

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

NATIONAL SOLID WASTES  
MANAGEMENT ASSOCIATION

Case No. 04-71271  
Hon. George E. Woods

Plaintiff,

v

JENNIFER M. GRANHOLM, in her official capacity  
as Governor of the State of Michigan; and  
STEVEN E. CHESTER, in his official capacity  
as Director of the Michigan Department of  
Environmental Quality; MIKE COX, in his official  
capacity as Michigan's Attorney General;  
COL. TADARIAL J. STURDIVANT, in his official  
capacity as Director of the Michigan Department  
of State Police; and the CHARTER COUNTY OF WAYNE

Defendants.

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**VERIFIED COMPLAINT**  
**FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF**

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**VERIFIED COMPLAINT FOR DECLARATORY, INJUNCTIVE,  
AND OTHER RELIEF**

1. This action is a companion case to a matter filed in this district captioned The National Solid Wastes Management Association v Charter County of Wayne and Robert A. Ficano, Case No. 03-60188, in which the Honorable Marianne O. Battani issued an Opinion and Order of the Court Granting Plaintiff's Motion for Declaratory Judgment and Denying Defendants' Motion for Declaratory Judgment and Summary Judgment on February 3, 2004. This lawsuit challenges a package of recently enacted bills governing solid waste management in the State of Michigan ("**State**"). Specifically, Plaintiff challenges the "**Solid Waste Control Package**" (or "**Package**") of bills passed by both Chambers of the Michigan Legislature by March 15, 2004 and signed on March 26, 2004 by Governor Jennifer M. Granholm ("**Granholm**"). In general, the Package constitutes an unlawful scheme which: (1) imposes unconstitutional prohibitions of the disposal of solid waste in the State's Disposal Facilities and improperly extends the reach of those prohibitions to jurisdictions outside the State; (2) provides arbitrary enforcement and inspection authority to the Michigan Department of Environmental Quality ("**MDEQ**"), the Department of State Police ("**State Police**"), counties and municipalities; (3) requires landfill owners and operators in the State to submit landfill capacity reports; and (4) imposes a moratorium on new landfill construction permits for two years. The Package is unconstitutional because it violates the dormant Commerce Clause, the Foreign Commerce Clause, the Contracts Clause, the Foreign Affairs Powers of the United States Constitution, the State Constitution's Separation of Powers Clause and the Plaintiff's due process rights.

## I. THE PARTIES

### A. The Plaintiff

2. Plaintiff, The National Solid Wastes Management Association (“NSWMA”) is a non-profit trade association that represents for-profit companies providing solid and medical waste collection, recycling and disposal services and companies providing legal and consulting services to the solid waste industry. NSWMA represents members who operate in all fifty states, including Michigan, and regularly represents its members in state and federal court.

3. NSWMA has its principal place of business in Washington, D.C.

4. Some of the individual members of NSWMA own and operate transfer facilities, processing plants and sanitary landfills (hereinafter “**Disposal Facilities**”) in both federal judicial districts within the State.

5. Those individual members of NSWMA who own or operate Disposal Facilities in the State are collectively referred to as “**Facility Owners.**”

6. Some of the Facility Owners accept out-of-state and/or Canadian municipal solid waste.

### B. The Defendants

7. Defendant Jennifer M. Granholm is the Governor of the State and is sued in her official capacity. The term “Granholm” includes the Executive Office, its divisions, officers, servants, employees, attorneys, agents and representatives, and those persons in active concert or participation with it.

8. Granholm has led a campaign to ban out-of-state and Canadian municipal solid waste from being accepted at Disposal Facilities in the State since running for Governor and subsequently taking office on January 1, 2003.

9. Defendant Steven E. Chester, (hereinafter “**Chester**”), is the Director of the MDEQ and is sued in his official capacity. “Chester” includes all persons acting or purporting to act on his behalf.

10. Defendant Mike Cox (hereinafter “**Cox**”) is the Attorney General for the State and is sued in his official capacity. “Cox” includes all persons acting or purporting to act on his behalf.

11. Defendant Col. Tadarial J. Sturdivant (hereinafter “**Sturdivant**”), is the Director of the State Police and is sued in his official capacity. “Sturdivant” includes all persons action or purporting to act on his behalf.

12. Defendant, The Charter County of Wayne (hereinafter referred to as “**Wayne County**” or “**County**”) is the eighth largest county in the nation and is the most populous county in Michigan.

13. The “County” includes its Executive, departments, divisions, officers, servants, employees, attorneys, agents and representatives, and those persons in active concert or participation with them.

14. The Defendants are hereinafter collectively referred to as the “**Defendants.**”

15. Defendants Granholm, Chester, Cox and Sturdivant are citizens of the State.

16. The Defendants are responsible for implementing and enforcing Michigan's solid waste laws and regulations, including Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("NREPA").

17. The Defendants are State actors.

## **II. JURISDICTION**

18. Jurisdiction is conferred upon this Court pursuant to Article III of the U.S. Constitution and 28 U.S.C. §§ 1331 and 1343 because the claims made in this case involve federal questions and the deprivation, under color of State law, statute, ordinance and regulation, of rights and privileges afforded the Plaintiff under the Constitution of the United States.

19. This Court has personal jurisdiction over the Defendants as each is a citizen of and resides in the State.

20. This Court has authority to enter declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

## **III. VENUE**

21. Venue in this Court is proper under 28 U.S.C. § 1391(b)(2) as a substantial part of the events giving rise to the claims in this case occurred, and a substantial part of the property that is the subject of this action, is situated within the Eastern District.

22. Venue is also proper in this Court under 28 U.S.C. § 1392 as the property affected by the events giving rise to the claims in this case is located in different districts within the State.

#### **IV. GENERAL ALLEGATIONS**

##### **A. Solid Waste Management in Michigan**

23. In general, the disposal of solid waste in Michigan is governed by Part 115, Solid Waste Management of the NREPA (hereinafter “**Part 115**”).

24. Part 115 requires solid waste to be handled at Disposal Facilities.

25. Disposal Facilities must be licensed and permitted by the MDEQ.

26. Part 115 and the Administrative Rules implementing it, dictate the specific location, design, and operational requirements that apply to Disposal Facilities.

##### **B. The MDEQ**

27. The MDEQ was created by Executive Order No. 1995-18, which transferred environmental regulatory programs from the Department of Natural Resources to the newly created MDEQ.

28. The MDEQ, through NREPA, Part 115 and its Administrative Rules, develops and administers methods for the disposal of solid waste that are environmentally sound, that maximize the utilization of valuable resources, and that encourage resource conservation including source reduction and source separation.

