SUPREME COURT OF THE UNITED STATES

Nos. 93–70 AND 93–108

OREGON WASTE SYSTEMS, INC., ET AL., PETITIONERS
93–70 *v.*
DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON ET AL.

COLUMBIA RESOURCE COMPANY, PETITIONER
93–108 *v.*
ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OREGON

[April 4, 1994]

JUSTICE THOMAS delivered the opinion of the Court.

Two Terms ago, in *Chemical Waste Management, Inc.* v. *Hunt*, 504 U. S. ___ (1992), we held that the negative Commerce Clause prohibited Alabama from imposing a higher fee on the disposal in Alabama landfills of hazardous waste from other States than on the disposal of identical waste from Alabama. In reaching that conclusion, however, we left open the possibility that such a differential surcharge might be valid if based on the costs of disposing of waste from other States. *Id.*, at ___, n. 9 (slip op., at 10, n. 9). Today, we must decide whether Oregon's purportedly cost-based surcharge on the in-state disposal of solid waste generated in other States violates the Commerce Clause.

Like other States, Oregon comprehensively regulates the disposal of solid wastes within its borders.[1] Respondent Oregon Department of Environmental Quality oversees the State's regulatory scheme by developing and executing plans for the management, reduction, and recycling of solid wastes. To fund these and related activities, Oregon levies a wide range of fees on landfill operators. See, *e. g.*, Ore. Rev. Stat. §§459.235(3), 459.310 (1991). In 1989, the Oregon Legislature imposed an additional fee, called a "surcharge," on "every person who disposes of solid waste generated out-of-state in a disposal site or regional disposal site." §459.297(1) (effective Jan. 1, 1991). The amount of that surcharge was left to respondent Environmental Quality Commission (Commission) to determine through rulemaking, but the legislature did require that the resulting surcharge "be based on the costs to the State of Oregon and its political subdivisions of disposing of solid waste generated out-of-state which are not otherwise paid for" under specified statutes. §459.298. At the conclusion of the rulemaking process, the Commission set the surcharge on out-of-state waste at $2.25 per ton. Ore. Admin. Rule 340–

[1]Oregon defines "solid wastes" as "all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semisolid wastes, dead animals, infectious waste . . . and other wastes." Ore. Rev. Stat. §459.005(27) (1991). Hazardous wastes are not considered solid wastes. §459.005(27)(a).

97–120(7) (Sept. 1993).

In conjunction with the out-of-state surcharge, the legislature imposed a fee on the in-state disposal of waste generated within Oregon. See Ore. Rev. Stat. §§459A.110(1), (5) (1991). The in-state fee, capped by statute at $0.85 per ton (originally $0.50 per ton), is considerably lower than the fee imposed on waste from other States. §§459A.110(5) and 459A.115. Subsequently, the legislature conditionally extended the $0.85 per ton fee to out-of-state waste, in addition to the $2.25 per ton surcharge, §459A.110(6), with the proviso that if the surcharge survived judicial challenge, the $0.85 per ton fee would again be limited to in-state waste. 1991 Ore. Laws, ch. 385, §§91–92.[2]

The anticipated court challenge was not long in coming. Petitioners, Oregon Waste Systems, Inc. (Oregon Waste) and Columbia Resource Company (CRC), joined by Gilliam County, Oregon, sought expedited review of the out-of-state surcharge in the Oregon Court of Appeals. Oregon Waste owns and operates a solid waste landfill in Gilliam County, at which it accepts for final disposal solid waste generated in Oregon and in other States. CRC, pursuant to a 20-year contract with Clark County, in neighboring Washington State, transports solid waste via barge from Clark County to a landfill in Morrow County, Oregon. Petitioners challenged the administrative rule establishing the out-of-state

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[2]As a result, shippers of out-of-state solid waste currently are being charged $3.10 per ton to dispose of such waste in Oregon landfills, as compared to the $0.85 per ton fee charged to dispose of Oregon waste in those same landfills. We refer hereinafter only to the $2.25 surcharge, because the $0.85 per ton fee, which will be refunded to shippers of out-of-state waste if the surcharge is upheld, 1991 Ore. Laws, ch. 385, §92, is not challenged here.

surcharge and its enabling statutes under both state law and the Commerce Clause of the United States Constitution. The Oregon Court of Appeals upheld the statutes and rule. *Gilliam County* v. *Department of Environmental Quality*, 114 Ore. App. 369, 837 P. 2d 965 (1992).

