

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

NATIONAL WASTE & RECYCLING  
ASSOCIATION,

Plaintiff,

V.

WARRICK COUNTY SOLID WASTE  
MANAGEMENT DISTRICT,

Defendant.

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) Case No. 1:15-cv-1787  
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## **Verified Complaint for Declaratory and Injunctive Relief**

## INTRODUCTION

This lawsuit challenges four inter-related resolutions adopted by the Warrick County Solid Waste Management District (the “District”) that impose an excessive burden on interstate trade, impermissibly discriminate against out-of-state solid waste and recycling companies, and exceed the powers that the District was granted by the Indiana General Assembly.<sup>1</sup> Specifically, the District’s resolutions grant a private contractor, Renewable Resources, LLC (“Renewable”), a monopoly over the curbside collection and the processing of solid waste and recyclable materials in Warrick County.

The United States Supreme Court in *C&A Carbone, Inc. v. Town of Clarkstown, New York*, held that an ordinance that granted a local private contractor a monopoly over processing solid waste and recyclable materials violated the “dormant” Commerce Clause of the United States Constitution and created an impermissible burden on interstate commerce. 511 U.S. 383

<sup>1</sup> True and accurate copies of the resolutions subject to this lawsuit—Resolution 2015-03, Resolution 2015-04, Resolution 2015-05, and Resolution 2015-06—are attached to this Complaint as Exhibits A-D, respectively.

(1994). Like the ordinance at issue in *Carbone*, the District's decision to grant Renewable a monopoly over processing solid waste and recyclable materials creates an impermissible burden on interstate commerce. In addition, the District's decision to grant a private contractor a monopoly over processing solid waste and recyclable materials exceeds the District's authority under Indiana law. Regarding the Warrick County curbside waste and recyclable material collection program, the District's process to award Renewable a monopoly did not allow in-state and out-of-state bidders to compete freely on a level playing field, which also violated the dormant Commerce Clause. Moreover, the District's decision to award a curbside collection monopoly exceeded its authority under Indiana law.

Plaintiff National Waste & Recycling Association ("NWRA") has members who have been injured and will continue to be injured by the District's resolutions and therefore seeks declaratory and injunctive relief that the resolutions are invalid. Further, the curbside collection program is set to commence on December 1, 2015, and Plaintiff is seeking a temporary restraining order to prevent the District from enforcing Renewable's monopoly over curbside collection.

#### **JURISDICTION, VENUE AND CAUSE OF ACTION**

1. This Court has jurisdiction over this cause under 28 U.S.C. §§ 1331, 1343, 1367.
2. This Court also has jurisdiction over this cause under 28 U.S.C. § 1332.
3. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201, 2202.
4. Venue is proper in this judicial district under 28 U.S.C. § 1391.
5. Plaintiff brings this cause of action under 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

6. Plaintiff also invokes the Court's supplemental jurisdiction to vindicate violations of Indiana's statutes governing solid waste management districts.

### PARTIES

7. NWRA is a nonprofit trade association that is incorporated in Illinois and has its principal place of business in Washington D.C.

8. NWRA represents the interests of for-profit waste and recycling companies in North America and is the leading organization providing leadership, advocacy, research, education and safety expertise to promote the North American waste and recycling industries, serve as their voice and create a climate where members provide safe, economically sustainable and environmentally sound services.

9. NWRA members that operate in Warrick County include Advanced Disposal, Republic Services, Inc. and Eric Gries Disposal.

10. NWRA's members, including Republic Services, Inc. and Advanced Disposal, will each be harmed by the resolutions that are the subject of this lawsuit in an amount greater than \$75,000.

