

Flow Control/Waste Transport: Federal Appellate Court Addresses Challenge to Minnesota County Ordinance



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

06/24/2022

The United States Court of Appeals Eighth Circuit ("Eighth Circuit") addressed in a May 27th Opinion issues arising out of a judicial challenge to a Minnesota County ordinance addressing solid waste management. See *Paul's Industrial Garage, Inc., et al. v. Goodhue County, et al.*, 2022 WL 1695533.

The challenged ordinance included provisions requiring that certain solid wastes be transferred to a state-owned plant where it would be processed into refuse-derived fuel.

Goodhue County, Minnesota ("County"), enacted an ordinance requiring all garbage be deposited at a state-owned plant in Red Wing, Minnesota ("Plant"). The material was then processed into refuse-derived fuel and sold to Northern States Power Company ("Xcel") where it would be utilized to produce electricity.

Paul's Industrial Garage ("PIG") (a Wisconsin-based waste hauler) and other waste haulers and processors filed a judicial action in the United States District Court for the District of Minnesota against the County. They argued that the ordinance violated the United States Commerce Clause because it benefited an in-state company, Xcel, at the expense of out-of-state haulers and processors.

The County ordinance can be described as utilizing "flow control." Flow control is a legal provision that allows government to designate the places where solid waste can be taken for processing, treatment, or disposal. Governments often engage in flow control for economic reasons. For obvious reasons such provisions are periodically challenged by private entities in the solid waste sector.

PIG and the other plaintiffs argued that the ordinance violated the dormant Commerce Clause in two ways:

- Requiring all solid waste to go to the Plant to be converted into refuse-derived fuel unfairly discriminates against out-of-state competitors
- Even if the County is free to require all garbage to go to a state-owned plant, it violated the dormant Commerce Clause by exclusively selling a byproduct of that garbage to a private, in-state company

The United States District Court granted summary judgment to the County holding that:

... because PIG doesn't have the ability to turn refuse-derived fuel into electricity, it isn't similarly situated to Xcel and therefore can't bring a claim under the dormant Commerce Clause.

Further, it held that even if PIG had the ability to convert refuse-derived fuel into energy, the United States Supreme Court decision in *United Haulers* (public entities in appropriate circumstances can flow control) would still result in the case's dismissal.

The Eighth Circuit states that the dormant Commerce Clause is a negative implication of the Commerce Clause. States may not enact laws that discriminate against or unduly burden interstate commerce. In other words, states cannot adopt protectionist measures preserving a national market for goods and services. If a law benefits in-state economic interest while also inordinately burdening out-of-state economic interest, it is discriminatory.

Nevertheless, the Eighth Circuit notes that the Commerce Clause was:

. . . never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country.

The Eighth Circuit states that the dormant Commerce Clause doesn't prohibit differential treatment of companies that perform different services. Cited as an example is the proposition that state and local governments are free to treat vacation homes differently from primary residences.

As a result, PIG's and the other plaintiffs' dormant Commerce Clause claim is deemed deficient because they did not allege inability to convert garbage into refuse-derived fuel. Further, they are stated to have failed to allege the ability to burn refuse-derived fuel to create electricity. Consequently, they are not competitors with either the Plant of Xcel and the Eighth Circuit holds their claims must fail.

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