The State Supreme Court affirmed. *Gilliam County* v. *Department of Environmental Quality of Oregon*, 316 Ore. 99, 849 P. 2d 500 (1993). As to the Commerce Clause, the court recognized that the Oregon surcharge resembled the Alabama fee invalidated in *Chemical Waste Management, Inc.* v. *Hunt*, 504 U. S. ___ (1992), in that both prescribed higher fees for the disposal of waste from other States. Nevertheless, the court viewed the similarity as superficial only. Despite the explicit reference in §459.297(1) to out-of-state waste's geographic origin, the court reasoned, the Oregon surcharge is not facially discriminatory "[b]ecause of [its] express nexus to actual costs incurred [by state and local government]." 316 Ore., at 112, 849 P. 2d, at 508. That nexus distinguished *Chemical Waste*, *supra*, by rendering the surcharge a "compensatory fee," which the court viewed as "*prima facie* reasonable," that is to say, facially constitutional. *Ibid.* The court read our case law as invalidating compensatory fees only if they are "`manifestly disproportionate to the services rendered.'" *Ibid.* (quoting *Clark* v. *Paul Gray, Inc.*, 306 U. S. 583, 599 (1939)). Because Oregon law restricts the scope of judicial review in expedited proceedings to deciding the facial legality of administrative rules and the statutes underlying them, Ore. Rev. Stat. §183.400 (1991), the Oregon court deemed itself precluded from deciding the factual question whether the surcharge on out-of-state waste was disproportionate. 316 Ore., at 112, 849 P. 2d, at 508.

We granted certiorari, 509 U. S. ___ (1993), because the decision below conflicted with a recent decision of the United States Court of Appeals for the Seventh

Circuit.[3] We now reverse.

The Commerce Clause provides that "[t]he Congress shall have Power . . . [t]o regulate Commerce . . . among the several States." Art. I, §8, cl. 3. Though phrased as a grant of regulatory power to Congress, the Clause has long been understood to have a "negative" aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce. See, *e. g.*, *Wyoming* v. *Oklahoma*, 502 U. S. ___, ___ (1992) (slip op., at 15); *Welton* v. *Missouri*, 91 U. S. 275 (1876). The Framers granted Congress plenary authority over interstate commerce in "the conviction that in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation." *Hughes* v. *Oklahoma*, 441 U. S. 322, 325–326 (1979). See generally The Federalist No. 42 (J. Madison). "This principle that our economic unit is the Nation, which alone has the gamut of powers necessary to control of the economy, . . . has as its corollary that the states are not separable economic units." *H. P. Hood & Sons, Inc.* v. *Du Mond*, 336 U. S. 525, 537–538 (1949).

Consistent with these principles, we have held that the first step in analyzing any law subject to judicial scrutiny under the negative Commerce Clause is to determine whether it "regulates evenhandedly with only `incidental' effects on interstate commerce, or discriminates against interstate commerce." *Hughes*, *supra*, at 336. See also *Chemical Waste*, 504 U. S., at ___ (slip op., at 5). As we use the term here, "dis-

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[3]*Government Suppliers Consolidating Servs., Inc.* v. *Bayh*, 975 F. 2d 1267 (1992), cert. denied, 506 U. S. ___ (1993).

crimination" simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter. If a restriction on commerce is discriminatory, it is virtually *per se* invalid. 504 U. S., at ___, n. 6 (slip op., at 9, n. 6). See also *Philadelphia* v. *New Jersey*, 437 U. S. 617, 624 (1978). By contrast, nondiscriminatory regulations that have only incidental effects on interstate commerce are valid unless "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Pike* v. *Bruce Church, Inc.*, 397 U. S. 137, 142 (1970).

