

# NOT IN MY LANDFILL: VIRGINIA AND THE POLITICS OF WASTE IMPORTATION

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**Abstract** Since the 1970s, federal and state regulations have dramatically changed the management of municipal solid waste in the Commonwealth of Virginia. Regulations required open dumps to be replaced by sanitary landfills with control technology to prevent environmental contamination. In contrast to local governments, private waste management companies had the financial resources to construct landfills with the necessary technology. Recently, companies have found that these expansive landfills could not survive financially on Virginia trash alone and began to import waste from other municipalities on the East Coast. This practice has led Virginia to become the second largest importer of municipal solid waste in the country. Waste importation has developed into a political and legal battle that has pitted the Commonwealth and grassroots organizations against the waste industry and its clients. Each stakeholder group makes a compelling argument as to why their position best protects local economies, Virginia's citizens, and the Commonwealth's natural resources. However, the Commerce Clause prevents states from enacting statutes that would interfere with interstate trade of waste. This article discusses the growth of the waste industry in Virginia and the perspectives of stakeholders involved with the importation debate. Without federal legislative action, the author concludes, there is no straightforward answer to the "problem" of waste importation in Virginia.

## Introduction

Waste disposal first became a political issue in Virginia in the early 1970s, when federal regulations required localities to close publicly owned disposal sites that did not meet new, more stringent environmental standards. State regulations, adopted in 1988, added additional environmental controls. Meeting these standards proved expensive, and rather than retrofitting sites to meet these new federal and state standards themselves, Virginia communities turned to private waste management companies to construct and manage new landfills that would adhere to these regulatory requirements. Geographical, political, and economic conditions made seven Virginia counties the ideal candidates for private corporations to establish expansive regional landfills that would accept waste from Virginia and increasingly from jurisdic-

tions outside the Commonwealth.<sup>1</sup> Indeed importation of waste into the state has grown so rapidly that Virginia has become the second largest importer of out-of-state municipal solid waste in the country. This past year Virginia imported approximately 4.6 million tons of waste.

In recent years, residents of landfill counties, as well as those through which the waste is transported en route to the landfills, and state officials have begun to criticize the lucrative waste importation business, questioning whether it is in the best interest of the Commonwealth's residents and natural resources. In a series of political and legal battles, stakeholders, including citizen groups, state officials, and representatives of the waste industry have clashed over the current and potential political and economic ramifications of waste importation in Virginia.

This article describes the development and current status of Virginia's waste dilemma. It discusses the legal and political history of the growth of the waste industry in Virginia and examines the different stakeholders contending to determine the future of waste importation. Finally, it looks at how federal legislation may be the only solution that will allow state governments to maneuver through complex Constitutional waters and limit the flow of out-of-state waste.

## How Virginia Became Number Two

Since the turn of the century, "new and improved" manufacturing processes have caused a variety of everyday products to be produced as disposable items, often with large amounts of packaging material. As Americans' use of these products has increased, so has the nation's waste output. Until the 1970s, municipalities commonly used open dump-

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ing and open burning to “eliminate” disposed items.<sup>2</sup> In general, these disposal sites were neither planned nor managed to limit potential health hazards, such as groundwater, air, and soil contamination.<sup>3</sup> In response to concerns that these expanding dumps could lead to serious health risks, the federal government developed guidance for states to address the hazards of these waste disposal practices.<sup>4</sup>

In 1976, Congress passed the Resource Conservation and Recovery Act (RCRA) to regulate the management and disposal of solid and hazardous waste. Although Congress had previously passed the Solid Waste Disposal Act in 1965 and the Resource Recovery Act in 1970 to improve solid waste disposal practices, it increased the scope of government involvement by adding RCRA’s management guidelines. Subsequent amendments to RCRA include the 1984 Hazardous and Solid Waste Amendment, which increased the U.S. Environmental Protection Agency’s (EPA) oversight of state municipal solid waste plans, and the 1992 Federal Facilities Compliance Act, which placed federal facilities within RCRA’s purview.<sup>5</sup>

