposed to be acted on by the Senate. In accordance with our very sound rules, any one of 100 can tie something up, and at the last minute there was a Senator's objection, and the legislation failed. It came back. It was enacted most recently in 1995 by a 94 to 6 margin. So I am hopeful that we can move this hearing and move a markup.

Now that the distinguished Senator from Virginia has arrived, I think I will repeat my statement because I know it will be of great interest to him, since Virginia is burdened like Pennsylvania and Ohio are, with waste which comes into the State. I think Senator Warner will agree with Senator Voinovich and me that we ought to have some regulation on it.

Thank you very much, Mr. Chairman.

[The prepared statement of Senator Specter follows:]

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

Mr. Chairman, I thank you for agreeing to hold this hearing today. The interstate shipment of solid waste and the inability of localities to use flow control authority are problems of national significance and are top priorities for millions of Pennsylvanians and for me. Thirty-seven States imported municipal solid waste in recent years, including thirteen States represented on this committee: Pennsylvania, Virginia, Ohio, Oregon, New Jersey, Nevada, New York, New Hampshire, Connecticut, Missouri, Montana, Idaho, and California.

My legislation, The Solid Waste Interstate Transportation and Local Authority Act of 2001, (S. 1194) would allow these States and their local communities to have a voice in determining how much trash can be imported without threatening the environment. My bill has been referred to this committee and it is a very high priority of mine to see it considered by the committee in a markup at the earliest possible date after this hearing and scheduled for consideration by the full Senate promptly.

Congressional action is imperative because of rulings by the U.S. Supreme Court on the issue of trash shipments. Beginning in 1978 with the *Philadelphia* v. *New Jersey* decision, in which the Court stipulated that New Jersey could not close its borders to trash from Pennsylvania, and in subsequent decisions, 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 remaining solution is for Congress to enact legislation conferring such authority on the States, which would then be Constitutional.

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.

It is 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, 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, 6.3 million tons in 1996 and 1997, 7.2 million tons in 1998, and a record 9.8 million tons in 2000, which are the most recent statistics available.

According to the Congressional Research Service, twenty States had increased imports of municipal waste in 2000, with the largest increases occurring in Pennsylvania and Michigan. The increases in these two States, 2.6 million and 1.1 million tons respectively, total more than the entire increase nationally. Fully 52 percent of total municipal waste imports are disposed in just three States: Pennsylvania, Virginia and Michigan and Pennsylvania remains the largest waste importer by far with out-of-state waste accounting for half of my State's trash disposal and 30 percent of the national total for interstate shipments.

Most of the trash imported into Pennsylvania came from New York and New Jersey, with New York responsible for 48 percent and New Jersey responsible for 40 percent of the municipal solid waste imported into Pennsylvania in 2000.

This is not a problem limited to one small corner of my State. Millions of tons of trash generated in other States find their 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, Virginia, Michigan and similar waste importing States.

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 from States that have failed to adequately manage the waste they generate.

This issue was highlighted for me in 1988 when I was traveling near Scranton, Pennsylvania and noticed a large waste truck on the side of the road emitting a terrible odor. I found out that the truck was bringing waste from outside the State. Upon my return to Washington, I discussed the problem with my late colleague, Senator John Heinz, and in 1989 we introduced legislation to address the issue. Subsequently, I joined former Senator Dan Coats along with cosponsors from both sides of the aisle to introduce legislation which would have authorized States to re-

strict 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 the Environment and Public Works Committee's reported bills in the 103d and 104th Congresses, and I supported these measures during floor consideration.

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.

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 years received numerous phone calls and letters from 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 and recycling goals or mandates. 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.

In order to fix these problems, my legislation would provide a presumptive ban on all out-of-state municipal solid waste, including construction and demolition debris, unless a landfill obtains the agreement of the local government to allow for the importation of waste. An exemption to the ban would exist if the facility already has a host community agreement; or for the amount of out-of-state waste specified in standing contracts, for the life of the contract or the period ending 3 years after the date of enactment. Further, my bill would provide State governments the authority to place a limit on the amount of out-of-state waste received annually. It would also provide a ratchet authority to allow a State to gradually reduce the amount of out-of-state municipal waste that may be received at facilities.

These provisions will provide a concrete incentive for the largest exporting States to get a handle on their solid waste management immediately. Additionally, to address the problem of flow control, my bill would provide local governments the authority to direct that their waste be disposed of in designated facilities. This would be a narrow fix for only those localities that constructed facilities before the 1994 Supreme Court ruling and who relied on their ability to regulate the flow of garbage to pay for their municipal bonds and address their stranded costs.

In conclusion, the two most popular words of any speech, I would like to welcome David Hess, Secretary of the Pennsylvania Department of Environmental Protection, who will be testifying today. He will likely address many of the issues I have raised with more particularity. His presence here emphasizes the importance of this issue to Pennsylvania. This is an issue that affects many States, and I urge my colleagues to support this very important legislation. Thank you, Mr. Chairman.

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

Senator BAUCUS. Thank you, Senator. I appreciate your statement and also reminding us of how close we were to passing legislation. I remember that moment vividly, and I regret that we did not pass it at that time. It was very close, but it didn't happen.

Senator SPECTER. Mr. Chairman, if I just might say one more word, we are having simultaneously a meeting of the Defense Appropriations Subcommittee with CIA Director George Tenet. So I am going to have to excuse myself after a few moments.

Senator BAUCUS. Thank you, Senator.

I would like, frankly, all of us to focus even more centrally on just how this is really a very simple issue and it is a very simple answer, at least in my judgment. The issue, very simply, is: Should

a State or a town have the right to decide whether it wants to host a landfill or a garbage dump or a site that accepts garbage, or should they have no say whatsoever? That is, should a State or community have some say in whether garbage is located, dumped, or received in that community. I think the answer to that question is very clear. Of course, they should. It is just that simple.

My personal view is, although I very much understand the pressures that other big States have, particularly New York, that that's not a problem that they should, frankly, dump onto other States. With the States having the right to say no, then the larger States will find a way to deal with their needs, a way that makes more sense and that is much more sensitive to the interests of people in other States, that is, the receiving States.

But until legislation is passed giving States the right to say "no", then there will be very little incentive for the producing States, that is, the garbage-producing States, to come up with the incentives that are necessary to work out an accommodation or a proper solution.

I will never forget several years ago when a Minneapolis firm was contemplating sending garbage out to Montana, to eastern Montana. I have forgotten the volume and how many railroad cars it would be or trucks it would be, particularly railroad cars rumbling through these small towns in Montana on the way to a site just outside of Miles City, but it was massive. It was a very large number. At the appropriate time I can go back and find out just what that volume was.

I am not going to prolong the issue. To me, it just is very simple; that is, States should have the right, municipalities should have the right to say "no", because then the producing States will have the incentives to try to figure out a way to more properly deal with the garbage that they create.

[The prepared statement of Senator Baucus follows:]

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

Thank you, Mr. Chairman for holding this hearing today on the issue of interstate shipments of waste.

I have always regarded this issue in very simple terms. Should a State or town have the right to decide whether it wants to host a big landfill or garbage dump that accepts garbage from other States? Or, should they have no say whatsoever. Mr. Chairman, the answer is also simple. People should have the right to say "no." It's high time Congress gave them that right.

As Mr. Burnley from Virginia States in his testimony, landfills consume open space and can threaten our quality of life and the environment. With big landfills come big trucks, dust, traffic, noise, and stink. In the past and I'm sure in the future, with big landfills have come big messes that States and local communities must find some way to clean up. These are not trivial concerns.

Mr. Chairman, I do understand that this issue isn't as simple as it sounds. I know that some States with large metropolitan populations are struggling with the enormous problem of trash disposal. But, solving one's trash problem by dumping one's garbage on unsuspecting or even unwilling towns in another State is not a real solution. Montana had a scare a few years back, when a proposal was made to accept out-of-state garbage from as far away as Minneapolis at a landfill near Miles City, Montana. This would have meant thousands of railroad cars and trucks full of garbage rolling through rural Montana towns.

If a town wants that landfill, if they think that it's a good economic opportunity, then that should be a decision made by the local community and the State. The community should have every right to say "no" if they don't want another State's garbage in their back yard, and States should be able to look out for the health and well-being of their citizens and their environment. States and local communities can

accept the burden of handling their own garbage; they shouldn't be forced to bear that burden for anyone and everyone.

Mr. Chairman, almost every time a State or local community has tried to restrict waste imports in order to protect the health and well-being of its citizens, they usually lose in court because they're found to be in violation of the Commerce Clause of the Constitution. This just isn't fair.

This committee has struggled with this issue for almost a decade. I've introduced good, common sense legislation in the past that gave communities the right to determine their own character and protect themselves from out-of-state garbage. Congress almost enacted this bill, but we failed to reach a consensus at the last minute. This committee has raised the issue every Congress since then, but we've accomplished nothing. It's about time we finally did something.

I would like to thank the Senator from Pennsylvania, Senator Specter, for introducing his bill, S. 1194. I think he provides a good starting point for discussing this issue with our witnesses today and I look forward to hearing their testimony. Thank you, Mr. Chairman.

Senator BAUCUS. I would like now to turn to others who might want to give statements. Senator Warner from Virginia.

Senator WARNER. I thank the chair very much.

Senator BAUCUS. Senator Voinovich, do you want to——

Senator VOINOVICH. I was here first.

Senator BAUCUS. Yes, right, Senator Voinovich was ahead. We have an early bird rule in this committee, and the Senator from Ohio was the early bird.

OPENING STATEMENT OF HON. GEORGE V. VOINOVICH, U.S. SENATOR FROM THE STATE OF OHIO

Senator VOINOVICH. Mr. Chairman, I want to thank the committee for holding this hearing. This is a problem that has plagued my State for many, many years. I am particularly happy to welcome Harold Anderson from the Solid Waste Authority of Central Ohio, who will testify about the importance of flow control.

While interstate waste has long been viewed as a Midwest problem, two non-Midwest States, Pennsylvania and Virginia, are now importing more garbage than the State of Ohio. Each year Ohio receives over a million tons of municipal solid waste from other States. Over the last 4 years that level has increased to almost 2 million tons of municipal garbage. That is a 63 percent increase over what we were getting in 1997.

Forty percent of the waste that was imported into Ohio in 2000 came from two States, New York and New Jersey. These are the same two States that Midwest governors were asked by congressional leaders in 1996 to negotiate an agreement on interstate waste provisions. The governors of the importing States quickly came to an agreement with Governor Whitman of New Jersey, and I was involved in that negotiation. We began discussions with New York, but these were put on hold indefinitely in the wake of their May 1996 announcements to close the Fresh Kills landfill.

I might also say that I was very much involved in the 1994 legislation and was very disappointed that we passed both Houses and then at the tail-end died. Another year we got bills passed out of the Senate and in the House, and Representative Solomon from New York kept it from going to the Floor in the House to be voted on. So this is a subject that has been around this Congress for many, many years, and one that most people have been able to understand, but for some reason one or two people have been able to frustrate the majority of the people that are involved.

The thing that bothers me is that we have developed a very, very active recycling program in Ohio. We really do a great job of recycling, and we are very jealous about our landfills space. It is very, very frustrating to local municipalities and districts when they are very good citizens in terms of recycling and then seeing their landfills being filled up from out-of-state waste.

I recall in 1996 a situation where we had to issue a permit to this company to build a landfill in Stuebenville, Jefferson County. It was very clear that they were going to bring in some million and a half tons of garbage from Canada. I couldn't do a thing about it. Thank God the company lost the bid for the Canadian garbage, and then the person that came in and asked for the permit came back and said, "Well, we don't need the permit anymore." But it was strictly meant to provide space for out-of-state, out-of-country garbage in that particular case.

So I am going to ask that my statement be included in the record.

Senator BAUCUS. So ordered, without objection.

Senator VOINOVICH. But this has got to be a problem that this Congress tackles this year. Hopefully, because you, Senator Warner, and you, Senator Specter, are involved in this, perhaps we can get this done, but it will take a great deal of time, because there are some forces there that really don't want this to happen.

The other part of my bill deals with flow control, which, again, is controversial. But there are hundreds of districts throughout the United States who issued bonds to build sold waste treatment facilities, and the way they were able to guarantee the payment of those bonds was that they could control the garbage, so they would have enough garbage coming in that they would get the tipping fees that they could pay the bonds.

Well, in the *Carbone* case, the Supreme Court ruled that you can't do that. So all these communities are out there and trying to figure different ways of handling their bondholders. Many of them have had to raise taxes to guarantee those bonds. That is another thing that I think that needs to be addressed in this legislation.

So I am anxious to work with my colleagues to see if there is some way that we can bird-dog this, grab a hold of it, not let it go, and get it done, understanding that we have a whole lot of other priorities that need to be addressed, but action on this is long overdue.

[The prepared statement of Senator Voinovich follows:]

STATEMENT OF HON. GEORGE V. VOINOVICH, U.S. SENATOR FROM THE STATE OF OHIO

Mr. Chairman, I want to thank you for conducting this hearing today on a problem that has plagued my State of Ohio as well as many other States nationwide for a number of years now—the uncontrolled amounts of trash that other States are dumping on us.

I'd particularly like to welcome Harold Anderson from the Solid Waste Authority of Central Ohio who will testify about the importance of flow control.

While interstate waste has long been viewed as a Midwest problem, two non-Midwest States, Pennsylvania and Virginia, have passed Ohio in the volume of out-of-state waste they receive.

Each year, Ohio receives well over one million tons of municipal solid waste from other States. Over the last 4 years, annual levels of waste imports have been steadily increasing, and estimates for 2000 indicate that Ohio imported approximately 1.8 million tons of municipal solid waste, a 63 percent increase over the amount of solid

waste imported in 1997. While these shipments are not near our record level of 3.7 million tons in 1989, I believe an import level of nearly two million tons of trash is still entirely too high.

Mr. Chairman, roughly 40 percent of the waste that was imported into Ohio in 2000 came from 2 States—New York and New Jersey. These are the same 2 States that Midwest Governors were asked by Congressional leaders in 1996 to negotiate an agreement on interstate waste provisions. The Governors of the importing States quickly came to an agreement with Governor Whitman of New Jersey—the second largest exporting State—on interstate waste provisions. We began discussions with New York, but these were put on hold indefinitely in the wake of their May 1996 announcement to close the Fresh Kills landfill.

Because it is cheap and because it is expedient, communities in many States have simply put their garbage on trains, trucks, or barges and shipped it to whatever facility in whatever State—anything to keep from dealing with it themselves. However, State and local governments that have acted responsibly to implement environmentally sound waste disposal plans and recycling programs like we've done in Ohio have been subjected to a tidal wave of trash from these communities in other States. And while States like Ohio have worked to develop comprehensive disposal plans—like I set up when I was Governor of Ohio—the only disposal plan in effect in some States is to load up the trucks and move them out. Unfortunately, without a specific delegation of authority from Congress, such activity can continue in perpetuity, or until we run out of space.

Mr. Chairman, I have been working since 1990 to let our States have the right to control interstate shipments of trash.

I was amazed, that even though I was Governor of the State of Ohio, I could do nothing to stop the millions of tons of trash that were being brought into my State. The Federal court system prevented me from doing what I thought necessary to preserve Ohio's environment. Barring that avenue, I tried to reason with Governors of other States; those who exported to Ohio. Nothing happened. We made our case to Congress, and we got nowhere. All the while, the major trash hauling companies continued to bring the waste to Ohio.

So, today, we're no further along than we were when I first took up this issue 12 years ago. I think we need to change that by enacting comprehensive legislation that puts power back into the hands of Governors—and, through them, local officials—to make the decisions that affect their States and localities.

Yesterday, I introduced S. 2034, which is legislation that reflects the 1996 agreement on interstate waste and flow control provisions that my State, along with Indiana, Michigan and Pennsylvania, reached with then-Governor Whitman, whose own State of New Jersey is a large exporter of trash.

In fact, the provisions of my bill are consistent with the National Governor's Association's long-standing policy, which was adopted by all the nation's Governors. This policy, which was adopted in 1990, states that Governors must be able to act on their own initiative to limit, reduce or freeze waste import levels at existing and future facilities.

For Ohio, the most important aspect of my bill is the ability for States to limit future waste flows through "permit caps." This provision provides assurances to Ohio and other States that there is a genuine need for new facilities and that they won't be built primarily for the purpose of receiving out-of-state waste.

This is particularly necessary because it gives States the ability to consider where waste comes from during the permitting process. As Governor I dealt with a situation in 1996 in which Ohio EPA had to issue a permit for a new landfill because Ohio could not deny the permit based solely on where waste originated. This new landfill would have taken in 5,000 tons of garbage a day—approximately 1.5 million tons a year—from Canada alone. This would have doubled the amount of out-of-state waste entering Ohio. Thankfully, this landfill company lost its bid for Canadian trash business. Following that, the applicant asked that their permit be rescinded because there wasn't a need for the facility in the State.

Unfortunately, efforts to place reasonable restrictions on out-of-state waste shipments have been perceived by some as an attempt to ban all out-of-State trash. On the contrary, we are not asking for outright authority for States to prohibit all out-of-state waste, nor are we seeking to prohibit waste from any one State.

We are asking for reasonable tools that will enable State and local governments to act responsibly to manage their own waste and limit unreasonable waste imports from other States. Such measures would give States the ability to plan facilities around their own needs.

One other thing that our witnesses will discuss today—including Mr. Anderson—is re-establishing the ability of States and communities to enact flow control for solid waste. As my colleagues know, flow control allows States or communities to

designate where solid waste generated within their jurisdictions must be taken for processing, treatment or disposal. The bill that I have introduced includes a provision to restore flow control provisions to what they were prior to the 1994 Supreme Court decision in *Carbone* v. *Clarkstown*. Doing so will give States and localities an important tool to make sound choices regarding the disposal of their own solid waste within that community or State.

Mr. Chairman, I would like to thank you for bringing the issue of interstate shipment of waste once again to the attention of this committee, and it is my hope that the full Senate will have the opportunity to consider my legislation during this session of Congress.

States like Ohio should not continue to be saddled with the environmental costs of other States' inability to take care of their own solid waste. We, in Ohio, have worked hard to address our own needs with recycling and waste reduction programs to preserve our environment for future generations. It is time for other States to step up to the plate and do the right thing also.

I thank the witnesses for appearing today, and I look forward to their testimony. Thank you, Mr. Chairman.

Senator BAUCUS. Senator Warner.

OPENING STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Senator WARNER. Thank you, Mr. Chairman. I think it is important that this committee has held this hearing this morning because this is my 24th year in the Senate, and my colleague from Pennsylvania, give or take a year, has been here about the same time. We have worked on this issue every year we've been here. As you say, our distinguished colleague from Ohio, we have gotten it down to the one yard line, only to see a single or two or three persons throw that final block and stop it.

If you look back in history, when the Founding Fathers put together the United States, we united, but we remained sovereign to a large degree in our States. We really only came together to have a common currency, keep the enemy from coming over the ramparts, and to deliver the mail. But when we put in the Interstate Commerce Clause, none of us recognized that we would be here today in 2002 fighting this issue. It's just wrong. It offends basic fairness.

Virginia is the second largest recipient of the discard from other States. Hundreds upon hundreds of trailer trucks come down from distant places dripping, leaking, causing congestion, accidents on the highway, and proceed to several landfills in remote parts of our State that have, by virtue of their local government, accepted this waste, and totally circumvented a series of governors of our State who have courageously fought to try to limit this and to control it.

So it is not just a matter of environmental concern. It is also a matter of the transportation system and others who share the highways. And now one State is going to barge large quantities into our State, coming down the Atlantic coastline, up the Chesapeake Bay, and I might add with these barges, some of which thus far have been shown to leak, up the Chesapeake Bay, and into a port that will then truck it the distance to the repositories.

Now the Congress and this committee have forged a program for years and taken Federal tax dollars to clean up the Chesapeake Bay, and now the leaky barges will be proceeding up that very Bay, and we are having a struggle preserving our fish and shellfish and everything else that migrates into the oceans. I tell you, we've got to stop this thing.

Each State is obligated to take care of its own waste. Virginia takes care of its, and I don't see why we shouldn't have the authority to regulate this in a manner to protect our own environment in the State of Virginia and to protect those avenues of transportation, be they the road system and/or the water system.

I see our distinguished colleague from New York. I think I'll start from the beginning such that you can hear every word.

[Laughter.]

Senator CLINTON. I don't want to miss a word, Mr. Chairman, today.

Senator WARNER. I'm sorry, but I say to you most respectfully—and you know my respect for you as a Senator; I think you have been very effective for your State—but I hope you are less effective on this issue than you have been on some others in your career here in the U.S. Senate.

Because why should Virginia continue to receive—we are now second in the Nation as a repository, and I daresay your beloved, and, indeed, the world's beloved Big Apple is the biggest exporter. So I am anxious to hear your comments on this issue, and I will patiently wait.

I thank the chair.

[The prepared statement of Senator Warner follows:]

STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Mr. Chairman, I want to thank you for scheduling our hearing this morning. I join in welcoming our witnesses who will share their individual experiences with us.

The transport and disposal of waste across State lines is an issue that I have worked on for over 10 years.

The problem has not gone away, and over time, has only worsened. States are charged, under Federal law, with the requirement to ensure that there is adequate, long-term capacity to dispose waste generated IN-STATE.

This critical planning cannot be fully formed by States unless they have the necessary authority to manage all municipal solid waste, regardless of where it originates.

The current practice of allowing each local government to decide to accept out-of-state waste in a piecemeal fashion does not allow for responsible solid waste planning. Neither does it promote sound environmental protection of our natural resources and open space.

One cannot deny that there are potential long-term consequences to our environment from these landfills, particularly our underground drinking water supplies. Trading off environmental damages for short-term financial gains is not acceptable.

It is time for the Federal Government to act to give States this modest authority. I pledge to continue working with this committee to move legislation forward.

Senator CLINTON. I am so glad I'm here.

[Laughter.]

Senator BAUCUS. Thank you very much, Senator.

Senator if you wish to make a statement, you are certainly recognized to do it, or if you want to wait until a later date, it is up to you.

Senator CLINTON. I'm happy to abide by whatever the sequencing is, Mr. Chairman.

Senator BAUCUS. Well, the sequence has come to you.

Senator CLINTON. It's my turn? All right. Thank you very much.

Senator WARNER. Would the chair indulge me that, for the record, I am co-sponsor of the legislation of both the Senator from Pennsylvania and the Senator from Ohio.

OPENING STATEMENT OF HON. HILLARY RODHAM CLINTON, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator CLINTON. Well, thank you very much. I know that this is the last few days before the recess, so I, like everyone, have three committee meetings being held simultaneously. So I will come and go, but it is in no way a statement on my part about the importance of this issue.

I am very pleased to be here because this is an important matter. I thank the committee for holding this hearing.

I want to welcome our New York witness, New York City Department of Sanitation's Deputy Commissioner for Legal Affairs, Ms. Leslie Allan. I may not be able to stay for her entire testimony, but I want to thank her for being here and for representing the city of New York.

Now, as I am sure we will hear, and probably many of us already know, this week marks the 1-year anniversary of the closing of the Fresh Kills landfill. I understand that the closure of Fresh Kills has created a heightened level of concern for the States that are the major importers of waste. I want to say from the beginning that, while we may disagree on what should or could be done legislatively at the Federal level with respect to the issue of interstate shipments of waste, I think we all do agree that all States, all communities, all individuals need to manage waste responsibly, safely, and in an environmentally-sound manner, whether we are talking about transport, re-use, recycling, or disposal.

As the Nation's largest exporter of municipal solid waste, I believe that New York State and New York City have shown their commitment to ensuring that waste generated within our borders is disposed of safely and responsibly. Now both the State and the city—and I want to underline this, because I think this is a critical point—both the State and the city of New York require valid and legally-binding host community agreements before entering into any contracts for waste disposal. In other words, the city is only exporting waste to those host communities that have agreed up front they are willing to take it, and they can meet certain standards in doing so.

I am also concerned that there is a basic misunderstanding that somehow our waste, which of course we do generate a lot—we have a lot of people. You know, New York City has had a population increase in the last 10 years, 8 million strong. Yet, we do not export to any community without a host community agreement.

I think that New York State also deserves some recognition for its recycling rate of over 40 percent. Therefore, our State is in the top five in the country for recycling.

So I think that we know that we've got to do what needs to be done with respect to the waste we create. I would like it if we would turn the clock back, go back to the 1950s, and we didn't have so much packaging and so much unnecessary waste, but, you know, that is one person's opinion.

Waste disposal is obviously not cheap. We do have to do it right. It has to be done in an environmentally-appropriate manner. Those communities that accept the responsibility to receive waste that is generated from beyond their own borders are doing so freely, contracting on the basis on what they believe is obviously a good ar-

rangement for them and for the exporter and the companies that run these operations.

So, Mr. Chairman, I thank you for holding this hearing. Again, I would just emphasize that we do have a lot of waste. We create a lot of waste. Our Nation as a whole creates way too much waste. I wish we could do more on that, but, in the meantime, New York is following a procedure which I think is well-founded both in law and in practicality by only sending waste where we can get an agreement that it is to be received and handled in an appropriate manner.

[The prepared statement of Senator Clinton follows:]

STATEMENT OF HON. HILLARY RODHAM CLINTON, U.S. SENATOR FROM THE STATE OF NEW YORK

Thank you, Mr. Chairman.

I apologize to my colleagues and to today's witnesses for being late. Unfortunately, as is often the case here in the Senate, all three of the committees on which I sit have business this morning.

I have both a business meeting in the HELP Committee and a very important Budget Committee markup this morning—which both directly conflict with each other, and with this hearing.

So, I'm trying to be in three places at once this morning.

Mr. Chairman, in the interest of time, I will submit my full statement for the record.

But if I could, I would just like to take this opportunity to welcome our New York witness—New York City Department of Sanitation's Deputy Commissioner for Legal Affairs, Ms. Leslie Allan.

Thank you for being with us here today, Ms. Allan, and for so ably representing the city of New York.

As you all probably know, this week marks the 1-year anniversary of the closing of the Fresh Kills Landfill.

I know that the closure of Fresh Kills has created a heightened level of concern for the States that many of my colleagues here on this committee represent.

Let me just say that while we may disagree on what should be done legislatively at the Federal level with respect to the issue of interstate shipments of waste, I think we all do agree that all States, all communities, and all individuals, for that matter, need to manage waste responsibly, safely, and in an environmentally sound manner—whether we are talking about transport, reuse, recycling, or disposal.

As the nation's largest exporter of municipal solid waste, I believe that New York State (and New York City as well) has shown its commitment to ensuring that waste generated within its borders is disposed of safely and responsibly, and will continue to do so.

Both the State and the City require valid and legally binding Host Community Agreements before entering into any contracts for waste disposal—in other words, the City is only exporting waste to those host communities that have agreed up front and willingly to take it.

In addition, both New York State and New York City have shown a strong commitment to recycling.

Recent reports show New York State with a recycling rate of over 40 percent—which I think puts the State in the top five for recycling.

And New York City has had a very ambitious recycling program in place, which we all hope will be up and running again very soon.

Let's face it. New York State, and New York City in particular, is one of the largest consumer markets in the nation.

We, in New York, consume the goods grown, developed, processed, and manufactured in your States, and will continue to do so—just as we hope others around the country will continue to use and enjoy New York products as well.

And when we consume, we create waste; and waste disposal is not cheap.

According to a story last month in the New York Times, the city's Independent Budget Office has projected that the sanitation budget for the City could rise by over 60 percent from 1997 to 2004—that's millions and millions of dollars that would probably go to outside businesses and communities.

In closing, let me reiterate that I believe all States and all communities need to manage waste responsibly, safely, and in an environmentally sound manner.

But I do not know that controlling interstate shipments of waste is the solution, or that it will help us to all achieve our collective objective.

I believe that New York State/New York City has and will continue to commit itself to ensuring that waste generated within its borders is disposed of safely and responsibly, and with the willingness and acceptance of the Host Community.

With that, I would just like to ask that the testimony of Mr. Michael E. McMahon, Chairman of the New York City Council Committee on Sanitation and Solid Waste Management, be entered into the record.

Thank you.

Senator BAUCUS. Thank you very much, Senator.

We will now proceed to the witnesses. Before I do, there are some Closeup students in the audience from Montana. They are from Deer Lodge in Montana.

This is a good lesson in democracy. Here we've got some Senators who don't want the waste and others, "Hey, we're doing a good job; we've got agreements with the host communities, and why not?"

I would like you to stand, you students, from Powell County High School in Deer Lodge, MT. You're seeing it. This is how this place works. It won't be entirely clear to you, but this is what happens.

[Laughter.]

Thanks an awful lot. I appreciate it.

[Applause.]

Senator WARNER. Mr. Chairman——

Senator BAUCUS. Sure.

Senator WARNER [continuing]. Could I join you in welcoming these students? I am one who frequently visits Deer Lodge to go trout fishing. It is one of the most beautiful trout streams in America, and your lovely communities up there, many of which have restored the old buildings that date way back into the 1800s. You're fortunate to live in that part of America. It is a great State.

As you see, here's your Senator here this morning conducting a hearing of tremendous significance to a number of States. He is also chairman of the Finance Committee. Of course, I believe in further reduction of taxes, and I will leave it to him as to exactly his viewpoints on that.

[Laughter.]

Senator BAUCUS. I'll remember that, Senator, at the appropriate time.

Senator WARNER. You might ask that question of him.

[Laughter.]

Senator BAUCUS. All right, thank you. And it is true, Senator Warner visits our State very often for lots of reasons, including trout fishing.

OK, why don't Mr. Parker, all of you, come up, our panel here? Our panel consists of Mr. Robert Burnley, who is director of the Virginia Department of Environmental Quality; Mr. David Hess, secretary of the Pennsylvania Department of Environmental Protection; Mr. Harold Anderson, who is the chief counsel of the Solid Waste Authority of Central Ohio; Ms. Leslie Allan, deputy commissioner for Legal Affairs, New York City Department of Sanitation, and Mr. Bruce Parker, president and CEO of National Solid Waste Management Association.

Let's begin in the order in which I introduced all of you, with Mr. Burnley. We are going to ask each of you to adhere to our 5-minute rule. Your statements will automatically be included in the record.

You needn't worry about that. But if we could restrict ourselves to 5 minutes, we would deeply appreciate it.

Mr. Burnley.

STATEMENT OF ROBERT G. BURNLEY, DIRECTOR, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

Mr. BURNLEY. Thank you, and good morning, Mr. Chairman and members of the committee. I am Bob Burnley, director of Virginia's Department of Environmental Quality. I certainly appreciate the opportunity to be here with you this morning and speak about Virginia's concerns regarding interstate waste.

Governor Warner and I are concerned about interstate waste because landfills consume open space and threaten the quality of our environment. While every State has a responsibility to ensure adequate and safe waste disposal capacity for its citizens, Virginia should not be forced to assume these long-term costs and increase risks for other States. We should not have our hands tied as we attempt to protect ourselves from the onslaught of garbage from other States.

Virginia is second in the Nation in the amount of out-of-state waste received. Over the last decade, the amount of out-of-state waste imported to Virginia has more than doubled. In 2000, we imported 4.5 million tons of solid waste. That represents more than 20 percent of Virginia's total waste stream. Our landfill permits consume approximately 10 acres in Virginia. This capacity will last until the year 2014 if disposal volumes remain constant. If, however, Virginia is not able to cap the flow of waste from other States, we may be forced to provide additional landfill space at a much earlier date.

The Environmental Protection Agency acknowledges that, despite our best technology, all landfills will eventually leak. Actually, in Virginia one of our modern subtitle D landfills, one of our most modern landfills, has already shown indications that it is contaminating groundwater, less than 10 years after it was constructed.

Virginia has enacted very stringent requirements for the siting, monitoring, and operation of its landfills, more stringent than those established by the EPA. Despite our best efforts, however, to protect Virginia's environment, we do not know what will happen in 20 or 30 years from now. Common sense tells us that, the larger the landfill and the more waste we are forced to accept, the greater the risk of groundwater contamination and other pollution.

Unfortunately, Virginia has already suffered the consequences of uncontrolled shipments of out-of-state waste. The Kim-Stan Landfill in western Virginia was originally operated as a local landfill, but was later purchased by private interests. In the subsequent months they began importing waste from other States, increasing the volume significantly. Literally hundreds of tractor-trailers filled with trash traveled the back roads of rural Allegheny County every day. The owners of that landfill soon filed for bankruptcy, and the landfill is now a Superfund site.

The Commonwealth has already expended its taxpayer dollars to investigate and contain the contamination. Neither the generators nor the generating State have borne any of these costs. We hope our enhanced landfill regulations will prevent this type of environ-

mental catastrophe from happening in the future, but the fact remains that no one is certain the current landfill designs are adequate to protect and to provide long-term environmental protection.

Another concern is our inability to enforce against generators who send their waste to Virginia facilities. Virginia prohibits certain types of waste from its landfills that are allowed municipal solid waste streams from other States. Without the ability to limit imports from these States, Virginia is forced to expend more of its State-funded compliance resources at landfills accepting waste from other States. When violations are found, we have no authority to pursue enforcement against the source of the waste if they are outside Virginia.

In 1998 and 1999, the Department of Environmental Quality found illegal wastes in loads of trash coming from New York City. In the resulting litigation, the court found that it would be impossible for the New York City transfer station to adequately screen the trash to prevent these banned wastes from making their way to Virginia unless the volumes were significantly curtailed. The Federal courts, however, have prevented us from imposing any limits or caps on the disposal of these wastes because it would violate the Commerce Clause of the Constitution.

As Senator Warner mentioned, every day trains filled with garbage travel Virginia's railways, many parking along the way while they wait their turn at the landfill. Tractor-trailers filled with garbage work their way through the crowded interstate system and across rural Virginia. At least one of Virginia's operators plans to use barges to import garbage. Each barge will bring approximately 250 tractor-trailer loads of trash across the Chesapeake Bay and up the James River. Virginia has tried to protect itself by imposing disposal caps, by regulating large trash trucks, and imposing restrictions on barges, but the Federal courts have blocked these efforts.