11. NWRA has associational standing to bring this claim on behalf of its members. *See, e.g., Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (U.S. 1977); *see also Ezell v. City of Chicago*, 651 F.3d 684, 696 (7th Cir. 2011) *Ezell v. City of Chicago*, 651 F.3d 684, 696 (7th Cir. 2011) (applying the associational standing test from *Hunt*); *Nat'l Solid Wastes Mgmt. Ass'n v. City of Dallas*, 903 F. Supp. 2d 446, 458 (N.D. Tex. 2012) (holding that the National Solid Wastes Management Association had associational standing to challenge a solid waste flow control ordinance on behalf of its members).

12. The District is a governmental agency created by Indiana statute that regulates certain solid waste management issues in Warrick County.

### **FACTUAL ALLEGATIONS**

13. The events that led to the filing of this lawsuit began at least as early as September 2013 and culminated with the District's passage of several resolutions in August and September of 2015 that control the flow of solid waste and recycling in Warrick County to a local privately owned and operated facility (generically called a "waste flow ordinance" or "flow control ordinance").

#### *The District Contract to Construct and Operate the "Pelzer Road Facility"*

14. During the District's September 19, 2013 meeting, it was reported that local company, Aigner Construction, Inc. ("Aigner Construction") had approached the District about entering into a "public/private partnership" for the development of a waste sorting and processing center in Warrick County at 1111 S. Pelzer Road, Boonville, IN 47601 (the "Pelzer Road Facility"). [Exhibit E, Sept. 19, 2013 District Meeting Minutes ("DMM"), at 2.]

15. Next to the proposed Pelzer Road Facility is a recycling center (the "Recycling Center") that is currently operating.

16. During the District's October 24, 2013 meeting, it was proposed that Aigner Construction and the District enter into a confidentiality agreement concerning the planned "public/private partnership" for the Pelzer Road Facility. [Exhibit F, Oct. 24, 2013 DMM, at 2.]

17. At the District's November 21, 2013 meeting, its attorney requested that future agendas and minutes omit the name of the contractor for the Pelzer Road Facility in order to abide by the confidentiality agreement. [Exhibit G, Nov. 21, 2013 DMM, at 4.] The attorney

stated the confidentiality agreement was signed, and that he would meet with the local contractor on November 25, 2013 to discuss their “public-private partnership.” [*Id.*]

18. At the District’s January 16, 2014 meeting, it was proposed that Aigner Construction would assist the District to complete specifications of the project plans needed for the development of the request for proposal (“RFP”) to construct and operate the proposed Pelzer Road Facility. [Exhibit H, Jan. 16, 2014 DMM, at 2.] The District, by motion, agreed to enter into a “public-private partnership” with Aigner Construction to complete the project specifications. [*Id.*]

19. At the District’s February 27, 2014 meeting, it was reported that Aigner Construction and the District worked together to develop the scope and specifications for the District’s RFP to construct and operate the Pelzer Road Facility. [Exhibit I, Feb. 27, 2014 DMM, at 2.]

20. Also at the District’s February 27, 2014 meeting, Jordan Aigner outlined the three phases that would be identified in the RFP, including the development of a new waste drop-off center, and the development of a waste-to-energy project, to be owned and operated by the private company that would be awarded the contract under the RFP. [*Id.*]

21. The District’s attorney then stated that once the waste-to-energy facility is operational, the District has the authority by statute to adopt a resolution to order all trash collected in Warrick County to be brought to this facility. [*Id.*]

22. The District published the RFP to construct and operate the Pelzer Road Facility in a local newspaper first on March 5, 2014 and again on March 12, 2014. [Exhibit J, Mar. 27, 2014 DMM, at 1.] The deadline to submit responses to the RFP was March 28, 2014 at noon. [*Id.*]

23. On March 28, 2014, the District was provided with a copy of an “amended” proposal<sup>2</sup> submitted by Renewable Resources, LLC (“Renewable”) in response to the RFP. [Exhibit K, Apr. 24, 2014 DMM, at 1.] The District approved Renewable’s proposal at the April 24, 2014 District meeting. [*Id.* at 4.]

