

***The Politics of Trash:
Flow Control and Corporate Growth¹***

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In May, 1994, the U.S. Supreme Court decided that state and local laws mandating the delivery of municipal solid waste to particular facilities—generally called “flow control” laws—violate the dormant Commerce Clause of the U.S. Constitution (*C&A Carbine, Inc. v. Town of Clarkstown*). The dormant commerce clause of the U.S. Constitution reserves the regulation of interstate commerce to the Federal government unless Congress specifically grants authority to the states. The *Carbone* decision meant that public disposal facilities needed to compete with one another and private facilities for trash and that their operation and financing was no longer guaranteed. If let stand, this decision would profoundly change the waste industry in the United States.

Flow control laws were a major mechanism for developing local trash disposal facilities since they ensured continued income for new or renovated facilities. These laws guaranteed more than \$20 billion of existing bonds (*Solid Waste Report 1995*). There was an immediate move for Congress to authorize local flow control. Over the past three years, lobbying has been intense and the issue has been hotly debated in both the House and the Senate. It quickly became apparent that the only legislation likely to pass would be some sort of narrow “grandfather” legislation that affirmed flow control for those localities that already exercised it in May, 1994, with little or no authorization for future flow control.

In the Fall, 1994, the House passed flow control legislation but it failed in the Senate. In May, 1995, the Senate passed flow control legislation but similar legislation failed in the House on January 31, 1996. Although the issue still attracts debate, it has not come to the floor again.

The debates have been primarily framed as a conflict between local governments and the rights of trash haulers, with the rhetoric of “free enterprise” and competition at the forefront. Indeed, this is the way the Court framed it in *Carbone*. Associate Justice Anthony Kennedy, writing for the Court, said, “The flow control ordinance . . . hoards solid waste, and the demand to get rid of it, for the benefit of the preferred processing facility.”

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Larry Knutson, a waste hauler from Rosemont, Minnesota, echoed the same sentiments at a House hearing: “the vast majority of small independent waste collection firms strongly oppose flow control. They think market competition does a much better job than flow control of leveling the playing field” (1993:161). “Flow control provides a way for local officials to hide the costs of their mistakes by forcing private firms to pay more for the disposal of their garbage,” according to Jonathan Adler, associate director of environmental studies at the Competitive Enterprise Institute (CEI) of Washington, D.C. (quoted in *Solid Waste Report*, September 29, 1994).

The National Solid Waste Management Association (NSWAMA), a trade association of haulers, has taken the lead in fighting flow control. All of the court cases, including *Carbone*, have pitted local trash haulers against local governments. NSWAMA, and its parent organization, the Environmental Industries Association (EIA) have underwritten many of these court battles between haulers and local governments.²

The argument of this paper is that the focus on trash haulers and a competitive local market economy is misleading. It is difficult to find a way in which abolition of flow control increases local hauler competition, and much easier to understand how abolition would diminish competition in a significant way. It is clear, however, that abolition of flow control benefits private owners of trash disposal facilities and transportation capacity. Ultimately, abolition of flow control primarily benefits large vertically integrated waste disposal corporations.

The flow control debate has been dominated and in many ways controlled by these large, international waste management corporations which have emerged over the past 30 years, especially Browning-Ferris Industries (BFI) and WMX Technologies (formerly Waste Management). The major effect of abolishing flow control will be the further consolidation of the industry.

Data for this research come from many sources including government and court documents, including briefs submitted in the *Carbone* case; congressional hearings and floor debate; materials obtained from lobbyists and organizations, and from the files of several Senators and Representatives; local news accounts; and trade publications within the solid waste industry. Extensive personal interviews were conducted with congressional staff, lobbyists, and officials from several interested organizations in Washington, DC. Interviews were also conducted with representatives from various state and local solid waste organizations from around the country while they were attending several conventions in Washington, DC. Finally, to supplement news reports and court documents, local information about Clarkstown, New York, and Regional Waste Systems in the Portland, Maine, area, personal interviews were conducted with local officials, trash haulers, and disposal facility operators.

² See, for instance, Greczyn 1997a and 1997b. A spokesperson for EIA told me in 1995 that NSWAMA has been “involved in suits against flow control for 16-18 years.”

