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HEARING ON H.R. 382, H.R. 411, AND H.R. 1730

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

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HEARING ON H.R. 382, H.R. 411, AND H.R. 1730

WEDNESDAY, JULY 23, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON ENVIRONMENT
AND HAZARDOUS MATERIALS,
Washington, DC.

The subcommittee met, pursuant to notice, at 3 p.m. , in room 2237, Rayburn House Office Building, Hon. Paul E. Gillmor (chairman) presiding.

Members present: Representatives Gillmor, Shimkus, Fossella, Rogers, Otter, Solis, Allen, Doyle, Stupak, Green, and Dingell (ex officio).

Staff present: Mark Menezes, majority counsel; Jerry Couri, policy coordinator; Jill Latham, legislative clerk; Mary Ellen Grant, deputy communications director; and Bettina Poirier, minority counsel.

Mr. GILLMOR. The committee will come to order, and first, let me apologize to everyone for the fact that the committee is starting late and also that we are in a different hearing room. It has been an unusual day in Congress. We have had, I guess, about 2 or 2½ hours solid voting, and it is throwing everything behind schedule.

You know, many Members of both parties have expressed concern about interstate waste, among them Jo Ann Davis of Virginia, and Mr. Greenwood of Pennsylvania, and Mr. Rogers, and Mr. Dingell of Michigan, along with many others have been very active in this fight. Tip O'Neill was famous for saying that even though congressional politics had national implications, in the end, all politics is local. And the issue of interstate waste, I think, has bolstered Speaker O'Neill's point.

For almost 25 years Congress has avoided any definitive statement on the issue that is as local as it is national, as much a territorial encroachment dispute as it is an environmental health and safety issue, and it is one that has community, State, and national and international implications.

I first became involved with the issue of interstate and international shipment and disposal of municipal solid waste when as the Ohio Senate leader I proposed comprehensive legislation to encourage recycling and reform the way ordinary garbage was being disposed. While this law passed after the Supreme Court's ruling in Philadelphia v. New Jersey, subsequent court rulings have made proactive and proenvironment efforts like we took in Ohio difficult to sustain. What is fundamental is that the courts have established waste as a commodity, and Congress has the authority to regulate

it. Therefore, if anything is to be done, it is up to Congress to decide if this matter warrants intervention or is best left to continue unchecked in the free market as it has basically been since 1978.

When we look at this question, there are some facts we need to consider. First, total interstate waste shipments continue to rise as a result of the closure of older landfills and the increasing consolidation of the waste management issues. About 35 million tons of municipal solid waste crossed State lines for disposal in 2001, which was an increase of 9.4 percent over the proceeding year. Waste imports have been growing each year since the early 1900's and now represents 21.6 percent of all municipal solid waste disposed at landfills and waste combustion facilities. In the last decade reported imports have increased 141 percent.

Solutions have been elusive, but one thing is certain: Generating the solid waste has never been a problem, but since costs and court decisions are uncertain, cash-strapped States and municipalities are reluctant to expend financial and political capital to develop trash control systems that are efficient, lawful and protective of the environments. At the same time, geography and demographics place limits on the States' and the municipalities' abilities to exercise waste management commensurate with their population.

We need to decide if the time has finally come for Congress to act on this issue. Before us today are three different drafts, each imposing somewhat different regulatory structures for States to use regarding interstate and international waste. I have been disappointed that more people who claim to care about the environment have not been involved in this debate, but if we are serious about our commitment to recycling, to safer groundwater, we can't turn a blind eye to the issues which are raised here.

Let me say that I think in many instances the current system is one that rewards the environmentally irresponsible who don't make the expenditures to provide for disposal of the waste they generate, and punishes the environmentally responsible, those States which make the investments in landfills and then are unable to protect themselves from the import of out-of-State waste. I think today's witnesses will help us explore these areas, and I want to thank them all for the sacrifices that many of them have made to be with us.

And I also want to remind members that they will each be given the option to waive their time to deliver an opening statement in favor of having that time added to their time allocations for individual questions.

And I am now pleased to yield 5 minutes to the gentlelady and the ranking member from the State of California Ms. Solis.

Ms. SOLIS. Thank you, Mr. Chairman. At this time I would like to yield to our ranking member, Congressman Dingell because I understand he has an appointment, so I would yield my time to him.

Mr. DINGELL. Mr. Chairman, I first of all commend you for this hearing, and I thank you for it. I also want to thank the gentlewoman from California for her kindness in yielding to me.

I would like to observe that if we don't do something about this problem, Michigan, Ohio and a lot of other States are going to be

awash in foreign trash, so I am pleased that we are having this hearing.

The three bills that are the subject of this hearing, H.R. 1730, H.R. 411, and H.R. 382, share the same goal, providing States with the tools they need to manage imports of industrial and municipal solid waste. I thank the witnesses who are here to today to testify on this important issue, and I want to welcome a number of Michiganders who are here with us today, including our distinguished Senate colleague Senator Stabenow, who has been unrelenting in her fight against Canadian waste; our good friend Representative Miller, who took up the fight on the first day of her arrival here in town; and also my colleague Mr. Rogers of Michigan, who has a long interest in this matter. I also want to welcome the distinguished director of the Michigan Department of Environmental Quality, Steve Chester; and also my constituent Michael Garfield, director of the Ecology Center from Ann Arbor, both of whom provide testimony as to the trouble caused by this massive influx of out-of-State and international waste. Finally, I welcome our other Michigan witnesses, including Michigan State Senate majority leader Ken Sikkema. I want to particularly welcome you, Ken; former State trooper Linda Jordan; and Professor Robert Howse of the University of Michigan.

I regret very much that I will be compelled to leave this hearing for a meeting with the President and the conferees to discuss the Medicare prescription plan. I do intend to return as quickly as I possibly can to continue my participation in this very important meeting.

This is not a new issue. Legislation on interstate shipment of waste has been introduced in every Congress since the 1980's. This subcommittee last held a hearing on this subject in August 2001. With the passage of time the issue has only grown more urgent. In fact, a 2001 Congressional Research Service report indicates that the waste imports into Michigan alone have more than doubled since 1999. Without action this problem will continue to grow worse very rapidly.

States have been searching for a legal means to control shipments of municipal solid waste from other States and other countries. Unfortunately, the result has only been costly and unproductive litigation. State laws have been struck down by the courts because under the commerce clause of the Constitution, only Congress can grant States and localities the right to fully regulate waste imports into their jurisdiction.

In 1994, this committee passed a bill that I developed with Representative Boucher and Upton, our good friend from Michigan also, and cosponsored by you, Mr. Chairman, and our good friend Mr. Greenwood, that was very similar to H.R. 1730, one of the bills before us today. We acted in the aftermath of the 1992 Supreme Court decision in the case of Fort Gratiot Landfill vs. Michigan Department of Natural Resources. I would note that the support for the legislation was so broad and bipartisan that it passed the House 368 to 55. It was killed in the Senate by a New England Senator.

The committee has a long history with H.R. 1730 introduced by our friend and colleague Representative Greenwood. Since then a

bipartisan group of members have introduced legislation at each and every Congress. Unfortunately we have not been able to get it to markup. Those from Michigan and other affected States hope that this will change. And again, I note that if we don't do something about it, Michigan, Ohio, and other States in the Midwest will be awash in trash not of our own making.

On April 10 of this year, the chairman, I note, received a bipartisan letter from the Governors of six waste-importing States, Michigan, Indiana, Ohio, Pennsylvania, Wisconsin and Kentucky, requesting an expeditious markup of H.R. 1730, and this meeting today represents a first step and I commend you and thank you for that. I ask unanimous consent that the letter be placed in the record of this hearing.

[The letter referred to follows:]

STATE OF MICHIGAN, STATE OF OHIO,
COMMONWEALTH OF PENNSYLVANIA,
STATE OF WISCONSIN, STATE OF INDIANA,
COMMONWEALTH OF KENTUCKY
April 10, 2003

The Honorable PAUL E. GILLMOR, *Chairman*
Subcommittee on Environment and Hazardous Materials
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

DEAR MR. CHAIRMAN: We are writing to advise you of our strong support for the Solid Waste Interstate Transportation Act and request that you hold an expeditious markup of this legislation.

As you know, this bill, almost identical to H.R. 1213 from the 107th Congress, would provide state and local governments with needed tools to reasonably limit the amount of out-of-state and international waste that crosses their borders, maintain disposal capacity for their own waste, and assure protection of states' natural resources. As Governors of states that continue to receive unwelcome waste shipments, we believe the time for action is past due.

Lacking a specific delegation of authority from Congress to regulate waste imports within state boundaries, states remain subject to an endless flood of trash from outside their borders. It is critical that Congress end the decade-long impasse created by the U.S. Supreme Court's 1992 decision in *Ft. Gratiot Sanitary Landfill, Inc. v. Michigan Department of Natural Resources,* where the Court held that state limitations on interstate waste shipments violate the interstate commerce clause of the U.S. Constitution. In the absence of Congressional action, our states can continue to expect increasing percentages of annual waste disposal to originate from outside our borders.

Our states have worked together for several years to resolve the problem of unregulated interstate transport of waste, and many states outside of our region also view this issue as significant. With the limitation presented by the Supreme Court's Ft. Gratiot decision, the passage of the Solid Waste Interstate Transportation Act would provide much-needed authority for efforts to restore rationality, accountability, and control of interstate waste flows.

We urge the Subcommittee on Environment and Hazardous Materials to mark this legislation up before the Memorial Day District Work Period and look forward to working with you toward enactment of a bill that will prevent future dumping on the citizens of Ohio, as well as Indiana, Kentucky, Michigan, Pennsylvania, Wisconsin and other states.

Sincerely,

GOVERNOR JENNIFER M. GRANHOLM, GOVERNOR BOB TAFT,
GOVERNOR EDWARD G. RENDELL, GOVERNOR JIM DOYLE,
GOVERNOR FRANK L. O'BANNON, GOVERNOR PAUL E. PATTON

cc: The Hon. Hilda L. Solis, Subcommittee Ranking Member
The Hon. W.J. (Billy) Tauzin, Chairman, Committee on Energy and Commerce
The Hon. John D. Dingell, Ranking Member, Energy and Commerce Committee

Mr. DINGELL. We are also here to discuss other bills, including my bill, H.R. 411, which would require the EPA to implement and

enforce the bilateral agreement between Canada and the United States concerning transboundary movement of hazardous waste amended in 1992 to cover municipal solid waste. In my home State of Michigan, not only has interstate waste grown, but the amount of waste from Canada being disposed of in Michigan increased by 149 percent since 1996. In the course of each day, nearly 200 trash trucks cross the bridges from Canada headed for our landfills. I am very much distressed that EPA has neglected to pursue its duty and has determined that this agreement is not to be implemented. I look forward to questioning the EPA witness on this matter later.

Both Senator Stabenow and Representative Rogers also each have legislation addressing the issue of Canadian waste. While Senator Stabenow's bill is not the subject of our hearing today, we will be discussing Mr. Rogers' legislation, H.R. 382, and I believe that the discussion of all the bills before the committee is the desirable thing. We have also seen what happens when the States have crafted laws that run afoul of constitutional restrictions. We get legislation, but we get no solution to the problem. That is why I believe international agreements and constitutional issues must be considered so that at the end of the day we can succeed in solving this problem.

The bottom line, Mr. Chairman, is that our States and local governments have waited too long for the authority to regulate incoming waste. The price for delay is being paid by our citizens and our environment. There is, however, hope, and I believe that this committee affords our people that hope, and I hope that we will proceed forward to move legislation out onto the floor of the Congress and onto the President's desk. I believe that legislation to give States authority to manage municipal solid waste imports is urgently in the public interest, and I commend you for this hearing and thank you for the time.

I ask unanimous consent that the statements by Senator Levin and Wayne County Executive Bob Ficano be included in the record today.

Mr. GILLMOR. Without objection, so ordered.

[The information referred to follows:]

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

First, I would like to thank the members of the Energy and Commerce Committee for holding a hearing on this important issue. I would also like to thank my friend Congressman Dingell for inviting me to testify. He has worked extremely hard on this issue through the years and should be commended for his tireless efforts to give our constituents a voice in this matter.

The largest source of waste imports to Michigan continues to be from Canada, which contributed 11.5% of all waste disposed in Michigan in fiscal year 2002, up from 9.8% in FY2001. Each day, approximately 125-150 trash trucks from Toronto and about 30 trash trucks from other municipalities in Canada cross the border into Michigan.

The Michigan Department of Environmental Quality estimates that, for every five years of disposal of Canadian waste at the current usage volume, Michigan is losing slightly more than a half-year of landfill capacity. The negative impacts of landfills, including noise pollution and foul odors, as well as the potential for groundwater contamination, are exacerbated by the significant increase in the use of our landfills from sources outside of Michigan.

Further, trucks carrying municipal solid waste from Canada represent a potential threat because of the nature of the cargo—it is dense and variable—which makes

it difficult for customs inspectors to adequately assess the materials contained in the trucks. And we aren't the only ones who have discovered that waste trucks are a good way to smuggle items into the U.S. In April of this year, a Canadian trucker smuggled 50 pounds of marijuana in a garbage truck headed for a Michigan landfill. The President of the company that owns one of the Michigan landfills said that a few months prior to this incident, U.S. Customs agents had told the landfill to be on the lookout for contraband such as illegal drugs. It is obvious that these trucks can hide materials that you don't want Customs inspectors to find. This could drugs, or it could be weapons.

Ontario has about 345,000 square miles compared to Michigan's 57,000 square miles. **Canada should be able to find a** suitable Ontario site for Toronto's garbage with six times the land mass that Michigan has.

In 1986, the U.S. and Canada entered into an agreement allowing the shipment of *hazardous* waste across the U.S./Canadian border for treatment, storage or disposal. The Agreement requires notification of shipments to the importing country, and also allows the importing country to reject shipments, or withdraw consent for shipment, for good cause. In 1992, the two countries decided to add *municipal solid waste* to the agreement. However, neither the EPA nor the State Department have actually enforced it.

It is unacceptable that there is an international agreement that provides protections and they are not being exercised to protect the people of Michigan. We believe that the EPA has the authority to enforce this Agreement, but feel that legislation is needed to put additional pressure on the EPA to enforce it. That is why I support HR 411. This legislation will ensure that the protective notice and consent provisions of the Agreement are implemented. Further, in order to protect the health and welfare of the citizens of Michigan and their environment, the legislation requires that many factors be considered before the EPA can consent to waste shipments from Canada. The views of the importing state and the impact of the importation on state and local recycling efforts, landfill capacity, air emissions and road deterioration resulting from increased vehicular traffic and public health and the environment should all be considered. The legislation also provides penalties to those who violate its provisions.

We need to have the Transboundary Agreement between the United States and Canada enforced. HR 411 would do just that and I urge the Committee's support.

PREPARED STATEMENT OF ROBERT A. FICANO, WAYNE COUNTY EXECUTIVE

We want to thank the Members of the House Subcommittee on Environment and Hazardous Materials for holding a public hearing on the challenges and issues related to imported waste. We welcome the opportunity to submit testimony, and would like to express appreciation to Congressman John Dingell, Congressman Mike Rogers, and Congressman James Greenwood for introducing critically needed federal legislation to address the issue of imported waste.

The County of Wayne is home to over 2 million people and is Michigan's most populous county; in fact, it is the eighth largest county in the United States. We share a border with Canada, are a major transportation gateway for North America, and one of our country's busiest border crossings. Throughout its 207-year history, Wayne County has remained a destination for millions of new Americans, the home of the automobile, and the Arsenal of Democracy. It is the birthplace of the American labor movement, and today one of the most culturally diverse communities in North America, and a place I am honored to be from and humbled to now lead.

Wayne County, like other large communities, faces a variety of challenges—some which we have created and which we alone must fix, and others beyond our control. Imported waste entering into Wayne County is one of these issues. Try as we might to stem the tide of imported waste coming into our County, we are limited by law, precedent, and international agreements.

Currently, over 180 trucks per day cross into Michigan from Canada, dumping millions of tons of trash into various Wayne County landfills. We recently were informed that sludge from Toronto's sewage treatment plants now is being hauled by truck from Canada and dumped at a landfill in Sumpter Township. In addition, while we have been repeatedly assured by the Centers for Disease Control that SARS cannot be transmitted by such wastes, the uncertainty of the disease's pathology, and the fact that Toronto is still a source for this deadly virus, presents a continuing concern to me and to other Wayne County's residents, public officials and guests.

Imported waste is not merely coming from Canada. Due to State and Federal law, waste from neighboring States is also being dumped in our County's landfills. If al-

lowed to continue at its present pace, Wayne County risks losing its available landfill space—for the use of our own residents—within the next 10 to 14 years. This is completely unacceptable, as our only alternatives are to allow more landfills and more trash, or to begin exporting trash into neighboring Michigan counties, continuing this vicious circle.

Wayne County is doing all it can under its limited legal authority. Recently, the County Executive Administration drafted and submitted to the County Commission a proposed amendment to our Solid Waste Ordinance that would mandate that all imported waste coming into Wayne County adhere to State of Michigan standards, such as the State's bottle bill law, which would limit some imported trash. A modest increase in the County's "tipping fees," also has been proposed. A slight increase would supplement our ongoing landfill inspection efforts while helping fund needed community programs to combat illegal dumping and disposal of household hazardous wastes.

Despite our best efforts, the ultimate problem of imported waste coming into Michigan, and especially Wayne County, demands Federal intervention. Congress must enact laws to allow States to deal with the flow of trash between States. As the CEO for Wayne County, I have a responsibility to my residents of today, and our children of tomorrow. We must be able to dispose effectively of our current waste, and plan for our future needs. We cannot accomplish this alone, however, as Wayne County's authority is severely limited. The 2.1 million people of Wayne County are turning to the Congress for relief from this threat to our quality of life and the environmental health of our great State of Michigan.

Finally, we want to make brief comments about the three pieces of legislation pending before the Committee today. H.R. 411, sponsored by Congressman John Dingell (D-MI), will provide the most effective and efficient tools to deal with immediate issue of the importation of Canadian waste. H.R. 411 would expand the bilateral agreement signed in 1986 and require the EPA to enforce the requirement that the United States and Canada notify each other with regard to the flow of waste between the two countries. Before consenting to a shipment of Canadian trash, the EPA must consider the views of each State and local jurisdiction into which the waste is to be imported. Additionally, the EPA must factor in its decision, the impact on public health and the environment, including the effect on recycling programs, landfill capacity, and air quality and road deterioration due to increased traffic. The non-existent federal enforcement to date makes the legislative directives contained in this bill necessary.

We strongly support H.R. 1730, sponsored by Rep. James Greenwood (R-PA), which authorizes the States themselves to establish limitations on the amount of imported waste that is received for disposal at each facility. States would be permitted to limit the amount of waste received annually at each facility to the quantity received in 1995 if a statewide recycling program is in place. Moreover, facilities would be prohibited from receiving imported waste unless such waste is received pursuant to a host community agreement or an exemption from this prohibition, which may also be limited by the State. These restrictions would greatly assist Wayne County as approximately half of the waste that comes into Michigan from other States is disposed in a Wayne County landfill.

Finally, H.R. 382, sponsored by Congressman Mike Rogers (R-MI), authorizes the States to not only limit, but also potentially eliminate altogether, the intake of solid waste from outside of the United States. This proposed legislation provides no mandates for State restrictions. While the intention of this legislation is good, it seems to contradict the 1986 agreement and we worry that, if enacted, H.R. 382 will be challenged in our federal courts, further delaying our immediate need for relief on the trash issue.

Again, thank you for allowing Wayne County to submit testimony on this critically needed legislation. On behalf of the citizens of Wayne County, we appreciate your efforts and urge Congress to enact legislation this year to address and resolve the difficult challenges and hurdles posed by imported waste.

Mr. GILLMOR. And the Chair recognizes the vice chairman of the committee, Mr. Fossella of New York.

Mr. FOSSELLA. Thank you, Mr. Chairman, and, again, thank you for convening this hearing. But I think it should shed some light on the gravity of the situation before us, as indeed it affects everybody in this country. And it is not a topic everyone likes to talk about, but it is reality.

My concern with some of the legislation before us deals very fundamentally with the notion of the free flow of commerce across and among the States. When this country first found its independence, you recall there were 13 sort of separate little nations that led to the Articles of Confederation, and one of the biggest problems that young Nation had was the ability for States to decide what could come in and what could come out. And I think that hampered unnecessarily the economic growth of a young Nation. But it was soon discovered that the best and most solid way to ensure growth for our great country, that since then practically every nation has sought to emulate, is to allow the States and allow goods and services and commerce to flow freely without the ability of one State to impose restrictions on goods coming from another.

I am very sensitive to the needs of every member here and across—maybe members who aren't here, of what trash means, what garbage means. And we had on Staten Island the Nation's largest landfill the Fresh Kills landfill. It was unlined, environmentally unsafe, violations of many State and Federal laws. And, Mr. Chairman, you have referenced earlier those who claim to be environmentally friendly who didn't lend their voice to this fight. We knew for years because we were speaking out loud to no avail until finally we were able to close that Fresh Kills landfill.

But it is important to note that New York City, like so many other municipalities around the country, exports its garbage to landfills or resource recovery facilities that accept it voluntarily. They are cleaner, they are safer, the localities like them. They mean jobs to those communities. It's essentially a contract between one who wants to send goods to another location, and a sort of a receiver who wants to receive it in return for a fee. It has worked for about 200 plus years now. It is the right thing to do. I think that if we look at it and look at it deeply—and the members who may be sensitized and look at it as a back-yard issue really should take a step back and realize that cities like Chicago, Philadelphia, Washington, San Francisco, Los Angeles are going to have significant problems imposed upon their taxpayers and residents if Congress begins to impose unnecessary burdens and restrictions upon the ability of one State and municipality to stop and prevent it or limit it extensively from sending its garbage elsewhere.

I know there are other bills under consideration that deal with international waste, and I am sensitive to the needs of those members as well. I think we should also take a step back and realize the potential for some trade implications.

But I am anxious to hear the testimony of our witnesses here and also draw attention that we are joined by a colleague of mine from Staten Island, Councilman Andrew Lanza, who will testify later, who will help to shed some light on what I just said, but also on its impact across the country.

And with that, Mr. Chairman, I thank you for the time and yield back.

Mr. GILLMOR. The gentleman yields backs.

The gentlelady Ms. Solis.

Ms. SOLIS. Thank you, Mr. Chairman. I will be brief. I also want to recognize our witnesses and thank them for coming here today and to shed light on this very important issue.

I happen to be a Representative from the State of California, which unfortunately is a receiver of a lot of waste from different parts of L.A. County. In fact, I had the dubious distinction of representing one of the largest landfills, which is now the largest landfill in the State, known as the Puente Hills landfill. It is 60 stories high, and we collect all the waste from over 80 communities. And we have five other landfills, two that have been closed, three Superfund sites in our area.

We do have issues that I hope will be talked about here, and I do believe it is important for localities and municipalities that are affected by the intake or import of waste that they do have an ability to have some consent, and some ability to be able to be publicly noticed and to also know that there is going to be ample enforcement when needed and necessary, because cleanup costs our taxpayers a lot of money. And, yes, we have been slow on that cleanup, and I hope to hear more from EPA and others about what remedies and solutions we need to come up with.

And I thank the gentlewoman from the Senate for being here today, and also our other Representative that is here. And I would just defer back, yield back my time, and submit the rest of my testimony for the record.

Mr. GILLMOR. The gentlelady yields back, and the Chair is pleased to recognize a member who has taken a strong leadership role on this issue, Mr. Rogers from Michigan.

Mr. ROGERS. Thank you very much, Mr. Chairman. I want to echo Mr. Dingell's comments of thanks to the witnesses. Senator Stabenow, thank you for being here. Congresswoman Miller, thank you very much. This is something that we all know is very very important to Michigan. As well as former State trooper Linda Jordan; thanks for going the extra mile to get here. We certainly appreciate it.

I wanted to show this clip. This is what the Canadian Broadcast Company was showing. I think it will give the audience and the panel a little bit of flavor about even what the Canadians are saying. Can you roll that, please.

[Videotape played.]

Mr. ROGERS. Since 1999, there has been a 280 percent increase in Canadian trash dumped in Michigan, and with this has come a whole host of problems: In one case, and State Trooper Jordan will testify to this later, human blood dripping out of a Canadian trash truck; 50 pounds of marijuana found smuggled in a Canadian trash truck; women—we had women hit by two trash trucks coming across the border. The Public Interest Research Group in Michigan, an environmental group from Michigan, cited PCBs and soiled coffin waste in a lawsuit, and I don't even want to know what that is, discovered in landfills that accept Canadian trash. And there is the pictures of the blood that was found coming across the border.

NAFTA has very clear exceptions for human health. We are clearly within the confines of NAFTA by saying no to Canadian trash.

I want to applaud Congressman Dingell and Senator Stabenow on their efforts. The time has come, I think. We have tried amendments. We have tried petitions. We have tried all of those things.

The time has come to rally around this issue and say no to Canadian trash. We have the ability to do it.

Mr. Chairman, I thank you for your courage and leadership on this issue. This is a tough subject, and it is hard to get these meetings. We are going to hear from some great panelists today who are going to localize it for us back in Michigan and, I think, send a very, very clear message not only to our good friends, the Canadians, but around the world that there is a common-sense approach to this. Under this bill, commercial waste streams continue to flow back and forth, paper, slag, copper, things that can be value added. But the very end of the revenue stream, this household municipal waste, household garbage that gets thrown in a hole with dirt thrown over the top of it can and should come to an end. I think our good neighbors to the north, being one of the largest landmass countries in the world, can handle their own household municipal waste.

And, Mr. Chairman, I thank you and would yield back my time.

Mr. GILLMOR. The gentleman from Michigan Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman, and thanks for holding this hearing. Want to welcome all of our witnesses here today. I echo Mr. Dingell's comments and our elected officials and our friends from Michigan who are here on this very important issue to us in Michigan.

In Michigan solid waste that is coming in from neighboring States and Canada has created environmental concerns, public health concerns, public safety concerns, and now quite sadly, with a press release put out yesterday by the Michigan GOP chairwoman, partisan politics has entered into the equation. And there really is no room for it when we are talking about the trash being exported from country to country and State to State.

In 1992, the U.S. Supreme Court struck down Michigan's law that allowed counties to prohibit import of solid waste from outside the State. Since that time we have seen an explosion of waste exports to Michigan. In 2001, Michigan imported nearly 3.6 million tons of municipal waste. Many of the concerns that Michigan residents had back in the 1980's and 1990's about accepting out-of-State waste remains today. Because we are nearly surrounded by the Great Lakes and because so much of our groundwater lies within the Great Lakes Basin, Michigan has tough regulations of what can be accepted in our landfills. For example, heavy metal pollutants such as lead and mercury are closely monitored. So in importing waste from Canada, we aren't sure what exactly is coming to us in roughly the 150 to 200 of the semi loads of foreign trash that are dumped in our landfills each and every day.

Another concern post-9/11 is the very real possibility that individuals could use trash shipments to conceal shipments of weapons or materials that could be used for terrorist activities.

Today we will hear some staggeringing statistics about interstate and foreign solid waste importation. We will also hear a horror story of barrels of blood dripping being shipped into Michigan in trash trucks from Toronto during the height of the SARS epidemic. I think, Mr. Rogers, we have seen some of those slides.

Another aspect of the discussions today will be differing thoughts on how the three bills before us would impact trade agreements

such as NAFTA and GATT. Testimony will show differences in approach to solving the trash dilemma. But we can all agree on one thing: Congress must act, and we must act now to give States the ability to manage waste coming in.

With that, Mr. Chairman, I yield back the balance of my time. I look forward to hearing from our different panels of witnesses.

Mr. GILLMOR. Thank you.

The gentleman from Illinois Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman. I, too, will try to be brief, but this is an important debate.

The State of Illinois finds itself in a quandary because not only are we the third-ranking State as far as exporters, we are also the sixth-ranking State as far importers. Most of the export occurs in the greater Chicagoland area. Obviously a vast majority of the importing comes in the southern part of the State, which I represent. So being at least here at the hearing, and we have two members on the commerce committee from Illinois, one is from the greater Chicagoland area, you can see that we will have a strong interest in how legislation moves forward.

I have traditionally been supportive of the interstate commerce clause and understanding that trash is a commodity. But there are the local concerns and how the local people have the ability to have the input in their local communities. There are three bills that we have in front of us that I know we are going to have good hearings on, and I look forward to hearing that.

This gets to be a very emotional issue, as we have seen already, and hopefully we can cut through the emotion and try to find some common ground to address the issues, because trash just didn't go away. It is going to go somewhere. And there are communities that—you take the city of New York, they are going to have to export it. They are going to have to. Chicago is going to have to export it. They are just not going to tear down a 50-story building and place a landfill there.

So I think let's let cooler heads prevail. And I look forward to hearing the testimony, and I thank you, Mr. Chairman.

Mr. GILLMOR. The gentleman from Pennsylvania.

Mr. DOYLE. Mr. Chairman, I want to thank you for holding the hearing. As the coauthor of one of the three bills, I am interested to hear from the panel, and I would ask for unanimous consent to submit my statement for the record in the interest of getting a little bit more time during questioning.

Mr. GILLMOR. The Chair appreciates that, and without objection, so ordered.

The gentleman from Texas.

Mr. GREEN. Thank you, Mr. Chairman. And like my colleague, I have a statement for the record. But also like my ranking member, the solid waste in my district is mostly interstate, and I would like to see how we can include these bills to have notice requirements for my own constituents. I yield back my time.

[The prepared statement of Hon. Gene Green follows:]

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Thank you, Chairman Gillmor and Ranking Member Solis, for holding this hearing on the interstate and international transportation of solid waste.

This is an important issue for our states that also has far-reaching international and trade implications.

With the consolidation of the waste management industry and the closing of many landfills, interstate waste shipments have been on the rise in recent years.

As some states face these increasing imports of solid waste, however, they have little means to regulate it because the Commerce Clause of the Constitution leaves the regulation of interstate commerce to Congress.

For well over a decade, many states have been urging Congress to grant them the authority to regulate solid waste imports to their states. Yet, without this express authority granted by Congress, the states' hands seem to be tied.

This issue has languished too long in Congress, and we need to give states the tools they need to appropriately manage their solid waste.

I understand that we have three legislative options to this problem before the subcommittee today. I am encouraged by the Chairman and Ranking Members attention to this issue and hope that this hearing is a sign that we will soon take legislative action.

Because the road to remedy this problem has been so long, however, I hope the subcommittee will carefully scrutinize each of these proposals with regard to their ability to meet legal muster and abide by our trade agreements.

Therefore, I would support narrowly-crafted legislation to address this issue within the framework of our current agreements.

The last thing we need is to provide our states with legislative authority, only to have it get tied up in lengthy litigation while the trash literally piles up.

I thank the witnesses for appearing before us today and look forward to hearing their testimony.

With that, Mr. Chairman, I yield back the balance of my time.

Mr. GILLMOR. The gentleman yields back. The gentleman, Mr. Allen.

Mr. ALLEN. Thank you, Mr. Chairman. I do have a brief statement. I want to thank you for holding this hearing today and also a special thank you to Senator Stabenow for returning over here to her former domain on this side of the Capitol.

The issues surrounding the shipment of interstate waste have been debated here since the 104th Congress. They are clearly contentious, but I believe we can work toward developing effective legislation. Mr. Dingell has expressed his interest in developing effective legislation, and I trust we can work together to that end.

Solid waste is an issue that creates conflict between exporting and importing States and communities, environmentalists and waste management interests. There is simply too much waste and not enough places to put it. In some parts of the country, States have made an effective effort to control the amount of waste that they produce.

In Maine, for example, we have the most—one of the most comprehensive beverage container redemption programs in the Nation, as well as other effective recycling programs. We have also permitted the necessary facilities in order to process more waste than we produce.

While interstate transport of waste is viewed as a more severe problem in other parts of the country than Maine, our State both imports and exports municipal solid waste across State and international boundaries. In terms of municipal solid waste, Maine is a significant net importer. In 2000, we imported 191,000 tons from Massachusetts, New Hampshire and New Brunswick, which represents 19 percent of the total waste burned or land filled in the State. We also exported 29,000 tons of municipal solid waste to New Hampshire and New Brunswick.

Maine has also repeatedly affirmed policies that would limit the importation of more municipal solid waste. We are a rural State,

and we don't want to be a dumping ground for urban areas like New York or any other areas beyond what we can control. In—we—in 2000, 11,500 tons of municipal solid waste from Maine was exported to Canada. And Maine's DEP has worked closely with the Customs personnel to make sure the trash is properly monitored and that no other waste, such as toxic or medical waste, is exported.

While I understand that many Americans in other parts of the country want the right to prevent imports, we are worried that such a ban might yield a ban on exports from Maine to New Brunswick. Therefore, I believe that legislation on this issue should be limited in its scope. A broad bill such as Representative Rogers' H.R. 382, which would give States the power to ban foreign garbage, in our view, may risk angering the Canadians, creating the potential either for a ruling under NAFTA or a reciprocal ban on exports from Maine. Mr. Dingell's bill narrower legislation appears less likely to have these problems, and I hope we have a good conversation about these alternatives.

In conclusion, Mr. Chairman, I thank you for holding this hearing, and I look forward to future hearings on this subject in the subcommittee.

Mr. GILLMOR. Thank you very much.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. W.J. "BILLY" TAUZIN, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Mr. Chairman, thank you for holding this hearing on an issue important to so many of our members on this committee. Each day across our country, thousands of tons of trash are traveling on America's highways, crossing state and national borders on its way to disposal and recycling facilities. And, whether or not we think about our own trash the second we put it out for pickup, the many issues associated with interstate and international shipments of municipal solid waste affect each and every one of us.

The issues presented by the interstate and international shipment and disposal of municipal solid waste have confronted local communities, state governments, and the court systems for years. The Supreme Court first ruled on this issue back in 1978 in Philadelphia v. New Jersey, stating that waste is indeed commerce and therefore no undue burden may be placed on the interstate shipment or disposal of waste products. Since that time, the delicate balance needed for any law or regulation to be in compliance with the Supreme Court's ruling is often subtle and always subject to challenge.

What is fundamental, though, to any discussion on this topic is that within our great Constitution, the Commerce Clause grants Congress the power to regulate commerce among the states. (Art. 1, 8, cl.3) While the Supreme Court has ruled on this matter, Congress has the constitutional authority to regulate it.

Today, our subcommittee is reviewing three bills—two of which provide states with greater authority to affect or prohibit incoming shipments of solid waste with the third addressing the codification and further enforcement of existing bilateral trade agreements. I know these issues are important to many members and that the interesting new twists that have occurred on these issues are not new. In fact, the core interstate waste debate has been kicking around this Committee and in Congress for at least a decade. I am not optimistic we will solve this matter today, but I am hopeful that we will be able to more carefully understand the complex issues and raw passions that drive this debate.

The three drafts before us today each impose a slightly different regulatory structure for states to abide by regarding interstate and international waste. I believe today's witnesses will help us to survey the strengths and weaknesses of these bills from both public and private perspectives. Hopefully, together we can identify certain places in legislation that can either be hurtful or helpful to creating a safe, efficient, environmentally-responsible, and cost-effective solid waste market and dis-

posal system in our country. I thank them for coming and look forward to their input.

Mr. GILLMOR. Well, we are very pleased to have two of our colleagues with us, Senator Stabenow, Congresswoman Miller and as an Ohioan, let me stay from the great State of Michigan, we would like to welcome you and we will go first to Senator Stabenow.

STATEMENT OF HON. DEBBIE STABENOW, A UNITED STATES SENATOR FROM THE STATE OF MICHIGAN

Senator STABENOW. Well, thank you, Mr. Chairman. It is great to be here with Congresswoman Miller, and I thank you very much for hosting this meeting—and Ranking Member Solis, thank you to both of you. Mr. Chairman, I very much appreciated your opening statement and comments. This is an extremely important issue, not just for Michigan, but for other States as well, and I look forward to working with all of you. I believe that there is a way to write legislation that will allow States such as Maine or areas such as New York to be able to maintain their current relationships, and at the same time, allow States like Michigan or other local communities to be able to object when, in fact, there is a case to be made. And we believe that there certainly is in Michigan.

I also want to thank Congressman Dingell, as always, for his leadership on this issue. I am proud to be a cosponsor of S. 199, which is the Senate companion bill to Congressman Dingell's bill, H.R. 411. Senator Levin and I are both very committed, if the committee chooses, the subcommittee and, subsequently, the House finds in its wisdom that there is support to pass legislation, in particular along the lines of 411; but whatever we can do, whatever is the best approach that allows us to move forward and solve the problem, we intend to vigorously support and do everything that we can in the Senate to work with you to pass this into law.

I have also introduced S. 383, the Canadian Waste Import Ban of 2003, which is based on the same principles as H.R. 411. I am also pleased that H.R. 411 has strong support on the committee, and I want to thank Congressman Bart Stupak, who is always a champion on these issues, and Congressman Mike Rogers, as well, for their commitment to the issue and their cosponsorship of the bill, 411, as well as other legislation.

Last year, Michigan received almost 3.5 million tons of municipal solid waste from outside the State, more than double the amount that was imported in 1999. And one of the reasons we come to you now is because of the tremendous increase that is occurring in the waste. This waste accounts for about one-fifth of Michigan's total trash and gives Michigan the unpleasant distinction of being the third largest importer of waste in the United States.

My colleagues may be surprised to know that the biggest source of this waste was not another State, but was in fact our good friends to the north, Canada. More than 57 percent of the waste that was dumped in Michigan in 2002 was from Ontario, Canada, and these imports are growing rapidly, which is of tremendous concern to the people of Michigan.

On January 1, 2003, as another Ontario landfill closed its doors, the city of Toronto switched from dumping two-thirds of its trash to dumping all of its trash, 1.1 million tons to Michigan landfills.

The city of Toronto is also currently in the process of finalizing a 4-year contract to ship human waste and sewage sludge to a Michigan landfill. Not only does this waste dramatically increase or decrease Michigan's own landfill capacity, but when we all think about the challenges of siting landfills and people who are willing to have a landfill in their neighborhood in order to be responsible for their own waste and the waste of their communities and their States, to find that in fact we are losing our landfill capacity at twice the rate as a result of these actions is of great concern. And it also has a tremendous negative impact on our environment and the public health of our citizens.

These trash shipments also present a threat, unfortunately, to homeland security. Currently we have over 180 truckloads of waste coming into Michigan every day from Canada. It is extraordinary when you look at these trucks that are lined up, bumper to bumper, going across the bridges. Whether it is in Port Huron at the Blue Water Bridge or the Ambassador Bridge they travel through the busiest parts of metro Detroit.

We have even received reports that trash shipments are now crossing the International Bridge in Sault Saint Marie on the Upper Peninsula. In addition to causing traffic delays and filling our water or our air with the stench of the exhaust and garbage, these trucks are also presenting a security risk at our Michigan-Canadian border, since, by their nature, trucks full of garbage are much harder for Customs agents to inspect than traditional cargo, even though they certainly are doing their very best to inspect thoroughly.

And as has been indicated earlier, on April 16, 2003, Sumpter Township police officials arrested the driver of a Canadian trash truck at a Michigan landfill after he had crossed the Michigan Canadian border with more than 50 pounds of drugs inside of his truck.

Additionally, Canadian trash trucks carrying radioactive materials, most likely medical waste, have been turned back at U.S. ports of entry no less than five times, and it has been reported and you will hear more specifics today about a trash truck containing bags of untreated blood that was stopped at the Ambassador Bridge because it was literally dripping blood. And we very much appreciate the fact that Customs—and we have a Customs official here who can speak to the ability and the hard work that caused them to be able to stop this.

We have addressed some of the Homeland Security concerns that these shipments present in the fiscal year 2003 supplemental appropriations bill, which was signed into law in April. It includes a provision that I offered as an amendment, directing Customs to inspect all Canadian trash trucks that cross the Blue Water Bridge and the Ambassador Bridge and requiring Customs to have radiation equipment in place at these ports of entry by May 2003, which we now have.

But, again, this is not a complete inspection. It is a very, very difficult to completely inspect the trucks.

I will continue to fight to make our borders safer, but ultimately, Mr. Chairman, I believe it is the EPA's responsibility to stop the trash shipments. Michigan already has protections contained in the

international agreement between the United States and Canada. We already have an agreement. But, unfortunately, enforcement provisions are not being utilized; in fact, they are being ignored.

Under the agreement concerning the transboundary movement of hazardous waste, which was entered into in 1986, shipments of waste across the Canadian U.S. border require government-to-government notification. The EPA, as the designated authority for the United States, would receive the notification and then have 30 days in which to consent or object to the shipment. To date, the EPA has not enforced these notification provisions and has never been notified of a Canadian trash shipment. By failing to enforce this treaty, the EPA is not only failing to address the environmental safety and the public health hazards that these Canadian waste shipments present, but they are ignoring the very strong opposition of the citizens of Michigan.

We would like the EPA to work with us and to object on our behalf, which they have the authority to do. In early June, I started an on-line petition drive on my Web site to ask the EPA administrator to enforce the treaty and to stop the Canadian waste shipments into Michigan. The response I received, Mr. Chairman, has been truly extraordinary. More than 2000 people signed the petition within the first 24 hours. And as of yesterday, as indicated on the charts where we have listed, in very small print, all of the individuals' names, 800,416 people have signed my petition and that number continues to grow. The reason I mention this is because it demonstrates how strongly people in Michigan feel and how concerned they are.

To give you an idea of what that number means, 81,416 people would completely fill every seat in Detroit's Tigers Comerica Park twice. This is truly a State-wide issue. Residents from every county in Michigan, all 83 counties, have expressed their opposition to the trash shipments and have signed the petition. I plan to present these petitions to the new EPA administrator whenever he or she is nominated.

H.R. 411, Mr. Chairman, would give Michigan residents the protection they are entitled to under this bilateral treaty. The bill would give the EPA the authority to implement and enforce this treaty, and it would create criteria for the EPA's determination of whether or not to consent to a shipment, including the State's views on the shipment, which are very important. If the State did not object, that would be a very strong consideration; and, in fact, I believe the bill could be written in a way to use the State's position as the basis to object or not to object. They also would be able to object based on the impact on landfill capacity, air emissions, public health and the environment.

Given the lack of agreement on whether H.R. 382, the Solid Waste International Transportation Act would be in violation of NAFTA. I believe that H.R. 411 provides the most immediate and effective solution to this growing Canadian trash problem. However, certainly, whatever strategy works, not only can pass, but can be implemented, is what I know all of us from Michigan would support.

These waste shipments, Mr. Chairman, need to be stopped, and I am here on behalf of the citizens from Michigan to thank you

very much for this hearing and to ask that you join with our colleagues in the House and the Senate, both sides of the aisle, in finding a solution that will work for us. Thank you.

[The prepared statement of Hon. Debbie Stabenow follows:]

PREPARED STATEMENT OF HON. DEBBIE STABENOW, A U.S. SENATOR FROM THE STATE OF MICHIGAN

I want to thank Chairman Gillmor and Ranking Member Solis for holding this hearing. This is an extremely important issue not just for Michigan but many other states. I look forward to working with all the Committee members on this important issue. I would also like to thank Congressman Dingell for his leadership on this issue. I am proud to be a co-sponsor of the *S. 199,* the Senate companion bill to Congressman Dingell's bill, *H.R. 411.* I have also introduced, *S. 383, the Canadian Waste Import Ban of 2003,* which is based on the same principles as *H.R. 411.* I am also pleased that *H.R. 411* has strong support on this committee, and I want to thank Congressman Stupak and Congressman Rogers for their commitment to this issue and their co-sponsorship of the bill.

Last year, Michigan received almost 3.5 million tons of municipal solid waste from outside the state, more than double the amount that was imported in 1999. This waste accounts for about one-fifth of Michigan's total trash, and gives Michigan the unpleasant distinction of being the third largest importer of waste in the United States.

My colleagues may be surprised to know that the biggest source of this waste was not another state, but our neighbor to north, Canada. More than 57% of the waste that was dumped on Michigan in 2002 was from Ontario, Canada, and these imports are growing rapidly. On January 1, 2003, as another Ontario landfill closed its doors, the City of Toronto switched from dumping two-thirds of its trash, to dumping all of its trash—1.1 million tons—to Michigan landfills. The City of Toronto is also currently in the process of finalizing a 4 year contract to ship human waste and sewage sludge to a Michigan landfill.

Not only does this waste dramatically decrease Michigan's own landfill capacity, but it has a tremendous negative impact on Michigan's environment and the public health of its citizens. These trash shipments also present a threat to homeland security. Currently, 180 truckloads of waste come into Michigan each day from Canada. These trucks cross the Ambassador Bridge and Blue Water Bridge and travel through the busiest parts of Metro Detroit. We have even received reports that trash shipments are crossing on the Soo International Bridge in the U.P. In addition to causing traffic delays, and filling our air with the stench of exhaust and garbage, these trucks also present a security risk at our Michigan-Canadian border, since by their nature trucks full of garbage are harder for Customs agents to inspect then traditional cargo.

On April 16, 2003, Sumpter Township police officers arrested the driver of a Canadian trash truck at a Michigan landfill after he had crossed the Michigan-Canadian border with more than 50 pounds of drugs inside of his truck. Additionally, Canadian trash trucks carrying radioactive materials, most likely medical waste, have been turned back at U.S. ports of entry no less than five times, and it has been reported that a trash truck containing bags of untreated blood was stopped at the Ambassador Bridge because it was literally dripping blood. Unfortunately, these incidents only represent what Customs has been able to detect and stop from crossing into Michigan.

We have addressed some of the homeland security concerns that these shipments present. The FY 2003 Supplemental Appropriations bill which was signed into law in April, included a provision that I offered as an amendment directing Customs to inspect all Canadian trash trucks that cross the Blue Water Bridge and the Ambassador Bridge, and requiring Customs to have radiation equipment in place at these ports of entry by May 2003. I will continue to fight to make our borders safer, but ultimately it is the EPA's responsibility to stop these trash shipments.

Michigan already has protections contained in an international agreement between the United States and Canada, but they are being ignored. Under *the Agreement Concerning the Transboundary Movement of Hazardous Waste,* which was entered into in 1986, shipments of waste across the Canadian-U.S. border require government-to-government notification. The EPA as the designated authority for the United States would receive the notification and then would have 30 days to consent or object to the shipment. To date, the EPA has not enforced these notification provisions and has never been notified of a Canadian trash shipment.

By failing to enforce this treaty, the EPA is not only failing to address the environmental, safety and public health hazards that these Canadian waste shipments present, but they are ignoring the strong opposition of the citizens of Michigan. In early June, I started an on-line petition drive on my website to ask the EPA Administrator to enforce this treaty and to stop the Canadian waste shipments. The response I have received has been truly extraordinary. More than 12,000 people signed the petition within the first 24 hours. And as of yesterday, 81,416 concerned citizens have signed my petition and that number continues to grow. To give you an idea of what that number means. 81,416 people would completely fill every seat in Detroit Tigers' Comerica Park—*twice!* And this is truly a state-wide issue. Residents from every county in Michigan—all 83—have expressed their opposition to these trash shipments and signed my petition. I plan to present these petitions to the new EPA Administrator whenever he or she is nominated.

H.R. 411 would give Michigan residents the protection they are entitled to under this bilateral treaty. The bill would give the EPA the authority to implement and enforce this treaty, and it would create criteria for the EPA's determination of whether or not to consent to a shipment, including the state's views on the shipment, and the impact on landfill capacity, air emissions, public health and the environment. Given the lack of agreement on whether *H.R. 382, the Solid Waste International Transportation Act,* would be in violation of NAFTA, I believe that *H.R. 411* provides the most immediate and effective solution to this growing Canadian trash problem. These waste shipments need to be stopped, and they have been ignored for far too long by the EPA, at the expense of the health and welfare of Michigan families.

Mr. GILLMOR. Thank you, Senator.

Congresswoman Miller.

STATEMENT OF HON. CANDICE S. MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mrs. MILLER. Thank you, Mr. Chairman. I certainly appreciate your having this hearing today, and I want to thank Ranking Member Solis, as well, and all the committee members; and I certainly appreciate Senator Stabenow coming out today and taking time for her comments.

Today, this hearing is on an issue that my State of Michigan has been talking about for decades, literally decades, and that is Canadian trash. This issue has been debated by the Congress for over 20 years, but today we are still searching for the right solution to this.

I have served, actually, on my county's solid waste planning committee, so I am very familiar with the volatile issue of solid waste disposal; and after much debate, we finally agreed on a comprehensive plan to take care of our own waste, because that was the responsible thing to do. In fact, every county in the State of Michigan has an approved solid waste—comprehensive solid waste plan which has been approved by the State as well.

It took us a decade to make those plans, and we thought we had contemplated every possibility, but we never contemplated that the entire city of Toronto would be sending us any of their trash, let alone 100 percent of it. But that is actually Toronto's solid waste plan.

That's the solid waste plan for much of Canada, and obviously it is clearly in conflict with our plan.

Each and every day, hundreds of huge semi trucks cross the border from Canada into Michigan loaded with garbage. In 2001, these trucks carried more than 6.5 million cubic yards of garbage into my State; and last year, as the Senator mentioned, that number increased dramatically, the vast majority of it crossing at the Blue

Water Bridge, which is in the heart of my congressional district. These trucks are clogging our border crossings, and are an incredible safety hazard, as well, as on our roadways; not to mention the bad roads that we already have and the wear and tear these trucks are creating.

You are going to hear today from officials from my State that will detail various items found in the Canadian trash. As Representative Rogers mentioned, for instance, this trash has been found to include such things as PCBs, medical waste, even soiled coffin waste. Additionally, Michigan really does pride itself on having one of the most restrictive bottle and can return laws in the Nation. Of course, we enacted these to promote recycling and to keep them from filling up our landfills. Yet the Canadian trash does not meet our standards, and Canadian trash brimming with this kind of waste is filling our landfills at an alarming rate.

In Michigan, we have planned for and approved enough space in our own landfills to absorb about 20 years of our own waste. But with the continuing flow of Canadian trash entering Michigan, this timeframe is literally cut in half.

Let us not forget that Michigan, known as a Great Lakes State, has that, of course, because we are surrounded by the Great Lakes, which comprise actually one-fifth of the fresh water supply of our entire planet. And I think the worst thing about this situation is that Michigan State and local officials are powerless to do anything to solve this problem.Certainly it is more than appropriate for Michiganians to look to their Federal Government to protect them from the bad behavior of another country.

Now, I recognize that some States do want the ability to import trash; and I have no problem with that. I am a very strong advocate of State's rights. I believe that every State should have the ability to do what is right for them, for their people. State's rights should always be upheld all the time, every time.

On this issue, however, the people of my State have spoken out loud and clear. They want to stop the importation of Canadian trash, and for all of these reasons, I am a very strong supporter of H.R. 382, sponsored by my colleague from Michigan, Representative Mike Rogers.

