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S. HRG. 106–357

# INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE

## HEARING

BEFORE THE

## COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

JUNE 17, 1999

ON

**S. 533,** A BILL TO AMEND THE SOLID WASTE DISPOSAL ACT TO AUTHORIZE LOCAL GOVERNMENTS AND GOVERNORS TO RESTRICT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE, AND FOR OTHER PURPOSES

**S. 663,** A BILL TO IMPOSE CERTAIN LIMITATIONS ON THE RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE, TO AUTHORIZE STATE AND LOCAL CONTROLS OVER THE FLOW OF MUNICIPAL SOLID WASTE, AND FOR OTHER PURPOSES

**S. 872,** A BILL TO IMPOSE CERTAIN LIMITATIONS ON THE RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE, TO AUTHORIZE STATE AND LOCAL CONTROLS OVER THE FLOW OF MUNICIPAL SOLID WASTE, AND FOR OTHER PURPOSES

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# INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE

**THURSDAY, JUNE 17, 1999**

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

The subcommittee met, pursuant to notice, at 9:33 a.m. in room 406, Senate Dirksen Building, Hon. John H. Chafee (chairman of the committee) presiding.

Present: Senators Chafee, Reid, Baucus, Lautenberg, Crapo, and Voinovich.

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

Senator CHAFEE. I want to welcome everyone this morning. It is a meeting of the full Committee on Environment and Public Works on interstate transportation and flow control of solid waste.

We're here today to hear testimony on the issues of interstate transportation of municipal solid waste, also known as MSW, or, in more common terms, it is trash. And we're also going to discuss flow control.

Three bills have been introduced on these issues—S. 533 by Senators Warner and Robb, S. 663 by Senator Specter, and S. 872 by Senators Voinovich and Bayh.

I want to welcome the Senators who are here today. We are delighted that you are able to be present.

Interstate waste and flow control aren't new issues for this committee. Concerns about increased interstate shipments of solid waste and the potentially adverse economic impacts of flow control have been around for almost a decade. In this committee, the full Senate and the House have all tried on several occasions to address these concerns through legislation. We've never succeeded.

I think that the legislation we crafted back in the 104th Congress represented a good compromise for the time. It balanced the interest of importing States with the legitimate disposal needs of exporting States and tried to provide a narrow grandfather for facilities that had relied on flow control.

It was a good bill, but things have changed. I appreciate the concerns raised by Virginia, Pennsylvania, Ohio, and Indiana that import large volumes of solid waste. I can understand that these States don't want to become or be perceived as the dumping grounds for New York's trash.

There's another side to the story, however. Interstate waste shipments have increased over the past 5 years, but this is due largely

to the closure of hundreds of small landfills who were unable to comply we new stringent environmental standards. As a result, waste may be crossing State lines, but it is ending up in facilities that meet the highest standards—double liners, leachate collection systems, and groundwater monitoring requirements. In most cases, it is being shipped to facilities in communities that choose to accept out-of-State waste.

The facts on flow control have also changed. In 1995, in wake of the Carbone decision in the Supreme Court, State and local governments predicted that recycling and disposing facilities would go bankrupt and entire waste management systems collapse without flow control. These predictions turned out to be overly pessimistic. The vast majority of facilities that previously relied on flow control have survived without it.

So things have changed from 1993 and 1994. The proponents of Federal legislation on interstate waste and flow control this year have a special burden to make the case that it is still needed. The principles I will use to evaluate any legislation are simple. I believe that solid waste is fundamentally like all other commodities and should be protected by the commerce clause of the Constitution. The Supreme Court has consistently affirmed that principle.

If Congress is going to restrict shipments of solid waste, whether through limitations on interstate movement or flow control, it should do so in a way that minimizes the interference with free commerce and insures the highest degree of protection for the environment.

State and local governments I don't believe should be given broad authority through flow control to create solid waste monopolies. Consumers—in this case the solid waste generators—should have the freedom to send their waste to the most economically efficient facilities.

So it seems to me the issue is no longer one of insuring adequate capacity for our Nation's trash; instead, the question we should be asking ourselves is: how can we insure that solid waste is managed in the most environmentally responsible manner?

I believe the answer lies in recognizing the economies of scale that have enabled regional state-of-the-art facilities to comply with EPA regulations and continuing to allow solid waste to flow to the best new facilities.

So we look forward to hearing from out witnesses and appreciate that they are all present.

Senator Reid, did you have anything you wanted to say?

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

Senator REID. Yes, I do, Mr. Chairman.

I, first of all, would welcome Senators Bayh, Warner, and Specter to the hearing this morning.

Mr. Chairman, a substantial settlement was just arrived in Las Vegas after 2 years of litigation and administrative tribunal work. We had in Las Vegas a solid waste landfill for some 35 years. It closed, and then the trouble really started. There were some who said it would go into Lake Mead, garbage from that facility.

Solid waste is a very, very difficult problem, and the fact that you have a solid waste landfill is a problem in and of itself, so I certainly understand why the three of you are here.

I would say, specifically to Senator Bayh, your predecessor, Senator Coats, was very courageous. He was one of two Republicans who voted to support our nuclear waste issue, and he did this with a lot of—it took a lot of guts to do that, because it became a very partisan issue, which it shouldn't have, and that was bringing nuclear waste to the State of Nevada.

I'm familiar not as much with the State of Pennsylvania as I am with the State of Virginia, because I have a home in the State of Virginia, and it is, I understand, a difficult problem, and I have watched admirably as you and Senator Robb have tried to make sure that there is some reasonable program to stop the flow of waste into the State of Virginia.

I've read your bill. It seems like, to me, at this stage it makes common sense to change the rules of the road. It seems like everything that you've asked to do in the legislation is constitutional, which also, with interstate commerce, causes a constitutional problem. So I am willing to work with you on this issue, and I think that you are doing the right thing.

It is not my goal this morning to put anyone on the spot, but I want to recognize the similarities between the battle that we have been fighting for 6 years on interim storage of nuclear waste and for more than 15 years of battle of permanent storage of nuclear waste and the issue that we now have before this body.

Yesterday, I am happy to report, the Energy and Natural Resources Committee passed a bill that doesn't have interim storage of nuclear waste in Nevada, and that's really a step forward, so I'm happy to report there will not be a battle on the Senate floor this year dealing with nuclear waste.

So, anyway, I guess the one message I would like to leave here is that we talk a lot about States' rights, but when it comes to issues of garbage—and that's what this is—States' rights hasn't had anything more than lip service.

We have in the past, here in this body and in the Congress, generally, worked very hard to establish flexibility. We did that in the last surface transportation bill. We worked on it. Senator Warner was instrumental in working on that. We've done the safe drinking water revolving fund. These are issues that we resolved with the Governors, mayors, and even State assemblymen. We need to make sure that there is input on this legislation, also.

So the problem with municipal landfills in big cities, as the big cities begin to close, is going to get worse, not better. I ask my colleagues: should any State be forced to accept trash from another State against their will?

Maybe I grew up in a simpler time, but I'm still a firm believer in the notion that if you make a mess you should clean it up yourself.

I read recently that New York Mayor Giuliani has said that accepting New York's trash is the price the rest of the Nation should pay for having access to all the cultural activities that the Big Apple has to offer. With all due respect to my colleague, Senator Moynihan, senior member of this committee who I know disagrees

with me on this issue, I hope the citizens of New York will choose to keep their garbage and their mayor at home.

[The prepared statement of Senator Reid follows:]

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

Thank you, Mr. Chairman, for holding a hearing on these important issues.

I would like to welcome my colleagues, Senators Robb, Bayh, and Specter to today's hearing. All three of you are representing slightly different, but compatible points of view on interstate transport of solid waste.

Senator Bayh, I supported your predecessor, Senator Coats, in his efforts to impose some reasonable, state-option restrictions on transport of solid waste and I am glad to see that you have taken up that torch.

Senator Specter, we also have worked on this and many other issues in recent years. I am delighted to see you here today.

Senator Robb, I am most familiar with your situation. I spend a fair bit of time in Virginia. My home when I am here is in your neck of the woods. I have witnessed first hand how hard you have worked, in conjunction with my good friend, Senator Warner, to try to introduce some reasonable restrictions on interstate transport.

I have read your bill and it seems like it makes some reasonable, common sense changes to the rules of the road. As someone who has spent much of his career trying to keep waste of another kind out of my state, I know someone who is willing to fight to the finish for his state when I see him. I am proud to work with you on this issue.

It is not my goal this morning to put anyone on the spot, but do not dismiss lightly the similarities between forcing states to accept unwanted trash from other states and the desire of many in this body to force Nevada to accept waste from America's nuclear reactors.

Nevada does not rely on nuclear power and never has. Nevada has never wanted and never will want a dump at Yucca Mountain, yet here we are.

Worse, rather than closing 110 "landfills" and opening just one, we are really just opening the 111th landfill.

Again, I don't want to beat this to death this morning, but it often seems like "states' rights" is just something we pay lip service to on this issue.

We spend a lot of time in the Committee talking about kitchen table, quality of life issues that affect the everyday lives of all Americans.

In the last year alone, we have addressed issues of congestion, air quality, and drinking water quality. These are issues that concern most people every day.

As part of our effort to alleviate these problems, this Committee has worked hard to ensure that our states and local governments have the tools and resources they need to effectively combat these quality of life detriments.

Tremendous resource flexibility under TEA–21 and the Safe Drinking Water Revolving Fund are both examples of this Committee listening to our Governors, mayors, and state assemblymen when they have told us what they need to most effectively run our states.

Today, we are considering three bills in this same tradition. Our states are telling us that they want and need the ability to say, "No," to other states that want to ship their trash out-of-State.

Senator CHAFEE. Senator Warner, what's your situation? You've got a hearing?

Senator WARNER. I'm due before the Foreign Relations Committee momentarily to introduce one of the President's nominees, and if I could just make a brief statement and submit my full statement for the record, I would be most appreciative to the chair and my colleagues.

Senator CHAFEE. All right.

Senator LAUTENBERG. I have no objection, Mr. Chairman, provided we have chance to make the——

Senator CHAFEE. You'll have a chance.

Senator LAUTENBERG. With that assurance, I'm delighted to accommodate our good friend.

Senator WARNER. Well, I thank you.

Senator REID. Mr. Chairman, where he made his mistake, he should be up here on the dais rather than down there at the witness table.

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

Senator WARNER. I wanted to face the chairman, and I'll tell you why, my good friend.

First, I'm almost ready to take my distinguished colleague from Nevada's State and supplant it with mine—that is, let his statement stand for Virginia.

But, Mr. Chairman, I copied down something you read from your prepared statement. You said, "I regard solid waste like all other commodities." Now, my good friend, you and I have been associated for some 30 years in public service. I want to invite you to Virginia to look at the roads that are laden with the grease and the debris from leaking trucks by the thousands that come into our State. I want to take you down to one place where there is a mountain of garbage as tall as the Washington Monument and 994 football fields wide. I don't know of any other commodity that parallels that, my dear friend. Perhaps you'd like to revise your statement.

Senator CHAFEE. Is this an invitation you're giving me?

Senator WARNER. Yes.

[Laughter.]

Senator WARNER. And if you would like——

Senator CHAFEE. I mean for the summer vacation.

Senator WARNER.—we can get the former Secretaries of the Navy, get a little barge and take you up the James River following one of these barges coming in and let you waft in the vapors. It's unlike anything you've ever seen.

Now, having said that, my good friend, clearly under our Constitution Congress has the authority to give the States the latitude and the flexibility they need to address the legitimate environmental, health, and safety concerns whose overly onerous scope is unfairly inherited, I think, by States like mine.

I say to you in all candor, what I am seeking in this legislation, the bill put in by my colleague, Mr. Robb, who will be here momentarily, and myself—and I've been at this for 15 years with various bills, as you know. My good friend to the left might recount one of our earlier legislative efforts where the chairman was instrumental in that in 1994, but that's a footnote of history.

The point is, we're trying to simply strike a balance between the free enterprise system. There are witnesses here from my State who take views different from mine, and I ask that you respect them as you will respect me. But we are trying to strike a balance between the free enterprise system in their right to handle waste and the citizens of the several States in their right to look after their safety, their environmental concerns, their quality of life.

In our State, I must say we're very proud of our heritage and the forefathers that worked to establish freedom and democracy in this country and to provide for such a balance in the magnificence of the Constitution, but right now our State ranks, depending on the day and the month, one, two, or three nationwide in terms of the quantity being brought in.

The time has come to strike a balance, I say most respectfully to the chairman and the members of the committee, and I thank the committee for the opportunity to speak.

Senator CHAFEE. Thank you. Your full statement will go on the record.

Senator WARNER. Thank you.

[The prepared statement of Senator Warner follows:]

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

Mr. Chairman, thank you for holding this hearing to review the different proposals introduced by my colleagues as well as the legislation introduced by Senator Robb and myself to give our States and local governments authority to manage the disposal of municipal waste within their borders.

For several years, the Committee on Environment and Public Works, on which I am privileged to serve, has considered many legislative proposals to convey authority to States and localities to begin to address this serious problem. Unfortunately, no legislation has been enacted since this serious problem first surfaced in the early 1990's.

Today, large volumes of waste are traveling from Northeastern states to Mid-west and Mid-Atlantic states. Over the past few years, the amount of waste traveling across state lines has greatly increased and projections are that interstate waste shipments from certain states will continue to grow.

Most States and localities are responsible in ensuring that adequate capacity exists to accommodate municipal waste generated within each community. I regret, however, that the evidence available today shows that there are specific situations where State and local governments are neglecting responsible environmental stewardship.

The result of this neglect is that other States such as my home state of Virginia are bearing the burden of disposing of waste exporting states. These State and local governments currently have no authority to refuse this waste or even to control the amount of waste that is sent for disposal on a daily basis.

We must strike a balance between the rights of free enterprise to deal in waste and the rights of citizens of states to protect themselves from less controlled, excessive imports and the negative impacts on our quality of life and environment. For Virginia may I also add, we are proud of our heritage in our forefathers devising our system of democracy and free enterprise. But now we rank at the very top as recipients of waste.

The Virginia General Assembly passed laws this year to self-regulate trash disposal and self-limit dumping. As expected, these laws passed with overwhelming support of the people of Virginia but now face lawsuits in Federal courts deeming these state laws unconstitutional.

These lawsuits challenge Virginia's right to protect her waterways and landscape from the uncontrolled expansion of landfills.

Stemming the flow of trash into Virginia is as much a matter of public safety and responsible public policy as it is a common sense matter. A recent series of articles in the Washington Post detailed Federal safety records showing the rise in serious accidents involving trash haulers in Virginia along the I–95 corridor, barge leaks into the James River, and the rise in metals found in the groundwater at two mega-fills.

These mega-fills challenge the imagination. Picture a mountain of garbage as tall as the Washington Monument and 994 football fields wide. That's how big a mega-fill in Sussex County, Virginia alone would be if built out as planned to accommodate out of state trash not agreed to by Virginia's state and local community leaders.

The legislation I have cosponsored, S. 533, recognizes that in the normal course of business it is necessary for some amount of waste to travel across State lines, particularly in circumstances where there are large urban areas located at State borders. S. 533 will not close down State borders or prevent any waste shipments.

States will have, however, for the first time, the ability to effectively manage and plan for the disposal out-of-State waste along with waste generated within their borders.

Specifically, S. 533 will allow States who are today receiving 1 million tons of waste or more yearly to control the growth of these waste shipments. My bill does

not mandate that states take any specific action -it only gives them the authority should they choose to do so.

These States would be permitted to freeze at 1998 levels the amount of waste they are receiving or, if they decided, they could determine the amount of out-of-State waste they can safely handle. Today, they have no voice, but this legislation will give all citizens the right to participate in these important waste disposal decisions.

For all States and localities, protections would be provided to ensure that all interstate waste must be handled pursuant to a host community agreement. These voluntary agreements between the local community receiving the waste and the industry disposing of the waste have allowed some local governments to determine waste disposal activities within their borders.

According to the Constitution, Congress has the authority to give the states the latitude and flexibility they need to address the legitimate environmental, health and safety concerns whose overly onerous scope is unfairly inherited by states like Virginia.

I ask my colleagues to give fair consideration to S. 533 and the testimony we are privileged to receive today so we can develop a fair and equitable resolution to this problem.

Senator CHAFEE. Now what I'd like to do is finish up the opening statements here briefly and then we'll get to—how's your time? Have you got a few minutes, Senator Specter?

Senator SPECTER. I have a few minutes.

Senator CHAFEE. All right. Let's go through.

Senator Baucus?

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

Senator BAUCUS. Thank you, Mr. Chairman. I will be very brief.

I very much hope we can resolve this issue this Congress. This is the fifth Congress we've attempted to deal with this issue. We came very close—and seeing the Senator from Indiana at the table reminds me of Senator Coats, who worked very, very hard on this issue. In fact, he would often tell me, "Oh, my gosh, my Governor back home was just hammering me on this. I've got to do something on interstate waste."

Senator VOINOVICH. You've got to watch those Governors.

Senator BAUCUS. Yes, you've got to watch them.

And we, unfortunately, were unable in this Congress to resolve it then. I very much hope we can now.

The key problem—actually, it's a benefit—is the commerce clause of the Constitution, which, in effect, prevents the States from handling this issue, and it also is the reason why flow control has been ruled unconstitutional—efforts by States to govern flow control.

I have a lot of sympathy with the statement made by the Senator from Nevada. A lot of us in the west in the rural open States just don't like having garbage dumped in our States, just don't like it, and we want to have the ability to say no. It's that simple.

Now, it is a bit complicated. I'm not going to sit here and say that every State should have the absolute right to always say no in all instances, because, as I vaguely recall, something like 40 States—maybe more than that—both export and import solid waste. Nobody is really—no one really wears a black hat here and nobody wears a white hat. There are various shades of gray.

But we want to be able to help those States who do want to say no to give them a very strong voice in their ability to say no, trying to find that right balance.

Mr. Chairman, I very much hope that, after many, many tries, we can finally get it resolved. Thank you.

Senator CHAFEE. Senator Reid?

Senator REID. Want me to give another one?

Senator CHAFEE. Oh, excuse me.

[Laughter.]

Senator CHAFEE. Excuse me. Senator Crapo?

**OPENING STATEMENT OF HON. MICHAEL D. CRAPO, U.S. SENATOR FROM THE STATE OF IDAHO**

Senator CRAPO. Thank you, Mr. Chairman. I have to go to the floor momentarily, so I'll just make a very brief statement, if that's all right.

I just want to echo the comments of Senator Baucus about the fact that many of us come from States that want to assure that we retain the right to control our own destinies on this issue, and I perceive this very much to be an issue that requires that we recognize the interests of the various States and their rights to self-government.

With that, Mr. Chairman, I will submit the remainder of my statement for the record.

Senator CHAFEE. Thank you, Senator.

Senator Lautenberg?

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

Senator LAUTENBERG. Yes. Thanks, Mr. Chairman.

I'm going to take just a couple minutes to read a statement, because this is a complicated subject with no clear answers, and so we are going to try to find our way through the very thick thicket, and it is—I listened to my colleagues with great respect, and I hear about the objections that people raise to having to take other people's trash. Well, we in New Jersey object to taking other people's trash, as well. Some of it is delivered through the air, toxics that are emitted from chimneys all over the place that flow and drop acid and spoil our waters, our tributaries and our land, so this is not the kind of a game where you can just look at one possibility.

My State had a suit that went to the Supreme Court to try and stop Philadelphia, which was dumping trash in New Jersey, and New Jersey lost on the case. This was years ago, Senator Specter, and we thought we had a right.

Now New York to our east wants to send its trash west, and, while so many of our people work there and earn their pay there, contribute to the development of that city, we don't want their trash to follow our commuters back home at night when they come.

So we have a very strong environmental question in our tiny State, the most-densely-populated State in the country, and we try to keep our green areas green and our waters clean and it is not easy.

We have the highest recycling rates among the highest recycling rates in the country, and it is an accomplishment that is developed household-by-household. It is an accomplishment that reflects broad public commitment to environmental protection, and our environmental ethic was developed the hard way.

Not too long ago, New Jersey was a favorite dumping ground for more than one State and burning dumps could be found around the

State. As a consequence of that, we have the highest number of Superfund States of any State in the country—and, again, in terms of geography, we probably rank 47th or 48th in size—so we put in place some of the most modern waste management facilities in the country, though often at great financial and political cost.

Today we face challenges in the area of waste management with the fall of flow control and the deregulation of waste management. Many counties have been left with stranded waste facilities that they bonded, they paid for.

Our neighbor to the east, a great city—we don't want their trash, but they could warp what we create in our own State in a very short order.

And we hear the resentment of those communities which accept our trash, and I understand it, but this is a Federal issue when you talk about, in my view, environment. Lots to be resolved.

I know there are many legislative solutions proposed on the issue, several of which we're going to hear about today. I know, however, that the situation in New Jersey is, as I assume it is in other States, influx, and that approach seems to make sense. The approach that seemed to make sense just a few years ago doesn't necessarily work any more, but we shouldn't rush to a solution that we'll repeat in the future.

Now, I'm going to be looking at this issue very carefully, Mr. Chairman, and for that reason I thank you for holding this hearing. And I would say this: if we abandon, if we force flow control on some of our communities, their tipping rates will go to more than double, on top of very heavy real estate taxes.

So we are, again, somewhat in the muddle, as they say, and we're going to work with all of our colleagues as vigorously as we can to arrive at a compromise that satisfies the largest number of people.

Thank you very much.

Senator CHAFEE. Thank you very much.

Senator Voinovich?

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

Senator VOINOVICH. Mr. Chairman, I want to thank you for conducting this hearing today. It is a problem that has plagued States nationwide—the uncontrollable amounts of trash being dumped into our landfills and incinerators from other States. I have just a few brief remarks, and I'd ask that my total statement be put into the record.

I'd like to welcome Dewey Stokes from the Franklin County Board of Commissioners today, who is going to be testifying about the importance of flow control.

Senator Bayh, it's nice to see you here, and Senator Robb, Senator Specter.

Senator Bayh and I have been working on this problem since 1991, when I was Governor of Ohio, and, Senator Baucus, I may have testified before you several times over the last number of years to try and do something about this problem.

Now, it is viewed in some instances as a midwest problem, but I think it is safe to say that this is a problem that affects States

nationwide. Non-midwest States such as Virginia and Oregon have passed Ohio in the volume of out-of-State waste received in their States. Because it is cheap and expedient for other States, they've simply put their garbage on trains, trucks, barges, and shipped it to other places.

However, lacking specific delegation of authority from Congress, States and local governments have acted responsibly to implement environmentally sound waste disposal plans, and recycling programs are still being subjected to a flood of out-of-State waste.

I am very proud, Senator Lautenberg, of what we've done in Ohio about recycling, but there is a problem when you're asking people to recycle and then have all this stuff coming in from out-of-State, and they're saying, "We're recycling and they're filling up our landfills."

The bill that Senator Bayh and I introduced reflects an agreement on interstate waste and flow control provisions that our States, along with Michigan and Pennsylvania reached with Governor Whitman, whose own State of New Jersey is a large exporter of trash.

In fact, the provisions of Senate Bill 872 enjoy broad support from our Nation's Governors. Twenty-four Governors, including Governor Whitman and Western Governors Association, have sent letters to Congress supporting the provisions that we have in our bill.

In addition, Senate Bill 872 is consistent with the National Governors Association policy, which was adopted by all of the Nation's Governors. This policy states that Governors must be able to act on their own initiative to limit, reduce, or freeze waste import levels at existing and at future facilities.

Mr. Chairman, I would ask that the letters of support sent by individual Governors, the Western Governors Association, the National Association of Counties be inserted in the record.

For Ohio, the most important aspect of our bill is the ability for States to limit future waste flows through permit caps. This provision provides assurances to Ohio and other States that new facilities will not be built primarily for the purpose of receiving out-of-State waste.

For example, Ohio EPA had to issue a permit for a landfill that was bidding to take 5,000 tons of garbage a day—approximately 1.5 million tons a year—from Canada, alone. This would have doubled the amount of out-of-State waste entering Ohio. Thankfully, this landfill lost the Canadian bid. Ironically, though, the waste company put their plans on hold to build the facility because there is no need to build a facility in Ohio.

They've got the permit. We had to give it to them. They wanted a permit because they wanted to bring in the garbage from Canada, and when they lost the contract with Canada they said, "Well, we're not interested in doing it any more," and that was the end of it.

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

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

And so, Mr. Chairman, I think this is an important issue. It has been around a long time. It would be wonderful if we could take care of it in the 106th Congress.

[The prepared statement of Senator Voinovich and additional material submitted for the record follow:]

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

Mr. Chairman, I thank you for conducting this very important hearing today on a nationwide problem interstate waste shipments. I strongly believe it is time for Congress to give State and local governments the tools they need to limit garbage imports from other States and manage their own waste within their own States.

Ohio received about 1.5 million tons of trash in 1998 from other States. (Up from 1.4 million tons in 1997 and 1.1 million tons in 1996.) While I am pleased that these shipments have been reduced from 1.9 million tons when I first became Governor, I believe it is still entirely too high. And we have no assurances that our out-of-State waste numbers won't rise to our record high of 3.7 million tons in 1989.

Because it is cheap and because it is expedient, other States have simply put their garbage on trains, trucks or barges and shipped it to States like Ohio, Indiana, Michigan, Pennsylvania and Virginia. This is wrong and it has to stop.

Many State and local governments have worked hard to develop strategies to reduce waste and plan for future disposal needs. As Governor of Ohio, I worked aggressively to limit shipments of out-of-State waste into Ohio through voluntary cooperation of Ohio landfill operators and agreements with other States. We saw limited relief. But honestly, Ohio has no assurance that our out-of-State waste numbers won't rise significantly with the upcoming closure of the Fresh Kills landfill on Staten Island in 2001.

However, the Federal courts have prevented States from enacting laws to protect our natural resources. What has emerged is an unnatural pattern where Ohio and other States both importing and exporting have tried to take reasonable steps to encourage conservation and local disposal, only to be undermined by a barrage of court decisions at every turn.

Quite frankly, State and local governments' hands are tied. Lacking a specific delegation of authority from Congress, States that have acted responsibly to implement environmentally sound waste disposal plans and recycling programs are still being subjected to a flood of out-of-State waste. In Ohio, this has undermined our recycling efforts because Ohioans continue to ask why they should recycle to conserve landfill space when it is being used for other States' trash. Our citizens already have to live with the consequences of large amounts of out-of-State waste increased noise, traffic, wear and tear on our roads and litter that is blown onto private homes, schools and businesses.

Ohio and many other States have taken comprehensive steps to protect our resources and address a significant environmental threat. However, excessive, uncontrolled waste disposal in other States has limited the ability of Ohioans to protect their environment, health and safety. I do not believe the commerce clause requires us to service other States at the expense of our own citizens' efforts.

A national solution is long overdue. When I became Governor of Ohio in 1991, I joined a coalition with other Midwest Governors Governor Bayh , Governor Engler and Governor Casey, and later Governors Ridge and O'Bannon to try to pass effective interstate waste and flow control legislation.

In 1996, Midwest Governors were asked to reach an agreement with Governors Whitman and Pataki on interstate waste provisions. Our States quickly came to an agreement with New Jersey—the second largest exporting State—on interstate waste provisions. We began discussions with New York, but these were put on hold indefinitely in the wake of their May 1996 announcement to close the Fresh Kills landfill.

The bill that Senator Bayh and I introduced, S. 872, reflects the agreement that our two States, along with Michigan and Pennsylvania, reached with Governor Whitman.

For Ohio, the most important aspect of this bill is the ability for States to limit future waste flows. For instance, they would have the option to set a "permit cap," which would allow a State to impose a percentage limit on the amount of out-of-State waste that a new facility or expansion of an existing facility could receive annually. Or, a State could choose a provision giving them the authority to deny a permit for a new facility if it is determined that there is not a local or in-State regional need for that facility.

These provisions provide assurances to Ohio and other States that new facilities will not be built primarily for the purpose of receiving out-of-State waste. For instance, Ohio EPA had to issue a permit for a landfill that was bidding to take 5,000 tons of garbage a day approximately 1.5 million tons a year from Canada alone, which would have doubled the amount of out-of-State waste entering Ohio. Thankfully this landfill lost the Canadian bid. Ironically though, the waste company put their plans on hold to build the facility because there is not enough need for the facility in the State and they need to ensure a steady out-of-State waste flow to make the plan feasible.

With the announcement to close the Fresh Kills landfill, it is even more critical to Ohio that States should receive the authority to place limits on new facilities and expansions of existing facilities. The Congressional Research Service estimates that when Fresh Kills closes, there will be an additional 13,200 tons of garbage each day diverted to other facilities. However, CRS also points out that there is only about 1,200 tons per day of capacity available in the entire State of New York. Even if New York handles some of that 13,200 tons a day in-State, it is estimated that about 4 million tons per year will still need to be managed outside the State from that landfill alone.

In addition, this bill would ensure that landfills and incinerators could not receive trash from other States until local governments approve its receipt. States also could freeze their out-of-State waste at 1993 levels, while some States would be able to reduce these levels to 65 percent by the year 2006. This bill also allows States to reduce the amount of construction and demolition debris they receive by 50 percent in 2007 at the earliest.

States also could impose up to a $3-per-ton cost recovery surcharge on out-of-State waste. This fee would help provide States with the funding necessary to implement solid waste management programs.

And finally, the bill grants limited flow control authority in order for municipalities to pay off existing bonds and guarantee a dedicated waste stream for landfills or incinerators.

Flow control is important to States like New Jersey, which has taken aggressive steps to try to manage all of its trash within its borders by the year 2000. New Jersey communities have acted responsibly to build disposal facilities to help meet that goal. However, if Congress fails to protect existing flow control authorities, repayment of the outstanding $1.9 billion investment in New Jersey alone will be jeopardized.

I am deeply concerned that responsible decisions made by Ohio, New Jersey and other States have been undermined and have put potentially large financial burdens on communities and have encouraged exporting States to pass their trash problems onto the backs of others.

Twenty-four Governors, including Governor Whitman, and the Western Governors' Association have sent letters to Congress strongly supporting the provisions that are in our bill.

In addition, S. 872 is consistent with National Governors' Association policy, which was adopted by all of the nation's Governors. This policy states that Governors must be able to act on their own initiative to limit, reduce or freeze waste import levels at existing and future facilities. It also calls for the ability for States to impose surcharges on interstate waste shipments.

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

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

I believe the time is right to move an effective interstate waste bill. S. 872 represents a consensus of importing and exporting States—States that have willingly come forward to offer a reasonable solution.

VOINOVICH-BAYH INTERSTATE WASTE BILL

*Major Provisions*

*Freeze Authority.* Allows States to freeze out-of-State waste at 1993 levels.

*Presumptive Ban.* Gives local governments more power to determine whether they want to accept out-of-State waste by prohibiting disposal facilities that did not receive out-of-State waste in 1993 from receiving such waste until the affected local government approves its receipt. Facilities that have a host community agreement or permit in place that specifically authorizes the facility to accept out-of-State waste would be exempt from the ban.

*Ratchet.* Allows States that received more than 650,000 tons of out-of-State waste in 1993 to reduce their waste to 65 percent of 1993 levels by 2006 and thereafter.

*Permit Caps.* A State legislature may set a percentage limitation on the amount of out-of-State waste that new facilities or expansions of existing facilities could receive. Such limitation would apply statewide to all such facilities. A State legislature could not set a percentage limit below 20 percent.

*Needs Determination.* Gives States an option to deny a permit for a new facility or major modification to a facility if it is determined there is not a local or in-State regional need for that facility.

*Construction and Demolition Debris.* Allows States to reduce the amount of construction and demolition debris by 50 percent in 2007 at the earliest.

*Authority to impose fees on out-of-State waste.* Allows States to authorize up to a $3 per ton surcharge on out-of-State waste.

*Flow Control.* Authorizes any State or political subdivision that adopted flow control prior to 1984, or that adopted flow control that was later suspended due to court action or any violation of the Commerce clause, to reinstate it. Authorizes any State or political subdivision to reinstate flow control for solid waste and recycled materials for the life of a bond.

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NATIONAL ASSOCIATION OF COUNTIES,
*June 16, 1999.*

The HONORABLE GEORGE V. VOINOVICH,
*United States Senate,*
*Dirksen Senate Office Building,*
*Washington, DC 20510.*

DEAR SENATOR VOINOVICH: The National Association of Counties (NACo) supports the reinstatement of enforceable flow control authority to local governments that own or operate debt-financed solid waste facilities. We commend you for sponsoring legislation that will enable counties and municipalities to recover one of their tools to effectively carry out the waste management responsibilities.

As you know, in 1994 the U.S. Supreme Court, in C&A Carbone v. Town of Clarkstown, struck down an ordinance directing municipal solid waste generated within the town's borders to a designated facility, thereby depriving the town of the revenue stream that financed an environmentally sound solid waste management system. As a result of the ruling, and similar lower court decisions, the financial underpinning of many public landfills and waste-to-energy facilities have been placed in jeopardy. To assure that debt service payments were made on tone, counties, cities and towns have dipped into reserve fiends and adopted new taxes and user fees on residents and businesses.

S. 872 will "godfather" local facilities that relied upon flow control authority prior to the Carbone decision and allow prior bonded debt to be repaid with revenues from a steady stream of municipal solid waste. It will also permit local governments that have successfully prevailed in Federal courts since the Carbine ruling to maintain the alternative solid waste funding systems they have established.

NACo is appreciative of your efforts on behalf of local governments on this issue, and we are pleased to endorse the floor control provisions of S. 872. Thank you for your sponsorship of this important legislation. Please feel tree to contact NACo's Associate Legislative Director for environment, energy and land use, Diane Shea (202/942–4269) if you have any questions.

Very truly yours,

LARRY B. NAAKE, *Executive Director*

WESTERN GOVERNORS' ASSOCIATION,
*June 15, 1999.*

The HONORABLE GEORGE VOINOVICH,
*Hart Senate Office Building,*
*Washington, DC 20510.*

DEAR SENATOR VOINOVICH: On behalf of the Western Governor's Association (WGA), we would like to commend you for introducing S. 872, "The Municipal Solid Waste Interstate and Transportation and Local Authority Act of 1999." This bill would authorize much needed tools to States to manage the disposal of out-of-State municipal solid waste. We strongly support sections 2 and 3 of the bill, and urge their passage during this Congress. WGA does not have a position on "flow control," and therefore does not advocate any position on that section of the bill.

Western Governors believe each State should do everything it possibly can to manage the wastes generated within its borders. We do not support an outright ban on waste shipments between States because there are many examples of safe, effective and efficient cross-border waste management arrangements.

We believe the provisions in sections 2 and 3 of yoru bill would provide States reasonable controls over both current, and future, waste streams. The Governors particularly appreciate section "2(i) Cost Recovery Surcharge." Authority for cost recovery surcharges is needed to help States offset their costs for overseeing the disposal of out-of-State wastes. The Governors also support section "3(b) Authority to Deny Permits to Impose Percentage Limits." Percentage limitations are necessary for States to paln and protect future in-State disposal capacity by ensuring that a portion of landfills and incinerators will be available for in-State use. To that end, we would seek an amendment that addresses significant increases of out-of-State waste going to existing sites under host community agreements.

Again, we commend you for introducing S. 872, and urge its passage this Congress.

Sincerely,

MICHAEL O. LEAVITT, *Governor of Utah,*
*WGA Lead Governor.*

JOHN A. KITZHABER, M.D.,
*Governor of Oregon.*

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STATE OF INDIANA,
STATE OF OHIO,
STATE OF MICHIGAN,
STATE OF NEW JERSEY.
*April 22, 1999.*

DEAR SENATORS VOINOVICH AND BAYH: We are writing to express our strong support for the Municipal Solid Waste Interstate Transportation and Local Authority Act of 1999, which you plan to introduce this week. This legislation would at long last give State and local governments Federal authority to establish reasonable limitations on the flow of interstate waste and protect public investments in waste disposal facilities needed to address in-State disposal needs.

Both of you know firsthand the problems States face in managing solid waste, as required by Federal law. During your terms of office as Governors, you worked to support the passage of effective Federal legislation that would vest States with sufficient authority to plan for and control the disposal of municipal solid waste, including noncontaminated construction and demolition debris. The need for such legislation arose from venous U.S. Supreme Court rulings applying the commerce clause of the U.S. Constitution to State laws restricting out-of-State waste and directing the flow of solid waste shipments.

We are committed to working with all States and building upon the broad State support which exists to pass legislation in the 106th Congress that will provide a balanced set of controls for State and local governments to use in limiting out-of-State waste shipments and directing intrastate shipments. The need for congressional action on interstate waste/flow control legislation is becoming more urgent. Last year, the Congressional Research Service reported that its most recent data showed interstate waste shipments increasing to a total of over 25 million tons. The closing of the Fresh Kills landfill in New York City is likely to dramatically increase that figure.

Your bill includes provisions which we believe are important for State and local governments such as the general requirement that local officials formally approve

the receipt of out-of-State municipal solid waste prior to disposal in landfills and incinerators. The legislation does include a number of important exemptions for current flows of . It also provides authority for States to establish a statewide freeze of waste shipments or, in some cases, implement reductions. In addition, the legislation explicitly authorizes States to implement laws requiring an assessment of regional and local needs before issuing facility permits or establishing statewide out-of-State percentage limitations for new or expanded facilities.

We legislation would also allow States to impose a $3-per-ton cost recovery surcharge on out-of-State waste and would provide additional authority for States to reduce the flow of noncontaminated construction and demolition debris. Under a separate set of provisions, States would also be authorized to exercise limited flow control authority necessary to protect public investments.

We recognize that the Municipal Solid Waste Interstate Transportation and Local Authority Act of 1999 would not establish an outright ban on out-of-State waste shipments; instead, it would give States and localities the tools they need to better manage their in-State waste disposal needs and protect important natural resources. We pledge our support for your efforts to ensure that no State is forced to become a dumping ground for solid waste. We believe your bill will enjoy wide support and look forward to working with you to secure its passage.

Sincerely,

FRANK O'BANNON, *Governor, State of Indiana.*
JOHN ENGLER, *Governor, State of Michigan.*
BOB TAFT, *Governor, State of Ohio.*
CHRISTINE T. WHITMAN, *Governor, State of New Jersey.*

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COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
*Harrisburg, April 22, 1999.*

DEAR SENATOR VOINOVICH AND SENATOR BAYH: I am writing to express my strong support for the Municipal Solid Waste Interstate Transportation and Local Authority Act of 1999, which you plan to introduce this week. This legislation would at long last give State and local governments Federal authority to establish reasonable limitations on the flow of interstate waste and protect public investments in waste disposal facilities needed to address in-State disposal needs.

Both of you know firsthand the problems States face in managing solid waste, as required by Federal law. During your terms of office as Governors, you worked to support the passage of effective Federal legislation that would vest States with sufficient authority to plan for and control the disposal of municipal solid waste, including noncontaminated construction and demolition debris. The need for such legislation arose from various U.S. Supreme Court mlings applying the commerce clause of the U.S. Constitution to State laws resmcting out-of-State waste and directing the flow of solid waste shipments.

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We recognize that the Municipal Solid Waste Interstate Transportation and Local Authority Act of 1999 would not establish an outright ban on out-of-State waste

shipments; instead, it would give States and localities the tools they need to better manage their in-State waste disposal needs and protect important natural resources. I pledge our support for your efforts to ensure that no State is forced to become a dumping ground for solid waste. I believe your bill will enjoy wide Support and look forward to working with you to secure its passage.

Sincerely,

TOM RIDGE.

Senator CHAFEE. Well, thank you very much.

Senator Specter?

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

Senator SPECTER. Thank you very much, Mr. Chairman. I ask that my full statement be made a part of the record so that I may speak more briefly and summarize my views.

Senator CHAFEE. It will be.

Senator SPECTER. It is a pleasure to appear again before this distinguished committee, and I think it not inappropriate to note this may be my last appearance before the committee chaired by you, Senator Chafee, and I regret that aspect of it. We're going to miss you very much.

Senator CHAFEE. Aren't you nice. Thank you.

Senator SPECTER. And especially in this committee.

While it may be a little premature to speculate about forthcoming elections, or whatever Mayor Giuliani's plans may be—I'm sorry that Senator Reid has departed, but I'll see him on the Senate floor and convey my personal regards and my message when I see him—there's another important constitutional provision which may or may not govern Mayor Giuliani's activities. There is a constitutional provision which prohibits interfering with the movement or travel of any Member of Congress, which would include a Member of the Senate en route to Washington. Now, there is no need to pass through Nevada, but should Rudolph Giuliani pass through Pennsylvania en route to Washington for any purpose, I think even New Jersey, he'd be very welcome.

Now on to today's topic.

I would echo what Senator Baucus has said—that we really ought to get this matter resolved in the 106th Congress. I can recall we came within a hair's breadth in one Congress, and it was all wrapped up and I was on the train heading toward New Jersey with an intermediate stop in Philadelphia when I was called back to the cloak room and the bill was stopped at the very, very last second.