The Commonwealth seeks the authority to control the manner in which our——

Senator BAUCUS. Mr. Burnley, I'm going to have to ask you to wrap up your statement as best you possibly can.

Mr. BURNLEY. OK.

Senator BAUCUS. You can summarize if you wish.

Mr. BURNLEY. We are asking Congress to grant States the ability to control the importation of garbage. We want that authority to be simple and flexible enough to meet the needs of other States, and we would love to have an opportunity to work with this committee and others as that legislation is developed.

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

Senator WARNER. Could I join in thanking Mr. Burnley and thanking the Governor of Virginia, coincidentally, Governor Warner, to strongly support the desires of a vast majority of Virginians to obtain this type of relief from the Congress of the United States.

Senator BAUCUS. Thank you, Senator.

Mr. Hess.

STATEMENT OF DAVID HESS, SECRETARY, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. HESS. Mr. Chairman, thank you, and, members of the committee, thank you for being here. I want to particularly thank Senator Specter for his terrific opening statement today.

I am David Hess. I am Secretary of the Department of Environmental Protection, here representing Governor Mark Schweiker. I also had the pleasure of representing Tom Ridge last year, and Pennsylvania has been here since the late Governor Casey, to press our case for authority for States to control the importation of waste.

We have been struggling with this issue for some time. I think just a quick glance at some of the numbers for Pennsylvania will tell the story.

We, last year, imported 12.2 million tons, 12.6 million tons of waste. That was just a little bit less than half of the waste that was disposed in Pennsylvania, and most of that was from New York and New Jersey. As long as States take the out-of-state, out-of-mind attitude toward garbage and export an unlimited quantity of garbage to their neighbors, as was pointed out, there is no incentive to deal with the issue, and no incentive to develop facilities of their own. The most recent court decisions regarding Virginia's statutes just simply underscore once again the need for Congress to act on this important issue.

Pennsylvania supports Senator Specter's legislation and Congressman Greenwood's legislation. We are asking for something I think that's very simple, four things:

No. 1, give Pennsylvania's communities the ability to allow the disposal of imported waste through host community agreements, community control over the process.

No. 2, impose a freeze on waste imports immediately, with a predictable schedule to follow for reducing imports over time.

No. 3, allow States to impose a percentage cap on the amount of imported waste that a new facility could receive.

And, No. 4, allow States to consider in-state capacity as part of the permitting process.

While we wait for congressional action, Pennsylvania has not been standing still. We have been moving forward with our efforts to create safer communities that have been impacted by waste imported from other States. We have created the world's largest curbside recycling program, serving over 10 million residents. We now have over 12 years of capacity available for the disposal of waste at current limits, and we have some of the toughest environmental standards for constructing landfills in this country.

Recently, the Mayor of New York, Mayor Bloomberg, announced an 18-month suspension of their recycling program. Although this proposal is expected to save the city in the neighborhood of $57 million, what we expect is that the burden of more waste coming into Pennsylvania will be the result.

At the same time, you have initiatives in Philadelphia by Mayor Street to re-energize the recycling program in that city, and I had the pleasure of kicking off that process this week with the Mayor and Commissioner Johnson. Other people are expanding their recy-

cling operations. We don't want yet more garbage coming to Pennsylvania because the city is cutting back on its commitments.

In addressing our own waste capacity issues, Governor Schweiker has proposed a 2-year moratorium on all new or expanded landfill permits. We've also supported standards for creating host community agreements. There is also legislation pending in our general assembly to increase the recycling $2 to $7 per ton of waste coming into Pennsylvania.

Last year we had to initiate the largest environmental enforcement effort we have ever undertaken in the State's history, called Operation Clean Sweep, to deal with unsafe trucks, leaking waste trucks, all across the State. Five DEP State police officers, PennDOT officers, and others were out inspecting trucks for an entire week. We found over 11,000 violations in those trucks. We issued over $2 million worth of fines. That is just one indication of the kind of issues that we get involved in because of the imported waste issue.

Our democracy is built on the foundation of empowering people to make choices. It is also built on the concept of fairness. The citizens of the Commonwealth are asking Congress for a fair and equitable opportunity to make reasonable decisions with regard to waste entering our communities from out of the State. This is the missing piece of legislative authority that will allow us to better manage and control almost half the waste disposed in our State.

Pennsylvania has worked with a variety of Senators and Representatives in Congress over the years to try to address this issue, and we look forward to working with you as you again tackle this important issue for Pennsylvania.

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

Mr. Anderson.

STATEMENT OF HAROLD J. ANDERSON, CHIEF COUNSEL, SOLID WASTE AUTHORITY OF CENTRAL OHIO

Mr. ANDERSON. Mr. Chairman, members of the committee, my name is Harold Anderson, and I am chief counsel of the Solid Waste Authority of Central Ohio, also known as SWACO. I am testifying on behalf of SWACO and the Local Government Coalition for Environmentally Sound Municipal Solid Waste Management.

We commend Chairman Jeffords for holding this important hearing. We would also like to thank Senators Voinovich and Specter for introducing bills to address the issue of flow control and interstate waste. We would like to thank Senator Warner for sponsoring both of those bills.

My testimony will address flow control and interstate waste transport. Before turning to those points, however, let me tell you about SWACO. We own one of the 10 largest public landfills in the United States. SWACO strongly embraces recycling and other environmentally-friendly programs. In fact, SWACO recently took over a recycling program for the 700,000 residents of the city of Columbus. SWACO also strongly embraces partnerships with the private sector, and our public landfill is operated by Waste Management, Inc.

Our coalition supports S. 1194. That bill protects stranded investment by providing limited grandfather authority for the use of flow

control. Flow control is a mechanism which allows local governments to meet debt obligations in a fiscally-responsible manner. As the term implies, a local government will control the flow of municipal solid waste by selecting and designating by ordinance a specific facility or set of facilities for municipal solid waste processing and disposal.

Unfortunately, in the *Carbone* case, the U.S. Supreme Court ruled that the flow control ordinance at issue in the case violated the Commerce Clause. I should note that, prior to the *Carbone* decision, flow control was repeatedly validated by Federal court decisions from the 1970s to the 1990s.

The consequences confronting communities throughout the Nation due to the loss of flow control authority and the absence of Federal legislation such as Senate bill 1194 have been quite serious. SWACO is a case in point. We have over $150 million in stranded investment in a waste-to-energy facility that was closed on the heels of the *Carbone* decision. After the *Carbone* ruling, we laid off 250 employees and had to impose a $7-per-ton fee, a waste tax, on all municipal solid waste that's generated in Franklin County. We had to take that action to generate sufficient revenue to meet our debt obligations, in the absence of flow control authority.

On a national scale, the principal rating agencies, Moody's and Standard and Poor's, have downgraded a considerable number of bonds for public solid waste facilities since *Carbone*, and the estimated value of that is over $3.5 billion. This is a significant strain on local government.

I would also like to emphasize that, because we have made significant financial sacrifices to meet our obligations, we have not defaulted on our bond obligations. Unfortunately, the absence of such a default has led some to suggest that we do not need flow control legislation. This suggestion is only correct if you are to conclude that the better approach is to increase local taxes to meet those financial obligations undertaken years ago. That position contradicts Federal policy, which was announced more than a decade ago, which discourages the use of general taxation to fund solid waste management.

S. 1194 is narrow legislation that protects public investment made in reliance on flow control, is self-limited, and does contain a sunset provision. Senate bill 1194 is not anti-competitive, nor is it anti-private enterprise. The tipping fees that SWACO charges for the use of its facilities are set at a level to recover only the cost of providing those services, and in fact flow control does not increase prices. U.S. EPA concluded in a post-*Carbone* report to Congress that the tipping fees paid in flow control-reliant communities, when broken down into their component parts, are comparable to those for non-flow-controlled facilities.

Turning to interstate waste transportation, SWACO strongly supports legislation that will provide communities with appropriate means to husband their finite resources and waste management capacity. The interstate waste transportation legislation before this committee addresses a serious national problem. Ohio is a case in point. Communities across our State have serious concerns with

trash from outside Ohio being disposed in our State. This local concern has resulted in a large——

Senator BAUCUS. I would ask you to summarize, please, Mr. Anderson.

Mr. ANDERSON. Thank you, Senator.

This has resulted in a large number of bills in Ohio's statehouse, bills ranging from moratoriums on landfills to study commissions. This is a Federal issue. It is not a State issue. We need Federal legislation on this matter.

Thank you.

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

Ms. Allan.

STATEMENT OF LESLIE ALLAN, DEPUTY COMMISSIONER FOR LEGAL AFFAIRS, NEW YORK CITY DEPARTMENT OF SANITATION

Ms. ALLAN. Mr. Chairman and members of the committee, my name is Leslie Allan, and I am Deputy Commissioner for Legal Affairs at the New York City Department of Sanitation. On behalf of Mayor Bloomberg, I appreciate the opportunity to testify today on the pending interstate waste legislation. The bill could clearly have a profound impact on New York City's day-to-day municipal solid waste operations.

In 1996, as you know, Mayor Giuliani and Governor Pataki agreed to close the Fresh Kills landfill by December 31, 2001. That decision was the city's first step toward embarking on a new environmentally-sound course to manage its solid waste. It is important for the committee to recognize from the outset that New York City closed Fresh Kills responsibly and appropriately, with due consideration for the States and the communities that have chosen to accept the city's waste.

On March 21, about a year ago, New York City sent the last barge of Department-collected waste to Fresh Kills, thereby completing a five-phase program initiated in July 1977 which required that all of the city's exported waste be disposed of in communities that have expressly chosen to accept it through valid, legally-binding host community agreements.

The city's plan mandates that we only export to willing jurisdictions. The Mayor does not see any need for legislation to require New York City to do that which it already does.

In exporting its residential waste, the city is exercising nothing more than the right that the Constitution extends to cities and States nationwide to responsibly, efficiently, and environmentally handle their solid waste management in a heavily-regulated and highly-competitive private sector business. The courts have consistently upheld municipal solid waste shipments as a commodity in interstate commerce, and over the years communities have relied on the certainty that these decisions provide for protecting long-term free market plans to manage solid waste.

This is especially important in a landscape where more rigorous environmental protections required under subtitle D of the Resource Conservation and Recovery Act, RCRA, have compelled communities to replace their old small landfills with large, costly,

state-of-the-art regional facilities that comply with the Federal statute. In this context, the right to transport solid waste across State lines complements the basic reality that different regions have varying different disposal capacities regardless of State lines. Areas such as New York City and Chicago, which lack adequate space for landfills and/or are prohibited from incinerating their waste, may be located closer to better and more cost-effective facilities in other States. These facilities need the additional waste generated elsewhere to pay for part of the increased cost of complying with RCRA.

Although the closure of Fresh Kills affects primarily the city's residential waste, the private market is as essential to the management of that waste as it is to the management of the city's commercial waste. For years the city's commercial businesses have relied on private haulers to export waste from New York. For many communities and States, the municipal waste disposal fees by these haulers are an important revenue stream. The city believes that each locality has the right to decide whether to accept or reject out-of-state solid waste, not because of Federal legislation, but because of locally-decided host community agreements.

The fact is that the city, in securing contracts for the disposal of its residential waste, has relied exclusively on host community agreement sites and has, thus, furthered a partnership that benefits both the importer and the exporter. For the Nation's largest and most densely-populated city of 8 million people, composed of three islands and a peninsula, the ability to send waste to newer, more advanced regional facilities located outside the city's boundaries acknowledges the very environmental demographic and geographic realities that made closing Fresh Kills necessary.

For the local governments that have opted to import our waste, the revenue generated through host fees, licensing fees, and taxes has substantially enhanced the local economy, improved area infrastructure, paid for school construction, paid for paving roads, and assisted the communities in meeting their own waste management needs. Clearly, many other jurisdictions nationwide share New York's approach. Forty-two States import and 46 States and Washington, DC export municipal solid waste.

For the city and the businesses it selects to handle its municipal solid waste disposal, certainty and the long-term security of waste management arrangements are fundamental to making New York a viable place to live and work.

Senator BAUCUS. I have to ask you to wrap up, too, Ms. Allan.

Ms. ALLAN. We cannot afford to disrupt those contracts and agreements, and we enthusiastically endorse host community agreements, but right now we use only sites that have host community agreements.

Senator BAUCUS. Thank you very much.

Mr. Parker.

Senator WARNER. Mr. Chairman, could I ask—I've got a group of students also that joined us today.

Senator BAUCUS. Sure, absolutely.

Senator WARNER. They're standing in the back of the room. They have been selected as Virginia Leaders for the Right Choices. They

are here to discuss with me today the risks linked with alcohol and drugs. Thank you for coming.

Senator BAUCUS. Well, thank you. Thank you very much for attending.

[Applause.]

Mr. Parker.

STATEMENT OF BRUCE PARKER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL SOLID WASTE MANAGEMENT ASSOCIATION

Mr. PARKER. Mr. Chairman, Senators Warner, Voinovich, and Clinton, I appreciate the opportunity to be here today. My name is Bruce Parker, and I'm the president of the National Solid Waste Management Association. We represent all the private companies in the United States, large and small, that every day pick up and put down, recycle, and process and dispose of solid waste.

Before I begin, Senator Warner, I wanted to carry on with your athletic metaphor. I guess I'm the blocker on the one yard line today. I think that the story that I have to tell represents my helmet and armor because I think it is a story that has never been or has not been as clearly articulated as the other side, and I am happy to do that today.

The message I want to leave you with is very simple, and that is that borders have no legitimate role in managing solid waste or any commodity, for that matter, in interstate commerce. They make neither economic nor environmental sense. They are contrary to the trend toward bigger and better facilities, toward more innovative and flexible facilities. For these reasons, NSWMA and its members oppose on principle S. 1194, and for that matter, any legislation that would authorize Congress to restrict, impede, or otherwise prevent the free transportation of garbage in interstate commerce.

In spite of all the impassioned language that everybody has heard and the demonization of garbage moving in interstate commerce, the reality is quite simple. Every day—and if you look at that chart right there that we have prepared, if you would please—every day trash moves across State borders in a very extensive and intricate web of transactions, mostly between contiguous States, and also involving both imports and exports.

As a matter of fact, out of all the waste generated in the United States that moves in interstate commerce, we are talking about 30 million tons, which only constitutes about 7 percent. We are only talking about less than 10 percent that is actually disposed of.

According to the Congressional Research Service's latest update on its report on interstate commerce, 46 States exported garbage and 42 States imported garbage. Only one State neither imported or exported. Twenty-four States, the District of Columbia, and Ontario exported more than a thousand tons. At the same time, 28 States imported more than 100,000 tons. Ten States, ranging in size from Vermont to New York, exported more than 15 percent of their waste.

Garbage, like recyclables or raw materials or finished products, doesn't pay any attention to artificial State restrictions, like cars

or tomatoes, when it moves in interstate commerce. Let me just give you the broader context, if I may, why this has happened.

The result of all this is clearly related to Federal and State environmental policy. In 1990, this country had 10,000 landfills. Today we have less than 2,600. Why? Because Federal EPA and Congress, Congress particularly, promulgated the Resource Conservation and Recovery Act, subtitle D. That act basically put all the substandard landfills out of business. Between, I think, 1993 and 1998, 51 percent of the substandard landfills in all the States were closed down.

States also required even more strict environmental standards because they have their right under RCRA to do that: financial assurance, double liners; you name it, and my members have complied with it. So environmental policy has dictated better environmental protection and protection of human health.

Let me just talk a moment also about the fact of contiguous States. There are many communities that rely upon landfills not in their own State because they're more closely related to landfills in other States. Chicago is a perfect area. Illinois has abundant landfill, but the counties around Chicago, they can go north, they think, up to Illinois, and they can go south to Indiana. It makes more sense. They're going to good, state-of-the-art facilities.

Last, host community agreements, some of the speakers have talked about those. There are many communities in every single State that takes out-of-state waste that look upon this as any type of industrial activity. It is an opportunity for jobs, and it is an opportunity for revenue.

In the State of Virginia, the great State of Virginia, as a matter of fact, there are communities, poorer communities, that have relied on garbage coming in, environmentally well-suited landfills, to protect public health and the environment. Those monies pay for schools, for roads, for recreational facilities, as well as in Pennsylvania.

I just testified yesterday in Cleveland about some comparable bills, and I will tell you that many of the public—I beg your pardon, in Lansing, MI; excuse me, Senator—many of the communities in Lansing, MI, the public communities are also accepting out-of-state waste as well as in other States.

And I will end my remarks by just talking about flow control in one paragraph, if I may. In 1995——

Senator BAUCUS. A short paragraph.

Mr. PARKER. Very short. I talk quickly. I'm from the East.

[Laughter.]

In 1995, the New York State Conference of Mayors and Municipal Officials testified in this very same room against flow control, stating that, "Flow control adds unnecessary spending to a village or a city's bottom line," and giving examples of cities wasting money on county authority disposal schemes they had no control over.

In 1997, Congressman Pascrell testified here against flow control, citing his experience as Mayor of Paterson, New Jersey, and the bipartisan opposition to it. One of those members was Jim McGreevy, then Mayor, who is the current Governor of New Jersey, of Wood-Ridge at that time. Pascrell testified that flow control "allows governments to create monopolies which leads to costs some-

times up to an extra 40 percent being dumped on consumers." And trust me, things have not changed. The more innovative communities that built facilities with flow control have found ways to lower taxes, lower costs, and be more efficient in doing it.

Thank you, sir.

Senator BAUCUS. Thank you very much, Mr. Parker. I will ask my first question of you.

Of course, the legislation we are talking about doesn't prohibit a State from accepting garbage from another State, does it? It provides that a governor of a State can decide at its own discretion whether or not to accept. It would just seem to me that, given the discretion of a State whether or not, that that would encourage the exporting State to work out some agreement with the tentative importing State. So perhaps under some terms the importing State would say, "Yes, that's a pretty good idea," listening to the concerns, say, of a host community.

Of course, the host community should not—most people in the State decide the fate of so many other people in that State. There could be many, many people in the State who don't want that garbage to go through their town on the way to the host community. In addition, many States like to have some sense of their own economic development and plan it in some way themselves.

Of course, what you are advocating would prohibit that. It would, in a sense, say that some outlier could come on in, irrespective of the State economic development plan, if a local community wanted to do something a bit different. Frankly, what it might do—that is, this legislation—is encourage States to spend more time with those local communities that want some economic development.

So I just don't understand the argument that you're essentially making that States should not have the ability, at their own discretion, to say "no", which, as we know, in the practical world probably will mean sometimes "no," sometimes, "well, no, but—" and some other arrangement. Whereas, on the alternative, when States have no authority to say "no", there's less incentive to work out an accommodation among States and among State governments along with their communities.

I just don't understand at all why—the better approach is to try to work out these agreements, and that would happen with legislation that would give States discretion.

Mr. PARKER. May I answer that, sir?

Senator BAUCUS. Absolutely.

Mr. PARKER. Thank you so much. The bills we are talking about, first of all, begin with a prohibition. There's a complete ban, and then there's exceptions to that ban.

It is interesting because Mr. Hess, who is from Pennsylvania, testified today, as well as he did last August before the House, that he is for host community agreements. The problem with these bills is that what you see is not really what you get. There are so many exceptions. There's ratchets. There's caps. There's reopeners. Basically, companies who have relied upon contracts, who have relied upon the Commerce Clause, who have built these large facilities in response to environmental policy, would essentially be stripped down. So these bills are fatal in that regard. They really give you a lot less than what you get.

Really, I'm sympathetic to this. I live in Scranton, PA, as I said. There are huge mega-landfills there. The trucks that Senator Specter talked about, I see those myself.

But, you know, this is an equity question. It is not an environmental question. It is not a health question. It is not about trucks. There are other ways of dealing with those things.

States right now, even if they allow garbage to come in, in their whole solid waste plan with giving permits and zoning requirements, and so forth and so on, there are less restrictive means of doing that than closing the——

Senator BAUCUS. But you're avoiding my central question. The central question is: What's wrong, as a general rule, for States having the discretion to say "no"? What's wrong with giving them discretion, not a prohibition, discretion? With all the attendant consequences that I mentioned earlier?

Mr. PARKER. For the same reason that the Constitution doesn't give Pennsylvania the discretion to keep cars made in Detroit out if they have a BMW factory in Pennsylvania.

Senator BAUCUS. That's not right. That's not right. Congress could pass a law so stating, and it would be constitutional.

Mr. PARKER. That's true, but what's the difference? There's still a commodity of——

Senator BAUCUS. There are many commodities that are regulated by the Commerce Clause, many, many, many commodities that transfer. We've got rails. We've got highways.

Mr. PARKER. With due respect, sir, I don't know of any prohibition of a commodity.

Senator BAUCUS. Well, I'm just talking about, I haven't researched this, but I know that Congress many, many times affects interstate commerce by passing Federal legislation. This would be a way to affect interstate commerce in a way that allows States to have some control over their own destiny, whereas currently with respect to this commodity they effectively do not.

All right, I am going to have to leave. Senator Warner, thank you very much for taking over.

Senator WARNER [presiding]. OK, I'll take over the chair.

Senator Voinovich, by the early bird, you're next to the questioning.

Senator VOINOVICH. Well, thank you, Mr. Chairman.

I would like to know——

Senator WARNER. First, we ought to thank Senator Baucus for really conducting a good, vigorous, and thorough hearing on this, and Senator Jeffords.

Senator BAUCUS. Thank you.

Senator VOINOVICH. Mr. Anderson, because of the *Carbone* decision, you lost flow control, and as a result of that, you had to impose an additional tax on the people in your jurisdiction to satisfy the bondholders, is that correct?

Mr. ANDERSON. That's correct, Senator.

Senator VOINOVICH. How would this legislation impact upon you?

Mr. ANDERSON. I guess the most helpful way to view this is kind of an analogy. We went out, SWACO went out and got a mortgage to build a house. We secured that mortgage based on our job——

Senator VOINOVICH. Yes, I understand that, and then the people that were paying the mortgage disappeared on you, so you had to make up for it. The question is, if this passed, how would it help you currently? Would you be able to then regain flow control from the jurisdictions that you had?

Mr. ANDERSON. What it would do would be to allow us to reduce the debt by exercising that grant of authority. It would also allow us at the same time to be able to continue the recycling programs that we carry out and reduce the tax burden on the residents in our community.

Senator VOINOVICH. But the communities that were taken out of your flow control are now being serviced by probably some companies that Mr. Parker represents, right?

Mr. ANDERSON. Yes, sir.

Senator VOINOVICH. So what had happened, then, is those jurisdictions who are now with some other company that disposes of their garbage would then have to come into your jurisdiction, so that you could capture their tipping fees to help pay the bonds that they originally were supposed to pay?

Mr. ANDERSON. Senator, I believe under S. 1194 if the private waste companies and those public entities entered into those contracts in good faith, the bill allows for those contractual relationships to continue until they terminate. At the time they terminate, then we would——

Senator VOINOVICH. And at that stage of the game you would take over?

Mr. ANDERSON. Yes.

Senator VOINOVICH. OK. I just wanted to get that clear, so everyone understands.

Ms. Allan, I like your name because my wife's maiden name was Allan, and there aren't too many A-L-L-A-Ns. There are a lot of A-L-L-E-Ns. So you must have some Scot background.

Ms. ALLAN. I think I do.

[Laughter.]

Senator VOINOVICH. I would like, and you don't have to give this to me now, I would like to have a report on the number of landfills closed in the State of New York and the number of landfills opened in the State of New York. The reason I would like that is, it has been my impression over the years—and I have been dealing with this problem now since 1990. My first commercial, when I ran for the governorship, was how I was going to stop out-of-state waste coming into the State of Ohio. At that time I said that we were bringing in some bad stuff, at that time, oh, medical waste, and all of the people who were carrying it said, "Oh, no, no." Well, about 2 months after my commercial ran, a truck tipped over in Lancaster, OH. It was just full of medical waste. It was from New Jersey, and I got a hold of Governor Florio at the time, and we entered into an agreement to stop that from happening.

Anyhow, we have been at this a long time, but over the years my feeling has been that the State of New York has not really stepped up to the table as a State in dealing with their own garbage problem, and that it has been a lot easier for that problem to be hoisted off on Virginia, Ohio, Pennsylvania, and other States. I would be

interested in the maintenance of effort. So I would like a report on that from you.

Ms. ALLAN. Well, I will have to contact the State about that, and they will get back to you. That is a State issue.

What I can say about the city is that in the first 6 months of fiscal year 2002, July 2001 to January 2002, New York City exported only .1 percent of its residential waste to Ohio. So New York City itself is not unduly burdening Ohio, I don't think. We've brought in a total of, an average of 9 tons a day and a total of 1,740 tons in that 8-month period.

I would also like to say that the way New York City's process works, we contract with private companies to export the waste, and we have to take the lowest bidder. So we don't have any control over the destinations of the waste that the contractors are providing, except that we do a very extensive field interview, field inspection, integrity review of the landfill operators. We review the host community agreements. We review the permits. We review the environmental impact statements. We say to the vendors, "You cannot take waste to this, that, or the other landfill because it's not up to the state-of-the-art."

But, apart from that, it is the contractors with whom we bid, with whom we contract, and we have to take the lowest bid. So the contractors decide whether they are going to take it to Ohio or to Pennsylvania or to Virginia. It is not the city of New York.

Senator VOINOVICH. Yes, I understand that. I would like to make it clear to Mr. Parker and others that we allow States in my bill to freeze out-of-state waste at 1993 levels. This bill does not require an absolute ban on out-of-state waste. In fact, it has a limit on what the legislature can do. They have to at least allow that 20 percent of landfill can be from out-of-state. It does give some discretions to local communities, if they, indeed, want to go forward and have it, that they've got to get permission from the State.

But the fact is, and you're right, Mr. Parker, it does go through a series of things, but this is not an outright ban on out-of-state waste. It basically is giving the States more of an opportunity to control something that is a valuable resource to the respective States. Communities, if you don't have to worry about your garbage problem and you just can continue to expand and expand and expand—it also deals with—it gets into the issue of competitiveness between one State and another. Landfill capacity becomes something very important. It is just like a community with water. If you don't have the water, you can't expand. if you don't have a way to dispose of your garbage, if you don't recycle it, then that has some limitation on your density and what you can do. It is a side of this thing that I think some people really don't recognize, but I sure do as a former governor interested in economic development and planned developments of areas of our State.

Enough of my comments.

Senator WARNER. I would like to get a question or two.

Senator VOINOVICH. Go ahead, Mr. Chairman, yes.

Senator WARNER. I have to tell you, I respect you, Ms. Allan, but I'm going to get a little tougher with you. Our research shows New York has done almost, the city has done almost nothing to try and

build recycling plants. I was just told that one has been shut down for 18 months. Is that correct?

Ms. ALLAN. Recycling plants?

Senator WARNER. Yes.

Ms. ALLAN. Well, no, I don't think that's correct. The city, just like with our export, we contract with private companies——

Senator WARNER. Listen, I know you can skirt all these little laws with how you contract, but the fact of the matter is, what is the city doing or not doing to try and consume, either through recycling or to exporting somewhere within the State, some of its waste?

Ms. ALLAN. Well, the city has a very extensive recycling program. In fact, it's got one of the best recycling programs in the country. We collect—and I had the tonnage, but we collect—last year we collected 425,000 tons of paper, which we sent to recyclers. They recycled it. The city was paid $5 million. There is a market for recyclable paper. They make it into corrugated cardboard, and it is a viable recycling material.

Senator WARNER. That's fine.

Ms. ALLAN. Now metal, glass, and plastic, New York, as you know, has a very strong bottle bill, so that the aluminum bottles and cans from carbonated beverages are removed from the waste stream before sanitation ever gets a hold of them.

Senator WARNER. Because there, again, there's a profit return on that, I would assume.

Ms. ALLAN. Yes, that goes to the bottlers and to the individuals who return it.

Senator WARNER. Fine.

Ms. ALLAN. But the remaining metal, glass, and plastic, which is unwashed applesauce jars and unwashed spaghetti jars and bottles of water, et cetera, make up approximately a thousand tons a day of the city's total waste stream, which is over 18,000 tons.

Senator WARNER. All right, well, let's just——

Ms. ALLAN. We are putting an 18-month suspension on the collection of that because it is right now costing us $56 million to collect 1,000 tons of metal, glass, and plastic. It's an infeasible program, and we have to improve it.

Senator WARNER. So you did close it down for 18 months?

Ms. ALLAN. We are planning on suspending recycling of metal, glass, and plastic——

Senator WARNER. Because it is too expensive?

Ms. ALLAN. Because it doesn't work.

Senator WARNER. Well, you said too expensive.

Ms. ALLAN. Because there are no markets. Because Waste Management, which is——

Senator WARNER. All right.

Ms. ALLAN [continuing]. Is one of our recyclers, has told us that they crush the glass and take it to landfills to use it for cover. That is not a market use of the glass.

Senator WARNER. Fine. Market is one thing. I'm talking about our State, which is the recipient of an enormous amount of your waste. It is simply cheaper for you to ship it to Virginia than to try and process it somewhere in the environs of New York City, is that correct? Bottom line?

Ms. ALLAN. No, I don't think that's correct, sir, with all due respect. The studies that we have done of our recycling show that approximately 40 percent of what we recycle ends up as residue or garbage. That is being exported along with the rest of the garbage. It's not recyclable. It is not usable materials.

As for what we send to Virginia, in the first 6 months of this year we sent 260,000 tons of waste to Virginia, which was only 13 percent of our waste stream, and which, in fact, if we took away a thousand tons a day, or added a thousand tons a day, it would not have a significant impact, considering that we send waste to about 25 or 30 landfills.

Senator WARNER. Well, you say 13 percent "is only." I think that is a lot coming our way.

What have you done by way of trying to find a landfill? Can you say that there's not a square mile of area in the State of New York which cannot be adopted for landfill purposes?

Ms. ALLAN. No, I can't say that, sir, and I know that Commissioner Doherty has started talking to the State about siting a landfill in New York for New York City. Again, what kinds of facilities New York State has is a matter for the State. It is not a matter for the city. New York State is the one that permits its landfills and decides where they're going to be sited. New York City has no authority over the siting of landfills in New York State.

Senator WARNER. Fine, you can duck and run all you want, but there's a simple concept: You've got a very large State, and there's got to be areas in which landfills can be put, and put in a safe and environmentally-compatible way. This is simply a battle between the rich and the poor, and that's what it comes down to. Your State is a prosperous State. Your city is a very prosperous city, albeit suffering a frightful tragedy, but we're about to vote, I think it's today, on a supplemental to the Federal taxpayers who are trying to reimburse the city significantly for 9-11. I just put that down as an aside.

But the fundamental thing, it is the rich versus poor. We do have some remote counties in our State which have resorted to taking in the waste to try to meet their financial needs. That's a fact. I am sure that if there were other ways to achieve their financial needs, they wouldn't do it. But this is a fact; they're taking it. And that's true in other jurisdictions.

But it is cheaper for you to export than to try and, within your own State framework and Federal framework of environmental laws, either recycle or provide landfills, and no one can come in this hearing room and tell me to my satisfaction that there isn't a square mile of land somewhere in that great State which could be converted to landfill and begin to accept some of the waste, whether it is from the city or other parts of New York. It's a simple fact of the matter.

Ms. ALLAN. Yes, sir, and if I could say one thing, the three landfills that our vendors, our contractors are using in Virginia, all three are state-of-the-art landfills, built with State permits, after full environmental impact statements, and with host community agreements, and with very stringent conditions that we comply with. So nothing in this bill about host community agreements and permitting would affect those landfills except for the State to be

telling the locality, "You can't take New York City's waste," and we consider that to be a problem with the Commerce Clause.

Senator WARNER. Well, fine. I recognize that you are working within the confines of existing laws. I and others are doing the very best we can to bring about some equity in that legal framework.

But, Mr. Burnley, to you, clearly, they are working within the existing framework of law, but the State has no voice, almost no voice whatsoever in this interstate transportation of waste. And, as a consequence, the State is incurring expenses to manage these landfills—why don't you expand on that?—which you're paying out of the pockets of the State taxpayer.

Mr. BURNLEY. That's true. Increased compliance efforts, there are more inspections. We are having to spend those very scarce resources that we have for environmental protection in places that we really would prefer not to.

We are also having to clean up trucks, truck wrecks that are spilling garbage. We are having to spend a great deal of time and effort and money on trying to figure out a way to regulate barge traffic on the Chesapeake Bay that is going to be carrying garbage. All of those things, we could be using that time and those scarce resources for other environmental issues.

Senator WARNER. I have a great familiarity with the Chesapeake Bay, and having been the former Secretary of the Navy, I know of some accidents we have had in shipping in that area, serious ones. If one of those barges with the capacity of—what did you indicate?

Mr. BURNLEY. Two hundred and fifty tractor-trailers.

Senator WARNER. Fine. If it were to be sunk, as a consequence of an accident in fog or other navigation probabilities, what kind of environmental problem would we be faced with?

Mr. BURNLEY. Well, as you know, Senator, the Chesapeake Bay is already facing a lot of challenges already. You mentioned fish and shellfish and other water quality issues. That would obviously exacerbate those problems. Who knows what kind of efforts would be necessary to recover the garbage and what kind of environmental impacts it would have, but it would be significant.

Senator WARNER. Now I would be glad to allow any of the witnesses to respond to some of the points I made here today, if you want to expand on them. Anyone wish to be recognized for that purpose?

Mr. Hess.

Mr. HESS. Mr. Chairman, thank you. The issue of host community agreements has come up several times, and I think that is an important issue. In fact, we had in 1999 done a survey of our communities that are hosting various waste facilities. As a result of that survey, we found that 47 of those communities did not want in fact, to accept out-of-state waste. Ten of them did. I don't think anyone is saying we're going to close the door to waste imports. I think we have a regional responsibility.