This bill would simply allow individual States to either choose to accept or not to accept another nation's trash into their landfills, and I can assure you that, given the opportunity, the Michigan legislature would quickly enact legislation to ban Canadian trash. In fact, in a State of almost 10 million people, I think you would be very hard-pressed to find anyone who did not consider themselves to be an environmentalist. But this trash and the damage that it is doing to our landfill capacity certainly threaten our ability to maintain a clean environment.

In addition, and the Senator spoke to this as well, but since the absolutely horrific attacks on our Nation of 9/11, the thought that terrorists may use these trucks as vehicles to transport materials that could be used in an attack on our Nation cannot be dismissed. Nobody is regulating this trash. Nobody is inspecting it. And certainly Canada's import in trash represent a hole in our national security.

The Blue Water Bridge is the third busiest commercial artery in the northern tier of our Nation. We can just think about an incident that might shut us down and how they could crush the flow of goods on this bridge, having a huge negative impact on our economy and our national trade.

The time has come to do something about this problem, and the people of Michigan are demanding action. I realize again that there are problems associated with this issue. Many States are exporters of trash, as has been mentioned, and many are importers and these States want the ability to continue to ship trash from State to State. Fine. But of all the members of the U.S. House of Representatives, there is not one on that floor who represents the country of Canada.

This bill focuses on the ability of individual States to ban the importation of foreign trash, and I believe this is a reasonable approach. Canada is a great Nation. They have always been our ally. They are our neighbors; they are our friends. However, just as the people in Washington, DC, might go to Alexandria or Georgetown for lunch, in my district we go to Sarnia, we go to Windsor because it is that close and we have always felt so welcome, because our good friends, the Canadians, have always been our close neighbors.

Just this year, the citizens of Windsor demanded that these huge trash hauling trucks be rerouted and sent across the Blue Water Bridge into the United States because they said they did not want to see nor did they want to smell these trucks or deal with the impact on their beautiful city. As it was reported in the media, they said it was just too gross. So they sent them into our neighborhoods to be dumped into our beautiful State, and that is certainly not very neighborly.

It is time to correct the situation. It is past time for the U.S. Congress to act on this issue. It is time to allow the voices of our individual States to be heard on this important issues, as well. Mr. Chairman, again, I am certainly grateful for your leadership on this issue and allowing the debate to move forward. I thank each and every member of the committee for your thoughtful consideration of this very important legislation.

Thank you so much for your time.

[The prepared statement of Hon. Candice S. Miller follows:]

PREPARED STATEMENT OF HON. CANDICE S. MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Thank you Mr. Chairman, Ranking Member Dingell and members of the Committee.

Today this committee is holding a hearing on an issue that my state of Michigan has been talking about for decades, Canadian Trash. This issue has been debated by the Congress for over 20 years, but today, we're still searching for the right solution.

I served on my counties solid waste planning committee, so I'm very familiar with the volatile issue of solid waste disposal. After much debate, we finally agreed on a comprehensive plan to take care of our own waste, because that was the responsible thing to do. Every County in Michigan has an adopted solid waste plan, approved of by the State. It took us a decade to make the plan. And we thought we had contemplated every possibility. But we never contemplated that the entire city of Toronto would be sending us any of their trash, let alone 100 percent of it.

But that is Toronto's solid waste plan. That is the solid waste plan for much of Canada. And obviously, it is clearly in conflicts with ours. Each and every day, hundreds of huge semi trucks cross the border from Canada into Michigan loaded with garbage.

In 2001, these trucks carried more than 6.5 million cubic yards of garbage into my state, last year that number increased dramatically, the vast majority of it crossing the Blue Water Bridge in Port Huron, which is in the heart of my district.

These trucks clog our border crossings and are an incredible safety hazard on our roadways, not to mention the wear and tear on already bad roads.

You will hear today from officials from my state that will detail various items found in Canadian trash that pose a threat to our environment and the health of our people.

For instance, this trash has been found to include such things as PCB's and medical waste, even soiled coffin waste. Michigan prides itself on having one of the most restrictive bottle and can return laws in the nation which was enacted to promote recycling and to keep them from filling up our landfills, and yet the Canadian trash does not meet our strict standards.

But Canadian trash, brimming with this kind of waste, is filling our landfills at an alarming rate.

In Michigan, we have planned for and approved enough space in our landfills to absorb about 20 years of our own waste. With the continuing flow of Canadian trash entering Michigan, that time frame is cut in half.

Let us not forget that Michigan is known as the "Great Lakes State" because it is surrounded by the Great Lakes which comprises fully ⅕ of the fresh water supply of the entire planet.

I think the worst thing about this situation is that Michigan state and local officials are powerless to do anything to solve this problem. Certainly it is more than appropriate for Michiganians to look to their Federal Government to protect them from the bad behavior of another country.

I recognize that some states do want the ability to import foreign trash, and I have no problem with that. I am a strong advocate of states' rights, and believe every state should have the ability to do what is right for them and their people. States' rights should always be upheld, all the time and every time.1On this issue the people of my state have spoken out loud and clear. They want to stop the importation of Canadian trash.

For all of these reasons I am a strong supporter of H.R. 382, sponsored by my colleague from Michigan, Representative Mike Rogers. This bill would simply allow individual states to either choose to accept or not to accept another nations' trash into their landfills.

I can assure you that if given the opportunity, the Michigan legislature would quickly enact legislation to ban Canadian trash.

In our state of almost 10 million people, you would be hard pressed to find anyone who is not concerned about the environment.

This trash—and the damage it does to our landfill capacity—seriously threaten our ability to maintain a clean environment.

In addition, since the absolutely horrific attacks of September 11th, the thought that terrorists may use these trucks as vehicles to transport materials that could be used in an attack on our nation cannot be dismissed.

In February, I wrote an op-ed for the Detroit News, raising the issue of how Canadian trash imports undermine our homeland security efforts, because of the endless possibility of who knows what, placed by terrorists into one of these trash trucks.

Nobody's regulating it. Nobody's inspecting it, and certainly, Canada's imported trash represents a hole in our national security.

The Blue Water Bridge is the third busiest commercial artery in the northern tier of our nation. We can just think about an incident that might shut it down, and how that could crush the flow of goods on this bridge, having a huge negative impact on our economy and our national trade.

All of this just because Michigan is forced to accept a product that practically no one in the state wants. The time has come to do something about this problem, and the people of Michigan are demanding action. I realize that there are problems associated with this issue. Many states are exporters of trash and many are importers, and these states want the ability to continue to ship trash from state to state.

Fine. But of all the members of the U.S. House of Representatives, not one represents Canada and this bill focuses on the ability of individual states to ban the importation of foreign trash. I believe this is a reasonable approach.

Canada is a great nation, a nation that has always been our ally, our neighbor and our friend. The Canadians are truly one of the greatest cultures, greatest societies the world has ever seen.

Just as people in Washington DC might go to Alexandria or Georgetown for lunch, in my district, we go to Windsor or Sarnia, it is so close and we have always felt so welcome.

Because our good friends, the Canadians, have always been our close neighbors.

This year, the citizens of Windsor, demanded that these huge trash hauling trucks, be rerouted, and sent across the Blue Water Bridge, into the United States, because they said, they did not want to see or smell the trucks, or deal with their impact on their beautiful city. As it was reported in the media, they said it was "too gross"

So they sent them into our neighborhoods, to be dumped in our beautiful state.

That is certainly not very neighborly. It is time to correct this situation. It is past time for the U.S. Congress to act on this issue. It is time to allow the voices of our individual states to be heard on this important issue.

Mr. Chairman, I am grateful for your leadership in allowing this debate to move forward. I thank each and every member of the committee for your thoughtful consideration of this important legislation.

Mr. GILLMOR. Thank you very much, Congresswoman and senator. We very much appreciate your testimony. Thank you.

We have one vote—I think it's only going to be one vote—on the floor. We will recess the committee, and I would ask the members to come right back if there is one vote so that we can proceed with the second panel, which is Mr. Springer of the EPA.

The committee stands in recess.

[Brief recess.]

Mr. GILLMOR. The committee will come to order. We are going to go to Mr. Springer, the second panelist. Let me announce to our other witnesses, to the extent you can when it is your turn, if you could limit yourselves to 5 minutes in your verbal remarks, because all of your statement will be part of the record. We are likely to have more procedural votes in the House of Representatives as the day continues, which will be disruptive and also cut into the time that we have available. So I simply want to make everyone aware of that.

Mr. GILLMOR. And we will go to Mr. Robert Springer, who is the Director of the Office of Solid Waste, the Environmental Protection Agency. Mr. Springer.

STATEMENT OF ROBERT SPRINGER, DIRECTOR, OFFICE OF SOLID WASTE, ENVIRONMENTAL PROTECTION AGENCY

Mr. SPRINGER. Thank you. Good afternoon, Mr. Chairman and members of the subcommittee. I am, as just indicated, Robert Springer, Director of the EPA's Office of Solid Waste. I am pleased to be here today to discuss the municipal solid waste issues both within the U.S. and internationally.

In my prepared remarks I was going to cover a couple of different issues. I will try to shorten those so that what appear to be the most salient matters are brought forward at this time.

There is in my prepared remarks a description of how the hazardous waste regulations under EPA and the municipal regulations that EPA has put forward are handled, and I offer those for your reference.

I want to shift then, rather than go through all of that, over to what is happening today on international waste and where we are with that.

So, in the current regulatory system to address risk posed by wastes that are transported in interstate and international commerce in the U.S., there is significant movement of both hazardous waste and municipal solid waste across State borders. It is EPA's position that the most effective way to control risks posed by inter-

state management of waste is through a strong domestic regulatory program.

The U.S. has a regulatory framework in place that is designed to protect human health and the environment from any risks posed by the disposal of hazardous waste or municipal solid waste, whether those wastes are generated within or outside the United States.

With respect to wastes that are generated outside the U.S., it is important to note that more than 90 percent of the waste that is exported from the U.S. goes to Canada, and, similarly, virtually all of Canada's waste exports are destined for the U.S. That is why the agreement between the Government in Canada and the Government of the United States of America concerning transboundary movement of hazardous waste is critical to both countries. This agreement was established by the two Federal Governments in 1986. It ensures that human health and the environment are protected through government oversight of hazardous waste shipments between the two countries.

The agreement was based on a mutual knowledge that the two countries have very advanced, effective, regulatory programs in place to address waste management so the human health and the environment are protected.

I will offer a description of how the system works. Any person who intends to export a hazardous waste must first inform their Federal Government and provide specific information including the types and quantities of waste involved, the location where the waste will cross the border, and the name of the facility where the waste is destined to arrive.

The environmental agency of the exporting country then provides this information to the environmental agency in the importing country and requests consent for the proposed shipment. Only after consent is granted by the importing country may the exporter proceed with the waste shipment. Typically the consent for waste export covers multiple shipments for a 1-year period.

The primary role of the environmental agencies in the notice and consent process is to ensure that the waste will be properly managed. For example, when Canada exports hazardous waste to the U.S., EPA will consult directly with the appropriate State agency or will review previously submitted State information to confirm that the receiving facility is permitted to manage all of the specific waste identified in the notice and that the State believes the waste will be handled consistent with Federal and State requirements.

If this is not the case, we would deny the entry of the waste into the United States. This same notice and consent scheme is what the U.S. and Canada intend to use for municipal solid waste shipments once both countries have the necessary legal authority.

The other area I would like to cover is how EPA is working to obtain the necessary authorities to appropriately monitor the municipal solid waste shipments between the U.S. and Canada.

In 1992 the U.S. and Canada amended the bilateral agreement to include municipal solid waste, pending enactment of necessary legislation. Past U.S. administrations took the position that the legislative vehicle for obtaining the statutory authority under the Resource Conservation and Recovery Act to implement the munic-

ipal solid waste provision would be Basel Convention implementing legislation.

EPA is again working with other Federal agencies to draft Basel Convention implementing legislation that would provide us with the necessary authority for municipal solid waste imports and exports.

Canada is developing regulations based on a recent amendment to the Canadian Environmental Protection Act that will enable them to provide notice and consent for municipal solid waste. Environment Canada informs us that its regulatory process should be completed in about a year.

Regarding the matter of homeland security, after the terrorist attacks of September 11, 2001, EPA initiated a comprehensive analysis of oversight provided by Customs operations at the borders. I was in Region 5 at the time and directed my staff to do that along the U.S./Canadian border as well.

Following that, there has been a cooperative effort between the Department of Homeland Security and the Bureau of Customs with EPA to strive to ensure that the U.S. remains vigilant in protecting our people and environment.

In summary, EPA is continuing to address these important waste management issues and we look forward to continuing to work with Congress in the future on legislation to implement the Basel Convention. I would like to thank the Chairman and subcommittee members for inviting me here to speak today.

[The prepared statement of Robert Springer follows:]

PREPARED STATEMENT OF ROBERT SPRINGER, DIRECTOR, OFFICE OF SOLID WASTE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Good Afternoon, Mr. Chairman and members of the Subcommittee. I am Robert Springer, Director of EPA's Office of Solid Waste. I am pleased to be here today to discuss municipal solid waste issues both within the U.S. and internationally. I will provide an overview of three aspects of our national waste management program that are relevant to today's discussion. First, I will provide a broad summary of EPA's authority to control wastes under the Resource Conservation and Recovery Act (RCRA) within the United States. Second, I will describe the current system of oversight for international hazardous waste shipments between the U.S. and Canada. Last, I will discuss how EPA is working to obtain the necessary authorities to appropriately monitor the municipal solid waste shipments between the U.S. and Canada.

HAZARDOUS WASTE CONTROL

Regarding the first matter—RCRA establishes separate statutory frameworks for the regulation of hazardous solid waste under Subtitle C, and nonhazardous waste, including municipal solid waste, under Subtitle D. Pursuant to the very specific statutory mandate of Subtitle C, EPA has constructed a comprehensive and rather prescriptive regulatory system for "cradle-to-grave" controls on the generation, storage, transportation, and disposal of hazardous waste. This program includes a permitting system for all waste management facilities. It specifies facility design, operation, closure and post-closure standards, treatment standards prior to land disposal, and extensive corrective action provisions (including clean up) to address releases of hazardous constituents from facilities that manage hazardous waste. EPA is responsible for setting protective national standards and retains a strong oversight role in implementation of state programs.

NONHAZARDOUS WASTE

Subtitle D establishes a very different framework for the various nonhazardous wastes, including municipal waste, covered by this Subtitle. EPA is responsible for setting national standards applicable to disposal of nonhazardous waste, but the states retain the primary responsibility for implementation and enforcement of the

national disposal regulations and for all other aspects of nonhazardous waste management. This is an appropriate framework given that domestic management of nonhazardous waste has historically been a state and local responsibility. In the 1980's, states were required by RCRA to develop solid waste plans to specify the state approach for environmentally sound solid waste management. Those plans continue to serve as a base for solid waste operations in each state. In 1991, EPA established comprehensive national standards applicable to municipal solid waste landfills. RCRA provides only a limited "back up" role for EPA in the implementation and enforcement of the regulations applicable to municipal solid waste landfills. It does so by granting EPA the authority to approve the adequacy of state permitting programs, and, in the event a program is found to be inadequate, provides EPA with enforcement authority only.

RECYCLING

In addition to establishing national standards applicable to the disposal of nonhazardous waste, EPA has historically played a leadership role in the area of recycling of municipal solid waste and other nonhazardous wastes. We have done so by supporting the development of markets for recyclable materials through procurement policies and by establishing recycled content guidelines. We have also provided information and technical assistance to states and localities to assist them in establishing recycling and resource conservation programs. Additionally, we have provided recycling information to the public so that individuals can incorporate a reuse and recycling ethic into their daily lives. EPA has recently renewed our efforts in this area by establishing the Resource Conservation Challenge (RCC). The goal of the RCC is to cultivate innovative and cost-effective recycling and waste minimization efforts and realize the potential of using waste as a safe and viable energy source. At the same time, we intend to raise consumer environmental awareness so that the public can become better environmental stewards.

WASTE TRANSPORTATION

With that as background, I would now like turn to the second topic area, and share with you how our current regulatory system addresses the risks posed by wastes that are transported in interstate and international commerce.

Within the U.S., there is significant movement of both hazardous wastes and municipal solid wastes across state borders. It is EPA's position that the most effective way to control risks posed by interstate management of wastes is through a strong domestic regulatory program. The U.S. has a regulatory framework in place designed to protect human health and the environment from any risks posed by the disposal of hazardous or municipal solid waste whether those wastes are generated within or outside the U.S.

INTERNATIONAL WASTE

With respect to wastes that are generated outside the U.S. it is important to note that more than 90% of international waste movements involving the U.S. and Canada is with each other. That is why the *Agreement Between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous Waste* is critical to both countries. This agreement was established by the two federal governments in 1986 to ensure that human health and the environment are protected through government oversight of hazardous waste shipments between the two countries. The agreement was based on the mutual knowledge that the two countries have very advanced, effective regulatory programs in place to address waste management so that human health and the environment are protected. I'll offer an example of how the system works.

Any person who intends to export a hazardous waste must first inform their Federal government and provide specific information, including the types and quantities of waste involved, the location where the waste will cross the border, and the name of the facility where the waste is destined. The environmental agency of the exporting country then provides this information to the environmental agency in the importing country and requests consent for the proposed shipment. Only after consent is granted by the importing country may the exporter proceed with the waste shipment. Typically the consent for waste export covers multiple shipments for a one year period.

The primary role for the environmental agencies in the notice and consent process is to ensure that the waste will be properly managed. For example, when Canada exports hazardous waste to the U.S., EPA will either consult directly with the appropriate state agency or will review previously-submitted state information to confirm that the receiving facility is permitted to manage all of the specific wastes iden-

tified in the notice, and that the state believes the wastes will be handled consistent with federal and state requirements. If this is not the case, we would deny entry of the waste into the U.S. It is this same notice and consent scheme that the U.S. and Canada intend to use for municipal solid waste shipments once both countries have the necessary legal authorities.

CANADIAN MUNICIPAL SOLID WASTE

The last area I want to discuss is how EPA is working to obtain the necessary authorities to appropriately monitor the municipal solid waste shipments between the U.S. and Canada.

In 1992, the U.S. and Canada amended the bilateral agreement to include municipal solid waste, pending enactment of necessary legislation. Past administrations took the position that the legislative vehicle for obtaining the statutory authority under RCRA to implement the municipal solid waste provisions would be Basel Convention implementing legislation. EPA is now working with other federal agencies to draft Basel Convention implementing legislation that would provide us with the necessary authority for municipal solid waste imports and exports.

Canada is developing regulations based on recent amendments to the Canadian Environmental Protection Act that will enable them to provide notice and consent for municipal solid waste. Environment Canada informs us that its regulatory process should be complete in about a year.

TORONTO'S MUNICIPAL SOLID WASTE

Let me now briefly address the current situation concerning Toronto's municipal solid waste that is being sent to Michigan landfills for disposal. This Administration has endeavored as a priority to respond to and closely engage members of Congress and their staff, the State of Michigan (including the Governor), concerned citizens in Michigan, Canadian counterparts, and others regarding the municipal solid waste shipments coming from Toronto. Due to the concerns expressed by the citizens and elected officials in the State, the Michigan Department of Environmental Quality has examined the waste arriving from Canada, and has inspected the operations at the receiving landfills. The State agency has repeated this scrutiny on a number of occasions. Preliminary results from recent Michigan Department of Environmental Quality inspections indicate that the shipments from Toronto are managed as well as similar shipments originating within the State. The landfill inspections have confirmed that the composition of the waste received from Toronto is typical of municipal solid waste, and the waste is suitable for disposal in Michigan landfills.

HOMELAND SECURITY

There is one other aspect of international waste movements I wish to share with you. After the terrorist attacks of September 11, 2001, EPA initiated a comprehensive analysis of oversight provided by Customs' operations at the border regarding chemicals, wastes, and other materials subject to RCRA, Toxic Substances Control Act, and Federal Insecticide, Fungicide, Rodenticide Act. This cooperative effort continues today with the Department of Homeland Security as we strive to ensure that the US remains vigilant in protecting our people and our environment.

CONCLUSION

In summary, EPA is continuing to address these important waste management issues, and we look forward to working with Congress in the future on legislation to implement the Basel Convention. I would like to thank the Chairman and Subcommittee members for inviting me to speak here today.

Mr. GILLMOR. Well, thank you very much, Mr. Springer. Let me start out with some questions on an agreement with Canada and the draft of the Basel Convention language. We have been waiting and waiting and waiting. I would point out that your counterpart before this Committee on Small Business made almost identical statements back in 1991, stating that Canadian ratification would occur by the next summer. So we hope this can be a priority. The committee is anxious to move forward.

Mr. SPRINGER. Regarding the legislation, given the conversations that I have been in, I am somewhat optimistic that we will complete informal discussions soon and begin formal agency review

shortly. So I would hope then that we can move this legislation forward.

Mr. GILLMOR. Let me ask you a question. As I understand it from your testimony, I wasn't clear if once this is in place that it could be structured so that the importing country would have discretion as to whether or not to accept. Is that your understanding, that the importing country would?

Mr. SPRINGER. Provided that the shipments met the requirements of the receiving country for management of the waste. That is the current arrangement under hazardous waste, and that is expected to be the arrangement under municipal solid waste.

Mr. GILLMOR. I guess what I am getting at is could either the United States or Canada say we don't want this stuff under the agreement?

Mr. SPRINGER. Not as a general matter. It is regarded, as members here have pointed out, as a trade issue.

Mr. GILLMOR. Okay. Your testimony suggests that two decades ago, EPA went through the process of approving individual State comprehensive solid waste management plans. Do these solid waste management plans need to be reapproved by EPA?

Mr. SPRINGER. EPA no longer has the resources to do that. At the time they were originally approved, there was a grant program in place, and so our approvals came with some finances for the plans to be developed.

Since EPA no longer has that role, States have been updating those on their own. On occasion, though, we have been petitioned to look at the plans, and we have done that.

Mr. GILLMOR. Your testimony outlines the differences and responsibilities between subtitle C and D of RCRA. Since these subtitles establish a separate statutory framework for regulation of hazardous solid waste under subtitle C and nonhazardous waste under subtitle D, it seemed reasonable to conclude one type of waste is more hazardous than the other. And so the question is, Why, then, are 14 of the Nation's subtitle D landfills currently on the NPL list indicating that the contamination at those sites is worse than those at the subtitle C landfills?

And as a follow-up on that question, are any of the sites contained in States that heavily import solid waste for disposal?

Mr. SPRINGER. At the time that both the Superfund bill was passed and RCRA rules were in place, many landfills in the United States did not operate with double liners or other restrictions that since came into place. So many landfills in fact made the Superfund list because they were not built to the specifications that are in place today.

Landfills that operate today do have to meet those requirements. I am not aware of any landfills, though—I would be happy to check, Mr. Chairman, if there is one—that have been permitted and meet these design criteria that have failed and been referred to the Superfund list.

Mr. GILLMOR. Thank you, Mr. Springer.

My time has expired.

Ms. Solis.

Ms. SOLIS. Thank you, Mr. Chairman. I have several questions, too, and I guess the one that stands out the most is why has it

taken us so long? Why wait 11 years? And I would like an explanation. Also you said that there is an issue with funding and inspections. So maybe you could elaborate about that.

Mr. SPRINGER. I think there have—I am assuming—been several attempts in the past that have made it to various levels to put these provisions in place. I am not familiar with all of them. I have been in the Office of Solid Waste for 10 months. While I have been there, we have moved it forward within EPA and at the staff level with other agencies. So we are moving it forward, I hope. I am optimistic about it given what I see happening, and I look forward to bringing that forward soon.

Ms. SOLIS. When you say that the money has run out, would you be a little bit more explicit about that?

Mr. SPRINGER. There was a grant program that encouraged States to develop these plans, and once they were in place, decisions were made that those—additional money was not needed year after year to——

Ms. SOLIS. It wasn't needed or it wasn't allocated or——

Mr. SPRINGER. It was not appropriated.

Ms. SOLIS. Did the agency request——

Mr. SPRINGER. To the agency.

Ms. SOLIS. Did the agency request that appropriation?

Mr. SPRINGER. I haven't been able to speak to that——

Ms. SOLIS. Can you maybe get back to us on that?

Mr. SPRINGER. Okay.

Ms. SOLIS. And then another question I have is, Have you received any notices about shipments from Canada?

Mr. SPRINGER. None have come to us as far as I am aware. Since this data was raised, I was in Chicago in the regional office, and I was not aware of any while I was there either.

Ms. SOLIS. I don't have any other questions at this time.

Mr. GILLMOR. The gentleman from New York.

Mr. FOSSELLA. Thanks, Mr. Chairman. Just a quick question, Mr. Springer, and thank you. Are there certain types of hazardous waste that can only go to certain hazardous waste landfills; for example, electroplating sludge? Describe what that is, where it goes now, and where it would go if it all had to be disposed, for example, in the U.S.

Mr. SPRINGER. Today the U.S. ships about twice as much hazardous waste to Canada as Canada ships to us. A little less than twice. So the reason the U.S. ships to Canada is that there are more smelters, more ability to recover materials in Canada than the U.S. So if that trade did not occur, most of those wastes—because the facilities aren't here—would have to go for disposal rather than recovery or recycling. The absence of the infrastructure to manage that waste and to recover the material, there is not enough capacity here to do that, and that is the case with electronic waste.

It has just been in the news quite a bit lately. EPA is working with the electronic industry to encourage recycling of consumer electronics. And so most of those waste—most of the capacity for handling those wastes happens to be in Canada.

Mr. FOSSELLA. That is all. Thanks, Mr. Chairman.

Mr. GILLMOR. The gentleman from Michigan.

Mr. STUPAK. Thank you, Mr. Chairman. Mr. Springer, in this agreement—this was in 1992, and we are now in 2003. It has been 11 years and no notice or notification, implementation has ever been implemented. Correct?

Mr. SPRINGER. That is correct.

Mr. STUPAK. Yet doesn't article 5, section 3 of the agreement expressly provide—let me read to you: To the extent any implementing regulations are necessary to comply with this agreement, the parties will act expeditiously to issue such regulation consistent with domestic law.

Article 5.3 further and expressly provides that pending such an issue—hence your Basel Convention, as you call it—the parties will make best efforts to provide notification in accordance with this agreement where current regulatory authority is insufficient.

So when we are dealing with whether it is hazardous waste or municipal waste, notice should be given between the parties as to what is moving across this international border. Is that correct?

Mr. SPRINGER. Both parties are to do that when they have the appropriate legislation in place.

Mr. STUPAK. It also says pending that, we will make the best efforts to provide notification where current regulatory authority is insufficient. So if you don't have Basel, you still have to give notification. Isn't that correct?

Mr. SPRINGER. Sir, as far as I am aware, the answer to that is no.

Mr. STUPAK. The answer to that is no. We have got this CRS report back here in 2000 that says you have to still give notice while you are waiting for this Basel Convention. So you are saying that is incorrect?

Mr. SPRINGER. EPA would not have the authority to act on a notice if it saw one. It doesn't have the ability under law to accept or reject it.

Mr. STUPAK. Well, the authority for the—the authority to move across is this 1992 agreement, solid waste. First, in 1986, it was hazardous. They amended it in 1992 to be solid waste, municipal solid municipal waste. Correct?

Mr. SPRINGER. Mr. Congressman, I think the correct statement would be that in the agreement the parties agreed to in the future provide notice when they did this, because the Basel provisions would have blocked them from doing that, from engaging in the trade. The Basel provisions——

Mr. STUPAK. Mr. Springer, before there can be any trade, there has to be an agreement. Despite Basel or anything else, there is an agreement, right? That is, 1986 there was hazardous waste. 1992, you amend it to include municipal solid waste. And in there it says—and tell Basel, whatever Basel is, convention—what is that?

Mr. SPRINGER. The year for Basel—I am going to have to refer——

Mr. STUPAK. Well, some other time. But in the meantime, it says you are going to make the best effort to notify each other what is going on, and you even talk about in your testimony, once you approve a route it is good for 12 months. So if you have these routes that are supposed to be proved, notification, from everything I can

gather, there has never been any notification to the U.S. on where they are shipping the stuff to Canada or from Canada to the U.S., so both countries are violating the agreement.

Mr. SPRINGER. Both countries interpreted the agreement the same way, that each country needed to get the authority. Canada amended its Environmental Protection Act——

Mr. STUPAK. And would——

Mr. SPRINGER. [continuing] and on the U.S. side, a series of attempts over the years have been put in place to amend RCRA to give EPA the authority.

Mr. STUPAK. And without that authority, you are telling us they can still move waste back and forth?

Mr. SPRINGER. That's correct.

Mr. GILLMOR. The gentleman's time has expired, but the Chair would also note that the gentleman has additional time from his opening statement. So the gentleman is recognized for an additional 2 minutes.

Mr. STUPAK. Thank you, Mr. Chairman. So, to date, there has been no notice back and forth as to where these movements of waste are coming back and forth between our States?

Mr. SPRINGER. That is my understanding, Congressman.

Mr. STUPAK. And you expect now that next year sometime this will be done, this requirement of notice and all this, this implementing authority?

Mr. SPRINGER. On the Canadian side. On the U.S. side, I was indicating that I believe that soon there will be action across the executive branch to prepare legislation to come forward that work has gone on at the staff level and that that would hopefully be soon before the Congress. I can't—I don't know when the action would take place.

Mr. STUPAK. How do you enforce the hazardous material? Do you have any notice on the movement of hazardous material there?

Mr. SPRINGER. Yes. And that was what I was describing in the prepared testimony.

Mr. STUPAK. So any disagreement, they will give you notice on hazardous material, but they won't give you notice on solid waste material?

Mr. SPRINGER. On the hazardous material, we do have the authority.

Mr. STUPAK. All right. And you don't underneath solid waste?

Mr. SPRINGER. Right.

Mr. STUPAK. And even if you had the authority, you are telling us you can't enforce it anyway, because you don't have the resources to do it?

Mr. SPRINGER. I don't think I said that. I think I was referring to a question earlier about the writing of solid waste plans by State agencies and whether EPA was still soliciting those plans and reviewing those plans.

Mr. STUPAK. So whenever this agreement is in place, you expect to enforce it?

Mr. SPRINGER. Yes, sir.

Mr. STUPAK. And you are telling this committee it will be next year sometime?

Mr. SPRINGER. I don't think I indicated when, Congressman, but——

Mr. STUPAK. When do you think you are going to be able to enforce this agreement, give notice and——

Mr. SPRINGER. I think we would, following enactment, one of the possibilities is that——

Mr. STUPAK. Following enactment. When do you think the enactment is going to be done?

Mr. SPRINGER. I would look to the Congress for some direction on that.

Mr. STUPAK. Well, I have been on this committee since 1994. We have been talking about this since 1994. What more direction does EPA need from the committee?

Mr. SPRINGER. We need the statute adjusted.

Mr. STUPAK. And what suggestion is that on that statute we want adjusted? What are the adjustments you want?

Mr. SPRINGER. We will bring those forward shortly, Congressman, to allow us to do the——

Mr. STUPAK. I have been waiting since 1994. So when would you do that? When would EPA do that?

Mr. SPRINGER. I hope very soon.

Mr. STUPAK. Can you define that a little better, "soon"? It has been 9 years.

Mr. SPRINGER. The EPA is close to completing the internal review in EPA, and it will go forward across the Federal Government shortly.

Mr. GILLMOR. The gentleman from Michigan.

Mr. ROGERS. Thank you, Mr. Chairman. Thank you, Mr. Springer, for being here. We appreciate it. Congratulations on getting here 10 months ago in this job. Good job.

I just wanted to clarify one thing and follow up on something Mr. Gillmor mentioned, is that even after H.R. 411 was enacted into law—and I am all for the irritant factor—but he said you can't really deny these shipments, and really what this is is irritant to them that they have got to fill out a form and send it over; and it is quite a process, which I think is a good—any time we can irritate them for bringing trash over, good idea. But in reality, this would not allow the EPA to ban any of those trash shipments coming into the United States. Is that correct?

Mr. SPRINGER. That's correct.

Mr. ROGERS. Thank you. No further questions.

Mr. GILLMOR. The other gentleman from Michigan, the ranking member of the committee.

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy, and again I commend you for this hearing. There are three bills which are the subject of this hearing: H.R. 382, H.R. 411, H.R. 1730. What is the position of the administration on each of those bills?

Mr. SPRINGER. I am not aware that the administration has taken a position on any of the three bills.

Mr. DINGELL. When will the administration have a position?

Mr. SPRINGER. I do not know, Congressman.

Mr. DINGELL. All right. Now, it is 11 years since the United States adopted a bilateral agreement with Canada in which it has said that the countries, "will make best efforts to provide notifica-

tion of shipments of municipal waste across their respective borders from their other signatory partner."

Is there anyplace where the regulatory authority in that legislation is insufficient?

Mr. SPRINGER. Yes, sir, there is, Congressman.

Mr. DINGELL. Where? It is a treaty which has the force and effect of law. Where do you—why do you lack authority to issue the necessary regulations?

Mr. SPRINGER. Under RCRA we do not have the authority to——

Mr. DINGELL. No. No. You have an agreement here between countries. These have the force and effect of domestic law. Why have you not issued regulations on this up till now?

Mr. SPRINGER. I believe that both countries were of the same opinion regarding the agreement, that both needed to enact the law.

Mr. DINGELL. The designated authorities are listed in article 1 A of the agreement. For Canada the designated authority is the Canadian Department of the Environment; for the United States, the Environmental Protection Agency. The agreement requires government-to-government notifications where exports from Canada to the United States are involved. The Canadian Department of Environment under this would need to notify the U.S. EPA. Why has the U.S. EPA not insisted that this be done?

Mr. SPRINGER. Well, Congressman, let me go back and point out that the——

Mr. DINGELL. No. Just tell me why they do not.

Mr. SPRINGER. An agreement is an agreement and not a treaty. But as to the EPA's ability to perform this action which would have the effect on commerce, EPA would need the authority to do that. We do not have that authority today. I believe that that——

Mr. DINGELL. Will you please submit to the committee a statement of the authority that is needed?

Has the United States requested Canada to exercise best efforts to comply with the terms of the bilateral agreement, or has it not?

Mr. SPRINGER. I believe that the United States is actively engaged on the hazardous side of that agreement.

Mr. DINGELL. You heard the question. Has the United States requested that the Canadians exercise best efforts to comply with the terms of the bilateral agreement?

Mr. SPRINGER. I am not privy to that.

Mr. DINGELL. So I would assume that the answer, then, you were giving us is no.

Now, the bilateral agreement provides that the parties will act expeditiously to issue implementing regulations pursuant to the agreement. The agreement was amended to include municipal waste in 1992. It is now 2003, 11 years later. Why is this failure so apparent to implement the treaty 11 years after the agreement was made, and how is it consistent with the agreement's direction to the two parties to act expeditiously?

Mr. SPRINGER. Both sides thought that each side would have implemented Basel by now when they originally put this language forward for municipal waste.

Mr. DINGELL. When do you estimate that you will have proposed to finalize implementing regulations?

Mr. SPRINGER. Depending on what the legislation says, we may have to promulgate rules or the legislation could be self-implemented.

Mr. GILLMOR. The gentleman's time has expired, but the ranking member of the subcommittee, Ms. Solis, has 4 minutes, which she yields to the ranking member of the full committee.

Mr. DINGELL. You are very gracious. Just one finishing question. What does EPA plan to do in the future to make best efforts to comply with this treaty?

Mr. SPRINGER. EPA will soon have a proposal forward among Federal agencies and up through the system on one more attempt to have Basel provisions enacted.

Mr. DINGELL. By what date?

Mr. SPRINGER. Hopefully soon, Congressman.

Mr. DINGELL. Hopefully soon; what does that mean? We are 11 years into this agreement and nothing has been done. What does "soon" mean in that kind of a timeframe?

Mr. SPRINGER. I am relatively new to Washington, I have to say, and I hope that it is quite soon.

Mr. DINGELL. Thank you, Mr. Chairman, for your courtesy.

Mr. GILLMOR. Thank you, Mr. Springer. That concludes this round questions. We very much appreciate you coming.

Mr. SPRINGER. Thank you, Chairman.

Mr. GILLMOR. And we will call up panel 3. Senator Sikkema, Mr. Chester, Councilman Lanza, Commissioner Orlin. And Deputy Secretary DiPasquale. I hope I have pronounced that correctly.

We know that Senator Sikkema has to depart by 5:30, and we want to go directly to him so that we can hear from him. And also I think it is understood that you have agreed to answer questions in writing when members submit them, so that you can be on your way and request unanimous consent that that be the order.

And we will now go to the Senator.

STATEMENTS OF HON. KEN SIKKEMA, MAJORITY LEADER, MICHIGAN SENATE; ROBERT ORLIN, DEPUTY COMMISSIONER, NEW YORK CITY DEPARTMENT OF SANITATION; HON. ANDREW LANZA, COUNCILMAN, 51ST DISTRICT, NEW YORK CITY; STEVEN CHESTER, DIRECTOR, MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY; AND NICHOLAS A. DiPASQUALE, DEPUTY SECRETARY, OFFICE OF AIR, RECYCLING AND RADIATION PROTECTION, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. SIKKEMA. Thank you, Mr. Chairman, and members of the committee. My name is Ken Sikkema. I am Senate majority leader in the Michigan Legislature. I am here today to support a number of pieces of legislation but particularly Congressman Roger's bill, H.R. 382, which gives us authority in Michigan to regulate and, frankly, limit foreign waste.

But I also generally want to say I am going to support any legislation—you have a number of pieces of legislation in front of you—I support any legislation that gives Michigan authority to regulate out of State waste. And let me very briefly explain why this is such an important issue to Michigan.

Back in 1978 we passed our Solid Waste Act. I was a young legislative staffer in the senate at the time, and the premise of that act was threefold. No. 1, we wanted to make counties responsible for their own waste. No. 2, we wanted to protect the environment. We have these little landfills all over the place, and so we created regulation like liners, siting, et cetera, where they could be so the environment will be protected.

Now, the third reason—and this is primarily why we would like the Congress to act—is frankly we wanted to limit the number of landfills in Michigan. We wanted to reduce them and we wanted to limit them, because landfills, no matter how you engineer them, eventually cause environmental contamination; and even on top of that, they cause a lot of other problems. Nobody wants to live next to them. They cause traffic and congestion and other problems which you have already heard about today.

So we wanted to limit the number of landfills in the State. In 1988 we amended that act to allow counties to prohibit waste coming from other counties and also to prohibit waste coming from other States and other countries.

Now, as you well know, that was contested. The Fort Gratiot decision of 1992, the U.S. Supreme Court basically said, States without authority from Congress, you can't prohibit out-of-state waste because it is a commodity.

Now, I admit it is a commodity, but it is a pretty darn strange commodity. It is the only commodity I know of where you pay somebody to take it. And we have been struggling since then with how we can regulate and prohibit out-of-state waste, and you have already heard testimony as to how that is increasing.

In Michigan today, 20 percent of our landfill capacity is taken up by out-of-state waste, and over half of that is from Canada. So, you know, even if you acted just to allow us to deal with the Canadian or foreign waste, it would have a dramatic positive impact on the State of Michigan.

Now, in the interest of time, Mr. Chairman, let me just reiterate. We need Federal legislation that gives Michigan the authority to regulate out-of-state waste so that our solid waste management laws—and that our goals, that is, environmental protection in limiting the number of landfills are not compromised, because today it is compromised when 20 percent of our landfill capacity is being used by out-of-state waste.

Now, as a senate majority leader, I am planning to move legislation this fall. It will be bicameral, house and senate. I worked with the speaker on it. It is going to be bipartisan. We have Republicans and Democrats. We are working with a Democratic Governor. We are going to move a package of bills that will allow us to maintain the integrity of our Solid Waste Management Act.

Now, without going into the details of the package, it is going to probably include things like expanding the number of items that can't go in the Michigan landfills. We are probably going to enact more comprehensive recycling requirements. We are going to give the DEQ, our State agency dealing with environmental protection, more authority and more direction in terms of inspections and a number of other things.

Forty bills have already been introduced in the Michigan legislature, but my fear is—and I think it is a legitimate fear, is that without action from you all and from the Congress, the effectiveness of this bipartisan package that we are going to enact this coming fall is going to be compromised. I just don't think it is going to be that effective without you giving us the authority we need.

I think—you know, I submitted a statement and I am happy to answer questions in writing just because of the time constraint, Mr. Chairman. So I am going to end it there.

But just in conclusion, you know, we are a Great Lakes State. I hope you will appreciate our sensitivity in becoming a solid waste dumping ground when 20 percent of our landfill capacity is being used by waste that we don't generate. And it does compromise our solid waste planning.

So, Mr. Chairman and members, I appreciate the opportunity you have given me on a very hectic day for you all to be here. Thank you.

[The prepared statement of Hon. Ken Sikkema follows:]

PREPARED STATEMENT OF KEN SIKKEMA, MAJORITY LEADER, MICHIGAN SENATE

Thank you Mr. Chairman and members of the House Energy and Commerce Subcommittee. I am here at the invitation and urging of Congressman Rogers to offer my ardent support for HR 382—Congressman Rogers' proposal to afford the states express authority to regulate foreign municipal solid waste.

As you know, Michigan has a long and unique history of efforts to protect the integrity of its solid waste planning process. In 1978, the Michigan Legislature passed the state's Solid Waste Management Act in order to help provide integrity for our waste management process and to provide a suitable environment for the disposal of waste. In that act, each county was required to develop a management plan that would ensure suitable disposal. As a direct consequence, the numerous landfills in Michigan, many of which that were not operating with the latest technologies, were either closed or upgraded to provide for a long-term, responsible plan for the state. In addition, Michigan also began to focus on reduction, reuse, and recycling of its waste in an effort to reduce the amount of landfill space needed. In short, Michigan took its responsibilities seriously by investing heavily in a plan that provided for integrity of its waste management process.

One of the most significant amendments to this act occurred in 1988 and provided the authority to each county to be able to ban waste generated from outside of that county. This legislation had the effect of allowing a county to also ban the importation of out-of-state waste. As you may know, challenges to this statute ultimately led to the U.S. Supreme Court's 1992 decision in Fort Gratiot Sanitary Landfill v MDNR, which struck down the statute as violative of the Interstate Commerce Clause.

Since that time, Michigan has struggled with the issue of how to control waste shipped from out of state. With ever increasing amounts of foreign municipal solid waste coming across our borders, Michigan's wellconceived plan to provide for its own disposal options has been compromised by the inability to regulate out-of-state waste. Over the last three fiscal years, Michigan has seen foreign municipal solid waste increase from 4.2 million cubic yards in FY—2000 to 6.6 million cubic yards in FY 2002, with projections for the next year indicating an additional increase of at least 300,000 cubic yards because of new contracts. The steps taken by Michigan policymakers to develop a responsible plan through the reduction, reuse, and recycling, and the placement of its waste in landfills are jeopardized when we cannot control the amount of waste coming across our borders.

In reaction to the growing concern over how to control out of state waste, Governor Engler created an out-of-state waste task force in May of 1999. The deliberations of the Solid Waste Importation Task Force ultimately led to a recommendation that federal legislation needed to be passed to authorize states to regulate out-of-state waste.

Subsequent to the decision of the U.S. Supreme Court and the recommendations of the Task Force, numerous pieces of legislation have been introduced, including resolutions urging and imploring the federal government to pass needed legislation.

Letters have been written urging the same, and countless other communications have been sent, all asking Congress to act in the needed fashion.

I am here today to deliver two important messages.

Number one, my colleagues in the Michigan Legislature and I all appreciate and support prompt and sorely needed action on HR 382. I can tell you that resolutions, such as SR 12, expressly supporting passage of HR 382, have already been passed by the Senate, and legislation has been introduced that would take the authority you will provide the state in this legislation and immediately implement an aggressive regulatory program that will protect the state from the ever-increasing amounts of foreign municipal solid waste.

Number two, my colleagues in the Michigan Legislature and I, without meaning to sound unappreciative of these current efforts to give the states this important authority, have a bipartisan, bicameral plan being prepared that will allow us to act unilaterally to protect Michigan's borders from the waste and sludge that is coming across our international borders. We have stepped up inspections, authorized the Department of Environmental Quality to assess the sources and kinds of out-of-state waste, and conducted hearings around the state to refine a plan that will move Michigan into position to slow down the importation of waste—what I believe to be not a valuable item of commerce but an unintended negative consequence of human activities.

There have been over 33 pieces of legislation introduced this session alone dealing with this issue, and from these bills, I fully expect that a bipartisan, bicameral legislative initiative will be passed by the end of this year. From early indications, this package will contain bills that will expand the number of items banned from our landfills and set up a more comprehensive recycling program to both improve recycling in our state and enable us to scrutinize the kind of waste that is coming across our borders. This plan is a good one and mirrors what other states have done to curb out-of-state waste but is not as desirable as moving HR 382, which would give the state full authority to take more direct actions to regulate out-of-state waste.

We all know that Michigan has a lot at stake, and I believe that Michigan is not like any other state. We are the home of the Great Lakes and should not be regarded as anyone's dumping ground. We have taken the responsibilities laid out in the Michigan Constitution very seriously to protect this state's natural resources from "pollution, impairment and destruction." We have taken prudent actions in this regard as we have developed a plan for our state that ensures that we have an adequate amount of landfill capacity. This action and Michigan's patience in waiting for appropriate federal legislation should not be a signal for anyone or any entity to think that we have given a free pass to dump their waste in our state.

Let me close by saying that I sincerely appreciate your efforts in focusing on this important natural resource issue, and I also sincerely hope that the actions you take will be swift and meaningful. HR 382 is a critical piece of legislation that will give us the foundational authority to take the steps we need to protect our waste management programs and, more importantly, the health of our natural resources and the people of this state. I thank you for your time in taking my testimony and urge prompt action on this critical piece of legislation—HR 382.

Mr. GILLMOR. Thank you, Senator, and have a good trip back to Michigan.

We will go to Mr. Robert Orlin, who is the Deputy Commissioner of the New York City Department of Sanitation.

STATEMENT OF ROBERT ORLIN

Mr. ORLIN. Thank you very much, Mr. Chairman. Good afternoon, Mr. Chairman, ranking member and distinguished members of the committee. My name is Robert Orlin and I am the Deputy Commissioner for Legal Affairs for the New York City Department of Sanitation. I appreciate the opportunity to testify this afternoon on the legislation pending before your committee, legislation that could have a profound impact on the city's day-to-day municipal solid waste operation.

A decision by top New York State and New York City elected officials to close the Fresh Kills landfill by December 31, 2001, paved the way for the city to progress on a new path in managing its solid waste. From the outset, New York City closed Fresh Kills re-

sponsibly and appropriately with due consideration for the States and their communities that have chosen to accept the city's waste.

With the exception of the temporary reopening of the Fresh Kills landfill after the tragedy of September 11, 2001, the city completed a five-phase program to close the landfill when it sent its last barge of department-collected waste to the landfill in March 2001.

Central to the city's closure plan was the city's absolute commitment that all the city's exported waste would be disposed of in communities that have expressly chosen to accept such waste through valid, legally binding, host community agreements.

The Federal courts have consistently upheld municipal solid waste shipment 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 the rigorous environmental protection required under subtitle (D) of the Resource Conservation and Recovery Act compelled communities and private companies to replace old, small landfills with larger, costlier state-of-the-art regional facilities that comply with the more protective law.

The city believes that each locality has the right to accept or reject out-of-state solid waste, not by Federal legislation, but by locally decided host community agreements.

For those localities that have chosen to import the city's waste, the revenue generated through host fees, licensing fees and taxes has substantially enhanced their local economies, improved area infrastructure, paid for construction of new schools, paved roads and assisted host communities in meeting their own waste management needs. Clearly, many other jurisdictions nationwide share New York's approach, since 42 States import and 49 States and Washington, DC, export municipal solid waste.

For New York City and the vendors to which it awards contracts for the disposal of municipal solid waste, the elements of certainty and long-term waste management arrangements are fundamental to making New York a viable place to live and work. Any disruption to the contracts between the city and its vendors or agreements between vendors and host communities that solidify the city's waste disposal framework would detrimentally impact the city's day-to-day solid waste operations. For this reason, the city strongly supports the importing community's right to negotiate the host community agreement that is most suited to the locality's particular needs, and then spells out 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, these arrangements and contracts must be honored in order to preserve the mutual interest of both importers and exporters.

In that regard, the city has not predetermined where its solid waste will be disposed. Instead, it has implemented measures to ensure that 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.

Additionally, 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 to restrict exports.

I thank the committee for the opportunity to appear today and underscore the city's interest and commitment in addressing commerce's concerns regarding the interstate transport of municipal solid waste. Thank you.

[The prepared statement of Robert Orlin follows:]

PREPARED STATEMENT OF ROBERT ORLIN, DEPUTY COMMISSIONER, BUREAU OF LEGAL AFFAIRS, NEW YORK CITY DEPARTMENT OF SANITATION

Good afternoon Mr. Chairman, Ranking Member and distinguished members of the Committee. My name is Robert Orlin, and I am the Deputy Commissioner for Legal Affairs of the New York City Department of Sanitation. I appreciate the opportunity to testify this afternoon on the legislation pending before your Committee—legislation that could have a profound impact on the City's day-to-day municipal solid waste operations.

The decision by top New York State and New York City elected officials to close the Fresh Kills landfill by December 31, 2001 paved the way for the City to progress on a new path in managing its solid waste. From the outset, 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. With the exception of the temporary reopening of Fresh Kills after the tragedy of September 11, 2001, the City completed a five-phase program to close Fresh Kills when it sent its last barge of Department-collected solid waste to the landfill in March 2001.

Central to the City's closure plan was the City's absolute commitment that all of the City's exported waste would be disposed of in communities that have expressly chosen to accept such waste through valid, legally binding Host Community Agreements. Since the City only exports to willing jurisdictions, the City does not believe it is necessary to enact legislation requiring New York City to do that which it already requires of itself.

The federal courts have consistently upheld municipal solid waste 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 most rigorous environmental protection required under Subtitle D of the Resource Conservation and Recovery Act have compelled communities and private companies to replace old, small landfills with larger, costlier, state of the art, regional facilities that comply with the more protective law.

For many communities and States, municipal solid waste disposal fees are an important revenue stream. The City believes that each locality has the right to accept or reject out-of-State solid waste " not by federal legislation, but by locally decided Host Community Agreements.

In securing contracts for waste disposal exclusively at Host Community Agreement sites, the City has furthered a partnership that benefits importer and exporter alike. As the nation's largest and most densely-populated city of eight million people, 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 those localities that have chosen to import our waste, the revenue generated through host fees, licensing fees and taxes has substantially enhanced their local economies, improved area infrastructure, paid for construction of new schools, paved roads and assisted host communities in meeting their own waste management needs. Clearly, many other jurisdictions nationwide share New York's approach, since 42 States import and 49 States and Washington, DC export municipal solid waste.