The Senate did pass a good compromise in the 104th Congress, and I applaud the work of the committee starting early to try to get it through the Senate and through the House in this Congress to resolve the matter.

I, too, have been at this for more than a decade. Senator Heinz and I commiserated 1 day about the tremendous stench on the highway outside Scranton with enormous garbage trucks situated there, and I think Senator Warner has characterized the situation as to what problems. He has made the invitation you Navy Secretaries all stick together. And when the Supreme Court has categorized waste in the same category with other commercial projects, I would disagree with that, as I do from time to time.

What we're doing is dealing with a nuisance here, practically criminal conduct. Creation of a nuisance is a crime under common law and under many statutes. So I hope we can deal with it.

The legislation which I have proposed—and there are great similarities in all these bills—would put a presumptive ban on all out-of-State and municipal solid waste unless there is agreement from local governments. And I understand the point that Senator Chafee has made, and there perhaps should be enabling legislation at the State government level so that the State puts is imprimatur on what the Congress authorizes, because Congress does have the authority to deal with the interstate issue constitutionally.

The freeze authority I think should be at the 1993 levels, which was about the time we really started to get into this issue.

I speak from the point of view of a State which is the largest importer of waste. It increased from less than four million tons in 1993 to more than seven million tons in 1998.

Now, the flow control authority issue is somewhat complicated, but I believe that the narrow provisions in Senate bill 663, my bill, provide the balance in saying that the local authorities can institute flow control on facilities constructed before 1994 when the Supreme Court decision came down banning flow control.

I think it was a reasonable expectation prior to that decision that flow control was appropriate, so that if there had been reliance on it, a very solid legal principle where reliance is established, that ought to be recognized, so that flow control, I think, while perhaps not a principle which we would generally want to incorporate, for that limited purpose where there is a showing of reliance, where local authorities had purchased bonds in reliance on what the law was prior to the Supreme Court decision.

That, Mr. Chairman and members of the committee, is a very abbreviated statement of my bill. A longer statement will be included for the record, and I thank you, Mr. Chairman, for moving ahead at an early stage in this Congress, and we'll be glad to work with the committee to try to structure a bill from the varieties of legislative proposals which are now before this distinguished committee.

Senator CHAFEE. Well, thank you very much, Senator Specter.

Senator Robb?

## STATEMENT OF HON. CHARLES ROBB, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Senator ROBB. Thank you, Mr. Chairman. I thank you for holding this hearing, and I hope it will soon be followed by a markup. Congress, as members of this committee and others testifying today have already indicated needs to act soon to address the problem that is faced by States, in many cases, that are being inundated with unwanted out-of-State trash.

Senator Specter and I, along with a number of those on this committee, including my senior colleague, John Warner, from whom you heard just a moment ago, have been working for years to give States and localities the authority that they need to regulate interstate garbage.

When I first started working on this problem in 1993, we faced a situation slightly different than the one that confronts us today. Then there were waste companies that were threatening to build

landfills in communities where they were absolutely unwanted. Unfortunately, many rural communities were powerless to stop them, so I introduced legislation to protect all communities from being dumped on by unwanted out-of-State garbage.

In an effort to move this debate forward, Senator Warner and I have crafted legislation using some new and relatively novel approaches to try to strike the proper balance between allowing interstate commerce and necessary protections for States and localities. I hope some of the ideas we included in our bill, S. 533, can help form the basis of a bill that can break the logjam that has prevented passage of interstate waste legislation in the past.

All of us who represent States on the receiving end of all this interstate garbage understand that the only bill that will truly protect our States is a bill that can be signed into law. So, while we may be tempted to introduce draconian legislation that would score political points back home, we need to stay focused on developing a solution that scores legislative points in the Congress.

It is time for us to craft a serious, sensible, workable piece of legislation that will provide communities with the authority to say no to waste imports, provide Governors with the authority to limit waste imports if the cumulative effect of imports proves harmful, and to assure that importing States receive compensation for the increased costs incurred from handling waste imports.

The situation in Virginia I believe is similar to that in many States. In the past 10 years, Virginia has issued permits to seven large landfills. Because the cumulative impact of these disposal facilities can be broad and negative, States need to have the authority to address these potential long-term cumulative effects. In an effort to gain some protection this year, Virginia's General Assembly enacted legislation attempting to address the problems created by the cumulative impact of these seven mega-landfills, but this effort serves to highlight the need for Congress to act.

To overcome a constitutional challenge, the State placed a limit on the amount of waste that each landfill could accept. This total cap applies to both Virginia trash and non-Virginia trash headed for the landfill. If a landfill operator can accept only a limited number of tons, however, then common sense suggests that they will accept the most lucrative tons first. To get access to that landfill then Virginia communities might have to get into a bidding war with trash coming in from outside the State.

Because the Virginia law does not and may not, under the Constitution, discriminate against waste from outside the state, it is likely that the cost of waste disposal for Virginians will go up.

Without Congressional action, States that try to regulate waste imports reasonably are severely limited in their options. Even though the Virginia legislation appears to conform to the commerce clause of the U.S. Constitution, it was challenged last week on constitutional grounds. Whether or not the Virginia statute stands, Virginia and other States need our help.

The bill Senator Warner and I developed has four major provisions to help States. These provisions are intended to broaden the discussion and examine new approaches for solving this longstanding problem.

The first provision provides local communities with the authority to say no to imports of municipal solid waste. S. 533 sets out specific requirements for information that is made available to communities before they enter into these agreements and ensures that the agreement is negotiated in the sunshine so that all the citizens of the jurisdictions, as well as the neighboring jurisdictions and the State are well aware of the potential effects and the benefits of the facility.

By requiring host community agreements, S. 533 provides local governments with the authority needed to make the best arrangements for their communities. This has been the basis of legislation I have sponsored previously, which came very close to being enacted 5 years ago.

The second provision allows Governors to cap receipts of imported waste at 1998 levels. This provision is similar to the newly-adopted law in Virginia that would allow receipts of in-State waste to continue to grow. Frankly, I wish we had passed the legislation in 1994 and used those levels to limit imports. Unfortunately, since that time new landfills have been opened and have begun accepting out-of-State trash.

This presents us, as policy-makers, with a dilemma. If we limit the amount to 1993 levels, that would mean either that landfills built after that time would accept no waste, or the levels the State accepted in 1993 would be apportioned among the landfills existing today.

Using 1998 as a base year avoids the problem of trying to determine what volume of waste was imported in earlier years.

Some of the legislation under consideration requires that we would treat the level of imports received in 1993. Although this is desirable in many ways, it seems to me it would be virtually impossible to apportion equitably the waste receipts among existing landfills if the earlier date were used as a base.

My concern is that this would open up the States to expensive, lengthy litigation. S. 533 also provides for a $3-a-ton import fee. I liken this fee to out-of-State tuition. There are costs associated with disposal of waste that are borne by the State that imports the waste. For example, in Virginia those costs come out of the general fund. The cost of site inspections, weigh stations, safety checks, and other enforcement activities are assumed by the importing State. It is appropriate, it seems to me, that we share these costs with the exporting entity. A fee of $3 per ton will cover many of these incremental costs associated with waste importing.

Last, S. 533 contains provision new to this debate. In the past, we've focused on protecting importing States. The last provision in S. 533 focuses, instead, on encouraging exporting States to begin to find in-State solutions for their garbage disposal needs. The section provides that, beginning in 2001, any State can refuse all imports from a super-exporting State. Should an importing State choose to continue to accept waste from these exporters, the Governor can assess a premium of $25 a ton on imports in 2001, $50 a ton for waste received in 2002, and $100 a ton for waste received in 2003 and all years thereafter. These fees would give Governors of both importing and super-exporting States some room to negotiate as new capacity is developed. It buys some time for the ex-

porters at a cost high enough to provide needed incentives to site additional space within the State of origin.

It is important to remember that fees are applied to always from a super-exporter, from the first ton to the last. Hopefully, that will motivate all citizens of exporting States to look for in-State solutions.

It is clear that some interstate commerce in trash is necessary and perhaps beneficial. For example, Virginia sends some of its waste to Tennessee, and most States, as has already been indicated, accept at least some waste from other States. But it now appears that New York intends to shut the last disposal site serving New York City without siting additional in-State capacity. This would increase the pressures already felt by neighboring States.

Mr. Chairman, Congress should act before Fresh Kills closes so that the city will not rely on other States for additional disposal capacity.

In the past, I had hoped that by simply providing for the use of host community agreements we would ensure that communities would take only the waste that they felt was essential to operate state-of-the-art disposal facilities.

The lack of true authority in this area has aggravated the problem, and now it is necessary to give more authority at the State level as well as the local level. It is time for Congress to step in.

I believe S. 533 provides new ideas that can strike the right balance, and I hope the Senate can use it as a framework in concert with other solutions that have been offered by other Members of this body to find a real solution to a very real problem.

With that, Mr. Chairman, I thank you and the members of the committee and I look forward to working with you on crafting legislation.

Senator CHAFEE. Thank you very much, Senator Robb.

If you have other appointments, please feel free that you can leave now if you so choose.

Senator ROBB. Thank you.

Senator CHAFEE. Senator Bayh?

## STATEMENT OF HON. EVAN BAYH, U.S. SENATOR FROM THE STATE OF INDIANA

Senator BAYH. Thank you very much, Mr. Chairman, for your leadership on this issue. I, too, would request respectfully that the entirety of my prepared statement be entered into the record.

Senator CHAFEE. Yes, it will be.

Senator BAYH. I'd like to express my appreciation also to the other members of the committee who are here this morning giving their time to this very important issue, and, in particular, to my colleague, Senator Voinovich. As Senator Voinovich indicated, we have been colleagues for many, many years, first as Governors, now as Senators. We've had a productive relationship on many issues, including this one, and so, George, I am grateful for your leadership on this issue, as well.

Also to our co-sponsors, both Senators from Ohio, Senator Lugar from Indiana, both Senators from Michigan, as well as Senator Feingold from Wisconsin have very graciously agreed to co-sponsor

our legislation, so we do have a good bipartisan support for our approach.

Before beginning, Mr. Chairman, I'd just like to briefly echo some comments from our colleague, Senator Warner, and say that the shipment of out-of-State garbage is different. It is different than most commodities. It is different when residents in a community find that there are used needles contained in this material. It's different when they discover there is potentially infectious medical waste included in this material. It is different when they find that these large trucks that are used to transport the garbage too often contain maggots and other vermin that can leak and get about in the community. It becomes a very emotional issue, and it decreases property values. Fear goes up, and people get demobilized. To fully understand this perhaps it is necessary to visit with some of the constituent community groups and recipient communities.

I remember vividly visiting with a woman named Terry Moore near Cloverdale, Indiana. She started a group called ''Dump Watchers,'' because the semi tractor trailers were coming through past her home practically 24 hours a day, all too often leaking. It is just different than most other commodities with which I am familiar, and that is the fact that underlies the importance of the legislation that I am honored to be before you today to testify about.

Mr. Chairman and members of the committee, let me try to put this in some perspective for you by beginning with just a couple of questions.

How would you and your neighbors react if the person next door began dumping tons of trash in your back yard? What if he said there was nothing you could do to stop it, and that he planned to increase the amount he was dumping in your back yard every day? What if his dumping of his trash in your back yard, in fact, increased the cost of you disposing of your own trash?

Sound far-fetched? Sound outrageous? Well, that's the position that Indiana and many other States find themselves in in trying to deal with the rising tide of waste imposed upon us from other States.

As you well know, States such as ours have been struggling for years to ensure the safe, responsible management of out-of-State municipal solid waste. As Governor of our State, I tried to ensure that our State's disposal capacity would meet Indiana's long-term solid waste needs. However, our efforts to institute effective, long-term waste management policies were, and continue to be, thwarted by obstacles at the Federal level which allow massive and unpredictable flows of out-of-State waste into our State disposal facilities.

There are negative environmental as well as economic impacts. Depriving importing States of the ability to impose reasonable regulations, this waste creates unacceptable burdens.

First, Mr. Chairman and members of the committee, unregulated out-of-State waste interferes with a State's duty to protect the health and safety of our citizens.

There are significant difficulties in ensuring that out-of-State waste flows comply with State disposal standards. Last year, alone, the Indiana Department of Environmental Management was forced to suspend operation of two transfer stations and fine nine others

for failure to provide proper documentation of the waste that they handled. The State sent inspectors to 21 other landfills to investigate other violations.

We're vigilant in monitoring our facilities, but the sheer volume of waste makes it virtually impossible to detect and catch every violation.

Second, Mr. Chairman—and I like to emphasize this because of your long and very honorable support of environmental protection efforts across our country—this situation undermines our State environmental objectives.

The expansion of landfilling discourages waste minimization and our State recycling programs. During my years as Governor, we started the very first recycling grants in the history of our State and the very first grants to businesses to try and minimize the waste stream that they were generating. How can we convince citizens in Indiana to reduce their waste and increase recycling of byproducts if they see our landfills being filled up with out-of-State waste from other jurisdictions? Where is the incentive for responsible waste management when our accomplishments will be overwhelmed by millions of tons of waste coming from other jurisdictions that perhaps don't share our concerns about reducing the long-term waste stream because it is easier and cheaper for them to take the short-run solution of just dumping their trash in a State like Indiana.

It really does undermine the incentive for long-term, responsible waste policies in the States that have to receive this waste.

Third, there are significant economic burdens that come with out-of-State waste. States make economic decisions not to dispose of their own waste, as Senator Robb was referring to, and transfer some of these costs to States that must receive it.

As landfill space inevitably diminishes, the cost of disposal in low-cost States like Indiana will rise. Ultimately, Indiana citizens will be paying a penalty imposed on them by other States who choose not to provide for their own waste disposal needs.

I believe there is a term for this. It's called "taxation without representation." It's simply not right that a policy of neglect in some jurisdictions can lead to the rise of costs on the part of citizens in other States.

It is this unfairness that brings us here today. As previous witnesses have testified, the Supreme Court has ruled that Congress must act before States have the ability to deal with this problem.

The need for that authority has never been more acute. Nationwide, interstate waste shipments increased by 32 percent last year, alone. Shipments to Indiana have been steadily rising over the last few years to a current level of 2.8 million tons. The same is happening in other States, such as in Ohio and Virginia. And these increases will be dwarfed by the impact, as Senator Robb mentioned, of the planned closing in 2001 of the Fresh Kills landfill in New York, which will send another 13,000 tons of municipal waste into interstate commerce each and every day. That's almost five million tons a year.

In Indiana, after decreasing from 1992 to 1994, waste imports significantly increased in 1995 and doubled in 1996. Between 1996 and 1998, out-of-State waste received by Indiana facilities in-

creased by 32 percent, to its highest level in the last 7 years. In fact, in 1998, 2.8 million tons of out-of-State waste were disposed of in Indiana, and that's 19 percent of all the waste disposed of in our State coming from someplace else.

Our State Department of Environmental Management has predicted that our State will run out of landfill space by the year 2011, or perhaps earlier, given the surge of out-of-State waste imports.

Now, we have laws in place, such as a needs determination law, that allows the State to deny an operating permit to a new disposal facility if no local or regional need for the facility is established. However, without Congressional action, Indiana may lack the authority to implement our law.

I could go on about the impacts on the State of South Dakota that's facing a $10 million fine because of its efforts. Impacts on States such as Virginia and others have been outlined here today.

Now, the Voinovich-Bayh legislation would end this uncertainty in Indiana and other States that are trying to implement effective, long-range waste management strategies. Senator Voinovich and I believe that we have crafted a comprehensive, equitable approach to interstate waste disposal. Our bill, S. 872, is a bipartisan, national approach to interstate waste management and it is based upon principles developed and supported by a coalition of 24 Governors, Mr. Chairman, from around the country, and has been endorsed by the Governors not only of my State and Senator Voinovich's State, but the States of Michigan, Pennsylvania—Senator Lautenberg, I'm happy to say the Governor of your home State, as well, has endorsed this approach—as well as the Western Governors Association and the National Association of Counties.

Mr. Chairman, I know we need to get on to other witnesses. I have many other things that I could say here outlining the provision of our bill. I won't go through them all because you've been very gracious with your time today. Let me just conclude by saying we see this as an issue of basic fairness.

Every State can, we believe must be, primarily responsible for taking care of its own waste. Senator Lautenberg mentioned the situation of acid rain. It was a decision of this Congress to deal with this on a national level, and the utilities in our State have invested hundreds of millions of dollars to comply. Our rate-payers are now paying more to try to stop some of this material from going to States like New Jersey.

We ask that a similar national approach be taken to the problems of out-of-State waste.

Before I depart, Mr. Chairman, I also have an additional privilege here today. Our lieutenant governor is with us, representing our State. Lieutenant Governor Joe Kernan has a long and distinguished career in public service. He is a decorated veteran of the Vietnam Conflict, as well as the former mayor of South Bend, his home town. Elected in 1987, he served in that position longer than any other mayor in the city's history—nine years.

In 1996, he became Governor O'Bannon's lieutenant governor and has been doing an outstanding job leading economic development, agriculture, tourism, and other important responsibilities for the State of Indiana.

He is a fine public servant, Mr. Chairman, in addition to which he is my dear friend, and I'm pleased that he could be with me here today representing our State.

Thank you for your patience, Mr. Chairman. I appreciate the ability to come and testify before your committee.

Senator CHAFEE. Did the lieutenant governor serve under that noted Governor Bayh?

Senator BAYH. Only as mayor, Mr. Chairman, not as lieutenant governor.

Senator CHAFEE. Not as lieutenant governor?

Senator BAYH. Lieutenant Governor O'Bannon is now Governor O'Bannon, I'm happy to say.

Senator CHAFEE. I see. All right. Well, thank you for your comment. Let me just ask you one question, if I might, Senator Bayh.

The impression is that in many of these instances the local communities desire to be a waste disposal facility. In other words, they have created these facilities. Presumably, there are some jobs involved with it. And so it is not always the case where the receiving facility objects to it. Am I correct in that or inaccurate?

Senator BAYH. That is not always the case, Mr. Chairman. You are right in some instances. But I would have to say that in a majority of cases, many communities would very much like the ability to deal with this situation. Often, private companies have the ability to contract around the desires of a local communities, and that's another reason for this legislation. Our approach will give local communities and local governments the ability to have the first say in how trash is disposed of in their own back yards.

Senator CHAFEE. Okay. Fine. Well, thank you.

Senator LAUTENBERG. Mr. Chairman?

Senator CHAFEE. Yes.

Senator LAUTENBERG. Just one quick thing.

I'm happy to be here to witness the reunion of the Retired Governors Club. I want to say thanks to both of you, Senator Bayh and Senator Robb. I think that your interests are in solving a problem, and to try to do it in a compromise fashion is a very difficult problem.

Senator Bayh, when you talk about your neighbor putting trash in your back yard, I assume that your back yard would not be a licensed landfill and collecting revenue for that; otherwise, I would be certain that a good lawyer like you could stop that very quickly.

Senator BAYH. We would certainly try, Senator.

Senator LAUTENBERG. Thank you.

Senator CHAFEE. All right. Thank you all very much.

Now we'll go to the next panel. Thank you both, gentlemen. We appreciate your coming.

Next witness will be Lieutenant Governor Kernan of Indiana.

Senator CHAFEE. Now what we're going to do is we're going to have a limit of 5 minutes for your presentation. Your entire statement will go in the record, but if you could keep an eye on these lights that would be helpful.

Mr. KERNAN. I will do so, Mr. Chairman.

Senator CHAFEE. Thank you.

**STATEMENT OF HON. JOSEPH E. KERNAN, LIEUTENANT GOVERNOR, STATE OF INDIANA**

Mr. KERNAN. Mr. Chairman and distinguished members of the committee, I'm pleased to be here to be able to testify on pending legislation that would vest in States and localities the Federal authority to control shipments within reason of out-of-State municipal solid waste.

I would ask, in the interest of brevity, if my comments and my formal statement, as well, be made a part of the record, Mr. Chairman.

Senator CHAFEE. Right. It will be.

Mr. KERNAN. In Indiana, as Senator Bayh mentioned, during calendar year 1998 we had some 2.8 million tons of out-of-State waste that was disposed of in our State. That is enough to, coupled with Senator Warner's analogy, to cover two lanes of Interstate 95 from Washington, DC, to Richmond, Virginia, each way with 10 feet of garbage.

We, in the State of Indiana, over time have taken aggressive enforcement measures through State regulations to try to limit the amount of out-of-State flow from our landfills. We've negotiated agreements with the States of New Jersey and New York, as well, and we've had several of our landfills that accepted out-of-State waste that have closed, but we still see the amount of waste that comes into our State increasing, even though we are no longer—in 1998, anyway—taking imports that come from the east coast.

As a mayor, I can relate to you, Senator, that it is, as Senator Voinovich and Senator Bayh mentioned, very difficult to explain the your constituents, when you are implementing waste reduction measures, recycling measures, to see your landfill capacity continue to be eaten up because of the import of out-of-State waste.

We in my community did not see the import of out-of-State waste as being a good way to approach economic development. It is not something that we wanted in our community, but the answer that we had to give was that there was nothing that we can do about it because it is interstate commerce, and I don't believe that that is a good answer.

We made several legislative attempts in Indiana going back almost a decade with higher tipping fees for out-of-State trash, as well as certification that there was no hazardous or infectious waste. All of those efforts, with the exception of one, were struck down by the Supreme Court.

We still have a law in place that requires applicants for new landfills or expansions to demonstrate that there is a local or regional need for additional capacity, and this needs statute has been used to deny permits on several occasions, but there is no certainty that it will withstand a court challenge if one comes about.

Several of the highlights of S. 872 that we believe are very important in Indiana are, one, that it ensures that the local officials who have the responsibility are held accountable for in-State disposal capacity by imposing the presumptive ban after enactment and requiring formal approval for out-of-State shipments.

Second, that State officials be permitted to freeze out-of-State shipments at all facilities at the 1993 levels unless such a limita-

tion conflicts with an existing host agreement or a permit which authorizes a higher level.

We also believe that the provision that permits those States that receive more than 650,000 tons of out-of-State MSW in 1993 may impose a ratchet in order to be able to reduce the amount of trash that they receive by 35 percent over a 7-year period.

And, finally, States are given some perspective controls with laws that would permit State laws, such as we have in Indiana, that deal with a needs requirement that is similar, as well, to what has been enacted in other States.

Taken together, we believe that the provisions of S. 872 do not eliminate all together out-of-State waste shipments, which would neither be prudent nor necessary. They do, however, provide a mix of public notice, requirements, and controls that will ensure public support for States' waste management programs and prevent unwanted floods of out-of-State trash.

We believe, as has been mentioned by many of the speakers before, that this is a measured approach. It is reasonable. It provides provisions that we think are balanced, and we believe that it is time for the Congress to act.

I appreciate, Mr. Chairman, the opportunity to be here on behalf of Governor O'Bannon and the State of Indiana, and thank you for this opportunity.

Senator CHAFEE. Well, thank you very much, Governor.

Is it my understanding—I think in your entire written statement you have a suggestion that you've been able—Indiana has been able to reduce the volumes coming in from New Jersey and New York, and using aggressive enforcement of your existing laws, and also through—apparently, you negotiated some agreements with those two States.

Doesn't that suggest that you are able to take care of the situation?

Mr. KERNAN. No, Senator, I don't think that it does, given the fact that we have seen the amount of trash that has come in from out-of-State continue to increase, even with those agreements with New York and New Jersey.

And, as was mentioned by Senator Bayh, as well as Senator Robb, we are concerned with what will happen when the Fresh Kills landfill in Staten Island becomes fully closed in the year 2001.

So, while we have been able to negotiate agreements with some States, we have not with others, and have seen the amount of trash that continues to come in increase over that period of time, and we believe very strongly that Federal legislation is required—again, in a balanced way—to give us the tools that are necessary at the State and local level to be able to make some of these decisions, ourselves.

Senator CHAFEE. Senator Lautenberg?

Senator LAUTENBERG. I have no questions, Mr. Chairman.

Senator CHAFEE. Senator Voinovich?

Senator VOINOVICH. Yes. Some of the industry representatives and public officials have expressed concern that our bill and similar legislation would be administered unevenly and disrupt waste shipments because of different choices made by State and local government. Do you have any response to that criticism?

Mr. KERNAN. Senator, I guess that I would disagree very strongly. Where we find ourselves today and have for the last decade is in a position where we have tried to come up with schemes that will be successful, will not be overturned by the Supreme Court, in order to limit out-of-State trash.

There is a great deal of uncertainty in local communities, in States, as well as, I believe, within the waste management industry because there is no clear guidance, and I think that that speaks to the fact that we would be much better off, there would be much better guidance if the Congress would act in the responsible way that has been proposed, particularly in S. 872.

Senator VOINOVICH. Thank you.

Senator CHAFEE. You all set?

Senator VOINOVICH. Fine.

Senator CHAFEE. Indiana, itself, is an exporter to some degree, is it not?

Mr. KERNAN. We are, Mr. Chairman. We exported in 1997 about 660,000 tons of solid waste. That is less than 25 percent of the amount of solid waste that came into the State.

Again, we are looking for a balanced approach here and one that will not limit, will not prohibit out-of-State shipments, but that gives States and local communities the ability to be able to say yes or no within reasonable guidelines, and we are certainly cognizant of the fact that if we have an additional 2.8 million tons worth of capacity in the State, that we have the additional room to be able to accommodate that 660,000 tons that went out-of-State of 1997.

Senator CHAFEE. I suppose one way of restricting the import of it is to not have the facilities. In other words, all of your facilities I presume are state-of-the-art facilities with the base provided. Am I correct in that?

Mr. KERNAN. You are correct, Senator. We have today, if we look at just our projections on in-State trash, about 24 years worth of capacity. We believe that it is prudent to have in the neighborhood of 20 years worth of capacity at least as we look forward, recognizing the difficulty of siting landfills.

At the same time, if the imports of trash continue at the same levels, that capacity will be reduced by a third, and we only have 16 years worth of capacity—again, assuming that we stay at the same levels that we have been in 1998.

So, while we have state-of-the-art facilities that are operated, for the most part, by one of the 61 solid waste districts, which are multi-jurisdictional in Indiana, we believe that other States should take on the same kind of responsibility that we have to make sure that there is in-State capacity that is provided to be able to handle your own garbage and not those of anyone who wishes to ship that garbage into your community.

Senator CHAFEE. Okay. Fine. Well, thank you very much, Governor, for coming. We appreciate it a great deal.

Mr. KERNAN. Thank you, Mr. Chairman.

Senator CHAFEE. Give our best wishes to your Governor, too.

Mr. KERNAN. I will. Thank you.

Senator CHAFEE. Now, the next panel will consist of—if those gentlemen and ladies would come forward—Mr. Seif from Pennsylvania, Mr. Sondermeyer, Floyd Miles from Virginia, Dewey

Stokes from National Association of Counties, Grover Norquist, and Robert Eisenbud.

Mr. Seif, I understand you have an engagement that you have to get to, and what we'll do is we'll put you on and then we'll ask you questions and then you can be excused. So why don't you proceed.

Now, if you would, when you see the yellow, wind down; when you see the red, that's the time to stop.

Go ahead.

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

Mr. SEIF. Thank you, Senator. Good morning. I'm Jim Seif, secretary of Environmental Protection, Pennsylvania, representing Governor Tom Ridge and 12 million other Pennsylvanians who are fed up to here with this interstate trash issue.

What we seek, quite simply, is Federal legislation, like the bills before you now that will give us a voice in deciding how to handle a problem that only over the last few years has gotten worse.

In every year of Governor Ridge's term—that's 5 years—he and I have visited Members of Congress, including some of you, and, in fact, this is my second appearance on this issue before this committee.

The previous Governor of Pennsylvania, Bob Casey, was equally energetic and equally frustrated on this issue, and he was joined by many other Pennsylvanians in that regard.

Why are we again here today? Because the problem that we recognized over this last decade has only gotten worse.

First, in the last 5 years, trash imports to Pennsylvania have increased from 6.6 million tons a year to nearly 10 million tons, which is approaching half of all the waste that goes into Pennsylvania landfills.

Second, we can anticipate more of this same kind of problem as Fresh Kills closes and other market events take place. I might add that the closing of Fresh Kills is an environmental plus for New York and for the Nation and it should go forward. The fact of the matter is that other machinery should be in place, as well, for that event.

And, finally, a new problem has emerged, referred to very eloquently by Senator Warner. Pennsylvania is host to 600,000 trash truck trips per year. Our inspections show, including some very recent ones, some egregious violations of every common-sense safety and trash hauling precept at the continuing rate of about 25 percent.

These facts have increased our resolve to press this issue and to join others in finding a common-sense solution. We have become even more convinced in the process that, no matter what we do, only Federal legislation giving us some additional permission to do sensible things is the solution.

Senator Chafee, I think you are absolutely right that trash is interstate commerce. It is a commodity. We use landfill methane from landfills now to generate electricity. We will some day mine these landfills, I'm sure, for the resources that we foolishly threw

away. We earn fees from landfills. We have employees at landfills. And we know that the trash that goes into landfills goes across State borders each way, each day, into and out, as Senator Lautenberg has pointed out.

We do not doubt that it is interstate commerce, but, you know, not all interstate commerce is equal, as Senator Bayh and Senator Warner have pointed out. It is not the same to have a software company set up in your community as it is to have a landfill. It has a different effect, it requires a different configuration of services and protections. It is, simply, different, and States have treated it differently in every other regulatory context.

Pennsylvania has made heavy investments and hard choices over the last decade since 1988 when Act 101 was passed, and no matter what we do—the investment of hundreds of millions of dollars, the Nation's toughest environmental standards for landfills, the largest system of curbside recycling, and so on—no matter what we do, the trash keeps coming from elsewhere.

This is, in effect, a misuse of an asset that we have gathered about us. The investment of political capital and ordinary dollars in this infrastructure is being used up by others. It is as if someone ran a pipe into one of the Great Lakes and said, "Let's send it to Mexico." It is an asset. I think the Congress wouldn't stand by and leave that area unregulated. Maybe they wouldn't close the pipeline, and we don't ask that the trash pipeline be closed, but the fact is something would be done and we ask for that here.

We built a great system and, like that Field of Dreams, they came, and they're helping us use it up at a greater rate than we had a right to predict.

We ask that no fence be built at the borders. We ask for no money. We ask for the right to export trash to others under reasonable constraints. And we ask for the elements of the bill, whether it is Voinovich-Bayh, who have done so much over the years as Governors and Senators on this problem, or any other bills that would give us at least the following tools: the right of communities to allow—not bar, but allow, as well, because it is commerce—trash; the imposition of a freeze and a ratchet at sensible numbers; and the capping of out-of-State waste that goes into a State. We also think it is a great idea to help exporting States, and it might be that the committee will want to do that, as Senator Robb has suggested.

We hope that Pennsylvania will respond to an invitation by the Congress to act reasonably in this area in a reasonable way, just as the court has invited the Congress to act reasonably in this area.

Thank you.

Senator CHAFEE. Well, thank you very much, Mr. Seif.

I don't have any questions.

Senator Lautenberg?

Senator LAUTENBERG. Just one, briefly, Mr. Chairman.

Mr. Seif, the ratcheting down—and I'm pleased to hear the fact that you want a reasonable—expect a reasonable solution to be found, because otherwise nothing will happen.

But if it ratcheted down and the communities that have landfills continue to want to receive the revenue and the material that

comes, how would you suggest making the decision as to which community can continue to receive at the old rate if you have one limit overall for the State?

Mr. SEIF. In one respect, the old rate is locked in by existing contracts, and the renewability of them might be countenanced by a State law or encouraged, for that matter, since a community also has a right to predictability, as does the industry.

I think Federal legislation would actually increase predictability here, because right now, as political pressure builds, States are going to do all manner of things—some of them capricious, not all of them constitutional—in this area in an unpredictable way, and if their efforts and zeal were channeled by a sensible Congressional set of formations and a predictable ratchet, then I think we could help the industry, as well.

Senator LAUTENBERG. Thanks, Mr. Chairman.

Senator CHAFEE. Senator Voinovich?

Senator VOINOVICH. I'd just like to comment that I think the comment you made about States taking all kinds of inventive ways of preventing it—I know I faced that when I came in as Governor of Ohio. We tried everything possible to move forward, and we even had some people suggest that the State Highway Department should get a little bit more active on our interstates, and called and said, "No, we're not going to do that."

But the fact is that we do have a crisis now in our States, and with Fresh Kills closing it is going to get a lot worse, and you're right—people are going to start using some things they ought not to be using.

But I would say to you we'll have some testimony today stating that it interferes with the commerce clause and the free enterprise system and so forth. What do you say to some of the witnesses that will be making that argument today?

Mr. SEIF. That we would agree that interference with interstate commerce is a no-no constitutionally and economically, but that this is not the kind of an interference that will hurt the industry or hurt the States who are exporting in the long term. It will cause predictability. It will let States do what States ought to be doing, which is act responsibly within their own borders and to step up to the plate if they haven't already.

It is no solution to say we're not going to import trash because we don't have the capacity. What that does is the citizens in your own State are stuck with higher costs and problems and economic issues. The fact is, you should arrange for your own capacity, as we are doing, and the Congress can, without violating the interstate commerce clause, provide for sensible, reasonable provisions for State law to do that.

Senator VOINOVICH. You might argue that, in other words, you have certain rights, but when you exercise those rights, if they start interfering with my rights and driving up my costs and taking up my valuable land, then there is some reason to say that the exercise of that right should have some limitations on it.

Mr. SEIF. It's the misuse of a State's asset, and a State ought to be able to protect that within limits, and that's what's going on here.

Senator VOINOVICH. It's a tough thing. I can tell you I'll never forget the first news conference I had was on all this waste coming in in 1991, and everyone said, "Don't worry about it. The stuff is good, and no infectious waste."

Well, they had a traffic situation. A truck turned over, and the only thing that was in that truck was infectious waste, and all of the comforting statements that we got from the landfill operator and others that this was wonderful and proper, in fact, wasn't. So that's the other problem that you have—you don't know what you're getting into your respective States.

Mr. SEIF. I did have—time doesn't permit—a lot of dirty pictures to share with the committee, namely, the results of our most recent truck stop, and the leaking and the problems and the contents that shouldn't have been there going both ways. We would like permission to work—in fact, the idea of working with a highway department is not a bad idea. I'm going to take it back—and to protect ourselves in that public safety aspect, as well.

Senator CHAFEE. It seems to me one of the points that has been made here constantly is that trucks coming down with stuff running out of the trucks, and so forth, that, it seems to me, is something that can be controlled by the State wherein it is occurring. It seems to me that if a truck is leaking and not adhering to environmental regulations, then there's a way of enforcing that.

I think—was it you—one of the witnesses said that 25 percent of the trucks were—was that your testimony——

Mr. SEIF. Yes, sir.

Senator CHAFEE.—were in violation of local laws. Well, they ought to be made to obey local laws. So I'm not sure I find that as convincing an argument on this whole subject because something can be done about it in your case of Pennsylvania.

Mr. SEIF. I will bolster the argument in this fashion: the truck has already traveled hundreds of miles by the time it gets to our border. I don't think we help interstate commerce at all when we stop it there because it is leaking. It ought to be stopped at the State of origin. There ought to be some provisions, perhaps in a bill that would permit the States to get together in special regulation of that kind of hauling, like the food backhauling issue is now covered.

It also seems to me that the problem would be more easily regulated, if regulation is the answer, if there were just a whole lot fewer trucks. We don't need 600,000 to serve Pennsylvania. We need about half that.

Senator CHAFEE. Well, it seems to me that if you come down on them hard enough they are going to straighten out their act. It would seem that way to me.

Okay. Fine. Well, thank you very much.

Mr. SEIF. Thank you, Senator.

Senator CHAFEE. I know you have an appointment, so if you wish to be excused, you can be.

Now Mr. Sondermeyer, assistant commissioner for environmental regulation in the State of New Jersey.

Did you want to say a few comments?

Senator LAUTENBERG. Well, just to welcome Mr. Sondermeyer. New Jersey prides itself on its ability and its interest to fighting

for a cleaner environment, and this is such a serious problem. Everybody keeps on mentioning Fresh Kills, and we're going to be in the first wave when that stuff starts coming if something else isn't done about it.

And we know that Mr. Sondermeyer has had long experience working on environmental issues. We welcome him here and I look forward to hearing what New Jersey from Trenton thinks about how we ought to solve that problem, Mr. Chairman.

Mr. SONDERMEYER. Thank you, Senator.

Senator CHAFEE. All right. Go to it. If you'd follow the lights, likewise, that would be helpful.

Mr. SONDERMEYER. Okay.

**STATEMENT OF GARY SONDERMEYER, ASSISTANT COMMISSIONER FOR ENVIRONMENTAL REGULATION, STATE OF NEW JERSEY**

Mr. SONDERMEYER. Good morning, Mr. Chairman and distinguished members, and thank you for the welcome, Senator Lautenberg. I greatly appreciate the opportunity to update you on New Jersey's situation.

A great deal has changed since Congress last seriously debated the need for interstate waste shipment and flow control legislation. Nationally, as has been noted repeatedly, the closure of Fresh Kills and the prospect of 13,000 tons per day, or almost five million tons per year of additional waste leaving the city has generated renewed interest and concern.

To put this in perspective, New Jersey exports about two million tons per year.

From recent data, it shows that we are no longer exclusively an exporter of solid waste. Today we are receiving waste for disposal from New York, Connecticut, and Massachusetts. With the phased closure of Fresh Kills, exports to New Jersey for disposal and transport through our State to disposal locations to our south and west will increase significantly, as has been noted.

Also, since the Carbone and more recent Atlantic Coast decisions, New Jersey has worked with our counties to reconstruct our State's solid waste system. As a result, 15 of our 21 counties are now operating in a free market environment. However, the State and the counties are still faced with about $1.2 billion in outstanding debt which was a result of New Jersey's 20-year program to achieve self-sufficiency and to handle our own waste in an environmentally sound manner.

Under our State plan, 31 state-of-the-art waste management facilities were constructed. New Jersey's waste flow control rules had been specifically upheld in Federal court in 1988. The recent Carbone and Atlantic Coast decisions changed our course in midstream.

As we move into this Statewide free market, tipping fees are substantially lower, but inadequate funds and in some cases no funds are being collected out of disposal facilities to pay down the $1.2 billion debt.

To date, two counties have entered technical default, and the State has provided nearly $41 million to address stranded investments in five counties.

The bond rating situation is also of significant concern. Rating agencies have lowered the rates on almost all solid waste debt to below investment grade. Moody's Investors has downgraded the individual revenue bond rating for five counties to varying levels of junk bond status. Standard & Poor's has either downgraded or announced the risk of being downgraded for seven additional counties.

During the past year-and-a-half, the State has been very aggressive in moving to a Statewide free market system. We have pledged over $200 million in debt relief through a combination of a public question to approved by New Jersey voters last year and general fund appropriations.

We have adopted emergency rules to streamline our regulatory process. Our State treasurer has been conducting operational audits of 13 of our 21 county systems to ensure that tipping fees are as competitive as possible.

New Jersey has also entered a number of interstate agreements with our sister State of Pennsylvania, where we export most of our waste, which paved the way for a coordinated approach to future solid waste management.

In addition, we are working with Governors' offices from seven States across our region—Ohio, Michigan, Indiana, Pennsylvania, Virginia, and New York—in a good faith effort to find common ground on the difficult issues of waste disposal.

Despite these efforts, many of our counties still require long-term financial assistance. To add even more uncertainty, nearly 30 challenges remain lined up in the courts to test the validity of county and State actions taken since deregulation began.

New Jersey continues to believe in the philosophy that States should be responsible for managing their own waste. We support legislation to provide reasonable limits on out-of-State waste if it is combined with limited flow control authority.

We recognize that our old system of flow control is gone and, therefore, we seek only limited flow control authority as a transition tool to be used by a small number of New Jersey's 21 counties to pay off outstanding debt.

Toward this end, New Jersey supports S. 872, sponsored by Senators Voinovich and Bayh. S. 872 would not establish an outright ban on out-of-State waste shipments, but would give States and localities the goals they need to better manage their in-State waste disposal needs.

Further, S. 872 contains limited flow control authority necessary for counties in the State of New Jersey to rationally move to a free market, to pay off outstanding debt and to meet the interstate waste limitations authorized in the bill.

We also support S. 663 sponsored by Senator Specter for these reasons.

Conversely, New Jersey cannot at this time support S. 533. It is critical for New Jersey that any Federal interstate waste shipment legislation be balanced with at least a limited flow control provision.

Federal legislation that both limits interstate waste shipments and gives limited flow control authority, provides the tools and

flexibility needed by the States and localities to rationally manage our solid waste.

I sincerely thank you for your kind attention. I'd be happy to entertain any questions you may have.

Senator CHAFEE. Well, thank you very much, Mr. Sondermeyer.

Now, Mr. Miles, chairman, Charles City County Doctor of Supervisors, Providence Forge, in Virginia.

