

# *United Haulers: More Questions than Answers*

## Impact of US Supreme Court's Flow Control Decision:

- The Precise Scope is Still Unclear
- Decision Authorizes Flow Control to “facilities owned **and operated**” by a local government
- National Impact – Limited
- Local Impact – Uncertain

# Scope of Decision Not Clear

There are several unresolved questions:

1. Scope – Does it apply to government-owned/privately operated facilities? C&D? Commercial Recyclables?
2. What if local government has a 1% or 50% ownership interest? What if local government owns the land but a private company owns the building?
3. How does *United Haulers* affect the market participant doctrine?
4. Hierarchy considerations.

# Impact of Supreme Court's Decision



The *United Haulers* decision will not have a significant impact:

- Nationally, the public sector has only 17% of permitted MSW landfill capacity.
- Local governments that needed flow control were using exceptions to *Carbone* (market participant doctrine, intrastate, etc.).
- Many local governments lack resources to own and operate a landfill or incinerator.
- “Just because something’s constitutional does not mean it is good public policy” (Councilman C. Djou).

# What Does the Future Hold?

Decision May Mean Higher Waste Disposal Costs for Some Haulers and Customers.

- Public reaction – organized collection experience.
- Designation law – policy and procedure.
- In locations where local governments decide to engage in flow control, waste disposal costs will likely increase:
  - Franklin Cty., NY - \$85 v. \$60/ton
  - Barron Cty., WI - \$37 v. \$25/ton
  - Pre-*Carbone*, some tip fees exceeded \$100 per ton.
  - Haulers will be forced to pass on higher disposal fees to their customers.
- Private sector likely to oppose proposed flow control laws.
- Litigation expected nationally – local governments in FL and WI have authorized lawsuits against new flow control laws.
- Supreme Court changes.

# Better Approach

- Work with haulers.
- Waste delivery agreements.
- Don't force the issue.
- Citizens have strong feelings about waste issues.



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