Through RCRA, Congress aimed to protect human and environmental health, reduce waste, conserve energy and natural resources, and expeditiously reduce or eliminate the generation of hazardous waste.<sup>6</sup> The statute defines solid waste as garbage or refuse, sludge from water treatment or air pollution control facilities, or discarded materials, including solids, liquids, or contained gases from industrial, commercial, mining, agricultural, or community activities. In contrast, hazardous waste is defined as refuse that exhibits any one of the following characteristics: ignitability, corrosivity, reactivity, toxicity, or identification by the EPA as a hazardous substance.<sup>7</sup> RCRA contains ten subtitles that outline general federal and state responsibilities in carrying out RCRA’s objectives. Subtitles C, D, I, and J specifically deal with hazardous waste management, solid waste management, underground storage tanks, and medical waste. These guidelines set the *de minimus* requirements for state waste disposal practices.<sup>8</sup>

The RCRA Subtitle D program regulates the management of municipal solid waste. The program was designed to help state and regional authorities develop environmentally sound waste management plans.<sup>9</sup> Initial federal approval of a state’s waste management plan was contingent on the closure or renovation of a state’s existing dumps. States were banned from developing new open dumps and all disposal sites were to be replaced with sanitary landfills equipped with numerous features to prevent waste from contaminating the surrounding environment. The statute mandated

thick linings of clay or plastic to prevent leakage into groundwater, equipment to monitor the quality of nearby groundwater, and systems to eliminate methane gas produced by decomposing waste. RCRA also increased the responsibility of states over facility owners by requiring them to issue permits or other approval documents to owners before a waste facility could begin to operate.<sup>10</sup> In addition, RCRA established guidelines that landfill owners were to follow after landfills closed. Specifically, owners were to monitor the integrity of closed landfills for thirty years and demonstrate financial resources adequate to respond to environmental emergencies during the post-closure period.<sup>11</sup>

While Virginia began to develop a waste management program in 1971, it did not pass the more comprehensive Virginia Waste Management Act (VWMA) until 1988. In addition to RCRA requirements, VWMA established specific restrictions on where landfills could be located and required landfills to have two liners of either clay or plastic. All existing facilities were to comply by 1992.<sup>12</sup> Virginia’s Department of Environmental Quality (DEQ) enforces RCRA and VWMA requirements, issues permits to authorize landfill operations, and conducts quarterly facility inspections to insure compliance.<sup>13</sup>

Compliance with RCRA and state municipal waste programs like VWMA proved expensive for small landfill operators. A majority of disposal sites in Virginia were owned by municipalities that could not afford to update old disposal sites with new waste management technology that could cost up to \$40,000 per acre to install.<sup>14</sup> As a result, approximately two-hundred forty facilities closed in Virginia rather than updating or opening new sanitary landfills. Private waste management corporations, however, had the financial resources to comply with the new regulations. Attracted by Virginia’s undeveloped, inexpensive land and desirable geological conditions that decreased the threat of contamination of underlying groundwater, private companies saw Virginia as an ideal location to construct landfills.

In order to facilitate development of the industry, companies moved to establish and then exercise considerable political clout in the Commonwealth, becoming the third largest contributor to state political campaigns, behind only the tobacco and healthcare lobbies.<sup>15</sup> Lenient conflict of interest regulations give the industry a great deal of leeway in working with state officials to construct landfills.<sup>16</sup> Companies are permitted to hire and financially compensate Virginia state legislators who help to influence communities considering construction of privately run landfills within

their jurisdictions. State laws only prohibit legislators who have a financial interest in a matter before the General Assembly from voting on such issues. Chambers Development Company, for instance, the former owner of the Charles City County Landfill, hired two state legislators to convince residents of the economic benefits the landfill could produce for the county.<sup>17</sup> The camaraderie between government and industry also grew as waste experts moved between jobs with private waste management companies and state environmental agencies. The current head of Virginia DEQ is a former lobbyist for one of the nation's largest waste management companies, and the former Virginia Secretary of Natural Resources is the chief lobbyist for another waste company.<sup>18</sup>

A problem, however, quickly emerged after private landfills were opened in Virginia in the early 1990s—Virginia did not produce enough trash. The industry trend was to construct greater volume landfills to take advantage of economies of scale. The engineering requirements that prevented environmental contamination made it more cost effective for companies to build larger facilities.<sup>19</sup> However, companies soon found that they had constructed landfills too large to survive financially on Virginia trash alone. When the Commonwealth's major population center, Northern Virginia, opened two large incinerators, Virginia's own need for landfill space dropped significantly. In an attempt to increase business from Virginia residents for waste disposal, companies decreased disposal fees.<sup>20</sup> But companies needed to find another way to replenish their diminishing profits. Trash importation seemed to be the answer.

