

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF SUPPORTING) RESOLUTION NO. 94-2001B
PASSAGE OF FLOW CONTROL)
LEGISLATION BY THE U.S. CONGRESS) Introduced by Rena Cusma, Executive
Officer

WHEREAS, On May 16, 1994, the U.S. Supreme Court, in C & A Carbone, Inc. vs. Town of Clarkstown, New York, decided that flow control laws and ordinances which discriminate against interstate commerce violate the Commerce Clause of the U.S. Constitution; and

WHEREAS, It appears Metro's solid waste flow control system is not currently affected to any significant degree by the Carbone decision, including the authority to franchise in-region solid waste facilities, designate out-of-region facilities to receive Metro waste, issue non-system licenses, and impose solid waste fees; and

WHEREAS, At some time in the future, in order to accomplish the region's solid waste policy objectives, Metro may need to restrict disposal options in ways that, unlike the current system, could be contrary to the Carbone decision; and

WHEREAS, The U.S. Constitution gives Congress the authority to regulate interstate commerce and to grant to states and local governments the authority to take action affecting interstate commerce; and

WHEREAS, Several flow control bills are currently being considered by Senate and House committees of U.S. Congress; and

WHEREAS, The resolution was submitted to the Executive Officer for consideration and forwarded to the Council for approval; now, therefore,

BE IT RESOLVED,

That the Metro Council supports those provisions of pending federal legislation that preserve Metro's flow control authority as outlined in Metro Code Chapter 5.05 and allow other states and political subdivisions to direct, limit, regulate, or prohibit the movement of all municipal solid waste, excluding recyclables separated from other waste, generated or disposed of within its boundaries.

ADOPTED by the Metro Council this 11th day of August, 1994.


Ed Washington, Deputy Presiding Officer

SUPPLEMENTAL SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 94-2001A, FOR THE PURPOSE OF SUPPORTING PASSAGE OF FLOW CONTROL LEGISLATION BY THE U.S. CONGRESS

Date: August 4, 1994

Presented by: Councilor Hansen

Committee Recommendation: At the August 2 meeting, the Committee voted 4-0 to recommend Council adoption of Resolution No. 94-2001B. Voting in favor: Councilors Buchanan, Hansen, McFarland and McLain. Councilors Monroe and Wyers are absent.

Committee Issues/Discussion: At its July 5 meeting the Solid Waste Committee recommended Council adoption of Resolution No. 94-2001A. The purpose of the resolution was to express Metro support for pending federal flow control legislation. During Council consideration of the resolution, several Councilors expressed concern that some could use the resolution as a blanket endorsement of all present and future versions of the many pending flow control bills now pending in Congress. Councilors were not able to develop alternative language and therefore referred the resolution back to the Solid Waste Committee.

At the August 2 committee meeting, Council staff offered possible amendment language to the committee. The purpose of the language was to limit Metro support of flow control legislation to those elements of the legislation that preserve Metro's authority to excise flow control under Metro Code Chapter 5.05. The committee adopted the proposed amendment.

Councilor Hansen also requested a grammatical change in the first line of the second Whereas clause. Noting that the word "impact" is not a verb, she asked that it be changed to "affected". The committee approved this change.

SOLID WASTE COMMITTEE REPORT

RESOLUTION NO. 94-2001A SUPPORTING PASSAGE OF SOLID WASTE FLOW CONTROL LEGISLATION BY THE U.S. CONGRESS

Date: July 6, 1994

Presented By: Councilor Hansen

COMMITTEE RECOMMENDATION: At its July 5, 1994 meeting the Committee voted 4 to 1 to recommend Council approval of Resolution No. 94-2001 as amended. Committee members voting in favor were Councilors Buchanan, Hansen, McFarland and McLain. Councilor Wyers voted against and Councilor Monroe was absent.

COMMITTEE DISCUSSION/ISSUES: Terry Peterson, Planning and Technical Services Manager, presented the Staff Report. He pointed out that a recent decision by the U.S. Supreme Court affected the ability of local governments in some instances to regulate the flow of solid waste. There are several flow control bills pending in Congress that will allow states and political subdivisions to control the flow of solid waste within their boundaries. The purpose of the resolution is to indicate Metro support for such legislation.

