

Customer Information

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FLOW CONTROL ISSUES

The recent United States Supreme Court decision United Haulers v. Oneida-Herkimer Solid Waste Management Authority, April 30, 2007 changed the perceptions of many in the solid waste industry. Since the 1994 United States Supreme Court decision – Carbone v. Clarkstown it has been widely accepted that local governments could not direct the flow of waste to facilities. The resultant belief led to solid waste management planning that followed the guidance from a 3rd Circuit Ct. case, Harvey & Harvey Inc. v. Chester County, Pennsylvania, whereby flow control could be practiced but only in the event that there was fair an open competition to the market.

The United Haulers v. Oneida-Herkimer Solid Waste Management Authority case gave rise to several questions?

1. Is Flow Control adverse in all ways to the commerce clause of the U.S. Constitution?
2. Does the activity by the local government entity discriminate against interstate commerce?
3. Is the activity of the local government evenhanded in its impact on local vs. out-of-state interests?

The answers have been provided by the U. S. Supreme Court, Chief Justice John Roberts:

1. “In the case of United Haulers v. Oneida-Herkimer Solid Waste Management Authority we face flow control ordinances quite similar to the one invalidated in Carbone v. Clarkstown. The only salient difference is that the laws at issue here require haulers to bring waste to facilities owned and operated by a state-created public benefit corporation. We find this difference constitutionally significant.”

2. “Disposing of trash has been a traditional government activity for years, and laws that favor the government in such areas-but treat every private business, whether in-state or out-of-state, exactly the same- do not discriminate against interstate commerce for purposes of the Commerce Clause.”

3. “These important responsibilities set state and local government apart from a typical private business. Given these differences, it does not make sense to regard laws favoring local government and laws favoring private industry with equal skepticism. As our local processing cases demonstrate, when a law favors in-state business over out-of-state competition, rigorous scrutiny is appropriate because the law is often the product of “simple economic protectionism.” Laws favoring local governments, by contrast, may be directed toward any number of legitimate goals unrelated to protectionism. Here the flow control ordinances enable the Counties to pursue particular policies with respect to the handling and treatment of waste generated in the Counties, while allocating the costs of those policies on citizens and businesses according to the volume of waste they generate. The contrary approach of treating public and private entities the same under the dormant Commerce Clause would lead to unprecedented and unbounded interference by the courts with state and local government. The dormant Commerce Clause is not a roving license for federal courts to decide what activities are appropriate for state and local government to undertake, and what activities must be the province

of private market competition.”

What’s this got to do with the garbage market in North Central Pennsylvania?

That has not been determined. As you know the Counties in our service area lost a decision in the courts regarding Administrative Fees that were used to further the programs the local governments were operating. Those government programs have approached DEP and the Legislature for some form of relief. DEP will bring forth their guidance in December regarding “Flow Control” and how it relates to municipal waste planning in Pennsylvania. We will forward information from DEP as soon as we get it.

The Pennsylvania Independent Waste Haulers Association has followed the legislative and regulatory effort. At this time we know of no bills moving forward that impose fees on solid waste in the Commonwealth. Please, understand that this can change and a bill can come out of committee quickly and get passed. HB 934 was seeking a \$4 per ton fee on solid waste. Other bills from the House (HB) or Senate (SB) that have been proposed this session that include the levying of fees on solid waste: HB 1209, HB 1123, and SB 519. You can view those bills in their entirety at: http://www.legis.state.pa.us/dtsearch.asp?cmd=search&searchType=allwords&max_files=10&autoStopLimit=500&sort=Hits&ChoiceBox=Keyword&CiRestriction=Solid+Waste&CiScope=20070txt

Interference with County Waste Management Plans

In accordance with the Municipal Waste Planning and Waste Reduction Act, 52 P.S. §4000.101 et seq. (Act 101) each county in the Commonwealth of Pennsylvania plans for 10 years of disposal capacity for municipal solid waste generated within their jurisdiction. **No one in the Commonwealth may interfere with these County Waste Plans.**

DEP is currently performing comprehensive reviews of records to assure that facilities and waste haulers are maintaining the statutory and regulatory requirements and in the event they find non-compliance the DEP will respond with appropriate enforcement actions.

