Going Against the Flow:
The Case for Competition in Solid Waste Management

By Angela Logomasini

Local governments' imposition of solid waste flow control—the practice of mandating that trash haulers dispose of waste at government-designated facilities—creates monopoly providers of waste disposal services within a community. But such economic protectionism in the waste management industry has imposed huge costs on consumers, taxpayers, and the economy in general, while reducing innovation and subsidizing inefficient enterprises. Nonetheless, Congress is considering legislation that would bolster such laws. A better policy would be to curb their usage to promote a competitive system that allows the industry to seek the lowest cost options and operate efficiently.

When the founding fathers wrote the U.S. Constitution, they included the Commerce Clause, which provides that state governments may not impede interstate commerce—unless Congress grants states that right. The framers included this "free trade" provision because they knew that such freedom leads to prosperity. History has proven this principle correct: free-market societies enable their citizens to engage in free exchange, and they have flourished as a result.

However, Congress is currently considering options for state regulation of waste management markets. Specifically, Congress is examining the possibility of allowing states to impose flow control laws, which mandate that waste collectors only deliver wastes to government-designated disposal facilities. As noted by William L. Kovacs and Martha Pellegrini in a Resource Recovery Report-commissioned study, the flow control debate revolves around whether we want a nation that supports government control and limited exchange or a society that supports free markets:

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"The flow control issue is the embodiment of the classic struggle between proponents of free competition and those who believe government can solve all problems. It places those who believe in the sacredness of private property and the establishment of value by the marketplace against those who believe that government should pick winners and losers and ensure the outcome by subsidizing the winners; thereby ensuring the others will lose."1

With Congress's electoral mandate to turn back the tide of intrusive government, the fact that a bill to expand flow control authority has passed in the Senate (S. 534) and is being considered in the House is perplexing. To members that understand the importance of their mandate, the flow control issue should be very simple. Flow control is an anticompetitive tool for use by those who believe in big government solutions. And, like other big government devices, it has a history of hindering free markets for the sake of little, if any benefit, while imposing huge costs on consumers, taxpayers, and the economy in general.

BACKGROUND

What Exactly Is Flow Control? The term "flow control" describes local government requirements that trash haulers—public and private—deliver the wastes they collect to a specific disposal facility for incineration, landfilling, recycling, or composting. Haulers must pay these facilities "tipping fees," a per-ton charge for the waste the facility receives. According to the U.S. Environmental Protection Agency (EPA), local governments in 35 states, the District of Columbia, and the Virgin Islands have employed flow control laws; and four states use flow control indirectly, through mechanisms such as "waste management plans." In eleven states, public officials do not use flow control at all.2 Many times, local governments impose flow control ordinances in order to send waste to government-owned incinertors or landfills, ensuring that the local government collects the tipping fees that such facilities charge for taking the wastes. Governments

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also use flow control laws to ensure they can pay off bonds they have issued to pay for constructing waste disposal facilities.

Flow Control "Put or Pay" Agreements. Local governments often use flow control laws to meet "flow control agreements," which are also referred to as "put-or-pay" agreements. Governments enter such agreements with private firms that either construct and own a waste facility or operate a government facility on contract. These agreements guarantee that the government will provide the plants with a certain percentage of the community's waste stream over a specific number of years—often as many as 30. When the government cannot deliver the agreed upon amount of waste, it must compensate the owner by paying the tipping fees that the facility would have collected had it received the agreed upon amount of waste.

Flow Control's Evolution. Beginning in the 1970s, local governments turned to flow control requirements in response to a variety of state mandates and federal policies. At that time, the federal government began promoting state and local waste management plans under the Resource Conservation and Recovery Act (RCRA). In response, states developed statewide solid waste management plans that included mandates to localities on how to manage wastes. On top of these requirements, the federal government began pushing the development of waste-to-energy facilities, which became a popular item amidst the perceived energy crisis in the 1970s. Increasingly, local governments turned to flow control as a device to help manage the growing burden of state mandates as well as to ensure revenues at newly constructed waste-to-energy facilities.