Mr. Peterson further stated that because of concern expressed by persons interested in the recycling aspect of solid waste the staff was proposing an amendment to the resolution which would exclude "recyclable separated from other waste" from the municipal waste stream proposed to be regulated or controlled. He referred the Committee to a copy of the "A" draft of the resolution which included the specific amendment.

Three members of the public testified on the proposed resolution. Mr. Paul Cosgrove representing the American Forest & Paper Assn. spoke in favor of the resolution as amended to exclude recyclable separated from the municipal waste stream. He submitted written information which is attached to this report as Attachment 1.

Mr. Jack Polans, resident of King City, asked several questions regarding the subject and took no position on the resolution. Mr. Jeff Murray, representing Far West Fibers spoke in opposition to the resolution. He submitted a letters in opposition from Far West Fibers and EZ Recycling which are attached as Attachments 2 and 3 to this report.

Councilor McLain expressed concern about the process Metro will use to monitor the Federal legislation. She has asked for a report from the General Counsel's office reviewing all the proposed legislation and she requested that periodic reports from appropriate staff be made to the Solid Waste Committee on the progress of that legislation in Congress and any positions taken by representatives of Metro.

PROPOSED FLOW CONTROL LEGISLATION - RECYCLING AND THE PAPER INDUSTRY

Overview: Legislation to control the flow of what is commonly regarded as waste (flow control) is currently being drafted by Representative Al Swift and Senator Frank Lautenberg. This legislation would regulate for the first time in Federal law the treatment of recyclable materials such as old newspaper, used office paper, and used corrugated (RCRA encourages recycling but does not distinguish between the diversion, sorting and processing of materials for recycling).

In order to maximize the growth of the paper recycling industry, flow control legislation must clearly distinguish between the treatment of privately owned material that is destined for recycling and the treatment of municipal solid waste destined for disposal.

Representative Swift and Senator Lautenberg are aware of the need to exclude recyclables from flow control authority, but the issue will likely remain contentious if this measure progresses through the legislative process.

Background: In 1990, the paper industry voluntarily established the goal of recovering 40 percent of the paper in the United States for recycling and reuse by 1995 (at the time the figure was approximately 27 percent). Without any government mandates, the industry achieved its goal two years ahead of schedule in 1993.

More paper is now recovered for recycling or reuse than goes to landfills - a major reversal of the situation that existed just a few years ago. And the industry continues to invest billions of dollars each year for equipment to increase recycling.

A New Goal - 50 Percent Recovery by the Year 2000 - The Need for Uninterrupted Flow: The industry has now set a new goal - we will recover 50 percent of the paper consumed in the United States by the year 2000, a goal that, when achieved, will place the U. S. at virtually the highest level of paper recovery of any industrialized nation in the world. And this will be achieved without new authority granting State or local governments the ability to direct the flow of recyclable materials nor any artificial constraints on the marketplace to insist on specific levels of recycled content in different grades of paper.

In order to encourage continued growth in recycling, paper and other recovered recyclable material must be allowed to flow freely from the residential or commercial consumer to the recycled paper mill. Paper recycling companies must be assured that there will be a continuous supply of usable recovered paper in order to justify the capital expenditures for investment in deinking and increased pulping capacity. Access to quality recovered paper is the key to the paper industry's ability to continue to increase its production of recycled paper. If local governments are granted authority to control or monopolize the flow of recovered paper, the ability of paper recycling companies to get the types of recovered paper they need will be unnecessarily compromised.

Paper Industry Concerns

The Other Side: Some local governments claim that they need authority to control all waste in their jurisdictions (flow control authority) to meet financial obligations they have incurred for building their waste management facilities. Such authority is currently limited under the Commerce Clause of the Constitution.

