

TRASHING THE POOR:

THE INTERSTATE GARBAGE DISPUTE

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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,”¹ 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 to limit waste imports.² New Jersey does not 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.”³

The real problem is lawmakers’ political rhetoric regarding waste imports

Governor Tommy Thompson of Wisconsin and Governor John Engler of Michigan are also capitalizing on the issue.⁴ And a coalition of states are now negotiating a “resolution” to the garbage “problem,” which they hope will lead to federal legislation.⁵ 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

¹ Stephen Dinan, “Governor Proposes 3 Trash Bills,” *Washington Times*, p. C9.

² Karen MacPherson, “Ridge Seeks Limit on Trash Imports,” *Pittsburgh Post-Gazette*, March 11, 1999.

³ Douglas Martin and Dan Barry, “Giuliani Stirs Up Boarder Tensions with Trash Plan,” *New York Times*, December 3, 1998, p. A1.

⁴ 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.

⁵ Amy Porter, “Mid-Atlantic State Discussions Laying Groundwork for Federal Transport Bill,” *Daily Environment Report*, February 12, 1999, p. AA -1.

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reasons.⁶ For example, a federal court in Virginia recently issued a temporary injunction (which is to remain in effect as the case against the law proceeds) on the state's recently passed laws to limit imports, indicating that the laws likely won't pass the constitutional test when the case is heard.⁷ State lawmakers, frustrated with the fact that the courts have continually struck down such laws, have turned to Congress, which has the constitutional authority to grant them the right to impose limits on imports.

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 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 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

⁶ 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.

⁷ *Waste Management Facility v. Gilmore*, E.D. Va., No. 3:99 CV, 6/29/99; the court said that the laws represented a "crystal clear" violation of the Commerce Clause.

⁸ *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383 (1994).

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.

*Revenues from
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concerns*

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.

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nationwide*

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-fourth of the county budget – according to County Administrator Kenneth Chandler.¹¹ The success of this landfill led other Virginia communities to follow suit.

The impacts statewide are well documented.¹² For example, in Gloucester County, the landfill company agreed to spend \$1.5 million to close the town'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 *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

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 1990s 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

¹¹ Andrew Petkofsky, "Landfill Fees Pay for Schools / Charles City County Sees Benefits in Trash," *Richmond times Dispatch*, January 31, 1999.

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.

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.

TABLE I
SAMPLING OF BENEFITS TO VIRGINIA COMMUNITIES

COMMUNITY	HOST FEES	OTHER BENEFITS
Amelia County	◆ \$6.3 million since spring 1993.	◆ New elementary school. ◆ Financing library. ◆ Financing fire truck. ◆ Paved gravel roads.
Brunswick County	◆ Opened in 1997, expects to bring in \$1 million in 1999.	◆ Funds used to improve disposal needs. ◆ Plans for school investment. ◆ Created about 70 full-time jobs.
Charles City County	◆ \$3.7 million in 1998. ◆ Host fees constitute nearly a fourth of town's \$15 million budget.	◆ Cut real-estate taxes nearly in half from \$1.29 to \$.70 per \$100 of assessed value. ◆ Financed \$22 billion new school complex, replacing run-down and hazardous buildings.
Gloucester County	◆ \$3 million annually.	◆ \$1.5 million to close old landfill. ◆ \$800 to monitor of old landfill. ◆ Free trash disposal and recycling. ◆ Income used to finance \$7.8 million elementary school and teachers' pay raises. ◆ Without fees, tax hike of 58 percent would be necessary to fund school.
King George County	◆ \$2.8 million in 1998.	◆ New water tower. ◆ Landfill company removed an illegal pile of 8 million old tires. ◆ 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. ◆ Helped cover costs of new administration building.
Sussex County	◆ \$4 million 1996: pre-competition. ◆ Expected \$2.5 million for 1999. ◆ Guaranteed \$2 million until 2002.	◆ New courthouse complex. ◆ Upgrade water supply system. ◆ General operating expenses. ◆ \$500,000 to close old landfills. ◆ Free trash disposal and recycling. ◆ Without it would have to raise taxes six cents per \$100 of assessed value.

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polluted water into the waterways rather than through 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 a closed 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.

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. A1.

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," *Copley News Service*, September 16, 1997.

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 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

The history shows that regional landfills have proven environmentally sound and economically efficient

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.

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.

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.

TABLE II
A SAMPLING OF COMMUNITIES NATIONWIDE
BENEFITING FROM HOST AGREEMENTS

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. ◆ 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. ◆ 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. ◆ Purchased \$120,000 fire truck.
	Riverview	◆ \$6 million annual income. ◆ Closed portions for skiing, golf.
	Orion Township	◆ New storm water system. ◆ New water supply system.
	Sumpter Township	◆ New firehouse. ◆ Paid for first sewer system.
	Van Buren Township	◆ \$1.7 Million to \$2 million annual host fees. ◆ Cut taxes. ◆ Tripled town recreation program. ◆ Free trash disposal.
PENNSYLVANIA	Bethlehem	◆ Landfill company purchased city landfill for \$25 million, and assumed the \$38 million debt on that landfill in 1998. ◆ Host agreement expected to generate \$7 million over a decade, or about 1 million annually. ◆ Free waste disposal.
	Akron	◆ City agreed (subject to EPA approval) to sell landfill for \$12 million. ◆ Landfill company agreed to also pay an addition 15 million to shut down the city's substandard landfill. ◆ Host agreement will generate year fees.