The Context of Flow Control and Two Local Cases

With the development of increased environmental consciousness beginning in the 1970's, and especially the passage of Federal legislation regulating landfills and calling for alternative means of trash disposal, municipalities, counties, and regional agencies built expensive facilities. These most often were waste-to-energy incinerators but also landfills and materials recycling facilities (MRF's) (see Blumberg and Gottlieb 1989, for a discussion of these developments).

To finance these facilities they developed state and local ordinances that required that municipal solid waste (MSW)³ be disposed of at certain sites—flow control. Flow control guaranteed that trash would be delivered to the facilities thus guaranteeing income for the facility and, in turn, guaranteeing the bonds used to finance the facilities. By 1995, the Public Securities Association estimated that over \$20 billion of bonds, mostly, although not exclusively, public, were underwritten by flow control ordinances (*Solid Waste Report* March 30, 1995). The Government Finance Officers Association of the United States and Canada identifies at least 327 bond-financed projects in 42 states that relied on flow control (Esser 1995).

The concrete arrangements in these and other local projects using flow control are remarkably diverse. This diversity is essential to understanding the complexity and contradictions faced in dealing with the issue in Congress. Two local cases, quite different, serve to illustrate the diversity and the ambiguity confronted at the Federal level.

Regional Waste Systems in Maine⁴

In the late 1970's, local officials from towns in the Portland, Maine, region began searching for ways to deal with their expanding trash problems. Faced with the need to close local dumps, lack of disposal capacity, and a concern for finding more environmentally sound ways to manage their municipal solid waste, they developed a regional landfill and a bailer facility to compact trash. By the mid-1980's this interim solution was no longer adequate. Twenty-one towns banded together as Regional Waste Systems, Inc. (RWS) to build a waste-to-energy facility. This facility burns trash, reducing its volume to ash and saving landfill space. At the same time, the heat is used to generate electricity that is sold to the local power company. This income helps offset the operating costs of the facility. The rest of the operating costs, including repayment of debt, is financed through fees to dump trash—tipping fees.

To finance construction of the facility, the member communities underwrote bonds. These bonds, in turn, were underwritten, or guaranteed, by the flow of trash coming to the

³ In this context, MSW can be understood as ordinary residential and commercial trash, excluding hazardous waste and construction and demolition debris. Recyclable trash is general included in MSW although not always included in flow control laws.

⁴ Information about RWS is taken from personal observation during 1994-95, extensive interviews with haulers and local officials, newspaper accounts, and corporate publications.

facility—a flow of trash which generated electricity and tipping fees to pay for the system and its debts. The flow of trash, in turn, was guaranteed by flow control ordinances in each of the communities. These ordinances required that all MSW (except recyclables) from the communities be dumped at the RWS facility. These ordinances were invalidated by *C&A Carbone, Inc. v. Town of Clarkstown* in 1994.

Clarkstown, New York⁵

In 1989, Clarkstown, New York, had to close its local landfill under a consent order from the state Department of Environmental Conservation. The town then entered into a contract with a local company, Clarkstown Recycling, Inc., to build a transfer facility. In return for the company constructing the facility, the town guaranteed 120,000 tons of trash each year for five years at a fixed tipping fee of \$81 per ton. The town would have to pay the difference if the tonnage was not met. In other words, the town guaranteed that Clarkstown Recycling a minimum return on its investment.

In order to guarantee the flow of trash to the transfer station, the town enacted a flow control ordinance requiring that trash (except recyclables) from the town be taken to the transfer facility.

Trash deposited at the transfer facility is then transported to disposal sites—landfills or incinerators—by the trailer-truck load. The facility uses various disposal sites ranging from Ohio landfills to incinerators in Maine and Massachusetts depending on the tipping fees being charged at those sites. Since Clarkstown Recycling's profit margin is ultimately determined by the difference between the tipping fee received and the tipping fee paid for disposal, disposal location is determined only by cost.

Who Cares? Local and National Interests

Even these brief sketches of these two communities and their trash arrangements should make it clear that there are both differences and commonalities. To some extent, different players have different stakes in the two communities—who cares about flow control and why is not straightforward.

