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Haulers Lose Supreme Court Flow Control Battle

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The U.S. Supreme Court ruled on Monday that flow-control ordinances adopted by the Oneida-Herkimer Solid Waste Management Authority in New York do not violate the dormant Commerce Clause of the U.S. Constitution. In a 6-3 decision, the court said that the ordinances, which require haulers collecting trash in New York's Oneida and Herkimer counties to take their waste to a publicly owned and operated landfill, "treat in-state private business interests exactly the same as out-of-state ones" and therefore do not violate the clause by discriminating against interstate commerce.

Justices Samuel Alito, Anthony Kennedy and John Paul Stevens dissented from the ruling.

The Supreme Court's decision in the United Haulers Association Inc. v. Oneida-Herkimer Solid Waste Management Authority lawsuit upholds a 2006 ruling by the U.S. Court of Appeals for the Second Circuit.

In its 1994 ruling in the C&A Carbone v. Clarkstown case, the U.S. Supreme Court struck down a Clarkstown, N.Y., law requiring haulers to take waste collected within the jurisdiction to a privately owned transfer station. However, in its Oneida-Herkimer decision, the high court stated that "Carbone cannot be regarded as having decided the public-private question."

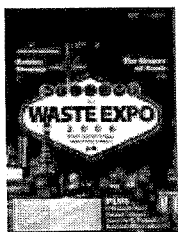
"The decision's impact on the private sector waste industry should be minimal, as the public sector has a small percentage of U.S. permitted landfill capacity," says David Biderman, general counsel for the National Solid Wastes Management Authority, which filed an amicus brief in support of the United Haulers Association and the individual haulers who filed the lawsuit. "However, in those locations where cities and counties decide to engage in flow control in response to the court's decision, residents and businesses should prepare themselves for dramatic price increases, as flow control creates a local waste monopoly insulated from free-market competition."

Barry Shanoff, general counsel for the Solid Waste Association of North America, calls the Supreme Court ruling "a dramatic vindication of the role of state and local government in municipal solid waste management, a clear and as-yet unmeasurable loss for the waste industry. No doubt the private sector was counting on a victory in this case to nicely tie up, from its perspective, loose ends."

"What a shame!," Shanoff adds. "Barely 24 hours after the decision is handed down and the waste industry is already threatening price increases in localities with flow control. Does anyone believe we would now be hearing about lower prices if the decision had gone the other way?"

Waste Age will have more on this story in its June issue.

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Press Room

LOCAL GOVERNMENT FLOW CONTROL UPHELD BY U.S. SUPREME COURT

LOCAL GOVERNMENT FLOW CONTROL UPHELD BY U.S. SUPREME COURT SWANA LAUNCHES ONLINE SESSION REVIEWING RULING

Silver Spring, Md. (Tuesday, May 1, 2007)—The U.S. Supreme Court, today, issued a decision in the case of United Haulers Association v. Oneida-Herkimer Solid Waste Management Authority. By a 6-3 margin, the high court ruled that local ordinance that direct locally generated wastes to publicly owned waste facilities do not discriminate against interstate commerce. The high court cited "compelling reasons" to justify treating these regulations different from laws favoring particular private businesses over their competitors. A contrary approach, said the court, would lead to "unprecedented interference by the courts with local government."

To help waste management personnel understand what this decisions means for them, SWANA will be offering an interactive E-Session to be held Friday, May 4, 2007 at 2:00 p.m. This online session will address such topics as the United States Constitution Commerce Clause, Carbone Decision, the burden to interstate commerce verses local benefits, and the governmental responsibility for trash disposal. Panelists include: Michael J. Cahill, attorney representing Oneida-Herkimer Solid Waste Management Authority, David Biderman, National Solid Waste Management Authority General Council, and Barry Shanoff, SWANA General Council.

"Congratulations to the professional team at the Oneida-Herkimer Solid Waste Management Authority who successfully defended the system they put in place to serve their citizens," commented John H. Skinner, SWANA Executive Director and CEO, adding "They have provided another option for other local governments to more effectively manage solid wastes and provide recycling services. SWANA supports the court's decision and has already taken steps to educate solid waste management community about changes that are sure to come."

The decision leaves in place a ruling by the U.S. Court of Appeals for the Second Circuit upholding county ordinances after a federal district court had ruled that local interests outweighed possible burdens on commerce.

This case is the first time the U.S. Supreme Court has ruled on an issue related to solid waste management for 13 years, the last being C&A Carbone, Inc. v. Town of Clarkstown, New York in 1994.

For more information about the educational session or to register, visit www.SWANA.org.

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Posted by 3C03BA4E-E0F2-4B68-ACAA-A74D00D6FCE8 Contributed by 3C03BA4E-E0F2-4B68-ACAA-A74D00D6FCE8

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