
FACTS TO ACT ON

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Trashing Transport: Strategies to Ban Imported Garbage

If communities intend to protect local soil and groundwater resources, it is increasingly apparent that they must be responsible for the management and disposal of their own trash. Already, interstate waste transport contributes to several problems in the United States. Besides adding more traffic to the nation's already congested highways, out-of-state waste uses valuable landfill capacity, which can hinder efforts to develop or implement long-term solid waste management plans. Also, the practice of backhauling solid waste in food trucks between states has raised health and safety concerns. Although a number of proposals to curb interstate waste were defeated in Congress last year, many states have passed landfill import restrictions against out-of-state waste.

Due to the commerce clause of the U.S. Constitution, however, landfill import restrictions have often been overruled by courts. In City of Philadelphia v. New Jersey (1978), the Supreme Court overturned a New Jersey statute prohibiting the in-state disposal of any out-of-state waste. In its decision, the court ruled that garbage was entitled to commerce clause protection and that a state could not restrict its movement. Writing for the majority, Justice Stewart reasoned that the harms associated with solid waste arise only after it is deposited in a landfill, and at that time there is no valid reason to differentiate between out-of-state and domestic waste.¹

With a flat prohibition against out-of-state waste apparently unconstitutional, states have employed alternative strategies to regulate imported waste. One strategy, first enunciated by the Supreme Court in Hughes v. Alexandria Scrap (1976), allows a state to act in its own self-interest when controlling state-owned facilities.² Known as the "market participant" doctrine, it was later applied in court to states that had banned out-of-state waste from publicly-owned landfills.³

In Lefrancois v. Rhode Island (1987), a federal district court applied the market participant exemption to a Rhode Island state policy prohibiting the disposal of out-of-state wastes at the state's public landfill. Since Rhode Island has only one landfill, it succeeded in completely banning out-of-state waste.⁴

Another strategy used to limit interstate waste relates to a legal "balancing test" of laws and regulations concerning interstate commerce. The balancing test was formulated by the Supreme Court in Pike v. Bruce Church, Inc. (1970). In its decision, the court ruled that a state may regulate interstate trade in the public interest if the local benefits are greater than any potential impedance to interstate commerce.⁵ This decision has given a number of communities, which are taking responsibility for the management of their own waste, the legal backing to regulate the disposal of imported waste.

As part of their waste management plans, several states have designated solid waste districts or counties within the states. To avoid charges of discrimination against out-of-state waste, a number of districts have enacted landfill restrictions against waste generated outside of the district, regardless of the state of origin. Michigan law (H.B. 5524, enacted 1988) requires any facility receiving out-of-county waste to be explicitly authorized in the solid waste management plans of the receiving and sending counties. In addition, a county may limit the disposal of imported waste if it can demonstrate in its solid waste plan that imported waste is detrimental to the long-term landfill capacity of the county. This law was upheld by a federal district court in Michigan, but the decision is being appealed.⁶

In Ohio (H.B. 592, enacted 1988), districts apply differential surcharges to tipping fees in a three-tier system based on the origin of the waste. A 70 cent per ton state surcharge is applied to waste generated within a district, and this fee increases to \$1.10 per ton for out-of-district waste, and \$1.70 per ton for out-of-state waste. The money generated from the state surcharge is used to fund hazardous waste clean-up programs through the Ohio Environmental Protection Agency (EPA). In addition to the state surcharge, a district surcharge is also applied in a similar three-tier system. The money generated from the district surcharge is returned to the solid waste district for use in the implementation of recycling and composting programs. Like Michigan, districts in Ohio have the power to limit the disposal of imported waste if the provisions are included in the long-term solid waste plans of that same district. The plans, which must account for a minimum of ten years, are currently being drafted by each district and will be reviewed by the Ohio EPA before being implemented in 1991.

Some states have restricted interstate waste through permitting and health inspection requirements. An Indiana law (H.B. 1240, enacted 1990) mandated that interstate waste cannot be dumped in Indiana unless it is accompanied by documents signed by a health official in the state of origin stating that it contains no hazardous waste. On the day the law became effective, more than 50 trucks, all hauling out-of state waste, and some containing infectious medical wastes, were turned away from Indiana landfills. Unfortunately, the provision was recently invalidated by a federal district judge.⁷

Other provisions of the Indiana law remain effective. Indiana requires that all applications for new landfills, or for expansions at existing sites, demonstrate a "local" need. In addition, in Indiana, Ohio, and New Jersey, any applicant for a waste disposal permit must demonstrate "good character" by passing a background investigation to determine whether the applicant has previously committed any environmental infractions.