We shared that information with the Mayor's office at the time in New York City, and did not hear anything back. Some of those facilities were clearly getting waste from New York City, where they did not want that waste. I would welcome the opportunity to share that list and any other information with the representative

here from New York City. We can do an accounting of what the host communities agreements do say.

Senator WARNER. Senator Voinovich, I must depart, and if you would just accept the chair, and continue this hearing. We thank all of you for coming, but this is a tough issue, and the battle is not over, folks.

Senator VOINOVICH [presiding]. Thank you, Mr. Chairman.

Mr. Hess, you had an opportunity to hear Mr. Parker's testimony. Would you like to comment on it? He makes a point that we have a lot of garbage flowing back and forth over State borders. I know in our State we have some garbage that flows out of Cincinnati over into Kentucky.

What's your response to what Mr. Parker has to say in terms of why his organization is opposed to this?

Mr. HESS. Well, I think, again, the numbers in our case speak for themselves. Forty-seven percent or so of the waste that's disposed in Pennsylvania comes from out-of-state, primarily from New York and New Jersey, but from 18 other States as well. I think it comes down to a fundamental issue of fairness and incentives for those States to develop facilities that can take care of waste there.

We have never taken the position, all the way back to the late Governor Casey, of closing our borders. We recognize that there is a reasonable responsibility, but, frankly, being dumped on to that extent is not acceptable to Pennsylvania, has not been under Republican or Democratic governors.

Senator VOINOVICH. So your theory is that, if we were able to get our legislation passed, that the legislation that I have, there's a lot of flexibility here. It basically says that communities that have approved it can continue to approve it, if they want to. It says that any expansions over since 1993 would have to be approved by the local community. We say we can still provide 20 percent imports. So it gives you some flexibility.

I think the most difficult thing in the legislation is that, if you want to build a brand-new landfill site, that there's got to be some need for that landfill site for the respective community. It can't be built like the one they wanted to build in Jefferson County, to bring in garbage that I think Waste Management wanted to bring in from Canada, and just basically said we're not going to become the garbage dump for Canada.

Mr. HESS. I think, Senator, the host communities' wishes on these issues need to be heard. I think the one thing that I've heard in going to communities that have landfills is that they feel pretty powerless against the landfill operators. I think giving them a voice, giving them a choice, is something that would be a tremendous relief to those communities. Congress does have the authority to do that.

Senator VOINOVICH. So it is your theory, or you have facts to back it up, that many of the landfills in your State that are taking in 47 percent of the garbage from out-of-state got permits and are receiving this waste, but the communities in which the waste is coming into are in opposition to it?

Mr. HESS. Some of them have agreed, but there are others that have not. As I said, we would be glad to share that information with the city.

Senator VOINOVICH. What would you say to those that have agreed to do it?

Mr. HESS. That is really their choice. I think that is one of the main points that we're concerned about. They don't now have a choice of where their waste comes from. That can only be given by Congress through legislation like yours and Senator Specter's. That is something I think that is extremely important to them. Again, we would be happy to share that information with the city.

Senator VOINOVICH. Do you see a—let's put it this way: Have you seen recently a large increase of out-of-state waste coming into your State?

Mr. HESS. We have, if you look at the numbers. Again, since everyone began to talk about this in approximately 1989, Pennsylvania imported about 3.4 million tons of waste from other States. Right now, as I mention in my remarks, last year that was up to 12.6.

Senator VOINOVICH. You're way above what we are taking in.

Mr. HESS. This is one category where we don't want to be No. 1 any longer, Senator.

Senator VOINOVICH. This would also put some pressure on some of the States to start to face up to the responsibility that they have to make more landfills available. That is why I am very interested to see, get the information from the State of New York about what they are doing in terms of handling their own problem.

It is real easy if you've got a company that comes in, gets the contract, and they're low bidder, and no one has to worry about it except the State where the stuff is going. There ought to be some kind of requirement of maintenance of effort by States to handle their own garbage. Maybe we ought to look at that percentage that you've got to handle yourself before you are going to be able to shift it into somebody else's backyard.

Well, I want to thank the witnesses very much for being here today. This will conclude the hearing.

[Whereupon, at 11:40 a.m., the hearing was adjourned, subject to the call of the chair.]

[Additional statements submitted for the record follow:]

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

Mr. Chairman, thank you for holding this hearing today. Interstate waste and flow control are issues that have spanned the duration of almost five chairmen of this committee. With all that has happened in the past year or so, it is almost comforting that the more things change, the more they stay the same. In 1995, Senator John Chafee and I worked hard to pass an interstate waste/flow control bill. The House took a more free market approach and legislation was never signed into law. In hindsight, that may have been the right outcome, in particular as it relates to flow control.

Because of the promise of flow control, facilities were sited on an unconstitutional premise that a local government could mandate a market for itself. In 1994, the Supreme Court affirmed the unconstitutionality of flow control in the *Carbone* decision. With this decision came a cry for help from the local communities who feared, absent flow control, they would be forced to default on bonds that had been issued to finance the construction of waste management facilities. We heard testimony to that effect in 1995. It is now 7 years later, flow control has still not been signed into law, and all of the talk of massive doom has not come to fruition. I do acknowledge that it has not been easy on many communities without the ability to exercise flow control authority, but no one ever said that competing in the free market was supposed to be easy. I do not believe that the Federal Government should be about mandating market streams, or allowing others to mandate a market stream where healthy competition already exists. We should be advocating open markets and consumer choice, not contracting and restricting. The need for flow control implies the inability to compete in a free market system—which means residents would be paying prices higher than they would otherwise be paying. It is, in essence, an added tax on top of paying for waste management services for anyone who lives within these jurisdictions. But when forced to compete, the majority of communities have risen to the occasion by charging competitive rates, streamlining operational costs and seeking alternative sources of revenues. I commend these communities for responding with innovation and good old American ingenuity. Now, if localities need to raise additional revenue, they can do so without compromising the free market mechanism. If localities want to impose a tax on their citizens, they should do so directly, rather than hiding it in Federal flow control legislation.

With regard to interstate waste restrictions; this issue remains a complex divergence of open markets and States rights. Many States, including New Hampshire, both import and export significant amounts of waste. In 2000, my State exported 54,000 tons while importing 255,000 tons. Towns across New Hampshire are uneasy with current and proposed imports. I understand their concerns and have worked to find a fair solution. First and foremost, we must be assured that ALL waste is being managed in an environmentally sound manner. We must seek creative, innovative and cooperative solutions to these issues without having to put artificial constraints on what is a free market. Absent legislation that is agreeable to all regions of the country, history has proven that having any legislation signed into law is almost an insurmountable task. As of yet, I am not convinced that any legislation before us contains the answer. I look forward to the testimony of our witnesses. Thank you.

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

I am pleased to testify before this committee on this important legislation. The Senate has expressed its will on this issue over and over again by overwhelming votes. However, we have been unable to enact a law that would give states and local governments control over their own jurisdictions, and over their own land. In Michigan, my counties and townships have plans for waste disposal and have invested a lot of money to dispose of their waste locally. Those plans and those investments are disrupted when contracts are entered into without consideration by State, county, or local governments of the impact of those contracts.

In Michigan, we are facing a totally unsustainable situation with regard to the importation of waste from other states and Canada. Waste received from states outside Michigan increased 16 percent in fiscal year 2001, while imports from Canada rose 40 percent. Over the past 2 years, imports from Canada have risen 152 percent and now constitute about half of the imported waste received at Michigan landfills. Currently, approximately 1,300 truckloads of waste come in to Michigan *each week* from Canada. And this problem isn't going to get any better. These shipments of waste are expected to continue as Toronto and other Ontario sources phaseout local disposal sites. On December 4, 2001, the Toronto City Council voted 38–2 to approve

a new solid waste disposal contract that would ship an additional 1.25 million tons of waste per year to the Carleton Farms landfill in Wayne County, Michigan, beginning in January 2003. In addition, two other Ontario communities that generate a combined 385,000 tons of waste annually have signed contracts to ship their waste to Carleton Farms.

Based on current usage statistics, the Michigan Department of Environmental Quality estimates that Michigan has capacity for 15–17 years of disposal in landfills. However, with the proposed dramatic increase in the importation of waste, this capacity is less than 10 years. The Michigan Department of Environmental Quality estimates that, for every 5 years of disposal of Canadian waste at the current usage volume, Michigan is losing a full year of landfill capacity.

The environmental impacts on landfills, including groundwater contamination, noise pollution and foul odors, are exacerbated by the significant increase in the use of our landfills from sources outside of Michigan. Congressional inaction is harming our constituents who are powerless to do anything about this.

The EPA has stated that our lack of domestic laws in this area hinders international efforts to control shipments of Canadian municipal waste into Michigan. This legislation would resolve this problem by giving control to the states to determine whether or not they want to accept out-of-state waste.

I am pleased that the Senate Environment and Public Works Committee has hearings planned on this issue and I look forward to working with my colleagues on both sides of the aisle to get this important legislation passed and signed into law.

STATEMENT OF HON. STEVE BUYER, U.S. REPRESENTATIVE FROM THE STATE OF INDIANA

Mr. Chairman. I am very grateful that this committee is holding a hearing today on the troublesome issue of interstate waste shipments.

Small towns in my home State of Indiana and other similar states have been overtaken by thousands of tractor trailers, loaded with out-of-state municipal waste. In 1998 almost 2.2 million tons of out-of-state municipal solid waste was disposed at facilities within Indiana, mostly landfills. Most of those landfills are in my congressional district. Those 2.2 million tons represented 30 percent of the total amount of waste disposed in Indiana's landfills.

While 1998 was a peak year for Indiana, the level of out-of-state trash coming into Indiana from States that refuse to deal with their own trash is still unacceptably high.

Indiana has accepted the responsibility to address the disposal needs for trash generated in Indiana. The State has 61 solid waste management districts to address our own waste. Indiana currently has 17 years of in-State capacity based on current disposal rates. However, the threat of unlimited quantities of out-of-state trash could quickly undo the good that the State of Indiana and its citizens have planned. The primary goal for Indiana is to protect our State's disposal capacity and our natural resources and environment. It is impossible for the State and local communities to plan if it can be undone by unlimited, uncontrolled out-of-State trash.

Imported trash creates environmental problems, safety problems, and community development difficulties. States should have some ability to address these needs without running afoul of the Commerce clause. That is why I have cosponsored H.R. 1213, the Solid Waste Interstate Transportation Act." This bill would give the State of Indiana the tools it needs to ensure that its environment is not despoiled by the actions of other States that are not so responsible. This idea is not new. The House passed similar legislation in the 103rd Congress by an overwhelming vote. The Senate has passed similar legislation as well.

I urge this committee to move forward to give States the necessary tools to protect their environments and their communities.

STATEMENT OF ROBERT G. BURNLEY, DIRECTOR, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

INTRODUCTION

Good morning Mr. Chairman and members of the committee. I am Bob Burnley, Director of Virginia's Department of Environmental Quality. I appreciate the opportunity to speak to you about Virginia's concerns about interstate waste.

SOLID WASTE MANAGEMENT AND INTERSTATE WASTE DISPOSAL IN VIRGINIA

Governor Warner and I are concerned about interstate waste because landfills consume open space and threaten the quality of our environment. While every state has a responsibility to ensure adequate and safe waste disposal capacity for its citizens, Virginia should not be forced to assume these long-term costs and increased risks for other states. We should not have our hands tied as we attempt to protect ourselves from the onslaught of garbage from other states.

Virginia is second in the Nation in the amount of out-of-state waste received. Over the last decade, the amount of out-of-state waste imported to Virginia has more than doubled. In 2000, Virginia imported 4.5 million tons of solid waste. This represents more than 20 percent of Virginia's total waste stream.

Landfill permits consume approximately 10,000 acres in Virginia. This capacity will last until 2014 if disposal volumes remain constant. If, however, Virginia is not able to cap the flow of waste from other states, we may be forced to provide additional landfill space at a much earlier date.

The U.S. EPA acknowledges that, despite our best technology, all landfills will leak eventually. Virginia has enacted very stringent requirements for the siting, monitoring and operation of its landfills, more stringent than those established by EPA. Despite our best efforts to protect Virginia's environment, however, we do not know what will happen 20 or 30 years from now. Common sense tells us that the larger the landfill and the more waste we are forced to accept, the greater the risks of ground water contamination and other pollution.

Unfortunately, Virginia has already suffered the consequences of uncontrolled shipment of out-of-state waste. The Kim-Stan Landfill in western Virginia was originally operated as a local landfill but was later purchased by private interests. In the subsequent months they began importing waste from other states, increasing the volume significantly. Hundreds of tractor-trailers filled with trash traveled the back roads of rural Allegheny County each day. The owners soon filed bankruptcy and the landfill is now a Superfund site. The Commonwealth has already expended millions of its taxpayer dollars to investigate and contain the contamination; neither the generators nor the generating state have borne any of these costs. We hope our enhanced landfill regulations will prevent this type of environmental catastrophe from happening in the future, but the fact remains that no one is certain that current landfill designs are adequate to provide long-term environmental protection.

Another concern is our inability to enforce against generators who send their waste to Virginia facilities. Virginia prohibits certain types of waste from its landfills that are allowed in the municipal solid waste streams of other states. Without the ability to limit imports from these states, Virginia is forced to expend more of its state-funded compliance resources at landfills accepting wastes from other states. When violations are found, however, we have no authority to pursue enforcement against the source of the waste if they are outside Virginia.

In 1998 and 1999, DEQ found illegal wastes in loads of trash coming from New York City. In the resulting litigation, the Virginia State Courts found that it would be impossible for a New York City transfer station to adequately screen the trash to prevent these banned wastes from making their way to Virginia's landfills unless the volumes were significantly curtailed. The Federal courts, however, have prevented us from imposing any limits or caps on the disposal of these wastes because it would violate the Commerce Clause of the Constitution.

Every day, trains filled with garbage travel Virginia's railways, many parking along the way while they wait their turn at the landfill. Tractor trailers filled with garbage work their way through the crowded interstate system and across rural Virginia. At least one of Virginia's landfill operators plans to use barges to import garbage. Each barge will bring approximately 250 tractor-trailer loads of trash across the Chesapeake Bay and up the James River. Virginia has tried to protect itself by imposing disposal caps, regulating large trash trucks, and imposing restrictions on trash barges; but the Federal courts have blocked these efforts.

VIRGINIA'S GOALS

The Commonwealth seeks the authority to control how our natural resources are consumed and protect the long-term welfare of our citizens. In order to do this, we are asking Congress to grant states the ability to control the importation of garbage. This authority should be simple and flexible enough to meet the needs of all states, without basing it upon the solid waste management system of one particular state.

For example, some of the legislation being considered would authorize states to cap waste imports at 1993 levels. Virginia first collected verifiable information on waste imports in 1998. The Department of Environmental Quality has been working

with Senator Warner and other members to identify these concerns and I hope that we will be able to address them before any action is taken.

I applaud the committee for continuing its efforts to address this issue. Thank you for the opportunity to present Virginia's concerns about interstate waste disposal. I would be happy to work with you and your staff to move such legislation forward. This concludes my prepared remarks, and I will be happy to answer any questions.

STATEMENT OF DAVID E. HESS, SECRETARY, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chairman Jeffords, Senator Smith, members of the committee my name is David Hess, and I am the Secretary of Pennsylvania's Department of Environmental Protection. I am here today on behalf of Governor Mark Schweiker to talk to you about an issue of great importance to the Commonwealth of Pennsylvania—interstate waste.

Pennsylvanians have been struggling with this issue for more than a decade. In 1988, we faced a garbage crisis with only 18 months of total disposal capacity to the present with an ever increasing flood of waste from outside our borders almost doubling the millions of tons of garbage disposed of in our state every year. We solved our problem by building a statewide waste management infrastructure through a Commonwealth-wide recycling program and sound, scientifically based landfill standards.

Just a quick glance at our waste management statistics underscores our concern. Disposal figures in 2001 indicate that 26.6 million tons of waste was disposed in Pennsylvania waste facilities. Of this, nearly half—12.6 million tons or 47.3—percent was imported from at least 20 states.

Over the past 7 years, Governor Ridge, Governor Schweiker, previous DEP Secretary Jim Seif and I visited many Members of Congress to urge you to resolve this issue. Our message has been simple and consistent—pass Federal legislation giving communities a voice in deciding whether trash from other states should be disposed of in their communities.

As long as states can export unlimited quantities of trash to their neighbors, there is no incentive to deal with this reality by creating their own waste management infrastructure.

For a number of years, states have attempted to regulate the movement of waste across their borders, only to be denied that right by the courts.

Earlier this month, the U.S. Supreme Court refused to review the lower court decision that the Commonwealth of Virginia's solid waste laws regulating out-of-state waste unduly interfered with interstate commerce.

This most recent court action underscores the need for Congress to act on this issue and provide states with the ability to manage the importation of municipal waste from other states.

Our resolve in finding a regional solution to our waste issues remains unchanged, but Federal legislation remains the only key to reducing unwanted trash imports.

The people of Pennsylvania are asking Congress to give them a voice in deciding whether trash from other states should come to their communities for disposal. We are not seeking to build a fence around our borders to turn back every waste truck, or to turn our backs on the legitimate needs of our neighbors. We are not asking for Federal money. We are simply asking the Congress to give the states the authority to place reasonable limits on unwanted municipal waste imports in a planned, balanced and predictable manner.

Specifically, Pennsylvania is seeking Federal legislation that gives us some basic tools:

1. Give Pennsylvania's communities the ability to allow the disposal of imported waste through host community agreements, which would address concerns such as operating hours, truck traffic, noise and litter before permits are issued;
2. Impose a freeze on waste imports immediately, with a predictable schedule for reducing imports over time;
3. Allow states to impose a percentage cap on the amount of imported waste that a new facility could receive; and
4. Allow states to consider in-state capacity as part of the permitting process.

In numerous decisions dating back to 1978, the U.S. Supreme Court has ruled that the transportation 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.

There have been a number of legislative efforts that squarely address the interstate waste commerce question and present a fair and equitable solution to both importing as well as exporting states.

Legislation introduced by Senator Specter (S. 1194—June 18, 2001) and a similar bill by Congressman Greenwood (HR 1213—March 27, 2001) incorporate similar provisions that Pennsylvania supports. We have also supported legislation sponsored by Senators Voinovich and Bayh, and have worked in the past with Senator Warner and former Senator Robb.

While we wait for Congressional action, Pennsylvania has moved forward in our efforts to strive for cleaner, safer communities, and environmentally educated citizens.

Pennsylvania has created a world-class recycling program that serves over 10 million residents in over 1,485 communities, and has resulted in Pennsylvanians recycling over 32 percent of all waste they generated, diverting one-third of our trash from disposal.

In 1988, we recycled 167,000 tons of materials. Today, we recycle more than 3.4 million tons—more than twenty times as much! Recycling diverts materials destined for disposal, and at the same time, provides jobs and infuses over $20 billion annually into Pennsylvania's economy. There are currently more than 3,200 recycling and reuse businesses in the Commonwealth, which employ more than 81,000 people. And the lessons we've learned on environmental responsibility are invaluable.

Materials that were once considered unusable and unrecyclable are building better and safer roads. We have begun pilot projects that incorporate the use of recycled plastics in 'plasphalt', glass cullet for pipe backfill along roadways, and shredded tires as light weight fill in highway bridge approaches.

Playgrounds and recreational trails are constructed from discarded tires from waste tire piles that at one time blighted Pennsylvania's landscape.

Composting of household organic waste diverts 21 percent of food waste and other organic material from the municipal waste stream adding up to 2.2 million tons annually.

And we have 12 years of permitted disposal capacity to continue to meet the waste disposal needs of the Commonwealth using the nation's toughest environmental standards.

We don't back down from our responsibilities. We know what the responsible thing to do is and we do it. However, the same cannot always be said of our neighbors.

Recently in his proposed budget, Mayor Michael Bloomberg of New York City announced the 18-month suspension of metal, glass and plastic recycling programs. Although their proposal is expected to save the city an estimated $57 million, the real costs are assumed by other states like Pennsylvania. Clearly, if this proposal is passed, Pennsylvania will receive even more waste.

We sincerely hope the city of New York recognizes the hard work we have done in Pennsylvania to make our recycling program one of the best in the nation, and rejects any proposal aimed at lessening their environmental responsibilities at the costs of others. We have reason to believe that they will and that they will continue their commitment to waste reduction and recycling.

The city plans to make recommendations to Governor Pataki and the New York legislature regarding ways to reduce waste exports and the siting of new landfills outside of New York City. We are committed to being a good neighbor as demonstrated by our partnership with New York's city and state officials in managing waste and demolition debris disposal in the wake of the tragic events of September 11th.

In addressing Pennsylvania's waste capacity issues responsibly, Governor Schweiker has initiated and supported legislation introduced in the General Assembly that proposes a landfill moratorium on new permits, limits landfill capacity, and supports host community agreements that address concerns such as landfill operating hours, truck traffic, noise and litter.

Trash truck safety is an important component of the overall waste importation dilemma. The increase in truck traffic due to the transportation of waste over state lines has resulted in more traffic accidents, roadside littering, leaking loads and wear-and-tear on our highways. Trucks hauling trash make over 600,000 trips a year in Pennsylvania alone.

New tough truck safety legislation has also been introduced that will establish a comprehensive authorization program for waste hauling vehicles that operate in Pennsylvania. A complete review of the transporter's compliance history will also be required, before a written authorization is issued. The bill also establishes civil and criminal penalties for persons who violate the provisions of the written authorization and continue to have environmental and safety violations.

In an unprecedented effort to reduce the high rate of safety and environmental violations of trash haulers, our agency, in conjunction with PennDOT and the PA State Police, launched "Operation Clean Sweep"—surprise trash truck inspections at every landfill and major incinerator in the state for 8 days straight during May 2001. Over 500 inspectors from all three agencies participated.

"Operation Clean Sweep" identified hundreds of unsafe trash trucks—86 percent of the trash trucks had safety violations and more than one-third of the trucks were removed from service as unsafe vehicles. During "Operation Clean Sweep" we inspected more than 40,000 trucks, which resulted in over 11,000 safety and environmental violations issued.

Our democracy is built on the foundation of empowering people to make choices. It is also built on fairness.

The citizens of the Commonwealth of Pennsylvania are asking Congress for a fair and equitable opportunity to make responsible decisions with regard to waste entering our communities from out of state—this missing piece of legislative authority will allow us to better manage and control almost half of the waste disposed of in our state.

Senators, you have the power to provide that missing piece. Pennsylvania has toiled over the past 14 years to provide a comprehensive and accountable waste management system to manage the wastes our citizens generate. We have developed successful programs to reduce the amount of waste that needs to be managed and permitted landfill capacity to deal with the remainder. My agency has worked diligently to ensure the waste industry improves its compliance and safety records. The Pennsylvania General Assembly has worked to develop equitable solutions for transportation safety and host community protections. Your help will result in a complete approach to managing waste rather then a partial solution Pennsylvania's efforts alone would deliver.

Pennsylvania looks forward to a positive response from Congress and stands ready to work with you on developing legislation that will assure equitable, cost effective and reliable waste disposal for all communities.

STATEMENT OF HAROLD J. ANDERSON III, CHIEF COUNSEL, SOLID WASTE AUTHORITY OF CENTRAL OHIO

Chairman Jeffords and members of the committee:

My name is Harold Anderson and I am Chief Counsel of the Solid Waste Authority of Central Ohio ("SWACO"). I am testifying on behalf of SWACO and the Local Government Coalition for Environmentally Sound Municipal Solid Waste Management ("Coalition"), a joint effort by a number of cities, counties, solid waste management authorities and related associations concerned with municipal solid waste flow control, interstate waste transportation and other municipal solid waste issues.

We commend you, Chairman Jeffords, for holding this hearing, and for allowing the long-standing issues of interstate waste and flow control to again be brought before the committee. We also thank Senator Voinovich for a very similar bill that we understand is expected to be introduced in the near future. And last, but certainly not least, we also want to extend sincere appreciation to Senator Specter for sponsoring S. 1194, as well Senators Wyden, Warner, Stabenow and Santorum for their co-sponsorship of the bill.

BACKGROUND

My testimony will briefly address flow control and interstate waste transportation. Before turning to those points, first let me tell you about SWACO. We are among the ten largest public waste management authorities in America. SWACO strongly embraces recycling and other environmentally friendly programs. In fact, SWACO recently took over the recycling program for the 700,000 residents of the city of Columbus. SWACO strongly embraces partnerships with the private sector. Our public landfill is operated by Waste Management, Inc.

Our Coalition supports S. 1194. The bill would protect stranded investment by providing limited grandfather authority for the use of "flow control." These are investments that many communities and other public bodies made in direct response to Federal mandates arising under the Resource Conservation and Recovery Act and parallel state laws that give local governments primary responsibility to assure adequate long-term capacity to manage in an environmentally sound manner all of the municipal solid waste generated within their respective jurisdictions.

"Flow control" is a mechanism that allows local governments to meet that obligation in a fiscally responsible manner. As the term implies, a local government will "control the flow" of municipal solid waste by selecting—and designating by ordi-

nance—a specific facility (or set of facilities) for municipal solid waste processing, disposal, etc.

Providing that capacity or infrastructure will often require significant financial commitments which are, in turn, secured through revenue bonds and similar flow control-dependent financial arrangements. In fact, since 1980 over $20 billion in state and local bonds have been issued in reliance on flow control authority for the construction of solid waste facilities.

Unfortunately, in the *Carbone* case the Supreme Court ruled that the flow control ordinance at issue in the case violated the Commerce Clause. I should hasten to note that prior to *Carbone* flow control had repeatedly been validated by Federal court decisions spanning more than two decades from the 1970's into the 1990's, and statutes in more than 20 states authorized local governments to employ flow control. In fact, in previous hearings before this committee, Moody's Investors Service, Inc., testified, and I quote, that "[p]rior to the *Carbone* decision, Moody's viewed the state and local flow control laws and ordinances as valid, binding and enforceable."

THE IMPACT OF THE CARBONE DECISION

The consequences confronting communities throughout the Nation due to the loss of flow control authority and the absence of Federal legislation such as S. 1194 include steep 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, depletion of cash reserves, and ever-increasing upward pressure on tipping fees as the unavoidable fixed cost burden of waste management infrastructure is shared by fewer and fewer users.

My agency, SWACO, is a case in point. We have over $150 million of stranded investment in a waste-to-energy facility that was closed on the heels of the *Carbone* decision. After the *Carbone* ruling we laid off 250 employees and had to impose a $7 per ton fee—a waste tax—on all municipal solid waste generated in Franklin County. We had to take that action to generate sufficient revenue to meet our debt obligations in the absence of flow control authority.

In terms of the bond downgrades that I mentioned a moment ago, the principal rating agencies, Moody's and Standard and Poor's, have downgraded a considerable number of bonds (at least 22), and the total outstanding solid waste debt for public agencies that has been downgraded or placed on credit watch for potential downgrading since *Carbone* is estimated at over $3.5 billion.

Compounding these difficulties is the spillover effect for other public investment needs. Specifically, when a flow control-reliant community goes to the bond market to finance essential needs such as schools, roads, public safety facilities, wastewater treatment plants, etc., the interest rate that it must pay is likely to be higher due to the instability that results from the absence of Federal flow control legislation. Those additional costs are ultimately borne by the local taxpayers.

I must also emphasize that we have not defaulted on our bonds and, like many other local governments, we have made significant financial sacrifices to meet our obligations. Along with other communities and public bodies, we will continue to do everything within our ability to avoid the truly debilitating impact of a bond default.

Unfortunately, the absence of such a default has led some to suggest that we "do not need" flow control legislation. That suggestion would be correct *if*—and only *if*—one also concludes (which we do not) that the better approach is to increase local taxes to meet financial obligations undertaken a number of years ago in good faith reliance on flow control authority. Aside from its unfairness, that position would contradict Federal policy announced more than a decade ago to discourage use of general taxes to fund solid waste management. And surely no one would seriously suggest that flow control-reliant communities must endure an Orange County-type default to justify congressional action.

S. 1194 PROVIDES NARROW PROTECTION FOR STRANDED INVESTMENT

S. 1194 is narrow legislation that protects reliance interests. The bill provides "grandfather" authority for use of flow control by communities with stranded investment (or contractual obligations) undertaken in reliance on the previous availability of flow control. In that regard, just as stranded cost protection for a utility recognizes that industry restructuring "changed the rules of the game" in terms of a utility's ability to recover various prudently incurred investments from the past, the *Carbone* decision "changed the rules" for local governments that had previously relied on flow control to secure their investments in the waste management infrastructure needed to serve their communities.

The authority provided by S. 1194 is also self-limiting. By that I mean it is confined to recovery of a narrow list of expenses for waste disposal and recycling facilities (e.g., principal and interest on bonds and "put or pay" contract obligations). As a result, the flow control authority provided by S. 1194 will only be used where necessary and only for as long as necessary.

In addition, the bill protects the interests of non-flow controlled facilities by making the exercise of flow control subordinate to post-1994 contractual relationships that would be impaired by the exercise of flow control.

Finally, the bill contains a firm "sunset" provision that limits its protection (i) to investments and contractual obligations undertaken in 1994 or earlier and (ii) only for the duration of such investments or obligations as they stood in 1994. Put another way, under this legislation, flow control authority can be re-instituted only for communities that had relied on flow control before May 1994, and once pre-*Carbone* obligations are satisfied a community's authority under the bill terminates.

FLOW CONTROL IS NOT ANTI-COMPETITIVE OR ANTI-PRIVATE ENTERPRISE

It should also be emphasized that flow control is not anti-competitive or anti-private enterprise. In considering this point it is important to bear in mind that the tipping fees—user fees—charged for municipal solid waste management services in communities that rely on flow control are limited to recovering the *costs* of those services (recycling, household hazardous waste collection, composting, public education, etc.). Moreover, communities that rely on flow control also rely to the maximum extent possible on private enterprise for their waste management infrastructure. SWACO and the other 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 would exercise flow control authority are privately owned and/or operated.

FLOW CONTROL DOES NOT INCREASE THE OVERALL COST FOR WASTE MANAGEMENT SERVICES

Nor does flow control increase prices or result in the imposition of higher costs for a given category of service. The local governments that have relied on flow control adhere to competitive bidding requirements that make cost a prime consideration in selecting among alternative waste management facilities or vendors. Tipping fees in communities that rely on flow control will almost always recover, in addition to the cost to dispose of non-recyclable waste, the costs of other essential services such as recycling, household hazardous waste collection, etc. Nevertheless, U.S.EPA concluded in its post-*Carbone* report to Congress on flow control that when the tipping fees paid in those communities are broken down into their component parts, the resulting prices are comparable to those for non-flow controlled facilities.

INTERSTATE WASTE TRANSPORTATION

Finally, I also want to commend your bills, Senators Specter and Voinovich, for addressing the issue of interstate waste transportation. SWACO strongly supports legislation that will provide communities with appropriate means to husband the finite natural resources and waste management capacity in their states and facilitate more effective local planning for waste management needs. We believe that host community agreements play a fundamental role in this matter and want to make sure that our communities have appropriate control over waste imports from other states. In the long run, this will benefit both importing and exporting states by increasing the importance of waste reduction and minimization programs and encouraging comprehensive planning by state and local governments.

The interstate waste transportation legislation before this committee addresses a serious national problem. Ohio is a case in point. Communities across our state have serious concerns with trash from outside Ohio being disposed in our state. This local concern has resulted in a large number of bills being introduced in Ohio's Statehouse ranging from moratoriums on landfill construction to commissions to study the issue. Each of these bills, while well intentioned, are bad public policy that will increase the cost for taxpayers while doing nothing to help the environment.

SWACO is part of a coalition of public and private waste companies and business customers that advocate against these bills in the Ohio Statehouse. Our message to members of the Ohio General Assembly is simple: the concerns of local communities regarding out of state waste needs to be resolved in the Congress and not the Statehouse.

In conclusion, I certainly appreciate the opportunity to appear before the committee this morning, and I sincerely hope we can finally resolve these issues. We stand ready to help.

Thank you.

RESPONSES BY HAROLD ANDERSON TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. In your testimony, you state: "These are investments that many communities . . . and other public bodies [made] in direct response to Federal mandates arising under (RCRA) and parallel states laws that give localities primary responsibility to assure adequate longterm capacity to manage in an environmentally sound manner all of the (msw) generated within their respective jurisdictions." Could you please note the citation in RCRA, or any other Federal statute, where there is an expressed mandate on localities to assure long-term capacity to manage msw generated within any local jurisdiction?

Response. Section 1002(a)(4) of RCRA, 42 U.S.C. § 6901(a)(4), states that "the collection and disposal of solid wastes continue to be primarily the function of State, regional, and local agencies." In furtherance of that policy, sections 4002 and 4003 of RCRA, 42 U.S.C. §§ 6942 and 6943, prescribe detailed state and local responsibilities for solid waste management planning. In fact, such planning is one of RCRA's principal objectives. *See* 42 U.S.C. § 6902(a)(1) ("The objectives of this chapter are to promote the protection of health and the environment and to conserve valuable material and energy resources by providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans"). One of RCRA's planning priorities is, in turn, assurance of adequate capacity to meet the affected communities' "present and reasonably anticipated future needs." *Id.*, §§ 6941, 6942(b).

Referring to these same statutory provisions, the U.S. Environmental Protection Agency has emphasized that RCRA "places great emphasis on State, regional, and local planning and contains numerous provisions concerning the scope and content of State plans." *Report to Congress on Flow Control and Municipal Solid Waste*, EPA 530–R–95–009 (March 1995, at 1–2) (cited below as "*Report to Congress on Flow Control*"). As EPA explains, to satisfy RCRA's criteria, "State plans must provide for adequate recycling and disposal capacity and must address [waste management] facility planning and development." *Id.* at 1–3; *see also*, Congress of the United States, Office of Technology Assessment, *Facing America's Trash: What Next For Municipal Solid Waste*? 340, 348 (enactment of RCRA "was a clear movement toward more direct Federal involvement in solid waste management;" "[t]o plan an effective MSW strategy, the responsible political jurisdiction needs to be able to predict the approximate amount of MSW to be handled and provide sufficient capacity").