Trash haulers

The *Carbone* case began when Carmine and Angelo Carbone were charged with violating Clarkstown's flow control ordinance. As trash haulers, the Carbone brothers were seeking lower cost disposal than the fee at the Clarkstown transfer station. From their perspective, they were doing just exactly what Clarkstown Recycling was doing: putting trash into trailers and shipping them to cheap disposal sites. As Carmine Carbone put it, "They can ship it out, why can't I?" (interview, 1995).

⁵ Information about Clarkstown is taken from personal interviews with participants, including the Carbones, during a visit in 1995; media and trade publication accounts; and court documents, especially the filings to the New York state appellate court.

In both RWS and Clarkstown, most trash is collected by private haulers who then transport it to the transfer station or disposal facility. This is the situation in most towns in the United States although some larger communities have municipal collection. Even in these communities, however, private haulers generally collect commercial trash—trash from businesses and industries. Generally speaking, a third to a half of all trash is commercial and thus hauled by private companies.⁶ Moreover, commercial trash is the most lucrative business for trash haulers, much preferred over residential routes.⁷

Tipping fees define profits for trash haulers. The hauler's expenses and profits come out of the difference between the fee paid by the consumer (commercial or residential) and tipping fee. The lower the disposal fee, the greater the difference. This means that the trash hauler has an interest and incentive to seek out cheaper disposal sites; flow control is perceived by haulers as an intrusion into their competitive business.

The argument of the haulers is that they own the trash once they pick it up and, therefore, should have the right to decide where and how they should dispose of it. From this perspective, flow control is an illegal taking of property. The brief for the Carbones in the Clarkstown case makes this point explicitly: “the application of the local law as applied to [the Carbones] constitutes a taking of property” in violation of due process (*Town of Clarkstown v. C & A Carbone, Inc., et al*, Supreme Court, Appellate Division, Second Department of the State of New York, August 31, 1992 at 8). Since the Carbone decision, haulers in Minnesota and Florida have sued successfully for compensation for past “taking” (Greczyn 1996).

The largest association of trash haulers, the National Solid Waste Management Association (NSWMA), has vigorously opposed all forms of flow control, helped fund the *Carbone* case, and lobbied against any Federal legislation. As noted above, they have also funded many other court challenges to flow control. Through their umbrella organization, Environmental Industry Associations, and teamed up with the Competitive Enterprise Institute, they have been a loud and potent voice in Washington; they have been instrumental in making anything but the narrowest grandfather of existing flow control impossible. In other words, they have had a major impact on setting the ground rules of the debate.

The interest of small haulers against flow control, however, is not as obvious with more scrutiny. In a competitive environment, if all haulers have access to the same cheaper disposal facilities one would expect the fees charged customers to come down enough to erase the initial cost savings of diverting trash to cheaper sites. In the long run, then, it would seem that flow control would not significantly effect a hauler's profits. As one public official put it, “If they all have access to the same disposal facilities, where's the competitive advantage? Competitively, it's the same as under flow control” (interview, 1995).

⁶ Recent news articles about the crackdown on trash haulers in New York City illustrate this point. The City collects residential trash but the private companies are competing for trash from commercial establishments. See also, Lehman, 1997.

⁷ This is continually reiterated in interviews with haulers.

Theoretically, flow control might not make any difference for haulers. In reality, however, all haulers do not have equal access to cheaper facilities. Trash companies that have their own disposal facilities can dispose of trash more cheaply than those who do not. Haulers with their own disposal capacity can give themselves a lower disposal rate. In addition, they would be taking profits from both the hauling and the disposal. Moreover, haulers with capital to invest in more efficient transportation to remote sites would hold an edge in locating lower disposal rates (Higgins 1993).

According to Congressional testimony, examples of this dynamic are appearing. One striking example is Springfield, Missouri where a U.S. Circuit Court decision in 1993 abolished flow control. Following the decisions, Browning-Ferris and WMX bought landfills in the region. They increased their market share dramatically by trucking to their own sites (see O'Neal 1993a and 1993b and also Deaver 1993, and Higgins 1993:143-44).