Several states have passed temporary moratoriums on imported waste while they devise comprehensive solid waste management plans. In Pennsylvania, Governor Casey has issued a moratorium on applications or permits for new solid waste disposal facilities, unless the application can show that 70 percent of the waste proposed to be received at the facility is generated in Pennsylvania. In Montana, there is a state-wide moratorium on all interstate waste, with the expectation that differential fee legislation will be passed before the moratorium ends next year. As one person said in Montana, "the issue is extremely important to people out here, they don't want to feel like they are being dumped on with other people's trash. . ."

Although garbage receives commerce clause protection, and restrictions on its movement have only been narrowly tolerated, some legislative action has been upheld in the courts. When a landfill is publicly owned, legislation restricting wastes on the basis of origin will apparently be upheld due to the "market participant" exemption. Additionally, solid waste districts that limit imported waste may withstand judicial scrutiny if the burden of landfill restrictions is borne equally by those within and outside of the state. As states, counties, and cities seek to extend the lives of local landfills, banning specific recyclables from landfills is another route that will promote local recycling and avoid unfavorable court rulings.

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Selected Leading Cases on Interstate Commerce Clause/Waste Flow

Philadelphia v. New Jersey, 437 U.S. 617 (1978)
Rollins v. St. James, 775 F.2d 627 (5th Cir. 1985)
Hardage v. Atkins, 582 F.2d 1264 (10th Cir. 1978)
Evergreen v. Metropolitan Serv. Dist., 643 F.Supp 127 (1986)
BFI v. Anne Arundel Cty, 438 A.2d 269 (1981)
Dutchess v. Plattekill, 417 N.E.2d 74 (1980)
Monroe-Livingston v. Caledonia, 417 N.E.2d 78 (1980)
New Energy Co. v. Limbach, 100 L.Ed.2d 302 (1988)
Lewis v. BT Inv. Manages, Inc., 447 U.S. 27 (1980)
Maine v. Taylor, 477 U.S. 131 (1986)
Sporhase v. Nebraska, 458 U.S. 941 (1982)
Brown-Forman v. NY Liquor Auth., 476 U.S. 573 (1986)
Ark. Elec. Coop. v. Ark. PSC, 461 U.S. 375 (1983)
Glassboro v. Gloucester Cty Bd, 495 A.2d 49 (N.J. 1985)

Harvey & Harvey, Inc. v. Delaware Solid Waste Auth., 600 F.Supp 1369 (D.Del 1985)
White v. Mass. Coun., 460 U.S. 204 (1983)
Shayne Bros. v. D.C., 592 F.Supp 1128 (D.D.C. 1984)
County Commr. v. Stevens, 473 A.2d 12 (1984)
Bill Kettlewell Excavating, Inc. v. Michigan D.N.R., 89-CV-30015-P.H. (U.S. Dist. Ct., E.D. Mich) (1990)
Diamond Waste, Inc. v. Monroe County, GA, C.A. 89-380-2-MAC (W DO) (U.S. Dist. Ct., Mid. Dist. of GA) (1990)
Government Suppliers Consolidating Services Inc. v. Indiana, DC SInd, No. IP 90-303-C (1990)

This article was written by Matt Gallaway with contributing research from Robert Nagel.

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References

- ¹ City of Philadelphia v. New Jersey, 437 U.S. 617 (1978).
- ² Hughes v. Alexandria Scrap, 426 U.S. 794 (1976).
- ³ Several other cases led to the application of the market participant exemption to public landfills. Reeves v. Stake, 447 U.S. 429 (1980), upheld a South Dakota policy confining the sale of cement at a state-owned plant solely to state residents in times of shortage. In County Commissioners of Charles County v. Stevens, 473 A.2d. (1984), the court upheld a county prohibition on out-of-state waste at public landfills.
- ⁴ LeFrancois v. Rhode Island, 699 F. Supp. 1217 (D.R.I. 1987).
- ⁵ Pike v. Bruce Church, Inc., 90 U.S. 844 (1970).
- ⁶ In March 1990, a federal district court upheld a St. Clair County (MI) prohibition on the disposal of all out-of-county solid waste [Bill Kettlewell Excavating, Inc., v. Michigan Department of Natural Resources, et al., 732 F. Supp. 761 (D. Mi. 1990)]. In its decision, the court applied the commerce clause balancing test to the county regulation, and cited a 1986 case, Evergreen Waste Systems v. Metropolitan Service District, 643 F. Supp. 127 (D. Ore. 1986), in which the court upheld a district ban on out-of-county wastes at public landfills. The Kettlewell decision is currently being appealed in the 6th Circuit Court of Appeals (90-1361).
- ⁷ "Trash trucks denied use of Indiana landfills." WasteTech News Volume 2:16, p. 1. A differential fee system, based on tipping fees at landfills in the state from which the imported waste originated, was also invalidated. Government Suppliers Consolidating Services, Inc. v. Indiana, DC SInd, No. IP 90-303-C (1990).