Question 2. How many communities have had to default on bonds due specifically to the absence of flow control authority? Please list these communities.

Response. Mr. Anderson's testimony did not suggest that any community defaulted on solid waste bonds due to the absence of flow control authority. To the contrary, Mr. Anderson (at pp. 3–4) referred to his own solid waste management agency, the Solid Waste Authority of Central Ohio (SWACO), and

> emphasize[d] that we [SWACO] have not defaulted on our bonds and, like many other local governments, we have made significant financial sacrifices to meet our obligations. Along with other communities and public bodies, we will continue to do everything within our ability to avoid the truly debilitating impact of a bond default.

We are not aware of any bond payment defaults, although there have been (and continue to be) various technical defaults on bonds, that is, violations of bond indenture requirements for minimum reserves sufficient to meet near-term bond payment obligations and other standard requirements for the protection of bondholders. Communities in the latter category include several in New Jersey, such as the Pollution Control Financing Authority of Camden County, the Passaic County Utilities Authority and the Atlantic County Utilities Authority. To avoid the certainty of payment defaults for a number of New Jersey communities, the state has diverted over the past several years more than $200,000,000 of tax revenue to support pre-*Carbone* public debt obligations undertaken in direct reliance on the availability of flow control authority. New Jersey noted this point in a recent brief filed with the Supreme Court: "over $200,000,000 has already been expended from the [New Jersey] State Treasury to prevent defaults on public debt obligations" due to the loss of flow control authority. *See* Brief of Amicus Curiae State of New Jersey at 2, *United Haulers Association, et al.* v. *Oneida-Herkimer Solid Waste Management Authority, et al.* (brief filed December 7, 2001), Supreme Court of the United States (No. 01–686).

Question 3. Has the absence of flow control reduced tipping fees?

Response. While reducing tipping fees is one of the responses that communities have pursued to cope with the loss of flow control authority, such reductions have typically been accompanied by a number of austerity measures. The latter have included, to mention a few examples, cancellation of recycling and other environmentally essential programs, employee layoffs and terminations and depletion of cash reserves (these impacts and others in more than fifty communities across the Nation are detailed in the record of previous hearings before the Environment and Public Works Committee). *See Hearing on Transportation and Flow Control of Solid Waste Before the Senate Committee on Environment and Public Works*, 105th Cong. 77–80 (1997) (statement of Randy Johnson, Chair, Board of County Commissioners, Hennepin County, Minnesota). But these austerity measures do not solve the financial difficulties that have resulted from the loss of flow control authority. That is because many of the financial obligations that communities undertook in reliance on the previous availability of flow control are fixed obligations that cannot be avoided or reduced. That has meant increased taxes or diverting taxes from other high priority needs.[1]

An example is the previously noted $200,000,000 in taxes in New Jersey, which is expected to approach $1,000,000,000 over the next 10 to 15 years due to the loss of flow control. Another example is Mr. Anderson's own agency, SWACO. Facing over $150 million of stranded investment in a waste-to-energy facility that was closed as a result of the *Carbone* decision, SWACO was forced (after having had to terminate more than 250 employees) to impose a $7 per ton fee—a waste tax—on all municipal solid waste generated in Franklin County, Ohio (the Columbus metropolitan area). A similar example in the immediate vicinity of Washington is Fairfax County, Virginia. Due to the loss of flow control, Fairfax County will have to spend $5.5 million in tax revenue in fiscal year 2002 to support solid waste facility bonds that were issued in reliance on flow control authority. Over the next 9 years, it is projected (absent Federal legislation to grandfather pre-*Carbon* solid waste bonds and similar obligations) that $40,000,000 to $50,000,000 in Fairfax County taxes will be required for that purpose. As Fairfax County's March 20, 2002 testimony to the Environment and Public Works Committee emphasized, those are "dollars that could be used for schools, public safety, human services, and roads."[2]

Question 4a. You state in your testimony, in support of the need for flow control, there is a Federal policy that discourages the use of general taxes to fund solid waste management. Your conclusion seems to imply that financial obligations could not be met absent flow control or the imposition of other taxes, and that the latter would violate Federal policy. Further documentation was provided after the hearing to support this assertion—specifically the testimony of then-EPA Administrator William Reilly before this committee on September 17, 1999 was cited. Mr. Reilly's testimony states in part:

> ". . . the first thing for local and municipal governments to do is to make certain that the prices charged for waste services reflects the direct and indirect costs, including the cost of land used, closure and postclosure costs, and other relevant costs. . . . It is just commonsense, and good economic sense that those responsible for solid waste costs pay the costs of these activities. . . . Full cost and variable rate pricing mechanisms send the appropriate market signals to households and go a long way toward encouraging cost effective waste minimization and recycling. We believe that State and local community use of mar-

[1] Nor is a lower tipping fee somehow a litmus test for sound municipal solid waste management policy. The New Hampshire Department of Environmental Services (DES) addressed this precise point in its November 1995 report entitled *The Cost of Flow Control.* The New Hampshire DES explained that the recycling, household hazardous waste collection and other services that are supported by tipping fees in flow controlreliant communities "lead 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." Id. at 1. The DES also noted that it is "the duty of public authorities to respond to public (and frequently legislative) mandates to provide these services." Id. at 4 (the DES report is discussed below at pp. 6–8 and a copy accompanies this letter).

[2] The loss of flow control authority also has a spillover effect for other public investment needs. When a flow control-reliant community goes to the bond market for any of a broad range of general obligation-public infrastructure financing needs, such as schools, roads, public safety facilities, etc., the interest rate that it must pay is likely to be evaluated as having more risk and consequently a higher cost due to the absence of Federal flow control legislation. Those additional costs are borne by local taxpayers.

ket-based approaches such as variable pricing, should be pursued aggressively. . . .”

After reading the full testimony of Mr. Reilly, it appears that the policy espoused before this committee by Mr. Reilly endorses free market mechanisms, but not necessarily flow control. Mr. Reilly seems to begin with the premise of a free market system (contrary to flow control) that would then employ full and variable fees based on the volume of msw generated by each household as a means to impact generation behavior. Your testimony appears to oppose using general tax revenues for waste management purposes as a means to raise prices via a guaranteed market and monopoly pricing. Mr. Reilly's testimony discourages the use of general revenue so the consumer will understand the full cost of the service, as well as encouraging variable pricing as a free market mechanism allowing the user to reduce their fees by reducing volume. This policy is to allow the taxpayer to lower their cost via free market mechanisms, while your testimony appears to seek justification to remove any free market options for that same taxpayer and raise their fees for service.

Response. As explained above and in Mr. Anderson's testimony (pp. 3–4), pre-*Carbone* public debt and other financial obligations undertaken in reliance on flow control authority must continue to be satisfied to avoid bond payment default. Absent sufficient revenue from user fees, the only alternative for meeting such obligations is to increase taxes or divert existing sources of tax revenue. Federal policy recommendations in 1990 (and subsequently) discouraged such use of general taxes to fund municipal solid waste collection and disposal services, and favored user fees that recover the full cost of solid waste collection and disposal directly from the waste generator (such user fees are commonplace for communities that rely on flow control). Those policy recommendations included the September 1991 Senate EPW testimony of former EPA Administrator William Reilly and EPA's “*Handbook For Solid Waste Officials*” (*Variable Rates In Solid Waste: Handbook For Solid Waste Officials*, USEPA, Office of Solid Waste and Emergency Response, EPA/530-SW–90–084A (September 1990)). Neither Mr. Reilly's testimony or the corresponding portion of the *Handbook For Solid Waste Officials* refer to flow control (pro or con). Instead, they criticized the use of local property taxes to fund solid waste collection and disposal services and advocated reliance on user fees. In the absence of flow control authority, many communities have been forced to rely on taxes, contrary to the policy referred to above.

With all due respect to Senator Smith, the suggestion in his question that “a free market system [is] contrary to flow control” and that proponents of S. 1194 and S. 2034 “seek justification to remove any free market options for . . . taxpayer[s] and raise their fees for service” is simply incorrect. In considering this point it should be emphasized that the tipping fees charged for municipal solid waste management services in communities that rely on flow control are based on the *costs* of the various solid waste management services provided. In that regard, it bears particular emphasis that when properly analyzed on an equivalent services basis, flow control-reliant communities *do not pay more* for the waste management services they receive than non-flow control communities. In fact, referring to this precise point in its *Report to Congress on Flow Control*, EPA explained that “[w]hen the tipping fee [paid in a flow controlreliant community] 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 (quoting Moody's Public Finance, *Perspectives on Solid Waste*, August 16, 1993, p. 3). A very similar conclusion was reached by the New Hampshire DES in its November 1995 report, *supra*, *The Cost of Flow Control* at 2–4 (the DES report is further discussed below).

In addition, flow control-reliant communities procure their waste management services through *competitive bidding in the private marketplace*. Put another way, communities that rely on flow control also rely to the maximum extent possible on private enterprise for their waste management infrastructure. Mr. Anderson's agency, SWACO, is a case in point. SWACO contracts with Waste Management, Inc., and a number of other private sector entities for a broad range of services, including most of the services required for the day-to-day operation of SWACO's landfill. From a national perspective, such public-private partnerships are the norm for communities that have relied on flow control. Thus, as EPA emphasized, “it is noteworthy that the private sector has an ownership or operational role for 84 percent of WTE [waste-to-energy] throughput, including most of the larger WTEs.” *Report to Congress on Flow Control* at III–58. State and regional statistics show the same pattern. As an example, the Pennsylvania Waste Industries Association, which represents private companies engaged in the operation of landfills, transportation of solid waste, recycling and related services, has estimated that its members provide 75 percent of all of the municipal waste processing and disposal services within Pennsylvania.

Finally, and again with all due respect to Senator Smith, the suggestion (in his question) that proponents of S. 1194/S. 2034 "seek justification to remove any free market options for . . . taxpayer[s] and raise their fees for service" disregards the fact that in a flow control-reliant community, as with any other community, the decision to provide particular solid waste management services is ultimately made by duly elected officials and the citizens they serve. Flow control has nothing to do with—and no elected official has the objective of—simply "rais[ing] their fees for service." To the contrary, the purpose of flow control is to have sufficient revenue to support the solid waste management services that the *community has selected.* Put another way, and as explained in more detail in the next section of this letter, the tipping fees assessed in flow control-reliant communities and the integrated waste management services provided in those communities are directly related and one cannot be viewed in isolation from the other.

Question 4b. Do private sector providers of waste management services factor all costs, including cost of land used, closure and postclosure, in determining the price they charge for their service (consistent with Mr. Reilly's testimony)?

Given that non-government entities do not have the ability to tax, isn't their only option in recovering their cost to charge full cost for services?

Response. The two questions quoted immediately above are closely related and we address them together. They have also been addressed by EPA in its *Report to Congress on Flow Control* and by the New Hampshire DES in its November 1995 report, *supra*, *The Cost of Flow Control*.

First, flow control-based tipping fees will almost always recover, in addition to the cost to dispose of non-recyclable waste, the costs of environmentally essential "integrated waste waste management (IWM) programs (e.g., recycling, public education, household hazardous waste collection, composting and others)." *The Cost of Flow Control* at 1. As EPA has emphasized, such recycling and related services "generally do not lend themselves to generation of their own revenues." *Report to Congress on Flow Control* at ES–11, III–80. The New Hampshire DES recognized the same point. As DES explains, unlike a private non-flow controlled facility whose "tipping fee is exactly that—the cost to dump rubbish into a landfill or into the pit of an incinerator," the tipping fees charged at facilities that rely on flow control typically fund a range of very important integrated waste management (IWM) services that have been selected by the affected communities.[3]

The Cost of Flow Control at 1. DES also noted that these programs "lead[] to increased diversion of materials to recycling and composting programs," "significant[ly] reduc[e] the volume of waste requiring ultimate disposal" and "diver[t] from disposal facilities . . . many of the most toxic constituents in MSW." *Id.*

The New Hampshire DES' report was prepared in response to a so-called "study" of the cost of flow control commissioned by a waste company that opposed flow control (Browning-Ferris Industries). The study concluded that flow control-reliant communities pay more for waste management services than non-flow control communities. As DES noted, however, the waste company's study was based on a "false comparison" of tipping fees at flow-controlled and non-flow-controlled facilities, which had the effect of substantially inflating the tipping fees charged at the flow controlled facilities. *The Cost of Flow Control* at 4. DES explained this point as follows:

> To yield an accurate comparison of tipping fees at public, flowcontrolled disposal facilities against those at private facilities, the [waste company's study] 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, [the study] *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.*

Id. at 2 (emphasis added); *see also id.* at 4 ("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)."). As an example of these errors, the waste company's study compared the tipping fees charged at Medina, Ohio's modern recycling facility with the cost of waste disposal at landfills in the same region of Ohio. Aside from the fact

[3] The New Hampshire DES further explains this point as follows: The public typically views IWM programs funded through [flow control-based] 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 [household hazardous waste] collection, composting, and other IWM programs were billed on a fee-for-service basis.

that it generally costs more at this time to recycle rather than landfill waste (which has nothing to do with flow control), the New Hampshire DES concluded that when properly analyzed Medina's flow control-based tipping fees for comparable services *were actually lower* than the non-flow controlled facilities the waste company's study had used for comparison (in fact, based on a proper comparison, costs were lower for at least two of the three flow-controlled facilities examined by the New Hampshire DES). *Id.* at 3–4.[4]

We should also note in passing that the two questions we address in the preceding text seem to imply that private sector (non-flow-controlled) providers necessarily set their prices to recover their full costs. The New Hampshire DES disagrees, and explains in *The Cost of Flow Control* (at 2) that "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."

Question 4c. Do you believe that Mr. Reilly's testimony of September 17, 1991, endorses a policy of mandated flow control or a policy of full pricing, variable pricing and free market mechanisms?

Response. As explained above, Mr. Reilly's September 1991 testimony did not address flow control. His testimony is significant for present purposes because he was critical of using property taxes or similar general taxes to support solid waste collection and disposal services. Instead, he favored user fees that recover the full direct and indirect costs of solid waste generation and disposal (the full cost/variable cost pricing to which Senator Smith's question refers). But due to the loss of flow control authority, many flow control-reliant communities that had previously employed such user fees (i.e., fees that fully recover all direct and indirect costs) have been required (out of necessity and contrary to Mr. Reilly's suggested policy) to use general taxes in order to meet pre-*Carbone* financial obligations.

Question 5. Should the taxpayer have a choice of reducing their costs by reducing volume and seeking the lowest cost option for managing their waste?

Response. Local voters and taxpayers have the right to choose among alternative solid waste management strategies. Communities that rely on flow control will select, through their elected local governments, a strategy that emphasizes protection of the environment and cost efficiency for the long-term. Some will disagree with that choice, and such differences of opinion can be expected for nearly all matters of public policy. The flow control provisions of S. 1194 and S. 2034 accommodate those differing viewpoints by limiting the use of flow control to a very narrow set of expenses (e.g., payment of debt service on bonds and recycling and household hazardous waste program expenses, etc.) and carefully confining the authority to the necessary term (e.g., the bond repayment period) and no longer.

RESPONSE BY HAROLD ANDERSON TO AN ADDITIONAL QUESTION FROM SENATOR CLINTON

Question. In your testimony, you mention a "Federal policy announced more than a decade ago to discourage use of general taxes to fund solid waste management." Please provide a citation for this policy and any further details available regarding this policy.

Response. EPA's *"Handbook For Solid Waste Officials" (Variable Rates In Solid Waste: Handbook For Solid Waste Officials*, USEPA, Office of Solid Waste and Emergency Response, EPA/530–SW–90–084A (September 1990)), criticized the use of local property taxes to fund solid waste management services. The criticism was based on the concern that such use of property taxes fails to give "residents *any* incentive to reduce their waste." *Id.*, Volume I—Executive Summary 2 (emphasis in original). The *Handbook* continues by noting that "In fact, with the property tax method, residents never even see a bill, and generally have no idea how much it costs to remove their garbage every week. Areas with [this] method [] of payment have often had to resort to mandatory recycling programs in order to try to reduce their amount of garbage." As an alternative to use of property taxes, the *Handbook* encourages volumebased user fees. *Id.* at 2–3.

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[4] The study also ignored the difference between the tipping fees charged at (i) flow controlled facilities that are subject to long-term contractual arrangements with corresponding capacity assurance and price stability and (ii) the spot market tipping fees at non-flow-controlled facilities (for which there are no corresponding capacity commitments or price stability). That difference in fees reflects a fundamental difference in the two service arrangements and is essential for consideration when analyzing the cost impact of flow control. A principal reason why local governments rely on flow control is to facilitate long-term, price-stable arrangements for the development and financing of waste management facilities and to avoid the substantial price fluctuation and capacity uncertainty that is a characteristic of the spot market.

Following publication of the *Handbook*, former EPA Administrator William K. Reilly testified before the Senate Environment and Public Works Committee to provide "EPA's views on solid waste management" and RCRA reauthorization. *See* William K. Reilly, Administrator, U.S. Environmental Protection Agency, Statement Before the Subcomm. on Environmental Protection of the Senate Comm. on Environment and Public Works 1 (September 17, 1991). Among other things, Administrator Reilly explained that the prices charged by local governments for waste management services should recover all direct and indirect costs. He then stated that the practice in which the costs of waste management services are "typically hidden—in our property taxes" should be discouraged. As an alternative, he said such costs should instead be recovered through volume-based user fees because "[f]ull cost and variable rate [volume sensitive] pricing mechanisms send the appropriate market signals to households and go a long way toward encouraging cost-effective waste minimization and recycling." As Mr. Reilly emphasized, the alternative he recommended "is just common sense, as well as good economic sense." *Id.* at 12–13.

STATEMENT OF LESLIE ALLAN, DEPUTY COMMISSIONER FOR LEGAL AFFAIRS, NEW YORK CITY DEPARTMENT OF SANITATION

Mr. Chairman and members of the committee, my name is Leslie Allan, and I am Deputy Commissioner for Legal Affairs at the New York City Department of Sanitation. On behalf of Mayor Bloomberg, I appreciate the opportunity to testify today on pending interstate waste legislation—bills that could clearly have a profound impact on the City's day-to-day municipal solid waste operations.

In 1996 Mayor Giuliani and Governor Pataki agreed to close the Fresh Kills landfill by December 31, 2001. That decision was the City's first step toward embarking on a new, environmentally sound course in the management of its solid waste. It is important for the committee to recognize from the outset that New York City closed Fresh Kills responsibly and appropriately, with due consideration for the states and their communities that have chosen to accept the City's waste. On March 22, 2001, just about 1 year ago, New York City sent its last barge of Department collected waste to Fresh Kills, completing a five-phase program initiated in July 1997, requiring that all of the City's exported waste be disposed of in communities that expressly choose to accept it through valid, legally binding Host Community Agreements. Since this plan mandates that the City only export to willing jurisdictions, the Mayor does not see a need for legislation to require New York City to do that which it already requires of itself.

In exporting its residential waste, the City is exercising nothing more than the right the Constitution extends to cities and states nationwide—responsible, efficient, and environmentally sound solid waste management through heavily regulated and highly competitive private sector businesses. The courts have consistently upheld MSW shipments as a commodity in interstate commerce, and over the years communities have relied on the certainty these decisions provide for protecting long-term, free market plans to manage solid waste. This is especially important in a landscape where the more rigorous environmental protections required under Subtitle D of the Resource and Conservation and Recovery Act (RCRA) have compelled communities to replace old, small landfills with larger, costlier, state-of-the-art, regional facilities that comply with the law. In this context, the right to transport solid waste across state lines complements the basic reality that different regions have varying disposal capacities irrespective of state lines. Areas such as New York City and Chicago, lacking adequate space for landfills and/or prohibited from waste incineration, may be located closer to better and more cost-effective facilities in other states. These facilities need the additional waste generated elsewhere to pay for part of the increased cost of RCRA compliance.

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 disposing of the City's commercial waste. For years the City's businesses have relied on private haulers to export waste from New York. For many communities and states, MSW disposable fees are an important revenue stream. The City believes that each locality has the right to accept or reject the disposal of solid waste not by Federal legislation, but by locally decided Host Community Agreements.

The fact is that the City, in securing contracts for waste disposal exclusively at Host Community Agreement sites, has furthered a partnership that benefits importer and exporter alike. For the nation's largest and most densely populated city of eight million people-comprised of three islands and a peninsula—the ability to send waste to newer, more advanced regional facilities located outside the City's

boundaries acknowledges the very environmental, demographic, and geographical realities that made closing Fresh Kills necessary. For the localities that have opted to import our waste, the revenue generated through host fees, licensing fees, and taxes has substantially enhanced the local economy, improved area infrastructure, paid for school construction, paved roads, and assisted host communities in meeting their own waste management needs. Clearly, there are many other jurisdictions nationwide that share New York's approach, since 42 states import and 46 states and Washington, DC, export municipal solid waste.

For the City and businesses it selects to handle MSW disposal, certainty and the long-term security of waste management arrangements are fundamental to making New York a viable place to live and work. Any disruption to the contracts and agreements providing the City's waste disposal framework could interfere with the City's day-to-day operations. This is why the City enthusiastically supports the importing community's right to negotiate a Host Community Agreement most suited to its particular needs, and to spell out in detail all of the provisions that make waste disposal from out-of-state acceptable to that locality. Conversely, the City will rely on private sector bidding to select the most competitive price for disposal. Once formally agreed to, however, these agreements and contracts must be inviolate in order to preserve the mutual interests of both importers and exporters.

In that regard, the City has not pre-determined where its municipal solid waste will be disposed. Instead, it has put into place measures that ensure each bidder has all of the requisite environmental permits, along with a Host Community Agreement that verifies the receiving jurisdiction's approval of the disposal facility and its acceptance of the imported waste and applicable fees. Furthermore, the existing authority that states have in permitting solid waste facilities in accordance with their own regulatory mandates, zoning ordinances, and land use provisions, suggests even less cause for Federal intervention through legislation to restrict exports.

In closing Fresh Kills landfill, the City looked to the private sector and the competitive free market to shape the future availability of disposal sites. In July 1997, when the City began the first phase of diverting waste from the landfill, *The New York Times* reported that certain local officials were ready to welcome New York's waste because it made "good economic sense." Robert E. Wright, president of the Connecticut Resource Recovery Authority, which oversees and is part owner of that state's incinerators, told the press, "I guess we probably have a more favorable eye on New York than some more distant states." Of some jurisdictions *The Times* reported further, ". . . where counties have spent millions of dollars to build incinerators, local officials generally are eager for any guaranteed flow of trash."

New York City, one of the largest consumer markets in the nation, is not solely dependent on exporting MSW through private disposal markets to close Fresh Kills. Although we are currently retooling our residential recycling program, it continues to be one of the most ambitious in the nation. New York City's recycling program is the only large city program that requires 100 percent of its households—including multi-family dwelling residents to recycle. Moreover, the New York City Mayoral Directive to all City agencies to reduce workplace waste and establish accountability measures for waste reductions have reduced further the daily tonnage of export.

The City's residents are huge consumers of goods manufactured in and shipped from other states, and the waste generated by packaging materials is significant. For that reason, the Mayor supports Federal legislation that would limit packaging or require manufacturers to use some percentage of recycled content in packaging material. Such requirements would have tremendous—and measurable—effect on the quantity of exported solid waste. Despite the City's best waste reduction and recycling efforts, however, the City will still need to dispose of a substantial amount of its waste outside its boundaries. I am confident that the capacity, the market, and the desire to accommodate the City's waste at out-of-state disposal sites will exist in the foreseeable future. To that end, New York City, successfully closed Fresh Kills by relying on free market, private sector solutions predicated on the strength of Host Community Agreements.

On behalf of Mayor Bloomberg, I thank the committee and underscore the City's interest and commitment in addressing Congress' concerns regarding the interstate transport of municipal solid waste.

STATEMENT OF BRUCE PARKER, PRESIDENT & CEO, NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION

Mr. Chairman, on behalf of the private sector solid waste management industry, I appreciate the opportunity to testify today on proposed interstate waste and flow control legislation. I am Bruce Parker, President and CEO of the National Solid

Wastes Management Association (NSWMA). NSWMA represents companies that collect and process recyclables, own and operate compost facilities and collect and dispose of municipal solid waste (MSW). NSWMA members operate in all fifty states.

The solid waste industry is a $43 billion industry that employs more than 350,000 workers. We are proud of the job we do and the contribution our companies and their employees make in protecting the public health and the environment. America has a solid waste management system that is the envy of the world because of our ability to guarantee quick and efficient collection and disposal of trash in a manner that fully conforms with state and Federal waste management laws and regulations.

Our members provide solid waste management services in a heavily regulated and highly competitive business environment. Thus, we are critically interested in proposals, such as restrictions on the interstate movement of MSW, that would change that regulatory or competitive environment, increase the cost of waste disposal and threaten the value of investments and plans companies have made in reliance on the existing law.

The message I want to leave with you is this: restricted borders have no legitimate place in managing trash or any other product in our economy. They do not make economic or environmental sense. They are contrary to the concept of open borders; contrary to the evolution to bigger, better, more environmentally sound disposal facilities; contrary to our desire to keep disposal costs for taxpayers low; and contrary to the trend toward more innovative and protective waste management facilities.

In the balance of this statement, I will share with you our reasons for concern and opposition to S. 1194, the "Solid Waste Interstate Transportation and Local Authority Act of 2001." I will discuss the background and context as we see it, and the flaws in the proposed legislation.

THE SCOPE OF INTERSTATE MOVEMENTS

Interstate waste shipments are a normal part of commerce. In spite of all the impassioned language you have heard from a few states denouncing garbage that moves across state lines, the reality is simple: every state except Hawaii exports or imports garbage or both and none are harmed in the process.

According to "Interstate Shipment of Municipal Solid Waste: 2001 Update," which was released by the Congressional Research Service (CRS) last July, 30 million tons of MSW crosses state borders. This equals approximately 7 percent of the garbage generated in the United States and less than 11 percent of what is disposed (generation and disposal estimates are based on the same state solid waste data base used by the CRS in estimating waste imports and exports).

These shipments form a complex web of transactions that often involve exchanges between two contiguous states in which each state both exports and imports MSW. In fact, the vast majority of exported MSW, more than 80 percent, goes to a disposal facility in a neighboring state. According to the CRS report, 24 states, the District of Columbia and the province of Ontario exported more than 100,000 tons of solid waste last year. At the same time, 28 states imported more than 100,000 tons. Fifteen states imported and exported more than 100,000 tons.

The CRS report documents interstate movements of MSW involving 49 of the 50 states. Forty-six states, the District of Columbia and one Canadian province export and 42 states import. Attached is "Interstate Movement of Municipal Solid Waste" (NSWMA Research Bulletin 02–01) which contains extensive information on this subject, including a map showing the movement of solid waste among the states that is based on the data in the CRS report.

Moreover, while some states are the biggest exporters based on tonnage, several small states and the District of Columbia are highly dependent on waste exports. In addition to Washington, DC, which exports all of its MSW, Connecticut, Illinois, Maryland, Missouri, New Jersey, New York, Rhode Island, Vermont and West Virginia export more than 15 percent of their solid waste. The reality is that MSW moves across state lines as a normal and necessary part of an environmentally protective and cost effective solid waste management system. Like recyclables, raw materials and finished products, solid waste does not recognize state lines as it moves through commerce. In fact, the United States has benefited both environmentally and economically from the free market for waste disposal and recyclables.

CRS cites a number of reasons for interstate movements. These include enhanced disposal regulations and the subsequent decline in facilities. In addition, CRS notes that in larger states "there are sometimes differences in available disposal capacity in different regions with the state. Areas without capacity may be closer to landfills (or may at least find cheaper disposal options) in other states."

THE ROLE OF REGIONAL LANDFILLS

The CRS report notes that the number of landfills in the US declined by 51 percent between 1993 and 1999 as small landfills closed in response to the increased costs of construction and operation under the Resource Conservation and Recovery Act (RCRA) Subtitle D and state requirements for more stringent environmental protection and financial assurance. The number of landfills in the early 1990's was nearly 10,000 while today there are about 2,600 and the total number continues to decline as small landfills close, and communities in "wastesheds" turn to state-of-the-art regional landfills that provide safe, environmentally protective, affordable disposal.

Construction and operation of such facilities, of course, requires a substantial financial investment. By necessity, regional landfills have been designed in anticipation of receiving a sufficient volume of waste from the wasteshed, both within and outside the host state, to generate revenues to recoup those costs and provide a reasonable return on investment.

It was widely recognized that the costs to most communities of Subtitle D-compliant "local" landfills were prohibitive. The development of regional landfills was entirely consistent with all applicable law, and was viewed and promoted by Federal and state officials and ensuing regulatory policy as the best solution to the need for economic and environmentally protective disposal of MSW.

These regional landfills provide safe and affordable disposal as well as significant contributions to the local economy through host fees, property taxes, and business license fees. Additional contributions to the communities include free waste disposal and recycling services, and in some cases assumption of the costs of closing their substandard local landfills. These revenues and services enable the host communities to improve and maintain infrastructure and public services that would otherwise not be feasible.

BOTH THE PUBLIC AND THE PRIVATE SECTORS OPPOSE INTERSTATE RESTRICTIONS

NSWMA is not alone in opposing restrictions on interstate waste. The Solid Waste Association of North America (SWANA), which represents both public and private sector solid waste management professionals, also opposes these restrictions. At its mid-year meeting last summer, SWANA's International Board of Directors voted unanimously to approve a policy statement that supports "the free transboundary movement of solid waste".

Public sector waste managers and private sector waste management companies agree that they can't do their job and protect the public health and the environment while having their hands tied by artificial restrictions based on state lines.

HOST COMMUNITIES BENEFIT

MSW also moves across state lines because some communities invite it in. Many communities view waste disposal as just another type of economic activity, as a source of jobs and income. As noted above, these communities agree to host landfills and in exchange receive benefits, which are often called host community fees, that help build schools, buy fire trucks and police cars, and hire teachers, firemen and policemen and keep the local tax base lower.

THE BROADER CONTEXT

The legislation currently proposed on this issue, S. 1194, would radically disrupt and transform the situation I have described. For that reason, as well as the precedential nature of some of the provisions, let me suggest that you consider this legislation in a broader context.

The applicability of the Commerce Clause to the disposal of out-of-state waste is well established by a long line of U.S. Supreme Court decisions spanning more than a quarter of a century. As you probably know, the original decision protected Pennsylvania's right to export its garbage to a neighboring state. The Court has consistently invalidated such restrictions in the absence of Federal legislation authorizing them.

Throughout this period, private sector companies did what businesses do: they made plans, invested, wrote contracts, and marketed their products and services in reliance on the rules which clearly protected disposal of out-of-state MSW from restrictions based solely upon its place of origin.

In this fundamental sense, the interstate commerce in waste services is like any other business, and proposed legislation to restrict it should be evaluated in the broader context of how you would view it if its principles and provisions were made applicable to other goods and services, rather than just garbage.

Consider, for example, parking lots. Suppose a state or local government sought Federal legislation authorizing it to ban, limit, or charge a differential fee for parking by out-of-state cars at privately owned lots or garages, arguing that they were using spaces needed for in-state cars, and that the congestion they caused was interfering with urban planning, etc. Or suppose they asked for authority to tell privately owned nursing homes or hospitals that they couldn't treat out-of-state patients because of the need to reserve the space, specialized equipment, and skilled personnel to meet the needs of their own citizens. Similar examples can easily be identified—commercial office space for out-of-state businesses, physicians and dentists in private practice treating out-of-state patients, even food or drug stores selling to out-of-state customers.

I would hope that in all of these cases, you would respond to the proponents of such legislation by asking a number of questions before proceeding to support the restrictions: What kind of restrictions do you want? Are they all really necessary? Can you meet your objectives with less damaging and disruptive means? What about existing investments that were made in reliance on the ability to serve out-of-state people? What about contracts that have been executed to provide that service? Would authorizing or imposing such restrictions be an unfunded mandate on the private sector providing those services, or on the public sector outside the state that is relying on them? Would such restrictions result in the diminution of the value of property purchased in reliance on an out-of-state market, and thereby constitute a "taking"? Will the restrictions be workable and predictable? I respectfully suggest that you ask the same questions about the proposed legislation involving restrictions on interstate MSW.

THE PROPOSED LEGISLATION

The proposed legislation, S. 1194, fails to protect host agreements and investments. Nor does it preserve an opportunity to enter and grow in a market that demands economic and protective waste disposal. And it also fails to provide predictability about the rules that will apply to interstate shipments of waste. The array of discretionary authorities for Governors to ban, freeze, cap, and impose fees, and then change their minds over and over again, promises to result in chaos and a totally unpredictable and unreliable market and waste disposal infrastructure. In the worst case, hasty state action to ban or limit imports could lead to a public health crisis in exporting states if their garbage has no where to go.

FLOW CONTROL

NSWMA opposes restoration of flow control because it's too late to put Humpty Dumpty back together again. In the 8 years since the *Carbone* decision, landfills and transfer stations have been constructed, trucks have been bought, people have been hired, contracts have been written, and both the consumers and providers of waste services have experienced the benefits of a competitive market. These investments and arrangements cannot be undone, nor should they be. The facilities that benefited from an uncompetitive monopolization of local solid waste management have learned to compete in a free market. They have become more efficient and competitive as a result of the rigors of the free market system. Why would anyone want to replace a competitive system with uncompetitive monopolies?