Since Virginia is located near major urban centers on the East Coast, companies found that they could easily transport waste via trucks, trains, or barges to landfills in Virginia. At about the same time, a number of areas on the East Coast were facing a different kind of waste dilemma. New York City, Massachusetts and New Jersey feared that their landfills were nearing capacity. Thus, jurisdictions looking for alternative places to dispose of their waste awarded contracts to companies disposing waste in Virginia. Waste disposal in Virginia was a particularly attractive option for these jurisdictions since, in addition to the benefits outlined above, tipping fees, or the amount of money companies charge to dispose of each ton of waste, within the Commonwealth were and continue to be among the lowest in the region. While average tipping fees in Virginia have been approximately \$40 per ton, fees have exceeded \$50 per ton in Pennsylvania and nearly \$70 per ton in New York and New Jersey.<sup>21</sup> Sending waste to Virginia was both convenient and cost effective.

The seven regional or "mega" landfills that accept out-of-state waste are located in Sussex, Charles City, King George, King and Queen, Gloucester, Amelia, and Brunswick Counties. Allied Waste Inc., Eastern Environmental Services, Inc., and Waste Management, Inc. own and operate these facilities. These three companies currently import 4.6 million tons of waste per year, making Virginia the second largest waste importer behind Pennsylvania, which imports 9.8 million tons of waste per year.<sup>22</sup> Sixty-eight percent of the waste disposed in these landfills is imported from other states.<sup>23</sup> Waste management companies in Virginia have made efforts to address the various environmental problems associated with waste disposal. Despite their anti-environment reputation, companies have constructed and now operate landfills in accordance with federal and state environmental statutes. However, as Virginia's waste industry continues to grow, citizens have become concerned about these privately managed sites. Many Virginians, grassroots organizations, and state legislators are wary of potential negative effects associated with waste importation, including environmental and health hazards, and the Commonwealth's reputation as a dumping ground for other states.

Waste importation in Virginia has developed into a contentious political and legal battle that has pitted the Commonwealth and grassroots organizations against the waste industry and its clients. Claiming their position best protects local economies, Virginia's citizens, and the Commonwealth's natural resources, each stakeholder group makes compelling arguments for their respective positions. An examination of these different perspectives demonstrates that there is no straightforward answer to the "problem" of waste importation in Virginia.

## Stakeholders

### Waste Management Industry

Private companies contend that the current regional landfills are safer than those operated previously by local or county governments. Unlike disposal sites in the 1970s, new landfills have control technology to prevent environmental contamination. Each landfill contains several feet of lining made of clay and an impervious synthetic fabric to prevent rain or other accumulated liquids from leaching into the ground. Pipes and pumps collect water that accumulates above the liner for treatment. Systems also monitor and eliminate methane gas, an explosive byproduct of decomposing waste.<sup>24</sup> Companies operate under strict federal, state, and local regulations that require 100 percent compliance. Fines for noncompliance discourage companies from "breaking the rules." While they vary in number and amount of

hours spent on-site, all landfills also have inspectors that monitor disposal activities. Representatives from the industry argue that there are misconceptions about the safety of the industry today and that citizen groups are not fully informed about the environmental controls with which landfills are equipped.<sup>25</sup> In addition, industry representatives claim that opponents try to draw arbitrary distinctions between intrastate and interstate waste. The composition of municipal waste in Virginia is really the same as that of New York or any other state. According to the Virginia Waste Industries Association, one needs "to look at it as an industry providing a service to the locality and to the state, like any other service provider. This is an industry that is doing things right."<sup>26</sup>