For New York City and the vendors to which it awards contracts for the disposal of municipal solid waste, the elements of certainty and long-term waste management arrangements are fundamental to making New York a viable place to live and work. Any disruption to the contracts between the City and its vendors, or agreements between vendors and host communities that solidify the City's waste disposal framework, would detrimentally impact the City's day-to-day municipal waste operations. For this reason, the City strongly supports the importing community's right to negotiate a Host Community Agreement that is most suited to the locality's particular needs and that spells out the provisions that make waste disposal from out-

of-State acceptable to the locality. Conversely, the City will rely on private sector bidding to select the most competitive price for disposal. Once formally agreed to, these agreements and contracts must be honored 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 implemented measures to ensure that 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. Additionally, 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.

New York City is not solely dependent on exporting municipal solid waste through private disposal markets. New York City has one of the most ambitious—and certainly the largest—recycling program in the nation. New York City's recycling program is the only large city program that requires 100 percent of its households—including residents of large multi-family buildings—to recycle. Additionally, the Mayor's Directive to all City agencies that all employees reduce workplace waste and establish accountability measures for waste reduction has further reduced the daily tonnage of export.

New York City's residents are major consumers of goods manufactured in and shipped from other States. The waste generated by the packaging materials to ship these goods is significant. For this reason, the Mayor supports federal legislation that would place limitations on packaging content or require manufacturers to use minimum percentages of recycled content in packaging material. These requirements would have a 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 portion of its solid waste outside its boundaries.

I thank the Committee for the opportunity to appear today, and underscore the City's interest and commitment in addressing Congress' concerns regarding the interstate transport of municipal solid waste.

Mr. GILLMOR. Thank you.

Councilman Andrew Lanza is of the 51st district.

STATEMENT OF ANDREW J. LANZA

Mr. LANZA. Thank you, Mr. Chairman. Chairman Gillmor, distinguished members of the committee, ladies and gentlemen, good afternoon. My name is Andrew Lanza, and I am the New York City councilman representing the south shore of Staten Island.

Most of the Fresh Kills landfill is located entirely within my district, and I am also a member of the New York City Council's Committee on Sanitation and Solid Waste Management.

For many years, the Fresh Kills landfill was the only repository for municipal solid waste within New York City. The Fresh Kills landfill was a nonpermitted open dump that was not in compliance with any relevant Federal and State laws or regulations governing landfills. Fresh Kills grew into the word's largest landfill, was the Nation's largest emitter of man-made-produced methane and leaked millions of gallons of leachate into the environment.

The story of Fresh Kills is, I believe, relevant to the proposed legislation before you.

For many years, New York City either ignored alternatives to the Fresh Kills landfill or the option simply did not exist. The lack of alternatives led to the development of a policy that was shortsighted and created an unprecedented environmental disaster on what had once been a pristine wetland covering hundreds of acres.

Following the development of the regional landfill system in the mid-1990's, it became economically feasible for New York City to ship its waste out of the city. This economical alternative allowed New York City to close the Fresh Kills landfill and begin a long

overdue environmental cleanup. And I might add that the efforts to close that landfill were spearheaded and led by then City Councilman Vito Fossella.

New York City now disposes of its refuse in facilities that meet legal guidelines required of landfills, and through a series of host community agreements, pays local jurisdictions for the right to do so. These agreements have spurred economic development and provided towns with monies to pay for services that might otherwise be unavailable. By allowing the free market to operate, municipalities have been given a broad range of alternatives to dispose of solid waste in a manner that is conducive to good environmental and economic practices.

In order to create these alternatives, the free market must be allowed to continue to offer options on both ends of the commerce transaction. The bills before the subcommittee today would reduce the options available to municipalities. By restricting alternatives, municipalities will be forced into bad decisions that will increase the economic and environmental costs in the long term.

Also host communities will lose an important revenue stream that they may be unable to replace. In short, this legislation could be the first step in reopening not only the Fresh Kills dump, but in creating scores of harmful dumps like it across the Nation. And this is not a New York issue by any means; it is a Philadelphia issue, it is a Chicago issue, a Detroit issue, it is a San Francisco issue. In fact, right now we sit in a city of—a community of 500,000 that exports all of its waste.

Where in any of these cities would you begin dumping garbage tomorrow? Are these cities in a position to change their waste disposal policies in a short period of time? Do these cities have the space to create landfills or incinerators, and do they have the financial wherewithal to implement such drastic policy changes?

The passage of legislation restricting or banning interstate waste shipments will impose an unfunded mandate in times of budgetary peril. Furthermore, legislation such as this would force municipalities to dispose of their waste in unsuitable locations.

Our Constitution was formed to allow the free flow of commerce, people and ideas. The strength of our Nation and its economy is dependent upon the preservation of these principles. By restricting the ability of municipal solid waste to be shipped in interstate commerce, we take a dangerous step toward weakening the principles embodied in our commerce clause in the Constitution.

What next? Will the interstate shipment of coal be stopped because of the pollution it causes? How about eliminating the import of automobiles because of the tens of thousands of Americans killed in automobile accidents every year? Why not limit interstate sale of meat products because of the fat content that may lead to heart disease? Silly propositions? Maybe, but so is suing McDonald's because you are overweight.

The argument that says that traffic, pollution and accidents as a result of truck traffic through States is a reason to limit the flow of commerce just doesn't fly because we can use that argument against all commerce. In my State, which is the largest consumer market in the Nation, we see trucks from just about every State in this Union come through on their way to deliver goods to other

States, and they leave behind accidents and traffic and thousands of tons of emissions every single day.

I would submit that we start down a very dangerous and slippery slope were we to decide to stop, at our border, trucks simply because they had on their license plate the name of another State other than New York.

For the foregoing reasons, I respectfully request that you do not pass the legislation before you, and I would be glad to accept any questions. Thank you.

[The prepared statement of Andrew J. Lanza follows:]

PREPARED STATEMENT OF ANDREW J. LANZA, COUNCILMAN, NEW YORK CITY

Chairman Gillmor, distinguished members of the Committee, ladies and gentleman. Good Afternoon. My name is Andrew Lanza, and I am the New York City Councilman representing the South Shore of Staten Island. Most of the Fresh Kills Landfill is located within my City Council district. I am also a member of the New York City Council's Committee on Sanitation and Solid Waste Management.

For many years, the Fresh Kills Landfill was the only repository for municipal solid waste within New York City. The Fresh Kills Landfill was an un-permitted open dump that was not in compliance with any relevant federal and state laws or regulations governing landfills. Fresh Kills grew into the world's largest landfill, was the Nations largest emitter of man-made produced methane and leaked millions of gallons of leachate.

The story of fresh kills is, I believe, relevant to the proposed legislation before you. For many years, New York City either ignored alternatives to the Fresh Kills Landfill, or the options simply did not exist. The lack of alternatives led to the development of a policy that was short sighted and created an unprecedented environmental disaster on what had once been a pristine wetland covering hundreds of acres.

Following the development of the regional landfill system in the mid-1990's it became economically feasible for New York City to ship its waste out of the City. This economic alternative allowed New York City to close the Fresh Kills Landfill and begin a long overdue environmental cleanup. New York City now disposes of its refuse in facilities that meet legal guidelines required of landfills and through a series of host community agreements pays local jurisdictions for the right to do so. These agreements have spurred economic development and provided towns with monies to pay for services that might otherwise be unavailable.

By allowing the free market to operate, municipalities have been given a broad range of alternatives to dispose of solid waste in a manner that is conducive to good environmental and economic practices. In order to create these alternatives, the free market must be allowed to continue to offer options on both ends of the commerce transaction. The bills before the subcommittee today would reduce the options available to municipalities. By restricting alternatives, municipalities will be forced into bad decisions that will increase the economic and environmental costs in the long-term. Also, host communities will lose an important revenue stream that they may be unable to replace. In short, this legislation could be the first step in re-opening the fresh kills dump, and in creating scores of harmful dumps like it across the nation.

This is not a New York issue by any means. Today, we sit in a city of 500,000 that exports all of its waste. Where in Washington D.C. would you start dumping garbage tomorrow. Is the District of Columbia in a position to change its waste disposal policies in a short amount of time? Does the District of Columbia have the space to create landfills or incinerators? Does the District of Columbia have the financial wherewithal to implement such drastic policy changes? These questions are asked of Chicago, Philadelphia and many cities across the nation. The passage of legislation restricting interstate waste shipments will impose an unfunded mandate in times of budgetary peril. Furthermore, this legislation would force municipalities to dispose of its waste in unsuitable locations.

Our Constitution was formed to allow for the free flow of commerce, people and ideas. The strength of our Nation and its economy is dependent upon the preservation of these principles. By restricting the ability of municipal solid waste to be shipped in interstate commerce, we take a dangerous step toward weakening the principles embodied in our constitutions's commerce clause. What next?? Should the interstate shipment of coal be stopped because of the pollution it causes? Should the export of autombiles be restricted because the tens of thousands of Americans killed

in auto accidents each year. Why not limit the interstate sale of meat products because of fat content that may lead to heart disease. Silly propositions? Maybe, but so is suing McDonalds because you're overweight.

For the foregoing reasons, I respectfully request that you do not pass the legislation before you.

Again, thank you for the opportunity to testify and I will be more than happy to take whatever questions you may have.

Mr. GILLMOR. Thank you, Mr. Lanza.

Mr. Steven Chester, Michigan Department of Environmental Quality.

STATEMENT OF STEVEN E. CHESTER

Mr. CHESTER. Thank you, Mr. Chairman and committee members. My name is Steven Chester, and I am the Director of the Michigan Department of Environmental Quality.

I want to thank the committee for this opportunity to discuss legislation aimed at providing States with the authority to effectively manage the interstate transfer of solid waste.

On April 2, 2003, the Governors of six States, including Governor Granholm of Michigan wrote to Chairman Gillmor requesting an expeditious markup of H.R. 1730, sponsored by Representative James Greenwood of Pennsylvania. That bill would provide State and local governments with the tools needed to reasonably limit the amount of out-of-state waste and international waste that crosses their borders. The basis of the request from the six Governors is clear. Congress has had this issue before it for over 10 years and the States desperately need action.

The three bills subject to today's hearing each would help Michigan and other States gain control of municipal solid waste imports. In addition to H.R. 1730, H.R. 382 introduced by Representative Mike Rogers of Michigan would give States authority to limit waste from outside the United States.

H.R. 411, introduced by Congressman John Dingell of Michigan, would require the administrator of the Environmental Protection Agency to enforce the notice and consent provisions of a bilateral agreement between the governments of the United States and Canada, which you have heard so much about already today.

Now, Michigan has paid a price for the 10 years we have been waiting to effectively manage disposal of solid waste within our borders. Since 1996, the amount of waste from other States being disposed of in Michigan rose by 61 percent, and the amount of waste from Canada rose by 149 percent. Total out-of-state imports of waste into Michigan landfills rose to approximately 12 million cubic yards in fiscal year 2002, up from approximately 6.4 million cubic yards in fiscal year 1999, or just 4 years earlier.

The largest individual source of waste imports into Michigan is now Canada. The increase of waste importation has had a real effect on the citizens and environment in Michigan. Approximately 180 trucks from Canada now travel Michigan roadways each day, heading for a Michigan landfill to dispose of Canadian waste. The trucks increase the danger to Michigan citizens traveling those roadways, advance wear and tear on Michigan's roads and emit increased pollutants Michigan citizens breathe.

The volume of waste being imported to Michigan also has a long-term effect on our land resources. This means that Michigan will

have to consume more valuable open space to site new landfills than we otherwise would. And every new landfill increases the potential for groundwater contamination, the loss of precious drinking water supplies and brings with it long-term monitoring and maintenance costs.

For Michigan citizens, the number of out-of-state trucks idling at landfill gates means more noise, more odors and more destruction of their lives. These Michigan citizens are now asking, and asking with increasing fervor, why their elected State representatives and the agency officials appointed to assist them cannot address their concerns. That is why we in Michigan are asking you to provide the States with clear authority to adequately and comprehensively manage our need for environmentally sound solid waste disposal.

Importantly, this does not mean we need the authority to button up our borders and exclude all imported waste, but it does mean having the ability to control the volume and flow of solid waste within our borders in the best interest of the local communities in the State as a whole.

In the late 1980's, Michigan was in the forefront of efforts to meet long-term solid waste disposal needs. With the bill before you today, we look once again to regain that opportunity to undertake such efforts.

H.R. 1730, H.R. 382 and H.R. 411 each provides the tools necessary in that regard by allowing considered choices by local communities in the State about how landfills are developed and how they are utilized.

Thank you again for the opportunity to provide testimony on this vitally important issue. Michigan welcomes the opportunity to assist this committee in developing solid waste legislation. We ask you to move forward quickly in doing so and to move a bill toward final passage.

Thank you, and it would be my pleasure to answer any questions you may have.

[The prepared statement of Steven E. Chester follows:]

PREPARED STATEMENT OF STEVEN E. CHESTER, MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

Good afternoon, I am Steven E. Chester, Director of the Michigan Department of Environmental Quality. The Department is Michigan's environmental regulatory agency, responsible for the air, water quality, wetlands, waste management, and environmental cleanup programs.

I would like to thank the committee for the opportunity today to discuss legislation that would be effective for managing the interstate transfer of solid waste. In 1992, the United States Supreme Court ruled, in the matter of *Fort Gratiot Sanitary Landfill v. Michigan Department of Natural Resources et al.* (1992 Fort Gratiot decision), that provisions of Michigan's Solid Waste Management Act, which allowed counties to impose restrictions on the importation of solid waste from other states and countries through their Solid Waste Management Plans, violated the United States Constitution and were not enforceable. The United States Constitution's Commerce Clause reserves to the United States Congress the authority to regulate commerce between the states and with foreign countries. The Courts have long recognized the so-called "dormant" nature of the Commerce Clause as prohibiting states from such areas of regulation unless authorized by Congress. As a result, while movement of waste between Michigan counties is still regulated by state law, we are unable to restrict imports of solid waste from outside of Michigan.

On April 2, 2003, the Governors of six states, including Governor Jennifer M. Granholm of Michigan, wrote to Chairman Gillmor requesting an expeditious markup of H.R. 1730 sponsored by Representative James C. Greenwood (R-PA). That bill would provide state and local governments with the tools needed to reasonably limit

the amount of out-of-state and international waste that crosses their borders, maintain disposal capacity for their own waste, and assure protection of the states' natural resources. The basis of the request from the Governors is clear: Congress has had this issue before it for over ten years and the states desperately need action. A bill sponsored by Representative Richard Boucher (D-VA) in 1994 (H.R. 4779) would have provided the necessary state authority, but was stalled by the opposition of a single Senator. While a committee hearing was held in 2001, no markup was initiated, and the states are still left wanting.

The three bills subject to today's hearing each would help Michigan and other states gain control of municipal solid waste imports. In addition to H.R. 1730, H.R. 382, introduced by Representative Mike Rogers (R-MI) would give states authority to limit waste from outside the United States. H.R. 411, introduced by Congressman John Dingell (D-MI) would require the Administrator of the U.S. Environmental Protection Agency (EPA) to enforce the notice and consent provisions of the bilateral Agreement Between the Government of the United States and the Government of Canada Concerning the Transboundary Movement of Hazardous Waste. When Governor Granholm wrote to former EPA Administrator Christine T. Whitman asking that the bilateral agreement be enforced, the EPA replied that it "hopes to seek" notice and consent authority under the Resource Conservation and Recovery Act (RCRA). H.R. 411 would end the wait using existing authority to give state and local governments needed tools to reclaim control over waste imports.

Michigan has paid a price for the 10 years we have been waiting for the authority to fully manage disposal of solid waste within our borders. Solid waste import data has been collected by the Department on a fiscal year basis since 1996. Data from these reports indicate an increase in the level of imports over the last seven years. Based on data collected there has been an overall increase of 26 percent in the amount of solid waste being generated in Michigan. However, the amount of waste from other states being disposed of in Michigan rose by 61 percent during this period. The amount of waste from Canada being disposed of in Michigan rose by 149 percent.

Waste from other states and Canada is approximately 20 percent of the total solid waste disposed of annually in Michigan. This is up from 13 percent just seven years ago. At this rate imports equate to 25 percent of the waste Michigan residents generate, meaning that Michigan will lose one full year of landfill capacity every four years. Total out-of-state imports of waste into Michigan landfills rose to 11,494,443 cubic yards in fiscal year 2002, up from 6,349,695 cubic yards in fiscal year 1999, an increase of 81 percent. The largest individual source of waste imports is now Canada, with total reported fiscal year 2002 imports to Michigan landfills of 6,607,856 cubic yards, up 4,265,065 cubic yards, or 182 percent, from fiscal year 1999.

The increase of waste importation has had a real effect on the citizens and environment of Michigan. On average, 125-150 trash trucks from Toronto and about 30 trash trucks from other municipalities in Canada now travel Michigan roads each day heading for a Michigan landfill to dispose of Canadian waste. The trucks increase the danger to Michigan citizens traveling those roadways, advance wear and tear on Michigan roads, and emit increased air pollutants Michigan citizens breathe.

Beside the immediate effect of increased truck traffic, the volume of waste being imported to Michigan will have a long term effect on our land resources. As stated, imported waste is consuming Michigan landfill capacity at a rate that will require us to site new landfills 20% earlier than would otherwise be the case. This means that Michigan will have to consume more valuable open space to site new landfills than we otherwise would. And every new landfill increases the potential for groundwater contamination, the loss of precious drinking water supplies, and brings with it long term monitoring and maintenance costs. Ironically, Michigan is currently in the process of having potentially liable parties identified to address releases that have resulted from the improper closure of the Fort Gratiot Sanitary Landfill. Canadian firms and out of state firms have been identified on this list and are currently in the process of being pursued to remediate these releases under state law.

But for Michigan citizens, it is the more immediate effect of imported waste that matters. To them, the number of trucks idling at the landfill gate waiting their turn to dump their waste means more noise, more odors, and more disruption of their lives. These are people who don't understand why, if they have been responsible in accepting neighborhood landfill for disposal of their own waste, people in other states and countries don't do the same. These are people who have a hard time justifying the inconveniences of recycling paper, plastic, bottles and cans to save landfill space, if it is just going to be used up by folks in other states and countries. And these are people who are asking—and asking with increasing fervor—why their

elected state representatives and the agency officials appointed to assist them, cannot address their concerns.

This message has been heard in Michigan. There are currently forty-one bills pending in the Michigan Legislature to address various aspects of solid waste importation. However, many of them present significant issues of questionable legal authority given the restrictions of the Commerce Clause.

And that is what we are asking of you: The clear authority to adequately and comprehensively manage our need for environmentally sound solid waste disposal. Importantly, this does not mean we need the authority to button up our borders and exclude all imported waste. What it does mean is having the ability to consider the costs and benefits associated with waste disposal, no matter the source, and to control waste volumes, no matter the source, in the best interests of the local community and the state as a whole. What it does mean is the ability to plan for our long term disposal needs with certainty. And to those citizens growing increasingly impatient with their government, it means getting a say over the quality of their life.

In the late 1980's Michigan was in the forefront of efforts to meet long term solid waste disposal needs. While various components of those efforts dealt with diversion of materials away for waste disposal, a central core was the ability to look ahead, make difficult choices, and provide disposal capacity. With the bills before you today, we look once again to regaining that opportunity to undertake such efforts. H.R. 1730, H.R. 382, and H.R. 411 would each provide the tools necessary in that regard by allowing considered choices by local communities and the state about how landfills are developed and utilized. While the bills differ slightly in their approaches, each would allow us to recognize the effects of imported waste and to factor those effects into decisions about whether imported waste will be accepted. And we support the goals of these bills for that reason.

As previously noted, the ten years that this issue has laid before Congress has been costly to Michigan. While we urge you to action soon, we also urge you to take the action that will be most effective. Given the sensitive legal and international relations issues that surround this topic, the best approach will be one that minimizes the potential for litigation thereby resulting in the earliest practical opportunities for states to use the new authority granted by Congress.

Thank you again for the opportunity to provide this testimony. At this time, states have very limited ability to regulate imports of out-of-state solid waste; however, it is possible for federal legislation to create a balance between the communities' plans for their long-term disposal needs and the needs of private waste disposal firms to operate profitably, to compete fairly with each other, and to honor existing contractual relationships. Michigan welcomes the opportunity to provide assistance to this committee in developing legislation which would give states the ability to impose reasonable regulation of waste imports while recognizing existing waste management relationships and the needs of the waste disposal industry and waste generators to operate effectively. We ask you to move forward quickly in doing so and to move a bill toward final passage.

Thank you. I would be pleased to answer any questions you may have.

Mr. GILLMOR. Thank you very much.

Mr. Nick DiPasquale, Deputy Secretary of the Pennsylvania Department of Environmental Protection.

STATEMENT OF NICHOLAS A. DiPASQUALE

Mr. DIPASQUALE. Thank you, Chairman Gillmor, members of the committee. My name is Nick DiPasquale. I am the Deputy Secretary of the Office for Air, Recycling and Radiation Protection for the Pennsylvania Department of Environmental Protection.

I am here today on behalf of the Governor, Ed Rendell, and Secretary Kathleen McGinty to talk about an issue of great importance to the Commonwealth, that of interstate waste. I want to thank Representative Greenwood for introducing this important piece of legislation and other members of the Pennsylvania delegation, Congressman Doyle, for supporting it as many members of this committee have. We appreciate the efforts of Representative Greenwood and look forward to working with him to keep this issue on the forefront of public discussion.

States need the opportunity to implement reasonable controls on the amount of out-of-state waste being imported into their jurisdiction, and each State needs to take responsibility in planning for the management of their municipal solid waste.

Pennsylvania recognized that Congress has the authority to enable States to regulate—and only Congress has the authority to give States the authority to regulate interstate waste.

The United States Supreme Court has made that abundantly clear on a number of decisions. Congress must act for Pennsylvania and for other States to have the proper tools to manage the movement of interstate waste.

In the 1980's, Pennsylvania took the responsibility for the management of its own waste by increasing environmentally sound, permitted disposal capacity. Unfortunately, other States have benefited from this. Pennsylvania believes that States should to the greatest extent practical manage their disposal needs within their own borders.

We recognize that there on the borders between States, there is always going to be some movement back and forth, but in the State of Pennsylvania, for example, almost 50 percent of the waste that is going into our disposal facilities is from out-of-state.

The Commonwealth has made efforts to improve the management and safety of waste that gets disposed of in the State of Pennsylvania. The efforts to increase the amount of recycling have been ongoing since the 1980's and remain a high priority of the State. The Pennsylvania Department of Environmental Protection has conducted safety inspections, which we refer to as "Trashnets," in cooperation with surrounding States in an effort to improve the condition and safety of the use of transportation vehicles that haul municipal waste.

In addition, the Pennsylvania legislature passed Act 90 last year, entitled the Waste Transportation Safety Act, in an effort to ensure the responsible and safe transportation of municipal and industrial waste by requiring written authorization from Pennsylvania's DEP for any vehicle disposing of waste in Pennsylvania. We have already authorized over 26,000 vehicles under Act 90.

There are a number of minor technical amendments that we would like to work with Representative Greenwood and staff of the committee that deal with the definition of host community in Pennsylvania.

As you may be aware, while the responsibility for planning is at the county level, in many cases the host agreements are executed with municipal or local governments, and we would like to make sure that the definition accurately incorporates the those jurisdictions.

I am going to skip over the minor technical comments to get more time to ask questions of the panel, but we do want to support the efforts of the committee to support the efforts of Congressman Greenwood in passing this legislation. We do have a serious problem with the import of State—waste from out-of-state in Pennsylvania and one that we think needs to be corrected.

Thank you very much.

[The prepared statement of Nicholas A. DiPasquale follows:]

PREPARED STATEMENT OF NICHOLAS A. DIPASQUALE, DEPUTY SECRETARY, OFFICE OF AIR, RECYCLING AND RADIATION PROTECTION, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chairman Gillmor, members of the Committee, my name is Nicholas DiPasquale. I am the Deputy Secretary of the Office of Air, Recycling and Radiation Protection, Pennsylvania Department of Environmental Protection. I am here today on behalf of Governor Edward Rendell and DEP Secretary Kathleen McGinty to talk to you about an issue of great importance to the Commonwealth of Pennsylvania—interstate waste.

I want to thank Representative Greenwood for this opportunity to testify before the committee today. I also want to thank the Representative for his ongoing efforts in addressing the challenge that the interstate movement of waste presents to each of us. We appreciate the efforts of Representative Greenwood and look forward to working with him to keep this issue in the forefront of public discussion.

States need the authority to implement reasonable controls on the amount of out-of-state waste being imported into their jurisdiction and each state needs to take responsibility in planning for the management of their Municipal Solid Waste. Pennsylvania recognizes that only Congress has the authority to enable States to regulate the interstate movement of waste. The United States Supreme Court has made that clear. Congress must act for Pennsylvania and other States to have the proper tools to manage the interstate movement of waste.

In the 1980s, Pennsylvania took the responsibility for the management of its own waste by increasing environmentally sound permitted disposal capacity. Other states have benefited from this. Pennsylvania believes that states should work to manage their disposal needs within their own borders.

The Commonwealth has made efforts to improve the management and the safety of the management of all waste present in Pennsylvania. The efforts to increase the amount of recycling have been ongoing since 1988 and remain a high priority. Pennsylvania's Department of Environmental Protection has conducted safety inspections, known as "Trashnets" in cooperation with surrounding states in an effort to improve the condition and safe use of waste transportation vehicles.

In addition, the Pennsylvania Legislature passed Act 90 last year, entitled the "Waste Transportation Safety Act," in an effort to ensure the responsible and safe transportation of municipal and industrial waste by requiring written authorization from Pennsylvania's Department of Environmental Protection for any vehicle disposing of waste in Pennsylvania. We have already authorized over 26,000 waste vehicles under Act 90.

Any discussion of interstate waste at the federal level has merit and should be supported. "The Solid Waste Interstate Transportation Act of 2003" bill introduced by Representative Greenwood is a positive piece of federal legislation to address this issue. However, as with any legislative proposal, there are changes that would help address Pennsylvania issues.

As examples, there are two definitions to which we suggest minor adjustments that are technical in nature. We offer these in the spirit of support for Representative Greenwood's legislation.

First, an "affected local government" is defined as "...the public body authorized by State law to plan for the management of municipal solid waste...". In Pennsylvania, Act 101, the Municipal Waste Planning, Recycling and Waste Reduction Act, requires counties to plan for the management of municipal waste; therefore, the affected local government in Pennsylvania would be the county, not the municipality.

This minor change would be helpful in Pennsylvania's varying levels of local government, including county and municipal governments, can enter into host community agreements. To address this issue, the term "affected local government" needs to be broadly defined to include all levels of local governments that execute host community agreements. This would enable host municipalities, which bear most of the adverse impacts of a solid waste facility, to have the decision-making power about the receipt of out-of-state waste at the facility.

Second, the definition of "municipal solid waste" excludes "recyclable materials," which are defined in the legislation as "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." The definition of "recyclable materials" does not include the requirement that the material actually be recycled. The definition only requires that the materials be separated at the curb or managed separately from other waste destined for disposal. In order to align the definition of "recyclable ma-

terials" with the Pennsylvania definition, the federal definition should require that the materials actually be recycled.

The bill as proposed would establish a presumptive ban on the receipt and disposal of out-of-state municipal solid waste at landfills and incinerators. However, the legislation also specifies certain situations where the presumptive ban would not apply, thereby allowing the receipt and disposal of out-of-state waste at a facility. The presumptive ban would not apply in situations where host community agreements, permits or contracts specifically authorize the receipt of out of state waste.

The host community agreements would have to be with counties, but in Pennsylvania, host community agreements are entered into with local communities. Shifting the agreements could cause considerable concern to local communities and other affected communities that currently receive revenues from the facility to offset the inconveniences of hosting the facility. There are only a few permits and contracts if any, that would meet the conditions for exemption as currently drafted in the bill.

Regarding the establishment of out-of-state waste limits based upon 1995 levels, it should be noted that the definition for a "comprehensive recycling program" is more encompassing and explicit than the recycling program provisions established by Pennsylvania's Act 101 because the bill's definition requires the generators of municipal solid waste to separate all of a list of materials for recycling as a condition of disposing of the waste at landfills or incinerators in the state.

Because Pennsylvania's recycling law requires only three materials from a list of materials to be separated, it is questionable whether Pennsylvania would be eligible to implement the freeze based upon 1995 waste levels.

Until federal legislation is passed, the Commonwealth will continue to pursue the improvement of recycling programs, cooperation with other states, and the improvement of safe management of waste. We would be happy to provide a more detailed analysis with specific recommended amendments for your consideration.

We look forward to working with Representative Greenwood and other members of Congress as this legislation moves forward.

Thank you.

Mr. GILLMOR. Thank you very much, and if we can go to the questions, let me just make one brief comment on the commerce clause, which the Founding Fathers did put in the Constitution, and I presume they didn't do a vain act. It was intended, I think, that Congress be able to treat different types of commerce differently.

Let me ask you, Mr. Orlin—you know, I applaud your support of recycling in New York City and recycled content standards for packaging, but a couple questions along that line. I would like to know how that squares with the April 2, 2003, statement of New York City Deputy Controller Greg Brooks, who is justifying the cancellation of parts of New York's recycling program because it was too expensive. And part of that, would it be fair to say that the current law would encourage cities like New York to get rid of recycling because we can basically ship their problems out-of-state?

Mr. ORLIN. Mr. Chairman, the city had cut back on its recycling program. However, even before the cutback, the city continued to recycle all sorts of mixed paper, including magazines, newspapers, cardboard, as well as metals. On July 1, 2003, the city reinstituted its plastic recycling, and I am happy to state that as of April 1, 2004, the city will resume its glass recycling. So by April of next year the city's entire recycling program will be as it was a couple of years ago.

Mr. GILLMOR. Thank you. Councilman Lanza, even if we have certain communities which agree to contract the host community agreement, how do you assure that communities surrounding that host community protect their environmental quality and landscape from an increase in waste shipments. Let me give an example, just last week, there was a major traffic accident on the Beltway at 202 involving an overturned waste truck en route from New York. The

accident backed up traffic for hours and caused an inconvenience to the surrounding community. And that is just one isolated occurrence on a given day. But with the increase in exported waste from New York and other States, as well the increase in international transport, how are surrounding communities supposed to deal and be recompensed for their increased financial burdens, burdens on their roads and traffic congestion, and also the environmental burdens as the exported waste shipments continue to increase?

Mr. LANZA. Again, I believe that argument could be made against all interstate commerce, regardless of the goods being shipped. That accident happened to involve a trash truck. Staten Island is part of the interstate system, and we deal and are confronted by truck and jack-knifed trucks almost daily. More typically, it involves trucks transporting produce from New Jersey or from the south or beef from the Midwest or petroleum or gasoline from the southwest. And so communities deal with those issues the way they deal with all issues regarding the transport of goods.

Mr. GILLMOR. Let me just ask, the public puts trust in all of us to properly manage tax dollars. And since the State government and body has an interest in spreading the cost of proper in-State disposal of its own waste of all of its citizens, why should those State citizens also be responsible for bearing the cost of disposing of out-of-State waste from other States and countries. In other words, isn't heavy reliance on exportation of solid waste a de facto way of shifting costs from one jurisdiction to the other?

Mr. LANZA. I think the distinction between the good commodity and the bad commodity or somehow separating out waste from commodities that no one here is suggesting that we limit really doesn't meet the reality. New York City is, as I've said, the largest consumer market. We also are not a manufacturing economy or community, which means that the majority of the goods consumed in New York City comes from other States. And so that means that the majority of the waste being generated by New York City has origins outside of New York City. When that dozen of eggs comes across the bridge from New Jersey into Staten Island, it is in a carton. And when the people on Staten Island are finished consuming those eggs there is a carton to be disposed of, a carton that came from New Jersey. So I don't think it makes sense to say that it is a good commodity on the way in and a bad commodity on the way out. And I think the principle that should be upheld here is that of free market. Staten Island, where I represent, happens to be closer to the State of New Jersey than it is to any other part of New York City. In fact, New York City is closer to New Jersey, Pennsylvania, Connecticut and Massachusetts than it is to the majority of the rest of New York State. So the stream of commerce ought to be based on the regional realities as opposed to artificial and man-made State lines, and I think that is what was intended by the Constitution.

Mr. GILLMOR. Mr. Orlin, you said you wanted to respond to my question as well.

Mr. ORLIN. To your earlier question, responding to the accident, we were all terribly saddened to hear the news but I want to make clear that the city vigorously supports highway safety laws. In its contracts it requires that the vendors comply with all highway

safety laws and truck routes. And also would like to point out that the city is intent on reducing the export of waste by truck traffic. It is currently formulating a long-term plan and doing the environmental review for the long-term plan, which will rely heavily on barge and rail export to final disposal sites and we will be presenting that plan to the city council and to the State Department of Environmental Conservation next year.

Mr. GILLMOR. Thank you very much. My time has expired. The gentlelady from California.

Ms. SOLIS. Thank you. My question is for Mr. Chester. I would ask you how you feel about the free market approach that was described by the gentleman from New York.

Mr. CHESTER. Well, I think there is a basic misunderstanding here. The bills that you have before you, I don't believe are incompatible with free market approaches. They don't flat out prohibit States from accepting waste. They give States choices. They say you can make a choice to prohibit or you could limit. And you can limit that according to a number of different methods. In fact, 1730 goes even further to honor permits and contracts that are in place and allow for host agreements that would allow for some out of State waste to continue to be disposed of in that location. So I don't see them as incompatible. I really see them as providing States with choices and the ability to manage their solid waste issues kind of holistically.

Ms. SOLIS. The approach that the gentlemen from New York are talking about that actually this is a benefit to the receivers of that imported trash. How would you view that in terms of effects on the environment and regulations and what have you that you probably have imposed. At what cost or is there a cost, in your opinion?

Mr. CHESTER. I don't think there is any secret that many of the old dump sites and landfills that we have had are now, as someone mentioned earlier, on the NPL, which means they are Superfund sites or on the equivalent State sites for clean up. There have been real problems associated landfills nationwide. It is true, we have much better standards now but that is not to say that even with these better standards, that a number of these landfills will leach contaminants to groundwater and cause problems in the future. There is a cost associated with landfilling solid waste, a number of costs from an environmental perspective.

Ms. SOLIS. You mentioned there was, I think, 180 trucks that come in every day into Michigan.

Mr. CHESTER. That is correct. Between 125 to 150 are associated with trash from Toronto and remaining 30 to 40 come from other areas of Canada.

Ms. SOLIS. One of the issues I am familiar with in my district, we have about five different landfills and there does seem to be other costs that are added that don't even go into the landfill operation, and that is transportation of the roads with congestion and what have you. There are issues regarding the degradation of our highway transportation access roads that time and time again that our local municipalities have to pick up and they get no compensation for that as well. And I wanted to mention that is something that I know happens. I wanted to get a response from Mr.

DiPasquale and what bill or the series of bills that are being presented which one would you be more in favor of?

Mr. DIPASQUALE. My comments today were confined to H.R. 1730. And we certainly support that as an effort to gain some control or give the States some reasonable control over the movement of interstate waste. But there is no question that there are significant impacts on local communities as a result of the increased volume of waste that they are taking at local landfills. We have tried to address that in Pennsylvania by increasing the stringency of the regulations that apply to these facilities as part of the permitting process that take into account some of the things that occur that are outside of the permitting process. But there is no question that these impacts are occurring because of the increase in interstate waste.

Ms. SOLIS. Last, my question to the gentlemen from New York to either one, Mr. Lanza maybe. In California, we have some very strong regulations and laws that are passed, and one is waste reduction. And all our cities and localities are required to meet certain criteria. And some people would say that it is outlandish because our cities aren't going to get there and that is always a problem. But what has the city done to help reduce, to enhance recycling and are there any incentives for businesses or the government itself to look at other modes of recycling?

Mr. ORLIN. Well, as I stated, the city does encourage and promote recycling. There are laws on the book that require residential households and commercial vendors to recycle. There are enforcement agents who enforce the laws so if someone throws out paper and puts it into the regular waste stream, that person would be fined by the sanitation department. There is a mail directive that encourages waste reduction among city agencies. We use recycled paper. We encourage the use of electronic transmission. We try to double side our paper. We take steps like that. Obviously a lot of the—the best waste reduction is from packaging which the city can't control on its own. That seems to be congressional—something that would have been done through congressional action to reduce the amount of packaging and products.

Ms. SOLIS. Do you have any laws in place that regulate the use of bottles and things like that? We have a fee in California that actually is attached to that that we use also as an incentive for——

Mr. ORLIN. There is a bottle bill in New York State, and very few bottles end up in the waste stream that are recycled that have a 5 or 10 cent return.

Mr. GILLMOR. Gentlelady's time has expired. Also I would point out that Mr. Greenwood, a member of the subcommittee, is not able to be here because he is tied up in another committee—subcommittee meeting, concurrently the Oversight and Investigation Committee, but this would appear to be an appropriate time to ask unanimous consent that his statement be entered in the record. And without objection, so ordered.

The gentlemen on my right wishing to ask a quick question. Yes, Mr. Fossella.

Mr. FOSSELLA. Mr. DiPasquale, I have a 1999 letter from the then mayor of Philadelphia, now Governor, Mr. Rendell, expressing concern about legislation restricting waste shipments. He notes

"any action which raises the costs of the disposal of such materials can cost even a small municipality hundreds of thousands of dollars. In the case of a city or county, the size of Philadelphia can cost millions of dollars." He goes on to discuss legislative initiatives similar to those being discussed today.

"Much of the legislation being proposed will do more harm than good. As New Jersey has proven over the years, an area or State which is a net importer of municipal solid waste, can turn around in a relatively short period of time and find itself needing to be an exporter of such materials. This appears to be a situation in which the marketplace should be left as much as possible on its own to provide for the needs of society."

This letter was addressed to Senator Santorum regarding the interstate transportation of solid waste. Just as a way of illustration, I am curious as to what you think about that sort of sentiment today and is it and could it, indeed, impact, as we have said, in different ways here today, other municipalities around the country?

Mr. DIPASQUALE. I think certainly, as I mentioned in my comments, there is always going to be the flow of waste back and forth across borders as a matter of economy. The Governor has not, in any way, supported a total outright ban on the movement of interstate waste, and I think the position today is consistent with his position back in 1999. We think that the Greenwood proposal does offer choices to communities. It does allow for the movement of waste back and forth across State borders. It sets up a host community agreement system where local governments can make decisions on whether or not they want to.

In Pennsylvania, there have been surveys that show that some communities would be interested in continuing to receive interstate waste as long as they were adequately compensated for the impacts that occur. But that decision should be left up to local governments. So I don't see any inconsistency between this testimony and the Governor, former mayor of Philadelphia and his comments back in 1999.

Mr. FOSSELLA. This isn't meant to be judgmental of his comments other than to underscore that it appears that when he talks about allowing the marketplace to come up with the cure. For example, he further adds, "the addition of flow control measures and other restrictions could quickly turn what is, at present, a short-term surplus to dispose of capacity into a long term financial crisis for the municipalities such as Philadelphia." And I think it just once again highlights what the potential impact and perhaps the unintended consequences of pursuing and promoting and passing ultimately such legislation. My time has expired. Thank you, Mr. Chairman.

Mr. GILLMOR. Gentleman's time has expired. The gentleman on my left seek recognition. Mr. Doyle.

Mr. DOYLE. Thank you, Mr. Chairman. Mr. DiPasquale, one of the reasons Jim Greenwood and I coauthored this legislation was to help Pennsylvania maintain its disposal capacity. I worked in the State legislature during the 1980's as did Jim, and we had to make some very tough decisions in Pennsylvania to get a lot of these landfills permitted. Cost a lot of money. People didn't want

them in their backyards, but we understood back in the 1980's that if we did not take some steps to build some capacity, that we were going to be in a crisis in our State and we were going to be looking for somewhere to put our garbage, and we didn't know where that might be.

So we bit the bullet and looked at some of the prospects that needed to be taken. Now we have a situation where 50 percent of the garbage that goes into those landfills doesn't come from Pennsylvania.

And so I wonder if you could speak a little bit to add some details as to what the capacity levels are at Pennsylvania's landfills and what trends you are seeing as a result of the fact that we are importing half of the waste that goes into those landfills from other States.

Mr. DIPASQUALE. I would be happy to do that. In 1989, about 27 percent of the waste that was being disposed of in Pennsylvania came from out of State. By 2001, 47 percent, approaching 50 percent of the waste was coming from out of State. And in the last few years, since 2000, that level has stayed pretty consistent.

Just by way of the composition of the interstate waste, about 41 percent of all interstate waste disposed of in Pennsylvania comes from New York and about 46 percent from New Jersey for a total of 80 percent of the imported waste is from two States. There are roughly about 20 States total in Canada that send waste to Pennsylvania, but certainly the bulk of it is coming from New York and New Jersey. Capacity is a difficult question sometimes to respond to depending on who you talk to.

The State currently has, in our opinion, about 11 years of capacity left when you look at landfill capacity and resource recovery facility. That is a comfortable margin, but if that capacity is going to be used up increasingly by out-of-state waste, then we are going to have to make provisions to control that flow in some way or permit additional capacity.

Mr. DOYLE. Mr.—Councilman Lanza, you just heard Deputy Secretary DiPasquale talk about Pennsylvania since the 1980's taking responsibility for planning for their solid waste needs. What has the State of New York done to plan for its waste disposal needs? How many landfills as we speak today are being permitted? What plans are there for the State to permit additional landfills or is the solid waste disposal plan for New York State to just continue to export its waste to States like Pennsylvania?

Mr. LANZA. I can speak for New York City and I am a New York City council member. I don't know what their plans are and currently with respect to landfills in upstate New York. I can say that New York City has a very aggressive plan with respect to limiting the amount of waste it produces, putting it into the form that I think allows for the most environmentally sound transport of it. Presently, all waste from New York City will be compacted at transfer stations, put in sealed containers. And so, New York City simply involves itself in a bidding process where it puts out bids for all to entertain, whether they be upstate New York, or even closer than that, right across the river in Pennsylvania or New Jersey.

And so these contracts are awarded on the basis of costs for the city and on the basis of the host community agreements that are executed by the municipalities that expressly and willingly accept the waste based upon the economic benefits they derive.

Mr. DOYLE. What percentage, I am curious, of the waste that is generated in New York City goes to Pennsylvania?

Mr. LANZA. I don't know the answer to that question.

Mr. DOYLE. As you let these bids out in New York City. I mean, are most of the bids let out to Pennsylvania landfills or does New Jersey get a lot? What is your experience with the bids that you have awarded?

Mr. LANZA. As a council member, I have not been involved in the bid process, but I would turn it over to Mr. Orlin.

Mr. ORLIN. When the city has entered into contracts with its vendors, it doesn't select the disposal sites. The city will award a contract with a vendor and the vendor selects disposal sites that are lawfully permitted and compliant with all local, State and Federal laws and has a host community agreement.

Mr. DOYLE. You contract with someone who picks up the garbage and it is up to them to figure out where to dump it?

Mr. ORLIN. We require that it be disposed of in a lawfully permitted landfill with a host community agreement and make sure that the landfill or waste facility is compliant with all laws.

Mr. DOYLE. How do you plan for the future when you know New York and New Jersey eventually fills up all of Pennsylvania's landfills? And I mean, that is the trend that we are the garbage can for your State and New Jersey. So when our landfills can't take any more between what we are pointing there and what your State and New Jersey is putting there, what plans are you making now for that eventuality because that day is coming, and as you said, there is no short turnaround time to find a new place to dump. So what is the city doing or what is New York doing to plan for the future when our landfills are all filled up?

Mr. ORLIN. New York City is exploring the possibility of acquiring landfill space upstate. We continue to explore the feasibility of such an option. We are in the preliminary stages of that exploration now.

Mr. GILLMOR. The gentleman's time has expired.

Mr. DOYLE. Can I get extra time for not having an opening statement?

Mr. GILLMOR. You just had a series of profound questions.

Mr. DOYLE. Thank you, Mr. Chairman.

Mr. GILLMOR. You are over by 3 minutes and 44 seconds.

Mr. DOYLE. Time flies when you are having fun.

Mr. GILLMOR. Are there further questions of this panel? Gentleman from Michigan—actually, I got to come back over here.

Mr. ROGERS. I have one quick question. This is for Mr. Chester. Thank you for the work you do. Appreciate it. Tough job ahead of you. Is the Governor supportive of 1730, 411, and 382?

Mr. CHESTER. Well, clearly she is supportive of 1730, but as stated in our prepared testimony, we are willing to work this committee on any of the pieces of legislation. So they all are a little different as you know, and do things a little differently. Our inter-

est ultimately is getting legislation that allows us to manage the solid waste coming into the State.

Mr. ROGERS. There is no formal position on 411 or 382 from the Governor.

Mr. CHESTER. No other than the general support for the approach. As I said, they are all a little different and we can go into the details of that, but we want to work with this committee to achieve what I think is a common goal.

Mr. ROGERS. You have confused me. Does she support the bills or does she not support the bills?

Mr. CHESTER. I have not talked to the Governor directly on it, but as I said, we support the legislation that is being proposed, H.R. 1730. H.R. 382 has merit as well and H.R. 411 because that really solves the whole bilateral agreement issue, in our opinion.

Mr. ROGERS. No further questions.

Mr. GILLMOR. The other gentleman from Michigan.

Mr. STUPAK. Thank you, Mr. Chairman. I will yield 1 minute to Mr. Doyle of my time. I know he has some questions.

Mr. DOYLE. I will take less than that. Mr. DiPasquale, I wanted to make the comment that I would appreciate you getting these technical changes that you addressed in your testimony to my staff so that Mr. Greenwood and I can work on those. And I yield back.

Mr. STUPAK. Mr. Orlin, you said you basically put out bids and they have to—hauler comes and get it and has got to go a licensed landfill with a host agreement?

Mr. ORLIN. That is correct. And the city, before it sends any waste to any landfill, it inspects the landfill.

Mr. STUPAK. Could you describe the contents—this is just solid waste. Do you say what is restricted like bottles are allowed in, computer screens.

Mr. ORLIN. Any municipal solid waste is allowed and hazardous waste is not allowed.

Mr. STUPAK. Any inspection going on by the city to know what is going out in these contracts?

Mr. ORLIN. I mean the requirements are that in the residential waste——

Mr. STUPAK. I know there are requirements. Do you have any kind of inspection process?

Mr. ORLIN. When waste is dumped at the transfer station, the people do notice if there is improper waste in there at times. But I don't think there is a formal inspection by the city.

Mr. STUPAK. The hauler is going to go back to the city and say there are things in there that shouldn't have been in there?

Mr. ORLIN. Well, the city has a vigorous enforcement, for example, if medical waste is found——

Mr. STUPAK. Where is the enforcement if it goes to Pennsylvania?

Mr. ORLIN. It is enforced prior to going to Pennsylvania.

Mr. STUPAK. How do you do that then?

Mr. ORLIN. When waste ends up in the transfer station and if there is medical waste, the city has a vigorous enforcement program.

Mr. STUPAK. Do you inspect it at the transfer station.

Mr. ORLIN. I can't say we inspect every ton of waste or every pound of waste.

Mr. STUPAK. What percentage do you inspect?

Mr. ORLIN. I couldn't give you a percentage.

Mr. STUPAK. Director Chester, along those lines, are there any inspections of the trucks coming across from Canada into Michigan so we know what is in those trucks?

Mr. CHESTER. Yes, there is. It is not at the border, but each landfill has to have what is known as a waste analysis plan. And as part of that plan, there is an inspection schedule on the trucks. And admittedly, you can't inspect every truck, but we have that. In addition to that in Wayne County, in particular, they inspect each landfill facility each week and——

Mr. STUPAK. Is that the county or State?

Mr. CHESTER. County. On top of that, we have inspectors with the MDQ, and you are probably aware of the fact we have a stepped-up or increased inspection program ongoing.

Mr. STUPAK. Does your office ever receive a call or written notification from EPA concerning the routes or approval of semi loads of trash coming in from Canada? Has the DEQ ever received notification like that.

Mr. CHESTER. Not that I am aware of.

Mr. STUPAK. Has the EPA ever told you how many loads are planned for a site in a year coming over from Canada.

Mr. CHESTER. Solid waste?

Mr. STUPAK. Solid waste.

Mr. CHESTER. Not that I am aware of.

Mr. STUPAK. Do you believe the EPA have the current authority to enforce the U.S. Canada agreement about notification and routes?

Mr. CHESTER. Well, I am not an expert on treaty law. It strikes me, unless I am misinterpreting the gentleman from EPA, what they are really trying to do is accomplish two things. They want to make EPA—the United States, a party to the Bozzle convention, and in doing that, also allow them to go ahead and implement the solid waste portion of it. I would just suggest that H.R. 411 accomplishes that second goal very directly.

Mr. STUPAK. Mr. Orlin were you here when we were questioning the EPA as to notification and things like that?

Mr. ORLIN. I was here.

Mr. STUPAK. In your testimony, you mention RCRA and sub title D and how it is good for communities and private companies to replace and have safe landfills and things like that. Do you know—do you have any opinion whether RCRA would apply to the EPA? Is there notification requirements?

Mr. ORLIN. I am not familiar with that specific issue.

Mr. STUPAK. Do you give notice to the EPA when you move your trash from New York to like Pennsylvania or to New Jersey?

Mr. ORLIN. We don't—no, we don't give notice. We have a solid waste management plan in effect.

Mr. STUPAK. Do you move the trash to Canada?

Mr. ORLIN. New York City and New York State doesn't export to Canada.

Mr. STUPAK. I am trying to get down the notice provisions. The law was very clear in 1992 that it was supposed to be there. Thank you, Mr. Chairman. I guess my time has expired.

Mr. GILLMOR. Are there further questions of this panel?

Mr. DINGELL. Mr. Chairman.

Mr. GILLMOR. The distinguished ranking member.

Mr. DINGELL. Before I am recognized for questions, I have three items I would like to put in the record and ask unanimous consent. First, the very excellent statement of our dear friend, Mr. Manton, a former Member of Congress, a former colleague of ours in this committee, a great friend of mine and gentleman for whom I have enormous respect and affection. Second, a letter from the Canadian ambassador about the Canadian position on this matter. And last of all, a study which was prepared for us, a report to the Congress on interstate shipment of municipal solid waste, 2002 update. A very useful document.

Mr. GILLMOR. Without objection, statements will be made a part of the record.

[The information referred to follows:]

Canadian Embassy Ambassade du Canada

501 Pennsylvania Avenue, N.W.
Washington, D.C. 20001

July 22, 2003

The Honorable Paul Gillmor
United States House of Representatives
Longworth House Office Building, Rm 1203
Washington, D.C. 20510-2204

The Honourable Hilda L. Solis
United States House of Representatives
Longworth House Office Building, Rm 1725
Washington, D.C. 20510-2204

Dear Chairman Gillmor and Ranking Member Solis,

I wish to comment on the upcoming hearing of the House of Representatives Environment and Hazardous Materials Subcommittee on July 23, 2003 to examine three bills pertaining to the transport of solid waste: H.R. 382, the *Solid Waste International Transportation Act of 2003*; H.R. 411, *To direct the Administrator of the Environmental Protection Agency to carry out certain authorities under an agreement with Canada respecting the importation of municipal solid waste*; and H.R. 1730, the *Solid Waste Interstate Transportation Act of 2003*.