Mr. Miles?

**STATEMENT OF FLOYD H. MILES, SR., CHAIRMAN, CHARLES CITY COUNTY BOARD OF SUPERVISORS, PROVIDENCE FORGE, VIRGINIA**

Mr. MILES. Mr. Chairman and members of the committee, my name is Floyd Miles, Sr., and I'm chairman of the Board of Supervisors in Charles City County, Virginia.

Thank you for the opportunity to present the experience and the point of view of Charles City County concerning out-of-State waste.

The free market forces that brought a reasonable landfill to Charles City County have been both an environmental and financial success story, and we are very concerned with any legislation that would arbitrarily impact interstate commerce without any justification other than political expediency.

Way of explanation, Charles City County is one of the originals. They established in Virginia in 1634, and when they took the last census in 1990 we had approximately 400 more people in Charles City than when the first census was taken in 1790.

We're located between Richmond and Williamsburg——

Senator CHAFEE. That's what you call a slow rate of growth.

Mr. SONDERMEYER. Yes, sir.

[Laughter.]

Mr. SONDERMEYER. Controlled. That's right.

We're located between Richmond and Williamsburg on the James River, with almost no industry, no cities or towns, no stop lights. We are essentially one of the poorest counties in eastern Virginia.

In 1987, the State of Virginia mandated that we close our local landfill, which was typically of most landfills at that time, which was just an unlined hole in the ground without any monitoring wells.

Although the State mandated that we close the facility and replace it with something else, no funds were made available to us from the State. At that time, our tax rate was $1.29 per hundred, which was one of the highest rates of any tax rate in any rural county in this State. Even with this high tax rate our school system was physically deteriorating and we had no hopes of other significant improvements to cheaply recognize alternatives for handling that solid waste at that time would have require a real estate tax increase of at least 50 percent.

None of these alternatives were acceptable to us, and we proposed a public/private partnership where a private company would operate the reasonable landfill owned by the county, would do so under extremely, extreme, strict environmental safeguards and would still pay significant revenues to the county.

After many public hearings, the citizens of Charles City supported this approach and our landfill operator was selected. That

led to the construction of Charles City County's regional landfill that now serves not only eastern Virginia but cities along the east coast.

We recognized from the beginning that if a landfill design was going to be as stringent as we required to assure the safety of our citizens, there would be a substantial amount of trash brought to us from landfills outside of the county. We did not discriminate at that time between trash from the city of Richmond, our capital in northern Virginia, or to the trash of Newark or Network. The cost of building an acre of landfill to our specification for twice the standards required by the State of Virginia and their environmental protection agency is approximately $300,000. We were willing to trade off the handling of other plaintiff's trash in return for having such a safe facility.

In and to providing Charles City with an environmentally safe landfill, our agreement has provided to offset it with a dramatic source of revenue. Since the landfill began operating in 1990, we've collected approximately $40 million in payments. These funds have allowed the county to reduce its tax burden to its citizens to $0.72 per hundred, to replace completely its failing school facilities, to expand its recreational programs for its citizens, and to provide new office facilities for both county government and the county school board.

Because the regional landfill was such an unqualified success in Charles City, a number of other Virginia counties have allowed regional landfills to be placed in them. These counties are typically rural with low tax base. As a result, Virginia now has seven regional landfills.

We recognize that public pressure and concern that revolves around the handling of trash, but this committee should recognize that the drive to limit out-of-State trash has nothing to do with the environment and everything has to do with politics, especially in our State.

A review of the actions of our Governor and our Legislature during the most recent session of the General Assembly that ended in February proved this point. While the Governor and the Legislature bent over backwards to discriminate against out-of-State waste, there was also a bill which would have required the closure of unlined landfills that have been demonstrated to be leaking and posing a threat to the environment of Virginia. This bill received no support from the Governor and was defeated by the Legislature.

So Virginia is left with officially sanctioned leaking landfills, while we are concerned today with the quality of the New York trash versus Richmond trash and what State is No. 1, two, or three in terms of hauling out-of-State waste.

I should also point out that there's a certain amount of hypocrisy in Virginia's position, since all of our hazardous waste is disposed of outside of Virginia, primarily in Ohio and in New York, and our nuclear waste is disposed of out-of-State.

Interstate commerce works to the extent which it is restricted, will have real impacts on real people. The consequences of such a restriction will be increased fees for other generators of solid waste, and the same time, penalize counties who have attempted to meet

the requirements of the State and EPA with environmentally safe landfill facilities.

Thank you, Mr. Chairman.

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

Now we will hear from Mr. Dewey Stokes, president, Board of directors of Commissioners, Franklin County, Ohio, on behalf of the National Association of Counties.

Mr. Stokes?

**STATEMENT OF DEWEY R. STOKES, PRESIDENT, BOARD OF COMMISSIONERS, FRANKLIN COUNTY, OHIO, ON BEHALF OF THE NATIONAL ASSOCIATION OF GOVERNORS**

Mr. STOKES. Thank you, Mr. Chairman. I am Dewey Stokes, president of the Board of Commissioners of Franklin County, Ohio, and I'm testifying today on behalf of the National Association of Counties and represent over 3,000 counties in the United States, and we are also speaking on behalf of the Local Government Flow Control Coalition.

We commend you, Mr. Chairman Chafee for holding this hearing and for allowing the longstanding issue of interstate waste and flow control to again be brought before the committee.

I also want to compliment Senator Voinovich for his dedication to solving this problem and his persistence in sponsoring Senate 872 legislation that is vitally important to my county and many other communities, and similar bill, Seignette bill 663 by Senator Specter, is also worthy of our praise.

A great deal of investment in pub infrastructure has taken place in the local governments that used flow control as a method to finance facilities dispose of solid waste. Since 1980, over 20 billion in State and local bond issues were sold for solid waste facilities.

The need for legislation to grandfather these existing facilities continues just as strongly today as it did when the U.S. Supreme Court in 1994 decided the Carbone case.

We have not defaulted on our bonds. Most communities have made large financial sacrifices in order to meet these bond payments. But surely no one would seriously suggest that flow controlled reliant communities must endure an Orange County, California, type experience to justify Congressional action.

To avoid default and bond downgrades, communities have raised taxes, imposed new trash fees, cut back on waste management and recycling services and draw down on reserve cash.

Nationally, the total outstanding debt that has either been downgraded or put on a credit watch for potential downgrading by the rating agency, since the Carbone case is over $2.3 billion by local public agencies.

What does all this mean? It means that when counties go to the bond market to borrow funds for other public projects like jails, bridges, and schools, the interest rate is significantly higher. This additional cost is borne by local taxpayers, small businesses, as well as all our other residents.

In Franklin County, we have over $160 million in stranded investments in a wasted energy facility that was closed on the heels of the Carbone decision. After that Carbone decision, we also laid

off $250 employees and imposed a $7 per ton fee on a waste tax on all municipal solid waste generated in Franklin County and disposed of in Ohio Landfills.

We had to take that action to generate sufficient revenue to meet our debt obligations due to the Carbone decision and Congress's failure to help us.

My community will do everything possible to prevent a bond default and to keep our bond rating. I would expect other communities everywhere to do the same thing.

The flow control provision of S. 782 and 663 are exactly the same, and I repeat, they are exactly the same as the stranded cost protection provisions of the electronic, utility, restructuring leg that is supported by many of the Senate's most staunch advocates of a free market economy.

Under that legislation, no electric utility will have to suffer a bond downgrade or, worse yet, a bond default to be eligible for financial protection.

Local governments are equally deserving of protection on the same basis, without being forced to suffer more downgrades, more local tax increases, and more litigation.

We ask only for equitable treatment. Simply put, the Carbone decision in 1994 changed the rules of the game. S. 872 and 663 provide narrow grandfather union for pre-Carbone use of a flow control to assist affected communities and making that transition.

Under these bills, flow control authority can be reinstituted only for those communities that initially used flow control before May 1994. Once pre-Carbone debt is paid off, the community's authority under these bills terminates.

We hope that the committee will join with the Senators who have sponsored the flow control bills and temporarily give us back what the Supreme Court took away.

We urge you to support Senate S. 872 and similar bills.

I also want to commend Senator Voinovich for addressing the issue of interstate waste in his bill.

Like my counterparts in many other States, we want to make sure that your communities have the control over waste imports from others states, whether we welcome it or whether they reject it.

In conclusion, I hope we can finally resolve these difficult issues, and we certainly stand ready to help and assist wherever we can.

Thank you, Mr. Chairman, for the opportunity to offer this testimony today.

Senator CHAFEE. Well, thank you very much, Mr. Stokes.

Now we have Mr. Grover Norquist, president, Americans for Tax Reform.

Mr. Norquist, we welcome you once again.

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

Mr. NORQUIST. Thank you. Glad to be here.

I represent Americans for tax reform. We're a citizen organization and we receive no money from Federal, State, or local taxpayers or institutions.

I have just been over in the House the last couple of days where they have been taking turns going after the First Amendment and the Second Amendment, and today we're having a discussion about whether the commerce clause is a good idea over here on the Senate side.

I think commerce clause is a good idea. I think interstate commerce is a wonderful idea.

I think that, as a country, we've moved away from George Wallace's fraudulent understanding of State's rights and the idea that States have the ability to go after the people inside their states. Peoples rights do not change when they cross State borders. We are one country, and interstate commerce is one of the most important things that keeps it that way.

The economist Bruce Bartlett said that if somebody really wished the United States ill, he should convince the government to keep statistics on the flows of balance of payments on goods and services between States. Then, every State would fight about whether they were buying too many cars from West Virginia or California or whether computer software is being built in one State rather than another.

Are we going to get into discussions about liver transplants—somebody was saying all trash has to be buried in the State where it was made. Do all liver transplants have to be within States. Shall we allow a State to decide that heart and liver transplants shouldn't cross State borders, or the State should be able to grab those?

I think these are very dangerous, but there are two bad ideas being discussed today. The first is limiting interstate commerce. The second is flow control.

I think flow control is extremely dangerous as a concept. All the taxpayer groups, all the free market groups are very concerned that what flow control does is subsidize and bail out white elephants. Some politicians made some very bad decisions in getting their counties and local governments into businesses they had no business getting involved in. This is the United States of America. This is not Poland running steel mills 30 years ago. We ought not to be in the business of having government-run businesses that compete with the private sector, and then, when they do—and they do it poorly, and then they invest poorly, they want to turn around and impose a tax, because that's what flow control is, a tax on the people who live near them to bail out these white elephants that they put in.

If they were poorly built, if there was poor judgment of putting them in, the politicians who put them in should be fired and removed. They should pay the consequences if there was corruption involved, and that's why the facilities aren't worth what people said they were going to be worth when they built them. If there has been corruption, the guilty ones should go to jail, not just out of office. But again, Mayor Brett Schundler has pointed out that flow control legislation: "would institutionalize one of the worst excesses of the 'big government knows best' mentality. We're forced to spend money on waste disposal that we would rather use for schools or police." The coalition against flow control, which includes the National Federation of Independent Business, the National

Restaurant Association, the National Association of Manufacturers, the Association of Builders and Contractors have said, "Small business owners strongly oppose flow control because it would allow local governments to dictate where small business must send their waste and allow these governments to set monopoly prices.

The National Association of Manufacturers says "flow control embodies the worst of all government monopolies—a hidden tax in the form of higher prices, reduced efficiency, more intrusive government at a stifle-free market. Karen Kerrigan of the Small Business Survival Committee has explained, "Flow control is nothing short of centralized State planning that harms individuals, families, and businesses. It raises taxes, increases the size of government, and hurts American consumers.

Americans for Tax Reform considers a vote for flow control to be a vote for tax increases. Flow control is a stealth tax. It is a hidden burden imposed on families an businesses by artificially inflating the price of waste collection. The American people already pay too much in taxes. We do not need yet another tax increase. Those politicians who built the white elephants should pay at the poles for having done so. They should not inflict their mistakes on the taxpayers.

Senator CHAFEE. I'll put you down as undecided then, shall we? [Laughter.]

Senator CHAFEE. All right. Mr. Eisenbud, director, legislative affairs, Waste Management, Inc.

**STATEMENT OF ROBERT EISENBUD, DIRECTOR, LEGISLATIVE AFFAIRS, WASTE MANAGEMENT, INC.**

Mr. EISENBUD. Thank you, Mr. Chairman.

There's not a lot for me to say that has not already been said by one witness or another. Let me just briefly run through some of the points I make in the written statement and then try to respond to a few points that have come up.

You've heard about the development of regional landfills in response to the closure of small landfills as a result of subtitle D requirements and financial burdens and so forth. Let me just indicate that Waste Management operates five of the seven regional landfills in Virginia, and our experience there is illustrative of what I think is typical.

Senator CHAFEE. Do you operate the one in Miles' city, in the Charles City——

Mr. EISENBUD. We do, sir, Charles City County. And I have——

Senator CHAFEE. Mr. Miles, does he operate the one in your——

Mr. MILES. Yes, sir.

Senator CHAFEE. Thank you. Go ahead, Mr. Eisenbud.

Mr. EISENBUD. Our experience in Virginia is typical of what occurs throughout the country, we think. All of those five regional landfills are built in accordance with subtitle D or better, in terms of the RCRA requirements. By contrast, there are 63 local landfills still operating in Virginia. Of those, 30 have no liners at all. Operations at 15 of the local landfills have contaminated the groundwater. No action is scheduled at all to do anything about the problem or to close the leaking landfills. Let me repeat: no action is scheduled at all for any of the leaking landfills.

Meanwhile, the two others that are operated are providing safe, economic, environmentally protective waste disposal, plus, as Mr. Miles indicated, for the cumulative impact at our five landfills, $18 million of benefit fees and services in 1998, alone. These revenues and services, which I detail to some extent in the statement, have made it possible for host communities to improve and maintain infrastructure and services that would simply not otherwise be feasible.

Now, in my statement I suggest that there are three criteria that could usefully be applied to evaluate proposed legislation. They are the extent to which the legislation provides protection, opportunity, and predictability. Those three catch-all criteria capture a number of other questions and concerns that we raise in the statement.

I hope the need for protection is obvious. We're talking about good faith reliance on existing law and a long line of Supreme Court cases that have formed the basis for contracts and investments of very substantial proportions.

Similarly, legally binding contracts under State law should be protected, since they are entered into in good faith.

The opportunity criterion refers to simply an ability to participate in an interstate market that has thus far served very, very well.

And, finally, predictability—and this is particularly relevant, I hope, Senator Voinovich, to a concern that you raised earlier.

We need to know what the rules are, and, frankly, the proposed legislation provides no predictability. The array of discretionary authority that is vested in Governors makes it impossible to predict which Governor will impose which authority when, and whether that authority that is imposed will last into the next Administration, or might even be changed by the current Administration. Frankly, it makes business planning impossible.

As you might gather, for a number of reasons, we find that all of the bills before the committee at the present time fail to meet the criteria that we suggest.

Finally, on Fresh Kills, let me just mention that there are two facts that have escaped attention. One is that nine States and the District of Columbia export more than New York when measured as a percentage of waste generated. Four of them are represented on this committee.

Second, New York has indicated that it intends to ship waste only to landfills that have agreed to receive out-of-State waste. So, as I say in the statement, "What, as a matter of policy, is wrong with that?"

Finally, as I indicate in the statement, we have strongly opposed flow control in its proposed form because we think it is simply too late to put Humpty Dumpty back together again 5 years after the decision. Too much has transpired by way of contracts, investments, people hired, arrangements made. It is not possible to take a snapshot of 5 years ago and say, "Let's reimpose that on the current world."

Thank you, Mr. Chairman.

Senator WARNER [assuming the chair]. We thank you very much. Chairman Chafee is checking into his responsibility before the Fi-

nance Committee. They have the nominee for the Secretary of Treasury, of course.

My colleague, would you like to lead off with the questions?

Senator LAUTENBERG. That's very generous, and I do appreciate it.

Senator WARNER. You deferred to me this morning very graciously, and I thank you for that.

Senator LAUTENBERG. Well, we belong to a similar club here, white hair and all that.

[Laughter.]

Senator LAUTENBERG. Of the wizened heads.

Mr. Chairman, it is interesting to hear the contrasting opinions, and I have a couple of questions that I assume kind of nag everybody, and that is: how do we square away the costs to those communities who are careful with their recycling and want to ship out their trash to the most cost-effective place? That might be out of State, might be in State—dump sites that are licensed—they all are.

Mr. Eisenbud, I assume that any dump site that is now created will have to meet the environmental standard that a license requires.

Mr. EISENBUD. I would say so. Yes, sir.

Senator LAUTENBERG. All right. So that we're not creating new problems in the State of New Jersey. We have the largest number of Superfund sites in the country. New York ranks very closely behind us. And we learned a painful lesson—that if you want to do it, you've got to do it right because you pay the price. It is just deferred as to when you pay it.

And so I would ask, Mr. Sondermeyer, the New Jersey Business and Industry Association strongly opposes flow control, as do the Americans for Tax Reform—I think we heard that. How do we reconcile their opposition as taxpayers to the flow control that you feel is necessary to restore the financial health of some of our New Jersey counties? What's fair here?

Mr. SONDERMEYER. You're right, Senator. It is a very—I think you used the term "thicket" in your earlier comments. It is a very complex situation to try to deal with, and the problem is that we went ahead in good faith on the rules of the game going back 20 years ago and built a significant solid waste infrastructure of state-of-the-art facilities due, as you know, to the legacy of problems that we had both in Superfund sites, and essentially we had a town dump in 567 towns, and we built 17 state-of-the-art disposal facilities, 13 of which are public facilities, and that's part of the problem that we have to try to deal with, which is somewhat different than other parts of the country.

And what we need in terms of the rates situation that you're addressing, I think, is a rational transition to a free market.

We agree that, notwithstanding the good faith of the system that was built, we're not going to go back to directing every single town to send solid waste to specific facilities, but we have to have a transition, and we're seeing that transition take place now. We've seen rates in New Jersey come down, on average, $28 per ton, but what goes with that is some services have been cut back and some services are jeopardized.

In particular, you had noted recycling and the job that New Jersey has done in recycling. We're seeing some slippage in recycling in the State because of this reduction in the rates, because what we try to do is build a holistic system that dealt not just with disposal but also with source reduction, household hazardous waste and so forth.

So it is a difficult issue to reconcile, and right now we're very concerned because we have had a couple of counties enter technical default and we have already had to provide bail-out funds to the tune of $41 million just so far, and we've utilized, I think, every tool that we could under existing law to try to guide our counties. The counties have stepped up to try to deal with this situation, but we still have substantial default possibilities that we're facing.

Senator LAUTENBERG. So we would have to, rather than simply say, "Okay, we'll control the volume," we would have to build in some kind of incentives for continuing or expanding recycling efforts.

So to show good faith interests by the communities, to control the volume of trash that they create, none of us ought to be free to just dump out whatever we feel like. You know, there are communities around the country where you pay per bag, and a bag contains a certain weight of trash, so that people have an interest in curbing the volume that they create.

But what is the difference, if you can tell me, between tipping fees that might be available for those communities that ship their trash to wherever they ship it to, as opposed to being forced to send their material to an incinerator or another place designated as part of the flow control system?

Mr. SONDERMEYER. I think at this point we've seen some transition with the rates, and they're coming quite closer. There was a wider disparity that had been reported in earlier years between the tipping fees in our State and in other States. I think at this point the regional differences have diminished. Actual disposal costs in the industry have gone up, I believe, $10 per ton at many of the facilities operated even out-of-State, and our rates have come down. So that differential is narrowing.

Senator LAUTENBERG. What had been the rates for those places that built the facilities? Listen, we've got to find a way to give them some relief.

Mr. SONDERMEYER. Yes.

Senator LAUTENBERG. They did what they did in the context of the then law and the context of the then policies, so they are out there with these things. But what—just so that we know, what might the costs be for a community that sends its facility—its material to a facility that has been created in our State?

Mr. SONDERMEYER. In our system right now it's about $60 per ton.

Senator LAUTENBERG. As contrasted to $10 a ton?

Mr. SONDERMEYER. No, no. As contrasted—in Pennsylvania, landfills I think now are in the $50 to $55 per ton rate, so the differential is very close.

Senator LAUTENBERG. I'd like permission, Mr. Chairman, to get——

Senator WARNER. Senator, take such time as you wish. It's just the two of us here, so if you want to continue for a bit that's fine.

Senator LAUTENBERG. Well, we've got our good friend, the ex-Governor——

Senator WARNER. I'm sure our good friend will——

Senator LAUTENBERG. Ex-Governors don't really want to wrestle with this problem.

Senator WARNER. I find this one has adapted himself quite well to this institution.

Senator LAUTENBERG. I think so. Well, I said before, Mr. Chairman, that I felt like I was an associate member of the Retired Governors Club because we had four Governors between two there and two here, so now we're finally regaining a majority.

But I would ask if Mr. Sondermeyer could provide the committee with a specific list of communities that handle their trash both ways in the State of New Jersey to give us an example about what the differences might be so that we can help make sensible decisions.

[Information to be supplied follows:]

The following chart compares the tipping fees charged at the primary transfer or disposal facility in each of New Jersey's 21 counties just prior to deregulation (November 1, 1997) and the current rate in place as of June 1, 1999. The chart reflects, on average, a $28 per ton decrease which is a direct function of deregulation and the need to set rates that are competitive in the region. At first glance this appears to represent positive rate reduction. After further analysis it must be recognized that in the wake of deregulation, counties and authorities have been charging market rates in order to attract any appreciable volume of waste, whether the rate is reflective of covering debt obligations or not. In many cases, sufficient funds are not being collected. By the end of 1998, two counties had already entered technical default and the State provided nearly $41 million to address stranded investments in five counties.

Should Congress enact interstate waste shipment and flow control legislation, we do not anticipate rates to climb back to 1997 levels for several reasons:

First, it is now clear that flow control authority is not needed in every county. We anticipate that only those counties with significant stranded investment would need to resort to exercise flow control authority in the future.

Second, for counties with significant stranded investment, the State has already set aside $210 million to help subsidize rates, where appropriate, following the entering of grant and loan agreements to help keep tipping fees in the competitive range.

Third, any county which requests State financial assistance must agree to undergo a detailed operational audit of their solid waste operations by the Department of Treasury and related State agencies. Through this review, all methods of streamlining operations and reducing costs have and will be identified, with specific conditions built into the grant or loan agreement. To date, 13 of our 21 counties have undergone comprehensive operational audits. This will help keep rates in the competitive range regionally until stranded investments can be retired.

New Jersey Solid Waste Disposal Rate Summary

| County | Primary Facility | 11/10/97 Pre-Atlantic Coast Rate | 6/1/99 Post-Atlantic Coast Rate |
|---|---|---|---|
| Atlantic | ACUA System | $120 | $48 |
| Bergen | BCUA Trans. Sta | $102 | $60 |
| Burlington | County Landfill | $49 | $51 |
| Camden | Camden Incinerator | $93 | $50 |
| Cape May | CMCMUA Landfill | $93 | $76 |
| Cumber | County Landfill | $60 | $60 |
| Essex | Essex Incinerator | $73 | $50 |
| Gloucester | Glouco. Incinerator | $101 | $60 |
| Hudson | SWTR Trans. Sta | $63 | $60 |

New Jersey Solid Waste Disposal Rate Summary—Continued

| County | Primary Facility | 11/10/97 Pre-Atlantic Coast Rate | 6/1/99 Post-Atlantic Coast Rate |
|---|---|---|---|
| Hunterdon | County Trans. Sta | $93 | $57 |
| Mercer | MCIA Trans. Sta | $117 | $98 |
| Middlesex | MCUA Landfill | $55 | $51 |
| Monmouth | County Landfill | $75 | $55 |
| Morris | MCMUA Trans. Sta | $88 | $83 |
| Ocean | OCLF Landfill | $63 | $55 |
| Passaic | No Facility | $105 | No Rate |
| Salem | County Landfill | $64 | $64 |
| Somerset | BRI Transfer Sta | $133 | $73 |
| Sussex | County Lanfill | $109 | $58 |
| Union | UCUA Incinerator | $83 | $50 |
| Warren | PCFAWC Inciner | $100 | $48 |
| Averages | NA | $88 | $60 |

Senator LAUTENBERG. Mr. Eisenbud, do you know what the difference might be for communities that use your managed facilities and as compared to other local landfill sites or what have you?

Mr. EISENBUD. I don't have that information available. I can try to get it for you, sir.

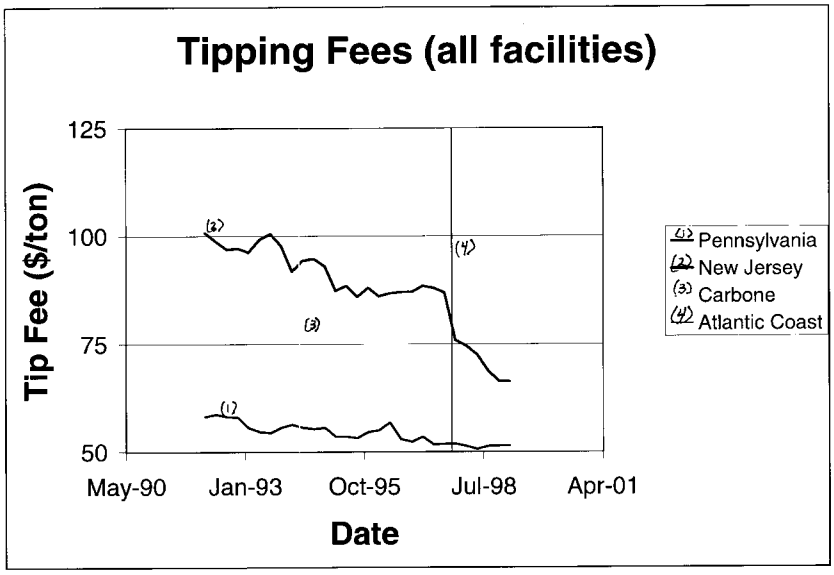
Senator LAUTENBERG. I'd appreciate it.

[Information to be supplied follows:]

New Jersey and Pennsylvania Tipping Fees[1]

| Date | Tipping Fee ($/ton) | |
|---|---|---|
| | Pennsylvania | New Jersey |
| March 1992 | 58.19 | 100.77 |
| June 1992 | 58.72 | 98.74 |
| September 1992 | 58.15 | 96.91 |
| December 1992 | 58.06 | 97.18 |
| March 1993 | 55.62 | 96.27 |
| June 1993 | 54.68 | 99.18 |
| September 1993 | 54.37 | 100.52 |
| December 1993 | 55.66 | 97.72 |
| March 1994 | 56.29 | 91.80 |
| June 1994 | 55.67 | 94.33 |
| September 1994 | 55.31 | 94.73 |
| December 1994 | 55.60 | 92.99 |
| March 1995 | 53.58 | 87.33 |
| June 1995 | 53.51 | 88.45 |
| September 1995 | 53.22 | 85.90 |
| December 1995 | 54.59 | 87.99 |
| March 1996 | 54.98 | 86.04 |
| June 1996 | 56.77 | 86.73 |
| September 1996 | 52.91 | 87.00 |
| December 1996 | 52.28 | 87.02 |
| March 1997 | 53.46 | 88.41 |
| June 1997 | 51.69 | 87.97 |
| September 1997 | 51.77 | 86.82 |
| December 1997 | 51.81 | 75.89 |
| March 1998 | 51.34 | 74.56 |
| June 1998 | 50.60 | 72.53 |
| September 1998 | 51.27 | 68.73 |
| December 1998 | 51.35 | 66.37 |
| March 1999 | 51.42 | 66.30 |

[1] Chartwell Information Publishers




Senator LAUTENBERG. Mr. Chairman, we have an interesting situation here where Mr. Stokes, an old friend of mine, used to be the national president of the Fraternal Order of Police, and so I would guess that anybody that violates the rules that have been established are in for deep trouble.

Mr. STOKES. We'll monitor that, what you said earlier about the trucks, Senator.

Senator LAUTENBERG. Yes. Well, you know, I'm charmed by different views on this, because, in addition to shipping trash to Indiana and receiving some part of their public electric facilities or power generating facilities, we shipped them some fantastic football players that played at Notre Dame and the University of Indiana, and we want some compensation for those things.

Mr. STOKES. We thank you, Senator

[Laughter.]

Senator LAUTENBERG. Thank you, Mr. Chairman.

Senator WARNER. Our colleague from Ohio.

Senator VOINOVICH. Mr. Stokes, could you go into a little more detail about the impact that this lack of flow control has had in your community in terms of raising taxes and citizens giving up services and how that has impacted the taxpayers around the country as a result of the fact that they pulled the plug on—and your ability to finance those facilities.

Mr. STOKES. I think since the Carbone decision, right after, a couple weeks afterwards we had to close, we closed our plant. We laid off approximately 250 employees and constituents. We still have, as a result of the Carbone decision, $160 million debt to pay off the plan. It makes it very difficult to compete.

We charge $27 per ton. It is a little lower than our State average in my county for that. But, in addition to that, we've had to impose

a $7 a ton surcharge tax on our taxpayers to make those—meet the financial costs of the operation after the closure of the plant.

So it does have an impact, and this is about taxes and taxes and taxes on our people. It's a tax issue. But, at the same time, if we don't meet that obligation of those bonds and we default on those bonds, our taxpayers are going to pay more when we go out to bond the schools, the bridges, and other items that we have to go out to bond in the cities and the counties that are affected by our regional plan.

So it is about facing economics and changing the game, changing the rules of the game in the middle of the game.

We had a flow control in our State that met the obligations and still does today. What we're asking the Congress to do is pick up where the Supreme Court said, "It is now your responsibility to protect those States that had the flow control, justified flow control system prior to May 1994."

So I think it is only fair that Congress invoke your legislation to protect those States that went out on the limb to control.

What would we do with the garbage today if we hadn't gone out, if they hadn't taken the venture, if they hadn't went out in Virginia and built the plants to take in that trash? What would we do? Where would the trash go?

Senator VOINOVICH. I think that the objective evaluation of this is—and I was there as a county commissioner back in Cuyahoga County many years ago, and we had a tremendous problem of what are you going to do with the garbage and all the other things that were there, and there was enormous pressure on us by the citizenry to do something about this problem, and so many communities—we didn't go forward with it, but many communities did, and duly-elected representatives of the community exercised their best judgment to deal with the problem that was plaguing the community, and they made those decisions and they went forward with them.

The point you're making is that after those decisions were made the ability to capture the garbage and have flow control disappeared as a result of the Supreme Court decision.

It seems to me, in fairness to those communities that got involved in this, they ought to not have that situation just kind of dumped in their lap and they should be given some credit for the decision-making that those communities have made, and I think that's what this legislation is trying to remedy for those communities.

In terms of bond issue rating, having everything—your bond rating lowered because of the fact that you've got a problem with a waste facility, which penalizes your people when they go out and borrow money for something else.

So I think that there is a real strong, I think, argument here that if people acted responsibly and did what they thought they were supposed to do that you don't, as you mentioned, change the rules in the middle and then kind of let them say, you know, "You're stuck with it." And we're trying to do that right now with public utilities in this country who——

Mr. STOKES. Absolutely.

Senator VOINOVICH.—went ahead and built nuclear power plants and did all kinds of things. By the way, they were trying to be consistent with good environmental concerns. And now they're stuck out there with these stranded costs, and we're trying to reach out to try and do something about it, and so I think that that's something that is real important, that we are talking about taxpayers.

Mr. STOKES. We absolutely are, and Franklin County right now stands at a point that, if challenged and it went to the Supreme Court of the United States, it could possibly reverse what we're doing and put us in a worse condition than we're in right now.

We have strived to minimize the damage and minimize the taxes on the taxpayers in our county, and I think it is only fair that the Congress pick up the gauntlet that the Supreme Court laid at its doorstep and give us the temporary flow control situation that we need to meet those obligations.

And I might say, those obligations were met, Senator, as you said, based upon the future and upon the demands of the time of getting rid of trash they made, and those politicians that were in office, at least in our area, made an intelligent decision to build this facility to answer a very serious problem.

Can you imagine the criticism they would have gone under if we did not have proper trash disposal facilities? And the health care problems that would evolve from that would have been more catastrophic than what we face even today.

Senator VOINOVICH. Mr. Chairman?

Senator WARNER. Take such time as you wish, Senator.

Senator VOINOVICH. Okay.

Senator WARNER. Although I might add I'm going to ask if you would chair the committee until Chairman Chafee returns or place the committee in recess awaiting his return.

I have a few questions, but if you want to continue on——

Senator VOINOVICH. I'd just like to make one other comment.

Senator WARNER. Sure.

Senator CHAFEE. Mr. Eisenbud, you set up a criteria and I'd like to comment on it, because we looked at it.

You talked about protection. The current system does not protect sound environmental recycling laws and policies today established by State. It also doesn't protect communities that do not want to take out-of-State waste.

Now, in the case of Virginia, you wanted it, right? And I'm sure there are communities in my State that may want to have these kinds of facilities built. This doesn't say that they can't do it. It sets up an understandable way of dealing with the problem and, frankly, just response to the local concerns of communities. If you want to do that, that's fine.

The other thing you talk about is opportunity. The current system does not provide an opportunity for affected local communities to say no to out-of-State waste shipments. In other words, we had a community, you know, that didn't want to have it, business comes in, gets the permit, permit is issued, they can go ahead and build it and the local community has nothing to say about whether or not they're going to have that there or not in their community.

Predictability—the current system does not provide predictability to States who make tough decisions to site landfills and inciner-

ators and determine how much property is available to dispose of trash in the State.

It doesn't provide predictability to local governments who have to submit disposal plans.

In other words, I don't know whether you know how tough it is to site landfills. I mean, you know, I've been in trying to site landfills and go through these things and getting people to go along with them, and then, once it's done and then they find out that, you know, the stuff is coming in from all over the place, they get angry with you.

What we're trying to do here is to deal with a problem that has been around here a long time in an understandable fashion.

Now, if there are some things that we can do to kind of sway some of your problems, maybe we can sit down and talk about it, but we just can't let this thing keep going the way it is going. And it is going to get worse.

I'm going to tell you something: I'll say this to the citizens of New York—I don't think it is fair that they should just dump their problem on the rest of the country, and right now they are exporting 3.7 million tons, and now when Fresh Kills is gone it's another 13,000 each day. Each community, each State has a responsibility to deal with this, and the politicians in those States have the responsibility to step to the table and take on siting landfills that people don't want and deal with the NIMBY problem.

So we're trying to get some equity and fairness here. Maybe we can provide an incentive to States to say to start to deal with the problem.

Why isn't the State of New York right now, why isn't Governor Pataki out there saying, "We've got a problem. We need to do it," go to the Legislature and work on siting these facilities? Why not?

Mr. EISENBUD. I trust that is a rhetorical question.

Senator VOINOVICH. It is. So we'll let somebody else do it someplace else.

You know, this may be—there's different types of interstate commerce. I've got to tell you something, Mr. Norquist: the people in my State don't think that infectious waste and garbage is interstate commerce. They feel it's a threat to the public health and welfare. Okay? That's the way they look at it.

Mr. Chairman?

Senator WARNER. Well, I thank you very for your views, Senator. I'm glad you've come to the Senate for many, many reasons, not the least of which has been the few of us fighting this lonely battle for many, many years, about 15 for this Senator.

Senator VOINOVICH. Mr. Chairman, I want to say to you I have been working on this problem since 1991. Twenty-four Governors now are in favor of doing something about it. The Western Governors, Governor Whitman, Governor Floria—Governor Whitman is now for it.

We had this ready to go 2 years ago and it got killed in the House because the chairman of the Rules Committee in the House was from New York State and he made sure it didn't get done.

We don't have that any more and we can get it done this time.

Senator WARNER. You know, I think, my colleague, I want to make two observations.

One, throughout my career in the Senate I've always been deferential to the Governor of my State, whether they're democrat or republican, and the State Legislature. I've always tried to work and be helpful. I have no answer to this question in Virginia about the series of landfills which are not under your aegis, Mr. Eisenbud, but which you bring up, Mr. Miles, in your well-prepared statement.

I don't have an answer. I make no excuses as to why our State hasn't enacted such legislation as is necessary to bring about a correction of the existing situation. But I do feel very strongly this bill that Senator Robb and I put in is fair, and I say, Mr. Miles, to you, you've written a very good statement. Your constituents should take pride in how you've represented their interest, and that's your job. But listen to this—"immediate authority"—this is the Robb-Warner bill—"on or after the date of enactment of this section, a Governor of a State that imported more than a million tons of municipal solid waste during the calendar year 1998 may restrict the quantity of out-of-State municipal waste received for disposal at each landfill during a calendar year to the quantity of out-of-State municipal solid waste received for disposal at the landfill during 1998."

Now, Virginia is somewhere in the five to six million tons. That's a lot of trash that is permitted by this to continue to be brought into the State. Now, all I'm trying to do in this legislation is strike a balance.

So my question to you, Mr. Miles, is: do you feel that that's an unreasonable provision, when we're trying to strike a balance between those who suffer a detriment to their quality of life—indeed, their environment and possibly their health, safety, and the highways are clogged with the transportation systems bringing this in? Is that unreasonable in your judgment?

Mr. MILES. Well, Senator, to answer your question, let me go back just a little bit and ask to be allowed that time, sir.

When we first were directed by the State to close our landfill because it was a hole in the ground, we as a county—and I served on that board at that time, which was almost 12 years ago—we decided that we would build the most environmentally safe landfill that there was at that time.

So what we did, we mandated that the contractor build a hazardous waste landfill that was only allowed to accept municipal solid waste.

Now, why did we do that? Because that required an additional amount of liners, and we felt that we needed to make sure that our citizens were protected, so we told them, "If you want to build a landfill, here are the requirements that you have to build it to."

When we looked at the landfill, itself, we looked at it from the long-range process. A lot of additional landfills in Virginia have opened up with an unlimited amount of tons per day that they could accept in. We started off with a low number and gradually ended up at 6,000 tons per day because we felt that that was a number that we could take in safely to provide our citizens with their disposal of solid waste and also receive the funds necessary to improve the standard and the quality of life for those in the county.

So we, in turn, put a 6,000-ton limitation per day that could be accepted. Well, if you look at 1998 levels, because of our looking at it for the future, we're only accepting an average of 2,500 tons per day.

When this law went into effect for us we were the original regional landfill in the county because now we're restricted to 2,500 tons a day, when some of our neighbors that, for whatever reason, decided not to put a cap on it, they can accept, 6,000, 7,000, 8,000, 9,000, 10,000 tons per day based on 1998 levels, and we're saying that's punishing us as a county when we tried to look long-range and tried to look at what we felt was best for the citizens and the State.

The State is mandating to us what we can and cannot do. I've heard continuously statements made that we want to look at it from the standpoint of what the State and local government can do.

Our citizens—we had a mandate from them that we needed to do something. We were in a predicament that we had to do something, and we felt that we would turn a negative into a positive. We had to accept ways to—let's get some revenues from it so that we can completely rebuild our school system.

We have a new K–12 school system. The State was in the process of telling us that unless you improve your school systems we're going to take it over. We said that was not going to happen, so we built a completely new school system.

Senator WARNER. I appreciate the economics in your county. I have visited your county through the years, and I recognize the problem and I want to commend you and other responsible citizens in your country for trying to certainly construct your physical plant in such a way as to maximize the preservation of the environment in your immediate area and meet other requirements for quality of life in the county.

But I've got to balance against that, say, the folks up here in northern Virginia who witness every day these trucks going down I–95—you know, that's a principal corridor, am I not correct?

Mr. MILES. That's correct, sir.

Senator WARNER. That congests the highways, it adds pollution, and in some instances those trucks have not been equipped in such a way as to prevent some leakage of this refuse—primarily the fluid—as it goes down the highway.

So people of our State of over six million citizens are affected far beyond the environs of Charles City County by the importation of this waste.

Likewise, the James River—I've had people in my office—I really had to contain them—about the leakage into the river, pollution that is occasioned by these heavy barges transporting this waste up, the odors that are attendant to this transportation system. So I'm trying to strike a balance.

It seems to me that six million tons or thereabout a year is still an awful lot of trash. If I had my way, I wouldn't allow this to continue.

Now, I cannot explain why the Virginia Congressional delegation in the House—I haven't petitioned all of them—have, I think, somewhat views different than mine, but I'm going to forge ahead—may be by myself with Senator Robb, but I'm going to forge

ahead to see what I can do to help strike a balance in terms of the quality of life of our citizens throughout the State that could be affected by this.

But, again, you've discharged your responsibility very fairly and commendably. You've raised some interesting questions, and I'm candid to say I don't have the answer.

Mr. MILES. Senator, if I could, just one additional comment. It is kind of ironic that we talk about the trucks and whatever when we were trying to allow barges, which have been proven to be safer—we've got some containers going up the James River going to some of our neighborhoods that have some stuff in them that if it touches your skin for 3 seconds it will eat your skin off, and we've been trying to allow barge traffic to come through——

Senator WARNER. You mean other than those associated with your landfill?

