



Interstate Waste Commerce

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For more than two decades, various states and localities have battled over interstate and intrastate movements of municipal solid waste. States have passed import bans, out-of-state trash taxes, and other policies to block imports. Localities have passed laws preempting the movement of wastes outside their boundaries for disposal under so-called flow-control laws. Federal courts have struck down both types of laws as protectionist policies that violate the U.S. Constitution's Commerce Clause, which gives only Congress the authority to regulate interstate commerce. Yet some federal lawmakers want to pass a federal law to give states the authority to regulate trade in the waste disposal industry.

Legislative History

Congress has attempted to deal with this issue on several occasions, starting with the 1992 attempt to reauthorize the Resource Conservation and Recovery Act (RCRA). Bills dealing with interstate commerce and flow control have been advanced during every Congress since 1992, but none have passed into law. The issue heated up in the late 1990s when New York City decided to send increasing amounts of waste to Virginia for disposal. When localities agreed to take the waste to collect "host fees," state legislators objected. As a result, several bills were introduced in Congress that would institute complicated schemes

under which state lawmakers could regulate waste imports and flow control.¹ Since then, members of Congress have continued to introduce legislation to regulate interstate waste disposal. In 2005, Rep. Jo Ann Davis (R-VA) introduced H.R. 274, which allows shipments to “host communities,” but it applies needless regulatory red tape and bureaucracy that could complicate such agreements.

Host Communities

In recent years, many communities chose to host regional landfills, agreeing to allow waste imports in exchange for free trash disposal and a cut of the landfill profits. These agreements have enabled communities nationwide to cut taxes, repair and upgrade infrastructure, give pay raises to teachers, and build schools and courthouses, as well as close and clean up old, substandard landfills.²

Flow Control

The debates over interstate waste 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 prevent competition with facilities that local governments owned or backed with bonds. But in

1994, the Supreme Court ruled in *C & A Carbone Inc. v. Town of Clarkston, NY* that solid waste flow-control laws were unconstitutional because they violated the Commerce Clause.³

Carbone has resulted in more economically sound public policy. Flow-control laws forced trash haulers to take wastes to the most expensive facilities. As a result, the public faced higher disposal costs, and cities were encouraged to invest in inefficient and otherwise uncompetitive waste disposal facilities. After *Carbone*, 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 ensure 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 is considered a good thing because it means only the best providers survive. However, *Carbone* did not result in this alleged financial “disaster.”

Communities benefit from a competitive environment because they 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 sounder decisions based on market realities, which helps their constituents avoid more faulty government investments.⁴

1. For a more complete overview of these bills, see Angela Logomasini, *Trashing the Poor: The Interstate Garbage Dispute* (Washington, DC: Competitive Enterprise Institute, 1999), 11–14. <http://www.cei.org/gencon/025,01659.cfm>.

2. For a sampling of such benefits, see Logomasini, *Trashing the Poor*.

3. *C & A Carbone Inc. v. Town of Clarkstown, NY*, 511 U.S. 383 (1994).

4. For a more detailed discussion of the problems with flow control, see Jonathan Adler, “The Failure of Flow Control,” *Regulation* 2 (1995); National Economic Research Associates, *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), <http://www.heartland.org/Article.cfm?artId=4026>.

However, a 1997 Supreme Court case undercut *Carbone* to a limited extent. In 2007 the court ruled in *United Haulers v. Oneida-Herkimer Solid Waste Management Authority* that localities could direct waste to government-owned landfills or other disposal facilities. Because most landfills are privately owned, this ruling has limited impact, but unfortunately, may encourage governments to invest in new, inefficient government facilities so that they can essentially operate a garbage disposal monopoly, which will likely be needlessly costly to taxpayers.

Public Safety

During 1999, public officials claimed that regional landfills posed a host of health and safety problems. The landfills allegedly would lead to cancer clusters in the future. Officials in the District of Columbia, Maryland, and Virginia conducted an investigation of trucks transporting waste from state to state, which they alleged showed that transporting wastes created severe highway hazards. They also argued that garbage barges were not a safe means of transporting the waste because waste would allegedly spill and pollute waterways. Finally, they claimed that medical waste was being dumped illegally into Virginia landfills, thereby creating dire health hazards. All these claims proved specious:

- Rather than increasing public health and safety risks, these landfills enable communities to close substandard landfills and construct safe, modern landfills.
- It is estimated that modern landfills pose cancer risks as small as one in a billion, an extremely low risk level.⁵

5. 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* 10 (1992): 505–16. For some additional facts on landfill risks, see the policy brief titled “Solid Waste Management.” See also Logomasini, *Trashing the Poor*, 18–20.

- People should be concerned about truck safety—particularly those in the industry who drive the trucks and employ others who do—but the problems were not as severe as suggested.
- During the 1999 government investigation, of the 417 trucks stopped and inspected in the District of Columbia, Maryland, and Virginia, 37 experienced violations. That number represented a 9 percent violation rate—an above average performance, considering the 25 percent rate nationwide.⁶
- Virginia’s “solution” to the traffic problem—banning garbage barges—could put more truckers on the road and prevent industry from using a safer transportation option.
- Barges not only reduce traffic; they also carry cargo nine times farther using the same amount of energy, emit less than one-seventh of the air pollution, and have the fewest accidents and spills of any other mode of transportation, according to a 1994 U.S. Department of Transportation study.⁷
- Medical waste is not more dangerous than household waste. According to the Centers for Disease Control and Prevention, “medical waste does not contain any greater

6. Craig Timber and Eric Lipton, “7 States, D.C., Crack Down on Trash Haulers,” *Washington Post*, February 9, 1999, B1. See also *Motor Carrier Safety Analysis, Facts & Evaluation* 3, no. 3 (Washington, DC: U.S. Department of Transportation, 1998).

7. U.S. Department of Transportation, U.S. Maritime Administration, *Environmental Advantages of Inland Barge Transportation* (Washington, DC: Department of Transportation, 1994).

quantity or different type of microbiologic agents than residential waste.”⁸

Finally, one key concern raised by the landfill debates involves the externalities landfills create for people who live either near them or along transportation routes. Clearly, problems can arise, and lawmakers should be concerned about odors, litter, and traffic. These are the real issues that demand local government attention, requiring trespass and local nuisance laws.⁹ However, these local concerns are not an excuse to ban free enterprise in any industry.

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. With the Supreme Court restoring competition, the resulting trade has proved beneficial to both host communities and states that lack landfill capacity. Allowing states to impose import limits or flow-control laws will only turn back

the progress that the private sector has made. These policies will mean a return to a system in which lawmakers impede market efficiencies, thereby increasing costs and reducing economic opportunity. Those who will feel the real pain of these policies will be the many poor, rural communities that desperately seek ways to improve their infrastructure and quality of life.

Key Expert

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Recommended Readings

Logomasini, Angela. 1999. *Trashing the Poor: The Interstate Garbage Dispute*. Washington, DC: Competitive Enterprise Institute. <http://www.cei.org/gencon/025,01659.cfm>

———. 1995. *Going against the Flow: The Case for Competition in Solid Waste Management*. Washington, DC: Citizens for a Sound Economy Foundation. <http://www.heartland.org/Article.cfm?artId=4026>.

8. Centers for Disease Control and Prevention, “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* 39, no. 45 (1990): 822–24.

9. See Bruce Yandle, *Common Sense and Common Law for the Environment* (Lanham, MD: Rowman and Littlefield, 1997).

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