As flow control laws became ever more intrusive, haulers and others turned to the courts for relief from the mandates, an activity that continues today. One of the first such flow control cases resulted from a 1976 ordinance passed by the City of Akron (Ohio) that required all waste haulers to obtain licenses from the city. As a condition of licensure, Akron mandated that haulers take waste to a designated incinerator. The ordinance would not allow haulers to do business with lower cost facilities or transfer stations that sorted out the recyclables. Haulers challenged the ordinance on a number of grounds. They claimed that the ordinance: (1) violated the Sherman Act as an unreasonable restraint on trade; (2) violated the U.S. Constitution's Commerce Clause; and, (3) represented a taking of property without just compensation, in violation of the Constitution. However, the court upheld the Akron ordinance as a necessary use of the
police power that states have to protect public health and safety. The court also held that the ordinance only had a minimal effect on interstate commerce.  

Since the Akron case, haulers and others have continued litigation on flow control, focusing on arguments that flow control impedes interstate commerce, violating the Commerce Clause. Finally in 1993, the U.S. Supreme Court found that flow control ordinances were unconstitutional, on the basis that they regulated and discriminated against interstate commerce. The case, C & A Carbone, Inc. v. the Town of Clarkstown, has brought the flow control issue to a head in Congress as many state and local officials seek to regain their flow control authority.  

FLOW CONTROL'S HIGH COSTS  

Throughout this year, Congress has been considering legislation to require agencies to balance the costs and benefits of regulations they write. In so doing, Congress must not forget to consider the costs and benefits of the laws that it passes. Flow control is no exception. While its costs are many, the benefits are few.  

Much of the evidence as to flow control's costs and benefits come from a recent call for public comments by the EPA. The overwhelming majority of private firms that answered this call for comments opposed flow control due to its many adverse impacts. In fact, 80 percent of disposal firms opposed flow control, and close to 90 percent of recycling firms opposed flow control (some recycling firms expressed opposition to flow control only for their industry). Among the specific problems identified:

Flow Control is Anticompetitive. Flow control essentially allows governments to create monopoly providers of waste disposal services. Such economic protectionism enables the government to charge whatever rate serves its needs—at the expense of taxpayers and consumers. In Connecticut,  


for example, flow control means that haulers (and therefore consumers and taxpayers) near the border of Massachusetts have been unable to benefit from lower market rates in that state.

One hauler notes that higher tipping fees are just part of the problem. He states:
"Before flow control, I had business in four towns, each of which had its own free municipal landfill. I collected roughly the same amount of waste in each town, so every fourth week I would alternate which landfill would get the town's waste. I did this all with one truck in seven hours. After flow control was instituted, designations changed as did my route and my business. My seven hour day increased to eleven or twelve hours. I was forced to sell several routes because Paine's could not provide our customers with the same level of service as they were accustomed to and expected. When you add all these factors together, the CRRA [Connecticut Resource Recovery Authority] has created a monopolistic system that must ultimately fail. By comparison, if CRRA disposal facilities would join the private/competitive market of the real world, it [sic] could sustain itself and persevere."6

A number of haulers reported that tipping fees at flow-controlled facilities have been increasing rapidly—a fact that should not be surprising in a government monopoly. One hauler noted that over nine years disposal rates in Lancaster (Pennsylvania) County's flow-controlled system increased 767 percent, and in nearby York County, flow control-supported rates increased 974 percent over 10 years.7 Another hauler in Southington, Connecticut noted that since its opening, the Bristol, Connecticut incinerator had increased its prices 10 percent a year while it received flow-controlled wastes. The town supported the incinerator because public officials thought it would provide the community with a stable source of inexpensive disposal for many years. However, while the Bristol incinerator was costing Connecticut residents $55 a ton for disposal, market rates in nearby Massachusetts ranged between $20 and $40 a ton.8

Flow control's government monopolies do not only hold haulers hostage to higher prices. They make it difficult, if not impossible, for disposal companies to succeed. Many of these companies could offer lower disposal prices to attract business in a free market, but if the government prohibits their customers from going to such facilities, how can they survive?

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As government increases costs, the protected monopoly edges out many small haulers. As one company notes in testimony to the EPA: "My testimony against flow control is based on the fact that my fixed disposal costs are so high that I cannot keep pace with the competition, placing my business in jeopardy. Public sector disposal policies undermine my ability to compete fairly and profitably in the private sector."