One public facility manager summed up the situation of the small hauler this way:

The little guy loses without flow control. The big guy can take it in his own truck to his own facility. Even if he charges himself the same price he charges the little guy—can you see that happening?—he can cut the price to his customer. At the end of the day, it's all the same pot of money; he can subsidize the hauling and still make his profit. Until the little guys are all gone, of course. (interview, 1996)

None of this is evident from the presentations of the National Solid Waste Management Association. In personal interviews, representatives of the NSWMA have been offended by this analysis which, they say, misses the philosophical and ideological point: that government should not tell haulers where to take their trash. Chaz Miller of the EIA, for example, was adamant that this sort of analysis is “smoke and mirrors.” In his view, the issue is that haulers are competing for accounts but flow control made it impossible for them to control costs.

This view is echoed by a NSWMA information sheet, *Myths and Facts about Flow Control* (undated), in which they claim:

Waste services companies of many different sizes compete effectively against each other in local markets across the nation. The job of local government is not to ensure competition among businesses that are already highly competitive. In fact, the overwhelming majority of small, independent hauling companies vehemently oppose flow control. Most see their ability to compete against large companies hinging partly on their freedom to find the best business deals for their customers among competing waste service facilities.

Although most of the members of the NSWMA are small private companies, the organization was founded by large trash corporations, BFI and WMX in particular, from which they receive much of their funding. NSWMA dues are based on revenue volume

and the largest contributors are the largest corporations (Russell 1996b). These corporations own huge amounts of disposal capacity and have the capital to invest in efficient transport, which may explain the NSWMA position.

The crucial point here, however, is that not all trash haulers have an equal interest in the abolition or creation of flow control laws. The interests of the small local haulers are quite different than that of the large vertically integrated trash corporations. The key element here is vertical integration—generally speaking, abolition of flow control most benefits those haulers who own disposal facilities.

Waste Disposers

Flow control really has more to do with trash *disposal* than with trash hauling. Abolishing flow control allows disposal facilities to compete for trash. Just as your local hotel or motel has rooms to fill and compete for customers, landfills and incinerators have capacity to fill and compete for trash.

By the mid-1990's, the competition among disposers was intense. For example, Citrus County, Florida, was attempting to negotiate with various trash corporations for the right to dispose of the County's trash.

“‘We’re going to open it up and see who’s got the best offer and the best bid,’ Citrus County Commissioner Gary Bartell said. ‘We’ve got a commodity.’ ‘They build such massive landfills that they need the product to make it cost effective,’ the commissioner said. ‘It’s amazing the changes that are occurring’” (Pelletier 1996).

In Clarkstown, flow control is fairly irrelevant to disposal facility operators. The transfer station passes trash out into the competitive disposal world.

In contrast, flow control is extremely relevant at RWS. The publicly owned facility at RWS is perfectly happy with flow control. Flow control means a captive stream of trash at whatever rate the communities decide to set. However, commercially operated landfills and incinerators would like to compete with RWS and cannot with flow control. Thus, some disposers benefit from flow control and some do not.

This is not a simple distinction between public and private facilities. Rather than a transfer station, Clarkstown could have built an incinerator or new landfill, funded the same way. They could have had a commercial firm build and operate the facility with a minimum return guaranteed by flow control. The owner-operator of the facility would greatly benefit from flow control.

It turns out that a lot of communities have done this and that the largest contractors have been BFI and WMX directly in the case of landfills or indirectly through Ref-Fuel (owned by BFI) or Wheelabrator (controlled by WMX), in the case of incinerators. At the same time, BFI and WMX own or control vast amounts of disposal capacity that is not flow controlled. As a result, purely as a matter of economic interest, these

international trash corporations find themselves on both sides of the fence as disposers—they both benefit from pre-*Carbone* flow control and are impeded by flow control.

On balance, these corporations benefit more from the abolition of flow control. However, the best scenario for them is one in which existing flow control arrangements are retained, or grandfathered, but new arrangements are prohibited. Not coincidentally, this is the proposed solution supported by a coalition of organizations, including WMX Technologies and BFI.