Ownership: Recyclable material, be it a bundle of old newspapers, a bale of corrugated paper, or any other material is like all other property and the owner should have the unqualified right to sell, donate, deliver, or transfer ownership. The paper industry believes that this principle is at the heart of the flow control debate and seeks specific support for the following provisions in order to ensure that this principle is properly and faithfully carried out. Federal law should not give State and local governments the authority to mandate disposal of recyclable material in any one way, since mandated disposal will not necessarily increase recycling. The definitions of Recyclable Materials and Ownership Rights need to be clarified in order to provide the maximum amount of material available to paper recycling companies.

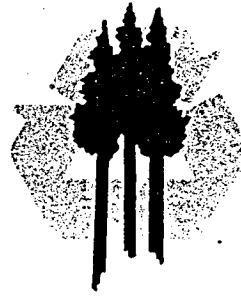
Grandfathering: Many municipalities have contracts granting haulers exclusive rights within a locality. Such exclusive contracts can do serious harm to the paper recycling community. For example, one city in Florida has granted a hauler the right to remove all material from commercial establishments in the locality for a fee, even though retail establishments have private contracts with recyclers or others to remove valuable recyclables (corrugated, office waste, etc.) and receive compensation. Grandfathering such exclusive contracts, as has been proposed in the draft legislation, would trample private ownership rights and deny recyclers access to their raw material. Any grandfathering of existing contracts should exempt recyclable material.

Reporting: Local governments are seeking to include authority for them to require reporting of recycling activity from all generators of recyclable materials. The reporting of materials diverted from solid waste is complex, resulting in miscounting and misleading data. There is nothing which prohibits states from authorizing reporting of recyclables diverted from the waste stream and such requirements should be tied directly to state waste management plans. As drafted, the provision in the bill neither ensure the collection of meaningful data nor requires that such information be kept confidential.

Conclusion

Paper recycling has increased dramatically over the past few years. In order to continue this record, and mindful of the fact that the very vast majority of recovered paper was diverted from and never entered the waste stream, flow control legislation should: (1) maintain the right of ownership of recyclable materials; (2) prohibit existing contracts that inhibit recycling by perpetuating exclusive arrangements; and (3) not authorize local governments to impose unnecessary reporting requirements.

July 1, 1994

FAR WEST FIBERS, INC.

P.O. Box 503
 10750 S.W. Denney Road
 Beaverton, Oregon 97075
 Phone (503) 643-9944
 FAX (503) 646-2975

Judy Wyers, Presiding Officer
 METRO
 600 N.E. Grand Avenue
 Portland, OR 97232-2736

Re: Metro Resolution No. 94-2001 Supporting National Flow Control Legislation.

Dear Ms. Wyers and Metro Council Members;

Thank you for the opportunity to express our concerns about the proposed resolution before the Metro Council regarding flow control legislation. To be clear with you, our companies and our industry are **absolutely opposed to flow control laws which adversely impact recycling.**

By definition in ORS 459.005, Solid Waste is defined as "All putrescible and nonputrescible wastes, including but not limited to garbage... wastepaper and cardboard... commercial waste... and other wastes." In ORS 459A.075 Exemptions, it states that "ORS 459.005 does not apply to recyclable material which is (1) source separated by the generator; and (2) purchased from or exchanged by the generator for fair market value for recycling or reuse.

Although it appears that most current recycling and reuse practices fall clearly within the protection of the laws of the State of Oregon, Metro language as proposed in Resolution No. 94-2001 refers to all municipal solid waste and gives no specific exemption to source separated recyclables. This is a dangerous omission which disturbs our industry. It is our contention that source separated recyclables are valuable commodities and are not solid waste, and that they should not be treated as solid waste until or unless they are useless and or are discarded. It is a mistake to include recyclables under the definition of solid waste, whether or not they are later exempted.

In short, if local government has a problem with the flow of garbage and refuse, it should address that problem separately and not confuse the issue with the flow of recyclables.

Therefore, a national flow control law, if drafted along the lines of proposed Metro Resolution No. 94-2001 would have adverse effect upon our business specifically and all other private collection, processing and recycling businesses generally. We **strongly oppose** the Metro Resolution as drafted.

