

Canadian-American Environmental Relations: A Case
Study of the Ontario-Michigan Municipal Solid Waste
Dispute

by

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Abstract

Canada and the United States are faced with many cross-border environmental issues and therefore must negotiate potential solutions with one another. Complicating such negotiations is the fact that both countries are federal systems which require negotiations and decision-making interactions amongst various levels of government domestically which, in turn, influence and are influenced by bilateral relations. Therefore, this study focuses on governmental relations both within each country (intergovernmental relations) and between the two countries (bilateral/international relations). Using the Ontario-Michigan Municipal Solid Waste dispute (1996-2006) as a case study, this thesis advances an organizational framework for the examination of the role of formal and informal interactions in shaping bilateral environmental policy. Through application of this framework, it is revealed that both formal and informal federal level relations in the U.S. prevented sub-national and local level authorities from effectively developing a solution to the dispute. Future studies which apply the organizational framework used in this thesis to other cross-border environmental issues are needed in order to determine whether such conclusions hold true in the case of all cross border disputes.

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Chapter 1: Introduction

Canada and the United States share a 9000 km-long border that transects a wide variety of ecosystems, river basins and lakes (Canada, 2006). Issues such as acid rain, Great Lakes Basin water management, cross-border waste flows and transboundary endangered species migrations are just a few of the many joint environmental issues facing the neighbouring countries. While cross-border efforts to deal with some of these issues have been fairly cooperative, as in the case of the New England Governors' and Eastern Canadian Premiers' joint efforts to combat acid rain through the Climate Change Action Plan of 2001, some of the actions surrounding cross-border environmental issues have been rather contentious (New England Climate Coalition, 2006). Such contentiousness is particularly apparent in the Ontario-Michigan Municipal Solid Waste (MSW) dispute.¹

The dispute began in 1996, when the City of Toronto began considering Michigan landfills as a potential solution to its impending disposal crisis. Faced with the imminent closure of the Keele Valley Landfill, Toronto's sole disposal site (Franczyk; Oct. 30, 1996), the City was forced to identify additional disposal options for the 519,000 tons of municipal solid waste it was responsible for disposing of each year ("Facts About Toronto's Trash," 2006). Because of legal and political hurdles in developing a disposal option within Ontario, the City of Toronto eventually entered into an arrangement in 2001 with two Michigan based landfill operators, Republic Services, Inc. and Waste Management, Inc., to ship and dispose of 100 percent of the City's waste in the State of Michigan (Globe and Mail Dec. 5, 2001). Several other Ontario municipalities, including the Regions of Peel, York and Durham, eventually followed suit. By 2006, approximately 400 tractor trailers loaded with compacted MSW from Ontario municipalities entered Michigan each day ("Fighting to Stop Canadian Trash," 2006).

¹ Environment Canada defines Municipal Solid Waste as "any material for which the generator has no further use, and which is managed at disposal, recycling, or composting facilities" (Environment Canada 2007). MSW is defined by the U.S. Environmental Protection Agency as "consisting of everyday items such as product packaging, grass clippings, furniture, clothing, bottles, food scraps, newspapers, appliances, paint, and batteries" (United States Environmental Protection Agency, 2007).

These waste shipments created public outcry amongst citizens and environmental groups within Michigan and has led to prolonged efforts by Michigan lawmakers to pass laws which seek to close Michigan's borders to Ontario's waste or make the practice of disposing in Michigan cost prohibitive. Because of Ontario's limited disposal capacity, the Province is dependent on Michigan's landfills in order to dispose of its waste in an economic and environmentally sound manner (Carroll, 2006).

Within this study, the Ontario-Michigan MSW dispute is used as a case study in order to explore how bilateral environmental relations are negotiated within the context of federalism. The MSW dispute provides an enlightening case study because it contains within it the basic elements affecting most joint Canadian-American environmental issues, most notably the concepts of federalism/inter-governmental relations and international relations. This case study is also similar to many other cross-border issues because particular elements of it fall under the pervasive reach of the North American Free Trade Agreement (NAFTA) (Qin, 2006).

The study of environmental relations between the United States and Canada has been slow to develop and there have been few efforts to identify, specifically, how bilateral environmental relations are negotiated within the context of federalism (Dorsey, 1998; Carroll, 1983). Therefore, this study contributes to such work and provides an analysis of the ways in which bilateral relations are negotiated between federal governments in the case of the Ontario-Michigan MSW dispute. In addition to developing a better understanding of bilateral relations between the two countries, by applying this study's framework to the Ontario-Michigan MSW dispute, it is possible to test the extent to which the framework is useful in explaining such cross-border disputes.

Furthermore, the case study, which consists of an examination of the nature of the influence and interactions of various levels of governmental and non-governmental actors on both sides of the border, provides findings that may be generalizable to other cross-border environmental disputes as it contains elements found within other environmental issues such as air pollution and water management (Canada, 2006). Additionally, this study is relatively unique in that it examines the influence of local level actors in

influencing bilateral relations as well as the role that NGOs and private businesses play. Typically, such informal relations² are not accounted for by international relations scholars. These findings contribute to the work of scholars such as Kathryn Harrison (2000), George Hoberg (1997), and Debra VanNijnatten (2003) who have conducted multiple studies of the role of the federal government in environmental issues on the Canadian side of the border. Similarly, this work will also complement the studies of U.S. federalism by Barry Rabe (1999), David John (1994), and Robert Agranoff and Michael McGuire (1998).

Organizational Framework

During the 1980s and 1990s, the prevailing models for policy analysis were based on Putnam's (1988) two-level game theory, which focused on how domestic politics and negotiations affected international negotiation processes and vice versa. However, they failed to account for the impacts of direct cross-border interaction amongst sub-national and local level units. Mid-1990s studies by Kirton and Munton (1996) pointed to the growing prevalence of Canadian provincial and U.S. state cross-border negotiations related to environmental issues. Kirton and Munton (1996) concluded that such interactions are having an increasingly important role in transboundary cooperation (VanNijnatten, 2003), therefore identifying the importance of considering the bilateral actions of non-central governments. In addition, Hoberg (1997) compared and contrasted methods of decision-making within the Canadian and American federal systems, illustrating the importance of considering the particular nuances of each country's government. Such work was later built on by Harrison (2000), who examined the role of federalism in influencing environmental policies within both systems, further arguing that it is necessary to understand how domestic interactions can influence bilateral relationships.

These developments in understanding Canadian-American environmental relations were expanded upon even further by VanNijnatten (2003) who argued that "to

² See Appendix C for definition.

grasp the full complexity of the Canada-U.S. environmental relationship, one must employ a multi-faceted framework for analyzing cross-border interactions” (VanNijnatten, 2003; 94). VanNijnatten explains that such a framework has two main components: (1) an examination of formal negotiation processes, which typically take place at the federal level; and (2) a study of the informal “working relations” between mid-level government officials, experts and non-governmental organizations.

Based on the findings of these scholars, an organizational framework for the examination of the Ontario-Michigan MSW dispute has been developed, which involves an investigation of the cross-border interactions of federal, sub-national, and local level governmental and non governmental actors³. The actions of parties such as the State of Michigan Governor, Ontario Premier, Michigan and Ontario Mayors, Toronto City Councilors, Michigan County Commissioners, NGO groups and private business are studied. By examining the role of these actors and others in the dispute, it is possible to understand their varying types of influence and identify ways in which such influences lead to barriers or opportunities to resolving the waste dispute as well as the impacts of such influences on broader issues of Canadian-American relations.

The organizational framework to be used in this study begins with an analysis of the intergovernmental relations occurring within Canada as well as those within the U.S. This analysis of intergovernmental relations within each country will include an investigation of: (1) formal level or legislative relations; (2) informal, or administrative, relations; and (3) the role of non-governmental and private business actors in influencing formal and informal relations⁴. Following the analysis of the interactions occurring domestically, the study examines the cross-border interactions taking place amongst actors at all levels. Specifically, this includes an investigation of formal and informal bilateral environmental relations between Canada and the U.S. The investigation of these interactions also focuses on the role of non-governmental and private business actors.

³ For the purposes of this thesis; the term “Federal” applies to central or national level of government in Canada or the U.S., “sub-national” will be used to refer to the U.S. state/Canadian province level of government, and the term “local” applies to municipal authorities.

⁴ See Appendix C for definitions of “formal relations,” “informal relations,” and “organizations.”

Additionally, the informal bilateral relations analysis will also seek to identify any existing epistemic communities⁵.

Data for each of these various forms of domestic and bilateral relations were collected through a combination of literature reviews and confidential, key-informant interviews. The purpose of the application of this particular organizational framework to this case study is to identify the ways in which federalism influences bilateral relations and also test the usefulness of such a framework in explaining bilateral interactions between Canada and the U.S.

Bodies of Primary and Secondary Literature

As part of the case study analysis, several primary and secondary literatures are reviewed. Primary sources including the U.S. Congressional records and Canadian Parliamentary proceedings are used to assess the factors involved in the development and evolution of the Ontario-Michigan MSW dispute. Information regarding the dispute was also gathered through a series of confidential key informant interviews with government officials as well as non-governmental organization and business representatives on both sides of the border. These interviews focus on determining the roles and degrees of influence of various actors shaping this particular policy process.

The secondary literature consulted in order to identify and understand the concepts and theories behind Canadian-American environmental relations include the bodies of research related to Canadian and American federalism and intergovernmental relations, including the work of Carroll (1981; 1983), Hoberg (1994; 1997), Dorsey (1998), Laferriere and Stoett, (1999) Harrison (1994; 1996; 2000) and VanNijnatten (2003). Qin's (2006) work related to the North American Free Trade Agreement as well as various other Canada-U.S. environmental agreements and legislation are also consulted. These sources provide a better understanding of some of the major concepts

⁵ See Appendix D for a diagram of this study's organizational framework.

and theories behind Canadian-American environmental politics and help to identify ways in which these theories could be built upon.

Overview of Study

This study explains how bilateral environmental relations are negotiated within the context of federalism by applying an organizational framework developed for use in this study to the Ontario-Michigan MSW dispute. In addition to examining how bilateral environmental negotiations unfold, the study also seeks to identify the usefulness of this study's organizational framework in explaining how such negotiations unfold. These findings lead to a set of recommendations for the resolution of the MSW dispute, specifically, as well as for improving organizational frameworks used to study bilateral Canadian-American environmental relations. Chapter 2 of this study reviews theories related to intergovernmental relations, federalism, international relations and Canadian-American relations in order to explain the evolution of methods of analyzing environmental relations between the two countries. The organizational framework to be used in this study as well as the methodologies behind its application to the Ontario-Michigan MSW dispute are explained in Chapter 3. Chapter 4 is an examination of the MSW dispute in order to understand the ways in which bilateral environmental relations between Canada and the U.S. are negotiated within the context of federalism. The findings and implications of that examination are reviewed in Chapter 5 in an effort to identify the particular strengths and weaknesses of this study's organizational framework in explaining how such negotiations unfold. Chapter 6 discusses the conclusions and limitations of the study and identifies areas for possible future research.

Chapter 2: The Development of an Organizational Framework

This chapter presents a review of literature related to the theories of intergovernmental relations and international relations, as well as the more specific subsets of these fields of study, Canadian and American federalism and Canadian-American relations, respectively. This review covers historical as well as current methods for analyzing intergovernmental relations and international relations separately, as well as emerging models which combine the two fields of study in order to explain cross border interactions. A discussion of such models explains the reasons behind the development of the organizational framework being tested in this thesis.

Current models and theories of intergovernmental relations, Canadian and American federalism, international relations, and Canadian-American relations are able to shed some light on the ways in which federalism influences bilateral relationships. However a more thorough examination of non-governmental and private business actors as well as the influence of local level governments is also necessary in order to fully understand how cross-border environmental disputes emerge, evolve and are resolved between federal governments. Therefore, an application of the theories developed by Hoberg (1997), Harrison (2000) and VanNijnatten (2003)— the most promising models yet to emerge—is necessary. Based on the work of these scholars, an organizational framework has been developed for use in this thesis. This framework examines both the formal relations, or legislation, and informal relations, or administrative interactions, occurring amongst government actors on all levels as well as NGOs and private business.

The literature of intergovernmental relations and Canadian and American federalism are reviewed in order to understand the development of theories to explain domestic interactions within each country. Reviewing such literature provides an understanding of the failures and successes of previous analytical and organizational frameworks in explaining domestic politics. The second portion of the literature review

seeks to further the understanding of how bilateral environmental relations are negotiated within the context of federalism by examining theories and developments in the fields of international relations and Canadian-American relations. The review of these two streams of literature will be synthesized in the final section through an examination of the successes and shortcomings of existing analytical and organizational frameworks used in studying Canadian-American environmental relations.

Understanding Domestic Interactions: A Review of Intergovernmental Relations and Canadian and American Federalism Literature

Intergovernmental Relations

Intergovernmental relations consist of the various interactions amongst federal, sub-national and local levels of government, such as the impacts that policy decisions at one level have on the others. Models such as the one developed by Paul Peterson (1981), attempt to better explain how one level of government influences another and provide the basis for subsequent models and theories. Peterson's (1981) model examined the interactions of local level actors and the ways in which they bargain with sub-national authorities for resources. Because of these bargaining practices, Peterson argues that redistributive policies, which hinder competitiveness, should be the responsibility of federal and sub-national governments (Peterson, 1981). Peterson goes on to elaborate on these arguments in the book *When Federalism Works* with Barry Rabe and Kenneth Wong, in which he states that policy decisions that affect a majority of a country's population should be made at the federal level, while those that only affect a small portion are best handled at the local level (Peterson et al, 1986). This is similar to the principle of subsidiarity which argues that the lowest level of government which is capable of making and implementing a policy decision should be the one to do so (Van Kersbergen & Verbeek, 2007).

Although Peterson's (1981) model has been fairly effective in guiding policy decisions at the local and sub-national level, it is not the most appropriate one for issues of environmental policy. Because environmental issues tend to affect more than one locality at a time, Peterson's (1981) model would argue that the responsibility for decisions related to the environment should be held at the federal level. However, some environmental decisions, such as waste management are developmental or related to public works and therefore are arguably best dealt with locally rather than federally. As a result of these conflicts, additional models emerged which built off the theories of Peterson (1981) in order to attempt to determine which level of government is best suited for the responsibility of environmental decision making (Rabe, 1991).

A majority of the work related to intergovernmental environmental relations consists of analyses of the sub-national- federal relations in the United States. Building on the work of Peterson (1981), Rabe (1991) examined environmental regulations in the state of New Jersey in order to determine the ability of states to implement environmental policies developed at the federal level. Rabe determined that although the sub-national level should play a lead role in environmental protection efforts, continued federal oversight is still useful because of the transboundary nature of most environmental issues and the differing levels of capacity between states. However, unlike Peterson's (1981) model, Rabe (1991) argues that a majority of the power for developing and implementing environmental policies should be held at the sub-national level, rather than federal. Although Rabe's (1991) work took into account federal level actors and their influence on the sub-national level, he failed to include the role of local level actors in his analysis. A related study by David John (1994) presented similar conclusions to those of Rabe. He argued that U.S. states should handle the majority of environmental protection policies because they can more effectively engage citizens and also have the capacity to negotiate solutions to transboundary issues. However, once again, the influence of local level actors on sub-national and federal level actors was ignored (John, 1994).

One of the first attempts to account for the interactions and influences of actors at all levels was the work of Thomas Anton (1989), who introduced the idea of "benefit coalitions." Anton described such coalitions as "any association of individuals, often

representing other individuals, who mobilize to develop, implement and support government benefits programs⁶” (Anton, 1989; 32). Additionally, he notes that local governments are quite often the implementing agency for many sub-national and federal policies. Anton’s work provided insight into the formation of government policy by arguing that federal, sub-national and local level policy is not simply shaped from the bottom-up or the top-down, but a combination of influences from all levels. Although Anton examines various levels of interactions and expands his analysis to include more than just government officials and agencies, he fails to include the role of non-governmental actors such as activist groups, community organizations, the media, and private businesses (Birkhead, 1990).

Building on previous efforts to understand the influence of actors from all orders of intergovernmental relations, Stever (1993) examined the impacts of sub-national level actors on the federal and local levels. Stever (1993) argued that the reliance of the federal government on sub-national units of government for policy implementation has resulted in “creeping federalism” in the United States, in which the structure and function of local governments is altered. For example, new agencies, or new offices within existing agencies, are sometimes formed in order to implement federal regulations (Cimitile et al, 1997). A similar instance of “downloading” occurred in Canada beginning in 1993 when federal and provincial environmental ministers, constrained by budget cuts, began delegating a greater number of environmental responsibilities to municipal governments (“The Bumpy Journey Ahead...,” 2002). As a result, models such as those used by Stever gained predominance in North American intergovernmental relations studies.

Although models such as Stever’s (1993) and Anton’s (1989) took into account actions at all levels, they still assumed a strict hierarchy, in which sub-national level actors were always the “middle men” or “go-betweens” for the local and federal level. In order to examine the interactions occurring directly between the local and federal levels, Agranoff and McGuire (1998) developed a descriptive empirical model based on the

⁶ Government benefits programs include any federally funded initiative to provide assistance, usually monetary in nature, to those in need. These include, for example, disability and unemployment insurance, pensions and national health insurance (“Government Benefits, Grants and Financial Aid,” 2006).

theory that local authorities with the capacity to engage in the intergovernmental process at both the federal and sub-national levels behave in a way that cannot be described by traditional top-down or bottom-up models of federalism. Agranoff and McGuire (1998) argue that “fundamental changes in intergovernmental relations and governance support the idea that intergovernmental management is more complex and involved than indicated by either of the zero-sum approaches” (Agranoff and McGuire, 1998; 2).

Although Agranoff and McGuire’s (1998) model of intergovernmental relations was more inclusive of the types of interactions occurring within federal systems, much like Anton’s (1989) model, it failed to take into account the influence of non-governmental actors and private business. According to scholars such as VanNijnatten (2003), the inclusion of non-governmental organizations (NGOs) and private business is essential to fully understanding the interactions which occur both within federal systems as well as bilaterally. In addition to models and theories which include mechanisms for analyzing the interactions of NGOs and private business with federal, sub-national, and local level actors, it is also necessary to put theories of intergovernmental relations within a more specific context in order to account for the particular characteristics of Canadian and American federalism.

Canadian and American Federalism

An important sub-category of intergovernmental relations, which also potentially influences the nature of Canadian-American relations, is that of Canadian and American federalism. Krane (1993) argues that there is a lack of conceptual integration between federalism and policy making studies, which results in incomplete or inaccurate conclusions about the roles of influence of various levels of government in decision-making. Further complicating this lack of connection is the fact that most policy models fail to account for the differing degrees of power and jurisdiction among the various levels of government. In order to better account for differing levels of power and jurisdiction within the North American context, it is important to analyze federalism in

Canada and the U.S. specifically in order to understand the role it plays in bilateral environmental relations (Krane, 1993).