Other disposers are in a much less conflicted situation. Ogden Projects, for instance, primarily operates disposal facilities for local governments and supports flow control, even future flow control authority. In contrast, Chambers and USA Waste, owner-operators of non-flow controlled disposal capacity, oppose flow control (see, for instance, testimony before the House Energy and Commerce Subcommittee in Hearing of the Subcommittee on Transportation and Hazardous Materials, November 5, 1993). These corporations also refused to support the “compromise” legislation endorsed by BFI and WMX.

Competition among disposers also led most of the large corporations to oppose restrictions on interstate shipment of trash. Owners and operators of large landfills and incinerators compete in at least regional, and sometimes national, markets for trash. The Roosevelt landfill in Washington state is a good example of the scope of this activity; Roosevelt receives trash from Alaska to the north and Napa Valley, California, more than 700 mile to the south (Wiley 1995).

Once again, not all disposers have an equal interest in the complete abolition of flow control laws. The largest corporations have some interest in grandfathering pre-*Carbone* arrangements but no interest in allowing new flow control arrangements.

Environmental Organizations

It may be surprising that environmental organizations played a small role in debates about flow control. Representatives of these organizations exacted early agreements from all parties that any flow control authorization would not include recyclables—that recyclables would not be flow controlled (interviews, 1995). Beyond this, they have generally remained steadfastly neutral.

RWS provides a good example of how flow control can be used for sound environmental practices. Incineration is superior to landfilling in the Resource Conservation and Recovery Act of 1976 (RCRA)⁸ and flow control allows for financing of expensive waste-to-energy facilities. In addition, some jurisdictions have used flow

⁸ The guidelines in RCRA, implemented in state plans, created an hierarchy of waste management options which makes source reduction the highest priority and landfill disposal the lowest. The Maine statute, for instance, (ME Revised Statutes, Title 38, §2101(1)) ranks options from most to least acceptable: 1. reduction; 2. reuse; 3. recycling; 4. composting; 5. “processing which reduces the volume of waste needing land disposal, including incineration;” and, 6. “land disposal of waste.”

control laws to both fund and ensure utilization of facilities such as the composting facility constructed by Fairbault and Martin Counties in Minnesota (*Waste Systems Corp. v. County of Martin*, 1992).

However, the Clarkstown case provides an example of flow control that has nothing to do with promoting sound environmental practices and arguably promotes overuse of landfill capacity. Indeed, the Clarkstown approach doesn't really address any of the critical issues in developing a comprehensive solid waste management plan.

A report on flow control to Congress by the Office of Solid Waste, Municipal and Industrial Solid Waste Division of the Environmental Protection Agency (EPA) in March, 1995, disappointed many advocates of flow control. After surveying the role of flow control in the United States, the EPA concluded that "there are no empirical data showing that flow control provides more or less [environmental] protection" (ES-4). Along these lines, the EPA also concluded that "there are no data showing that flow controls are essential either for the development of new solid waste capacity or for the long term achievement of State and local goals for source reduction, reuse and recycling" (ES-5).

In this case the view of the EPA apparently corresponded to that of environmental organizations. As a result, these organizations contributed to the framework or ground rules for debate, ensuring that recyclables not be included, but have not played any subsequent role.⁹

Waste Transporters

Of all the groups involved in the flow control debate, transportation corporations and trade organizations were the least visible and almost the only group with a clear and unambiguous interest. Railroad and trucking companies were part of a coalition that strongly opposed any flow control.

The Environmental Transportation Association (ETA) was a vehicle for discussions and lobbying from this segment of the industry. Companies involved with the ETA include Southern Pacific, Union Pacific, Burlington Northern, and Chicago and Illinois Midland railroads along with companies such as Chambers Development primarily concerned with solid waste (Association documents and interviews, 1995).

The role of the transportation industry in solid waste is expanding. In 1992, New York exported 3.8 million tons of MSW and New Jersey exported 2.6 million tons while Pennsylvania imported 4.3 million tons, Illinois imported 4.3 million tons, and both Ohio and Indiana imported 1.8 million tons (Environmental Industry Association 1995). In more concrete terms, New York's 3.8 million tons is roughly the equivalent of 1,630 trash compacting trucks crossing the state line each day!

⁹ The recycling industry is not really discussed here but their perspective seems to have been the same as the environmental groups: so long as you don't flow control recyclables we don't really care.