Sincerely yours,

FAR WEST FIBERS, INC. and
 E-Z RECYCLING

John G. Drew
 President

EZ
 255-2299

JGD/ces



Recycling

12820 N.E. Marx Street
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(503) 255-2299

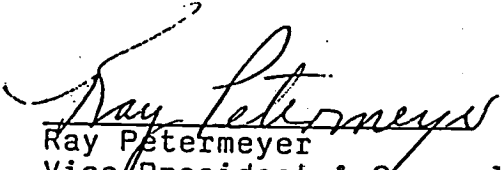
July 5, 1994

Judy Wyers, Presiding Officer
Metro Council
Portland, Oregon

To the Members of the Metro Council:

As a member of the Executive Board and Treasurer of the Paper Stock Institute of America and on the Executive Board of The Institute of Scrap Recycling Industries, a National Association, I oppose the Resolution No. 94-2001. Flow control has been pushed by governmental agencies for a number of years and it is not to the benefit of the public or the recycling arenas of our nation. I realize the wording has been changed to exclude source-separated recyclables; however why is it necessary to address this issue. The Supreme Court has already made a decision as to flow control legislation, so why must Metro Council deal with this.

I would urge the Council to table this resolution at this time.


Ray Petermeyer
Vice President & General Manager

BEFORE THE METRO COUNCIL

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) Executive Officer

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WHEREAS, The U.S. Constitution gives Congress the authority to regulate interstate commerce and to grant to states and local governments the authority to take action affecting interstate commerce; and

WHEREAS, Several flow control bills are currently being considered by Senate and House committees of U.S. Congress; and

WHEREAS, The resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

BE IT RESOLVED, That the Metro Council supports passage of flow control legislation by the U.S. Congress that would allow states and political subdivisions to direct, limit, regulate, or prohibit the movement of all municipal solid waste, excluding recyclables separated from other waste, generated or disposed within its boundaries.

ADOPTED by the Metro Council this _____ day of _____, 1994.

Judy Wyers, Presiding Officer

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 94-2001 FOR THE PURPOSE OF SUPPORTING PASSAGE OF FLOW CONTROL LEGISLATION BY THE U.S. CONGRESS

Date: June 28, 1994

Presented by: Bob Martin
Terry Petersen

PROPOSED ACTION

Adopt Resolution No. 94-2001 for the purpose of supporting passage of flow control legislation by the U.S. Congress that would allow states and political subdivisions to direct, limit, regulate, or prohibit the movement of all municipal solid waste generated or disposed within its boundaries.

FACTUAL BACKGROUND AND ANALYSIS

Several committees of the U.S. Congress are currently drafting legislation regarding the control of waste by states and local governments. Interest in this legislation has been stimulated by a recent U.S. Supreme Court decision that the flow control ordinance adopted by Clarkstown, New York discriminated against interstate commerce and therefore violated the Commerce Clause of the U.S. Constitution (see May 27, 1994, memo from Todd Sadlo to Rena Cusma and Judy Wyers).

Metro's current solid waste flow control system includes the authority to franchise in-region solid waste facilities, designate out-of-region facilities to receive Metro waste, issue non-system licenses, and impose solid waste fees. As described in detail in the May 27 memo from Todd Sadlo, any affect of this system on interstate commerce is, at most, incidental. Therefore, the Metro system would withstand a commerce clause challenge.

However, Metro might in the future face situations similar to other local governments and find it necessary, in order to accomplish certain policy objectives, to adopt flow control practices that are in conflict with the Supreme Court decision. The U.S. Congress has the authority to grant to local governments the right to take action affecting interstate commerce. Several congressional committees are now considering flow control legislation that would allow states and political subdivisions to limit, regulate, or prohibit the movement of municipal solid waste generated within its boundaries (Metro's Office of General Counsel is in the process of preparing a review of this legislation).

Attached is part of a June 13, 1994, memo from Congressman Al Swift, Chairman, Subcommittee on Transportation and Hazardous Materials, describing national trends related to flow control and the positions of various interested parties.

