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Roll Over And Play Dead?

Not Bloody Likely!

While reactions to the recent Supreme Court decision vary, "woe is me" did not make the short-list.

As is so often the case when sudden change is involved, the real action in the *Carbone v. Clarkstown* ruling is not in the decision itself, but in the reaction. (For some of these reactions, see our *Flow Control* roundtable forum beginning on p. 14.) While many felt that the "losers" in such a ruling would be the municipal waste authorities and/or the publics they served, what has emerged instead is a resolve on the part of the public sector to reacquire control of all the elements of their systems, level the playing field on disposal fees, and deal with the private sector from a position of strength. The public will benefit in several ways in addition to paying market-driven tipping fees. More important will be its involvement in discussions over nuts-and-bolts issues of waste management -- methods, options, costs, participants, and financial implications -- and how these fit in with other municipal priorities. This is good, but as with everything else, there's a "catch" ... obtaining the support of the community by seeing to it that the issues are presented fairly and fully.

Laying The Cards On The Table

There's no end to the rhetoric that has surrounded flow control since it became an issue. Take the term monopoly. As it is normally applied, monopoly has to do with unilateral control of a market segment, and to carry the thought a step further, authority -- monopolistic or pluralistic -- is the logical outgrowth of responsibility; the two are functionally inseparable. Municipalities are charged with maintaining public health and safety, a non-delegatable mandate they are able to carry out fully only when they retain control over the factors that affect it. The keys lie in expertise, will, and wherewithal, and a deficiency in any one of these exposes the public to risk.

At the outset, flow control seemed a natural outgrowth of the waste authorities' responsibility to public health and safety, but as challenges mounted, the focus of (and on) flow control has changed. Now, two separate aspects have emerged -- legal and economic. Many municipalities engaged in the former -- often in order to keep public debt within statutory limits -- such that in recent years they dealt out MSW activities through contractual arrangements which have loosened governmental authority over vital elements of the system. Thus they have set the stage for separation of authority from responsibility. [It should be noted here that some larger, vertically integrated, private waste management firms took another course, essentially seeking to create economic monopolies through their ability to use integration to underbid opponents (public or private) for specific services and then leverage their way to increasing control of business within the area.] Ironically, in the supposed name of fiscal restraint, some municipalities have unwittingly placed themselves in the position of underwriting the financing of privately-owned facilities, paying the operational costs, and guaranteeing profit with a commodity (waste) whose supply they could never really guarantee. For some, it has been a workable solution, to others it is an ever-deepening cesspool, to those most impacted by *Carbone* it's a time bomb brought to its fully-armed state by the decision., To the public, it is one of those "mysteries wrapped in an enigma" for which public entities have become justifiably famous in recent decades.

It's time to change the experiment.

Yes, we need to encourage Congress to provide guidance. Yes, we need to take stock of our activities and make sure the elements are working in harmony toward the greater goal. Yes, we need to focus on efficiencies that allow us to provide the most service for the buck. But most important of all, we need to draw the public into the center of debate -- present it with the facts and alternatives -- and let it decide.

(The importance of this issue and the latest developments are underscored by the last-minute addition of a special session on flow control on Sunday, July 1st, the day prior to the opening of SWANA's International Solid Waste Expo in San Antonio, TX.)

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