



NATIONAL SOLID WASTES
MANAGEMENT ASSOCIATION

May 27, 2008

The Honorable Cathy Catterson
Office of the Clerk
United States Court of Appeals
For the Ninth Circuit
P.O. Box 193939
San Francisco, California 94119-3939

Re: City of Los Angeles et al v. County of Kern et al, No. 07-56564

Dear Ms. Catterson:

Pursuant to Circuit Advisory Committee Note to Circuit Rule 29-1, the National Solid Wastes Management Association (NSWMA) files an original and three copies of NSWMA's letter in support of the plaintiff-appellees in the above-referenced case and affirmance of the Federal District Court's decision in the case. NSWMA is the national trade association for the solid waste industry, with members that operate in all fifty states. NSWMA's members include waste haulers and the owners of landfills, transfer stations, recycling centers and other solid waste management facilities. NSWMA members are not currently involved in biosolids recycling to a significant degree, but share many of the interests and goals of the municipalities and contractors that engage in land application work.

NSWMA's members rely heavily on the protections granted under the dormant Commerce Clause, and specifically, on the federal courts' careful review of local laws that seek to discriminate against interstate commerce or impose an undue burden on interstate commerce. Modern, environmentally-protective solid waste disposal and recycling facilities have developed, in part, because the Commerce Clause prohibits local governments from passing laws such as Measure E. These facilities rely on the steady flow of solid waste, often across state and county lines, to provide cost-effective and environmentally-protective waste disposal to the American people. At many landfills, methane gas is captured which annually provides 10 billion kilowatt hours of electricity and offsets the use of 170 million barrels of oil, *An Overview of Landfill Gas Energy in the United States*, U.S. EPA (Apr. 2007) at 8 (<http://www.epa.gov/lmop/docs/overview.pdf>). America's increasingly sophisticated systems for interstate waste transportation and management would be at risk if local voter initiatives could discriminate against or unduly burden this vital stream of commerce. Kern County cannot isolate itself from the national economy under the Commerce Clause, the same way that New Jersey was prohibited from insulating itself from Pennsylvania waste in *Philadelphia v. New Jersey*, 437 U.S. 617 (1978).

Biosolids recycling through land application is an important part of the country's waste management infrastructure. Biosolids that cannot be land applied may have to be diverted to landfills (not all of which accept biosolids), increasing competition for this vital and limited resource across broad geographic areas.

NSWMA also supports the affirmance of the Federal District Court's holding that the recycling mandate of the California Integrated Waste Management Act ((CIWMA) preempts Kern County's ban on biosolids recycling. NSWMA members are directly involved in recycling and waste minimization efforts that the CIWMA has encouraged since its passage in 1989. A local ban on land application of biosolids is contrary to the purposes of this important statute.

NSWMA urges the court to affirm the decision below.

Respectfully submitted,



David Biderman
General Counsel

cc: Counsel of Record

CA No. 07-56564
DC No. 06-5094

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CITY OF LOS ANGELES; ORANGE COUNTY SANITATION DISTRICT; COUNTY
SANITATION DISTRICT NO. 2 OF LOS ANGELES COUNTY; RESPONSIBLE
BIOSOLIDS MANAGEMENT, INC.; R&G FANUCCHI FARMS, INC.; SHAEN MAGAN,
BOTH INDIVIDUALLY AND D/B/A HONEY BUCKET FARMS AND TULE
RANCH/MAGAN FARMS; WESTERN EXPRESS, INC.; SIERRA TRANSPORT, INC.; AND
CALIFORNIA ASSOCIATION OF SANITATION AGENCIES,

PLAINTIFFS-APPELLEES,

v.

COUNTY OF KERN AND KERN COUNTY BOARD OF SUPERVISORS,
DEFENDANTS-APPELLANTS,

ARVIN-EDISON WATER STORAGE DISTRICT, ASSOCIATION OF IRRIGATED
RESIDENTS, KERN COUNTY WATER AGENCY, KERN WATER BANK AUTHORITY,
INTERVENORS.

On Appeal from the United States District Court
for the Central District of California
Hon. Gary A. Feess, District Court Judge

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[See following pages for a complete list
of parties and counsel.]

PROOF OF SERVICE

I

I declare under penalty of perjury under the laws of California and the United States of America that a copy of the National Solid Wastes Management Association's Letter in Support of Plaintiffs-Appellees was mailed, first-class postage prepaid, to the counsel listed in the service list below, that the foregoing is true and correct and that this declaration was executed on May 27, 2008, in Washington, D.C.


David S. Biderman

SERVICE LIST

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