In *Chemical Waste*, we easily found Alabama's surcharge on hazardous waste from other States to be facially discriminatory because it imposed a higher fee on the disposal of out-of-state waste than on the disposal of identical in-state waste. 504 U. S., at ___ (slip op., at 6). We deem it equally obvious here that Oregon's $2.25 per ton surcharge is discriminatory on its face. The surcharge subjects waste from other States to a fee almost three times greater than the $0.85 per ton charge imposed on solid in-state waste. The statutory determinant for which fee applies to any particular shipment of solid waste to an Oregon landfill is whether or not the waste was "generated out-of-state." Ore. Rev. Stat. §459.297(1) (1991). It is well-established, however, that a law is discriminatory if it "`tax[es] a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State.'" *Chemical Waste*, *supra*, at ___ (slip op., at 6) (quoting *Armco Inc.* v. *Hardesty*, 467 U. S. 638, 642 (1984)). See also *American Trucking Assns., Inc.* v. *Scheiner*, 483 U. S. 266, 286 (1987).[4]

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[4]The dissent argues that the $2.25 per ton surcharge is so minimal in amount that it cannot be considered discriminatory, even though the surcharge expressly applies only to waste generated in other States. *Post*,

Respondents argue, and the Oregon Supreme Court held, that the statutory nexus between the surcharge and "the [otherwise uncompensated] costs to the State of Oregon and its political subdivisions of disposing of solid waste generated out-of-state," Ore. Rev. Stat. §459.298 (1991), necessarily precludes a finding that the surcharge is discriminatory. We find respondents' narrow focus on Oregon's compensatory aim to be foreclosed by our precedents. As we reiterated in *Chemical Waste*, the purpose of, or justification for, a law has no bearing on whether it is facially discriminatory. See 504 U. S., at ___ (slip op., at 5–6). See also *Philadelphia*, *supra*, at 626. Consequently, even if the surcharge merely recoups the costs of disposing of out-of-state waste in Oregon, the fact remains that the differential charge favors shippers of Oregon waste over their counterparts handling waste generated in other States. In making that geographic distinction, the surcharge patently discriminates against interstate commerce.

Because the Oregon surcharge is discriminatory, the virtually *per se* rule of invalidity provides the proper legal standard here, not the *Pike* balancing

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at 9. The dissent does not attempt to reconcile that novel understanding of discrimination with our precedents, which clearly establish that the degree of a differential burden or charge on interstate commerce "measures only the *extent* of the discrimination" and "is of no relevance to the determination whether a State has discriminated against interstate commerce." *Wyoming* v. *Oklahoma*, 502 U. S. ___, ___ (1992) (slip op., at 17). See also, *e. g.*, *Maryland* v. *Louisiana*, 451 U. S. 725, 760 (1981) ("We need not know how unequal [a] [t]ax is before concluding that it . . . discriminates").

test. As a result, the surcharge must be invalidated unless respondents can "sho[w] that it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *New Energy Co. of Indiana* v. *Limbach*, 486 U. S. 269, 278 (1988). See also *Chemical Waste*, *supra*, at ___ (slip op., at 7–9). Our cases require that justifications for discriminatory restrictions on commerce pass the "strictest scrutiny." *Hughes*, *supra*, at 337. The State's burden of justification is so heavy that "facial discrimination by itself may be a fatal defect." *Ibid.* See also *Westinghouse Elec. Corp.* v. *Tully*, 466 U. S. 388, 406–407 (1984); *Maryland* v. *Louisiana*, 451 U. S. 725, 759–760 (1981).

At the outset, we note two justifications that respondents have *not* presented. No claim has been made that the disposal of waste from other States imposes higher costs on Oregon and its political subdivisions than the disposal of in-state waste.[5] Also, respondents have not offered any safety or health reason unique to nonhazardous waste from other States for discouraging the flow of such waste into

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[5]In fact, the Commission fixed the $2.25 per ton cost of disposing of solid waste in Oregon landfills without reference to the origin of the waste, 3 Record 665–690, and Oregon's economic consultant recognized that the per ton costs are the same for both in-state and out-of-state waste. *Id.*, at 731–732, 744. Of course, if out-of-state waste did impose higher costs on Oregon than in-state waste, Oregon could recover the increased cost through a differential charge on out-of-state waste, for then there would be a "reason, apart from its origin, why solid waste coming from outside the [State] should be treated differently." *Fort Gratiot Landfill, Inc.* v. *Michigan Dept. of Natural Resources*, 504 U. S. ___ (1992) (slip op., at 7). Cf. *Mullaney* v. *Anderson*, 342 U. S. 415, 417 (1952); *Toomer* v. *Witsell*, 334 U. S. 385, 399 (1948).

Oregon. Cf. *Maine* v. *Taylor*, 477 U. S. 131 (1986) (upholding ban on importation of out-of-state baitfish into Maine because such baitfish were subject to parasites completely foreign to Maine baitfish). Consequently, respondents must come forward with other legitimate reasons to subject waste from other States to a higher charge than is levied against waste from Oregon.