Private companies further argue that efforts to change the current situation would be detrimental to Virginia's citizens and environment. Waste Management, Inc. claims that legislation to artificially diminish landfill capacity would drive up the price of waste disposal. In such a situation, communities would only be able to afford "the old, leaking facilities of yesteryear."<sup>27</sup> The industry also opposes other legislation that would prohibit transportation of waste by barge. Waste Management, Inc. officials argue that shipment of waste via barge is safe since waste is placed in waterproof containers, designed to prevent leakage. Since barges also reduce the number of waste hauling trucks on highways along the northeast corridor, they reduce the air pollution that would have been produced by those trucks.<sup>28</sup>

### Host County Governments

Through host fees, or the fees paid to the host county per volume of waste disposed, regional landfills have become a vital source of revenue for several Virginia counties. Charles City County, in particular, has derived substantial economic benefits from the operation of Chambers Landfill by Waste Management, Inc. The county estimates that the facility generates anywhere from \$2.5 to \$6 million per year and has raised approximately \$20 million since the landfill opened in 1989.<sup>29</sup> Charles City County is also home to one of the poorest school districts in Virginia, and landfill revenue has enabled the county to construct three new public school buildings and direct funds towards new community facilities, social services, and a 44 percent reduction in the county's tax rate.<sup>30</sup> Sussex County has also profited from its regional landfill, earning \$12.7 million since the Atlantic Waste Disposal Landfill was opened in 1993.<sup>31</sup>

County supporters of regional landfills argue that waste importation is a local issue, and that county officials and residents are capable of making informed decisions about

the safety of landfill operations. All counties undergo a thorough negotiation process with private companies before approving landfill construction. Host agreements lay out county expectations of the private company, often requiring companies to accept county waste for free as well as make hours of operation and use of local roads convenient for local residents.<sup>32</sup> The counties use these contracts to maintain control over the operations of waste management companies. Supporters argue that waste importation benefits exporting and importing communities directly and that the state government should respect agreements that have empowered communities to make decisions that strengthen local economies.<sup>33</sup>

### Grassroots Organizations

Grassroots organizations have been largely responsible for mobilizing opposition to waste importation. Campaign Virginia, an environmental organization based in Richmond, has made waste importation its primary concern since the spring of 1997. Campaign Virginia has also worked with the Virginia chapter of the Sierra Club and Virginians for Sensible Waste Management, a coalition of other local environmental groups and individuals, to increase awareness of the concerns associated with waste importation.

Despite the environmental controls implemented by private companies, grassroots organizations contend that waste importation threatens human and environmental health in Virginia. For the past two years, there have been an increasing number of federal and state violations connected to Virginia's regional landfills. State records show that medical waste, including used syringes and tubes and red bags with biohazard symbols, have been discovered at regional landfills.<sup>34</sup> Virginia DEQ has fined Waste Management, Inc. for dumping out-of-state medical waste in the Sussex County and Charles City County regional landfills. At the Gloucester County landfill, DEQ records show that landfill staff identified biohazard bags at least fifty times in 1997. Despite generating economic benefits, there is also evidence that two of the older regional landfills may be leaking toxic materials into groundwater. In Amelia and Charles City counties, groundwater tests in 1998 revealed elevated levels of lead, chromium, and other toxic substances.<sup>35</sup> While several of these violations have been discovered, landfill staff have admitted the potential for additional, unknown hazards due to the difficulty of identifying banned materials that have been mixed with permitted waste. A former inspector for the Gloucester County landfill noted, "If you find four red bags in a day, how many others are you covering up? At least five or six."<sup>36</sup> In addition, on-site inspection varies per landfill. While state regulations require

Virginia DEQ inspectors to visit landfills every three months, they do not require constant monitoring of landfills. Only the Brunswick and King George County landfills have enough staff to insure that an inspector is on site while the landfills are open.<sup>37</sup>

Opponents are additionally concerned by an expected increase in waste importation to Virginia within the next two years. In September 1998, New York City awarded an expanded disposal contract to Waste Management, Inc., owner and operator of five of the seven regional landfills in Virginia. When first signed, the contract stated that Waste Management, Inc. would transport approximately twenty-four hundred tons of waste per day from New York City to Virginia and other states. However, a newly renovated port on the James River has enabled Waste Management, Inc. to increase daily importation levels at a lower cost. The company was to begin importing four thousand tons of waste per day from Brooklyn to only Virginia landfills last summer.<sup>38</sup> Additional waste importation is expected when New York City closes the Fresh Kills Landfill, its last landfill, in 2001.<sup>39</sup> Moreover, Waste Management, Inc. is the primary contender for another contract to dispose of twelve thousand tons of waste per day from Manhattan, Queens, Brooklyn, and the Bronx. Waste Management, Inc. is contemplating sending 60 percent of this additional waste primarily to the Charles City County landfill.<sup>40</sup>