BUDGET IMPACT

There is no immediate budget impact of this resolution. However, local government authority to direct the flow of solid waste is critical for sound financial management of the solid waste system. In order to achieve stable and equitable rates, all waste generated in the region must contribute to the cost of the system. Passage of national flow control legislation granting local governments the authority to direct waste, even if there is an impact on interstate commerce, would help ensure that this happens.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 94-2001.

AL SWIFT WASHINGTON, CHAIRMAN
 BLANCHE M. LAMBERT ARKANSAS
 W. J. BILLY TAUZIN LOUISIANA
 MICK BOUCHER VIRGINIA
 J. ROY ROYLANDS GEORGIA
 THOMAS J. MANTON NEW YORK
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 FRANK PALLONE, JR. NEW JERSEY
 LYNN SCHERE CALIFORNIA
 PHILIP R. SHARP INDIANA
 EDWARD J. MARKEY MASSACHUSETTS
 BILL RICHARDSON NEW MEXICO
 JOHN D. DINGELL MICHIGAN
 (EX OFFICIO)

ARTHUR P. ENDRES, JR.
 STAFF DIRECTOR/CHIEF COUNSEL

U.S. House of Representatives
 SUBCOMMITTEE ON TRANSPORTATION
 AND HAZARDOUS MATERIALS

COMMITTEE ON ENERGY AND COMMERCE

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 MICHAEL D. CRAPO IDAHO
 CARLOS J. MOORHEAD CALIF.
 (EX OFFICIO)

MEMORANDUM

#1473

26 pp.

SWR

TO: Members, Committee on Energy and Commerce

FR: Al Swift, Chairman, Subcommittee on Transportation and Hazardous Materials

DA: June 13, 1994

RE: Municipal Solid Waste Flow Control Legislation

Attached please find a copy of a staff discussion draft of legislation regarding municipal solid waste flow control and an article from The Washington Post describing the recent U.S. Supreme Court decision on flow control. There will be a meeting for staffers of Committee Members to discuss this staff discussion draft, and other issues regarding flow control, at 3:00 p.m. on Thursday, June 16, 1994, in Room 2218 Rayburn House Office Building.

The aforementioned draft has been put together by staff in order to foster discussion on a possible resolution of the flow control issue. Subcommittee staff will be available to discuss issues relating to flow control and to answer questions and receive further comments concerning this draft and associated issues. I am most interested in hearing your views on this proposed legislation.

I. BACKGROUND

A.) General Background.

Traditionally, municipal solid waste ("MSW") management has been a local government responsibility. However, since the passage of the Resource Conservation and Recovery Act ("RCRA") amendments to the Solid Waste Disposal Act (42 U.S.C. 6901-6991i) in 1976, the federal government and the states have become increasingly more involved in waste management. The 1976 RCRA amendments contained provisions encouraging states to adopt comprehensive, EPA-approved, MSW management plans. The nature of these plans, along with the increasing complexity and costliness of waste management facilities, has had a significant effect on waste management issues at the local level.

The term "flow control" refers generally to legal provisions used by local governments to designate where municipal solid waste from a specified geographic area must be processed, stored, or disposed. The purpose of flow control ordinances is to keep wastes from leaving a specified area; therefore, these ordinances may also have an impact upon waste movement in interstate commerce.

Flow control ordinances have routinely been enacted and enforced by local governments for many years; however, over the course of the last several years, the use of flow control has become increasingly controversial, and challenges to flow control ordinances have been successful.

One reason for this trend is that new environmental requirements for landfills, incinerators and waste-to-energy facilities, and recycling facilities are forcing older, less protective facilities to close. New, state-of-the-art facilities are considerably more expensive and complex than those they are replacing; therefore, costs to local governments for constructing and/or operating these facilities are much greater than previously was the case.

Currently, 29 states authorize all or some of their political subdivisions to adopt flow control ordinances. Hundreds of millions of dollars have been invested in facilities in these states; much of this financing was done thorough the issuance of revenue bonds. By choosing this method of financing, local governments are able to avoid reaching into their general funds and thus affecting their tax bases. Typically, flow control is used to provide assurances of an adequate waste stream to guarantee revenue to repay the bonds. Local governments argue that, without flow control, they will be unable to build new facilities, and they may default on existing bonds.