These numbers are prior to the abolition of flow control—with flow control gone the demand for transportation services, often long-haul services, is rapidly expanding. For example, the Roosevelt landfill in Washington, mentioned above, is primarily served by rail (Wiley 1995). In Florida, CSX Transportation and Waste Management of Florida founded Rail•Cycle Florida to haul thousands of tons of trash per day to the WMX landfill in Jackson County (Peltier 1995b)

The motivation for the transportation industry to oppose flow control is clear. Again, however, it is clear that the large vertically integrated corporations stand to gain the most when they are involved in transportation as well as disposal.

Bond Holders

The leading advocate for the financial community in general, and bondholders in particular, was the Public Securities Association (PSA). This organization strongly supported legislation that would grandfather existing flow control arrangements at least until bonds were paid off, thus protecting the investments of bond holders. The fear presented was that local governments would have to default on their bonds.

This narrow interest of the PSA has been dismissed by the groups most adamantly opposed to flow control, the Environmental Industries Associations and the Competitive Enterprise Institute. “The real issue,” one representative told me, “is whether we should save people who buy bonds from themselves?” (interview, 1995). He also suggested that towns are unlikely to be hurt if they default since MSW bonds are a very small part of their debt.

Although the arguments on behalf of the bondholders remained influential they were substantially reduced over the two years following the *Carbone* decision. In October, 1994, a PSA news release said, “It is absolutely vital that Congress enact a flow control bill this week. ... The credit standing of billions of dollars of outstanding bonds hangs in the balance.” Although the situation was complex, these images of doom became less powerful as time passed. As the chief lobbyist for BFI noted to me in August, 1995, the “sky is falling syndrome” becomes less persuasive every day. “It hasn’t happened.”

What had happened, and continues to happen, is that rating agencies have been reluctant to lower their ratings. Local governments have not generally defaulted on their bonds, often fearing lower credit ratings themselves. They have found other schemes including, most often, raising local taxes or raising local trash assessments on residents and businesses.

For our purposes, however, the most important point is that bondholder interests are limited to current flow control projects rather than flow control in general. In this, the interests of the bondholders were consistent with those of the large corporations.

Local Governments

Local government organizations have been the major force pushing for flow control legislation. The most active has been the Municipal Waste Management Association

affiliated with the U.S. Conference of Mayors, and the National Association of Counties. These organizations initially pushed for blanket authorization of local flow control by local governments. The concerted opposition of the large trash corporations and numerous other organizations, however, quickly led to a primary emphasis on, and concern about, local governments with outstanding financial obligations, such as RWS communities and Clarkstown.

In the Fall, 1994, these organizations, with the assistance of Senate majority leader Mitchell, put together a coalition, that included BFI and WMX, the National League of Cities, 300 state and local governments, the Public Securities Association, and various other groups. This “Flow Control Compromise Coalition” supported legislation that authorized flow control for communities that already had it in May, 1994, but severely limited any flow control in the future. By March, 1995, the legislation the coalition supported was even narrower eliminating, for example, the ability of grandfathered communities to use flow control to construct future facilities.¹⁰

Generally speaking, municipal, county and state governments have favored flow control legislation. Those governments most directly effected, including Clarkstown and the communities involved in RWS, were left with a financial liability which may ultimately be borne by citizen in those communities. Nationally, this liability is more than \$20 billion in bonds alone and much more when liabilities such as that of Clarkstown are included.

One of the reasons local government organizations were forced to bow to the pressure from trash corporation is that support of flow control is far from unanimous among municipal officials. This placed national organizations in a difficult position. The municipalities involved in RWS joined the regional system and are full participants. They support flow control. Clarkstown, however, is really a 44 square mile township that includes various municipalities, for instance, Nyack. Conceivably, West Nyack could begin to chaff at the constraints imposed by Clarkstown and want to reduce its trash bill by shipping somewhere other than the Clarkstown transfer station.

That is exactly what has happened in some areas of New Jersey, Pennsylvania, Minnesota, and other states, where counties had taken on primary responsibility for solid waste management. In Bergen and Passaic Counties, New Jersey, for instance, several towns including Patterson and Jersey City, sued the counties in 1994 to ship their trash out of state and cut costs. According to the *New Jersey Record* (Voreacos 1994) officials claimed they could save over \$40 per ton taking their trash to Pennsylvania.