Although a large amount of literature exists that addresses the differences between the Canadian and American federal systems, such as Smiley's (1984) review of the differing levels of autonomy of sub-national governments in the U.S. and Canada, limited information relates specifically to environmental policy. The fundamental differences in the Canadian and American forms of federalism were examined by Hoberg (1997), who argued that because of the differences in federal systems, Canadian and American policymakers address environmental issues in fundamentally different ways. The U.S. system of a 'separation of powers' provides for a much more influential role by Congress than the Westminster-style parliamentary system affords Canadian legislators (Hoberg, 1997). However, in Canada, authority over natural resources is held by the provinces, while in the U.S., natural resources fall under the control of the federal government. The prominent role of provinces in dealing with natural resources means that a greater degree of cooperation and negotiation between sub-national and federal levels of government is necessary in Canada than in the U.S. in order to address environmental issues efficiently (Inscho and Durfee, 1995).

The decision making process related to environmental issues in both Canada and the U.S. was modeled by Harrison (2000) in her exploration of the role of the federal governments of the U.S. and Canada in shaping domestic environmental policy. In the U.S. federal system, the central government has the authority to implement international treaties, whether or not the subject of the treaties falls within state jurisdiction. Therefore, once a treaty is brought into force by the federal government, all contradictory state laws automatically become invalid. In contrast to this, within the Canadian system of federalism, the central government cannot implement treaties which affect matters of provincial jurisdiction (Friesen, 1994). Canadian environmental policy scholars argue that, it is predominantly the provinces that set the agenda when it comes to environmental decision-making ("The Bumpy Journey Ahead...", 2002).

Furthermore, Rabe (1999) discusses the fact that there is a predominance of command and control approaches in the U.S., while Harrison (2000) elaborates on the

comparatively larger role of the court system in the U.S., thereby placing a greater burden on the states to enforce and oversee the implementation of environmental policies developed at the federal level. Related to the greater role of the judicial system in U.S. environmental policy, is the influence of the public. Dunlop (1989) argues that the formation of U.S. environmental laws and policy is mostly motivated by public opinion. Vogel (1986) further elaborates on the role of the judicial system in the formation of U.S. environmental policy by exploring the relatively contentious nature of the American regulatory system. By identifying the need to examine the “bargaining and accommodation that regularly take place in the American regulatory system,” Vogel was able to provide a fuller understanding of American federalism (Dwyer, 1987; 810).

Theories of intergovernmental relations and Canadian-American federalism, specifically, explain why an analysis of local, sub-national, and federal level interactions is useful in understanding policy decisions and bargaining positions. Such analyses help to explain the influence of federalism within both Canada and the U.S., but in order to understand the influence of federalism in bilateral relations it is also necessary to analyze what is taking place at the international level.

Understanding Trans-border Interactions: A Review of International Relations and Canadian-American Relations Literature

International Relations

The evolution of the field of international relations theory began with Hans Morgenthau’s *Politics Among Nations* (1948), which presented a Hobbesian view of interactions among central governments. Morgenthau (1948) argued that central governments could be viewed as rational actors that continually sought their own self-interest in the form of increasing power. However, a split emerged in the 1960s which separated international relations theory into two separate streams or methods of analysis—the traditional versus a more scientific approach. The emerging scientific view used a

systems approach to analyze the interactions of central governments and argued that such interactions could be better understood as a pattern of behavior, much more organized than Morgenthau's vision of interactions between central governments (Smythe, 1980). The "patterns" of central government interactions were clarified by the work of Johan Galtung (1968), who argued that international relations could be better understood as the formation of communities as means of association amongst relatively similar and equal entities rather than the development of organizations which consisted of a grouping of entities arranged in a hierarchy.

However, this argument remained incomplete in helping to understand international relations because, as scholars such as Willoughby and Fenwick (1974) argued, there remained an obviously hierarchical component to central government interactions. In an effort to avoid nuclear conflict, researchers sought to determine what types of relational structures were most likely to result in the outbreak of war. This emphasis on system structure and conflict led to the study of regions and subsystems. Scholars such as Landheer (1963) began to examine levels of economic and social integration between central governments, analyzing activities at the sub-national level such as trade, mail, and the movement of people, in order to determine the extent of international cooperation. Such examinations of integration led to an increased understanding of the growing importance of non-governmental actors in international relations (Smythe, 1980). Robert Keohane and Joseph Nye (1972) offered one of the most comprehensive explanations of "transnational relations" in which they outlined the importance of non-governmental organizations⁷ and intergovernmental organizations⁸.

Although the breaking down of central governments into sub-systems and the inclusion of non-government actors into international relations theory remained a major approach within the field, a second stream of analysis also existed. This stream continued to view the international system as being defined by hierarchy and status rather than cross-border transactions (Smythe, 1980). Galtung (1971) and Wallace (1971)

⁷ Organizations which are not a direct part of a government system and are either domestic or international in focus (Singer & Wallace, 1970).

⁸ An organization with sovereign states or other international non-governmental organizations as its members and can only be established through a treaty (Singer & Wallace, 1970).

argued that the rank of central governments within the international system was indicative of the type of behavior they would engage in and an understanding of such rankings could lead to explanations of conflict and disputes.

In the late 1980s and 1990s, constructivism, a new dominant theory of international relations, emerged as a result of the work of Alexander Wendt (1987; 1995). The Constructivists argued that international relations are guided by socially constructed or “intersubjectively shared ideas, norms, and values...” (Guzzini & Leander, 2006; 3). Furthermore, constructivism argues that actors continuously “redefine their interests and identities” through interaction with one another. In other words, the role of power and influence in international relations cannot be isolated as predictors of actors’ behaviour. Although Wendt’s work contributed to international relations theory, it still maintained, similar to previous theories, that national governments were the primary actors in global politics and therefore did little to explain the impacts of activities occurring at the sub-national level.

In addition to Wendt’s (1987) constructivist theories, another important aspect of international relations which must be examined is what Duchacek (1990) calls the “trans-sovereign activities of non-central governments” (Duchacek, 1990; 3). The “trans-sovereign activities of non-central governments” includes any effort by a sub-national or local government to enter into direct international negotiations or interactions on their own behalf. Similar to Keohane and Nye (1972), Duchacek’s theories expanded the study of international cooperation, however, they did not explicitly examine the role of NGOs and intergovernmental organizations.

Duchacek (1990) argued for the need to examine such “trans-sovereign activities” because of the increased presence of non-central governments abroad. For example, U.S. port authorities such as Alabama’s Port of Mobile and the Texas Port Authority of Corpus Christi have representatives throughout Europe; and the Canadian Provinces of Alberta, British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan have established 46 permanent missions in 11 foreign countries (Duchacek, 1990). Such trans-sovereign activities are often carried out for trade and investment purposes, but

increasingly, they have also been aimed at solving transboundary environmental issues, as in the case of the coalition formed in 1998 between New England Governors and Eastern Premiers to deal with air quality issues (VanNijnatten, 2003).

Since the 1960s, U.S. states have pursued various investment, trade and environmental interests abroad, with little interference from the federal government (Duchacek, 1990). Similarly, based on the efforts first carried out by Quebec, the Canadian provinces have convinced Ottawa that they have the right to “act internationally in their areas of constitutional jurisdiction (which includes control over natural resources, giving them, in contrast to the U.S. states, considerable clout)” (Duchacek, 1990; 5). However, because some federal systems have long allowed and encouraged non-central governments to conduct business and other negotiations abroad, such as the Lander in West Germany and Austria and the cantons in Switzerland, this form of interaction has long been studied (Duchacek, 1990).

According to Duchacek, there are six primary methods through which sub-national governments can promote their agendas abroad, which include: (1) establishing permanent offices abroad in centers of commerce or national capitals; (2) promoting and publicizing the role of non-central government leaders in international negotiations and interactions; (3) sending fact finding missions abroad; (4) conducting publicity campaigns which promote local manufacturing and technology assets in order to encourage international trade and investment; (5) establishing foreign trade zones; and (6) sending representatives to participate in international conferences or organizational meetings (Duchacek, 1990; 7). These methods are used in a variety of ways and often in combination with one another, based on the types of negotiations that sub-national governments choose to enter into.

Duchacek (1990) argues that there are three types of negotiations: (1) transborder regional paradiplomacy, (2) transregional and paradiplomatic contacts, and (3) global paradiplomacy. Duchacek defines paradiplomacy as international activities or lobbying which are carried out by sub-national and local governments. Transborder regional

paradiplomacy involves informal cross-border contacts based on geographic proximity and similarity of issues to be addressed. According to Duchacek, this most often involves

such matters of common interest as crossings of migrants and immigrants; the legal movement of manufactured goods; prevention of smuggling; the management of water resources; problems of pollution; energy transfers; civil defense; sewage; prevention of natural disasters...; and various transfrontier manufacturing and/or ecological ventures... (Duchacek, 1990; 20)

This form of paradiplomacy, Duchacek argues, is contingent upon the existence of informal, elite-level working groups and partnerships which can perform the tasks of organization and coordination between national policies and transborder endeavors. For instance, an example of this includes the development project in the Souris River Basin which was jointly financed by Saskatchewan, Manitoba and North Dakota.

In contrast to transborder regional paradiplomacy, transregional paradiplomacy involves diplomatic contact amongst non-central governments that do not necessarily border one another, but whose national governments do. Duchacek (1990; 25) writes that “such subnational units are separated by other provincial/state jurisdictions from the international border which, in order to establish and maintain their links, they have, as it were, to leapfrog.” An example of this form of paradiplomacy is Canadian provincial trade missions in the U.S., such as Quebec and Alberta’s missions to Texas. Also in contrast to transborder regional paradiplomacy, transregionalism requires a higher degree of formality and attention to diplomatic protocol in order to prevent friction between consular representatives and ensure compliance with foreign laws (Duchacek, 1990).

The final form of negotiation used by non-central governments is global paradiplomacy, which involves interactions between non-central governments and cultural, industrial and trade centers as well as branches or agencies of foreign national governments. Such interactions are more diplomatic or political in nature, rather than being based solely on economic or social initiatives. Global paradiplomacy is not limited to countries that border one another (Duchacek, 1990). An example of such paradiplomacy includes the more than one hundred permanent missions which have been established abroad by Canadian provinces and U.S. states.

Both the transborder regional paradiplomacy and global paradiplomacy, together, offer an understanding of how differing levels of power and influence, combined with increasing levels of integration, shape the current international system. For the purposes of this thesis, the understanding of the international systems and theories such as Duchacek's may be helpful in explaining the bilateral environmental relationship between Canada and the U.S. as they identify the various types of cross-border relations which can occur with federal systems. However, in order to better explain such transboundary relations it is necessary to place theories of international relations within the North American context specifically. Therefore, an examination of the narrower field of Canadian-American relations is needed.

Canadian-American Relations

Building on international relations theories, the field of Canadian-American relations has emerged, placing such theories in a North American specific context. James Eayrs (1961) and John Holmes (1971) argue that Canadian-American relations in the post-war international system could be regarded as national government-to-national government relations, despite the large imbalance of power between the two countries. This approach was very similar to that of Galtung (1971) and Wallace (1971) who saw national government-to-national government interactions as hierarchical. Canada was seen by Eayrs (1961) and Holmes (1971) as a "middle power" because of its potentially important role as an ally or mediator, especially within the United Nations system.

Building on Holmes's (1971) examination of federal level Canadian-American relations, John Redekop (1976) argues that Canadian-American relations are most accurately characterized as one of continental subsystem dominance. Similar to Ernst Haas's (1964) theory of functionalism, Redekop (1976) claims that although a significant degree of the interactions between Canada and the U.S. occurs between the two federal governments, "the major components of Canadian-American affairs consist of the workings of clearly discernible, mainly non-governmental, continental subsystem" (Redekop, 1976; 235). As Redekop (1976) uses the term, subsystems include

“differentiated units, mainly groups, which are closely interrelated or even structurally integrated in achieving certain goals or meeting certain needs, but are each only part of one or more larger general subsystems” (Redekop, 1976; 235).

Although Holmes’s model of Canadian-American relations was inclusive enough to include interactions taking place at various levels amongst various actors, none of the models in use at the time focused specifically on environmental issues. The main focus of Canadian-American relations in the 1960s and 1970s was economic integration. Economist Kari Levitt (1970), for example, examined the domestic consequences of economic relations between the two countries and influenced many Canadian political scientists to investigate methods for preventing the U.S. from having further economic and social effects on Canada.

However, in an effort to shift the focus of Canadian-American relations away from purely economic relations to include environmental ones as well, George Hoberg (1997) identified six mechanisms by which the U.S. can affect Canada’s environmental policy. The first of these mechanisms is a physical one, in which economic and industrial activities in the U.S. create environmental problems such as pollution, which crosses the border separating the two countries. Secondly, Hoberg (1997) argues that the Canadian environmental policy development process is often affected by efforts to emulate those of the U.S. Such emulation occurs when government leaders attempt to replicate a successful process from the U.S. or when “activists in one country use the experience of another country to pressure their own government to take action” (McKenzie, 2002; 120).

The third mechanism of influence includes American diplomacy, which is often carried out through institutions such as the International Joint Commission (IJC) and the North American Agreement on Environmental Cooperation (NAAEC). Hoberg further argues that influence exerted through international trade agreements, most notably NAFTA, and through increasing economic integration between the two countries is another mechanism. A final mechanism identified by Hoberg (1997) is what he terms “cross-border lobbying,” which involves the lobby efforts of U.S. environmental groups on the Canadian government to take specific environmental actions.

Like Hoberg (1997), Harrison (2000) also examined some of these mechanisms of influence, noting that they often occur in combination with one another and that the specific mechanism employed places varying degrees of pressure on Canadian officials. Such theories further demonstrate the usefulness of examining interactions occurring amongst actors at all levels, within and across borders, as well as the role that NGOs and private business can play in such interactions. Although models such as Hoberg's and Harrison's focus on bilateral influences, such cross-border interactions cannot be fully understood outside of the context of federalism as federal structures create the parameters which actors operate within on an international level. Therefore, in order to place cross border interactions in a federalist context, it is necessary for this study to take into account both streams of interaction.

Analytical Approaches to Understanding the Canada-U.S. Environmental Relationship

Until the mid-1990s, with the exception of Redekop's (1976) model, nearly all of the studies of Canadian-American environmental relations examined only the cross-border activities of federal level actors, ignoring the interactions occurring across borders at the sub-national and local levels. Putnam's (1988) two-level game theory was the most commonly applied approach. However, this method of analysis began to change, especially with John Kirton and Don Munton's 1996 analysis of cross-border subnational linkages. Their research identified over a hundred such transnational linkages and underscored the need to begin studying cross-border interactions occurring between U.S. states and Canadian provinces. Building on the work of Kirton and Munton (1996), Alper (1997) argued that not only had cross-border sub-national environmental cooperation become more prominent, but many states and provinces had also begun to form what he termed "formal institutional linkages" for dealing with environmental issues. Such findings have also been reinforced by Barry Rabe (1997), who examined issues of transboundary management of the Great Lakes. Furthermore, the work of

Leyton-Brown and Sands (1997) argue that states and provinces play a role in “defining the timbre of [environmental] relations” between Canada and the U.S.

Additionally, Munton and Kirton (1996) conclude that in order for successful cross-border cooperation to occur, the establishment of epistemic communities consisting of experts and officials from both the public and private sector who agree on the key components of the issue to be addressed, as well as the methods for addressing it, is necessary. VanNijnatten (2003), who defines epistemic communities as networks of “officials, experts, and non-governmental actors at multiple levels,” also argues that such informal relations are important because of their ability to build consensus domestically and reduce the likelihood of disputes amongst actors involved in cross-border interactions. Therefore, it is important to identify operating epistemic communities in order to fully understand the nature of environmental relations between the U.S. and Canada.

In light of existing research into the increasingly complex nature of Canada-U.S. relations by scholars such as Hoberg (1997), Harrison (2000) and VanNijnatten (2003), it becomes apparent that in order to understand how policies are developed and implemented, an analysis of formal and informal relations taking place both within and between each country is necessary. Attention must also be given to the role of NGOs, private businesses and the existence of epistemic communities.

Intergovernmental relations and Canadian-American federalism theories provide a guide for analyzing the development of domestic policies by demonstrating the need to investigate the influence and interactions of local, sub-national and federal level actors within each country. Hoberg (1997) and Harrison (2000) in particular, argue that an examination of interactions amongst all levels is necessary. Additionally, because of the lack of attention in intergovernmental relations and Canadian-American federalism literatures to the importance of local level actors in influencing bilateral relations, this study also seeks to explicitly focus on the local level in order to attempt to address that particular gap in the literature. Furthermore, VanNijnatten (2003) also asserts that an examination of such interactions must include formal and informal relations as well as

the influence of NGOs and private business. Therefore, the framework used in this study will incorporate an examination of such relations at all levels of government as well as the influence of NGOs and private businesses on those relations.

Additionally, international relations and Canadian-American relations theories provide guides for analyzing the ways in which Canada and the U.S. interact on bilateral environmental issues. When such theories and frameworks for the analysis of cross-border and domestic interactions are combined, it becomes possible to understand how bilateral environmental relations are negotiated between Canada and the U.S. within the context of federalism. Therefore, this study's organizational framework also examines the formal and informal relations within which occur across borders between the Canadian and American federal systems. Similar to the intergovernmental relations analysis, the organizational framework also examines the often overlooked issue of interactions of NGOs and private business with government actors in order to take into account their particular influence on bilateral relationships. Finally, based on the findings of VanNijnatten (2003) regarding the often overlooked importance of epistemic communities, within the analysis of informal bilateral relations, attention is given to the existence and influence of such communities.

Chapter 3: Methods for an Examination of the Ontario-Michigan Dispute

This chapter provides an explanation of the techniques to be used by this study in order to gather data for an examination of the Ontario-Michigan Municipal Solid Waste (MSW) dispute. In order to identify the influence of federalism in Canadian-American relations, it is useful to examine a specific case study, such as the Ontario-Michigan MSW dispute from June of 1996 to August of 2006.

The Ontario-Michigan dispute is an interesting case to examine because it contains elements of other cross-border disputes, such as a mixture of cooperation and contention, the involvement of multiple levels of actors, and falls under the scope of NAFTA. Additionally, the Ontario-Michigan MSW dispute has not received much attention from the academic community. With the exception of a study conducted regarding the impacts of NAFTA (Qin, 2006) on the movement of waste from Ontario to Michigan, there is only one other scholar examining the dispute in an effort to develop a comprehensive timeline of the events involved (Unsworth, 2004). Furthermore, most studies of Canadian-American environmental cooperation have focused on issues of air and water quality (Canada, 2006), for instance Rabe's (1997) examination of Great Lakes water basin management and VanNijnatten's (2003) study of the "Ozone Annex." An examination of transboundary waste movements provides an interesting addition to the debate over cross-border cooperation because it is not directly related to the issue of natural resources.