A second reason for the recent controversy surrounding the imposition of flow control is that states and local governments are increasingly adopting an integrated approach to waste management in order to facilitate their compliance with state-mandated MSW management plans. Because integrated programs often involve such components as curbside recycling, household hazardous waste pickup, incineration or waste-to-energy and composting, these programs tend on their faces to be more expensive than traditional disposal programs. Often, the tipping fee charged at the disposal facility is used to subsidize the non-profitable portions of the integrated program.

Third, recent court decisions have raised serious questions regarding flow control's legal status. It is interesting to note that, prior to 1988, flow control ordinances were consistently upheld; however, since 1988, they have been consistently found to violate the Commerce Clause of the U.S. Constitution, and hence have been overturned on these grounds. On May 16, 1994, the U.S. Supreme Court issued a decision in C. & A. Carbone v. Clarkstown (discussed below), in which, by a 6-3 vote, the Court held that the

flow control ordinance at issue in the case violates the Commerce Clause.

B.) EPA Report to Congress

In September 1992, Congress mandated that EPA conduct a study and submit a report to Congress on flow control as a means of MSW management. The report is due in September 1994. The study is to contain a comparative review of states with and without such authority, along with an analysis of the impact of flow control laws on protection of human health and the environment, the development of state and local waste management capacity, and the achievement of state and local goals for source reduction, reuse, and recycling. In August and September of 1993, EPA held a series of three public hearings in Arlington, Virginia; San Francisco, California; and Chicago, Illinois to receive comments and data on flow control from interested parties. Over 100 persons testified at these hearings, and over 180 documents were submitted for the record. At this time EPA is still in the process of compiling the information gathered at this summer's hearings, and the Administration does not have a formal position regarding flow control legislation.

C.) Interested Parties' Views.

Following is a summary of the general positions of various parties involved in the flow control debate.

1.) Local and State Governments.

Local governments tend to strongly support the granting of flow control authorities. These governments argue that they require extensive, unfettered flow control authorities in order to provide adequate waste streams to repay financing on facilities such as incinerators or landfills and in order to provide comprehensive, integrated waste management programs. These governments often have hundreds of millions of dollars invested in the construction and operation and maintenance of these facilities.

Local governments also argue that they need the authority to impose flow control in order to meet state mandates and develop integrated MSW management plans.

The various state-level associations, such as the National Governors' Association and the Association of State and Territorial Solid Waste Management Officials, have not yet taken

positions on flow control; however, several of the States have had experience with the issue. Approximately twenty states filed amicus briefs in the Carbone case. According to information gathered by EPA as part of the preparation of that agency's Report to Congress, states generally support authorizing local governments to impose flow control; however, these states generally insist upon having the flexibility to tailor flow control to their individual needs.

2.) Waste Management Industry.

The large, vertically-integrated waste companies tend to oppose flow control on several grounds. For example, they claim that it is anti-competitive and monopolistic. The National Solid Wastes Management Association (NSWMA) recently described flow control as "a regulatory blunderbuss delivering economic disruption and unintended adverse environmental consequences with little or no benefit." (Comments of the NSWMA submitted to the U.S. EPA public meeting on flow control held on 8/17/93; Docket No. F-93-RFCN-FFFFF).

The waste industry also argues that flow control protects facilities from the need to compete for revenue to repay project revenue bonds; that it does not ensure long-term disposal capacity, but merely ensures unfair competition regarding existing capacity; and that flow control, by discouraging private firms from constructing new, state-of-the-art disposal facilities, may have an adverse impact on the environment.

These firms also argue that flow control does not have a positive impact on recycling. They argue that, while recovery of materials may occur, recovery alone does not equal recycling. According to these firms, flow control has no impact on the most important element in ensuring a successful recycling program: the development of adequate markets for recovered materials. They generally argue that flow control has not been the stimulus for recycling; rather, recycling has increased due to market development and/or government-imposed requirements for the separation of recyclable materials from MSW.