*The Brief History of Renewable Resources, LLC*

24. According to the Indiana Secretary of State’s records, Renewable was created on March 13, 2014, just 12 days after the RFP to construct and operate the Pelzer Road Facility was first published.<sup>3</sup>

25. According to Renewable’s website, Jordan Aigner is the President of Renewable, Jeremy Aigner is the Vice President of Renewable, and Jerry Aigner is in charge of operations for Renewable.<sup>4</sup>

26. Aigner Construction, which developed the RFP, and Renewable, which obtained the contract under the RFP, are owned by some or all of the same individuals.

27. In March 2015, Renewable submitted a solid waste processing permit application to operate the Pelzer Road Facility to the Indiana Department of Environmental Management (“IDEM”).<sup>5</sup>

28. IDEM has not yet reached a decision whether to grant Renewable’s solid waste processing permit application, and the Pelzer Road Facility has not been constructed.

29. Renewable has not sought the necessary permits to construct a waste-to-energy project.

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<sup>2</sup> It is unclear at this time why there was an “amended” proposal.

<sup>3</sup> Indiana Secretary of State, Business Entity Search available at [https://secure.in.gov/sos/online\\_corps/name\\_search.aspx](https://secure.in.gov/sos/online_corps/name_search.aspx) (search for Renewable Resources, LLC).

<sup>4</sup> Renewable Resources, LLC, Meet the Staff, <http://www.renewable-resources.org/about.html> (last visited Nov. 12, 2015).

<sup>5</sup> Warrick County Processing Center Permit Application and Operation Plan, Prepared by Jordan M. Aigner, Renewable Resources, LLC, March 2015 available at <http://vfc.idem.in.gov/Default.aspx> (search for IDEM Document Number “80025938”).

*The District Contract to Provide Curbside Solid Waste and Recycling Collection Services*

30. At the District's February 26, 2015 meeting, the District discussed a new, second RFP for the provision of curbside trash and recycling collection services in Warrick County. [Exhibit L, Feb. 26, 2015 DMM, at 3.]

31. Copies of a draft RFP for the curbside trash and recycling collection program were presented to the District at its April 16, 2015 meeting, and the District's attorney reported that he was drafting a waste flow ordinance for recommendation to the County Commissioners. [Exhibit M, Apr. 16, 2015 DMM, at 2, 3.]

32. The District finalized the development of the curbside collection RFP on or about May 21, 2015. [Exhibit N, May 21, 2015 DMM, at 2.] Proposals for the RFP were to be returned by July 10, 2015, and then forwarded to the Scoring Committee for review. [*Id.* at 2.]. The District's attorney stated he intended to present the draft waste flow ordinance to the County Commissioners for review by the end of May 2015. [*Id.* at 3.]

33. The RFP was sent to four local contractors that were believed to be capable of providing the required services: (1) Advanced Disposal, (2) Bailey's Waste Services, (3) Eric Gries Disposal, and (4) Republic Services, Inc. [Exhibit O, Oct. 14, 2015 District Presentation on Curbside Program, at 4.]

34. A fifth business interested in the program—Renewable—was also provided a copy of the RFP. [*Id.*]

35. The District only considered RFP responses from Advanced Disposal and Renewable due to an asserted deficiency in Republic's response. [*Id.*]

36. The terms of the individual RFP responses were disclosed in the District's August 3, 2015 meeting, where it was announced that Advanced Disposal was the lowest bidder, had the

most experience, was willing to service the most households, and was willing to provide the most services, among other things. [Exhibit P, Aug. 3, 2015 DMM, at 1-3.]

37. However, instead of selecting one of the four options mentioned in the RFP, the District then proposed that both Advanced Disposal and Renewable submit bids for a fifth, new service option. [*Id.* at 3.]

38. The fifth service option was not sent out for an RFP to any other companies. [*Id.*]

Also at the District's August 3, 2015 meeting, Renewable stated the Pelzer Road Facility would be operational by December 1, 2015, and the District's attorney said he would get a final version of the waste flow ordinance submitted to the County Commissioners. [*Id.* at 5.]