Canada and the United States have a long-standing partnership in jointly managing the two-way trade of hazardous and municipal wastes. Canada legally exports municipal waste to Michigan as do the States of New York, Illinois, Indiana, Ohio, Connecticut,

New Jersey, Pennsylvania and Wisconsin. Trade in waste between Canada and the U.S. is a two way street. Michigan sends approximately five times as much hazardous waste to Canada as Canada exports to Michigan.

The commerce in waste is governed by our respective rights and obligations under international trade agreements such as the World Trade Organization Agreements and the North American Free Trade Agreement. A preliminary reading of the draft Congressional Bills cited above would suggest they appear to be at variance with U.S. trade obligations as required by the WTO and NAFTA. Furthermore, the *Canada-U.S. Agreement on the Transboundary Movement of Hazardous Wastes* in 1986, (later amended in 1992 to include municipal waste) is intended to facilitate the environmentally sound management of waste by reducing the movement of municipal and hazard wastes to the nearest safe disposal site without regard to borders.

Since signing the *Agreement*, effective measures have been put in place in both countries for cooperatively managing cross-border hazardous waste shipments. Canada is working toward adopting similar measures for controlling movements of municipal waste in 2005. I understand the United States Environmental Protection Agency has also undertaken to develop complementary regulations to manage exports of municipal waste from the United States. I am confident that these measures will support our common goal of protecting human health and the environment, while allowing the continued free flow of commerce.

Yours sincerely,

Michael Kergin
Ambassador

c.c. The Honorable Mike Rogers, United States House of Representatives
The Honorable John D. Dingell, United States House of Representatives
The Honorable James C. Greenwood, United States House of Representatives
Members of the Michigan Delegation to the United States Congress

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Report for Congress

Received through the CRS Web

Interstate Shipment of Municipal Solid Waste: 2002 Update

November 26, 2002

James E. McCarthy
and
Anne L. Hardenbergh
Resources, Science, and Industry Division

Interstate Shipment of Municipal Solid Waste: 2002 Update

Summary

This report, which replaces CRS Report RL31051, provides updated information on interstate shipment of municipal solid waste (MSW). Since the late 1980s, Congress has considered, but not enacted, numerous bills that would allow states to impose restrictions on interstate waste shipments, a step the Constitution prohibits in the absence of congressional authorization. Over this period, there has been a continuing interest in knowing how much waste is being shipped across state lines for disposal, and what states might be affected by proposed legislation. This report provides data useful in addressing these questions.

Total interstate waste shipments continue to rise due to the closure of older local landfills and the increasing consolidation of the waste management industry. About 35 million tons of municipal solid waste crossed state lines for disposal in 2001, an increase of 9.4% over 2000. Waste imports have grown each year since CRS began tracking them in the early 1990s, and now represent 21.6% of all municipal solid waste disposed at landfills and waste combustion facilities. In the last eight years, reported imports have increased 141%.

Pennsylvania remains, by far, the largest waste importer. The state received 10.7 million tons of municipal solid waste and 1.9 million tons of other non-hazardous waste from out of state in 2001, more than 30% of the national total for interstate shipments. Virginia, the second largest importer, received 4.1 million tons, 62% less than the amount received by Pennsylvania. Michigan, the third largest importer, imported 3.6 million tons of MSW in fiscal year 2001; waste imports to Michigan have doubled since 1999. Twenty-three states had increased imports in the current report – the largest increases occurring in Pennsylvania and Michigan. In all, eight states reported imports that exceeded one million tons.

While waste imports increased overall, several states (including New Hampshire, South Carolina, Connecticut, Arizona, and Washington) reported sharp declines in waste imports.

New York remains the largest exporter of waste, with New Jersey and Illinois in second and third place, respectively. Four states (New York, New Jersey, Illinois, and Maryland) account for more than half the national total of waste exports.

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Interstate Shipment of Municipal Solid Waste: 2002 Update

Introduction

This report provides updated information on interstate shipment of municipal solid waste. Concerned about increased waste imports, some states have attempted to regulate this commerce; federal courts, however, have declared these state restrictions unconstitutional. If states are to have such authority, congressional action is required.

Since the late 1980s, Congress has considered, but not enacted, numerous bills that would grant such authority.[1] Over this period, there has been a continuing interest in knowing how much waste is being shipped across state lines for disposal, and what states might be affected by proposed legislation. This report provides data useful in addressing these questions. It updates information provided in earlier CRS reports.[2]

The report presents information gathered through telephone contacts with solid waste officials in the 50 states, the District of Columbia, and the Canadian province of Ontario. The data obtained from these contacts are summarized in Tables 1, 2, and 3, and Figures 1 and 2. Table 4 presents additional information, including the names and telephone numbers of state contacts.

Not all states require reporting of waste imports, and very few track exports, so the available data are incomplete and in some cases represent estimates rather than actual measurements. In a number of cases, faced with conflicting reports from exporters and importers or no quantitative data at all, we provided our best estimate based on discussions with state officials or other sources.

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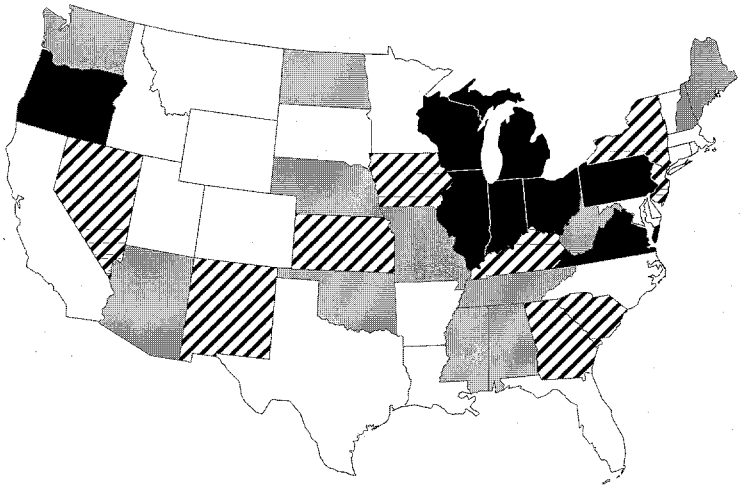
[1] Legislation on interstate shipment of waste has been introduced in every Congress since the 100th. In the 104th Congress, the Senate passed S. 534. The bill would have granted states authority to restrict new shipments of municipal solid waste from out of state, if requested by an affected local government. In the 103rd Congress, both the House and Senate passed interstate waste legislation (H.R. 4779 and S. 2345), but lack of agreement on common language prevented enactment. For a discussion of the issues addressed in these bills, see CRS Report RS20106, *Interstate Waste Transport: Legislative Issues*.

[2] This report replaces *Interstate Shipment of Municipal Solid Waste: 2001 Update*, CRS Report RL31051. Earlier reports, now out of print but available directly from the author, were *Interstate Shipment of Municipal Solid Waste: 2000 Update*, CRS Report RL30409, *Interstate Shipment of Municipal Solid Waste: 1998 Update*, CRS Report 98-689; *Interstate Shipment of Municipal Solid Waste: 1997 Update*, CRS Report 97-349; *Interstate Shipment of Municipal Solid Waste: 1996 Update*, CRS Report 96-712; *Interstate Shipment of Municipal Solid Waste: 1995 Update*, CRS Report 95-570; and *Interstate Shipment of Municipal Solid Waste*, CRS Report 93-743.

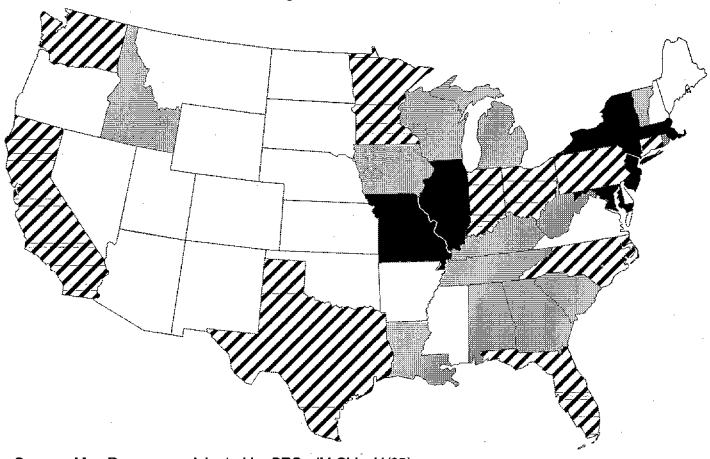
Figure 1. Imports of Municipal Solid Waste, 2001 or latest year, in tons



Source: Map Resources. Adapted by CRS. (M.Chin 11/02)

Amounts in Tons	
	1,000,000 or greater
	500,000 to 999,999
	100,000 to 499,999
	0 to 100,000

Figure 2. Exports of Municipal Solid Waste, 2001 or latest year, in tons



Source: Map Resources. Adapted by CRS. (M.Chin 11/02)

Table 1. Imports of Municipal Solid Waste, 2001 or Latest Year
(in tons)

State	Quantity Imported
Pennsylvania	[a] 10,666,090
Virginia	[b] 4,098,684
Michigan	[c,d] 3,597,729
Ohio	1,988,753
Indiana	[e] 1,456,699
Illinois	[d] 1,440,804
Oregon	[f] 1,301,882
Wisconsin	1,106,928
Georgia	[g] 964,285
New Jersey	[f] 892,394
New York	839,700
New Mexico	750,000
Kentucky	701,442
Kansas	636,847
South Carolina	[h] 579,299
Nevada	532,615
Iowa	[h] 505,598
Mississippi	466,399
Alabama	[f,i] 382,000
Tennessee	329,036
Arizona	[j] 260,000
New Hampshire	250,000
West Virginia	200,000
Missouri	178,032
Maine	[k] 164,527
Oklahoma	125,000
Nebraska	122,500
Washington	[f] 116,365
North Dakota	[f] 103,382
Connecticut	[h,l] 75,941
Massachusetts	67,247
Maryland	[m] 39,926
Texas	[n] 34,173
Montana	33,964
California	[f] 28,672
North Carolina	[h] 21,614
Arkansas	12,718
Idaho	12,583
Utah	[o] 5,967
South Dakota	1,400

[a] In addition, Pennsylvania received 1,938,857 tons of other waste (industrial waste, construction/demolition [C&D] waste, ash, asbestos, and sludge) from out of state at MSW landfills in 2001.
[b] Virginia also imported 720,782 tons of other waste, mostly sludge, incinerator ash, and C&D waste in 2001.
[c] 10/1/2000 - 9/30/2001.
[d] Converted from cubic yards using 3.3 cu. yds. = 1 ton.
[e] Indiana also imported 172,410 tons of non-municipal solid waste, primarily C&D and industrial waste in 2000.
[f] 2000.
[g] 7/1/2001 - 6/30/2002.
[h] 7/1/2000 - 6/30/2001.
[j] 4/1/2001 - 3/31/2002.
[i] As reported by BioCycle magazine.
[k] 1999.
[l] Connecticut import total does not include waste from New York that was received at a Connecticut transfer station and re-exported to other states for disposal.
[m] Maryland also imported 422,945 tons of C&D waste.
[n] 9/1/2000 - 8/31/2001.
[o] Utah landfills have generally imported more industrial than municipal solid waste.

Source: CRS, based on telephone interviews with and data provided by state program officials.

Table 2. Exports of Municipal Solid Waste, 2001 or Latest Year

(in tons)

State	Quantity Exported
New York	[a] 7,493,130
New Jersey	[b] 5,431,121
Illinois	3,084,880
Maryland	2,081,230
Ontario, Canada	1,976,000
Missouri	[c] 1,671,162
Massachusetts	1,015,042
Ohio	986,693
District of Columbia	961,052
Washington	949,685
Indiana	[d] 927,245
North Carolina	[e] 900,743
California	746,433
Connecticut	[f] 732,439
Minnesota	671,800
Pennsylvania	576,525
Florida	519,251
Texas	[g] 518,698
Iowa	[e] 390,917
Georgia	350,000
West Virginia	331,635
Tennessee	303,882
Kentucky	275,341
Wisconsin	204,831
Michigan	146,358
Idaho	134,062
Rhode Island	[h] 121,631
Vermont	121,546
Alabama	107,769
Louisiana	103,539
South Carolina	[e] 101,603
Arkansas	91,088
Delaware	[i] 83,689
Mississippi	74,515
New Hampshire	57,000
Kansas	53,111
Maine	[j] 50,862
Virginia	47,419
Alaska	30,000
Nebraska	17,900
Oklahoma	19,990
Oregon	[h] 19,384
North Dakota	15,418
Nevada	5,475
South Dakota	2,400
Utah	1,000

[a] As reported by seven importing states. New York's data indicate exports of 4,900,100 tons.
[b] As reported by six importing states. New Jersey's data indicated substantially smaller exports (2,651,000 tons in 2000).
[c] As reported by receiving states. Missouri's data indicate exports of 1,439,834 tons in 2001. A significant percentage of Missouri's exports are believed to be construction and demolition or industrial waste sent to MSW landfills.
[d] As reported by four receiving states (Michigan, Kentucky, Ohio, and Illinois). Indiana reported 335,190 tons of exports, but noted that the amount was incomplete because it only counted exports from transfer stations.
[e] July 2000 - June 2001.

[f] As reported by receiving states, Connecticut exports may include waste that originated in New York State, but was managed at a Connecticut transfer station.
[g] September 1, 1999 - August 31, 2000.
[h] 2000 data.
[i] As reported by 4 receiving states. Delaware reported only 14,518 tons of exports in 2001.
[j] 1999 data.

Source: CRS, based on telephone interviews with and data provided by state program officials. In many cases, the amount is based on data compiled by receiving states. See Table 4 entries for additional information.

Table 3. Net Imports/Exports of Municipal Solid Waste, 2001 or Latest Year

(in tons)

(Data subject to numerous qualifications: see notes from Tables 1, 2, and 4.)

State	Imports	Exports	Net Imports/Exports
Pennsylvania	10,666,090	576,525	10,089,565
Virginia	4,098,684	47,419	4,051,265
Michigan	3,597,729	146,358	3,451,371
Oregon	1,301,882	19,384	1,282,498
Ohio	1,988,753	986,693	1,002,060
Wisconsin	1,106,928	204,831	902,097
New Mexico	750,000	-	750,000
Georgia	964,285	350,000	614,285
Kansas	636,847	53,111	583,736
Indiana	1,456,699	927,245	529,454
Nevada	532,615	5,475	527,140
South Carolina	579,299	101,603	477,696
Kentucky	701,442	275,341	426,101
Mississippi	466,399	74,515	391,884
Alabama	382,000	107,769	274,231
Arizona	260,000	-	260,000
New Hampshire	250,000	57,000	193,000
Iowa	505,598	390,917	114,681
Maine	164,527	50,862	113,665
Oklahoma	125,000	19,990	105,010
Nebraska	122,500	17,900	104,600
North Dakota	103,382	15,418	87,964
Montana	33,964	-	33,964
Tennessee	329,036	303,882	25,154
Utah	5,967	1,000	4,967
South Dakota	1,400	2,400	-1,000
Alaska	-	30,000	-30,000
Arkansas	12,718	91,088	-78,370
Delaware	-	83,689	-83,689
Louisiana	-	103,539	-103,539
Idaho	12,583	134,062	-121,479
Vermont	-	121,546	-121,546
Rhode Island	-	121,631	-121,631
West Virginia	200,000	331,635	-131,635
Texas	34,173	518,698	-484,525
Florida	-	519,251	-519,251
Connecticut	75,941	732,439	-656,498
Minnesota	-	671,800	-671,800
California	28,672	746,443	-717,771
Washington	116,365	949,685	-833,320
North Carolina	21,614	900,743	-879,129
Massachusetts	67,247	1,015,042	-947,795
District of Columbia	-	961,052	-961,052
Missouri	178,032	1,671,162	-1,493,130
Illinois	1,440,804	3,084,880	-1,644,076
Ontario, Canada	-	1,976,000	-1,976,000
Maryland	39,926	2,081,230	-2,041,304
New Jersey	892,394	5,431,121	-4,538,727
New York	839,700	7,493,130	-6,653,430

Source: CRS, based on telephone interviews.

Fifteen of the states provided data for a period other than calendar year 2001 – either their latest fiscal year or a different calendar year. This adds another layer of imprecision: we combined data for whatever was the latest reporting period, even though in these 15 cases, this meant combining data from different time periods. Each of the exceptions from the 2001 reporting period is noted in the appropriate tables, but the reader should perhaps keep in mind that many of the totals reported here are our best estimate rather than precise figures.

Total Shipments

The data show that total interstate waste shipments continue to rise: imports in the current survey totaled 35.0 million tons, 15.1% of the 231.9 million tons of municipal solid waste generated in the United States.[3] Of municipal waste disposed (as opposed to recycled or composted), the percentage is even higher. EPA estimates that 69.9 million tons of municipal solid waste were recycled or composted in 2000, leaving 162 million tons to be disposed in landfills or incinerators. Of this amount, 21.6% crossed state lines for disposal.[4]

Between CRS's year 2001 report (reporting largely 1999 and 2000 data) and the current survey (reporting generally 2001 data), imports increased 3.0 million tons, or 9.4%. Since 1993, reported imports have risen 141%, from 14.5 million tons in 1993 to 35.0 million tons in the current survey.

States Reporting Increased Imports

Twenty-three states had increased imports of municipal waste in 2001, with the largest increases occurring in Pennsylvania and Michigan. The increases in these two states, 0.9 million tons and 0.75 million tons respectively, total 55% of the entire increase nationally.

The preponderance of these two states in the 2001 waste statistics demonstrates another element of the emerging picture of interstate waste shipment: 52% of total municipal waste imports are disposed in just three states: Pennsylvania, Virginia, and Michigan.

Pennsylvania continues to be the largest waste importer, by far. Disposal facilities in the state received 10.7 million tons of MSW and 1.9 million tons of other

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[3] Because many of the larger importers now differentiate MSW from other non-hazardous waste imports, we compared total MSW imports to EPA's national estimate of MSW generation (231.9 million tons in the latest available year, 2000). State-reported waste generation, summarized in *BioCycle* magazine's annual survey, is substantially higher (409 million tons in 2000) but is likely to include other nonhazardous waste, provided it was disposed at MSW facilities. For state-reported data, see Nora Goldstein and Celeste Madtes, "The State of Garbage in America," *BioCycle*, December 2001, p. 42.

[4] Much of the waste destined for recycling may also have crossed state lines, but waste destined for recycling does not carry the same stigma as that sent for disposal, and recycling facilities do not generally require permits by state agencies. Thus, amounts shipped across state lines for recycling cannot generally be tracked by the solid waste agencies.

nonhazardous waste from out of state in 2001. The amounts represented half of all solid waste disposed in the state and more than 30% of the national total for interstate shipments.

After Pennsylvania, Virginia is the largest waste importer, with 4.1 million tons of MSW imports and 720,782 tons of other nonhazardous waste. Despite predictions that Virginia would receive increased imports as New York's Fresh Kills landfill phased out operations, waste imports to Virginia have remained roughly the same in the 1998-2001 period. (Instead, New York's increased exports appear to have gone primarily to Pennsylvania and New Jersey.)

Michigan, the third largest waste importer in 2001, saw out-of-state waste disposed in the state grow by more than 750,000 tons that year. Substantial amounts of waste come to Michigan from Illinois, Indiana, and other neighboring states; but the biggest source, accounting for about half of Michigan's out-of-state waste, is Ontario, Canada. Ontario's waste shipments are growing as the Toronto area awards new contracts for waste disposal and closes its two remaining landfills. At the beginning of 1999, the Toronto area was generating about 2.8 million tons of waste annually, of which about 700,000 tons were shipped to Michigan. By early 2003, however, there will be virtually no local disposal capacity. Barring unforeseen developments, most of this waste is expected to be sent to Michigan for disposal.

In other highlights:

- Eight states reported imports exceeding one million tons per year in the latest year, a figure unchanged from our two previous surveys, which reported 1998 and 2000 data.

- Another 21 states had imports exceeding 100,000 tons.

- For the fourth year in a row, New Jersey is on the list of major importers, with 892,394 tons of MSW imports in 2000 (2001 data were not yet available). The state is still a major exporter of waste, as well: receiving states estimate New Jersey's exports at more than 5.4 million tons in 2001. But the absence of flow control (local government requirements that waste within their jurisdiction be disposed at local facilities, which were overturned by the courts in the mid-1990s) has led waste-to-energy facilities in New Jersey to search for waste to replace local waste now being disposed elsewhere. As a result, large amounts of waste are entering New Jersey from New York.

- New York, the nation's largest waste exporter, also saw rapid growth in waste imports in 2000 and 2001. The state imported 839,700 tons of waste in 2001, an increase from 539,000 tons in our previous survey.

- Other states reporting major increases in imports were Ohio, Georgia, and New Mexico. Ohio has had a nearly 900,000 ton increase in MSW imports between 1998 and 2001; Georgia

experienced a nearly 750,000 ton increase over the same three years; and New Mexico had a 500,000 ton increase in the last two years.

- Oklahoma made its first appearance on our list of importers: the state reported that in September 2001, it began receiving 1,500 tons per day of waste from Wichita, Kansas. Based on this information, we estimate imports at 125,000 tons for the year 2001. This amount will increase to around 400,000 tons in 2002.

- Although there are no comprehensive data, imports to transfer stations[5] are a political issue in some locations. Transfer stations are generally located in urban areas and are subject to less stringent regulation than disposal facilities. Heavy truck traffic and odors have aroused concerns in some neighboring communities. Connecticut, Rhode Island, and the District of Columbia report significant amounts of out-of-state waste imported to transfer stations, then exported to other states for disposal. New York City's plan to export waste to transfer stations in New Jersey raised substantial controversy, before being rescinded.

States Reporting Decreased Imports

While waste imports increased overall, 14 states reported declines in waste imports. In many cases, the declines were small, but five of the states (New Hampshire, South Carolina, Connecticut, Arizona, and Washington) had declines exceeding 100,000 tons. Most notable were: South Carolina, where imports declined by about one-third in the last two years (simultaneous with a major increase in Georgia's imports); Connecticut, where imports declined by two-thirds; and New Hampshire, where new permit conditions imposed on the state's largest landfill have contributed to a state-wide reduction in imports of more than 560,000 tons since 1997.

Major Exporters

Six states (New York, New Jersey, Illinois, Maryland, Missouri, and Massachusetts) each exported more than one million tons of waste to facilities in other states in the latest reporting period, and ten other states and the District of Columbia exported more than half a million tons. The Canadian province of Ontario also exported a substantial amount of municipal waste (about 2,000,000 tons), most of it to Michigan.

New York, New Jersey, Illinois, and Maryland remained the largest exporters. Together these four states accounted for 52% of waste exports nationally.

New York's exports rose to 7,493,130 tons in 2001, according to seven receiving states, an increase of nearly 700,000 tons over the previous year. The

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[5] Transfer stations receive waste from collection trucks, compact it, bale it, and load it on larger trucks for disposal elsewhere.

increase reflects the March 2001 closure of New York City's Fresh Kills Landfill — the city's last disposal facility.

New Jersey's estimated exports, 5.4 million tons, have also grown dramatically. In New Jersey's case, the cause of increased exports is the overturning of the state's flow control law, which, until 1997, directed much of the state's waste to high-cost local facilities for disposal. The state law was overturned and the state exhausted its appeals in October 1997. Exports have since grown by about 3 million tons per year.

Illinois' exports, at 3.1 million tons, declined slightly in 2001, after several years of rapid growth: despite the decline, the state's exports in 2001 were still three and a half times the amount reported for 1995.[6] Most of the exports originate in Cook County (Chicago and its suburbs), which has a relative shortage of disposal capacity. Illinois as a whole reported a more than doubling of landfill capacity between 1995 and 2000, but Chicago is located near the border of both Indiana and Wisconsin; so increases in capacity elsewhere in Illinois may not affect disposal decisions in the metropolitan area.

In all, 13 states (and Ontario, Canada) increased waste exports by more than 100,000 tons each in the period, while 4 states had major decreases. In addition to the exporters discussed above, Pennsylvania and Maryland showed the largest increases (although in Pennsylvania's case, the increased exports were dwarfed by additional waste entering the state). Among states showing decreased exports, California showed the largest drop, a reduction of nearly 450,000 tons.

Net Imports and Exports

Table 3 combines import and export data to rank the states by net amounts imported or exported. The table shows that 25 states were net importers, 22 plus the District of Columbia were net exporters. Thirty-nine of the 50 states had net imports or exports exceeding 100,000 tons in the reporting period; 23 exceeded 500,000 tons. Perhaps most interesting, given the tendency to identify states as either exporters *or* importers, 17 states both exported *and* imported in excess of 100,000 tons of municipal solid waste.

Several factors are at work here. In the larger states, there are sometimes differences in available disposal capacity in different regions within the state. Areas without capacity may be closer to landfills (or may at least find cheaper disposal options) in other states. A good example is Illinois: the Chicago area, which is close to two other states, exports significant amounts of waste out of state. Downstate, however, Illinois has substantial available landfill capacity, and imports about 1 million tons annually from St. Louis and other locations in Missouri.

As noted earlier, the movement of waste also represents the growing regionalization and consolidation of the waste industry. In 2001, the three largest firms (Waste Management, Allied Waste, and Republic Services) accounted for 73%

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[6] Illinois, like most states, does not report waste exports. This export estimate was derived from data provided by neighboring states.

of total revenues of the industry's 100 largest firms.[7] These large firms offer integrated waste services, from collection to transfer station to disposal site, in many locations. Often, they ship waste to their own disposal facility across a border, rather than dispose of it at an in-state facility owned by a rival. As small landfills continue to close — the number of U.S. landfills declined 52% between 1993 and 2000[8] — this trend toward regionalization and consolidation is likely to continue. The amount of waste being shipped across state lines for disposal may rise in this process.

Additional Information

The remainder of this report consists of a table summarizing waste import and export data, by state. All 50 states and the District of Columbia are listed in alphabetical order, with data for the amount of waste exported, destination of exports, amount of waste imported, source of imports, and a state agency contact for additional information.

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[7] "Waste Age 100," *Waste Age*, June 2002, pp. 42-52.

[8] "The State of Garbage in America," *BioCycle*, April 1994, p. 51, and December 2001, p. 42.

Table 4. Amount and Destination of Exported MSW, and Amount and Sources of Imported MSW, by State

State	Amount of MSW Exported	Destination of Exported Waste	Amount of MSW Imported	Sources of Imported Waste	State Contact
Alabama	The state has no reporting system but plans to begin collecting information soon. Surrounding states report 107,769 tons of exports from Alabama.	97% to Mississippi; small amounts to Georgia and Tennessee.	The state has no reporting system but plans to begin collecting information soon. BioCycle magazine reports 382,000 tons of imports to Alabama.	Mostly from Georgia.	John Narramore, AL Dept. of Environmental Management (334) 271-7764
Alaska	Alaska estimates exports at around 30,000 tons.	Nearly all to Washington; maybe a small amount to Oregon.	No imports.	N.A.	Glenn Miller, AK Dept. of Environmental Conservation (907) 465-5153
Arizona	Arizona does not export significant amounts of MSW. There may be flows of less than 100 tons per year to Nevada and New Mexico. Also, the state does not track waste of the Navajo nation, which may export waste.	Nevada, New Mexico	260,000 tons in the period 4/1/2001 to 3/31/2002.	Nearly all from California. A small amount comes from New Mexico. Very small amounts may also come from Nevada or Utah.	David Janke, AZ Dept. of Environmental Quality (607) 207-4173
Arkansas	State reports 91,088 tons exported in 2001. This includes all waste exported, not just MSW. Receiving states report comparable amounts.	State reports Oklahoma, Missouri, and Louisiana are the main destinations. Mississippi also reports imports from Arkansas.	State does not track imports. According to the state, there is probably very little waste being imported. Missouri reports exporting 12,718 tons to Arkansas in 2001.	Missouri	Darlene Hale, AR Dept. of Pollution Control and Ecology (501) 682-0586

State	Amount of MSW Exported	Destination of Exported Waste	Amount of MSW Imported	Sources of Imported Waste	State Contact
California	According to California, exports were 2000: 746,433 tons 1999: 1,010,232 tons 1998: 676,327 tons. Receiving states report slightly higher amounts. Although exports are substantial, they represent only about 2% of the MSW generated in the state.	Nevada and Arizona are the major destinations. A small amount goes to Washington.	28,672 tons in 2000.	State does not keep track of where waste comes from.	Janelle Auyeung, CA Integrated Waste Management Board (916) 341-6218
Colorado	State does not track exports. Some very small amounts of MSW may be exported to Kansas, Nebraska, and New Mexico.	Kansas, Nebraska, and New Mexico	State does not track imports. Small amounts of MSW may be imported from Kansas and Nebraska. Out-of-state tires are sometimes disposed of in the state from the Dakotas, Kansas, and Nebraska.	Kansas, Nebraska, North Dakota, and South Dakota	Glenn Mallory, CO Dept. of Public Health and Environment (303) 692-3445

State	Amount of MSW Exported	Destination of Exported Waste	Amount of MSW Imported	Sources of Imported Waste	State Contact
Connecticut	According to Connecticut, 303,069 tons of MSW were exported in FY2001 (7/1/2000 - 6/30/2001). This includes only waste reported through transfer stations and not waste taken directly out of state by haulers. Receiving states report much more: a total of 732,439 tons received in 4 states in 2001.	482,049 tons to Pennsylvania; 123,067 tons to Ohio; 100,000 tons to NY; 27,323 tons to Mass.	75,941 tons of MSW imported in FY2001 (7/1/2000 - 6/30/2001). This does not include 40,442 tons of NY waste managed at a CT transfer station and then exported for disposal. Waste imports have decreased substantially in recent years.	36,617 tons from Rhode Island; 28,535 from Massachusetts; 10,788 from New York.	Judy Belaval, CT Dept. of Environmental Protection (860) 424-3237
Delaware	MSW exports in 2001 were 14,518 tons, according to Delaware. Receiving states report 83,689 tons.	97% to Pennsylvania and Virginia. Small amounts reported by New York and Ohio.	The state operates 3 landfills that are all prohibited from accepting out of state waste. There is one private facility that is permitted as an industrial waste facility that has in the past imported about 400,000 tons of construction and demolition waste. However, most of the waste going to that facility now is probably from in-state.	N.A.	Jamie Rutherford, DE Dept. of Natural Resources and Environmental Control, (302) 739-3689

State	Amount of MSW Exported	Destination of Exported Waste	Amount of MSW Imported	Sources of Imported Waste	State Contact
District of Columbia	Receiving states report a total of 966,052 tons in 2001.	Virginia (97%) Pennsylvania (3%)	New York reports sending 800 tons of MSW to D.C. in 2001. DC also imports substantial amounts of waste from Maryland to transfer stations located in the District. None of this waste is disposed in DC.	Mostly Maryland.	Sybil Hammond, D.C. Dept. of Public Works (202) 673-6833
Florida	The state does not track exports. Georgia and South Carolina report receiving 519,251 tons of MSW from Florida. Exports increased by two-thirds in the most recent report, but still represent less than 2% of Florida's waste generation.	Georgia (93%) South Carolina (7%)	The state does not track imports. There is little incentive to import, since disposal is less expensive in Georgia.	N.A.	Peter Goren, FL Dept. of Environmental Protection (850) 488-0300
Georgia	The state has no information on exports. CRS estimates 350,000 tons of exports based on information available for three receiving states.	Mostly to Alabama. South Carolina and Tennessee each report about 20,000 tons from Georgia.	964,285 tons in FY 2002 (7/1/2001 to 6/30/2002). Waste imports have quadrupled since FY 1998.	50% of the waste comes from Florida, 21% from New Jersey, 11% from South Carolina, 6% from Rhode Island, 4% from New York.	Scott Henson, GA Dept. of Natural Resources (404) 362-4533
Hawaii	No exports of MSW.	N.A.	No imports of MSW.	N.A.	Gary Siu, HI Dept. of Health (808) 586-4244
Idaho	Idaho estimates 134,062 tons of exports.	Washington (82,928 tons) Oregon (27,956 tons) Montana (23,178 tons).	State estimates 12,583 tons of imports.	7,103 tons from Oregon; 5,475 tons from Nevada; 5 tons from Utah	Dean Ehlert, ID Dept. of Environmental Quality (208) 373-0416

State	Amount of MSW Exported	Destination of Exported Waste	Amount of MSW Imported	Sources of Imported Waste	State Contact
Illinois	3,084,880 tons in 2001, according to six receiving states.	1,336,000 tons to Indiana (CRS estimate based on Indiana data). 865,000 tons to Wisconsin. 779,000 tons to Michigan. Smaller amounts to three other states.	The state reports importing 1,440,804 tons in 2001.	Missouri (72%); Iowa (20%); Wisconsin (4%); Indiana (3%); Kentucky (1%); negligible amounts from 6 other states.	Ellen Gambach, IL Environmental Protection Agency (217) 782-9288
Indiana	Four receiving states report receiving a total of 927,245 tons from Indiana. Indiana reports 335,190 tons of exports in 2001, but this includes only waste exported by transfer stations, not waste taken directly out of state by haulers.	Michigan (536,033 tons), Ohio (180,407 tons), Kentucky (161,858 tons), Illinois (48,947 tons).	1,456,699 tons of MSW in 2001.	92% from Illinois. The remainder mostly from Ohio, Kentucky, and Michigan.	Michelle Weddle, IN Dept of Environmental Management (317) 233-4624
Iowa	In FY2001 (7/1/2000-6/30/2001), Iowa exported 390,917 tons of MSW.	345,372 tons to Illinois; 24,599 tons to Nebraska; 18,833 tons to Missouri; 2,113 tons to Wisconsin.	Iowa imported 505,598 tons of MSW in FY2001 (7/1/2000-6/30/2001).	478,641 tons (95%) from Minnesota; smaller amounts from Missouri, Nebraska, Illinois, South Dakota, and Wisconsin	Tammie Krausman, IA Dept of Natural Resources (515) 281-8382
Kansas	53,111 tons exported in 2001. Oklahoma reports substantially higher amounts.	Missouri and Oklahoma.	636,847 tons in 2001, which was 19% of total MSW disposed of in the state.	608,212 tons (96%) from Missouri; the remainder from Oklahoma and Nebraska.	Kent Foerster, KS Dept. of Health and Environment (785) 296-1540

State	Amount of MSW Exported	Destination of Exported Waste	Amount of MSW Imported	Sources of Imported Waste	State Contact
Kentucky	The state does not track exports. Four neighboring states report 275,341 tons of Kentucky exports.	Tennessee (58%) Ohio (21%) Indiana (18%) Illinois (3%).	701,442 tons of MSW imported in 2001.	379,820 tons (54%) from Ohio; 161,858 tons (23%) from Indiana; 119,617 tons (17%) from W. Va.; 35,851 tons (5%) from Tennessee. Small amts. from 4 other states.	Carol Sole, KY Dept. for Environmental Protection (502) 564-6716 x216
Louisiana	No tracking system, but Mississippi reports that it received 103,539 tons from Louisiana in 2001.	Mississippi. Small amounts may go to Texas, as well.	No tracking. Mississippi reports its border areas may export small amounts to Louisiana.	Mississippi	Dennis Duszynski, LA Dept. of Environmental Quality (225) 765-0230
Maine	50,862 tons in 1999, plus 40,412 tons of construction and demolition waste.	19,000 to New Brunswick (Canada); most of the rest to New Hampshire.	164,527 tons of MSW in 1999.	Massachusetts (74%); the rest from New Hampshire.	George MacDonald, ME Dept of Environmental Protection (207) 287-5759
Maryland	Maryland reported 1,547,065 tons of MSW exported in 2000. Receiving states, which have reported data for 2001, reported receiving 2,081,230 tons.	1,718,468 tons to Virginia; 361,710 tons to Pennsylvania.	39,926 tons imported in 2001. Maryland also imported 422,945 tons of C&D waste.	Delaware, Pennsylvania, Virginia, West Virginia, and D.C.	Frank Diller, MD Dept of the Environment (410) 631-4143

State	Amount of MSW Exported	Destination of Exported Waste	Amount of MSW Imported	Sources of Imported Waste	State Contact
Massachusetts	1,015,042 tons exported in 2001; nearly 400,000 tons of other waste (mainly construction and demolition waste and tires).	327,576 tons to South Carolina; 273,111 tons to New York; 200,242 tons to New Hampshire; 155,314 tons to Maine; smaller amounts to Connecticut, Ohio, Pennsylvania, Rhode Island, and Canada. New York reports receiving 450,000 tons of MSW in 2001, substantially more than Massachusetts reports.	67,247 tons of MSW imported in 2001; 141,135 tons of other waste (mainly construction and demolition waste, tires, and ash).	27,323 tons from Connecticut; 21,196 tons from New Hampshire; 16,189 tons from Rhode Island; 2,078 tons from Vermont; 461 tons from New York.	Brian Holdridge, MA Dept. of Environmental Protection (617) 292-5578
Michigan	The state does not track exports, but two neighboring states reported 146,358 tons from Michigan in 2001, an increase of 72%.	Ohio (55%) Indiana (45%).	In FY2001, 10/1/2000 - 9/30/2001, imports were 3,597,729 tons, 757,000 tons more than in FY2000. (Data converted from cubic yards by CRS).	Ontario, Canada (50%), Illinois (22%), Indiana (15%), Ohio (9%), Wisconsin (4%) Imports from Ontario are growing rapidly.	Lynn Dumroese, MI Dept. of Environmental Quality (517) 373-4738
Minnesota	671,800 tons in 2001, a slight decrease from 704,878 tons in 2000.	372,300 tons to Iowa; 239,700 tons to Wisconsin; 58,400 to North Dakota; 1,400 to South Dakota .	Imports were inconsequential.	N.A.	Jim Chiles, MN Pollution Control Agency (651) 296-7273
Mississippi	State does not track exports, but believes small amounts of waste are being exported from "isolated areas" near the borders. Tennessee reports receiving 74,515 tons of Mississippi waste.	Any exports most likely go to Alabama, Louisiana, and Tennessee.	466,399 tons of MSW in 2001.	230,237 tons (49%) from Tennessee; 104,550 tons (22%) from Alabama; 103,539 tons (22%) from Louisiana; 27,910 tons (6%) from Arkansas.	Pradip Bhowal, MS Dept. of Environmental Quality (601) 961-5082

State	Amount of MSW Exported	Destination of Exported Waste	Amount of MSW Imported	Sources of Imported Waste	State Contact
Missouri	According to Missouri, 1,439,834 tons in 2001. MSW definition includes some industrial waste. Receiving states report 1,671,162 tons.	Illinois (62%), Kansas (36%). Small amounts to Arkansas, Iowa, Tennessee, and Indiana.	178,032 tons in 2001.	80,441 tons from Illinois; 75,937 tons from Arkansas; 11,135 tons from Kansas; 10,159 tons from Iowa.	Debbie Sessler, MO Dept. of Natural Resources (573) 751-5401
Montana	The state says it sends a "tiny little bit" to North Dakota.	North Dakota	33,964 tons in 2001.	27,373 tons (81%) from Idaho; small amounts from North Dakota, Washington, and Wyoming.	Pat Crowley, MT Dept. of Health and Environmental Sciences (406) 444-5294
Nebraska	Nebraska does not collect annual data on waste exports. From 7/1/2000 - 6/30/2001, Iowa reports receiving 9,255 tons. In calendar year 2001, Kansas reports receiving 8,645.	Iowa and Kansas.	Nebraska does not collect annual data on waste imports. A one-time survey reported 122,500 tons in 1997. Probably hasn't been much change since then, according to the state. Iowa reports sending 24,599 tons from 7/1/2000 - 6/30/2001.	Mostly from Iowa. Some from South Dakota.	Keith Powell, NE Dept. of Environmental Quality (402) 471-4210
Nevada	There are no exports from Nevada according to the state. Idaho reports receiving 5,475 tons from Nevada.	Idaho	532,615 tons in 2001, about 16% of total MSW disposed in Nevada.	Almost all from California. Tiny amounts from Arizona and Utah.	Les Gould, NV Division of Environmental Protection (775) 687-4670 x3018
New Hampshire	57,000 tons in 2001.	Massachusetts and New York	250,000 tons in 2001, less than half of what was imported in 1999.	Mainly Massachusetts.	Pierce Rigrod, NH Dept. of Environmental Services (603) 271-3713

State	Amount of MSW Exported	Destination of Exported Waste	Amount of MSW Imported	Sources of Imported Waste	State Contact
New Jersey	5,431,121 tons in 2001, according to six importing states. New Jersey reports substantially less: 2,651,000 tons in 2000.	88% to Pennsylvania, 5% to Ohio, 4% to Georgia, 3% to Virginia.	892,394 tons in 2000, a slight increase from 1999.	Nearly all from New York.	Ray Worob, NJ Dept. of Environmental Protection (609) 984-6903
New Mexico	The state says there are no exports: New Mexico's tipping fees are lower than those in surrounding states. However, Texas and Arizona both report receiving small amounts of waste from New Mexico.	Arizona and Texas	In 2001, 750,000 tons of MSW were imported, more than triple the amount two years earlier. The imported waste represented 25% of all waste landfilled in the state in 2001.	Colorado, Texas, and maquiladora waste from Mexican border areas.	John O'Connell, NM Environment Dept. (505) 827-2385
New York	Seven importing states report a total of 7,493,130 tons from New York. New York facilities reported exports of 4,900,100 tons in 2001, but these data are believed to be incomplete.	Primarily Pennsylvania (4.8 million tons), Virginia (1.1 million tons), New Jersey (879,000 tons), and Ohio (664,000 tons).	New York estimates 839,700 tons were imported in 2001 from "selected states". Waste imports to New York have grown by 700,000 tons since 1998.	450,000 tons (54%) from Massachusetts; 200,000 tons (24%) from Pennsylvania; 100,000 tons (12%) from Connecticut; lesser amounts from Vermont, New Jersey, New Hampshire, Maine, Maryland, and other states. In addition, Ontario, Canada reports sending 190,000 tons of MSW to New York.	Gerard Wagner, NY State Dept. of Environmental Conservation (518) 402-8692

State	Amount of MSW Exported	Destination of Exported Waste	Amount of MSW Imported	Sources of Imported Waste	State Contact
North Carolina	900,743 tons in FY2001 (July 2000 to June 2001), a decline of 206,000 tons from the previous year, but still an 8-fold increase since FY 1996.	Virginia, South Carolina, incidental amounts to Georgia and Tennessee	21,614 tons in FY2001	Virginia	Paul Chrisman, NC Dept. of Environment and Natural Resources (919) 733-0692 x254
North Dakota	The state does not track MSW exports. Two states report receiving a total of 15,418 tons of MSW from North Dakota.	Montana (3,735 tons) Pennsylvania (11,683 tons).	103,382 tons MSW in 2000.	Mainly from Minnesota; small amounts from South Dakota and Montana.	Steve Tillotson, ND Dept. of Health (701) 328-5166
Ohio	986,693 tons in 2001.	Mostly to Kentucky (46%) and Michigan (31%). Lesser amounts to West Virginia (12%), Pennsylvania (9%), and Indiana (3%).	Ohio reports importing 1,988,753 tons of MSW in 2001, a 200,000 ton increase from 2000.	New York (33%), Pennsylvania (19%), New Jersey (13%), Indiana (9%), Connecticut (6%), and West Virginia (6%) accounted for the bulk of imports. The other 14% came from 20 states, DC, and the Virgin Islands.	Michelle Kenton, OH Environmental Protection Agency (614) 728-5368
Oklahoma	The state does not track waste exports but does not believe much waste is exported. Kansas reports receiving 19,990 tons of MSW from Oklahoma in 2001.	Kansas	CRS estimates 125,000 tons in 2001. Oklahoma does not track waste imports, but the state is aware that in September 2001, the City of Wichita, Kansas began exporting about 1,500 tons per day of MSW to Oklahoma for disposal. In addition, small amounts come from Arkansas and Texas.	Mostly from Kansas. Arkansas and Texas also report sending MSW to Oklahoma.	John Roberts, OK Dept. of Environmental Quality (405) 702-5100

State	Amount of MSW Exported	Destination of Exported Waste	Amount of MSW Imported	Sources of Imported Waste	State Contact
Ontario, Canada	Michigan reports receiving 1,786,284 tons of waste from Ontario, 10/1/2000 - 9/30/2001. Ontario estimates that another 190,000 tons is disposed in New York.	Michigan, New York	None.	N.A.	Bruce Pope, Ontario Ministry of Environment and Energy (416) 325-4420
Oregon	19,384 tons of MSW in 2000.	Some to Idaho, most to Washington.	1,301,882 tons of MSW in 2000.	Most from Seattle-area in Washington; small amount from California and Idaho.	Judy Henderson, OR Dept. of Environmental Quality (503) 229-5521
Pennsylvania	The state does not track exports. According to neighboring states, Pennsylvania exported 576,525 tons of MSW in 2001.	64% to Ohio, 35% to New York, 1% to Virginia.	10,666,090 tons of MSW in 2001, 30% of the nat'l total, an increase of about 900,000 tons from 2000. The state also imported 1,938,857 tons of sludge, industrial, residual, C&D, ash, and asbestos waste, a decrease from 2000.	New York and New Jersey accounted for nearly 90% of MSW imports, at about 45% each. 482,049 tons, or 5%, came from Connecticut; 361,410 tons (4%) from Maryland. The rest came from 8 other states and DC.	Sally Lohman, PA Dept. of Environmental Protection (717) 787-7382
Rhode Island	121,631 tons in 2000, all of which was waste imported to a transfer station and then exported elsewhere for disposal.	Connecticut about 36,000 tons, Massachusetts about 41,000. Georgia reports receiving 56,883 tons.	121,930 tons in 2000, nearly all of this waste was imported to transfer stations and then exported for disposal.	N.A.	Robert Schmidt, RI Dept. of Environmental Management (401) 222-2797 x7260

State	Amount of MSW Exported	Destination of Exported Waste	Amount of MSW Imported	Sources of Imported Waste	State Contact
South Carolina	101,603 tons in FY2001 (7/1/2000 - 6/30/2001).	Georgia	The state reports that it imported 579,298 tons of "defined" MSW in FY2001 (7/1/2000 - 6/30/2001), which includes residential, commercial, institutional and industrial packaging/administrative wastes.	345,570 tons (60%) from Massachusetts; 133,986 tons (23%) from Texas; The remainder from Florida, New Jersey, Georgia, and North Carolina.	Celeste Duckett, SC Dept. of Health and Environmental Control (803) 896-4226
South Dakota	The state does not track exports. A small amount of exporting may occur, but it is not significant. Iowa reports 2,400 tons of waste from South Dakota in FY 2001.	Iowa	The state does not track imports. A small amount of importing may occur, but it is not significant. Minnesota reports sending 1,400 tons to South Dakota.	Minnesota	Jim Wente, SD Dept. of Environment and Natural Resources (605) 773-3153
Tennessee	The state does not track waste exports, but neighboring states report 303,882 tons of Tennessee waste exports.	Mississippi (76%) Kentucky (12%) Virginia (9%) Georgia (3%).	329,036 tons in 2001.	159,772 tons (49%) from Kentucky; 74,515 tons (23%) from Mississippi; 41,725 tons (13%) from North Carolina; 21,324 tons (6%) from Virginia; 19,547 tons (6%) from Georgia; the rest from Arkansas, Missouri, and Alabama.	A. Wayne Brashear, TN Dept. of Environment and Conservation (615) 532-8010

State	Amount of MSW Exported	Destination of Exported Waste	Amount of MSW Imported	Sources of Imported Waste	State Contact
Texas	No reporting requirement for exported waste. Estimates based on regional plans show 518,698 tons of residential and commercial MSW were exported to other states from Sept. 1,1999 to Aug. 31, 2000.	New Mexico is probably the major destination. Texas says waste most likely goes to New Mexico, Louisiana, and Oklahoma. South Carolina also reports receiving significant quantities of Texas waste.	In FY2001 (9/1/2000 - 8/31/2001), 34,173 tons of MSW were imported.	Louisiana, New Mexico, Oklahoma, and Mexico. Some smaller amounts may come from other states.	Lynne Haase, TX Commission on Environmental Quality (512) 239-6613
Utah	As in 2000, about 1,000 tons of 2001 MSW went from Wendover, Utah to Wendover, Nevada. There might be some small amount of exports from Indian reservations.	Nevada	5,967 tons in 2001, a large decrease from 2000 (66,000 tons).	Massachusetts	Jeff Emmons, UT Dept. of Environmental Quality (801)538-6748
Vermont	121,546 tons in 2000, an increase from 88,350 in 1999.	74,982 tons to New York; 44,988 tons to New Hampshire; 1,576 tons to Massachusetts.	No reported imports.	N.A.	Julie Hackbarth, VT Dept. of Environmental Conservation (802) 241-3446
Virginia	The state does not track MSW exports. Three states report 47,419 tons of exports from Virginia.	North Carolina (46%) Tennessee (45%) Pennsylvania (9%).	4,098,684 tons of MSW in 2001, plus 720,782 tons of other waste (mostly sludge, incinerator ash, and C&D waste).	97% from 3 states and DC: 1,443,724 tons from Maryland; 1,120,111 tons from New York; 936,387 tons from DC; 486,942 tons from NC; less than 3% from 13 other states.	Kathy Frahm, VA Dept. of Environmental Quality (804) 698-4376

State	Amount of MSW Exported	Destination of Exported Waste	Amount of MSW Imported	Sources of Imported Waste	State Contact
Washington	949,685 tons in 2000.	Oregon	116,365 tons in 2000, a decrease from 243,292 tons in 1999, mainly due to a landfill losing a California contract.	41,808 tons from Canada (mainly British Columbia); California, 30,139 tons; Idaho, 24,035 tons; Alaska, 20,129 tons; Oregon 198 tons; Antarctica, 56 tons.	Ellen Caywood, WA Dept. of Ecology (360) 407-6132
West Virginia	No tracking system. Ohio, Kentucky, Pennsylvania, and Virginia reported 331,635 tons from West Virginia.	Ohio and Kentucky (36% each), Pennsylvania (16%), Virginia (12%).	The state has no tracking system, but estimates that it imports about 200,000 tons of MSW per year.	Ohio reports shipping 119,077 tons to West Virginia in 2001. Other sources, N.A.	Anne Howell, WV Division of Environmental Protection (304) 558-4253
Wisconsin	The state does not collect export data, but three receiving states report 204,831 tons of Wisconsin exports in 2001, about 18% less than in 1999.	Michigan (146,442 tons) Illinois (57,049 tons) Indiana (1,340 tons).	1,106,928 tons in 2001.	865,404 tons (78%) from Illinois; 238,836 tons (22%) from Minnesota. Small amounts from Iowa and Michigan.	Wayne Ringquist, WI Dept. of Natural Resources (608)267-7557
Wyoming	The state does not collect export data. A few tons a day may leave the state.	N.A.	The state does not collect import data. A few tons a day may enter the state.	N.A.	Bob Doctor, WY Dept. of Environmental Quality (307) 473-3468

N.A. = not available

Source: CRS, based on telephone interviews with and data provided by state program officials.