Mr. MILES. Yes, sir. We have, going to the chemical companies on the James River, they have some stuff in those tankers that if it touched your skin for 3 seconds it will eat through your skin, and we've got the double-lined barges that we want to send up there, but yet the State is saying you can't do it. That's why we've challenged them in court, to prove that yes, we can do it.

Senator WARNER. Well, as you can see, this is a very controversial issue.

Mr. MILES. Yes, sir, it is.

Senator WARNER. And it is a responsibility of the U.S. Congress to weigh carefully and fairly the arguments of all and try and come and make a decision.

Mr. MILES. Yes, sir.

Senator WARNER. Now, Mr. Eisenbud, what views do you have about the constituents that come to see me about, say, that main corridor of transportation, which is an artery in our State, and its ever-increasing number of trucks associated with this situation? What do you say? Do you feel that this is an inequitable approach?

Mr. EISENBUD. Senator, I wouldn't use "inequitable" to describe it. I think it is problematic for us.

If I could take your points in series, the problem that we see with the text is that the freeze——

Senator WARNER. With the what?

Mr. EISENBUD. With the freeze authority. It does not protect contracts at all, as far as we can determine. So if we had a contract that was written in good faith in reliance on the existing law that was legally binding in the State of Virginia under Virginia law that called for an increase of deliveries to the facility at Charles City County over a period of years, the freeze would prevent that from ever happening, and obviously there has been reliance on that contract.

Second, when the super export ban kicks in under your bill, as we understand it, the ban will overwhelm the freeze, and so, to the extent that waste has been coming to Charles City County from New York—which it clearly has—that super exporting ban will prohibit it entirely, and so it is very likely to result in considerably less than the freeze level in that circumstance.

Senator WARNER. What approach, then—and I ask this in a constructive and with a fair tenor of voice and intention—what ap-

proach would you suggest that I take with respect to the literally millions of people right along this corridor of 95 who are suffering some degradation in terms of their lifestyle as a result of this burgeoning economy of waste?

Mr. EISENBUD. I appreciate that concern and would very much like to try to help, and I'd like, if I might, to talk further with you about it, recognizing the complexity.

Senator WARNER. Let's talk right here in the open hearing. Here we all are.

Mr. EISENBUD. One of the things that I would offer is that barges make much more sense than trucks. The Coast Guard has testified in Virginia hearings that barges are safer. We are proposing, as Chairman Miles indicated, to use double-hulled, steel-alloy, sealed, floatable containers. Even if the barge sinks, the containers will float without contaminating anything and be towed ashore probably by an ordinary boat. In the meantime, they'll contaminate nothing.

For every barge load, we will take literally hundreds of trucks off I–95 if permitted to do so. That's got to be a net environmental benefit if the barge containers and operations are as we intend them to be.

Now, I want to acknowledge to you, Senator, candidly, there were problems——

Senator WARNER. I beg your pardon. Do you want to go back on that a little bit. Senator what?

Mr. EISENBUD. I want to acknowledge to you very candidly that there were problems with barging that some of your constituents may be referring to. Those were 2 years ago, with a totally different operation, without those sealed containers.

Senator WARNER. That may well serve——

Mr. EISENBUD. And there is no barging going on now.

Senator WARNER. That may well serve my State. I'm not that familiar with my colleague's State, but I know a lot of areas barge is not an alternative to the arterial highways, and that—anyway, I've raised my questions. I'm going to turn the gavel over to my distinguished colleague here now to continue with his inquiries and then allow the chairman an opportunity to return.

Senator VOINOVICH [assuming the chair]. Has he indicated he's coming?

Senator WARNER. He has so indicated. Thank you.

Senator VOINOVICH. Well, I think what I'm going to do then is recess the committee until the chairman comes back, because I haven't any further questions I'd like to ask any of the witnesses. Thank you very much for being here today.

[Recess.]

Senator VOINOVICH. The meeting is adjourned.

[Whereupon, at 11:55 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

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

Well, here we go again.

Two years ago, I opened a hearing by saying that I was disappointed to be revisiting the issues of interstate waste and flow control. My views haven't changed much

in that regard. In the 4 years since the Senate addressed interstate waste and flow control in 1995, we have seen State and local governments continue to address this topic in the context of a free market. Even witnesses testifying today in support of Federal legislation will acknowledge that fact. In my view, the case for Federal intervention becomes more difficult to make with each passing day.

In 1995, Senator Chafee and I worked very hard to pass an interstate waste and flow control bill, S. 534. The House took a more free market approach to the issues, however, and S. 534 died in that body. That may have been the right outcome, in hindsight.

I believed then that the legislation we passed had significant flaws, particularly in regards to flow control. At the time, however, I thought it was important to quickly address these issues, in light of the allegedly dire consequences we faced if we failed to act. Well, Congress did not enact Federal legislation in this area, parties continued to operate in a free market in this regard, and, simply put, the sky did not fall.

I would like to make a few specific comments about the two issues we are here today to discuss. In previous Congresses, we heard testimony supporting flow control stating that immediate action was required to protect municipalities from having to default on bonds they had issued to fund their waste-to-energy and recycling efforts. Today, however, one of the witnesses will testify that bond defaults should actually not be the "litmus test" for legislation. The reason for that new position is clear: While some downgrades have taken place—a total of 17 nationwide—widespread municipal defaults did not occur. Testimony from another witness indicates that only two counties in New Jersey have entered "technical default" -which as I understand it means the issuer is still current on payments but the revenue available for debt service has declined.

Rather than simply defaulting, localities have responded the way we would hope and expect them to: they have instituted competitive tipping fees, cut their overhead costs, and sought alternative streams of revenue. That is the way the free market should work, and that is the way it has worked. I commend those communities for taking responsibility for their own actions.

The fact is, supporters of flow control have a much tougher case to make this year. It is clear that the free market is not broken. Tipping fees have fallen and competition has proven favorable to residents who ultimately pay for this disposal. Flow control legislation would upset market forces that are reducing costs for residents. It would constitute a tax on consumers, no matter how disguised as a "user fee." If localities want to impose a tax on their citizens, they should do so directly, rather than hiding it in Federal flow control legislation.

Proponents of interstate bans or controls also have a difficult case to

make, but I am interested in hearing about creative solutions that can balance competing interests in this regard. I understand the need for States to plan for their future in-State disposal needs. I also understand the real benefits of the free market, as Mr. Miles so eloquently States in his written testimony.

The interstate issue remains complex. Many States, including my own, both import and export significant amounts of waste, in cooperation with neighboring States. Regional solutions are clearly being sought—and found—to regional problems. I do not see how allowing individual States within a region to take themselves out of the equation helps matters, but I am concerned about in-State capacity issues—particularly in light of the impending closure of the Fresh Kills landfill. Those 11,000 tons of excess waste from New York must be disposed of, and I understand that other States don't want their own planning and in-State capacity disrupted by that State's waste.

To date, however, I have seen no evidence that we can improve upon the solutions emerging from the interplay of local, State, and regional political and business entities operating within a free market system. I remain unconvinced that the bills before us are the answer to concerns about the interstate transportation of solid waste. There may be creative solutions out there to these issues, but it is not clear to me that presumptive bans, freezes, and ratchets are among them.

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

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STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, U.S. SENATOR FROM THE STATE OF NEW YORK

The proper disposal of municipal solid waste (MSW) is an issue that should rightly concern us, and one that this committee has taken up several times in past years. In the 104 Congress, we committee members representing both importing and ex-

porting States worked to pass S. 534. The bill permitted States to limit unwanted MSW imports while protecting contractual agreements between host communities, waste management companies, and exporting communities. By protecting host community agreements, S. 534 ensured that communities which agreed to receive MSW would not suffer adverse economic consequences as the result of any import cap.

As the committee again focuses on this issue, I feel that we should consider three policy areas. First, we should ensure that the shipment of MSW across State lines is environmentally safe and poses no danger on our roadways or waterways. Second, we should empower communities to resist the disposal of unsolicited MSW in those communities. Finally, we must respect the right of communities to enter and maintain host community agreements to receive MSW that is generated beyond city, county, or State lines. The escalating cost of constructing environmentally secure landfills (some cost more than $300,000 per acre to build) necessitates that Congress respect the right of communities to receive MSW to aid in the financing of modern landfills.

As the nation's largest exporter of MSW, New York State is committed to ensuring that waste generated within its boundaries is disposed of in a responsible manner. Both Governor Pataki and Mayor Giuliani have a policy of requiring host community agreements for the issuance of any contracts to dispose of MSW generated in New York City and State. None of the contracts that will be granted for the disposal of MSW which presently goes to Fresh Kills landfill in New York City will be made without firm host community agreements.

New York State is also engaged in talks with States that import large quantities of MSW to find agreement on how to ensure that the transport of MSW across State lines is as unobtrusive as possible. And finally, New York is working hard to reduce the amount of MSW it generates. Statewide, 42 percent of the waste stream is recycled—one of the nation's highest rates.

While New York is aggressively pursuing means to limit the amount of MSW it generates, and the State continues to import MSW from neighboring States, New York will likely remain a net exporting State. As the committee considers potential restrictions on the volume of MSW any city, county, or State may export, I feel we should also review the disposal patterns of other forms of waste. In New York's case, we might be able to reduce the amount of hazardous waste which is transported across State lines for processing in the Empire State.

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STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM THE STATE OF FLORIDA

Mr. Chairman, members of the committee, thank you for the opportunity to speak on the subject of regulation of municipal solid waste. It is a subject that this committee has struggled with over the past several years. We in Florida also struggle with this issue.

Management of municipal solid waste has traditionally been the responsibility of local governments, within the guidelines established by the Federal and State government for protection of human health and the environment. Current guidelines for construction of landfills have driven the cost of these facilities beyond the ability of many communities to pay for them. The closing of old landfills and movement towards large, modern, regional landfills provides increased protection of our groundwater, and other natural resources.

Florida faces many challenges to responsible management of municipal solid waste. Our vulnerable groundwater and sensitive wetlands restrict the number of suitable locations for landfills, especially in the most densely populated and fastest growing areas of the State. Many communities have turned to incineration of waste as an alternative to landfills, and they are struggling with questions of how to finance those facilities. Because of our geography, export of waste to other States is not as attractive to Florida as it is to some other parts of the country, so we are attempting to deal with our waste within the State.

I appreciate the concern that many communities have expressed about accepting large volumes of waste from outside their local area. I also appreciate the need of the private sector for a stable and predictable regulatory environment on which to base their investment decisions. I also believe in the power ofthe free market to provide the most cost effective services to consumers. I look forward to hearing the viewpoints of our witnesses today, and working with my colleagues to develop an acceptable approach to regulation of municipal solid waste.

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

Mr. Chairman and members of the Committee, I appreciate the opportunity to testify before you today on the critical issue of interstate shipments of solid waste, which is a top environmental priority for millions of Pennsylvanians and for me.

As you are aware, Congress came very close to enacting legislation to address this issue in 1994, and the Senate passed interstate waste and flow control legislation in May, 1995 by an overwhelming 94–6 margin, only to see it die in the House of Representatives. I am confident that with the strong leadership of my good friends and colleagues Chairmen Chafee and Smith, and Senators Voinovich and Warner, we can get quick action on a strong interstate waste bill and conclude this effort once and for all.

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

It is high time that the largest trash exporting States bite the bullet and take substantial steps towards self-sufficiency for waste disposal. The legislation passed by the Senate in the 103d and 104th Congresses would have provided much-needed relief to Pennsylvania, which is by far the largest importer of out-of-State waste in the nation. According to the Pennsylvania Department of Environmental Protection, 3.9 million tons of out-of-State municipal solid waste entered Pennsylvania in 1993, rising to 4.3 million tons in 1994, 5.2 million in 1995, 6.3 million tons in both 1996 and 1997, and a record 7.2 million in 1998. In fact, millions of tons of trash generated in other States find their final resting place in more than 50 landfills throughout Pennsylvania. Most of this trash comes from New York and New Jersey, with New York responsible for 3.1 million tons and New Jersey responsible for 2.9 million tons in 1998, representing 83 percent of the municipal solid waste imported into Pennsylvania.

This is not a problem limited to one small corner of Pennsylvania. As you are all well aware, this problem affects municipalities across the United States. Nationally 25 million tons of municipal garbage cross State lines annually for disposal, and interstate shipments overall have increased 32 percent in recent years. Now, more than ever, we need legislation which will go a long way toward resolving the landfill problems facing Pennsylvania, Ohio, Virginia and similar waste importing States. In 1997, nine States imported in excess of a million tons of solid waste and additional 20 States imported in excess of 100,000 tons of solid waste. I am particularly concerned by the developments in New York, where Governor Pataki and Mayor Giuliani have announced the closure of the City's one remaining landfill, Fresh Kills, in 2001. That will require the City to find landfill space for as much as 13,200 tons of waste per day, forcing it to landfills in importing States such as Ohio, Indiana, Pennsylvania and Virginia.

Over the past several years, I have met with numerous county officials, environmental groups, and other Pennsylvanians to discuss the solid waste issue. I have come away from those meetings impressed by the deep concerns expressed by the residents of communities which host a landfill rapidly filling up with the refuse of millions of New Yorkers and New Jerseyans whose States have failed to adequately manage the waste they generate.

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

During the 103d Congress, we encountered a new issue with respect to municipal solid waste—the issue of waste flow control authority. On May 16, 1994, the Supreme Court held (63) in Carbone v. Clarkstown that a flow control ordinance, which requires all solid waste to be processed at a Designated waste management facility, violates the Commerce Clause of the U.S. Constitution. In striking down the Clarkstown ordinance, the Court stated that the ordinance discriminated against interstate commerce by allowing only the favored operator to process waste that is within the town's limits. As a result of the Court's decision, flow control ordinances in Pennsylvania and other States are considered unconstitutional.

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

In order to fix these problems, I introduced legislation (S. 663) on March 18, 1999 with Senator Santorum and Congressman Greenwood introduced companion legislation in the House of Representatives. The legislation would provide a presumptive ban on all out-of-State municipal solid waste, including construction and demolition debris, unless a landfill obtains the agreement of the local government to allow for the importation of waste. It would provide a freeze authority to allow a State to place a limit on the amount of out-of-State waste received annually at each facility. These provisions will provide a concrete incentive for the largest exporting States to get a handle on their solid waste management immediately. To address the problem of flow control, my bill would provide authority to allow local governments to designate where privately collected waste must be disposed. This would be a narrow fix for only those localities that constructed facilities before the 1994 Supreme Court ruling and who relied on their ability to regulate the flow of garbage to pay for their municipal bonds.

I understand that Virginia's Senators Warner and Robb and Ohio's Senators Voinovich and Bayh have introduced similar legislation to address the interstate shipments of solid waste. I look forward to working with them and the Committee to solve the interstate waste problem once and for all. In the past, the Committee has devised appropriate legislation which protected the ability of municipalities to plan effectively for the management of their municipal solid waste while also guaranteeing that market forces will still provide opportunities for enterprising companies in the waste management industry. I urge the Committee to take the same approach in the 106th Congress and report flow control legislation to the full Senate as soon as possible. Thank you again for the opportunity to share my views.

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STATEMENT OF HON. CHARLES S. ROBB, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Mr. Chairman, I thank you for holding this hearing. And I hope it will soon be followed by a mark-up. Congress needs to act soon to address the problem faced by States, in many cases, that are being inundated by unwanted out-of-State trash.

Senator Specter and I, along with a number of those on this Committee, including my senior colleague John Warner, have been working for years to give States and localities the authority they need to regulate interstate garbage. When I first started working on this problem in 1993, we faced a situation slightly different than the one that confronts us today. Then, there were waste companies that were threatening to build landfills in communities where they were absolutely unwanted. Unfortunately, many rural communities were powerless to stop them, so I introduced legislation to protect all communities from being dumped on by unwanted out-of-State garbage.

In an effort to move this debate forward, Senator Warner and I crafted legislation using some and relatively novel approaches to try to strike the proper balance between allowing interstate commerce and necessary protections for States and localities. I hope some of the ideas we included in our bill, S. 533, can form the basis of a bill that can help break the logjam that has prevented passage of interstate waste legislation in the past. All of us who represent States on the receiving end of all this interstate garbage understand that the only bill that will truly protect our States is a bill that can be signed into law. So while we may be tempted to introduce draconian legislation that could score political points back home, we need to stay focused on developing a solution that scores legislative points here in the Congress.

It is time for us to craft a serious, sensible, workable piece of legislation that will provide communities with the authority to say "no" to waste imports, provide Governors with the authority to limit waste imports if the cumulative affect of imports

proves harmful, and to ensure that importing States receive compensation for the increased costs incurred from handling waste imports.

The situation in Virginia, I believe, is similar to that in many States. In the past 10 years Virginia has issued permits to seven large landfills. Because the cumulative impact of these disposal facilities can be broad and negative, States need to have the authority to address these potentially long-term cumulative effects.

In an effort to gain some protection, this year Virginia's General Assembly enacted legislation attempting to address the problems created by the cumulative impact of these seven mega-landfills. But this effort serves to highlight the need for Congress to act. To overcome a constitutional challenge, the State placed a limit on the amount of waste that each landfill could accept. This total cap applies to both Virginia trash and non-Virginia trash headed for the landfill. If a landfill operator can accept only a limited number of tons, then common sense suggests that they will accept the most lucrative tons first. To get access to that landfill, then, Virginia communities might have to get into a "bidding war" with trash coming in from outside the State.

Because the Virginia law does not (and may not under the Constitution) discriminate against waste from outside of the State, it is likely that the cost of waste disposal for Virginians will go up. Without Congressional action States that try to regulate waste imports reasonably are severely limited in their options. Even though the Virginia legislation appears to conform to the Commerce Clause of the U.S. Constitution, it was challenged last week on constitutional grounds. Whether or not the Virginia statute stands, Virginia and other States need our help.

The bill Senator Warner and I developed has four major provisions to help States. These provisions are intended to broaden the discussion and examine new approaches for solving this long-standing problem.

The first provision provides local communities with the authority to say "no" to imports of municipal solid waste. S. 533 sets out specific requirements for information that is made available to communities before they enter into these agreements, and ensures that the agreement is negotiated in the sunshine, so that all the citizens in the jurisdiction, as well as neighboring jurisdictions and the State, are well aware of the potential effects and benefits of the facility. By requiring host community agreements, S. 533 provides local governments with the authority needed to make the best arrangement for their communities. This has been the basis of the legislation I have sponsored previously, and which came very close to being enacting 5 years ago.

The second provision allows Governors to cap receipts of imported waste at 1998 levels. This provision is similar to the newly adopted law in Virginia, but would allow receipts of in-State waste to continue to grow. Frankly, I wish we had passed the legislation in 1994 and used those levels to limit imports. Unfortunately, since that time new landfills have been opened and have begun accepting out-of-State trash. This presents us, as policy- makers, with a dilemma. If we limit the amount of waste to 1993 levels, that would mean either that landfills built after that time would accept no waste, or the levels the State accepted in 1993 would be apportioned among the landfills existing today. Using 1998 as a base year avoids the problem of trying to determine what volume of waste was imported in earlier years. Some of the legislation under consideration requires that we retreat to the level of imports received in 1993. Although this is desirable in many ways, it seems to me it would be virtually impossible to apportion equitably the waste receipts among existing landfills if the earlier date were used as a base. My concern is that this would open up the States up to expensive and lengthy litigation.

S. 533 also provides for a $3/ton import fee. I liken this fee to out-of-State tuition. There are costs associated with the disposal of waste that are borne by the State that imports the waste. For example, in Virginia those costs come out of the general fund. The cost of site inspections, weigh stations, safety checks, and other enforcement activities are assumed by the importing State. It is appropriate it seems to me, that we share these costs with the exporting entity. A fee of three dollars/ton will cover many of these incremental costs associated with waste importing.

Lastly, S. 533 contains a provision new to this debate. In the past, we've focused on protecting importing States. The last provision in S. 533 focuses instead on encouraging exporting States to begin to find some in-State solutions for their garbage disposal needs. The section provides that beginning in 2001 any State can refuse all imports from a "super exporting State". Should an importing State choose to continue to accept waste from these exporters, the Governor can assess a premium of $25/ton on imports in 2001, $50/ton for waste received in 2002, and $100/ton for waste received in 2003 and all years there after. These fees would give Governors of importing States and super exporting States some room to negotiate as new capacity is developed. It buys some time for the exporters, at a cost high enough to

provide needed incentives to site additional space within the State of origin. It is important to remember that the fees are applied to all waste from a super exporter, from the first ton to the last. Hopefully, that will motivate all citizens of exporting States to look for in-State solutions.

It is clear that some interstate commerce in trash is necessary, and perhaps beneficial. For example, Virginia sends some of its waste to Tennessee, and most States, as has already been indicated, accept at least some waste from other States. But it now appears that New York intends to shut the last disposal site serving New York City, without siting additional in-State capacity. This could increase the pressures already felt by neighboring States. Mr. Chairman, Congress should act before Fresh Kills closes, so that the city will not rely on other States for additional disposal capacity.

In the past, I had hoped that by simply providing for the use of host community agreements we would ensure that communities would take only the waste that they felt was essential to operate State of the art disposal facilities. The lack of true authority in this area has aggravated the problem, and now it is necessary to give more authority at the State level, as well as the local level. It is time for the Congress to step in. I believe S. 533 provides new ideas that can strike the right balance, and I hope the Senate can use it as a framework, in concert with other solutions that have been offered by other members of this body, to find a real solution to a very real problem. With that Mr. Chairman, I thank you and the members of this committee, and I look forward to working with you on crafting legislation.

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RESPONSES BY SENATOR ROBB TO ADDITIONAL QUESTIONS FROM SENATOR GRAHAM

*Question 1.* State records show that Pennsylvania and Virginia ship most of their hazardous waste to disposal facilities in New York. What is the justification for allowing Pennsylvania and Virginia to restrict imports of MSW from New York, but not allowing New York to restrict imports of hazardous waste from Pennsylvania and Virginia?

Response. I cannot address the issue of waste exchange between New York and Pennsylvania, but let me speak to waste transport between New York and Virginia. According to the most recent available records from USEPA, Virginia does export more hazardous waste to New York than it imports, but the volumes are relatively low. The volumes reflect the treatment regimes required under RCRA Subtitle C. Under these standards specific treatment procedures are required for different waste streams. Although most States do provide some type of treatment of hazardous wastes, few States (if any) could provide all the different varieties of treatment necessary to satisfy requirements under RCRA. The volumes transported between Virginia and New York are small quantities of each waste produced in different manufacturing processes. Economies of scale are available when hazardous wastes are accumulated and moved to treatment facilities that treat specific types of waste. The "90 day" rule under Subtitle C that allows generators to accumulate waste onsite without a permit is evidence that the economies of scale necessary to make treatment affordable are recognized as necessary, as are regional facilities for treatment and disposal.

Municipal solid waste (MSW) differs from hazardous waste because it is so uniform, and there are only one or two disposal options available. Landfilling is the most common method of disposal for MSW and the standards and engineering practices are largely the same from State to State. Although economies of scale do apply to MSW disposal, the geographic coverage necessary to reach that scale is generally much smaller. In addition, the volumes of MSW generated are exponentially greater than that of hazardous waste. For example while it is true that New York accepted more hazardous waste from Virginia than it exported, they will export more than 4,000,000 tons of MSW to Virginia this year. That is over 500 times more MSW than the hazardous waste that was imported from Virginia. In addition, there is no special treatment regime required for MSW, there are simply not enough facilities in New York.

Limiting exports of MSW ensures that wastes are disposed of close to the point of origin and quickly, which is an essential public health protection component of MSW disposal. The safest most environmentally sound disposal occurs in a state-of-the-art landfill, or thermal treatment facility and is completed within the shortest time possible. In general that means that the facilities should be as close as possible to the source of the waste.

*Question 2.* If States are allowed to cap wastes imports based on volumes received in previous years, the market in those importing States would effectively be frozen, creating virtual monopolies for the companies that have existing contracts to handle

wastes in those States. Has the effect of this action on the waste management industry and on consumer prices been evaluated?

Response. Although S. 533 does cap waste imports at existing facilities, it does not prohibit the siting of facilities to compete for waste generated inside any State. For that reason the bill does not create monopolies in the industry. No waste business is prohibited from siting a landfill in any State to serve as a disposal site for waste generated in that State. In fact there is great need in some States for additional capacity, and that need will continue to grow. S. 533 does nothing to inhibit the competition between companies. In fact, by limiting imports at specific facilities the bill will have the effect of increasing competition by ensuring that new facilities are sited in States that export vast volumes of waste.

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STATEMENT OF HON. EVAN BAYH, U.S. SENATOR FROM THE STATE OF INDIANA

Mr. Chairman, members of the committee, I first want to thank you for holding this hearing on the national problem of municipal solid waste management. I particularly want to thank Senator Voinovich for his work on our bill, and our cosponsors, who include both Senators from Ohio and, Michigan, my colleague from Indiana, Senator Lugar, and Senator Feingold from Wisconsin. This is a critical issue for my State, as well as many others, and I look forward to working with you to move forward with solutions.

Let me try to put this issue in perspective. How would you react if your neighbor began dumping tons of trash in your backyard? What if he said there was nothing you could do to stop it and that he planned to increase the amount he dumped in your yard every day—and expected you to pay for it? Sound Outrageous? Absurd? Well, that's the position that Indiana and many other States are in trying to fight the rising tide of waste from other States. As you well know, some States have been struggling for years to ensure safe, responsible management Of out-of-State municipal solid waste.

As Governor of Indiana, I tried to ensure that Indiana's disposal capacity would meet Indiana's municipal solid waste needs. However, our efforts to institute effective long-range waste management policies were—and continue to be—- thwarted by obstacles at the Federal level, which allow massive and unpredictable amounts of out-of-State waste to flow into State disposal facilities.

Unregulated flows of out of State waste have significant negative environmental and economic impacts. Depriving importing States of the ability to impose reasonable regulations on this waste creates unacceptable burdens.

First, unregulated out-of-State waste interferes with States' duty to protect the health and safety of its citizens. There are significant difficulties in ensuring that out-of-State waste flows comply with State disposal standards. Last year, the Indiana Department of Environmental Management was forced to suspended operation of two transfer stations, fine 9 others for failure to provide proper documentation of the waste they handled. The State sent inspectors to 21 other landfills to investigate other violations. We are vigilant in monitoring our facilities, but the sheer volume of waste makes it impossible to catch every violation.

Second, it undermines State environmental objectives. The expansion of landfilling discourages waste minimization and recycling programs. How do we convince Indiana citizens to reduce their waste and increase their recycling if they see our landfills being filled with out-of-State trash. Where's the incentive for responsible waste management when our accomplishments will be overwhelmed by waste from States that don't manage their wastes?

Third, there are economic burdens that come with out-of-State waste. States that make the economic decision not to dispose of their own waste transfer the hard choices and costs of landfilling to States where disposal is cheaper. As landfill space inevitably diminishes, the costs of disposal in low-cost States, like Indiana, will rise. Ultimately, Indiana citizens will be paying a penalty imposed on them by States who choose not to provide for their own waste. I believe that's what's called taxation without representation. It is not right that States whose sole waste policy is to "ship it out" can undermine carefully developed long-term waste management policies in States like mine.

It this unfairness that brings us here today. Because the Supreme Court has ruled that municipal solid waste is a commodity in interstate commerce, only Congress has the authority to regulate it. Before States can plan for, and manage, the waste that comes into their States, Congress must statutorily delegate that authority to them.

The need for that authority has never been more acute. Nationwide, interstate waste shipments increased by 32 percent last year. Shipments to Indiana have been

steadily rising over the last few years to the current level of 2.8 million tons. The same is happening other States, such as Ohio. And these increases will be dwarfed by the impact of the planned closing of 2001 of the Fresh Kills Landfill in New York, which will send another 13,000 tons of municipal waste into "interstate commerce" every day. That's almost 5 million (4.75) tons a year.

In Indiana, after decreasing from 1992 to 1994- waste imports increased significantly in 1995 and doubled in 1996. Between 1996 and 1998, out-of-State waste received by Indiana facilities increased by 32 percent to their highest level in the last 7 years. In fact, in 1998, 2.8 million tons of out-of-State waste were disposed of in Indiana—that's 19 percent of all the waste disposed of Indiana's landfills.

Our Department of Environmental Management has predicted that the State will run out of landfill space in 2011—or earlier, depending on the volume of waste. We have laws in place, such as a needs determination law, that allows the State to deny an operating permit to a new disposal facility if no local or regional need for the facility is established. However, without Congressional action, Indiana's authority to make this decision is subject to challenge. The uncertainty created by this cuts against responsible environmental and economic planning. This is a concern for every State that tries to manage its land resources and waste disposal. For instance, a Federal court recently ruled that the State of South Dakota owes a landfill developer $10 million dollars for blocking the operation of the landfill through a statewide referendum. And lawsuits have recently been filed challenging Virginia's new laws to limit anticipated shipments New York trash.

The Voinovich/Bayh bill would end this uncertainty in Indiana and other States that are trying to implement effective, long-range waste management strategies. Senator Voinovich and I believe we have crafted a comprehensive, equitable approach to interstate waste disposal. Our bill, S. 872, is a bi-partisan, national approach to interstate waste management. It is based on principles developed, and supported by a coalition of 24 Governors from around the country and it has been endorsed by the Governors of Indiana, Ohio, Michigan, Pennsylvania and New Jersey, as well as the Western Governors Association and the National association of Counties .

Before I discuss what our bill will do, let me tell you what it will NOT do. It will not ban interstate waste disposal.

S. 872 simply would gives States the authority to make waste management decisions that reflect the needs and desires of their communities. The key to this authority is giving States the power to place reasonable limits on the waste that can comes in to the State. Our bill will give States the power to set a percentage cap on the amount of out-of-State waste that new or expanding facilities could receive. Alternatively, States would have the option to deny a permit to a new or expanding facility if there is no regional or in-State need for the facility. These provisions will ensure that States can make long-range waste management decisions that will not be undermined by an unchecked flow of out-of-State waste. They also give States the right to decide whether they want to dedicate their finite land resources to landfills built primarily to accommodate waste from other States.

In addition to State authority, our bill will also enhance local authority to make waste disposal decisions by creating a presumptive ban on receipt of out-of-State trash. What that means is, that unless there is an existing host community agreement or permit, disposal facilities that didn't receive out-of-State waste in 1993 (the year that Supreme Court action limited State authority and made Congressional action necessary) would be prohibited from starting to take the trash until the local government approved.

Other provisions of the bill will give States the power to ensure manageable and predictable waste flows by freezing waste imports at 1993 levels. States bearing the greatest burden of interstate waste—those that disposed of more than 650,000 tons in 1993—could reduce imported waste to 65 percent of the 1993 level by 2006. Acceptance of construction and demolition debris, a rapidly growing component of interstate waste shipments, could also be reduced. Under what's referred to as a ratchet, construction and demolition waste could be reduced by 50 percent over the next 7 years.

In addition to State authority, our bill will also enhance local authority to make waste disposal decisions by creating a presumptive ban on receipt of out of State trash. What that means is, that unless there is an existing host community agreement or permit, disposal facilities that didn't receive out-of-State waste in 1993 would be prohibited from starting to take the trash until the local government approved. States would be permitted to charge a $3-a-ton cost-recovery surcharge to defray the costs of their solid waste management plans.

Further, our bill would allow States to track municipal solid waste shipped though transfer stations by requiring annual reports on the origin and amount of

out-of-State waste received for transfer. Currently, the origin of large amounts of interstate waste traveling through transfer stations is obscured because the transfer station is treated as the originator of the waste in landfill records.

Mr. Chairman, we see this as an issue of basic fairness. Every State can be—must be responsible for taking care of its own waste. We should not reward States for foisting the hard choices of landfill citing and waste management on neighboring States. The Voinovich/Bayh bill will ensure that the hard work and hard decisions our States have made to manage our municipal waste will not be overruled by an ever-growing stream of waste from other States. We are trying to give the people who have to live with waste planning decisions the power to make them. I look forward to working with you to move this important legislation forward.

Before I depart, I would also like to welcome Lieutenant Governor of Indiana, Joe Kernan, who will be testifying later at this hearing.

Lt. Governor Kernan has a long and distinguished career in public service. He is a decorated veteran of the Vietnam conflict, as well as the former mayor of South Bend, his home town. Elected in 1987, he served in that position longer than any other mayor in the city's history, 9 years. In 1996, he became Governor O'Bannon's Lieutenant Governor. As Lieutenant Governor Joe Kernan serves as the President of the Indiana Senate, the Director of the Indiana Department of Commerce, and as the Commissioner of Agriculture. He is uniquely qualified to discuss the Indiana perspective on interstate waste, and I am very glad the Committee has invited him here to today and that he was able to join us.

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STATEMENT OF HON. RICK SANTORUM, U.S. SENATOR FROM THE COMMONWEALTH OF PENNSYLVANIA

Chairman Chafee, I appreciate the opportunity to present testimony today as your committee hears from many interested parties regarding the disposal of interstate waste. I regret that I am unable to deliver these remarks personally, however, I would like to extend my regards to Governor Tom Ridge who is scheduled to testify with respect to Pennsylvania's role in the interstate waste debate.

Without a doubt, this is a significant issue for the citizens, government, and business interests in the Commonwealth of Pennsylvania. As many are aware, the Commonwealth has the dubious distinction of being the No. 1 importer of out-of-State waste. In fact, since 1993 when the state lead all others in trash imports, imports have increased by 60 percent. Additionally, Pennsylvania is surrounded by three states that annually export more than 1 million tons of waste, at a minimum, to their neighbors. With the looming pressures of consolidation within the waste management industry, leading to more regional concentration of waste disposal, coupled with the pending closure of New York City's Fresh Kills Landfill in 2001, I strongly believe the time for Congressional action is before us.

While the focus of the committee's hearing will be directed towards two bills, those introduced by the Senate delegations from Ohio and Virginia, I am a cosponsor of legislation, S. 663, The Solid Waste Interstate Transportation and Local Authority Act of 1999, that was introduced by Pennsylvania's senior Senator. Such regional, and unified state interest merely serves to highlight the importance and need for an in-depth Congressional look at the issue of interstate waste disposal. Even further, Federal court decisions have determined that state and local governments cannot restrict shipments of interstate waste as they are protected under the Constitution, by the interstate commerce clause, thereby leaving the authority with Congress. While there have been numerous legislative attempts to give states certain authority over shipments of interstate waste since the 103d Congress, a consensus measure has never been reached.

With the leadership of Chairman Chafee, the dedication of Senator Bob Smith coupled with the ongoing efforts of many Governors who have been meeting to find a mutually agreeable solution, the opportunity exists for Congress to step forward. Any future legislation will need to carefully balance the rights of states and their local governments to oversee and guide waste disposal; the needs of waste exporting communities; existing contracts with local governments; and what type of waste would qualify for restriction.

Mr. Chairman, I appreciate your willingness to address this very timely issue, and hope that you will give continued consideration to all legislative initiatives addressing the disposal of interstate waste.

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STATEMENT OF LT. GOV. JOSEPH E. KERNAN, STATE OF INDIANA

*Introductory Remarks*

Mr. Chairman and distinguished members of the committee, I am pleased to testify on pending legislation that would vest States and localities with Federal authority to control shipments of out-of-State municipal solid waste (MSW). As members of the committee may know, Indiana's elected State officials and Federal representatives have long been concerned that our State's efforts to manage the disposal of our solid waste, as required under Federal law, are threatened by unconstrained flows of garbage. I am therefore gratified to offer comments on behalf of the State of Indiana on two bills, S. 872 and S. 533, recently introduced in the U.S. Senate to address this issue.

Today's hearing comes at an auspicious time. Shipments of interstate municipal solid waste continue to rise nationally, and so does public concern. A 1998 report issued by the Congressional Research Service showed a 32 percent increase of imports over the 2-year period from 1995 to 1997. In Indiana, during calendar year 1998, almost 2.2 million tons of out-of-State municipal solid waste was disposed of at our MSW facilities, mostly landfills, representing 30 percent of the total amount. Adding construction and demolition (C&D) debris and special waste, which are recorded separately, a total of 2.8 million tons of out-of-State waste was disposed of at Indiana MSW disposal sites last year—enough to cover two lanes of Interstate 95 from Washington, DC to Richmond, VA and back again with 10 feet of garbage.

Almost all of Indiana's out-of-State waste currently comes from neighboring States, with most shipments originating at transfer stations in the Chicago area and going to landfills in the northern portion of the State. A number of years ago, Indiana was deluged with garbage shipments from New Jersey and New York. However, through aggressive enforcement of State regulations concerning the types of waste allowed in landfills, negotiated agreements between Indiana and those two States, and the filling-up and closure of several landfills receiving out-of-State waste, the flow was dramatically reduced. In fact, last year, our State received no long-haul shipments from the East Coast.

While this situation could change, especially with the closure of the Fresh Kills landfill in Staten Island, New York, Governor Frank O'Bannon and I are chiefly concerned with ensuring that our administration and local officials gain the ability to control the overall amount of out-of-State waste shipments. Our primary goal is to protect our State's disposal capacity and natural resources; the origin of out-of-State shipments is less important.At the present time, we have 24 years of in-State capacity based on current disposal rates, and the State's 61 solid waste districts are working hard to meet our goal of reducing disposal by 50 percent by the year 2001. At the current rate of out-of-State waste shipments, however, that capacity could be reduced by 8 years.

Our efforts to manage in-State capacity needs could be frustrated by the growing influx of garbage, which serves to exhaust landfill capacity that is saved through local recycling and waste reduction efforts. It becomes difficult to make the case for waste reduction in Indiana as other States' garbage flows freely across our borders.

When, in 1990, out-of-State waste became an issue of public concern in Indiana, our State legislature passed several provisions of law to protect our citizens against the unregulated dumping of trash. These included a higher tipping fee for out-of-State waste and a requirement that out-of-State shipments be certified as not containing hazardous or infectious waste. A Federal judge who ruled they violated the Commerce clause of the U.S. Constitution later struck these provisions down.

A year later, in 1991, additional regulatory provisions were passed, including a ban on the hauling of food and other products in a vehicle used to also haul solid waste and an identification sticker for vehicles transporting waste into Indiana. These too were ruled unconstitutional.

Today, we still have a law in place from 1990 that requires applicants for new landfills or expansions to demonstrate that there is a local or regional need for additional capacity. This "needs" statute has been used to deny permits on several occasions, but there is no certainty it will withstand court challenge without Federal legislative action.

After listening to today's testimony, I urge you to act to address this issue in a manner that carefully balances the concerns of State and local officials, the importance of protecting our natural resources, and the legitimate business interests of the waste industry. Congress could have and should have acted on this issue years ago and two former Members of Congress from Indiana—Senator Dan Coats and Congressman Phil Sharp—labored long and hard to pass legislation. Indiana's current congressional delegation stands united in its support of enacting a Federal interstate waste law.

*S. 872, the "Municipal Solid Waste Interstate Transportation and Local Authority Act"*

I believe that S. 872, introduced by Senator George Voinovich of Ohio and Senator Evan Bayh of Indiana, represents a measured approach to providing States and localities with tools to limit but not eliminate out-of-State waste shipments. The Voinovich-Bayh bill, which is similar to legislation introduced in the Senate by Senator Arlen Specter of Pennsylvania (S. 663) and Congressmen Jim Greenwood and Ron Klink of Pennsylvania in the House (H.R. 1190), is also supported by the coalition of Governors who are working in a bipartisan, collaborative fashion to win passage of Federal interstate waste and flow control legislation. In addition to Governor O'Bannon, this group includes Governor John Engler of Michigan, Governor Bob Taft of Ohio, Governor Tom Ridge of Pennsylvania, and Governor Christine Whitman of New Jersey. I note that the congressional delegations of the five States represented by this coalition are being urged to work together on a bill that can pass both the House and Senate. Congressmen Steve Buyer and Pete Visclosky are leading Indiana's efforts in the House.

S. 872 ensures that local officials are held accountable for in-State disposal capacity by imposing a "presumptive" ban after enactment and requiring formal approval for out-of-State shipments. Such approvals must be granted in host community agreements in the form of written, legally binding documents. These agreements must include a specific authorization worded in a manner that ensures public notice of out-of-State shipments.

The bill provides exemptions to the ban for current flows covered by existing host agreements or permits that include specific authorizations. In addition, S. 872 also exempts waste streams at facilities that were taking waste in 1993, the point in time when State and local officials, along with the waste industry, were clearly put on notice that Congress might pass requirements for more disclosure and approval of out-of-State MSW shipments.

Other provisions in S. 872 allow State officials to freeze out-of-waste shipments at all facilities at 1993 levels unless such a limitation conflicts with an existing host agreement or permit authorizing a higher level. If a State does not implement a freeze, an affected local government, as defined under the bill, can implement a freeze at a particular facility if it has not executed a host agreement and the facility does not have a permit authorizing a higher level.

Alternatively, States that received more than 650,000 tons of out-of-State MSW in 1993 may impose a "ratchet" to reduce imports by 35 percent over 7 years.

