

US EPA ARCHIVE DOCUMENT

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## CHAPTER II

### STATE FLOW CONTROL AUTHORITIES AND IMPACT ON HUMAN HEALTH AND THE ENVIRONMENT

As directed by Congress, EPA conducted a review of States with and without flow control authority and investigated the impact of flow control ordinances on protection of human health and the environment. This chapter discusses the methodology and summarizes the findings for both the State review and impact on human health and the environment. Appendix II-B describes four case studies of how local governments implement MSW programs with and without flow controls.

#### A. METHODOLOGY

EPA initially considered administering a survey of all the States to obtain comprehensive information. However, EPA concluded that a comparative State review of flow control authorities could be conducted through performing the following two tasks: (1) reviewing published State statutes and regulations; and, (2) developing case studies to provide examples of how local governments implement MSW programs with and without flow controls.

After collecting the relevant data from published State environmental statutes and regulations, EPA developed a summary matrix on flow controls and solid waste management planning. Federal, State, and local government officials familiar with the flow control issue verified the accuracy of the matrix.

#### B. STATE AUTHORITIES

<b>Finding:</b>	<i>Thirty-five States, the District of Columbia, and the Virgin Islands authorize flow control directly; four additional States authorize flow control indirectly through mechanisms such as local solid waste management plans or home rule authority; eleven States have no flow control authority.</i>
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EPA researched published State environmental laws and developed a State-by-State summary of statutory and regulatory authorities to manage municipal solid waste (see Appendix II-A). EPA found that State flow control laws vary in the degree of authority and discretion given to local governments to manage and control the flow of MSW within their political jurisdictions. Based on the review, EPA classified States into three categories as follows: (1) States that explicitly authorize the use of flow controls, (2) States that authorize flow controls indirectly through granting municipalities powers such as home rule,<sup>1</sup>

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<sup>1</sup> Municipalities that have home rule authority may exercise power over local issues to the extent not prohibited or regulated by the State. Using home rule authority, municipalities may establish flow controls over their solid waste.

and (3) States that do not authorize flow controls. Exhibit II-1 presents a map of the States showing their flow control authorities, if any.

**EXHIBIT II-1**

Contains Data for  
Postscript Only.

Based on review of this data, key findings concerning flow controls and municipal solid waste management include the following:

- ◆ **Thirty five (35) States, the District of Columbia, and the Virgin Islands explicitly authorize the use of flow controls.** These States and territories specifically allow local governments to use flow controls, to designate facilities where waste must be managed, and to require mandatory participation in municipal solid waste management services. Exhibit II-2 lists these States. Although they have the authority to use flow control, some States and territories (e.g., Illinois, South Dakota, and the District of Columbia) do not use it in practice.

- ◆ **Four other States authorize flow controls indirectly through mechanisms such as home rule authority or the local solid waste management planning process.** These mechanisms allow local governments to adopt flow control ordinances. These States can be grouped as follows:

-- **Maryland and Massachusetts are home rule States.** In a home rule State, municipalities have autonomy over local issues and may exercise this power in areas not prohibited by the State. For example, although Maryland does not have a State statute authorizing the use of flow controls, Prince George's County, under home rule authority, established a flow control ordinance to designate where MSW must be managed.

-- **Michigan and Texas allow local governments to designate where MSW must be managed as part of their local planning authority.** In Michigan, a municipality's MSW planning document determines capacity needs and can authorize flow control as part of the plan's requirements. In Texas, cities and counties may impose flow controls as part of local MSW management planning.

- ◆ **Eleven States have no flow control provisions.** Indiana is a special case: By State law, Indianapolis, Indiana has flow control authority. In the rest of Indiana, a solid waste management district is not authorized to use flow controls unless a local government within the district already used flow controls at the time the district was formed; this exception allows some districts to renew any flow control contracts, although the use of flow controls generally is restricted.

- ◆ **Scope of materials covered by flow controls varies among the 35 States that explicitly authorize flow controls.** Twelve (12) States (and the Virgin Islands) authorize flow controls without restrictions on what types of materials may be controlled.<sup>2</sup> These States allow flow control ordinances to direct solid waste and recyclable materials to designated management facilities. Illinois authorizes local

Exhibit II-2 STATES WITH FLOW CONTROL AUTHORITIES	
◆ Alabama	◆ New York
◆ Arkansas	◆ North Carolina
◆ Colorado	◆ North Dakota
◆ Connecticut	◆ Ohio
◆ Delaware	◆ Oklahoma
◆ Florida	◆ Oregon
◆ Georgia	◆ Pennsylvania
◆ Hawaii	◆ Rhode Island
◆ Illinois	◆ South Dakota
◆ Iowa	◆ Tennessee
◆ Louisiana	◆ Vermont
◆ Maine	◆ Virginia
◆ Minnesota	◆ Washington
◆ Mississippi	◆ West Virginia
◆ Missouri	◆ Wisconsin
◆ Montana	◆ Wyoming
◆ Nebraska	
◆ New Hampshire	◆ District of Columbia
◆ New Jersey	◆ Virgin Islands

