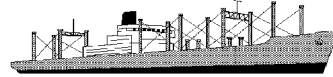




Rollin' On [®]



An Electronic and Facsimile Newsletter for the Transportation Industry

Volume XIV, Issue 7

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July 2008

SOLID WASTE INDUSTRY: *Consolidation or confusion, and what about drop boxes?*

Here's the deal. You are the number three solid waste (garbage) hauler in the country. You have deep pockets and decide to buy the number two hauler which has had its financial challenges. The number one guy is still way out in front, with revenues more than 50 % higher than number two and you, number three, combined.

But number one decides that the combination of two and three is not good for its business. So number one makes a play for you. You are annoyed since you believe that number one is just trying to screw up your deal with number two.

Such is life in the solid waste business these days. Republic Services, Inc., based in Florida, entered into an agreement to buy Allied Waste Industries, Inc., based in Arizona. The plan was for the merged operations to be based in Arizona.

However, the nation's largest solid waste hauler, Waste Management, Inc., based in Houston, apparently not liking the change in the landscape, decided to make an offer for Republic which was not amused with the offer.

What happens with these three companies can have an impact here in Oregon. Waste Management and Allied Industries have extensive local operations, the extent of which may not be apparent since they sometimes continue to use the name of the local company they have bought out, to keep things warm and fuzzy. The impact is not limited to just residential service, since they also have extensive commercial operations as well.

And there's the rub. Most cities and

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counties grant exclusive franchises for collection and transportation of solid waste. They eliminate competition, the effect of which is that businesses are charged higher rates than would otherwise be the case. The City of Portland does not franchise commercial operations, thus allowing the marketplace to work. And it works well. Haulers compete with each other for the business.

If you are located outside Portland's city limits, you are red meat for both your city or county and its designated hauler. You can't shop around. You are stuck with the chosen company, and at the rate chosen by that governmental entity, as if government understands commercial operations.

Moreover, your recycling operations are at risk. Recyclable materials are exempt from local regulation, yet some local governments utilize a distorted definition of recyclable materials, a definition that puts more money in the their pockets since their take may include revenues from landfilling but not from recycling. You may have materials that may be recycled, but if you local hauler doesn't provide the necessary recycling service for that material, your materials are landfilled or else. With the enforcement mechanism of the governmental entity against you. All at a time that Metro, which doesn't regulate haulers, is trying to increase recycling.

This is true even if you offer to pay the city or county its take of the exorbitant rate, so that the haulers are all on equal footing. The excuse is that there is a contract in place, the

franchisee gets the business, and if the franchisee doesn't recycle, so be it. It is more important to the city or county to keep in good graces with its hauler, while conveniently lining its own pockets, than to recycle.

Although hard to believe, it is easier to get authority to transport nuclear and radioactive materials across the country, from one coast to the other, over 3,000 miles, than to transport a commercial drop box 100 yards within most Oregon cities and counties. It is simply mind boggling. But as long as the cities and counties stay in bed with their haulers, and they have the ears, and more, of the lobbyists and legislators in Salem, things won't change.

And that brings us back to the three way skirmish between the nation's three largest solid waste haulers. As the industry consolidates, competition is diminished. Sure, there will be some economies of scale, but will those benefits go to the businesses or to the shareholders?

These businesses are also vertically integrated, i.e. they do the hauling with their own equipment and then they dump at their own landfills. There is usually a bigger bang for the buck by landfilling than by recycling, so guess what might happen at times. Waste Management likes to say that it is the nation's largest recycler, which conjures up an image of a sumo wrestler who claims to be the largest dieter. It's a scary image.

So it's up in the air as to whether number three gets together with number two, or whether number one swallows number three. And who else wins or loses.

That's it for now. Until next time, keep the cargo *rollin'!*

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 30 years and emphasizing transportation law, business law and related litigation.