Within this study, an analysis of domestic as well as transboundary interactions must be performed. Therefore, the first stage of the analysis will focus on the formal and informal intergovernmental interactions occurring domestically within Canada and the U.S. In addition, an examination of the actions of government officials, the role of NGOs and private business will also be reviewed.

The second stage of the analysis will involve an examination of the formal and informal bilateral interactions taking place between the two countries. The actions of parties such as the State of Michigan Governor, Ontario Premier, Michigan and Ontario Mayors, Toronto City Councilors, Michigan County Commissioners, and NGO groups will be studied. The existence of epistemic communities will also be examined. By examining the interactions of varying degrees of influence of these actors and others in the dispute, it will be possible to determine the ways in which bilateral environmental relations are negotiated between the two countries within the context of federalism.

Within the MSW dispute case study, data were gathered through a three-pronged approach, involving (1) confidential interviews with key informants; (2) a review of relevant newspapers, non-governmental organization and industry association position papers, and articles; and (3) an examination of relevant Parliamentary proceedings and Congressional debate records as well as minutes from provincial/state and local level debates where available. These three investigative approaches complement one another and provide for a more thorough exploration of the Ontario-Michigan MSW dispute case study. Because little scholarly work has been conducted on the dispute, interviews with those directly involved, newspaper reports, and debate records serve as the only sources of information about the developments and actors involved. Although the MSW dispute is ongoing, this study covers the events from the beginning of the debate over the Adam's Mine in 1996 to the 2006 agreement between Michigan Senators and Ontario's Minister of the Environment to phase out waste shipments over a four year period. The data gathered from these various prongs will be analyzed using this study's organizational framework in order to identify how federalism affects bi-lateral environmental policy, which can then lead to a better understanding of how cooperation between Canada and the U.S. can be improved. By examining the actions and interactions taking place at various levels amongst an array of actors, the organizational framework used in this thesis provides for a depth of analysis not found with most previous analytical tools.

The Case Study

Case studies have been defined as efforts which attempt “to illuminate a decision or set of decisions: why they were taken, how they were implemented, and with what result” (Schramm, 1971; 10). A set of decisions is exactly what is being examined in the case of the Ontario-Michigan MSW dispute and, in order to do so, a variety of techniques are being combined as part of this particular case study approach.

Orum (1991) et al, who define case study research as “an in-depth, multifaceted investigation, using qualitative research methods, of a single social phenomenon,” argue that case studies play an indispensable role in social science research as they allow complex situations or phenomena to be examined within their unique context. In addition to case studies, other strategies for conducting social science research exist, including experiments, surveys, histories, and analyses of archival records. Although several strategies for investigation exist, there are situations in which certain strategies are more effective than others (Kvale, 1996). For instance, Yin and Orum (2003; 1991) argue that case studies are a favourable approach when the issue or event being studied is a contemporary one over which the researcher has little control.

Because the Ontario-Michigan MSW dispute is a current, continuously evolving issue, neither a history nor analysis of archival records alone would have yielded the complete story about the role of federalism in Canadian-American relations. However, when combined with a review of newspapers, articles and position papers, as well as confidential key informant interviews, an analysis of archival records becomes more meaningful as it helps to place the data from the archival records within a broader context. Yin (2003, 8) argues that the “unique strength [of the case study] is its ability to deal with a full variety of evidence--- documents, artifacts, interviews and observations—beyond what might be available in a conventional historical study.” Therefore, a case study approach is what is warranted in this situation as it allows for a combination of data collection techniques which can be compared and triangulated in order to increase the validity of the study’s findings.

In addition to using a combination of methods of investigation, a combination of units of analysis is also necessary in order to fully utilize the organizational framework for this study (Scholz and Tietje, 2002; VanNijnatten, 2003). Within this study, the unit of analysis is the MSW dispute itself, and the sub-units of analysis include local, sub-national, and federal level actors working in both the public sector and the private sector. The data necessary for an analysis of each of these levels will be collected using the previously mentioned three-pronged approach. Because of the use of multiple collection methods and units of analysis, this particular case study will be classified as embedded rather than holistic, meaning that the interactions and events occurring at each of the levels will be considered separately from one another and then examined within a broader context (Yin, 2003; Scholz and Tietje, 2002).

A case study approach was also necessary in this particular situation because of the need to examine the MSW dispute within its context. Scholz and Tietje (2002) write that “the case study approach... is an empirical enquiry that investigates a contemporary problem within its real-life context.” The context of the issue is important as it can provide for greater insight into the reasons behind the development and evolution of the dispute and therefore enhance the validity of comparisons or generalizations to similar cross-border environmental issues. Case studies allow researchers to investigate a particular event or series of events or interactions within their particular context, rather than separately as in experiments. Yin (2003; 13) writes that researchers would utilize case studies “because [they] deliberately wanted to cover contextual conditions—believing that they might be highly pertinent to [the] phenomenon of study.”

It is also necessary to look at the MSW dispute within its context for more practical reasons. Another factor in determining the appropriateness of a case study approach is the extent to which the researcher can control the events or behaviors that are being investigated. Because it is virtually impossible to control the type of interactions and degrees of influence of the actors involved in the MSW dispute, research approaches such as experiments are impractical. A case study is useful in this instance because it allows for the situation and events surrounding it to be analyzed without requiring the

manipulation of actors and processes or the removal of events from their context (Yin, 2003).

Although it is often useful to compare and contrast the results from multiple case studies, a single case study approach was chosen in this instance because the MSW dispute contains aspects, such as federalism, which are typical or representative of most Canadian-American environmental issues. However, at the same time, the case is also a somewhat revelatory one in that the particular problem being analyzed, the MSW dispute, has received little attention from academia thus far. Scholz and Tietje (2002) state that a single case study approach should be utilized when the phenomenon under investigation is considered to be “unique, prototypical, salient or revelatory to the understanding of the...problem.” Despite the fact that a single case study approach may limit the degree of generalizability, the ability to contribute to the field of Canadian-American environmental relations by thoroughly investigating such a revelatory case is significant (Feagan et al, 1991).

By using a single, embedded case study approach, a fuller understanding of the development and evolution of the MSW dispute between Ontario and Michigan can be established, and can be done so within the context of the issue. Such a case study not only illuminates an under-studied phenomenon, but also provides information which can potentially result in insights into other cross-border environmental issues between the U.S. and Canada.

Interviews

One of the main components of the case study approach is interviewing (Marshall & Rossman, 1999). Interviews are more than simply a series of responses to questions posed by an investigator; they are a form of conversation, especially when they are open-ended and semi-structured. More specifically, interviews can be considered guided conversations which are carried out for a specific purpose (Kvale, 1996; Seidman, 2006). Interviews are a prominent method for conducting qualitative research, which as Kvale

(1996) notes, can be differentiated from quantitative research in that “the basic subject matter is no longer objective data to be quantified, but meaningful relations to be interpreted” (Kvale, 1996; 11). Because the case study is an effort to understand the web of interactions amongst various actors involved in the Ontario-Michigan MSW dispute, interviews are a valuable research technique to utilize.

There are many different forms or types of interviews; some are explorative, while others seek to test a specific hypothesis. Exploratory interviews often lack a firm structure and are based on a topic or issue introduced by the researcher rather than a series of specific, pre-determined questions. Often, the interviewer must determine questions on the spot based on interviewee responses. Conversely, interviews which are designed to test a hypothesis are more rigidly structured and often involve a comparison of various interviewees’ responses to the same set of pre-determined questions (Miller and Dingwall, 1997). Due to the lack of academic study on the issue of the Ontario-Michigan MSW dispute, it is more useful to conduct exploratory interviews aimed at gaining insight into the nature of the dispute rather than attempting to prove or disprove a hypothesis, especially given the lack of understanding regarding the dispute’s development and evolution (Glaser and Strauss, 1967; Kvale, 1996). Although this study sought to test the usefulness of this study’s organizational framework in identifying how bilateral environmental relations are negotiated within the context of federalism, the questions asked in the interviews were designed to gather data for the analysis of the case study rather than directly test the framework. Therefore, an exploratory interview process was most appropriate for use in this study.

As part of the exploratory interview process, the interviews were loosely based around several broad questions. The responses to these questions were then followed up on by the interviewer in order to seek further clarification and elaboration. Interviewees were encouraged to discuss the issue from different angles and were not restricted to addressing a specific aspect of the dispute, a technique which allowed for more effective exploratory investigation (Maccoby and Maccoby, 1954; Madge, 1965; Marshall & Rossman, 1999). The key questions posed to policy makers at all levels and on both sides of the border included:

- 1.) What role has your office/agency played in the negotiation process surrounding the MSW dispute between Michigan and Ontario? (i.e. How long has the office/agency been involved? What are your responsibilities in this dispute? Whose interests do you represent? What has your stance on the issue been?)
- 2.) What level of access/influence does your particular agency/office have in the ongoing MSW dispute? Are there any barriers to your participation?
- 3.) What difficulties and opportunities do intergovernmental politics (i.e. local/sub-national/national relations) pose for the development of a sustainable solution to the current MSW dispute?
- 4.) Between what levels of government or agencies/organizations is most of the contention and cooperation taking place? (i.e. is it mostly a domestic or international disagreement?) What negotiation dynamics are involved?
- 5.) What do you see as the major reasons/events/factors leading to the emergence and continuation of this dispute?
- 6.) Have you dealt with any other comparable cross border issues between the U.S. and Canada and if so, what similarities and differences can you identify between the MSW issue and others?

These questions were posed in an effort to better understand the series of events involved in the developments of the MSW dispute as well as the specific role of federalism in shaping such developments. Interviewees were also encouraged to provide any additional insights, anecdotes or statements which they believed explained the unfolding and continuation of the dispute. A similar set of questions were posed to both Canadian and American NGO and business leaders and representatives. These questions included:

- 1.) What role has your organization played in the negotiation process surrounding the MSW dispute between Michigan and Ontario? (i.e. How long has the organization been involved? Whose interests do you represent? What has your stance on the issue been?)
- 2.) What level of access has your organization had to relevant decision makers? What factors have facilitated or hindered this access? (i.e. what are the barriers to effective participation?)
- 3.) What do you see as the major reasons/events/factors/individuals/publications leading to the emergence and continuation of this dispute?

- 4.) Has your organization dealt with comparable cross border environmental issues? If so, what similarities or differences can you identify between the MSW issue and others?

The questions posed to NGO and business leaders and representatives were also intended to provide insights into the development of the dispute and understand the influence that non-governmental organizations were able to have in light of federalist structures. Interviewees were also encouraged to provide any additional comments which they deemed relevant.

Additionally, these exploratory interviews were conducted with key informants, or those who are in leadership, decision-making, or expert roles (Leech, 2002). On the Canadian side of the border, three government officials and three non-governmental organization leaders were interviewed. An additional two government officials, three non-governmental organization representatives and one business leader were interviewed in the U.S. Key informant interviews were selected because, as Dexter (1970) argues, “in standardized interviewing...the investigator defines the question and the problem; he is only looking for answers within the bounds of his presuppositions” (Dexter, 1970; 31). “In elite interviewing...however, the investigator is willing, and often eager, to let the interviewee teach him what the problem, the question, the situation, is...” (Leech, 2002; 54). Therefore, because the study involves exploratory research aimed, in part, at understanding the decision-making processes involved in the MSW dispute, elite level interviewing was chosen as a technique.

In addition to including elite level interviewees, the protocol of anonymity was also used in order to increase the candor of the data gathered from respondents. Research suggests that interviewees’ concern over the consequences of their statements or with creating a favourable impression can lead to “systematic” bias in responses when their anonymity is not ensured (Rosenthal and Rosnow, 1969; Rosenberg, 1965, 1969). For instance, Dingwall (1997) argues that “whether of interest or not, the respondent is still concerned to bring the occasion off in a way that demonstrates his or her competence as a member of whatever community is invoked by the interview topic” (Dingwall, 1997; 27).

However, evidence exists which demonstrates that when anonymity is ensured, there is “a small yet consistent effect” towards increasing the openness of interviewees in their responses (Reamer, 1979). Because of the ongoing and political nature of the MSW dispute, it was considered highly likely that the validity of data collected from interviewees would be improved through the assurance of confidentiality (Singer, 1978). The interview techniques and specific questions asked as part of this study were reviewed and approved by the University of Waterloo’s Office of Research Ethics on June 1, 2006.⁹

Although interviews are an invaluable tool in understanding relationships and interactions within a specific context, scholars argue that there are several methodological problems in their use due mainly to the lack of standard methods or rules for carrying out qualitative research (Kvale, 1996). For instance, in a literature review of qualitative methods, Giorgi (1994) finds that “greater theoretical clarity and consistency as well as deeper reflection or better utilization of imaginative possibilities still seem to be called for in order to bring better theoretical conceptualization and more consistent practices to qualitative research.” Kvale (1996) addresses this criticism that the interview process lacks scientific rigor by arguing that no undisputed definition of what exactly “science” is exists. In an attempt to clarify what “science” means, Kvale combined the “core cultural beliefs” of the meaning of “science” to develop the definition of science as “the methodological production of new, systematic knowledge” (Kvale, 1996; 60). Based on this definition, the scientific merit of an interview can be determined based on the extent to which it adheres to this definition, or results in new knowledge. Furthermore, Holstein (1995) addresses criticisms of the interview process by arguing that its flexibility is a positive attribute rather than a limiting one as it allows the researcher to expand the focus of the investigation based on the emergence of new information.

The interview process carried out as part of this study’s analysis of the Ontario-Michigan MSW dispute has resulted in new knowledge regarding the relationships among the various actors involved. While some aspects of the study, such as the analysis

⁹ See Appendix B for Office of Research Ethics approved documents used to communicate with interviewees.

of archival records, generate knowledge which could be considered previously known, new knowledge results when this information is evaluated in light of the data gathered from the other two prongs of the investigation allowing new insights and conclusions to be drawn. The interview process played a key role in illustrating the relationship between these known facts to develop a picture of the interactions of multiple actors within the complex web of influence affecting the nature of the dispute. Therefore, the interview process, as well as the study as a whole, can be considered a scientific one, given Kvale’s (1996) definition.

Another limitation of conducting interviews is the unwillingness of interviewees to disclose certain information as well as a complete lack of access to some of the actors involved in the dispute. For instance, the major waste management companies and landfill operators chose not to participate in the interview process and declined to provide the researcher with any information beyond that published in press releases and on the companies’ websites. Of the 31 individuals contacted for the purposes of an interview, 3 offered no response, 17 declined, 1 agreed to participate provided they would not be quoted, and 11 accepted. Of those who declined, one was an NGO which stated that they no longer had on staff any individuals who had been directly involved in the issue, two were representatives of waste management companies, one was a Canadian industry association representative, one was a landfill operator, seven were Canadian policymakers and the remaining five were U.S. legislators. Of those offering no response: one was a Canadian government official and two were U.S. legislators.

Summary of Interviews Conducted

	Governmental Actors	Private Business Representatives	Non-Governmental Organization Representatives
Canada	4	2	0
United States	3	1	2

(Table 1)

Summary of Those Declining to Participate in Interview Process

	Governmental Actors	Private Business Representatives	Non-Governmental Organization Representatives
Canada	7	1	1
United States	5	3	0

(Table 2)

Although there was limited participation in the interview process, it was still possible to develop an in-depth understanding of the Ontario-Michigan MSW dispute. Furthermore, the limitations of the interview technique were overcome, at least partially, through the assurance of confidentiality of the interviewees as well as careful attention to the process of eliciting and analyzing interviewee responses. Through the use of exploratory and empirical interviews conducted at the elite level, an understanding of the relationships and interactions amongst the actors in the MSW dispute can be developed, which will lead to an understanding of the ways in which federalism influences bilateral environmental relations.

News Reviews

In addition to conducting interviews, another component of the case study involves the review of documents such as newspaper and magazine reports to gain an understanding of the timeline of events related to the MSW dispute as well as the actions taken and statements made by actors involved with the dispute. In accordance with the findings of scholars such as Marshall and Rossman (1999), as well as Jones et al (2006), a document review process is an important part of providing contextual information within a case study. Such information can then be used to supplement, clarify and validate information gained from interviewees (Marshall and Rossman, 1999).

The primary newspaper archives to be reviewed consist of the Toronto Star, Globe and Mail of Toronto, Lansing State Journal, Detroit Free Press, Detroit News, the Kirkland Lake Gazette and Timiskaming Press. These newspapers were selected because a Factiva and LexisNexis Academic search of all North American publications revealed that they covered aspects of the MSW dispute. The Lansing State Journal and the Kirkland Lake Gazette also have a history of ongoing coverage of the MSW issue since the late 1990s to the present. These particular newspapers have consistently provided thorough coverage of the issue as a whole, as well as addressed issues related to the impact of the dispute on the communities in which they are located. However, this review only uncovered information about the events and individuals involved which the various newspapers chose to cover. Additionally, the objectivity of the data cannot be assured as each of the newspapers may have had their own particular bias (Marshall and Rossman, 1999). However, the wide range of newspapers reviewed as well as the efforts to triangulate data with that garnered from other document reviews and interviews will help to counter potential biases by providing additional information that some newspapers may have chosen not to report.

NGO and Industry Association Position Papers

The particular position papers reviewed for this study include those produced by the National Solid Waste Management Association of the U.S.; the Ecology Center of Ann Arbor, Michigan; Clean Water Action of Michigan; the Michigan Environmental Council; Great Lakes United; the Canadian Environmental Law Association; the Toronto Environmental Alliance; and the Sierra Club. Each of these NGOs and business organizations has played a lead role in attempting to influence the MSW dispute and has a history of involvement in the issue beginning in the late 1990s according to newspaper reports. The information gained from these position papers will help to inform the nature and type of opposition that existed to the movement of waste from the Greater Toronto Area (GTA) to Michigan and will also be used to further validate the information gained from the interview process. Because the data selected for inclusion in each of the

position papers were informed by the particular biases of the organization presenting them, it was necessary to compare them with the findings from interviews and other document reviews in order to validate their assertions (Marshall and Rossman, 1999).

Legislature Debate Records

Another source for obtaining information about the actions, statements and positions of the actors involved in the MSW dispute were the records of Parliamentary Proceedings from the Province of Ontario and the Government of Canada, as well as the Congressional records from the State of Michigan and the U.S. Government from 1996 to 2006. These records also helped to develop a more thorough timeline of the events involved in the development and evolution of the dispute. Although the debate records provided limited information regarding the context surrounding efforts to pass various pieces of legislation, when compared with data from newspaper reviews, NGO and industry association position papers as well as interviewee responses, it was possible to develop a more complete picture of the events surrounding these debates. This once again helped to enhance the validity and reliability of the analyses. However, it was still not possible to ascertain the motivations of the legislators because of the possibility that other political issues may have influenced their behaviour or statements made in relation to the MSW dispute.