##### **1. The Solid Waste Section**

29. The MDEQ Enforcement Section coordinates efforts to ensure compliance with permit requirements and state or federal laws when the violations are not corrected with field operation efforts.

30. Enforcement is done either administratively or through the court systems in conjunction with Cox, as the Attorney General.

31. NREPA requires each Michigan County (or group of counties if they chose to work together), including Wayne County, to adopt and enforce a solid waste management plan approved by the MDEQ.

**C. Wayne County's Solid Waste Program**

32. Pursuant to NREPA, Wayne County adopted the Wayne County Solid Waste Management Plan in 1990 and adopted certain amendments thereto in 2002 (the "**Plan**").

33. On November 7, 2002, the MDEQ approved, with modifications, the locally-approved update to the Plan (hereinafter "**2002 Update**").

34. On October 19, 2000, Wayne County approved and adopted Enrolled Ordinance No. 2000-654, commonly referred to as the "**Wayne County Solid Waste Ordinance**" (the "**Ordinance**").

35. Wayne County amended the Ordinance in August 2003, making it unlawful for a Wayne County Landfill to accept, from any community, waste that did not have a beverage container law "comparable" to Michigan's Bottle Bill, MCL §§ 445.571-445.576 (the "**Bottle Bill**").

36. Wayne County has responsibility for solid waste planning, implementation and enforcement.

37. Pursuant to NREPA, Chester and MDEQ, through the Solid Waste Section, are involved in the planning, implementation and enforcement of the Plan.

38. Pursuant to NREPA, Cox and Sturdivant are involved in the enforcement of the Plan.

**D. Solid Waste Statistics in Michigan**

39. The MDEQ collects and reports statistics on solid waste disposal in the State.

40. In 2004, the MDEQ reported that for the period from October 1, 2002 to September 30, 2003, approximately 62,615,429 cubic yards of solid were disposed in State landfills.

41. In 2004, the MDEQ reported that waste generated in the State increased two percent, to 47,115,961 cubic yards.

42. Significantly, the MDEQ's 2004 statistics do not include the tens of thousands of solid waste, low-level nuclear material and other hazardous items the State exports to other states and Canada.

**E. Out-Of State Waste Imported for Disposal in Michigan**

43. Some of the Facility Owners located in Berrien, Wayne, Calhoun, Crawford, Genesee, Macomb, Menominee, Monroe, St. Joseph and Wayne Counties, in addition to accepting municipal solid waste from intrastate sources, also accept out-of-state municipal solid waste.

44. The sources of the out-of-state municipal solid waste include, among other States, New Jersey, New York, Ohio, Pennsylvania, Indiana, Illinois, Iowa, Maine, Missouri, New Hampshire, Wisconsin and Connecticut (hereinafter collectively referred to as the "**Sister States**").

45. The MDEQ collects and reports statistics on the percentage of solid waste imported for disposal within the State from out-of-state sources.

46. In 2002, the MDEQ reported that for the period from October 1, 2000 to September 30, 2001, approximately 10 percent, or 5,977,769 cubic yards, of the total waste disposed of in State landfills came from Sister States.

47. In 2003, the MDEQ reported that for the period from October 1, 2001 to September 30, 2002, approximately 8.5 percent, or 4,886,587 cubic yards, of the total solid waste disposed of in State landfills came from Sister States.

48. In 2004, the MDEQ reported that for the period from October 1, 2002 to September 30, 2003, approximately 10 percent, or 6,066,440 cubic yards, of the total solid waste disposed of in State landfills came from Sister States.

49. The MDEQ reported a *24 percent increase* in disposal of Sister State waste in Michigan between the last two reporting periods.

**F. Canadian Waste Imported for Disposal in Michigan**

50. Prior to July 2003, some of the Facility Owners, independently, contracted with several Canadian municipalities, including Toronto, (“**Municipalities**”), for the disposal of the Municipalities’ solid waste (hereinafter “**Canadian Contracts**”).

51. Pursuant to the Canadian Contracts, the Facility Owners, independently, agreed to dispose of the Municipalities’ solid waste in their respective Disposal Facilities located in Wayne, Macomb, and Genesee Counties.

52. The Municipalities, either directly or through contracts with private industry, collect the solid waste from within their jurisdictional bounds and deposit it at transfer stations located in Canada.

53. Independent contractors transport the Municipalities’ solid waste from the Canadian transfer stations to Disposal Facilities in the State.

54. The MDEQ collects and reports statistics on the percentage of solid waste imported for disposal within the State from Canadian sources.

55. In 2004, the MDEQ reported that for the period from October 1, 2002 to September 30, 2003, approximately 23,750 tons of Canadian municipal solid waste was shipped each week to State Disposal Facilities.

56. In 2004, the MDEQ reported that for the period from October 1, 2002 to September 30, 2003, approximately 15 percent of the total solid waste disposed of in State landfills was generated in Canada.

57. In 2004, the MDEQ reported that for the period from October 1, 2002 to September 30, 2003, there was a *43 percent increase* in the import of Canadian waste during the last MDEQ reporting period.

**G. Michigan Solid Waste Importation Task Force**

58. On May 28, 1999, former Michigan Governor John Engler established the Michigan Solid Waste Importation Task Force (“**Task Force**”).

59. The Task Force was charged, in part, with identifying the trends, causes and consequences of imported solid waste; meeting with members of Congress to encourage the passage of federal legislation allowing the State to control solid waste importation; and making recommendations to the Governor and the MDEQ regarding the control of interstate and international waste imports.

60. On November 22, 2000, the Task Force submitted its Report and concluded:

“Michigan no longer has legal authority to restrict these unwelcome imports despite several years of effort coordinated with other importing states to seek legislative remedies.” *Id.* Further, the Task Force concluded that, “It is clear that the only remedy sure to withstand legal challenge is

one based on authority granted to States by Congress. Most court decisions have made clear that Congress has the authority to enact such authority.”

#### **H. Political Response to the Increase in Importation of Out-of-State Waste**

61. The response to the increase in the import of out-of-state and Canadian solid waste was an organized, multi-level campaign to treat intrastate solid waste differently than out-of-state or Canadian waste by banning and/or severely restricting the import of out-of-state and Canadian waste.

##### **1. Congressional Hearing**

62. On July 23, 2003, a congressional hearing was held to discuss, in part, proposed federal waste regulation legislation, H.R. 382, H.R. 411 and H.R.1730 (hereinafter “**July 23, 2003 Congressional Hearing**”).

63. The U.S. Representative from Michigan, John Dingell, stated at that hearing:

States have been searching for a legal means to control shipments of municipal solid waste from other States and other countries. Unfortunately, the result has only been costly and unproductive litigation. State laws have been struck down by the courts because under the commerce clause of the Constitution, only Congress can grant the States and localities the right to fully regulate waste imports into their jurisdictions.

