

Crow Wing County Waste Management,

Appellant,

vs.

Commissioner of Revenue,

Appellee.

**FINDINGS OF FACT  
CONCLUSIONS OF LAW AND  
ORDER FOR JUDGMENT**

Docket 8358 R  
No.

Dated: May 25, 2012

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The Honorable Sheryl A. Ramstad, Judge of the Minnesota Tax Court, heard this matter on April 6, 2012, at the Crow Wing County Courthouse, 213 Laurel Street, Brainerd, Minnesota.

John J. Sausen, Assistant Crow Wing County Attorney, represented the Appellant.

Sara L. Bruggeman, Assistant Attorney General, represented the Commissioner of Revenue ("Commissioner").

Both parties submitted post-trial briefs. The matter was submitted to the Court for decision on May 17, 2012.

The issue in this case is whether the Commissioner properly denied Appellant's request for a refund of sales tax paid on items used to construct a methane gas collection and flare system used in Appellant's municipal solid waste disposal operation for tax periods May 1, 2007, through May 31, 2009.

The Court, having heard and considered the evidence adduced at the hearing, and upon all of the files, records and proceedings herein, now makes the following:

**FINDINGS OF FACT**

1. Crow Wing County Waste Management (“Appellant”) is located at 15728 State Highway 210, Brainerd, Minnesota.
2. The tax years at issue are May 1, 2007, through May 31, 2009.
3. Appellant operates a mixed municipal solid waste disposal facility (“Facility”).
4. In 2007, Appellant expanded the disposal capacity of the Facility, adding another landfill cell. A cell is a large separate hole dug into the ground where solid waste is deposited for eventual decomposition. The design and construction of the cell was under the direction of the Minnesota Pollution Control Agency. The cell required the installation of a liner system (“Liner System”).
5. The expansion also necessitated the addition of a pond and treatment system to collect and treat the water (leachate), which percolates through the solid waste that is deposited at the Facility (“Leachate System”).
6. Leachate, a byproduct resulting from the decomposing solid waste mixing with rainwater and runoff, is a pollutant which has the potential of adversely affecting the groundwater. To prevent this pollution, the cell is lined with an impermeable liner and a separate and independent system

of pipes, valves, pumps, and other equipment is installed to collect this leachate. The leachate is then either treated and applied to the land or sprayed back onto the waste material in the cell.

7. During times when Appellant cannot treat and apply the leachate to the land, it recirculates the leachate through the solid waste after the solid waste is deposited in the landfill. Doing so causes the decomposition of garbage to accelerate, which increases the production of landfill gas.

Landfill gas contains approximately 50% methane gas, which is a powerful greenhouse gas considered to be a pollutant if it gets into the atmosphere.

8. In 2008, Appellant installed a methane gas flare system ("Gas System") to capture and burn the methane gas produced by the decay of the solid waste. The Gas System works by establishing certain collection points for the methane gas and funneling it through a network of pipes to the flare system, which burns the gas. The heat produced in this process is used to heat a building located at the landfill, but the heat is not sold for commercial purposes.

9. The Gas System is a separate system from the Leachate System and the Liner System.

10. On or about December 31, 2009, Appellant submitted sales tax refund claims for items purchased in connection with the landfill expansion and addition of the Gas System. The amount of the refund claims was \$46,228.80. The tax refund was divided into three separate projects:

1) landfill addition (Liner System); 2) leachate application and circulation addition (Leachette System); and 3) Gas System project.

11. On March 30, 2010, the Minnesota Department of Revenue (“Department”) issued a Notice of Change in Sales and Use Tax, which permitted refund claims totaling \$29,110.15 for the landfill addition(Liner System) and leachate application (Leachette System) projects. The Gas System refund claim was disallowed.

12. On April 29, 2010, Appellant filed an administrative appeal of the Notice of Change in Sales and Use Tax, requesting an informal conference with the Department of Revenue. None was held.

13. On or about February 9, 2011, the Department sent Appellant a letter indicating that the tax exemption and refund claim for \$17,118.65 for the Gas System was disallowed under Minn. Stat. § 297A.70, subd. 3(a)(2) on the ground that the equipment is not directly used to collect, transport, process, or dispose of mixed municipal solid waste but instead, collects and burns methane gas, a byproduct of the solid waste decay.

14. On April 11, 2011, the Department issued a Notice of Determination of Appeal (“Order”) denying Appellant’s administrative appeal

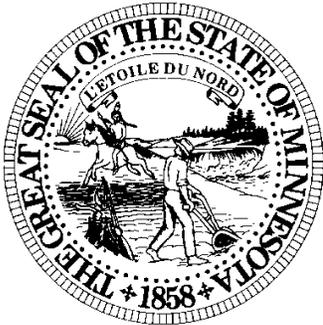
15. On May 9, 2011, Appellant filed a timely Notice of Appeal of the Order.

