

A Trial On Striking Down Biosolids Ban on Two Constitutional Grounds Win for City of Los Angeles

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Following a two week bench trial the Tulare County, California Superior Court has struck down a voter initiative passed in 2006 in Kern County that banned the land application of biosolids (treated municipal wastewater sludge) to farmland in Kern County. Judge Lloyd Hicks wrote in a 48 page opinion that that Measure E “is invalid and void for all purposes, for the dual reasons that it exceeds Kern’s police power authority and is preempted by state law.” *City of Los Angeles v. Kern County*, 2016 WL 7175653, 2016 Cal Super Lexis 9727 (Tulare Co. Super. Ct. Nov. 28, 2016). The case is believed to be the first trial focused on the benefits and safety of recycling biosolids to farmland, a practice used by many of America’s largest cities for decades.

The City of Los Angeles led a coalition of Southern California public agencies, farmers, and contractors in the lawsuit against Kern County to protect their long standing use of biosolids as a fertilizer and soil amendment on farms in Kern County. Los Angeles owns a 4,700 acre farm in Kern where it has grown feed crops with the aid of biosolids for over 20 years. Since 2006, the voter initiative (“Measure E”) has been under a series of injunctions pending trial.

On the police power claim, the Court ruled in its statement of decision that “the overwhelming weight of the evidence is that there is no basis in fact for any determination that land application of biosolids poses any risk to Kern County residents, let alone a real and substantial risk that would be alleviated by banning such land application.... Los Angeles has met its burden of producing evidence to the effect that there is no basis in fact for Measure E’s public welfare claims.... There is no evidence of risk to human health.” The Court concluded that because the biosolids ban bore no substantial relation to the public welfare, it was an invalid exercise of the county’s police power under the California Constitution.

On the preemption claim, the Court ruled that the California Integrated Waste Management Act (“CIWMA”), which requires that all local governments in California promote and maximize recycling, was controlling over a local voter initiative and thus preempted Measure E. The Court held that “Measure E prohibits what CIWMA requires.... Measure E is in direct conflict with, and inimical to, CIWMA, and is therefore, for that reason, also void. . . . Banning a commonly used and cost efficient method of recycling and re-use is not consistent with and is destructive of the state’s policies and

requirements.”

The City of Los Angeles in its [media statement](#) said that it “welcomed the decision and looks forward to continuing to recycle biosolids at its farm to grow feed crops used by Kern County dairies and to benefit the millions of City residents who depend on economical and environmentally sound wastewater management.”

National stakeholders have applauded the ruling. The National Association of Clean Water Agencies (“NACWA”) stated that “This litigation involved the first full-blown bench trial focused on biosolids safety. The ruling is a victory not only for the City of Los Angeles and other municipal utilities that challenged Measure E, but for utilities across the country that can use this strong legal precedent to protect biosolids land application as an economical and environmentally sound wastewater management practice.”

The case opinion is reported at City of Los Angeles v. Kern County, 2016 WL 7175653, 2016 Cal Super Lexis 9727

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