RESTRICTING OR PROHIBITING THE IMPORTATION OF CANADIAN WASTE RAISES SERIOUS QUESTIONS ABOUT AMERICAN OBLIGATIONS UNDER INTERNATIONAL TRADE AGREEMENTS

S. 1194 would also restrict the importation of MSW form Canada and in so doing, raises serious questions about American responsibilities under the North American Free Trade Agreement, the General Agreement and Tariffs and Trade and the Canada-U.S.A. Agreement on the Transboundary Movement of Hazardous Waste (amended to include solid waste).

MSW may not be everyone's favorite commodity, but it is covered by the same free trade provisions that protect paper and cars and television sets. If we could close our borders to Canadian solid waste, what would prevent Canada from closing its borders to American hazardous waste? American exports of hazardous waste to Canadian disposal facilities have increased dramatically over the last 5 years. If Michigan can ban Canadian MSW, why can't the Canadians be allowed to ban Michigan hazardous waste?

CONCLUSION

Thank you, Mr. Chairman. That concludes my statement.

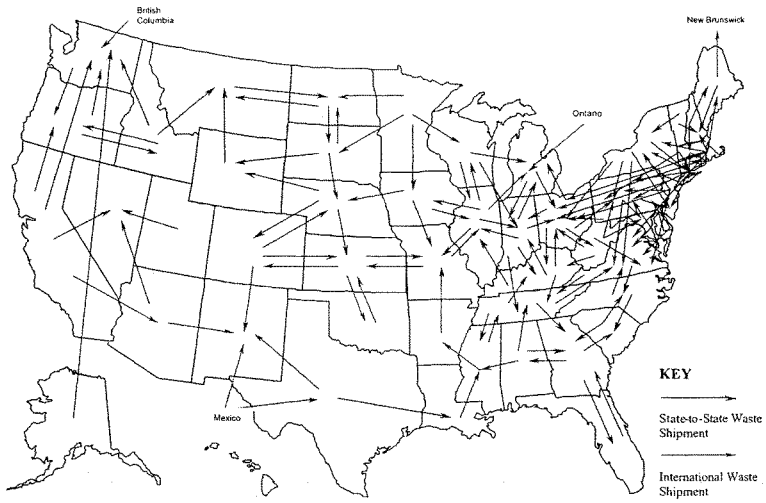

Figure 2. Interstate Shipment of Municipal Solid Waste in 2000 (CRS, 2001)
Note: Map does not include transactions with the District of Columbia.

Exports

In 1989, CRS found that only 13 states and the District of Columbia exported waste to another state for disposal. As the waste volumes increased over the years, so did the number of states exporting waste. In 2000, the number of states exporting waste had grown to 47 plus the District of Columbia, 2 Canadian provinces, and Mexico.

Based on CRS's data for the year 2000 that is presented in Table 1 and Figure 3 (page 5) :

- Eight states exported more than one million tons including California, Illinois, Maryland, Missouri, New Jersey, New York, North Carolina, and Ohio. The number of states exporting more than a million tons of MSW per year doubled in 2000 compared to 1989 when four states (Missouri, New Jersey, New York, and Pennsylvania) exported more than a million tons per year of MSW.

- The state exporting the largest volume of MSW in 2000 was New York (6.8 million tons) followed closely by New Jersey (4.2 million tons).

- Three states (Indiana, Massachusetts, and Washington) and the District of Columbia exported between 0.75 million tons and 1.00 million tons of MSW in 2000.

RESPONSES BY BRUCE PARKER TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

Question 1. Does a free market for waste disposal services provide the lowest cost for consumers?

Response. The economic history of the United States shows that free markets always provide the lowest costs and the most efficient services for consumers.

Question 2. What is the impact on the environment?

Response. NSWMA recognizes that environmental regulations are necessary to guarantee that disposal facilities are operated in a manner that is protective of public health and safety. NSWMA has a long record of advocacy in favor of EPA promulgating regulations for municipal solid waste landfills under Subtitle D and a strong record in favor of fair and consistent enforcement of those regulations.

If EPA's Subtitle D regulations are properly enforced the environmental and public health impacts of disposal facilities are minimal. The solid waste industry supported EPA when it promulgated the regulations because we believe protecting public health and the environment is absolutely essential. A Subtitle D disposal facility is highly engineered with an impermeable bottom liner, a leachate collection and removal system, a gas collection venting or removal system, a low permeability cap after closure, and a continuous monitoring system until after the post-closure period. It should be noted that each of the seven facilities in Virginia that receive exported waste are state-of-the-art Subtitle D facilities.

Question 3. What less disruptive means can Congress utilize to incentivize all states to effectively manage their solid waste?

Response. Placing restrictions on the interstate movement of solid waste is inherently disruptive. Bans or limits on imports of solid waste could lead to so-called exporting states suffering disruption in their waste management needs and potential health problems as local governments and haulers in those states attempt to find regulated disposal facilities. As noted in our written testimony, 10 states, ranging in size from Vermont to New York, export at least 15 percent of their waste (based on Congressional Research Service data). Because it can take 7 or 8 years to site, permit and construct a Subtitle D landfill, these states would be hit particularly hard by any limits on the interstate movement of solid waste.

Many of the so-called exporting states also have strong recycling programs. New Jersey and New York have two of the highest statewide recycling rates in the country. The Federal Government could help these two states, along with the other 48 states, by further encouraging recycling through market development activities. For instance, the Federal Government could help recycling markets by increasing its use of recycled content products.

Question 4. Do private sector providers of waste management services factor all costs, including cost of land used, closure and post-closure, in determining the price they charge for their service.

Response. We are not privy to how members of NSWMA or other private sector firms price their services. However, all fixed and variable costs must be included in the tip fee in order for a facility to cover its costs. Disposal facilities cannot stay in operation if they are unable to cover their costs. As to closure and post-closure costs, normal enforcement of the financial assurance provisions of the Subtitle D regulations should guarantee that those costs are included in the tipping fee.

RESPONSES BY BRUCE PARKER TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. Does a free market for waste disposal services provide the lowest cost for consumers?

Response. The economic history of the United States shows that free markets always provide the lowest costs and the most efficient services for consumers.

Question 2. What is the impact on the environment?

Response. NSWMA recognizes that environmental regulations are necessary to guarantee that disposal facilities are operated in a manner that is protective of public health and safety. NSWMA has a long record of advocacy in favor of EPA promulgating regulations for municipal solid waste landfills under Subtitle D and a strong record in favor of fair and consistent enforcement of those regulations.

If EPA's Subtitle D regulations are properly enforced the environmental and public health impacts of disposal facilities are minimal. The solid waste industry supported EPA when it promulgated the regulations because we believe protecting public health and the environment is absolutely essential. A Subtitle D disposal facility is highly engineered with an impermeable bottom liner, a leachate collection and re-

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RESPONSES BY BRUCE PARKER TO ADDITIONAL QUESTIONS FROM SENATOR CLINTON

Question 1. In your testimony you indicated that the construction and operation of environmentally sound landfill facilities requires a substantial financial investment. Can you please tell us a little bit more about the scale of such financial investments, as well as the time and resources needed to site and permit these facilities?

Response. Prior to EPA's promulgation of the municipal solid waste (MSW) landfill criteria under RCRA part 258 (commonly referred to as the Subtitle D regulations) in 1991, many landfills operated with minimal or no environmental protections. Those landfills that were built with liners, leachate control systems and other technologies designed to protect public health and the environment, were at a competitive disadvantage with these unlined dumps. This competitive disadvantage was caused by the cost of installing environmentally protective technology and operating the facility in a protective manner as opposed to the cost of just digging a hole, throwing garbage in and eventually covering the site.

EPA's Subtitle D regulations raised the environmental standards for all MSW landfills by requiring criteria for siting, operating, designing (including liners and leachate collection systems), and monitoring groundwater. These regulations also require that corrective action be taken if necessary to clean up contamination from the facility, that for at least 30 years after the landfill closes monitoring and corrective action must continue, and that funds will be available to ensure that these activities are performed.

The cost of meeting the Federal standards is substantial. Landfill experts estimate that predevelopment costs alone can be as much as $10 million. These costs include, for example, site selection studies, land purchase, environmental assessments, hydrogeologic analyses, engineering fees, and licensing and permit review fees. Construction costs, which would include the liners and leachate collection systems, can be 500,000 per acre. When the other costs of owning and operating a Subtitle D compliant MSW landfill are taken into account, the total costs are commonly $100 million and may approach $300 million.

Because the siting process can be long, involving extensive public review of applications and a thorough permitting process at the state level, 7 or 8 years can elapse between the time the facility operator commits to building a landfill at a particular site and the facility is fully permitted and operating.

Question 2. Does that in any way explain why we are seeing the consolidation of this industry and the substantial decrease in the number of landfills in the United States?

Response. In the preamble to the Subtitle D regulations, EPA noted that the higher cost of the more environmentally protective facilities was likely to lead to fewer, but larger facilities. This prediction has proven to be true. Many small facilities closed because their owners—whether public or private sector—were unable to make the necessary improvements to comply with the Subtitle D regulations. These higher costs undoubtedly hastened the consolidation in the solid waste industry as companies combined to provide the financial resources to build and operate landfills. The higher costs also explain the decrease in the number of landfills, which has declined substantially from approximately 10,000 in 1990 to 2600 today. Of necessity these new regional facilities are larger both in size and in-take volume, than the old unlined facilities of the past. The higher costs imposed by EPA regulations require economies of scale that the old unlined facilities did not need to have, and therefore, the large regional facilities are dependent on larger geographic areas from which to obtain waste. However, even though the number of landfills has declined substantially, the construction of new, larger, regional facilities has lead to more disposal capacity than was available in 1991. According to recent studies, the average national landfill capacity was about 11 years in the late 1980's. By the mid-1990's, national landfill capacity rose to about 14 years and presently stands at more than 18 years.

Question 3. Understanding the kinds of investments that are required, why do communities choose to allow the construction and operation of such facilities? What are the benefits to these communities that must somehow out-weigh the costs?

Response. Host communities work with private sector companies for a wide variety of reasons. In many cases, the host community operated an unlined dump that caused environmental harm and must be closed and cleaned up. Private sector landfill companies have the expertise to clean up these facilities. In many cases, the company agrees to clean up the old site as part of the host community agreement. Other benefits include free garbage collection and disposal for the host community and per ton fees paid to the host community that are used for such purposes as buying police and fire equipment, building new schools, hiring new teachers and public safety officers. These communities view the landfill as a viable and important form of economic development.

Question 4. In your testimony you ask the question, "can you meet your objectives with less damaging and disruptive means"? What do you see as the "objectives" that pending legislative proposals are trying to address, and do you believe that we can meet these objectives with less damaging and disruptive means?"

Response. The phrase in the testimony was meant as a rhetorical question. In fact, any attempt to limit or restrict the movement across state lines would be disruptive and inflict needless cost on the residents of exporting jurisdictions. According to Congressional Research Service data, ten states, ranging in size from Vermont to New York, export 15 percent or more of their solid waste. Since it takes 7 or 8 years to site, permit and build a Subtitle D landfill, these states would be severely harmed by disruptions in their access to environmentally protective disposal facilities. In addition, local jurisdictions stand to lose their host community benefits when waste volume declines.

STATEMENT OF SCOTT M. DUBOFF ON BEHALF OF THE LOCAL GOVERNMENT COALITION FOR ENVIRONMENTALLY SOUND MUNICIPAL SOLID WASTE MANAGEMENT

This statement is submitted on behalf of the Local Government Coalition for Environmentally Sound Municipal Solid Waste Management (Coalition) for inclusion in the Environment and Public Works Committee's March 20, 2002 hearing record in the above-referenced matter. The Coalition consists of cities, counties and solid waste management authorities concerned with municipal solid waste flow control legislation and other solid waste management issues. The Coalition's members are committed to long-term waste management solutions that provide full protection for public health and the environment at reasonable costs.

The Coalition strongly supports the flow control provisions of S. 1194, the "Solid Waste Interstate Transportation and Local Authority Act of 2001," and S. 2034, the "Municipal Solid Waste Interstate Transportation and Local Authority Act of 2002." This statement addresses the continuing need for—and very strong equitable arguments justifying—the narrow "grandfather" authority that the bills would provide for uses of flow control authority that were in effect at the time of the Supreme

Court's *Carbone* decision (*C. & A. Carbone* v. *Town of Clarkstown*, 511 U.S. 383 (1994)). In addition, we respond to incorrect statements concerning flow control made by one of the witnesses at the March 20 hearing.

I. BACKGROUND

The narrow flow control provisions of S. 1194 and S. 2034 (which are identical in the two bills) consist of the following:

> The bills would establish limited "grandfather" protection for communities with stranded investment (or contractual obligations) undertaken in reliance on the previous availability of flow control authority.
>
> That authority is self-limiting such that it will be used only where necessary and only for the period necessary. More specifically, that authority is confined to recovery of a narrow list of expenses for waste disposal and recycling facilities (e.g., principal and interest on bonds and "put or pay" contract obligations) and could only be relied upon where waste flow to a designated facility is not otherwise sufficient—absent use of this legislative authority—to meet those expenses.
>
> The "Interim Contracts" provision in each of the bills further limits the narrow authority provided, and protects the interests of non-flow controlled facilities, by making reinstatement of flow control authority subordinate to conflicting waste delivery agreements entered after a community's post-*Carbone* suspension of flow control authority.
>
> Finally, the bills each contain a firm "sunset" clause that (i) limits the authority provided to investments and contractual obligations undertaken in 1994 or earlier and (ii) only for the duration of such financial or contractual obligations as in effect in 1994 (e.g., the provisions for bond repayment in effect in 1994).

As the term implies, "flow control" is a mechanism that allows local governments to implement their choices for managing locally generated municipal solid waste in an environmentally sound and fiscally responsible manner. A local government will "control the flow" of such waste by selecting a specific facility (or set of facilities) for processing, disposal, etc., of locally generated municipal solid waste. To effectuate its choice, the local government will adopt an ordinance or regulation which "designates" those facilities for management of such locally generated waste and requires their use by waste haulers.

As noted above, S. 1194 and S. 2034 would protect the stranded investment that has resulted from the *Carbone* decision by providing a very limited grandfather provision for the use of flow control. These are investments that many communities and other public bodies made in direct response to Federal mandates arising under the Resource Conservation and Recovery Act (RCRA) (*see* 42 U.S.C. § 6901(a)(4)) (management of municipal solid waste "continue[s] to be primarily the function of State, regional, and local agencies") and parallel state laws that give local government entities such as the Coalition members primary responsibility for assuring adequate long-term capacity to manage all of the municipal solid waste generated within their respective jurisdictions. State laws routinely parallel RCRA's recognition of state and local governmental responsibility for municipal solid waste management.[1]

In that regard, it should also be noted that acquiring the long-term sources of environmentally-sound and price-stable capacity that a community will designate for management of its municipal solid waste will often require significant financial commitments. Those commitments are, in turn, secured through revenue bonds and similar flow control-dependent financial arrangements. In fact, since 1980 over $20 billion in state and local bonds have been issued in reliance on flow control authority for the construction of waste management facilities including state-of-the-art, environmentally-protective recycling and resource recovery (e.g., waste-to-energy) facilities and landfills.

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[1] For example, in Ohio each county (or solid waste management district) is responsible for certifying the availability of sufficient solid waste management (e.g., disposal) capacity to serve the county's residents for a 10-year period. Ohio Rev. Code § 3734.53(A). Similarly, in Pennsylvania, counties and municipalities have responsibility for assuring adequate solid waste disposal capacity. 53 Pa. Stat. §§ 4000.303(a), 4000.304(a). Most state codes have similar provisions. *See e.g.,* Conn. Gen. Stat. § 22a–220 (responsibility of each municipality to arrange for solid waste collection and disposal); Or. Rev. Stat. § 268.317 (giving metropolitan service districts extensive solid waste disposal authority); Tenn. Code Ann. § 68–211–906 (solid waste authorities comprised of county and municipal governments have exclusive authority regarding solid waste collection within their boundaries); Wash. Rev. Code § 35.21.120 ("A city or town may by ordinance provide for the establishment of a system or systems of solid waste handling for the entire city or town or for portions thereof").

II. THE IMPACT OF THE CARBONE DECISION

Prior to the Supreme Court's *Carbone* decision flow control had been repeatedly validated by Federal court decisions spanning more than 15 years from the late 1970's into the 1990's (and statutes in more than 20 states have authorized local governments to employ flow control). In fact, in previous hearings before this committee, Moody's Investors Service, Inc., testified that "[p]rior to the *Carbone* decision, Moody's viewed the state and local flow control laws and ordinances as valid, binding and enforceable." *See Hearing on Transportation and Flow Control of Solid Waste Before the Senate Committee on Environment and Public Works*, 105th Cong. 307, 311 (1997) (cited hereafter as "S. Hrng. 105–72"). Unfortunately, in *Carbone* the Supreme Court ruled that the flow control ordinance at issue in that case, which required use of a designated waste transfer facility to the exclusion of other facilities, violated the Commerce Clause. The Court's decision has spawned scores of additional lawsuits and prolonged litigation for many flow controlreliant local governments, and that is only part of the troubling impacts that followed.

More specifically, the consequences confronting communities throughout the Nation due to the loss of flow control authority and the absence of Federal legislation include steep declines in waste deliveries and resulting bond downgrades, increased taxes to offset declines in tipping fees (i.e., the fees paid to process or dispose of the portion of the waste stream that cannot be recycled), termination of recycling and other environmentally essential programs, employee layoffs and terminations, depletion of cash reserves, increasing upward pressure on tipping fees as the unavoidable fixed cost burden of waste management infrastructure is shared by fewer users, and more recently, even technical default on bonds (e.g., violating bond indenture requirements for minimum cash reserves sufficient to meet near term bond payment and other financial obligations). In terms of taxes, in one state alone more than $200,000,000 of tax revenue has been diverted since *Carbone* to fund local solid waste bond payment obligations that had previously been funded by flow control-based user fees. *See* Brief of Amicus Curiae State of New Jersey at 2, *United Haulers Association, et al.* v. *Oneida-Herkimer Solid Waste Management Authority, et al.* (brief filed December 7, 2001), Supreme Court of the United States (No. 01–686) ("over $200,000,000 has already been expended from the [New Jersey] State Treasury to prevent defaults on public debt obligations" due to the loss of flow control authority).

The number of bond downgrades (at least 22 in total) by the principal rating agencies (Moody's Investors Service, Inc. and Standard and Poor's Corporation) is also troubling, and Moody's has placed many additional solid waste bond issues in the "unstable-credit watch" category due specifically to the absence of flow control legislation. The absence of such legislation also affects solid waste bonds that are secured by general obligation guarantees or bond repayment insurance as back-up security where there was previous reliance on flow control. Nationally, the total outstanding debt issues of local public agencies that have been downgraded or placed on credit watch for potential downgrading by rating agencies since *Carbone* is over $3.5 billion.

Compounding these difficulties is the spillover effect for other public investment needs. When a flow control-reliant community goes to the bond market for any of a broad range of general obligation-public infrastructure financing needs, such as schools, roads, bridges, public safety facilities, etc., the interest rate that it must pay is likely to be adversely affected, that is, the bond issue will be evaluated as having more risk and consequently have a higher cost due to the absence of Federal flow control legislation. Those additional costs are ultimately borne by the local taxpayers.[2]

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[2] During the March 20 hearing, Coalition witness Harold Anderson, Chief Counsel of the Solid Waste Authority of Central Ohio (SWACO), identified the tax increases and other adverse impacts sustained by SWACO and the communities it serves as a result of the *Carbone* decision. Similar impacts in more than fifty other communities across the Nation are detailed in the record of previous hearings before the committee. *See* S. Hrng. 105–72, sera, at 77–80 (statement of Randy Johnson, Chair, Board of County Commissioners, Hennepin County, Minnesota). On the other hand, the written testimony submitted at the March 20 hearing by witness Bruce Parker, president of an association of companies engaged in waste hauling and landfill operations opposed to flow control, suggests (pp. 910) that local governments responded to *Carbone* by "learn[ing] to compete in a free market" and "becom[ing] more efficient." While we would certainly agree that very few, if any, business or government entities could legitimately claim that they have achieved all possible efficiencies, Mr. Parker's statement is not otherwise valid. In fact, if his suggestion were correct, a necessary corollary would be that the required increases in local taxes, termination of environmentally essential recycling programs and other harsh measures that followed in the wake of *Carbone* were somehow a sign of "efficiency." That was obviously not the case.

We must also emphasize that it would be a mistake to assume (or suggest) that the absence of bond payment defaults is an indication that "all is well." Such a conclusion not only disregards the fact that many local governments have already made significant financial sacrifices in order to meet their obligations but also further disregards the fact that local governments will do everything within their ability to avoid either a bond rating downgrade or the truly debilitating impact of a bond default.

A final point regarding the impact of the *Carbone* decision: Surely the preferred policy outcome should not be one in which, due to the absence of flow control authority, local governments are forced, as examples, to terminate recycling programs, lay off employees or increase taxes. Nevertheless, it has been suggested (by legislative opponents) that because some local governments may have these alternatives available they "do not need" flow control legislation. That suggestion would be correct *if*—and only *if*—one also concludes (which we do not) that the better approach is to increase local taxes in order to meet financial obligations undertaken a number of years ago in good faith reliance on flow control authority.[3]

III. S. 1194 AND S. 2034 PROVIDE NARROW PROTECTION FOR STRANDED INVESTMENT

The preceding points demonstrate the need for the stranded cost protection that S. 1194 and S. 2034 would provide. In considering this matter it should be noted that in the utility context "stranded costs" refers to prudent investments a utility made as a regulated monopoly, but which would cause the utility's rates to exceed the market-based prices that prevail in a competitive (deregulated) market. The public policy underlying that protection is sometimes referred to as the "regulatory compact": Utilities undertook the investments necessary to serve their customers' needs, and in exchange enjoyed regulated monopoly status and rates sufficient to recover their prudently incurred costs. The advent of retail competition, however, changed "the rules of the game" by taking away the assured customer base that a utility previously enjoyed as a regulated monopoly. In such circumstances stranded cost protection is intended to keep the utility whole by assuring recovery of prudently incurred costs that may not be recoverable in a competitive market. In short, utility restructuring legislation "changes the rules of the game," and stranded cost recovery provides a transition to assure fair treatment of investment decisions that were made under the old rules.

Flow control is precisely the same situation. Thus, in many states local governments have by law been given primary responsibility for assuring adequate capacity to dispose of all municipal solid waste generated in their communities. *See* n. 1, above. Local governments responded in various ways to meet that responsibility. Many entered contracts for long-term waste disposal, while others built facilities (most often in partnership with private vendors) to serve their communities. Both approaches required significant financial commitments, which are often secured through flow control-dependent revenue bonds or put-or-pay contracts, as had been entirely permissible prior to the *Carbone* decision. But *Carbone* "changed the rules" for local governments that had previously relied on flow control, which is directly analogous to the situation electric utilities confront with restructuring legislation. And just as the need for a reasonable transition for stranded cost recovery has been recognized in the utility restructuring context, it should also be recognized in solid waste legislation. That is the purpose of the limited grandfather provisions for flow control in S. 1194 and S. 2034.

IV. FLOW CONTROL DOES NOT INCREASE COSTS FOR WASTE MANAGEMENT SERVICES

A. The Facts

It should also be emphasized that flow control does not increase prices or result in the imposition of higher costs for a given category of service. The local governments that rely on flow control adhere to competitive bidding requirements which make cost a prime consideration in selecting among alternative waste management facilities or vendors. And the fact that some flow control-reliant communities may have tipping fees that are higher than the tipping fees at an another disposal facility does not undermine that conclusion in any way.

[3] In addition to the financial and environmental impacts discussed above, an often overlooked indirect impact of *Carbone* has been a reduced ability for local governments to meet their long-term solid waste management planning obligations due to uncertainty regarding waste volumes generated and disposal sites utilized. The result has at times been vague planning documents that fall short of the comprehensive solid waste management objectives set forth in RCRA and parallel state laws.

Following up on the preceding point, flow control-based tipping fees will almost always recover, in addition to the cost to dispose of non-recyclable waste, the costs of environmentallyessential waste management services such as recycling, household hazardous waste and yard waste collection services. As EPA has emphasized, such recycling and related services "generally do not lend themselves to generation of their own revenues." *See* U.S. Environmental Protection Agency, *Report to Congress on Flow Control and Municipal Solid Waste*, EPA 530–R–95–009 (March 1995, at ES–11) (cited below as "*Report to Congress on Flow Control*"). Moreover, as EPA has also recognized, when properly analyzed on an equivalent services basis, flow controlreliant communities do not pay more for the waste management services they receive than nonflow control communities. Referring to flow control-reliant communities, EPA noted that "[w]hen the tipping fee [paid in those communities] 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 (quoting Moody's Public Finance, *Perspectives on Solid Waste,* August 16, 1993, p. 3).

Furthermore, the approach of combining the costs of other solid waste management programs in a composite user fee charged for disposal of municipal solid waste is the preferred—and very sound—public policy. In that regard, the policy that EPA began recommending more than a decade ago was to discourage use of general taxes to fund solid waste management services. For example, EPA's "*Handbook For Solid Waste Officials*" (*Variable Rates In Solid Waste: Handbook For Solid Waste Officials*, USEPA, Office of Solid Waste and Emergency Response, EPA/530–SW–90–084A (September 1990)), pointedly criticized the use of local property taxes to fund solid waste management services. The basis for the criticism was that such use of property taxes fails to give "residents *any* incentive to reduce their waste." *Id*., Volume I—Executive Summary 2 (emphasis in original). The *Handbook* continues by noting that "[i]n fact, with the property tax method, residents never even see a bill, and generally have no idea how much it costs to remove their garbage every week. Areas with [this] method[] of payment have often had to resort to mandatory recycling programs in order to try to reduce their amount of garbage." As an alternative to such use of property taxes, the *Handbook* encourages volume-based user fees. *Id*. at 2–3.

Following publication of the *Handbook*, former EPA Administrator William K. Reilly testified on this matter (as well as other RCRA reauthorization topics) before the Senate Environment and Public Works Committee. *See* William K. Reilly, Administrator, U.S. Environmental Protection Agency, Statement Before the Subcommittee on Environmental Protection of the Senate Comm. on Environment and Public Works 1 (September 17, 1991). Among other things, Administrator Reilly explained that the prices charged by local governments for waste management services should recover all direct and indirect costs. He then stated that the practice in which the costs of waste management services are "typically hidden—in our property taxes" is poor policy. As an alternative, he said such costs should instead be recovered through volumebased user fees. That is the approach followed by flow control-reliant communities and, as Mr. Reilly emphasized, that approach "is just common sense, as well as good economic sense." *Id.* at 12–13.

B. Falsehoods and Misconceptions

1. *Costs.* At the March 20 hearing, witness Parker (see n. 2, above) suggested that flow control increases costs to consumers by 40 percent. Mr. Parker referred to 1997 testimony before the Senate Environment and Public Works Committee as the source for his 40 percent figure, and the 1997 testimony, in turn, referred to a study commissioned by a waste company that opposed flow control (Browning-Ferris Industries) as the basis for the figure.[4] That "study" was entirely invalid, however, and laden with distortion that portrayed flow control as more expensive.

In that regard, the State of New Hampshire, Department of Environmental Services (DES), was asked to evaluate the waste company's so-called "study." DES' report (at p. 4) found that the study was (i) "flawed in its assumptions, reported results, and conclusions," (ii) based on "[m]isleading use and reporting of statistics" and (iii) as consequence the study had lost "any standing it might otherwise claim as a meaningful contribution" to evaluation of these matters (the New Hampshire DES' report is attached to this statement). In particular, the study made a false comparison of tipping fees at flow controlled and non-flow controlled facilities. The result was to inflate substantially the tipping fees charged at the flow controlled fa-

[4] Although Mr. Parker attributed the 40 percent figure to Congressman William Pascrell's March 18, 1997 testimony, the figure was not mentioned by Mr. Pascrell, but rather by witnesses John Broadway and Grover Norquist. *See* S. Hrng. 105–72, *supra*, at 91, 92.

cilities. That was a fundamental error because, as the New Hampshire DES explained,

> 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).

Id.

As a further example of these errors, the study attempted to support its claim that flow control costs more by comparing the tipping fees charged at Medina, Ohio's modern recycling facitity with the cost of waste disposal at landfills in the same region of Ohio. Without belaboring the obvious, it costs more to recycle rather than landfill waste, and that has nothing to do with flow control.[5]

We should also note that witness Parker's written testimony suggested (pp. 9–10) that "it's too late" to provide grandfather authority for the pre-*Carbone* uses of flow control that S. 1194 and S. 2034 would protect because subsequent to *Carbone* "contracts have been written, people have been hired," etc., which "cannot be undone." Mr. Parker's concern is addressed in the "Interim Contracts" provision of each of the bills. That provision, which was included in previous versions of this legislation at the request of waste hauling companies, would make reinstatement of flow control authority under either bill subordinate to conflicting waste delivery agreements entered after a community's post-*Carbone* suspension of flow control authority and prior to enactment of either S. 1194 or S. 2034. *See* sec. 3 of S. 1194, proposed § 4012(g) of title 42; sec. 5 of S. 2034, proposed § 4014(g) of title 42.

2. *Impact on Competition.* It should also be emphasized that flow control is not anticompetitive or anti-private enterprise. In considering this point it is important to bear in mind that communities which on flow control also rely to the maximum extent possible on private enterprise for their waste management infrastructure. 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. National trends are fully consistent. Thus, as EPA has emphasized, "it is noteworthy that the private sector has an ownership or operational role for 84 percent of WTE [waste-to-energy] throughput, including most of the larger WTEs." *See Report to Congress on Flow Control* at III–58. 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, has estimated 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.

Finally, the tipping fees charged for municipal solid waste management services in communities that rely on flow control are based on *cost* and are 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 that are provided—recycling, household hazardous waste collection, composting, public education, resource recovery (waste-to-energy), etc. Such tipping fee-derived revenues do not cross-subsidize non-solid waste management services. Moreover, S. 1194 and S. 2034 specifically limit the use of flow control-derived revenues to payment of debt service on bonds (or similar contractual obligations) for eligible facilities, necessary operations and maintenance expense for those facilities and recycling, composting and household hazardous waste program expenses. Thus, as noted above, the authority the bills provide is self-limiting and will be invoked only where necessary and only for the period necessary. In short, that authority will be used only where waste flow to a designated facility during the term of the above-described obligations is not otherwise sufficient—absent use of such legislative authority—to meet the expenses specified in S. 1194 and S. 2034.

V. CONCLUSION

In conclusion, the Coalition appreciates the opportunity to provide the foregoing views to the committee. We respectfully urge the committee to proceed expeditiously

[5] The so-called study also ignored the difference between the tipping fees charged at (i) flow controlled facilities that are subject to long-term contractual arrangements with corresponding capacity commitments and price stability and (ii) the spot market tipping fees at non-flow controlled facilities (for which there are no corresponding capacity commitments or price stability). That difference in fees reflects a fundamental difference in the two service arrangements and is essential for consideration when analyzing the cost impact of flow control. Thus, a principal reason why local governments rely on flow control is to facilitate long-term, price-stable arrangements for the development and financing of waste management facilities and to avoid the substantial price fluctuation and capacity uncertainty that is a characteristic of the spot market.

with consideration of S. 1194 and S. 2034, and we pledge our full efforts to assist in that process.

STATEMENT OF MARK LENNON AND PATRICK PINKSON-BURKE, PLANNING AND COMMUNITY ASSISTANCE SECTION, WASTE MANAGEMENT DIVISION, NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES

"THE COST OF FLOW CONTROL": CRITICAL REVIEW OF THE NATIONAL ECONOMIC RESEARCH ASSOCIATES ANALYSIS, 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, end 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 . . . failing 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 percent 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 increase 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 they 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 control 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.—Comparative Disposal Costs: Onondaga County, NY and Competing Private Facilities

Name of disposal facility	Type	Disposal Fee only ($/ton) [1]	Cost per ton/mile ($) [2]	Roundtrip distance (miles) [3]	Total cost ($/ton) 3+(4x5)	NERA total cost ($/ton) [4]
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	64.26
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	68.98
6. Am. Ref-fuel WTE Inc.	IN	69.00	0.081	420	103.02	80.93
7. Adirondack Resource Recovery Facility	IN	85.00	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, 1995.
[1] Tipping few at Onondaga is actually $99.00/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 vale of electricity back to the haulers every month. This has ranged from a minimum of $5,50/ton to a high of $15.50/ton. The current rebate of $7.50 would lower the tipping fee to $80.61 for actual disposal fees only—and to $91.50 for all services. (per private conversation with Andy Brigham. OCRRA, 6/14/95) All other facilities are privately owned and offer minimal integrated waste management services.
[2] Per conversation with the Tellus Institute in Boston, hauling costs in the U.S. 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 would be $1.775/22 tons, or $.081/ton/mile. June 16, 1955.
[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.

Table 3.—Comparative Disposal Costs: Des Moines, IA and Competing Private Facilities

Name of disposal facility	Type	Tipping fee only ($/ton) [1]	Cost per ton/mile ($) [2]	Roundtrip distance (miles) [3]	Total cost ($/ton) 3+(4x5)	NERA total cost ($/ton) [4]
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 Dalas Sanitary Landfill	LF	14.00	0.081	60	18.85	15.70
4. Cerro Gordo Co. LFN, Iowa	LF	16.00	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	..	30.00	0.081	260	51.06	37.39
10. Cass Co. Sanitary LF	..	50.00	0.081	140	61.34	53.98
11. Average Disposal costs at Alternate Facilities	..				40.19	29.26
12. Savings from Flow Control (Row 11–Row 1)	..				$15.19 [5]	$4.26

Sources and Notes:

Based upon the NERA study entitled ''the Cost of Flow Control'', dated May 3, 1995.

[1] Tipping few at Onondaga is actually $26.00/ton. This fee includes recycling services, composting, a battery program and HHW collections. These programs are inseparable from the tipping fee. This facility is publicly owned. (per conversation with Des Moines Metro Park East LF Mgr. 6/12/95). All other facilities are privately owned and operated and do not offer integrated waste mangement.