Please, LCRMS only accepts municipal waste from the following counties; Columbia, Lycoming, Montour, Northumberland, Snyder and Union counties. Those are the counties that have Lycoming County Resource Management Services listed as a designated facility under their DEP approved Municipal Solid Waste Management Plan.

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POINTS OF INTEREST IN THIS ISSUE:

- *Revisions to Waste Regulations are pending*
- *Permanent Waste Authorization stickers now required.*
- *Tire Wash being monitored*

UPCOMING HOLIDAYS

- *Thanksgiving: Thursday, November 22, 2007*
- *Christmas: Tuesday, December 25, 2007*
- *New Year’s Day: Tuesday, January 1, 2008*

PREVENT BLOW-ING LITTER: *Clean out your truck prior to leaving site!*

Use of Tire Wash Being Monitored

We are periodically monitoring the use of the Tire Wash and making note of all trucks that by pass it when use is required.

The tire wash was installed in order to comply with a regulatory requirement to prevent track-out of dirt and waste onto public roads. We require use of the wash when the potential for track-out is the greatest.

Because failure to use the Tire Wash could jeopardize our operating permit, in order to safeguard the site for those who do follow the rules we plan to take action against

those who fail to. Currently the appropriate action to be taken is under advisement by our legal counsel.

While we regret the necessity for any action, the consequences of permit violations with no effort by the site operator to prevent further occurrences can result in shut down by DEP until a plan is approved to address the non-compliance. So we ask that you please help us maintain the site for the use of all our customers by complying with site rules.

Another Retiree for LCRMS

The staff of LCRMS sends Bryan Crawley off to a well deserved retirement with best wishes for health, and happiness after 20+ years of service. Bryan served many roles at RMS from equipment operator, equipment maintenance, to his final position of welder. We all wish Bryan the best of luck!



Revisions to Waste Regulations Pending

DEP is getting ready to propose revisions to the Waste Regulations. The revisions primarily combine the separate Municipal and Residual Waste Regulations deleting numerous duplications.

One of the changes being made is to put Storage of Waste in a separate chapter from Collection and Transportation of waste. Waste Haulers Authorization regulations implemented by Act 90 in 2002 will be written into regulation with the adoption of these revisions.

One of the major changes is a revised definition of "waste. There are also revisions to General and Beneficial Use Permits, and Permits by Rule. ." A requirement that landfills be required to report overweight vehicles on a monthly basis is proposed.

Harry Bryson Retires

The staff of LCRMS wishes Harry Bryson the best of health and happiness in honor of his retirement after 25



years of service. Harry was a very dedicated Heavy Equipment Operator/Special Projects Coordinator in the Operations Division. Good Luck Harry!

DEP is releasing the draft revisions to the Solid Waste Advisory Committee (SWAC) for review and comments in two phases. The first phase was released to the committee on September 13th and the second phase will be released to them on November 8th. The primary action that the committee will take is to decide whether or not the regulatory package is ready to be released to the Environmental Quality Board (EQB) for their review. DEP hopes that the SWAC will be ready to send the package to the EQB in January, 2008. The official public comment period will begin when the package is sent to the EQB.

We'll keep you updated and let you know when the public comment period begins.

New Sedimentation Pond Construction

You may have been watching the progress that has been achieved by K.C. Construction Company on the Sedimentation Pond relocation project since our last customer newsletter .

The two existing sedimentation ponds north of the access road will eventually be removed. Two larger ponds are under construction south of the access road to replace them.

This project is being done in conjunction with filing for a landfill expansion permit with DEP later this fall. Currently RMS has airspace available through 2010. The expansion will give

the landfill around 12 to 15 more years of airspace to service you.

Future Changes:

When the expansion permit is approved, the main access road will be relocated south across from Fritz Station Road.



Reminder on Interim Waste Authorization Stickers

Monday, September 17, 2007 was the **final** day for vehicles with the white Interim stickers to be permitted to dispose of waste at Pennsylvania facilities. All waste haulers who have not received their final green stickers should contact Waste Transportation Safety Program immediately at (717) 783-9258. You can access forms and additional information at <http://www.depweb.state.pa.us/>