



# **SOLID WASTE DELIVERY ASSURANCE IN MINNESOTA**

**MPCA ENVIRONMENTAL CONFERENCE**

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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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- April 30, 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 (continued)

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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