39. Because the information was discussed openly in the August 3, 2015 meeting, Renewable knew the contents of Advanced Disposal's bid at the time it prepared its response for the new service option. [*See Id.* at 1-3.]

40. In the District's August 11, 2015 meeting minutes, it was reported that Renewable's bid on the new service option was 3 cents below Advanced Disposal's bid for curbside pickup. [Exhibit Q, Aug. 11, 2015 DMM, at 1.]

41. Renewable also changed other service options to mirror Advanced Disposal's bid. [*Id.*]

42. The Scoring Committee for the RFP recommended the District chose Advanced Disposal as the winner of the RFP because they are an established company and it would be a more seamless transition for Warrick County customers. [*Id.*]

43. After the Scoring Committee's recommendation was made, the District called a recess for 50 minutes. [*Id.* at 2.]



44. After the recess, Renewable and Advanced Disposal were asked to provide presentations to the District, which they did. [*Id.* at 2-4.] Then the District voted 6-0 to accept the bid from Renewable—rejecting the Scoring Committee’s recommendation. [*Id.* at 5.]

45. The process to select the winner of the curbside pickup RFP did not allow in-state and out-of-state bidders to compete freely on a level playing field because Advanced Disposal, a national company with a local operation, was selected as the winner of the RFP process by the Scoring Committee, but, without explanation, the District unanimously chose Renewable, a local startup that had also developed various RFP materials for the District, as the winner of the curbside collection RFP process.

*The District and County Waste Flow Ordinances and Resolutions*

46. On May 12, 2014, the Warrick County Board of Commissioners—a separate political unit from the District—adopted Resolution 2014-06, which states “Upon completion of the Facilities described above . . . the Board of Commissioners of Warrick County states its intention to enact an ordinance directing that **all solid waste collected within the borders of Warrick County shall be directed to the Facilities to be located on Pelzer Road**, as may be permitted be Federal, State and local statutes and regulations that exist at that time.” [Exhibit R, Resolution 2014-06 (emphasis added).] The referenced “Facilities” include the Pelzer Road Facility and a proposed waste-to-energy facility, neither of which has been built.

47. After Renewable was chosen as the curbside waste and recycling contractor, the District also passed four inter-related resolutions to establish a waste flow control in Warrick County.

48. Those four inter-related resolutions are the subject of this lawsuit, and they include: (1) Resolution 2015-03, “A Resolution by the Warrick County Solid Waste

Management District Board of Directors Establishing a Curbside Waste and Recycling Management Program”; (2) Resolution 2015-04, “A Resolution by the Warrick County Solid Waste Management District Board of Directors Directing All Recyclable Materials to the Pelzer Road Facility or to One of the District’s Drop-off Centers”; (3) Resolution 2015-05, “A Resolution by the Warrick County Solid Waste Management District Board of Directors Modifying Resolution 2015-03 Establishing a Curbside Waste and Recycling Management Program”; and (4) Resolution 2015-06, “A Resolution by the Warrick County Solid Waste Management District Board of Directors Amending Resolution 2015-04 Directing All Recyclable Materials to the Pelzer Road Facility or to One of the District’s Drop-off Centers.”

49. Resolution 2015-03 and Resolution 2015-04 were adopted on August 19, 2015, and are now in effect.

50. Resolution 2015-05 and Resolution 2015-06 were adopted on September 17, 2015, and are now in effect.

51. Resolution 2015-03, Resolution 2015-04, Resolution 2015-05, and Resolution 2015-06 are collectively referred to below as the “Resolution.”

52. The Resolution requires all “covered participants” to use Renewable’s<sup>6</sup> curbside waste and recycling program. [Exhibit Resolution 2015-03, at Sec. V.]

