

## Rachel's Environment & Health News

### #66 - Lawsuit Charges Nation's Largest Waste Firms Conspire Nationwide To Fix Prices And Rig Contr

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The nation's two largest waste haulers, BFI and Waste Management, Inc., have been sued in federal court by a group of businesses charging the haulers with conspiring nationwide to fix prices and rig bids on waste hauling contracts. The suit was filed last October but was revealed only recently by BFI (Browning-Ferris Industries) in papers filed with the federal Securities and Exchange Commission.

This lawsuit represents the first time the two firms have been accused of conspiring on a nationwide basis to violate antitrust laws, according to Bill Richards, writing in the WALL STREET JOURNAL Feb. 17, 1988. In earlier antitrust cases involving the companies, both have insisted that senior management wasn't aware of any wrongdoing. The two haulers each operate in 40 states and abroad.

Last October both firms pleaded guilty and paid \$1 million fines to federal charges that they conspired to fix prices and allocate customers in the Toledo, OH, area. Allocating customers means to divvy up customers, agreeing not to compete against each other for a customer's contract. In 1984 both firms were convicted of price fixing by a federal court in Atlanta, GA. Both companies are currently under investigation for price fixing by five grand juries in various states.

The most recent suit was brought by six businesses, the largest being Cumberland Farms, which operates a chain of convenience stores; Cumberland is no mom and pop outfit--they operate stores in 21 states and they own Gulf Oil, among other things. Other plaintiffs include Kirschner Brothers Oil in Haverford, NJ; Perry Corp. of New Jersey; Animal Hospital of Chester County, PA; Uncle Donald's, Inc. of Memphis, TN; Overton Pub, Inc., of Memphis; and George Gusses, a Toledo, OH, businessman.

The lawsuit charges that since 1978 the two waste-hauling giants--one of whom (BFI) has been linked to organized crime by a New York legislative investigation (see HWN #40)--have conspired together to allocate customers, rig bids, and fix prices.

The attorney for Cumberland is Dianne M. Nast in Philadelphia; phone (215) 2381700.

--Peter Montague

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**THE NEW URBAN GARBAGE SOLUTION: DUMP IT IN POORER, RURAL AREAS THAT FAIL TO PROTECT THEMSELVES**

Garbage used to be a strictly local problem. No more. New Jersey is now hauling garbage to landfills as far away as Kentucky--at least 550 miles from central Jersey. It's part of a plan by New Jersey Governor Tom Kean to solve his state's garbage crisis by sharing the wealth with distant neighbors. It's also clearly part of a national pattern-- wealthy, urban areas are exporting their garbage (and their hazardous waste) to poorer, rural areas. Los Angeles is dumping in Arizona. New York is dumping in Vermont. But the most aggressive exporter of garbage is NJ.

States like Pennsylvania, Ohio, West Virginia, and Kentucky are now trying to pass laws to keep out New Jersey's trash. Maine, New Hampshire, Vermont, Delaware, Maryland, Indiana, Virginia and even North Carolina must take similar steps, unless they want to become garbage dumps for New Jersey. But it's a tricky business, legally, because of the "commerce clause" of the Constitution which says states cannot restrict interstate commerce.

It all started in 1978 when the U.S. Supreme Court ruled that New Jersey could not ban importation of trash from Philadelphia. The decision was based on the commerce clause. This meant New Jersey could not simply refuse to take trash from another state.

When Governor Kean came to power in NJ, he faced a choice: either solve the state's garbage crisis by innovative means (recycling, composting, and other fundamental, sensible measures), which might require the electorate to modify their lifestyles slightly (curbside separation of waste, for example)--or figure out how to ship the stuff out of state. Mr. Kean chose to ship garbage out of state and to begin to build mass burn incinerators in low-income neighborhoods in every county (thus minimizing opposition while pleasing the banks and the construction trades). It's a very expensive, polluting solution but it will make the problem go away until he's out of office and that's all he really needs. He can now declare on national TV that he "solved" the NJ solid waste crisis, and he hopes this will sweep him into the vicepresidency with Mr. Bush-Dole. Mr. Kean is desperately trying to project an image as "Mr. Environment" despite his nickname among environmentalists in New Jersey, which is "Toxic Tommy." Environmental enforcement in New Jersey has all but disappeared under Mr. Kean's brand of leadership.

New Jersey's neighbors have finally caught on to the Kean strategy and have begun to try to protect themselves:

Ohio has two bills pending now; one would prohibit a landfill from accepting waste from a "service area" beyond a radius of 100 miles. The second measure would require landfills to charge \$3 per ton on wastes that originate beyond the 100-mile service area.

In August, 1987, Kentucky's governor signed "emergency regulations" forcing landfills to meet strict daily trash limits and allowing counties to impose "reasonable fees" on haulers who bring garbage from out of state.

West Virginia is requiring all landfills to apply for new permits and the new permits will impose monthly limits on the amount of waste a landfill can accept.

For its part, New Jersey has learned to protect itself from Philadelphia (and from New York City) trash by a state-wide planning process. Every NJ county must draw up a solid waste management plan, and each is free to exclude wastes from other counties. Because it is a "reasonable" exercise of the state's planning powers, and because it is not a blanket ban on importation of out-of-state trash, it does not conflict with the commerce clause. It is a New Jersey-invented solution to the out-ofstate trash problem.

Pennsylvania, currently the biggest receptacle for NJ garbage, is considering passage of such a statewide planning law. New Jersey desperately hopes they can't succeed before 1992 when New Jersey's "mass burn" solution is supposed to be in place. Without poorer, rural neighbors to take its garbage, New Jersey would have to face up to the realities of a modern lifestyle that is not sustainable because it is destroying the earth.

--Peter Montague

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