Flow control hurts consumers. Like so many government-created monopolies, the cost of flow control is passed along to consumers. According to a study conducted by National Economic Research Associates (NERA), flow control raises disposal costs, on average, by $14 per ton, or 40 percent. The New York State Public Interest Group (NYPIRG) found that at least 22 of New York State's counties have flow control laws that cost residents in these communities 54 percent more than the costs to citizens that reside in counties that allow an open market. This gives haulers little option but to raise their customers' prices accordingly.

The NERA study and the NYPIRG study simply confirm what haulers explained to the EPA. In an open market, haulers often negotiate with disposal facilities to obtain a special price for their customers based on the level of business they conduct with a facility. When the price gets too high at their usual facility, they search for alternatives. Flow control bars them from doing so. One hauler noted in 1993 the cost increases due to flow control: "This year, York Waste Disposal will pay, on behalf of its customers, over $11 million dollars in disposal. I know if we were able to negotiate disposal prices directly with disposal facilities, we could cut that disposal bill in half! ... In the long run, who suffers?—you and I, the consumer!" Another hauler lamented: "The disposal cost alone, which the government now controls, makes it impossible for me to offer reasonable prices any longer."

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## Flow Control's Costs to Consumers

<table>
<thead>
<tr>
<th>Community</th>
<th>Flow Control Price</th>
<th>Market price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rhode Island (1991)</td>
<td>$59.00</td>
<td>$37.00</td>
</tr>
<tr>
<td>Bristol, CT</td>
<td>$55.00</td>
<td>$20.00 to $40.00</td>
</tr>
<tr>
<td>York Co., PA</td>
<td>$59.25</td>
<td>$30.00</td>
</tr>
<tr>
<td>Mercer Co., NJ</td>
<td>$117.61</td>
<td>$55.00</td>
</tr>
<tr>
<td>New Britain, CT</td>
<td>$71.00</td>
<td>$55.00</td>
</tr>
<tr>
<td>A New Jersey Community</td>
<td>$100.00</td>
<td>$45.00</td>
</tr>
<tr>
<td>A Minnesota Community</td>
<td>$57.00</td>
<td>$89.20</td>
</tr>
<tr>
<td>N. Dakota Community</td>
<td>$200.00</td>
<td>$15.00 to 19.00</td>
</tr>
<tr>
<td>Roanoke, VA.</td>
<td>$80.00</td>
<td>&quot;less than half&quot;</td>
</tr>
<tr>
<td>A Long Island, NY Community</td>
<td>$104.00</td>
<td>$70.00</td>
</tr>
<tr>
<td>Prairie Land, MN</td>
<td>$70.00</td>
<td>$30.00</td>
</tr>
<tr>
<td>Clarkstown, NY</td>
<td>$81.00</td>
<td>$71.00</td>
</tr>
<tr>
<td>Mecklenburg County, NC</td>
<td>$37.60</td>
<td>$39.00</td>
</tr>
<tr>
<td>Hunterdon County, N.J.</td>
<td>$100.00</td>
<td>&quot;approximately half&quot;</td>
</tr>
</tbody>
</table>

### NOTES ON TABLE:

- This table illustrates a snapshot of just a few of the many cases where flow control raises costs for consumers.
- Table 1 cites the source of each examples (except where case name is included) since prices may change over time; see page 18.
- The price figures in Table 1 represent per ton tipping fees at disposal facilities. This table does not include flow control's added costs due to extra miles traveled, etc.
Many consumers would also be surprised to learn that sometimes governments use flow control to charge higher rates for haulers within their community, while charging a competitive market rate to others in an effort to attract revenues from outside the local government jurisdiction. For example, in York County (Pennsylvania), while rates were $59.25 a ton for in-county generated wastes, the York County incinerator would receive out-of-county wastes (spot market wastes) for $30 a ton.¹⁴

Sometimes governments use the differential between their monopoly prices and market prices to their own advantage—simply pocketing the difference. For example, a New Jersey hauler describes a situation in his state where the county requires all haulers to drop wastes at the government’s transfer station at a cost of $117.81 for regular trash and $156.36 for construction debris. The government then takes that trash to a private landfill that competes in another jurisdiction. At that landfill, the hauler notes, he is charged only $55 a ton for either regular trash or construction debris. That means consumers in the flow-controlled community are paying an extra $62 per ton for regular trash and $81 per ton for construction debris because the hauler has to bring trash from that community to the government transfer station rather than directly to the landfill.