Mr. DINGELL. I very much enjoyed your comments, Messrs. Orlin and Lanza. They are very helpful to us and I thank you for your assistance. I note Mr. Manton had something to say here about the situation with regard to the shipment of solid waste out of New York. He said as follows: I am concerned that we are proceeding at this time with the full committee markup of H.R. 4779.

Mr. Chairman, after many months, the primary affected parties, and the States of New York, New Jersey, Pennsylvania, Ohio, Indiana and Michigan—I note Ohio, Indiana and Michigan—and the city of New York have at last begun to negotiate seriously in the hopes of achieving a mutually agreeable compromise. Earlier he said in his statement that the solid waste exports from New York State have increased from the 1988 level of 1.1 million tons to 3.7 million tons in 1993. Most of this increase occurred between 1988 and 1991 when the exports increased from 1.1 million tons to 3.4 million tons. The States that primarily received this waste include Connecticut, Indiana, Illinois, Ohio, Massachusetts, Pennsylvania, Virginia and West Virginia. Can you tell us how, Mr. Lanza, those negotiations are going because our people in Michigan are very anxious to know.

Mr. LANZA. I am not privy to those negotiations.

Mr. DINGELL. Is it possible that they are not going on?

Mr. LANZA. It is quite possible.

Mr. DINGELL. It is possible. Well, the reason I ask that question, I have been looking here at the study which I put in the record, Pennsylvania imports 10 million tons. It exports 576 thousand tons. New York imports 839,700 tons and it exports 7,493,000 to be a net exporter of 6,653,430 tons. Michigan exports 146,000, imports 3,597,000 tons for a net of 3,451,000 tons. This sounds to me like New York has not done much. They have increased their export from 3 million to close to 7 million tons. Does that indicate that vast and successful negotiations are going on between New York and the recipient States?

Mr. LANZA. It may simply reflect market pressures having their effect and I think part of that increase——

Mr. DINGELL. And a massive export by New York to their sister States.

Mr. LANZA. I think part of it might reflect the fact that an unpermitted environmental disaster known as the Freshkills landfill was closed.

Mr. DINGELL. In your remarks, you indicated that if the legislation pending before this committee is passed, it would result in disposal of waste in "unsuitable locations." I assume that that means that it would result in disposal of waste inside New York instead of New York exporting to its sister States, such as Pennsylvania. Mr. DiPasquale and you, my friend, Mr. Doyle, would have a sense of outrage on this. Am I correct on that?

Mr. LANZA. No. What I meant when you limit the market and you eliminate options from municipalities like New York and Chicago and San Francisco and Philadelphia and Detroit and all the large urban municipalities across this Nation, then you are left with less effective, or you are left with bad choices and those bad choices end up in poor solutions to what is a national issue of waste management.

Mr. DINGELL. And in New York, that would mean you would have to keep some of the stinking stuff at home; is that right?

Mr. LANZA. It would mean that the free market would determine whether or not where the best location is, the most suitable locations are to dispose of waste, which, as I have said, the source of which, in many cases, is outside of New York.

Mr. DINGELL. Free market is a desirable thing, and we would like you to keep the trash at home. We would like the Canadians to do like. Mr. Chester, you noted that the Fort Gratiot sanitary landfill, which was the cause of one of the major lawsuits outlawing State regulation of interstate waste regulation, was improperly closed. Canadian firms are now being identified for possible enforcement action. How are you doing in pursuit of Canadian firms and American firms, and how are you doing on recovering the cost of cleanup if these parties resist enforcement?

Does the State have adequate resources or laws to pursue Canadian firms that cause contamination problems in the United States?

Mr. GILLMOR. Gentleman's time has expired, and we have also given him Mr. Greenwood's unused time. If the gentleman would answer.

Mr. DINGELL. If I could get the answer to that question, because we want to stop this from being deposited in Ohio and Pennsylvania and Michigan. So please answer the question.

Mr. CHESTER. Unlike domestic laws, the answer to that is no, we do not have adequate laws to go after firms in Canada. It presents challenges.

Mr. DINGELL. Out of respect of the chairman, could you give us a statement of what authority you would need under law to be able to pursue the Canadians and other good-hearted people who are trashing up our State.

Mr. CHESTER. I will do that.

Mr. GILLMOR. Thank you, Mr. Dingell, and all time has expired. I want to express my appreciation to this panel for your testimony. Thank you very much. And we will proceed to panel number 4. We will call the fourth panel to order and I would request that you limit your remarks to the 5 minutes and your written statements will be included in their entirety in the record.

And we will begin with Mr. Daniel Esty of Yale Law School.

STATEMENTS OF DANIEL ESTY, YALE LAW SCHOOL; JON E. HUENEMANN, SENIOR VICE PRESIDENT AND GROUP LEADER, FH/GPC A FLEISHMAN-HILLARD INTERNATIONAL COMMUNICATIONS COMPANY; MICHAEL GARFIELD, DIRECTOR, THE ECOLOGY CENTER; THOMAS WOODHAM, FORMER VICE CHAIRMAN, LEE COUNTY COUNCIL, SOUTH CAROLINA; LINDA JORDAN; AND ROBERT HOWSE, PROFESSOR, UNIVERSITY OF MICHIGAN LAW SCHOOL

Mr. ESTY. Thank you, Mr. Chairman, and committee members. My name is Dan Esty, and I am the director of the Yale Center for Environmental Law and Policy. I am a professor at the Yale Law School and the Yale environment school. In a prior life a decade ago, I spent 4 years at the Environmental Protection Agency as special assistant to then-administrator Bill Reilly as deputy

chief of staff for a year, and then as deputy assistant administrator for policy. And at that time I was the chief EPA negotiator of the environmental provisions of the NAFTA. I have written a number of books on trade and environment, and that really is the issue I think before you today. The question is how do you set up a structure of appropriate regulations of waste and waste trade, and yet do it in a way that is consistent with the trade obligations of this country. And I think the three bills before you provide different approaches to that same goal, and I think the effort that you are undertaking here today to sort out how best to sort out the goal is a worthy one and I hope to be of some help in that effort.

I think the context of this question that is how to proceed on an environment track consistent with trade obligations is important to get clear, and I just want to spend a minute or 2 on that and would be happy to answer further questions.

We have obviously some GATT obligations that the United States has taken on carried out through the World Trade Organization. We have NAFTA and we have the U.S. Canada waste trade agreement. And I think the critical aspect here is to think through which of the 3 bills before you are most likely to steer clear of entanglement with those treaties, those agreements in ways that might undo the environmental efforts that is being advanced with the legislation. Obviously the fundamental trade obligation that is in the GATT and repeated in the NAFTA is avoiding discrimination or trying to set up quantitative restrictions on trade.

There are, of course, exceptions that are permitted where legislation or where regulatory efforts run afoul of those basic obligations, but those are difficult elements to meet, that is article 20 of the GATT and the appropriate corresponding aspect of NAFTA. It does require that a party demonstrate that it is doing something that is necessary to protect animal, human, plant life or health and it is doing so in the least trade restrictive way responsible. That is the element of article 20 E of the GATT, a difficult standard to meet.

Article 20 G allows us to go forward with what might otherwise be a violation of trade obligations where we have something that relates to the conservation of exhaustible natural resources, but in this case, it must be done in conjunction with domestic restrictions of the same sort. There is a headnote in article 20, an overarching set of obligations that relate to the need to avoid any regulatory approach or legislation that is arbitrary or unjustifiable discrimination, or disguised restriction on trade.

That context is further contributed to by the U.S. Canada Waste Treaty. Put forward first in 1986, adopted as we heard in 1992, to include municipal solid waste and I think it does have a fairly broad starting general obligation to permit imports of waste. Against that backdrop, let me review the three bills before you and offer my opinion on how they stack up in pursuit of this goal of appropriate regulation and yet consistency with international trade obligations.

I think the most difficult one to see standing up under this test is H.R. 382. It appears to give a very broad authorization for State regulation. There is an attractiveness, an elegance, a simplicity to that, but I think in a complicated world where one is pursuing mul-

tiple goals, it is easy to see how that bill is likely to trigger trade objections, trade challenges.

And I think there is a real risk that if that is the direction the committee goes, this process of bringing appropriate environmental protection to bear will bog down, will become entangled with all kinds of trade challenges. It is a provision in this legislation that is discriminatory on its face. It focuses on foreign waste alone, and it is likely to draw a lot of fire in that regard.

The better bet, I think, is 1730, which offers a more tightly drafted, more carefully controlled, more narrowly tailored approach to the environmental regulations that are permitted. I think it offers a mechanism that is likely to allow for both environmental protection and consistency with trade obligations. I think it is quite easy to see how this would fit as well, even if it were challenged within the GATT article 20 G exception for protecting exhaustible natural resources, in this case, limited landfill space.

And I believe that the bill that is of the least likely to draw trade challenges, that is to say, the most likely to advance environmental protection on the ground in the short run, the most pragmatic is H.R. 411. It does nothing more than ask the government, the EPA, to carry out the existing obligations under the U.S. Canada waste agreement. It, in effect, pushes EPA to ramp up its efforts, and I think this is an important first step of getting a grip on the problem at hand that would ensure that the notice and consent provisions are taken seriously, that the traffic is tracked, that the data is kept on what is going on, and it would provide a foundation for further action and the denial of consent if that were thought to be necessary.

So let me close by saying I appreciate the opportunity to share my thoughts with you. I stand ready at any time to help the members of the committee think through how to advance this legislation and how to ensure that appropriate environmental controls are put in place consistent with the trade obligations of this country. Thank you.

[The prepared statement of Daniel Esty follows:]

PREPARED STATEMENT OF DANIEL C. ESTY, DIRECTOR, YALE CENTER FOR ENVIRONMENTAL LAW AND POLICY

Good afternoon. I am Dan Esty, Director of the Yale Center for Environmental Law and Policy. In a former life at the Environmental Protection Agency in Washington, I was a Special Assistant to Administrator William Reilly (1989-90), Deputy Chief of Staff (1990-91), and then Deputy Assistant Administrator for Policy (1991-1993), and I served as one of the negotiators of the environmental provisions of the North American Free Trade Agreement (NAFTA). I would like to thank the Chairman and members of the Subcommittee for allowing me the opportunity to offer my views on the important waste trade issues that are before the Congress.

The legislation before this Subcommittee raises critical questions about the relation of environmental protection to trade obligations. In brief, I see the challenge centering on the question of how best to structure a set of environmental safeguards without running afoul of these obligations? The three bills before you—H.R. 382, H.R. 411, and H.R. 1730—represent different approaches to regulating the interstate and international movement of municipal solid waste. The bills' authors share a common goal, which is to protect the environment. So the question I want to address is: which approach is most likely to achieve this outcome?

Before answering this question, I would like to speak briefly about the framework of trade agreements and obligations that shape the context for this analysis. Regardless of one's views of NAFTA, the General Agreement on Tariffs and Trade (GATT), or the US-Canada Waste Trade Agreement, these agreements represent

binding obligations on the United States. To ignore these obligations invites legal and political challenges to any structure of environmental controls that a state might choose to adopt. Dispute resolution processes within the international trading system often take years to be resolved, which could create chaos and postpone the implementation of an appropriate structure of environmental controls on waste shipments. As I will explain below, the best way to ensure that the states have the ability to regulate waste shipments and to limit the environmental harm that unrestricted waste disposal might inflict, is carefully constructed regulation that minimizes the risk of NAFTA or GATT challenges.

I should also add at this preliminary juncture a word about our own Supreme Court's scrutiny of restrictions on interstate waste shipments. In past cases such as *Philadelphia v. New Jersey* (437 U.S. 617 (1978)) and *Ft. Gratiot v. Michigan* (504 U.S. 353 (1992)), the Supreme Court has struck down attempts by states to regulate interstate movement of solid municipal waste. These cases can, however, be differentiated from the legislation at hand. Both H.R. 382 and H.R. 1730 explicitly confer upon the states immunity from the strictures of the Commerce Clause.

The ability of Congress to authorize state regulation, even to the extent of burdening interstate commerce appears to be quite clearly settled as a matter of law. The Supreme Court has repeatedly indicated that Congress can immunize state regulation, including environmental standards, even where the regulatory approach affects interstate trade that might otherwise be protected by the dormant Commerce Clause. In *Northeast Bancorp, Inc. v. Board of Governors of the Federal Reserve System* (472 U.S. 159 (1985)), the Supreme Court upheld the Federal Reserve Board's approval of applications by out-of-state companies for acquisition of bank holding companies in Massachusetts and Connecticut partly on the basis that Congress had immunized the relevant state statutes: "When Congress so chooses, state actions which it plainly authorizes are invulnerable to constitutional attack under the Commerce Clause." As recently as this past June, the Supreme Court emphasized in *Hillside Dairy, Inc. v. Lyons* (123 S. Ct. 2142 (2003)) that, though in the case at hand there was no immunity from the Commerce Clause, "Congress certainly has the power to authorize state regulations that burden or discriminate against interstate commerce." But the Court "will not assume that it has done so unless such an intent is clearly expressed." Thus, the bills under discussion today would likely withstand Commerce Clause review.

The real issue with this legislation does not concern interstate trade and the dormant Commerce Clause, but rather international trade and the obligations imposed on United States (and by extension to each of the 50 states) under various agreements to which the United States is a party. In this regard, import bans are likely to run afoul of US trade obligation. Both Article XI of the GATT and Article 309:1 of NAFTA prohibit a member country from imposing quantitative restrictions on goods imported from other member countries. And both agreements forbid discriminatory behavior

Yet both NAFTA and the GATT provide exemptions for legitimate environmental policies that are carefully constructed, even those that might have a disruptive effect on trade. Properly designed legislation could therefore afford effective environmental protection *and* meet our international trade obligations—thereby minimizing the possibility of a dispute with the chaos and delay that would be entailed.

Two elements of Article XX of the GATT provide a foundation for appropriate state regulation of waste shipments. Article XX(b) allows for environmental measures "necessary to protect human, animal or plant —life or health," as long as they are "not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade." A French ban on imports of asbestos under this exception was recently upheld by the Appellate Body of the WTO.

Article XX(g) provides an even clearer foundation for carefully crafted restrictions on waste shipments. It states that the GATT shall not prevent contracting parties from taking actions "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption." GATT panels have interpreted this language to mean that a questioned environmental policy should be "primarily aimed" at addressing a conservation goal and invoked in conjunction with comparable domestic restraints.

The NAFTA contains similar language. The basic prohibition on quantitative trade restrictions and the national treatment obligation are subject to exemptions for legitimate environmental policies. US-Canada trade relations are further framed by the 1986 Agreement Between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous Waste, which was amended in 1992 to include municipal solid waste. The terms of this Agreement are especially important to address because, by the terms

of the NAFTA, it prevails over the NAFTA should there be an inconsistency between them.

H.R. 411 expressly recognizes the US obligations under the US-Canada Waste Trade Agreement and seeks to strengthen the environmental safeguards built into this agreement. H.R. 411 would use the existing US-Canada framework to ramp up the oversight of the flow of waste from Canada to the United States, requiring, for example, the EPA to implement and enforce the established notification and consent procedures. Of the three bills presently under consideration by the Subcommittee, H.R. 411 represents the one that is least likely to be challenged as a violation of US trade obligations. In this regard, it represents the best bet for promoting quick environmental action to address the waste trade problem.

H.R. 382 seems to be at the greatest risk of engendering a challenge based on international trade obligations. Because it authorizes virtually any regime of waste regulation that a state might choose to adopt, including a ban on waste imports, it would likely be seen as a threat to the free trade principles of the GATT and the NAFTA and a potential direct violation of the US-Canada Waste Agreement. H.R. 382 has a simple elegance. But in a complex world, simple solutions rarely work. I believe that H.R. 382 would almost certainly draw multiple legal challenges.

Since H.R. 382 simply authorizes state restrictions on waste trade and does not mandate them, it might not trigger a GATT or NAFTA challenge immediately. Under the emerging jurisprudence of the World Trade Organization, laws that permit outcomes that might be inconsistent with a country's trade obligations will generally not be considered ripe for challenge. But a law that creates "explicit risks" of a breach of WTO obligations might be considered a sufficient basis to launch a GATT challenge and for Canada to request that a dispute settlement panel be seated. The sweeping nature of what might be done under the authorization of H.R. 382 makes this a risky approach to regulating waste shipments.

Because H.R. 1730 is more narrowly tailored, it is much less likely to precipitate a challenge based on US trade obligations. Unlike H.R. 382, H.R. 1730 is not open-ended. It specifies a particular set of regulations that states may adopt rather than giving states "carte blanche" authorization to restrict foreign waste trade. In addition, H.R. 1730 tracks more carefully the language and disciplines of GATT Article XX(g). It makes a state's authority to regulate waste shipments contingent on the state's own efforts to promote recycling and places any effort to limit foreign municipal solid waste imports within the broader context of U.S. attempts to reduce the nation's own municipal solid waste.

Environmental protection represents an important public policy goal. But regulation must be done on a pragmatic basis that promises to deliver real, on-the-ground progress. Efforts to control waste shipments must therefore be undertaken with an eye on other policy goals and constraints. Developing a system of waste trade restrictions that ignores international trade obligations makes no sense and invites trouble. Systematically designed legislation that carefully defines what states can do and seeks to promote consistency with the GATT, NAFTA, and other international trade obligations of the United States offers the best path forward.

Thank you.

Mr. GILLMOR. Thank you very much.

Mr. Jon Huenemann. I hope I have pronounced your name correctly.

STATEMENT OF JON E. HUENEMANN

Mr. HUENEMANN. Thank you, Mr. Chairman. It is a pleasure to be here and actually it is an honor and I appreciate the opportunity to testify before the subcommittee, which I think is taking a very important, very complicated and challenging issue as has already been seen by the testimony so far today and the years of discussion that has occurred on this issue. I am currently senior vice president of FHGPC a Fleishman-Hillard Company. I want to state for the record I am not here representing any particular client on this issue. I am here on my own volition as a witness on this topic. I should start by saying I am 15-year veteran of the Office of U.S. Trade Representative. My most recent position was assistant U.S. Trade representative and one of my responsibilities was to direct U.S. Trade relations with Canada and Mexico and coordinate the

trilateral work program with Canada and Mexico under the NAFTA.

I also would like to start by saying that I realize how difficult the issues are that the committee is trying to deal with. It appears that every which way you turn, you run into a legal obstacle or an obstacle to try to find a solution that the citizens of your State have found troubling and difficult. I would note that U.S. Trade agreements essentially—I would like to note up front that U.S. Trade agreements do not, in any way, say that States, municipalities or the Federal Government have no right or have no say or have no ability obviously to pursue environmental protection or human safety and health related policy considerations.

At the same time, I think the United States, as you all know, has entered into numerous international trade agreements, one of them being the NAFTA, one of them being the GATT of the WTO agreements, and these obligations are very important and obviously are designed to facilitate international commerce. And in that context, I believe protecting the environment and human health is not inherently in conflict with any of these particular agreements that are before us. And I am choosing to comment today specifically on the international policy obligations of the United States without trying to draw any view on the validity of any of the particular concerns that have been raised today about how you deal with municipal waste, because I think that is an issue that is obviously extremely complicated.

But let me note by—let me go through the bills very briefly, each one of them and note what I believe are some of the issues that are raised under the international obligations of the United States and some of the practical considerations that I think are germane to each of the three bills that are before you today. Under H.R. 382, as I understand it, and as I have read it, it essentially authorizes States to take action to limit or prohibit the importation of waste. If, in fact, a State were to take such action, it is my view that such action would implicate the national treatment provisions of the NAFTA and the GATT as well as the quantitative restriction provisions of the NAFTA and the GATT, and therefore, the United States would find itself in a circumstance where it would be vulnerable to challenge under the speed settlement provisions of those particular agreements.

One can argue that one could pursue these actions under the exceptions provisions under article 20 of the GATT and the corresponding provision under the NAFTA. I would venture to guess that that is a tall order and the reason why I say that is because unless such actions are accompanied by equivalent domestic actions to constrain or deal with the environmental or human safety health issues, it is very difficult for that kind of action to stand up under international dispute settlement. With respect to H.R. 411, which directs the U.S. To bilateral waste agreement that we have with Canada with certain actions and considerations in mind, my point is the following.

I think it is fair to obviously consider how best to implement an agreement. We have an agreement with Canada. It is fair, obviously, to look at how that agreement is being implemented. My concern, quite frankly, is a practical one. The question is if the

United States engages in a unilateral interpretation of a bilateral agreement, the Canadians in looking at this can obviously look at it from a practical standpoint and say we like that or don't like that. If they don't like it, they have the opportunity to react. They can react in a way that is either positive or negative. If they choose to take negative action in response to what they perceive to be negative action on the part of the United States, we could run into a problem because the Canadians can walk away from that agreement.

And as I understand it, at least with respect to some of the data I have seen, we ship a lot of hazardous waste to Canada under this agreement much more hazardous waste could goes north than comes south. So there is a practical consideration here in the context of our relationship with Canada under this agreement that needs to be considered. That is in no way designed to cast dispersion on the fundamental concerns that exist in Michigan and how you deal with this waste. But the other thing to bear in mind with H.R. 411 is that if, in fact, the United States were to take action under H.R. 411 that was deemed to be inconsistent with our international trade obligations, this does not preclude the Canadians from pursuing dispute settlement under the NAFTA or under the GATT. Not that I am saying that the Canadians would.

I quite frankly think the Canadians would probably would try to find a way to resolve this issue absent going that route. But I am saying that we should bear in mind that our international obligations still remain relevant and part of the framework upon which how one has to look at this issue. With respect to H.R. 1730, this bill on its face is not something that is designed to deal obviously specifically so much with how one addresses international waste.

On the other hand, depending on how this bill were to be implemented, if it were to be implemented in a manner that is discriminatory vis-a-vis international waste, then it could run into issues with respect to the national treatment provisions of both the GATT and the WTO agreements as well as the quantitative restriction provisions.

So all I am saying to the subcommittee—and I commend you for looking at this issue closely—is that there are international obligations that are very important. And the final thing that I would say is in looking at this issue very broadly from the standpoint of the States and the role that Congress plays in regulating commerce under the Constitution is when you make that decision to grant a State authority to, in effect, enact their own international trade policy, it has implications. It has implications obviously not just for this particular issue, but it has implications for a lot of other issues that could be dealt with by the Congress in a way that may not necessarily be very positive.

States could engage in individual policies that conflict with each other and therefore implicate international trade and create a lot of different difficulties for the United States more broadly in the broader global environment. Thank you, Mr. Chairman, for the opportunity to state my views.

[The prepared statement of Jon E. Huenemann follows:]

PREPARED STATEMENT OF JON E. HUENEMANN, SENIOR VICE PRESIDENT AND GROUP LEADER OF FHIGPC/A FLEISHMAN HILLARD INTERNATIONAL COMMUNICATIONS COMPANY

INTRODUCTION

Mr. Chairman and members of this subcommittee, it is an honor and a privilege to be here today to provide you my perspective on H.R. 382, the Solid Waste International Transportation Act of 2003, H.R. 411, to direct the Administrator of the Environmental Protection Agency to carry out certain authorities under an agreement with Canada respecting the importation of municipal solid waste, and for other purposes, and H.R. 1730, the Solid Waste Interstate Transportation Act of 2003. I should state that I am not here representing any client interest on this matter and the views I am expressing are my own. It is my sincere hope that my views will provide the subcommittee with information it considers useful in informing your debate concerning the proposed legislation under consideration.

Please allow me to begin by noting that I spent more than fifteen years in the Office of the U.S. Trade Representative (USTR) within the Executive Office of the President (EOP). My last position in USTR, which I left in 2000, was Assistant U.S. Trade Representative in which one of my principal responsibilities was to direct U.S. trade relations with Canada and Mexico and serve as the U.S. coordinator of the North American Free Trade Agreement (NAFTA) trilateral work program with Canada and Mexico. Prior to that I held a number of positions in which I was directly involved in the negotiation and implementation of trade and foreign direct investment agreements and the implementation of U.S. trade laws and policy.

Please also allow me to note that I appreciate the interest and genuine concerns in a host of communities surrounding the treatment of municipal waste. It is something that deserves serious consideration by policymakers and appropriate measures at all levels of government to ensure that communities have the means and the proper policies in place to contain and deal safely and in an environmentally sound manner with such waste. It is quite clear that this has been a topic of concern in many communities for many years, and the issues involved are not getting any easier.

INTERNATIONAL POLICY CONSIDERATIONS

My purpose for being here today is to discuss the international policy considerations surrounding these bills. More specifically, I hope to inform the subcommittee of considerations that I believe are important as they relate to the development and implementation of U.S. trade policy and agreements when considering these bills.

I think it is first germane to note that there is nothing in trade agreements to which the U.S. is a party that says that federal, state or municipal authorities cannot pursue policies that are intended to protect the environment or human health. In fact, on an international level the U.S. is a party to numerous agreements that are designed to protect the environment and protect human health. Furthermore, as you well know, there are a myriad of state and municipal laws designed to pursue these same purposes.

At the same time, the U.S. is also a party to numerous international agreements designed to facilitate the flow of international trade and investment, including the agreements under the jurisdiction of the World Trade Organization (i.e., the General Agreement on Tariffs and Trade (GATT), etc.), the NAFTA and numerous additional regional and bilateral agreements. These agreements are instrumental in protecting U.S. commercial interests in the U.S. market and abroad as we seek opportunities in the global marketplace. Furthermore, as is the case with our adherence to international environmental agreements, they tend to help create a world that is more productive and safer than it would otherwise be in their absence.

So my approach to the bills under consideration today is one in which I believe it is important to fully consider the consequences of any actions we may take and to consider the nature and obligations of the agreements for which we have already entered into with foreign nations. In my view, these are very serious considerations and I do not subscribe to the view that protecting the environment and human health in the U.S. is necessarily in conflict with the maintenance and advancement of an effective U.S. trade policy. Quite the contrary in some instances, a number of the international trade agreements we have entered into explicitly encourage governments, ours included, to continue and even step up efforts to protect the environment and human health.

A DISCUSSION OF THE BILLS IN QUESTION

With all this in mind, please allow me to raise some considerations with regard to the bills in question, turning first to H.R. 382, then H.R. 411 and then H.R. 1730. I will then conclude with a few general considerations for the subcommittee to consider.

I think it is evident that there is a rise in concern among citizens in certain parts of the United States regarding the importation of municipal waste, principally from Canada. The volume of the international trade, and specifically imports from Canada, is fueling citizen complaints about a variety of considerations: the impact on traffic volumes, highway and road conditions, air pollution, land fills, incinerators and the environment surrounding such sites, and the potential consequences for human health. Irrespective of where the waste originates from, all these issues deserve careful consideration and thoughtful responses.

H.R. 382, H.R. 411 and H.R. 1730 approach these specific concerns from different angles. H.R. 382 and H.R. 411 more explicitly address the issue with international trade considerations in mind, although H.R. 1730 does not eliminate the prospect of international trade obligations considerations.

H.R. 382

H.R. 382 authorizes states to "enact a law or laws prohibiting or imposing limitations on the receipt and disposal of foreign municipal waste." Presumably the purpose behind this proposed legislation is to give states the right to act to shut down or limit imports, and presumably a state or some states may exercise that right otherwise one has to question the fundamental purpose of the proposed legislation.

Should a state take action to limit or prohibit the importation of the items in question, in this case municipal solid waste, a fundamental premise of U.S. international trade obligations that is reflected both in the GATT and the NAFTA would be implicated—the so-called "national treatment" principle, which is enshrined in Article III of the GATT and in Article 301 of the NAFTA. Furthermore, GATT Article XI and NAFTA Article 309, which prohibit the implementation of quantitative restrictions, would also be implicated. Accordingly, the country whose trade was impacted by such action by the U.S. would be afforded the right to pursue dispute settlement under the terms of those agreements, including the right to enforce those agreements should they be found to be breached by a dispute settlement panel.

Should a state take such action as provided for under H.R. 382, one may argue that such actions were justified on the grounds that they were premised on the protection of the environment and human health. However, in the absence of equivalent action to shut down, or limit, the utilization of the relevant landfills, for example, by all users, including those within the state in question and the U.S. on environmental and/or human safety grounds, it is highly questionable that the exceptions available under GATT Article XX and NAFTA Article 2101 would be viable. Furthermore, the burden of proof falls on the party taking the discriminatory action to show that the action is not "a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail", is not "a disguised restriction on international trade" and is "necessary to protect human, animal or plant life or health." In short, the threshold for these exceptions is purposely very high.

H.R. 411

This bill attempts to address the concerns that have arisen in a different manner. Specifically, it chooses to focus on the existing bilateral agreement on the transboundary movement of hazardous waste—later augmented with respect to municipal waste—which the U.S. has with Canada and its implementation. Mind you, that agreement, first signed in 1986, seeks to ensure that the treatment of waste that flows across our border is "conducted so as to reduce the risks to public health, property, and environmental quality." Furthermore, the agreement recognizes that the realities of being neighboring sovereign states means that the appropriate treatment of this waste "may involve the transboundary shipment" of such waste. In short, there has been a long history of trade in waste, both hazardous and non-hazardous, between the U.S. and Canada. This should not surprise anyone given the depth of the economic relationship. Furthermore, both countries have officially stated their intent, through this agreement and other domestic actions, to properly treat such trade in waste in a manner that is safe and environmentally sound.

Should the U.S. chose to unilaterally re-interpret the provisions of this agreement in a manner that causes concerns in Canada, Canada could withdraw from the agreement. Or, Canada could unilaterally re-interpret the agreement in ways that may implicate U.S. shipments of waste to Canada, which I understand are signifi-

cant. In other words, the practical implications of any U.S. effort to interpret or enforce the agreement in a manner that Canada finds objectionable, could lead to similar actions on the part of Canada, or Canada's withdrawal from the agreement altogether. If the agreement were to be, in effect, voided, the international trade obligations of the United States under the WTO and the NAFTA would also remain in force, as they do now. A question to consider is whether unilaterally interpreting the existing agreement on transboundary waste in a manner that invites "mirror action", or some other adverse consequence, by Canada is ultimately in the interests of the United States, particularly when Canada is such a significant destination for U.S. hazardous waste.

H.R. 1730

This bill is ostensibly designed to empower local communities through new "host community" agreements with regard to waste management. It includes language that would encompass foreign waste, although on its face it does not treat foreign waste differently than it does domestic U.S. waste. As a result, it does not appear to raise any direct issues that could implicate U.S. international trade obligations. Although, were such legislation to be enacted it is conceivable that if the implementation of the legislation by a state were to succumb to action(s) that discriminates in its treatment of foreign waste it could have implications for U.S. international obligations.

ADDITIONAL POLICY CONSIDERATIONS

In addition to the issues that I have already raised, another consideration has to do with the role of individual states in the conduct of U.S. trade policy. Irrespective of the fact that congress can authorize states to conduct their own respective foreign and domestic trade policies, the notion that the congress would authorize individual states to, in effect, conduct their own form of international trade policy raises some issues, not all of which are likely to be helpful to U.S. interests in the world. I do not want to overstate the potential concern, but in my view congress should think very carefully about the prospect of respective individual states undertaking distinct, and possibly conflicting, foreign trade policies, even if these policies are very narrowly focused on specific products. The constitution provides congress the sole authority to regulate commerce (both domestic and foreign) and the President the authority to negotiate on behalf of the U.S. with foreign powers. Those authorities are well considered and have served the U.S. well throughout its history. I am not convinced that delegating such authority to the states is necessarily in the nation's interest in the broader global environment. It may lead to more problems than it is worth, although I am in no way attempting to denigrate the validity of concerns that surround the treatment of waste in localities.

CONCLUSION

I hope my testimony will contribute constructively to the debate the subcommittee will have with respect to these bills. The issues before you deserve serious consideration and raise a host of interesting and overlapping issues that "cross the paths" of local, state and national officials in addition to having international implications. My own desire is that the approaches that are eventually adopted at all these levels of government are, in fact, guided by a fully informed and enlightened debate, and for that I want to thank the subcommittee for its effort to do just that today.

Thank you Mr. Chairman and members of the committee.

Mr. GILLMOR. Thank you.

And I would ask the witnesses again to try to stay within your 5 minutes. Mr. Michael Garfield, director of the ecology center in Ann Arbor.

STATEMENT OF MICHAEL GARFIELD

Mr. GARFIELD. Thank you, Mr. Chairman, committee members. My name is Michael Garfield. I am the director of the Ecology Center, a Michigan environmental organization that has worked on solid waste issues for 33 years. We are also the parent organization of the largest community-based recycling program in the State of Michigan, a program cited by EPA as one of the 15 best programs in the country. I am also an organizer of Don't Trash Michigan, a

coalition of 29 environmental, church and labor organizations, which collectively represent over 250,000 Michigan residents.

Thank you very much for the opportunity to testify today. I would begin by emphasizing that we are not calling for a blanket ban on interstate waste shipments. We believe that the core problem facing Michigan and other States is that we have not been given the tools to conduct thoughtful, environmentally protective waste management planning in the face of regionalized solid waste markets. We could support H.R. 382 if it is found to be compliant with NAFTA and other international agreements. We support H.R. 411 to deal with the international aspect of Michigan's waste importation problem and that of other States.

We are disappointed that EPA has not yet carried out the provisions of the bilateral agreement on waste, particularly given that the government of Canada provides Canadian waste generators with a significant financial incentive to export solid waste to the United States. When Canadian waste is dumped in Canadian landfills, their Federal Government assesses a 7 percent goods and services tax on the transaction.

However when Canadian waste is disposed of in the United States, that tax is not assessed. We strongly support H.R. 1730 as a measure to give local communities the wherewithal to conduct thoughtful waste management planning. The current system has left Michigan citizens victimized for good behavior. When Michigan began to run short on landfill space in the late 1980's, we didn't look to other States and Ontario to assume our burden. We went through the politically difficult process of citing new landfills and we allowed new facilities to open, in some cases, over strenuous local objections.

Michigan managed its problem through a fairly sophisticated county-based planning system that requires counties to assume the obligation for disposing or recovering their trash, in turn, letting them carefully plan disposal capacity so they don't have to sight more landfills than they need. But the influx of out-of-state waste into Michigan has thrown our planning system into chaos and has undermined our citizens commitment to waste reduction and responsible waste management. Recycling rates have decreased during this period. The influx of out of State waste to large regional landfills is devastating the quality of life in our local communities.

The landfills suffer problems created by the patchwork of State and municipal standards prohibiting toxic materials and municipal solid waste. It has been said that landfills generate a significant source of revenue for the impacted communities, but often that is not the case. The owner of the Michigan landfill used by Toronto, Republic Services, has signed a host community agreement with Sumpter Township, the rural township where its landfill is located. But Republic's landfill is located in the far southeastern corner of the township and few residents of Sumpter Township live within 2 miles of the facility.

However, hundreds of households are located within shouting distance of the landfill to the east in Huron Township to the southeast in Ash Township. While Sumpter Township receives a fee payment for every ton of trash dumped in the Republic Landfill there, Huron and Ash townships do not receive one cent. The most inno-

vative and entrepreneurial solutions for waste management are being developed at the local level. These solutions are part of a growing yet still young recycling industry. The economic development of this industry relies on a regulatory structure which holds local communities responsible for managing their own trash. If local communities and waste generators can look 300 miles and more across State and international borders to low cost regional disposal options, than the incentive for recycling innovation is eliminated.

Michigan, Pennsylvania, Virginia and a handful of other States have been the losers in the first decade of regional landfills after the Fort Brass decision. Without Federal intervention, other States will join us in coming years. This prospect was foreseen by Chief Justice Rehnquist in his dissent.

He wrote, the Court today penalizes the State of Michigan for what to all appearances are its good faith efforts in turn, encouraging each State to ignore the waste problem in the hope that another will pick up the slack. The court fails to recognize that the latter option is one that is quite real and quite attractive for many States and becomes even more so when the intermediate option of solving its own problems, but only its own problems is eliminated.

Eleven years later, the chief justice's forecast has materialized in Michigan and other States. We now need your help, the help of Congress, to regain some measure of local control over landfill citing. Please take action as soon as possible to address this growing problem. Thank you very much.

[The prepared statement of Michael Garfield follows:]

PREPARED STATEMENT OF MICHAEL GARFIELD, DIRECTOR, ECOLOGY CENTER

My name is Michael Garfield. I'm the Director of the Ecology Center, a statewide environmental organization that has worked on Michigan solid waste issues for 33 years. In addition to our advocacy work, the Ecology Center is the parent organization of the largest community-based recycling program in the state of Michigan. That program has been cited by the U.S. Environmental Protection Agency as one of the 15 best recycling programs in the country, achieving a 52% recovery rate. I am a former manager of that recycling program, and have worked in waste management policy and the recycling business for sixteen years. I am also an organizer of Don't Trash Michigan, a coalition of organizations devoted to placing sensible restrictions on waste imports and improving Michigan's solid waste policies. Don't Trash Michigan consists of 29 environmental, church, and labor organizations which collectively represent over 250,000 Michigan residents.

Thank you very much for the opportunity to testify today.

I would begin by emphasizing that our objections to out-of-state waste are not borne of blind hostility to other people's garbage. We are not calling to close down Michigan's borders, and we do not see a net benefit from a federal law that would create a blanket ban on interstate waste shipments. Instead, we believe that the core problem facing Michigan and other states is that we have not been given the tools to conduct thoughtful and environmentally protective waste management planning in the face of the regionalization of solid waste markets. We need your help to empower local and regional planning systems to fix serious problems like Michigan and other states now experience, and to prevent future problems from arising elsewhere.

We could support H.R. 382, if it is found to be compliant with the North American Free Trade Agreement and other international agreements. We are aware of concerns raised by some experts regarding the consistency of this approach with international agreements. I am not a legal expert, and will offer no opinion on this matter. But I urge you, in addressing the waste transportation problem, to advance carefully crafted legislative solutions whose implementation is least likely to be stalled by legal challenges. Michigan's problem is immediate and growing.

We also support H.R. 411 to deal with the international aspect of our problem. Frankly, it is hard for residents and organizations in Michigan to understand why a long-standing agreement, signed by both countries, has so far gone unimplemented and unenforced, and now requires a Congressional resolution to be put in effect. We are disappointed that EPA has done nothing to date to carry out its provisions.

We're further confounded by this inaction given that the Government of Canada provides Canadian waste generators and haulers with a significant financial incentive to export solid waste to the United States. When Canadian waste is dumped in Canadian landfills or other Canadian disposal facilities, their federal government assesses a 7% Goods and Services Tax (GST) on the transaction. However, when Canadian waste is disposed in the United States, the GST is not assessed. When the State of Oregon applied differential taxation rates to waste originating from in-state sources versus out-of-state sources, the practice was ruled an unconstitutional restraint of commerce by the U.S. Supreme Court.[1] Wouldn't Canada's differential taxation on waste based on its disposal destination also be an unfair protection of its landfill space, and subsequently a violation of NAFTA?

Finally, we strongly support H.R. 1730 as a measure to give local communities the wherewithal to conduct thoughtful waste management planning. In Michigan, the press has lasered in on the trash shipments to Michigan from the City of Toronto, but our problem is not only with Canada's largest city. Less than half of the Canadian waste dumped in Michigan originates in Toronto. Nor is our concern just a Michigan-Ontario dispute. Forty-three percent of the out-of-state waste dumped in Michigan originates in other U.S. states.[2]

Over 3.5 million tons of out-of-state garbage is disposed in Michigan landfills, approximately 20% of the total. This amount has been increasing rapidly in recent years, particularly the portion coming from Ontario. Some have argued that Michigan also exports solid waste to other states. However, we only export 85,000 tons per year, which means that 41 tons come in to Michigan for every one we send out. Likewise, some have argued that Michigan exports hazardous waste to Canada and other states. However, Michigan is also a net importer of hazardous waste, receiving approximately twice as much hazardous waste (506,000 tons) as we export (246,000 tons).[3]

The current system has left Michigan citizens in the predicament of being victimized for good behavior. We're surrounded by four of the Great Lakes. Half of our residents rely on groundwater for their drinking water. The citizens of Michigan share a strong land stewardship ethic.

Dating back to the mid-1970s, we had put in place a protective and responsible waste management policy. Our beverage container recycling program has achieved a best-in-the-nation 95% recovery rate.[4] We have extensive yard waste diversion programs. Some of our communities have outstanding recycling programs.

When Michigan began to run short on landfill space in the late-1980s and early-1990s, we didn't look to Ohio, Indiana, Wisconsin, Illinois, and Ontario to assume our burden. We went through the politically torturous process of siting new landfills, and we allowed new facilities to open—in some cases, over strenuous local objections.

Michigan could manage its problem because we have in place what was a fairly sophisticated county-based planning system that requires counties to assume the obligation for disposing or recovering their trash. They can do this through the designation of facilities within their boundaries, or through the designation of facilities in other counties or states, provided that the recipient units of government agree to the exports. In almost all cases, the recipient unit of government does agree to the export designation, and the process affords them a mechanism for handling their obligations. This system of negotiating designated capacity forces counties to assume the practical and moral responsibility for getting rid of their trash, while letting them carefully plan disposal capacity so they don't have to site more landfills than they need.

We believe that a solid waste planning system like this—based on the principles of local/regional responsibility, local/regional control, and state-based minimum

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[1] Oregon Waste Systems v DEQ, 511 U.S. 93 (1994).

[2] "Report of Solid Waste Landfilled in Michigan," Michigan Department of Environmental Quality, February 28, 2003.

[3] "Report of Solid Waste Landfilled in Michigan," Michigan Department of Environmental Quality, February 28, 2003. "Legal Barriers to Regulating Imported Solid Waste and How to Break Through Them," Bill Richards, Senior Policy Advisor, Michigan Department of Environmental Quality, July 2003.

[4] Michigan Department of Treasury.

standards—is the most sensible way to manage solid waste policy. It is similar to good land use planning, also best managed locally and regionally in accordance with statutory minimum standards. For solid waste, we believe it is the best way to balance the need for disposal against a reasonable community interest in preserving land for other, better uses. It is also an economically efficient method of solid waste program planning.

However, the influx of out-of-state waste into Michigan has thrown our planning system into chaos, and has undermined our citizens' commitment to waste reduction and responsible waste management. Many citizens have given up recycling on the grounds that their efforts are only saving landfill space for trash from other states and Canada. Our recycling office has received dozens of calls to this effect, and the recycling rate in our community has decreased slightly during the past three years.[5] Throughout the State of Michigan over the past several years, the growth in recycling programs has plateaued, and in some cases, slid back.

Second, the influx of out-of-state waste to huge regional mega-landfills devastates the quality of life in our local communities. It brings large amounts of heavy truck traffic, increased air pollution, blowing debris, and foul odors. It brings the threat of long-term future groundwater contamination, as took place at many older facilities.[6]

The impacts are unmistakable every hour of every day for Lynette and Ken Guzman, of Huron Township, about twenty miles southwest of Detroit. The Guzmans and their two young children live on what used to be a quiet two-lane country road filled with tree-lined front yards and families relaxing outdoors in the summertime. But now that road is abuzz with the red Wilson Logistics trailer trucks—almost 200 hundred per day, six or seven days per week—each carrying more than 30 tons of Toronto's trash, arriving as early as 6:00 a.m. The road is the most direct route from the highway to Republic Services' Carleton Farms Landfill. The prevailing winds blow from the landfill toward the Guzmans' community, so they and their neighbors rarely leave their windows open in the summer, much less sit outside anymore. As trucks leave the landfill, they frequently leave a trail of trash and mud or thick dust along the road and in residents' front yards. Four months ago, as one of the Guzmans' neighbors tried to pull into her driveway, a Wilson truck rear-ended her into a second Wilson truck coming from the other direction. The woman required major reconstructive surgery to her face and is still confined to a wheelchair. Her eight-year old son witnessed the accident as he was boarding his school bus.

The waste industry often argues that their landfills generate a significant source of revenue for the impacted communities. But the Guzmans' story refutes this argument. Republic Services has signed a host community agreement with Sumpter Township, the rural township where its landfill is located. But Republic's landfill is located in the far southeastern corner of the township, and few residents of Sumpter Township live within two miles of the facility. However, hundreds of households are located within shouting distance of the facility to the east, in Huron Township, and to the southeast, in Ash Township, which is even in a different county (Monroe) than the landfill (Wayne). The trucks roll through Huron Township, where the Guzmans live, and don't even pass into Sumpter Township until they enter the landfill property. While Sumpter Township receives a fee payment for every ton of trash dumped in the Republic landfill there, Huron and Ash Townships do not receive one cent.

Third, the huge regional landfills consolidate the inherently toxic nature of ordinary municipal solid waste, posing a long-term future groundwater contamination threat. Municipal solid waste typically includes household hazardous wastes such as pesticides and batteries, heavy metals from used electronics, toxic compounds from automotive fluids, and other potential contaminants. During the course of this year, U.S. Customs officials have identified several Canadian trucks carrying medical waste and other prohibited items. But how many trucks carry prohibited items which are never discovered?

To partially address the concern of toxic loading into disposal facilities, Michigan has banned the landfill disposal of lead-acid batteries, used motor oil, yard waste, sewage, asbestos waste, and other items. Some of our neighboring jurisdictions,

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[5] City of Ann Arbor Solid Waste Department.

[6] "Michigan Sites of Environmental Contamination," Michigan Department of Natural Resources, April 1994.

however, do not have restrictions as stringent. For example, Ontario does not ban disposal of lead-acid batteries or used motor oil.[7]

Finally, the lack of local control over out-of-state waste undermines Michigan's recycling programs. Disposal over-capacity in Michigan and in other over-built states has created powerful downward price pressures in regional landfill markets. Large waste generators have recently been signing contracts with Michigan landfills for less than one-third the going rate in Ohio, Indiana, and other neighboring states.[8] While local governments can break even or return modest profits from an investment in recycling programs, they cannot beat the artificially low prices in Michigan's current landfill-heavy economic climate. As a result, Michigan communities have been witnessing a slow and steady disinvestment in recycling and recovery programs by both private and public sector service providers, despite otherwise reasonable profitability in the recycling industry.

The most innovative and entrepreneurial solutions for waste management—state-of-the-art recycling, composting, reuse, household hazardous waste programs—are being developed at the local level. These solutions are part of a growing, yet still young, recycling/recovery industry. The economic development of this industry relies on a regulatory structure which holds local communities responsible for managing their own trash. If local communities and waste generators can look 300 miles and more across state and international borders to low-cost regional disposal options, then the incentive for recycling innovation is eliminated. At present, the federal framework presents local communities with a no-holds-barred approach to landfill siting and waste transport. States have no tools to counter-balance dramatic capacity and price differentials between each other. Michigan, Pennsylvania, Virginia, and a handful of other states have been the losers in the first decade of regional landfills after the *Ft. Gratiot* decision. Without federal intervention, other states will no doubt join us in coming years.

This prospect was foreseen by Chief Justice Rehnquist in his *Ft. Gratiot* dissent. He wrote:

> "In adopting this legislation, the Michigan Legislature also appears to have concluded that, like the State, counties should reap as they have sown—hardly a novel proposition. It has required counties within the State to be responsible for the waste created within the county. It has accomplished this by prohibiting waste facilities from accepting waste generated from outside the county, unless special permits are obtained.
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> "The Court today penalizes the State of Michigan for what to all appearances are its good-faith efforts, in turn encouraging each State to ignore the waste problem in the hope that another will pick up the slack. The Court's approach fails to recognize that the latter option is one that is quite real and quite attractive for many States—and becomes even more so when the intermediate option of solving its own problems, but only its own problems, is eliminated."[9]

Eleven years later, the Chief Justice's forecast has materialized in Michigan and other states. We now need the help of Congress to regain some measure of local control over landfill siting, to restore a level playing field between the states, and to promote the economic development potential of recycling. Please take action as soon as possible to address this growing problem.

Mr. GILLMOR. Thank you. And Mr. Thomas Woodham the former vice-chairman of the Lee County Council in South Carolina.

STATEMENT OF THOMAS WOODHAM

Mr. WOODHAM. Thank you, Mr. Chairman and distinguished members of the subcommittee. My name is Thomas Woodham, and I appreciate the opportunity to testify today on the movement of municipal solid waste between States. As a former member of the Lee County Council, I experienced firsthand the closure of our sub-

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[7] "Solid Waste Importation Under Part 115," Presentation by Frank Ruswick, Jr., Acting Assistant Division Chief, Michigan Department of Environmental Quality Waste and Hazardous Materials Division, at Southeast Michigan Environmental Forum—Solid Waste Importation Conference," July 17, 2003.

[8] "Solid Waste Importation Under Part 115," Presentation by Frank Ruswick, Jr., Acting Assistant Division Chief, Michigan Department of Environmental Quality Waste and Hazardous Materials Division, at Southeast Michigan Environmental Forum—Solid Waste Importation Conference," July 17, 2003." Also, City of Ann Arbor Solid Waste Department; Resource Recycling Systems, Inc.

[9] Fort Gratiot Sanitary Landfill v Michigan DNR, 504 U.S. 353 (1992).

standard facility and the development of a sub title D facility to replace our old landfill. Lee County is a rural, agricultural community with minimal industrial investment. As such, many agricultural by-products were disposed of at our landfill. In 1988 the State of South Carolina told us we had an environmentally unsafe landfill and that we would have to close it. We made several proposals to develop a new landfill, but each one was rejected by the State.

At this time a private waste company approached the council and offered to build and manage a waste facility in Lee County. The Council accepted their offer and Lee County Landfill was developed with the State's blessing. Today the landfill takes in 4,000 tons of waste per day both from within our borders and outside our State borders. The landfill is inspected several times a month by State authorities and never been fined or issued notice of violation, nor has it ever been found to pose any danger to the surrounding environment.

The landfill is currently upgrading facilities to convert methane gas to generate electricity cooperatively with the State of South Carolina subsidiaries. The benefits the county has received from this arrangement with the private waste company include $1,900,000 in savings with the closure cost associated with the old landfill, free disposal for the county, a rebuilt rail line and more than $1,200,000 in host fees. The total fees and services provided represents roughly 21 percent of our annual budget. The goal of Lee County Council is to reinvest the revenues of the landfill, improving the quality of life, education, police protection, EMS service, fire protection, et cetera and minimizing the tax burdens on the citizens and local industry.

