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Competition/Solid Waste: National Waste & Recycling Association Obtains Preliminary Injunction Against an Exclusive Warrick County, Indiana Curbside Solid Waste and Recycling Collection Program

Arkansas Environmental, Energy, and Water Law Blog

04/05/2016

As noted in a previous blog post, <http://www.mitchellwilliamslaw.com/competitionsolid-waste-national-waste-recycling-association-lawsuit-challenges-warrick-county-solid-waste-management-district-indiana-contract-for-curbside-collection-processing-solid-wasterecycl>, the National Waste & Recycling Association (“NWRA”) filed a November 13, 2015 Complaint for Declaratory and Injunctive Relief (“Complaint”) against Warrick County Solid Waste Management District (Indiana) (“District”) in the United States District Court (Southern District of Indiana) addressing four resolutions adopted by the District.

The NWRA alleged that the District’s resolutions granted Renewable Resources, LLC (“Renewable”) a monopoly of the curbside collection and processing of solid waste and recyclable materials in Warrick County, Indiana.

The NWRA and the District subsequently entered into a Stipulation of the Parties (“Stipulation”) dated November 25, 2015, which addressed certain issues until “further Order of the Court after a preliminary injunction hearing.” <http://www.mitchellwilliamslaw.com/competition/solid-waste-national-waste-recycling-association-and-warrick-county-solid-waste-management-district-enter-into-stipulation-agreement-pending-preliminary-injunction-hearing>

The United States District Court in a March 29th opinion grants NWRA’s motion for a preliminary injunction.

The Court’s opinion provides a description of:

- The District’s plan to build a recycling processing center
- The Request for Proposal to construct Phases I (recycling drop off and interim processing facility), II (recycling, sorting, storage and processing center), and III (waste processing center/waste-to-energy facility)
- The curbside collection Request for Proposal
- District establishment of flow control and an exclusive curbside program

The federal District Court determined in the opinion’s “Conclusions of Law” that:

- NWRA has standing to bring the suit
- NWRA is granted a motion for preliminary injunction
- Irreparable harm is established because if Renewable is able to provide exclusive services during the course of litigation the loss of goodwill may make it difficult for NWRA's members to regain customers they will have lost in the interim
- NWRA has no adequate remedy at law

The Court found that NWRA had a high probability of success on Count III of its Complaint (based upon the present record) which alleged that the District exceeded its authority under Indiana law when it adopted Resolution 2015-03, which created the exclusive curbside collection program.

The NWRA had alleged that by adopting this Resolution, the District had allegedly (1) engaged in franchising or established a territory within Warrick County, (2) established the type of service Renewable must provide in Warrick County, and/or (3) establish the fees that Renewable must charge in Warrick County.

The Court "balanced the harms" to NWRA, certain non-parties, and the District if preliminary injunction was granted. It found that the balance of harms favored granting NWRA's request for injunctive relief.

As a result, the Court stated that:

... the District is hereby ENJOINED from enforcing Resolution 2015-03 against NWRA's members or any other person who desires to collect solid waste and recycling in Warrick County. "Covered participants," as defined in Resolution 2015-03, may use any hauler for waste and recycling pickup services. The District may not seek civil penalties, attorneys' fees, court costs, or any other fees from any person that provides waste and recycling pickup services to covered participants.

[Click here to download a copy of the opinion.](#)