



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

Solid Waste Collection and Transportation/State Regulation: Washington Appellate Court Addresses Preemption Question

11/17/2022

The Court of Appeals of Washington (Division 2) (“Appellate Court”) addressed in a November 8th Opinion whether federal law preempts the State of Washington’s regulation of rail transportation involving certain train-on-flatcar/container-on-flatcar (“TOFC/COFC”) activities. See *Waste Management of Washington, Inc., et al. v. Washington Utilities and Transportation Commission*, 2022 WL 16756590.

The question arose in the context of certain companies that were providing collection, transportation, and waste disposal services to two papermills that did not have Washington Utility and Transportation Commission (“WUTC”) certificates of authority.

Murrey’s Disposal Company, Inc. (“Murrey’s”) submitted two complaints with the WUTC against the following companies:

- Waste Management of Washington, Inc. (“Waste Management”)
- Waste Management Disposal Services of Oregon, Inc. (“WMDSO”)
- MJ Trucking & Contracting (“MJ Trucking”)
- Daniel J. Anderson Trucking and Excavation, LLC (“DAT”)

(collectively, “Waste Management”)

The complaints requested that the WUTC order the referenced entities to cease and desist from engaging in the collection and transportation of solid waste from two papermills in the State of Washington.

The two papermills contracted with WMDSO to collect, transport and dispose of their solid waste at its Columbia Ridge landfill. Further, WMDSO is stated to have subcontracted with MJ Trucking and DAT to transport waste-filled cargo containers by truck to transfer stations operated by WMW and others. The containers were loaded onto railcars for transportation via railroad to Columbia Ridge.

Murrey’s argued that the companies did not have WUTC certificates of authority to operate a solid waste collection company in the counties in which the papermills were located. The WUTC granted Murrey’s motion for summary determination and issued the cease and desist order.

The Opinion indicates that under Washington law an entity must obtain a certificate of authority for the WUTC to collect solid waste. Murrey’s had such authority. However, Waste Management did not have the certificate of authority.

Waste Management argued that federal law regarding rail transportation preempted the relevant Washington law because the various entities providing TOFC/COFC service involved in part transportation of the solid waste on railcars. They argued that there were two sources of federal preemption authority:

- Surface Transportation Board's exclusive jurisdiction over transportation by rail carriers therefore such regulation of rail transportation preempts state law remedies (transportation by rail carrier was argued to include both the motor carrier leg and the rail leg of TOFC/COFC service)
- 49 U.S.C. § 10502 authorizes the Surface Transportation Board to exempt certain services from federal regulation and that 49 CFR § 1090.2 states that highway TOFC/COFC service provided by a rail carrier either itself or jointly with a motor carrier as part of a continuous intermodal freight movement is exempt from federal regulation regardless of the type, affiliation, or ownership of the carrier performing the highway portion of the service (Surface Transportation Board is argued to have exercised its exclusive jurisdiction over those services)

The Appellate Court holds that neither of the referenced authorities preempt Washington law regarding Waste Management's solid waste collection activities.

In reaching this conclusion the Appellate Court undertakes a discussion that includes:

- Washington law regarding solid waste collection
- Federal law regarding railroad transportation
- Preemption of Washington law

Based on the referenced analysis the Appellate Court concludes that the United States Congress did not intend to preempt state government regulation of the collection of solid waste. It further held that Waste Management could not show that the WUTC summary determination order was based on an erroneous interpretation of the applicable state law.

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