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## Advocacy Position Statement

### **Municipal Solid Waste Flow**

#### Statement of Purpose

The American Public Works Association seeks to inform elected officials, regulators, policy-makers and decision-makers and the public at-large of its stated position on municipal solid waste flow control.

#### Statement of Position

Local governments must have the legal authority through solid waste flow control to deal with its role in the management of all solid waste generated within, exported from, or imported into their jurisdiction.

#### Background and Rationale

The American Public Works Association believes that since local general purpose governments are in most instances ultimately responsible for the management of environmentally sound and fiscally viable municipal solid waste programs, those governmental units should have the authority to control the flow of waste materials under their jurisdiction. Although local circumstances vary, these materials generally should include the residential municipal solid waste and recyclables generated within the municipality's boundaries. If higher levels of government do not wish to take responsibility for planning and operating municipal waste management programs, their involvement should be limited to setting general policies and goals rather than placing constraints on local government authority or dictating how local governments should manage the waste stream for which they are responsible.

Over the past several years, waste flow control has been the subject of much judicial review and has been discussed at length by legislative and executive bodies at all levels of government. The private sector, with its expertise in the waste management arena and coupled with its large investment in waste management equipment and facilities, has also been an active participant in those discussions.

A recent judicial pronouncement by the Supreme Court on solid waste flow control was made in April 2007 in *United Haulers Association v. Oneida-Herkimer Solid Waste Management Authority* 55 U.S. (2007). In this case, the Court ruled in favor of the two counties upholding solid waste flow control ordinances that required waste haulers to deliver their trash to a publicly operated processing site. Since waste flow control is a vital factor in the development and operation of many solid waste management programs, it is essential that EPA, Congress and state legislatures consider the ramifications on integrated solid waste management systems of limiting the authority of responsible public sector agencies in that regard.

In most areas of the United States, local general-purpose governments have been charged with ultimate responsibility to manage the municipal solid waste generated within their boundaries. Some states have enacted legislation codifying that responsibility. Other states have vested that responsibility with regional or statewide agencies and assigned those public entities the responsibility for managing the municipal waste generated within boundaries established in the legislation.

In order to fulfill their obligation, the planning efforts undertaken by the responsible public agencies must consider all elements of integrated solid waste management. The planning program must take into account the environmental, economic and political elements of waste management program alternatives including the use of various types of public/private cooperative activities and the availability of existing facilities and infrastructure.

Municipal waste management programs, whether they be implemented at the local, regional or state levels, start at the storage container located in the home, school, office or plant and continue through the collection, transportation, processing and final disposal phases. Most local municipal programs focus primarily on the residential waste stream, with the private sector supplying the services to other generators. In some instances, however, the public sector agency exercises control over the entire municipal waste stream by providing service to all generators through the use of public employees and publicly owned equipment and/or facilities, through contracting of services for all generators or through the licensing of haulers, processors and disposers.

Since the details of each particular program are heavily dependent on the demographics, physiographics, financial capabilities and staff expertise available in a given area, current programs vary significantly in those details. Examples of how municipal waste management programs vary in their implementation include:

- Public ownership and operation of all required equipment and facilities
- Public ownership and operation of collection equipment and contract for private operation of publicly owned transfer, processing (materials recovery, composting, waste-to-energy) facilities and/or disposal (landfill) facilities

- Public ownership and operation of collection equipment and contract for use of privately owned and operated transfer, processing facilities and/or disposal facilities
- Private ownership and operation of all required equipment and facilities through service contract with the public sector
- Private ownership and operations of all required equipment and facilities through direct contracts between the individual generator and the private sector supplier

A review of these approaches clearly indicates that the capabilities of the private sector—both environmentally and financially – have been, and will continue to be, integral elements of solid waste management programs undertaken by the public sector. Under any of the options, however, appropriate federal and state laws should ensure that the environment and public health are protected.

Regardless of the system employed, the amount of waste handled in any single program has a great impact on the economics of that system. Larger volumes can provide economy of scale benefits through the implementation of area wide programs involving both large and small municipalities. Such benefits could have a positive impact on the financing of capital costs, on the cost of day to day operations and on the more efficient utilization of personnel and equipment. This is particularly true today as the environmental sophistication and resultant capital and operating costs associated with modern waste management equipment and facilities have soared. Therefore, any federal proposal regarding flow control must assess both the retrospective and prospective impact of those proposed actions.

From a retrospective standpoint, many capital-intensive solid waste management projects required that local governments deliver a minimum amount of waste to a specific facility through binding contractual commitments or reliance on existing flow control authority. The owners/operations of such facilities, whether they are public or private sector entities, rely on income to cover development, financing and operating costs. Any proposed revision to flow control authority must protect such pre-existing arrangements.

In the same vein, but from a prospective standpoint, local governments must continue to have the ability to make the decisions and have the tools to properly manage that portion of the total municipal waste stream from which they have assumed responsibility. Those governmental units must have adequate authority to implement an integrated waste management program and direct wastes under their control to recycling, composting, resource recovery or disposal facilities if they choose to do so.

Recognizing that flow control authority is essential but that it can also be abused, solid waste management planning must take into account the following items:

- The total amount of municipal waste generated

- The amount of that waste stream to be controlled by the local implementing agency or agencies
- The method or methods selected to manage that portion of the waste stream
- The various collection, processing and disposal options available
- The extent to which some or all of those options are currently being provided and who the providers are
- The advantages and disadvantages of public ownership and control versus market-based private sector completion
- The balancing effort of market forces brought about by a competitive process
- The environmental impacts of the various alternatives
- The cost associated with each alternative

All other things being equal, where the economics associated with any of those alternatives is heavily dependent on the volume of material to be handled, and especially where multi-jurisdictional programs are being considered, it is essential that each local governmental unit be able to commit to the selected project that portion of its municipal waste stream for which it has accepted responsibility, regardless of whether the service is to be provided by a public or private sector entity.

Sponsor

Solid Waste Management Committee