##### **2. Granholm’s Response**

64. During her campaign for Governor, then-Attorney General and candidate Granholm released her environmental platform, which included the following statement:

The Engler-Posthumus Administration allowed states and countries with lax environmental laws to send their solid waste to Michigan. Jennifer Granholm will require governments that wish to use Michigan landfills for municipal waste to certify that they meet the same standards that we do. For example, Michigan recycles its bottles and cans. Any incoming solid

waste should be as free of bottles, cans, batteries and electronic components as waste generated in Michigan.

Jennifer M. Granholm, “Protecting the Environment, Growing Our Economy,” at 58 (June 10, 2003).

65. Granholm warned about the impending closing of Ontario’s Keele Valley landfill and plans to ship all of Toronto’s municipal solid waste to Michigan for disposal, stating “Toronto will soon send all of its municipal waste to our state. *Michigan should not be turned into a dumping ground for the rest of North America.*” *Id.* at 57 (emphasis added).

66. During her February 5, 2003, State of the State Address (“**State of the State 2003**”), Granholm again made her intentions clear: “[W]e will no longer allow Michigan to be North America’s dumping ground.”

67. In her State of the State 2003, Granholm admitted that “[f]ederal law doesn’t allow us to ban this trade in Canadian and out-of-state trash.”

68. Despite that admission, Granholm stated: “...we do have the right to insist that trash dumped in our landfills meets our standards.”

69. In her State of the State 2003, Granholm asked the Michigan Legislature “...to act now to pass legislation that will allow us to refuse to accept solid waste loaded with batteries, bottles, cans and toxic substances that jeopardize our health and safety,” emphasizing that “[o]ur state cannot – and will not – be the nation’s trash can.”

70. One year later, Governor Granholm repeated this theme during her January 27, 2004, State of the State Address (“**State of the State 2004**”), urging the Legislature to pass legislation that would “close the deal and ensure that we put a lid on it forever.”

71. A MDEQ press release, issued February 2, 2004, to accompany a new MDEQ report reflecting the increase in waste imported from out-of-state and Canada, included the following statement by the Governor:

In the wake of this report, it is now more imperative than ever that the Legislature deliver to my desk the package of bills *to curb the flow of out-of-state and foreign trash in Michigan....* I think we can all agree that Michigan's quality of life is eroded a little bit more with every truckload of trash that is brought in to our state. It is time for the Legislature to move on the trash legislation.

MDEQ Press Release, "DEQ Releases 2003 Solid Waste Report" (Feb. 2, 2004), (emphasis added).

### **3. The MDEQ's Response**

72. At the July 23, 2003 Congressional Hearing, MDEQ Director Chester, under the direction of and on behalf of Granholm, testified that Congress should adopt legislation that would permit states to restrict the interstate and international transfer of municipal solid waste. (**Exhibit A**).

73. Chester asked the Committee on Energy and Commerce at the Congressional Hearing to adopt legislation that would, "provide state and local governments with the tools needed to reasonably limit the amount of out-of-state and international waste that crosses their border, maintain disposal capacity for their own waste, and assure protection of the states' natural resources."

74. Chester admitted that the State did not have authority to restrict the import of out-of-state or Canadian waste, stating:

In 1992, The United States Supreme court ruled, in the matter of Fort Gratiot Sanitary Landfill v. Michigan Department of Natural Resources et al (1992 Fort Gratiot decision), that provisions of Michigan's Solid Waste Management Act, which allowed counties to impose restrictions on the importation of solid waste from other states and countries through their Solid Waste Management Plans, violated the United States Constitution and

were not enforceable. The United States Constitution's Commerce Clause reserves to the United States Congress the authority to regulate commerce between the states and with foreign countries. The Courts have long recognized the so-called "dormant" nature of the Commerce Clause as prohibiting states from such areas of regulation unless authorized by Congress. As a result, *while movement of waste between Michigan counties is still regulated by state law, we are unable to restrict imports of solid waste from outside of Michigan.* (Emphasis added.)

#### **4. The Legislature's Response**

75. In March 2004, the Michigan Legislature approved and adopted eleven bills which amend the NREPA, including S.B. 57, S.B. 497, S.B. 498, S.B. 499, S.B. 500, S.B. 502, S.B. 506, S.B. 557, S.B. 715, H.B. 5234 and H.B. 5235, governing the management of solid waste in the State, such bills being commonly referred to as the "**Solid Waste Control Package**" or "**Package**."

76. The sponsors' intent in sponsoring the bills, as well as the Legislature's intent, in adopting the Solid Waste Control Package, is to close the State's borders to out-of-state and Canadian waste.

77. Before its passage, Senate Majority Leader Ken Sikkema made clear the intent of the Package: "This package is designed *to stop or discourage out-of-state waste*. That's what this is all about." Edward Hoogterp, "Senate OKs Steps to Curb Out-of-State Trash" (Oct. 10, 2003)(emphasis added).

78. After its passage, Senate Majority Leader Sikkema sent an electronic mail update re-affirming the intent of the legislation: "The Senate this week passed *sweeping restrictions on the importation of Canadian and out-of-state waste*....This legislative package represents a bi-partisan effort to *limit the importation of Canadian and out-of-state waste*." Senate Majority Leader Ken Sikkema Capitol E-mail Update (Mar. 9, 2004) (emphasis added)

79. House Speaker Rick Johnson expressed the Legislature's intent in equally unequivocal terms: "... the legislation passed in the House today, we believe...is ... *going to stop the flow of Canadian trash* here in Michigan. We're hopeful that that's what happens and hopefully as we go forward we're going to see Michigan not be the dumping grounds of Canadian trash or out-of-state trash from the day forward that the Governor signs the bills into law." Michigan House Republicans Media Clips Archives, Johnson Audio Clip 1 (Feb. 5, 2004) (site last visited March 25, 2004) (emphasis added).

80. On March 26, 2004, Granholm, in her capacity as Governor of the State and pursuant to Article IV, § 22 of the Mich. Const. signed one set of the Package into law in a Sumpter Township park in Wayne County, a site which overlooks a Wayne County landfill which accepted the majority of Canadian waste imported into the State in 2003.

81. On March 26, 2004, Granholm, in her capacity as Governor of the State and pursuant to Article IV, § 22 of the Mich. Const., signed a second set of the Package in Macomb County, a community that hosts a landfill which accepts up to 80 truck loads of Canadian waste per day.

