

**Federation of New York Solid Waste Associations  
2010 Solid Waste & Recycling Conference  
Bolton Landing, New York  
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**Hot Topics: How Local Solid Waste Cases Reverberate Nationally**

Presented by

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**Climate Change Litigation – Can You Sue? If So, For What?**

- *Connecticut v. American Electric Power, Inc.*, 582 F.3d 309 (2d Cir. 2009)

8 states, NYC, and private entities seek injunction to force utilities to cap and reduce CO<sup>2</sup> emissions. District judge dismissed complaint. Appeals court reversed.

No political question. Claim stated for common law nuisance.

Clean Air Act does not rule out nuisance claims.

EPA rulemaking launch ≠ overlap → displacement.

Pending petition for re-hearing en banc (en masse).

- *Comer v. Murphy Oil Co.*, 585 F.3d 855 (5<sup>th</sup> Cir. 2009)

Property owners along Mississippi Gulf Coast seek damages from GHG emissions contributing to global warming > rise in air and water temps > higher sea levels > increased power of Hurricane Katrina > property destruction.

District judge dismissed claims – nuisance, trespass, negligence. No standing + political questions.

Appeals court reverses. Injury fairly traceable to defendants' actions + injury likely to be redressed by court action.

Note: Chain of causes alleged is O.K., but harder to prove proximate cause and prevail on merits.

Re-hearing en banc - week of May 24 - New Orleans.

- *Native Village of Kivalina v. Exxon Mobil Corp.*, 663 F.Supp.2d 863 (N.D.Cal. 2009)

Suit seeks compensation for eventual relocation of village.

GHG emissions > global warming > Arctic sea ice melts > reduced protection of coast from winter storms and waves > coastal erosion > village becoming uninhabitable.

District judge dismissed common law nuisance claim – political question.

-- Lack of judicially discoverable and manageable standards.

-- Requires initial policy determination best made by executive or legislative authority.

Plaintiffs must prove defendants unreasonably interfered with a right common to the general public. “Unreasonable” - gravity of the harm vs. utility of conduct. No manageable standards in weighing GHG emissions against energy production alternatives available.

Plaintiffs could not show that anticipated relocation of coastal village was fairly traceable to alleged GHG emissions. Tenuous chain of causes.

### **Flow Control – What Difference if Facility Publicly Owned, Privately Operated?**

- *C&A Carbone, Inc., et al. v. County of Rockland*, No. 08 Civ. 6459, S.D.N.Y., filed July 18, 2008

Business/government task force recommends county-wide flow control. County requires all local waste and recyclables to be hauled to a “designated facility.” Includes transfer stations, MRFs, drop-off centers, and resource recovery facilities. RCSWMA owns facilities but uses private contractors to operate them.

Group of generators, haulers and processors sues County, RCSWMA, Town of Clarkstown and Clarkstown Recycling Center. Claims: discrimination against interstate commerce and undue burden on commerce; taking of property without due process; interference with contractual rights; violation of state environmental quality review act.

Carbone and other companies had a chance to submit proposals to operate the RCSWMA facilities.

Hearing on pending motions set for July 1.

### **NYC E-Waste Law Challenge**

- Electronic Equipment Recycling and Reuse Act (Local Law 13) – highlights at [http://www.nyc.gov/html/nycwasteless/html/in\\_business/electroniclaw\\_reqs.shtml](http://www.nyc.gov/html/nycwasteless/html/in_business/electroniclaw_reqs.shtml)
- *Consumer Electronics Association v. City of New York*, No. 09 Civ. 6583, S.D.N.Y., filed July 24, 2009
  - Interferes with and burdens interstate commerce.
  - Selective targeting of equipment.
  - Ignored proper environmental review under city and state laws.

- Outside support for the parties: waste organizations; local governments; NAM; city sanitation workers.

Links to court filings:

<http://www.itic.org/index.php?submenu=environment&src=gendocs&ref=e-recycling>

Negotiations ongoing – key dates:

June 14 – settlement deadline

July 9 – hearing on Plaintiffs’ motion for a preliminary injunction.

### **Waste Disposal Limit Resurrected**

- Solano County (Calif.) voters approve local initiative: Measure E (1984) – caps in-county disposal of wastes from outside county.
  - U.S. Supreme Court. decisions – *Chem Waste; Ft. Gratiot* (1992)
  - Not enforced.
- County approves expansion of Potrero Hills Landfill (2005)
  - Opponents file lawsuit – violates Measure E.
  - County judge upholds approval. (2009)

Three lawsuits (2009) – Solano County Superior Court

- Pltfs: Measure E is valid + undo expansion approval + compel county to enforce.
- County: Dismiss the lawsuits.
- Ruling imminent.

*Potrero Hills Landfill, Inc. v. County of Solano*, No. 09-2514-JAM-JFM (E.D.Cal., Dec. 22, 2009)

- Plaintiffs: Waste Connections, Inc. and 20+ haulers and recyclers  
Measure E is invalid + expansion vital to Bay Area disposal needs.  
County: Urges stay of pending state court suits until federal case resolved.  
Intervenors: 3 state court plaintiffs – dismiss the case or abstain due to potential conflicts with pending state cases.
- Case dismissed – state court can better deal with same issues.
- Appeal pending in Ninth Circuit.

**Biosolids Application Ban**

- Kern County, Calif. voters – ballot initiative → local ordinance forbidding land application of biosolids at agricultural sites within the county.
- Federal lawsuit seeks injunction – discriminates against interstate commerce and violates Calif. Integrated Waste Management Act.
  - District court: Injunction
    - Unlawful discrimination against out-of-county biosolids.
    - Violates IWMA.

[County appeals]

- Appeals court: Plaintiffs lack legal standing to make Commerce Clause challenge
  - > Biosolids shipments did not cross state lines.
  - > No plaintiff from outside Calif.

Remands case to district court for more evidence on IWMA claim, but injunction remains.

*City of Los Angeles v. County of Kern*, No. 07-56564, 9<sup>th</sup> Cir., Sept. 9, 2009.

- U.S. Supreme Court: After appeals court denies re-hearing, plaintiffs file cert petition (Mar. 2010). County brief in opposition to petition (Apr.)  
Justices to confer on May 27. Decision to grant or deny – June.

*City of Los Angeles, et al., v. Kern County, California, et al.*,  
S.Ct. Docket No. 09-1111.

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