The information gathered through interviews, newspaper reports, NGO and industry position papers, and debate records will be triangulated and used to inform the case study. The case study will then be analyzed in light of this study's organizational framework. Therefore, a review of formal and informal intergovernmental relations in the MSW dispute will be performed. This first stage of analysis will then be followed by an examination of the formal and informal bilateral environmental relations between the U.S. and Canada. Both of these stages of analysis will focus on the interactions amongst government, NGO, and private business actors as well as epistemic communities across borders. The findings from this analysis will then be used to explain the ways in which

federalism influences bilateral environmental relations and help to determine the strengths and weakness of the study's organizational framework.

Chapter 4: An Investigation of the Ontario-Michigan Dispute

In examining the Ontario-Michigan MSW dispute, an investigation of both intergovernmental relations within Canada and the U.S. and bilateral relations between the two countries is necessary. This chapter begins with a brief overview of the Ontario-Michigan MSW dispute and is followed by an investigation of the formal, or legislative, intergovernmental relations within Canada and the U.S. The examination of formal level relations includes an investigation of environmental protection and waste disposal laws within Canada and the Province of Ontario, followed by an examination of similar laws within the U.S. and the State of Michigan. The second stage of the analysis involves a look at the informal, or working level administrative relations amongst government officials at all levels as well as NGOs and private businesses.

The final stage of the case study examination includes an investigation of formal and informal bilateral environmental relations between Canada and the U.S and identifies the existence of any epistemic communities. The analysis of formal relations includes an examination of international agreements such as North American Free Trade Agreement (NAFTA) and the 1986 Canada-USA Agreement of the Transboundary Movement of Hazardous Waste. Additionally, the informal bilateral relations analysis includes an examination of working-level bilateral relations between Michigan state senators and Ontario's Environment Minister. Similar to the intergovernmental analyses performed, the review of bilateral environmental relations also includes the role of NGOs and private businesses.

Overview of the Ontario-Michigan Municipal Solid Waste Dispute

In early 1996, faced with the upcoming closure of the Keele Valley Landfill (the sole disposal site for the City of Toronto's waste) and significant hurdles to the

development of a landfill in the Adams Mine of Kirkland Lake¹⁰, the City of Toronto began looking for alternative solutions for dealing with its vast amounts of garbage. Several months later, in August of 1996, amidst a contentious battle to gain approval for the Adams Mine landfill, Toronto negotiated the first in a series of contracts to ship waste to the State of Michigan. The contract covered the hauling and disposal of a portion of the city's municipal solid waste (MSW) and was only a short term one, running from August of 1996 until December of 2001 (Franczyk; Dec. 04, 1996). At the time the contract was signed, Michigan's landfills were viewed by most as a temporary solution to Toronto's pending garbage crises; the contract was meant to prolong the life of Ontario's Keele Valley Landfill until another one could be sited within the Province. In December of 2001, faced with the imminent closure of the Keele Valley Landfill and an absence of viable domestic solutions, the City of Toronto signed a second, longer term contract with Republic Services, Inc. of Carleton, Michigan to haul and dispose of 100 percent of the City's MSW in Michigan's Carlton Farms landfills near Detroit until December of 2010.

In addition to the lack of landfill options within Ontario, the most frequently cited argument by the City of Toronto to begin shipping waste to Michigan was an economic one. With the closing of the Keele Valley Landfill, projected disposal costs in Ontario rose from \$C12/tonne to \$C60/tonne, based on estimated costs for developing and operating a landfill in Kirkland Lake— considered to be the city's best domestic alternative. This rise in cost made Michigan, with its relatively large landfill capacity, location within close proximity to the Canada-U.S. border and lowest tipping fees in the U.S., an attractive option. The regions of Peel, York, and Durham, as well as private industrial companies eventually followed suit with similar agreements ("Facts About Toronto's Trash," 2006). Although Toronto's waste shipments to Michigan only accounted for 23.4 percent of waste being imported into the state from Ontario as of 2006, the City of Toronto represents the largest single contributor and therefore receives the most attention from Michigan legislators and non-governmental organizations in the dispute over waste shipments (Carroll, 2006). Because of Toronto's relatively higher profile as compared to other municipalities in Ontario, the City has become the center of

¹⁰ Kirkland Lake is located approximately 700 kilometers north of Toronto. See appendix for map.

attention for most Michigan legislators and NGOs attempting to garner public support (Cook, 2006).

By 2006, the City of Toronto was generating approximately 865,000 tonnes of municipal solid waste each year, 40 percent of which was then diverted from landfill disposal through recycling and composting initiatives, such as the Blue and Green Bin programs. The remaining 519,000 tonnes were then compacted, loaded into tractor trailers and shipped to Michigan's Carleton Farms Landfill in Wayne County ("Facts About Toronto's Trash," 2006). The shipment of this waste resulted in nearly 400 solid waste trucks crossing the Canada-U.S. border each day ("Fighting to Stop Canadian Trash," 2006). The movement and landfilling of such large amounts of waste has led to environmental problems such as increased air pollution in both Ontario and Michigan and diminishing landfill capacity in Michigan (Carroll, 2006).

In addition to the problem of decreasing landfill capacity, the practice of importing Canadian waste also poses a unique security challenge for the U.S. The nature of the shipping method makes it more difficult for U.S. Customs officials to inspect the materials coming across the border as compared to traditional cargo. There have been several cases in which the truckloads were used as a way to attempt to traffic illicit substances into the U.S., most notably in September 2003, when one ton of illegal drugs, valued at \$US 9 million, was detected ("Fighting to Stop Canadian Trash," 2006). Such security threats as well as fears over diminishing landfill capacity within the state led to public outcry to ban Ontario's waste shipments into Michigan.

In an effort to reduce its dependence on Michigan landfills, the Province of Ontario is working to combat its MSW issues through an integrated waste management strategy. A central component of this plan has been the Green Ontario Solid Waste Strategy, which is aimed at reducing the province's waste by 50 percent, based on 1987 levels. However, no timetable has been attached to this effort. In addition, the City of Toronto's waste diversion programs, which include the Blue Box Recycling and Green Bin programs, are aimed at achieving 100 percent diversion by 2010. In 2005, the city reported diversion rates at 40 percent, therefore demonstrating the necessity of additional efforts to reach the 2010 goal ("Facts About Toronto's Trash," 2006). Although, there

have been significant increases in recycling activities throughout Ontario, particularly in Toronto, critics continue to argue that such efforts will not reduce the waste flow enough to end the necessity of exporting to Michigan (“Getting Rid of Waste,” 2006). Therefore, cooperation with Michigan will likely continue to be a necessity until the Province of Ontario is able to site a landfill capable of handling Toronto’s disposal needs. Further underscoring the potential for a waste management crisis for Toronto and the Province, the Ontario Waste Management Association (OWMA) stated that by 2010, Ontario’s waste disposal capacity will be 50 percent of what it was when the 2001 contract with Michigan landfills was signed. Therefore, even if Toronto is able to achieve its diversion rate goals the Province will still be dependent on Michigan’s landfills, unless a new landfill is sited within Ontario. Rob Cook of OWMA states that in such a case, “without the Michigan option, Ontario will only have two years of disposal capacity” (Cook, 2006).

Formal Intergovernmental Relations Analysis for the Canadian and American Federal Systems

In both Canada and the U.S., waste disposal is regulated by federal and sub-national legislation, which lays out guidelines for disposal facilities such as landfills and incinerators. Additionally, such legislation also calls for the designation and subsequent separation of waste into either the “hazardous/toxic waste” or “solid wastes” categories. The implementation of these handling and disposal laws is overseen by Environment Canada and U.S. Environmental Protection Agency (EPA) in Canada and the U.S. respectively (Unsworth, 2004). In order to understand how the federal context influences bilateral environmental relations between Canada and the U.S., this study’s organizational framework calls for a review of the legislation in place and the boundaries or restrictions that such legislation places on the actions of parties to the dispute.

Formal Intergovernmental Relations Analysis: Canada

In Canada, the main environmental laws governing waste management are the federal Environmental Assessment Act (1992) and the federal Environmental Protection Act (1999). These federal laws in turn influence the way in which the Province of Ontario and municipalities carry out their waste management practices and develop policies. In addition to the federal and provincial legislation in place, the actions of parties to the Ontario-Michigan MSW dispute are also affected by several Toronto City Council Agreements and a related Provincial Act to declare Adams Mine a lake.

The Environmental Assessment Act's (1992) stated goal is "to ensure that projects that are to be carried out in Canada or on federal lands do not cause significant adverse environmental effects outside the jurisdictions in which the projects are carried out" ("Service Ontario E-Laws," 2006). The Assessment Act requires that any type of work related to the building or modification of physical infrastructure undergo a thorough review process, which includes a public consultation component, to determine the potential effects on environmental and human health ("Service Ontario E-Laws," 2006). This means that before municipalities can site a landfill or sanction the movement of waste from one jurisdiction to another, an environmental assessment must be carried out in order to determine that there will be little or no negative effects on human or environmental health. The Province of Ontario passed its own environmental assessment act, the Ontario Environmental Assessment Act (OEAA), in 1990 and contains the same requirements for dealing with the disposal and handling of solid waste as that of the federal Environmental Assessment Act (1992). When it comes to issues of transporting waste through the province and developing landfills or other disposal operations, the OEAA act has precedence over the federal Environmental Assessment Act (1992).

Related to the Environmental Assessment Act (1992), the federal Environmental Protection Act (1999) is concerned with pollution prevention and the protection of the environment for the health and well being of Canadian citizens. With respect to waste management, the Protection Act calls for the safe handling and disposal of toxic and hazardous substances ("Service Ontario E-Laws," 2006). Therefore, the findings from

environmental assessments must show that the terms of the Environmental Protection Act will be upheld in order for the proposed project to proceed. The Province of Ontario has its own Environmental Protection Act, passed in 1990, which creates the guidelines for the siting of a landfill and requires that operators gain certification from the Province before waste disposal. The Ontario Environmental Protection Act also requires that before a landfill can be sited, it must satisfy the requirements of the OEAA (“Services Ontario E-Law,” 2007).

In addition to these federal and provincial laws, several Toronto City Council agreements also play a role in the MSW dispute. The first of these took place in August of 1996, when the council voted to approve a temporary, short-term contract with Michigan based Republic Services, Inc. to ship and dispose of waste within the state. On December 4, 2001, the Council approved another contract with Republic Services to continue shipping waste to Michigan until 2006. This contract was later amended in 2005 by the Council to extend waste shipments and disposal in Michigan landfills until 2010.

Furthermore, in 2005, the Province also took action to remove the Adams Mine option from the table by passing Bill 49, the Adams Mine Lake Act, which designated the Mine as a Lake. Because the Environmental Protection Act (1999) has made it illegal for waste to be disposed of in lakes, the mine will be protected from future development as a landfill (“Service Ontario E-Laws,” 2007). Therefore, Toronto will have to look elsewhere if it intends to find a domestic solution to its waste disposal needs.

The Adams Mine Lake Act, as well as the Toronto City Council decisions create the basis for the continuation of the MSW dispute between Ontario and Michigan. Additionally, while not directly dictating how waste services should be provided by municipalities, both the Environmental Assessment Act and the Environmental Protection Act create the parameters within which provinces and municipalities must operate in terms of waste management. An understanding of the boundaries placed on the sub-national and local levels through legislation helps to explain why informal intergovernmental relations unfold as they do.

Formal Intergovernmental Relations Analysis: United States

On the American side of the border, the waste dispute is governed largely by the U.S. Congress which regulates all matters of international and interstate commerce under Article 1, Section 8, Clause 3 of the U.S. Constitution. This particular clause, known as the Commerce Clause, makes states such as Michigan incapable of unilaterally regulating the importing or exporting of commodities across its borders.¹¹ However, several environmental laws also play a role, including the National Environmental Policy Act of 1969 (NEPA) and the Resource Conservation and Recovery Act of 1976 (RCRA). At the sub-national level, waste issues are governed by Michigan's Natural Resources Environmental Protection Act of 1994 (NREPA), as well as by Michigan's 1988 Solid Waste Management Plan ("Laws and Regulations," 2007).

The National Environmental Policy Act (1969) serves as the charter for U.S. environmental protection laws. NEPA (1969) established the first environmental protection policies and set goals of environmental conservation and protection for the country. It also provided guidelines under which all other national and sub-national level environmental legislation was to be established ("Laws and Regulations," 2007).

Following NEPA (1969), the federal Resource Conservation and Recovery Act (1976) was implemented. RCRA established guidelines for the management of solid waste within the U.S. and granted enforcement authority to the U.S. Environmental Protection Agency (EPA). RCRA placed authority for the development of solid waste management policies at the federal level, thereby dictating to the sub-national level what each state's waste management regulations must include ("Laws and Regulations," 2007).

Therefore, in an effort to enforce RCRA at the sub-national level, Michigan enacted the Natural Resources and Environmental Protection Act (NREPA) in 1994, which met the requirements of RCRA, but also contained more specific regulations for dealing with solid waste. NREPA required that all out-of-state waste be accompanied by

¹¹ The 1992 U.S. Supreme Court Case of *Fort Gratiot Landfill v. Michigan Department of Natural Resources* (504 U.S. 353) found that only the U.S. Congress can regulate the interstate movement of waste.

one of three documents: a Solid Waste Manifest Record, which demonstrates that the out-of-state waste is being shipped from an approved jurisdiction; a Prohibited Waste Removal Record, showing that the waste shipment has been screened and does not, or no longer, contain prohibited materials; or a Uniform Solid Waste Record, which confirms that the waste shipment is composed of “uniform material,” other than incinerator ash.

Under NREPA, the State of Michigan was able to determine for itself which methods would be used for the enforcement of RCRA. Therefore, the State granted enforcement authority to the Michigan Department of Environmental Quality (MDEQ), which handled issues of enforcement mainly through inspections of waste truckloads being disposed of in Michigan. A 2005 study conducted on behalf of the MDEQ found that 73.3 percent of the truckloads of Canadian MSW being disposed of in Michigan were accompanied by a Prohibited Waste Removal Record, 7.3 percent were accompanied by a Solid Waste Manifest Record, 1.4 percent had a Uniform Solid Waste Record, and 18 percent did not present any documentation but were still allowed to enter the state (Tetra Tech EM, Inc., 2006). These findings suggest that the State of Michigan has been fairly successful at the task of implementing environmental enforcement responsibilities placed on it by the U.S. federal government. Although no clear mandate has been given, local authorities play a role in waste management issues by carrying out municipal services as they deem appropriate. However, these services must be provided in such a way as to meet the requirements of the federal government through NEPA.

The establishment of waste disposal capacity within the state of Michigan is dictated by the 1988 Solid Waste Management Plan (SWMP). The SWMP required each county within the state to develop for itself waste disposal capacity which could serve the needs of that county in perpetuity (“Solid Waste Policy,” 2007). Because each county was responsible for handling its own waste disposal needs indefinitely, local governments tended to approve the siting of landfills which were much larger than what was projected to be necessary. Such practices have led to excess disposal capacity within the state. Additionally, under the SWMP, private companies were allowed to own and operate landfills as well as request any size bond they desired from the state. These allowances

led to a majority of landfills in the state being privately held but publicly funded, further increasing the amount of excess disposal capacity.

The federal and sub-state environmental and waste management regulations establish the boundaries within which the actors involved in the MSW dispute operate. Since no legislation exists which clearly grants exclusive authority over waste management to any one level of government, intergovernmental politics and interactions on both sides of the border can influence the bilateral environmental relationships between Canada and the U.S. Additionally, Michigan's waste management policies have encouraged the excessive development of landfills, therefore creating bountiful and inexpensive disposal options for waste generated outside of the state (Van Guilder, 2006).

Informal Intergovernmental Relations Analysis of the Canadian and American Federal Systems

Formal intergovernmental relations in both Canada and the U.S. establish the boundaries within which informal interactions among actors at the federal, sub-national and local levels take place. Therefore, in order to gain a full understanding of the intergovernmental relations occurring within both the Canadian and American federal systems, the informal aspects of such relations must now be examined.

Informal Intergovernmental Relations Analysis: Canada

The Keele Valley landfill, Toronto's sole solid waste disposal site for over two decades, received its last shipment of waste on December 31, 2002, when it officially reached its maximum capacity. In the late 1980s, prior to Keele Valley's closing and faced with the task of managing nearly a million tons of MSW per year, the City of Toronto began working to develop another disposal option as well as an aggressive waste diversion campaign. The most promising option at the time was that of Adams Mine,

located in the District of Timiskaming, just south of Kirkland Lake (City of Toronto, 2006).

In 1989, Adams Mine, an iron strip mine developed in 1963, was closed (Wroe; July 24, 1996). The closing of the Mine, which employed nearly 400 people, led to an economic downturn within the City of Kirkland Lake. However, the closing of the Mine also presented a potential solution for the City of Toronto's seemingly imminent garbage crisis as well as a way to once again provide jobs for residents of Kirkland Lake (Anonymous Interview, Town of Kirkland Lake official; Jun. 29, 2006).

After closing, the Mine was purchased by Gordon McGuinty¹² of Notre Development Corporation, who immediately began working with Provincial authorities in order to get the necessary permits to turn the mine into a landfill which would receive all of the City of Toronto's waste via rail shipments by Canadian National and Ontario Northland. McGuinty also simultaneously lobbied Toronto for a contract to dispose of the City's waste. McGuinty and other proponents argued that creating a landfill in Adams Mine would provide employment opportunities and help to revive the local economy. Additionally, proponents claimed that the site would be ideal for hydraulic containment, because of its high elevation.

The City of Toronto was particularly receptive to McGuinty's proposal as it was currently in the midst of a search for a "willing host" for a new disposal site because of the impending closure of Keele Valley. However, because of existing provincial environmental laws, before Adams Mine could be allowed to operate as a landfill and accept Toronto's waste, Kirkland Lake would first have to agree to become such a "willing host" and a series of environmental assessments (as required by the 1992 Environmental Assessment Act) would have to be performed in order to ensure that the project would not pose any threats to human or environmental health and safety. However, the assessment process was a costly and time-consuming one that could take years to complete.

¹² Gordon McGuinty is no relation to Ontario Premier Dalton McGuinty.

Therefore, in an effort to speed up the development of the Adams Mine Landfill, Ontario Premier Peterson attempted to waive Ontario's environmental assessment requirements (Royson; 1991, D1). Peterson argued that the lack of usable landfill space in the Province was a "problem for Ontario as well as Toronto," and that the pressing need for a solution to Toronto's waste problem warranted an approval of the project by the Province without a complete assessment. As a result of Peterson's interventions, the City of Toronto accepted McGuinty's proposal and the project appeared to be going through until 1990, when Premier Bob Rae (NDP) took office.