### **CONCLUSIONS OF LAW**

The Commissioner’s Order dated April 11, 2011, is hereby affirmed.

IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.  
A STAY OF FIFTEEN DAYS IS HEREBY ORDERED. THIS IS A FINAL  
ORDER.

BY THE COURT,



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Sheryl A. Ramstad, Judge  
MINNESOTA TAX COURT

DATED: May 25, 2012

### **Memorandum**

#### **Background**

This appeal stems from the Commissioner of Revenue's ("Commissioner") denial of Crow Wing County Waste Management's ("Appellant") request for a refund of sales tax paid on items used to construct a methane gas collection and flare system used in Appellant's municipal solid waste disposal operation. On April 11, 2011, the Commissioner denied the refund on the ground that the equipment in question is not entitled to an exemption under Minn. Stat. § 297A.70, subd. 3(a) (2) because the equipment is not directly used to collect, transport, process, or dispose of mixed municipal solid waste ("Order"). Appellant filed a timely appeal on May 9, 2011.

#### **Facts**

Appellant operates a municipal solid waste disposal facility. In 2007, Appellant expanded the disposal capacity of the facility, necessitating that a pond

be added to collect the water that percolates through the solid waste deposited at the facility. This water, called leachate, must be treated before it is applied to the land. During times when Appellant cannot treat and apply the leachate to the land, it recirculates the leachate through the solid waste after the solid waste is deposited in the landfill. Doing so causes the decomposition of garbage to accelerate, increasing the production of landfill gas containing methane gas.

In 2008, Appellant installed a methane gas flare system (“Gas System”) to capture and burn the methane gas produced by the decay of the solid waste. The Gas System works by establishing certain collection points for the methane gas and funneling it through a network of pipes to the flare system, which burns the gas. The heat produced in this process is used to heat a building located at the landfill, but the heat is not sold for commercial purposes.

On or about December 31, 2009, Appellant submitted sales tax refund claims for items which were purchased in connection with the landfill expansion and addition of the Gas System. The tax refund was divided into three separate projects: (1) landfill addition; (2) leachate application and circulation addition; and (3) methane gas flare system project. In a Notice of Change in Sales and Use Tax dated March 30, 2010, the Minnesota Department of Revenue (“Department”) permitted the refund claims totaling \$29,110.15 for the landfill expansion and leachate application projects, but denied the refund claim for \$17,118.65 for the Gas System. The Department determined that the Gas System was not used directly for mixed municipal solid waste management services.

Appellant filed an administrative appeal on April 29, 2010, and requested an informal conference with the Department. None was ever held. By letter dated February 29, 2011, the Department notified Appellant that the tax exemption and refund were denied because “[t]here are currently no exemptions for pollution control equipment purchased for municipal solid waste management.” The denial went on to state: “[t]he fact that equipment may be required by the state of Minnesota has no bearing on whether it qualifies for exemption.” On April 11, 2011, the Department issued a Notice of Determination of Appeal (“Order”) denying Appellant’s sales tax exemption for the amounts spent on machinery and equipment used for collection and disposal of methane gas. On May 9, 2011, Appellant filed a timely appeal of the Order.

### **Statutes**

A disposal facility is defined as “a waste facility permitted by the agency [Minnesota Pollution Control Agency] that is designed or operated for the purpose of disposing of waste on or in the land, together with any appurtenant facilities needed to process waste for disposal or transfer to another waste facility.”<sup>1</sup>

Mixed municipal solid waste means:

garbage, refuse, and other solid waste from residential, commercial, industrial, and community activities that the generator of the waste aggregates for collection, except as provided [below.] Mixed municipal solid waste does not include auto hulks, street sweepings, ash, construction debris, mining waste, sludges, tree and agricultural wastes, tires, lead acid batteries, motor and vehicle fluids and filters, and other materials collected, processed, and disposed of as separate waste streams....”<sup>2</sup>

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<sup>1</sup> Minn. Stat. § 115A.03, subd. 10.

<sup>2</sup> Minn. Stat. § 115A.03, subd. 21(a) and (b).