[2] Per conversation with the Tellus Institute in Boston, hauling costs in the U.S 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 5.081/ton/mile. June 16, 1955.

[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.

[5] This is the minimum savings. Metro LF disposal fees include the cost of IWM. 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 compares with the competing private facilities.

Table 4.—Flow Control in Medina County, OH Provides Integrated Services At The Extra Cost of $8.70/ton (Includes Composting, Recycling, and HHW)

Name of disposal facility	Type	Tipping fee only ($/ton) [1]	Cost per ton/mile ($) [2]	Roundtrip distance (miles) [3]	Total cost ($/ton) 3+(4x5)	NERA total cost ($/ton) [4]
1. Medina County MRF	TS	$52.50	0.081	0	$52.50	$58.00
2. American LF	LF	25.00	0.081	90	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. BFI/Carbon Limestone Sanitary LF	LF	30.00	0.081	100	38.10	32.84
7. BFI/Lorain Co. LF	LF	34.47	0.081	40	37.71	35.61
8. Laidlaw/Cherokee Run-Belletontaine LF	LF	30.00	0.081	220	47.82	36.25
9. Athens-Hocking LF	LF	30.00	0.081	240	49.44	38.82
10. Laidlaw/Williams Co. LF	LF	31.00	0.081	280	53.68	38.95
11. WMI/Evergreen Recycling/Disposal LF	LF	35.55	0.081	180	50.13	40.66
12. Royalton 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	58.84	51.48
15. Average Disposal Costs at Alternate Facilities	..				43.80	37.01
16. Extra Cost of Integrated Waste Mgt (Row 1–Row 15)	..				8.70	20.99

Sources and Notes:

Based upon the NERA study entitled ''the Cost of Flow Control'', dated May 3, 1995.

[1] Tipping few at Medina Co. MRF as of 7/1/95 is actually $62.50/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 Tellus Institute in Boston, hauling costs in the U.S 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 $.081/ton/mile. June 16, 1995.

[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 Joyce Doughty, Director, Fairfax County Division of Solid Waste Disposal & Resource Recovery

INTRODUCTION

Mr. Chairman, members of the committee, thank you very much for the opportunity to present testimony on the Solid Waste Interstate Transportation and Local Authority Act of 2001, (S. 1194), a very important piece of legislation before this committee. My name is Joyce Doughty, and I am the Director of Solid Waste Disposal & Resource Recovery for Fairfax County, Virginia.

S. 1194 is an imperative piece of legislation for Fairfax County, Virginia, as well as to communities around the nation. Today, I come before you to specifically comment on one provision of S. 1194, Congressional Authorization Of State And Local Municipal Solid Waste Flow Control.

CONSEQUENCES OF CARBONE INC. V. TOWN OF CLARKSTOWN, NEW YORK (NO. 92–1402)

Let me start off by briefing the committee on the situation that Fairfax County faces. Municipal solid waste management was a major concern for Fairfax County in the 1980's. With rapidly dwindling landfill disposal capacity in the County, and in the region, Fairfax County developed a comprehensive solid waste management system which is centered around a state-of-the-art waste-to-energy facility. This system came with a price.

Fairfax County pro-actively implemented and engineered a solution to its needs, building a large waste-to-energy facility. Fairfax County entered into an agreement with the firm of Covanta Fairfax, Inc., to develop the project. The facility cost over

$200 million, which was paid for by issuing $252 million in bonds which have been refinanced, however $163 million remains outstanding. The bonds have a net annual debt service of approximately $20 million. Bonds will remain outstanding until February 2011.

The County has relied on the solid waste fees charged for use of this facility to generate revenue to pay off those bonds, and to also pay for other solid waste programs, not just disposal. The County provides services to its citizens that are both civically and environmentally desirable. Included are programs that do not generate any, or sufficient, revenues to pay for themselves such as recycling education, household hazardous waste collection, citizen's recycling and disposal facilities, hauler vehicle inspection, permitting, and enforcement. The County relied on solid waste flow control to direct an adequate amount of waste to the facility and set tipping fees adequate to support the solid waste management system needs. These fees turned out to be higher than those charged by mega-landfills later developed that do not have such environmental and civic responsibilities.

However, in 1994 the U.S. Supreme Court placed Fairfax County's, and other communities', flow control authority in question in the case of *Carbone Inc.* v. *Town of Clarkstown, New York* (No. 92–1402). The Court found that municipal solid waste is an article of commerce; thus, state and local flow control mandates of the type questioned in this case violated the commerce clause of the U.S. Constitution.

The perceived loss of flow control resulted in a steady stream of waste, generated in Fairfax County, being shipped down Virginia's highways to privately owned megalandfills. Fairfax County took various actions to regain control through both legal and financial methods. Tipping fees were drastically reduced to compete with the large private landfills, resulting in decreased revenues. In order to offset the loss of revenues the County has taken both internal and external steps to reduce its costs. The County has also applied operating reserves, originally intended to be used for capital purchases and as environmental reserves, to operating costs. In fiscal year 2002, the reserve funds were exhausted and the County was forced to subsidize the solid waste system with $5.5 million from the County's General Fund. At this level, over the course of the next 9 years the County could spend $40 to 50 million from the General Fund to subsidize the program. Thus, dollars that could be used for schools, public safety, human services, and roads, would be used to assist paying for solid waste including the waste-to-energy facility.

Flow Control provisions of S. 1194 will allow communities from around the Nation to resume full use of flow control authorization to repay debts that were established before the Supreme Court ruled in the *Carbone* case. It is difficult for a jurisdiction such as Fairfax County, and others nationwide, to develop long-term solid waste management programs that are environmentally responsible, when the "rules of the game" can be changed at any time.

IMPACT OF FLOW CONTROL ON THE SOLID WASTE INDUSTRY

In 1992, Congress directed the U.S. Environmental Protection Agency (EPA) to develop and submit a report to Congress on solid waste flow control as a means of municipal solid waste management. The EPA[1] found that flow control played a limited role in the solid waste market as a whole. However, flow control authority played the largest role in financing and funding of waste-to-energy facilities. The EPA also found that flow control provided for an administratively effective mechanism for local governments to plan for and fund their solid waste management systems. Allowing local governments to control the disposition of locally generated municipal solid waste allows planners to more accurately determine how much waste has to be managed and how effective local waste management plans are, further explaining flow control as an effective tool for planning and management.

Solid waste flow control is of critical importance to Fairfax County, Virginia and we urge you to move proposed flow control legislation forward. Interstate waste transport legislation is linked to flow control legislation in S. 1194. While the interstate waste transport portion of the legislation has been at the forefront of discussions, we believe that it is critical that flow control provisions remain linked to the legislation. The consequences of passing an interstate waste bill without flow control could be financially devastating to Fairfax County and other municipalities around the nation. If private mega-landfills cannot import waste from outside the state they will look more closely within the state boundaries for alternate sources of waste, and will further undercut the ability of local governments to effectively plan and finance solid waste programs.

[1] The report was published by the EPA in March 1995 (EPA530–R–95–008)

S. 1194 does not authorize flow control for every community in the nation. S. 1194 simply states that communities that had relied on flow control, before 1994, to finance debt on the construction of a solid waste facility will be able to resume using full flow control measures until all publicly funded bonds are paid off. This legislation does not authorize new uses of flow control.

We thank you for your time and would be willing to answer any questions that the committee has.

STATEMENT MICHAEL E. MCMAHON, CHAIRMAN, NEW YORK CITY COUNCIL COMMITTEE ON SANITATION AND SOLID WASTE MANAGEMENT

Chairman James M. Jeffords and members of the committee, I am Michael E. McMahon and represent the North Shore of Staten Island in the New York City Council. I am also the Chairperson of the Council's Committee on Sanitation and Solid Waste Management.

As a Staten Islander I believe I am uniquely qualified to as a stake holder to state to you that solid waste management including the landfill of garbage is a regional issue and the transporting of waste across state lines is an activity which must be protected by the interstate commerce clause. I implore you to take no steps and entertain no action that would limit the protections of the interstate commerce clause as they relate to the movement of trash to landfills, especially since those protections were recently affirmed by the Supreme Court of the United States.

As you are well aware, the people of Staten Island have suffered for more than 50 years the noxious effects of the Fresh Kills Dump, which finally closed in March of last year. It was an illegal, unlined, unprotected dump and violated Federal, state and city laws. In order to keep this dump closed, the city of New York has developed an interim and long-term plan for the handling of its waste. An integral part of this plan is the export of solid waste to out-of-state landfills. These sites are environmentally sound and legal. They are lined and provide economic benefit to the area in which they are located. They are a good resource to urban areas irrespective of state boundaries.

Of course, the city of New York must develop and adhere to a solid waste management plan that not only exports its trash, but is founded on the principles of reusing, recycling, and reducing our trash. I commit to you that the City Council of New York City will work on a plan to realize these goals. But even when we adhere to environmentally sound practices, the City will need to export a portion of its solid waste. The density of our population and the direction of rail lines as they exist require interstate export. This export will only be to landfills that are legally operated and welcome the trash.

In conclusion, it is respectfully requested that the export and transport of solid waste is a protected activity under the interstate commerce clause and I urge you on behalf of all New Yorkers to maintain this protection.

Thank you.

ASSOCIATION OF AMERICAN RAILROADS,
Washington, DC, April 9, 2002.

Hon. JAMES M. JEFFORDS, *Chairman*
U.S. Senate,
Washington, DC.

Dear Mr. CHAIRMAN: The Association of American Railroads (AAR) submits the following comments in connection with the committee's March 20, 2002 hearing on interstate waste. AAR opposes legislation to restrict the interstate transportation of municipal solid waste, or to ban it outright in the absence of a host community agreement. Although well intentioned, such legislation would diminish opportunities to optimize environmental protection, impose an inappropriate burden on interstate commerce, and unnecessarily distort consumer markets.

America's railroads play a key role in the safe and efficient transportation of municipal solid waste to state-of-the-art disposal facilities. In many cases, these sophisticated facilities have replaced smaller, local landfills that were forced to close because they failed to comply with stringent new environmental requirements. As the committee heard from New York City Department of Sanitation's Leslie Allan,

> . . . the more rigorous environmental protections required under Subtitle D of the Resource and Conservation and Recovery Act (RCRA) have compelled communities to replace old, small landfills with larger, costlier, state-of-the-art, regional facilities that comply with the law. In this context, the right to transport

> solid waste across state lines complements the basic reality that different regions have varying disposal capacities irrespective of state lines. . . . Areas such as New York City and Chicago, lacking adequate space for landfills and/or prohibited from waste incineration, may be located closer to better and more cost-effective facilities in other states. These facilities need the additional waste generated elsewhere to pay for part of the increased cost of RCRA compliance.

This testimony offers a compelling example of the necessity of interstate waste shipments, and the mutual benefits that inure to the geographic areas involved.

For these reasons, AAR opposes S. 1194, introduced by Senator Arlen Specter, and S. 2034, introduced by Senator George Voinovich. Enactment of such legislation would impede the free market and limit the availability of environmentally—beneficial, cost-effective waste management options. In the end, the Nation would be less well off because of the barriers the measures would erect to the free flow of commodities across state lines.

Under the Constitution, Congress is vested with the power to "regulate Commerce . . . among the several states." Consistent adherence to this principle has helped to create a seamless U.S. economy and the finest transportation network in the world. The enactment of interstate waste prohibitions and limitations would balkanize waste management and create a troubling precedent that Congress might subsequently choose to extend to other commodities.

Moreover, this balkanization of waste management along state and local lines would sharply drive up consumer costs. Under the proposed legislation, states might be forced to replicate facilities that already exist in other jurisdictions. These new landfills might not be as environmentally protective as larger, regional facilities because the cost structure of advanced sites often depends on substantial economies of scale. Furthermore, by cutting off access to multi-state supplies of municipal solid waste, the bill would make investment in large regional facilities less likely in the future.

Public officials must focus on how to ensure that solid waste is managed in the most environmentally responsible manner. Railroads agree that the answer lies in allowing solid waste to flow to the best new regional facilities, as provided for in legally—binding host community (or other) agreements, which incorporate state-of-the-art technology and that meet or exceed Environmental Protection Agency regulations.

AAR appreciates this opportunity to submit comments on S. 1194 and S. 2034. I respectfully request that my statement be made a part of the record in connection with the March 20, 2002 hearing before the committee on this legislation.

Sincerely,

Edward R. Hamberger.

II

107TH CONGRESS
1ST SESSION

S. 1194

To impose certain limitations on the receipt of out-of-State municipal solid waste, to authorize State and local controls over the flow of municipal solid waste, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 18, 2001

Mr. SPECTER (for himself, Ms. STABENOW, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To impose certain limitations on the receipt of out-of-State municipal solid waste, to authorize State and local controls over the flow of municipal solid waste, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Solid Waste Interstate Transportation and Local Authority Act of 2001".

SEC. 2. INTERSTATE TRANSPORTATION AND DISPOSAL OF MUNICIPAL SOLID WASTE.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding after section 4010 the following new section:

"SEC. 4011. RECEIPT AND DISPOSAL OF OUT-OF-STATE MUNICIPAL SOLID WASTE.

"(a) PRESUMPTIVE BAN ON RECEIPT OF OUT-OF-STATE WASTE.—No landfill or incinerator may receive any out-of-State municipal solid waste for disposal or incineration unless the waste is received pursuant to—

"(1) a host community agreement in accordance with subsection (b) or (c); or

"(2) an exemption under subsection (d).

"(b) EXISTING HOST COMMUNITY AGREEMENTS.—Except as provided in subsection (e), out-of-State municipal solid waste may be received at a landfill or incinerator for disposal or incineration pursuant to a host community agreement entered into before the enactment of this section if—

"(1) the agreement specifically authorizes the owner or operator to accept, at the landfill or incinerator, out-of-State municipal solid waste; and

"(2) the owner or operator complies with all of the terms and conditions of the host community agreement.

The owner or operator shall provide a copy of the host community agreement, within 90 days after the enactment of this section, to the State and affected local government and make such a copy available for inspection by the public in the affected local community.

"(c) NEW HOST COMMUNITY AGREEMENTS.—

"(1) EXEMPTION FROM BAN.—Except as provided in subsection (e), out-of-State municipal solid waste may be received at a landfill or incinerator for disposal or incineration pursuant to a host community agreement entered into on or after the enactment of this section (in this section referred to as a 'new host community agreement') if the agreement specifically authorizes the receipt of such waste and meets the requirements of paragraphs (2) through (5) of this subsection.

"(2) REQUIREMENTS FOR AUTHORIZATION.—An authorization to receive out-of-State municipal solid waste pursuant to a new host community agreement shall be granted by formal action at a meeting; be recorded in writing in the official record of the meeting; and remain in effect according to its terms. Such authorization may specify terms and conditions, including an amount of out-of-State mu-

nicipal solid waste that an owner or operator may receive and the duration of the authorization.

"(3) INFORMATION.—Prior to seeking an authorization to receive out-of-State municipal solid waste pursuant to a new host community agreement under this subsection, the owner or operator of the facility seeking such authorization shall provide (and make readily available to the State, each contiguous local government and Indian tribe, and any other interested person for inspection and copying) each of the following items of information:

"(A) A brief description of the facility, including, with respect to both the facility and any planned expansion of the facility, the size, the ultimate waste capacity, and the anticipated monthly and yearly quantities of waste to be handled. Such quantities shall be expressed in terms of volume.

"(B) A map of the facility site indicating location in relation to the local road system and topography and general hydrogeological features. The map shall indicate any buffer zones to be acquired by the owner or operator as well as all facility units.

"(C) A description of the then current environmental characteristics of the site, a description of ground water use in the area, and a discussion of alterations that may be necessitated by, or occur as a result of, the facility. The description of groundwater use shall include identification of private wells and public drinking water sources.

"(D) A description of environmental controls typically required to be used on the site (pursuant to permit requirements), including run on or run off management, or both, air pollution control devices, source separation procedures (if any), methane monitoring and control, landfill covers, liners or leachate collection systems, and monitoring programs. In addition, the description shall include a description of any waste residuals generated by the facility, including leachate or ash, and the planned management of the residuals.

"(E) A description of site access controls to be employed, and roadway improvements to be made, by the owner or operator, and an estimate of the timing and extent of increased local truck traffic.

"(F) A list of all required Federal, State, and local permits.

"(G) Estimates of the personnel requirements of the facility, including information regarding the probable skill and education levels required for jobs at the facility. To the extent practicable, the information shall distinguish between employment statistics for preoperational and postoperational levels.

"(H) Any information that is required by State or Federal law to be provided with respect to any violations of environmental laws (including regulations) by the owner, the operator, and any subsidiary of the owner or operator, the disposition of enforcement proceedings taken with respect to the violations, and corrective action and rehabilitation measures taken as a result of the proceedings.

"(I) Any information that is required by State or Federal law to be provided with respect to gifts and contributions made by the owner or operator.

"(J) Any information that is required by State or Federal law to be provided with re-

spect to compliance by the owner or operator with the State solid waste management plan.

"(4) PRIOR NOTIFICATION.—Prior to taking formal action with respect to granting authorization to receive out-of-State municipal solid waste pursuant to a new host community agreement under this subsection, an affected local government shall—

"(A) notify the State, contiguous local governments, and any contiguous Indian tribes;

"(B) publish notice of the action in a newspaper of general circulation in the affected area at least 15 days before holding a hearing under subparagraph (C), except where State law provides for an alternate form of public notification; and

"(C) provide an opportunity for public comment in accordance with State law, including at least 1 public hearing.

"(5) SUBSEQUENT NOTIFICATION.—Promptly, but not later than 90 days after an authorization is granted pursuant to a new host community agreement under this subsection, the affected local government shall notify the Governor, contiguous local governments, and any contiguous Indian tribes of such authorization.

"(6) AUTHORITY.—

"(A) IN GENERAL.—A State may enact a law or laws with respect to the entry, by an affected local government in the State, into a host community agreement, as it relates to the interstate transportation of solid waste.

"(B) NO DISCRIMINATION.—In enacting a law or laws pursuant to subparagraph (A), a State shall act in a consistent manner that does not discriminate against the receipt of out-of-State municipal solid waste on the basis of State of origin.

"(d) EXEMPTION FOR WASTE NOT SUBJECT TO HOST COMMUNITY AGREEMENTS.—

"(1) EXEMPTION FROM BAN.—Except as provided in subsection (e), out-of-State municipal solid waste received at a landfill or incinerator shall be exempt from the presumptive ban contained in subsection (a) if the owner or operator of the landfill or incinerator provides to the State in which the landfill or incinerator is located and to the affected local government either of the following:

"(A) PERMIT.—Information establishing that, before the enactment of this section, the owner or operator of the landfill or incinerator

has received a State permit that specifically authorizes the owner or operator to accept, at the landfill or incinerator, such out-of-State municipal solid waste. This subparagraph shall be effective only if the owner or operator complies with all of the terms and conditions of the permit after the date of enactment of this section and notifies the affected local government of the permit as soon as practicable but not later than 90 days after the date of enactment of this section.

"(B) CONTRACT.—Information establishing that the owner or operator of the landfill or incinerator has entered into a binding contract before March 18, 2001, that commits to the delivery to and receipt at the landfill or incinerator of a specific quantity of out-of-State municipal solid waste and that the owner or operator of the landfill or incinerator has permitted capacity actually available on the date of enactment of this section for receipt of the specific quantity of out-of-State municipal solid waste committed to in the contract. This subparagraph shall be effective only for the longer of—

"(i) the life of the contract (not including any renewal, novation, or extension thereof); or

"(ii) a period of 3 years after the date of enactment of this section,

and only with respect to the amount of the obligation in the contract.

"(2) AVAILABILITY OF DOCUMENTATION.—The owner or operator of a landfill or incinerator receiving out-of-State municipal solid waste pursuant to an exemption under paragraph (1) shall make available for inspection by the public in the affected local community a copy of the permit or contract referred to in paragraph (1). The owner or operator may omit any proprietary information contained in contracts.

"(3) DENIED OR REVOKED PERMITS.—A landfill or incinerator may not receive for disposal or incineration out-of-State municipal solid waste pursuant to an exemption under paragraph (1) if the operating permit for the landfill or incinerator (or renewal thereof) was denied or revoked by the appropriate State agency before the date of enactment of this section, unless such permit or license (or re-

1 newal) has been reinstated as of such date of enact-
2 ment.
3 "(e) REQUIRED COMPLIANCE.—Exemptions under
4 subsections (b), (c), and (d) shall not apply to a landfill
5 or incinerator during any period with respect to which the
6 State in which the facility is located has determined that
7 the facility is not in compliance with applicable Federal
8 and State laws and regulations relating to—
9 "(1) facility operation and design;
10 "(2) in the case of landfills, facility location
11 standards, leachate collection standards, ground-
12 water monitoring standards, and standards for fi-
13 nancial assurance and for closure and postclosure
14 and corrective action; and
15 "(3) in the case of incinerators, the applicable
16 requirements of section 129 of the Clean Air Act (42
17 U.S.C. 7429).
18 "(f) AUTHORITY OF STATE TO RESTRICT OUT-OF-
19 STATE MUNICIPAL SOLID WASTE.—
20 "(1) LIMITATIONS ON AMOUNT OF WASTE RE-
21 CEIVED.—
22 "(A) LIMIT FOR ALL FACILITIES IN THE
23 STATE.—A State may limit the amount of out-
24 of-State municipal solid waste received annually
25 at each landfill or incinerator in the State to

the limitation amount described in paragraph (2), except as provided in this subsection. No such limit may conflict—

"(i) with provisions of a permit specifically authorizing the owner or operator to accept, at the facility, out-of-State municipal solid waste; or

"(ii) with a host community agreement entered into between the owner or operator of any such landfill or incinerator and the affected local government.

"(B) CONFLICT.—A limit referred to in subparagraph (A) shall be treated as conflicting with—

"(i) a permit if the permit establishes a higher limit or does not establish any limit on the amount of out-of-State municipal solid waste which may be received annually at the facility; and

"(ii) a host community agreement if the host community agreement establishes a higher limit or does not establish any limit on the amount of out-of-State municipal solid waste which may be received annually at the facility, but only to the extent

that the landfill or incinerator, at the time the host community agreement was entered into, had specifically permitted capacity to receive the solid waste authorized by the host community agreement.

"(C) LIMIT FOR PARTICULAR FACILITIES.—An affected local government that has not executed a host community agreement with a particular landfill or incinerator may limit the amount of out-of-State municipal solid waste received annually at the landfill or incinerator concerned to the limitation amount described in paragraph (2). No such limit may conflict with provisions of a permit specifically authorizing the owner or operator to accept, at the facility, out-of-State municipal solid waste.

"(D) EFFECT ON OTHER LAWS.—Nothing in this subsection shall be interpreted or construed to supersede any State law relating to contracts.

"(2) LIMITATION AMOUNT.—For any landfill or incinerator that commenced receiving documented out-of-State municipal solid waste before the date of enactment of this section, the limitation amount referred to in paragraph (1) for any year shall be

equal to the amount of out-of-State municipal solid waste received at the landfill or incinerator concerned during calendar year 1993. The documentation referred to in this paragraph shall be such as would result in criminal penalties under State law in case of false or misleading information. Such documentation shall include the amount of waste received in 1993, place of origin, identity of the generator, date of shipment, and type of waste.

"(3) NO DISCRIMINATION.—In establishing a limitation under this subsection, a State shall act in a consistent manner that does not discriminate against any shipments of out-of-State municipal solid waste on the basis of State of origin.

"(g) LIMITATIONS ON PROSPECTIVE WASTE FLOWS.—

"(1) STATE AUTHORITY TO DENY PERMITS.—A State may provide by law that the State will deny, or refuse to renew, a permit for the construction or operation of a landfill or incinerator, or for a major modification to an existing landfill or incinerator, if—

"(A) the State has approved a State or local comprehensive municipal solid waste man-

agement plan developed under Federal or State law; and

"(B) the denial or refusal to renew is based on a determination, pursuant to a State law authorizing the denial or refusal to renew, that there is not a local or regional need for the landfill or incinerator in the State.

"(2) PERCENTAGE LIMIT.—

"(A) IN GENERAL.—A State may provide by law that a State permit issued or renewed after the date of enactment of this section for a municipal solid waste landfill or incinerator, or for expansion of a municipal solid waste landfill or incinerator, shall include a requirement that not more than a specified percentage of the total amount of municipal solid waste received annually at the landfill or incinerator may be out-of-State municipal solid waste. A percentage limitation established by a State under this subparagraph shall not be less than 20 percent.

"(B) HOST COMMUNITY AGREEMENT.—Notwithstanding subparagraphs (A) and (C), a landfill or incinerator acting pursuant to a host community agreement entered into prior to the

date of enactment of this section that specifically authorizes the landfill or incinerator to receive a specific quantity of out-of-State municipal solid waste annually may receive the specific quantity authorized under the host community agreement.

"(C) NONDISCRIMINATION.—An annual percentage limitation referred to in subparagraph (A)—

"(i) shall be uniform for all municipal solid waste landfills and incinerators in the State; and

"(ii) may not discriminate against out-of-State municipal solid waste according to the State of origin.

"(h) AUTHORITY OF STATE TO RESTRICT OUT-OF-STATE MUNICIPAL SOLID WASTE BASED ON RECYCLING PROGRAMS.—

"(1) AUTHORITY.—

"(A) LIMITATION.—A State may limit the amount of out-of-State municipal solid waste received annually at each landfill or incinerator in the State to the amount of out-of-State municipal solid waste received at the landfill or incinerator concerned during calendar year 1995

if the State has enacted a comprehensive, statewide recycling program. No such limit may conflict—

"(i) with provisions of a permit specifically authorizing the owner or operator to accept, at the facility, out-of-State municipal solid waste; or

"(ii) with a host community agreement entered into between the owner or operator of any such landfill or incinerator and the affected local government.

"(B) CONFLICT.—A limit referred to in subparagraph (A) shall be treated as conflicting with—

"(i) a permit if the permit establishes a higher limit or does not establish any limit on the amount of out-of-State municipal solid waste which may be received annually at the facility; and

"(ii) a host community agreement if the host community agreement establishes a higher limit or does not establish any limit on the amount of out-of-State municipal solid waste which may be received annually at the facility, but only to the extent

that the landfill or incinerator, at the time the host community agreement was entered into, had specifically permitted capacity to receive the solid waste authorized by the host community agreement.

"(2) NO DISCRIMINATION.—In establishing a limitation under this subsection, a State shall act in a consistent manner that does not discriminate against any shipments of out-of-State municipal solid waste on the basis of State of origin.

"(3) EFFECT ON OTHER LAWS.—Nothing in this subsection shall be interpreted or construed to supersede any State law relating to contracts.

"(4) DEFINITION.—As used in this subsection, the term 'comprehensive, statewide recycling program' means a law of statewide applicability that requires the generators of municipal solid waste to separate all of the following materials for recycling as a condition of disposing of the waste at landfills or incinerators in the State:

"(A) Aluminum containers.

"(B) Corrugated paper or other container board.

"(C) Glass containers.

"(D) Magazines or other material printed on similar paper.

"(E) Newspapers or other material printed on newsprint.

"(F) Office paper.

"(G) Plastic containers.

"(H) Steel containers.

"(I) Containers for carbonated or malt beverages that are primarily made of a combination of steel and aluminum.

"(i) COST RECOVERY SURCHARGE.—

"(1) AUTHORITY.—A State may impose and collect a cost recovery charge on the processing, combustion, or disposal in a landfill or incinerator of out-of-State municipal solid waste in the State in accordance with this subsection.

"(2) AMOUNT OF SURCHARGE.—The amount of the cost recovery surcharge may be no greater than the amount necessary to recover those costs determined in conformance with paragraph (4) and in no event may exceed $2.00 per ton of waste.

"(3) USE OF SURCHARGE COLLECTED.—All cost recovery surcharges collected by a State shall be used to fund those solid waste management programs administered by the State or its political sub-

division that incur costs for which the surcharge is collected.

"(4) CONDITIONS.—(A) Subject to subparagraphs (B) and (C), a State may impose and collect a cost recovery surcharge on the processing, combustion, or disposal within the State of out-of-State municipal solid waste if—

"(i) the State demonstrates a cost to the State arising from the processing, combustion, or disposal within the State of a volume of municipal solid waste from a source outside the State;

"(ii) the surcharge is based on those costs to the State demonstrated under clause (i) that, if not paid for through the surcharge, would otherwise have to be paid or subsidized by the State; and

"(iii) the surcharge is compensatory and is not discriminatory.

"(B) In no event shall a cost recovery surcharge be imposed by a State to the extent that the cost for which recovery is sought is otherwise paid, recovered, or offset by any other fee or tax paid to the State or its political subdivision or to the extent that the amount of the surcharge is offset by voluntarily

agreed payments to a State or its political subdivision in connection with the generation, transportation, treatment, processing, combustion, or disposal of solid waste.

"(C) The grant of a subsidy by a State with respect to entities disposing of waste generated within the State does not constitute discrimination for purposes of subparagraph (A)(iii).

"(5) DEFINITIONS.—As used in this subsection:

"(A) The term 'costs' means the costs incurred by the State for the implementation of its laws governing the processing, combustion, or disposal of municipal solid waste, limited to the issuance of new permits and renewal of or modification of permits, inspection and compliance monitoring, enforcement, and costs associated with technical assistance, data management, and collection of fees.

"(B) The term 'processing' means any activity to reduce the volume of solid waste or alter its chemical, biological or physical state, through processes such as thermal treatment, bailing, composting, crushing, shredding, separation, or compaction.

"(j) IMPLEMENTATION AND ENFORCEMENT.—Any State may adopt such laws and regulations, not inconsistent with this section, as are necessary to implement and enforce this section, including provisions for penalties.

"(k) EFFECT ON INTERSTATE COMMERCE.—No State or local government action taken as authorized by this section, including the establishment of a limit pursuant to subsection (f) or the enactment or execution of a law or regulation described in subsection (e)(6), (g), (h), (i), or (j), shall be considered to impose an undue burden on interstate commerce or to otherwise impair, restrain, or discriminate against interstate commerce.

"(l) ANNUAL STATE REPORT.—Each year the owner or operator of each landfill or incinerator receiving out-of-State municipal solid waste shall submit to the Governor of the State in which the landfill or incinerator is located information specifying the amount of out-of-State municipal solid waste received for disposal during the preceding year. Each year each such State shall publish and make available to the public a report containing information on the amount of out-of-State municipal solid waste received for disposal in the State during the preceding year.

"(m) DEFINITIONS.—For purposes of this section:

"(1) AFFECTED LOCAL GOVERNMENT.—The term 'affected local government' means—

"(A) the public body authorized by State law to plan for the management of municipal solid waste, a majority of the members of which are elected officials, for the area in which a landfill or incinerator is located or proposed to be located;

"(B) if there is no such body authorized by State law, the elected officials of the city, town, township, borough, county, or parish exercising primary responsibility over municipal solid waste management or the use of land in the jurisdiction in which a landfill or incinerator is located or proposed to be located; or

"(C) contiguous units of local government located in each of 2 or more adjoining States acting jointly as an affected local government, pursuant to the authority provided in section 1005(b), for purposes of providing authorization under subsection (b), (c), or (d) for municipal solid waste generated in the jurisdiction of one of those units of local government and received for disposal or incineration in the jurisdiction of another.

"(2) HOST COMMUNITY AGREEMENT.—The term 'host community agreement' means a written, legally binding agreement, lawfully entered into between an owner or operator of a landfill or incinerator and an affected local government that specifically authorizes the landfill or incinerator to receive out-of-State municipal solid waste.

"(3) MUNICIPAL SOLID WASTE.—

"(A) WASTE INCLUDED.—Except as provided in subparagraph (B), the term 'municipal solid waste' means—

"(i) all waste materials discarded for disposal by households, including single and multifamily residences, and hotels and motels; and

"(ii) all waste materials discarded for disposal that were generated by commercial, institutional, municipal, and industrial sources, to the extent such materials—

"(I) are essentially the same as materials described in clause (i); or

"(II) were collected and disposed of with other municipal solid waste described in clause (i) or subclause (I) of this clause as part of normal mu-

nicipal solid waste collection services, except that this subclause does not apply to hazardous materials other than hazardous materials that, pursuant to regulations issued under section 3001(d), are not subject to regulation under subtitle C.

Examples of municipal solid waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, and household hazardous waste. Such term shall include debris resulting from construction, remodeling, repair, or demolition of structures.

"(B) WASTE NOT INCLUDED.—The term 'municipal solid waste' does not include any of the following:

"(i) Any solid waste identified or listed as a hazardous waste under section 3001, except for household hazardous waste.

"(ii) Any solid waste, including contaminated soil and debris, resulting from—

"(I) a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604 or 9606);

"(II) a response action taken under a State law with authorities comparable to the authorities of such section 104 or 106; or

"(III) a corrective action taken under this Act.

"(iii) Recyclable materials that have been separated, at the source of the waste, from waste otherwise destined for disposal or that have been managed separately from waste destined for disposal.

"(iv) Scrap rubber to be used as a fuel source.

"(v) Materials and products returned from a dispenser or distributor to the manufacturer or an agent of the manufacturer for credit, evaluation, and possible reuse.

"(vi) Any solid waste that is—

"(I) generated by an industrial facility; and

"(II) transported for the purpose of treatment, storage, or disposal to a facility or unit thereof that is owned or operated by the generator of the waste, located on property owned by the generator or a company with which the generator is affiliated, or the capacity of which is contractually dedicated exclusively to a specific generator, so long as the disposal area complies with local and State land use and zoning regulations applicable to the disposal site.

"(vii) Any medical waste that is segregated from or not mixed with solid waste.

"(viii) Sewage sludge and residuals from any sewage treatment plant, including any sewage treatment plant required to be constructed in the State of Massachusetts pursuant to any court order issued against the Massachusetts Water Resources Authority.