Campaign Virginia's Executive Director, Jim Sharp, believes that it is unreasonable for states, like New York, which face landfill shortages to shift the burden of their waste to Virginia. Sharp believes that these communities must take responsibility for managing the waste they create.<sup>41</sup> Other opponents are concerned that violations of environmental regulations and potential public health hazards will only be compounded by increased importation. Groups like Campaign Virginia question the financial solvency of waste management companies. Despite demonstrating current financial assurances that companies can handle emergencies should they arise, Campaign Virginia worries that companies may not have the capacity to deal with problems in the long run. If companies enter bankruptcy from the extreme costs of cleaning up such events, others worry that current and future taxpayers will have to pay the cost of closing landfills and cleaning up the contamination.<sup>42</sup>

Waste hauling trucks that make one hundred thousand trips each year into Virginia also present problems.<sup>43</sup> State and federal records show that more than a dozen trucking companies that haul waste from out-of-state have safety records far worse than the national average. Several haulers that

frequently enter the Commonwealth have high rates of safety violations and accidents caused by overtired drivers, poor vehicle maintenance, and trucks exceeding weight capacity.<sup>44</sup> For example, one New Jersey based company that transports waste to the Gloucester County landfill, has been ordered off the road for violations over half of the times that its trucks have been inspected. Nationwide, waste hauling trucks are taken out of service an average of 27 percent of the time.<sup>45</sup> This past February, a hauling truck spilled several thousand pounds of waste from New York City off I-295 into Chickahominy Creek. Around the same time, state troopers from seven states and the District of Columbia conducted a three day enforcement "blitz" of waste hauling trucks which resulted in removal of 10 percent of trucks from the road for vehicular problems and waste related violations.<sup>46</sup>

### Host County Residents

According to Campaign Virginia, county residents often did not support county governments' decisions to permit the construction and operation of these expansive landfills. In King George, Sussex, and other counties, numerous residents attended public hearings to voice their opposition to the landfills during contract negotiations. Despite their opposition, county officials were swayed by the economic gains to be made from the facilities.<sup>47</sup> Some residents claim that companies only showed these communities the short-term economic benefits of these facilities. Financially vulnerable counties may have accepted landfills without information on environmental risks or knowledge of potential economic consequences, like decreased property values.<sup>48</sup>

Residents also use "Not In My Backyard" (NIMBY) arguments to protest waste importation and regional landfill size. The facilities produce noise and putrid odors. In an interview with *The Washington Post*, one woman who lives near the Amelia Landfill remarked that she keeps up with New York news since New York newspapers from the landfill regularly blow into her yard.<sup>49</sup> Host county residents in Virginia have claimed that waste management companies targeted their communities because they are economically disadvantaged and have high minority populations.<sup>50</sup> According to the U.S.A. Counties General Profile, nonwhite residents account for more than 75 percent of the population in Charles City County and 61 percent of the population in Sussex and Brunswick Counties. In contrast to the state median income of approximately \$36,000, these counties have an annual average median household income of \$26,000.<sup>51</sup>

### Virginia State Officials

During the 1999 legislative session, the Virginia General Assembly and Governor James Gilmore joined grassroots organizations and county residents in officially opposing waste importation. This position signaled a great departure for the Assembly since it does not have a record of supporting pro-environmental causes. Additionally, as discussed above, state legislators have been known for their cozy relationships with representatives of the waste industry and receipt of campaign largesse.<sup>52</sup> It also marked a shift for Gilmore, who, during his 1997 gubernatorial election, remained silent on the issue of reducing waste imports when his opponent, then Lt. Governor Don Buyer, raised the issue. Gilmore was also the leading recipient of campaign donations, with contributions totaling \$100,000, from the waste industry.<sup>53</sup> Given this history, Governor Gilmore's decision to oppose increasing levels of waste importation was particularly surprising.