Respondents offer two such reasons, each of which we address below.

Respondents' principal defense of the higher surcharge on out-of-state waste is that it is a "compensatory tax" necessary to make shippers of such waste pay their "fair share" of the costs imposed on Oregon by the disposal of their waste in the State. In *Chemical Waste* we noted the possibility that such an argument might justify a discriminatory surcharge or tax on out-of-state waste. See 504 U. S., at ___, n. 9 (slip op., at 10, n. 9). In making that observation, we implicitly recognized the settled principle that interstate commerce may be made to "`pay its way.'" *Complete Auto Transit, Inc.* v. *Brady*, 430 U. S. 274, 281 (1977). See also *Maryland*, *supra*, at 754. "It was not the purpose of the commerce clause to relieve those engaged in interstate commerce from their just share of state tax burden[s]." *Western Live Stock* v. *Bureau of Revenue*, 303 U. S. 250, 254 (1938). See also *Henneford* v. *Silas Mason Co.*, 300 U. S. 577 (1937). Nevertheless, one of the central purposes of the Clause was to prevent States from "exacting *more* than a just share" from interstate commerce. *Dept. of Revenue of Washington* v. *Association of Washington Stevedoring Cos.*, 435 U. S. 734, 748 (1978) (emphasis added). See also *Northwestern States Portland Cement Co.* v. *Minnesota*, 358 U. S. 450, 462 (1959).

At least since our decision in *Hinson* v. *Lott*, 8 Wall. 148 (1868), these principles have found expression in the "compensatory" or "complementary" tax doctrine. Though our cases sometimes discuss the concept of the compensatory tax as if it were a doctrine unto itself, it is merely a specific way of justifying a facially discriminatory tax as achieving a legitimate local purpose that cannot be achieved through nondiscriminatory means. See *Chemical Waste*, *supra*, at ___, n. 9 (slip op., at 10, n. 9) (referring to the compensatory tax doctrine as a "justif[ication]" for a facially discriminatory tax). Under that doctrine, a facially discriminatory tax that imposes on interstate commerce the rough equivalent of an identifiable and "substantially similar" tax on intrastate commerce does not offend the negative Commerce Clause. *Maryland*, *supra*, at 758–759. See also *Tyler Pipe Indus., Inc.* v. *Washington State Department of Revenue*, 483 U. S. 232, 242–243 (1987); *Armco*, 467 U. S., at 643.

To justify a charge on interstate commerce as a compensatory tax, a State must, as a threshold matter, "identif[y] . . . the [intrastate tax] burden for which the State is attempting to compensate." *Maryland*, *supra*, at 758. Once that burden has been identified, the tax on interstate commerce must be shown roughly to approximate—but not exceed—the amount of the tax on intrastate commerce. See, *e. g.*, *Alaska* v. *Arctic Maid*, 366 U. S. 199, 204–205 (1961). Finally, the events on which the interstate and intrastate taxes are imposed must be "substantially equivalent"; that is, they must be sufficiently similar in substance to serve as mutually exclusive "prox[ies]" for each other. *Armco*, *supra*, at 643. As Justice Cardozo explained for the Court in *Henneford*, under a truly compensatory tax scheme "the stranger from afar is subject to no greater burdens as a consequence of ownership than the dweller within the gates. The one pays upon one activity or

incident, and the other upon another, but the sum is the same when the reckoning is closed." 300 U. S., at 584.[6]

Although it is often no mean feat to determine whether a challenged tax is a compensatory tax, we have little difficulty concluding that the Oregon surcharge is not such a tax. Oregon does not impose a specific charge of at least $2.25 per ton on shippers of waste generated in Oregon, for which the out-of-state surcharge might be considered compensatory. In fact, the only analogous charge on the disposal of Oregon waste is $0.85 per ton, approximately one-third of the amount imposed on waste from other