53. Covered participants include:

- Single-family, residential zoned properties;
- Multi-family, residential zoned properties that are able to utilize the [recycling and waste containers offered under the Program];

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<sup>6</sup> The Resolution states that Renewable Resources, LLC is charged with constructing and operating the Pelzer Road Facility, but Renewable Resources, Inc. is the Contractor operating the curbside collection program. [Exhibit A, p. 1.] However, the Indiana Secretary of State’s website only lists Renewable Resources, LLC—not Renewable Resources, Inc.—as a business entity registered in Indiana. NWRA does not know whether the reference to Renewable Resources, Inc. was a typographical error or if this business entity has not registered with the Indiana Secretary of State.

- Embedded Commercial zoned properties, defined as those businesses embedded within residential areas and also able to utilize the [recycling and waste containers offered under the Program]; and
- Warrick County and Municipal government properties able to utilize the [recycling and waste containers offered under the Program].

[*Id.* at Sec. IV.]<sup>7</sup>

54. Renewable can decide not to provide services to a covered participant if the District and Renewable determine it is not economically feasible to provide services to that person. [*Id.*]

55. Covered participants also have the option of “opting out” of the curbside waste and recycling program, and “[r]esidents of incorporated municipalities” are not covered participants unless their city councils vote to join Renewable’s program. [*Id.* at Sec. V.]

56. Although not everyone in Warrick County is required to participate in Renewable’s program, under the Resolution, other companies are prohibited from serving covered participants and certain existing curbside collection contracts are purportedly rendered void. [*Id.* at Sec. VI.B.]

57. Specifically, the Resolution provides that existing contracts for curbside waste collection and disposal may only remain in effect until August 19, 2016, at the latest, and any contract provision to the contrary is purportedly deemed void. [*Id.* at Sec. VI.B.]

58. Also, contracts for curbside collection that were “entered into after August 19, 2015, and that extend beyond November 1, 2015” are purportedly automatically void. [*Id.*]

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<sup>7</sup> The District amended this section through Resolution 2015-06 to exclude from the definition of covered participant certain nonprofit organizations that sell recyclable materials to raise funds. [Exhibit D, Resolution 2015-06, at Sec. IV.]

59. Renewable's curbside collection program will go into effect on December 1, 2015. [Exhibit S, Oct. 2, 2015 Ltr. from T. Glass to E. Gries; Exhibit T, Oct. 21, 2015 Ltr. from T. Glass to Advanced Disposal.]

60. Under the Resolution, "[a]ll residents not eligible for participation [in the curbside waste and recycling program] or that have opted out of the Program **are required to deliver** all solid waste and recyclables to the various drop-off centers in Warrick County." [Exhibit A, Resolution 2015-03, at Sec. V (emphasis added).]

61. The Resolution also provides that "all waste and recycled materials collected in Warrick County **shall be delivered** [to the Pelzer Road Facility]," which would include waste that makes a pit-stop at the drop-off centers. [*Id.* at Sec. VII (emphasis added).]

62. As originally drafted, the Resolution stated all solid waste collected in Warrick County from the drop-off centers, the curbside program, or by any other means must be delivered to the Pelzer Road Facility for Renewable to process. "[A]ny other means of disposal of all solid waste located within Warrick County, including but not limited to delivery and disposal outside of Warrick County" is unlawful. [*Id.* at Sec. VIII.]

63. The Pelzer Road Facility has not yet been constructed, nor has Renewable obtained the necessary permits to commence construction.

64. Perhaps because the Pelzer Road Facility has not yet been built, the District adopted an amendment to the Resolution on September 17, 2015, which states solid wastes "may be disposed of," instead of "shall be disposed of" at the Pelzer Road Facility. [Exhibit C, Resolution 2015-05, at Sec. VIII.]

65. The District also removed the provision that "any other means of disposal of all solid waste located within Warrick County, including but not limited to delivery and disposal

outside of Warrick County” is unlawful. [*Compare* Exhibit A, Resolution 2015-03, at Sec. VIII with Exhibit C, Resolution 2015-05, at Sec. VIII.]