Both Gilmore's and the General Assembly's changes in position may be attributed to several factors. Most notably, high profile waste violations in 1998 and 1999, including the discovery of banned medical waste and truck accidents, received significant media attention.<sup>54</sup> Then several news reports created a "trash war" between New York City Mayor Rudolph Giuliani and Governor Gilmore. Giuliani was quoted as saying, "Virginians should enjoy taking New York trash because [Virginians] enjoy Big Apple culture."<sup>55</sup> The Congressional Research Service also issued a report publicizing Virginia's status as the second largest importer of municipal solid waste. This heightened media attention generated public interest and outrage.

With an impending election last fall and control of the Assembly uncertain for the first time in decades, Democratic and Republican legislators in the General Assembly recognized the importance of appearing "pro-environment" as well as the political dividends of opposing trash importation. One representative of the waste industry claims that Republicans specifically spoke out against the large amount of waste imported from New York to appear environmentally conscientious without alienating their other pro-business constituencies in Virginia.<sup>56</sup> State officials also recognized the symbolic implications of waste importation for Virginia. Even without contamination events, the dubious distinction of being "Number Two" could damage the Commonwealth's lucrative \$11.4 billion tourism industry.<sup>57</sup>

### Legislative Action Against Waste Importation

In November 1998, Governor Gilmore ordered a temporary moratorium on the construction and expansion of landfills in Virginia until the issue could be taken up by the General Assembly. This about-face is all the more surprising given that from 1994 to 1998, the Virginia General Assembly failed to pass over a dozen pieces of legislation that would have restrained the growth of the waste industry in Virginia.<sup>58</sup> During his State of the Commonwealth address in January 1999, Gilmore announced Waste Management, Inc.'s intentions to increase importation from New York City to Virginia and laid out a proposal to counter these plans. He proposed a prohibition on the use of barges to transport waste on Virginia's waterways, an imposition of new permit requirements for landfill owners, a cap on the amount of waste that could be disposed in Virginia, and increased inspections of waste hauling vehicles.<sup>59</sup> Eighteen conservation groups including Campaign Virginia, the Virginia chapter of the Sierra Club, and Clean Water Action endorsed Gilmore's proposal.<sup>60</sup>

Just prior to the General Assembly's vote on several proposed bills containing the Governor's proposals, the Virginia House Conservation Committee held an open hearing in Richmond that was attended by citizens and representatives of the waste industry.<sup>61</sup> Testimony was heard from host county residents who both supported and opposed planned limitations on the industry. Representatives from Waste Management, Inc. showed a video illustrating the safety of barge importation. Two weeks later and with an overwhelming majority,<sup>62</sup> the General Assembly passed legislation to place a cap on the amount of waste that facilities could import and to ban shipment of waste by barge on the Rappahannock, James, and York Rivers.<sup>63</sup> Governor Gilmore signed the bill in March, and it became effective in July 1999.

Shortly after the law's enactment, Waste Management, Inc., two companies involved in offloading waste from barges, Charles City County, and Brunswick Waste Management filed suit against the Commonwealth in federal court. Waste Management, et. al. claimed that Virginia's new laws violated the Commerce Clause of the Constitution, alleging that the laws were aimed specifically at importers and transporters of municipal solid waste, thereby hindering interstate commerce. Virginia contended that the statutes were legitimate efforts to protect public health and conserve the state's natural resources.<sup>64</sup>