In addition, there are the communities which receive (and welcome) trash from the exporting states—they host the disposers who stand to benefit from the defeat of flow control.

¹⁰ This brief history depends primarily on documents produced by the Coalition. In addition, Senator George Mitchell’s office was kind enough to give me their file on flow control when he retired from the Senate.

These internal divisions have undoubtedly weakened the clout of the public sector organizations pushing flow control. In some organizations there is noticeable internal dissension. But even without this dissension, when opponents trot out panels of mayors and city officials to speak out against flow control the message of the public sector groups is bound to be weakened.

In addition, a basic argument for protecting local governments who have outstanding financial liability, including bonds, became weaker over time. Local governments suffered from the same dynamic as progressively weakened the position of the bondholders: the sky didn't fall and local government found creative ways to limp through. At the local level this has meant real difficulties but from a national perspective the fact that Gorham, Maine, may have to raise its tax rate ten cents per \$1000 doesn't feel like an crisis. As one Town Councilor put it, "national and state governments have a history of not worrying about property taxes" (interview 1997).

The sense of urgency was lost and with it a sense that the legislation was even necessary. After all, the only legislation that was seriously discussed was relief for communities that had flow control prior to the *Carbone* decision. Without some immediate legislation, the argument went, these communities would be in serious trouble. "As time goes on, those arguments ring increasingly hollow" (interview with lobbyist, 1995).

In a letter to *Waste News* in March, 1996, Susan Young, Director of Solid Waste and Recycling in Minneapolis, wrote that the defeat of flow control means little. "On Jan. 31, the House defeated waste flow control by a significant margin, and the rating agencies responded with little concern. Apparently the sky is not falling after all" (9).

Discussion

The major victory for the trash corporations came in the *Carbone* decision overturning local flow control laws. As suggested above, elimination of flow control most benefits companies who control disposal facilities. This benefit is compounded for vertically integrated corporations which can collect and transport trash to themselves at their own disposal facilities.

The apparent primary concern of the trash corporations in Congress was to ensure that the *Carbone* decision was not overturned by broadly authorizing the local flow control authority implied in RCRA. In this they were quite successful. The broadest legislation ever seriously considered authorized future flow control only after meeting various stringent competitive tests and applied only to residential trash. Over the 18 months following the *Carbone* decision, even that legislation was narrowed—it applied only to localities which already exercised flow control in May, 1994, and was extended for a limited time for limited purposes. Even this did not pass.

Although the corporations, and especially WMX, have economic interests in legislation that grandfathers existing arrangements, this can be over emphasized. BFI was a much more reluctant participant in supporting the compromise legislation and incurred

the wrath of some public sector groups by pushing for extremely narrow authorization. WMX seems to have pursued a strategy as much based on public relations with the public sector groups as their own limited economic interests in grandfathering legislation. In other words, there was some ambivalence on the part of these corporations.

One indication of WMX's ambivalence about even grandfathering legislation is their lack of vigorous leadership in either crafting or lobbying for legislation. Although they were a strong participant in most discussions, they rarely, if ever, called them or led them. Nor did their representatives pound on Congressional doors. The chief lobbyist for WMX made this clear to me in April, 1995, suggesting that WMX position was more that they "wouldn't oppose" the current compromise. He was not, he noted, "going door to door supporting [the current bill], but those who are can tell them we support it."

It would be a mistake to ignore the fertile ground on which the arguments against flow control fell in Congress. The ideology of classical *laissez faire* liberalism (Lowi 1995) permeated Congress. One Senate staffer in 1994 put it that "the idea that private enterprise can do it better is an article of faith around here." The Senators coordinating the successful effort to pass legislation in May, 1995, openly and vigorously proclaimed their deep opposition to flow control; their interest was only in protecting stranded investors and municipalities. Senator Robert Smith (R, NH) said on the floor:

I do not believe that flow control is necessary to deal with the problem of solid waster. We do not—I think the private sector can do it just fine. I do not believe the free market is broken. There is no evidence that the free market is broken in this area.

