Chemical Waste Management v. Hunt (91-471), 504 U.S. 334 (1992).

Syllabus	Dissent [Rehnquist]	Opinion [White]
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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CHEMICAL WASTE MANAGEMENT, INC. *v.* HUNT, GOVERNOR OF ALABAMA, et al.

certiorari to the supreme court of alabama

No. 91-471. Argued April 21, 1991 -- Decided June 1, 1992

Petitioner Chemical Waste Management, Inc., operates a commercial hazardous waste land disposal facility in Emelle, Alabama, that receives both in state and out of state wastes. An Alabama Act imposes, *inter alia,* a fee on hazardous wastes disposed of at in state commercial facilities, and an additional fee on hazardous wastes generated outside, but disposed of inside, the State. Petitioner filed suit in state court, requesting declaratory relief against respondent state officials and seeking to enjoin the Act's enforcement. The Trial Court declared, among other things, that the additional fee violated the Commerce Clause, finding that the only basis for the fee is the waste's origin. The State Supreme Court reversed, holding that the fee advanced legitimate local purposes that could not be adequately served by reasonable nondiscriminatory alternatives.

Held:

1. Alabama's differential treatment of out of state waste violates the Commerce Clause. Pp. 4-13.

(a) No State may attempt to isolate itself from a problem common to the several States by raising barriers to the free flow of interstate commerce. *Philadelphia* v. *New Jersey,* 437 U.S. 617; *Fort*

Gratiot Sanitary Landfill, Inc. v. *Michigan Dept. of Natural Resources, post,* p. ___. The State Act's additional fee facially discriminates against hazardous waste generated outside Alabama, and the Act has plainly discouraged the full operation of petitioner's facility. Such a burdensome tax imposed on interstate commerce alone is generally forbidden and is typically struck down without further inquiry. However, here the State argues that the additional fee serves legitimate local purposes. Pp. 4-7.

(b) Alabama has not met its burden of showing the unavailabilityof nondiscriminatory alternatives adequate to preserve the local interests at stake. See *Hunt* v. *Washington Apple Advertising Comm'n,* 432 U.S. 333, 353. Alabama's concern about the volume of waste entering the Emelle facility could be alleviated by less discriminatory means--such as applying an additional fee on all hazardous waste disposed of within Alabama, a per mile tax on all vehicles transporting such waste across state roads, or an evenhanded cap on the total tonnage landfilled at Emelle--which would curtail volume from all sources. Additionally, any concern touching on environmental conservation and Alabama citizens' health and safety does not vary with the waste's point of origin, and the State has the power to monitor and regulate more closely the transportation and disposal of all hazardous waste within its borders. Even possible future financial and environmental risks to be borne by Alabama do not vary with the waste's State of origin in a way allowing foreign, but not local, waste to be burdened. Pp. 7-11.

(c) This Court's decisions regarding quarantine laws do not counsel a different conclusion. The additional fee may not legitimately be deemed a quarantine law because Alabama permits both the generation and landfilling of hazardous waste within its borders and the importation of additional hazardous waste. Moreover, the quarantine laws upheld by this Court "did not discriminate against interstate commerce as such, but simply prevented traffic in noxious articles, whatever their origin." *Philadelphia* v. *New Jersey, supra,* at 629. This Court's decision in *Maine* v. *Taylor,* 477 U.S. 131--upholding a state ban on the importation of baitfish after Maine showed that such fish were subject to parasites foreign to in state baitfish and that there were no less discriminatory means of protecting its natural resources--likewise offers no respite to Alabama, since here the hazardous waste is the same regardless of its point of origin and adequate means other than overt discrimination meet Alabama's concerns. Pp. 11-13.

2. On remand the Alabama Supreme Court must consider the appropriate relief to petitioner. See, *e. g., McKesson Corp.* v. *Florida Division of Alcoholic Beverages & Tobacco,* 496 U.S. 18, 31. P. 13.

584 So. 2d 1367, reversed and remanded.

White, J., delivered the opinion of the Court, in which Blackmun, Stevens, O'Connor, Scalia, Kennedy, Souter, and Thomas, JJ., joined. Rehnquist, C. J., filed a dissenting opinion.