Flow Control is Inefficient. When government officials outlaw the competition that free markets generate and replace it with a regulated monopoly, the efficiencies generated by competition are lost. As noted, flow control requires communities to dispose of waste at more expensive facilities—facilities that, in part, cost more because they are poorly managed and often poorly designed in the first place. Indeed, many times government relies on flow control because they invest hundreds of millions of dollars to build enormous facilities that cost huge sums of money to operate—more than is prudent. The only way to recoup the costs for these poor investment decisions is flow control.

In addition to encouraging inefficient investments, flow control also forces private industry to engage in inefficient practices. For example, because flow control laws in one jurisdiction can direct waste to one facility while neighboring communities direct waste elsewhere, haulers sometimes must

engage in senseless collection practices to comply with all the laws. The National Solid Wastes Management Association (NSWMA, now the Environmental Industries Association) reports on how it affects one member of the association: "Flow control essentially requires this member to use two different trucks and crews to collect MSW [Municipal Solid Waste] on two sides of the same street. It has forced this hauler to design routes that are uneconomical because of their under-utilization of equipment, e.g., he frequently stores half-filled collection trucks in his lot overnight."  

Flow Control Discourages Innovation. The more competitors a market has, the more opportunity for new inventions. Flow control reduces the possibility for innovation by limiting entrants into the market. After all, why try to compete in a market when the government guarantees another participant most, if not all, of the business? In fact, the mere threat that government might pass a flow control law can sometimes be enough to deter anyone from making a significant investment.  

In some cases, governments use flow control specifically to keep out innovative competitors. In Loudon County, Virginia, for example, the county government spent years litigating with a local farmer who simply wanted to take the area's organic wastes (shrubbery and other yard-type wastes) to compost on his farm. The wastes created a rich fertilizer, which eliminated the need for chemical fertilizers. The farmer could take the wastes for $10 a ton from area developers, but the town insisted they bring it to the landfill at $55 per ton.  

By limiting such innovation, regulators reduce disposal options and disposal capacity. Ironically, many people contend that flow control is necessary to ensure disposal capacity, when in reality, it more likely has the opposite effect. As Nolan A. Perin, owner of a family-run hauling, disposal, and recycling business in Pennsylvania, noted in testimony to the EPA: "We are here because of the previous governmental intrusion into the marketplace which has caused a disposal-capacity shortfall and an inequitable enforcement situation to perpetuate itself in the field of solid waste disposal. New Jersey, which is perceived to be one of the worst violators in terms of sending its wastes to distant places found itself facing an extreme disposal capacity shortfall because of flow control and economic strangulation of industry."  

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15Comments of the National Solid Wastes Management Association Before the U.S. Environmental Protection Agency, Municipal Solid Waste Flow Control, August 17, 1993 EPA RCRA Docket #F-93-RFCN-FFFFFF, Document #00038.  


17Nolan A. Perin, letter to the Environmental Protection Agency commenting on flow control, August 13, 1993, EPA RCRA Docket #F-93-RFCN-FFFFFF.
Flow Control Can Mandate Disposal at Less Sound Facilities. One might think that flow control would at least direct wastes to the most environmentally sound alternatives. Unfortunately, flow control laws have actually been used to force haulers to dispose of wastes in ways that could pose greater environmental hazards. For example, in Rhode Island, Mr. Thomas McCaughey of McCaughey Standard Inc. Solid Waste Disposal and Recycling Systems and Services reported that the state's flow control law mandated that he dump waste in his state's Central Landfill, which had been declared a Superfund site, while bypassing a convenient, less expensive waste-to-energy plant in Massachusetts.18

Similarly, Scott Wagner of York Waste Disposal Inc. complained that the local government forced him to do business with a waste transfer station that had received $9,500 in environmental fines from the Pennsylvania Department of the Environmental Resources between 1986 and 1991. Mr. Wagner noted: “Our company has never used this site because of potential liability, we requested permission from the County to take this waste directly to the landfill, but were flatly denied.”19

Flow Control Hurts Recycling Effects. Flow control also represents a significant impediment to recycling, as it keeps firms from accessing the post-consumer materials they need. In comments to the EPA, Peter Bunsen, manager of the Paper Recycling Committee of the American Forest & Paper Association explained how flow control inhibits paper recycling: “To continue unprecedented expansion, the paper industry needs unfettered access to the marketplace for necessary volume, quality and diversity of this raw material [paper and paperboard used as raw material]. As with other commodities, the economics of supply and demand are crucial factors, and government


flow control policies which prohibit or restrict our ability to obtain the right amount and type of raw material jeopardized past and future investments in paper recycling."\(^{20}\)