82. Three laws that are part of the Solid Waste Control Package that have the effect of closing Michigan's borders to out-of-state waste are Senate Bill 502, House Bill 5234 and Senate Bill 498.

**i. Senate Bill 502**

83. Senate Bill 502 ("S.B. 502") (**Exhibit B**) was sponsored by Senator Nancy Cassis.

84. S.B. 502 requires the MDEQ, by October 1, 2004, to:
- a. notify each state, Canada, and each province in Canada that the State will not accept solid waste that is not in conformity with State law;
  - b. compile a list of those states, countries, and provinces, and local units of government that prohibit the same items from their disposal facilities that the State prohibits from its Disposal Facilities; and
  - c. prepare and provide to each landfill in the State, a copy of the list of countries, states, provinces and local jurisdictions who prohibit from disposal the same items the State prohibits from disposal in its Disposal Facilities.

85. In essence, S.B. 502 requires MDEQ to compile a list of “approved” jurisdictions from which waste can enter the State for disposal.

86. In sponsoring the Bill, Senator Nancy Cassis, stated, “*Stopping foreign waste* from expending our landfills has been of great importance to the citizens in the state of Michigan....This bill [S.B. 502] is a step in the right direction.” News Release, Senator for the 15th District, Nancy Cassis, “Cassis Looks to Restrict Out-of-State Trash” (May 23, 2003) (emphasis added)

87. S.B. 502 was effective on March 26, 2004.

**ii. House Bill 5234**

88. House Bill 5234 (“**H.B. 5234**”) (**Exhibit C**) was sponsored by Representative Daniel Acciavatti.

89. H.B. 5234 prohibits the Facility Owners from disposing municipal solid waste generated outside the State unless:

- (i) it comes from a jurisdiction on the MDEQ’s approved list;
- (ii) it was processed through a Disposal Facility that documents it removed prohibited items; and

- (iii) it is composed of a uniform material that otherwise meets standards for disposal in the State.

90. In sponsoring the Bill, Representative Dan Acciavatti, was clear that his intent was to curb out-of-state trash: “Today we did remove the rest of the package on dealing with out-of-state trash and it is a tremendous first step in *curbing the amount of trash coming into this country* from other states and other countries.”

91. Secondary sponsors of H.B. 5234 have been equally candid about their purpose to stop out-of-state waste.

92. For example, House Democratic Leader Dianne Byrum stated: “The Democratic House Caucus is committed to making *the elimination of Canadian and out-of-state garbage a priority*. Michigan residents stand in line to return their cans and bottles. Residents in Illinois and Ontario throw theirs in the trash, then truck it to our state. This must stop.” House Democrats Press Release, “Gielegem: Stop the Trashing of Michigan” (Jan. 27, 2003) (emphasis added).

93. Further, Representative Ruth Johnson stated: “Michigan’s extra landfill capacity has been an open invitation to *outsiders to dump their waste in our state*....Enough is enough. What Michigan needs is a practical plan to address the *flow of harmful out-of-state waste into our landfills*. The measures approved by the committee do just that.” News Release, House Republican Communications Service, “Panel Sends Clean Trash Initiative to Full House” (Nov. 6, 2003) (emphasis added).

94. H.B. 5234 was effective on March 26, 2004.

### **iii. Senate Bill 498**

95. Senate Bill 498 (“**S.B. 498**”) (**Exhibit D**) was sponsored by Senator Patricia L. Birkholz.

96. S.B. 498 confirms and consolidates the list of items the State prohibits from disposal in municipal solid waste landfills, including medical waste, yard clippings, used oil, lead acid batteries, low-level radioactive waste, regulated hazardous waste, liquid waste, sewage, PCBs and asbestos waste in municipal solid waste landfills. (*See*, MCL § 324.11514);

97. S.B. 498 amends Part 115, specifically, MCL § 324.11514, to add two new categories of prohibited items: beverage containers and whole motor vehicle tires.

98. Senator Birkholz was clear with respect to her intent in sponsoring the Bill: “*We’re stopping out-of-state trash from coming into Michigan* by what we did today.” MIRS Legislative News, “Eleven Out-of-State Trash Bills Move” (Oct. 10, 2003) (emphasis added).

99. S.B. 498 was effective on March 26, 2004.

#### **iv. Senate Bill 57**

100. Senate Bill 57 (“**S.B. 57**”) (**Exhibit E**) was sponsored by Senator Mike Bishop.

101. S.B. 57 provides Chester and the MDEQ with authority to restrict or prohibit the transportation or disposal in the State of municipal solid waste if:

- (i) Chester “after consultation with appropriate officials” determines the transportation or disposal of solid waste poses a “substantial threat to the public health or safety or to the environment,” and
- (ii) Chester determines that the restriction or prohibition on the transportation or disposal of the solid waste is “necessary to minimize or eliminate the substantial threat to public safety or to the environment.”

S.B. 57 was effective on March 26, 2004.

**v. Senate Bill 497**

102. Senate Bill 497 (“**S.B. 497**”) (**Exhibit F**) was sponsored by Senator Samuel “Buzz” Thomas III.

103. S.B. 497 defines the term “beverage containers” for purposes of the State’s new disposal prohibition.

104. S.B. 497 was effective on March 26, 2004.

**vi. Senate Bill 499**

105. Senate Bill 499 (“**S.B. 499**”) (**Exhibit G**) was sponsored by Senator Alan Sanborn.

106. S.B. 499 requires the MDEQ, the State Police, health officers and local enforcement bodies to enforce and administer the NREPA to:

- (i) conduct a minimum of four (4) annual inspections of all Disposal Facilities in the State;
- (ii) ensure that the Disposal Facilities are in compliance with the NREPA; and
- (iii) ensure that persons disposing of solid waste are in compliance with NREPA.

107. S.B. 499 was effective on March 26, 2004.

**vii. Senate Bill 500**

108. Senate Bill 500 (“**S.B. 500**”) (**Exhibit H**) was sponsored by Senator Dennis Olshove.

109. S.B. 500 provides for progressive increases in civil fines for multiple violations of Part 115.

110. S.B. 500 permits local governmental bodies such as municipalities and counties to bring actions for noncompliance in their own jurisdictions.

111. S.B. 500 permits Chester, the MDEQ and/or a health officer to request that Cox bring an action for non-compliance with and enforcement of NREPA.