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[6]The Oregon Supreme Court, though terming the out-of-state surcharge a "compensatory fee," relied for its legal standard on our "user fee" cases. See 316 Ore. 99, 112, 849 P. 2d 500, 508 (1993) (citing, for example, *Evansville-Vanderburgh Airport Authority Dist.* v. *Delta Airlines, Inc.*, 405 U. S. 707 (1972), and *Clark* v. *Paul Gray, Inc.*, 306 U. S. 583 (1939)). The compensatory tax cases cited in the text, rather than the user fee cases, are controlling here, as the latter apply only to "charge[s] imposed by the State for the use of state-owned or state-provided transportation or other facilities and services." *Commonwealth Edison Co.* v. *Montana*, 453 U. S. 609, 621 (1981). Because it is undisputed that, as in *Chemical Waste*, the landfills in question are owned by private entities, including Oregon Waste, the out-of-state surcharge is plainly not a user fee. Nevertheless, even if the surcharge could somehow be viewed as a user fee, it could not be sustained as such, given that it discriminates against interstate commerce. See *Evansville*, *supra*, at 717; *Guy* v. *Baltimore*, 100 U. S. 434 (1880). Cf. *Northwest Airlines, Inc.* v. *County of Kent*, 510 U. S. ___, ___ (1994) (slip op., at 12) (A user fee is valid only to the extent it "does not discriminate against interstate commerce").

States. See Ore. Rev. Stat. §§459A.110(5), 459A.115 (1991). Respondents' failure to identify a specific charge on intrastate commerce equal to or exceeding the surcharge is fatal to their claim. See *Maryland*, 451 U. S., at 758.

Respondents argue that, despite the absence of a specific $2.25 per ton charge on in-state waste, intrastate commerce does pay its share of the costs underlying the surcharge through general taxation.[7] Whether or not that is true is difficult to determine, as "[general] tax payments are received for the general purposes of the [government], and are, upon proper receipt, lost in the general revenues." *Flast* v. *Cohen*, 392 U. S. 83, 128 (1968) (Harlan, J., dissenting). Even assuming, however, that various other means of general taxation, such as income taxes, could serve as an identifiable intrastate burden roughly equivalent to the out-of-state surcharge, respondents' compensatory tax argument fails because the in-state and out-of-state levies are not imposed on substantially equivalent events.

The prototypical example of substantially equivalent taxable events is the sale and use of articles of trade. See *Henneford*, *supra*. In fact, use taxes on products purchased out of state are the only taxes we have upheld in recent memory under the compensatory tax doctrine. See *ibid.* Typifying our recent reluctance to recognize new categories of compensatory taxes is *Armco*, where we held that manufacturing and wholesaling are not substantially equivalent events. 467 U. S., at 643. In our view, earning income and disposing of waste at Oregon landfills are even less equivalent than manufacturing and wholesaling. In-

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[7]We would note that respondents, like the dissent, *post*, at 5, ignore the fact that shippers of waste from other States in all likelihood pay income taxes in other States, a portion of which might well be used to pay for waste reduction activities in those States.

deed, the very fact that in-state shippers of out-of-state waste, such as Oregon Waste, are charged the out-of-state surcharge even though they pay Oregon income taxes refutes respondents' argument that the respective taxable events are substantially equivalent. See *ibid.* We conclude that, far from being substantially equivalent, taxes on earning income and utilizing Oregon landfills are "entirely different kind[s] of tax[es]." *Washington* v. *United States*, 460 U. S. 536, 546, n. 11 (1983). We are no more inclined here than we were in *Scheiner* to "plunge . . . into the morass of weighing comparative tax burdens" by comparing taxes on dissimilar events. 483 U. S., at 289 (internal quotation marks omitted).[8]

Respondents' final argument is that Oregon has an interest in spreading the costs of the in-state disposal of Oregon waste to all Oregonians. That is, because all citizens of Oregon benefit from the proper in-state disposal of waste from Oregon, respondents claim it is only proper for Oregon to require them to bear more of the costs of disposing of such waste in the State through a higher general tax burden. At the

[8]Furthermore, permitting discriminatory taxes on interstate commerce to compensate for charges purportedly included in general forms of intrastate taxation "would allow a state to tax interstate commerce more heavily than in-state commerce anytime the entities involved in interstate commerce happened to use facilities supported by general state tax funds." *Government Suppliers Consolidating Servs., Inc.* v. *Bayh*, 975 F. 2d, at 1284. We decline respondents' invitation to open such an expansive loophole in our carefully confined compensatory tax jurisprudence.

same time, however, Oregon citizens should not be required to bear the costs of disposing of out-of-state waste, respondents claim. The necessary result of that limited cost-shifting is to require shippers of out-of-state waste to bear the full costs of in-state disposal, but to permit shippers of Oregon waste to bear less than the full cost.

