

# CONNECTICUT MUNICIPAL SOLID WASTE CONTRACTING ISSUES

## MSW Collection and Disposal

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# **1. Premise: Control of Collection Can Allow a Municipality to Foster Greater Efficiency and More Recycling, and Ultimately Lower Cost**

## **2. Statutory and Regulatory Overview**

### **a. Collection – General Municipal Powers**

- i. Municipal Authority to “Provide for or regulate the collection and disposal of garbage, trash, rubbish, waste material and ashes by contract or otherwise . . . .” Conn. Gen. State §7-148(c)(4)(H).
- ii. Municipal Authority to “Prohibit or regulate, in a manner not inconsistent with the general statutes, traffic, the operation of vehicles on the streets and highways . . . .” Conn. Gen. Stat. §7-148(c)(7)(B)(i).
- iii. Municipal authority to “Regulate the use of the streets . . . for public and private purposes;” Conn. Gen. Stat. §7-148(c)(7)(H)(xii).
- iv. Municipal authority to “Make all lawful regulations and ordinances in furtherance of any general powers . . . .” Conn. Gen. Stat. §7-148(c)(10)(A).

b. Specifically – Solid Waste Contracting Authority

- i. “The state, any municipality or regional authority may make contracts for the exercise of its corporate or municipal powers with respect to the collection, transportation, separation, volume reduction, processing, storage and disposal of its solid wastes for a period not exceeding thirty years and may pledge its full faith and credit for the payment of obligations under such contracts.” Conn. Gen. Stat. § 22a-221(a).

- i. “All contracts by any city, town, borough or regional authority with any person, another municipality or regional authority to provide processing, storage or disposal outside of its boundaries of solid wastes generated within its boundaries, shall be reviewed and have the approval of the commissioner as conforming to recognized standards of public health and safety before they can be implemented. The municipality shall be responsible for providing a copy of said solid waste disposal contract to the commissioner.” Conn. Gen. Stat. § 22a-213(a).
- ii. “The commissioner shall not approve any such contract unless he finds that the facility to which the waste is to be transported for processing, storage and disposal has been issued a solid waste permit to operate the facility and had the necessary capacity to accommodate the terms of the contract.” Conn. Gen. Stat. § 22a-213(b).
- iii. DEEP’s Regulations also provide that the Commissioner may impose conditions upon approval of such contracts, and further that the Commissioner shall consider whether or not the contract is consistent with the Connecticut Solid Waste Management Plan and shall not approve the contract unless the solid waste facility involved is operated in compliance with applicable statutes, regulations and facility permits issued by DEEP. Regulations of Connecticut State Agencies §22a-209-5.

- c. Collection – Registration of Collectors and Collection of Data
- i. Collectors required to register in each municipality for many years.
  - ii. Updated in 2010 - In Public Act 10-87, the legislature authorized municipalities to have collectors provide additional information in order to be registered.
  - iii. all collectors register annually in each municipality in which it hauls “solid waste generated by residential, business, commercial or other establishments, including, but not limited to, recyclables generated within the borders . . . .”  
Conn. Gen. Stat. § 22a-220a(d).

d. Disposal – Municipal Requirement

- i. MSW – “Each municipal authority shall make provision for the safe and sanitary disposal of all solid wastes which are generated within its boundaries . . . .” Conn. Gen. Stat. § 22a-220(a).
- ii. Recycling – “each municipality shall, consistent with the requirements of section 22a-241b, make provisions for the separation, collection, processing and marketing of items generated within its boundaries as solid waste and designated for recycling by the commissioner . . . .” Conn. Gen. Stat. § 22a-220(f).
- iii. Flow Control Authorization – “The legislative body of a municipality may designate the area where solid waste generated within its boundaries by residential, business, commercial and other establishments shall be disposed. The disposal of such solid waste at any other area is prohibited.” Conn. Gen. Stat. § 22a-220a(a). Virtually identical provision in the same section for recyclables.

### **3. Collection Control: Registration, Exclusive Contracts, Exclusive Franchises**

#### **a. Generally**

- i. No Specific law to direct choices or authorize details
- ii. Compare and Contrast –
  - 1. Statutory authority for each type of control.
  - 2. Potential Need for Regulations and Ordinances
  - 3. Bidding or other competitive selection process for contracts and franchises

b. User Fees, Unit Pricing

- i. Desire to Increase Cost to Resident for Increased MSW and thereby Encourage Diversion (Recycling)
- ii. Elements of User Fees v. Taxes
  1. Cost recovery (ok) v. revenue production (inappropriate tax)
  2. Opt out required?
  3. Regulation v. contract
    - a. No competitive selection for permittees
    - b. Less control of pricing without contract

### iii. Unit Pricing Mechanisms

1. Bags, Containers, Weight
2. Collectors' ability to perform, cost?
3. Resident acceptance
4. Size of containers

c. Politics of Change

- i. Imposing new, or different, costs on residents
  - 1. Deductible taxes v. non-deductible user fees
- ii. Displacing Existing Small, Resident Businesses
- iii. Risk of litigation

d. Maintaining a Competitive Environment

i. Duration of Contracts and Franchises

1. Contractors will want to have contract long enough to recover equipment investments

ii. Limited Geographic Districts, Allow for More than one Collector in the Municipality?

## 4. Disposal: Need to Provide for Disposal

### a. Historical Perspective

- i. 1970s – 80s – landfills in Connecticut closing
  1. Cost of environmental compliance
  2. Panic Atmosphere – no place to dispose of MSW
- ii. Trash to Energy Resource Recovery Facilities to be built
  1. Waste stream sources in order to obtain construction financing
  2. Long term contracts matched to debt repayment

- b. Current Issue: Prioritizing Energy Recovery over Landfilling ; In-State Resource Recovery v. Out-of-State Resource Recovery and Landfills
- i. Current cost of in-state resources recovery disposal—sometimes higher, sometimes similar; depends on transportation type
  - ii. Operators of in-state resources recovery facilities still need revenue
  - iii. Lack of environmental control with respect to out-of-state landfills
    1. Potential responsibility of municipality for contaminated wastes contained in MSW – CERCLA
  - iv. Flow Control v. Contract
    1. Potential constitutional restrictions on regulatory direction to in-state facilities; method of management vs. location of facilities
      - a. Public v. private ownership and operation of facilities
    2. Contract as “participation” in the market – less constitutional risk

- c. Duration of Contracts
  - i. Fixed v. Variable Pricing
  - ii. Other changing market conditions
  - iii. Need for vendor to have consistent cash flow

- d. All Municipal Contracts to be Approved by DEEP
  - i. Review to include “public health and safety”, appropriate licensing of disposal facility, and consistency with State Solid Waste Management Plan.
  - ii. What about out-of-state resource recovery facilities and landfills?
  - iii. Constitutional considerations with respect to out-of-state disposal.



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