STATES WITH NO FLOW CONTROL AUTHORITY	
◆ Alaska	◆ Kentucky
◆ Arizona	◆ Nevada
◆ California	◆ New Mexico
◆ Idaho	◆ South Carolina
◆ Indiana	◆ Utah
◆ Kansas	

<sup>2</sup> The States include: Alabama, Arkansas, Colorado, Iowa, Louisiana, Nebraska, New Hampshire, New York, North Dakota, Oregon, West Virginia, and Wyoming. In these States and the Virgin Islands, flow controls can cover all MSW. See the matrix in Appendix II-A for details.

governments to decide what materials can be subject to flow controls.<sup>3</sup> New York explicitly states that flow controls may cover even source separated recyclable materials.<sup>4</sup>

The remaining 23 States (and the District of Columbia) that allow flow controls, limit the recyclable materials or MSW that may be controlled.<sup>5</sup> For example, Mississippi, North Carolina, and New Jersey do not authorize flow controls for source separated recyclable materials. Other States (e.g., Louisiana, Ohio, and Rhode Island) allow flow controls only for source separated materials that have been discarded, abandoned, disposed, or left at the curb. Two States, Maine and Missouri, exclude only specifically designated recyclable materials from flow controls, while 2 others, Connecticut and Delaware, allow flow controls for only designated recyclable materials. Florida and Washington exclude commercial source separated recyclables from their flow control regulations. In addition, Vermont authorizes the control of recyclables only when flow controls do not adversely affect existing recycling centers.

- ◆ **Local governments in some States must address administrative hurdles prior to implementing flow controls.** Mississippi and Tennessee require a solid waste management authority to demonstrate the necessity of mandatory flow controls (e.g., after considering the use of existing facilities and examining other alternatives, a jurisdiction must demonstrate that flow controls are essential). In Colorado, a county or municipality must hold a public hearing prior to establishing flow controls. Wisconsin requires a municipality to attempt to develop a contractual agreement with persons who would be subject to a flow control ordinance. Minnesota requires a municipality or district, prior to establishing flow controls, to comply with both of the administrative requirements described above and also to demonstrate the need for flow controls. New York requires counties or public authorities to seek State legislative authorization for individual flow control ordinances.
- ◆ **In the majority of States, local governments or solid waste management districts have responsibility for MSW planning.** Most States require municipalities or solid waste management districts to develop MSW management plans. A few States (e.g., Arizona and Georgia) require coordination with local governments in developing State plans. In the District of Columbia and the Virgin Islands, the Mayor and the Virgin Islands Department of Public Works, respectively, must develop solid waste management plans. Alaska places some responsibility for MSW planning on individuals who own or manage facilities open to the public (e.g., restaurants, shopping centers, campgrounds).
- ◆ **Forty-three (43) States and the District of Columbia have established recycling or waste reduction goals.**<sup>6</sup> These goals range from Maryland's 20 percent recycling goal (for counties over 100,000) to Rhode Island's 70 percent recycling goal.<sup>7</sup> State and local government representatives claim that flow controls provide a means to help achieve State

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<sup>3</sup> Currently, no local government has implemented flow control in Illinois.

<sup>4</sup> Source separated materials are defined as specific materials that are segregated at the point of generation for separate collection. For example, individual households may separate certain recyclable materials, such as newspapers, from MSW prior to placing the materials at the curb for pick-up.

<sup>5</sup> The 23 States are: Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Maine, Minnesota, Mississippi, Missouri, Montana, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wisconsin.

<sup>6</sup> Robert Steuteville, "The State of Garbage in America: Part II *Biocycle*, May 1994, pp. 30-36. Of the 43 States, 36 States specifically adopted statutes with recycling and/or source reduction goals. The other 7 States adopted goals through different means, such as executive orders by State governors.

<sup>7</sup> States differ as to what materials count when assessing recycling rates.

recycling goals. (See Appendix I-A, Municipal Solid Waste Flow Control: Summary of Public Comments.)

### C. HUMAN HEALTH AND THE ENVIRONMENT

**Finding:** *Protection of human health and the environment is directly related to the implementation and enforcement of federal, State, and local environmental regulations. Regardless of whether State or local governments administer flow control programs, States are required to implement and enforce federally approved regulations that fully protect human health and the environment. Accordingly, there are no empirical data showing that flow control provides more or less protection.*

**Discussion:** The landfill and combustion segments represent approximately 80 percent of the MSW managed in the United States. These two segments are controlled by extensive and stringent State and federal regulations that are implemented through facility permitting and compliance assurance programs. These programs are designed for the express purpose of protecting human health and the environment and require the same level of control whether or not the waste is subject to flow control. Regardless of whether a State or local government requires flow control, each regulated facility is required to adhere to a minimum level of federal regulation that is deemed to be protective of human health and the environment as well as to State regulations that may be more stringent. There is no evidence that flow control either positively or negatively impacts the statutorily assured level of environmental protection, because the underlying regulatory requirements are controlling.

In recent years, States have begun regulating composting and recycling facilities to protect human health and the environment independent of flow controls. Further, the market analysis shows that only a small percentage of MSW managed by the composting and recycling segments is affected by flow control. Also, many States that authorize flow control explicitly exclude certain recyclables from flow control restrictions.

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