The waste industry counters the local governments' argument that flow control is necessary to provide guaranteed sources of revenue for new, expensive waste management and disposal facilities by citing examples where such facilities are currently being constructed without the imposition of flow control.

Another point raised by the waste industry is that flow control increases disposal costs without a comparable increase in benefits to the consumer (eg., the citizen of the municipality). The industry argues that flow control allows local governments to

"bundle" costs and charge one tipping fee at one site, thus denying citizens accurate information regarding the true costs of disposal and of other waste management or recycling programs. Others argue with this assertion; they claim that tipping fees imposed by governments in a flow-controlled situation often pay for a wider variety of services, such as curbside collection of recyclables, household hazardous waste collection, composting, and public education efforts, than are generally provided by a company operating in a free market system, where the company is free to "cherry-pick" and provide only those services that are profitable, regardless of demand.

Yet another issue raised by the large waste companies is that of waste generators' liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9601-9657). These companies argue that flow control has an uncertain, and potentially significant, impact on these persons' liability because they are unable to choose the disposal facility of their choice; hence, they have limited control over the environmental quality of the disposal facility.

Unlike the above-mentioned firms, a number of the smaller waste companies support flow control, especially if they operate publicly-owned facilities such as landfills or incinerators. These firms are concerned that, in the absence of flow control, large, vertically-integrated waste companies will use their greater resources to underbid the smaller firms and drive them out of business. However, it is important to note that many smaller firms that do not operate publicly-owned disposal facilities tend to oppose flow control.

3.) Waste-to-Energy Industry.

The waste-to-energy facility construction and operation industry trade association currently takes no position on flow control except as it relates to waste-to-energy facilities. In general, the association argues that flow control has been a useful tool for local governments and thus should be maintained where it already exists. It believes that the maintenance of existing flow control ordinances is necessary to protect significant existing capital investments. Regarding new facilities, the association believes that local governments should have the authority to impose flow control upon residential wastes, provided that the facility designation process is open. One firm, Ogden Projects, has staked out a different position than the rest of the association members regarding commercial wastes; this firm supports applying flow control to (non-recyclable) wastes from commercial sources.

4.) Recycling Industries.

The scrap recycling industry takes no position on flow control except as it related to recyclable materials. The industry argues that recyclable materials should be exempted from flow control on the grounds that they are private property and thus should not be subject to a taking without due compensation by the government.

According to this industry, personal property rights must be protected. It takes the position that ownership of recyclable materials is maintained until the owner takes specific action to voluntarily transfer ownership of the materials to other parties (i.e., by placing such materials at the curbside for pickup by a municipality or other collector).

The manufacturers of products made from 100% recycled paper, acting under the auspices of the Paper Recycling Coalition, want the ability to purchase supplies of old newsprint (ONP) directly from the public; they claim that this gives them access to relatively pure ONP for inclusion in their products. Companies in this industry are concerned about the potential for the imposition of flow control upon mill wastes that they currently dispose of at company-owned facilities.

The American Forest and Paper Association (AFPA) and the Paper Recycling Coalition take the position that recovered materials should be treated as commodities, not wastes, and thus should not be regulated as solid waste. Further, these industry groups believe strongly that personal property rights need to be protected: their position is similar in this regard to that of the scrap recyclers (see above). They believe that there should be no distinction created between residential and commercial wastes. These associations argue that, in recent years, the economic forces driving the adoption of flow control have broadened from assuring a steady materials supply for waste-to-energy plants to assuring a constant source of funding for MSW collection and disposal.

II. CASE LAW

A.) California Reduction Co. v. Sanitary Reduction Works of San Francisco, 199 U.S. 306 (1905).

The court ruled that a city waste-collection ordinance that required, among other things, that covered wastes that originated in the city be delivered to designated private "crematory" was within the scope of a state-authorizing statute, and was not arbitrary or beyond the city's police powers, as it had a substantial relation to protection of the public health. Moreover, the court ruled that such requirement was not a constitutional taking by virtue of the mandated crematory fee, nor because of the

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Judy Wyers, Presiding Officer