112. S.B. 500 was effective on March 26, 2004.

**viii. Senate Bill 506**

113. Senate Bill 506 (“**S.B. 506**”) (**Exhibit I**) was sponsored by Senator Bruce Patterson.

114. S.B. 506 provides for a two-year moratorium on new landfill construction permits.

115. S.B. 506 was effective on March 26, 2004.

**ix. Senate Bill 557**

116. Senate Bill 557 (“**S.B. 557**”) (**Exhibit J**) was sponsored by Senator Liz Brater.

117. S.B. 557 requires annual landfill capacity reports of all landfill owners and operators.

118. S.B. 557 was effective on March 26, 2004.

**x. Senate Bill 715**

119. Senate Bill 715 (“**S.B. 715**”) (**Exhibit K**) was sponsored by Senator Jud Gilbert.

120. S.B. 715 is an enforcement provision which provides a basis for counties and municipalities to assist Chester, the MDEQ, Sturdivant, and the State Police in implementing and enforcing NREPA.

121. S.B. 715 was effective on March 26, 2004.

**xi. House Bill 5235**

122. House Bill 5235 (“**H.B. 5235**”) (**Exhibit L**) was sponsored by Representative David Robertson.

123. H.B. 5235 requires the MDEQ to post on its website a list of all prohibited items and appropriate disposal options.

124. H.B. 5235 also requires solid waste haulers in the State to notify customers of:

- (i) the materials prohibited from disposal;
- (ii) the appropriate disposal options for prohibited items ; and
- (iii) the MDEQ’s website address.

125. H.B. 5235 was effective on March 26, 2004.

**5. The Local Response**

126. Prior to the enactment of the Package, Wayne County objected to the import into Wayne County Disposal Facilities of out-of-state and Canadian waste.

127. Prior to July 9, 2003, Wayne County’s Executive, Robert A. Ficano (hereinafter “**Ficano**”), in the County’s website, stated publicly:

We are committed in Wayne County to making sure the trash coming from across the border isn’t dumped into our County. We want to stop the trash from coming from Canada and onto our land. This is not just a Wayne County problem, it is a regional issue. Our plan starts with the formation of a Task Force....to begin addressing the problem...

128. Ficano also submitted a prepared statement at the July 23, 2003 Congressional Hearing on solid waste regulation legislation, in which he acknowledged that:

- a. “[t]ry as we might to stem the tide of imported waste coming into our County, we are limited by law, precedent and international agreements;”
- b. “[d]espite our best efforts, the ultimate problem of imported waste coming into Michigan, and especially Wayne County, demands Federal Intervention. Congress must enact laws to allow States to deal with the flow of trash between States;” and
- c. Wayne County’s authority to enact laws regulating interstate and international waste disposal was “severely limited.”

129. In August 2003, the Wayne County Commission adopted amendments to the Ordinance making it effectively unlawful for Wayne County landfills to accept out-of-state waste.

**I. Bottle Deposit Laws**

130. The State is one of eleven states, including California, Connecticut, Delaware, Hawaii, Iowa, Maine, Massachusetts, New York, Oregon and Vermont, that have enacted laws requiring a deposit be placed on various beverage containers in order to encourage recycling of those containers.

131. Upon information and belief, the State’s Bottle Bill requires a higher deposit on beverage containers than any other state.

132. Upon information and belief, the Sister States and Municipalities from whom the Facility Owners accept municipal solid waste, have not adopted or enacted beverage container deposit laws that provide regulation of beverage containers or that have bottle return rates comparable to those required by the State’s Bottle Bill.

**J. Composition of Municipal Solid Waste**

133. According to the U.S. EPA, in the United States approximately:
- a. 30 Percent of municipal solid waste is recovered and recycled or composted;
  - b. 15 percent is burned at combustion facilities; and
  - c. 56 percent is disposed of in municipal solid waste landfills.

U.S. EPA, *Basic Facts Municipal Solid Waste (MSW)*.

**1. Michigan Municipal Solid Waste**

134. As of the filing of this Verified Complaint, NREPA prohibits the disposal of medical waste, yard clippings, used oil, lead acid batteries, low-level radioactive waste, regulated hazardous waste, liquid waste, sewage, PCBs and asbestos waste in municipal solid waste landfills. MCL § 324.11514.

135. S.B. 498 amends MCL § 324.11514 to add two new categories of prohibited items: beverage containers and whole motor vehicle tires.

136. Beverage containers account for only one to five percent of the municipal solid waste stream.

137. As a result of the Bottle Bill, the State's municipal solid waste includes a minimal amount of beverage containers as the State asserts that its recovery rate under the Bottle Bill is approximately 94%.

138. The State has an overall recycling rate of 20 percent, resulting in a ranking of 28 out of the 50 states. *Michigan Beverage Container Task Force*, p 20.

**2. Sister States' Municipal Solid Waste**

139. The Sister States that export the most municipal solid waste to the State have laws preventing the disposal of the most harmful materials in municipal solid waste.

140. The MDEQ reported in 2004 that the Sister States which export the largest volumes of municipal solid waste to the State are Illinois, Indiana and Ohio.

141. Each of those three Sister States prohibits the disposal of items that are harmful to human health and the environment.

### **3. Canadian Municipal Solid Waste**

142. The majority of municipal solid waste imported from Canada is generated in the City of Toronto, Ontario, Canada (“**Toronto**”).

143. With the exception of beverage containers and certain yard clippings, Toronto prohibits the same items from disposal as those under the Solid Waste Control Package.

144. Toronto, through Chapter 841 and 844 of its Municipal Code governing the collection of commercial and residential waste, prohibits the City from collecting and owners from setting out for collection, certain additional “prohibited waste” which the State does not explicitly prohibit from disposal, including household wastes such as pool or photographic chemicals, laundry bleach, drain, oven, toilet and carpet cleaning solutions, paint thinner, rodent, insect, fungus and weed killers, oil based and latex paints, nickel-cadmium batteries, antifreeze, lighters and fire extinguishers.

145. By way of example, Toronto has adopted a household waste diversion plan in order to divert solid waste from landfills through recycling, reuse, reduction, and composting.

146. According to Toronto, *Waste Diversion Task Force 2010 Report (June 2001)*, (the “**2010 Report**”), Toronto diverted 27% of its household waste from landfills in 2001.

147. Under its waste diversion plan, Toronto sought to:
  - a. divert 30% of household waste by 2003;
  - b. divert 60% of household waste by 2006; and
  - c. divert 100% of household waste by 2010,

according to the 2010 Report.

148. In fact, Toronto successfully diverted 32% of its household waste from landfills in 2001.

149. Toronto residents recycle glass bottles and jars, metal cans, plastic bottles and jugs, aluminum containers, milk and juice containers, empty paint and aerosol cans and household paper.

150. During the last three (3) years, Toronto has diverted solid waste at a rate 25 to 40 percent greater than the State.

151. The Province of Ontario, including Toronto, has a voluntary, industry-sponsored deposit program for beer bottles and cans with a 98% recovery rate according to the Container Recycling Institute, "*Bottle Bill Resource Guide*."