We fail to perceive any distinction between respondents' contention and a claim that the State has an interest in reducing the costs of handling in-state waste. Our cases condemn as illegitimate, however, any governmental interest that is not "unrelated to economic protectionism," *Wyoming*, 502 U. S., at ___ (slip op., at 16), and regulating interstate commerce in such a way as to give those who handle domestic articles of commerce a cost advantage over their competitors handling similar items produced elsewhere constitutes such protectionism. See *New Energy*, 486 U. S., at 275.[9] To give controlling effect to respondents' characterization of Oregon's tax scheme as seemingly benign cost-spreading would require us to overlook the fact that the scheme

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[9]We recognize that "[t]he Commerce Clause does not prohibit all state action designed to give its residents an advantage in the marketplace, but only action of that description *in connection with the State's regulation of interstate commerce*." *New Energy Co. of Indiana* v. *Limbach*, 486 U. S. 269, 278 (1988). Cf. *Metropolitan Life Ins. Co.* v. *Ward*, 470 U. S. 869, 877, n. 6 (1985). Here, as in *New Energy*, we confront a patently discriminatory law that is plainly connected to the regulation of interstate commerce. We therefore have no occasion to decide whether Oregon could validly accomplish its limited cost-spreading through the "market participant" doctrine, *Hughes* v. *Alexandria Scrap Corp.*, 426 U. S. 794, 806–810 (1976), or other means unrelated to any regulation of interstate commerce.

necessarily incorporates a protectionist objective as well. Cf. *Bacchus Imports, Ltd.* v. *Dias*, 468 U. S. 263, 273 (1984) (rejecting Hawaii's attempt to justify a discriminatory tax exemption for local liquor producers as conferring a benefit on them, as opposed to burdening out-of-state liquor producers).

Respondents counter that if Oregon is engaged in any form of protectionism, it is "resource protectionism," not economic protectionism. It is true that by discouraging the flow of out-of-state waste into Oregon landfills, the higher surcharge on waste from other States conserves more space in those landfills for waste generated in Oregon. Recharacterizing the surcharge as resource protectionism hardly advances respondents' cause, however. Even assuming that landfill space is a "natural resource," "a State may not accord its own inhabitants a preferred right of access over consumers in other States to natural resources located within its borders." *Philadelphia*, 437 U. S., at 627. As we held more than a century ago, "if the State, under the guise of exerting its police powers, should [impose a burden] . . . applicable solely to articles [of commerce] . . . produced or manufactured in other States, the courts would find no difficulty in holding such legislation to be in conflict with the Constitution of the United States." *Guy* v. *Baltimore*, 100 U. S. 434, 443 (1880).

Our decision in *Sporhase* v. *Nebraska*, 458 U. S. 941 (1982), is not to the contrary. There we held that a State may grant a "limited preference" for its citizens in the utilization of ground water. *Id.*, at 956. That holding was premised on several different factors tied to the simple fact of life that "water, unlike other natural resources, is essential for human survival." *Id.*, at 952. *Sporhase* therefore provides no support for respondents' position that States may erect a financial barrier to the flow of waste from other States into Oregon landfills. See *Fort Gratiot*, 504

U S., at ___, and n. 6 (slip op., at 10–11, and n. 6). However serious the shortage in landfill space may be, *post*, at 1, "[n]o State may attempt to isolate itself from a problem common to the several States by raising barriers to the free flow of interstate trade." *Chemical Waste*, 504 U. S., at ___, and ___, n. 9 (slip op., at 4, and 10, n. 9).

We recognize that the States have broad discretion to configure their systems of taxation as they deem appropriate. See, *e. g.*, *Commonwealth Edison Co.* v. *Montana*, 453 U. S. 609, 622–623 (1981); *Boston Stock Exchange* v. *State Tax Comm'n*, 429 U. S. 318, 336–337 (1977). All we intimate here is that their discretion in this regard, as in all others, is bounded by any relevant limitations of the Federal Constitution, in this case the negative Commerce Clause. Because respondents have offered no legitimate reason to subject waste generated in other States to a discriminatory surcharge approximately three times as high as that imposed on waste generated in Oregon, the surcharge is facially invalid under the negative Commerce Clause. Accordingly, the judgment of the Oregon Supreme Court is reversed, and the cases are remanded for further proceedings not inconsistent with this opinion.

It is so ordered.