

## BIOSOLIDS

### Washington Supreme Court Lets Reversal Of Biosolid Ban Stand

By Rita Ann Cicero, Legal Writer, Westlaw Journals

The Washington Supreme Court has denied a petition to review a lower court's finding that a county ordinance banning the application of sewage sludge to any land within the county violated the state's constitution.

***Washington Department of Ecology v. Wahkiakum County, No. 91156-8, petition for review denied (Wash. Apr. 28, 2015).***

The high court's action lets stand a ruling by the state's Court of Appeals, Division 2, that reversed a trial court decision upholding Wahkiakum County's ban on biosolids.

**Jimmy Slaughter** of **Beveridge & Diamond** in Washington praised the high court's action. Slaughter participated in oral argument to the Court of Appeals in favor of preemption for *amici* Northwest Biosolids Management Association, National Association of Clean Water Agencies and others.

"The growing number of preemption decisions across the country underscores that urban/rural partnerships to improve farms with biosolids are good policy and good law," Slaughter said.

In 1992 the Washington Legislature established the state's biosolids program. The purpose was to recycle sewage waste by treating it and using it in land applications, according to the appeals court opinion.

Class B biosolids, generated by wastewater treatment plants, are used in farming, land reclamation and other applications.

Wahkiakum County passed an ordinance in 2011 that banned applications of class B biosolids to any land in the county.

The Washington Department of Ecology sued the county in the Cowlitz County Superior Court, alleging the ordinance violated the state constitution.

The trial court disagreed and granted summary judgment to the county.

On appeal, the Ecology Department argued that the Legislature intended that sewage sludge be recycled rather than disposed of in a landfill or incinerated. Additionally, since class B biosolids comprise about 88 percent of the biosolids produced in the state, the county essentially banned the land application of biosolids.

The state appeals court held that the county's ordinance was unconstitutional because it conflicted with general laws governing the disposal and land applications of biosolids.

The three-judge appellate panel rejected the county's arguments that it had not prohibited all land application of biosolids but had simply imposed more stringent regulations. *Wash. Dep't of Ecology v. Wahkiakum Cnty.*, 184 Wash. App. 372 (2014).

"The county's ban on land application of class B biosolids does not just thwart the Legislature's purpose to use biosolids to the maximum extent possible, it also thwarts the Legislature's purpose to prevent disposal of biosolids in landfills absent economic infeasibility," the appeals court said.

On April 28, the state Supreme Court denied review in the case.

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