Flow Control Leads to More Air Pollution and Increased Fuel Usage. It is not uncommon for flow control laws to make haulers travel distances that are far greater than would have traveled were they allowed to choose a closer facility. One hauler—forced to travel an additional 30 miles per trip to a disposal facility to meet a flow control law—described what this meant in environmental terms: "an additional 70 miles times 8 trucks x 52 weeks a year for twenty-nine thousand one hundred and twenty-two miles wasted. More diesel fuel used, more air pollution, more wear and tear on our trucks and on the public highways."\(^{21}\)

Flow Control Hurts Small Businesses. Flow control is particularly hard on small businesses. In an already tough market, small waste disposal companies can be squeezed out by flow control. One such hauler notes in response to the ever increasing tipping fees at the flow-controlled facility:

"Some people claim flow control protects small businesses because it levels the playing field. We compete against at least seven other hauling companies in Southington. We lose one customer a day, tempted away by lower prices. We offer discount programs we can ill afford. Tip fees continue to increase, but we do not dare to increase our price at the curb to cover them. If flow control truly protects us, than how can a national hauling company currently offer curbside prices in Southington that are 50 percent less than the established market rates?\(^{22}\)

Administrative Efficiency: A Benefit? Meanwhile, government officials account for the main base of support for flow control. Almost all of the public officials that responded to EPA's call for public comment expressed support for flow control, which is not surprising since such laws make their job easier. In fact, that was the main, if not only, benefit that EPA cited of flow control: the ability for local governments to effectively administer their solid waste management plans. However, is this administrative efficiency worth the cost? The experience with flow control indicates the

\(^{20}\)Peter Bunsen, Testimony of American Forest & Paper Association on Municipal Solid Waste Flow Control, August 17, 1993, EPA RCRA Docket #F-93-RFCN-FFFF, Document #00028


Flow control has raised costs for consumers, impeded economic efficiency in the marketplace, and discouraged innovation.

**Summary of Flow Control’s Costs v. Benefits**

<table>
<thead>
<tr>
<th>Costs</th>
<th>Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Increases prices for consumers</td>
<td>✓ Facilitates administrative efficiency</td>
</tr>
<tr>
<td>✓ Imposes hidden taxes</td>
<td></td>
</tr>
<tr>
<td>✓ Creates more air pollution</td>
<td></td>
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<tr>
<td>✓ Leads to higher fuel usage</td>
<td></td>
</tr>
<tr>
<td>✓ Is anti-competitive</td>
<td></td>
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<tr>
<td>Monopolistic/economic protectionist</td>
<td></td>
</tr>
<tr>
<td>✓ Reduces innovation</td>
<td></td>
</tr>
<tr>
<td>✓ Hinders productive recycling efforts</td>
<td></td>
</tr>
<tr>
<td>✓ Supports government’s ability to spend tax dollars to make poor investments</td>
<td></td>
</tr>
<tr>
<td>✓ Promotes inefficiency</td>
<td></td>
</tr>
<tr>
<td>✓ Creates incentives for illegal dumping</td>
<td></td>
</tr>
<tr>
<td>✓ Contributes to disposal capacity</td>
<td></td>
</tr>
<tr>
<td>Shortfalls in some areas</td>
<td></td>
</tr>
<tr>
<td>✓ Hurts small businesses</td>
<td></td>
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</tbody>
</table>

**Fallacies About Flow Control**

Flow control’s supporters have developed a number of arguments as to why consumers should shoulder the costs of these laws. However, based on the history of flow control’s implementation these arguments do not pass muster. Here are some of the main fallacies of flow control.

**Fallacy:** Flow control is necessary to ensure waste is disposed of in an environmentally sound manner.

**Fact:** Flow control has little to do with environmental health and safety. Facilities that compete for wastes meet the same standards as facilities that obtain wastes via flow control.
The EPA concluded in its study of flow control:

"Protection of human health and the environment is directly related to the implementation and enforcement of federal, state, and local environmental regulations. Regardless of whether state or local governments administer flow control programs, States are required to implement and enforce federally-approved regulations and fully protect human health and the environment. Accordingly, there are not empirical data showing that flow controls provides more or less protection."