66. However, the District’s amendments did not change a separate provision of the Resolution that states, “A new, state-of-the-art sorting and processing facility will be located on Pelzer Road, in addition to a solid waste sorting and disposal facility, **to which all waste and recycled materials collected in Warrick County shall be delivered** (the “Facility”).” [Exhibit A, Resolution 2015-03, at Sec. VII.]

67. Therefore, the Resolution, as amended, requires that all solid waste “shall” be delivered to the Pelzer Road Facility once it is constructed.

68. Also, on September 28, 2015 the Warrick County Board of Commissioners adopted Resolution 2015-21, which states waste “may be disposed of” at the Pelzer Road Facility. [Exhibit U, Resolution 2015-21, at § 136.02.] However, the Warrick County Board of Commissioners’ use of the word “may” in their ordinance does not change the fact that the District’s Resolution still uses the mandatory word “shall” in its requirement to direct all waste to the Pelzer Road Facility.

69. All recyclable *materials* collected in Warrick County from the drop-off centers, the curbside program, or by any other means must also be delivered to the Pelzer Road Facility for Renewable to process. [Exhibit B, Resolution 2015-03 at Sec. III.] Disposing of recyclable materials in any other manner is unlawful. [*Id.* at Sec. IV.]

70. Any person who violates the Resolution related to recyclable materials is subject to civil penalties. [Exhibit D, Resolution 2015-06 at Sec. V.]

71. The provisions requiring all recyclable materials to be directed to the Pelzer Road Facility is still in effect and has not been amended.

72. Damages to NWRA members are real and imminent as indicated by letters the District sent to NWRA members.

73. For example, the District, by counsel, threatened NWRA member Eric Gries Disposal with “injunctive relief, restraining orders, and/or damages against [the company’s] actions and any and all other available legal remedies against [Eric Gries Disposal]” if the company violates the Resolution. [Exhibit S, Oct. 2, 2015 Ltr. from T. Glass to E. Gries.]

74. The District also sent Advanced Disposal a letter telling the company to terminate its services to covered participants. [Exhibit T, Oct. 21, 2015 Ltr. from T. Glass to Advanced Disposal.]

75. The District’s attorney was also recently quoted in the local newspaper as saying, “Any commercial hauler who shall collect curbside waste or recycleable (sic) material from covered participants in violation of any provision of the program shall be subject to a (sic) civil penalties payable to Warrick County of \$1,000 for the first violation and \$2,500 for each additional violation.”<sup>8</sup>

### LEGAL CLAIMS

#### **Count 1 – Renewable’s Monopoly over Solid Waste and Recyclable Materials Processing Violates the United States Constitution.**

76. Plaintiff incorporates by reference paragraphs 1 through 75 above.

77. The Supreme Court has held that the processing and disposal of solid waste and recycling is itself interstate commerce. *C&A Carbone, Inc. v. Town of Clarkstown, New York*, 511 U.S. 383, 390-92 (1994). The dormant Commerce Clause prohibits laws that grant a single private contractor a monopoly over the processing and disposal of solid waste and recycling. *Id.*

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<sup>8</sup> The Standard, The Price of Trash Pickup (November 11, 2015) available at [http://www.warricknews.com/community/article\\_eb143da0-87f9-11e5-8fb1-fb3ca866d56f.html](http://www.warricknews.com/community/article_eb143da0-87f9-11e5-8fb1-fb3ca866d56f.html).

78. The Resolution grants Renewable a monopoly over the processing of solid waste in Warrick County because all waste generated in Warrick County must be sent to the Pelzer Road Facility owned and operated by Renewable.

79. Renewable's monopoly discriminates against interstate commerce in favor of a local business and violates the dormant Commerce Clause.

80. It is unclear at this time whether Renewable or the District owns and/or operates the Warrick County Recycling Center.

81. It appears that Renewable has or will have a monopoly over the processing of recyclable materials in Warrick County, in violation of the dormant Commerce Clause.

