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# Solid Waste Management: New York Court Addresses Whether Facility Purchasing/Reselling Scrap Metal is a Transfer Station

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A New York court in a September 21st opinion addressed whether a company that purchased and resold scrap metal, could be considered a solid waste “transfer station” under the Westchester County Solid Waste and Recyclables Collection Licensing Law. (“Westchester Law”) See *In re Universal Metal & Ore, Inc. v. Westchester County Solid Waste*, 37 N.Y.S.3d 57 (N.Y. App. Div. 2016).

Universal Metal & Ore, Inc. (“Universal”) brought a proceeding to review a determination whether it should have obtained a license to operate a transfer station.

Universal is described as an international metal trading company whose business includes purchasing scrap metal and reselling it at a profit. The company maintained a facility in Mount Vernon, New York. The company held a Class E scrap peddler business license which allowed it to collect scrap materials for sale to recyclables brokers.

Universal did not hold a Westchester Law “transfer station” license. This license was necessary for facilities in which solid waste and recyclables were “received and transported” for “final disposal.” The Westchester County’s Solid Waste Commission (“Commission”) required that Universal pay a “transfer station” fee on the basis that the company stored scrap metal on site prior to reselling it.

Universal refused to pay an annual fee of \$20,000 (minus a recycling credit of \$7,500). The Commission sent a notice of violation which directed Universal to:

1. cease operations until the fine was paid; and
2. appear before an administrative law judge (“ALJ”) for a hearing

The Commission argued at the hearing that:

1. Universal was a transfer station because it accepted and stored scrap metal at its facility;
2. the scrap metal was solid waste because, pursuant to the statutory definition, it was “discarded or rejected,” as “spent, useless, worthless or in excess to the owners” at the time it was sold to Universal;

3. the term “final disposal” as used in the definition of transfer station included the movement of material from Universal’s facility, and was not limited to transport to a landfill or incinerator; and
4. it was irrelevant that Universal paid for the scrap metal it received.

The ALJ rejected the Commission’s arguments. Universal was not a transfer station because the operation involved the resale of scrap metal. Further, the “final disposal” of materials to a landfill or incinerator was not occurring.

Instead Universal sold material to recyclables brokers. Further, the ALJ found it unnecessary to address whether scrap metal was a solid waste because Universal was not a transfer station.

The Commission rejected the ALJ’s conclusions. It found that Universal’s facility qualified as a transfer station.

A reviewing court agreed with the ALJ that Universal’s facility did not operate as a transfer station. The court noted that:

1. scrap metal is not “worthless or useless,” as statutorily required to be considered a solid waste, because Universal bought and resold it; and
2. the only reasonable interpretation of “final disposal” is when material is discarded to a facility such as a landfill or incinerator.

The court reasoned Solid Waste Law did not define “final disposal.” Therefore, the court reviewed Black’s Law Dictionary. It rejected the Commission’s argument that “final disposal” means to “no longer possess.” It held that such a narrow interpretation would ignore the inclusion of the term “final.”

Instead, the court held that the term “final disposal” clearly did not encompass Universal’s use of scrap metal. The court noted that Universal did not transport its materials to a site such as an incinerator or landfill. All of its materials were re-used or recycled.

The court also looked to the legislative intent behind the Solid Waste Law. The intent was primarily to:

1. protect the public from economic costs related to organized crime’s influence in the waste industry; and
2. to dispose of and recycle materials “in an environmentally sound manner.”

The New York legislative committee did not find the scrap metal industry a concern when developing the law. The industry was not traditionally tied to organized crime. Environmentally sound disposal, too, did not apply to scrap peddling because scrap metal was not considered solid waste and was not marked for “final disposal.” Therefore, the court held that there was no legislative intent to regulate scrap peddlers as transfer stations.

In sum, the court concluded that:

1. Universal did not operate a transfer station as defined under Solid Waste Law;
2. scrap metal was not a solid waste; and
3. the determination by the Commission that Universal had violated the Solid Waste Law by not registering and obtaining a license as a transfer station dealing in solid waste was arbitrary, capricious, and had no rational basis.

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