**K. Virtually Indistinguishable Waste**

152. The United States Environmental Protection Administration ("U.S. EPA") and the MDEQ, after having investigated the State's, the Sister States' and the Canadian municipal solid waste, have concluded that, regardless of source, the materials are indistinguishable from the perspective of human health, safety and the environment.

153. On July 23, 2003, Robert Springer, Director of the U.S. Environmental Protection Agency's Office of Solid Waste, testified before the Subcommittee on

Environment and Hazardous Materials, House Committee on Energy and Commerce, explaining that:

Due to the concerns expressed by citizens and elected officials in the State, the Michigan Department of Environmental Quality has examined the waste arriving from Canada, and has inspected the operations at receiving landfills. The State agency has repeated this scrutiny on a number of occasions. Preliminary results from recent Michigan Department of Environmental Quality inspections indicate that the shipments from Toronto are managed as well as similar shipments originating within the state. *The landfill inspections have confirmed that the composition of the waste received from Toronto is typical of municipal solid waste, and the waste is suitable for disposal in Michigan landfills.* (emphasis added).

154. On September 22, 2003, the MDEQ issued its *Report on Waste Inspections at Michigan Landfills*, confirming that, but for disposal of yard waste which was generally policed by the Facilities Owners, the composition of the solid waste, regardless of the source, is indistinguishable from a health and safety perspective and is, therefore, suitable for disposal in State Disposal Facilities.

**L. The Companion Case**

155. On September 5, 2003, NSWMA and one of its members filed a Complaint for Declaratory and Injunctive Relief against Wayne County and Ficano in this Court, challenging the constitutionality of the Wayne County Ordinance.

156. On February 3, 2004, this Court issued an Opinion and Order Granting NSWMA's Motion for Declaratory Judgment and Denying Defendants' Motion for Declaratory Judgment and Summary Judgment (**Exhibit M**) in which it determined that Wayne County's Ordinance making it unlawful for a Wayne County Landfill operator to accept solid waste from any waste generating entity that was not regulated by a beverage container law comparable to Michigan's Bottle Bill:

- a. could not withstand the Court's strict scrutiny under the domestic Commerce Clause;
- b. could not withstand the Court's heightened level of strict scrutiny under the foreign Commerce Clause; and
- c. did not meet constitutional standards.

157. This Court declared the Ordinance unconstitutional and unenforceable.

158. Wayne County and Ficano did not appeal the Order and, the Judgment is, therefore, final.

## **V. THE CONTROVERSY**

159. The Sister States and Canada import municipal solid waste in accordance with the Commerce Clause of the U.S. Constitution, as well as other governing legislation and treaties.

160. Defendants object to the importation of Canadian municipal solid waste into State Disposal Facilities unless the Municipalities comply with the essential requirements of the Package.

161. Defendants object to the importation of the Sister States' municipal solid waste unless the Sister States comply with the essential requirements of the Package.

162. Defendants Granholm and Chester sought the amendments to NREPA, the Package, to prohibit and/or restrict the importation of the Sister States' and the Municipalities' waste into State Disposal Facilities.

163. If the Solid Waste Control Package is enforced as written, the Facility Owners' constitutional rights will be violated.

164. An actual controversy exists between the Facility Owners and Defendants as to the constitutionality of the Solid Waste Control Package, most particularly, but not limited to, SB 502, HB 5234 and SB 498.

**COUNT I**

**VIOLATION OF DORMANT COMMERCE CLAUSE**

165. NSWMA incorporates by reference, as though set forth in full herein, the allegations contained in paragraphs 1 through 164.

166. The Commerce Clause of the United States Constitution authorizes Congress to “regulate Commerce with foreign Nations and among the several States.” U.S. CONST. Art. I, § 8, cl. 3

167. The NREPA, particularly the Package, violates the dormant Commerce Clause by, among other things:

- a. requiring Sister States, other states, the Municipalities and their local governments to enact legislation comparable to Part 115 of NREPA before the Facilities Owners are permitted to accept the out-of-state and Municipalities’ solid waste at their Disposal Facilities;
- b. restricting the movement of the Municipalities’ and out-of-state solid waste into the State;
- c. impeding the free interstate flow of solid waste;
- d. making interstate commerce in solid waste more costly than intrastate commerce in waste;
- e. increasing the likelihood of conflict arising from the Sister States,’ the Municipalities’ or their local governments’ enacting extraterritorial laws governing waste diversion; and
- f. requiring extraterritorial application of the Bottle Bill, the Plan, and Part 115 of the NREPA.

168. The Defendants' adoption, implementation and enforcement of the Package violate NSWMA's constitutional rights in violation of 42 U.S.C. § 1983.

## **COUNT II**

### **VIOLATION OF THE FOREIGN COMMERCE CLAUSE**

169. NSWMA incorporates by reference, as though set forth in full herein, the allegations contained in paragraphs 1 through 168.

170. The Foreign Commerce Clause of the United States Constitution authorizes Congress to, "regulate Commerce with foreign Nations and among the several States." U.S. CONST. Art. I, § 8, cl. 3

171. The Foreign Commerce Clause:

- a. prohibits protectionist policies; and
- b. restrains the States from excessively interfering with foreign affairs.

172. The NREPA, particularly the Package, violates the Foreign Commerce Clause by:

- a. impermissibly discriminating against the Municipalities' municipal solid waste;
- b. impermissibly and purposely discriminating against foreign commerce by imposing Part 115 of the NREPA on the Municipalities;
- c. impermissibly attempting to control conduct beyond the borders of the United States, specifically, conditioning the acceptance of solid waste at Disposal Facilities on a foreign jurisdiction's passage of a legislation comparable to Part 115;
- d. interfering with the United States' ability to "speak with one voice" in foreign affairs with respect to the transboundary movement of solid waste; and

- e. diverging with the United States' obligations under a Bilateral Trade Agreement with Canada to permit the importation of waste across the U.S./Canada border.

173. The Defendants' adoption, implementation and enforcement of the Package violate NSWMA's constitutional rights in violation of 42 U.S.C. § 1983.

### **COUNT III**

#### **VIOLATION OF THE FOREIGN AFFAIRS POWER**

174. NSWMA incorporates by reference, as though set forth in full herein, the allegations contained in paragraphs 1 through 173.

175. The power to regulate foreign affairs is reserved for the federal government which establishes rules governing international trade with foreign countries.