Even during these times of budget shortfalls, Lee County has continued to provide quality services and upgrade its infrastructures without an increase in taxes for six consecutive years. The primary objective of Lee County Council is to improve the infrastructure and better position themselves to attract new industry long after the landfill has reached capacity and closed. Once the landfill is closed, the county plans on turning it into a 1,500 acre park for the citizens of Lee County to enjoy for years to come. Without the revenues generated by this landfill, Lee County would not be able to develop the infrastructure necessary to attract new industries without placing the tax burden directly on the citizens and existing industries in Lee County. To further illustrate the financial impact of Lee County, the value of a mili tax $25,300.

The median income in Lee County is $13,896, which is the lowest in the State of South Carolina. Without the revenue of the landfill taxes would have to increase 75.1 mills in order to maintain the same level of services currently being provided. As you can see from the median income, a tax increase of this size or reduction in services provided would severely impact the citizens of Lee County. The landfill has been a savior for Lee County from an environmental and revenue perspective and the host community contract between Lee county and the landfill has been beneficial for everyone involved. Having said this, the savings Lee County has realized in the closing of the old landfill and free disposal and the host fees that they receive from the facility will put tens of millions of dollars into the community by the time the landfill reaches capacity.

Lee County would not have been able to generate similar revenues without the landfill and the fees they receive from accepting out of State waste.

I would like to thank the committee for allowing me to inform you of the situation in Lee County. Also the Chairman and Vice Chairman of Lee County Council, along with the County Administrator have given their full endorsement of the testimony and are willing to answer any questions you may have at a later date. Thank you.

Mr. GILLMOR. Thank you very much. And we will now go to Ms. Linda Jordan.

STATEMENT OF LINDA JORDAN

Ms. JORDAN. Yes, sir. Thank you and thank you to the committee for allowing me to speak and thank you to Congressman Rogers for your work with H.R. 382.

On Saturday, October 5, 2002 while working as a Michigan State trooper assigned to the Detroit post I was dispatched to the U.S. Customs Cargo Facility on the Detroit side of the Ambassador Bridge for a suspicious situation. The Ambassador Bridge connects Detroit, Michigan to Windsor, Ontario and is the main thoroughfare for semi-tractors from Canada into the U.S. On the aforementioned day the suspicious situation was a semi-tractor leaking blood from its trailer. Upon arrival I was met by two Customs representatives. Both men advised the Department of Health had been notified but refused to respond. In addition, an agent from the Federal Protection Service, the agency responsible for investigating crimes on Federal property, arrived but did not take any action and left the scene. Customs Agent Young advised while he was checking vehicles for illegal cargo he noticed blood dripping from the trailer of one of the vehicles. He stated it had created a pool in its previous location and since the vehicle had been sequestered there was another pool of blood in its new location and blood continued to drip. The driver of the vehicle stated he was hauling garbage.

The vehicle trailer had two grates in the back door, one of which was leaking blood. It was also dripping through the seam between the door and the bed of the trailer. Agent Young and I climbed to the top of the trailer to check the contents but the trash was compacted so tightly we were not able to see the source of the blood. The x-ray performed by Customs agents onsite revealed a location of density, but was inconclusive.

Agent Young and I escorted the vehicle to a waste management recovery station in Detroit in order to off-load the garbage and find the source of the blood. The driver of the vehicle pushed approximately a quarter of the garbage out of the trailer. In this small amount of garbage we found two garbage bags full of used blood products, partially empty blood transfusion bags, and intravenous tubing. In addition there was still a large amount of blood in the bags. The medical waste filled two large clear garbage bags and then were placed in another yellow garbage bag. The two clear bags were tied, but the yellow bag was not. None of the waste was in the required red biohazard bags nor was the vehicle properly marked with biohazard placards. The site was immediately declared a HAZMAT area and I advised my dispatcher to notify the

Health Department. Representatives from Detroit Fire Department Emergency Management Division arrived on scene and contacted their civilian contract HAZMAT crew to dispose of the waste and decontaminate the site. Agent Young and I then escorted the vehicle back to the Customs Cargo Facility to be cited and sent back across the bridge to Canada. This ended my involvement and I cleared the scene.

Follow-up of the incident approximately 2 weeks later revealed Customs had decided not to cite the driver nor did they cite the transport company. It is reasonable to assume the semi came back across the bridge the very next day to get to the landfill. Additional follow-up of the Department—with the Department of Environmental Quality revealed the garbage picked up that day had been traced to two nursing homes and a hospital, all of which were located in Canada. To my knowledge no citations have ever been issued in this incident and it is not known if the blood had ever been screened for diseases.

The driver of the vehicle was a subcontractor who transports for a company out of Brampton, Ontario and that company, a check of that company revealed that they are not authorized to transport medical waste. The garbage was picked up from Mississauga, Ontario, from a site where the site manager says that they only process industrial food waste. The load was en route to Carlton Farms Landfill in Belleville, Michigan. I spoke with the site engineer of Carlton Farms and he said that they are not authorized to accept medical waste at that site.

OSHA regulations are very specific when it comes to the disposal of medical waste. None of those procedures were followed nor were the transportation regulations followed.

I have been a registered nurse for 8 years in civilian and military life and it is my nursing experience that allowed me to identify the items in question as blood transfusion bags and IV equipment. As a nurse I am also aware of the dangers associated with an exposure to unknown sources of blood. Scientists have not yet discovered ways to test donor blood for every existing pathogen. If the used blood or expired blood is not autoclaved prior to disposal, those pathogens can thrive in such a warm moist environment as a landfill. The worst case scenario would be the transmission of a disease by insect or stray animal because of recklessness or laziness, such as this situation.

It is apparent by this incident that proper procedures are not being followed in Canada. This was just one garbage hauler on 1 day coming across one bridge. One has to question how many times this occurs out of the hundreds of vehicles coming across the Ambassador Bridge on a daily basis. It is unrealistic to think every garbage hauler will be inspected once it reaches the U.S.

The deregulation of garbage has been blatantly and disgustingly taken advantage of, and it is my hope that those that fought to include garbage as commerce never envisioned that improperly disposed of medical waste would be sent over the bridge mixed in with the garbage. Including Canadian garbage in international commerce has totally eliminated the environmental and, more importantly, the human element. Imagine if you will driving behind this semi either on a motorcycle or with your vehicle windows down and

having blood from the back of a truck splash on your face, arm or windshield or having a stray dog digging around that landfill licking the blood bags, then playing or licking the children in the neighborhood.

I am extremely disgusted and appalled at what I witnessed and the nonchalant attitude I received from State and Federal officials. Garbage is no longer regulated because it falls under commerce is what I was told over and over again. I don't believe the United States should be accepting another country's garbage. The fact that we have no idea what is being put in those garbage haulers is more of a reason to put a stop to Canadian garbage coming in to the U.S. Equally appalling is the fact that in these times of increased bioterrorism threats Customs officials identify a hazardous situation yet Federal agencies that are responsible for enforcing violations of this nature did not respond.

I have been in public service for the past 20 years, with the military, with the State police and currently with the Army, and I am also a nurse, as I stated before. I am committed to protecting the health, safety and freedoms of this great country. We have soldiers overseas eliminating international threats to keep this country safe, and it is imperative that all necessary actions be taken domestically to ensure that our borders are kept safe from any human, chemical or disease that may pose a threat to citizens of this great Nation.

Thank you.

[The prepared statement of Linda Jordan follows:]

PREPARED STATEMENT OF LINDA JORDAN

On Saturday, 5 October 2002, while working as a Michigan State Trooper assigned to the Detroit post, I was dispatched to the Fort Street U. S. Customs Cargo Facility on the Detroit side of the Ambassador Bridge for a suspicious situation. The Ambassador Bridge connects Detroit, MI to Windsor, Ontario, Canada, and is a main thoroughfare for semi-tractors from Canada into the U.S. On the aforementioned day the suspicious situation was a semi-tractor leaking blood from it's trailer. Upon arrival, I was met by Customs Chief Gary Calhoun and Customs Agent Senior Investigator (SI) Andre Young. Both men advised the Department of Health had been notified but refused to respond. In addition, an agent from the Federal Protection Service, the agency responsible for investigating crimes on federal property, arrived but did not take action and left the scene.

SI Young advised while he was checking vehicles for illegal cargo, he noticed blood dripping from the trailer of one of the vehicles. He stated it had created a pool in its previous location and since the vehicle had been sequestered, there was another pool of blood in its new location and blood continued to drip. The driver of the vehicle stated he was hauling garbage.

The vehicle trailer had two grates in the back door, one of which was leaking the dark liquid. It was also dripping through the seam between the door and the bed of the trailer. SI Young and I climbed to the top of the trailer to check the contents, but the trash was compacted so tightly we were not able to see down far enough to locate the source of the dripping substance. The x-ray performed by Customs agents on-site revealed a location of density, but was inconclusive.

SI Young and I escorted the vehicle to the Waste Management Recovery Station in Detroit, MI, in order to off-load the garbage and find the source of the dripping blood. The driver of the vehicle pushed approximately ′ of the garbage out of the trailer. In this small amount of garbage we found two garbage bags full of used blood products, partially empty blood transfusion bags and intravenous (IV) tubing. In addition, there was a large amount of blood still in the bags. The medical waste filled two large clear garbage bags, which were then placed in a larger yellow garbage bag. The two clear garbage bags were tied but the yellow bag was not. None of the waste was in the required red biohazard bags, nor was the vehicle properly marked with biohazard placards. The site was immediately declared a hazmat area and I advised my dispatcher to notify the Health Department. Detroit Fire Depart-

ment (DFD) Deputy Commissioner Seth Doyle as well as Lt Harold Watkins of the DFD Emergency Management Division arrived on-scene and notified their civilian contract hazmat crew to dispose of the waste and decontaminate the site. SI Young and I escorted the vehicle back to the Fort Street Cargo Facility to be cited and sent back across the bridge to Canada. After the vehicle escort, I provided SI Young with the personal, vehicle and company information of all parties involved in the incident. This ended my involvement and I left the scene.

Follow-up of the incident approximately two weeks later revealed Customs had decided not to cite the driver, nor did they cite the transport company. It's reasonable to assume the semi came back across the bridge to get to the landfill the next day. Additional follow-up with the Department of Environmental Quality under the Department of Health revealed the garbage picked up that day had been traced to two nursing homes and a hospital, all of which were located in Canada. To my knowledge no citations have ever been issued in this incident. It is not known if the blood had ever been screened for diseases.

The driver of the vehicle was a subcontractor who drives for a transport company out of Brampton, Ontario. A check of the transport company by Michigan State Police Motor Carrier Investigator Jeff Snyder revealed the company is authorized to transport garbage/refuse but not medical waste. The garbage load was picked up from Canadian Resource Recovery in Mississauga, Ont. I was advised by Customs that Mr. Bassi, the load manager at Canadian Resource Recovery, stated his site only disposes of industrial food waste. The load was enroute to Carlton Farms Landfill in Belleville, Wayne County, MI. I spoke with the site engineer of Carlton Farms who advised they are not licensed to accept medical waste.

A general inquiry of the blood bank at Harper Hospital, Detroit, MI, one of my places of employment, revealed when units of blood are expired, they are placed in a red plastic biohazard bin, with markings on the outside and two red biohazard garbage bags lining the inside. The waste is retrieved by a private company, who replaces the biohazard containers. The private company then places the expired blood in an autoclave to destroy bacteria and pathogens, after which the blood is transported by a company authorized to transport medical waste and buried at a facility authorized to receive medical waste. This procedure applies to partially and completely used units of blood and equipment.

I have been a registered nurse for eight years, with specialties in medical-surgical and nephrology. I am also a Captain in the U.S. Army Reserve Nurse Corp. It is my nursing experience that allowed me to immediately identify the items in question as blood transfusion bags and intravenous equipment. I have transfused blood on many occasions in my career and am familiar with the procedures of disposing expired and used blood products. As a nurse I am also aware of the dangers associated with an exposure to unknown sources of blood. Scientists have not yet discovered ways to test donor blood for every existing pathogen. For example, the American Red Cross will not allow an individual to donate blood if they have lived in Europe for more than six months during the 1980s because there is no way to test the blood for Mad Cow Disease. If the used or expired blood is not autoclaved prior to disposal, the pathogens can thrive in such a warm, moist environment as a landfill. Many diseases could fester in the open pit of a refuse site. Worst case scenario would be transmission of a disease by insect or stray animal because of recklessness or laziness such as this situation.

It is apparent by this incident that proper procedures are not being followed in Canada. This was just one garbage hauler on one day coming across one bridge. One has to question how many times this occurs out of the hundreds of vehicles coming across the Ambassador Bridge on a daily basis. It is unrealistic to think every garbage hauler will be inspected once it reaches the U.S.

The deregulation of garbage has been blatantly and disgustingly taken advantage of. It is my hope that those that fought to include garbage as commerce never envisioned that improperly disposed of medical waste would be sent over the bridge mixed in with the garbage. However, I am probably being naïve. Including Canadian garbage in international commerce has totally eliminated the environmental and, more importantly, the human element. Imagine driving behind this semi, either on a motorcycle or with your vehicle windows open, and having blood from the back of a truck splash on your face, arm or windshield, and having to follow the Center for Disease Control's Post Exposure Prophylaxis Protocol. Of possibly having to take harsh medication with serious side effects because the source of the blood is unknown and the possibility of contracting a disease exists. Months of not knowing if a disease has been contracted or not, did the splashed blood get into a cut or not. Not to mention a stray dog digging around that landfill, licking the blood bags then playing or licking the children in the neighborhood.

I am extremely disgusted and appalled at what I witnessed and the nonchalant attitude I received from State and Federal officials. "Garbage is no longer regulated because it falls under commerce now", is what I was told over and over again. I don't believe the United States should be accepting another country's garbage. The fact that we have no idea what is being put in those garbage haulers is more of a reason to put a stop to Canadian garbage coming into the U.S. Equally appalling is the fact that in these times of increased bio-terrorism threats, Customs officials identified a hazardous situation and the federal agencies that are responsible for enforcing violations of this nature did not respond. Yet one more reason to keep Canadian waste in Canada.

I have been in public service for the past twenty years. I am a former U.S. Army Paratrooper with 9 years active duty, a former Michigan State Police Trooper, current U.S. Army Reserve Nurse and current nursing professional who has been and continues to be totally committed to protecting the health, safety and freedoms of this great country. As such, I believe that with soldiers dying overseas to keep this country safe, it is imperative that all necessary actions be taken domestically to ensure that our borders are kept safe from any human, chemical or disease that may pose a threat to the citizens of this great nation.

Mr. GILLMOR. Thank you very much, Ms. Jordan. And we will now go, last but not least to Professor Robert Howse, the University of Michigan Law School, which is an excellent law school. Having graduated from there, I can say that.

STATEMENT OF ROBERT L. HOWSE

Mr. HOWSE. Thanks very much, Mr. Chairman and members of the committee. I teach international law and in particular, international trade law at the University of Michigan. I have also taught at the University of Toronto and at Harvard Law School. And perhaps I could begin by stating that I myself am a Canadian and a native of Toronto, and I recall the debates about NAFTA that occurred in Canada and in Toronto. And one thing I will say at the outset is that of all the arguments that the government of the day made in favor of the approval of NAFTA, they never actually, I think, dreamed of suggesting that one of the advantages of NAFTA would be that Canadians would dump their environmental problems on the United States.

The NAFTA is fundamentally a commercial agreement, and I start from the premise that it does not require environmental burden sharing. That might be something required by the constitution of a Federal State. It might be required in something like a political and economic union like the European Community, but it is not something required in the North American Free Trade Area between the United States, Canada and Mexico. It is not a purpose of the NAFTA and therefore in interpreting the various provisions of the NAFTA we have to bear in mind that it is not that kind of agreement. It is fundamentally an agreement to facilitate trade and not environmental burden sharing.

This being said, let me begin, and my written remarks focus particularly on bill 382. I think of all the testimony that I have heard so far and my own, I would suggest that bill 382 is in itself very—does not give rise to a valid complaint under the WTO or NAFTA, whatever the issues that might be raised by subsequent actions by States, and the reason for that is that the bill by its very terms does not itself restrict any trade. It doesn't mandate anything and therefore it could not be considered to give rise to a violation certainly under the jurisprudence of the WTO and GATT, which suggests that by and large, and there are some borderline cases and

we could discuss those, but by and large, legislation that does not actually mandate some restriction of trade that is a violation is not a violation. You have to wait for some subsequent action that actually restricts trade in order to bring a complaint. Until that time the complaint is not ripe. So you could pass this legislation and then there would still be no restrictions because it actually doesn't purport to restrict anything, only to provide an authorization to the States.

The second point relates to what I understand to be a doctrine of statutory construction employed by the courts of the United States, which is that unless there is express language to the contrary, the courts will assume that legislation is not intended to violate the international obligations of the United States. So the correct reading of bill 382, if it were passed into law, would be that it only authorizes actions of the States that would be consistent with the international obligations of the United States. So about bill 382, and I think it is the same for the other legislation, you don't have to worry about the law itself.

Now, what about subsequent State actions? That is a more complicated story. The NAFTA works a little differently than the Commerce Clause in the U.S. Constitution. It has separate chapters and provisions dealing with different kinds of trade, trade in goods, trade in services, investment. In the case of trade in goods, I do not believe that the national treatment obligation would apply to waste in this context. The reason that the national treatment or nondiscrimination obligation would not apply to waste is that in order to have a violation of national treatment, you have to show that like domestic products are being treated better than imported products, in this case from Canada, and that presupposes that there are like domestic products in competition in consumer markets.

So, I mean here you are not dealing with a situation where Canadian and American garbage are competing for consumers and therefore you will not find like products in the sense required for a violation of national treatment with respect to trade in goods.

With respect to quantitative restrictions, the prohibition on export restrictions, it is my view that if you look at the context in which those provisions occur both in the GATT and in the NAFTA's context, is clearly market access. In other words, it is prohibited to restrict exports or imports that are destined for a market in the other country. And this says nothing in my view about what you can or can't do with respect to material that is being transported across the boundary, not to be traded in the marketplace, but rather as a means of taking an environmental problem from one country and putting it into another. Trade in services under NAFTA, there are definitely certain kinds of actions that States could take that could be a problem from that point of view. One example I gave in the written statement is if waste was prohibited unless it were carried by American carriers. That would be discrimination against Canadian service providers. But I see no reason why States could not restrict waste, while at the same time providing equal treatment to Canadian and foreign businesses competing in the market where it is legal to compete, and that is all that is really required here for national treatment in trade and services. You can ban the import of waste, the actual physical material as long as

you don't unduly favor American over Canadian waste disposal businesses or companies.

What about investment? Could actions of a State violate the investor protection provisions in NAFTA? Here we are dealing with hypotheticals. You would have to find a Canadian company that qualifies within the meaning of expression "investor or investment" within the North American Free Trade Agreement and then look at the effects of any State regulation on that particular company. So that is really quite hypothetical or speculative.

But again I come back to the basic proposition that none of this flows intrinsically from the proposed legislation itself. It would only flow from certain kinds of subsequent actions by States. And I would even question whether as a matter of U.S. administrative or constitutional law, although my expertise is not in those fields, I would even question whether the U.S. courts would interpret any of this legislation as actually giving any right to a State to violate the international obligations of the United States. So in other words, I don't think there is anything to worry about under international trade law. But obviously there is a great deal to worry about in terms of which public policy is going to be effective to deal with the problem. But that is not my area of expertise.

[The prepared statement of Robert L. Howse follows:]

PREPARED STATEMENT OF ROBERT HOWSE, ALINE AND ALLAN F. SMITH PROFESSOR OF LAW, UNIVERSITY OF MICHIGAN LAW SCHOOL [1]

I. NAFTA PROVISIONS ON TRADE IN GOODS

Let me express at the outset my doubts as to whether these provisions are even applicable to the export and import of garbage; is garbage a traded good, within the meaning of NAFTA? It is not entering the United States as a good offered for sale to consumers on the market; rather it is being sent abroad for environmental reasons. The NAFTA itself is not an agreement that requires sharing of environmental burdens between NAFTA members; indeed, the level of cooperation contained in the NAFTA environmental side agreement falls far below a legal requirement of such burden-sharing. The NAFTA is fundamentally a commercial agreement, which requires among other things, equality of competitive opportunities for goods and services being *traded* across the borders of NAFTA member states; i.e. being produced in one NAFTA member state, and sold to consumers in another. In other words, NAFTA disciplines commercial protectionism, the protection of one's own consumer markets against goods and services from other NAFTA members. Leaving aside the issue of recyclables, there is no consumer market at all for the garbage in question; it would be laughable in fact to describe it as competing with US garbage for US consumers.

But even if garbage were considered to be a traded good within the meaning of NAFTA, it would make no difference in the case of Bill H.R. 382. This is because the NAFTA defines the basic obligations concerning free movement of goods (Import and Export Restrictions and National Treatment) in accordance with the GATT and the WTO Agreements. GATT and WTO case law is clear: only legislation that **mandates** a violation of a trade agreement may be challenged as illegal. There may be borderline cases, where the legislation leaves **some** window of discretion for decisionmakers, but could still be found to constitute a possible violation; there has been one such borderline case in the history of the GATT and WTO, the *Section 301* case, and in that instance the panel, while entertaining the possibility of a violation, ultimately ended up finding no violation. HR. 382 is on the opposite end of the spectrum from such borderline cases. H.R. 382 mandates **nothing**; it merely authorizes the states to take certain actions that, without Congressional approval, they would be unable to take because of the constitutional constraint of the Commerce Clause. It is even questionable whether H.R. 382 **authorizes** the states to take actions in violation of NAFTA, much less mandating such violations; while I am not an expert

[1] These are purely my personal views as a scholar of international trade law, and are not being stated on behalf of any government or institution.

on the foreign relations law of the United States, my understanding is that the US courts will generally interpret a statute in a manner that is consistent with US international legal obligations, unless there is clear wording in the statute to the contrary. I suppose that, to reassure the US trading partners, in this case Canada, wording might be added to the Bill to state explicitly that Congress is authorizing only those state actions that are consistent with the international trade obligations of the United States. But as I have just said, for purposes of the US courts interpreting it that way or of legal consistency with NAFTA, such wording is not necessary.

II. NAFTA TRADE IN SERVICES OBLIGATIONS

These obligations apply only to measures "relating to cross-border trade in services by service providers **of another Party**". In the present case, Canadian service providers are not offering any service for sale in the US; rather it is the reverse—US landfill operators are providing a service to Canada. Therefore the NAFTA Trade in Services obligations are inapplicable to the United States in this situation.

Even if they were applicable, the general point stated above concerning the non-mandatory nature of the proposed legislation would likely foreclose any issue of a NAFTA violation.

III. NAFTA TRADE AND INVESTMENT OBLIGATIONS

These obligations apply where a business entity of **another** NAFTA party operates as an "investor" or "investment" in the United States. I am not aware of any Canadian entity that meets the NAFTA definition of an "investor" or "investment" in the United States and that could be affected by this legislation in such a way as to have a valid investor-state claim. Only if such an entity already existed, would one have a NAFTA investor-state issue; and then one would have to examine the effects of the legislation on that entity, and whether those effects run afoul of the NAFTA provisions on investor protection, such as the expropriation provisions. As was already emphasized in one NAFTA investor-state case that dealt with trade in hazardous substances, the S.D. Myers case, the Basel Protocol on Transboundary Movement of Hazardous Wastes would trump the NAFTA to the extent of any inconsistency. However, there is no need to consider the details of that, as long as there is no Canadian business entity that qualifies as an "investor" or "investment" within the meaning of NAFTA, since there is no one with standing to bring an investor-state claim in the first place.

CONCLUSION

I wish to emphasize that the above remarks apply on to Bill H.R. 382 itself. They do not address hypothetical scenarios where subsequent action by the states restricting imports of garbage might give rise to a NAFTA claim. There are certainly some hypothetical scenarios where that could happen: for instance, if a state prohibited imports of garbage unless the hauler was of US nationality, then there could be an issue of National Treatment with respect to trade in services. It might be argued that Canadian haulers were being discriminated against in such a situation.

But clearly, no scenarios of that kind flow from Bill H.R. 382 itself.

Mr. GILLMOR. Thank you very much. I thank all the panelists and particularly you, Ms. Jordan. I know you made a special effort to be here and we appreciate it. Let me see if the members of the panel have questions.

Mr. Rogers.

Mr. ROGERS. Thank you, Mr. Chairman, and I have just a couple. And I want to again thank publicly Ms. Jordan for the exceptional effort you made to get here and telling your story. Thank you very, very much.

In your opinion, as a nurse, both through the military and in private practice, does exposure to human blood, pose a health risk?

Ms. JORDAN. Absolutely. There is a whole protocol that has to be followed if one gets an exposure and it doesn't matter how. It is whether you are on a job as a police officer or in a hospital. The Centers for Disease Control has what they call post-exposure prophylaxis, and it involves testing, blood testing as well as medica-

tion follow-up. And some of those medications have serious side effects themselves. So it poses a huge threat.

Mr. ROGERS. And at that time you also brought out a HAZMAT team to clean this up. This wasn't—you didn't get out there with some rags and mop that up?

Ms. JORDAN. No. There are regulations for all of it. It had to be cleaned up per specific guidelines, and that HAZMAT crew has those guidelines. That is what they do for a living. So, and I was not—we had gloves, masks and goggles on, but there was so much blood—I only cut the bag to see what was in there and then we stepped away. There was no need to make us vulnerable to an exposure once we saw what it was. So we stepped away and let the HAZMAT crew come in and clean the site.

Mr. ROGERS. Thank you.

And, Mr. Esty, you mentioned earlier that you thought the bill 382 had some trade issues. But under the international trade agreements under both GATT and NAFTA there are exceptions to human health and, as I think you heard Ms. Jordan mention, that this certainly clearly falls within that. Would you not agree with that?

Mr. ESTY. I think one of the problems with 382 is that it expressly talks about limiting foreign waste. So it is going to be viewed as facially discriminatory and therefore it is going to have to go to these exceptions under the GATT in order to be excepted. And as you have heard from several of the witnesses today, there is a high hurdle in getting yourself cleared through one of those exceptions. So if you are going to go through with a claim, as you are suggesting, under GATT Article XX(b), which is the protection of human health, you are going to have to demonstrate that there is a necessity for the kind of legislation you have adopted and that that necessity has been interpreted in the GATT in the WTO process as a requirement that it be the least trade restrictive option available, and the very fact that there are other options on the table here today makes that a hard claim to uphold.

Mr. ROGERS. Yeah, but the bill itself, where in the bill itself does it violate, in your opinion, GATT and NAFTA, given the comments of Mr. Howse as well?

Mr. ESTY. I think it is all about what it invites States to do. And frankly, having heard the testimony from the Senator and from others earlier today, I think it is quite likely that some States would enact something approaching an all out ban on Canadian waste coming in.

Mr. ROGERS. But this bill doesn't do that. This bill clearly has a very clear and simple purpose, and you are speculating. So the bill itself doesn't do that. So in your estimation you are saying then this bill probably would not be in violation of that?

Mr. ESTY. It is inviting trouble. It is inviting a challenge. And although Professor Howse has indicated that it might not be challenged because it doesn't itself mandate something that is inconsistent with our GATT obligations, it does authorize actions that might be inconsistent and there are GATT cases where even that action has invited a challenge. So my comments really go to the pragmatic situation here, what is going to get on the ground environmental protection for the people of Michigan and others who are

feeling threatened by the flow of waste, the kind of protection that will be up held, durable, not challenged. And I think in my opinion——

Mr. ROGERS. Is it your estimation that you don't think the waste industry will challenge 1730?

Mr. ESTY. I think there are likely to be challenges from the waste industry, but I think perhaps not from Canada if it is tightly crafted, narrowly tailored and focused on the kinds of issues that are legitimate State interventions.

Mr. ROGERS. Because in fact it won't really stop the flow of Canadian trash, nor will 411, even though I cosponsored both of those bills and I encourage all the action we can. But they really won't ban Canadian trash?

Mr. ESTY. Well, if they ban Canadian trash they will get challenged. If they constrain it——

Mr. ROGERS. So 382 does not ban anything. I am glad that you are with me on that.

I just have one other additional question. Mr. Huenemann, you raised an interesting issue and I probably wouldn't have brought it up other than you raised it. But you are here on your own accord without any, nobody brought you here necessarily. Can I ask if your firm, do they handle waste management clients to any degree?

Mr. HUENEMANN. My firm, my office does not.

Mr. ROGERS. And have you ever been a paid consultant for the waste industry to any degree?

Mr. HUENEMANN. No, never.

Mr. ROGERS. Interesting. Thank you.

Mr. GILLMOR. Are there further questions of the witnesses? The gentleman from Michigan, Mr. Stupak.

Mr. STUPAK. Thank you. Mr. Esty, of the three bills, does 382 invite the most likely challenge, or "invites the most trouble" I think was the words you use?

Mr. ESTY. Yeah, I would rank them as 382 is the most likely to be entangled and therefore not to get on the ground action. I think the 1730 is less likely but it depends a lot on the details of how it gets implemented, and the least likely is the bill that simply advances the existing U.S.-Canada waste agreement and urges the EPA to pursue it with greater vigor and to take on board some of those obligations that have not been implemented and which we have heard testimony today have not been fully brought to fruition.

Mr. STUPAK. The fact that—someone testified that Canada gives a 7 percent, I think Mr. Garfield did—a 7 percent tax on it if it is deposited in Canada.

Mr. ESTY. That is right.

Mr. STUPAK. Would that then make that garbage, whatever you want to call it, a good then under NAFTA because it is being taxed by one of the parties to the agreement?

Mr. ESTY. Does that make it a tradable good?

Mr. STUPAK. A good, yeah.

Mr. ESTY. You know, I think that is a matter of technical analysis but historically within the U.S. legal context waste is a good and we can't get around it in the way that Mr. Howse has suggested.

Mr. STUPAK. Okay. Ms. Jordan, the person who had that truck with the blood and that, no paperwork whatsoever like where they got the waste, where they picked it up or anything like that?

Ms. JORDAN. Yes, he gave us the information where he picked it up but——

Mr. STUPAK. Where he picked it up, right.

Ms. JORDAN. Yes.

Mr. STUPAK. So he wouldn't be the—the person who drove this truck wouldn't be the person who picked it up from this nursing home or all these other sites; he was just the hauler?

Ms. JORDAN. Correct. He picked it up from a transfer station. Garbage is picked up from the sites and then dropped off at a transfer station, then another truck comes in and takes it to the landfill.

Mr. STUPAK. From your own—maybe I should ask Mr. Woodham. Is that the way you do it, like someone picks it up, and I think New York testified you go to a compacting station and then someone else hauls it. So by the time it actually gets to a landfill if you want to inspect it or something you are at least twice removed from the person who actually picked it up. So that driver, whoever it is, without proper documentation won't have a clue what is in that truck?

Mr. WOODHAM. Well, you know, first I think that is a terrible situation and I would support the full prosecution under the law——

Mr. STUPAK. I am not looking for prosecution. I am just trying to get to the inspection.

Mr. WOODHAM. My understanding in a landfill, you know, all of it is documented as it goes in. So in the event something is found or some record is tracked back you can go back to a landfill and dig down to that area and the hauler that brought it in you can hold them responsible.

Mr. STUPAK. That would be the hauler. But the hauler might not be the person who picked it up, right?

Mr. WOODHAM. Well, the hauler would be the person that picked it up, I would believe.

Mr. STUPAK. Well, he picked it up from the compacting station or whatever.

Mr. WOODHAM. A transfer station I guess you would say. But there should be records on where all the waste came from.

Mr. STUPAK. Do you guys inspect your stuff that comes into your landfill in South Carolina?

Mr. WOODHAM. The county, the State inspects it and then the local, the landfill, they inspect it. Just like everybody else it is a random, it is not every——

Mr. STUPAK. Can you give me an idea what percentage? We only inspect 1.3 percent of all containers that come into this country, whether food or whatever.

Mr. WOODHAM. I would have no idea.

Mr. STUPAK. I am just trying to make some kind of comparison. Okay. I guess my time is up. Thanks, Mr. Chairman.

Mr. GILLMOR. Thank you very much. Let me just ask Professor Howse, if you would like to respond to any of the interpretations of Mr. Esty because, you know, you are not only at opposite ends of the table, you have a different point of view on that.

Mr. HOWSE. Well, I just do not know of any case in the GATT or WTO where legislation that did not actually mandate a restriction that was a violation of a trade agreement was found to be illegal. There was one case, the section 301 case, where the panel contemplated the possibility that even though there was some discretionary element in the legislation, nevertheless it created a serious enough threat of a violation that it would amount to in itself an illegal act under GATT. But ultimately the panel stood back from that and said, no, that is not true at the end of the day. And one of the reasons they stepped back is what I alluded to earlier, which is the rule of statutory construction that statutes are not to be read, you know, or interpreted lightly to violate the international trade obligations of the United States. So I mean, first of all, you know, these bills are not mandatory as far as any trade restrictions. And second, even to the extent that authorization might be relevant to a violation, the normal rule of statutory construction would be that the States are not being authorized to violate the international trade obligations of the United States. But if Professor Esty has other case law that I for some reason have missed, perhaps he could talk about it.

Mr. GILLMOR. Yeah. If we could be real brief, because we do have to be over to vote very shortly. But would you like to answer quickly?

Mr. ESTY. The case where the WTO has addressed this is the 1999 section 301 case that Professor Howse referred to, and there was a concern raised that the mere authorization of legislation that could be implemented in GATT in consistent ways was a source of concern. And the issue here isn't ultimately whether a GATT case is successful or not. It is the entanglement of efforts to bring good environmental practices to bear in a long drawn out set of legal challenges, trade challenges. So I am not convinced that this would win in the end, but I am convinced that it would be challenged, that there would be a mess on our hands and that we wouldn't be implementing those environmental controls that we all want to see in place. So I think that is the real issue here, and of course we don't know what the State will do. But there is a prospect that it will do something that would later be considered inconsistent with our legal trade obligations and trying to sort things at that point, getting States to revise or revoke legislation is a terrible mess.

Mr. GILLMOR. The gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, I thank you. I know we are in a hurry to leave here, but I do want to ask this question. Professor Howse, I found your comments to be very interesting. Can you tell us flat out that under H.R. 382 the legislature of the State of Michigan or the State of Ohio could not ban all importation of Canadian trash or all importation of trash from New York or some other State? Can you make that bald statement to us, please?

Mr. HOWSE. Concerning other States, I would prefer not to comment on that because I am not an expert.

Mr. DINGELL. Well, let's comment on Canada. Could the legislature of Michigan ban all Canadian trash coming in if H.R. 382 passes? Can you tell me they could not?

Mr. HOWSE. I——

Mr. DINGELL. Or can you tell me you don't know?

Mr. HOWSE. I don't know.

Mr. DINGELL. Okay. Perhaps Mr. Esty can tell us. Could they ban—could the State of Michigan through its legislature ban all importation of Canadian trash if H.R. 382 passes?

Mr. ESTY. I certainly read 382 to provide that broad an authorization.

Mr. DINGELL. You think they could. So now if they did that would that then constitute a violation of GATT or NAFTA?

Mr. ESTY. I would say absolutely.

Mr. DINGELL. Now, Mr. Howse, what would you say if that were so? You were commenting on——

Mr. HOWSE. On the scenario that all trash were banned from Canada, I don't think that——

Mr. DINGELL. No. No. Just answer the question, please. Our time is limited. If Michigan banned all importation of Canadian trash, would that constitute a violation of NAFTA or of GATT?

Mr. HOWSE. I don't believe so.

Mr. DINGELL. You don't believe so. Okay. If Canada banned all imports of U.S. Trash into Canada, would the United States have recourse under international law?

Mr. HOWSE. Under international trade law, I don't believe so.

Mr. DINGELL. You don't believe so?

Mr. HOWSE. Maybe under some other law.

Mr. DINGELL. Mr. Esty, do you want to comment?

Mr. ESTY. I would be interested in the legal underpinnings for that opinion. I really don't see any foundation for that. I mean it seems, and we could ask my colleague who spent 15 years at USTR, but I think that kind of absolute ban is fundamentally what Article XI of the GATT is about and Article III, nondiscrimination. So I think this would trigger an immediate Canadian challenge if Michigan were to ban all waste. I think it would be hours, not days before requests for discussions are held.

Mr. DINGELL. Now, in a statutory interpretation or an interpretation of a treaty, the presumptions come into play and the courts and the interpreting agencies say, well, they couldn't have intended that. But then somebody takes action which is completely inconsistent with the presumption. What then happens? Mr. Howse, do you want to tell us? So I have got this presumption that I can't do it, let's say I am a member of the Michigan legislature, but I go ahead and do it. What happens to the presumption? It goes out the window, doesn't it?

Mr. HOWSE. Well, then it would be partly a question of statutory interpretation, right.

Mr. DINGELL. Okay. So the presumption vanishes. Michigan I happen to know feels strongly about this Canadian trash and the minute we pass a piece of legislation that they think would authorize it you can bet yourself a new hat they will be running out and you will see legislation introduced and probably reported out of a committee that will ban the import. Isn't that fair to say? Just talking about human nature and how our people in Michigan are going to respond.

Mr. HOWSE. I am afraid that I am not familiar enough with the debate in Michigan to say whether I thought an outright ban as opposed to some other kind of restrictions based upon health and

safety and environmental risk would be the outcome of the legislative process of Michigan.

Mr. DINGELL. My time is very limited and I have got to hurry. Mr. Esty, do you want to comment on this matter?

Mr. ESTY. Well, I would just say I have spent a career, including time in government, trying to figure out ways to ensure that the trade regime takes on broad environmental concerns. But it can't be done in absolutes.

Mr. DINGELL. But the minute somebody takes an action that is inconsistent with the presumption, the action becomes——

Mr. ESTY. Is what is operational.

Mr. DINGELL. The action becomes the dominant fact in the interpretation of the treaty as opposed to the presumption. This exists as long as there is no factual or legal basis to come to adopt the conclusion, is that correct?

Mr. ESTY. Correct.

Mr. DINGELL. Thank you. Mr. Chairman, I thank you for your courtesy. Mr. Howse, I thank you. I thank you also, Mr. Esty.

Mr. GILLMOR. Thank you. Let me ask unanimous consent that all members have 5 days to submit statements for the record. Without objection, so ordered. Also Mr. Fossella has—was not able to attend Panel 4.

Mr. DINGELL. Oh, Mr. Chairman, would you allow me to just read one thing, please?

Mr. GILLMOR. As long as you read it fast, John.

Mr. DINGELL. I will read it fast. Our colleague Ms. Miller said this in her statement. I can assure you that if given the opportunity Michigan legislature would quickly enact legislation to ban Canadian trash. A former Secretary of State, sitting colleague. Thank you, gentlemen, and thank you.

Mr. GILLMOR. And I would ask the panel if they would be willing to accept written questions from members of the panel, and before we adjourn I want to thank all of you, Panel 4. You deserve some kind of medal. You have been here all day and we very much appreciate it. Meeting adjourned.

[Whereupon, at 7:15 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF MICHIGAN
August 15, 2003

MS. JILL LATHAM, *Legislative Clerk*
Committee on Energy and Commerce, Majority Staff
United States House of Representatives
Washington, DC 20515

DEAR MS. LATHAM: This letter is in response to U.S. Representative Paul E. Gillmor's August 5, 2003, letter requesting a response to additional questions related to my testimony during the July 23, 2003, hearing on interstate and international waste. I will address the questions in the order they were presented.

Question: Mr. Chester, your testimony makes several references to the 10 years between the Supreme Court's action in 1992 and the present day. Certainly, the courts have eliminated many but not all options for states to employ in dealing with out-of-state waste. What has the State of Michigan done to reassess their situation and help create safe and efficient alternatives or programs to address their concerns?

Response: Since the 1992 decision in the case of *Fort Gratiot Sanitary Landfill v. Michigan Department of Natural Resources,* Michigan has taken numerous actions in an attempt to deal with out-of-state waste. Some of Michigan's efforts in-

clude banning additional items from being landfilled in Michigan and creating the Michigan Solid Waste Importation Task Force to examine trends, causes, and consequences of out-of-state waste imports and develop recommendations. Most recently, Michigan has conducted additional inspections at solid waste landfills throughout the state to ensure that prohibited solid waste is not entering these facilities. Although Michigan has taken action to address the content of out-of-state waste, the volume of solid waste imports to Michigan continues to increase. Under current law, Michigan has almost no ability to control the volume of solid waste importation. Michigan has also met with the Ontario Ministry of the Environment and representatives from the city of Toronto in an effort to persuade them to identify Canadian sites for the disposal of their municipal solid waste and to encourage them to effectively plan for the disposal capacity needs within Ontario.

Question: Mr. Chester, some people would argue that Michigan and other importing states could regulate the flow of waste just by the condition and way it issues permits for a disposal facility. Do you believe this to be true? Do you think it would pass the Commerce Clause scrutiny under the U.S. Constitution?

Response: Under current Michigan law, the regulation of out-of-state waste through conditions in landfill permits is not achievable. The Michigan Department of Environmental Quality (MDEQ) is obligated by statute to issue a permit to a disposal area if all of the requirements of state law are met. The landfill permit applicant does not have to identify the source of his anticipated business. If the MDEQ does not issue the permit within 120 days of receiving an administratively complete application, the permit is automatically issued by default. Michigan also does not believe such an approach would pass Commerce Clause scrutiny. Without federal legislation authorizing states to regulate out-of-state waste flow, this approach would likely be viewed as a state's attempt to discriminate against interstate commerce and, therefore, would be in violation of the Commerce Clause. In addition, we believe that restricting the development of landfill space would lead to Michigan being irresponsible in terms of ensuring that the state can properly manage its solid waste. Such action would artificially increase the cost of solid waste disposal for Michigan citizens and could result in illegal dumping.

Question: Mr. Chester, in 2001, the State of Michigan exported more than 146,000 tons of solid waste to other states for disposal. Noting that during that same year, Michigan was a "net-importer" of over 3.5 million tons of solid waste, it would seem your state is able to take care of its entire trash load and then some. Am I correct? And, if so, why are you exporting so much?

Response: In 2001 Michigan disposed of over 20 million tons of solid waste. This question states that Michigan exported more than 146,000 tons of solid waste to other states for disposal and imported over 3.5 million tons of solid waste for disposal. Michigan does not specifically track the amount of solid waste exported; however, if the figures provided are correct, 146,000 tons of solid waste is 0.7 percent of the waste placed in Michigan landfills, which is minimal compared to the total volume of waste disposed of in Michigan and the total volume of waste imported in 2001. Although the reasons for exporting waste may vary, the close proximity of a few Michigan communities to disposal areas in other states bordering Michigan accounts for this export. Although Michigan has capacity to handle the volume of waste currently being disposed, data collected over the past seven years suggests a strong potential for increases in waste imports to continue. If significant increases in waste imports continue, Michigan solid waste disposal capacity will diminish at a much faster rate than planned. Current Michigan disposal capacity was developed as part of county solid waste management plans to meet long-term disposal needs of Michigan communities. Losing this capacity at significantly increased rates undermines the long-term planning done by these communities and will result in the need to establish new disposal capacity or find capacity in other locales. Additionally, development of local disposal capacity as part of county planning activities was done as part of integrated waste management strategies intended to include waste recycling and composting activities. Michigan has taken responsibility to provide for a comprehensive waste management policy. Loss of capacity because of significant imports of waste from jurisdictions undermines local commitment to waste planning and continues to hinder recycling and other waste reduction efforts in Michigan.

Question: Mr. Chester, recognizing that Michigan does export waste, would passage of any of these bills impede your ability to export in the future? Why?

Response: Michigan is not concerned that any of the bills currently introduced would impede our ability to export waste in the future. Michigan is not looking to close its borders entirely; however, we support legislation that would provide states with the authority to reasonably limit the amount of out-of-state waste imports. Because of the lack of authority under the Commerce Clause, states have no authority to ensure their state's waste management policies are not disrupted by out-of-state

waste imports or to ensure natural resources are being protected. Michigan hopes to strike a balance between the competing needs of communities to plan for their long-term needs and the needs of private waste disposal firms to operate profitably, to compete fairly with each other, and to honor a certain level of contractual relationships.

Question: Mr. Chester, two years ago, Russell Harding testified before our committee that Michigan was losing one full year of landfill capacity for every five years of out-of-state imports. Is this still the case? How do you see this matter playing itself out in the future either with or without congressional action on the bills before us?

Response: Based on the most recent data, the volume of imports is equivalent to 25 percent of the waste Michigan residents generate. Based on these figures, Michigan will actually lose one full year of landfill capacity every four years rather than every five years. Solid waste imports show a continuing trend to increase; therefore, without congressional action, Michigan solid waste disposal capacity will diminish at a much faster rate than planned. If congressional action is taken to allow reasonable controls on out-of-state waste imports, the impact on available disposal capacity is expected to be reduced.

Question: Mr. Chester, some of our panelists would argue that your concerns about substantial truck traffic and other human and resource costs incurred by the State are just "sour grapes." Could I have you provide me some statistics to show this is not idle whining?

Response: Michigan does not have any specific statistics to demonstrate that substantial truck traffic negatively impacts Michigan's environment. However, it is common knowledge that an increased volume of trucks will cause deterioration to Michigan roadways, will emit increased air pollutants, and will increase the amount of congestion on Michigan roadways. Michigan's concerns about increased truck traffic also involve the increased disruption of the lives of Michigan citizens as a result of the number of trucks waiting at landfill gates to dump. Furthermore, subsequent to the events of September 11, 2001, it was documented in Michigan that several automobile plants were unable to receive timely distribution of automobile parts from our Canadian neighbors. This resulted in production suspensions because of the delays created in border crossings. One hundred and eighty fewer trucks per day would have reduced those lines at the border crossings. These are trucks that would not have to tie up border crossings if an alternative site to take their municipal solid waste were constructed in Ontario.

Question: H.R. 382 and H.R. 411 have been introduced with your state in mind. Please tell us if you believe these bills will help improve your state's situation. How will passage of this bill not result in setting the stage for the balkanization of what is increasingly a regional system of waste management facilities?

Response: Michigan believes that H.R. 382 and H.R. 411 could improve our situation. H.R. 382 gives states the ability to take direct action in regulating out-of-state waste imports; whereas, H.R. 411 provides states with the opportunity to present their views to the United States Environmental Protection Agency (EPA) on each shipment of municipal solid waste. Since states currently have no authority to regulate out-of-state imports, either of these bills would allow states to be involved in the regulation of out-of-state waste imports. H.R. 382 provides direct authority to stop Canadian waste from entering Michigan or any other state that exercises the discretion it would grant. It would be a powerful tool to help forge more cross-border cooperation on waste issues if it withstands the significant domestic and international legal hurdles that were discussed by the legal witnesses during the final panel of testimony. Michigan is also concerned about the limited scope of H.R. 382, which would provide help with only about half of municipal solid waste imports. It was noteworthy, for example, that the witnesses for New York City not only could not provide an estimate of waste volumes shipped to other states, but indicated they had no real interest in acquiring or sharing that information. That is why Michigan is urging Congress to pass the most comprehensive legislation possible that will withstand any constitutional or trade challenge.

Additionally, Michigan does not expect H.R. 382 or H.R. 411 to cause a decreased regional system of waste management facilities. Since 1992, Michigan's well-developed plan to provide for its own disposal of solid waste has been challenged by the inability to regulate out-of-state waste. Michigan's actions to develop a responsible plan for waste management are ineffective if the amount of out-of-state waste crossing our borders is uncontrolled. Michigan does not intend to close its borders to out-of-state waste; however, Michigan hopes federal legislation will be enacted to allow states to uphold their planning efforts. Therefore, Michigan supports the passage of federal legislation that will strike a balance between the long-term disposal needs of waste generators and the states' need to regulate landfill capacity.

Question: Do you support the outright ban of waste shipments from outside your State? Do you support restrictions being placed on waste from outside your state? What do you see as the distinction between these two terms and where do you think the appropriate public policy place for your state to be is?

Response: Michigan supports legislation that would provide states with the authority to reasonably limit the amount of out-of-state waste imports, not necessarily an outright ban. The distinction between the two terms is that allowing restrictions on volume does not totally prohibit the disposal of out-of-state waste imports. States are currently vulnerable to the unrestricted volume of solid waste coming in from outside of their borders. Michigan hopes to see legislation that will give states the ability to take direct action in reasonably controlling the flow of waste coming across their borders.

Question: Do you support a local community's ability to negotiate a Host Community Agreement? If so, do you still support it if it means out-of-state waste is still being disposed in Michigan? Should the state have any kind of veto power over these agreements? Does the presumptive ban in H.R. 1730 preclude the involvement of local communities?

Response: Michigan supports the concept of a local Host Community Agreement process because local communities are most affected by waste imports. Allowing these communities to negotiate Host Community Agreements will ensure they are not being adversely impacted by siting of disposal areas or other solid waste management decisions. Michigan does not intend to seal its borders against imports; therefore, Michigan would continue to be supportive of a Host Community Agreement process even if it means out-of-state waste will continue to be disposed of in Michigan. Giving states authority to veto Host Community Agreements should be considered because state oversight may ensure unneeded disposal capacity is not created in the state. Michigan does not believe the presumptive ban in H.R. 1730 precludes the involvement of local communities. In fact, H.R. 1730 appears to encourage local communities and landfills to work together to negotiate Host Community Agreements if the landfill intends to accept out-of-state waste.

Question: Mr. Chester, has citizen opposition to landfills that accept out-of-state waste either stopped or significantly prolonged the approval of a landfill? Please expound on the level of citizen opposition you are encountering in Michigan.

Response: Under current Michigan law, the MDEQ is obligated to issue a permit for a disposal area if all of the requirements of the law are met. If the MDEQ does not issue the permit within the 120day statutory time line, the permit is automatically issued by default. Therefore, citizen opposition to landfills that accept out-of-state waste has not affected the issuance of a permit for a landfill. However, the MDEQ does receive a great deal of correspondence expressing opposition to Michigan landfills accepting large volumes of out-of-state waste. These citizens do not understand why people in other states and countries cannot be responsible for disposal of their own waste. Additionally, these citizens argue that it is meaningless to recycle in order to save landfill space if it is just going to be used up by other states and countries.

Question: EPA's testimony states, "Preliminary results from recent Michigan Department of Environmental Quality inspections indicate that the shipments from Toronto are managed as well as similar shipments originating within the State." I also have a *Detroit Free Press* article claiming Michigan DEQ inspections found Canadian trash to be cleaner than Michigan waste. The article says, "DEQ Director Steven Chester . . . found almost no hazardous materials in any of the almost 900 domestic and Canadian loads examined through the end of April." Of all these inspections, what has the Department found to suggest MSW [municipal solid waste] from Toronto is materially different from MSW from Wayne County, where the Carleton Farms landfill is located? Please comment on EPA's testimony and the Free Press article in your response.

Response: Preliminary results indicate loads of waste from Canada typically have a higher volume of yard waste and beverage containers than shipments originating in Michigan. However, the results of the MDEQ's inspections are not finalized; therefore, a definitive answer cannot be given at this time in response to the Detroit Free Press article claiming Canadian trash is cleaner than Michigan's or the EPA's testimony that MDEQ inspections found shipments from Toronto are managed as well as shipments originating within Michigan.