"(ix) Combustion ash generated by resource recovery facilities or municipal in-

cinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.

"(4) OUT-OF-STATE MUNICIPAL SOLID WASTE.—The term 'out-of-State municipal solid waste' means, with respect to any State, municipal solid waste generated outside of the State. The term includes municipal solid waste generated outside of the United States.

"(5) RECYCLABLE MATERIALS.—The term 'recyclable materials' means materials that are diverted, separated from, or separately managed from materials otherwise destined for disposal as solid waste, by collecting, sorting, or processing for use as raw materials or feedstocks in lieu of, or in addition to, virgin materials, including petroleum, in the manufacture of usable materials or products.

"(6) SPECIFICALLY AUTHORIZES.—The term 'specifically authorizes' refers to an explicit authorization, contained in a host community agreement or permit, to import municipal solid waste from outside the State. Such authorization may include a reference to a fixed radius surrounding the landfill or incinerator which includes an area outside the State

or a reference to 'any place of origin', reference to specific places outside the State, or use of such phrases as 'regardless of origin' or 'outside the State'. The language for such authorization must clearly and affirmatively state the approval or consent of the affected local government or State for receipt of municipal solid waste from sources or locations outside the State from which the owner or operator of a landfill or incinerator proposes to import it. The term shall not include general references to the receipt of waste from outside the jurisdiction of the affected local government.".

(b) TABLE OF CONTENTS.—The table of contents of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding after the item relating to section 4010 the following new item:

"Sec. 4011. Receipt and disposal of out-of-State municipal solid waste.".

(c) INCIDENT REPORTS.—Not later than one year after the date of the enactment of this Act and annually for the next two years, the General Accounting Office shall submit a report to the Committee on Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate that contains the following information:

(1) Available information for each State that imports municipal solid waste detailing any incidents

or circumstances where waste materials that are not authorized by permit to be disposed of at a landfill or incinerator have been discovered in the imported municipal solid waste during the transportation, processing, or disposal of such waste. Such unauthorized waste materials can include hazardous waste, medical waste, radioactive waste, and industrial waste.

(2) For each incident or circumstance identified under paragraph (1), an indication of the method or circumstances of detection, and the identity of the source of the waste, the transporter, and the disposal facility.

(3) For each incident or circumstance identified under paragraph (1), an indication of whether anyone was cited for a violation, and if so the nature of the violation and any penalty assessed.

SEC. 3. CONGRESSIONAL AUTHORIZATION OF STATE AND LOCAL MUNICIPAL SOLID WASTE FLOW CONTROL.

(a) AMENDMENT OF SUBTITLE D.—Subtitle D of the Solid Waste Disposal Act is amended by adding after section 4011 the following new section:

"SEC. 4012. CONGRESSIONAL AUTHORIZATION OF STATE AND LOCAL GOVERNMENT CONTROL OVER MOVEMENT OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIALS.

"(a) FLOW CONTROL AUTHORITY FOR FACILITIES PREVIOUSLY DESIGNATED.—Any State or political subdivision thereof is authorized to exercise flow control authority to direct the movement of municipal solid waste and recyclable materials voluntarily relinquished by the owner or generator thereof to particular waste management facilities, or facilities for recyclable materials, designated as of the suspension date, if each of the following conditions are met:

"(1) The waste and recyclable materials are generated within the jurisdictional boundaries of such State or political subdivision, as such jurisdiction was in effect on the suspension date.

"(2) Such flow control authority is imposed through the adoption or execution of a law, ordinance, regulation, resolution, or other legally binding provision or official act of the State or political subdivision that—

"(A) was in effect on the suspension date;

"(B) was in effect prior to the issuance of an injunction or other order by a court based on a ruling that such law, ordinance, regula-

tion, resolution, or other legally binding provision or official act violated the Commerce Clause of the United States Constitution; or

"(C) was in effect immediately prior to suspension or partial suspension thereof by legislative or official administrative action of the State or political subdivision expressly because of the existence of an injunction or other court order of the type described in subparagraph (B) issued by a court of competent jurisdiction.

"(3) The State or a political subdivision thereof has, for one or more of such designated facilities—

"(A) on or before the suspension date, presented eligible bonds for sale;

"(B) on or before the suspension date, issued a written public declaration or regulation stating that bonds would be issued and held hearings regarding such issuance, and subsequently presented eligible bonds for sale within 180 days of the declaration or regulation; or

"(C) on or before the suspension date, executed a legally binding contract or agreement that—

"(i) was in effect as of the suspension date;

"(ii) obligates the delivery of a minimum quantity of municipal solid waste or recyclable materials to one or more such designated waste management facilities or facilities for recyclable materials; and

"(iii) either—

"(I) obligates the State or political subdivision to pay for that minimum quantity of waste or recyclable materials even if the stated minimum quantity of such waste or recyclable materials is not delivered within a required timeframe; or

"(II) otherwise imposes liability for damages resulting from such failure.

"(b) WASTE STREAM SUBJECT TO FLOW CONTROL.—Subsection (a) authorizes only the exercise of flow control authority with respect to the flow to any designated facility of the specific classes or categories of municipal solid waste and voluntarily relinquished recyclable materials to which such flow control authority was applicable on the suspension date and—

"(1) in the case of any designated waste management facility or facility for recyclable materials

that was in operation as of the suspension date, only if the facility concerned received municipal solid waste or recyclable materials in those classes or categories on or before the suspension date; and

"(2) in the case of any designated waste management facility or facility for recyclable materials that was not yet in operation as of the suspension date, only of the classes or categories that were clearly identified by the State or political subdivision as of the suspension date to be flow controlled to such facility.

"(c) DURATION OF FLOW CONTROL AUTHORITY.—Flow control authority may be exercised pursuant to this section with respect to any facility or facilities only until the later of the following:

"(1) The final maturity date of the bond referred to in subsection (a)(3)(A) or (B).

"(2) The expiration date of the contract or agreement referred to in subsection (a)(3)(C).

"(3) The adjusted expiration date of a bond issued for a qualified environmental retrofit.

The dates referred to in paragraphs (1) and (2) shall be determined based upon the terms and provisions of the bond or contract or agreement. In the case of a contract or agreement described in subsection (a)(3)(C) that has

no specified expiration date, for purposes of paragraph (2) of this subsection the expiration date shall be the first date that the State or political subdivision that is a party to the contract or agreement can withdraw from its responsibilities under the contract or agreement without being in default thereunder and without substantial penalty or other substantial legal sanction. The expiration date of a contract or agreement referred to in subsection (a)(3)(C) shall be deemed to occur at the end of the period of an extension exercised during the term of the original contract or agreement, if the duration of that extension was specified by such contract or agreement as in effect on the suspension date.

"(d) INDEMNIFICATION FOR CERTAIN TRANSPORTATION.—Notwithstanding any other provision of this section, no State or political subdivision may require any person to transport municipal solid waste or recyclable materials, or to deliver such waste or materials for transportation, to any active portion of a municipal solid waste landfill unit if contamination of such active portion is a basis for listing of the municipal solid waste landfill unit on the National Priorities List established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 unless such State or political subdivision or the owner or operator of such landfill unit has in-

1 demnified that person against all liability under that Act
2 with respect to such waste or materials.
3 "(e) OWNERSHIP OF RECYCLABLE MATERIALS.—
4 Nothing in this section shall authorize any State or polit-
5 ical subdivision to require any person to sell or transfer
6 any recyclable materials to such State or political subdivi-
7 sion.
8 "(f) LIMITATION ON REVENUE.—A State or political
9 subdivision may exercise the flow control authority grant-
10 ed in this section only if the State or political subdivision
11 limits the use of any of the revenues it derives from the
12 exercise of such authority to the payment of one or more
13 of the following:
14 "(1) Principal and interest on any eligible bond.
15 "(2) Principal and interest on a bond issued for
16 a qualified environmental retrofit.
17 "(3) Payments required by the terms of a con-
18 tract referred to in subsection (a)(3)(C).
19 "(4) Other expenses necessary for the operation
20 and maintenance and closure of designated facilities
21 and other integral facilities identified by the bond
22 necessary for the operation and maintenance of such
23 designated facilities.
24 "(5) To the extent not covered by paragraphs
25 (1) through (4), expenses for recycling, composting,

and household hazardous waste activities in which the State or political subdivision was engaged before the suspension date. The amount and nature of payments described in this paragraph shall be fully disclosed to the public annually.

"(g) INTERIM CONTRACTS.—A contract of the type referred to in subsection (a)(3)(C) that was entered into during the period—

"(1) before November 10, 1995, and after the effective date of any applicable final court order no longer subject to judicial review specifically invalidating the flow control authority of the applicable State or political subdivision; or

"(2) after the applicable State or political subdivision refrained pursuant to legislative or official administrative action from enforcing flow control authority expressly because of the existence of a court order of the type described in subsection (a)(2)(B) issued by a court of the same State or the Federal judicial circuit within which such State is located and before the effective date on which it resumes enforcement of flow control authority after enactment of this section,

shall be fully enforceable in accordance with State law.

"(h) AREAS WITH PRE-1984 FLOW CONTROL.—

"(1) GENERAL AUTHORITY.—A State that on or before January 1, 1984—

"(A) adopted regulations under a State law that required or directed transportation, management, or disposal of municipal solid waste from residential, commercial, institutional, or industrial sources (as defined under State law) to specifically identified waste management facilities, and applied those regulations to every political subdivision of the State; and

"(B) subjected such waste management facilities to the jurisdiction of a State public utilities commission,

may exercise flow control authority over municipal solid waste in accordance with the other provisions of this section.

"(2) DURATION OF AUTHORITY.—The authority to direct municipal solid waste to any facility pursuant to this subsection shall terminate with regard to such facility in accordance with subsection (e).

"(i) EFFECT ON AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS.—Nothing in this section shall be interpreted—

"(1) to authorize a political subdivision to exercise the flow control authority granted by this section in a manner inconsistent with State law;

"(2) to permit the exercise of flow control authority over municipal solid waste and recyclable materials to an extent greater than the maximum volume authorized by State permit to be disposed at the waste management facility or processed at the facility for recyclable materials;

"(3) to limit the authority of any State or political subdivision to place a condition on a franchise, license, or contract for municipal solid waste or recyclable materials collection, processing, or disposal; or

"(4) to impair in any manner the authority of any State or political subdivision to adopt or enforce any law, ordinance, regulation, or other legally binding provision or official act relating to the movement or processing of municipal solid waste or recyclable materials which does not constitute discrimination against or an undue burden upon interstate commerce.

"(j) EFFECTIVE DATE.—The provisions of this section shall take effect with respect to the exercise by any State or political subdivision of flow control authority on or after the date of enactment of this section. Such provi-

1 sions, other than subsection (d), shall also apply to the
2 exercise by any State or political subdivision of flow con-
3 trol authority before such date of enactment, except that
4 nothing in this section shall affect any final judgment that
5 is no longer subject to judicial review as of the date of
6 enactment of this section insofar as such judgment award-
7 ed damages based on a finding that the exercise of flow
8 control authority was unconstitutional.

9 "(k) STATE SOLID WASTE DISTRICT AUTHORITY.—
10 In addition to any other flow control authority authorized
11 under this section a solid waste district or a political sub-
12 division of a State may exercise flow control authority for
13 a period of 20 years after the enactment of this section,
14 for municipal solid waste and for recyclable materials that
15 is generated within its jurisdiction if—

16 "(1) the solid waste district, or a political sub-
17 division within such district, is required through a
18 recyclable materials recycling program to meet a
19 municipal solid waste reduction goal of at least 30
20 percent by the year 2005, and uses revenues gen-
21 erated by the exercise of flow control authority
22 strictly to implement programs to manage municipal
23 solid waste and recyclable materials, other than in-
24 cineration programs; and

"(2) prior to the suspension date, the solid waste district, or a political subdivision within such district—

"(A) was responsible under State law for the management and regulation of the storage, collection, processing, and disposal of solid wastes within its jurisdiction;

"(B) was authorized by State statute (enacted prior to January 1, 1992) to exercise flow control authority, and subsequently adopted or sought to exercise the authority through a law, ordinance, regulation, regulatory proceeding, contract, franchise, or other legally binding provision; and

"(C) was required by State statute (enacted prior to January 1, 1992) to develop and implement a solid waste management plan consistent with the State solid waste management plan, and the district solid waste management plan was approved by the appropriate State agency prior to September 15, 1994.

"(l) SPECIAL RULE FOR CERTAIN CONSORTIA.—For purposes of this section, if—

"(1) two or more political subdivisions are members of a consortium of political subdivisions es-

tablished to exercise flow control authority with respect to any waste management facility or facility for recyclable materials;

"(2) all of such members have either presented eligible bonds for sale or executed contracts with the owner or operator of the facility requiring use of such facility;

"(3) the facility was designated as of the suspension date by at least one of such members;

"(4) at least one of such members has met the requirements of subsection (a)(2) with respect to such facility; and

"(5) at least one of such members has presented eligible bonds for sale, or entered into a contract or agreement referred to in subsection (a)(3)(C), on or before the suspension date, for such facility,

the facility shall be treated as having been designated, as of May 16, 1994, by all members of such consortium, and all such members shall be treated as meeting the requirements of subsection (a)(2) and (3) with respect to such facility.

"(m) RECOVERY OF DAMAGES.—

"(1) PROHIBITION.—No damages, interest on damages, costs, or attorneys' fees may be recovered

in any claim against any State or local government, or official or employee thereof, based on the exercise of flow control authority on or before May 16, 1994.

"(2) APPLICABILITY.—Paragraph (1) shall apply to cases commenced on or after the date of enactment of the Solid Waste Interstate Transportation and Local Authority Act of 2001, and shall apply to cases commenced before such date except cases in which a final judgment no longer subject to judicial review has been rendered.

"(n) DEFINITIONS.—For the purposes of this section—

"(1) ADJUSTED EXPIRATION DATE.—The term 'adjusted expiration date' means, with respect to a bond issued for a qualified environmental retrofit, the earlier of the final maturity date of such bond or 15 years after the date of issuance of such bond.

"(2) BOND ISSUED FOR A QUALIFIED ENVIRONMENTAL RETROFIT.—The term 'bond issued for a qualified environmental retrofit' means a bond described in paragraph (4)(A) or (B), the proceeds of which are dedicated to financing the retrofitting of a resource recovery facility or a municipal solid waste incinerator necessary to comply with section 129 of the Clean Air Act, provided that such bond

is presented for sale before the expiration date of the bond or contract referred to in subsection (a)(3)(A), (B), or (C) that is applicable to such facility and no later than December 31, 2001.

"(3) DESIGNATED.—The term 'designated' means identified by a State or political subdivision for receipt of all or any portion of the municipal solid waste or recyclable materials that is generated within the boundaries of the State or political subdivision. Such designation includes designation through—

"(A) bond covenants, official statements, or other official financing documents issued by a State or political subdivision issuing an eligible bond; and

"(B) the execution of a contract of the type described in subsection (a)(3)(C),

in which one or more specific waste management facilities are identified as the requisite facility or facilities for receipt of municipal solid waste or recyclable materials generated within the jurisdictional boundaries of that State or political subdivision.

"(4) ELIGIBLE BOND.—The term 'eligible bond' means—

"(A) a revenue bond or similar instrument of indebtedness pledging payment to the bondholder or holder of the debt of identified revenues; or

"(B) a general obligation bond,

the proceeds of which are used to finance one or more designated waste management facilities, facilities for recyclable materials, or specifically and directly related assets, development costs, or finance costs, as evidenced by the bond documents.

"(5) FLOW CONTROL AUTHORITY.—The term 'flow control authority' means the regulatory authority to control the movement of municipal solid waste or voluntarily relinquished recyclable materials and direct such solid waste or recyclable materials to one or more designated waste management facilities or facilities for recyclable materials within the boundaries of a State or political subdivision.

"(6) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' has the meaning given that term in section 4011, except that such term—

"(A) includes waste material removed from a septic tank, septage pit, or cesspool (other than from portable toilets); and

"(B) does not include—

"(i) any substance the treatment and disposal of which is regulated under the Toxic Substances Control Act;

"(ii) waste generated during scrap processing and scrap recycling; or

"(iii) construction and demolition debris, except where the State or political subdivision had on or before January 1, 1989, issued eligible bonds secured pursuant to State or local law requiring the delivery of construction and demolition debris to a waste management facility designated by such State or political subdivision.

"(7) POLITICAL SUBDIVISION.—The term 'political subdivision' means a city, town, borough, county, parish, district, or public service authority or other public body created by or pursuant to State law with authority to present for sale an eligible bond or to exercise flow control authority.

"(8) RECYCLABLE MATERIALS.—The term 'recyclable materials' means 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, for the pur-

pose of recycling, reclamation, composting of organic materials such as food and yard waste, or reuse (other than for the purpose of incineration). Such term includes scrap tires to be used in resource recovery.

"(9) SUSPENSION DATE.—The term 'suspension date' means, with respect to a State or political subdivision—

"(A) May 16, 1994;

"(B) the date of an injunction or other court order described in subsection (a)(2)(B) that was issued with respect to that State or political subdivision; or

"(C) the date of a suspension or partial suspension described in subsection (a)(2)(C) with respect to that State or political subdivision.

"(10) WASTE MANAGEMENT FACILITY.—The term 'waste management facility' means any facility for separating, storing, transferring, treating, processing, combusting, or disposing of municipal solid waste.".

(b) TABLE OF CONTENTS.—The table of contents for subtitle D of the Solid Waste Disposal Act is amended

1 by adding the following new item after the item relating
2 to section 4011:

"Sec. 4012. Congressional authorization of State and local government control over movement of municipal solid waste and recyclable materials.".

○

II

107TH CONGRESS
2D SESSION

S. 2034

To amend the Solid Waste Disposal Act to impose certain limits on the receipt of out-of-State municipal solid waste.

IN THE SENATE OF THE UNITED STATES

MARCH 19, 2002

Mr. VOINOVICH (for himself, Mr. FEINGOLD, Mr. LEVIN, Mr. DEWINE, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To amend the Solid Waste Disposal Act to impose certain limits on the receipt of out-of-State municipal solid waste.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Municipal Solid Waste Interstate Transportation and Local Authority Act of 2002".

SEC. 2. AUTHORITY TO PROHIBIT OR LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT EXISTING FACILITIES.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following:

"SEC. 4011. AUTHORITY TO PROHIBIT OR LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT EXISTING FACILITIES.

"(a) DEFINITIONS.—In this section:

"(1) AFFECTED LOCAL GOVERNMENT.—The term 'affected local government', with respect to a facility, means—

"(A) the public body authorized by State law to plan for the management of municipal solid waste for the area in which the facility is located or proposed to be located, a majority of the members of which public body are elected officials;

"(B) in a case in which there is no public body described in subparagraph (A), the elected officials of the city, town, township, borough, county, or parish selected by the Governor and exercising primary responsibility over municipal solid waste management or the use of land in

the jurisdiction in which the facility is located or proposed to be located; or

"(C) in a case in which there is in effect an agreement or compact under section 105(b), contiguous units of local government located in each of 2 or more adjoining States that are parties to the agreement, for purposes of providing authorization under subsection (b), (c), or (d) for municipal solid waste generated in the jurisdiction of 1 of those units of local government and received in the jurisdiction of another of those units of local government.

"(2) AUTHORIZATION TO RECEIVE OUT-OF-STATE MUNICIPAL SOLID WASTE.—

"(A) IN GENERAL.—The term 'authorization to receive out-of-State municipal solid waste' means a provision contained in a host community agreement or permit that specifically authorizes a facility to receive out-of-State municipal solid waste.

"(B) SPECIFIC AUTHORIZATION.—

"(i) SUFFICIENT FORMULATIONS.—For the purposes of subparagraph (A), only the following, shall be considered to

specifically authorize a facility to receive out-of-State municipal solid waste:

"(I) an authorization to receive municipal solid waste from any place within a fixed radius surrounding the facility that includes an area outside the State;

"(II) an authorization to receive municipal solid waste from any place of origin in the absence of any provision limiting those places of origin to places inside the State;

"(III) an authorization to receive municipal solid waste from a specifically identified place or places outside the State; or

"(IV) a provision that uses such a phrase as 'regardless of origin' or 'outside the State' in reference to municipal solid waste.

"(ii) INSUFFICIENT FORMULATIONS.—For the purposes of subparagraph (A), either of the following, by itself, shall not be considered to specifically authorize

a facility to receive out-of-State municipal solid waste:

"(I) A general reference to the receipt of municipal solid waste from outside the jurisdiction of the affected local government.

"(II) An agreement to pay a fee for the receipt of out-of-State municipal solid waste.

"(C) FORM OF AUTHORIZATION.—To qualify as an authorization to receive out-of-State municipal solid waste, a provision need not be in any particular form; a provision shall so qualify so long as the provision clearly and affirmatively states the approval or consent of the affected local government or State for receipt of municipal solid waste from places of origin outside the State.

"(3) DISPOSAL.—The term 'disposal' includes incineration.

"(4) EXISTING HOST COMMUNITY AGREEMENT.—The term 'existing host community agreement' means a host community agreement entered into before January 1, 2002.

"(5) FACILITY.—The term 'facility' means a landfill, incinerator, or other enterprise that received municipal solid waste before the date of enactment of this section.

"(6) GOVERNOR.—The term 'Governor', with respect to a facility, means the chief executive officer of the State in which a facility is located or proposed to be located or any other officer authorized under State law to exercise authority under this section.

"(7) HOST COMMUNITY AGREEMENT.—The term 'host community agreement' means a written, legally binding agreement, lawfully entered into between an owner or operator of a facility and an affected local government that contains an authorization to receive out-of-State municipal solid waste.

"(8) MUNICIPAL SOLID WASTE.—

"(A) IN GENERAL.—The term 'municipal solid waste' means—

"(i) material discarded for disposal by—

"(I) households (including single and multifamily residences); and

"(II) public lodgings such as hotels and motels; and

"(ii) material discarded for disposal that was generated by commercial, institutional, and industrial sources, to the extent that the material—

"(I) is essentially the same as material described in clause (i); or

"(II) is collected and disposed of with material described in clause (i) as part of a normal municipal solid waste collection service.

"(B) INCLUSIONS.—The term 'municipal solid waste' includes—

"(i) appliances;

"(ii) clothing;

"(iii) consumer product packaging;

"(iv) cosmetics;

"(v) disposable diapers;

"(vi) food containers made of glass or metal;

"(vii) food waste;

"(viii) household hazardous waste;

"(ix) office supplies;

"(x) paper; and

"(xi) yard waste.

"(C) EXCLUSIONS.—The term 'municipal solid waste' does not include—

"(i) solid waste identified or listed as a hazardous waste under section 3001, except for household hazardous waste;

"(ii) solid waste resulting from—

"(I) a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604, 9606);

"(II) a response action taken under a State law with authorities comparable to the authorities contained in either of those sections; or

"(III) a corrective action taken under this Act;

"(iii) recyclable material—

"(I) that has been separated, at the source of the material, from waste destined for disposal; or

"(II) that has been managed separately from waste destined for disposal, including scrap rubber to be used as a fuel source;

"(iv) a material or product returned from a dispenser or distributor to the manufacturer or an agent of the manufacturer for credit, evaluation, and possible potential reuse;

"(v) solid waste that is—

"(I) generated by an industrial facility; and

"(II) transported for the purpose of treatment, storage, or disposal to a facility (which facility is in compliance with applicable State and local land use and zoning laws and regulations) or facility unit—

"(aa) that is owned or operated by the generator of the waste;

"(bb) that is located on property owned by the generator of the waste or a company with which the generator is affiliated; or

"(cc) the capacity of which is contractually dedicated exclusively to a specific generator;

"(vi) medical waste that is segregated from or not mixed with solid waste;

"(vii) sewage sludge or residuals from a sewage treatment plant; or

"(viii) combustion ash generated by a resource recovery facility or municipal incinerator.

"(9) NEW HOST COMMUNITY AGREEMENT.—The term 'new host community agreement' means a host community agreement entered into on or after the date of enactment of this section.

"(10) OUT-OF-STATE MUNICIPAL SOLID WASTE.—

"(A) IN GENERAL.—The term 'out-of-State municipal solid waste', with respect to a State, means municipal solid waste generated outside the State.

"(B) INCLUSION.—The term 'out-of-State municipal solid waste' includes municipal solid waste generated outside the United States.

"(11) RECEIVE.—The term 'receive' means receive for disposal.

"(12) RECYCLABLE MATERIAL.—

"(A) IN GENERAL.—The term 'recyclable material' means a material that may feasibly be

used as a raw material or feedstock in place of or in addition to, virgin material in the manufacture of a usable material or product.

"(B) VIRGIN MATERIAL.—In subparagraph (A), the term 'virgin material' includes petroleum.

"(b) PROHIBITION OF RECEIPT FOR DISPOSAL OF OUT-OF-STATE WASTE.—No facility may receive for disposal out-of-State municipal solid waste except as provided in subsections (c), (d), and (e).

"(c) EXISTING HOST COMMUNITY AGREEMENTS.—

"(1) IN GENERAL.—Subject to subsection (f), a facility operating under an existing host community agreement may receive for disposal out-of-State municipal solid waste if—

"(A) the owner or operator of the facility has complied with paragraph (2); and

"(B) the owner or operator of the facility is in compliance with all of the terms and conditions of the host community agreement.

"(2) PUBLIC INSPECTION OF AGREEMENT.—Not later than 90 days after the date of enactment of this section, the owner or operator of a facility described in paragraph (1) shall—

"(A) provide a copy of the existing host community agreement to the State and affected local government; and

"(B) make a copy of the existing host community agreement available for inspection by the public in the local community.

"(d) NEW HOST COMMUNITY AGREEMENTS.—

"(1) IN GENERAL.—Subject to subsection (f), a facility operating under a new host community agreement may receive for disposal out-of-State municipal solid waste if—

"(A) the agreement meets the requirements of paragraphs (2) through (5); and

"(B) the owner or operator of the facility is in compliance with all of the terms and conditions of the host community agreement.

"(2) REQUIREMENTS FOR AUTHORIZATION.—

"(A) IN GENERAL.—Authorization to receive out-of-State municipal solid waste under a new host community agreement shall—

"(i) be granted by formal action at a meeting;

"(ii) be recorded in writing in the official record of the meeting; and

"(iii) remain in effect according to the terms of the new host community agreement.

"(B) SPECIFICATIONS.—An authorization to receive out-of-State municipal solid waste shall specify terms and conditions, including—

"(i) the quantity of out-of-State municipal solid waste that the facility may receive; and

"(ii) the duration of the authorization.

"(3) INFORMATION.—Before seeking an authorization to receive out-of-State municipal solid waste under a new host community agreement, the owner or operator of the facility seeking the authorization shall provide (and make readily available to the State, each contiguous local government and Indian tribe, and any other interested person for inspection and copying) the following:

"(A) A brief description of the facility, including, with respect to the facility and any planned expansion of the facility, a description of—

"(i) the size of the facility;

"(ii) the ultimate municipal solid waste capacity of the facility; and

"(iii) the anticipated monthly and yearly volume of out-of-State municipal solid waste to be received at the facility.

"(B) A map of the facility site that indicates—

"(i) the location of the facility in relation to the local road system;

"(ii) topographical and general hydrogeological features;

"(iii) any buffer zones to be acquired by the owner or operator; and

"(iv) all facility units.

"(C) A description of—

"(i) the environmental characteristics of the site, as of the date of application for authorization;

"(ii) ground water use in the area, including identification of private wells and public drinking water sources; and

"(iii) alterations that may be necessitated by, or occur as a result of, operation of the facility.

"(D) A description of—

"(i) environmental controls required to be used on the site (under permit requirements), including—

"(I) run-on and run off management;

"(II) air pollution control devices;

"(III) source separation procedures;

"(IV) methane monitoring and control;

"(V) landfill covers;

"(VI) landfill liners or leachate collection systems; and

"(VII) monitoring programs; and

"(ii) any waste residuals (including leachate and ash) that the facility will generate, and the planned management of the residuals.

"(E) A description of site access controls to be employed by the owner or operator and road improvements to be made by the owner or operator, including an estimate of the timing and extent of anticipated local truck traffic.

"(F) A list of all required Federal, State, and local permits.

"(G) Estimates of the personnel requirements of the facility, including—

"(i) information regarding the probable skill and education levels required for job positions at the facility; and

"(ii) to the extent practicable, a distinction between preoperational and postoperational employment statistics of the facility.

"(H) Any information that is required by State or Federal law to be provided with respect to—

"(i) any violation of environmental law (including regulations) by the owner or operator or any subsidiary of the owner or operator;

"(ii) the disposition of any enforcement proceeding taken with respect to the violation; and

"(iii) any corrective action and rehabilitation measures taken as a result of the proceeding.

"(I) Any information that is required by Federal or State law to be provided with re-

1 spect to compliance by the owner or operator
2 with the State solid waste management plan.
3 "(J) Any information that is required by
4 Federal or State law to be provided with re-
5 spect to gifts and contributions made by the
6 owner or operator.
7 "(4) ADVANCE NOTIFICATION.—Before taking
8 formal action to grant or deny authorization to re-
9 ceive out-of-State municipal solid waste under a new
10 host community agreement, an affected local govern-
11 ment shall—
12 "(A) notify the State, contiguous local gov-
13 ernments, and any contiguous Indian tribes;
14 "(B) publish notice of the proposed action
15 in a newspaper of general circulation at least
16 15 days before holding a hearing under sub-
17 paragraph (C), except where State law provides
18 for an alternate form of public notification; and
19 "(C) provide an opportunity for public
20 comment in accordance with State law, includ-
21 ing at least 1 public hearing.
22 "(5) SUBSEQUENT NOTIFICATION.—Not later
23 than 90 days after an authorization to receive out-
24 of-State municipal solid waste is granted under a
25 new host community agreement, the affected local

government shall give notice of the authorization to—

"(A) the Governor;

"(B) contiguous local governments; and

"(C) any contiguous Indian tribes.

"(e) RECEIPT FOR DISPOSAL OF OUT-OF-STATE MUNICIPAL SOLID WASTE BY FACILITIES NOT SUBJECT TO HOST COMMUNITY AGREEMENTS.—

"(1) PERMIT.—

"(A) IN GENERAL.—Subject to subsection (f), a facility for which, before the date of enactment of this section, the State issued a permit containing an authorization may receive out-of-State municipal solid waste if—

"(i) not later than 90 days after the date of enactment of this section, the owner or operator of the facility notifies the affected local government of the existence of the permit; and

"(ii) the owner or operator of the facility complies with all of the terms and conditions of the permit after the date of enactment of this section.

"(B) DENIED OR REVOKED PERMITS.—A facility may not receive out-of-State municipal

solid waste under subparagraph (A) if the operating permit for the facility (or any renewal of the operating permit) was denied or revoked by the appropriate State agency before the date of enactment of this section unless the permit or renewal was granted, renewed, or reinstated before that date.

"(2) DOCUMENTED RECEIPT DURING 1993.—

"(A) IN GENERAL.—Subject to subsection (f), a facility that, during 1993, received out-of-State municipal solid waste may receive out-of-State municipal solid waste if the owner or operator of the facility submits to the State and to the affected local government documentation of the receipt of out-of-State municipal solid waste during 1993, including information about—

"(i) the date of receipt of the out-of-State municipal solid waste;

"(ii) the volume of out-of-State municipal solid waste received in 1993;

"(iii) the place of origin of the out-of-State municipal solid waste received; and

"(iv) the type of out-of-State municipal solid waste received.

"(B) FALSE OR MISLEADING INFORMATION.—Documentation submitted under subparagraph (A) shall be made under penalty of perjury under State law for the submission of false or misleading information.

"(C) AVAILABILITY OF DOCUMENTATION.—The owner or operator of a facility that receives out-of-State municipal solid waste under subparagraph (A)—

"(i) shall make available for inspection by the public in the local community a copy of the documentation submitted under subparagraph (A); but

"(ii) may omit any proprietary information contained in the documentation.

"(3) BI-STATE METROPOLITAN STATISTICAL AREAS.—

"(A) IN GENERAL.—A facility in a State may receive out-of-State municipal solid waste if the out-of-State municipal solid waste is generated in, and the facility is located in, the same bi-State level A metropolitan statistical area (as defined and listed by the Director of the Office of Management and Budget as of the date of enactment of this section) that contains

1 2 contiguous major cities, each of which is in
2 a different State.
3 "(B) GOVERNOR AGREEMENT.—A facility
4 described in subparagraph (A) may receive out-
5 of-State municipal solid waste only if the Gov-
6 ernor of each State in the bi-State metropolitan
7 statistical area agrees that the facility may re-
8 ceive out-of-State municipal solid waste.
9 "(f) REQUIRED COMPLIANCE.—A facility may not re-
10 ceive out-of-State municipal solid waste under subsection
11 (c), (d), or (e) at any time at which the State has deter-
12 mined that—
13 "(1) the facility is not in compliance with appli-
14 cable Federal and State laws (including regulations)
15 relating to—
16 "(A) facility design and operation; and
17 "(B)(i) in the case of a landfill—
18 "(I) facility location standards;
19 "(II) leachate collection standards;
20 "(III) ground water monitoring stand-
21 ards; and
22 "(IV) standards for financial assur-
23 ance and for closure, postclosure, and cor-
24 rective action; and

"(ii) in the case of an incinerator, the applicable requirements of section 129 of the Clean Air Act (42 U.S.C. 7429); and

"(2) the noncompliance constitutes a threat to human health or the environment.

"(g) AUTHORITY TO LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE.—

"(1) LIMITS ON QUANTITY OF WASTE RECEIVED.—

"(A) LIMIT FOR ALL FACILITIES IN THE STATE.—

"(i) IN GENERAL.—A State may limit the quantity of out-of-State municipal solid waste received annually at each facility in the State to the quantity described in paragraph (2).

