



City of Los Angeles • Department of Public Works • Public Affairs Office
200 N. Spring St., M-165 • LA, CA 90012 • (213) 978-0333 • FAX (213) 978-0332

Contact: Cora Jackson-Fossett
(213) 978-0319
(213) 978-0333

E-mail: cora.jackson@lacity.org

FOR IMMEDIATE RELEASE

COURT OKAYS LOS ANGELES SUIT CHALLENGING KERN COUNTY BIOSOLIDS BAN

Los Angeles (Oct. 26, 2006)—A federal judge in Los Angeles rejected a significant portion of Kern County’s motion to dismiss a lawsuit challenging its ban on land application of biosolids. In a 27 page order, Judge Gary Allen Feess of the United States District Court in Los Angeles also rejected Kern County’s argument that the case should not have been filed in Los Angeles but instead belonged in the federal court district that includes Kern County.

The court ruled that the City and its co-plaintiffs were entitled to bring the lawsuit in Los Angeles because the effects of the Kern Ban alleged by the Plaintiffs -- higher costs and difficulties managing biosolids if they are barred from Kern County -- would be felt by the government agencies in the Los Angeles area.

Cynthia Ruiz, president of the City’s Board of Public Works, said, “We are pleased that the court has denied most of Kern County’s motion to dismiss and that the claims of the City, its sister agencies, and their business partners will be heard. We also appreciate the court’s recognition that the Kern ban has enormous impacts on metropolitan Los Angeles and the case should be heard here.”

The ruling clears the way for a motion by the City and its allies asking the court to stay the ban and allow land application of biosolids to continue while the case is heard. As of now, the ban goes into effect in early 2007. Judge Feess will hear the Plaintiffs’ request for a preliminary injunction on November 13.

Rita Robinson, director of the Bureau of Sanitation, said, “We appreciate the court’s close attention to all of our legal arguments in this detailed ruling. We look forward to the upcoming hearing on our request for a preliminary injunction, which is extremely important. The prospect of closing the City’s Green Acres Farm after 12 years of successful biosolids recycling poses enormous challenges to the Bureau of Sanitation. The facts show that biosolids recycling is good for Los Angeles and good for Kern County.”

The ruling is the court’s first major decision on the lawsuit, which was filed in August by the City of Los Angeles, Los Angeles County Sanitation Districts, Orange County Sanitation District, and

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farmers and businesses that work with biosolids. The lawsuit seeks to overturn a ballot initiative passed by Kern County voters in June that barred the Plaintiffs from recycling biosolids at two farm sites in Kern County, including a 5,000 acre farm owned by the City of Los Angeles.

BACKGROUND:

The City of Los Angeles' lawsuit includes six separate legal claims that the Kern biosolids ban is illegal. Kern County argued that none of the claims are valid and asked the judge to dismiss the entire lawsuit. The court rejected Kern County's motion and ruled that the municipalities and their business allies could move forward on four of the six claims.

Judge Feess decided that the Plaintiffs could pursue two claims that the ban violates the United States Constitution. The court stated that "Plaintiffs allege that the intent and effect of Measure E are to discriminate against biosolids from urban communities in Southern California and that Measure E constitutes an undue burden on interstate commerce, outweighing the illusory, asserted benefits to Kern. If proven, these allegations would mean that Measure E transgressed the Dormant Commerce Clause." The court said there could also be a case for a violation of the Equal Protection Clause of the U.S. Constitution: "If, in fact, there are no benefits to a biosolids ban, and measure E actually harms the environment, Measure E would not be rationally related to the asserted government interests of public health and safety. And if the ban were merely motivated by a desire to target Plaintiffs, it would be arbitrary and thus fail . ." Judge Feess rejected a third federal claim that the biosolids ban was illegal under the federal Clean Water Act.

The court likewise allowed two of the three claims based on California law to go forward. Judge Feess approved proceeding on a claim that the ban violates the California Integrated Waste Management Act's mandate that biosolids be recycled in preference to disposal in landfills or incineration. The court also will allow the Plaintiffs to proceed on a claim that the ban exceeded Kern County's governmental authority. Measure E also allegedly increases costs for managing biosolids by increasing competition for alternative management resources, and will increase rates for sewage services provided by the government Plaintiffs." The court dismissed a claim by the Plaintiffs that the ban was illegal under the California Water Code.

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