If all facilities must meet the same environmental standards, no reason exists to deny some facilities the right to compete. As noted above, flow control is actually counterproductive to environmental goals. It encourages waste of resources; increases air pollution by demanding that haulers travel greater distances; and sometimes even mandates that haulers do business with firms or government entities that violate environmental laws.

**Fallacy:** Flow control is necessary to ensure that communities will have enough disposal capacity.

**Fact:** Disposal companies continue to invest in waste disposal facilities without flow control assurances, which is why states that do not employ flow control still have plenty of disposal capacity.

There is little reason to fear that in the absence of flow control states will not have the capacity to manage wastes. The eleven states that do not have flow control manage to site facilities. And the states with numerous flow control laws do not necessarily do much better. In fact, New Jersey and New York, states that rely on flow control ordinances, are among the highest exporters of solid waste.

In its study, the EPA reviewed the various waste disposal alternatives to determine which, if any, were dependent on flow control. Landfills are the main disposal method across the country. The EPA found "no evidence that flow controls have played a significant role in financing landfills or landfill expansions....Private landfill firms have demonstrated their ability to raise substantial capital from publicly-issued equity offerings, indicating that investors are willing to provide capital for the expansion of landfills without flow control guarantees, in response to a perceived market demand for this segment." Moreover, the EPA notes, the nation has plenty of landfill capacity.

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24 Ibid. at p. II-10.
While the United States has fewer landfills today than in past decades, today's landfills still offer enough capacity because they are larger.

The EPA found that flow control does, in fact, help support waste-to-energy incinerators, supporting 58 percent of these facilities' throughput. However, the fact that these plants benefit does not mean capacity would disappear if they were not supported by an anticompetitive flow control law. Much—42 percent—of the production of these facilities is obtained on a competitive basis. Therefore, many of the facilities that rely on flow control may survive in a competitive market. But even if some did not, the waste would simply go to support other facilities—making it easier for them to survive.

Far from reducing capacity, an open market would likely increase it. As noted earlier, flow control hinders creation of capacity by keeping firms out of the market because they cannot compete when the government has designated much, if not all, of the waste disposal business to a specific facility. Free markets, offering the opportunity to compete—not government-created monopolies—create capacity.

**Fallacy:** Flow control is necessary to enable governments to obtain bonds needed to build waste facilities. Without such flow control assurances, no one will underwrite the costs of the facilities necessary to manage trash.

**Fact:** Competitive waste management industries are prepared to, and are in fact, investing in disposal facilities in the absence of flow control. Flow control simply gives governments the opportunity to make bad investment decisions at the taxpayers' expense.

Underwriters of bonds used to build waste management facilities make this argument because flow control gives them a relatively risk-free investment—at the expense of consumers who then must pay for higher waste disposal. With flow control assurances, underwriters are willing to issue bonds for facilities that could prove wasteful and incapable of competing in an open marketplace. But in a free market, underwriters will only back enterprises that they deem will prove efficient enough to withstand the competition. If underwriters do not want to support construction of a facility, that's a good thing. It protects taxpayers and consumers from subsidizing what would be a poor investment decision by the local government.

As one trash hauler noted to the EPA: "...it currently costs between $500,000 and $1 million PER ACRE to build a new landfill....Private companies that invest in building these facilities have NO opportunity to guarantee income through enacting flow control." Still, many companies are willing and able to get into this business. Little

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reason exists to grant risk-free investments to underwriters when others are willing to invest in disposal facilities without such economic protectionism.

In fact, one industry analyst notes in Standard & Poor's Credit Week Municipal that flow control is not the only way to secure financing: "While important, legal waste flow control is not a requirement for receiving a [Standard & Poor's Bond] rating. It is not necessarily even a requirement for receiving a high bond rating. If a system can provide solid waste disposal at a cost level below the surrounding market, the incentive for a hauler to avoid the system is eliminated. The more competitive the rate, the higher the rating the system's debt is likely to enjoy."26

Fallacy: Flow control laws are necessary to foster government recycling efforts.

Fact: Flow control does not support much recycling—rather, it tends to hinder economically sound recycling.