176. The NREPA, particularly the Package, violates the foreign affairs power of the United States Constitution by, among other things:

- a. interfering with the federal government's exclusive right to regulate foreign relations;
- b. attempting to regulate the transboundary movement of waste across the United States-Canada border, in contravention of the Bilateral Agreement between the United States and Canada concerning the Transboundary Movement of Hazardous Waste October 28, 1986 U.S.-Can., T.I.A.F. No. 11099. See also amendment 1992 affected by exchange of notes at Washington, November 4 and 25, 1992, CTIA 701 DOS: 92-260;
- c. attempting to regulate the transboundary movement of waste across the United States-Canada border in contravention of the North American Free Trade Agreement ("NAFTA") generally and Art. 104, specifically; and
- d. attempting to regulate the transboundary movement of waste across the United States-Canada border in contravention of the General Agreement on Tariffs and Trade ("GATT"), General Agreement on Tariffs and Trade, Oct. 30, 1947, 55 U.N.T.S. 194, as amended in Final Act Embodying the Results of the Uruguay Round Of Multilateral Trade Negotiations, Apr. 15, 1994.

177. The NREPA, particularly the Package, has more than an incidental or indirect effect on foreign relations.

178. Defendants' adoption, implementation and enforcement of the NREPA, including the Package, violate NSWMA's constitutional rights in violation of 42 U.S.C. § 1983.

#### **COUNT IV**

#### **VOID FOR VAGUENESS**

179. NSWMA incorporates by reference, as though set forth in full herein, the allegations contained in paragraphs 1 through 178.

180. The United States Constitution guarantees each person that the government will not deprive it of its property rights without due process of law.

181. The Facilities Owners have a protectable property interest in their respective Disposal Facilities and the operation of those Facilities.

182. The NREPA, including the Package, violates NSWMA's due process rights because:

- a. it does not provide fair notice of the conduct it regulates; and
- b. it gives the Defendants unstructured and unlimited discretion in concluding whether the Package has been violated.

183. The language found in the Package is not reasonably precise because, among other things:

- a. S.B. 57 does not define what constitutes a "consultation;"
- b. S.B. 57 does not define who constitutes "appropriate officials;"
- c. S.B. 57 does not define "substantial threat to the public health or safety or to the environment;"

- d. S.B. 57 does not define what constitutes an “imminent and substantial threat;”
- e. S.B. 57 does not define what constitutes “interested parties;”
- f. S.B. 57 does not define what constitutes an “emergency situation;”
- g. S.B. 498 does not adequately define “de minimus;”
- h. S.B. 499 does not define what constitutes a “regular, random inspection;”
- i. S.B. 499 states that inspections “may” occur at disposal areas, but does not indicate where the inspections would actually be conducted;
- j. S.B. 499 does not define what constitutes “waste being transported for disposal.”
- k. S.B. 502 does not define what constitutes “comparable;”
- l. S.B. 502 does not define what constitutes an “enforceable solid waste disposal;” and
- m. S.B. 500 does not define what constitutes a “violation.”

184. Under NREPA and the Package, a Court may impose both civil and criminal sanctions for violations of NREPA.

185. The Defendants’ adoption, implementation and enforcement of the NREPA, including the Package, violate NSWMA’s constitutional rights in violation of 42 U.S.C. § 1983.

## **COUNT V**

### **PROCEDURAL DUE PROCESS VIOLATION**

186. NSWMA incorporates by reference, as though set forth in full herein, the allegations contained in paragraphs 1 through 185.

187. After a determination has been made by Chester under S.B. 57(MCL 324.11526c(1) or (3) that the transportation or disposal of solid waste must be restricted or prohibited, the Facility Owners are entitled to actual notice of that decision before the order can take effect as that order affects their property rights.

188. S.B. 57 does not require the Defendants to provide the Facility Owners with notice, much less prior notice, of the decision or order.

189. Where Chester is not required to provide prior notice to the Facility Owners, the Facility Owners' procedural due process rights are violated.

## COUNT VI

### VIOLATION OF THE CONTRACTS CLAUSE

190. NSWMA incorporates by reference, as though set forth in full herein, the allegations contained in paragraphs 1 through 189.

191. There are contractual relationships between:

- a. the Facility Owners and the Sister States;
- b. the Facility Owners and waste generators in the Sister States; and
- c. The Facility Owners and the Municipalities, (hereinafter "**Contractual Relationships**") governing the terms and conditions of the disposal of municipal solid waste in the State.

192. A state government may not impair the contracts of its citizens.

193. The NREPA, as amended by the Package, severely impairs the Contractual Relationships.

194. The impairment is substantial and not *de minimus*.

195. There is no legitimate public purpose for the Package which impairs the Contractual Relationships.

196. The means by which the contracting parties' rights and responsibilities were adjusted are not reasonable.

197. The Package violates the Facility Owners' constitutional rights under Art. I, § 10 of the Michigan Constitution which provides that "no law impairing the obligation of contracts shall be enacted."

198. The Package violates the Facility Owners' constitutional rights under Art. I, § 10 of the U.S. Constitution which provides that "no law impairing the obligation of contracts shall be enacted."

## COUNT VII

### VIOLATION OF THE SUPREMACY CLAUSE

199. NSWMA incorporates by reference, as though set forth in full herein, the allegations contained in paragraphs 1 through 198.

200. The Supremacy Clause of the U.S. Constitution ("**Supremacy Clause**") states that the "Constitution and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any Thing in the Constitution or the Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, § 2.

201. Congress has enacted the following legislation and/or agreements (hereinafter collectively referred to as "**Federal Agreements**") which govern, at least in part, the transboundary movement of waste between countries:

- a. Agreement Between the United States and Canada Concerning the Transboundary Movement of Hazardous Waste (Oct. 28, 1986), U.S.-Can., T.I.A.S. No. 11099 (the “**Bilateral Agreement**”);
- b. North American Free Trade Agreement (“**NAFTA**”) generally and Art. 104, specifically;
- c. General Agreement on Tariffs and Trade (“**GATT**”), General Agreement on Tariffs and Trade, Oct. 30, 1947, 55 U.N.T.S. 194, as amended in Final Act Embodying the Results of the Uruguay Round Of Multilateral Trade Negotiations, Apr. 15, 1994; and
- d. the Commerce Clause, U.S. CONST. Art. I, § 8, cl. 3.

202. Congress has expressed its intent to occupy the entire field of transboundary movement of waste between countries and has left no room for the State to supplement federal law.

203. Based on the enactment of the Package, there exists an outright or actual conflict between federal and State law.

204. Compliance with the Federal Agreements and the State’s Package is effectively impossible.

205. An explicit and implicit barrier to state regulation exists in federal law with respect to the transboundary movement of solid waste between countries.