82. Accordingly, because NWRA's members are prohibited from sending solid waste and recyclable materials collected in Warrick County to anywhere other than Renewable's facilities, NWRA's members have been and will be injured by the Resolution.

**Count 2 – Renewable's Monopoly over the Curbside Collection of Solid Waste and Recyclable Materials Violates the United States Constitution.**

83. Plaintiff incorporates by reference paragraphs 1 through 82 above.

84. The process through which the District selected Renewable as the sole provider of curbside solid waste and recycling collection in Warrick County was not free and open to competition, including out-of-state competition.

85. The RFP Scoring Committee selected Advanced Disposal as the winner of the RFP process for curbside collection, but the District then chose Renewable without explanation.

86. The District's decision to choose Renewable over the advice of the Scoring Committee and without explanation is highly suspicious and smacks of local protectionism. This is especially true given the relationship between Aigner Construction and Renewable, and the fact that Aigner Construction appears to have had a hand in developing at least the first RFP.

87. Indiana law sets forth certain requirements that apply to RFPs for public contracts to ensure that the procedures are free and open to competition, and, as described in Count 4 below, the District's process for selecting the curbside collection contractor violated those requirements.

88. The District's decision to grant Renewable the RFP contract over the advice of the Scoring Committee violated the Commerce Clause because the District's process for selecting the curbside contractor was not free and open to competition. Revenue generation for a local company is not an adequate justification for discrimination against interstate commerce

**Count 3 – Renewable's Monopoly over Solid Waste and Recyclable Materials Processing and Its Monopoly over Curbside Collection Violates Indiana Law.**

89. Plaintiff incorporates by reference paragraphs 1 through 88 above.

90. The Resolution violates Indiana law because it exceeds the District's statutory authority.

91. Indiana law provides that the District does not have "the power to exclusively control **the collection or disposal** of any solid waste or recyclables within the district by means that include . . . Franchising . . . [or] . . . Establishing a territory or territories within the district in which a person may provide service." Ind. Code § 13-21-3-14(b)(2) (emphasis added). The District violated this provision by granting Renewable a monopoly over solid waste and recycling processing in Warrick County.

92. Indiana law provides that the District does not have "[t]he power to establish the type of service that a person must provide for **the collection or disposal** of solid waste or recyclables within the district." Ind. Code § 13-21-3-14(b)(3) (emphasis added). Yet, the Resolution specifies numerous details that dictate the "type of service" County residents will receive from Renewable—e.g., the frequency of waste and recycling collection, what types of



waste Renewable will collect, and the number and size of refuse containers. [See, e.g., Exhibit A, Resolution 2015-03, at Sec. C, D, and IX.A.]

93. Indiana law provides that the District may not “establish fees that a person must charge for **the collection or disposal** of solid waste or recyclables within the district.” Ind. Code § 13-21-3-14(b)(4). Yet, the Resolution explicitly specifies the fees that Renewable may charge. [Id. at Sec. IX.]

94. Although there is an exception to these limitations on the District’s authority under Ind. Code §§ 13-21-3-14(b) and 13-21-3-14.5, that exception applies only if the District finds that “(1) the waste management service is not currently available in the district at a reasonable cost; and (2) providing the waste management service by means of its own work force or by contract will benefit the public health, welfare, and safety of residents of the district.” Ind. Code § 13-21-3-14.5(d).

95. The District made no such finding.

96. Even if the District had made such a finding, which Plaintiff disputes, such a finding would not be an adequate justification under the statute for voiding contracts for solid waste and recycling companies who collect waste in Warrick County and process the waste and recyclable materials in a different location.

97. There is an active market to process waste and recyclable materials collected in Warrick County. For example, both Advanced Disposal and Republic Services, Inc. have facilities that accept solid waste and recyclable materials within a short drive of Warrick County.