As the EPA points out, flow control laws mostly serve waste-to-energy incinerators. EPA notes 58 percent of waste-to-energy incinerators' production depends on flow control, while only 3 percent of the recycling market depends on flow control.27 In addition, while communities increasingly rely on composting, EPA could not find any flow control laws used to support that activity.

Where flow controls do facilitate some recycling the impact is marginal: it affects only 19 percent of one type of recycling activity—MRFs [Municipal Recovery Facilities, which are plants that sort wastes for recycling]. Moreover, flow control only helps the recycling operations that cannot survive on their own. Such operations would fail in the open market because they use more resources than they save, which is why they cost so much more. While flow control protects such inefficient operations, it disadvantages the ones that would succeed by saving resources and money.

Rather than help, flow control does more to hinder recycling. As noted, recycling firms tend to overwhelmingly oppose flow control because such laws often make it impossible for them to access recyclables. Often local ordinances direct the materials to incinerators owned or contracted by government.


In a larger sense, whether waste is disposed of via recycling or incineration is beside the point. Flow control simply means directing waste to one facility, at the expense of its competition—even when the competition can dispose of the waste in an environmentally sound manner, while using fewer resources and charging lower prices. A free market directs waste to the most efficient disposal option, which in some cases may mean disposing waste in an efficient, competitive incinerator, while other times it means recycling. Flow control means directing waste to the facility that serves local government revenues and controls—regardless of whether better, more efficient options exist.

**Fallacy:** Flow control is necessary because it makes the most sense to each community to manage all its own waste.

**Fact:** Flow control does indeed foster a community's ability to manage its own waste. But expecting a community to manage all of its own wastes is like expecting a community to grow all its own trees for home building or grow all its own food. Not only are such arrangements unnecessary, they do not make good sense.

The founding fathers wanted free trade between the states and within the states because it allows the entire nation to benefit from the diverse resources unique to each. Free trade makes it possible to supply the entire nation with corn grown in the Midwest and oranges grown in warm coastal states like Florida and California. Each area uses its unique resources, but all benefit.

The same goes for waste management. If one community builds a large, regional landfill or other waste management facility, should it not be allowed to compete? Market forces in recent years have led to the development of large regional landfills located in more rural areas rather than many smaller landfills located within communities. By allowing for free market competition, various communities can offer the resources they have available.

### CONGRESSIONAL PROPOSALS

Rather than look for ways to expand local government authority to impose onerous flow control laws, the goal of any flow control law considered in Congress should be the elimination of these anticompetitive and counterproductive laws—not an extension of them.

Some suggest that any flow control law that passes in Congress should necessarily grandfather the facilities currently under contract—even when that impedes interstate commerce. They say the costs of allowing these facilities to fail would be too great to the taxpayers in the communities that have financed them. But what about the costs these facilities are already imposing on these communities, day in and day out? At issue
is whether continuing to impose the costs of flow control for up to 30 more years is worth saving facilities for fear that some might not be able to compete. Extending flow control means prolonging bad investments that are already costing taxpayers money. It means forcing haulers to continue engaging in absurd practices to comply with different flow control laws in neighboring communities.

Congress should not include any provision allowing the creation of any new flow control laws. Some proposals have included provisions that would allow flow control in "limited" cases where "no other alternatives" exist within a community. But the idea that "no other alternatives" could exist is simply incorrect. Ironically, that is the excuse public officials currently use for flow control laws now in place. With such a provision, public officials will continue to use that excuse.

In sum, the following principles should guide the flow control debate:

- Maintain the Supreme Court rulings upholding constitutional restrictions on impediments to interstate commerce in the solid waste industry. These rulings are already the law of the land, they support a sound principle. There is little justification for taking a step backward to protect facilities from competition in other states.

- Do not legislate to protect this anticompetitive practice. Flow control is an expensive, inefficient, and environmentally counterproductive policy. Its eventual elimination should be the goal of any flow control policy.

CONCLUSION

As Congress debates flow control, members should remember what this debate is really about: Do they want to lead the nation towards policies that seek government solutions or do they want to keep true to their mandate to reduce the burden of government? They should also remember the results of anticompetitive policies like flow control—higher costs for consumers and taxpayers, and unnecessary burdens on small "mom and pop"-type entrepreneurs. The only ones who benefit from flow control seem to be local government officials, who gain an administrative tool that enables them to make irresponsible investments at taxpayer expense.