On July 1, 1999, a U.S. District Court placed an injunction on the new law, supporting the plaintiff's claim that the statute unconstitutionally restricted interstate trade. On February 2, 2000, the U.S. District Court officially struck down the legislation, basing its decision on precedent set in several federal cases concerning the transportation of waste across state borders.<sup>65</sup> According to Judge James Spencer, Virginia's law could be upheld if the state were to prove that the statutes passed the two-prong test outlined in *Environmental Control Technology v. South Carolina*. This test requires the state to justify a law by factors unrelated to economic protectionism and to document that it is unable to find a nondiscriminatory alternative to protect local interests.<sup>66</sup> The court found that Virginia did not meet either criterion and could not claim resource protection as the basis for violating the Commerce Clause. Even if the state classified landfill space as a "natural resource," the state could not prohibit residents of another state from accessing that resource. Despite claiming that the laws protect the health and safety of Virginia's residents, the court ruled that Virginia could not address such concerns by discriminating against out-of-state waste.<sup>67</sup> Similarly, the court found that the state overlooked nondiscriminatory alternatives when enacting the 1999 statutes. The court proposed that Virginia impose a capacity cap on all landfills located within the state. This would include both the large regional landfills as well as smaller facilities that handle only intrastate waste. The court's opinion went on to say that the General Assembly could have imposed a user fee to encourage companies to decrease waste importation or enacted stricter regulations on the safety of barges instead of banning all shipments of waste by water.<sup>68</sup> Judge Spencer concluded:

Virginia acted to staunch the importation of municipal solid waste in a knee-jerk response to reports that increased levels of out-of-state municipal solid waste would soon be flowing into the Commonwealth, which—while perhaps advantageous politically, or socially commendable—is impossible constitutionally.<sup>69</sup>

## Conclusion

While the federal court did uphold current importation practices in Virginia, it is clear that the debate over waste importation is far from over. Neither Virginia residents nor state officials are willing to permit the waste industry to continue its current rate of growth. Similarly, waste management companies and their clients will contest the constitutionality of any future state legislation that would hinder

waste importation in Virginia. Thus, critics of waste importation argue that federal legislation alone will enable Virginia and other states to directly control waste importation. Such congressional action would grant states the authority to limit waste importation without violating the Commerce Clause. The administration of Pennsylvania Governor Tom Ridge has already launched an aggressive campaign to push Congress to pass legislation that would permit states to directly limit the importation of waste across their borders. Legislation has also been proposed in the House and Senate that would grant such authority to states. Sponsors of the three bills include Virginia's two senators, Democrat Charles Robb and Republican John Warner, and others from Indiana, Ohio, and Pennsylvania. However, no action has yet been taken on these proposals.

The potential environmental and economic ramifications of waste importation necessitate congressional consideration. A national policy on waste importation will undoubtedly face similar challenges to Virginia's legislation. As this debate moves to the national level, the size and intensity of stakeholder campaigns will increase. National environmental organizations will join local groups to demonstrate the environmental impacts of waste importation. The waste management industry will also exercise its extensive political and financial resources to protect the legality of current practices. Despite the influence of these stakeholders, Congress must apply the same rationale used in approving previous waste management statutes. Whether or not it permits unrestricted waste importation, new federal waste legislation should work in concert with RCRA to continue to protect human and environmental health.

## Notes

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<sup>1</sup> Eric Lipton, "As Imported Garbage Piles Up, So Do Worries; 3 Million Tons Of Trash Enter Va. Each Year," *Washington Post* (12 November 1998), A1.

<sup>2</sup> Virginia Department of Environmental Quality (DEQ). *Report on the Management of Municipal Solid Waste in the Commonwealth of Virginia: A Historical Review* (Richmond, VA: DEQ, 1998), 7.

<sup>3</sup> *Resource Conservation and Recovery Act, U.S. Code*, vol. 42, sec. 6901.

<sup>4</sup> DEQ, 10.

<sup>5</sup> Environmental Protection Agency (EPA). Office of Solid Waste and Emergency Response, *RCRA, Superfund, and EPCRA Hotline Training*