98. Further, even if the District had made a finding, the Resolution is not in the best interest of the public because under the Resolution Renewable can decide not to service certain

Warrick County residents and those residents will be prohibited from obtaining service from any other provider.

99. The District cannot support a finding that waste management services are not available in Warrick County “at a reasonable cost” because the District’s plan will substantially increase costs for solid waste and recyclable materials processing.

100. The District’s decision to grant Renewable a monopoly may have been based on a section of the Indiana Code that grants the Warrick County Board of Commissioners (as opposed to the District) the authority to establish “exclusive control” over waste and recycling collection and disposal in certain cases. [See, e.g., Exhibit R, Resolution 2014-06 (stating that Warrick County has the power to issue a flow control ordinance pursuant to Ind. Code § 36-9-33-3).]

101. Under Indiana law, the Warrick County Board of Commissioners may not “exclusively control the collection and disposal of solid waste . . . within the [county]” unless it has constructed or acquired “a facility for the processing or disposal of solid waste by incineration or similar methods.” No such facility has been constructed or acquired.

102. Accordingly, the District lacks the authority under Indiana law to grant a single contractor exclusive control over solid waste and recyclable material collection and disposal, and NWRA and its members have been and will be injured by the Resolution.

**Count 4 – The District’s RFP Process Violated Indiana Law.**

103. Plaintiff incorporates by reference paragraphs 1 through 102 above.

104. Indiana law provides that responses to an RFP for a public contract “must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation.” Ind. Code § 5-22-9-4.

105. Indiana law also provides:

(a) Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals.

(b) **In conducting discussions with an offeror, information derived from proposals submitted by competing offerors may be used in discussion only if the identity of the offeror providing the information is not disclosed to others.** The purchasing agency must provide equivalent information to all offerors with which the purchasing agency chooses to have discussions.

Ind. Code § 5-22-9-4 (emphasis added).

106. In this case, the District disclosed information about Advanced Disposal's proposal to Renewable, including numerous price terms, but then decided not to accept any of the proposals made and instead orally requested that Renewable and Advanced Disposal provide a proposal for a new, fifth service option that was not included the RFP.

107. This procedure violated the Indiana statutes noted above.

108. NWRA's members were not afforded fair and equal treatment with respect to opportunities for discussion and revisions of proposals pursuant to Ind. Code § 5-22-9-4(a).

109. The District's decision to choose Renewable over the advice of the Scoring Committee and without explanation is highly suspicious and smacks of local protectionism. This is especially true given the relationship between Aigner Construction and Renewable, and the fact that Aigner Construction appears to have had hand in developing the waste flow ordinance.

110. Accordingly, the District's RFP process to select the curbside collection contractor violated Indiana law, and NWRA and its members have been and will be injured by the District's decision to grant Renewable a monopoly over curbside collection under the Resolution.

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court:

- A. Declare that the Resolution violates the dormant Commerce Clause and is therefore unconstitutional and violates Indiana law for the reasons specified above;
- B. Enter a preliminary injunction, to be made permanent, enjoining the District from enforcing the Resolution;
- C. Enter a temporary restraining order prohibiting the District from enforcing the curbside collection program;
- D. Award Plaintiff its costs and reasonable attorney's fees under 42 U.S.C. § 1988; and;
- E. Award all other proper relief.

Respectfully submitted,

/s/ Richard A. Kempf

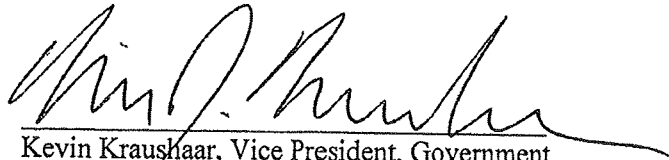
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**VERIFICATION**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 13, 2015

A handwritten signature in black ink, appearing to read "Kevin Kraushaar", is written over a horizontal line.

Kevin Kraushaar, Vice President, Government  
Affairs & General Counsel  
National Waste & Recycling Association

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