One of the NDP's first moves after coming into office was to close down the project because of Rae's unwillingness to appear to support the idea of "allowing a big city to dump its garbage in a small town's backyard" (Anonymous Interview, City of Toronto official; Jul. 27, 2006). The Rae government established the Interim Waste Authority, a committee which was responsible for locating a suitable disposal site for Toronto's waste. Additionally, the Rae Government passed a law which stated that waste could not leave the region it was created in. The Interim Waste Authority finally began another series of environmental assessments in 1995, which led to Toronto's decision in December of that year to reject the proposal based on concerns over possible contamination of Kirkland Lake's groundwater supply and what were considered the prohibitive costs of the project (Wroe; Jul. 24, 1996).

However, once Premier Mike Harris came into power in 1995, the Interim Waste Authority was dismantled and the responsibility of locating a disposal site for Toronto's waste was again placed in the hands of the City. In 1996, Toronto's Environment and Public Space committee recommended that the City be allowed to negotiate a short-term garbage disposal contract, in order to provide the city with more time to develop a solution for handling its garbage. The City decided to negotiate such a short term contract because, even if approved, the Adams Mine landfill could not be up and operating until 1999 and therefore a non-domestic disposal solution would be required. In October 1996, Metro Toronto council approved the decision to award a five-year contract for waste disposal to one of two Detroit-area companies beginning in December (Franczyk; Oct. 30, 1996).

However, this was not the end of the Adams Mine debate, as Premier Harris called for a full environmental assessment of the Michigan contract. Similarly, Gordon McGuinty charged the Toronto City Council with trying to circumvent new provincial legislation requiring a full environmental assessment of sites outside Ontario by approving the deal without first performing any assessments. The City maintained that the deal to ship a portion of its waste to Michigan-based landfills did not require an assessment under the 1992 Environmental Assessment Act. McGuinty stated that the City was doing nothing more than closing a "little loophole" which allows municipalities with big tonnages of waste to contract them out without investigating the potential environmental impacts of such agreements (Franczyk, Dec. 18, 1996).

Almost immediately after the signing of Toronto's contract with the Detroit-based companies, the Harris government came under fire for apparently favouring Adams Mine as a solution to Toronto's impending waste crisis (Davis; Nov. 13, 1996). These accusations came as a result of the Harris Government's unsuccessful attempts to force the Province to conduct a full environmental assessment of waste shipments to Michigan, which was perceived by some as an attempt to stall the Michigan deal long enough to finalize plans to dispose of waste in Adams Mine (Anonymous Interview, City of Toronto official; Sept. 12, 2006). In early November 1996, there were accusations against Harris for working to change environmental laws to make it easier for Adams Mine to be opened and harder to ship trash to the U.S. Liberal MPP David Ramsay charged the Harris government with patronage and possible corruption in the passage of Bill 76—The Environmental Assessment and Consultation Improvement Act, which was aimed at preventing municipalities from signing garbage disposal contracts without provincial approval—by questioning the nature of Harris's relationship with Notre Development Corp.'s President, Gordon McGuinty (Davis; Nov. 13, 1996). *The Kirkland Lake Gazette* reports Ramsay as publicly stating to Harris that, "your friend has the potential to make millions of dollars on this deal and now you have a law that can make it happen. You deny speaking to him on this subject and yet I can prove you did. Premier, what are you hiding?" McGuinty countered Ramsay's accusations by stating that the initiative to pass Bill 76 came from "the unions representing the Ontario

Northland Railway and the Highway 11 mayor's action committee,” not Harris (Davis; Nov. 13, 1996). But, despite such accusations, the disposal contract negotiated between Toronto and Republic Services, owner of the Michigan landfills chosen for disposal, went ahead as agreed without an environmental assessment.

Under the contract granted to the Detroit-based company, Toronto agreed to ship a total of approximately 250,000 tons of waste to Michigan annually, beginning in early January 2001. The remaining waste generated by Toronto would continue to be disposed of in the Keele Valley landfill until its closure. Although shipping waste to Michigan was C\$3 per ton less than disposing of all of the waste in Keele Valley until Adams Mine was ready as a disposal site, some argue that Toronto could have saved C\$42 million over five years had the disposal contract been awarded to Notre for disposal in Adams Mine rather than Michigan’s landfills, due to cheaper projected shipping costs (Carroll, 2006).

Although this temporary agreement had been signed with two Michigan landfills, McGuinty continued to press for the development of a landfill in Adams Mine. Progress appeared to be made in late 1999 when the Kirkland Lake City Council agreed to consider becoming a willing host, provided that the proper safety and environmental assurances were put in place and several other contingencies were met. Therefore, a number of environmental assessments as well as private studies were carried out to determine the environmental soundness of the proposal to ship waste from Toronto to Kirkland Lake via rail for disposal in the landfill which McGuinty planned to develop within Adams Mine. However, the announcement by the Kirkland Lake City Council that they were considering such a proposal led to contentious debate amongst the community, which created animosity and divisions that still existed seven years later (Anonymous Interview, Town of Kirkland Lake official; Jun. 29, 2006). The deep divisions which emerged in the community between those who supported the mine and those who opposed it were particularly apparent during the November 2000 municipal election which led to the ousting of all anti-Adams Mine Landfill councilors (Anonymous Interview, Town of Kirkland Lake official; Jun. 29, 2006; Eye Weekly, Mar. 1, 2001). Mike Garfield of the Ecology Center reported that “according to city political reporter

Charles Angus, the garbage debate became ‘the most raucous debate in the history of the City’” (Garfield, 2001).

Opponents of the proposal argued that because of the unstable nature of the mine’s walls, caused by the years of continuous blasting, it was likely that the site would eventually leach contaminants into the groundwater supply. They claimed that the likelihood of an environmental and human health disaster did not justify the few jobs that the landfill would create, although many citizens of Kirkland Lake continued to believe the findings of preliminary assessments commissioned by McGuinty which concluded that the mine was an ideal location for siting a landfill because of hydraulic containment (Anonymous Interview, City of Toronto official; Sept. 12, 2006).

Once the Kirkland Lake Council was satisfied that the plans to develop a landfill in Adams Mine did not pose a threat to human and environmental health, the new Council agreed to approve McGuinty’s proposal in 2001. However, a few additional conditions imposed by the Kirkland Lake Council first had to be met by Notre Development Corp. The contract with Notre Development Corp and Toronto also involved the development of a recycling center, the creation of 180 jobs, the provision of funding for local colleges, and the creation of an educational visitors’ area near the landfill. Kirkland Lake Councilors were not only seeking to ensure that the landfill would be environmentally sound, but they also viewed the proposal as an opportunity to market the city as an “environmental solution centre” (Anonymous Interview, Ontario environmental NGO representative; Jul. 5, 2006). After years of contentious debate the deal amongst McGuinty, Kirkland Lake’s City Council and the City of Toronto appeared to be going through. Although an environmental assessment would still have to be performed, efforts were still made to secure a contract with the City of Toronto (Anonymous Interview, Town of Kirkland Lake official; Jun. 29, 2006).

In a final push to get Toronto to approve the contracts to haul to Kirkland Lake, a city council meeting was held in Toronto on December 4th of 2001. Many of the opposition groups to the project were present and allowed to make statements regarding the project (Rusk, 2001). However, the meeting quickly soured when Waste

Management International (WMI), the company who was now bidding for the contract to oversee the movement of waste from Toronto to Adams Mine, expressed concerns over the future liabilities they were forced to incur as part of their contract. This made progress quite difficult and Mayor Mel Lastman “saw this as an opportunity to shut things down,” and immediately called for a vote on the issue. One interviewee claimed that Lastman, who had initially supported the Kirkland Lake project, quickly began looking for a chance to end talks over Adams Mine and commit to the Michigan alternative once public opposition to the idea of developing a landfill within Ontario began to emerge (Anonymous Interview, Town of Kirkland Lake official; Jun. 29, 2006). The Toronto City Council voted 38 to 2 to send its garbage to the Republic Inc. landfill site in Southeast Michigan as part of a five year contract and the Adams Mine deal was officially declared dead (Rusk, 2001). In 2005, the initial 2001 contract with Republic Inc. was quietly renegotiated and extended until January 2010 (Anonymous Interview, City of Toronto official; Jul. 3, 2006). Waste Management Inc. also signed an additional contract with the City to dispose of the remaining portion of Toronto’s waste until 2010 in Michigan’s Pine Tree Acres Landfill of Wayne County and Carleton Farms Landfill of Macomb County (Stabenow, 2006)¹³.

In a final move to ensure that future attempts to establish a landfill in Adams Mine would not be able to take place, the Province passed Bill 49, the Adams Mine Lake Act which officially declared the mine a lake. It is unclear why Harris supported such a move, but it has been speculated that he did so in order to discredit rumours that he was seeking to provide favours for McGuinty (Anonymous Interview, Town of Kirkland Lake official; Jun. 29, 2006).

Informal Intergovernmental Analysis: United States

Since Toronto began considering shipping its waste to Michigan in the late 1990s, many state legislators and citizen groups have been attempting to ban or limit such importations, although this cannot be legally done without an amendment to the U.S.

¹³ See Appendix A for map.

Constitution's Commerce Clause. Such an amendment is necessary in order to allow the State of Michigan to discriminate against waste from Canada. However, it is exceedingly unlikely that such an amendment will ever be approved because of strong opposition from Senators and Congressional Representatives of other States such as Indiana and Ohio, which also ship waste to Michigan for disposal. These Senators and Congressional representatives will not support federal legislation allowing states such as Michigan to refuse waste generated out-of-state because of the danger that they will also lose access to Michigan landfills along with Ontario (Anonymous Interview, Michigan legislator; Sept. 20, 2006).

Although legislators and citizens groups had been working for several years to prevent shipments of waste into the state from Ontario, it was not until the signing of a long-term contract with Republic Services in 2002 that the issue received widespread public or political attention. The first official effort to prevent Ontario's waste from entering Michigan took place in 1997, when the Michigan State Senate's National Resources and Environmental Affairs Committee passed a bill banning the importation of Canadian waste. Although the legislators involved in passing the bill knew that it could not be signed into law because it contradicted the U.S. Interstate Commerce Clause, it was seen as an opportunity for the Michigan Senate to express to then-Governor of Michigan, John Engler (Rep.), its disapproval of Toronto's intentions (Michigan Daily, 1997). Following this Senate bill, there was virtually no action within the Michigan legislature until 2001.

In an attempt to spur legislative action, environmental and community groups making up the "Don't Trash Michigan Campaign"¹⁴ began placing pressure on the state

¹⁴ The "Don't Trash Michigan Campaign" was organized by the Ecology Center of Ann Arbor, Michigan in 2000. As of 2006, members of the campaign included: Central Detroit Christians, Citizens Environmental Alliance of Southwestern Ontario, Clean Water Action, Corktown Recycles, CUTS: Communities United Together, Detroiters Working for Environmental Justice, East Michigan Environmental Action Council, Ecology Center, ECPP: Eastside Communities Policing Partnership, Great Commission Baptist Church, HEAT: Hamtramck Environmental Action Team, League of Conservation Voters, Michigan Environmental Council, Michigan Citizens for Water Conservation, Michigan Land Use Institute, Michigan Nature Association, Mid-Michigan Environmental Action Council, National Lawyers Guild- Detroit Chapter, NO WASTE: Network of Waste Activists Stopping Trash Exports, PIRGM: Public Interest Research Group of Michigan, RECAP: Romulus Environmentalists Care About People, Mackinac Chapter Sierra Club and West Michigan Environmental Action Council ("Endorsing Organizations," 2007).

of Michigan to take action to ban waste imports from Canada through the release of a report in 2000 entitled, "Dereliction of Duty: How the Department of Environmental Quality Endangers Michigan's Environment and Public Health." The report claimed that the Michigan Department of Environmental Quality (MDEQ) allowed landfill operators to expand their operations without permission from county authorities, which was argued to be in direct violation of the State of Michigan's Solid Waste Management Plan. Such expansions led to excess landfill space thereby allowing operators to import large amounts of out-of-state MSW despite local level opposition. The authors of the report pointed to the 1991 expansion of Carlton Farms in Sumpter Township as a particularly egregious case ("Dereliction of Duty...", 2000). The Michigan legislature made no official comment on the report. There was a similar lack of response from other environmental and community groups.

The issue reemerged in August of 2001, just before the signing of the long-term deal with Republic Services to haul waste from Toronto to Carlton Farms, outside of Detroit. In an effort to prevent further shipments of waste from Ontario, Michigan State Senator Ken DeBeaussaert (Dem.) introduced Senate Bill 0146 which aimed to make it no longer economically feasible to ship waste into the state. The bill called for a ban to the disposal of beverage containers in Michigan landfills, thereby making the disposal process more cumbersome for Ontario as well as for other states shipping garbage to Michigan as they would then have to invest in the time and effort required to sort all beverage containers out of waste shipments heading into the state ("Trash," 2002). DeBeaussaert argued that "The residents of Michigan have demonstrated their commitment to preserving natural resources by removing bottles and cans from our waste; others who seek to use our landfills should be held to that same standard" (Garfield, 2001).

Although Senate Bill 0146 was primarily intended to discourage Canadian waste shipments, it was presented as a natural resources conservation initiative in Michigan. DeBeaussaert's press releases stated that although Ontario operates a deposit system on beer bottles and cans, as well as curbside recycling programs, only 35 percent of beverage containers were recovered. Comparatively, under the Michigan bottle deposit

program, 98.4 percent of beverage containers were recovered for recycling, nearly 20 percent higher than the average recovery rate for ten other states with similar bottle deposit laws. DeBeaussaert further asserted that the passing of his bill would reduce the amount of waste coming into the state by 250,000 to 500,000 cubic yards annually. Such assertions led the Michigan Environmental Council (MEC)¹⁵ to lend its support to the bill. James Clift, MEC's Policy Director, stated that "this legislation is a positive step the State of Michigan can take without authorization by Congress to ensure our landfill space is being used wisely" (Garfield, 2001).

Similar legislation was also introduced in the Michigan Congress in October of 2001 by Representative Paul Gielegem (Dem.), in House Bill 4530, which was aimed at placing limitations on the amount of garbage that Canada could ship to the U.S. in the future. Neither of these bills successfully passed through the legislature though. DeBeaussaert's Senate Bill 0146 was referred to the Committee on Natural Resources and Environmental Affairs and Gielegem's House Bill 4530 was referred to the Commerce Committee; the research was unable to determine why no voting action was taken with either proposals ("Michigan Compiled Laws," 2007). In December of that year, Toronto approved its final plan to commence shipping all of the City's waste to Michigan's landfills ("Facts About Toronto's Trash," 2006).

The final approval of the Toronto-Republic Services contract in December 2001 sparked public outcry throughout the State of Michigan, which was further fueled by politicians seeking reelection. The 2002 midterm elections led to increased attention of the waste issue as many candidates ran on anti-Canadian waste platforms (Lansing State Journal; Oct. 12, 2002). The most prominent of these efforts were those of Congressman John Dingell (Dem.) and Senator Carl Levin (Dem.) who proposed legislation at the federal level which demanded that the EPA enforce a clause of the bilateral Agreement on the Transboundary Shipment of Waste (1986), requiring that Canada notify the U.S. before any waste shipments could occur. It was hoped that by forcing Canada to seek

¹⁵ MEC is a nonprofit organization which represents the interests of environmental, public health, and faith-based organizations throughout the state of Michigan by providing its members with technical assistance, coordinating state-wide environmental campaigns and working to lobby Michigan Legislators (Michigan Environmental Council, 2007).

approval from the U.S. before shipping, the U.S. Government would then have the opportunity, and presumably act upon it, to refuse the shipments. Although the issue was raised by Levin during a debate within the U.S. Senate, no official legislative action was taken nor did the EPA issue an official response (Levin, 2002).

In addition to the action being taken by Michigan lawmakers at the federal level, a package of bills was also introduced at the state level in February 2002 calling for the inspection of waste shipments from Canada. Approaching the issue of Canadian waste from a security perspective, Michigan Representatives Mickey Mortimer (Rep.), Mike Bishop (Rep.) and Mike Kowall (Rep.) each presented a bill to the Michigan Congress calling for the inspection of all waste shipments from Canada for items such as medical waste and bombs, citing the potential for a terror attack. Referring to the possibility of attempts to smuggle weapons of mass destruction into the U.S. in trucks hauling waste, Mortimer stated, "How do people get things like that into the country? You put them in things people don't want to look into" (Michigan Daily; Jan. 17, 2002). Although the collection of bills from Mortimer, Bishop and Kowall were able to garner considerable public support, they were never taken under consideration by the House because of the illegality under the Commerce Clause of discriminating against Canadian waste at the state level. The Michigan Department of Environmental Quality spokesman, Ken Silfván stated that "this problem has to be solved in Washington" (Michigan Daily; Jan. 17, 2002).

In April, Congressman Mike Rogers (Rep.) approached the issue from a slightly different angle, by amending a Treasury Department funding bill to provide for three additional customs officers at the Ambassador Bridge post. Although the amendment was considered "gimmicky," its successful passing through the House and Senate provided considerable public support for Rogers (Chartwell Solid Waste Group, 2002). It also demonstrated that legislators were becoming increasingly resigned to the fact that they could not ban waste shipments outright and would have to resort to other attempts to make shipping waste to Michigan a more cumbersome and costly undertaking for Toronto (Anonymous Interview, Southeastern Michigan County official; Aug. 11, 2006).

In the remaining months leading up to the November 2002 elections, Michigan residents were inundated with campaign ads opposing Canadian waste. Republicans and Democrats alike vowed to take action to impede the flow of waste into the state. These emotionally charged ads which argued that Canadians were polluting Michigan and threatening the landfill capacity of the state created considerable negative publicity for the city of Toronto. Although all of the Michigan legislators involved in efforts to ban or limit Ontario waste shipments were reelected, with the exception of Mortimer (Rep.), it is unclear what role the issue played in the election results (“2002 Official Michigan General Election Results,” 2002).

Newly elected Governor Jennifer Granholm’s (Dem.) State of the State address in January 2003 also helped provide momentum for the “Don’t Trash Michigan” campaign, declaring that she would no longer “allow Michigan to be North America’s dumping ground” (“Michigan: Greatness Through Challenge,” 2003). The election of Granholm also coincided with a drastic increase in Michigan’s waste shipments from Toronto, causing her to publicly urge the State Legislature to pass legislation which could limit or prevent the importation of Canadian garbage (Unsworth, 2004). Included in her 2003 State of the State Address, Granholm declared the need to pass laws which would “allow us to refuse to accept solid waste loaded with batteries, bottles, cans and toxic substances that jeopardize our health and safety” (Unsworth, 2004).

