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Must We Always End Up in Court?

The National Resource Defense Council's lawsuit against the California Integrated Waste Management Board underscores the dilemma public agencies face. Does litigation really offer solutions or is it the fallacy of our times to think so?

Very few in our society challenge the wisdom of open debate and the right of all citizens to be heard, but we have every right to question the venue and tactics employed. Particularly, we should question the role of litigation as a means of effecting change in processes that are, in essence, evolutionary. Rather than lending support to the orderly process of change, lawsuits all too frequently erect barriers of resentment and distrust. Once the adversarial situation is in place, focus shifts from purpose to action ... precisely the kind of bean-counting that leads us to defending positions rather than solving problems.

Next to getting the trash out from under the public's nose, the biggest challenge MSW managers face is finding workable ways to implement mandates from higher jurisdictions. The balancing act demands your constant attention to upholding the regulatory guidelines, meeting the goals and objectives on time and within the allocated budgetary framework, yet without incurring the wrath of the citizenry or its watchdogs. Meeting the first two challenges is difficult enough. Doing so in a minefield adds a counterproductive demand.

Just as policy-makers should not be unduly guided by implementation concerns, neither should local jurisdictions be micro managed during the implementation process. Most of us see fit to "cut a little slack" in how we deal with change. In the choice between adherence to the "letter" and the "intent" of a mandate, we rely on the skill and resourcefulness of our public officials and staffs to find a workable course. The larger and more diverse the constituency, the less slack there is for fitting action within the tolerance levels of the affected parties, which is why we must do all in our power to make the public aware of the consequences of all courses of action. The last thing any of us needs is a breeding ground for fruitless debate or litigation of any sort.

Consider, for example, yardwaste composting. Most of us favor diverting yardwaste from landfills, especially if it can be put to beneficial use. Composting is an increasingly used and rapidly maturing process that many feel holds the key to success. Such programs, however, can be costly, often with the lion's share tied up in the collection and transportation of materials. This situation is exacerbated by siting difficulties, forcing many communities to transport their yardwaste elsewhere for processing. As many of you have experienced, until your supply of yardwaste is assured and you can demonstrate delivery of product, you're unlikely to find a commercial customer. Until you've shown the ability to deliver product on time, in the amounts specified, and at an agreed-upon price, you still face concerns about cost and availability.

Experience shows that such problems rarely yield to simple solutions and many of the regulators and enforcement officials to whom you report understand this as well as you. But what about the public? Unless you've got trash blocking sidewalks, the chances are the majority is blissfully unaware of your problems and prefers to remain that way. Even if you've seized the initiative and made the public aware of the problems and potential solutions, you're likely to find yourself locked in battle with one or more of the myriad watchdog organizations, which are fine-tuned to the tactics of confrontation.

The National Resources Defense Council's lawsuit against the California Integrated Waste Management Board for allowing compost to be counted for diversion when used as ADC (see Field Report on page 21 in this issue for background) underscores the dilemma public agencies face. While one trusts that the court's ruling will be technically correct, it is far from clear what it will accomplish in bringing about the law's larger goals. A far better use of public dollars can be found than preparing legal briefs, and I can't help wondering whether the council's resources would be better spent in an effort to lessen the prohibitions against compost facility siting in metropolitan areas.