Low-Level Radioactive Waste (LLRW)

Question: Where does the state of Michigan send its low-level radioactive waste? If it were forced to dispose of low-level radioactive waste, does Michigan have enough legal capacity for disposal?

Response: There are only two facilities in the nation that receive for land disposal the LLRW from Michigan generators. These facilities are located in South Carolina and Utah. In 2002 Michigan generators disposed of approximately 3,000 cubic feet of waste at the South Carolina facility and approximately 6,000 cubic feet at the Utah facility. There are no commercial disposal facilities in Michigan licensed to dispose of LLRW. If Michigan were forced to dispose of its own LLRW, the state would have to resurrect an expensive and contentious facility siting process that was begun in 1989 and discontinued in 1991.

Hazardous Waste

Question: How much hazardous waste does Michigan export to Canada or other states (tonnage and percentage of total generation)? If forced to dispose of all its hazardous waste, would Michigan have the legal capacity to do so?

Response: A total of 649,000 tons of hazardous waste were managed within Michigan in calendar year 2002. The sources and destinations of that waste are shown in the following table:

Quantity in Tons

	Quantity
Source	
Michigan Industry	333,300
Canada	4,700
Other States	311,000
Total	649,000
Destination	
On-Site Treatment and Disposal in Michigan	77,900
Michigan Commercial and Captive Facilities	324,200
Exports to Other States	202,800
Exports to Canada	44,100
Total	649,000

What the table cannot show is how much of the waste that is exported to other states and to Canada actually originated in Michigan. The reason is Michigan's commercial hazardous waste management facilities import some of their wastes from other states, process the waste, and may then send it on for further treatment or disposal at a different facility. We do not readily know the origin of the waste stream that is exported from these commercial facilities. Accounting for all imports, the amounts we export to Canada and other states represent 7 percent and 31 percent, respectively, of the 649,000 tons of hazardous waste managed within our borders in 2002.

Unlike the solid waste disposal industry, the hazardous waste disposal industry requires many different types of facilities to manage many varied waste streams. It is difficult to compare the two industries. While most solid waste is disposed of in landfills, most hazardous waste is not. Hazardous waste streams vary from solid to liquid and from inorganic to organic, so many different types of facilities are needed to properly treat and dispose of them in accordance with applicable regulations. Because most states do not generate enough of each type of waste to support every type of facility needed to treat them within their borders, hazardous waste markets are more regional. Commercial facilities typically serve generators from surrounding states, and some companies provide services for selected waste streams (e.g., solvents) regionwide or nationwide, sending all of the collected wastes to their own central facilities in just a few of the states and in Canada.

While Michigan has excess capacity for managing many of the waste streams generated within our borders, we also do not have the commercial facilities necessary to manage certain hazardous wastes, most notably those that require combustion (i.e., incineration, use as a supplemental fuel in a cement kiln, etc.) as the required disposal method. We do not generate enough of these wastes to support commercial facilities in Michigan. That is why, for example, a significant portion of the hazardous wastes that we export to Canada are sent to commercial combustion facilities (e.g., Clean Harbors in Corunna, Ontario). Similarly, other states and Canada take advantage of our excess chemical wastewater treatment and toxic waste landfill capacity in Wayne County, capacity that is not as prevalent within their jurisdictions.

We do note that a portion of the hazardous wastes that we export to Canada are landfilled. Michigan has adequate landfill capacity for hazardous wastes. While we do not have much information on why the waste is sent to Canada, we suspect that

it is simply cheaper in some cases to landfill it in Canada, where they have less stringent land disposal regulations, than it is to treat the waste and dispose of it here or in other states. Our land disposal regulations often require the costly addition of treatment chemicals to bind up the hazardous constituents in the waste and additional laboratory analytical work to verify that the treatment standards have been met. Some of these wastes need only be solidified to be acceptable for landfilling in Canada, making the Canadian disposal option overall much cheaper. While the majority of our wastes that require landfilling are managed within our borders, industry currently enjoys the option of disposing of certain hazardous wastes in Canadian landfills. If Canada adopts land disposal regulations similar to ours, higher disposal costs will be felt by some generators.

Question: During questioning, you mentioned that you had not had an opportunity to speak to Governor Granholm regarding H.R. 411 or H.R. 382. I ask that you take the opportunity to do so. In a one-word answer for each, does Governor Granholm support H.R. 411 or H.R. 382?

Response: As stated during my testimony, Michigan supports any legislation that gives states the needed authority to regulate the flow of out-of-state waste shipments and strongly prefers a law that will withstand domestic or international legal challenges and addresses all out-of-state waste flows, rather than just a portion of them. Of the three bills, H.R. 1730 provides Michigan with the best tools to control out-of-state waste. H.R. 411 would also strengthen our position, as would H.R. 382 except for the limitations noted under question seven.

If you have any questions, please contact Mr. George W. Bruchmann, Chief, Waste and Hazardous Materials Division, at 5173739523, or you may contact me.

Sincerely,

STEVEN E. CHESTER
Director

cc: U.S. Representative Paul E. Gillmor
Mr. John Burchett, Governor's Washington Office
Mr. Jim Sygo, Deputy Director, MDEQ
Ms. Carol Linteau, Legislative Liaison, MDEQ
Ms. JoAnn Merrick, Senior Executive Assistant to the Director, MDEQ
Mr. William Richards, Senior Policy Advisor, MDEQ
Mr. George Bruchmann, MDEQ
Mr. Frank Ruswick, MDEQ
Mr. Lonnie Lee, MDEQ
Ms. Rhonda Oyer Zimmerman, MDEQ
Ms. Lynn Dumroese, MDEQ

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF MICHIGAN
August 15, 2003

MS. JILL LATHAM
Committee on Energy and Commerce, Majority Staff
United States House of Representatives
Washington, DC 20515

MS. SHARON DAVIS
Committee on Energy and Commerce, Minority Staff
United States House of Representatives
Washington, DC 20515

DEAR MS. LATHAM AND MS. DAVIS: This letter is in response to U.S. Representative John D. Dingell's August 4, 2003, letter regarding the following question related to the July 23, 2003, hearing entitled "Three Bills Pertaining to the Transport of Solid Waste: H.R. 382, H.R. 411, and H.R. 1730":

Question 1. In your testimony, you indicated that the State of Michigan has identified Canadian firms as potentially liable under Michigan law for contamination resulting from the improper closure of the Fort Gratiot Sanitary Landfill. You also indicated that current authorities and/or resources may not be sufficient to effectively pursue Canadian parties liable for waste shipped to this site or other sites in Michigan. What additional authorities and/or resources would be needed to address this problem?

Response: Michigan is currently pursuing action against Canadian firms that have been identified as being potentially liable for contamination at the Fort Gratiot Sanitary Landfill under both federal and state law. Our attorneys advise us that, with litigation anticipated, it would not be appropriate to provide detailed comments

regarding the authorities and resources that may enhance Michigan's ability to pursue enforcement of Canadian parties liable for waste shipped to sites within Michigan. It is certainly fair to say that any litigation against such liable parties located outside the United States will generate the need for additional financial resources and staff time to complete the enforcement actions and to collect fines or penalties from the firms identified.

I very much appreciate your continuing interest in this issue. I would be happy to work further with you and your staff to identify opportunities to augment existing laws so that those exporting waste into this country will be held to the same standards as domestic firms and will, thus, be required to bear the full environmental consequences of their waste disposal decisions. As noted on the advice of our attorneys, it is prudent to await the outcome of the Fort Gratiot matter before proposing specific amendments to current law.

If you have any questions, please contact Mr. George Bruchmann, Chief, Waste and Hazardous Materials Division, at 5173739523, or you may contact me.

Sincerely,

STEVEN E. CHESTER
Director

cc: U.S. Representative John D. Dingell
U.S. Representative Paul E. Gillmor
U.S. Representative Hilda L. Solis
U.S. Representative W. J. Tauzin
Mr. John Burchett, Governor's Washington Office
Mr. Jim Sygo, Deputy Director, MDEQ
Ms. Carol Linteau, Legislative Liaison, MDEQ
Ms. JoAnn Merrick, Senior Executive Assistant to the Director, MDEQ
Mr. William Richards, Senior Policy Advisor, MDEQ
Mr. George Bruchmann, MDEQ
Mr. Frank Ruswick, MDEQ
Mr. Lonnie Lee, MDEQ
Ms. Rhonda Oyer Zimmerman, MDEQ
Ms. Lynn Dumroese, MDEQ

RESPONSE FOR THE RECORD FROM NICHOLAS DIPASQUALE, DEPUTY SECRETARY, OFFICE OF AIR, RECYCLING AND RADIATION PROTECTION, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Question 1) Your testimony talks not only about state powers, but also about potential tensions between communities and within counties over various authorities. Who do you believe should have the ultimate authority and why?

Response: We believe that the state should be the ultimate decision maker because the outcomes and implications of our permitting decisions inevitably affect a multitude of local governments. The states should be the ultimate decision maker, but only after the concerns of local governments have been identified and adequately addressed. We believe that the state should have the responsibility for permitting municipal waste disposal facilities; however, this must be done in a comprehensive manner that identifies and addresses local government concerns and issues.

Question 2) Pennsylvania is the leading importer of out-of-state waste. With the great majority of these shipments coming from New York and New Jersey. How has the closing of Fresh Kills put pressure on disposal facilities in your state, as well as others, and what do you ultimately see happening for future disposal capacity in your state? Will the market alone correct this situation?

Response: The closing of Fresh Kills resulted in more New York waste being exported to neighboring states with excess landfill capacity like Pennsylvania, Virginia, Ohio and West Virginia. Each year waste originating from outside the Commonwealth makes up nearly half of the 26 million tons of waste managed in the Commonwealth. It is clear that Pennsylvania's citizens, natural resources and disposal capacity are being negatively impacted by out-of-state waste.

*Question 3)*Two years ago, David Hess, on behalf of your state agency, suggested that 20 percent of communities hosting landfills would accept waste imports. Do you think that number would rise or fall if H.R. 1730 was passed?

Response: We believe it would remain the same.

Question 4) "Operation Clean Sweep" was an interesting experiment in policing out-of-state waste. Could you please explain what its use found? Do you expect to continue this program? Would passage of H.R. 1730 alleviate the problems you encountered?

Response: "Operation Clean Sweep" was a cooperative effort among states to target and to improve environmental and safety issues associated with the interstate and intrastate highway transportation of municipal waste. During Operation Clean Sweep, 500 staff conducted over 40,000 vehicle safety and environmental inspections. Over 11,000 violations were detected, many of which led to summary citations, notices of violations and in some cases drivers or vehicles removed from service. Based upon Operation Clean Sweep and other vehicle inspection programs, the Commonwealth has data indicating a long history of compliance problems with transporters of municipal waste. We will continue to inspect highway waste transportation vehicles and recently instituted a program to require authorization of vehicles transporting waste to facilities in the Commonwealth. Passage of H.R. 1730 could help reduce the problems that have been encountered. (A list of the companies with more than ten Clean Sweep violations is attached for your information.)

OPERATION CLEAN SWEEP COMPANIES WITH MORE THAN 10 VIOLATIONS

Company Name, Address	Environmental Violations	# Safety Violations
Waste Management Inc., 1001 Fannin St., Houston, TX	339	554
Kephart Trucking Co., P.O. Box 386, Bigler, PA	107	338
BFI, 757 N. Eldridge Parkway, Houston, TX	88	65
Letica Inc., 2500 83rd St., North Bergen, NJ	12	99
York Waste Disposal Inc., 1110 East Princess St., York, PA	61	17
Wills Trucking Inc., 3185 Columbia Road, Richfield, OH	50	22
Stratus Entyerprises Inc., 8 Industrial Drive, Sharon, PA	15	50
Solid Waste Services Inc., 320 Godshall Drive, Harleysville, PA	22	38
Miners Fuel Co. Inc., P.O. Box 86, Tremont, PA	20	37
Dilex Trucking Inc., 1503 Astor St., South Plainfield, NJ	21	27
LU Transport Inc., 2648 West 50th St., Chicago, IL	32	14
Vision Transport, 2 Fishhouse Road, South Kerney, NJ	10	35
Republic Services, 110 SE 6th St., Fort Lauderdale, FL	27	10
Iron City Express, 1260 Stoors Ferry Road, Corapolis, PA	4	29
Chambers of Pennsylvania, 310 Leger Road, Irwin, PA	25	7
Onyx Waste Services Inc., 178 River St., Paterson, NJ	24	
Odyssey Waste Service LLC, 1722 Arch St., Philadelphia, PA	22	
JP Mascaro & Sons, 320 Godshall Drive, Harleysville, PA	21	
M & I Transport Inc., 400 Sipe Avenue, Jersey City, NJ	11	10
SMA Raza, Ledgewood, NJ	5	13
Superior Waste Services Inc., 125 South 8th St., Milwaukee, WI	15	
Waste Automation Corp., 2505 Old Rogers Road, Bristol, PA	15	
Raritan Valley Disposal, 14 Hollandbrook Road, Whitehouse Station, NJ	11	4
D & M Leasing Inc., 2 Fishhouse Road, South Kernry, NJ	13	
Gladiators Trucking Corp., 69-01 Polk St., West New York, NJ	7gD6	
Lebanon Farms Disposal Inc, 486 Obie Road, Newmanstown, PA	12	
Speedy Services Inc., 124 Richey Avenue, Collingswood, NJ	12	
East Coast Resources LLC, 6811 Kenilworth Avenue, Riverdale, MD	8	3

During Operation Clean Sweep, More than 2,800 clients (trucking companies (haulers), owners and drivers) had 11,000 vioiations. Of those, the top 28 clients, which were all trucking companies, had 2,387 violations. The remainder of the clients accounted for 8,700 violations. Targeting Trash Homepage

Question 5) Do you think that the new regulations that Pennsylvania has put into place would pass the "burden" test that the courts have used to strike down other waste laws?

Response: Yes, we believe that our current regulations would pass the "burden" test that the courts have used.

Question 6) Pennsylvania exported over 576,000 tons of waste in 2001. Are there plans to increase your exports in light of your current landfill capacity and future needs?

Response: In the past Pennsylvania has been on the forefront of municipal waste planning and will continue to be. We believe that each state has a responsibility to plan for and permit disposal capacity for the municipal waste they generate. The decision to construct new facilities or export waste to other states is a decision that is made by the waste industry and not the state government.

Question 7) Are you concerned about local governments, under H.R. 1730, being kept out of the decision making process under the presumptive ban? Why?

Response: We are concerned about host municipalities being kept out of the decision-making process. The concern is based on our division of authority—in Pennsylvania the host community, not the host county, is generally the level of government

at which a host agreement is executed; whereas, under H.R. 1730, the authority to exempt out-of-state waste under a host agreement is given to the county.

Question 8) In your opinion, what would happen if Congress chose to do nothing on the question of interstate waste? How do you see the market looking in 10 years?

Response: Lack of action at the congressional level will result in states like Pennsylvania, Virginia and Michigan continuing to bear the burden of receiving an excessive amount of waste from other states. One needs only to look at the history of waste movement over the past 15 years to see that as long as there is inaction from the Congress, this situation will continue. A lack of planning by those states that depend on exporting as a means of managing municipal waste will result in a steady increase in disposal costs because facilities will continue to be constructed where they can receive permits and not where the waste is generated. We also expect eroding support for recycling and waste reduction efforts. If Congress does not act, the current situation of some states planning for their waste generation and other states ignoring their responsibility to do so will continue.

Question 9) Your testimony reflects a strong inclination towards actual recycling. In terms of effective waste disposal and environmental protection, will more comprehensive solid waste recycling and disposal be better served under the status quo or under these bills?

Response: We believe that any efforts to reduce the amount of waste generated and increase the amount of waste recycled are worthy efforts. We believe that this legislation will assist some states in moving toward more comprehensive recycling programs that could result in a reduction in the amount of waste exported. We believe waste reduction and recycling are essential elements in establishing environmentally sustainable practices. We also would welcome a comprehensive, national product stewardship and packaging reduction initiative.

Question 10) Do you believe that these bills, if enacted into law, would raise the cost of recycling and disposal of municipal solid waste? Do you believe their passage would result in environmental improvements in the way these wastes are managed and disposed of?

Response: In regards to H.R. 1730, the cost of waste disposal and recycling should not rise for the citizens of Pennsylvania. We cannot address changes that might occur in other states. Reducing the transportation distance associated with municipal waste most certainly will result in environmental improvements and lower costs to consumers. Clearly the reductions in truck traffic, mobile source emissions and need for disposal capacity, as well as the preservation of the Commonwealth's natural resources, are environmental improvements that we all desire.

Question 11) What do you think is the appropriate level of government to have in the decision making process for citing waste disposal facilities and which level of government is best suited for which decisions and why?

Response: We believe that the State should have the responsibility for planning, making permit decisions and issuing permits for waste disposal facilities. While we do not actually site waste disposal facilities, we are required to review applications submitted for these facilities. We believe that the state should be the ultimate planning and permit decision maker because the outcomes and implications of these decisions inevitably affect a multitude of local governments. However, this must be done in a comprehensive manner that identifies and addresses local government concerns and issues. As we have noted previously, the decision to construct new facilities or export waste to other states is a decision that is made by the waste industry and not the state government.

Question 12) Proposed new section 4011 (a) of HR 1730 imposes an immediate Federal ban on receipt of all out-of-state waste (including waste from foreign sources) unless it is received pursuant to a host community agreement or other exemption. A landfill or incinerator with a host agreement will be exempt from the ban only if it had permitted capacity at the time of entering into the agreement to receive all of the out-of-state waste authorized by the agreement.

Response: Based on your knowledge of permits issued by DEP to landfills in Pennsylvania, do you know of any landfill that had been granted a permit to receive waste during the life of its host agreement when it entered into the agreement? Isn't the normal process one in which the landfill owner negotiates an agreement well before starting actual construction of the landfill, and seeks permits for that initial cell and then additional cells as each is approaching capacity?

We are not aware of any permit conditions that address this issue. Host municipal agreements can be negotiated at any time and are commonly negotiated when the applicant or operator plans to submit a new permit application or a modification to expand an existing facility. In the early 1990's, there were several landfills that had host agreements, however, the Department had no knowledge of the conditions in

those agreements. When the Department reviewed the permit applications for these landfills, the agreements were not presented to the Department.

Question 13) Proposed new subsection (f) of H.R. 1730 would allow a state or local government to freeze the amount of waste that may be received by facilities that are not exempt from the ban. The freeze level would be the amount of waste received from out-of-state during 1993 or another base year selected by the state. But the owner or operator of the facility must be able to document the "**identity of the generator**" of the waste that was received during that base year. Some may consider that to mean that the landfill owner must be able to identify the actual names of the people from whom the waste was collected outside Pennsylvania, for example.

Based on your experience at DEP, is there any way that requirement could possibly be satisfied? Is there any way that you at DEP would be prepared to review and evaluate the thousands of names that might be submitted if it were a requirement?

Response: We do not believe there is a method to identify individuals who send waste to facilities in the Commonwealth short of reviewing private industry's customer lists. The data we collect and manage only allows us to identify the Pennsylvania county or the state in which the waste originated. Facilities can easily identify each truck that has deposited waste and where the waste was collected. However, if the waste comes from a transfer facility, there is no means to identify the individual that sent waste to that facility.

YALE CENTER FOR ENVIRONMENTAL LAW AND POLICY
NEW HAVEN, CONNECTICUT
August 8, 2003

The Honorable PAUL E. GILLMOR
Chairman
Subcommittee on Environment and Hazardous Materials
The Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515-6115

DEAR MR. CHAIRMAN: I write in response to your August 5, 2003 letter inviting me to respond to questions related to my testimony on July 23, 2003 concerning H.R. 1730, H.R. 382, and H.R. 411. My answers to the questions are as follows:

Question 1. What do you see as the problems with a regulatory structure that would give states a "blank check" on regulating interstate waste, like the proposal in H.R. 382?

Response. The problem with the "blank check" approach to regulating interstate and international waste is that it invites a challenge under international trade rules. Other parties, particularly Canada, may view such an approach as a violation of the rules and principles of the Global Agreement on Tarriffs and Trade, the North American Free Trade Agreement, and perhaps the 1986 US-Canada Agreement Concerning the Transboundary Movement of Hazardous Waste. Unless the federal government sets guidelines for the states, it appears quite likely that states feeling threatened by waste trade (notably Michigan) will adopt very strict limitations on international waste flows that would likely be seen as a violation of US trade obligations. There might even be a challenge before any state has implemented such limitations.

Question 2. Can you go into more detail about the exemptions provided in NAFTA and GATT for legitimate environmental policies that are carefully constructed?

Response. GATT Article XX (and the corresponding NAFTA provisions) provide a mechanism by which legitimate environmental regulations can be upheld even if they conflict with the GATT nondiscrimination rules or other trade principles. GATT Article XX(b) allows environmental policies "necessary to protect human, animal, or plant life or health" so long as the measures put into place are "not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or disguise restriction on international trade." Under this provision, carefully crafted environmental regulations, including narrowly tailored controls on waste flows, would be considered an acceptable deviation from trade obligations. In a recent decision by the appellate body of the WTO, a French ban on imports of asbestos was upheld under this exception.

GATT Article XX(g) permits countries to take actions "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with the restrictions on domestic production or consumption." The GATT jurisprudence has made clear that any claim for exemption from trade obligations under this provision must be "primarily aimed" at addressing a conservation goal and in-

voked in conjunction with comparable domestic restraints. Again, carefully constructed waste policies could be deemed legitimate under this provision.

Question 3. Following from the previous question, what, in your opinion, are grounds for enacting such a policy for legitimate environmental concerns, and how would the member countries enact a provision that would have the least disruptive effect on trade?

Response. Controls on waste flows and disposal would be considered appropriate if they were undertaken in a way that did not discriminate against interstate or international waste shipments but rather were adopted in conjunction with an overarching plan for waste management that included limitations on intra-state waste.

Question 4. Can you explain in more detail the French ban on imports of asbestos under Article XX(b) of the GATT that was recently upheld by the appellate body of the WTO? Do you think H.R. 411 would be subject to the same scrutiny and if so would it be upheld by the WTO?

Response. The French asbestos ban was upheld under GATT Article XX(b) because the French were able to make a clear case that their regulation on asbestos was an appropriate response to the health threat presented by asbestos. The ban moreover came in the context of a compete ban on asbestos in the country, not just imported asbestos. Because the French regulation was so broad—prohibiting all imports of asbestos from Canada—it was subject to very strict scrutiny by the GATT dispute settlement panel and ultimately the GATT appellate body. H.R. 411 would likely be subject to less strict scrutiny and might well not even be challenged by the Canadians insofar as it simply seeks to implement the existing waste trade framework spelled out under the US-Canada Waste Trade Agreement of 1986.

Question 5. If "comparable domestic restraints" are not enacted in Canada to address the similar conservation goal that H.R. 411 is seeking to address, could the bill then be interpreted as having a disruptive effect on trade?

Response. The issue of "comparable domestic restraints" concerns the policies adopted by the United States regarding interstate and intra-state waste. In this regard, H.R. 411 seeks only to ensure that existing commitments on waste handling are upheld. I see little chance that this bill=s requirements would be seen as disruptive to trade unless US authorities began to implement the legislation in ways that seemed to represent an extreme or unexpected interpretation of the prior agreements and commitments.

Question 6. Explain in more detail the relationship between NAFTA and 1986 US-Canadian Agreement Concerning the Transboundary Movement of Hazardous Waste. How does H.R. 411 strengthen the enforcement of this agreement?

Response. Under the terms of the NAFTA, the 1986 US-Canada Agreement Concerning the Transboundary Movement of Hazardous Waste prevails over the NAFTA if there is any inconsistency identified. Thus, H.R. 411's commitment to strengthening the enforcement of this prior agreement is likely to be seen as shielded to some degree from a NAFTA challenge. Moreover, H.R. 411, on its face, does nothing more than seek to ensure that the 1986 agreement, as amended in 1992 to include municipal solid waste, is upheld.

Question 7. In your legal opinion, and in a one-word answer, is H.R. 382 a direct violation of the terms of the North American Free Trade Agreement (NAFTA)?

Response. Possibly.

Question 8. In your legal opinion, and in a one-word answer, does H.R. 382 require states to enact an import ban?

Response. No.

Question 9. Should H.R. 382 be signed into law, and Canada issues a challenge to that legislation claiming a violation of NAFTA, would the legislation be prevented from being implemented during the dispute settlement process? During the dispute settlement process concerning H.R. 382, would Michigan be prevented from taking the legislative action authorized to them?

Response. It is quite possible that a legal challenge by Canada to state provisions adopted under the authority provided by H.R. 382 would include an attempt to block any state action until the trade dispute was settled. As a result, it is quite possible, indeed likely, that the attempt to regulate waste trade would be thrown into turmoil and delayed.

Question 10. Should H.R 382 be signed into law, the State of Michigan enacted a law banning the import of municipal solid waste from Canada, and the Government of Canada challenged the Michigan law as a violation of NAFTA, would shipments of municipal solid waste from Canada to Michigan remain prohibited during the dispute settlement process to the prospective Michigan legislation?

Response. It is quite likely that Canada would seek to stay any prohibition on shipments of municipal solid waste from Canada to Michigan during the course of

a GATT dispute settlement process triggered by the adoption by the state of Michigan of a law banning the import of municipal solid waste from Canada.

Question 11. In your legal opinion, if the following language were added to H.R. 382, Sub-Section B, would a challenge to H.R. 382 as a violation of NAFTA have any merit?

Response. "Nothing in this law shall be taken to authorize any act of a state government or legislature contrary to the international obligations of the United States, including those in the North American Free Trade Agreement."

The relevant factor here is not what the language of H.R. 382 provides but rather what the state of Michigan does in response to the authority given to it. Based on the testimony presented by Michigan officials at the July 23 hearing, it seems quite likely that Michigan would seek to adopt sweeping restrictions on waste imports from Canada. It might well argue that such restrictions, perhaps including a total ban on Canadian waste shipments, was somehow permitted by the GATT Article XX exceptions. But any such sweeping regulation would certainly be challenged by the Canadian government. Such a challenge would have merit and would be likely to prevail.

I would pleased to supplement any of the answers that I have provided in this letter if any of the members of the committee so desire.

Sincerely,

DANIEL C. ESTY

ECOLOGY CENTER
ANN ARBOR, MI
August 18, 2003

PAUL E. GILLMOR
Chairman
Subcommittee on Environment & Hazardous Materials
U.S. House of Representatives
Washington, DC 20515

Re: Subcommittee questions on interstate and international transportation of solid waste

By Fax and Email Transmission to Jill Latham, 202-226-2447

DEAR CHAIRMAN GILLMOR, thank you for the opportunity to elaborate on my testimony of July 23, 2003, and to respond to the Members' questions in writing.

*Question 1.*Mr. Garfield, could you please detail for us what your exact background is within the waste management policy and recycling issues? How much of that was advocacy versus actual "on-the-ground" activity?

From 1987 to 1991, I served as the Policy Director of the Ecology Center. During this period, solid waste management was the organization's top priority issue, and more than half of my time was assigned to these matters. I served on the Michigan House Legislative Workgroup on Packaging and Waste Reduction, on the City of Ann Arbor's Solid Waste Commission, on other local and state solid waste committees, and as the Chair of a business/environmental coalition for expanded recycling. These activities were all related to policy development and advocacy.

From 1992 to 1993, I served as the Executive Director of Recycle Ann Arbor (RAA). RAA is a wholly-owned nonprofit subsidiary of the Ecology Center, which is also a nonprofit organization. In this position, I managed a workforce of 40 employees who provide recycling and waste reduction services in southeast Michigan. The organization then provided curbside recycling collection services for approximately 45,000 households, commercial collection services for nearly 1,000 businesses, a recycling drop-off station for 50,000 customers per year, roll-off container services for rural communities, materials processing and marketing, and other services. The organization has since added additional programs, including a ReUse Center, an electronic waste drop-off program, commercial waste audits, and site-based processing for businesses. As Executive Director, I had direct day-to-day managerial responsibility for all of RAA's programs and financial performance. During my tenure there, I increased the company's annual revenues by approximately 20%, decreased expenses by 12%, and increased the total amount of materials collected and recycled.

I would hasten to add that the position afforded me a deep and lasting appreciation of the complexities and pressures of managing a small business. It grounded my perspective regarding waste management policy in the "on-the-ground" realities of providing customer service.

Since 1994, I have served as the Director of the Ecology Center. As the chief executive officer of RAA's parent organization, I bear ultimate, though not day-to-day,

responsibility for the subsidiary organization's financial and programmatic performance, as well as its long-term strategic direction and introduction of new services. By virtue of my position, I hold a seat on the subsidiary's Board of Directors, and served as Board Chair for two years. As a result, I have continued to play a role in direct "on-the-ground" program management, and have resumed my work on policy development and advocacy efforts related to solid waste management, at both the local and state level. Of these efforts, I would specifically mention serving, between 1997 and 2003, as a member of Washtenaw County's Solid Waste Planning Committee, and as a participant in two Washtenaw County committees related to the implementation of the County's solid waste plan.

Question 2. Your testimony starts right out by saying that the issue of imported solid disposal is not an emotional NIMBY (not in my back yard) issue. Has it ever been and why is it not now?

Many Michigan residents have been outraged for many years by the large volume of imported trash coming into our state. Some communities are heavily impacted by the truck traffic and fear the potential consequences of burying huge amounts of trash in a single concentrated area. Some communities have suffered contamination of their drinking water from pollution at nearby landfills. These people and these communities certainly are emotional about their trash problems, and they certainly don't want landfills and incinerators in their back yards.

I think that waste transport is a NIABY issue—Not In Anybody's Back Yard. No state or region should suffer more than its fair share of waste disposal facilities, that is, the facilities needed to dispose of that area's garbage. We would like to create a policy framework that gives states and communities the tools to balance an obligation to dispose of its own trash with their reasonable desire to avoid excess disposal facilities. And, as much as possible, we would like to reduce the amount of waste being landfilled and incinerated.

We recognize that an outright ban on waste imports will not solve our problem because the amount of waste that is hauled across borders is merely a symptom of more fundamental problems—of inadequate solid waste planning tools, insufficient waste reduction programs, and severe state-by-state imbalances in landfill capacity.

Question 3. Obviously, from your testimony, we have heard how concerned you are about future landfill capacity and the impact of current and future imports. How do you feel about states enacting some sort of serious limitations or ban? Why?

I believe that states should have the authority to enact limitations on waste imports to accomplish either of two objectives.

First, states should be able to restrict waste imports for the purpose of protecting their residents' health and welfare. I believe that the U.S. Supreme Court's ruling in the *Ft. Gratiot* case already allows this sort of state regulation. However, it would be useful for Congress to reaffirm state authority to protect health and welfare in federal waste transport legislation.

In particular, Congress should codify two approaches to health and welfare protection. Some states ban the disposal of certain toxic materials in municipal solid waste disposal facilities. For example, Michigan bans the disposal of used motor oil, lead-acid batteries, yard waste, tires, and other problematic materials, and has outstanding recovery programs for these items. Other states, however, do not ban these materials. On the other hand, several states have banned disposal of CRT monitors and other electronic wastes, while Michigan has not. States should have the right to determine what materials should be banned from their landfills and incinerators, but interstate waste transport makes it impossible to enforce a ban, and undermines its purpose. Household quantities of illegal waste, such as used motor oil, are impossible to detect in a semi-trailer truck filled with garbage. In Michigan, the burden falls on the landfill owner to refuse illegal waste, and most operators have monitors to detect radioactive waste. But most illegal waste can only be detected by sight, and landfill owners suffer an impossible burden to identify all illegal materials sent to their facilities. It would be more reasonable for states to ban waste imports from states (or provinces) that do not prohibit disposal of items prohibited from the receiving state's disposal facilities. If the exporting states adopt the receiving state's standards, then they would have access to the receiving state's facilities.

States should also be able to ban waste imports from states that don't adopt the receiving state's other disposal bans. For example, Michigan is considering an outright disposal ban on beverage containers that are covered by the state's container deposit law. That law has achieved a near-100% recovery rate, and virtually no covered Michigan beverage containers wind up in Michigan landfills and incinerators. But Ontario, and most of our neighboring states, do not have a container deposit program, and—as a result—much of our landfill space is filled with out-of-state containers. If Michigan created an outright disposal ban on beverage containers, it should be able to refuse waste from states that don't do so, as well.

Second, states should be able to restrict waste imports for the purpose of limiting the number and size of landfills and incinerators that need to be developed in their states. As I stated in my written testimony, the current system unfairly penalizes states like Michigan which responsibly allowed disposal facilities to be sited in their states, to be used for Michigan garbage, and which have since been used for the trash of many states and Ontario.

By giving states the power to restrict waste imports, states could negotiate cross-border access to each other's landfills and incinerators. We have no objection to waste exports, if the importing state, exporting state, and the local receiving communities all approve the transaction. Under a system like this, I'd suggest that there would continue to be some cross-border waste transport, but the massive outflows of waste to states like Michigan, Pennsylvania, Virginia, and others would be slowed. If H.R. 1730 were enacted, a system of negotiated cross-border access is likely to emerge.

Question 4. I realize you do not claim to be a legal expert, but from your extensive background and expertise in this area, could you please tell us if you think H.R. 411, if enacted, would face immediate legal challenge?

I don't think HR 411 would invite an immediate legal challenge, since it merely calls for the implementation of a treaty already in effect. I would suggest, however, that one of the waste industry trade associations could provide a better-informed opinion about this.

Question 5. Do you think the subsidies given to Canadian waste haulers to export waste are anti-competitive and distort the market in such a way that they discriminate against Canadians handling own waste?

Yes.

Canada's 7% Goods and Services Tax (GST) would add approximately $14 million to the City of Toronto's $200+ million contract with Republic Services to use its landfill in Sumpter Township, Michigan. The Canadian government charges its GST tax on waste disposal in Canada, but does not charge it on Canadian waste disposed in the United States. This has the effect of further lowering the price of exported waste disposal relative to Canadian waste disposal at home.

In reality, Canada's differential tax is an anti-competitive way of protecting Canada's landfill airspace. It distorts the market and discriminates against the use of Canadian landfills.

Before 1994, the State of Oregon imposed a $2.25 per ton surcharge on the disposal of solid waste generated in other states, but only an $0.85 per ton surcharge on waste generated in Oregon. The state argued that the higher surcharge was a "compensatory fee" to offset disposal costs incurred by state and local government. In Oregon Waste Systems v DEQ, 511 U.S. 93 (1994), the U.S. Supreme Court held that this differential surcharge was a violation of the Interstate Commerce Clause. Why should Canada's differential fee be permissible when Oregon's was not?

Question 6. What lessons have Michigan and its residents learned over the years about solid waste management that are important for the rest of the country to understand?

I would point to four things from Michigan that have national significance.

First, as I mentioned above, the regionalization of solid waste disposal has penalized states that planned adequate disposal capacity for their own waste. Please see my answer to Question #3 and my written testimony about that point.

Second, Michigan's beverage container deposit law has been extremely successful in curbing litter and recycling materials in a cost-effective way. Approved by the state's voters in 1976, the Michigan Department of Transportation found that the law reduced highway litter by 80%, and other researchers have found comparable litter reductions along the state's beautiful Great Lakes beaches. The Michigan Department of Treasury has recorded annual redemption rate which fluctuate between 95% and 99%. Even using the lower figure, however, this program is the most successful recycling program in the state. The state's recovery rate is significantly higher than other states which have bottle bill laws, and our success is undoubtedly due to the fact that Michigan is the only state which uses a 10-cent deposit, as opposed to the more common 5-cent deposit. It is also instructive to note that our recovery rate is dramatically higher than states which don't have container deposit laws. According to the Container Recycling Institute, the non-deposit states only have an average 28% recovery rate of beverage containers. Given Michigan's success with this program, I would encourage the implementation of a national 10-cent container deposit law.

Third, Michigan communities have learned that curbside recycling programs are effective when serious investments are made through strong public-private partnerships. Several of our state's communities have created local curbside collection programs with high participation rates, high recovery rates, and low total costs. These

programs exist in urban areas, suburban areas, university towns, and rural communities. I am most familiar with the program in the City of Ann Arbor, which is centered around a publicly-owned and privately operated materials recovery facility, long-term contracts with scrap markets, and a contracted private sector hauler. While communities are now being charged the very low price of $10-$15 per ton to dump trash at Michigan landfills, the Ann Arbor area processes recyclables at approximately zero net cost. Other successful Michigan recycling programs are also beating the prevailing landfill tipping fees, as are many programs in other states.

Finally, some Michigan communities have over-invested in municipal waste incineration technology. The state has four trash incinerators including the country's largest incinerator inside the city of Detroit. These facilities were originally built and promoted as saving landfill space by burning the trash and then burying the resulting ash. Unfortunately, these facilities have been significant failures. Two of the four are in imminent financial trouble; all of them are significantly more expensive for their communities to use than landfills and recycling. The debt associated with the construction and refurbishing of the two facilities in Wayne County have created significant problems for the respective responsible parties.

Question 7. If you were king for one day, what type of solid waste management system would you establish for your state and country and why?

If I were king for one day, I would immediately restore democracy to my beloved country.

But if I could design the United States' and Michigan's solid waste management systems, I would base them on the following principles.

Responsibility and Control of Waste Disposal at the Local/State Level

As I discussed above in my answer to Question #3, states and local communities should bear the *responsibility* to dispose of their own trash. Their disposal destination need not also be local, but all states and local communities should have the control over access to disposal facilities in their jurisdictions. By pairing responsibility and control, states and communities would be able to negotiate access to disposal facilities, thereby creating a sufficient, but not excessive, amount of disposal capacity in a given location, with the accompanying burden those facilities bear.

Balanced Economic Playing Field Between Landfills and Recycling

At present, recyclable materials compete directly with virgin materials, such as timber, oil and mineral resources, on an uneven playing field. 15 federal tax subsidies for virgin materials cost approximately $2.6 billion a year, according to the Grassroots Recycling Network. Resource-efficient recycling and reuse businesses, which tend to be smaller, community-based and run by entrepreneurs, struggle against subsidized competitors. I would suggest that these subsidies be phased out, in order to create a more level playing field on which recycling can compete. It conserves resources and saves taxpayer dollars at the same time.

Producer Responsibility for Materials Recovery

Currently, the financial burden for waste disposal is borne by taxpayers in their local communities. We believe that it would be more efficient, less expensive, and better for the environment if producers and consumers were financially responsible instead of taxpayers. This has been done in other countries and in small segments of the U.S. economy through "producer responsibility" initiatives. (The producers, of course, pass on any extra costs to their consumers.) Shifting the costs of waste from taxpayers to brand owners and producers creates a powerful economic incentive to design waste out of the system and substantially reduce the use of toxic materials.

The producer responsibility concept has been embraced in the container deposit laws of ten states, including Michigan, whose program I described above. It has been applied in a recently enacted law in the State of Maine to recover mercury switches from automobiles. It has been proposed to handle other problematic materials, such as electronic wastes. We would suggest that the principle be applied to a wide range of materials.

Maximization of Recycling and Composting

Finally, if producers were responsible for the financial burden of recovering materials, then consumers must be responsible for ensuring that used products are returned to recovery systems. Many researchers have documented the most effective ways to design high-recovery recycling programs. They require user convenience, market incentives, good promotion, and smart design. Federal policy can help build the infrastructure for these programs by creating an even playing field for recyclable markets. The large federal procurement budget can also be used to build recycling markets by providing price preferences for recycled materials. Composting is also an underused material recovery method that has been found to be cost-effective in sev-

eral communities. I would propose that these programs be fully implemented nationwide, and be expanded beyond yard clippings to include other organic materials.

Thank you again for the opportunity to elaborate on my previous testimony.

Sincerely,

MICHAEL GARFIELD
Director

RESPONSES FOR THE RECORD FROM PROFESSOR ROBERT HOWSE

Question: 1.) Can you explain in more detail your argument that HR 382 does not mandate any kind of regulatory scheme that is in violation of NAFTA and why it is arguable that the transboundary movement of waste is even covered by NAFTA at all?

Response: This question has two parts. The first part asks for more detail on the argument that HR 382 does not mandate any kind of regulatory scheme that is in violation of NAFTA. This is the easy part to answer: the answer is that HR 382 does not mandate any regulatory scheme at all. It does not *require* the states, or indeed any one else to take action that could engage the rules in NAFTA. I think this is fairly obvious from the operative parts of the draft bill. I could perhaps be even clearer about this if concerned Members of the Committee were to identify some specific provision or language that they are concerned about. I would then be happy to focus my analysis on that particular provision of the draft bill. In questioning at the hearing, some Members of the Committee expressed concern that even if, technically, HR 382 does not purport to mandate state action, it could well *authorize* state action, which could include actions in violation of the United States' obligations under NAFTA. In this regard, one does have to take into account the policy context—which Members are better equipped to appreciate than a trade expert such as myself; for some Members the context is that Michigan's state legislature has apparently already expressed the will to ban completely the import of Canadian trash, once legislation such as HR 382 allows it do so consistent with the Commerce Clause in the US constitution. From this perspective, it might seem abstract or even somewhat disingenuous to separate the effects of HR 382 itself from those of the particular state action with which it is deeply intertwined. However, such is the approach in the case law of international trade: legislation that merely *authorizes* an act that is a potential violation of a trade obligation does *not* constitute a violation of such an obligation; it is the subsequent act that becomes the focus of the trade dispute, not the authorizing legislation. Both Professor Esty and I in our testimony to the Committee were in agreement that this is what the case law states, with one exception, the WTO panel decision in the S. 301 dispute. In that case, a WTO panel speculated that there could be instances where legislation that merely authorizes, and does not categorically mandate, a violation of trade obligations could itself constitute a violation. However, those speculations are strictly speaking *obiter dicta,* for in the end, the panel in that same case found that S. 301 did not constitute a violation of US trade obligations. This is a trial judgment that was not appealed to the Appellate Body of the WTO. In subsequent cases, the Appellate Body of the WTO has largely ignored the remarks of the panel in the *S. 301* decision, and, consistent with the case law prior to *S. 301,* has approached the issue of whether legislation per se violates trade obligations by analyzing whether it mandates a violation or merely authorizes. In the *US Anti-Dumping Act of 1916* case, for instance, the Appellate Body clearly upheld the decision of the panel below to analyze the consistency of US legislation with trade obligations in terms of whether the legislation itself mandated a violation of trade rules (as opposed to merely conferring a discretion that might be used in such a way as to give rise to a violation).

I understand that this mandatory/discretionary distinction might strike some Members of the Committee as rather formalistic, and not fully attuned to political realities. But it should always be born in mind that considerations of the sensibilities involved in judgments on the acts of sovereign governments generally lead international tribunals to exercise caution, and adopt a conservative and circumspect approach in deciding to find that a sovereign has violated its international obligations. In international law, there is a general presumption of good faith; unless there is clear evidence to the contrary, sovereigns are assumed to be law-abiding. The understandable reactions of governments, and legislatures, where international tribunals appear to have overreached or overstepped, demonstrates the soundness of a prudent approach to the question of when I violation of treaty obligations has occurred.

The second part of the question concerns the notion that movement of waste is not covered by NAFTA at all. I believe that the issue of whether actions that impair

the movement of waste are covered by NAFTA has to be examined on the basis of the individual provisions of NAFTA. In my written testimony you will find for example a scenario where a restriction on movement of waste would indeed engage a NAFTA obligation: suppose a state decides to ban all waste imports from Canada unless they are trucked by in-state truckers. That would arguably be a violation of the NAFTA with respect to trade in services; in this case there would be discrimination against *Canadian* trucking concerns. Where I argue that trans-boundary movement of waste is *not covered* by NAFTA at all is *only* in respect of the obligations in NAFTA concerning trade in goods. Which will be dealt with further in answering question 3.

Question: 2.) If Congress were to act on HR 382, how do you suggest the states use the open-ended regulatory guidance and Congressional authority to regulate the flow of waste without setting the stage for the balkanization of some of the regional waste management plans that have been in place for years?

Response: This strikes me as a very important issue of public policy. However, my own knowledge and expertise does not permit me to address it.

Question: 3.) Can you further explain your statement that NAFTA disciplines commercial protectionism, and why the transport of waste does not fit into this scheme?

Response: Here one needs to distinguish two aspects of the issue. The first is whether there is an entitlement of one NAFTA party to deal with its environmental situation by exporting waste, or pollution, to another NAFTA party. Here, I believe the answer is: "No", and that leads to question 4, in response to which I shall explain in detail why the answer is "No." The second aspect is whether NAFTA applies to trans-boundary trade in waste management *services* and related investment guarantees, i.e. to competition in the business of waste management. And there the answer is: "Yes" (see the scenario I put forth in answer to question 1 above). However, the obligations in NAFTA that deal with trade in services, including waste management services, apply only to situations where the services are provided by the other NAFTA party. Let's say that Congress were to pass a law that prohibited US entities under federal jurisdiction from *exporting* their waste from the US to Canada, in other words from purchasing waste management services from Canadians. That bill might well run afoul of NAFTA trade in services provisions because it would restrict the ability of another NAFTA party, i.e. Canada, to sell those services to Americans. But what the Committee is dealing with now is quite different situation: the problem is one of restricting the export of waste management services *to* Canada. Because the NAFTA trade in services obligations apply only to cases where *another* NAFTA party is providing the service to one's *own* nationals, this case is not covered by those obligations.

Question: 4.) On the other hand, in your testimony, you rather quickly presume that waste is not considered a traded "good" within the meaning of NAFTA. In light of this understanding, how do you compare it then with the Supreme Court's decisions in *Philadelphia v. New Jersey* and its progeny classifying waste as commerce, much like many of the "goods" and "services" you discuss in your testimony, and therefore placing it under Commerce Clause scrutiny that no undue burden be placed on the interstate transport of it?

Response: The Commerce Clause in the US constitution does not distinguish between trade in goods and trade in services: the framework of obligations is therefore structured differently than in NAFTA. I think it should be clear by now that I believe some aspects of commerce in waste are in principle protected by NAFTA ; the question under NAFTA is which aspects, and that depends on the individual provisions of NAFTA. It is certainly understandable that the US Supreme Court should have considered that commerce in waste is protected by the dormant commerce clause; it would even be understandable if in a federal union, with a national government capable of allocating benefits and burdens of commerce fairly through legislation applicable throughout the union, the ability of each state to say "Not in my back yard" would be more constrained than among sovereign states, where allocating benefits and burdens fairly across national jurisdictions would require international treaty negotiations, the difficulty of which is exemplified, for instance, by the Kyoto Protocol. The baseline assumptions of international law are that no state need unilaterally shoulder any of the burden for the environmental problems of another; and each state must be responsible and liable for harm caused by exporting its environmental problems to another state. Those assumptions might be unworkable in a federal union of sister states. But barring federal government at the international level, they are the appropriate ones for the international setting.

There are two main obligations on trade in goods in the NAFTA that are thought by some to be engaged by possible restrictions on the export of waste from Canada to the US. These obligations are essentially incorporated into NAFTA from the

GATT/WTO multilateral trade regime. First of all, there is national treatment of "like" products. This is the obligation not to discriminate against a good imported from another NAFTA member, in favour of the like domestic product.Clearly, this whole conception of National Treatment is based upon the idea that the imported product is competing with some "like" domestic product. So if you look at all of the case law on National Treatment, you will see that the first thing that has to be established is that there is some like domestic product in competition with the imported product. If there is no such "like" domestic product, the National Treatment claim fails then and there. Now there is no competition between the imported Canadian garbage and US garbage. We are simply not dealing with the consumer market that is assumed by the concept of National Treatment. So, with all due respect, I have not "quickly presumed" that the trade in goods provisions of NAFTA do not apply to waste; quite the contrary, it is those who think NAFTA would be violated, who may be making a presumption that these obligations would apply, without first carefully analysing the precise nature of the *specific* obligations and the legal tests and concepts that deploy.

Now let us consider the other possibly relevant NAFTA trade in goods obligation, Article 309, which makes it a violation to prohibit or restrict the import or export of any "good". Is trash a "good" within the meaning of Article 309? In my view the answer is supplied by considering the heading of the Chapter of NAFTA in which the trade in goods obligations are contained: "CHAPTER THREE: NATIONAL TREATMENT AND *MARKET ACCESS* FOR GOODS". (emphasis added) In other words, the obligations in Chapter III are of two kinds: first of all, an obligation of National Treatment or non-discrimination that applies to internal rules that govern the goods once they have entered the domestic marketplace (and as I have just explained the trash from Canada isn't coming to the US to be put on the domestic US marketplace), and additional obligations, that related to whether the imported good gets on the domestic marketplace in the first instance, such as tariffs and the quantitative restrictions, disciplined by Article 309. In other words, Article 309 covers restrictions on imports and exports that prevent *market* access. And this brings us back to the incontrovertible fact that the trash in question is not being brought in to enter the US domestic *market*, i.e. as a good to be sold to US consumers.

Moreover, and given the press of time, I regret not having had the opportunity to speak to the Committee about this during questioning before it, the Canada-US Waste Treaty provides powerful confirmation of my point of view. When the original Canada US Waste Treaty was created, in 1987, the GATT obligations incorporated into NAFTA 309, as well as the National Treatment obligations also incorporated into NAFTA Chapter III on trade in goods, had already existed in the GATT for 40 years. But if you look at the Canada-US Waste Treaty, you will find those obligations *no where mentioned*! There is not even a reference to the GATT provisions in question as a governing framework for movement of waste in the Preamble of that Treaty. This despite the fact that the Preamble refers to and and recognizes the relevance of a whole series of *other* international legal instruments, of an *environmental* nature. So far from suggesting that international law *requires* that trash from one party to the treaty be allowed into the territory of the other part, the Preamble states that the parties affirm" in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction". Then when you turn to the operative provisions, you see that Article 2, as amended, states: "To permit the export, import, and transit of hazardous waste and other waste across the Canada-United States border for treatment, storage, or disposal *pursuant to the terms of Canadian or American laws, regulations and administrative practices, and the provisions of the Agreement [art. 2 as amended in 1992]."* (emphasis added) In other words, the Treaty states that permissibility of the transboundary movement of waste is subject to *domestic* laws and regulations of each country, and says *nothing* about GATT. If we think back to 1992, that was around the time that NAFTA was being negotiated, and it seems to me that the absence of any mention of trade rules on goods in the Treaty is pretty strong evidence that when those obligations were being incorporated into the drafting of NAFTA, the background assumption was that they would not apply to garbage. I should further add that the obligations in question were already incorporated in the NAFTA's predecessor, the Canada-US Free Trade Agreement, and the Canada-US Free Trade Agreement is *also not mentioned* at all as a relevant international instrument in the Canada-US Waste Treaty as amended 1992.

