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Federal Appeals Court Overturns District Court Decision Invalidating Pennsylvania County Flow Control Law

A federal appeals court has overturned a district court decision and ordered the lower court to re-evaluate the validity of the flow control law under the *Pike* balancing test. The decision is the first important reported federal appeals court decision to rely on the U.S. Supreme Court's decision in the *United Haulers* case to overturn a lower court decision.

FACTS In 1988, Pennsylvania adopted a law known as Act 191 that makes counties responsible for waste management planning. In 1990, pursuant to Act 191, Lebanon County adopted a "Municipal Waste Management Plan," and in 1991, implemented the Plan by enacting a flow control law. Under that law, the Greater Lebanon Refuse Authority's (GLRA) landfill was designated as the sole recipient of solid waste generated in Lebanon County. GLRA owns and operates this landfill. In 2006, the county amended the Plan to authorize GLRA to approve interstate waste shipments to other disposal sites after it evaluates those facilities.

In 2003, Lebanon Farms Disposal, Inc., a GLRA-licensed hauler, was cited twice for transporting waste out of the county to the Pine Grove Landfill in Schuylkill County, Pennsylvania. The rate fee at the GLRA landfill was \$42.50 per ton, and was substantially lower at Pine Grove. In response, in April 2003, Lebanon Farms filed a lawsuit in federal district court challenging the constitutionality of the county's flow control law under the dormant Commerce Clause. In July 2006, the district court granted partial summary judgment in favor of Lebanon Farms, concluding that the flow control law discriminated against interstate commerce under *C.A.T. Leathers v. Freeport*, 533 U.S. 381 (2001) and *Harvey & Harvey, Inc. v. County of Chester*, 883 F.2d 788 (3d Cir. 1995) (enjoined August 2006 (12/1/06)).

Lebanon County appealed to the Third Circuit Court of Appeals. In April 2007, the U.S. Supreme Court decided *United Haulers, Inc. v. United Haulers of Solid Waste Mgmt. Authority*, 127 S. Ct. 1784 (2007). In September 2007, the appeals court denied a request by the local governments to vacate the district court decision and ordered both sides to file the merits regarding the impact of the *United Haulers* decision on this case.

DECISION The federal appeals court ruled, based on *United Haulers*, that the strict scrutiny test applied by the district court in its July 2006 decision was inappropriate, and that the *Pike* balancing test should be applied to determine whether the flow control law violates the Commerce Clause. The appeals court observed that "this case seems indistinguishable from *United Haulers* in all material ways for the purpose of the final discrimination analysis applied by the Supreme Court."

The appeals court rejected the local governments' argument that the *United Haulers* case imposes some sort of "less-strict form of *Pike* balancing which will always result in upholding" a flow control law. The Third Circuit concluded this argument was "flawed." The appeals court directed the local governments' attention to conduct a *Pike* analysis and conclude that their flow control law was constitutional. Although the court opined "we perhaps could conduct the balancing test on the record," it noted that the Second Circuit in the *United Haulers* case chose to decline the opportunity to issue such a ruling as a formal matter. Further, the court stated that "we intend to complete regarding the burden on interstate commerce and, more importantly, the putative local benefits."



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