

## ***Federal Interstate Waste Legislation Proposed***

Two bills introduced in the United States Congress by Rep. James Greenwood (R-Pa.) would authorize local and state control over the importation of solid waste from other states and countries. One bill (HR 1213) would generally ban the receipt of out-of-state waste unless it is expressly authorized in an agreement between the landfill and the host community. The other bill (HR 1214) would expressly authorize state and local governments to exercise “flow control” authority over waste within their jurisdictions. In the absence of such federal legislation, the United States Supreme Court has held that the Commerce Clause of the United States Constitution prohibits state and local governments from discriminating against the interstate movement of solid waste or solid waste-related services.

HR 1213 would generally prohibit out-of-state waste shipments at landfills that have not entered into a “host community agreement” to allow such shipments. In order to enter into such an agreement, if one does not already exist, the landfill would be required to provide the host community with specific information regarding the landfill’s operation, design, compliance history, and any gifts or contributions made by the landfill’s owner or operator to public officials. Prior to taking any formal action on the agreement, the host community would be required to notify the state, publish a notice of the proposed action, and hold at least one public hearing. The bill would also allow a state to deny a construction permit or operating license to a landfill or incinerator if the state determines that there is not a local or regional need for the facility.

HR 1214 would allow state and local governments to control the flow of solid waste disposed of *within* their jurisdictional borders and direct that waste to government-funded solid waste facilities in order to generate revenue to retire the public debt incurred in constructing those facilities. In 1994, the United States Supreme Court held that such flow control measures violated the Commerce Clause because they discriminated against out-of-state waste service providers competing for the waste stream.

The importation of out-of-state waste has been a hotly debated topic in Michigan. In 1999, Governor Engler established a Solid Waste Task Force to examine the trends, causes, and consequences of solid waste imports and to develop recommendations to address this issue without violating the Commerce Clause of the United States Constitution. The Task Force concluded that “federal legislation to grant to states reasonable authority to control waste imports is necessary” and that any such federal legislation “should balance the needs for communities to effectively plan for integrated waste management programs for their long-term needs and the needs of the disposal industry to operate effectively.” Michigan Waste Industry Association, an industry trade group representing the solid waste industry in Michigan, has stated that it generally agrees with the Task Force’s conclusion that only congress can regulate interstate commerce, but that “there is currently no legitimate reason for federal legislation that would interfere with the free market” movement of solid waste.

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