206. The NREPA, including the Package, violates the Supremacy Clause of the U.S. Constitution because it conflicts with federal law as established in the Federal Agreements.

207. The Package stands as an obstacle to the accomplishment and execution of the full objectives of the U.S. Congress as set forth in the Federal Agreements.

208. Where there is a conflict between competing rights under the State and Federal constitutions, the Supremacy Clause requires that the federal right prevails.

209. The Package is, therefore, barred by the Supremacy Clause and is unenforceable.

### **COUNT VIII**

#### **STATE LAW CLAIM—VIOLATION OF SEPARATION OF POWERS**

210. NSWMA incorporates by reference, as though set forth in full herein, the allegations contained in paragraphs 1 through 209.

211. The Michigan Constitution of 1963 embodies the principle of separation of powers. In particular, Const 1963, art. 3, § 2 provides: "The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution."

212. The Michigan Constitution of 1963 vests the legislative power in "a senate and house of representatives" (art 4, § 1). Specifying in the bill clause that "[a]ll legislation shall be by bill" (art 4, § 22), the Constitution further provides in the enactment clause that "[n]o bill shall become a law without the concurrence of a majority of the members elected to and serving in each house" (art 4, § 26), and in the presentment clause that "[e]very bill passed by the legislature shall be presented to the governor before it becomes law" (art 4, § 33).

213. The separation-of-powers principle embodied in the Michigan Constitution of 1963 forbids the legislative branch from retaining the right to approve or disapprove actions by state agencies without legislative action that meets the requirements of the bill clause (art 4, § 22), the enactment clause (art 4, § 26), and the presentment clause (art 4, § 33).

214. When the Legislature vests an administrative agency such as the MDEQ with the power to regulate conduct, it must provide for adequate standards and guidelines to protect the public from the exercise of uncontrolled, arbitrary power.

215. S.B. 57 (MCL 324.11514c (2) and (3)) requires Chester to submit a copy of any proposed order restricting or prohibiting the transportation or disposal of solid waste in the State to the members of the standing committees of the senate and house of representatives that consider legislation pertaining to public health or the environment.

216. S.B. 57 (MCL 324.11514c (2) and (3)) requires Chester to consider any comments received on the proposed order from the members of the standing committees of the senate and house of representatives that consider legislation pertaining to public health or the environment *before* he issues the final orders .

217. The submission-and-approval procedure in MCL 324.11414c (2) and (3), violates the separation-of-powers principle of the Michigan Constitution of 1963 because the procedure either (1) provides for the exercise of non-legislative powers by members of the legislative branch in violation of Const 1963, art 3, § 2 or (2) provides for the exercise of legislative power by the Defendants in violation of the bill clause (of Const 1963, art 4, § 22), the enactment clause (of Const 1963, art 4, § 26), and the presentment clause (of Const 1963, art 4, § 33).

218. Further, S.B. 57 fails to provide adequate standards and guidelines to protect the Facility Owners from the exercise of uncontrolled, arbitrary power.

219. Because S.B. 57 (MCL 324.11414c (2) and (3)), violates the separation-of-powers principle embodied in the Michigan Constitution and fails to provide adequate standards and guidelines to protect the Facility Owners from the exercise of uncontrolled,

arbitrary power, it is not a valid source of authority for the Package and S.B. 57 is, therefore, invalid and unenforceable.

## **VI. RELIEF REQUESTED**

WHEREFORE, NSWMA requests this Court to grant judgment in its members favor and enter an order for:

### **Injunctive Relief**

1. Finding and concluding that:

- a. NSWMA is likely to prevail on the merits of each of the counts set forth in this Complaint;
- b. NSWMA will suffer immediate and irreparable harm unless injunctive relief is granted, such damage consisting, among other things, of violations of NSWMA members' constitutional rights to substantive and procedural due process and constitutional rights under the dormant Commerce Clause, the Foreign Commerce Clause, the Foreign Affairs Powers, the Contracts Clause, the Supremacy Clause of the U. S. Const., art. VI, § 2, and the Separation of Powers Clause of the Michigan Const.;
- c. No harm will come to the public interest if injunctive relief is issued. In fact, the public interest weighs in favor of protecting NSWMA's constitutional rights; and
- d. No harm will come to Defendants if injunctive relief is issued pending an expedited judicial hearing on the allegations in this Complaint. In fact, the potential harm to NSWMA if relief is denied outweighs the harm to Defendants if relief is granted;

2. Enjoining Defendants, their officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them and who receive actual notice of this order by personal service or otherwise, pending final resolution of this action from:

- a. implementing or enforcing, directly or indirectly, the Package; and
- b. obstructing, impeding, or otherwise prohibiting the NSWMA and its members, or others similarly situated, from continuing to accept solid waste from Sister States and/or Municipalities that do not have solid waste management plans comparable to that of the State;

**Scheduling**

1. Pursuant to Local Rules 65.1 and 7.1(a), setting an expedited schedule for motions and briefing on the injunctive and declaratory relief requested herein;
2. Advancing and consolidating the trial of this action on the merits with the hearing on NSWMA's Motion for Declaratory Relief and Preliminary Injunction;

**Declaratory Relief Pursuant to 28 U.S.C. § 2201**

1. Declaring that the NREPA, including the Package, violates the dormant Commerce Clause, and is, accordingly, unconstitutional;
2. Declaring that the NREPA, including the Package, violates the Foreign Commerce Clause and, is, accordingly, unconstitutional;
3. Declaring that the NREPA, including the Package, violates the foreign affairs power of the United States Constitution, and, is, accordingly, unconstitutional;
4. Declaring that the NREPA, including the Package, violates NSWMA's procedural and substantive due process rights, and, is, accordingly, unconstitutional;
5. Declaring that the Package, violates the Supremacy Clause of the U. S. Const., art. VI, § 2;
6. Declaring the Package void for vagueness;
7. Declaring that the Package, violates the Contracts Clause of the U. S. Const., Art. I, § 10 and the Contracts Clause of the Michigan Const., Art I, § 10.

8. Declaring that S.B. 57 violates the separation of powers clause of the Michigan Constitution, Const 1963, art. 3, § 2 e, and is, accordingly, unconstitutional and unenforceable; and

9. Permanently enjoining and prohibiting the Defendants, their Agents and any person or entity with actual notice of the Court's order from enforcing, either directly or indirectly, the NREPA, insofar as it pertains to the Package; and

**Attorney Fees**

1. Granting NSWMA reasonable attorney fees and costs, including, but not limited to those available pursuant to 42 USC § 1988; and

2. Granting any other relief the Court deems necessary and just.

Respectfully submitted,

Howard & Howard Attorneys

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Complaint.DOC