- Module: Introduction to RCRA Statutory Overview* (Washington, D.C.: 1997), 3.
- <sup>6</sup> Ibid.
- <sup>7</sup> DEQ, 10.
- <sup>8</sup> Ibid, 11.
- <sup>9</sup> *Resource Conservation and Recovery Act*, sec. 6901.
- <sup>10</sup> EPA, 17.
- <sup>11</sup> DEQ, 16.
- <sup>12</sup> Ibid, 17.
- <sup>13</sup> Lipton, 12 November 1998.
- <sup>14</sup> Ibid.
- <sup>15</sup> Eric Lipton, "Powerful Friends Help Trash Industry Protect Its Interests," *Washington Post* (14 November 1998), A1.
- <sup>16</sup> Ibid.
- <sup>17</sup> Ibid.
- <sup>18</sup> Ibid.
- <sup>19</sup> DEQ, 82.
- <sup>20</sup> Lipton, 12 November 1998.
- <sup>21</sup> DEQ, 91.
- <sup>22</sup> Lipton, 12 November 1998.
- <sup>23</sup> DEQ, 23.
- <sup>24</sup> *Issues Page*. Virginia Business Lobbying & Politics. 6 October 1999 <<http://www.virginiapolitics.com/issues/nwwaste.html>>.
- <sup>25</sup> DEQ, 72.
- <sup>26</sup> Ibid, 73.
- <sup>27</sup> Virginia Business Lobbying & Politics <<http://www.virginiapolitics.com/issues/nwwaste.html>>.
- <sup>28</sup> Ibid.
- <sup>29</sup> Lipton, 12 November 1998.
- <sup>30</sup> Ibid.
- <sup>31</sup> Ibid.
- <sup>32</sup> Donald Cell, "When a Load of Garbage is a Good Thing," *Washington Post* (25 July 1999), B08.
- <sup>33</sup> Ibid.
- <sup>34</sup> Lipton, 12 November 1998.
- <sup>35</sup> Ibid.
- <sup>36</sup> Ibid.
- <sup>37</sup> Ibid.
- <sup>38</sup> R.H. Melton, "Tons More of N.Y. Trash Headed for Va. Landfills." *The Washington Post*, (12 January 1999), A1.
- <sup>39</sup> Ibid.
- <sup>40</sup> *Waste Management Holdings, et al v. James S. Gilmore*, 2000 U.S. Dist. LEXIS 1056.
- <sup>41</sup> James Sharp, telephone conversation with author, 21 February 2000.
- <sup>42</sup> Ibid.
- <sup>43</sup> Lipton, 12 November 1998.
- <sup>44</sup> Ibid.
- <sup>45</sup> Ibid.
- <sup>46</sup> Eric Lipton, "One in 10 Trash Trucks Sidelined, Three Days of Checks Reveal a Steady Stream of Violations," *Washington Post* (12 February 1999), B04.
- <sup>47</sup> Sharp, telephone conversation.
- <sup>48</sup> L. Douglas Wilder, "Virginia Doesn't Need Designation as Number 1 Importer of Garbage," *Richmond Times Dispatch* (29 November 1998), G3.
- <sup>49</sup> Lipton, 12 November 1999).
- <sup>50</sup> *Virginia Page*. USA Counties General Profile: 1998, U.S. Census Bureau. 23 February 2000 <<http://www.census.gov>>.
- <sup>51</sup> Ibid.
- <sup>52</sup> Rex Springston, "A surprising victory in the war on trash," *Richmond Times-Dispatch* (28 February 1999), A1.
- <sup>53</sup> "Gilmore takes on trash issue, restricts waste industry," *Roanoke Times* (15 November 1998), B9.
- <sup>54</sup> Springston, 28 February 1999.
- <sup>55</sup> Ibid.
- <sup>56</sup> Ibid.
- <sup>57</sup> DEQ, 52.
- <sup>58</sup> Lipton, 14 November 1998.
- <sup>59</sup> *Waste Management Holdings, et al v. James S. Gilmore*.
- <sup>60</sup> Rex Springston, "Trash dumping praised, blasted," *Richmond Times-*



*Dispatch* (2 February 1999), General Assembly section.

<sup>61</sup> Ibid.

<sup>62</sup> Craig Timberg, "War on Trash Isn't Over, Gilmore Declares," *The Washington Post* (30 June 1999), B1.

<sup>63</sup> *Waste Management Holdings, et al v. James S. Gilmore*.

<sup>64</sup> Ibid.

<sup>65</sup> Michael J. Podolsky, "When Does Interstate Transportation of Municipal Solid Waste Make Sense and When Does It Not," *Public Administration Review* 59 (1999), 250.

<sup>66</sup> *Environmental Technology Council v. South Carolina*, 98 F3d 785 (1996).

<sup>67</sup> *Oregon Waste Systems v. Dept. of Environmental Quality*, 114 S. Ct. 1534 (1994).

<sup>68</sup> *Waste Management Holdings, et al v. James S. Gilmore*.

<sup>69</sup> Ibid.

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