Following Granholm’s speech, a collection of environmental, labour, and community groups organized under the “Don’t Trash Michigan” campaign gathered at the state capital in Lansing to officially announce their support for legislative efforts to stem the flow of waste into Michigan on May 20th (“MEC Capitol Updates,” 2003). Following this public demonstrations, Senate Bill 98 was introduced by Senator Liz Brater (Dem.) in October and a complementary House Bill 4098 was introduced concurrently by Congressman Rogers. The bills called for the states or provinces that import solid waste into Michigan to demonstrate that their restrictions on solid waste are at least as stringent as the state’s restrictions. Both bills, which represented an effort to fight the importation of Canadian waste by creating additional obstacles to moving waste,

were referred to the Michigan House and Senate Environment and Public Works Committees.

Efforts were also being made simultaneously at the federal level by Michigan Senators Debbie Stabenow (Dem.) and Carl Levin (Dem.), who introduced U.S. Senate Bill 199 aimed at facilitating the enforcement of the bilateral Agreement on Transboundary Waste by empowering the EPA Administrator to take enforcement action in June of 2003. The bill was promptly referred to the subcommittee on the Environment and Public Works and no further action was taken with it that year. Governor Granholm attempted to tackle the same issue from a different angle, when she sent a letter directly to the Administrator of the EPA, Christine Whitman, asking her to “stringently enforce the amount of Canadian trash being imported into Michigan.” Granholm argued that Michigan’s Congressional delegation’s efforts should not be undermined by the failure of the U.S. Government to enforce existing legislation ("Governor Granholm Calls for Federal Action on Canadian Trash," 2003).

Senator Stabenow followed up these legislative efforts by launching a petition drive, which logged nearly 33,000 signatures in three days from Michigan residents opposed to the shipment of waste into the state. The signatures collected were presented to Washington in October of 2003, in an effort to maintain public pressure on the U.S. Congress to take action to ban waste imports (Stabenow, 2006).

Additional efforts in 2003 to impede the flow of Canadian waste were also taken in the Michigan Congress. Representative Rogers and others proposed House Bill 4099, which was patterned after the previously unsuccessful Senate Bill 0146. House Bill 4099 was introduced on January 29th 2004 and contained provisions aimed at making it illegal for shipments of waste from Canada containing “returnable” beverage containers to be disposed of in the state’s landfills. However, due to a ruling by the Michigan Supreme Court the following month, the bill was dropped because legislators felt it would undoubtedly be invalidated under the U.S. Commerce Clause if passed. The Supreme Court ruling was the result of Wayne County’s decision to amend its Solid Waste Management Ordinance to state that waste which did not meet the standards of

Michigan's 1978 Bottle Law could not be disposed of in the Carlton Farms Landfill in January of 2004. Although this seemed like a significant step forward in the efforts to limit the movement of Canadian waste into the state, the amendment was swiftly challenged by both the National Solid Waste Management Association and Republic Service (which owned Carlton Farms) in Federal court. The law was invalidated by the court on February 3, 2004 because it was determined to be in violation of the Commerce Clause of the U.S. Constitution. This ruling also marked the end of consideration of Brater's (Dem.) Senate Bill 98 and House Bill 4098 (Unsworth, 2004).

Efforts to force the EPA to enact the 1992 Amendment continued in January of 2004, when the U.S. Congress passed the "Consolidated Appropriations Act, 2004," which contained a section calling for the EPA to enforce the Bilateral Agreement (1986). Further action to limit Canadian waste was taken at the state level in March of 2004, when Governor Granholm signed into effect a package of laws which attempted to make the shipment of waste into Michigan illegal ("Michigan Compiled Laws," 2007). However, all clauses referring to an increase in tipping fees, largely regarded at the time as the most effective approach to reducing waste shipments into Michigan, were omitted. The lobbying efforts of local authorities and business associations against an increase in tipping fees had successfully convinced the Michigan legislature that such a move would lead to unacceptable negative economic impacts throughout the State. The National Solid Waste Management Association (NSWMA), a trade association which represents corporations throughout North America that carry out waste disposal activities, was particularly active in placing pressure on Michigan lawmakers not to increase tipping fees (National Solid Waste Management Association, 2004). Additionally, authorities from Wayne and Macomb Counties, the two counties receiving the most waste from Ontario, lobbied Michigan Congressional Representatives against an increase in tipping fees, arguing that it would deter out-of-state waste shipments which were an important component of the counties' tax bases (Anonymous Interview, Michigan legislator; Aug. 31, 2006).

Although the passing of the package of laws by Granholm seemed to mark considerable progress in halting waste shipments, they were swiftly challenged in court

by the NSWMA, which sought to go beyond preventing an increase in tipping fees ("NSWMA Challenges Michigan Laws Closing Landfills to Other States and Canada," 2004). The NSWMA argued that the laws violated the Commerce Clause and the Foreign Commerce Clause, which restrict states and municipalities from interfering with foreign affairs ("NSWMA Challenges Michigan Laws Closing Landfills to Other States and Canada," 2004). Much like the 2004 lawsuit in Wayne County, the Michigan Supreme Court once again ruled in favour of the NSWMA, declaring that the package of laws was unconstitutional.

The issue of Canadian waste in Michigan received brief national attention later that month, when presidential candidate John Kerry (Dem.) made several speeches throughout the state expressing his intentions to stop the flow of waste from Ontario into the state should he be elected to the White House (CBC News; Sept. 8, 2004). No other presidential candidates publicly commented on the waste dispute during the 2004 Presidential campaign.

Although attempts at the state level to ban waste were finally shut down after the second successful suit by the NSWMA, efforts to introduce such legislation at the federal level continued after the 2004 elections. In May of 2005, Michigan Representative Stupak introduced the "State Waste Empowerment and Enforcement Provision Act of 2005" bill in the U.S. House of Representatives, which was referred to the Committee on Energy and Commerce. The Bill called for states to be granted the authority to reject out of state waste shipments of MSW. The bill never emerged from the Committee on Energy and Commerce because it failed to gain support from other Representatives who saw such a measure to be disadvantageous as a majority of U.S. states are exporters of waste ("Michigan Compiled Laws," 2007). State Representatives were unwilling to support a measure which could hinder the ability of waste management authorities within their constituency to continue the practice of shipping waste out of state, and the bill was therefore dropped (Anonymous Interview, Michigan legislator; May 17, 2007).

Federal level action was not taken again until January of 2006, when Senator Jeannemarie Devolites Davis (Rep.) of Virginia, the first non-Michigan representative to

take such action, introduced the “Canadian Waste Import Ban Act of 2005” Bill, which would make it illegal for waste originating in Canada to be shipped to any U.S. jurisdiction without state consent (“Michigan Compiled Laws,” 2007). A similar bill was introduced to the Senate the following month by Senator Stabenow, but once again, neither bill made it out of the Senate as most legislators believed that even if passed, the bill would be struck down by the Supreme Court based on the U.S. Constitution’s Commerce Clause. Such a measure was also viewed as relatively unimportant to most Representatives (Anonymous Interview, Michigan environmental NGO representative; Apr. 25, 2007).

The continuous failure of legislation to pass at either the federal or state level was causing the effort to limit or ban Canadian waste to lose steam and the issue was beginning to fade from the agenda of many political leaders within the state of Michigan as well as amongst environmental and community groups in 2006 (Anonymous Interview, Michigan Department of Environmental Quality representative; Jul. 20, 2006). The “Don’t Trash Michigan” campaign seemed to become dormant and even the activities of community groups living beside the landfills accepting Canadian waste grew less active. However, the movement was revived in July of 2006, when the Michigan Legislature made measurable progress with the passing of a new bill (Anonymous Interview, Michigan legislator; Sept. 20, 2006). One of the measures contained within the bill, which was authored by Senator Debbie Stabenow, was to impose a US\$ 420 fee on trucks from Canada. Revenue collected from these fees would go towards increasing security screenings at the border, although the overall intent of the bill was to make it more costly and cumbersome for Ontario to ship waste to Michigan. The bill passed the Michigan Senate by a 37-0 vote and the House of Representatives by a 70-4 vote (“Michigan Compiled Laws,” 2007).

Although the bill has been passed by the state of Michigan, it cannot go into effect until complementary federal legislation is enacted. It is largely believed that action, if any, taken at the federal level will move quite slowly and that federal authorization is unlikely. However, the passing of this bill within the state of Michigan brought increased public awareness to the MSW dispute and sparked further efforts by Senators Levin and

Stabenow (Anonymous Interview, Michigan environmental NGO representative; Jul. 17, 2006; “Deal on Canada trash imperfect...,” 5A)

In mid 2006, efforts led by Senator Carl Levin were still underway to pass a bill in the Michigan House of Representatives to prevent trucks hauling garbage from entering the U.S. if the screening of those trucks was not comparable to that of other commercial vehicles. If successful, this too would make the process of transporting waste from Toronto to Southeastern Michigan more difficult (“Deal on Canada trash imperfect...,” 5A). However, despite the continued efforts within the State and Federal legislatures to prevent or hinder the movement of Canadian waste into the State of Michigan, Senators such as Levin attempted to work with Canadian officials directly in order to reach a solution to the dispute (Stabenow, 2007).

Analysis of Bilateral Environmental Relations Between Canada and the U.S.

Formal Bilateral Relations Analysis for Canada and the United States

The main international agreements which play a role in Canadian-American relations with respect to waste management are the 1986 Canada-USA Agreement of the Transboundary Movement of Hazardous Waste and the North American Free Trade Agreement (NAFTA). These agreements place restrictions on the abilities of parties at all levels to act in the dispute, particularly on the U.S side of the border.

The 1986 Agreement, which originally applied only to hazardous waste, was amended in 1992 to apply to all forms of waste, including municipal solid waste. Although the original intention of the Agreement was to mitigate the dangers of hazardous waste, its expansion to include MSW has resulted in the formalization of procedures for transporting waste across the Canada-U.S. border. The Agreement does this by presenting the specific requirements for the export, transportation, and import of waste across the Canada-U.S. border, which were determined and agreed upon based on

domestic laws within each country. Under the terms of the 1986 Agreement, waste exporters are required to notify the importing country prior to shipment and present the importing country with documentation regarding the type and origin of the waste. In addition to setting out the guidelines for the movement of waste from one country to another, the 1986 Agreement also allows importing countries to refuse or return waste shipments within 30 days of receiving them if they are deemed not to meet the country's health, safety and environmental standards. As of 2006, no attempt has been made by the U.S. to refuse Canadian waste shipments under the terms of the 1986 Agreement ("Canada-USA Agreement," 2007).

While not directly regulating the movement and handling of waste like the 1986 Agreement, NAFTA also presents conditions for its treatment. Under the treaty obligations of NAFTA, the U.S. must "grant national treatment to foreign goods once they have cleared U.S. Customs," which means that waste coming into the U.S. from Canada, must be treated the same way as all domestic waste and cannot be discriminated against because of its origin (Qin, 2006). The only way to avoid such obligations is for the U.S. to prove that Canadian waste is more harmful to health and the environment than U.S. domestic waste—an unlikely prospect, especially given the 2004 MDEQ decision to designate Ontario as an "approved jurisdiction." Therefore, if the U.S. attempts to ban waste imports from Ontario, the Government of Canada has the right to challenge such an initiative at under NAFTA (which it has vowed to do). According to legal analysts, such a situation would almost certainly force the United States to withdraw the ban and may result in other repercussions (Qin, 2006).

Because NAFTA requires that Canadian MSW be treated the same as domestic goods, the rules of the Commerce Clause of the U.S. Constitution must be applied to it. The application of the Commerce Clause means that proposed Michigan laws to ban its landfills from accepting MSW from outside of Michigan cannot take effect unless the U.S. Congress enacts legislation doing so. Efforts to encourage Congress to ban Canadian waste have been, and will likely continue to be, largely ineffective because of NAFTA (Qin, 2006). In other words, because of the status of waste as a commodity,

banning or discouraging the importation of Ontario's MSW alone, through market mechanisms, will violate the terms of NAFTA.

Such a situation means that the State of Michigan cannot decide for itself how to regulate these waste imports. In 2006, Michigan State Senators and Congressmen continued to actively lobby the U.S. Government for either a complete ban on waste imports or the imposition of higher tipping fees or import tariffs, which could significantly decrease the amount of MSW being imported from Canada (Rogers, 2006). However, because of the intricacies of bilateral agreements with Canada and intergovernmental relations within the U.S., it appears that Michigan will be unable to determine unilaterally how to resolve the waste dispute with Ontario.

A further obstacle to impeding Canadian waste flows was created in September of 2004, when the City of Toronto successfully convinced the Michigan Department of Environmental Quality (MDEQ) that they could meet the stringent guidelines set out for the disposal of waste within the state of Michigan and was subsequently placed on a list of "approved jurisdictions." Such a designation meant that MSW originating within Ontario was deemed by the MDEQ to be in compliance with Michigan's disposal regulations as stated in the Natural Resources and Environmental Protection Act (1994) (Unsworth, 2004). Therefore, the importation of waste from Ontario could no longer be challenged on environmental grounds—which had largely been regarded as one of the last viable options to legally stop the flow of Canadian waste into the State of Michigan (Guthrie, 2004).

Informal Bilateral Relations Analysis for Canada and the United States

The first attempt to take informal action bilaterally came in the form of a letter from Michigan Governor Engler to Ontario Premier Mike Harris and Toronto Mayor Mel Lastman urging them to utilize Adams Mine as a disposal site rather than the state's landfills in 2001. Engler argued that a domestic solution would be cheaper and provide job opportunities for the Kirkland Lake area. It was alleged within the press that Engler

wrote the letter with the direct input and assistance of Ontario Premier Mike Harris's staff, which Engler's office adamantly denied. But, regardless of these allegations, the letters appeared to have had no impact as Toronto proceeded with its plans to ship waste to Michigan (Unsworth, 2004).

Governor Engler's letter was followed by a series of failed attempts to find a solution to the waste dispute by amending domestic laws. Therefore, Michigan Senators once again attempted to open a dialogue with Canadian officials in hopes of developing a joint solution. Much like Engler's efforts in 2001, Senators Carl Levin and Debbie Stabenow attempted to facilitate formal discussions with Canadian officials through the exchange of letters. The exchange began on August 18, 2006, when Levin and Stabenow sent a letter to Ontario Minister of the Environment, Laurel Broten stating the importance of working cooperatively to reach a "mutually advantageous resolution to [the] issue" (Stabenow, 2006). Although these letters were likely preceded and followed up on by direct dialogue, no records of meetings between Levin, Stabenow, and Broten or members of their staff have been made public.

On August 31, 2006, Stabenow, Levin and Broten announced that they had successfully negotiated a non-binding agreement which called for a gradual decrease in the volumes of "municipally-managed solid waste" shipments to Michigan. Under the terms of the agreement, there will be a 20% reduction in municipally managed waste from Ontario between 2006 and 2007, a 40% reduction within the following two years, and a complete stop in the movement of such waste to Michigan by 2010. Additionally, municipalities of Ontario will agree not to renew their disposal contracts with Michigan waste haulers and landfill companies. In exchange for meeting these targets, Stabenow and Levin stated that they will drop the pending amendments to the 2007 Homeland Security Appropriations bill which were aimed at making the importation of waste into the U.S. a much more cumbersome and expensive process for Canada. (Stabenow, 2006)

Although such an agreement marks significant progress on this issue, it is important to note that the agreement only goes so far. For instance, because it is non-binding, there are no mechanisms for ensuring enforcement, and once those involved in

the current agreement (Levin, Stabenow, and Broten) leave office, there is no guarantee that the terms laid out will be adhered to. Additionally, as of 2007, no measurable decreases in waste shipments to Michigan or increases in diversion rates in Toronto and other Ontario municipalities have occurred, bringing into question the ability of Ontario to meet the terms of the agreement (Stabenow, 2006).

By examining formal and informal intergovernmental relations within Canada and the U.S., a fuller understanding of the development of the bilateral relations between the two countries is gained. An examination of the formal and informal intergovernmental interactions amongst government officials, NGOs and private businesses within each country has helped set the stage for a better understanding of why the unofficial bilateral agreement between Stabenow, Levin and Broten emerged in 2006.

Chapter 5: A Discussion of the Findings from the Ontario-Michigan Dispute

In examining the Ontario-Michigan MSW dispute, the particular strengths of this study's organizational framework in explaining how bilateral environmental relations are negotiated in the context of federalism become apparent. The ability of the framework to take into account the influence of government actors on all levels as well as NGOs and private businesses within and across international borders was particularly valuable. In addition, the investigation of the influence of formal as well as informal relations and the identification of existing epistemic communities was especially useful. These particular attributes of the study's organizational framework were able to illuminate the various aspects of the Ontario-Michigan MSW dispute, as well as provide a better understanding of how bilateral environmental relations are negotiated between Canada and the U.S.

Influence of Intergovernmental Relations: Canada

One of the main influences that federalism has on the negotiation of bilateral environmental relations between Canada and the United States is the limitations it places on actors to take action internationally, as well as domestically. The MSW dispute has been difficult to resolve within Ontario due to restrictions posed by formal intergovernmental relations, most notably the complex environmental assessment laws established under the Canadian Environmental Assessment Act (1992) and the Ontario Environmental Assessment Act (1990). Such laws made expanding or siting a new landfill an expensive and cumbersome process. The complexity of Ontario's environmental assessment policies and procedures, as experienced in the process to designate Adams Mine as a landfill, contributed to the Province's decision to begin looking for options within the U.S. Todd Pepper of Essex-Windsor Solid Waste discussed the state of Ontario environmental laws by arguing that "... the province has to address the delays in finding sites for new landfills in Ontario because of the complexity

of its environmental assessment legislation. It takes about 11 years in Ontario to get through all the legal hurdles to open a new landfill, compared to only about three years in the U.S.” (Rennie; Sept. 22, 2005). Similarly, the Canadian Business News Network states that “the problem is that the province's environmental assessment requirements are onerous and it can take a decade to win approval to expand or build disposal infrastructure ... such solutions would be useful in the long-term, but will be of little use in [this] short-term crisis” (“Toronto’s Garbage Crisis;” Sept. 30, 2005). Such formal structures basically forced Ontario municipalities like Toronto to seek a foreign solution to their waste management problems.

The informal intergovernmental relations also played a role in influencing the decision to ship waste to Michigan. As demonstrated by the experience of Kirkland Lake, communities and environmental groups strongly opposed the development of landfills within their communities. Because of the opposition from citizens and NGOs to having a landfill sited within their communities, politicians, such as Ontario Premier Bob Rae and Mayor Mel Lastman, were cautious not to appear as supporting such endeavors so as to maintain a positive public image. This was demonstrated in 1990, when the Rae Government promptly shut down the Adams Mine project after coming into office (Anonymous Interview, Town of Kirkland Lake official; Jun. 29, 2006). Similarly, in 2001, when Mayor Lastman saw the opportunity, he quickly closed off the possibility of negotiating a contract with Kirkland Lake (Rusk; Dec. 5, 2001).