Question: 5.) The type of limitations imposed on interstate waste in HR 382, which you support, gives the states almost a "blank check" to impose restrictions

on the international shipment of waste, without setting any preconditions on the use of that authority. If applied to the interstate shipment of waste, how then can we be certain that states might not impose extreme measures that might result in the balkanization of what is increasingly a multi-state regional system of waste management facilities?

Response: This question is more appropriately directed to someone whose expertise is in American federalism.

Question: 6.) In your opinion, if foreign waste were to be included in the definition of out of state waste, could it not be subjected to the same restrictions that states are allowed to impose on waste from other states? Would you be in support of a bill that accomplished this objective or do you see more regional problems ensuing with restrictions being imposed on the interstate shipment of waste?

Response: This question appears to ask the NAFTA/WTO implications of a bill that allowed states to impose on the importation of foreign waste the same kinds of restrictions as they are allowed to impose on waste from other US states. In the abstract, I don't believe the trade law issues would necessarily be different, if that were the approach taken to foreign waste; however, I would be pleased to consider in detail any particular proposed restriction on out-of-state waste, and give a view as to whether that provision would run afoul of international trade rules, if it were applied to foreign waste.

I have one further observation to share with the Committee. During the hearing, it was suggested by some that 1) legislation should and could be drafted to avoid a NAFTA challenge altogether, not just to ensure that the US would be victorious in such a challenge because; 2) this is an important objective, because even if the US were eventually to win such a NAFTA case, the on-going NAFTA litigation would hamper efforts to implement appropriate regulatory action to deal with the challenge of trans-border movement of waste.

On 1), I do not think this is a realistic goal. My experience is that governments take cases to international trade litigation for a number of reasons, including in response to pressures from domestic interest groups; even if the government thinks the legal case is weak, such litigation may be convenient method for taking off the political heat, and may be the easier course than explaining to a group that feels passionately about an issue that the legal arguments at the international level aren't really on its side. I have seen cases taken to the WTO that every competent expert believed were "losers"; but the domestic political pressure to do something led to those cases being filed. So based on my own knowledge of what happens in international trade litigation, and why cases are filed, I think it would be naive to think that one could avoid the filing of an unmeritorious NAFTA case through, say, hemming in some way or other the states' authority to restrict imports of Canadian trash. But the good news is that the fact that such a case is pending is unlikely to be disruptive to efforts to deal with the problem at the policy level. A NAFTA tribunal cannot issue an injunction to keep waste flowing between the two countries, or suspend the application of a domestic law. At the end of the day, only if Canada were to win on the merits, the US could be obligated to change its policies with respect to Canadian waste, and would normally be given a reasonable period of time in which to do so. There are many outstanding commercial as well as environmental issues between Canada and the US, and always scope for trade offs; in the extremely unlikely event of such a win for Canada, the United States might well exercise some of its negotiating leverage to work out a deal that addresses effectively the concerns on both sides of the border about this matter.

RESPONSES FOR THE RECORD OF JON E. HUENEMANN, SENIOR VICE PRESIDENT AND GROUP LEADER, FG/GPC A FLEISHMAN-HILLARD INTERNATIONAL COMMUNICATIONS COMPANY

Question: How do you counter the argument that waste is not a traded good within the meaning of NAFTA because it is not entering the United States as a good offered for sale to consumers on the market; rather it is being sent abroad for environmental reasons? Doesn't NAFTA focus on goods being traded across the borders of NAFTA member states?

Answer: Municipal solid waste has, and is, entering the United States under contract from a number of countries as a recognized commodity within the Harmonized Tariff Schedules of the United States (HTSUS). The four digit HTSUS code is 3825, and within that four digit code are 8 digit codes further defining the types of waste for classification and import tariff purposes. Within those 8 digit codes is one for municipal waste, which is "bound" under both the GATT/WTO and the NAFTA at zero. In other words, the tariff on municipal waste was formally the subject of tariff

negotiations on goods between the U.S. and its trading partners, both under the NAFTA and multilateral negotiations now reflected within the agreements under the WTO. There appears to be no basis to define trade in solid municipal waste as anything other than a good for tariff classification purposes given these facts.

If one were to attempt to restrict the services that facilitate the trade in municipal solid waste (i.e., distribution, delivery, transportation, financial services, etc.), one would also have to take into account U.S. international obligations regarding most-favored nation treatment and national treatment as reflected in NAFTA Article 1202, 1203 and 1204. There appears to be no exception, for example, within these NAFTA disciplines for services pertaining to the trade in municipal solid waste.

Question: How do you contrast your analysis of HR 382 with Professor Esty's analysis, which cites Article XX of the GATT and NAFTA provisions that state its terms are subject to exemptions for legitimate environmental policies? Why do you find the need for equivalent action or restrictions to be imposed on those intrastate transporters in order for an action to be found as a legitimate environmental policy?

Answer: I do not understand Professor Esty to be asserting that potential actions taken under HR 382, were it to become law, would necessarily fall under the exemptions set forth in GATT Article XX. In any case, GATT Article XX does set forth important disciplines that are worth stating again:

"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

(b) necessary to protect human, animal or plant life or health; . . .

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;"

Reading this language, it is quite clear that the contracting parties to the GATT/WTO want the threshold on any such actions that may fall under these exceptions, and the others listed in the article, to be high (i.e., necessary to protect, not just important . . .). The history of GATT/WTO dispute settlement makes this quite clear.

Furthermore, there is an overriding emphasis on avoiding discrimination between domestic and foreign commerce when undertaking actions in the first sentence of article XX, and even a further specific reference to a non-discriminatory approach in XX (g) with respect to actions designed to conserve exhaustible natural resources. Furthermore, I have doubts that one could justify discrimination against imports of municipal waste from Canada on environmental practices grounds any more than one could justify such discrimination against waste from within a state or other states. For example, I am not aware at this time (although such an analysis may exist) of any sound scientific research and analysis that would compel a dispute settlement panel to support a discriminatory approach to imported Canadian solid waste.

Question: If nothing is done to impose any restrictions on the international or interstate shipment of waste, especially from Canada, how do you see the market looking in the next 10 years? How do you suggest the states that are the heaviest importers, especially due only to geography and close proximity to major population centers, accommodate this increasingly larger burden?

Answer: What to do with municipal solid waste is not only an issue in the U.S., but it is also a global issue with global implications, and it is not going away as our societies continue to generate waste. Not surprisingly, the U.S. trades in waste with many countries. U.S. international obligations reflect this trade. The European Union, for example, has been wrestling with the regulation of waste disposal for decades, and is now reportedly considering streamlining aspects of the existing regulatory regimes. In each locality across the U.S. difficult decisions about waste management abound, and a variety of responses have been developed and will be developed. They include more recycling, incineration, encouraging full compliance with existing regulations on landfills to help minimize environmental degradation, tightening recycling and landfill/incineration requirements, etc. Clearly, there is no one solution that fits all circumstances, nor would I venture to proscribe a solution for any one circumstance at this time. However, it is not clear to me that the importation of Canadian solid municipal waste necessarily presents a unique set of circumstances on environmental, public infrastructure or human safety grounds, other than the municipal waste that is being dealt with is from Canada. I am also not sure that Canada, or for example the City of Toronto, intends to continue the existing practice indefinitely whereby it contracts to ship municipal waste to certain sites within the U.S. It is also important to bear in mind that the U.S. exports hazardous

waste to Canada in significant volumes. This trade in transboundary waste is a function of an increasingly integrated North American economy that was recognized long ago, and accordingly reflected in the bilateral agreement that exists between the two countries as well as in the NAFTA. Obviously, the key issue is can sound methods continue to be developed that appropriately handle the waste while cognizant and respectful of the integrated nature of our economies and our existing and potential future international obligations.

Question: In your opinion, can it be argued that HR 382 mandates nothing; it merely authorizes the states to take certain actions that without congressional authority, they would be unable to take because of the constraints of the Commerce clause?

Answer: The clear premise of HR 382 is that states should be given the right to limit, or prohibit, the importation of foreign municipal solid waste. My expectation would be that at some point a state, or maybe more, would utilize that authority, if granted, to limit or prohibit imports of foreign municipal waste. Otherwise, there appears to be little practical purpose for the proposed legislation.

Question: Doesn't the 1986 Agreement Between the Government of Canada and the Government the United States Concerning the Transboundary Movement of Hazardous Waste prevail over NAFTA should there be an inconsistency between them, since it was already in effect when NAFTA was entered into?

Answer: Yes, but to a point. Article 104 of the NAFTA reads as follows:

"In the event of any inconsistency between this Agreement and the specific trade obligations set out in:

(d) the agreements set out in Annex 104.1 (which include The Agreement Between the Government of Canada and the Government of the United States Concerning the Transboundary Movement of Hazardous Waste, signed at Ottawa, October 28, 1986)

such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice of equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement."

It is also important to bear in mind that the bilateral agreement concerning the transboundary movement of waste cannot, practically speaking, be unilaterally interpreted by either party in a manner that prohibits or limits trade in waste without running a risk of precipitating a similar response from the other party. Furthermore, the other party could both terminate the bilateral agreement and would have recourse to its rights under the NAFTA to pursue, for example, dispute settlement and the resulting remedies should the other party be found to be out of compliance.

Question: The Supreme Court has stated in Sporhase v. Nebraska that a State may enact a comprehensive regulatory system to address an environmental problem or a threat to natural resources within the confines of the Commerce Clause. If the states were to enact restrictions to impose certain limitations on the shipment of international waste, would these restrictions not be read to include, a fortiori, restrictions on interstate waste as well?

Answer: I have not read the Supreme Court decision referred to in the question, so I cannot comment on the specifics of that case or render any interpretations stemming from it. I can say that there is nothing to my knowledge in trade agreements the U.S. currently is a party to that precludes the federal government, states or municipalities from enacting policies to protect the environment. Trade agreements to which the U.S. is a party, however, include provisions which are designed to discourage the federal government, states and municipalities from enacting measures that discriminate in their treatment of foreign commerce. Accordingly, should a state enact an environmental policy that discriminates in its treatment of foreign commerce it generally runs the risk of running afoul of U.S. international trade obligations. On the other hand, this does not necessarily preclude a state from enacting an environmental policy that treats all commerce in a similar manner, including commerce within the state, commerce from outside the state and foreign commerce.

Question: Your testimony mentions that while the Greenwood bill doesn't pose NAFTA problems on its face, "were such legislation to be enacted it is conceivable that if the implementation of the legislation by a state were to succumb to action(s) that discriminates in its treatment of foreign waste it could have implications for U.S. international obligations." Can you elaborate on that statement?

Answer: Upon reviewing H.R. 1730 again, I would caution that the bill, if enacted, could lead to actions that risk implicating U.S. international obligations. The bill defines "out of state" to include "municipal solid waste generated outside the United States." Were a state, utilizing the authority generated in this bill, to engage in a practice that discriminated in its treatment of foreign municipal waste relative to in-state and/or out of state U.S. waste, then the national treatment provisions

(among others depending upon the precise nature of the state action) as reflected in GATT/WTO Article III (which are incorporated within NAFTA Article 301) may be implicated. What heightens the prospect that this bill could implicate the national treatment provisions of U.S. international trade obligations is that it is structured in such a way so as to draw a distinction between how in-state waste is treated and out of state waste is treated, which includes foreign waste. The national treatment provisions are structured to encourage similar tax and other regulatory treatment for all commerce.

RESPONSE FOR THE RECORD OF LINDA JORDAN, RN, BSN

Question 1. In your tenure as a State Trooper, do you recall instances such as the one you described before the Subcommittee today occurring often? In other words, were troopers regularly called to the border to investigate international shipments of cargo, waste and other goods?

Response: My tenure at the Detroit Post of the Michigan State Police was from February 2002 through April 2003. During this time I don't recall any incidents of this nature. However, the Division of Motor Carriers regularly patrol the Ambassador Bridge and all too frequently cite semi-truck drivers coming over the bridge for transporting flammable and caustic materials, which are not authorized to be transported over the bridge. A search of three random months in 2002 and 2003 revealed 13 reports and subsequent citations involving the aforementioned materials. We can assume there are at least two to three times that amount of such materials coming across the bridge that are not stopped. In addition, there was the report of the local police department that seized the drugs in the concealed compartments of a garbage hauler (Congressman Rogers referenced the incident in his opening statement of the Committee hearing) As a side note and more proof we have no idea what is coming across Michigan bridges, last summer there was an incident where a semi transported illegal immigrants across the Blue Water Bridge in Port Huron, MI, and deposited its "load" in a mall parking lot. Point of contact at the Detroit Post for hazardous materials is Motor Carrier Officer (MCO) Wilson Dixon at (313)256-2990.

Question 2. Can you expound more upon the reactions, or the inaction, regarding this incident from the Department of Health and the Federal Protection Service?

Response: Upon my arrival to the cargo facility, the Chief Customs Agent at that site advised me that the Department of Health had been notified but refused to come to the scene. I can't give any more information because I did not speak to anyone from the Department of Health. The on-call individual from the Department of Health finally did respond once we removed the blood from the semi (approximately 6-7 hours after the initial call), only because of the activation of the radiac-meter of the Customs Agent with whom I was working. (All Customs Agents at the bridge wear a radiac-meter/beeper.) The Department of Health HAD to respond to bring a more sophisticated device to check the load for radioactive materials. Points of contact at the Detroit U.S. Customs Cargo Facility are Chief Gary Calhoun or Senior Inspector Andre Young at (313)226-2980. Point of contact/responder from the Health Department is Donald Hamel at (313)876-4519.

The Federal Protection Service sent the on-call investigator, Greg Brown, who observed the dripping blood from the vehicle at the Cargo Facility. Mr. Brown advised he would send his lieutenant and he left the scene. I never saw anyone from the FPS again, nor did anyone from that agency try to contact me after the fact. The incident occurred on federal property and the FPS was the agency with jurisdiction. My duty was to ensure a crime had not been committed, i.e, to ensure there was no body compacted among the trash. Point of contact for this incident would be Greg Brown at (313)226-7360.

Question 3. Are you familiar with who was ultimately responsible for the cleanup of this incident and the investigation that ensued?

Response: Deputy Fire Commissioner Seth Doyle of the Detroit Fire Department became the Incident Commander once the blood was off-loaded at the transfer station and his Emergency Management Division notified their civilian contracted HAZMAT crew to clean the site and dispose of the blood. Point of contact is Deputy Fire Commissioner Seth Doyle at (313)596-2907.

I was told Sgt. Askew of The Department of Environmental Quality would be conducting the follow-up investigation, and relayed the information to him. Point of contact, Sgt. Askew at (734)953-1445.

Question 4. Do you know if the same or similar procedures for disposing of biohazardous waste, such as blood, are in place in Canada as in the U.S.?

Response: I have researched this topic and have spoken with representatives from the Ministry of the Environment in Toronto, Canada, which is the governing body regulating waste. In addition, I have spoken with a representative of Medical Waste Management, a civilian company and the largest medical waste hauler in Ontario. It appears Canadian regulations parallel U.S. regulations with regard to the disposal of medical waste. There are minor differences in procedures, none of which are harmful.

Question 5. As a Michigan resident and a member of the community, how is your life affected by the daily shipments of solid waste across the border from Canada? Have you noticed any other occurrences that have caused alarm within your community or was this just an isolated occurrence?

Response: Other than the blood incident, the drug seizure and the woman being hit by not one, but two garbage haulers, I know of no other incidents. No, I do not think these are isolated incidents. I believe these situations are more common than we realize we just have not been so fortunate in intercepting the offenders.

There has been an increase in the number of semi-trucks on the highways in Michigan. The garbage haulers are not always covered with a tarp, thus garbage has been noted flying from the trailers of the vehicles. Some drivers water down their load to prevent dust and small particles from taking flight while traveling. The water mixes with the load and leaks on the roadway. There is always a backup on the Ambassador Bridge and to avoid the wait, travelers and tourists opt to travel back to Detroit via the tunnel, which eliminates the aesthetic value and the enjoyment of traveling over the bridge. Acceptance of Canadian garbage has reduced the time expected to fill the landfill by half. Where will the garbage go once the landfill is full? Will a possible park be turned in to a new landfill because we must honor the contract with Toronto? It boggles the mind that with all the barren land in the upper provinces of our neighbors that some enterprising individual has not developed a landfill and become a millionaire as a result. It seems to me the thought from Canada is that it is much easier to literally dump the problem off on Michigan. In addition and thanks to NAFTA, my experience has been that U.S. officials throw up their hands and use those agreements as a crutch and cop out to do nothing, at the risk of U.S. citizens.

Points of contact: Canadian Ministry of the Environment, Mr. Peter Palmer at (416)314-4278, or Ms. Debra Hurst, Ministry of the Environment, Hazardous Waste Policy Section at (416)314-4186 or Mr. Dan Kennedy, Medical Waste Management at (905)789-6660.

NEW YORK CITY
DEPARTMENT OF SANITATION
August 22, 2003

Honorable *Paul E. Gillmor*
Chairman, Committee on Energy and Commerce
Subcommittee on Environment and Hazardous Materials
House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

DEAR CHAIRMAN GILLMOR: This is in response to your letter dated August 5, 2003, requesting answers to questions submitted by Members of Congress in follow-up to the hearing held by the House Energy and Commerce Subcommittee on Environment and Hazardous Materials on Interstate and International Transportation of Solid Waste. I thank you for the opportunity to testify at this Subcommittee's July 23, 2003 hearing and for the additional opportunity to submit further information into the hearing record on this topic.

As requested, the following are answers to the eleven (11) questions presented by the Subcommittee:

Question 1.) Mr. Orlin, the last time our committee gathered to discussed the issue of waste shipments, New York City's Deputy Mayor, Joe Lhota, testified that New York City exported all of its solid waste for disposal. Is that still the case or are you now shipping some of your non-recyclable trash to in-state facilities for disposal?

New York City, like many municipalities across the country, currently has contracts with private vendors for the disposal of the City's municipal solid waste. As part of the contracting process, private vendors are required to submit a list of final disposal locations that they would like to utilize. The Department, after a lengthy review, decides whether or not the final disposal locations are acceptable. A final disposal location is deemed acceptable after the Department determines that it is

operating with a lawful permit, that a Host-Community Agreement is in place, and a thorough site visit is conducted. While most disposal sites receiving City waste are located outside the State, the City's waste is currently being sent to the three disposal sites in New York State. Additionally, the Department has very recently approved a fourth disposal location in New York State, but no New York City waste has yet been sent to this location. The Department is also in the process of reviewing proposals for two additional disposal facilities located in the State.

Question 2.) Mr. Orlin, in your written statement, you describe the closing of the Fresh Kills landfill and the City's requirements that all of its municipal solid waste be disposed of in communities that have established host-community agreements (HCAs). How many of the HCA's handling New York City's trash are with communities in the State of New York?

A Host-Community Agreement is an agreement between the operator of a disposal facility and the community in which the facility is located. Currently, private vendors that contract with the City to dispose of its residential solid waste are authorized to use four facilities in New York State, and the City's waste is being sent to three of these facilities. These locations have Host-Community Agreements in place and have been deemed acceptable by the Department. The Department is in the process of reviewing proposals for the use of two additional facilities located in the State.

Question 3.) Can you detail how your municipality is ensuring that the localities that enact Host-Community Agreements with you have all the requisite environmental permits and are in accordance with zoning ordinances and land use provisions?

New York City conducts a detailed investigation into the sites submitted by our vendors for the final disposal of solid waste received in accordance with the City's contracts. The Department reviews: (1) the Host-Community Agreement in place, (2) copies of all permits issued to the facility allowing it to operate, and (3) a detailed questionnaire filled out by the operator of the disposal location regarding the operation of the site and its history. After reviewing these materials, the Department then conducts a site visit of the disposal location to ensure that it is operated in a safe and environmentally sound manner. Additionally, the Department obtains a legal opinion from a local attorney familiar with all requisite environmental laws, zoning ordinances and land use provisions as to the legality of the disposal site in question. If, after a site visit and a review of all of the above information, the Department deems a facility acceptable for disposal, the New York City Department of Investigation ("DOI") is then notified, and DOI conducts its own investigation as to the business dealings of the facility in question. If the proposed disposal site is not approved by the Department, the vendor is notified that the site is not authorized to accept any waste under the contract. The Department has denied permission to vendors to use proposed sites because the sites did not have Host-Community Agreements.

Question 4.) Has the City of New York sought to enter into more Host-Community Agreements or contracts with other towns in New York State? Why?

New York City has contracts with private vendors for the disposal of the City's municipal solid waste. It is the private vendors accepting the City's waste that enter into Host-Community Agreements with the localities hosting the waste disposal facilities. A Host-Community Agreement is an agreement between the operator of a disposal facility and the community in which the facility is located. As part of the contracting process with the City, private vendors are required to submit a list of final disposal locations that it would like to utilize. Currently, private vendors that contract with the City to dispose of its residential solid waste are authorized to use four facilities in New York State. These locations have Host-Community Agreements in place and have been deemed acceptable by the Department. The Department is also in the process of reviewing two more disposal sites located in New York State.

Question 5.) What do you see as the benefits for allowing the free market for interstate waste transport to continue to operate? What about the shortcomings?

For over 200 years, the United States has successfully relied on a free market system that allows for the shipment of goods, including solid waste, across State lines. This free market system allows communities and States to import municipal solid waste into their jurisdictions in order to take advantage of an important revenue stream. The free market system has also enabled the City and other municipalities to utilize environmentally sound disposal facilities. The City believes that each locality has the right to accept or reject out-of-state solid waste. In securing contracts for waste disposal exclusively at Host-Community Agreement sites, municipalities have furthered partnerships that benefit both importer and exporter alike. The ability of a municipality to send waste to newer, more advanced regional facilities located outside its boundaries acknowledges the very environmental, demographic and

geographical realities that many municipalities throughout the country face. For those localities that have chosen to import waste from other locations, the revenues generated through host fees, licensing fees and taxes have substantially enhanced their local economies, improved area infrastructure, paid for construction of new schools, paved roads and assisted host communities in meeting their own waste management needs. The ability to move waste freely across state lines to the most environmentally protective and most cost-effective facilities is essential and fully consistent with this country's well established free market economy.

Question 6.) It seems that officials from large metropolitan areas, like yourself, point out that they only ship their waste to willing communities. How would that end under the bills before us?

While HR 1730 purports to exempt proposed disposal sites with Host-Community Agreements from the ban on receipt of out-of-state waste, the bill actually places significant restrictions on the ability of solid waste facilities with Host-Community Agreements to receive out-of-state waste. These restrictions undermine the apparent protections provided to facilities with Host-Community Agreements. The proposed legislation places restrictions on the interstate movement of waste that could void decisions made by local governments, increase the cost of waste disposal, disrupt existing and planned arrangements for waste disposal services and limit the ability of willing communities to reap the economic benefits of receiving out-of-state waste.

For example, a facility with a Host-Community Agreement is only exempt from the ban on the receipt of out-of-state waste if it is in compliance with (a) all of the terms and conditions of the State permit authorizing the facility to operate and (b) most applicable Federal and State laws and regulations. The term "compliance" is not defined in the proposed legislation. Consequently, a minor violation could immediately impact a facility's ability to take out-of-state waste. The provision requiring compliance with all conditions in the State permit does not place any time limitation on a facility's ineligibility to take out-of-state waste, even if the permit violation is only a small infraction. Moreover, there is no provision allowing a facility operator to challenge an alleged permit violation. Thus, a small permit infraction could result in a facility's inability to take out-of-state waste for a prolonged period of time.

Even if a Host-Community Agreement is in place, HR 1730 authorizes State officials to deny permits for new facilities or expansions of existing ones, and potentially even deny simple requests for permit renewals, if State officials determine there is no local or regional need for the facility. The effect of this provision would be to allow State officials to discriminate against out-of-state waste by denying permits for solid waste facilities that would receive waste from outside the State, since the local area or region might not need a facility that handles out-of-state waste.

HR 1730 authorizes a State to limit the amount of out-of-state waste sent to each solid waste facility to the amount of out-of-state waste the facility received for disposal in 1993. A facility with a Host-Community Agreement is only exempted from this freeze based upon 1993 import levels if the facility had permitted capacity at the time it originally entered into the Host-Community Agreement to receive all of the out-of-state waste authorized by the Host-Community Agreement. This provision would likely remove much of the apparent protection afforded Host-Community Agreements in the proposed legislation. Additionally, authorizing States to freeze shipments of out-of-state waste based upon 1993 import levels ignores an entire decade of changes that have taken place in how municipalities dispose of solid waste and completely neglects the current waste disposal practices of municipalities throughout the country.

Additionally, the proposed legislation authorizes States to enact legislation governing a locality's ability to enter into Host-Community Agreements. There is no requirement that these State laws concerning Host-Community Agreements be consistent with the provisions of HR 1730. The proposed bill could therefore result in State laws that effectively preclude Host-Community Agreements.

These are just a few examples of how HR 1730 could adversely impact and impede the ability of municipalities to send waste to willing jurisdictions that have in place and benefit from Host-Community Agreements.

Question 7.) How great of a consideration are costs to New York City given when you are making solid waste disposal and other recycling decisions?

In making waste disposal decisions, cost is certainly an important consideration for the City, particularly given the current economic times. An even more important consideration for the City, however, is that its waste be sent to waste disposal sites in willing jurisdictions that fully comply with all relevant environmental laws. When making solid waste disposal decisions, the Department ensures that all of the City's waste is sent to environmentally sound facilities that have Host-Community Agreements and comply with all applicable Federal, State and local rules and regulations.

Additionally, the City is committed to recycling even though recycling is not necessarily the most cost-efficient means of handling and managing solid waste. The City has one of the few recycling programs in the country that picks up from 100 percent of residential households. The City, which also picks up from agencies and institutions, recycled approximately 32 percent of the City-managed waste collected as of April of 2003. As of July 1, 2003, the Department reinstated the collection of plastics and beverage cartons into the designated recyclable stream. Thus, the City's current residential and institutional recycling program includes recycling of metal, newspaper, magazines, catalogs, phone books, mixed paper and corrugated cardboard, plastics and beverage cartons. The City will also be redesignating glass as a recyclable material as of April 1, 2004.

Question 8.) Some of your and Mr. Lanza's testimony suggests that New York City is not capable of housing environmentally sound solid waste disposal facilities, either within the City or the State of New York, therefore you should ship it to regional mega-landfills in rural areas. Is this a fair impression?

Like many other densely populated municipalities, including Chicago and Washington D.C., New York City is faced with a shortage of space large enough for the siting of a suitable facility to handle the City's residential solid waste. The City is in the preliminary stages of looking for a landfill within New York State. New York City relies heavily on contracts with private vendors for the disposal of its municipal solid waste. As part of the contracting process, private vendors are required to submit a list of final disposal locations that it would like to utilize, which the Department reviews. The Department has approved the use of four in-State disposal locations provided by our vendors, including one that was approved recently, and is in process of reviewing proposals for two additional facilities located in the State.

Question 9.) Your testimony suggests that just about every state exports trash, therefore, Congress should take no action. However, government figures show that 50 percent of states are "net-importers," 35 percent are "net-exporters," and 15 percent do not have enough data to let us know where they stand. Since, potentially, more than half of all states have the capacity to import more trash than they export, shouldn't these folks have the chance to reserve a little in-state waste capacity for themselves?

Municipalities in forty-nine states and the District of Columbia export a portion of their waste outside their borders. While some municipalities export their waste to in-state disposal sites, other municipalities, depending on distance and the cost of transporting waste, choose to dispose of their waste at closer, more economically feasible disposal sites located outside the state. Complying with the stringent requirements of Subtitle D of the Resource Conservation and Recovery Act is costly. States are not the entities that build, operate and pay for the environmental compliance of waste disposal facilities. Rather, the private sector is primarily responsible for the construction and operation of waste disposal facilities throughout the country. In order for private companies to meet the costs of maintaining and improving existing facilities and to entice them to build new state of the art facilities, companies need to be assured that their facilities will not be restricted from receiving waste from willing customers. Wastesheds are regional in nature and are not limited by State boundaries. Where waste is ultimately disposed is in large part dependent upon available transportation corridors. Because of existing transportation routes, many localities, including New York City, send their waste outside their own State's borders.

Question 10.) Some people would argue that major exporters are placing other communities and states at odds, with local financial windfalls opposing the protection of overall state resources. In light of your insistence on the potential "loss" of export access through Host-Community Agreements, do you think this is a fair argument?

Markets for goods, including solid waste, are not limited by State lines. The citizens of New York import a large volume of goods from States across the entire country, and much of these goods, as well as the packaging for these goods, must ultimately be disposed. This committee heard testimony on behalf of a community in South Carolina that greatly benefits from the Host-Community Agreement it has in place. The Host-Community Agreement allows this community, and other communities like it, to benefit from a revenue stream that does not place an onerous burden on its taxpayers. The revenue received through Host-Community Agreements helps offset the costs of municipal services and community projects that would otherwise be passed down to the taxpayer. Placing significant restrictions on Host-Community Agreements, such as those in the proposed legislation, would severely limit a willing community's right to take advantage of the revenue received from having disposal facilities located within its borders. Without this revenue stream, commu-

nities will be forced to cut back municipal services and projects, increase local taxes or seek additional funding from the State.

Question 11.) Which bills do not allow Host-Community Agreements to govern the disposal of imported wastes?

While HR 1730 purports to exempt proposed disposal sites with Host-Community Agreements from the ban on receipt of out-of-state waste, the bill actually places significant restrictions on the ability of solid waste facilities with Host-Community Agreements to receive out-of-state waste. Similar bills that have been proposed in the House of Representatives, including HR 382, HR 411, HR 418, HR 1123 and HR 2581, also do not allow Host-Community Agreements to govern the disposal of imported wastes.

These restrictions found in the proposed legislation undermine the apparent protections provided to facilities with Host-Community Agreements. The proposed legislation places restrictions on the interstate movement of waste that could void decisions made by local governments, increase the cost of waste disposal, disrupt existing and planned arrangements for waste disposal services and limit the ability of willing communities to reap the economic benefits of receiving out-of-state waste.

For example, a facility with a Host-Community Agreement is only exempt from the ban on the receipt of out-of-state waste if it is in compliance with (a) all of the terms and conditions of the State permit authorizing the facility to operate and (b) most applicable Federal and State laws and regulations. The term "compliance" is not defined in HR 1730. Consequently, a minor violation could immediately impact a facility's ability to take out-of-state waste. The provision requiring compliance with all conditions in the State permit does not place any time limitation on a facility's ineligibility to take out-of-state waste, even if the permit violation is only a small infraction. Moreover, there is no provision allowing a facility operator to challenge an alleged permit violation. Thus, a small permit infraction could result in a facility's inability to take out-of-state waste for a prolonged period of time.

Even if a Host-Community Agreement is in place, the proposed legislation authorizes State officials to deny permits for new facilities or expansions of existing ones, and potentially even deny simple requests for permit renewals, if State officials determine there is no local or regional need for the facility. The effect of this provision would be to allow State officials to discriminate against out-of-state waste by denying permits for solid waste facilities that would receive waste from outside the State, since the local area or region might not need a facility that handles out-of-state waste.

HR 1730 authorizes a State to limit the amount of out-of-state waste sent to each solid waste facility to the amount of out-of-state waste the facility received for disposal in 1993. A facility with a Host-Community Agreement is only exempted from this freeze based upon 1993 import levels if the facility had permitted capacity at the time it originally entered into the Host-Community Agreement to receive all of the out-of-state waste authorized by the Host-Community Agreement. This provision would likely remove much of the apparent protection afforded Host-Community Agreements in the proposed legislation. Additionally, authorizing States to freeze shipments of out-of-state waste based upon 1993 import levels ignores an entire decade of changes that have taken place in how municipalities dispose of solid waste and completely neglects the current waste disposal practices of municipalities throughout the country.

Additionally, the proposed legislation authorizes States to enact legislation governing a locality's ability to enter into Host-Community Agreements. There is no requirement that these State laws concerning Host-Community Agreements be consistent with the provisions of HR 1730. The proposed bill could therefore result in State laws that effectively preclude Host-Community Agreements.

These are just a few examples of how HR 1730 could adversely impact and impede the ability of municipalities to send waste to willing jurisdictions that have in place and benefit from Host-Community Agreements.

I thank you again for this opportunity to submit further information into the hearing record on this very important issue.

Yours truly,

ROBERT ORLIN

cc. Honorable Vito J. Fossella
J. Chesser, Director, N.Y.C. Federal Legislative Affairs

RESPONSE FOR THE RECORD OF KEN SIKKEMA, MAJORITY LEADER, MICHIGAN STATE SENATE

Question: Senator, could you please help us understand the thinking and emotions in legislatures, like yours, that are repeatedly being rebuffed by the courts when you try to deal with your state's waste flow?

Answer: Michigan policymakers have for almost a decade been attempting to find a solution to how the state can regulate out of state waste. We have considered various options including requiring another state or nation's waste management program to be as protective as Michigan's, have considered enacting an express ban on out of state waste as a tool to protect public health, safety and welfare under the police powers reserved to the states, but have placed the greatest amount of hope in gaining authorization to regulate out of state waste directly from Congress. I would assess the current thinking and emotion right now in the Michigan Legislature as this: The goal in Michigan has always been to reduce the number of landfills in our state and it is not possible to do this when we are not able to control the amount of waste coming across our borders. The courts have consistently held that states must be granted authority by Congress to regulate out of state waste. Our feelings remain that the best position for Michigan to be in (if and when a legal challenge is made to our laws) is to have Congress expressly grant us this authority through legislation such as HR 382.

Question: Senator, the 1988 Michigan law, until struck down in 1992, gave counties the power to restrict waste shipments. Don't you agree that the negotiation of a Host Community Agreement actually conveys this same authority to communities? Why or why not?

Answer: No, I do not agree that Host Community Agreements can provide any consistent authority to achieve the state's desire to curb out of state waste. Host Community Agreements were designed to provide compensation to communities that agree to accept out of state waste. They do not provide the state with any certainty to achieve the states' long term goal of reducing the number of landfills. Host Community agreements are privately negotiated contracts that may or may not have the effect of restricting out of state waste. Since they are privately negotiated contracts, our constitution forbids any state interference with the provisions of the contract and because of this we cannot mandate inclusion of any provision to refuse out of state waste.

Question: You mention that Michigan is being placed in a tough spot concerning the handling of its own waste because it is powerless to stop interstate and international imports of solid waste. Many people today would argue that the communities taking the waste want it. Is there a tension between state and local officials about this policy?

Answer: Yes, there has always been tension between state and local governmental officials on accepting out of state waste. I suspect that there will always be tension because some communities may see a parochial advantage in accepting out of state waste. But given the state's need to protect its natural resources and to properly manage solid waste, on a statewide basis, ultimate authority to regulate how and where our waste goes must rest with the state.

Question: Senator, several of our panelists today will argue that H.R. 382 violates NAFTA. How do you respond to these claims, particularly since they could have the same effect that the Supreme Court case did 10 years ago?

Answer: I do not believe that HR 382 violates NAFTA. NAFTA is a commercial agreement that attempts to preserve a climate of equality for goods and services being traded across borders and the relevant test for HR 382 is whether the legislation mandates an action which expressly violates that climate of equality. HR 382 does not mandate that certain actions be taken which might violate NAFTA, but merely gives the states a needed tool to control waste. Further as I have stated before, I believe that waste is not a legitimate item of commerce, but an unintended negative consequence of human behaviors.

RESPONSE FOR THE RECORD OF ROBERT SPRINGER, DIRECTOR, OFFICE OF SOLID WASTE, ENVIRONMENTAL PROTECTION AGENCY

QUESTIONS FROM THE SUBCOMMITTEE ON ENVIRONMENT AND HAZARDOUS MATERIALS

Question 1. Mr. Springer, your testimony suggests that two decades ago, EPA went through the process of approving individual State's comprehensive solid waste management plans. Do these solid waste management plans need to be re-approved by EPA? Has EPA undertaken any systematic review of these plans to ensure that

States are still complying with these programs and whether States need to update their programs?

Response. As we testified, EPA is responsible under the current regulatory framework for setting national standards applicable to disposal of nonhazardous waste. EPA has no statutory authority for permitting, and the Agency's enforcement authority is limited to occurrences of imminent and substantial endangerment. The States retain the primary responsibility for implementation, including permitting, and enforcement of the national disposal regulations and for all other aspects of nonhazardous waste management. This is an appropriate framework given that domestic management of nonhazardous waste has historically been a State and local responsibility. The Resource Conservation and Recovery Act (RCRA) required that States develop solid waste management plans to specify the State approach for environmentally sound solid waste management and that EPA publish guidelines to assist in the development and implementation of the State plans. EPA published these guidelines in 1979. To encourage and assist States in developing their initial solid waste management plans, the Subtitle D grant program was established for a limited time. To be eligible to receive Subtitle D grant money from EPA, States were required to submit for EPA approval their comprehensive solid waste management plans. In 1982, the Subtitle D grant program was discontinued and States no longer had an incentive to submit plans to EPA for approval, but many States had already submitted their plans by this time. As of 1987, forty-three States and territories had submitted plans to EPA for approval, while several others had entered into discussions with EPA concerning their plans. Although States continue to internally review and update their solid waste management plans, the original plans we did assist in developing serve as a starting point for current solid waste management operations in the States.

Question 2. Our Committee received testimony from a former Michigan State Police Officer, Ms. Linda Ann Jordan, that more occurrences of hazardous materials are finding their ways into municipal waste only landfills due to the huge increases in interstate and international waste transport? How do you respond to this assertion?

Response. At this time, EPA is currently not aware of any information that supports the statements/assertions made by Ms. Linda Ann Jordan at the hearing. When EPA or an authorized State discovers situations where hazardous waste is being improperly disposed of in municipal landfills (for whatever reason, be it improper waste identification, transportation, etc.), both EPA and the States treat such violations very seriously and take appropriate action against the violator.

Question 3. You state that EPA's position is that the most effective way to control risks posed by interstate management of wastes is through a strong domestic regulatory program. The U.S. has a regulatory framework in place designed to protect human health and the environment from any risks posed by the disposal of hazardous or municipal solid waste, whether those wastes are generated within or outside the U.S. Could you please explain this framework and why you have made these comments?

Response. Our current regulatory framework, established pursuant to RCRA, addresses both hazardous waste and solid waste. The Agency believes that the regulatory system for hazardous and municipal solid waste ensures protection against risks to human health and the environment. The origin of the waste, whether domestic or foreign, has no impact as long as there are regulations in place that determine what can or cannot be responsibly managed in a landfill.

The hazardous waste management program, Subtitle C, is intended to ensure that hazardous waste is managed safely from the time it is generated to the time it is finally disposed (i.e., "from cradle to grave"). The Subtitle C program includes requirements to facilitate the proper identification and classification of hazardous waste and includes standards for those facilities that generate, treat, store, or dispose of hazardous waste. Transport of any hazardous waste must be accompanied by a manifest that lists, among other things, the type of waste, the facility that generated the waste, the individual transport companies that will convey the waste, and the final destination facility. To ensure that treatment, storage and disposal facilities adequately protect human health and the environment, owners and operators of these facilities must obtain a hazardous waste permit and comply with all regulations regarding the management of hazardous waste, including cleaning up contamination from past operations. In addition, prior to any placement on the land, hazardous wastes first must be treated to meet waste-specific treatment standards.

Subtitle D of RCRA primarily addresses nonhazardous solid waste. The term solid waste includes garbage, refuse, sludge, nonhazardous industrial wastes, and other discarded materials. For municipal solid waste, EPA recommends an integrated ap-

proach to management which includes source reduction, recycling, combustion, and landfilling.

In order to protect the environment, EPA developed detailed technical criteria for solid waste disposal facilities, including specific criteria for municipal solid waste landfills (MSWLF). The MSWLF criteria, promulgated in 1991, include provisions for location, operation, design, ground water monitoring, corrective action, closure and post-closure care, and financial responsibility. The operating criteria include requirements for running and maintaining a landfill, such as covering the landfill daily, controlling disease vectors, and controlling explosive gas. Design standards for liners, which may require leachate collection systems, are required to prevent groundwater contamination. Groundwater monitoring is required to insure proper operation of the landfill liner/leachate collection system. Finally, there are detailed requirements for the safe closure of a landfill and post closure care. Similar location restrictions and operational requirements apply generally to non-municipal solid waste facilities, and stricter groundwater monitoring and corrective action apply to non-municipal facilities that receive conditionally-exempt small quantity generator hazardous waste. Compliance with these requirements is generally assured through State-issued permits. EPA does not have the same enforcement authorities for subtitle D landfills as in Subtitle C; however, EPA may act when there is an imminent and substantial endangerment.

Question 4. Is an amendment to include solid waste, followed by the ratification and implementation of the Basel convention, the only way EPA intends to have trans-border, solid waste shipments with Canada addressed?

Response. No. In addition to ratification and implementation of the Basel convention, which would provide EPA with authority to require notice and consent for municipal solid waste shipments, the joint EPA-Customs Initiative is designed to improve compliance monitoring and surveillance of imports and exports of dangerous chemicals and wastes and materials regulated under statutes administered by EPA (e.g., municipal solid waste). The initiative also is intended to ensure that EPA and Customs share the information that Customs collects. Transborder shipments to and from Canada are an important focus of this initiative.

Question 5. Our understanding is that current trends concerning landfills are one of consolidation and privatization. How are States supposed to continue their comprehensive waste management plans mandated by RCRA in light of continuously increasing shipments of out of State waste?

Response. The States are in the best position to understand the current trend, in that all States issue permits for all the municipal solid waste landfills in their respective State. Thus, the State program managers, working together, are in the best position to effectively plan for and deal with this trend. Moreover, from the information that we have seen, it is more cost effective to build larger compliant landfills than smaller ones.

Question 6. Mr. Springer, you mention the efforts being undertaken by EPA to encourage recycling. What results are you seeing? What are the pitfalls of establishing these programs? And, how much more, if any, could EPA be doing to encourage recycling?

Response. Historically, EPA has encouraged recycling and we see the rates of recycling of municipal solid waste increasing. In 2002, 31 % of municipal solid waste was recycled and in EPA's new strategic plan, we will propose increasing that percentage.

EPA's programs to encourage recycling are primarily voluntary and we have seen excellent results from these programs. For example, our Waste Wise program has grown to include over 1,300 partners who, through 2001, reduced over 35 million tons of waste through prevention and recycling efforts.

In the Resource Conservation Challenge, EPA is embarking on a major effort to find flexible, yet protective ways to conserve our natural resources through waste reduction, recycling, and energy recovery. We believe that establishing goals and measures is critical to our success and are working with partners and with stakeholders to identify additional performance goals and measures to demonstrate the success of their efforts.

In order to keep encouraging recyling and resource conservation, EPA must continue to strengthen its partnerships with all levels of government, with business leaders, and with the American consumer. At the same time, EPA must work to insure that recycling methods are safe for both workers and the environment.

Question 7. If the U.S. and Canada are mutually dependent on each other for solid waste disposal, can anyone supply us with information on how much municipal solid waste the U.S. currently exports to Canada? Hazardous waste?

Response. As EPA testified, more than 90% of international waste movements involving the U.S. and Canada is with each other. Canada is the only country with

which the U.S. legally exports hazardous wastes for treatment and disposal. (We do export to other countries for recycling.) The most recent compilation of U.S. data on exports of hazardous waste to Canada shows 121,000 tons were exported in 1995. EPA is in the process of updating this compilation using more recent annual reports from individual States. Canadian data for the same year indicates 422,000 tons of hazardous waste coming from the U.S., but the Canadian hazardous waste definition captures a broader range of wastes. Data from both the U.S. and Canada agree that the U.S. exports significantly more hazardous waste to Canada than it imports. A Canadian study showed that in 1998 there were 23 States that exported hazardous wastes to Ontario, with the top five being Michigan, New York, Ohio, New Jersey, and Pennsylvania.

EPA does not have waste volume data on municipal solid waste exports because RCRA regulations do not require the collection of such data. According to Congressional Research Service data reported in 2002, only Maine and Massachusetts exported municipal solid waste to Canada, specifically to New Brunswick and Quebec.

Question 8. In a letter dated May 8, 2003, to Senator Levin, Assistant Administrator Ayres wrote that the Agency's interest in having RCRA amended to give effect to the waste import notice-and-consent provisions as applied to solid waste was "not . . . to block MSW imports from Canada into the U.S." but rather "EPA would only object to MSW imports if there were any legitimate environmental reasons." The letter goes on: "We have not received any environmental monitoring and assessment information indicating any environmental problems arising from Ontario MSW disposed of in Michigan, nor have we been advised that these MSW imports have been in conflict with US and Canadian goals for protection of the Great Lakes Basin ecosystem." Has the Agency's position changed at all since that letter was sent to Senator Levin?

Response. Our position remains the same. In response to increased concerns about imported wastes, Michigan DEQ conducted ten inspections at each of eight landfills from March through June 2003. Initial reports from early inspections do not indicate significant differences between municipal solid waste generated in Canada and that generated in Michigan.

Question 9. Does EPA perceive any environmental, health, or safety risk attendant to the importation of MSW from Canada to properly permitted and compliant RCRA Subtitle D landfills that requires legislative action?

Response. EPA believes that properly permitted and compliant Subtitle D landfills enable municipal solid waste to be disposed of in a manner that minimizes environmental, health, and safety risks. Therefore, we do not seek additional authority to regulate Subtitle D landfills. Transportation of any materials, whether among nations, States, or local jurisdictions involves some risk of accidents, spills, etc; but we believe that the current regulations deal appropriately with this. As EPA testified, legislative action is needed to implement the municipal solid waste provisions of the U.S.-Canada Waste Trade agreement, notably the notice and consent provisions regarding municipal solid waste.

Question 10. Are there any environmental problems with the interstate shipment of wastes to properly permitted and compliant RCRA Subtitle D landfills?

Response. As stated in our response to the previous question, EPA believes that properly permitted and compliant Subtitle D landfills enable solid waste to be disposed of in a manner that appropriately minimizes risk to public health and the environment. Interstate shipment of any material involves some risk—accidents, spills, etc. However, EPA is not aware of any evidence to date indicating environmental problems resulting from the interstate shipment of waste to compliant facilities.

Question 11. Your testimony explains the way our country and the Canadians handle the trans-border shipment of hazardous waste. Since solid waste is the issue today, you briefly point out that the U.S. and Canada intend to use the same notice and consent scheme "once both countries have the necessary legal authorities." Could you please explain these comments?

Response. Once both the U.S. and Canada have obtained the necessary authority, we expect the notice and consent process for municipal solid waste to be similar to the current hazardous waste notice and consent process. In connection with hazardous waste shipments from Canada to the U.S., that process is as follows: (1) prior to exporting a hazardous waste to the U.S., the Canadian exporter would notify Environment Canada of its intent to export; (2) upon receipt of this written notification by the primary exporter, Environment Canada would forward the notification to EPA; and, (3) if the U.S. consents to the shipment, Environment Canada would communicate the U.S.' consent to the Canadian exporter, who could then proceed with the export. The Canadian exporter is prohibited from shipping the waste

to the U.S. until EPA consents. (The process would work the same for exports from the U.S. to Canada.)

When EPA receives a notice for a hazardous waste import, we either consult directly with the appropriate State agency or we review previously-submitted State information to confirm that the receiving facility is permitted to manage all of the specific wastes identified in the notice, and the State believes the wastes will be handled consistent with federal and State requirements. If environmental problems are found or if the exporter has not provided sufficient information, we would not consent to receipt of the waste. It is important to note that our experience with hazardous waste shows that the vast majority of notices has involved shipments that fully comply with applicable laws, and therefore we have consented to them.

QUESTIONS FROM HON. JOHN D. DINGELL

Question 1. What is EPA's position on each of the three bills that were the subject matter of the hearing: H.R. 382, H.R. 411, and H.R. 1730?

Response. The Administration has not taken a position on H.R. 382, H.R. 411, and H.R. 1730.

Question 2. Please describe all of the options available to EPA, including voluntary compliance, as well as any additional legal or regulatory authorities that would allow for the full or even partial implementation of the Agreement Between the Government of the United States of America and the Government of Canada Concerning the Transboundary Movement of Hazardous Waste. ("U.S.-Canada Waste Trade Agreement" or "Agreement"). Please do not limit this answer to implementation of the Basel Convention.

Response. Currently, we cannot implement the Agreement Between the Government of the United States of America and the Government of Canada Concerning the Transboundary Movement of Hazardous Waste for municipal solid waste. As EPA discussed at the hearing, Canadian authorities are developing regulations based on recent amendments to the Canadian Environmental Protection Act that will enable them to provide notice and consent for municipal solid waste, and expect to complete this process in approximately one year. Additionally, the Agency is working on amendments to the Solid Waste Disposal Act for consideration by Congress that will provide the necessary authorities for the U.S. to fully implement the notice and consent provisions under the bilateral Agreement with Canada for municipal solid waste. At a minimum, to enable the U.S. to fully implement the notice and consent provisions in the bilateral Agreement, Congress needs to provide EPA with the following authority:

a. notice and consent authority for municipal solid waste imports and exports, similar to EPA's authority for hazardous waste imports and exports under section 3017 of the Resource Conservation and Recovery Act (RCRA);
b. specific requirements for exporters, prohibiting them from exporting municipal solid waste from the U.S. to Canada unless:
    i. they have notified EPA of a proposed export, which provides the necessary information regarding the types and amounts of wastes to be exported, identifying the transporters and facilities that will manage the waste, and all other information specified under Article 3(b) of the U.S.-Canada Waste Trade Agreement, and
    ii. the importing country has consented to the import of the waste;
c. specific requirements for importers, prohibiting them from importing municipal solid waste from Canada unless EPA has received notification of the import and has provided written consent to the import.

Question 3. What is EPA's time frame for implementing the U.S.-Canada Waste Trade Agreement, including the notice and consent requirements set forth in Article 3 and the "best efforts to provide notification" set forth in Article 5.3?

Response. EPA would like to implement the municipal solid waste provisions of the U.S.-Canada Waste Trade Agreement as soon as possible. To this end, we are working with other federal agencies to draft implementing legislation that will provide EPA with the necessary authority for municipal solid waste imports and exports. It is part of a comprehensive effort to amend RCRA so that the U.S. is able to ratify the Basel Convention. Once enacted, we would be able to implement the notice and consent provisions regarding municipal solid waste of the U.S.-Canada Waste Trade Agreement almost immediately.

Question 4. Has the EPA taken any action to implement the U.S.-Canada Waste Trade Agreement, including Article 5.3 that expressly provides that the Parties "will make best efforts to provide notification" where current regulatory authority is insufficient? If so, please identify the action taken by EPA, the date of the action, and provide a copy of any relevant documentation of each such action.

Response. In addition to seeking the necessary statutory authority, we are working on a bilateral basis with Canada to ensure governmental coordination and progress on the Agreement. We met with Canadian officials in September 2001 and March 2003 to discuss the implementation issues. We are also working on a trilateral basis with Canada and Mexico under the auspices of the Commission for Environmental Cooperation (CEC), established under the North American Agreement on Environmental Cooperation, to ensure transboundary waste movements are managed in an environmentally sound manner.