States are also given some prospective controls under provisions that authorize implementation of State laws requiring either a "needs" requirement similar to Indiana's statute or a percentage limitation cap for new or expanded facilities. S. 872 establishes a minimum level of 20 percent for the facility cap to ensure a reasonable flow of out-of-State shipments.

In addition, S. 872 includes separate provisions that would allow States to ratchet down shipments of out-of-State C&D debris by 50 percent over 10 years and impose a surcharge of up to $3 per ton on out-of-State solid waste to help defray the cost of administering their waste management programs. The bill also includes reporting requirements for both waste disposal facilities and transfer stations, which will help to better inform State officials and the general public of the origin of solid waste coming into each State, and in the case of transfer stations, the next destination of waste shipments passing through these facilities.

The Voinovich-Bayh legislation also includes provisions that would allow States that previously adopted "flow control" laws designed to direct locally-generated waste to local facilities, which were subsequently struck down by the U.S. Supreme Court, to reinstitute those authorities for the life of bonds issued in reliance on such statutes. These grandfather provisions would prove beneficial to a number of States, including New Jersey, which enacted flow control laws and sited waste facilities in a good faith effort to better meet their in-State disposal needs.

Taken together, the provisions of S. 872 do not eliminate altogether out-of-State waste shipments, which would be neither prudent nor necessary. They do, however, provide a mix of public notice requirements and controls that will ensure public support for States' waste management programs and prevent unwanted floods of out-of-State trash.

For Indiana, the presumptive ban on waste flows not granted explicit approval through host agreements or otherwise exempted, as well as the authorization for needs statutes, are the two most important features. The inclusion of controls for out-of-State C&D waste, which is becoming more of a problem in Indiana, is also important to us.

I also want to stress the significance of the definitions used in S. 872. For example, "affected local government" is defined as the public body responsible for plan-

ning for the management of MSW unless no such designation is made under State law. This requirement ensures that the public officials vested with authority for managing waste are also given the ability and responsibility to approve host community agreements.

*S. 533, the "Interstate Transportation of Municipal Solid Waste Control Act of 1999"*

This legislation, introduced by Senators Chuck Robb and John Warner of Virginia, takes a somewhat different approach to addressing the issue of interstate waste shipments, relying principally on the use of a freeze at 1998 levels for States receiving over 1 million tons of out-of-State MSW shipments. Unfortunately, requiring the use of Indiana's record level of MSW shipments to establish a ceiling for the State is not a satisfactory solution given the long-term impact of out-of-State shipments on the State's disposal capacity. Other States currently receiving less than 1 million tons of out-of-State MSW may also find this an unacceptable threshold for utilizing a freeze authority.

The authority to impose a ban on waste shipments from States exporting MSW in excess of 6 million tons per year would have little real effect at this time since no single State has yet reached this level of exports.

While S. 533 also includes a general ban on municipal solid waste shipments not approved by affected local governments, all publicly-owned facilities are exempted from this requirement. Further, the bill language is unclear as to whether approvals sought after enactment of the legislation require actual host community agreements and specific authorizations to receive out-of-State waste.

S. 533 also does not include any Federal authorization for States such as Indiana to implement "needs" statutes. Since many other States have enacted a form of the needs requirement—Pennsylvania, Michigan, and Virginia to name just a few—we believe it essential for Federal legislation to address this concern.

In addition, "affected local governments" are defined so broadly as to include any elected officials with responsibility for waste management or land use for purposes of post-enactment approvals and as any party (public or private) to a host community agreement entered into before enactment. Frankly, these provisions fail to provide sufficient public notice or accountability for approvals to receive out-of-State waste shipments.

I also note that S. 533 does not include any controls over C&D waste shipments, which are of concern to a number of States, including Indiana.

*Closing Remarks*

I recognize that your committee must weigh the interests and concerns of all 50 States and the private sector when considering a matter involving interstate commerce. On this issue, however, I am hopeful that you and your colleagues will agree that States should be allowed to exercise a reasonable set of controls to protect their natural resources and solid waste disposal capacity, and ensure public support for their own waste reduction efforts. I do believe there is sufficient consensus among the States for Congress to act.

The provisions of S. 872 reflect a series of provisions developed by the coalition of importing States after years of negotiations with the waste industry and several of the large exporting States. While representatives of this coalition are continuing to discuss possible areas of agreement with representatives of the State of New York in an effort to forge a mutually acceptable agreement, Governor O'Bannon and I believe Congress should not indefinitely delay legislative action.

Thank you again for allowing me to share the State of Indiana's concerns about this important public policy matter.

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RESPONSES BY JOSEPH KERNAN TO ADDITIONAL QUESTIONS FROM SENATOR VOINOVICH

*Question 1.* Many of the definitions in S. 872 are the result of negotiations from the various interests in this issue. Could you please explain the importance of the definitions used in S. 872?

Response. The definitions used in S. 872 are extremely important. The waste industry and interested States and local governments have worked for a number of years to identify key terms and define them in a way that will provide all parties with certainty as to what they mean. The results of those efforts are the definitions in S. 872.

By comparison, we have several concerns about the definitions in S. 533. First, the definitions in that bill are different from those included in previous interstate waste bills passed by the Senate (e.g. "affected local government"). Second, the bill also creates new definitions (e.g. "owner and operator") that create additional loop-

holes in the host community agreement requirement. Finally, it fails to define some important terms such as "specific authorization" that are essential for ensuring public notice of host agreements allowing out-of-State shipments.

*Question 2.* As you know, Midwest States have been asked repeatedly to try to reach consensus on controlling interstate waste shipmentS. And in good faith, they have tried to do so. In fact, S. 872 is the result of a consensus among Midwest Governors and New Jersey—which is a large exporter of trash. Should Congress wait indefinitely until all States reach consensus?

Response. No. There are many issues on which complete consensus cannot be achieved before the Congress actS. While representatives of Indiana are currently engaged in good faith discussions with their counterparts from our coalition States plus Virginia and New York, we have no assurances that they will be able to agree on a package of legislative provisionS.

Indiana and other waste importing States engage in negotiations on this subject with no leverage because of a lack of the broad-based Congressional action that we seek. We believe S. 872 is a balanced and fair approach to dealing with this problem that recognizes the legitimate interests of the waste industry and exporting StateS. The consequences for Indiana are too great for Congress to wait for complete and total agreement on every secondary and tertiary issue.

*Question 3.* Could you please explain the importance for States to have the authority to place restrictions on prospective waste flows—either through "permit caps" or "needs determination"?

Response. "Permit caps" and "needs determinations" are not intended to be mechanisms for blocking waste shipments altogether. They are tools that States can use to ensure that they have sufficient instate disposal capacity both statewide and within regional areaS.

Equally as important, allowing State and local officials to have some control over the amount of waste coming in from out of State helps those officials build public support for the State's own waste reduction effortS. Depriving State and local officials of those controls penalizes them for taking the responsible, and often very difficult steps to provide instate disposal capacity.

S. 872 entitles States to utilize either percentage caps or a needs requirement on new or expanded facilitieS. These choices should actually help to clarify State policy to waste industry officials and public officials in exporting StateS.

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

Chairman Chafee, members of the committee, my name is Jim Seif and I am the Secretary of Pennsylvania's Department of Environmental Protection. I am here today on behalf of Governor Tom Ridge who had hoped to be here personally to talk about an issue of vital importance to the Commonwealth of Pennsylvania—interstate waste. What we are asking for should be simple—federal legislation giving communities a voice in deciding whether trash from other States should come into their community for disposal.

Pennsylvania has made every effort to protect our communities from the burdens associated with the large volumes of waste that we receive, but we must have Federal legislation in order to implement an effective solution.

Over the last 5 years Governor Ridge and I have visited many Members of Congress, including some of you, to talk about the waste issue. In fact, I appeared before this very committee 2 years ago asking for your action.

The previous Governor of Pennsylvania, Robert P. Casey, also worked on this issue, as did members of our General Assembly from both sides of the aisle.

For the last 10 years, dozens of States and hundreds of communities have come to Congress asking for the same thing-the right to choose their own destiny on waste issues.

So why are we here again today?

The answer is simple-the threat we face from unwanted trash coming to our communities is larger than it has ever been:

In the last 5 years, trash imports to Pennsylvania have increased from 6.6 million tons to 9.8 million in 1998.

In 2001, Fresh Kills Landfill serving New York City will close—forcing the city to find new disposal sites for an additional 4.7 million tons of trash a year. They have already announced they will rely on exporting waste to solve their disposal problem.

Trucks hauling trash make over 600,000 trips a year in Pennsylvania alone, our inspections show a persistent 25 percent or more of these trucks have safety and environmental violations.

These facts have increased our resolve and the interest of our neighboring States in finding a regional solution to our waste issues, but Federal legislation remains the only key to finding a solution to the issue of unwanted trash imports.

In numerous decisions dating back to 1978, the U.S. Supreme Court has ruled that the transport and disposal of municipal waste is interstate commerce protected by the Constitution and that States do not have the authority to limit the flow of waste across State lines, until Congress grants them that authority.

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

Our communities now have no voice in deciding whether millions of tons of trash come to them for disposal from other States.

It is unfair that States like Pennsylvania, who have made the hard choices to build recycling programs and promote waste management programs to take care of the waste we generate, have no choice when it comes to trash imports.

Pennsylvania has invested hundreds of millions of dollars in our recycling and waste management programs over the last 11 years . We have adopted the nation's toughest environmental standards for landfills, built the nation's largest system of curbside recycling programs, and helped put 10-year waste plans in place in each of our counties. We now have over 130 companies that use recycled content in their products, and our State government has supported such companies by purchasing over 89 million dollars worth of these products last year.

We have also taken a number of additional steps in recent months to further improve our waste management programs.

Governor Ridge has proposed legislation for consideration by our general assembly that would permanently reduce and cap municipal and residual waste disposal capacity. He has issued an executive order to impose daily volume limits at waste facilities, and to study the impact of increased waste flows on public health, safety and natural resources in the commonwealth.

However, all of the political and financial capital that we have invested in this problem could be lost without Federal legislation. Clearly, no State can resolve this issue on its own.

Many of the efforts Pennsylvania has made over the years to solve our waste problem have only served to make it cheaper and easier for other States to avoid meeting their responsibilities.

While we thought we were saving over 2 millions tons of landfill space through increased recycling, that amount and more has been easily eaten up by imported waste.

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

Specifically, Pennsylvania is seeking Federal legislation on interstate waste that includes these provisions:

Give communities the ability to allow the disposal of imported waste through host community agreements;

Impose a freeze on waste imports immediately with a predictable schedule for reducing imports over time;

Allow States to impose a percentage cap on the amount of out-of-State waste that a new facility could receive;

Allow States to consider regional need as part of the permitting process;

Allow communities to adopt waste flow control ordinances to protect existing bond debt.

In addition to the Governor's leadership in seeking Federal legislation, I also want to mention that the Pennsylvania Senate and the Pennsylvania House of Representatives recently passed resolutions memorializing Congress to act on interstate waste legislation.

We are pleased to support the legislation sponsored by Senators Voinovich and Bayh, long-time allies in the interstate waste battle, as well as that of Senator Specter. Both of these bills would go a long way to provide the waste controls that Pennsylvania needs.

We would also be pleased to work with Senators Robb and Warner to make improvements to their bill, should the Committee see S. 533 as an appropriate vehicle.

However, in its current form, S. 533 would not provide sufficient controls for Pennsylvania as it would lock-in the unacceptable levels of waste imports we received in 1998, and not provide us with the ability to reduce those levels.

We look forward to working with Congress to address this important issue and to developing a consensus that will benefit all States and communities.

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RESPONSES BY JAMES SEIF TO ADDITIONAL QUESTIONS FROM SENATOR GRAHAM

*Question 1.* What environmental, health, and safety risks from municipal solid waste are not currently addressed by existing transportation and waste management laws? Is there evidence that unrestricted movement of municipal solid waste across State lines results in bad waste management decisions?

Response. Certain environmental and health risks are not currently addressed by existing transportation and waste management laws. Most States currently do not have the authority to inspect and cite a waste truck for environmental and health violations, i.e., leaking leachate, mixing municipal waste with other waste (medical), and improper covering or containment.

The unrestricted movement of municipal waste across State lines does result in poor waste management decisions. For example, waste haulers make approximately 600,000 trips a year across Pennsylvania transporting millions of tons of waste. Many other States also experience unnecessarily large volumes of trash transportation. It is a poor waste management decision to allow such intense usage of our highway system when municipal waste can be disposed locally.

Further, Pennsylvania's waste hauler inspection program, called "Trashnet," demonstrates that 25 percent or more of the waste trucks inspected failed to comply with basic environmental and safety regulations. These waste truck inspections are conducted jointly by the Department of Environmental Protection, the State Police, and the Department of Transportation. Waste trucks show more frequent violations than other hauling vehicles during highway inspections. In one recent inspection sweep, citations were issued to over 600 of the 2100 trucks inspected for violations such as unsecured loads, bad brakes, damaged axles, leaking trailers, illegal loads of waste, and uncovered or improperly enclosed loads.

*Question 2.* Why should Congress allow States to restrict the movement of municipal solid waste, but not other materials that are more of a threat to human health and the environment, such as hazardous wastes?

Response. Much of the interstate movement of hazardous waste is due to the widely variable nature of hazardous waste. Hazardous waste can take on many different forms and characteristics that require specialized treatment and disposal techniques. Many times the techniques are specific to a given type of hazardous waste. The waste generated in one State may not be enough to economically justify the siting of a specific type of treatment or disposal facility.

For example, in Pennsylvania, the prevalence of steel and its associated manufacturing activities has led to a commercial hazardous waste management industry in the State that is directed toward metal bearing inorganic wastes. These commercial facilities play an important role in managing wastes from steel making facilities in Pennsylvania, as well as other States.

The hazardous waste industry. is also very integrated. In Pennsylvania, there is no commercial capacity for fuel blending or solvent recovery. To be managed by one of these methods, organic wastes from generators in Pennsylvania must be sent to out-of-State facilities. A large portion of these wastes are managed in States adjacent to Pennsylvania. Much of the blended fuel is sent back to Pennsylvania to be burned for energy recovery in the cement-making process.

Municipal waste, on the other hand, is ubiquitous and can be safely disposed of in normal landfills. The technology used to landfill the waste is the same from one landfill to the next. It does not require specialized treatment at facilities that must rely on imports of waste to economically operate. All States in the union generate enough municipal waste to economically operate a municipal waste landfill.

*Question 3.* Allowing restrictions on interstate transport of municipal solid waste will make it more difficult to finance modern, state-of-the-art landfills, resulting in waste continuing to be disposed of in older, less protective facilities. How will States ensure that waste disposal facilities are protective of human health and the environment?

Response. Since 1988, all State environmental agencies are mandated by Federal law (Resource Conservation and Recovery Act (RCRA) Subtitle D) to adopt, at a minimum, Federal design, operation, and monitoring performance standards as a part of their municipal waste base program. All landfills constructed before 1988 in Pennsylvania were required to upgrade to meet those requirements or to close. This

is true in almost all other States as well. In addition, all municipal waste incinerators, regardless of the State, are subject to clean air laws and regulations.

Reasonable limits on the interstate movement of municipal waste will not interfere with financing of any landfills. The billion dollar waste industry would continue to prosper and would not suffer if such controls were implemented.

*Question 4.* Is there any evidence that interstate transport of waste interferes with efforts to increase recycling and reduce land disposal?

Response. Yes, States are working to increase recycling rates, but they are thwarted by the unrestricted flow of municipal waste. In 1997, Pennsylvania diverted 2.4 million tons from their municipal waste stream. These recycling efforts resulted in the preservation of an equal amount of landfill space. However, the preserved capacity was easily consumed by waste imported from other States. This has created a negative perception that business and public efforts to preserve their natural resources through recycling are in vain.

Landfills are able to reduce their tipping fees based on long-term contracts to import waste from other States. These reduced rates make it difficult for municipalities to choose the more costly and environmentally responsible option of recycling. The Commonwealth's efforts to promote recycling and preserve its natural resources are clearly being undermined by increased imports of municipal waste.

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STATEMENT OF GARY SONDERMEYER, ASSISTANT COMMISSIONER NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Good morning Mr. Chairman and distinguished committee members. My name is Gary Sondermeyer and I serve as assistant commissioner for environmental regulation at the New Jersey Department of Environmental Protection. I have been involved with solid waste management in New Jersey for nearly 20 years and have been an active participant in national interstate waste and flow control discussions over the past 10 years. I greatly appreciate the opportunity to appear before you today to update you on New Jersey's situation.

A great deal has changed since Congress last seriously debated the need for interstate waste shipment and flow control legislation. Nationally, the closure of Fresh Kills Landfill in New York and the prospect of 13,000 tons per day, or almost 5 million tons per year, of additional waste leaving the city has generated renewed interest and concern. To put this in perspective, New Jersey exports about 2 million tons per year. Recent data from 1997 and 1998 show that we are no longer exclusively an exporter of solid waste. Today we are receiving waste for disposal from New York, Connecticut and Massachusetts. With the phased closure of Fresh Kills, exports to New Jersey for disposal and transport through our State to disposal locations to our south and west will increase. Significantly. also since the Carbone and the more recent Atlantic Coast decisions, New Jersey has worked with our counties to reconstruct the State's solid waste management system. As a result, 15 of our 21 counties are now operating in a free market environment. However, the State and counties are still faced with about $1.2 billion of outstanding solid waste debt, the result of New Jersey's 20 year program to achieve self-sufficiency and to handle our own waste in an environmentally sound manner. Under our State plan, 31 state-of-the-art solid waste management facilities were constructed. New Jersey's waste flow control rules had specifically been upheld by the Federal district court as a valid exercise of State power in 1988. The recent Carbone and Atlantic Coast decisions changed our course in midstream.

As we move into this state-wide free market, tipping fees are substantially lower, but inadequate funds, or in some cases no funds, are being collected at our disposal facilities to pay down the $1.2 billion debt. To date, two counties have entered technical default and the State has provided nearly $41 million to address stranded investments in five counties.

The bond rating situation is also of significant concern. Rating agencies have lowered the rates on almost all solid waste debt to below investment grade. Moody's Investors has downgraded the individual revenue bond rating for five counties to varying levels of junk bond status. Standard & Poors has either downgraded or announced a risk of being downgraded for seven additional counties.

During the past year and a half, the State has been very aggressive in moving to a state-wide free market system. We have pledged over $200 million in debt relief through the combination of a public question approved by New Jersey voters last year and general fund appropriations. We have adopted emergency rules to streamline out regulatory process. Our State treasurer has been conducting operational audits of 13 of the 21 county systems to ensure that tipping fees are as competitive as possible.

New Jersey has also entered a number of interstate agreements with Pennsylvania, where we export most of our waste, which pave the way for a coordinated approach to future solid waste management. In addition, we are working with Governors' offices from 7 States across the region—Ohio, Michigan, Indiana, Pennsylvania, Virginia, and New York in a good faith effort to find common ground on the difficult issues of waste disposal.

Despite these efforts, many of our counties still require long term financial assistance. To add even more uncertainty, nearly challenges remain lined-up in the courts to test the validity of county and State actions taken since deregulation began.

New Jersey continues to believe in the philosophy that States should be responsible for managing their own waste. We support legislation to provide reasonable limits on out-of-State waste if it is combined with limited flow control authority. We recognize that our old system of flow control is gone, and we therefore seek only limited flow control authority as a transition tool to be used by a small number of New Jersey's 21 counties to pay off outstanding debt. The flow control authority would only be allowed for the life of the bonds.

Toward this end, New Jersey supports S. 872 sponsored by Senators Voinovich and Bayh. S. 872 would not establish an outright ban on out-of-State waste shipments but would give States and localities the tools they need to better manage their in-State waste disposal needs. Further, S. 872 contains the limited flow control authority necessary for counties and the State of New Jersey to rationally move to a free market, to pay off outstanding debt, and to meet the interstate waste limitations authorized in the bill. We also support S. 663 sponsored by Senator Specter for these reasons.

Conversely, New Jersey cannot, at this time, support S. 533. It is critical for New Jersey that any Federal interstate waste shipment legislation to be balanced with at least a limited flow control provision.

Federal legislation that both limits interstate waste shipments and provides limited flow control authority provides the tools and flexibility needed by the States and localities to rationally manage solid waste.

I sincerely thank you for your kind attention and would be happy to entertain any questions you may have.

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RESPONSES BY GARY SONDERMEYER TO ADDITIONAL QUESTIONS FROM SENATOR VOINOVICH

*Question 1.* Why is flow control an essential element of an interstate waste bill? Why do you believe that it is important for the two issues to move together?

Response. The exercise of flow control provides the complementary tool needed in some New Jersey counties, as well as others around the country, to be able to comply with interstate waste shipment restrictions.

As noted in my June 17 testimony, New Jersey supports limiting interstate waste shipments, particularly in light of the closing of Fresh Kills landfill in New York in 2001 and the substantial increase in New York exports through New Jersey to other States that is expected. New Jersey's flow control authority, first instituted in 1982, served several purposes. First, it was a financial tool to pay for state-of-the art, environmentally sound municipal landfills and resource recovery facilities necessary for the State to dispose our waste within our own borders. Second, as we proceeded to develop this increased disposal capacity over the past 20 years, it was an important tool that allowed us to gradually decrease the amount of waste we exported to other States. For example, from 1988 to 1994, New Jersey's trash exports were cut by 50 percent. We were on a downward export trend annually and we were well on our way to self-sufficiency. This trend was interrupted by the 1994 Carbone decision and subsequent Federal court challenges to New Jersey's flow control authority. During the past 4 years, exports have leveled off at about 2 million tons per year. By restoring limited and temporary flow control for New Jersey, we will be able to resume our downward trend of solid waste exports, thereby helping us meet interstate waste restrictions. Flow control for New Jersey, and probably other counties, is the bridge that will facilitate easing into interstate restrictions.

*Question 2.* Is the threat of default for your counties, or other counties around the country, a real problem or just a perceived problem?

Response. Through a combination of reduced bond ratings across the State, inability to raise sufficient revenues through tipping fees, and the ongoing and escalating need for the State to contribute funds to keep county facilities afloat, our fiscal situation is tenuous.

The threat of default for some New Jersey counties and authorities is not only real, it has already begun to occur. As noted in my June 17 testimony, two counties

have already entered technical default by being forced to tap dedicated reserve funds in order to meet quarterly bond payments. In addition, the major rating agencies have lowered the rates on almost all solid waste debt to below investment grade. These ratings affect 12 of our 21 counties where solid waste bonds have been degraded to junk bond status.

It is also important to point out that New Jersey is unique in its public ownership of major solid waste disposal facilities. Of the 17 major landfill and waste to energy facilities operating in New Jersey, 13 are publicly owned. In addition, three of the four privately owned facilities have contractual relationships with host counties and county authorities that result in fiscal responsibilities at the county level. As a result, it is accurate to say that the State, as well as the State's entire solid waste disposal infrastructure, is at financial risk through the continued inability to meet routine debt obligations.

To address the fiscal circumstances in our State, $210 million has already been dedicated as an initial safety net for stranded investment relief. To date, $41 million has been allocated to five counties in order to avoid solid waste default. In addition, $107 million has been authorized for direct debt relief in eight counties through voter approval of a bond issue in November 1998. Of our 21 counties, six are currently in significant fiscal difficulty and four additional counties may find themselves in a similar situation within the next year.

The prospects for the balance of the year are also of great concern to the State. We anticipate that at least four counties will fall short in revenues toward satisfying debt payments over the balance of calendar year 1999.

The entire bond rating situation discussed in my June 17 testimony will also eventually compromise a county's ability to raise capital for needed public works projects, such as roadways, bridges, or other vital infrastructure improvements. In addition, the chance of reduced bond ratings at the State level could have implications on the fiscal integrity of the State of New Jersey that has consistently been held among the highest bond ratings in the United States.

*Question 3.* While your testimony touches on this, could you please explain how New Jersey finds itself in such a unique situation relative to flow control?

Response. New Jersey is unique in its application of Statewide flow control covering all 566 municipalities, as well as all non-hazardous wastes including residential, commercial, industrial, institutional, construction and demolition debris, vegetative waste, and animal and food processing waste. We are also unique inasmuch as we applied a mandatory statewide and legislatively imposed planning process that covered every resident, business, industry, and institution located in New Jersey. New Jersey's goal was to develop an environmentally sound system that would allow the State to dispose its waste within our borders. This system was held together through the imposition of adopted statewide regulations which imposed flow control.

In answering this question, it is important to remember that the entire issue of restricting interstate waste was first argued in New Jersey. In the mid 1970's while our private landfills were being filled with waste from the cities of New York and Philadelphia, New Jersey attempted to block the interstate waste shipment of Philadelphia waste in order to preserve its capacity for the health, safety, and welfare of New Jersey residents. In the landmark decision of City of Philadelphia vs. New Jersey, the U.S. Supreme Court found solid waste to be an article of interstate commerce and covered under the protection of the Commerce Clause of the U.S. Constitution. Following our loss in the City of Philadelphia vs. New Jersey case, a statewide planning approach was developed and our 21 counties became responsible for developing comprehensive solid waste plans. Each district was charged to develop 10-year master plans that would need to be renewed every 2 years under the umbrella guidance of a statewide solid waste management plan.

With the establishment of waste planning districts and the use of flow control, counties began to develop solid waste plans and to propose the siting of new solid waste facilities. Ultimately, 33 facilities were built; 12 double lined landfills; 5 state-of-the-art energy recovery incinerators; and 16 modern transfer stations. To compliment these efforts, our State Legislature adopted mandatory recycling in 1987. Taken together, the siting of 33 major new facilities and imposition of mandatory recycling put New Jersey in the forefront of integrated solid waste management nationally. Flow control, in conjunction with county planning became the lynch pin of our system and the tool through which facilities were properly sized and constructed to serve the long term needs of each planning district.

We have now struggled with piecemeal approaches to address the loss of flow control for approximately 18 months. We have been able to avoid full default. We continue to use short- term, temporary financial assistance solutions that in no way eliminate the longer term fiscal problem.

RESPONSES BY GARY SONDERMEYER TO ADDITIONAL QUESTIONS FROM SENATOR GRAHAM

*Question 1.* What environmental health and safety risks from municipal solid waste are not currently addressed by existing transportation and waste management laws? Is there evidence that unrestricted movement of municipal solid waste across State lines results in bad waste management decisions?

Response. We do have concerns over the unrestricted movement of solid waste negatively impacting management decisions at the local level with respect to recycling New Jersey's mandatory recycling program dates to 1987 and is among the most environmentally protective in the nation. Through the designation of wastesheds and the State's use of flow control, detailed analysis of waste composition occurred in all the counties. Based on this composition analysis, some counties have required programs to source separate batteries, fluorescent bulbs, mercury switches, thermostats, computer screens, and other screens that contain heavy metals. We have also required these counties through the permit process to perform inventories of jewelry stores, camera shops, metal platers and other industrial establishments in order to implement education programs to avoid indiscriminate disposal of household hazardous waste. New Jersey does not have the authority, nor does any other State, to impose our recycling requirements on solid waste imports.

*Question 2.* Why should Congress allow States to restrict the movement of municipal solid waste, but not other materials that are more of a threat to human health and the environment, such as hazardous wastes?

Response. The human health and environmental protection aspects of the design and operation of both solid waste landfills and hazardous waste disposal sites are regulated by Federal EPA. States' interest in having the authority to restrict interstate solid waste shipments has more to do with local land use decisions to preserve long term disposal capacity. Local land use is not an issue in regulating hazardous waste.

It has been recognized that planning responsibilities for solid waste disposal can best be done at the State and local level. It has been administered with extremely limited, and in many cases non-existent, Federal oversight and guidance. The exception to this was the recently adopted Part 258 landfill requirements which, for the first time, brought some level of national consistency to the design and operation of municipal solid waste landfills.

In contrast, Subtitle C of the Resource Conservation and Recovery Act (RCRA) and subsequent amendments for hazardous wastes, have been implemented with a highly regulated Federal approach, which States can administer if delegated the authority. Both solid and hazardous waste programs currently have the necessary built-in components to protect public health and the environment.

Since the siting of hazardous waste disposal facilities is very difficult to accomplish at the local level, many are located directly where the waste is generated. This clearly is not the case for a landfill, which accepts waste from millions of homeowners and businesses. The local siting process for solid waste landfills can be contentious for many other different reasons including increased truck traffic, noise, and odors, which is why we believe local communities and governments should have authority over the ultimate use of their land.

*Question 3.* Allowing restriction on interstate transport of municipal solid waste will make it more difficult to finance modern, state-of-the-art landfills, resulting in waste continuing to be disposed of in older, less protective facilities. How will States ensure that waste disposal facilities are protective of human health and the environment?

Response. With the Federal Part 258 landfill standards, substandard landfills have been virtually eliminated. All New Jersey disposal facilities are currently protective of human health and the environment. Each has been designed to state-of-the-art standards and has detailed solid waste, air, and water resource permits that guide facility operations. In addition, the Department administers, as most States do, a rigorous enforcement program to monitor the activities at facilities to ensure their compliance with permit conditions.

*Question 4.* Is there any evidence that interstate transport of waste interferes with efforts to increase recycling and reduce land disposal?

Response. As we transition to a free market in New Jersey, we see evidence of reduced recycling for waste being disposed both inside and outside the State.

New Jersey has operated under a mandatory source separation and recycling law over the past 12 years. Through State legislation and an extremely aggressive approach to recycling, we have been able to obtain a statewide total waste stream recycling rate of 61 percent and a municipal waste stream of 42 percent.

As we move to deregulate our system in New Jersey, we have found numerous cases where materials which should have been source separated for recycling are commingled and shipped out-of-State for disposal. Economic considerations and the convenience of not source separating recyclable materials have, in most cases, been the motivating factor for this type of activity. We are also concerned, that some out-of-State facilities operate under the guise of recycling and really amount to nothing more than landfills or other disposal facilities.

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STATEMENT OF FLOYD H. MILES, SR., CHAIRMAN CHARLES CITY COUNTY BOARD OF SUPERVISORS, PROVIDENCE FORGE, VIRGINIA 23140

Thank you for the opportunity of presenting the experience and point of view of Charles City County concerning out of State waste. The free market forces that brought a regional landfill to Charles City County have been both an environmental and financial success story and we are very concerned with any legislation that would arbitrarily impact interstate commerce without any justification other than political expediency.

By way of explanation, Charles City County is one of the original shires established in Virginia in 1634 and, when they took the last census in 1990, we had approximately 400 people more than when they took the first census in 1790. We are located between Richmond and Williamsburg on the James River, have almost no industry, no cities or towns and no stop lights. We are essentially one of the poorest, if not the poorest, county in eastern Virginia.

In 1987, the State of Virginia mandated that we close our local landfill, which was typical of most landfills at that time, that is it was an unlined hole in the ground without any monitoring wells.

Although the State mandated that we close this facility and replace it with something else, no funds were made available to us. At the time, our tax rate was $1.29 per hundred, which was the highest tax rate of any rural county in the State. Even with this high tax rate, our school system was physically deteriorated and we had no hope of any significant improvements. The cheapest recognized alternative for handling our solid waste at that time would have required a real estate tax increase of at least 50 percent. [1]

None of these alternatives were acceptable to us and we proposed a public-private partnership whereby a private company would operate a regional landfill owned by the County, would do so under extremely strict environmental safeguards and would still pay significant revenues to the County. After many public hearings, the citizens of Charles City supported this approach and a landfill operator was selected. That led to the construction of the Charles City regional landfill that now serves not only eastern Virginia, but cities along the east coast. we recognized from the beginning, that if the landfill design was going to be as stringent as we required to assure the safety of our citizens, there would have to be a substantial amount of trash brought to the landfill from outside of the County. We did not discriminate at that time between trash from the City of Richmond or northern Virginia and the trash of Newark or New York. The cost of building an acre of landfill to our specifications, which is twice the standard required by the State of Virginia and the Environmental Protection Agency, is approximately $300,000.00 and we were willing to trade off the handling of other people's trash in return for having such a safe facility. [2]

In addition to providing Charles City with an environmentally safe landfill, our agreement has provided the County with a dramatic source of revenue. Since the landfill began operation in 1990, we have collected approximately 40 Million Dollars in payments. These funds have allowed the County to reduce its tax burden for its citizens (it is currently $0.72 per hundred), to replace completely its failing school facilities, to expand its recreational program for its citizens and to provide new office facilities for both County government and the County School Board.

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[1] We considered building a new lined landfill by ourself, joining another county to build a joint lined landfill, building a transfer station and then transporting the garbage to another landfill or simply paying a landfill operator to collect the County's waste at various locations and to dispose of it.

[2] Both EPA and Virginia design requirements specify that new landfills must have a liner system with a leachate collection system above the liner to preclude leachate escaping from the landfill and getting into the ground water. The Charles City license agreement requires that our operator construct landfill cells with two (2) liner systems and two (2) leachate collection systems and that they fund a separate account of approximately $300,000.00 per year to allow the County to hire independent engineers to monitor both the construction and operation of the landfill on a weekly or daily basis as necessary. The Virginia Department of Environmental Quality has its own inspector view the landfill on a quarterly basis.

Because the regional landfill was such an unqualified success for Charles City, a number of other Virginia counties have allowed regional landfills to be placed in them. These counties are typically rural with low tax base. As a result, Virginia now has seven (7) regional landfills. We recognize the public pressure and concern that revolves around the handling of trash, but this committee should recognize that the drive to limit out of State trash has nothing to do with the environment and every thing to do with politics. A review of the actions of our Governor and our legislature during the most recent session of the General Assembly that ended in February proves this point. While the Governor and legislature bent over backwards to discriminate against out of State waste, there was also a bill which would have required the closure of unlined landfills that have been demonstrated to be leaking and posing a threat to the environment of Virginia. This bill received no support from the Governor and was defeated by the legislature. So Virginia is left with officially sanctioned leaking landfills while we are concerned today with the quality of New York trash versus Richmond trash and what State is number 1, 2 or 3 in terms of handling out of State trash. I should also point out that there is a certain amount of hypocrisy in Virginia's position, since all of our hazardous waste is disposed of outside Virginia, primarily in Ohio and New York, and our nuclear waste is also disposed of out of State.

Interstate commerce works and the extent to which it is restricted will have real impacts on real people. The consequences of such a restriction will be to increase arbitrarily fees for many generators of solid waste and, at the same time, penalize counties who attempted to meet the requirements of the State and EPA with environmentally safe landfill facilities.

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RESPONSES BY FLOYD MILES TO ADDITIONAL QUESTIONS FROM SENATOR VOINOVICH

*Question 1(a).* What percentage of out-of-State waste enters the Charles City County landfill annually?

Response. For the calendar year 1998 the percentage of out-of-State waste entering the Charles City County landfill was 51 percent.

*Question 1(b).* How many tons of out-of-State waste enters the facility annually?

Response. For the calendar year of 1998 the total tons of out-of-State waste entering the Charles City County landfill was 359,366.

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STATEMENT OF DEWEY R. STOKES, PRESIDENT, BOARD OF COUNTY COMMISSIONERS, FRANKLIN COUNTY, OHIO, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES

I am Dewey R. Stokes, President of the Board of Commissioners of Franklin County, Ohio. I am testifying today on behalf of the National Association of Counties (NACo), which represents the over-3000 counties in the United States. We are also speaking on behalf of several individual local governments who are part of a coalition created specifically to support flow control legislation.

We appreciate being invited to participate in this hearing. As you know, counties have been before this committee on several occasions on this subject. We are delighted to have a chance to again press our case for Federal legislation to allow local governments to protect our huge investments in our municipal solid waste facilities.

We commend you, Chairman Chafee, for holding this hearing, and for allowing the longstanding issues of interstate waste and flow control to again be brought before the Committee. I also want to compliment Senator Voinovich for his dedication in solving these persistent problems by sponsoring S. 872, legislation that is vitally important to my county and many other communities. A similar bill, S. 663 by Senator Specter, is similarly worthy of our praise.

A great deal of investment in public infrastructure has taken place in the local governments that used flow control as a method to finance facilities to dispose of solid waste. Since 1980, over $20 billion in State and local bond issues were sold for solid waste facilities.

The need for legislation to grandfather these existing facilities continues just as strongly today as it did when the U.S. Supreme Court in 1994 decided the Carbone case (C. & A. Carbone, Inc. v. Town of Clarkstown, NY, 114 S.Ct.)

No, we have not defaulted on our bonds—most communities have made large financial sacrifices in order to meet those bond payments. Surely no one would seriously suggest that flow control-reliant communities must sustain an Orange County, California-type experience to justify congressional action. To avoid default and bond downgrades, communities have raised taxes, imposed new trash fees, cut back on waste management and recycling services, and drawn down reserve funds.

Nationally, credit-rating agencies downgraded debt ratings for 17 local and State solid waste authorities. Moody's downgraded 15 issues, of which approximately half were downgraded to "junk bond" status. Junk bond status, as I'm sure you know, means that the bonds are speculative and carry a significant risk that they will not be re-paid.

In addition to the downgrades, Moody's has 19 additional bond issues in the "unstable credit watch" category, due specifically to the absence of Federal legislation. As litigation by trash companies continues to be brought against counties and cities, the downgrades will also continue. The total outstanding debt that has either been downgraded or put on a credit watch for potential downgrading by the rating agencies since the Carbone case is over $2.3 billion by local public agencies.

What does this mean? It means that when a county goes to the bond market to borrow funds for other public projects—like jails or bridges or schools—the interest rate is significantly higher. This additional cost is borne by local taxpayers—small businesses as well as residents.

In Franklin County we have over $160 million of "stranded" investment in a waste-to-energy facility that was closed on the heels of the Carbone decision. After the Carbone ruling we had to impose a $7 per ton fee—a waste tax—on all municipal solid waste generated in Franklin County and disposed at in-State landfills. We had to take that action to generate sufficient revenue to meet our debt obligations due to the Carbone decision and the Congress' failure to help us.

My community will do everything possible to prevent a bond default and keep our bond rating, and I would expect communities everywhere to do the same thing. Surely bond defaults will not somehow be the litmus test for flow control legislation.

In this regard, I must emphasize that the flow control provisions of S. 872 and S. 663 are exactly the same as—I repeat, exactly the same—as the stranded costs protection provisions of the electric utility restructuring legislation that is supported by many of the Senate's most staunch advocates of a free market economy. Under that legislation, no electric utility will have to sustain a bond downgrade, or worse yet, a bond default, to be eligible for financial protection. Local governments are equally deserving of protection on the same basis—without being forced to sustain more downgrades, more local tax increases, and more litigation. We ask only for equitable treatment.

Simply put, the Carbone decision in 1994 changed the rules in the middle of the game. S. 872 and S. 663 provide narrow "grandfather" authority for pre-Carbone uses of flow control to assist affected communities in making the transition. If enacted, flow control authority can be re-instituted only for those communities that initially used flow control before May, 1994.

Let me emphasize that the flow control provisions of S. 872 and S. 663 are self-limiting. Once pre-Carbone debt is paid off, a community's authority under these bills terminates.

Opponents claim that flow control is a "hidden tax". Nothing could be further from the truth. The reality is that the absence of flow control authority has forced increased taxes and fees in many counties and cities. That is hardly a surprise—our debt obligations did not go away with the Supreme Court's Carbone decision. If that debt expense is not recovered through flow control-supported user fees, it will have to be recovered by increasing taxes or imposing new fees. There is no free lunch.

We hope that this Committee will join with the Senators who have sponsored the flow control bills and temporarily give us back what the Supreme Court took away. We urge you to support S. 872 and similar bills.

We also want to commend Sen. Voinovich for addressing the issue of interstate waste in his bill. Like my counterparts in many other States, we want to make sure that our communities have some control over waste imported from other States—whether to welcome it or reject it. The closing of New York's Fresh Kills landfill in just 2 years only makes the situation more critical.

But I urge you to remember that controlling interstate waste is only one half of the coin. Without the ability to keep waste at our own facilities, our local waste will be exported to cheaper landfills further west and south, and then more States will have to deal with the problem. I hope we can finally resolve this difficult issue, and we stand ready to help.

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

*I. Introduction*

Chairman Chafee, members of this subcommittee, and ladies and gentlemen in the audience, thank you for the opportunity to address you. I addressed this committee on the same topic we are discussing today in March 1997. Nothing has

changed since this period, nothing, none of the dire predictions of the proponents of flow control of massive foreclosure, to warrant the reimposition of flow control.

My name is Grover Norquist and I am the president of Americans for Tax Reform ("ATR"). As you may know, ATR is an organization comprised of individuals, corporations, and associations that favor lower taxes, less regulation, and a smaller Federal Government. We do not accept any Federal grant money nor do we benefit from specific Federal programs.

I come before you today to speak briefly about the free market, taxes, interstate waste restrictions and flow control legislation.

