

Michael Greenberg, President
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Testimony for Ohio Senate on House Bill 64 Flow Control Amendment
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Mr. Chairman and members of the Committee, I want to thank you for the opportunity to provide this testimony regarding the amendment to House Bill 64 regarding flow control of recyclables.

My name is Michael Greenberg, I am President of GT Environmental, Inc. an environmental consulting firm operating out of offices in Westerville, Stow, Athens and Marietta. GT is in its 20th year providing services to the State of Ohio, counties, municipalities, townships and Ohio businesses regarding compliance with Ohio's environmental laws and regulations. I also serve on the Board of Directors for the Solid Waste Association of North America and have been a Board member of the Organics Recycling Association of Ohio for the past ten years. GT Environmental has provided regulatory and compliance services to more than half of the solid waste management districts and counties in Ohio.

Thirty four years ago my career began at the Ohio Environmental Protection Agency. I became a manager in the Division of Solid and Hazardous Waste responsible for implementing a new solid waste law called House Bill 592, passed in 1988. House Bill 592 was a landmark piece of legislation in the environmental arena specifically for managing solid waste. During my tenure at Ohio EPA, I helped establish the framework for implementing this new law including the preparation of Ohio's first solid waste management plan. I was also heavily involved in the rule making process for compost facilities, fees and other aspects of the law.

The amendment proposed for the budget bill seems simple enough, however it targets a complex provision in Ohio law that provides a tool for solid waste districts to ensure all Ohio citizens have the ability to participate and recycle materials from their homes and businesses. Ohio law requires Ohio EPA to establish recycling goals for everyone. They accomplish that goal by requiring that solid waste districts provide recycling services (called the recycling infrastructure goal) to 90% of the population of every county in Ohio. The flow control provision allows both urban and rural districts to direct solid waste to specific facilities to process and/or transfer materials to end users or disposal. Some of these solid waste facilities called material recovery facilities are located in rural locations to provide services to residents who otherwise would not receive these recycling services because the rural areas do not provide the private sector with the same profit margins as urban areas. Solid waste districts have the tool of flow control to guarantee that a public facility that is built to support these requirements of the State have adequate revenues to support the debt for these facilities. Removing this tool would impact not only recycling facilities particularly in rural areas, but potentially facilities that manage yard waste as well.

The private sector does a great job in managing and processing our solid waste and recyclables in Ohio. The private sector business under House Bill 592 has blossomed. Requirements for recycling has brought a whole new industry and jobs to Ohio. New recycling facilities are operating both public and private throughout the state. Several hundred facilities managing yard waste are managing materials and turning it into compost that can be returned as soils and mulch that did not exist in 1988. Anaerobic digesters are operating to help manage organic material and food waste. This anaerobic technology was very limited until the last decade in Ohio.

The private sector will tell you that flow control hinders the free flow of waste and prevents them from managing the materials that they collect. There are few, if any examples, of flow control resolutions that have been enacted by solid waste districts that have prevented the private sector from managing recyclables at their processing facilities. In fact, although the private sector always raise the issue of flow control as a concern to their businesses, rarely if ever complain when a flow control provision falls in their favor over a competitor. There are more examples of the latter versus any flow control provisions impacting recyclable materials in Ohio. This proposed amendment is trying to regulate a problem that does not exist.

The issue of flow control is complex and has been a tool for Ohio solid waste districts for 27 years. Flow control is a tool used by municipal and county government across the United States. As I mentioned, I am on the Board of Directors for the Solid Waste Association of North America (SWANA). SWANA has over 8,000 members both public and private sector members including representatives from the largest waste companies in the United States. SWANA adopted the following policy on flow control.

SWANA recognizes flow control as an effective and legitimate instrument of integrated municipal solid waste management. To the extent it is allowed by law and after public discussion, including the consideration of economic, environmental and social impacts, and input from residents, businesses, and other interested parties, flow control can be implemented without unduly interfering with the free movement of municipal solid waste and recyclables across jurisdictional boundaries.

Ohio's solid waste law passed by the 1988 General Assembly has numerous safeguards built in to ensure that the existing private sector companies in operation are not harmed. This includes Ohio Revised Code Section 3734.52(E) which states the solid waste management plan or amended plan of each county or joint district shall provide for the maximum feasible utilization of solid waste facilities that were in operation within the district, or for which permits were issued on or before the effective date of the plan or amended plan and that are in compliance with the rules adopted under those section. The plan or amended plan shall incorporate all solid waste recycling activities that were in operation within the district on the effective date of the plan or amended plan. There is a pretty clear directive here that if you are operating your facility the county or joint district must provide for the maximum feasible utilization of your facility before creating a public option that could interfere with your ongoing business.

Another safeguard included in the current Ohio solid waste law is a requirement that any flow control provisions included in a solid waste plan must achieve a high standard of a super majority 60% approval from local political subdivisions, the county commissioners and Ohio EPA. Of the voting members of a solid waste district, two have a veto (the largest city and the county commissioners). Each plan must host a public comment period, a public hearing and Ohio EPA provides an initial review and Director's Findings and Orders. This is public policy at its finest requiring high standards and many checks and balances for approval through the public and their local representatives of a plan which includes flow control provisions.

A final safeguard in every solid waste management plan is the opportunity for any private sector firm to ask for a waiver to the flow control provisions. In most cases, the county commissioners grant these exemptions and if they don't at least the business playing field is level requiring all to use the same facility at the same cost.

Finally, the solid waste industry and means by which solid waste is collected, sorted, processed, and ultimately used is constantly changing. New technologies are coming on-line and the potential opportunities for Ohio to attract jobs and new industry to our state should not limit the agencies you entrusted with the responsibility to manage our waste and protect the public's health and welfare. The future may bring technologies that desire separated plastics to make a fuel or other recyclables as a raw material in a manufacturing process that currently does not exist. Taking away an essential tool that the people will decide when to use at the local level is short sighted. Ohio's law provides protections to private industry and any harm, if any, has been minimal or non-existent

Thank you for this opportunity to testify.