

Mixed Municipal Solid Waste/Flow Control: Federal Court Addresses Constitutional Challenge to Goodhue County, Minnesota, Ordinance



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07/20/2021

A United States District Court (D. Minnesota) (“Court”) addressed in a July 13th Order issues arising out of a Goodhue County, Minnesota, ordinance addressing mixed municipal solid waste (“MMSW”). See Paul’s Industrial Garage, Inc. v. Goodhue County, et al., 2021 WL 2936693.

The Order addresses a constitutional challenge to the Ordinance.

The Goodhue County Board of Commissioners adopted the Goodhue County Solid Waste Designation Ordinance (“Ordinance”) requiring all waste haulers doing business in the County to deliver MMSW collected within the County to the Red Wing Solid Waste campus (“Campus”). The Campus is operated by the City of Red Wing.

The Ordinance is described as designed to reduce the volume of MMSW in landfills and to provide an alternative fuel source to generate electricity. In addition, it is characterized as redirecting liabilities related to the Bench Street Landfill (located in Red Wing) to the State of Minnesota through the Closed Landfill Program (“CLP”).

The CLP allows counties to transfer landfill responsibility and liability to the State of Minnesota if the County requires all MMSW collected within its boundaries to be processed at a resource recovery center within the County. The Campus is stated to be the only such facility in the County. As a result, this designation allows the County to pursue what is described as the public policy goal of participating in the CLP.

Waste haulers were previously permitted to dispose of MMSW at any state-approved facility. As a result of the Ordinance, they are now prohibited from delivering MMSW collected in the County to any facility other than the Campus. They prefer to transfer MMSW collected in the County to a Wisconsin transfer facility because of what is characterized as the Ordinance’s “comparatively high tipping fee.”

The Ordinance’s directing of MMSW is a form of what is typically denoted “flow control.” The term is often applied to a local government’s directing the movement or disposition of refuse or waste. Flow control describes a scenario in which local government utilizes a law or regulation to direct one or more types of solid waste to a particular disposal, processing, transfer or other facility.

Flow control has been a subject of debate for years among local government, waste management, recycling industries and environmental groups. Many flow control disputes have been addressed by the courts.

A waste hauler and other companies (“Plaintiffs”) challenged the Ordinance based on the argument that it discriminates against out-of-state businesses in violation of the Dormant Commerce Clause. The Defendant County and the other defendants, (i.e., City of Red Wing, Goodhue County Board of Commissioners) moved for Summary Judgment.

In addressing the Motion for Summary Judgment, the Court notes that the Commerce Clause provides that:

. . . Congress shall have Power . . . [t]o regulate Commerce . . . among the several States . . .

The Commerce Clause has been held to deny the states the power to unjustifiably discriminate against or burden interstate flow of articles. The purpose is to prohibit economic protectionism (i.e., regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.

The Court initially undertakes an analysis to determine whether the Plaintiffs are similarly situated to Xcel. Xcel is described as the entity that it is claiming to be their competitor.

The Defendants argue that Xcel and the Plaintiff waste hauler are distinct businesses that do not compete for customers or provide the same services. This is based on the argument that the Plaintiffs are waste haulers that collect MMSW from residential and commercial customers and transport it to Plaintiff waste haulers transfer station.

In contrast, Xcel is described as a multi-state electric utility that generates electricity from refuse-derived fuel. In other words, it is argued to not collect or haul MMSW; accept MMSW; own or operate a waste transfer station; or dispose of MMSW at a landfill.

Plaintiffs responded that Xcel does directly compete with the Plaintiff waste hauler because they both:

. . . ultimately “dispose” of waste.

This is described as Xcel’s generating electricity from refuse-derived fuel that results from MMSW.

The Court rejects this argument, holding that MMSW and refused-derived fuel are different products governed by different regulatory schemes. It describes the difference in regulations and materials and states that:

. . . The fact that RDF is derived from MMSW does nothing to establish that plaintiffs compete with Xcel.

As a result, it holds that the Plaintiffs are not similarly situated to Xcel. Therefore, the Dormant Commerce Clause is not implicated.

The Court then notes that even if they were similarly situated, Summary Judgment would still be granted because the Ordinance falls within the scope of *United Haulers Association v. Oneida-Herkimer Solid Waste Management Authority*, 550 U.S. 330 (2007).

The United States Supreme Court in *United Haulers* upheld a New York law requiring haulers to bring waste to facilities owned and operated by a state-created public benefit corporation. The Majority Opinion found that the Ordinance merely enabled the counties to pursue traditional policy power functions and that the underlying policy choice (public sector waste handling) should be free from court interference.

The Court in its July 15th Order stated that the Goodhue Ordinance does not discriminate against private businesses and mandates that MMSW collected in the County be brought to the campus (a governmental facility) for processing. *United Haulers* was stated to hold that the Ordinance would not run afoul of the Commerce Clause.

The Court also rejected the Plaintiffs’ argument that the Court should instead look to *C&A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383 (1994). This United States Supreme Court Decision preceded *United Haulers*. It had not involved a state-created public benefit corporation.

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