This study’s organizational framework demonstrated the ways in which both formal and informal intergovernmental relations played a role in the continuation of the Ontario-Michigan MSW dispute on the Canadian side of the border. The cumbersome legislation and desire of politicians to maintain a favourable public image made shipping waste to Michigan a more attractive option. With the exception of the non-binding 2006 agreement between Levin, Stabenow, and Broten, the difficulty with siting or expanding a landfill in Ontario combined with public pressure on politicians made Ontario officials unwilling to comply with requests from State of Michigan officials to halt waste shipments. Similar legislative and political pressures also played out on the other side of

the border as both formal and informal intergovernmental relations also had effects on actors in the U.S.

Influence of Intergovernmental Relations: United States

On the U.S. side of the border, formal and informal intergovernmental relations also influenced bilateral relations between the two countries and played a role in the continuation of the dispute. The formal intergovernmental relations, which included the Commerce Clause and NAFTA, dictated that attempts to discriminate against Canadian waste could only be made legal through a Constitutional amendment. Therefore, these formal structures led to the necessity of informal relations, including bargaining amongst political representatives, which made the battle to halt waste shipments into the state a predominantly domestic one. Further limiting the degree of bilateral interactions was the fact that, within the U.S., intergovernmental relations created a great degree of frustration and animosity amongst actors involved in the dispute.

The formal intergovernmental structures dictated by the U.S. Constitution prevented the State of Michigan from banning the importation of waste from Canada without first passing a federal level amendment to the U.S. Constitution's Commerce Clause. Such formal intergovernmental relations meant that the Michigan representatives' proposals for a solution to the problem were contingent upon the approval of Congressional Representatives from other states. In order for Michigan representatives to gain such approval from other Congressional representatives, informal relations such as political bargaining and negotiations were necessary. In other words, Michigan Congressional Representatives had to work to negotiate a federal level agreement with other state Representatives in order to make the necessary changes to formal structures which impeded the ability of Michigan to prohibit waste shipments from Ontario.

The failure to successfully negotiate and pass the necessary federal legislation not only increased levels of animosity between Michigan lawmakers and Representatives

from other states, but also between Michigan and Ontario officials as the frustrations of Michigan representatives with the inability to resolve the situation began to grow (Anonymous Interview, Southeastern Michigan county official; Aug. 11, 2006). One anonymous interviewee conjectured that such frustrations on the Michigan side of the border led to unnecessary contempt for Ontario officials and may have delayed efforts towards cross-border cooperation, such as those demonstrated by Levin, Stabenow and Broten (Anonymous Interview, Michigan environmental NGO representative; Jul. 17, 2006). However, it is also important to consider the fact that had Michigan officials not been constrained by formal intergovernmental structures, they could have immediately closed the borders to Ontario's waste and no bilateral discussions may have taken place between the two countries regarding the issue.

Because of its ability to consider formal as well as informal interactions taking place in Canada and the U.S, this study's organizational framework was able to explain how domestic interactions influenced bilateral relations between the two countries. Without an examination of both formal and informal relations a full understanding of how bilateral relations are negotiated within the context of federalism could not have been grasped as the formal relations explain the constraints on actors while the informal relations illuminate the degree of cooperation and contention amongst the actors as well as the various pressures placed on them. Furthermore, the study of the Ontario-Michigan dispute demonstrates the importance of considering formal and informal relations at all levels, therefore reinforcing Duchacek's (1990) assertions about the need to analyze various forms of paradiplomacy in order to understand the emergence of bilateral negotiations.

However, Duchacek's (1990) argument that it is necessary to look at the ways in which actors of one country attempt to influence the policies of another were of little use in the MSW dispute case study as no such efforts took place. Similarly, the methods of influence identified by Hoberg (1997) and Harrison (2000) were also not present. It cannot be determined from this study alone, however, whether or not such factors should be considered in future studies. The fact that such forms of influence were not attempted in the Ontario-Michigan dispute could explain why an adequate resolution has not been

reached. Therefore, additional studies are necessary in order to determine the extent to which examining such attempts at cross-border influence help to explain how Canadian-American environmental relations are negotiated within the context of federalism.

Role of NGOs and Private Business

Similar to the Ontario experience, NGO groups and citizens also placed pressure on Michigan officials to take action to resolve the dispute. Had this pressure not been brought to bear on officials such as Levin and Stabenow, it is less likely that efforts to negotiate a resolution with Broten would have taken place. Throughout the MSW dispute, a coalition of NGOs organized under the “Don’t Trash Michigan Campaign” has worked to influence the domestic response to the shipments of Toronto’s waste into Michigan landfills. In 2000, the Campaign sought to raise public awareness, and thereby place pressure on lawmakers, by publishing the report entitled “Dereliction of Duty: How the Department of Environmental Quality Endangers Michigan’s Environment and Public Health” (“Dereliction of Duty...,” 2000). In 2003, the group again took action and worked to create public support for Senator Brater’s Bill 98 and Congressman Roger’s Bill 4098, calling for restrictions on out-of-state solid waste shipments. Such efforts further rallied public support for legislators’ efforts to ban waste shipments into the state (“About the Campaign,” 2007).

Conversely, the actions of Michigan legislators influenced the role of the “Don’t Trash Michigan Campaign.” This type of interaction was particularly apparent during the 2002 midterm elections when emotionally charged campaign advertisements created public outrage over the shipment of Toronto’s waste to Detroit area landfills, inspiring NGOs throughout the state to unite to form the “Don’t Trash Michigan Campaign.” Governor Granholm’s 2003 State of the State Address also helped increase publicity for the efforts of the Campaign. These interactions amongst policy makers and NGOs play an important role in the developments of the Ontario-Michigan MSW dispute.

In addition to the influential role of NGOs, was the role played by private business, especially through the industry association, the National Solid Waste Management Association (NSWMA). The NSWMA challenged several state laws in court and actively lobbied to prevent other laws from being passed within the Michigan Congress. In 2004, in a case brought before the federal court by the NSWMA, House Bill 4099—which made it illegal for shipments of waste from Canada to contain “returnable” beverage containers—was invalidated. Similarly, the “Consolidated Appropriations Act, 2004” was also invalidated in court after a suit brought by the NSWMA. In addition to preventing the enactment of laws which placed restrictions on out-of-state waste, the NSWMA also successfully lobbied against an increase in state tipping fees in 2004 (“National Solid Waste Management Association...,” 2004).

Although private business played an interesting role in influencing legislative efforts to resolve the dispute, its most direct involvement in the dispute was that of Republic Services, Inc. The MSW dispute was essentially created by an agreement between the City of Toronto and Republic Services Inc., a private waste hauler that owns the Carleton Farms Landfill near Detroit. Although Michigan lawmakers opposed such an agreement, the U.S. Commerce Clause and NAFTA left them unable to interfere with Republic Services’ decision to take the contract. Therefore, instead of attempting to regulate the actions of Republic Services, Michigan officials were forced to appeal to the City of Toronto and Province of Ontario not to begin shipping waste into the state, or pass a federal level amendment to the U.S. Constitution (Unsworth, 2004).

The role that NGOs and private business played in the development of the MSW dispute was clearly an influential one. Therefore, an understanding of the events surrounding the development of the dispute could not be complete without examining the role that such groups played. Because traditional models of intergovernmental relations as well as international relations fail to take into account such actors, the organizational framework used in this study is especially valuable in fully assessing the influences of such parties playing a role in the MSW dispute. Further supporting VanNijnatten’s (2003) assertions, this study has shown that without being able to consider the role of NGOs and private business, the understanding of how bilateral environmental relations

are negotiated within the context of federalism as well as the Ontario-Michigan MSW dispute would be wholly inadequate, especially given the degree to which some were directly involved.

The Absence of Epistemic Communities

As the examination of informal bilateral relations demonstrates, no epistemic community emerged at any point during the Ontario-Michigan MSW dispute. Based on the findings of VanNijnatten (2003), the failure of such a community to emerge can also explain the continuation and contentious nature of the MSW dispute.

VanNijnatten (2003) argues that an examination of epistemic communities is necessary in order to understand the ways in which informal relations and interactions can influence formal ones at other levels. In reference to the negotiations surrounding the “Ozone Annex” to the Canada-United States Air Quality Agreement, VanNijnatten argues that “...less visible modes of interaction at different spatial-institutional levels, particularly in terms of mid-level working relations and the operation of epistemic communities, were critical in laying the groundwork for negotiations towards the late 1990s” (VanNijnatten, 2003). Therefore, in order to fully apply the organizational framework used in this study, an examination of the role of epistemic communities was necessary.

However, within the Ontario-Michigan MSW dispute case study there were no “mid-level working relations” between Canadian and U.S. officials and the formation of an epistemic community has not yet occurred (Anonymous Interview, Michigan legislator; Aug. 31, 2006; Anonymous Interview, Michigan environmental NGO representative; Apr. 25, 2007). In August of 2006, the potential for the development of an epistemic community emerged when U.S. Senators Levin and Stabenow began discussing a possible resolution to the MSW dispute with Ontario Environment Minister Broten. Through a series of written exchanges and communication amongst the staff members of each representative’s office, an agreement to phase out waste shipments by

2010 was reached (Stabenow, 2006). However, because of the failure of other parties such as experts, government agencies, and NGOs to also participate in the development and enforcement of such a cooperative cross-border process, the Stabenow-Levin-Broten agreement failed to blossom from a diplomatic process into a fully fledged epistemic community.

The failure of an epistemic community to emerge may explain why a resolution to this dispute has been so slow in coming. For instance, it was not until a full 10 years after the emergence of the dispute that a loose agreement to work towards a phasing out of waste shipments was formed. These findings, when compared to VanNijnatten's observations during her analysis of the negotiations of the "Ozone Agreement," suggest that had a stronger epistemic community been formed, it is possible that a clearer and more enforceable resolution could have emerged and could have possibly occurred sooner. In discussing the epistemic community present in the "Ozone Annex" negotiations, VanNijnatten stated that "fanning out across various levels in the two governments, this epistemic community acted as the supports for the bridge being built via the binational negotiations" (VanNijnatten, 2003; 12). The absence of such a support system is one of the possible hindrances of an effective and timely resolution of the MSW dispute between Ontario and Michigan.

Further making the case for the lack of an epistemic community resulting in contention, is the fact that ample opportunities for cooperation within the MSW dispute existed. For instance, Toronto was faced with a lack of disposal capacity and difficulty in developing such capacity made the City dependent on Michigan's landfills. Conversely, Michigan's inability to stop the flow of unwanted waste into the State made it dependent on the City of Toronto to halt such shipments. Such mutual dependence should have facilitated cooperation between the parties. One interviewee expressed shock over the fact that the State of Michigan, which has one of the country's most advanced "bottle bills" and recycling programs, had not entered into some form of information or best practice sharing endeavor with the City of Toronto in an effort to reduce the amount of waste that Toronto was forced to landfill. However, such cooperation never emerged because, as the interviewee stated, "no communication was taking place between

environmental groups in Michigan and those in Ontario” (Anonymous Interview, Michigan environmental NGO representative; Jul. 17, 2006). As this failure in cooperation demonstrates, it seems that the absence of any form of epistemic community led to continued contention among the parties involved. However, it is important to recognize that limitations exist within this study that make definitive conclusions about the role of epistemic communities in facilitating cooperation difficult.

Weakness of the Study’s Organizational Framework

Although the study’s organizational framework was particularly instructive in explaining how bilateral environmental relations are negotiated within the context of federalism, especially with respect to the MSW dispute, the case study research uncovered an aspect which was not clearly delineated as a component of the framework; the way in which actors within the dispute view the issue. The unwillingness or inability of both sides to approach the dispute from the same perspective may have played a large role in the level of contentiousness and failure to reach an equitable and sustainable solution.

When it comes to regulating waste, an interesting paradox is present between Canada and the U.S. Within Canada, environmental laws at the federal and provincial level dictate the ways in which waste must be disposed of, but its management is left largely to municipalities (i.e. the City of Toronto) to determine how to handle. On the U.S. side of the border, the same type of federal and state environmental laws exist to oversee the disposal and handling of waste, but an additional governing factor is also in play: trade laws. In other words, in terms of the legislation governing this issue, on the Canadian side of the border it is framed largely as a municipal services issue, while on the American side it is viewed primarily as a trade issue—effectively tying the hands of local level actors to play a role.

Although it was the legal frameworks in place which seemed to set the tone for how the issue was addressed, it went beyond just formal intergovernmental relations and

was also a matter of public perception, especially on the U.S. side of the border. For instance, within Michigan, citizens became agitated over the idea of waste coming into the state from Canada, even though more waste was being imported on a daily basis and over a longer period of time from neighbouring U.S. states than from Ontario. Similarly, citizens became most emotionally charged over Toronto's waste shipments, seemingly ignoring the fact that several other Ontario municipalities were shipping waste as well. The growing animosity towards Canada was based on the perception that Canadian waste was polluting the state by eliminating valuable landfill space and resulting in excessive emissions from the 400 plus trucks crossing into the state each day (Stabenow 2006). The anger of citizens was further fueled by statements from Governor Granholm vowing not to let "Michigan become North America's dumping ground" ("Michigan: Greatness Through Challenge," 2007) and Mike Rogers' public insistence that the shipments of waste were "an unneighbourly act" (Rogers, 2006). The animosity over Canadian waste shipments to the U.S. caused citizens to place increased pressure on state and federal officials to take action. However, because citizens were viewing it as primarily an environmental issue, U.S. government actors as a trade and economic issue and Ontario officials as a municipal services issue, the development of a resolution to the dispute proved problematic.

Such findings require further study of the role of actor perception or viewpoint in influencing domestic and bilateral political outcomes in order to determine the degree to which such factors influence bilateral environmental issues between Canada and the U.S. Therefore, it would be useful for future studies to attempt to determine the extent to which such perceptions play a role in order to determine whether such factors should have a place within frameworks such as the one used for this study.

Although the organizational framework used in this study failed to account for the role of actors' perceptions in influencing bilateral relations, it still led to a thorough and multifaceted understanding of the Ontario-Michigan MSW dispute. The organizational framework provides a method for bringing to light the role of intergovernmental relations in hindering cooperation within and across borders; particularly through its investigation of both formal and informal intergovernmental relations, which create the parameters

within which actors can maneuver and also explain the ways in which they interact. Additionally, by accounting for the role of NGOs and private business and identifying any epistemic communities present in the dispute, a fuller understanding of the interactions amongst the parties can emerge.

Chapter 6: Conclusions

International relations theory is not complete without an understanding of the interactions and influences taking place amongst actors within a country. Therefore, in federal systems, bilateral negotiations are undoubtedly influenced by intergovernmental relations occurring in each of the two countries. As the analysis of the Ontario-Michigan MSW dispute has shown, there are several ways in which federalism can influence how bilateral environmental relations are negotiated, which include hindering or restricting the ability of parties to take certain actions, determining whether an issue is politically salient, and impacting the level of cooperation present in bilateral relations.

By applying this study's organizational framework, which was developed based on the work of scholars such as Hoberg (1997), Harrison (2000) and VanNijnatten (2003), this study was able to examine the ways in which bilateral environmental relations are negotiated within the context of federalism with respect to waste management. The analysis of both formal and informal relations occurring within Canada and the U.S. in the case of the Ontario-Michigan MSW dispute, as well as bilaterally, provided important insights into the ways in which actors at various levels are able to influence international outcomes. In addition to an examination of formal and informal relations, the study also included an analysis of non-governmental and business actors in order to better explain the influences and interactions occurring domestically in both Canada and the U.S.

This study not only built upon the work of international relations and federalism scholars by providing a more inclusive application of their theories, but it expanded the work of Canadian-American relations scholars such as VanNijnatten (2003). This examination of cross-border waste management issues compliments similar work by VanNijnatten (2003), which examined air quality issues between Canada and the U.S. Additionally, the specific examination of the Ontario-Michigan MSW case allowed for the development of several recommendations for the successful resolution of the dispute.

Summary of Findings

As the analysis of the Ontario-Michigan MSW dispute shows, intergovernmental relations place restrictions on the ability of federal governments to act in international negotiations and set the tone for how such negotiations will proceed. The rules of NAFTA as well as the U.S. Commerce Clause forced Michigan's dependence on bilateral cooperation from the Province of Ontario in order to work towards the development of a solution. Although the groundwork for a solution to the MSW dispute appears to have been laid, only time will tell whether or not the plan to cease waste shipments to Michigan by 2010 will be achieved. A key to the success of the proposed plan to cease waste shipments will be contingent upon continued cooperation among State of Michigan lawmakers, the Ontario Ministry of the Environment and City of Toronto officials. Therefore, it is important that actors involved in the dispute work to increase the factors that enhance cooperation.

In addition to the lessons learned about enhancing cooperation within the MSW dispute, this examination of Canadian-American environmental cooperation has also yielded insight into the methods of analyzing such cross-border relations. As the analysis of the Ontario-Michigan MSW dispute demonstrates, it is necessary to take into account actions occurring at all levels within and across borders as well as the influences of non-governmental organizations and private business.

However, in order to gain more insight into the ways in which environmental relations are negotiated within the context of federalism it is necessary to apply this study's organizational framework to other cross-border environmental disputes. The findings from the analysis of additional case studies can then be compared to those of this study's examination of waste management issues as well as VanNijnatten's analysis of air quality issues in order to attempt to identify patterns of cooperation and contention.

Recommendations for the Actors Involved in the Ontario-Michigan MSW Dispute

In order to improve cooperation in the case of the MSW dispute and increase the possibility of promoting a sustainable solution, actors must seek to improve communication across borders at all levels. At the local level, City of Toronto officials should be working with Michigan based NGOs, such as those working as part of the “Don’t Trash Michigan Campaign” to improve recycling and waste diversion programs. In particular, the City of Toronto could benefit from the experience and best practices information of the Ecology Center of Ann Arbor, Michigan. This environmental NGO has not only played an important coordinating role within the “Don’t Trash Michigan Campaign,” but its efforts have been instrumental in the development of the City of Ann Arbor’s recycling and waste diversion program—largely regarded as one of the best in the U.S. (“Newsletter,” 2007). Although the City of Toronto has a fairly advanced and effective recycling and waste diversion program of its own, there is still possible room for improvement. Therefore, cooperative efforts between Toronto and the Ecology Center of Ann Arbor could benefit the interests of both parties as the City of Toronto would be able to improve its recycling programs and the amount of waste left for disposal in Michigan could be significantly decreased. Such a decrease would help to ensure that the Agreement reached between Levin, Stabenow and Broten could be implemented and the goal of the “Don’t Trash Michigan Campaign” to end shipments of Canadian waste into the State could be realized.

Another possible cooperative effort which could also benefit both Ontario and Michigan through the reduction of Canadian MSW is the creation of a “bottle bill,” similar to that of Michigan’s, which would reduce disposal of beverage containers by placing a deposit on them. Studies have shown the implementation of Michigan’s “bottle bill” reduced the amount of beverage containers being disposed of in landfills by 98.4 percent (Garfield, 2001). An information sharing initiative between State of Michigan lawmakers and government officials involved in the implementation of such a “bottle bill” could provide the Province of Ontario officials with helpful guidance that may be useful should the Province decide to investigate the possibility of implementing a similar

effort. Once again, such cooperative dialogue and information sharing could result in parties on both sides of the border reaching their goals.