*II. Americans for Tax Reform Opposes Interstate Waste Restrictions and Flow Control*

Americans for Tax Reform believes that flow control promotes wasteful and inefficient practices at the expense of free market principals. It is anti-competitive, anti-taxpayer, and anti-growth. How else would one define the practice of permitting local governments to set up government-run trash disposal monopolies that virtually eliminate private-sector competition? I said in March 1997 and I will restate it now. ATR will score a vote for flow control and interstate restrictions as a vote for higher taxes.

In essence, flow control dictates where municipalities and businesses send their waste, and then artificially sets prices for disposal at above-market rates. These additional expenses are passed directly on to consumers in the form of higher costs for goods and services. In effect, flow control is a stealth tax. It is critical to remember that such costs will not be borne solely by corporate America—individuals, families, senior citizens and persons on fixed incomes will all shoulder the tax burden of flow control, and the larger government bureaucracy that it requires.

Moreover, the concept of flow control goes against free market principles. As you may know, the Supreme Court struck down local flow control regulations in 1994 in the case of Carbone v. Clarkstown, NY. The Court found that state-mandated flow control infringed upon interstate commerce. ATR believes that any interference with unrestricted movement of goods and services undermines the free market, and therefore, harms the American taxpayer.

At a time when Congress is empowering communities and individuals, in such cases as welfare reform and agricultural policy, the last thing our elected officials should consider is concentrating more power in the hands of elected officials. One cannot reconcile a theoretical commitment to a leaner and smarter government with the concept of a state-run monopoly that precludes private sector competition.

*III. The Costs of Flow Control*

ATR is proud to join with other champions of the free market on this issue. As Jersey City, NJ Mayor Brett Schundler so eloquently put it, flow control legislation "would institutionalize one of the worst excesses of the 'big government knows best' mentality that has long dominated Congress. . . we're forced to spend money on waste disposal that we would rather use for schools or police."

We've also seen a broad and diverse business coalition form around this issue. Representing organizations such as the National Federation of Independent Business, the National Restaurant Association, the National Association of Manufacturers, and the Association of Builders & Contractors, the Coalition Against Oppressive Flow Control has written: "Small business owners strongly oppose flow control because it would allow local governments to dictate where small business must send their waste and it allows these governments to set monopoly prices."

In another statement, the National Association of Manufacturers says: "flow control embodies the worst of all government monopolies—a hidden tax in the form of higher prices, reduced efficiency, a more intrusive government and a stifled free market."

And finally, Karen Kerrigan of the Small Business Survival Committee has explained: "Flow control is nothing short of centralized State planning that harms individuals, families, and businesses. It raises taxes, increases the size of government and hurts American consumers."

I couldn't agree with them more.

Perhaps as a way of summary, let me present four arguments against flow control. In so doing, I also hope to answer Chairman Smith's questions about what happens to communities in the absence of such regulation.

1) Flow control is nothing but a trash tax. ATR firmly believes that a vote to reinstate the practice of flow control is a vote to raise taxes. Flow control is a stealth tax—a hidden burden imposed on families and businesses by artificially inflating the price of waste collection. The American people already pay too much in taxes. We do not need yet another tax increase. Voters know that taxes on businesses are

ultimately borne by consumers and taxpayers in the form of higher prices, lower economic growth, and fewer jobs. ATR will work to make sure that the American people understand the harm done to them if flow control is enacted.

2) Flow control costs jobs. We know that flow control means small business can no longer shop around for the best price for its trash collection. Consequently, entrepreneurs face higher prices and have less money to pay their workers or hire new ones. Moreover, with scarce resources being diverted to pay increased "garbage taxes," there is less money for businesses to invest in their own communities. That means fewer private-sector jobs.

3) The cost of waste disposal is declining thanks to free market principles already in place. In the 3 years since local flow control was suspended, the price of waste collection has dropped. Contrary to the dire predictions of unelected bureaucrats, communities are not just surviving, but actually growing without flow control in place. The free market has forced inefficient government agencies that used to rely on flow control to become more efficient. This has lead to lower costs for homeowners and small businesses. For example, people under the regulation of Virginia's Southeastern Public Service Authority have seen prices cut by over 20 percent. Within Hennepin County, Minnesota, disposal prices have been slashed by 50 percent, from a high of $95/ton to $41/ton. In contrast, a study by the National Economic Research Associates reveals that flow control can actually increase the cost of waste collection by as much as 40 percent.

4) Flow control impedes market-oriented environmental and recycling efforts. The EPA has found that flow control fails to facilitate recycling or create other environmental benefits. I never thought that I would be united with Greenpeace, the Sierra Club, and the Audubon Society, but on this issue we agree. According to one environmental activist: "Flow control laws discourage environmental innovation . . . Congressional authorization of flow control could inhibit the development of alternative waste management options, including market-driven recycling efforts. Flow control laws unnecessarily inhibit the ability of recyclers and other ecological entrepreneurs to compete in the marketplace."

*IV. Conclusion*

As many of you know, I have relentlessly fought over the years for a smaller Federal Government and lower taxes. There could hardly be a better example of how Washington could threaten these principles than today's fight over flow control. The lines are cleanly drawn in this battle. On one side are the flow control proponents advocating a government-sanctioned monopoly. On the other side are the champions of the free market, American consumers, and the millions of small businesses across our nation. The choice could not be clearer.

Americans for Tax Reform strongly urges this Committee to protect American taxpayers and strike a blow for the free market. We urge you to oppose anti-competitive, anti-small business and anti-taxpayer programs such as the proposed flow control regime.

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RESPONSES BY GROVER NORQUIST TO ADDITIONAL QUESTIONS FROM SENATOR GRAHAM

*Question:* You advocate that a free market for waste disposal services provides the lowest cost for consumers. Given that two companies dominate the municipal waste disposal market in the United States, do consumers really have a choice of providers? Is there true competition in the marketplace?

Response. Whether a market is competitive is not determined by how many producers exist. There are many milk producers in America. But the Congress has created so many cross subsidies and barriers to entry that it is not a competitive or free (or rational) market.

When I was at college, I was taught by very well educated idiots—my professors—that the fact that there were three major car companies meant there was not a free market. I suggested, this is back in the 1970's, that entry was available from foreign car manufacturers and that unless tariffs or non-tariff barriers were erected by Congress this would keep the US car market competitive even with only three domestic producers. This I was assured was silly. Then in the 1980's, we discovered that there was relative ease of entry from Japan, Korea, Italy, Britain and Germany.

I understand that Congress, the EPA and State and local regulators have created many barriers to entry to the creation of new waste disposal sites and to waste carriers. You ought to stop doing this. You should undo the damage you and EPA and State and local governments have done by creating needless barriers to entry. No

fair creating barriers to entry and then whining that there are not enough entrepreneurs willing to brave your barriers.

Actually, my testimony didn't deal with a free market in waste disposal services—as important as that issue is. I focused on the threat to the commerce clause presented by demagogic politicians who threaten interstate commerce and the commerce clause by playing to voters understandable antipathy to "icky" industries. I also spoke against "flow control" which is nothing less than an attempt by corrupt and incompetent local governments that got themselves involved in the waste disposal businesses—where they had no business being in business—and then found that they could not compete in the market and want the government to "force" citizens to use their overprices, featherbedded, and otherwise wasteful facilities.

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STATEMENT OF ROBERT EISENBUD, DIRECTOR OF LEGISLATIVE AFFAIRS, WASTE MANAGEMENT

Mr. Chairman, I appreciate the opportunity to testify today on proposed interstate waste legislation on behalf of Waste Management, the world's largest publicly held solid waste management company.

In the United States, Waste Management companies provide municipal solid waste (MSW) collection, recycling, and disposal services in all the States. Waste Management operates more than 300 solid waste landfills and 23,000 waste collection and transport vehicles serving approximately 1.6 million commercial and industrial customers as well as 19 million residential customers. In addition, through Wheelabrator Technologies, Inc.'s 14 waste-to-energy plants, we produce energy from waste for the 400 communities they serve.

We provide these services in a heavily regulated and highly competitive business environment. Like all businesses, we are keenly interested in proposals, such as restrictions on the interstate movement of MSW, that would change that regulatory or competitive environment, and threaten the value of investments and plans we have made in reliance on the existing law.

In the balance of this statement, I will try to share with the Committee our reasons for concern and opposition to the proposed legislation before you. I will discuss the background and context as we see it, and suggested criteria for evaluation of legislation. I will then comment briefly on the Fresh Kills issue as well as the bills under consideration and proposals to restore flow control. More detailed comments on the bills are set forth in attachments to this statement.

*The Scope of Interstate Movements*

Approximately 8 percent of the MSW generated in the United States is shipped across State lines for disposal. These shipments form a complex web of transactions that often involve exchanges between two or more contiguous States in which each State both exports and imports MSW. An August 1998 Congressional Research Service report documents interstate movements of MSW between 43 States during 1997, involving exports by 33, and imports by 36 States. Nineteen States both exported and imported more than 100,000 tons of MSW.

The report explains that there are several factors contributing to these interactions. In some States, areas without disposal capacity are closer to landfills, or to less expensive disposal, across a border at strategically located regional landfills.

*The Role of Regional Landfills*

The CRS report notes that the number of landfills in the US declined by 46 percent between 1993 and 1997 as small landfills have been closed in response to the increased costs of construction and operation under the Federal RCRA Subtitle D and State requirements for environmental protection and financial assurance. The number of landfills in the early 1990's was nearly 10,000; today there are about 2,600, and the total number continues to decline as small landfills close, and communities in "wastesheds" turn to state-of-the-art regional landfills that are able to provide safe, environmentally protective, affordable disposal.

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

It was widely recognized that the costs to most communities of Subtitle D-compliant "local" landfills were prohibitive. The development of regional landfills was not only entirely consistent with all applicable law, it was viewed and promoted by Federal and State officials and policy as the best solution to the need for economic and environmentally protective disposal of MSW.

Waste Management's experience and activities in Virginia, where it operates 5 regional landfills, is illustrative of the role that these facilities play throughout the country. While I will defer to the comments of Mr. Miles and refrain from detailed comments about the Charles City County landfill, let me just describe the situation generally and provide a few details for you.

There are 7 regional landfills and 63 local landfills in Virginia that accept MSW. All of the regional landfills have been sited, constructed, and operated with liners, groundwater monitoring wells, and the other requirements of Subtitle D Standards. By contrast, 30 of the local landfills have no liners, and operations at 15 local landfills have resulted in contamination of the groundwater. No action is scheduled to abate the problems or close the leaking local landfills.

Meanwhile, the regional landfills provide safe and affordable disposal as well as significant contributions to the local economy through host fees, property taxes, and business license fees, totaling about $18 million from our 5 sites in 1998 alone. Additional contributions to the communities include free waste disposal and recycling services, and in some cases assumption of the costs of closing their substandard local landfills. These revenues and services enable the host communities to improve and maintain infrastructure and public services that would otherwise not be feasible.

*The Broader Context*

The proposed legislation before you would radically disrupt and transform the situation I have described. For that reason, as well as the precedential nature of some of the provisions, let me suggest that you consider those bills in a broader context.

The applicability of the Commerce Clause to the disposal of out-of-State MSW has been well established by a long line of decisions by the U.S. Supreme Court spanning more than 20 years. The Court has consistently invalidated such restrictions in the absence of Federal legislation authorizing them.

Throughout this period, companies like Waste Management have done what businesses do: they have made plans, invested, written contracts, and marketed their products and services in reliance on the rules, which clearly protected disposal of out-of-State MSW from restrictions based solely upon its place of origin.

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

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

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

*Suggested Criteria*

At some risk of oversimplification, the questions and concerns described above can be captured in 3 criteria by which to evaluate the proposed legislation; would the legislation provide Protection, Opportunity, and Predictability?

I hope the need for Protection is obvious. Good faith investments made in reliance on existing law should be protected. So, too, should the good faith decisions of local governments to enter Host Community Agreements approving receipt of out-of-State

waste. Similarly, legally binding contracts entered into before enactment of a change of rules must be protected out of fairness and to avoid sending a terribly threatening signal about the reliability of contracts, which constitute a fundamental building block of our economy.

The Opportunity criterion refers to the need to ensure the opportunity to compete in a lawful market that demands services, and to grow by virtue of the quality of the services offered. Discriminatory or arbitrary measures that deny or limit entry or participation in a market are simply bad policy that runs counter to the overwhelming trend in this country. They deny the public the benefits of competition.

By "Predictability", I intend to suggest that we need to know what the rules are. While nothing Is entirely certain or predictable in business or life, legislation should not add to market dynamics uncertain, external factors that allow for a change of rules based on a change of political winds or even personal whim. Business planning is rendered futile in the face of such uncertainties.

*The Proposed Legislation*

When measured against the suggested criteria, all the proposed legislation before you (S. 533, S. 663, and S. 872) fail on all counts.

None of the bills provides the Protection for host agreements, investments or contracts that they deserve. None of the bills preserves an Opportunity for entry into and growth in a market that demands economic and protective waste disposal. Finally, none of the bills provides Predictability about the rules that will apply to interstate shipments of waste. The array of discretionary authorities for Governors to ban, freeze, cap, and impose fees, and then change their minds over and over again, promises to result in chaos and a totally unpredictable and unreliable market and waste disposal infrastructure.

*The "Fresh Kills Issue"*

My comments thus far have dealt with interstate waste shipments generically, because the bills before you are applicable throughout the Nation. Let me turn now to comment on the "Fresh Kills Issue" that has attracted so much attention and motivated, at least in part, some of the legislative proposals.

In doing so, I want to stress that it is New York, not Waste Management, that has decided to close Fresh Kills landfill, and to request proposals for disposal of its MSW outside New York City. We are competing for that business. Our shareholders expect us to do so.

My purpose here is not to speak for New York State or the City, but rather to suggest that you consider the implications of two facts that have largely escaped attention.

First, the fact is that New York is not the largest exporter of MSW when measured as a percentage of the MSW a State generates. Nine States (DE, MD, NJ, RI, VT, LA, IL, MO, ID) and the District of Columbia all exported a greater percentage of their waste than the 13 percent exported by New York.

Second, New York City has committed to send Fresh Kills waste only to landfills in communities that have approved receipt of out-of-State MSW.

As a matter of policy, exactly what's wrong with a State exporting 13 percent or some similar percentage of the waste it generates to state-of-the-art landfills in communities that have approved receipt of out-of-State waste? If there is something wrong with it, precisely what must be changed, why, and how will legislation accomplish it?

*Flow Control*

Finally, let me comment briefly on the proposals in S. 633 and S. 872 to restore flow control authority.

We oppose restoration of flow control because we believe that it's simply too late to put Humpty Dumpty back together again. Restoration of flow control is neither feasible nor desirable.

In the 5 years since the Carbone decision, landfills and transfer stations have been constructed, trucks have been bought, people have been hired, contracts have been written, and both the consumers and providers of waste services have experienced the benefits of a competitive market. These investments and arrangements cannot be undone, nor should they be.

There is also good reason to question whether these flow control provisions, based on an approach crafted 3 years ago, are even needed any longer. Federal court decisions have upheld the use of waste districts, generation fees, and competitively awarded contracts as means to direct waste or provide funding to formerly flow controlled facilities.

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

ATTACHMENTS

WHAT'S WRONG WITH S. 533?

The provisions of S. 533 would result in unfair, unnecessarily severe, and probably unworkable restrictions on the interstate movement of waste that would abrogate contracts, diminish the value of private property and investments, void decisions by local governments, increase the cost of waste disposal, and disrupt existing and planned arrangements for waste disposal services. These problems are illustrated by the provisions discussed below.

*Federal Presumptive Ban:* Proposed new section 4011(b)(3) at page 13 imposes a Federal ban on receipt of out-of-State (OOS) municipal solid waste (MSW) unless the landfill is exempted from the ban (1) as a result of an existing or new Host Community Agreement (HCA) approving receipt of OOS MSW, (2) because it is located in a bi-State metropolitan statistical area, or (3) because it accepts for disposal less than 10,000 tons per year. Unlike other pending bills, there is no exemption for landfills that received OOS MSW in past years, or for those with State permits authorizing its receipt.

The ban is effective immediately upon enactment of the new section unless a State opts out under subsection (g) at page 25. As a result, every community in the Nation that hosts a facility without an HCA or other basis for exemption will be required by Federal law to expend the time and money to conclude an HCA in accordance with the elaborate and extensive requirements of proposed new section 4011(d) at pages 13–19, if it wants the facility to be able to receive OOS waste. This Federal requirement to spend time and money would be imposed even if the community had no desire to limit receipt of OOS MSW. The immediate effectiveness of the ban means that the flow of OOS MSW to facilities in those communities will be immediately and entirely cut off until they conclude the HCA process.

Moreover, even those communities that have concluded an HCA will be at risk as well, since there is no provision for resolving potential disputes about whether the facility is exempt from the ban. What agency enforces the ban? What is the penalty for violation of the ban? What courts have jurisdiction over disputes about the validity of HCAs? What happens to the flow of waste while the dispute is pending in the courts?

*Freeze Authority:* Subsection (b)(1) at pages 8–9 gives the Governor of any State that imports more than 1 million tons a year immediate discretionary authority to freeze imports at the 1998 level, even at landfills with valid HCAs. Thus, the facilities that escaped the presumptive ban because of their HCAs are subject to a freeze on volumes, and the decisions of local governments to allow imports are voided.

*Super Exporting State Ban:* Subsection (b)(2) gives the Governor of any State the discretionary authority, beginning in 2001, to ban all imports of OOS MSW from "super exporting States" that export more than 6 million tons per year. Here again, this authority applies to facilities with HCAs, thereby again vitiating the decisions of local elected officials.

*Discretionary Adjustments of Freeze and Ban:* Subsection (b)(3) gives any Governor who imposes the freeze or super exporting State ban the authority to adjust either one so as to give some landfills special privileges (exemptions), while imposing them on others.

Interestingly, a Governor's failure to respond to a request for an exemption is deemed an approval in the case of the freeze (page 11), but not in the case of the ban (page 12). Why not? What is an affected local government that receives no response supposed to do? More fundamentally, this discretionary authority to grant special exceptions would seem to invite the most undesirable political machinations and favoritism, making sound business planning by disfavored competitors virtually impossible. Indeed, planning by even the favored landfill and community will be in jeopardy of a change of political winds, since there is nothing irrevocable about the grant of an exception.

*Contract Protection:* There is no protection for legally binding contracts entered into before enactment of the legislation. The Federal ban, the freeze, the super exporting State ban, and the fees could all impair or abrogate such contracts.

While the discretionary actions of a Governor might be challenged successfully as violations of the Contract Clause of the U.S. Constitution, doing so would entail substantial expense and time, during which performance of the contract would be impaired.

The absence of explicit language protecting contracts is even more troubling in the context of the Federal ban. Imports pursuant to a contract entered into before enactment will likely not be protected from the ban because the Governor of the importing State would not have a role in banning the import; it would be prohibited by

the Federal statute. State law is not likely to provide protection from a Federal ban. Conversely, the Contract Clause applies only to actions by a State that abrogate a contract, so it would not protect the contract flows either.

*Fees:* Subsection (f) at pages 22–23 authorizes any State to impose a fee of up to $3 per ton of OOS MSW beginning in 2001 and a fee on OOS MSW from a super exporting State of $25 per ton in 2002, $50 per ton in 2003, and $100 per ton in 2004.

Unlike other pending legislation, there is no requirement that a State show that there is an unrecovered cost to the State for management of OOS MSW, nor is there an offset for benefit fees voluntarily paid to a host community. Moreover, like all the other discretionary authorities in this proposed section, there is nothing irrevocable about the decision of a Governor to impose or not impose a fee. As a result, fees can be imposed, then lifted, then imposed again, and so on, creating virtual chaos in the market, and foiling the best efforts of exporters, importing facilities, and host communities to predict, plan, contract, and invest based upon reasonable expectations and normal business dynamics.

*Public vs. Private Sector:* Although the text is not entirely clear or consistent, it appears to discriminate against the private sector and to favor the public sector by exempting from restrictions landfills owned or operated by a State or local government (page 7, line 20 through page 8, line 2). Why should a decision by an affected local government to allow receipt of OOS MSW at a privately owned/operated landfill be irrelevant, but so relevant for a publicly owned facility that no restrictions at all are imposed?

Reporting Requirements: Subsection (e) at pages 19–22 establishes a complicated, burdensome, and probably unworkable reporting system by which to determine the amount of MSW exported and imported by each and every State during the preceding year. Among the difficulties posed are the following:

- The "owner or operator" of a landfill does not include States or local governments under subsection (a)(8) at page 7, so publicly owned/operated landfills will not report under subsection (e)(1)(A), and the data will therefore be incomplete;
- States are given only 30 days after receipt of data from landfills, and EPA is given only 30 days to compile their reports. Such expeditious action is both unreasonable and unprecedented;
- States are required by subsection (e)(2)(A)(ii) to report the quantity of MSW exported during the preceding year. Exactly how are they expected to determine that amount? Few, if any, States currently gather such information on a comprehensive basis;
- Subsection (e)((2)(B)(iv) at page 20 requires States to report the "identity" of the generator of MSW. If this is meant to require the name of each person generating MSW, it is both impossible and irrelevant; and
- Subsection (e)(2)(D) at page 22 precludes judicial review of the list prepared by EPA. What, then, is an aggrieved party to do if the data, upon which bans, freezes and fees are based, are clearly erroneous?

TSCA-Regulated Waste: Subsection (a)(6) excludes from the definition of the MSW covered by the bill hazardous waste listed under section 3001, but waste regulated under the Toxic Substances Control Act is not excluded. The failure to expressly do so suggests that receipt of OOS TSCA-regulated waste at any landfill or incinerator is subject to the bans and limits of the bill.

Drafting Uncertainties: It is unclear as to whether incinerators are covered by some of the restrictions in the bill. "Incinerator" is included under the definition of affected local government, host community agreement, and owner or operator, but not elsewhere. The intended role of the subsection (a)(2) "affected local solid waste planning unit" is also unclear.

WHAT'S WRONG WITH SECTION 2 OF H.R. 1190 AND S. 663?

Section 2 of H.R. 1190 and S. 633 would abrogate contracts, diminish the value of private property and investments, void decisions by local governments, increase the cost of waste disposal, and disrupt existing and planned arrangements for waste disposal services. These problems are illustrated by the provisions discussed below in the order in which they appear in the bill.

*Federal Presumptive Ban:* Proposed new section 4011(a) at page 2 imposes a Federal ban on receipt of out-of-State (OOS) municipal solid waste (MSW) unless the landfill or incinerator is exempted from the ban (1) as a result of a Host Community Agreement (HCA) approving receipt of OOS MSW, (2) because it has a permit authorizing its receipt, or (3) because it has entered into a binding contract for a specific quantity of OOS MSW. All three of these purported exemptions are either much more limited than they appear or entirely illusory, as discussed below.

The ban is apparently effective immediately upon enactment of the new section. As a result, every community in the Nation that hosts a facility without an HCA, permit or contract for receipt of OOS MSW will be required by Federal law to expend the time and money to conclude an HCA in accordance with the elaborate and extensive requirements of proposed new section 4011(c) at pages 3–7, if it wants the facility to be able to receive OOS waste. This Federal requirement to spend time and money would be imposed even if the community had no desire to limit receipt of OOS MSW. The immediate effectiveness of the ban means that the flow of OOS MSW to facilities in those communities will be immediately and entirely cut off until they conclude the HCA process.

Moreover, even those communities that have concluded an HCA or host facilities that have permits or contracts will be at risk as well, since there is no provision for resolving potential disputes about whether the facility is exempt from the ban. What agency enforces the ban? What is the penalty for violation of the ban? What courts have jurisdiction over disputes about the validity of HCAs, permits, or contracts? What happens to the flow of waste while the dispute is pending in the courts?

*Definition of "Complies" and "Compliance":* The exemptions from the Federal ban are contingent on the facility being in "compliance" with Federal and State laws and regulations (page 11, lines 3–17) and with all of the terms and conditions of a permit authorizing receipt of OOS MSW (page 9, line 5), as well as the terms and conditions of the HCA (page 2, lines 24–25). This is a giant loophole, since the terms are not defined. Unless they are adequately defined, arbitrary and capricious action by State officials could lead to closure of a facility to all OOS MSW because of a litter violation, a 1-day delay in filing of a required report, or other minor infraction. Moreover, there is no mechanism for disputing the alleged non-compliance or any requirement that it be proven. A mere allegation of non-compliance would appear to suffice.

*State Laws on HCAs:* Proposed new subsection (C)(6) at page 8, lines 2–6 would authorize States to enact laws governing the entry by an affected local government into an HCA. There is no requirement that such laws be consistent, or not inconsistent, with the provisions of the section. Thus, for example, a State might enact a law requiring approval of a proposed HCA by the Governor or legislature of that State, or impose other requirements that would effectively preclude HCAS.

*Contract Protection:* Receipts of OOS MSW under certain legally binding contracts entered into before March 18, 1999 are explicitly protected from the ban by subsection (d)(1)(B)) at page 9, line 12-page 10, lines 1–7. In addition to the fact that this means that no subsequent contracts would be protected, even if the bill is not enacted for more than a year, the pre-March 1999 contracts will be protected only if the receiving landfill or incinerator on the date of enactment "has permitted capacity actually available" for the OOS MSW covered by the contract. Since sound business planning and cash flow considerations will ensure that this will almost never be the case, the protection is illusory. Moreover, even if there is permitted capacity for the total volume of waste to be received during the life of the contract, the subsection establishes a new Federal law of contracts that denies protection to contract renewals and extensions, even if they are not "novations" of the contract, and even if they would be protected under State law.

*Limitations on Amount of Waste Received:* Proposed new subsection (f) at page 11, line 18 through page 14, line 14 would allow a State or affected local government to freeze at 1993 levels the amount of OOS MSW that "naked grandfather" facility may receive. These are the facilities that are exempt from the ban because they received OOS MSW in 1993, but they do not have the required HCAs or permits authorizing receipt of OOS MSW.

A fundamental question arises as to whether a State could freeze receipts at facilities that do not have the requisite HCAs, permits, or contracts that would exempt them from the ban. The text of the subsection (a) Federal ban applies to all facilities unless they are specifically exempted. What naked grandfathers would be subject to the freeze rather than the ban?

In addition, for those facilities that are subject to the freeze, as is the case with exemptions from the ban, the exemptions are more apparent than real because

- a facility with an HCA is protected only if it had permitted capacity at the time of entering into the HCA to receive all of the OOS MSW authorized by the HCA (page 13, lines 1–5). This is a null set. Virtually all facilities with HCAs will be subject to the freeze.

The owner or operator of the facility must be able to document the "identity of the generator" of OOS MSW that was received in 1993. Assuming that this requires the names of each person from whom such waste was collected, it imposes an impos-

sible burden and guarantees that all naked grandfather facilities will be subject to the ban, not the freeze.

*Needs Determination:* Subsection (g)(1) on pages 14–15 guts all of the protection granted by other provisions of the bill for facilities with HCAs, permits, or "naked grandfather" status to receive OOS MSW by giving State permitting officials the power to deny permits for construction of new facilities and expansions of existing facilities if the officials determine that there is no local or regional need for the facility. Subsection (k) on page 22 "immunizes" such a denial from lawsuits based on the Commerce Clause.

The effect of this text would be to allow a State to discriminate against OOS MSW by denying permits for landfills or incinerators that would receive waste from outside the State, since the local area or region in the State would not "need" a facility for that out-of-State waste. This would make a nullity of any protection that might otherwise be gained from the rest of the bill, In the midst of widespread efforts to eliminate barriers to entry so as to promote competitive markets in virtually every sector of the economy, this proposal would move in exactly the opposite direction with centralized planning that will stifle competition and increase the costs of waste disposal. The existing facility would be given a monopoly, free from competition from "unneeded" capacity. Moreover, how will the central planners pick which facility gets a permit when and if they decide that new capacity is needed?

*Caps:* Subsection (g)(2) on pages 15–16 further erodes the protections ostensibly secured by other provisions of the bill. It authorizes any State to adopt a law that caps the amount of OOS MSW that may be received under permits issued after enactment at 20 percent of all MSW received annually. This would be a severe problem for regional landfills and incinerators for which there would simply not be sufficient in-State waste to sustain adequate operations.

Paragraph (B) exempts from the caps receipts at facilities that entered into HCAs prior to enactment, but only if the HCA specified the quantity of OOS MSW that may be received. Since few, if any, HCAs specify an amount, the effect of this paragraph is to deny any protection to pre-enactment HCAS. Moreover, since it makes no mention of post-enactment HCAs, it appears that they would be of no value in escaping a 20 percent cap, even if they did specify an amount. The combined effect of these provisions is to eliminate any reason to negotiate HCAs after enactment, and to so severely curtail operations as to eliminate existing regional facilities with HCAS.

*Authority Based on Recycling Programs:* Proposed subsection (h) on pages 16–19 allows States with comprehensive recycling programs to freeze receipts of OOS MSW at the levels facilities received in 1995, the year before Wisconsin's law was declared unconstitutional. Here again, facilities with HCAs are exempt only if they had, at the time of entering the HCA, permitted capacity to receive the waste authorized by the HCA a null set.

*Affected Local Government:* Subsection (m)(1) on page 23 defines the "affected local government" that is authorized to enter into an HCA and thereby exempt a facility from the ban and perhaps the freeze on its receipt of OOS MSW.

The text defines affected local government as the planning entity in all cases unless there is none authorized by State law, rather than the elected officials of the city, town, etc. with whom HCAs have traditionally been entered. This failure to recognize any but the planning body is artificial and a radical departure from all previous versions of proposed legislation on this subject, including the texts of H.R. 4779 that passed the House September 28, 1994, S. 2345 that passed the Senate September 30, 1994, S. 2345 that passed the House by unanimous consent on October 7, 1994, and S. 534 that passed the Senate on May 16, 1995. All of these texts allowed HCAs with either entity before enactment.

Here again, the effect of this provision would be to invalidate existing HCAs that have been concluded in good faith with the elected officials of local governments before enactment of any legislation. Their decisions on behalf of the people most directly affected by OOS MSW would be vetoed by the Federal legislation requiring that the time and money spent on public hearings and deliberations be cast aside, and that they effectively beg for approval from the MSW planning body to decide and determine their own best interestS.

*Construction and Demolition Waste:* The subsection (m)(3) definition of "MSW" includes on page 22, lines 13–24 C&D waste from "structures".

The effect of this text would be to subject all C&D waste to an unworkable regime that will increase the costs of its disposal for the following reasons:

*"Structures" is not defined:* Is debris from a tollbooth on a highway from a "structure"? Is the pavement at a drive-in food store or gas station, or the parking lot for an apartment building or store included as debris from "structures" when they and their associated buildings are constructed, repaired, or demolished? What about

mixed loads from those sources, or from the sites of the Florida hurricane, Los Angeles earthquake, Midwest floods, or Oklahoma City bombing?

How does the landfill owner know whether the debris was from a "structure" and covered by a ban or limit when it arrives in a truck at the landfill?

*TSCA-Regulated Waste:* Subsection (m)(3) excludes from the definition of the MSW covered by the bill hazardous waste listed under section 3001, but waste regulated under the Toxic Substances Control Act is not excluded. The failure to expressly do so suggests that receipt of OOS TSCA-regulated waste at any landfill or incinerator is subject to the bans and limits of the bill.

Industrial Waste: In a similar departure from all previous approaches to this problem, industrial, non-hazardous waste is not excluded from coverage under the bill. Subsection (m)(3)(B)(v) on page 24 excludes only that industrial waste that is sent to a "captive" facility owned by the generator or its affiliate. All other non-hazardous industrial waste generated by manufacturing or industrial processes would be subject to the bans and limits of the bill. The result would be a drastic reduction in the amount of industrial waste moving in competitive interstate commerce, and a dramatic increase in the costs of disposal.

WHAT'S WRONG WITH SECTION 2 OF S. 872?

Section 2 of S. 872 would result in unfair, unnecessarily severe, and probably unworkable restrictions on the interstate movement of waste that would abrogate contracts, diminish the value of private property and investments, void decisions by local governments, increase the cost of waste disposal, and disrupt existing and planned arrangements for waste disposal services. These problems are illustrated by the provisions discussed below.

*Federal Presumptive Ban:* Proposed new section 4011(b) at page 11 imposes a Federal ban on receipt of out-of-State (OOS) municipal solid waste (MSW) unless the landfill or incinerator is exempted from the ban (1) as a result of an existing Host Community Agreement (HCA) approving receipt of OOS MSW, (2) as a result of a new HCA, or (3) because it has a permit authorizing its receipt, received OOS MSW in 1993, or is located in a bi-State metropolitan statistical area. All three of these purported exemptions are either much more limited than they appear or entirely illusory, as discussed below.

The ban is apparently effective immediately upon enactment of the new section. As a result, every community in the Nation that hosts a facility without an HCA, permit or other basis for exemption will be required by Federal law to expend the time and money to conclude an HCA in accordance with the elaborate and extensive requirements of proposed new section 4011(d) at pages 12–18, if it wants the facility to be able to receive OOS waste. This Federal requirement to spend time and money would be imposed even if the community had no desire to limit receipt of OOS MSW. The immediate effectiveness of the ban means that the flow of OOS MSW to facilities in those communities will be immediately and entirely cut off until they conclude the HCA process.

Moreover, even those communities that have concluded an HCA or host facilities that have permits or received OOS MSW in 1993 will be at risk as well, since there is no provision for resolving potential disputes about whether the facility is exempt from the ban. What agency enforces the ban? What is the penalty for violation of the ban? What courts have jurisdiction over disputes about the validity of HCAs, permits, or 1993 receipts? What happens to the flow of waste while the dispute is pending in the courts?

*Contract Protection:* Proposed new subsection (g) at pages 22–25 would allow a State to freeze at 1993 levels the amount of OOS MSW that "naked grandfather" facilities may receive. These are the facilities that are exempt from the ban because they received OOS MSW in 1993, but they do not have the required HCAs or permits authorizing receipt of OOS MSW. Subsection (g) (1) (C) at page 24 States that nothing "in this subsection" supercedes any State law relating to contracts. No such language can be found with respect to the other subsections. As a result, receipts of OOS MSW under contracts are apparently not protected from the subsection (b) ban or the subsection (h) ratchet at pages 25–27.

The absence of explicit language protecting contracts is particularly troubling in the context of the Federal ban. Imports pursuant to a contract entered into before enactment will likely not be protected from the ban because the Governor of the importing State would not have a role in banning the import; it would be prohibited by the Federal statute. State law is not likely to provide protection from a Federal ban. Conversely, the Contract Clause of the U.S. Constitution applies only to actions by a State that abrogate a contract, so it would not protect the contract flows either.

*Affected Local Government:* Subsection (a)(1) on pages 2–3 defines the "affected local government" that is authorized to enter into an HCA and thereby exempt a facility from the ban and freeze on its receipt of OOS MSW.

The text defines affected local government as the planning entity in all cases unless there is none authorized by State law, rather than the elected officials of the city, town, etc. with whom HCAs have traditionally been entered. This failure to recognize any but the planning body is artificial and a radical departure from all previous versions of proposed legislation on this subject, including the texts of H.R. 4779 that passed the House September 28, 1994, S. 2345 that passed the Senate September 30, 1994, S. 2345 that passed the House by unanimous consent on October 7, 1994, and S. 534 that passed the Senate on May 16, 1995. All of these texts allowed HCAs with either entity before enactment.

The effect of this provision would be to invalidate existing HCAs that have been concluded in good faith with the elected officials of local governments before enactment of any legislation. Their decisions on behalf of the people most directly affected by OOS MSW would be vetoed by the Federal legislation requiring that the time and money spent on public hearings and deliberations be cast aside, and that they effectively beg for approval from the MSW planning body to decide and determine their own best interests. The facilities covered by those HCAs would be subject to the ban or, at best, to the freeze and ratchet if they accepted OOS MSW in 1993.

*Construction and Demolition Waste:* The subsection (a)(8) definition of "MSW" at pages 8–10 does not expressly exclude C&D waste. If that is the intent, the exclusion should be expressly set forth among the exclusions. Failure to do so would give rise to the argument that C&D waste is included, and dramatically increases the costs of its disposal.

*Host Community Agreement:* An additional problem results from the subsection (a)(4) definition of "Existing HCA" at page 5 and the subsection (a)(9) definition of "New HCA" at page 10. Existing HCAs are those entered into before January 1, 1999, while New HCAs are those entered into on or after the date of enactment. So what is the status of HCAs entered into after 1/1/99 but before enactment?

*TSCA-Regulated Waste:* Subsection (m)(3) excludes from the definition of the MSW covered by the bill hazardous waste listed under section 3001, but waste regulated under the Toxic Substances Control Act is not excluded. The failure to expressly do so suggests that receipt of OOS TSCA-regulated waste at any landfill or incinerator is subject to the bans and limits of the bill.

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## RESPONSES BY ROBERT EISENBUD TO ADDITIONAL QUESTIONS FROM SENATOR GRAHAM

*Question.* You advocate that a free market for waste disposal services provides the lowest cost for consumers Given that two companies dominate the municipal waste disposal market in the United States, do consumers really have a choice of providers? Is there true competition in the marketplace?

Response. Yes, consumers do have a choice of waste disposal service providers precisely because there is true competition in the marketplace. The availability of choice for the consumer and the existence of true competition among service providers are evidenced by several facts.

First, the recent merger of Waste Management and USA Wash would never have been approved by the US Department of Justice were it not certain that true competition would be sustained in the waste services marketplace. Thirteen States, including Florida, were on the consent decree approving the merger, and Oregon issued a parallel side letter All those authorities concluded that the merger as approved would not result in the kind of ""domination" to which you refer.

Second, the composition of the waste services industry itself supports the finding that there is true competition. Of the estimated $36 billion per year of solid waste services revenue, the Environmental Industry Associations estimates that municipalities capture 32 percent, the 5,500–7,000 privately owned companies capture 27 percent, and publicly held companies such as Waste Management, BFI, Allied, Casella, Republic, and Superior capture the remaining 41 percent of the revenues. It can hardly be said that any 1, 2, or even 10 or 12 companies 'dominate" the marketplace.

Finally a specific case may help to illustrate the effects of this true competition on the rates consumers pay for waste services. Before our Okeechobee landfill opened in Florida in 1993, the disposal rate at the Dade County landfill was $59 per ton. That rate has been reduced in response to the competition, and it is now

$45 per ton. The regional Okeechobee landfill has had a similarly beneficial effect on disposal rates for consumers in the Orlando area.

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ASSOCIATION OF AMERICAN RAILROADS,
*June 23, 1999.*

The HONORABLE JOHN CHAFEE, *Chairman,*
*Committee on Environment and Public Works,*
*U.S. Senate,*
*Washington, DC 20510.*

DEAR MR. CHAIRMAN: The Association of American Railroads (AAR) is writing in opposition to pending legislation which would restrict the interstate transportation of municipal solid waste, as well as permit government officials to require that all local waste be sent to publicly financed disposal facilities. Although well-intentioned, the legislation would impose an inappropriate burden on interstate commerce, unnecessarily distort consumer markets, and do nothing to enhance environmental protection.

America's railroads play a key role in the safe and efficient transportation of municipal solid waste to state-of-the-art disposal facilities. In many cases, these sophisticated facilities have replaced smaller, local landfills that were forced to close because they failed to comply with stringent new environmental requirements. As you pointed out in a recent statement, modern facilities are engineered to meet the highest standards, including double liners, leachate collection systems, and groundwater monitoring requirements.

AAR opposes legislation such as S. 533 introduced by Senators Warner and Robb, S. 663 introduced by Senator Specter, and S. 872 introduced by Senators Voinovich and Bayh—all of which would significantly increase the challenge of properly treating and disposing of solid waste. Enactment of the legislation would impede the free market and artificially limit the availability of cost-effective waste management options. In the end, the Nation would be less well off because of the barriers the measures would erect to the free flow of commodities across State lines.

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

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

As you have correctly noted, the question public officials should be asking is not how to ensure additional capacity for our nation's municipal solid waste—it is how to ensure that solid waste is managed in the most environmentally responsible manner. Railroads agree that the answer lies in allowing solid waste to flow to the best new regional facilities which incorporate state-of-the-art technology and which meet or exceed Environmental Protection Agency regulations.

I appreciate this opportunity to submit these comments on S. 533, S. 663, and S. 872. I request that my statement be made a part of the record in connection with the June 17 hearing before the Committee on Environment and Public Works on this legislation.

Thank you very much.

Sincerely,

EDWARD R. HAMBERGER.

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STATEMENT OF REPUBLIC SERVICES, INC.

Republic Services, Inc. submits this statement for the record in connection with the Senate Environment and Public Works Committee's June 17, 1999, hearing on

proposed legislation that would ban or severely restrict the interstate movement of municipal solid waste.[1]

## I. REPUBLIC SERVICES AND ITS INTEREST IN PROPOSED LEGISLATION

Founded in 1995, Republic Services, Inc. is a leading provider of solid waste collection and disposal services. Once the merger of Browning Ferris Industries ("BFI") and Allied Waste Systems is completed, Republic Services will be the nation's third largest provider of these services.[2] Republic Services provides waste collection services in 26 States and owns or operates 76 transfer stations and 58 landfills. In the past year, Republic Services acquired 16 landfills, 11 transfer stations, and 136 collection routes that Waste Management and USA Waste were forced to divest as a result of their merger.