There are many people who are involved in the transport of this material, and I refuse to believe that recycling cannot be accomplished without flow control. I simply do not believe it. I do not think there is any evidence to say that. But some States and some communities got themselves into a bind, and we are trying to help them out of that bind. (Congressional Record 1995:S6422)

By the Fall, 1995, the flow control issue was so clearly in the hands of the corporations that *Waste News* reported that representatives of WMX Technologies, Browning-Ferris, and the Public Securities Association openly met October 10 to refine compromise legislation (1996). On October 20, 1995, the three groups came to an agreement, further narrowing the grandfathering provisions (Daniels 1995b). The House bill voted on in January, 1996, was based on the WMX, BFI, PSA draft. (Daniels 1996a:23).

Neither WMX nor BFI actively worked for the bill defeated by the House on January 30, 1996. They were primarily concerned that if a bill passed it be as narrowly constructed as possible. The chief lobbyist for BFI, Rich Goodstein, expressed some satisfaction with the outcome as a referendum on flow control (Daniels, 1996b:21).

These corporations appear eager to move into post-Carbine arrangements, especially package contracts with towns for collection, transportation, and disposal. Large vertically integrated corporations have a natural advantage in landing these contracts. These arrangements can prompt the same outcries from local haulers as flow control. Several cases illustrate the analysis that the abolition of flow control will tend toward consolidation of the industry at the expense of small haulers:

1. Local haulers sued Bablylon, New York, after Babylon created a commercial solid waste district then bid out collection. Collection contracts specified that the trash be taken to an incinerator partially financed by Babylon. Federal courts, including the Supreme Court, upheld this arrangement. Babylon was, they said, acting as a “market participant.” Unlike flow control, this arrangement potentially brings all the advantages of large corporations to bear in bidding (Daniels 1995a).
2. Pendleton, New York, contracted with BFI to take their trash to an American Ref-Fuel incinerator. “[The town] got tired of sending their waste to Ref-Fuel for three times the amount Ref-Fuel was charging other communities,” according to Robert Roberson, attorney representing the town. Ref-Fuel had to sue the towns. At least one case has been decided for Ref-Fuel (Conn 1996).
3. In Michigan, local haulers protested when the United Waste landfill 25 miles north of Grand Rapids raised its rate 25 percent. They were accused of pressuring small haulers to sell out to them (Russell 1996a).
4. In Mercer County, Pennsylvania, local haulers went to court to fight the selection of a Waste Management landfill as the county disposal site. Selection followed a national solicitation of bids. The U.S. Court of Appeals found that the “burden is on the haulers to show that the procurement processes were unfair or discriminatory” (Daniels 1996c:3). The Supreme Court rejected an appeal.

There is a justifiable tendency in the analysis of policy to emphasize the complex nature of competing interests and concerns. Capital is not unitary; it often presents internal conflicts and contradictions that belie simple analysis (Chambliss 1979; Calavita 1986; Calavita and Pontell 1994). In the case of flow control we have seen that the interests of many constituencies are far from unitary.

However, the preoccupation with these complexities must not blind us to potentially simpler underlying dynamics. Gabriel Kolko (1963) examined a variety of regulatory developments during the progressive era in American history (1900-1916). He argued that underneath the complexity, conflicts, and contradictions lay a rather simple reality: “the regulation itself was inevitably controlled by the leaders of the regulated industry, and directed toward ends they deemed acceptable or desirable” (3).

Kolko argues that the changes in economic regulation were actually prompted by increased competition. He documents increased competition, especially from smaller firms, in the iron and steel industry, oil industry, automobile industry, agricultural

machinery industry, telephone industry, copper industry, and meat packing industry (1993:chapter two). In the telephone industry, for example, bringing the industry under Interstate Commerce Commission control, made “rate wars ... a thing of the past” (1993:179). These changes allowed American Telephone and Telegraph to use its size to consolidate its position and take over most small independent companies.

The parallel is striking: despite the growth of the large corporations, the waste industry is still highly competitive and dominated by small local firms. Flow control, along with attempts to regulate interstate transportation of trash, are major impediments to further consolidation of the industry. Over the past few years, the trash corporations have managed to neutralize both of these impediments.

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