

Solid Waste Task Force Issues Report On Interstate Waste Regulation

The Michigan Solid Waste Task Force (the Task Force) created by Governor John Engler has issued its final report to the Governor and the Director of the Michigan Department of Environmental Quality (MDEQ) regarding the control of interstate and international waste imports into Michigan. Although the Task Force determined that Michigan's existing landfills can effectively manage the current volume of solid waste imports, the Task Force speculated that this volume might significantly increase in the near future. The Task Force recognized, however, that the United States Constitution prohibits states from regulating interstate and international waste shipments unless the United States Congress authorizes such regulation. Therefore, the Task Force concluded that federal legislation, which balances the need for long-term planning with the need for efficient landfill operation and development, is necessary in order to address this issue. Accordingly, the Task Force recommended that a strategy should be developed to promote the passage of such federal legislation.

Governor Engler established the Task Force under Executive Order 1999-3 to examine 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 Commerce Clause grants Congress the power to regulate commerce among the states. Although the Commerce Clause is an affirmative grant of power to Congress and does not expressly govern the activities of states or local governments, federal courts have interpreted this constitutional provision to prohibit states from advancing their own commercial interests by curtailing the movement of articles of commerce, such as solid waste, either into or out of the state. This aspect of the Commerce Clause is often referred to as the "dormant Commerce Clause." A state law or local ordinance that discriminates against interstate commerce by treating in-state and out-of-state interests differently is generally invalid under the dormant Commerce Clause. In 1992, the United States Supreme Court held that provisions of the Michigan Solid Waste Management Act, which allowed counties to impose restrictions on the importation of solid waste from other states and countries through their Solid Waste Management Plans, violated the Commerce Clause and were not enforceable. Since that decision, there has been no restriction on the movement of solid waste

across Michigan's borders.

The Task Force summarized its findings and recommendations regarding interstate and international waste imports as follows:

- “Current levels of solid waste imports are manageable without immediate impacts on disposal capacity for Michigan citizens.”
- “Solid waste imports show a continuing trend to increase. Current events suggest a potential for significant increases in waste imports to Michigan and other importing states. If such increases occur, significant negative impacts on Michigan disposal capacity may result.”
- “Significant increases in waste imports will undermine local efforts to maintain and expand waste reduction and recycling efforts.”
- “State legislative options to control imports of solid waste from out-of-state are limited. State legislation that will actually limit waste imports will likely not withstand constitutional challenge. Legislative approaches that will withstand constitutional challenge are not likely to be effective at limiting imports.”
- “Federal legislation to grant to states reasonable authority to control waste imports is necessary.”
- “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.”
- “It is unlikely that the 106th Congress will consider legislation to address this issue before the end of 2000.”
- “The Task Force should develop a strategy to work with the Michigan Congressional delegation and with the Task Force members’ respective national organizations to urge enactment of legislation by the 107th Congress to address this issue. Michigan should continue its efforts to coordinate with other states to develop and promote enactment of needed legislation. The Task Force’s strategy should coordinate with these efforts.”

The Task Force consisted of six people appointed by Governor Engler representing the business community, local governments, and environmental organizations, and four additional members appointed (two each) by the Senate Majority Leader and the Speaker of the House of Representatives. The Task

Force members representing environmental organizations and the solid waste industry dissented from the Task Force's conclusion that waste imports should be restricted. Members of the Michigan United Conservation Club and the Michigan Environmental Action Committee, who were selected by Governor Engler to represent environmental organizations on the Task Force, commented that restricting waste imports is "not . . . the best possible way to handle [Michigan's] solid waste problem." Rather, the environmental organizations stated that a greater emphasis should be placed on waste reduction. "Environmentalists believe our solid waste problem is not the importation of solid waste, but is the lack of effort to change our disposal habits to reducing, reusing, and recycling our solid waste instead of landfilling it."

The Michigan Waste Industries Association (MWIA), which was also represented on the Task Force, also stated that interstate waste shipments should not be regulated. In response to the Task Force's report, MWIA prepared a detailed report on the solid waste industry's position on interstate waste regulation. MWIA is an industry trade organization representing companies engaged in the collection, processing, recycling and disposal of solid waste within the State of Michigan. MWIA summarized its position on this issue as follows:

- "MWIA agrees with the Task Force's conclusion that only congress can regulate the interstate movement of solid waste."
- "State and local governments should, therefore, stop attempting to regulate interstate waste shipments in violation of the Commerce Clause."
- "MWIA supports the use of the free market to determine the movement of solid waste."
- "MWIA believes there is currently no legitimate reason for federal legislation that would interfere with the free market."
- "Although MWIA opposes government interference with the free market, Industry agrees with the Task Force that any federal legislation in this regard must be balanced and workable."

The Task Force's report is available on MDEQ's web page at www.deq.state.mi.us/wmd.

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