



# **SOLID WASTE DELIVERY ASSURANCE IN MINNESOTA**

**SOLID WASTE ADMINISTRATORS ASSOCIATION  
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# *Carbone Case*

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- *Carbone*: 1994 U.S. Supreme Court Decision
- Privately-Owned and Operated Transfer Station
- Flow Control (Designation) Ordinance was *Per Se* Violation of Dormant Commerce Clause; No *Pike* Balancing Test Necessary
- Prevented Flow of Solid Waste to Out-of-State Disposal Facilities; Interstate Impacts

# Response to *Carbone*

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- Subsidize/Lower Tipping Fees Through Property Assessment (Solid Waste Service Charge; Chapters 400 and 473)
- Waste Delivery Agreements with Haulers
- Waste Delivery Commitment by Hauler; Reduced Tipping Fee by County
- Problem: Short-Term Agreements Lead to Increased Subsidies and Lower Tip Fees

# Market Participation for Waste Collection

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- *Smithtown* and *Babylon* Cases (2nd Circuit 1995); U.S. Supreme Court Declined to Hear
- Government Regulatory Act to Assume Responsibility for Collection, Subject to Commerce Clause
- Government Then Becomes Market Participant and Contracts for Collection Service or Performs with Public Employees; Exempt from Commerce Clause
- Government Designates Management Facilities in Contract
- Court: Importance of Government Managing Its Liability

# Minnesota Market Participation for Waste Collection

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- Stearns County Ordinance
- Wabasha County Ordinance
- Olmsted, Prairieland, Ramsey and Washington County Studies
- Resulted in Longer Term Hauler Contracts with Unsubsidized (or Less Subsidized) Tipping Fees

# Public Entities Statutes

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- Minn. Stat. §§ 115A.46, subd. 5(b); 115A.471
- County Solid Waste Management Plan Governs Public Entity Solid Waste Management Actions
- Includes Waste Collected by Private Haulers Under Contract to Municipalities
- Upheld in the *NSWMA* Case (8th Cir. 1998) Under Market Participant Exemption

# Hauler-Collected Service Charge

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- Shifts Some or All of Service Charge From Property Assessment to Collection Via Hauler Invoice
- Better Allocation of Service Charge Based on Amount of Waste Generated
- Upheld by Minnesota Supreme Court in *WLSSD* Case (1997)
- A “Model” for All Minnesota Communities

# *Oneida - Herkimer Case*

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- 2007 U.S. Supreme Court Decision; 6-3 That Flow Control to Public Facilities is Not *Per Se* Violation of Dormant Commerce Clause
- Chief Justice Roberts: “Constitutionally Significant” Difference Between Publicly-Owned and Privately-Owned Facilities

# *Oneida - Herkimer*

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- *Pike* Balancing Test Outcome: “Any Arguable Burden Does Not Exceed the Public Benefit”
- Favorable Criteria:
  - Finances Integrated Program of Waste Management Services
  - Increases Recycling and Proper Household Hazardous Waste Management
- Recent Pennsylvania Case on Public Ownership and Private Operation; No Outcome Yet

# Minnesota Waste Designation Statute (Minn. Stat. §§ 115A.80 – 893)

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- Applies to Counties or Solid Waste Districts
- “Mixed Municipal Solid Waste” or Other “Solid Waste” Not Managed as Separate Waste Stream, Unless Separate Waste Stream Would be Managed Lower on State Hierarchy
- Governs Haulers, Generators, Facilities in the County

# Exemptions

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- Recyclable Materials Exempt if Reused in Original Form or In Manufacturing Process
- Materials Processed at an Existing Resource Recovery Facility in Operation; Key is “Primarily Used” in Definition
- Under Certain Circumstances, Materials Separated for Recycling at Transfer Stations Within and Out of County
- MPCA Exemptions, Including Resource Recovery to be Facility Completed in 18 Months

# Contract Exemptions

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- Waste Subject to Delivery Agreement to the Designated Facility
- For Landfills, Waste Contracted to Another Landfill, for Term of Contract, or One Year, Whichever is Shorter

# Process

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1. Solid Waste Plan
2. Designation Plan; Detailed Contents Outlined in Statute; Additional Factors for Designation to Landfills
3. MPCA Review; 120 Days; Approve or Disapprove; May Add Conditions
4. Public Hearing; Specific Notice Requirements
5. 90-Day Contract Negotiation Process

# Process

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6. Designation Ordinance; Specific Requirements
7. MPCA Review; 90 Days; Approve if Consistent with Designation Plan and Procedure was Followed
8. Ordinance Amendments Also Must Obtain MPCA Approval; 90 Days. Substantial Change From Existing Plan Requires Revised Designation Plan

# Designation Statute Observations

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- Approach Depends on Status:
  - a) Start with Designation Plan
  - b) Amend Ordinance
  - c) Revised Plan and Amend Ordinance; or
  - d) Enforce Existing Ordinance
- Also Landfill vs. Resource Recovery; LFGTE vs. Resource Recovery Issues

# Additional Observations

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- Use of Designation in Combination with Delivery Agreements
- Full Tip Fee for Designation; Incentives for Delivery Agreements
- Advantages of Delivery Agreements Plus Regulatory Support of Designation Ordinance

# AMC Solid Waste Advisory Committee

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- Draft Designation Process Streamlining Document to be Discussed on September 17:
  1. Deletes Many Exemptions
  2. Significantly Shortens the Process and MPCA Review Times
  3. Modifies Petition Process

# Summary

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- Counties Again Have Many Tools for Waste Delivery Assurance That Have Been Upheld by the Courts
- The Waste Industry, Residents and Businesses Will Be Interested and Involved
- Every Situation is Unique; There is No One Easy Answer

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