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 1980s and into the 1990s. 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

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.

existing landfills in the United States would close within five to 10 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 1980s to less than \$1 million by 1994 because of competition

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²⁶ *Facing America’s Trash, What Next for Municipal Solid Waste*, (Washington, D.C.: 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.

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 five years left, and it usually takes at least five years to site facilities.²⁹ Yet Virginia now has a competitive landfill industry, which includes seven high-tech, regional landfills – consuming only eight ten-thousandths of 1 percent of state land³⁰ – 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 half a billion dollars annually to the state.³¹

Demanding that each state or county manage its own wastes is nonsensical

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 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

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, D.C.: 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.

³² Donald Bradley, “Zoning Board Denies Couple's Request to put Landfill in Backyard,” *Kansas City Star*, March 9, 1999.

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.

States should stop preventing the private sector from building facilities and competing

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.

³³Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, 112 F.3d. (3d. Cir. 1977) (Atlantic Coast II), *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.

Under RCRA, the EPA provides states with grants when they develop solid waste management plans

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, pronounced “rick-rah”), 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, 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

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.

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 are 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) includes an automatic ban with

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business
because of
Carbone v.
Clarkstown*

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, D.C.: National Economic Research Associates, 1995); and Angela Logomasini, *Going Against the Flow, The Case for Competition in Solid Waste Management* (Washington, D.C.: Citizens for a Sound Economy Foundation, 1995).

some exemptions for existing host communities along the same lines as the Robb-Warner bill. In 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 agreements. It allows them to pass laws to deny permit renewals for such facilities when regulators 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 more efficient, regional landfills will become less attractive investments

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 lose 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

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 Env'tl. Quality of Ore.*, 511 U.S. 93 (1994).

crisis of the early 1990s. 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.

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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 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

⁴⁰ Donald P. Baker, “In Virginia, Support Grows for Landfill Restraints; Republicans, Democrats Agree on Need,” *Washington Post*, November 25, 1998, p. B01.

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 (if they survive the court challenge or if Congress passes legislation) 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 additional sources of revenue.

In 1996, he entered into an agreement with Waste Management Inc. to dedicate a corner of his property for a port through which trash would pass on its way to the Charles City County landfill located a few miles away. But state lawmakers have attempted to squash his enterprise by banning the barges that would have imported trash to the port.⁴² While industry has won a temporary injunction against this law, Congress may soon allow such protectionist parties, despite the adverse impacts.

Carter is not the only one who will be left out the cold should Congress allow states to pass protectionist policies. 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 eight 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

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 16, 1999.

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 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

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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.

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 20, 1998, p. B1.

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 quite safe:

*Communities
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decisions
themselves*

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 the 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

⁴⁸ William Rathje, "Talking Trash," *Washington Post*, Sunday, February 7, 1999, pp. B1, B4.

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 one year period from any of the following activities: drinking a liter of wine; traveling six minutes by canoe; traveling 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 farm-

Landfills are a solution to serious health risks—not the problem

TABLE III

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
6 percent pose a 1-in-a billion risk.	Drinking half liter of wine
17 percent pose 1-in-a million risk.	Living two days in New York or Boston
Modern landfills pose <i>lowest</i> of risks.	Traveling 6 minutes by canoe
	Traveling 10 miles by bicycle
	Traveling 300 miles by car
	Flying 1,000 miles by jet
	One chest x-ray
	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 Gough, editors (Washington, D.C.: Resources for the Future, 1990), p. 57 (one-in-a million risk comparisons).

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.

⁵⁰ Richard Wilson, “Analyzing the Daily Risks of Life,” *Readings in Risk*, Theodore S. Glickman and Michael Gough (editors) (Washington, D.C.: Resources for the Future, 1990)

ing.⁵¹ Nonetheless, we engage in these activities because they eliminate more serious risks and make our lives better.

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

*We have safe
modern landfills
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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 simply dump trash. We have safe modern landfills that pose miniscule risks. That service is something to celebrate, not demonize.⁵⁴

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).

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.

DIVERSIONARY TACTICS:

“TRASHNET” AND MEDICAL WASTE SCARES

Once the waste issue in Virginia was in full swing, lawmakers began a series 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 brakes, 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, D.C., 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 an 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,

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⁵⁵ Rex Springston, “Medical Waste Stirs Furor / Gilmore: Fine Firm that Sent N.Y. Trash,” *Richmond Times Dispatch*, February 12, 1999.

⁵⁶ Craig Timber and Eric Lipton, “7 States, D.C., Crack Down on Trash Haulers,” *Washington Post*, February 9, 1999, p. B1; See also: *Motor Carrier Safety Analysis, Facts, & Evaluation*, (Washington, D.C.: U.S. Department of Transportation, 1998), Vol. 3, No. iii.

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.

Barges not only reduce traffic, they carry cargo further using the same amount of energy

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

⁵⁷ *Environmental Advantages of Inland Barge Transportation* (Washington, D.C.: Department of Transportation, U.S. Maritime Administration, 1994).

⁵⁸ Rex Springston, "Medical Waste Stirs Furor / Gilmore: Fine Firm that Sent N.Y. Trash," *Richmond Times Dispatch*, February 12, 1999.

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.

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

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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.

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 crisis, 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.

⁶⁴ See Bruce Yandle, *Common Sense and Common Law for the Environment*, (Landham, MD: Rowman & Littlefield, 1997).