Republic Services has a substantial interest in any legislation designed to restrict the movement of solid waste. Its position in the market and recent growth provide a somewhat different perspective from the industry Goliaths, Waste Management and Allied/BFI. As a result, the committee will benefit from considering Republic Services' perspective when it deliberates on the proposed legislation.

Republic Services shares many of the concerns that have been brought to the committee's attention in years past. Republic Services believes that the nation's prosperity arises in no small part from the framers' inclusion of the commerce clause in the Constitution. Congress's historic reluctance to confer authority upon the States to interfere with the free flow of goods and services across State borders has served the nation well. Republic Services has not seen evidence that a compelling public interest would be served by abandoning this reluctance in the case of municipal solid waste. Republic Services' views on the advantages of unburdened interstate commerce generally, and specifically the advantages stemming from allowing solid waste to cross State borders for disposal, are set out in Section III of this statement.

Republic Services firmly believes that Congress should not confer authority on States to interfere with the movement of solid waste across State borders for mere political expedience. Republic Services also believes that the burden falls upon those who want to authorize States to restrict such movement to demonstrate the public interest in doing so. This statement sets out the reasons why Republic Services believes that proponents of this legislation cannot bear that burden. These views are set out in Section IV of this statement.

Before turning to the more frequently voiced arguments, however, this statement focuses on what Republic Services regards as the potential anti-competitive and, as a result, anti-consumer aspects of the bills. This is an area in which Republic Services believes its perspective might uniquely inform the committee.

## II. ANTI-COMPETITIVE AND ANTI-CONSUMER EFFECTS

The proposed legislation would mean bad news for consumers: less competition among waste disposal service providers, higher disposal costs, and less local autonomy.

### *A. Less Competition*

By freezing in place certain existing relationships, the proposed legislation could lead to less competition among companies vying to provide waste collection and disposal services for local communities. Provisions in the legislation that would restrict the volume that landfills could import to 1993, 1995, or current baselines effectively freeze current market share. Authorizing a State to "cap" total solid waste imports into the State at a given baseline year has the same effect. The practical result would be to confer monopolies on established market dominators.

In essence, those large enterprises that are currently importing solid waste into a State would have a monopoly on the waste trade between the exporting and importing States. Only those integrated companies with disposal sites that were accepting the waste at the time the legislation passed (or at any baseline year) would be in a position to provide collection services in those markets where out-of-State disposal is the preferable management option. In light of this fact, it is easy to understand why Waste Management/USA Waste and Allied/BFI, the Goliaths of the industry, may be willing to accept ceilings on a State's annual out-of-State waste imports. The ceilings would not only further cement their present domination of the

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[1] The bills include S. 533, sponsored by Senators Warner and Robb, and S. 872, sponsored by Senators Voinovich, Bayh, Abraham, DeWine, Levin, and Lugar. A similar bill, S. 663, introduced by Senator Specter, was not referenced in the hearing announcement.

[2] In 1998, Waste Management generated $12.7 billion in revenues; BFI, $4.2 billion; and Allied Waste, $2.2 billion. William P. Barrett, Waste Not, Forbes 22 (Apr. 5, 1999). Republic Services' 1998 revenues were approximately $1.4 billion.

interstate waste trade but also strengthen their stranglehold on major metropolitan areas' collection services, where out-of-State disposal would be the preferred disposal option.

The net effect of this would be to diminish competition for waste collection in large markets, depriving consumers of competitive outlets for their collection services. Members of the committee will be familiar with the advantages that arise from competition: price competition and vendors vying for customer loyalty through continued quality improvement. The proposed legislation would result in a loss of these advantages.

Republic Services stands to lose significantly if a law is enacted that places a ceiling on transboundary waste shipments. Republic Services is now approaching the size that its business planning can address the efficiencies achieved through transboundary waste movements. Not one of the pending bills adequately addresses the apportionment of State waste import quotas among competitors. If all the waste imports authorized by the legislation are already in the Goliaths' hands, then Republic Services will be effectively—and unfairly—foreclosed from competing to provide these services.

*B. Higher Waste Disposal Costs*

Diminished competition translates into fewer choices among potential waste service vendors and, as a result, increased disposal costs for consumers. In addition, the benefits which consumers currently reap from economies of scale associated with regional landfills would be jeopardized.

As recognized by the U.S. Environmental Protection Agency, landfill size is a key factor in determining the cost per ton of waste disposal.[3] Construction and maintenance costs for state-of-the-art disposal facilities are substantial, and, for small communities, even prohibitive. However, by spreading these costs among greater numbers of consumers, landfill operators are able to achieve economies of scale, and lower the cost-per-ton of waste disposal.[4] Regional landfills also promote efficiency by allowing communities in the same general proximity to avoid the expense of siting separate fills.

Restrictions on the interstate transport of waste would harm consumers by eliminating the opportunities to create regional landfills that take advantage of these economies of scale and efficiencies of consolidation. In the short term, consumers in exporting States would be forced to pay higher disposal prices, because they would be unable to make use of regional landfills located in other States. In the long term, consumers in importing States would also face higher disposal costs. Many larger landfills currently depend on imported waste to generate sufficient revenue to cover operating costs. If these landfills are no longer permitted to freely accept out-of-State waste, they would be forced to raise their tipping fees in order to account for the smaller volumes of waste entering their facilities. Ultimately, construction of state-of-the-art facilities could come to a halt, leaving disposal to small, local facilities unable to achieve economies of scale.[5]

Restrictions on the interstate transport of waste would also harm some consumers by denying them access to the most competitive facilities. Some States enjoy a comparative advantage in the provision of waste disposal services. For example, the cost of land is generally cheaper in the Midwest than in the Northeast. As a result, the capital investment required to build a landfill in the Midwest is generally lower than the investment required to build a similar facility in the Northeast. This comparative advantage is reflected in the lower tipping fees charged by landfills in the Midwest.[6]

Furthermore, siting landfills in geographic areas that are naturally less amenable to achieving groundwater protection goals may require spending significantly more to achieve compliance with environmental protection standards.[7] The additional construction, operation and maintenance costs must be passed on to consumers through higher tipping fees.

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[3] Solid Waste Disposal Facility Criteria, 56 Fed Reg. 50,978, 50,987 (Oct. 9, 1991).

[4] See James E. McCarthy, Congressional Research Service, CRS Issue Brief, Solid Waste Issues in the 106th Congress 2 (April 9, 1999); see also Kirsten Engel, Reconsidering the National Market in Solid Waste: Trade-Offs in Equity, Efficiency, Environmental Protection, and State Autonomy, 73 N.C.L. Rev. 1481, 1504 (1995).

[5] See Margaret A. Walls and Barbra L. Marcus, Should Congress Allows States to Restrict Waste Imports? Resources 7-11 (Winter 1993).

[6] Id.

[7] See generally notes 31-36, infra, and accompanying text.

*C. Less Local Autonomy*

The proposed legislation would effectively subordinate local autonomy in favor of State authority provisions in the proposed legislation that would allow governors to countermand commutes decisions to allow imported waste to be managed within the communities' borders[8] constitutes an intervention in the relationship between State and local government that Congress would wisely avoid. While the concept of using host community agreements as a means of overriding presumptive import bans is a good idea, Federal legislation would nonetheless force Congress to intervene in complex State/local political relationships.

There are many reasons why communities choose to have a regional landfill operate in their vicinity. The community's geology and remoteness may make it suitable for the development of a landfill. Communities that have sited such landfills have received tens of millions of dollars in host community fees, making it possible to build new schools and roads, operate senior-citizen and after-school programs, buy ambulances and fire trucks, reduce real estate taxes, attract new businesses, and provide other sought-after benefits.[9]

The committee will be hearing from one such community. There are others. For example, one city chose to spend the $3.5 million it received as compensation for hosting a landfill to rehabilitate roadways and homes, and fund various other neighborhood improvement projects.[10] Restrictions on the interstate transport of solid waste could deprive local communities of these opportunities to engage in mutually beneficial arrangements for the disposal of solid waste.

III. ADVANTAGES OF UNBURDENED INTERSTATE COMMERCE

Given the potential anti-competitive effects discussed in the preceding section of this statement, members of the committee will have good reasons for concluding that the proposed legislation is ill-advised. Republic Services' focus on these potential effects, however, is not intended to denigrate the traditional commerce clause-based reasons for eschewing this legislation. For reasons set forth in this section, States neither have a significant interest in regulating interstate waste movements nor do they require congressional delegation of commerce clause authority to satisfy any legitimate environmental or safety objective.

*A. The Commerce Clause and States' Authority to Regulate Interstate Trade*

The framers drafted the commerce clause to remedy the divisiveness and openly hostile economic relationships that had developed between the States.[11] The commerce clause is based on the notion that an open and competitive national marketplace will lead to prosperity,[12] a notion that has served the nation well for over 200 years. It has led to the development of a strong national economy and the proper allocation of resources.

There is a well-established body of law that defines when States can and cannot interfere with interstate commerce. If a State wants to purposefully discriminate against interstate commerce, it must establish that such a measure is necessary to accomplish a compelling State interest.[13] For example, in Maine v. Taylor, the Supreme Court upheld a Maine law that banned the importation of live baitfish from other States. Given the importance of fishing to Maine's economy, coupled with the fact that it was very difficult to differentiate between imported baitfish containing parasites and those that did not, the Court concluded that Maine was justified in banning the imports. In contrast, State laws that affect—but do not purposely discriminate against—commerce are subject to a more lenient balancing test. States may enact laws that have incidental effects on interstate commerce, so long as the burden of such laws is not clearly excessive in relation to claimed benefits.[14]

Because States can affect the movement of waste across their borders if they can meet either of these standards, it is not necessary for Congress to confer additional authority upon the States. Indeed, for reasons made plain in this statement, such a conferral of authority would be ill-advised, because "any action taken by a State

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[8] See, e.g. S. 533, § 2(b); S. 872, § 2(h).

[9] Environmental Industry Associations, Executive Brief on Interstate Waste Transportation 1 (Apr. 1999) (hereinafter "EIA, Executive Brief").

[10] See Press Release from the City of Fort Wayne, Indiana, City to Use Host Fees For Improvements to Hanna Street,

[11] See, e.g. The Federalist No.45 (James Madison) (arguing for a Federal commerce power to counteract the Parochial tendencies of the States).

[12] See, e.g., The Federalist No.11 (Alexander Hamilton) (stating that a Federal commerce power was necessary to allow the United States to compete with the colonial powers).

[13] Maine v. Taylor, 477 U.S. 131,140 (1986).

[14] Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970).

within the scope of congressional authorization is rendered invulnerable to the commerce clause challenge.[15] In the case of solid waste disposal, a heavily regulated enterprise for which human health and safety and environmental protection are ensured through a comprehensive, Federal regulatory scheme,[16] no compelling State interest exists in regulating interstate waste. The reason proponents of the pending legislation are before the committee is that their States have not been able to reconcile their motives with this well-developed and well-functioning legal regime. Indeed, courts that have looked at the public policy aspects of this matter have not found the type of interest that would warrant such State interference.[17]

*B. Reasons for Interstate Waste Movements*

The movement of solid waste across State borders occurs for reasons arising from the need to manage such waste properly. In this regard, reference to the situation in the home States of the sponsors of the proposed bills represent reveals some ironies. Ohio, for example, imported one million tons of solid waste in 1997 and exported 900,000 tons of solid waste in the same year.[18] and Virginia export a significant percentage of hazardous waste to New York.[19] Where waste is allowed to cross-State borders—while human health and safety and environmental protection are closely regulated—then optimal management outcomes will follow.

Of the hundreds of millions of tons of solid waste generated each year in the United States, only a small percentage crosses State lines for disposal. Waste imports accounted for less than 9 percent of the solid waste disposed in the United States in 1998.[20] In Ohio, for example, out-of-State waste represented only 7 percent of the total waste disposed in the State during 1997.[21] Furthermore, a majority of waste exports are sent to neighboring States, indicative of the regional approach to waste management.[22] In contrast, nearly every State exports and imports some quantity of waste. For example, in 1995, 49 States exported solid waste and 45 States imported solid waste.[23]

Interstate shipments of solid waste have made possible the volume of business necessary to construct state-of-the-art, regional landfills. Landfills built to comply with U.S. EPA's regulations under Subtitle D of RCRA must fulfill requirements relating to liners, leachate and methane gas collection, ground water monitoring, and financial assurances.[24] While these protective measures are effective, they are also costly. It is estimated that the construction of a landfill that complies with the Federal regulations requires a capital investment of $500,000 per acre.[25]

In order to afford the costs of complying with these regulations, landfill owners have built larger, regional facilities. Statistics on waste disposal reflect these reallies. For example, approximately 75 percent of the nation's municipal solid waste is deposited in 25 percent of the nation's landfills.[26] Many of these larger landfills depend on waste from other States to generate sufficient revenue to cover operating costs.[27] Without the ability to freely accept large quantities of waste, these facilities may become too costly to operate.[28] In fact, almost three-quarters of the country's landfills have already closed as regulations governing land disposal have tightened.[29] Thus, the continued economic viability of state-of-the-art landfills depends on the continued free movement of solid waste.

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[15] Western and Southern Life Ins. Co. v. State Bd. of Equalization, 451 U.S.648, 652-653 (1981).

[16] See notes 32-36, infra, and accompanying text.

[17] See, e.g., City of Philadelphia v. New Jersey, 437 U.S.617, 628-629 (1978).

[18] James E. McCarthy, Congressional Research Service, CRS Report, Interstate Shipment of Municipal Solid Waste: 1998 Update 5 (Aug. 6, 1998).

[19] EIA, Executive Brief note 9 supra.

[20] Jim Glenn, The State of Garbage in America, Biocycle Magazine (Apr. 1999).

[21] See Press Release from Ohio EPA, "Landfill Capacity in Ohio Increases" (Apr. 15, 1999).

[22] Edward R. Repa, Interstate Waste Movement: 1995 Update, Waste Age Magazine 44 (June 1997).

[23] Id.

[24] See notes 31-36, infra, and accompanying text.

[25] EIA, Executive Brief note 9 supra.

[26] Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Landfills Point Source Category, 63 Fed. Reg. 6426, 6432 (Pete. 6, 1998).

[27] Walls and Marcus, supra note 5, at 11.

[28] See Solid Waste Disposal Facility Criteria, 58 Fed. Reg. 40,568, 40,571 (July 28, 1993) (in response to Federal regulation, "many of the smaller landfills may close and their users will instead send their waste to a regional waste management facility that can take advantage of an economy of scale").

[29] McCarthy, supra note 4, at 2.

## IV. ENVIRONMENTAL PROTECTION AND SAFETY

### *A. Restricting Interstate Waste Movements Will Not Advance Environmental Protection*

Restrictions on the interstate shipment of solid waste would not enhance protection of human health or the environment and, in fact, may undermine that goal. Proponents of this legislation generally claim a number of benefits will arise from passing this legislation, but none of the claimed benefits hold up to careful scrutiny. Moreover, proponents of the legislation overlook some negative potential consequences of the legislation that deserve the committee's attention. As this body previously heard from a representative from the respected environmental organization, the Natural Resources Defense Council, "interstate transport restrictions by themselves provide no environmental benefits, and in fact could be counterproductive."[30]

First, Federal law presently sets national standards for the degree to which operating landfills must protect human health and the environment. These standards are established on the basis of conservative assumptions that have been deemed to be appropriately protective. EPA has promulgated extensive regulations designed to protect groundwater and prevent pollution from landfills.[31] Pursuant to these regulations, landfill owners and operators must install composite liners, which prevent leachate from escaping into the groundwater.[32] Leachate and methane gas collection systems must be installed to capture and treat these releases.[33] Groundwater monitoring systems must be used to sample and analyze the surrounding groundwater.[34] Even after a landfill ceases to operate, its owner and operator must properly cover it, and continue to monitor and maintain the landfill site for 30 years.[35] Finally, landfill owners and operators are required to demonstrate that they have the financial ability to carry out closure and post-closure activities.[36]

Moreover, States are free to address legitimate environmental, health, and safety concerns about the operation and closure of solid waste landfills that operate within their borders by increasing the stringency of the regulations governing such landfills—if they do so without regard to the source of the waste disposed in them.[37] The Chair of the House counterpart to this committee recently identified States' authority under the existing legal regime[38] a reason not to adopt Federal legislation.[39]

Second, proponents of this sort of legislation claim that allowing so-called "long haul" transportation of solid waste serves as a disincentive to recycling efforts, but they make such claims without establishing a cause-and-effect relationship. Restricting cross-border waste shipments is not the way solve the recycling "problem." Some advocates of interstate waste movement restrictions assert that such restrictions will increase recycling rates. These proponents should come forward with evidence to support the proposition that the availability of "long-haul" disposal options diminishes recycling rates. Advocates of restrictive legislation will have to overcome, for example, evidence that waste exportation does not diminish recycling rates. On the contrary, New Jersey, which can claim the second highest recycling rate in the country, was also the second largest exporter of solid waste.[40]

Moreover, there is a substantial literature that attributes present recycling rates to a number of other factors—none of which have to do with the availability of "long-haul" disposal options. Profitability is likely the single most important determinant of recycling rates. The low prices for recycled materials and the costs associated with the collection and cleaning of post-consumer products affects the rates at which materials are recycled.[41] Because restricting waste movement will not affect the basic market forces by which material choices are made, the proposed legislation will not bring about the benefit that proponents of the legislation claim. If increased

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[30] Statement of Dr. Allen Hershkowitz, National Resources Defense Council, at Interstate Waste and Flow Control Hearings Before the House Commerce Committee, 104th Cong. (March 23, 1995).

[31] See generally 40 C.F.R § 258 (1998).

[32] 40 C.F.R § 258.40.

[33] Id. §§ 258.23, 258.40.

[34] Id. §§ 258.51, 258.53.

[35] Id. §§ 258.60, 258.61.

[36] Id. §§ 258.71, 258.72.

[37] See City of Philadelphia, 437 U.S. at 626-627.

[38] See notes 13-17, infra, and accompanying text.

[39] Hon. Thomas Bliley, Letter to the Honorable James S. Gilmore, III, Governor of Virginia (Mar. 5, 1999).

[40] Robert Steuteville, 1994 Survey: The State of Garbage in America, Biocycle Magazine 48 (Apr. 1994).

[41] See, e.g., Angela Logomasini, Going Against the Flow, The Case for Competition in Solid Waste Management (Citizens for a Sound Economy Foundation, 1995)

waste diversion/recycling is the objective, then effective Federal legislation would look very different from these bills.

Third, proponents of this sort of legislation do not address its potential negative consequences. In fact, restricting interstate waste disposal will result in a net environmental loss for the country. Allowing States to close their borders to waste from other States would be at cross-purposes with other environmental objectives such as preserving open space. If waste from the originating State cannot be sent to a regional landfill located in another State, then State-siting authorities, faced with the immediate necessity of constructing new landfills, will be forced to authorize the construction of landfills on "greenfields" within the State borders.[42] Such actions will be in direct contravention with one of the nation's most pressing environmental concerns—the loss of open space. The ultimate result would be a net environmental loss for the country as a whole.

*B. Proposed Legislation Will Not Reduce Transportation Volume or Accidents*

While proponents of Federal legislation might claim to be motivated by an interest in preventing waste transportation-related accidents, the committee should take a hard look at the facts to determine whether the proposed legislation will address that concern. The movement of municipal solid waste across State borders does not constitute a risk to human health or the environment of the magnitude that warrants Federal legislation. The health and safety issues associated with the interstate transportation of oil, gasoline, hazardous waste, or nuclear waste, for example, are simply not present with municipal solid waste. In sharp contrast to spills of these materials, a "spill" of municipal solid waste is unlikely to constitute an immediate threat to human health or the environment. Clearly, if reducing the risks posed by interstate transportation of material were the goal, the focus of the interstate restrictions would not be solid waste.

Furthermore, there is no evidence that trucks engaged in the interstate transportation of solid waste pose safety issues any different than associated with the transport of other goods. In fact, during a recent, intensive two-day State inspection of trucks and their contents in Pennsylvania, the Pennsylvania Department of Environmental Protection discovered that waste trucks actually had a better than average percentage of safety compliance. Out of the 1,071 waste hauling trucks stopped last month along Pennsylvania's highways, 226 trucks (approximately 21 percent) had violations. In contrast, the rate of violations for trucks in all industries is approximately 29 percent.[43]

Even if the statistics showed that hauling solid waste posed a more significant safety concern, enacting interstate waste controls will likely not decrease truck traffic or "long haul" waste disposal. In fact, interstate waste controls may increase both truck traffic and long haul disposals. When faced with limits in the amount of waste permitted to be sent to each State, exporting States will likely be forced to send more shipments each of lesser volumes—to more States.[44] Thus, limiting the quantity of waste exports to a particular State will result in an increased number of waste shipments to more States.

Interstate waste constraints may also require waste to be hauled further distances for disposal. For example, the Chicago metropolitan area currently exports a significant amount of waste. Although sufficient landfill capacity exists elsewhere in the State of Illinois, much of the waste generated in the Chicago area is shipped a short distance to the bordering States of Indiana and Wisconsin.[45] If interstate shipments were restricted, Chicago's waste could well have to be hauled longer distances in order to be disposed within Illinois' own borders.

## V. CONCLUSION

There are any number of compelling reasons for the committee to reject legislation that would confer authority on States to restrict cross-border waste movements. Mindful of the comprehensive Federal regulatory scheme that ensures the appropriate level of environmental protection, committee members can remain faithful to the principle that has led to the country's long enjoyment of the prosperity resulting from trade among the many States. Failure of proponents to establish that a compelling public (not political) interest will be served does not help their appeal. More

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[42] "Greenfields" are lands which are previously undisturbed by commercial or industrial activity.

[43] Bob Brown, Trashnet Nabs Waste Hauling Violators, Waste News 4 (May 31, 1999).

[44] See Eduardo Ley, Molly Macauley, and Stephen W. Salant, Spatially and Intermodally Efficient Waste Management: The Costs of Interstate Flow Control, Resources for the Future Discussion Paper (June 1996).

[45] McCarthy, supra note 18, at 8.

parochially, Republic Services asks committee members to pay careful attention to provisions in the various proposals that have the anti-competitive effect of freezing in place present market share as to interstate waste shipments, or at least the absence of well thought out mechanisms for apportioning import restrictions among competitors. Republic Services trusts that its submission of this statement has assisted the committee members and their staffs in considering this issue, which has a tremendous direct effect upon the Company.

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STATEMENT OF ANGELA LOGOMASINI, COMPETITIVE ENTERPRISE INSTITUTE

As Director of Risk and Environmental Policy at the Competitive Enterprise Institute, I would like to submit these written comments on proposals to limit interstate trade in municipal solid waste. CEI has a long track record of providing expert analysis on solid waste issues and other key environmental issues. For 15 years, our analysts have worked to promote free-market, pro-environmental principles and we have become a leading source of information to policymakers, the press, and the public. In addition, I personally have focused on solid waste issues, starting in 1990 during the Resource Conservation and Recovery Act reauthorization debate. I have provided analysis on wide range of solid waste-related issues since then, including the interstate trade issue.

For more than two decades, various States have battled over interstate movements of municipal solid waste. States have passed import bans, out-of-State trash taxes, and other policies to block imports. Federal courts have struck these laws down as protectionist policies that violate the commerce clause, which gives only Congress the authority to regulate interstate commerce. Now some Federal lawmakers want to pass a Federal law to give States authority to regulate trade in the waste disposal industry.

The U.S. Constitution protects interstate trade because the founders understood the benefits of free trade. They wanted to prevent State lawmakers, caught up in heated interstate disputes, from passing foolish protectionist policies. In this case, Federal lawmakers are willing to consider barring localities from engaging in trade in the disposal industry even though it is critical to quality of life in their communities.

Many communities choose to "host" regional landfills, agreeing to allow waste imports in exchange for free trash disposal and a cut in the landfill profits. These agreements have enabled communities nationwide to cut taxes, repair and upgrade infrastructure, give pay raises to teachers, build schools and courthouses, as well as close and cleanup old, substandard landfills. Funds from waste imports were even going to help one historic plantation in Virginia raise revenues to maintain the landmark—until the State passed a law impeding trade.

Virginia's recent trade barriers against solid waste are on shaky constitutional grounds and will soon face constitutional challenges. Congress may soon consider proposals to make Virginia's laws valid and enable other States to follow suit. But should landfill host communities (many of which are low-income and minority communities that need economic development) lose income from landfills, they may not be able to address future needs. And if Congress passes a law allowing States to regulate trade, many more communities may never even have the opportunity to consider entering into such agreements.

Still, some say that by allowing landfills to operate in their jurisdictions, these communities trade away public health and safety for mere monetary gain. In reality, communities desire the quality of life benefits—which include public health and safety—that this industry produces, particularly for many rural, low-income communities that have little other source of income. The landfill business is one way they can afford basic goods that most of us take for granted—e.g., safe school buildings, piped water, and safe waste disposal.

Rather than increasing public health and safety risks, these landfills enable communities to close substandard landfills and construct safe, modern landfills. The risks of these new landfills are exceedingly low. For example, one study finds that the risk of getting cancer from exposure to landfill wastes is about one in ten billion for a majority of existing facilities—a risk level many times safer than what EPA considers acceptable passing environmental regulations. Higher risk landfills (which range from one in ten billion risk levels to one in 100,000) were designed before landfill companies began employing high-tech landfill safety technology. New regional landfills, which are the ones responsible for accepting most waste imports, pose the least risk.

This issue is not about public health and safety. Instead, lawmakers are concerned that accepting out of State waste labels their States "dumping grounds,"

which makes the issue more about public relations than public health and safety. But State and Federal lawmakers only harm their own constituents when they act on such weak grounds, seriously undermining free enterprise because of failed public relations.

These findings are more fully detailed in a soon to be released CEI study on the topic. I would like to submit an early release of that study for the record, which is attached to this testimony. I thank the committee for allowing me to submit these comments, and I believe that the attached study will serve as a valuable resource as this debate unfolds.

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## TRASHING THE CONSTITUTION, TRASHING THE POOR INTERSTATE WASTE TRADE BARRIERS

(By Angela Logomasini)[1]

### INTRODUCTION

This year, Virginia Governor James Gilmore decided that he would "save" his State from New York trash imports. "The home State of Washington, Jefferson, and Madison has no intention of becoming the nation's dumping ground,"[2] the Governor noted in January. He proposed, and the Virginia Assembly passed, several initiatives to keep New York City from increasing imports to Virginia's landfills when the city's landfill on Staten Island closes in year 2001. The issue regarding who will take New York City's trash as well as imports from other States has been percolating in other parts of the country as well. In Pennsylvania, which is the nation's number one waste importer, Governor Tom Ridge is seeking a way limit waste imports.[3] New Jersey doesn't even want New York trash to travel through the State to landfills in other areas. When Mayor Giuliani proposed such shipments, New Jersey Governor Christine Todd Whitman issued a press release stating: "Whitman to New York's Garbage Plan: Drop Dead."[4]

Governor Tommy Thompson of Wisconsin and Governor John Engler of Michigan are also capitalizing on the issue.[5] And a coalition of States are now negotiating a "resolution" to the garbage "problem," which they hope will lead to Federal legislation.[6] Such importing States have attempted to ban imports, but the Supreme Court overturned such laws under the Constitution's commerce clause, which preempts the States from passing protectionist measures. Federal courts have generally attempted to balance States' rights to exercise local police power when managing solid wastes and ensuring public safety, but they have prohibited laws that impede interstate commerce for purely protectionist reasons.[7] State lawmakers, frustrated with the fact that the courts have struck down numerous laws attempting to block imports, have turned to Congress, which has the constitutional authority to grant them the right. Currently at question is whether import barriers recently passed in Virginia will survive an impending constitutional challenge.

The issue became more complicated when the Supreme Court ruled on the constitutionality of solid waste flow-control ordinances. Local governments passed these ordinances to mandate that haulers take all trash generated within the locality's jurisdiction to government-designated facilities. Bureaucrats used these ordinances to

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[1] Angela Logomasini is Director of Risk and Environmental Policy at the Competitive Enterprise Institute.

[2] Stephen Dinan, "Governor Proposes 3 Trash Bills," Washington Times, p. C9.

[3] Karen MacPherson, "Ridge Seeks Limit on Trash Imports," Pittsburgh Post-Gazette, March 11,1999.

[4] Douglas Martin and Dan Barry, "Giuliani Stirs Up Boarder Tensions with Trash Plan," New York Times, December 3, 1998, p. Al.

[5] For example, see: Mark Trudy, "Garbage Glut Swells Landfills: Trash From Outside Michigan on Increase, Gobbling Space, Raising Environmental Fears," Detroit News, February 15, 1999; and Richard P. Jones, "Thompson Vows to Keep Ban on Out-of-State Trash," Milwaukee Journal Sentinel, October 7, 1997.

[6] Amy Porter, "Mid-Atlantic State Discussions Laying Groundwork for Federal Transport Bill," Daily Environment Report, February 12, 1999, p. AA-1.

[7] The basis for many of these cases, is City of Philadelphia v. New Jersey, 437 U.S. 617 (1978), which held that States cannot impede commerce for purely protectionist reasons. They must show that such limits are "directed to legitimate local concerns, with effects upon interstate commerce that are only incidental." That standard has been hard for States to meet. In Fort Gratiot v. Sanitary Landfill v. Michigan Department of Natural Resources, 504 U.S. 353 (1992), the court held that the county commissioners in St. Clair County Michigan could not preempt a private landfill from taking out-of-State wastes simply because the county plan prohibited non-county wastes. In Chemical Waste Management v. Hunt, 504 U.S.334 (1992), the Supreme Court overturned an Alabama law that placed higher taxes-on-out of State waste.

prevent competition with facilities that local governments owned or backed with bonds. But in 1994 the Supreme Court ruled in C & A Carbone v. the Town of Clarkston that solid waste flow-control laws were unconstitutional because they too violated the commerce clause.[8]

But the real problem is lawmakers' political rhetoric regarding waste imports. In the end, their gamesmanship will only hurt their own State residents. Despite poor public relations that lawmakers levy against their own States, the waste disposal industry is not really causing unmanageable problems. Instead is it is producing major environmental and economic benefits to importing States, particularly benefiting low-income, rural, and often minority, communities. Usually, lawmakers embrace businesses that improve the quality of life for their constituents. But somehow trash is different, especially when it's from New York.

*What Free Enterprise Means to Host Communities*

An often forgotten part of the debate over waste trade is the positive impact it has on local economies and their residents. Various communities "host" landfills, which means a private firm constructs a landfill and provides the community with part of the profits. Communities enter into these agreements voluntarily via a permitting process, and they have benefited tremendously.[9] These agreements deal with the disposal of municipal solid waste (as opposed to hazardous waste). Municipal solid waste consists of basic household trash and non-hazardous industrial waste.

Landfill opponents have suggested that host communities should not focus on "greedy" desires for the money that landfills generate but focus instead on addressing environmental and "real" quality of life concerns. But these communities were suffering because they lacked the money to address those very concerns. By using revenues from host landfill companies, localities are taking care of basic public health and environmental concerns, building and upgrading water treatment facilities, cleaning of substandard landfills, and paying off debts. Best of all, they are lifting the burden on individuals by cutting high taxes in many communities composed of low-income Americans.

Virginia—the State that sparked the debate most recently—is benefiting from the landfill business enormously. At a press conference in January 1999, some Virginia residents explained how critically important the landfill business has proven to the livelihood of their communities.[10] When giving comments at the conference, the Reverend Eddie Perry of St. John Baptist Church reviewed the history related to the Charles City County landfill, which is located a few miles from his church.

According to Perry, just before the landfill was built, the county faced enormous challenges. Composed of mostly farms and with only 7,000 residents, the county had low tax revenues. To pay for services, the county had one of the highest local tax rates in the State and, on occasion, it could not even meet government payroll. In 1992, the State condemned the county landfill, which meant the county had to find a new place for disposal. In addition, the schools were about to lose State accreditation because they were in serious disrepair. Voters in the county turned down a bond referendum to pay for new schools because, as Perry noted, the people were already "taxed out." That's when the county organized a citizen advisory committee to decide whether they wanted a local or regional landfill. It wasn't long before they made their decision in favor of hosting a regional landfill, Perry noted.

Charles City County residents have enjoyed the benefits ever since. The landfill made possible a tax cut on real estate from $1.29 to 70 cents per $100 of assessed value. In 1994, Charles City was also able to replace the run down school buildings with a $22 million school complex, the debt on which the county will use future landfill fees to pay. In 1998, the landfill brought in $3.7 million—one-forth of the county budget—according to County Administrator Kenneth Chandler.[11] The success of this landfill led other Virginia communities to follow suit.

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[8] C & A Carbone, Inc. v. Town of Clarkstown, NY, 511 U.S. 383 (1994).

[9] Rather than allow these voluntary contracts to evolve on their own, some States have enacted laws to mandate such host fees and other benefit "agreements" for all new facilities. These State laws should be differentiated from the voluntary host agreements. Because they are coercive in nature, they may serve as a deterrent for siting rather than an incentive. For a description of some of these State laws see: What's In It for Us?: A Summary of Host Community Benefits and Policies, (New York: New York State Assembly, Legislative Commission on Solid Waste Management, January 1998).

[10] Press conference, Richmond, Virginia, hosted by the Competitive Enterprise Institute, February 1, 1999.

[11] Andrew Petkofsky, "Landfill Fees Pay for Schools / Charles City County Sees Benefits in Trash," Richmond times Dispatch, January 31, 1999.

The impacts statewide are well documented.[12] For example, in Gloucester County, the landfill company agreed to spend $1.5 million to close the down's old landfill and another $800,000 to monitor the facility. On top of those benefits, the county receives host fees from imported trash and free disposal service. Host fees have proven critical to Gloucester, where the town only collects a total of $145,000 annually in tax revenue. The cost for building the county's $7.8 million Bethel Elementary School would have required a 58 percent tax hike without the host fees. In Sussex County, host fees helped fund a new courthouse and upgrade the water supply system to the county offices and the local jail. In King and Queen County, the landfill generates about $1.8 million annually. Lee Busick of the King and Queen County board of supervisors told reporter Mathew Paust of the Hampton Roads, Virginia's Daily Press, "I don't know what we'd do without the income from the landfill. We have a debt of over $12 million and about 3,200 to 3,400 taxpayers."[13]

**TABLE I**
**SAMPLING OF BENEFITS TO VIRGINIA COMMUNITIES**

| COMMUNITY | HOST FEES | OTHER BENEFITS |
|---|---|---|
| Amelia County | ♦ $6.3 million since spring 1993. | ♦ New elementary school.<br>♦ Financing library.<br>♦Financing fire truck.<br>♦ Paved gravel roads. |
| Brunswick County | ♦ Opened in 1997, expects to bring in $1 million in 1999. | ♦ Funds used to improve disposal needs.<br>♦ Plans for school investment.<br>♦ Created about 70 full-time jobs. |
| Charles City County | ♦$3.7 million in 1998.<br>♦ Host fees constitute nearly a fourth of town's ♦<br>♦ $15 million budget. | ♦ Cut real-estate taxes nearly in half from $1.29 to $70 percent per $100 of assessed value.<br>♦ Financed $22 billion new school complex, replacing run-down and hazardous buildings. |
| Gloucester County | ♦ $3 million annually. | ♦ $1.5 million to close old landfill.<br>♦ $800 to monitor of old landfill.<br>♦ Free trash disposal and recycling.<br>♦ Income used to finance $7.8 million elementary school and teachers' pay raises.<br>♦ Without fees, tax hike of 58 percent would be necessary to fund school. |
| King George County | ♦ $2.8 million in 1998. | ♦ New water tower.<br>♦ Landfill company removed an illegal pile of 8 million old tires.<br>♦ Landfill company excavated an old dump and disposed of waste in environmentally sound landfill. |
| King & Queen County | ♦ $1.8 annually. | ♦ Paying off county debts of more than $12 million, which are considerable given only 3,200 – 3,400 taxpayers.<br>♦ Helped cover costs of new administration building. |
| Sussex County | ♦ $4 million 1996: pre-competition.<br>♦ Expected $2.5 million for 1999.<br>♦ Guaranteed $2 million until 2002. | ♦ New courthouse complex.<br>♦ Upgrade water supply system.<br>♦ General operating expenses.<br>♦ $500,000 to close old landfills.<br>♦ Free trash disposal and recycling.<br>♦ Without it would have to raise taxes six cents per $100 of assessed value. |

[13] Mathew Paust, "Trash Revenue Keeps County Coffers Filled," *Daily Press*, January 26, 1999.

Virginia is not the only state with localities getting in on this action. Free enterprise in the waste management business has generated economic benefits nationwide. Consider the impacts of Michigan landfills, many of which began in the early

[12] Mathew Paust, "Trash Revenue Keeps County Coffers Filled," Daily Press, January 26, 1999; and for additional figures in Table I one see, Rex Springston, "Trash Means Cash to Counties / Tough State Rules Led to Landfill Need for More Garbage," Richmond Times-Dispatch, January 31, 1999.

[13] Mathew Paust, "Trash Revenue Keeps County Coffers Filled," Daily Press, January 26, 1999.

1990's and continue to provide benefits.[14] While Governor Engler complains about this industry, Auburn Hills, Mich., has used host fees to upgrade its storm water sewer system. Upgrading a storm water system can result in considerable clean water protection benefits because inadequate systems often overflow and send polluted water into the waterways rather than though treatment systems.[15] Orion Township used host fees to pay for new roads, a new storm water system, and a water supply system. Lenox, Mich., which only has a population of 4,600 people, installed 7.7 miles of water line and bought a $120,000 fire truck. Sumpter Township built a firehouse and its first sewer system. In Van Buren Township, the Woodland Meadows landfill generated $1.7 to $2 million a year in host fees. They gained free trash disposal, cut taxes, and tripled their town's recreation program. In Canton Township, Auk Hills Landfill contributed $13 million to build the town's Summit on the Park community center.[16] Riverview has been benefiting from landfill business since 1967, and now its residents ski and golf on closed a portion of their landfill while collecting $6 million annual income on the rest. [17]

In Illinois, the town of Grayslake recently collected $380,000, its first payment from the Countryside Landfill, which public officials used to purchase 23,000 new books and pay for other library needs. The host fee agreement with the landfill is expected to generate up to $10 million for the community eventually.[18] The Spoon Ridge Landfill in Fairview Ill., agreed to pay the community a minimum of $85,000 a year in tipping fees when the landfill is open. Operating at full capacity, the landfill could generate up to $1 million a year for this small rural community. Located in a remote area at an old strip-mining site, the landfill is surrounded by trees and, hence, is not visible to passersby. Browning Ferris Industries (BFI), which owns the landfill, is also going beyond State requirements to replace wetlands affected by the landfill and is working with the Wildlife Habitat Council to develop an environmental plan.[19] However, the landfill is designed largely for future use when other nearby landfills close and, hence, a large share of the benefits will be gained in the future. Because of local competition for waste, BFI temporarily closed the landfill until older landfills close and more trash revenue is available for this particular site. Yet even with the landfill closed, BFI voluntarily continues to pay the village $50,000 a year for hosting the landfill.[20]

Fulton County, Ind., officials used $226,000 in host fees from the County Line Landfill to help cover the costs of expanded courthouse office space.[21] In St. Joseph's County, Ind., the Prairieview Landfill pays $2 per ton of waste disposed in the landfill to the county, generating $500,000 a year.[22] The funds are so important to meet county needs that various townships are battling over how to use the revenues. Being a rural agricultural area, the county has little other income, which makes this industry's contribution to the economy critical.

In Pennsylvania, public officials in Bethlehem sold the city landfill for $25 million to Eastern Environmental in 1998, which also assumed the county's $38 million debt on the landfill. In this town which only has an annual income of $1 million, the landfill is expected to generate $7 million over a decade. Residents gained free waste disposal for the town and turned the $38 million of debt that the city held

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[14] "Residents Soften Opposition as Landfills Turn Trash to Cash: Dumps Can Mean Big Money for Parks and Perks," Detroit News, February 5, 1999, p. C1; "Benefits of Landfill Snowball for Michigan Town," Chemecology, April 1992.

[15] For example, in 1988, New York City had to close its beaches on several occasions because of a "combined sewer overflow," when storm water and sewer systems overflowed because of storms. The mixture of wastes—which included raw sewage and trash from city streets, including syringes that led to a medical waste scare—flowed into waterways and onto nearby beaches. Cities can fix such system failures, but the costs can reach into the millions and even billions for places like New York. Host fees have been one important source of revenue for such essential infrastructure repairs. For a good perspective on the New York case, see: Michael Specter, "Sea Dumping Ban: Good Politics, But Not Necessarily Good Policy," New York Times, March 22, 1993, p. Al.