In order to better facilitate this type of information sharing, it would be useful for the federal government of Canada and the U.S. to promote international conferences of NGO and business leaders. Such conferences would be useful in bringing relevant parties together and opening dialogue between such actors. An international conference may also lead to the development of an epistemic community, which would then be able to continue facilitating cooperation and compliment the cross-border work of political officials.

Limitations of the Study

One of the limitations of the study was the lack of complete access to information regarding the motivations and intentions of some of the actors involved in the dispute, especially those holding political office. Because of the political nature of the dispute, there was information that interviewees were reluctant to disclose. It was also quite difficult to determine whether policy decisions by politicians, or political bargaining efforts, were influenced by other factors seemingly unrelated to the MSW dispute. There were also allegations of corruption and bribery of politicians by private companies that were alluded to by several interviewees, but impossible to verify.

However, despite the lack of participation and other limitations, it was still possible to conclude that the examination of local level decision-making and interactions as well as an investigation of the role of NGOs and private business was essential for understanding the nature of the Ontario-Michigan MSW dispute as well as other Canadian-American environmental issues. Examining such typically overlooked actors made it possible to more fully illustrate the ways in which intergovernmental relations placed restrictions on the ability to effectively resolve issues bilaterally.

Although this study has helped to further contribute to the fields of international relations, federalism and Canadian-American relations, it is necessary for additional studies to be carried out in order to determine the extent to which the findings of this study can truly be generalized. The organizational framework used in this study should be applied to other cross-border environmental issues such as water resource management, habitat conservation and endangered species protection in order to determine whether similar influences of federalism exist in other cases. Canadian-American relations scholars, particularly VanNijnatten (2003), have made the case for the development of such a framework, but further utilization of this method of analysis must take place in order to verify its usefulness in explaining how bilateral environmental relations are negotiated within the context of federalism.

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Appendix A

Key Locations in the Ontario-Michigan Municipal Solid Waste Dispute



“Ontario-Michigan.” Microsoft Streets and Trips.

Appendix B

Interviewee Recruitment Letter

Dear [Interviewee Name],

My name is Taylor Heins and I am a Masters student in the Faculty of Environmental Studies at the University of Waterloo. I am currently conducting research under the supervision of Dr. Ian Rowlands into the ongoing Municipal Solid Waste dispute between Ontario and Michigan. As part of my thesis research, I am conducting interviews with policymakers, government officials, and NGO and business leaders to understand the events, interactions and decision-making processes leading to the emergence and continuation of the dispute.

As you played a key role in such decision-making processes, I would like to speak with you about your perspectives on the dispute and the barriers to resolving it. I will be undertaking telephone interviews starting in late June. The interview would last about one hour, and would be arranged for a time convenient to your schedule. The questions are aimed at understanding your role in the decision-making processes related to the MSW dispute and the factors which have facilitated or hindered this role.

You may decline to answer any of the interview questions you do not wish to answer and may terminate the interview at any time. With your permission, the interview will be tape-recorded to facilitate collection of information, and later transcribed for analysis. All information you provide will be considered confidential. The data collected will be kept in a secure location and disposed of in 2 years time. After all of the data have been analyzed, you will receive an executive summary of the research results.

If you are interested in participating in this study or would like additional information about the study in general or the specific interview questions please contact me at theins@fes.uwaterloo.ca. With your permission, I would like to email you an information letter which has all of the details along with contact names and numbers to assist you in making a decision about your participation in this study.

If you have any questions regarding this study, or would like additional information to assist you in reaching a decision about participation, please feel free to contact Dr. Ian Rowlands at 519-888-4567, Ext. 2574. I would like to assure you that this study has been reviewed and received ethics clearance through the Office of Research Ethics at the University of Waterloo. However, the final decision about participation is yours. Should you have any comments or concerns resulting from your participation in this study,

please contact Dr. Susan Sykes in the Office of Research Ethics at 519-888-4567, Ext. 6005.

Thank you very much for your time,

Taylor Heins
Masters Candidate
Faculty of Environmental Studies
University of Waterloo

Information Consent Letter for Interviewees

University of Waterloo

Date

Dear [Name of Interviewee],

This letter is an invitation to consider participating in a study I am conducting as part of my Master's degree in the Faculty of Environmental Studies at the University of Waterloo under the supervision of Professor Ian Rowlands. I would like to provide you with more information about this project and what your involvement would entail if you decide to take part.

Canada and the United States share a 9000 km-long border that transects a wide variety of ecosystems, river basins and lakes. Issues such as acid rain, Great Lakes Basin water management, and transboundary endangered species migrations are just a few of the many joint environmental issues facing the neighbouring countries. It is imperative, therefore, that the ability of government agencies and authorities on both sides of the border are able to effectively cooperate with one another. Enhancing this cooperation will require the identification of existing barriers and the development of recommendations on how to overcome such barriers. Therefore, the purpose of this study is to examine barriers to effective Canadian-American environmental relations and develop recommendations for overcoming these barriers. The Ontario-Michigan municipal solid waste (MSW) dispute will be used as a case study to illustrate the types of barriers that can exist when two federal systems interact across multiple levels of decision-making authority.

This dispute provides an enlightening case study because it contains within it the basic elements affecting most joint Canadian-American environmental issues, most notably the concepts of federalism/intergovernmental relations and bi-lateral relations. This case study is also similar to many other cross-border issues because particular elements of it fall under the pervasive reach of the North American Free Trade Agreement (NAFTA) and related World Trade Organization (WTO) agreements.

I would like to include your organization [or agency] as one of the several actors to be involved in my study because of your active role in the decision-making processes related to the MSW dispute. I believe that your involvement in negotiation processes at the [insert appropriate level--- local, state/provincial, or federal] level places you in a unique position to speak about the various barriers and opportunities in resolving this on-going waste dispute.

Participation in this study is voluntary. It will involve an interview of approximately one hour in length to take place in a mutually agreed upon location or over the telephone.

You may decline to answer any of the interview questions if you so wish. Further, you may decide to withdraw from this study at any time by advising the researcher. With your permission, the interview will be tape-recorded to facilitate collection of information, and later transcribed for analysis. All information you provide is considered completely confidential. Your name will not appear in any thesis or report resulting from this study, however, with your permission anonymous quotations may be used. Audio tapes and data collected during this study will be retained for two years in a locked filing cabinet and then destroyed. Only researchers associated with this project will have access. There are no known or anticipated risks to you as a participant in this study.

If you have any questions regarding this study, or would like additional information to assist you in reaching a decision about participation, please contact me at 519-885-8313 or by email at theins@fes.uwaterloo.ca. You can also contact my supervisor, Professor Ian Rowlands at (519) 888-4567 ext. 2574 or email irowland@fes.uwaterloo.ca.

I would like to assure you that this study has been reviewed and received ethics clearance through the Office of Research Ethics at the University of Waterloo. However, the final decision about participation is yours. If you have any comments or concerns resulting from your participation in this study, please contact Dr. Susan Sykes of this office at (519) 888-4567 Ext. 6005.

I hope that the results of my study will be of benefit to those agencies, organizations and policy makers working to resolve the current conflict over waste disposal between Ontario and Michigan, as well as provide insight into other Canadian-American environmental cooperation issues.

I very much look forward to speaking with you and thank you in advance for your assistance in this project.

Yours Sincerely,

Taylor Heins

Masters Candidate

Faculty of Environmental Studies

University of Waterloo

Interviewee Consent Form

I have read the information presented in the information letter about a study being conducted by Taylor Heins of the Faculty of Environmental Studies at the University of Waterloo. I have had the opportunity to ask any questions related to this study, to receive satisfactory answers to my questions, and any additional details I wanted.

I am aware that I have the option of allowing my interview to be tape recorded to ensure an accurate recording of my responses.

I am also aware that excerpts from the interview may be included in the thesis and/or publications to come from this research, with the understanding that the quotations will be anonymous.

I was informed that I may withdraw my consent at any time without penalty by advising the researcher.

This project has been reviewed by, and received ethics clearance through, the Office of Research Ethics at the University of Waterloo. I was informed that if I have any comments or concerns resulting from my participation in this study, I may contact the Director, Office of Research Ethics at (519) 888-4567 ext. 6005.

With full knowledge of all foregoing, I agree, of my own free will, to participate in this study.

YES NO

I agree to have my interview tape recorded.

YES NO

I agree to the use of anonymous quotations in any thesis or publication that comes of this research.

YES NO

Participant Name: _____ (Please print)

Participant Signature: _____

Witness Name: _____ (Please print)

Witness Signature: _____

Date: _____

Consent Form for the use of Anonymous Quotations

I agree that excerpts from the interview may be included in the thesis and/or publications to come from this research, with the understanding that the quotations will be anonymous. I am aware that I may withdraw my consent at any time by advising the researcher.

I was informed that I may contact Dr. Susan Sykes, Director, Office of Research Ethics, at (519) 888-4567 ext. 6005 if I have any concerns or comments resulting from my participation in this study.

Participant Name: _____

Participant Signature: _____

Witness Name: _____

Witness Signature: _____

Date: _____

Letter of Appreciation for Interviewees

Dear [Interviewee Name]

I am writing to thank you for a stimulating conversation last week. It was indeed a pleasure speaking with you.

My project, *Canadian-American Environmental Relations: Identifying Barriers to Cooperation*, is proceeding according to design, and in particular my research for the chapter on the Ontario-Michigan municipal solid waste dispute is nearing completion.

I hope you will get in touch with me if further thoughts occur to you about the subject of our conversation. Should you have any comments or concerns you could also contact Dr. Susan Sykes of our Office of Research Ethics at 519-888-4567 Ext. 6005. This project was reviewed by, and received ethics clearance through, the Office of Research Ethics at the University of Waterloo.

I shall, as promised, be sending you a summary of my findings. I expect it to be ready for your review by June 2007.

Sincerely,

Taylor A. Heins
Masters Candidate
Faculty of Environmental Studies
University of Waterloo

Appendix C

Definitions

Diplomacy:

Simpson (1968) states that “while generally viewed as the means of carrying out foreign policies, diplomacy generates resources needed for the formulations of sound policy, and its practitioners should therefore be fully utilized in the policy-forming process” (Simpson, 1968; 136). This definition builds on and complements previous explanations of diplomacy, such as that of Attwood’s (1967), which argues that diplomacy is more than a bureaucratic process, it is a method by which principles or ideas can become policy.

Epistemic Communities:

VanNijnatten (2003) defines epistemic communities as networks of “officials, experts, and non-governmental actors at multiple levels,” and argues that such informal relations are important because of their ability to build consensus domestically and reduce the likelihood of disputes amongst actors involved in cross-border interactions. This definition is derived from the work of Haas (1992), who describes epistemic communities as “networks of knowledge-based experts (Hass, 1992; 2).”

Formal Relations:

Formal relations are defined by VanNijnatten (2003) as high-level negotiations or diplomatic relations “conducted by senior-level officials” (VanNijnatten, 2003; 2). This definition builds upon the work of Carroll (1983) who states that “since only governmental officials at the federal levels in both countries are constitutionally authorized to negotiate or make decisions in this area, these federal actors are naturally

the central focus of attention (Carroll, 1983; 21).” Formal relations not only include the process of developing legislation, but the legislations itself (Carroll, 1983; VanNijnatten, 2003).

Informal Relations:

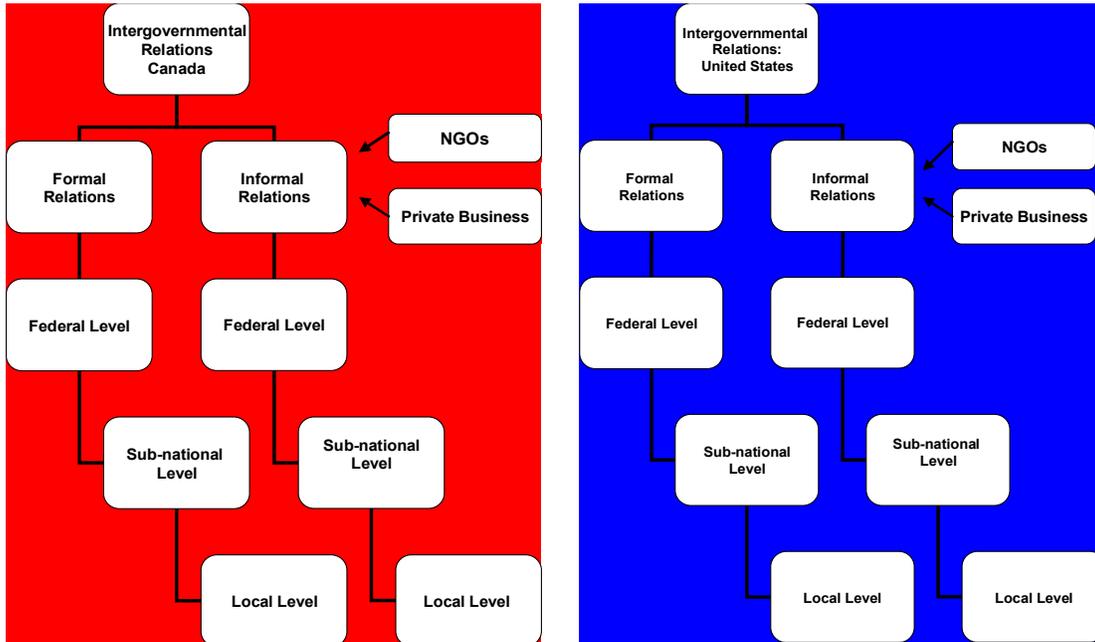
Informal relations are less visible than formal relations and often lead to the development of epistemic communities. VanNijnatten (2003) identifies informal relations as interactions amongst mid-level representatives or officials of government agencies, non-governmental organizations and private businesses. The interactions of these actors involve both implementing (i.e. carrying out administrative duties) and seeking to influence formal relations.

Organizations:

Organizations are defined by Scott (1995) as “a self-maintaining system that must satisfy a stable set of internal needs at the same time that it must adapt to influences impinging on it from an external environment (Scott, 1995; 4).” Furthermore, organizations are constructed based on a common purpose or goal and typically consist of formal memberships and institutional rules or procedures (Scott, 1995).

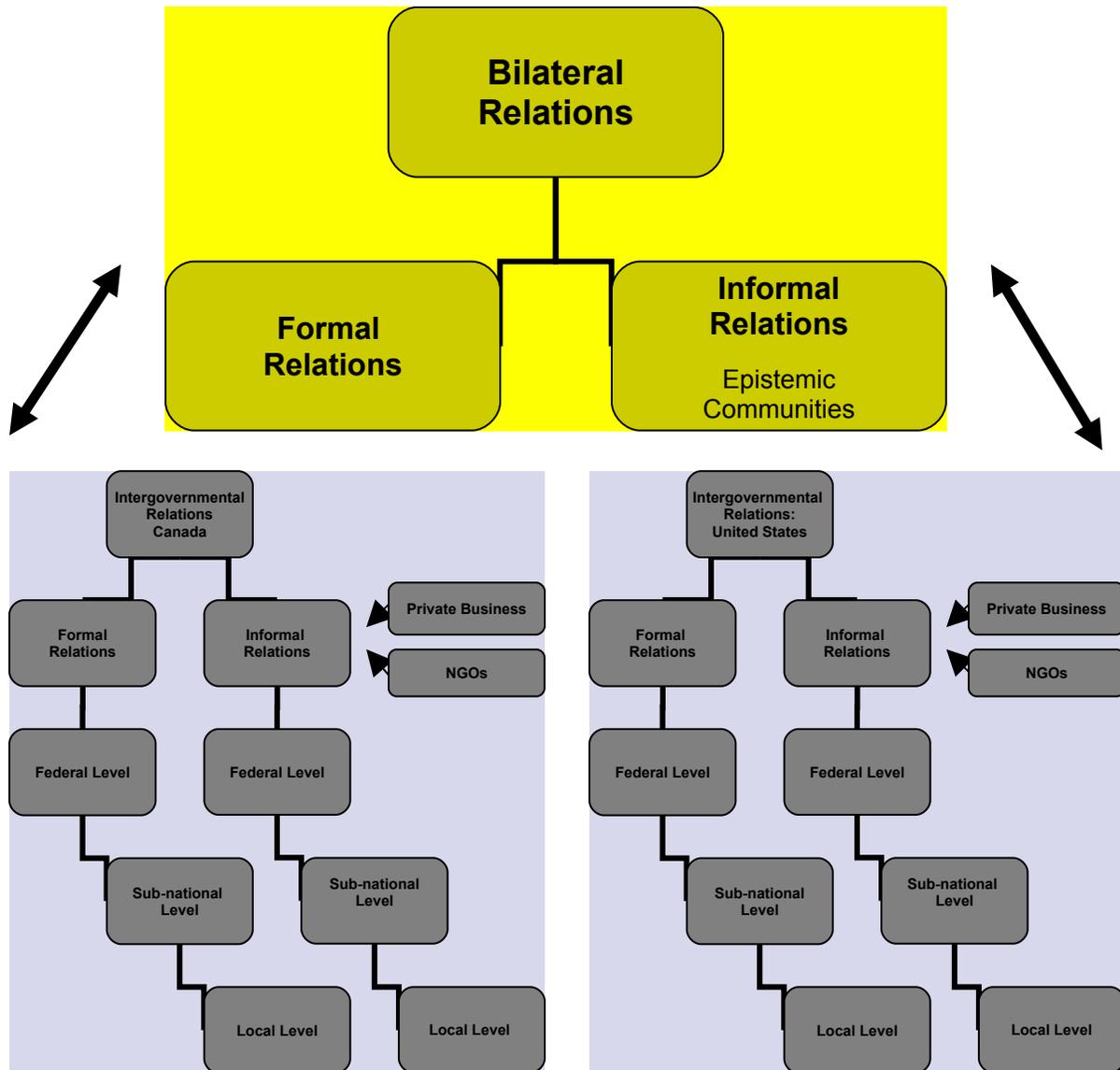
Appendix D

Diagram of the Study's Organizational Framework



Intergovernmental Relations Examination

The first portion of the organizational framework involves an examination of intergovernmental interactions occurring within Canada and then the United States. The analysis of intergovernmental relations consists of an examination of the formal relations within Canada occurring between the federal, sub-national and local levels of government. This analysis is then followed by a similar examination of informal relations occurring amongst all levels of government. The influence of NGOs and private businesses on informal relations is also considered. An identical process is repeated for the United States.



Bilateral Relations Examination

The second portion of the organizational framework used in this study involves an examination of the cross-border interactions between Canada and the United States. Similar to the intergovernmental relations analysis, formal and informal relations between the two countries are examined. This examination is followed by an identification of existing epistemic communities.