"(ii) NO CONFLICT.—

"(I) IN GENERAL.—A limit under clause (i) shall not conflict with—

"(aa) an authorization to receive out-of-State municipal solid waste contained in a permit; or

"(bb) a host community agreement entered into between the owner or operator of a facil-

ity and the affected local government.

"(II) CONFLICT.—A limit shall be treated as conflicting with a permit or host community agreement if the permit or host community agreement establishes a higher limit, or if the permit or host community agreement does not establish a limit, on the quantity of out-of-State municipal solid waste that may be received annually at the facility.

"(B) LIMIT FOR PARTICULAR FACILITIES.—

"(i) IN GENERAL.—An affected local government that has not executed a host community agreement with a particular facility may limit the quantity of out-of-State municipal solid waste received annually at the facility to the quantity specified in paragraph (2).

"(ii) NO CONFLICT.—A limit under clause (i) shall not conflict with an authorization to receive out-of-State municipal solid waste contained in a permit.

"(C) EFFECT ON OTHER LAWS.—Nothing in this subsection supersedes any State law relating to contracts.

"(2) LIMIT ON QUANTITY.—

"(A) IN GENERAL.—For any facility that commenced receiving documented out-of-State municipal solid waste before the date of enactment of this section, the quantity referred to in paragraph (1) for any year shall be equal to the quantity of out-of-State municipal solid waste received at the facility during calendar year 1993.

"(B) DOCUMENTATION.—

"(i) CONTENTS.—Documentation submitted under subparagraph (A) shall include information about—

"(I) the date of receipt of the out-of-State municipal solid waste;

"(II) the volume of out-of-State municipal solid waste received in 1993;

"(III) the place of origin of the out-of-State municipal solid waste received; and

"(IV) the type of out-of-State municipal solid waste received.

"(ii) FALSE OR MISLEADING INFORMATION.—Documentation submitted under subparagraph (A) shall be made under penalty of perjury under State law for the submission of false or misleading information.

"(3) NO DISCRIMINATION.—In establishing a limit under this subsection, a State shall act in a manner that does not discriminate against any shipment of out-of-State municipal solid waste on the basis of State of origin.

"(h) AUTHORITY TO LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE TO DECLINING PERCENTAGES OF QUANTITIES RECEIVED DURING 1993.—

"(1) IN GENERAL.—A State in which facilities received more than 650,000 tons of out-of-State municipal solid waste in calendar year 1993 may establish a limit on the quantity of out-of-State municipal solid waste that may be received at all facilities in the State described in subsection (e)(2) in the following quantities:

"(A) In calendar year 2003, 95 percent of the quantity received in calendar year 1993.

"(B) In each of calendar years 2004 through 2007, 95 percent of the quantity received in the previous year.

"(C) In each calendar year after calendar year 2007, 65 percent of the quantity received in calendar year 1993.

"(2) UNIFORM APPLICABILITY.—A limit under paragraph (1) shall apply uniformly—

"(A) to the quantity of out-of-State municipal solid waste that may be received at all facilities in the State that received out-of-State municipal solid waste in calendar year 1993; and

"(B) for each facility described in clause (i), to the quantity of out-of-State municipal solid waste that may be received from each State that generated out-of-State municipal solid waste received at the facility in calendar year 1993.

"(3) NOTICE.—Not later than 90 days before establishing a limit under paragraph (1), a State shall provide notice of the proposed limit to each State from which municipal solid waste was received in calendar year 1993.

"(4) ALTERNATIVE AUTHORITIES.—If a State exercises authority under this subsection, the State may not thereafter exercise authority under subsection (g).

"(i) COST RECOVERY SURCHARGE.—

"(1) DEFINITIONS.—In this subsection:

"(A) COST.—The term 'cost' means a cost incurred by the State for the implementation of State laws governing the processing, combustion, or disposal of municipal solid waste, limited to—

"(i) the issuance of new permits and renewal of or modification of permits;

"(ii) inspection and compliance monitoring;

"(iii) enforcement; and

"(iv) costs associated with technical assistance, data management, and collection of fees.

"(B) PROCESSING.—The term 'processing' means any activity to reduce the volume of municipal solid waste or alter the chemical, biological or physical state of municipal solid waste, through processes such as thermal treatment,

bailing, composting, crushing, shredding, separation, or compaction.

"(2) AUTHORITY.—A State may authorize, impose, and collect a cost recovery charge on the processing or disposal of out-of-State municipal solid waste in the State in accordance with this subsection.

"(3) AMOUNT OF SURCHARGE.—The amount of a cost recovery surcharge—

"(A) may be no greater than the amount necessary to recover those costs determined in conformance with paragraph (5); and

"(B) in no event may exceed $3.00 per ton of waste.

"(4) USE OF SURCHARGE COLLECTED.—All cost recovery surcharges collected by a State under this subsection shall be used to fund solid waste management programs, administered by the State or a political subdivision of the State, that incur costs for which the surcharge is collected.

"(5) CONDITIONS.—

"(A) IN GENERAL.—Subject to subparagraphs (B) and (C), a State may impose and collect a cost recovery surcharge on the proc-

1 essing or disposal within the State of out-of-
2 State municipal solid waste if—
3 "(i) the State demonstrates a cost to
4 the State arising from the processing or
5 disposal within the State of a volume of
6 municipal solid waste from a source out-
7 side the State;
8 "(ii) the surcharge is based on those
9 costs to the State demonstrated under sub-
10 paragraph (A) that, if not paid for through
11 the surcharge, would otherwise have to be
12 paid or subsidized by the State; and
13 "(iii) the surcharge is compensatory
14 and is not discriminatory.
15 "(B) PROHIBITION OF SURCHARGE.—In
16 no event shall a cost recovery surcharge be im-
17 posed by a State to the extent that—
18 "(i) the cost for which recovery is
19 sought is otherwise paid, recovered, or off-
20 set by any other fee or tax paid to the
21 State or a political subdivision of the
22 State; or
23 "(ii) to the extent that the amount of
24 the surcharge is offset by voluntary pay-
25 ments to a State or a political subdivision

of the State, in connection with the generation, transportation, treatment, processing, or disposal of solid waste.

"(C) SUBSIDY; NON-DISCRIMINATION.—The grant of a subsidy by a State with respect to entities disposing of waste generated within the State does not constitute discrimination for purposes of subparagraph (A).

"(j) IMPLEMENTATION AND ENFORCEMENT.—A State may adopt such laws (including regulations), not inconsistent with this section, as are appropriate to implement and enforce this section, including provisions for penalties.

"(k) ANNUAL STATE REPORT.—

"(1) FACILITIES.—On February 1, 2003, and on February 1 of each subsequent year, the owner or operator of each facility that receives out-of-State municipal solid waste shall submit to the State information specifying—

"(A) the quantity of out-of-State municipal solid waste received during the preceding calendar year; and

"(B) the State of origin of the out-of-State municipal solid waste received during the preceding calendar year.

"(2) TRANSFER STATIONS.—

"(A) DEFINITION OF RECEIVE FOR TRANSFER.—In this paragraph, the term 'receive for transfer' means receive for temporary storage pending transfer to another State or facility.

"(B) REPORT.—On February 1, 2003, and on February 1 of each subsequent year, the owner or operator of each transfer station that receives for transfer out-of-State municipal solid waste shall submit to the State a report describing—

"(i) the quantity of out-of-State municipal solid waste received for transfer during the preceding calendar year;

"(ii) each State of origin of the out-of-State municipal solid waste received for transfer during the preceding calendar year; and

"(iii) each State of destination of the out-of-State municipal solid waste transferred from the transfer station during the preceding calendar year.

"(3) NO PRECLUSION OF STATE REQUIREMENTS.—The requirements of paragraphs (1) and

(2) do not preclude any State requirement for more frequent reporting.

"(4) FALSE OR MISLEADING INFORMATION.—Documentation submitted under paragraphs (1) and (2) shall be made under penalty of perjury under State law for the submission of false or misleading information.

"(5) REPORT.—On March 1, 2003, and on March 1 of each year thereafter, each State to which information is submitted under paragraphs (1) and (2) shall publish and make available to the public a report containing information on the quantity of out-of-State municipal solid waste received for disposal and received for transfer in the State during the preceding calendar year.".

(b) CONFORMING AMENDMENT.—The table of contents of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding after the item relating to section 4010 the following:

"Sec. 4011. Authority to prohibit or limit receipt of out-of-State municipal solid waste at existing facilities.".

SEC. 3. AUTHORITY TO DENY PERMITS FOR OR IMPOSE PERCENTAGE LIMITS ON RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT NEW FACILITIES.

(a) AMENDMENT.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) (as amended by section 2(a)), is amended by adding after section 4011 the following:

"SEC. 4012. AUTHORITY TO DENY PERMITS FOR OR IMPOSE PERCENTAGE LIMITS ON RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT NEW FACILITIES.

"(a) DEFINITIONS.—In this section:

"(1) TERMS DEFINED IN SECTION 4011.—The terms 'authorization to receive out-of-State municipal solid waste', 'disposal', 'existing host community agreement', 'host community agreement', 'municipal solid waste', 'out-of-State municipal solid waste', and 'receive' have the meaning given those terms, respectively, in section 4011.

"(2) OTHER TERMS.—The term 'facility' means a landfill, incinerator, or other enterprise that receives out-of-State municipal solid waste on or after the date of enactment of this section.

"(b) AUTHORITY TO DENY PERMITS OR IMPOSE PERCENTAGE LIMITS.—

"(1) ALTERNATIVE AUTHORITIES.—In any calendar year, a State may exercise the authority under either paragraph (2) or paragraph (3), but may not exercise the authority under both paragraphs (2) and (3).

"(2) AUTHORITY TO DENY PERMITS.—A State may deny a permit for the construction or operation of or a major modification to a facility if—

"(A) the State has approved a State or local comprehensive municipal solid waste management plan developed under Federal or State law; and

"(B) the denial is based on a determination, under a State law authorizing the denial, that there is not a local or regional need for the facility in the State.

"(3) AUTHORITY TO IMPOSE PERCENTAGE LIMIT.—A State may provide by law that a State permit for the construction, operation, or expansion of a facility shall include the requirement that not more than a specified percentage (which shall be not less than 20 percent) of the total quantity of municipal solid waste received annually at the facility shall be out-of-State municipal solid waste.

"(c) NEW HOST COMMUNITY AGREEMENTS.—

"(1) IN GENERAL.—Notwithstanding subsection (b)(3), a facility operating under an existing host community agreement that contains an authorization to receive out-of-State municipal solid waste in a specific quantity annually may receive that quantity.

"(2) NO EFFECT ON STATE PERMIT DENIAL.—Nothing in paragraph (1) authorizes a facility described in that paragraph to receive out-of-State municipal solid waste if the State has denied a permit to the facility under subsection (b)(2).

"(d) UNIFORM AND NONDISCRIMINATORY APPLICATION.—A law under subsection (b) or (c)—

"(1) shall be applicable throughout the State;

"(2) shall not directly or indirectly discriminate against any particular facility; and

"(3) shall not directly or indirectly discriminate against any shipment of out-of-State municipal solid waste on the basis of place of origin.".

(b) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 1(b)) is amended by adding at the end of the items relating to subtitle D the following:

"Sec. 4012. Authority to deny permits for or impose percentage limits on new facilities.".

SEC. 4. CONSTRUCTION AND DEMOLITION WASTE.

(a) AMENDMENT.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) (as amended by section 3(a)), is amended by adding after section 4012 the following:

"SEC. 4013. CONSTRUCTION AND DEMOLITION WASTE.

"(a) DEFINITIONS.—In this section:

"(1) TERMS DEFINED IN SECTION 4011.—The terms 'affected local government', 'Governor', and 'receive' have the meanings given those terms, respectively, in section 4011.

"(2) OTHER TERMS.—

"(A) BASE YEAR QUANTITY.—The term 'base year quantity' means—

"(i) the annual quantity of out-of-State construction and demolition debris received at a State in calendar year 2003, as determined under subsection (e)(2)(B)(i); or

"(ii) in the case of an expedited implementation under subsection (e)(5), the annual quantity of out-of-State construction and demolition debris received in a State in calendar year 2002.

"(B) CONSTRUCTION AND DEMOLITION WASTE.—

"(i) IN GENERAL.—The term 'construction and demolition waste' means debris resulting from the construction, renovation, repair, or demolition of or similar work on a structure.

"(ii) EXCLUSIONS.—The term 'construction and demolition waste' does not include debris that—

"(I) is commingled with municipal solid waste; or

"(II) is contaminated, as determined under subsection (b).

"(C) FACILITY.—The term 'facility' means any enterprise that receives construction and demolition waste on or after the date of enactment of this section, including landfills.

"(D) OUT-OF-STATE CONSTRUCTION AND DEMOLITION WASTE.—The term 'out-of-State construction and demolition waste' means—

"(i) with respect to any State, construction and demolition debris generated outside the State; and

"(ii) construction and demolition debris generated outside the United States, unless the President determines that treat-

ment of the construction and demolition debris as out-of-State construction and demolition waste under this section would be inconsistent with the North American Free Trade Agreement or the Uruguay Round Agreements (as defined in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501)).

"(b) CONTAMINATED CONSTRUCTION AND DEMOLITION DEBRIS.—

"(1) IN GENERAL.—For the purpose of determining whether debris is contaminated, the generator of the debris shall conduct representative sampling and analysis of the debris.

"(2) SUBMISSION OF RESULTS.—Unless not required by the affected local government, the results of the sampling and analysis under paragraph (1) shall be submitted to the affected local government for recordkeeping purposes only.

"(3) DISPOSAL OF CONTAMINATED DEBRIS.—Any debris described in subsection (a)(2)(B)(i) that is determined to be contaminated shall be disposed of in a landfill that meets the requirements of this Act.

"(c) LIMIT ON CONSTRUCTION AND DEMOLITION WASTE.—

"(1) IN GENERAL.—A State may establish a limit on the annual amount of out-of-State construction and demolition waste that may be received at landfills in the State.

"(2) REQUIRED ACTION BY THE STATE.—A State that seeks to limit the receipt of out-of-State construction and demolition waste received under this section shall—

"(A) not later than January 1, 2003, establish and implement reporting requirements to determine the quantity of construction and demolition waste that is—

"(i) disposed of in the State; and

"(ii) imported into the State; and

"(B) not later than March 1, 2004—

"(i) establish the annual quantity of out-of-State construction and demolition waste received during calendar year 2003; and

"(ii) report the tonnage received during calendar year 2003 to the Governor of each exporting State.

"(3) REPORTING BY FACILITIES.—

"(A) IN GENERAL.—Each facility that receives out-of-State construction and demolition debris shall report to the State in which the facility is located the quantity and State of origin of out-of-State construction and demolition debris received—

"(i) in calendar year 2002, not later than February 1, 2003; and

"(ii) in each subsequent calendar year, not later than February 1 of the calendar year following that year.

"(B) NO PRECLUSION OF STATE REQUIREMENTS.—The requirement of subparagraph (A) does not preclude any State requirement for more frequent reporting.

"(C) PENALTY.—Each submission under this paragraph shall be made under penalty of perjury under State law.

"(4) LIMIT ON DEBRIS RECEIVED.—

"(A) RATCHET.—A State in which facilities receive out-of-State construction and demolition debris may decrease the quantity of construction and demolition debris that may be received at each facility to an annual percentage

of the base year quantity specified in subparagraph (B).

"(B) REDUCED ANNUAL PERCENTAGES.—A limit on out-of-State construction and demolition debris imposed by a State under subparagraph (A) shall be equal to—

"(i) in calendar year 2004, 95 percent of the base year quantity;

"(ii) in calendar year 2005, 90 percent of the base year quantity;

"(iii) in calendar year 2006, 85 percent of the base year quantity;

"(iv) in calendar year 2007, 80 percent of the base year quantity;

"(v) in calendar year 2008, 75 percent of the base year quantity;

"(vi) in calendar year 2009, 70 percent of the base year quantity;

"(vii) in calendar year 2010, 65 percent of the base year quantity;

"(viii) in calendar year 2011, 60 percent of the base year quantity;

"(ix) in calendar year 2012, 55 percent of the base year quantity; and

"(x) in calendar year 2013 and in each subsequent year, 50 percent of the base year quantity.

"(5) EXPEDITED IMPLEMENTATION.—

"(A) RATCHET.—A State in which facilities receive out-of-State construction and demolition debris may decrease the quantity of construction and demolition debris that may be received at each facility to an annual percentage of the base year quantity specified in subparagraph (B) if—

"(i) on the date of enactment of this section, the State has determined the quantity of construction and demolition waste received in the State in calendar year 2002; and

"(ii) the State complies with paragraphs (2) and (3).

"(B) EXPEDITED REDUCED ANNUAL PERCENTAGES.—An expedited implementation of a limit on the receipt of out-of-State construction and demolition debris imposed by a State under subparagraph (A) shall be equal to—

"(i) in calendar year 2003, 95 percent of the base year quantity;

"(ii) in calendar year 2004, 90 percent of the base year quantity;

"(iii) in calendar year 2005, 85 percent of the base year quantity;

"(iv) in calendar year 2006, 80 percent of the base year quantity;

"(v) in calendar year 2007, 75 percent of the base year quantity;

"(vi) in calendar year 2008, 70 percent of the base year quantity;

"(vii) in calendar year 2009, 65 percent of the base year quantity;

"(viii) in calendar year 2010, 60 percent of the base year quantity;

"(ix) in calendar year 2011, 55 percent of the base year quantity; and

"(x) in calendar year 2012 and in each subsequent year, 50 percent of the base year quantity.".

(b) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 3(b)), is amended by adding at the end of the items relating to subtitle D the following:

"Sec. 4013. Construction and demolition debris.".

SEC. 5. CONGRESSIONAL AUTHORIZATION OF STATE AND LOCAL MUNICIPAL SOLID WASTE FLOW CONTROL.

(a) AMENDMENT OF SUBTITLE D.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) (as amended by section 4(a)) is amended by adding after section 4013 the following:

"SEC. 4014. CONGRESSIONAL AUTHORIZATION OF STATE AND LOCAL GOVERNMENT CONTROL OVER MOVEMENT OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIALS.

"(a) FLOW CONTROL AUTHORITY FOR FACILITIES PREVIOUSLY DESIGNATED.—Any State or political subdivision thereof is authorized to exercise flow control authority to direct the movement of municipal solid waste and recyclable materials voluntarily relinquished by the owner or generator thereof to particular waste management facilities, or facilities for recyclable materials, designated as of the suspension date, if each of the following conditions are met:

"(1) The waste and recyclable materials are generated within the jurisdictional boundaries of such State or political subdivision, as such jurisdiction was in effect on the suspension date.

"(2) Such flow control authority is imposed through the adoption or execution of a law, ordi-

nance, regulation, resolution, or other legally binding provision or official act of the State or political subdivision that—

"(A) was in effect on the suspension date;

"(B) was in effect prior to the issuance of an injunction or other order by a court based on a ruling that such law, ordinance, regulation, resolution, or other legally binding provision or official act violated the Commerce Clause of the United States Constitution; or

"(C) was in effect immediately prior to suspension or partial suspension thereof by legislative or official administrative action of the State or political subdivision expressly because of the existence of an injunction or other court order of the type described in subparagraph (B) issued by a court of competent jurisdiction.

"(3) The State or a political subdivision thereof has, for one or more of such designated facilities—

"(A) on or before the suspension date, presented eligible bonds for sale;

"(B) on or before the suspension date, issued a written public declaration or regulation stating that bonds would be issued and held hearings regarding such issuance, and subse-

quently presented eligible bonds for sale within 180 days of the declaration or regulation; or

"(C) on or before the suspension date, executed a legally binding contract or agreement that—

"(i) was in effect as of the suspension date;

"(ii) obligates the delivery of a minimum quantity of municipal solid waste or recyclable materials to one or more such designated waste management facilities or facilities for recyclable materials; and

"(iii) either—

"(I) obligates the State or political subdivision to pay for that minimum quantity of waste or recyclable materials even if the stated minimum quantity of such waste or recyclable materials is not delivered within a required timeframe; or

"(II) otherwise imposes liability for damages resulting from such failure.

"(b) WASTE STREAM SUBJECT TO FLOW CONTROL.—Subsection (a) authorizes only the exercise of flow

control authority with respect to the flow to any designated facility of the specific classes or categories of municipal solid waste and voluntarily relinquished recyclable materials to which such flow control authority was applicable on the suspension date and—

"(1) in the case of any designated waste management facility or facility for recyclable materials that was in operation as of the suspension date, only if the facility concerned received municipal solid waste or recyclable materials in those classes or categories on or before the suspension date; and

"(2) in the case of any designated waste management facility or facility for recyclable materials that was not yet in operation as of the suspension date, only of the classes or categories that were clearly identified by the State or political subdivision as of the suspension date to be flow controlled to such facility.

"(c) DURATION OF FLOW CONTROL AUTHORITY.—Flow control authority may be exercised pursuant to this section with respect to any facility or facilities only until the later of the following:

"(1) The final maturity date of the bond referred to in subsection (a)(3)(A) or (B).

"(2) The expiration date of the contract or agreement referred to in subsection (a)(3)(C).

"(3) The adjusted expiration date of a bond issued for a qualified environmental retrofit.

The dates referred to in paragraphs (1) and (2) shall be determined based upon the terms and provisions of the bond or contract or agreement. In the case of a contract or agreement described in subsection (a)(3)(C) that has no specified expiration date, for purposes of paragraph (2) of this subsection the expiration date shall be the first date that the State or political subdivision that is a party to the contract or agreement can withdraw from its responsibilities under the contract or agreement without being in default thereunder and without substantial penalty or other substantial legal sanction. The expiration date of a contract or agreement referred to in subsection (a)(3)(C) shall be deemed to occur at the end of the period of an extension exercised during the term of the original contract or agreement, if the duration of that extension was specified by such contract or agreement as in effect on the suspension date.

"(d) INDEMNIFICATION FOR CERTAIN TRANSPORTATION.—Notwithstanding any other provision of this section, no State or political subdivision may require any person to transport municipal solid waste or recyclable mate-

1 rials, or to deliver such waste or materials for transpor-
2 tation, to any active portion of a municipal solid waste
3 landfill unit if contamination of such active portion is a
4 basis for listing of the municipal solid waste landfill unit
5 on the National Priorities List established under the Com-
6 prehensive Environmental Response, Compensation, and
7 Liability Act of 1980 unless such State or political subdivi-
8 sion or the owner or operator of such landfill unit has in-
9 demnified that person against all liability under that Act
10 with respect to such waste or materials.

11 "(e) OWNERSHIP OF RECYCLABLE MATERIALS.—
12 Nothing in this section shall authorize any State or polit-
13 ical subdivision to require any person to sell or transfer
14 any recyclable materials to such State or political subdivi-
15 sion.

16 "(f) LIMITATION ON REVENUE.—A State or political
17 subdivision may exercise the flow control authority grant-
18 ed in this section only if the State or political subdivision
19 limits the use of any of the revenues it derives from the
20 exercise of such authority to the payment of one or more
21 of the following:

22 "(1) Principal and interest on any eligible bond.

23 "(2) Principal and interest on a bond issued for
24 a qualified environmental retrofit.

"(3) Payments required by the terms of a contract referred to in subsection (a)(3)(C).

"(4) Other expenses necessary for the operation and maintenance and closure of designated facilities and other integral facilities identified by the bond necessary for the operation and maintenance of such designated facilities.

"(5) To the extent not covered by paragraphs (1) through (4), expenses for recycling, composting, and household hazardous waste activities in which the State or political subdivision was engaged before the suspension date. The amount and nature of payments described in this paragraph shall be fully disclosed to the public annually.

"(g) INTERIM CONTRACTS.—A contract of the type referred to in subsection (a)(3)(C) that was entered into during the period—

"(1) before November 10, 1995, and after the effective date of any applicable final court order no longer subject to judicial review specifically invalidating the flow control authority of the applicable State or political subdivision; or

"(2) after the applicable State or political subdivision refrained pursuant to legislative or official administrative action from enforcing flow control au-

1 thority expressly because of the existence of a court
2 order of the type described in subsection (a)(2)(B)
3 issued by a court of the same State or the Federal
4 judicial circuit within which such State is located
5 and before the effective date on which it resumes en-
6 forcement of flow control authority after enactment
7 of this section,
8 shall be fully enforceable in accordance with State law.
9 "(h) AREAS WITH PRE-1984 FLOW CONTROL.—
10 "(1) GENERAL AUTHORITY.—A State that on
11 or before January 1, 1984—
12 "(A) adopted regulations under a State
13 law that required or directed transportation,
14 management, or disposal of municipal solid
15 waste from residential, commercial, institu-
16 tional, or industrial sources (as defined under
17 State law) to specifically identified waste man-
18 agement facilities, and applied those regulations
19 to every political subdivision of the State; and
20 "(B) subjected such waste management fa-
21 cilities to the jurisdiction of a State public utili-
22 ties commission,
23 may exercise flow control authority over municipal
24 solid waste in accordance with the other provisions
25 of this section.

"(i) the life of the contract (not including any renewal, novation, or extension thereof); or

"(ii) a period of 3 years after the date of enactment of this section,

and only with respect to the amount of the obligation in the contract.

"(2) AVAILABILITY OF DOCUMENTATION.—The owner or operator of a landfill or incinerator receiving out-of-State municipal solid waste pursuant to an exemption under paragraph (1) shall make available for inspection by the public in the affected local community a copy of the permit or contract referred to in paragraph (1). The owner or operator may omit any proprietary information contained in contracts.

"(3) DENIED OR REVOKED PERMITS.—A landfill or incinerator may not receive for disposal or incineration out-of-State municipal solid waste pursuant to an exemption under paragraph (1) if the operating permit for the landfill or incinerator (or renewal thereof) was denied or revoked by the appropriate State agency before the date of enactment of this section, unless such permit or license (or re-

"(1) to authorize a political subdivision to exercise the flow control authority granted by this section in a manner inconsistent with State law;

"(2) to permit the exercise of flow control authority over municipal solid waste and recyclable materials to an extent greater than the maximum volume authorized by State permit to be disposed at the waste management facility or processed at the facility for recyclable materials;

"(3) to limit the authority of any State or political subdivision to place a condition on a franchise, license, or contract for municipal solid waste or recyclable materials collection, processing, or disposal; or

"(4) to impair in any manner the authority of any State or political subdivision to adopt or enforce any law, ordinance, regulation, or other legally binding provision or official act relating to the movement or processing of municipal solid waste or recyclable materials which does not constitute discrimination against or an undue burden upon interstate commerce.

"(j) EFFECTIVE DATE.—The provisions of this section shall take effect with respect to the exercise by any State or political subdivision of flow control authority on or after the date of enactment of this section. Such provi-

1 sions, other than subsection (d), shall also apply to the
2 exercise by any State or political subdivision of flow con-
3 trol authority before such date of enactment, except that
4 nothing in this section shall affect any final judgment that
5 is no longer subject to judicial review as of the date of
6 enactment of this section insofar as such judgment award-
7 ed damages based on a finding that the exercise of flow
8 control authority was unconstitutional.

9 "(k) STATE SOLID WASTE DISTRICT AUTHORITY.—
10 In addition to any other flow control authority authorized
11 under this section a solid waste district or a political sub-
12 division of a State may exercise flow control authority for
13 a period of 20 years after the enactment of this section,
14 for municipal solid waste and for recyclable materials that
15 is generated within its jurisdiction if—

16 "(1) the solid waste district, or a political sub-
17 division within such district, is required through a
18 recyclable materials recycling program to meet a
19 municipal solid waste reduction goal of at least 30
20 percent by the year 2005, and uses revenues gen-
21 erated by the exercise of flow control authority
22 strictly to implement programs to manage municipal
23 solid waste and recyclable materials, other than in-
24 cineration programs; and

"(2) prior to the suspension date, the solid waste district, or a political subdivision within such district—

"(A) was responsible under State law for the management and regulation of the storage, collection, processing, and disposal of solid wastes within its jurisdiction;

"(B) was authorized by State statute (enacted prior to January 1, 1992) to exercise flow control authority, and subsequently adopted or sought to exercise the authority through a law, ordinance, regulation, regulatory proceeding, contract, franchise, or other legally binding provision; and

"(C) was required by State statute (enacted prior to January 1, 1992) to develop and implement a solid waste management plan consistent with the State solid waste management plan, and the district solid waste management plan was approved by the appropriate State agency prior to September 15, 1994.

"(l) SPECIAL RULE FOR CERTAIN CONSORTIA.—For purposes of this section, if—

"(1) two or more political subdivisions are members of a consortium of political subdivisions es-

tablished to exercise flow control authority with respect to any waste management facility or facility for recyclable materials;

"(2) all of such members have either presented eligible bonds for sale or executed contracts with the owner or operator of the facility requiring use of such facility;

"(3) the facility was designated as of the suspension date by at least one of such members;

"(4) at least one of such members has met the requirements of subsection (a)(2) with respect to such facility; and

"(5) at least one of such members has presented eligible bonds for sale, or entered into a contract or agreement referred to in subsection (a)(3)(C), on or before the suspension date, for such facility,

the facility shall be treated as having been designated, as of May 16, 1994, by all members of such consortium, and all such members shall be treated as meeting the requirements of subsection (a)(2) and (3) with respect to such facility.

"(m) RECOVERY OF DAMAGES.—

"(1) PROHIBITION.—No damages, interest on damages, costs, or attorneys' fees may be recovered

in any claim against any State or local government, or official or employee thereof, based on the exercise of flow control authority on or before May 16, 1994.

"(2) APPLICABILITY.—Paragraph (1) shall apply to cases commenced on or after the date of enactment of the Solid Waste Interstate Transportation and Local Authority Act of 1999, and shall apply to cases commenced before such date except cases in which a final judgment no longer subject to judicial review has been rendered.

"(n) DEFINITIONS.—For the purposes of this section—

"(1) ADJUSTED EXPIRATION DATE.—The term 'adjusted expiration date' means, with respect to a bond issued for a qualified environmental retrofit, the earlier of the final maturity date of such bond or 15 years after the date of issuance of such bond.

"(2) BOND ISSUED FOR A QUALIFIED ENVIRONMENTAL RETROFIT.—The term 'bond issued for a qualified environmental retrofit' means a bond described in paragraph (4)(A) or (B), the proceeds of which are dedicated to financing the retrofitting of a resource recovery facility or a municipal solid waste incinerator necessary to comply with section 129 of the Clean Air Act, provided that such bond

is presented for sale before the expiration date of the bond or contract referred to in subsection (a)(3)(A), (B), or (C) that is applicable to such facility and no later than December 31, 1999.

"(3) DESIGNATED.—The term 'designated' means identified by a State or political subdivision for receipt of all or any portion of the municipal solid waste or recyclable materials that is generated within the boundaries of the State or political subdivision. Such designation includes designation through—

"(A) bond covenants, official statements, or other official financing documents issued by a State or political subdivision issuing an eligible bond; and

"(B) the execution of a contract of the type described in subsection (a)(3)(C),

in which one or more specific waste management facilities are identified as the requisite facility or facilities for receipt of municipal solid waste or recyclable materials generated within the jurisdictional boundaries of that State or political subdivision.

"(4) ELIGIBLE BOND.—The term 'eligible bond' means—

"(A) a revenue bond or similar instrument of indebtedness pledging payment to the bondholder or holder of the debt of identified revenues; or

"(B) a general obligation bond,

the proceeds of which are used to finance one or more designated waste management facilities, facilities for recyclable materials, or specifically and directly related assets, development costs, or finance costs, as evidenced by the bond documents.

"(5) FLOW CONTROL AUTHORITY.—The term 'flow control authority' means the regulatory authority to control the movement of municipal solid waste or voluntarily relinquished recyclable materials and direct such solid waste or recyclable materials to one or more designated waste management facilities or facilities for recyclable materials within the boundaries of a State or political subdivision.

"(6) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' has the meaning given that term in section 4011, except that such term—

"(A) includes waste material removed from a septic tank, septage pit, or cesspool (other than from portable toilets); and

"(B) does not include—

"(i) any substance the treatment and disposal of which is regulated under the Toxic Substances Control Act;

"(ii) waste generated during scrap processing and scrap recycling; or

"(iii) construction and demolition debris, except where the State or political subdivision had on or before January 1, 1989, issued eligible bonds secured pursuant to State or local law requiring the delivery of construction and demolition debris to a waste management facility designated by such State or political subdivision.

"(7) POLITICAL SUBDIVISION.—The term 'political subdivision' means a city, town, borough, county, parish, district, or public service authority or other public body created by or pursuant to State law with authority to present for sale an eligible bond or to exercise flow control authority.

"(8) RECYCLABLE MATERIALS.—The term 'recyclable materials' means 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, for the pur-

pose of recycling, reclamation, composting of organic materials such as food and yard waste, or reuse (other than for the purpose of incineration). Such term includes scrap tires to be used in resource recovery.

"(9) SUSPENSION DATE.—The term 'suspension date' means, with respect to a State or political subdivision—

"(A) May 16, 1994;

"(B) the date of an injunction or other court order described in subsection (a)(2)(B) that was issued with respect to that State or political subdivision; or

"(C) the date of a suspension or partial suspension described in subsection (a)(2)(C) with respect to that State or political subdivision.

"(10) WASTE MANAGEMENT FACILITY.—The term 'waste management facility' means any facility for separating, storing, transferring, treating, processing, combusting, or disposing of municipal solid waste.".

(b) TABLE OF CONTENTS.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 4(b)), is amended by

1 adding at the end of the items relating to subtitle D the
2 following:

"Sec. 4014. Congressional authorization of State and local government control over movement of municipal solid waste and recyclable materials.".

3 **SEC. 6. EFFECT ON INTERSTATE COMMERCE.**

4 No action by a State or affected local government
5 under an amendment made by this Act shall be considered
6 to impose an undue burden on interstate commerce or to
7 otherwise impair, restrain, or discriminate against inter-
8 state commerce.

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