[16] Mark Trudy, "Residents Soften Opposition as Landfills Turn Trash to Cash: Dumps Can Mean Big Money for Parks and Perks," Detroit News, February 5, 1999, p. C1.

[17] Mark Trudy, "Residents Soften Opposition as Landfills Turn Trash to Cash: Dumps Can Mean Big Money for Parks and Perks," Detroit News, February 5, 1999, p. C1; "Benefits of Landfill Snowball for Michigan Town," Chemecology, April 1992.

[18] "Benefits for Grayslake," Chicago Daily Herald, February 4 1999, p. 17.

[19] Jessica Dayton, "Village Sees Windfall in Expanded Landfill," Copely News Service, September 16, 1997.

[20] Jessica Dayton, "Company Says It will Cease Fairview Landfill Operations," Copley News Service, June 2, 1998.

[21] "Council Makes Final Payment on Building," South Bend Tribune, September 24, 1998, p. B3.

[22] Susan Dillman, "Securing Township Funds," South Bend Tribune, February 15, 1998, p. C5.

in the landfill into a net gain.[23] Other Pennsylvania landfills are seeking similar arrangements. In July of 1998, the Akron City Council unanimously agreed to sell off its landfill to for $12 million (a decision which is subject to EPA approval), and the landfill company agreed to pay an addition $15 million to shut down the government's landfill. Instead of paying $2 million a year to operate the landfill, they will gain royalties from the privately owned landfill.[24]

**TABLE II**
**A SAMPLING OF COMMUNITIES NATIONWIDE**
**BENEFITING FROM HOST AGRREMENTS**

| STATE | COMMUNITY | BENEFITS |
|---|---|---|
| INDIANA | Fulton County | ♦ Used $226,000 host fees for expanding courthouse offices. |
| | St. Joseph's County | ♦ Generates $500,000 a year for town. |
| ILLINOIS | Fairview | ♦ Company agreed to pay $85,000 million in tipping fees when open, but the landfill could generate $1 million annually.<br>♦ Company pays $50,000 a year when landfill closed because of competition. |
| | Grayslake | ♦ $380,000 first landfill payment used to buy 23,000 books for library.<br>♦ Host agreement expected to generate up to $10 million. |
| MICHIGAN | Auburn Hills | ♦ Upgraded storm water system |
| | Canton Township | ♦ $13 million in host fee paid to build town's Summit Park Community Center. |
| | Lenox | ♦Installed 7.7 miles of water line<br>♦ Purchased $120,000 fire truck |
| | Riverview | ♦ $6 million annual income<br>♦ Closed portions for skiing, golf. |
| | Orion Township | ♦ New storm water system<br>♦ New water supply system. |
| | Sumpter Township | ♦ New firehouse<br>♦ Paid for first sewer system |
| | Van Buren Township | ♦ $1.7 Million to $2 million annual host fees.<br>♦ Cut taxes.<br>♦ Tripled town recreation program.<br>♦ Free trash disposal. |
| PENNSYLVANIA | Bethlehem | ♦ Landfill company purchased city landfill for $25 million, and assumed the $38 million debt on that landfill in 1998.<br>♦ Host agreement expected to generate $7 million over a decade, or about 1 million annually.<br>♦ Free waste disposal. |
| | Akron | ♦ City agreed (subject to EPA approval) to sell landfill for $12 million.<br>♦ Landfill company agreed to also pay an addition 15 million to shut down the city's substandard landfill.<br>♦ Host agreement will generate year fees. |

*Regional Landfills: A Positive Market Response*

The interstate debate has intensified as America has shifted from smaller community-based landfills to larger regional landfills that subsist on interstate trash. The history shows that these regional landfills—in addition to providing revenue to host communities—have proven an environmentally sound and economically efficient response to regulatory and market changes during the past decade.

Fears about the impacts of landfills on the local environment led to the rise of the so-called not-in-by-backyard syndrome (NIMBY) in the late 1980's and into the 1990's. According to one poll, 28 percent of the public was concerned about landfill-created groundwater pollution in 1981, while 58 percent express concern by 1988.[25] At the same time, public officials were proclaiming that the United States faced a national "landfill crisis." The Office of Technology Assessment issued a report stating that most existing landfills in the United States would close within five to 10

[23] Matt Assad, "Landfill Pact Will Pay Off: Lower Saucon Decision Will Add Millions to Township Coffers, Trash Foes To Fight it," The Morning Call, March 20, 1998, p. B1.

[24] Charlene Nevada, "Akron Okays Selling Off Its Landfill: Buyer Intends to Triple Daily Trash Load," Beacon Journal, July 28,1998.

[25] Jennifer Chilton and Kenneth Chilton, "A Critique of Risk Modeling and Risk Assessment of Municipal Landfills Based on U.S. Environmental Protection Agency Techniques," Waste Management and Research (1992) Vol. 10, pp. 505-516.

years and that siting replacement landfills was increasingly difficult because of NIMBY.[26]

However, these statistics exaggerated the impending "capacity shortage" because they failed to recognize that new landfills tended to be much larger than the old ones. Nonetheless, media hype blew the problem out of proportion. The conventional "wisdom" became that we would soon run out of landfill space and would be buried in our trash. Americans would have to drastically reduce their waste, warned a Newsweek article, "[o]therwise, the dumps will cover the country coast to coast and the trucks will stop in everybody's backyard."[27] Amidst these public fears and pressures, the U.S. Environmental Protection Agency (EPA) promulgated regulations to increase landfill design standards, which they finalized in 1991.

The costs of new regulations made it more difficult for localities to shoulder the expense of the smaller landfills that served their communities. Private landfill companies—anxious to "solve" the landfill "crisis" by developing lots of new landfill capacity—also experienced increased costs associated with siting landfills in the face of NIMBY. Companies spent years attempting to gain permits and often paid high costs for failed attempts. Accordingly, when they did overcome NIMBY, they sited larger facilities that would last longer and enable them to recoup their investments. Many times, in order to overcome NIMBY, private companies offered host agreements that include host fees and free trash disposal to communities in exchange for the right to construct a regional landfill that would earn its income from out-of-State trash. Hence, these landfills could not exist without accepting interstate waste. The result was the birth of the modern, regional landfill and increasing interstate movement of municipal solid waste. The landfill capacity "crisis" never came to fruition, and now competition between landfills is the norm.

The development of regional landfills should be viewed as a success story in which the various players in the marketplace managed to find a solution within a difficult political and regulatory environment. While political rhetoric suggests that landfills pose a huge dilemma for many communities, they have in fact become the answer to many of the economic troubles that rural, low-income communities face. And no longer do we worry about a capacity shortage. Instead, competition to gain trash revenues is more common. For example, in Wayne County, Mich., Sumpter Township's host fee income dropped from $2.1 million annually during the 1980's to less than $1 million by 1994 because of competition from another landfill.[28]

Consider how the marketplace response worked for Virginia. In 1988, the U.S. Office of Technology Assessment warned that Virginia and seven other States (including today's number one importer: Pennsylvania) faced a serious dilemma because all their landfills had only 5 years left, and it usually takes at least 5 years to site facilities.[29] Yet Virginia now has a competitive landfill industry, which includes seven high-tech, regional landfills—consuming only .008 of 1 percent of State land[30]—that provide jobs and have proven a vital part of the State's economy. These seven regional landfills employed 196 State residents full time in 1996, paying out wages of $6 million. They are responsible for indirectly creating an additional 255 year-round jobs and 130 seasonal jobs. The hauling side of the industry creates an additional 1,450 jobs, paying wages of $35 million. On a yearly basis, it brings in more than $.5 billion annually to the State.[31]

Yet despite these trends, free trade opponents continue to argue that States should be self-sufficient and that each should take care of all its own waste. Similarly, the argument occurs at the local level, where some demand that each county manage all its own waste. But why stop at the county level? This "logic" demands that each household be responsible enough to manage all its own waste with a landfill located on site. Maybe some people would even want their very own backyard landfill. One couple in Kansas City, Kan., actually applied for a permit to put a landfill in its backyard to dispose of industrial wastes, but public officials denied

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[26] Facing America's Trash, What Next for Municipal Solid Waste, (Washington, DC: USGPO, 1998) p. 283.

[27] Melinda Beck with Mary Hager, Patricia King, Sue Hutchinson, Kate Robins, Jeanne Gorden, "Buried Alive," Newsweek, November 27, 1989, pp. 66-76.

[28] "Residents Soften Opposition as Landfills Turn Trash to Cash: Dumps Can Mean Big Money for Parks and Perks," Detroit News, February 5, 1999, p. C1.

[29] Facing America's Trash, What Next for Municipal Solid Waste (Washington, DC: USGPO, 1998) p. 283.

[30] Solid Waste Management in Virginia (Richmond: Commonwealth of Virginia, Department of Environmental Quality, 1997).

[31] Vector Corporation, "Host Community Benefits Point Paper," Prepared for the Interstate Waste Commission, October 31, 1997.

that request.[32] But most people will acknowledge that mandating backyard landfills would make as much sense as expecting each household to feed itself from farming its own land, providing its own medicine, producing its own paper, building its own computers, and basically running an entire economy from home. Demanding that each State or county manage all its own wastes or gain self-sufficiency in any market is equally nonsensical.

Consider the mess that such self-sufficiency planning has caused for New Jersey. Operating under the assumption that it could employ flow control laws, the State issued $2 billion in solid waste disposal bonds for waste transfer stations and waste-to-energy incinerators. Then when these facilities proved more expensive than landfills in other States as well as other options, the State employed a statewide flow control law to force localities and private haulers to only do business with the government-backed facilities.

Many mayors opposed the State law because it greatly increased their disposal costs. State officials in New Jersey should recognize their mistake and stop protecting poor investments. Yet even after Carbone, State officials have continued to plan and regulate the State solid waste economy—creating more problems. They have spent taxpayer dollars in court trying to prove that their version of flow control is constitutional, but the Federal courts have shot down their claims.[33] State bureaucrats have since turned to other schemes to recoup their losses, including a policy that drastically reduces costs on government-backed facilities and then levies taxes on haulers to make up the difference.[34]

Instead of investing in uncompetitive facilities or banning imports and competition, States should stop preventing the private sector from building facilities and competing. For example, Massachusetts may soon enter the fray as a major exporter because the State's 5-year-old moratorium on the development of landfill space means the State is running low on space. If the State does not lift its moratorium, it will have a two million ton capacity shortfall by the end of 1999, according to Steven G. Changaris, Regional Manager of the National Solid Wastes Management Association. In 1998, the State disposed of 2.5 million tons of waste, but by the end of this year it will only have capacity to handle 500,000 tons a year. As supply dries up, the price of landfill space rises considerably in Massachusetts. "Because of fewer disposal options, prices increased more than 30 percent last month," noted Michael Camara owner of ABC Disposal in New Bedford, Mass.[35] Opening markets in places like Massachusetts—rather than increasing exports—would not only be good for residents in these States, it would help alleviate interstate trash disputes.

*The Political Debates*

Despite the beneficial results of the growth in regional landfills and subsequent commerce of municipal solid waste, lawmakers are prepared act solely based on politics as the recent New York-Virginia debate highlighted. Unfortunately, the quarrel between Virginia and New York revived an old political debate, once spearheaded by former Senator Dan Coats (R-Ind.) whose State was once a major trash importer. Lawmakers like to raise the issue because it sells politically.

In addition to the rhetorical value of these debates for lawmakers, both the interstate trade and the flow control issues are important to State and local solid waste bureaucrats to support faulty government waste management planning schemes. Under the Federal Resource Conservation and Recovery Act (RCRA, the EPA provides States with grants when they develop solid waste management plans. Most States, accordingly, develop plans and seek EPA approval. The process entails planning the waste disposal industry pretty much the way socialists used to manage their economies, and it works just about as well. State and local bureaucrats estimate how much trash they will produce and where they will dispose of it for the next five to 30 years.

The result has been many bad government investments in inefficient incinerators and other disposal facilities, mandated recycling programs that siphon enormous sums of money away from other needs, rate regulation that reduces competition,

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[32] Donald Bradley, "Zoning Board Denies Couple's Request to put Landfill in Backyard," Kansas City Star, March 9, 1999.

[33] Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, 112 F.3d. (3d. Cir. 1977) (Atlantic Coast 11), cert denied sub nom., Essex County Utilities Authority v. Atlantic Coast Demolition & Recycling Inc. 118 S. Ct. 413 (1997), opinion amended by 135 F.3d 891 (3d Cir. 1998).

[34] See Sarah Halsted, "Haulers Take New Jersey Counties to Court," Waste Age, June 1998.

[35] "Waste Haulers Plan to Protest DEP Moratorium," Business Wire, April 22, 1999.

and other policies that raise costs for consumers and taxpayers.[36] Flow-control and interstate waste trade restrictions were tools they could use to overcome market forces (and, although unintended, marketplace efficiencies). Ironically, while government planners tried to mandate recycling when it did not make sense, they used flow control laws to keep wastes going to government facilities, often undermining efficient, market-driven recycling. But since the courts have overruled these laws, market forces have begun to play a larger role in the industry and have, as noted, proven positive.

Nonetheless, Congress has attempted to deal with this issue on several occasions starting with the 1992 attempt to reauthorize RCRA. Bills dealing with interstate commerce advanced during the 103rd Congress, but they hit a snag at the end of the 103rd Congress when the Supreme Court issued the Carbone decision. Hence, lawmakers attached flow control authority legislation to the interstate trade bill, creating more interests to balance at the end of the session and eventually derailing the bill because one senator's objection to the flow control provisions.

During the 104th Congress, both the interstate trade and flow control debates continued. With a new majority and more time to debate the issues, the interstate trade and flow control interests created a political dynamic in which proposals on neither issue could pass into law.

From a public policy perspective, this politically driven result has proven economically sound. Many localities argued that they needed flow control laws to protect their investments in government-bonded facilities that were built with the assumption that localities could assure revenues by directing all waste business to those facilities. They claimed that these plants would go out of business and their communities would pay high taxes to cover the debt. In an open market, some firms go out of business when they are not efficient. That's considered a good thing because it means only the best providers survive.

However, Carbone did not create even this alleged "disaster." No facility has gone out of business because of Carbone. In any case, communities benefit from the newly competitive environment because now these facilities must find ways to compete with more efficient operations, and haulers may conduct business with the lowest-cost providers. Under these circumstances, localities must make more sound decisions based on market realities, which saves their constituents from more faulty government investments.[37]

Because recent laws passed in Virginia will be subject to court challenges, Senators Charles Robb (D-VA) and John Warner (R-VA) introduced S. 533, the Interstate Transportation of Municipal Solid Waste Control Act of 1999. The bill sets up a complicated scheme that includes an automatic ban on all imports to some landfills, while providing limited exemptions to others such as existing host landfills.

However, while the automatic ban does not apply to communities with existing host agreements, other import limitations would apply. Governors could freeze imports at 1998 levels in States that accepted more than one million tons of waste in 1998. It would also allow States that reach the one million ton import mark to freeze total imports at the level the first year that exceeds that mark. The bill would also allow governors to prohibit imports from "super exporting States," which the bill defines as States that export at least a total of six million tons annually. In addition, it sets in place bureaucratic requirements for localities to submit requests to increase imports or terminate bans on imports from super-exporting States; and it allows States to impose taxes on out-of-State waste, starting at $3 per ton in 2001. States could then tax imports from "super exporting States" $25 per ton in 2002, $50 per ton in 2003, and $100 per ton in year 2004.

Rep. Jim Greenwood (R-PA) and Senator Arlen Specter (R-PA) have introduced legislation again attempting to set up a bureaucratic maze of regulations that allow various import limits. The legislation (H.R. 1190 in the House and S. 663 in the Senate) include an automatic ban with some exemptions for existing host communities along the same lines as the Robb-Warner bill. It addition, it would allow States to freeze imports to 1993 amounts for non-host communities. Despite the exemption for host communities, one provision could enable States to undermine host

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[36] For an overview of government planning problems see Angela Logomasini, "Municipal Solid Waste Mismanagement: Government Failures and Private Alternatives," Journal of Regulation and Social Costs, Vol. 3, No. 1, June 1993, pp. 61-81.

[37] For a more detailed discussion of the problems with flow control see Jonathan Adler, "The Failure of Flow Control, Regulation, No. 2, 1995; The Cost of Flow Control, (Washington, DC: National Economic Research Associates, 1995); and Angela Logomasini, Going Against the Flow, The Case for Competition in Solid Waste Management (Washington, DC: Citizens for a Sound Economy Foundation, 1995).

agreements. It allows them to pass laws to deny permit renewals for such facilities when regulars deem it in the local or regional interest.

The bill would allow for a couple other anti-trade actions. One provision would let States limit imports to 1995 levels if the State passes a statewide mandated recycling program and gains EPA approval, a provision designed to gain support from Wisconsin legislators. Wisconsin had passed a law to block imports from States that don't have mandated recycling programs. Federal courts have recently ruled the Wisconsin law unconstitutional.[38] Another provision would also give States the authority to tax out-of-State waste up to $2 per ton.[39]

The Greenwood-Specter bill also includes provisions that would allow flow control for facilities that relied on such agreements before Carbone. It would allow the Carbone decision to stand for all other facilities. Ironically, the inclusion of both provisions illustrates the absurdity of waste management planning. On the one hand, they are trying to keep waste out of their States, while on the other they are fighting to keep waste from leaving various communities because they don't want to loose the disposal fee revenue.

More recently, Senators George Voinovich (R-OH) and Evan Bayh (D-IN) introduced S. 872, which would ban imports except to host facilities (which would have to get permission from the State to take imports). The bill would allow a "permit cap" that would enable States to limit landfill expansions and permitting when such would serve the purpose of taking out-of-State waste. States could deny permits for new facilities on the grounds that the facility is not needed to serve State disposal needs, which means they could ban the siting of regional facilities. The bill would also allow States to freeze waste imports at 1993 levels (and in some cases 65 percent of that amount) and levy a $3 per ton tax on imported waste. Finally, the bill would include a provision that allows some flow control authority for facilities that depended on flow control before Carbone.

The thrust of all these bills is to undermine free enterprise in the waste disposal industry and return to a failed system of government planning and control. It simply turns back the progress that the industry had made in solving problems and putting an end to the so-called garbage crisis of the early 1990's. It will mean that private industry and localities will have less room to find solutions. The more efficient, regional landfills will become less attractive investments (and fewer communities will benefit). And governments will be forced (because they lack disposal alternatives) to invest in financially unwise facilities.

Several States—where access to inexpensive land and economic needs made landfills attractive investments in the past—will effectively have capacity surpluses, while others (where space is scarce) will have shortages. People in States with excess landfill space will suffer the economic consequences of not using their resources most fully, while those with shortages will face the high price of building less economical facilities. Undermining communities' abilities to engage in host agreements will also mean fewer opportunities to gain private funds for closing and monitoring substandard landfills. Finally, increased costs of disposal associated with making the market less efficient can lead to an increase in illegal dumping.

Some of the proposals include qualified exemptions for localities and host communities, but taxes and overall import limits promise to give those little meaning. In any case, if Federal lawmakers did make a more honest attempt to provide exemptions, local governments should remain wary of embarking down that slippery slope. Once lawmakers act, it will become much easier to further undermine free trade between the States when the issue comes up again. Moreover, exemptions may attempt to alleviate some of the pain for those who managed to get in the business early, but these proposals would prevent others from entering the business, eliminating their prerogative altogether.

*Devolution or Paternalism?*

State governors paint this issue as one of devolving power to the State level. But Federal lawmakers should realize that allowing States to regulate commerce is not actually devolving power. Rather, it entails taking power away from local communities and giving it to State lawmakers who seek to use this power for political gain. Somehow, these lawmakers think they know better than local officials, and they are more than happy to trump local initiatives. "Some localities actually want it [interstate waste trade]. They see it as an economic boon, but I think it's an unwise way

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[38] National Solid Wastes Management Association v. Meyer, 7th Cir., No. 98-2683.

[39] The Supreme Court had ruled unconstitutional policies imposing higher taxes on out-of-State waste, Chemical Waste Management v. Hunt, 504 U.S. 334 (1992); Oregon Waste Sys. v. Department of Envtl. Quality of Ore., 511 U.S. 93 (1994).

to help the economy," said Virginia House Speaker Thomas W. Moss Jr. just before the State began its 1999 legislative session. [40]

Rev. Eddie Perry exclaimed: "In Virginia we pride ourselves on local options—or the localities deciding for themselves, but then all of a sudden people want to say no to trash, impeding what localities had decided for themselves." Charles City County residents went into the landfill business "with their eyes open," as the result of "conscious decisions by the citizens of Charles City," Perry explained.[41] But the new State regulations setting caps on the amount of waste that the landfill can take will harm his county because it was not meeting its potential income, which had declined in recent years because of competition.

Ironically, as lawmakers decried the imports of "Yankee trash," Virginia's oldest plantation, where the great Confederate General Robert E. Lee's mother grew up, planned to generate income from the waste disposal business to maintain the historic landmark. But the State of Virginia's paternalistic policies have left the plantation—and its 11th generation heir, Charles Carter—high and dry.

Carter is trying to keep the historic plantation, which does not receive government subsidies or even private contributions, in family hands. But paying off the death taxes when he inherits the property may be more than Carter family can bear. The Carter family generates some income by opening up its home and property for tours, which brings in more than 50,000 visitors a year. But with the cost of maintaining the property, paying an annual life insurance policy of more than $40,000 for his father, and the fear that he won't have enough to cover the death tax, Carter has to find addition sources of revenue.

In 1996, he entered into an agreement with Waste Management Inc. to dedicate a corner of his property for a port though which trash would pass on its way to the Charles City County landfill located a few miles away. But State lawmakers have squashed his enterprise—at least for now—by banning the barges that would have imported trash to the port.[42]

Carter is not the only one left out the cold. As the Virginia Assembly was considering bills to limit imports, Bristol City Manager Paul Spangler lamented, "We went to great lengths to establish a regional facility, invested $22 million to build a landfill to serve Southwest Virginia, complied with State regulations, spent 8 years, thousands of man-hours, and hundreds of trips to Richmond doing it, and once we have overcome monumental hurdles to get it approved, it seems like we're being penalized for paying by the rules . . . It all seems unfair."[43]

Indeed, it would cost the city dearly. "If this ban on out-of-State trash passes, there is a very real possibility we would have to shut down. If that happens, we have to pay more to dispose of Bristol's trash somewhere else and we still have the debt to pay off with no revenue coming in,"[44] says Assistant City Manager Bill Dennison. The city still has a $20.2 million debt on the facility.

It is true that some people in these localities oppose landfills and such opposition leads to controversies related to siting. But when local governments site facilities, they weigh those concerns against those who support the landfills. In Amelia County, Va., debate over the landfill was fierce, but county officials decided to allow it because they recognized the benefits. Some local lawmakers of them paid a political price, losing their seats on the county board. Still, according to one observer, "Every person in this county has benefited from the landfill. . . . I think a majority now accepts it."[45]

In Pennsylvania, it took years of negotiations to approve the host agreement for the city of Bethlehem to sell its government-owned landfill and set up a host agreement with Eastern Environmental Services.[46] Bethlehem needed to get approval of the Lower Saucon Township, which eventually supported the landfill by a margin of 3-2 vote of the township's council. Saucon negotiated a buffer zone and a $500,000

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[40] Donald P. Baker, "In Virginia, Support Grows for Landfill Restraints; Republicans, Democrats Agree on Need," Washington Post, November 25, 1998, p. B01.

[41] Press conference, Richmond, Va., hosted by the Competitive Enterprise Institute, February 1, 1999.

[42] For an interesting overview of this story see: Robin Eisner, "A Port Ready For Trash that May Never Arrive," Staten Island Advance, March 1, 1999.

[43] Ann Grundon, "Bristol Fears New Trash Rules Could Pose Threat to Landfill," Richmond Times-Dispatch, February 1 6,1 999.

[44] Ann Grundon, "Bristol Fears New Trash Rules Could Pose Threat to Landfill," Richmond Times-Dispatch, February 16, 1999.

[45] Quote of Mike Salster, editor of Amelia's weekly newspaper as quoted by Rex Springston, "Trash Means Cash to Counties / Tough State Rules Led to landfill need for More Garbage," Richmond Times-Dispatch, January 31, 1999.

[46] Waste Management Inc. has since purchased Environmental Services, but Waste Management agreed to sell the landfill under a lawsuit settlement with the Department of Justice.

payment to the township, which it would use to build an emergency fund. "The agreement by Lower Saucon Township was a true act of political courage," according to Bethlehem Mayor Don Cunningham. There were indeed those who opposed the landfill, but elected officials thought best for the community at large.[47]

Disagreement, debate, bargaining, and yes even a little controversy, are part of governing. In the end, public officials make decisions by balancing the interests. This system, although far from perfect, is better than dictatorial regimes, and such policymaking is least coercive when closest to those involved. Under commerce clause protection, such landfill host decisions are practically as local as government gets. Proposals to turn these powers to the States will take these critical quality of life decisions away from localities and pass them up to State-level lawmakers who are more interested in scoring rhetorical political points than in truly helping those affected.

*Landfills: What Are the Risks?*

A large part of the debate revolves around the alleged environmental and public health risks of landfills. Free-trade opponents suggest that landfills will inevitably contaminate groundwater and create toxic waste sites that will cost future generations millions of dollars to clean. Why should one State assume the risks of another, opponents of interstate trade ask? On the other hand, others contend that modern landfills are extremely safe. When describing the landfill in Charles City County, Va., Professor William Rathje, director of the Garbage Project at the University of Arizona, describes the safety measures employed by modern landfills, which he contends are extremely safe:

First, the landfill, which opened in 1990 before most of the others, has a double composite plastic 60-millimeter liner as well as a clay liner and drainage layers, all of which guard against leakage into the outside environment. There is also a system to collect leachate (fluids that reach the bottom of the landfill), and most of the trapped leachate is delivered into a sewage treatment plant nearby for cleaning. The landfill has methane wells regularly drilled to vent or collect the methane gas for future use. In addition they 289-acre landfill is surrounded by a 700-acre buffer. Finally, having spent 25 years in the waste arena, I was not surprised to learn that the landfill's manager, Lee Wilson, has a degree in civil engineering and decided to get into the waste business to "minimize the environmental impacts of our garbage."[48]

Still it is true that landfills pose risks. Everything in life has risks—every occupation, every form of recreation, and every form of waste disposal. The key is whether a community is willing to bear those risks in exchange for the benefits of an activity. People make the same type of risk decisions everyday. We drive in our car knowing that there's a chance we could get in an accident, but we enjoy the benefits of convenient travel so we accept those risks. Communities should be free to make such decisions themselves, especially when the risk is insignificant.

When compared to most other forms of business and activities we experience in daily living, the risks posed by landfills to the surrounding communities are miniscule. In 1991, when the EPA proposed new landfill standards, it collected data on existing landfills. Using the EPA data, researchers Jennifer Chilton (a researcher at the John M. Olin School of Business at Washington University) and Kenneth Chilton (Center for the Study of American Business) conducted a study to estimate likely landfill risks. They found that for 60 percent of the landfills in existence, the cancer risks were one in ten billion. For another 6 percent, the risk was less than one in a billion and for 17 percent, landfills posed a one in a million cancer risk.[49] The worst landfills—5 percent existing at the time—posed a risk that could exceed one in 100,000. Considering the fact that these figures were derived before modern landfill standards took effect, new landfills should pose the lowest of risks.

Modern landfills likely fall in the low risk category and it's reasonable to assume that the risk is far less than one in a million. But in order to grasp how safe these landfills are, consider what a one in a million risk level means. One study lists some activities that pose a one-in-a-million risk of death. According to this study, you have a one in a million chance of dying during a 1 year period from any of the following activities: drinking a liter of wine; traveling 6 minutes by canoe; traveling

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[47] Matt Assad, "Landfill Pact Will Pay Off: Lower Saucon Decision will add Millions to Township Coffers. Trash Foes to Fight It," The Morning Call, March 2O, 1998, p. B1.

[48] William Rathje, "Talking Trash," Washington Post, Sunday, February 7, 1999, pp. B1, B4.

[49] Jennifer Chilton and Kenneth Chilton, "A Critique of Risk Modeling and Risk Assessment of Municipal Landfills Based on U.S. Environmental Protection Agency Techniques," Waste Management and Research (1992) Vol. 10, pp. 505-516.

300 miles by car; traveling 10 miles by bicycle; and flying 1,000 by jet.[50] The Environmental Protection Agency often employs the one-in-a-million risk level as the acceptable goal for agency regulation, and sometimes it considers one in 100,000 or one in 10,000 acceptable, and even one in 1,000. According to an analysis conducted by an agency official, the one in a million risk level allows a risk that is "almost vanishingly small," when compared to other risks we assume acceptable, which are in aggregate are "a million times larger." If we applied the one in a million standard to other activities, "a large portion of goods and services could not be produced." For example, he notes, we'd have to eliminate cooking, paving of roads, x-rays, anesthesiology, masonry, plumbing, painting, carpentry, and farming.[51] Nonetheless, we engage in these activities because they eliminate more serious risks and make our lives better.

| **LANDFILL CANCER RISKS** (assumes 70 years exposure) | **ONE IN A MILLION RISKS OF DEATH** (assumes one year exposure) |
|---|---|
| 60 percent of landfills pose a one in 10 billion risk. | Smoking 1.4 cigarettes<br>Drinking half liter of wine<br>Living two days in New York or Boston |
| 6 percent pose a 1-in a billion risk. | Traveling 6 minutes by canoe<br>Traveling 10 miles by bicycle |
| 17 percent pose 1-in-a million risk. | Traveling 300 miles by car<br>Flying 1,000 miles by jet |
| Modern landfills pose *lowest* of risks. | One chest x-ray<br>Eating 40 tablespoons of peanut butter |

Chart Sources: Jennifer Chilton and Kenneth Chilton, "A Critique of Risk Modeling and Risk Assessment of Municipal Landfills Based on U. S. Environmental Protection Agency Techniques, " Waste Management and Research (1992) Vol. 10, pp. 505-516, (landfills). Richard Wilson, "Analyzing the Daily Risks of Life, " Readings in Risk Theodore S. Glickman and Michael Cough, editors (Washington, D. C: Resources for the Future, 1990), p. 57 (one-in-a million risk comparisons).

Like farming and cooking, landfilling reduces other risks and improves our quality of life. While it imposes some risk (a very small one as demonstrated) we would suffer greater risks without it. The history of waste management reminds us that landfills are a solution to serious health risks—not the problem. Consider one historian's description of how ancient Paris once managed its waste:

Since ancient times, the basic rule for dealing with Parisian garbage was "tout-a-la-rue"—all in the street—including household waste, urine, feces and even fetuses. Larger items were frequently thrown into the "no-man's-land" over the city wall or into the Seine. Feces, however, was often collected to be used as fertilizer. Parisian dirt streets easily assimilated the refuse thanks to frequent rain and heavy pedestrian and cart traffic. The edible muck was often consumed by pigs and wild dogs, and the rest was consumed by microorganisms. The smell of the rotting matter was terrible but by no means the only contribution to the odors found in Paris.[52]

The author notes that Paris wasn't much different from other places. Thankfully, we've come a long way since then. When public health advocates began to realize the health dangers of waste, the waste industry emerged—not as a menace as some now tag them—but as a provider of an important public health service. In a recent Wall Street Journal article, Jeff Bailey noted that one of New York's early "sanitation engineers," Col. George E. Waring Jr., was known as the "apostle of cleanliness" and the "fever slayer." He was remembered for "turning trash collection and disposal into a professionally run municipal service, and for imbuing in working-class New Yorkers the understanding that filth is unhealthy."[53] Today, we don't

[50] Richard Wilson, "Analyzing the Daily Risks of Life," Readings in Risk, Theodore S. Glickman and Michael Gough (editors) (Washington, DC: Resources for the Future, 1990)

[51] Paul Milvy, "A General Guideline for Management of Risk from Carcinogens," Risk Analysis, Vol. 6, No. 1, 1986.

[52] Frederique Krupa, Paris: Urban Sanitation Before the 20th Century, December 1991, University of the Arts, http://www.op.net/uarts/krupa/alltextparis.html.

[53] Jeff Bailey, "The Advent of Cities Brought with it a Big Question: What do we do with all the Garbage,?" Wall Street Journal, January 11, 1999, R52; Bailey cites Martin Melosi, known for his book, Garbage in the Cities: Refuse, Reform and the [Environment, 1880-1980 (College Station and London: Texas A&M University Press, 1981).

simply dump trash. We have modern landfills that pose miniscule risks. That service is something to celebrate, not demonize.[54]

*Diversionary Tactics: "Trashnet" and Medical Waste Scares*

Once the waste issue in Virginia was in full swing, lawmakers began a serious of public relations gimmicks to keep the issue moving. These events are important to review because the critical impact they had, and continue to have, in pushing forward the agenda to limit out-of-State waste. The events began with the "Trashnet" investigation, a conveniently timed, three-day, seven-State intensive inspection of trash trucks and their contents. Regulators found trucking safety violations, which included bad breaks, flat tires, overly heavy loads, and improper licenses. Republican State Senator Bill Bolling viewed these violations as an opportunity to raise red flags and hopefully help him push his legislation aimed at ending waste imports. "If we found these types of problems during a three-day spot check, what goes on 362 days of the year?" he complained.[55]

Clearly, people should be concerned about truck safety, particularly those in the industry who drive the trucks and employ others who do. However, if lawmakers and regulators want to get such safety problems under control, perhaps they could have done a better job enforcing the laws they had rather than simply using safety problems as part of a public relations stunt. Furthermore, the problems were not as severe as suggested. In regard to the trucking safety violations, out of the 417 trucks stopped in Maryland, DC, and Virginia, 37 experienced violations. That amount represented a 9 percent violation rate—an above average performance considering the 25 percent truck safety rate nationwide.[56] However, the violations do raise reasons for concern and rather than simply using them for political gain, lawmakers should be concerned at all times. Industry should be most concerned because it's their workers and their potential liability. But it's not reasonable to ban free trade for entire industry because some portion of its workers get into accidents or don't meet standards. A reasoned solution would address the specific problem—in this case trucking violations—not throw out the baby with the bath water, i.e., instituting policies that keep even the responsible truckers from doing business in Virginia.

Ironically, Virginia's solution—banning garbage barges—actually could put more truckers on the road or prevent the industry from using a safer alternative that would reduce existing truck traffic. As noted earlier, in an attempt to keep New York waste from coming to Virginia, the assembly passed, and the Governor signed, a bill to ban trash barges from traveling in State waters. Since a barge can carry as much trash as 300 trucks, the industry's plan to begin using barges would have dramatically reduced trucks on the road. Barges not only reduce traffic, they carry cargo nine times further using the same amount of energy, emit less than one-seventh of the air pollution, and have the fewest accidents and spills than any other mode of transportation, according to a 1994 U.S. Department of Transportation study.[57]

But the hype about trucking wasn't the end of it. To make matters worse, State regulators then inspected landfills and found what appeared to be medical waste being dumped in the Charles City County landfill. Governor Gilmore jumped on the opportunity, holding a press event at which he exhibited what he said were blood stained sheets, syringes, and bandages. At the event, he exclaimed, "As governor, I am just not going to tolerate Waste Management's callous behavior. . . . Waste Management has shown a blatant disregard for the health and safety of Virginians."[58] Gilmore suggested that he might want to ban waste management's trucks from State highways.

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[54] Many suggest that we should force recycling all waste because they say it's inherently better. But they simply ignore the risks and costs associated with recycling. Recycling activities can increase risks in other areas, and it is only technically feasible and economically efficient to recycle a certain portion of our waste. Landfilling and recycling should compete in the marketplace, ensuring the most efficient mixture of recycling and landfilling, along with other alternatives that emerge through the competitive system.

[55] Rex Springston, "Medical Waste Stirs Furor / Gilmore: Fine Firm that Sent New York Trash," Richmond Times Dispatch, February 12, 1999.

[56] Craig Timber and Eric Lipton, "7 States, DC, Crack Down on Trash Haulers, Washington Post, February 9, 1999, p. B1; See also: Motor Carrier Safety Analysis, Facts, & Evaluation, (Washington, DC: U.S. Department of Transportation, 1998), Vol. 3, No. iii.

[57] Environmental Advantages of Inland Barge Transportation (Washington, DC: Department of Transportation, U.S. Maritime Administration, 1994).

[58] Rex Springston, "Medical Waste Stirs Furor/Gilmore: Fine Firm that Sent ICY. Trash," Richmond Times Dispatch, February 12, 1999.

The medical waste scare campaign raises other issues. Many remember the public fears that the appearance of medical wastes on New York beaches caused in 1988.[59] Congressional lawmakers used this case to pass legislation regulating medical waste to show that they were "doing something." But according to the Centers for Disease Control and Prevention, "medical waste does not contain any greater quantity or different type of microbiologic agents than residential waste."[60] Another study notes: "Several studies in Europe have shown that fewer organisms are present in hospital waste than in domestic waste and that the potential pathogens present are similar in both types of waste . . . There is therefore no evidence that hospital waste is more hazardous than domestic waste, or that hospital waste has been responsible for disease in the community or in hospital staff, apart from needles and possibly sharp instruments . . . Syringe needles and other sharp instruments are the only items known to have transmitted infection to hospital staff, but not to other staff handling waste in the community."[61] Accordingly, rather than addressing a real public health need, the medical waste law simply added costs to a health care industry that was already struggling with cost concerns.

Hence, it is unfair to raise fears that this waste would somehow affect the public at large. The risk of infection rests mostly with health care workers who are trained in management of these materials. It is not inconceivable that needles or sharp objects could harm those in the waste management industry, but the risks are very small and not much larger than risks posed by sharp objects found in residential waste. That may be why both Federal and State laws allow some medical waste to enter landfills, untreated. Yet some waste must go through expensive sterilization processes. It is doubtful that such processes significantly improve public safety, but public perceptions have more impact on what becomes law. (Ironically, the sterilization processes themselves pose an additional set of environmental concerns.)

In any case, trash companies have to comply with the law whether or not it makes sense. However there is confusion over what is considered "regulated medical waste." State law does allow some medical waste to enter landfills. During Trashnet, Governor Gilmore collected materials that could possibly be regulated medical waste and then quickly held a press conference, claiming all the waste was illegal and represented a gross violation by Waste Management, Inc. But in a brief to the court, Waste Management contended that the waste was legal and that some of it wasn't even medical waste. For example, according to recent press reports, Waste Management examined the samples of the "bloody" medical waste that the governor exhibited at his press conference. Some of it, according to the company's legal brief, was actually covered with red dye or paint.[62]

In the end, the court held that some portion of the wastes fit the definition of regulated medical wastes. The judge levied a fine of $150,000, a little more than a quarter of what the governor sought. State inspectors contend that between 2 and 5 percent of the trailer's load at the Charles City County landfill was medical waste and a smaller portion of that fit the definition of regulated waste—hardly worth the uproar. Waste Management officials have not stated whether they will appeal.[63]

Finally, one key concern raised by the landfill debates involves the externalities they create for people who either live near them or along transportation routes. Clearly, problems can arise and lawmakers should take concerns about odors, litter, and traffic seriously. These are the real issues that demand local government attention, employing trespass and local nuisance laws.[64] However, these local concerns are not an excuse to ban free enterprise in any industry, be it an industry as unpopular as trash management or one as popular as the local family farm.

*Conclusion*

Public officials need to learn that the best way to manage our trash is to stop trying to micromanage the entire trash disposal economy. In recent years, market forces have begun to correct many of the problems caused by faulty government planning schemes. The rise of regional landfills helped end the so-called garbage cri-

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[59] Apparently the trash was from city, not medical institutions, see footnote 13.

[60] 'Perspectives in Disease Prevention and Health Promotion Summary of the Agency for Toxic Substances and Disease Registry Report to Congress: The Public Health Implications of Medical Waste," Morbidity and Mortality Weekly Report, November 16, 1990,39(45), pp. 822-824.

[61] Graham A.J. Ayliffe, "Clinical Waste: How Dangerous is it?" Current Opinion in Infectious Diseases, 1994, 7:499-502.

[62] Andrew Petkofsky, "Trash Firms Says Dumping Was Proper / Waste Management Disputes State Officials," Richmond Times-Dispatch, March 19, 1999.

[63] Lawrence Latane, "Trash Hauler is Fined $150,000 / Units cites in Import of Medical Waste," Richmond Times-Dispatch, May 1, 1999.

[64] See Bruce Yandle, Common Sense and Common Law for the Environment, (Landham, MD: Rowman & Littlefield, 1997).

sis, and the resulting trade has proven beneficial to both host communities and States that lack capacity.

Allowing States to impose import limits or flow control laws will only turn back the progress that the industry has made. These policies will mean a return to a system where lawmakers impede market efficiencies, thereby increasing costs and reducing economic opportunity. In the final analysis, the only beneficiaries will be the politicians who earn symbolic political points. Those who feel the real pain will be the many poor, rural communities that desperately seek ways to improve their basic infrastructure and their quality of life.

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