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East Palestine, Ohio, Train Derailment Site/U.S. Environmental Protection Agency Alert: Addressing Potential State Interference with Acceptance of Hazardous Waste Material

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The United States Environmental Protection Agency (“EPA”) issued a March 17th document to State Environmental Commissioners, Directors, and Secretaries titled:

Alert Regarding Disposal of Hazardous Waste Material from East Palestine, Ohio, Train Derailment Site (“Alert”)

The *Alert* is transmitted from Barry N. Breen, EPA Acting Assistant Administrator for the Office of Land and Emergency Management.

EPA is stated to have received information that some states could be seeking to block acceptance of out-of-state hazardous waste material from the East Palestine, Ohio, Train Derailment Site (“Site”). If so, the *Alert* states:

. . . this likely would be impermissible, as states cannot ban interstate transport of waste in these circumstances . . . states cannot unilaterally stop shipments of out-of-state hazardous waste material from the Site.

Cited in support of this statement:

- Supremacy Clause of the U.S. Constitution (i.e., state actions are preempted when they are an obstacle to executing Congress’s purpose and objectives)
- Blocking the interstate movement of the waste may contravene the objectives of the Resource Conservation and Recovery Act
- Interference with the movement of hazardous waste material into or through another state may violate the Commerce Clause:
- Limiting the power of states of discriminate against interstate commerce, including by curtailing the movement of articles in commerce such as the interstate movement of hazardous waste
- Citing *Fort Gratiot Landfill v. Michigan Department of Natural Resources* and *City of Philadelphia v. New Jersey*

The *Alert* also cites that states will be notified of shipment plans and the material will be subject to required testing and analysis. In addition, the federal agency states that public safety depends upon the availability of safe hazardous waste disposal capacity.

A copy of the *Alert* can be downloaded [here](#).