Solid waste is defined as follows:

Solid Waste means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include hazardous waste; animal waste used as fertilizer, earthen fill, boulders, rock; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents or discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended, dissolved materials in irrigation return flows; or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended.<sup>3</sup>

Finally, “[w]aste management services” means waste collection, transportation, processing, and disposal.<sup>4</sup>

### **Standard of Review and Burden of Proof**

Orders of the Commissioner are presumed correct and valid.<sup>5</sup> Tax exemptions are narrowly construed because all property is presumed taxable.<sup>6</sup> Thus, the taxpayer bears the burden of demonstrating entitlement to an exemption.<sup>7</sup>

### **Discussion**

Machinery and equipment purchased by governmental entities and used

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<sup>3</sup> Minn. Stat. § 116.06, subd. 22.

<sup>4</sup> Minn. Stat. § 297H.01, subd.12.

<sup>5</sup> Minn. Stat. § 271.06, subd. 6 (2008); Southern Minnesota Beet Sugar Coop v. County of Renville, 737 N.W.2d 545, 558 (Minn. 2007); Larson v. Commissioner of Revenue, 581 N.W.2d 25, 30 (Minn. 1998); F-D Oil Co., Inc. v. Commissioner of Revenue, 560 N.W.2d 7091, 707 (Minn. 1997).

<sup>6</sup> See TCF Bank Savings FSB v. Commissioner of Revenue, 486 N.W.2d 756, 758 (Minn. 1992); Camping & Ed. Found. v. State, 282 Minn. 245, 250, 164 N.W.2d 369, 373 (1969); Ameripride Services, Inc. v. Commissioner of Revenue, File No. 7971 Minn. Tax Ct. Oct, 3, 2008).

<sup>7</sup> Id.

directly for collecting, transporting, processing and disposing of solid waste are exempt from sales tax under Minn. Stat. § 297A.70, subd. 3(a)(2) (“the statute”). Sales to governmental entities of “machinery and equipment, except motor vehicles, used directly for mixed municipal solid waste management services at a solid waste disposal facility”<sup>8</sup> are exempt from sales tax.<sup>9</sup> The definition of “waste management services” includes “waste collection, transportation, processing and disposal.”<sup>10</sup>

Appellant contends that since everything it does is waste management, all machinery and equipment purchased by it are exempt including the Gas System. The Commissioner argues that use of the words “used directly” in the statute limits the machinery and equipment eligible for statutory sales tax exemption to only that which directly collects, transports, processes, or disposes of mixed municipal solid waste. Further, the Commissioner claims that because the Gas System fails to meet these requirements, it is not exempt. We agree.

Every law must be construed to give effect to all its provisions.<sup>11</sup> If, as Appellant maintains, everything a solid waste disposal facility does falls under the umbrella of “mixed municipal solid waste management,” the phrase “used directly” would be meaningless. In other words, if everything done by a solid waste disposal facility is exempt, the legislature would have provided for an exemption to all machinery and equipment purchased by a solid waste disposal

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<sup>8</sup> Under Minn. Stat. § 115A.03, “disposal facility” is defined as “a waste facility permitted by the agency that is designed or operated for the purpose of disposing of waste on or in the land, together with any appurtenant facilities needed to process waste for disposal or transfer to another waste facility.”

<sup>9</sup> Minn. Stat. § 297A.70, subd. 3(a)(2).

<sup>10</sup> Minn. Stat. § 297H.01, subd. 12.

<sup>11</sup> Minn. Stat. § 645.16.

facility rather than limiting the exemption to only that which is used directly for mixed municipal solid waste management.

Additionally, since exemptions from sales tax are to be strictly construed, Appellant's interpretation of the statute is overly broad because it provides no meaningful limitation on the machinery and equipment which Appellant could purchase exempt from sales tax.

We next turn to the question as to whether Appellant's Gas System is "used directly for mixed municipal solid waste management services at a solid waste disposal facility," as required by the statute to be entitled to a sales tax exemption. Appellant argues that the definition of "waste management" given in Minn. Stat. § 115A.03, subd. 36 should be used by the Court.<sup>12</sup> The Commissioner urges the Court to use the definition of "waste management services" found in Minn. Stat. § 297H.01, subd. 12. While the statute here at issue does not expressly define the term, it is defined in a related statute concerning the same subject matter so that the statutes are considered *in pari material* and should be construed together.<sup>13</sup> Because Chapters 297H and 297A both concern taxation of services provided in Minnesota, they should be construed together. Therefore, "mixed municipal solid waste management services" means the collection, transportation, processing and disposal of garbage, refuse, sludge and other solid wastes. Regardless of which definition

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<sup>12</sup> Under Minn. Stat. § 115A.03, subd. 36, "waste management" means activities which are intended to affect or control the generation of waste and activities which provide for or control the collection, processing, and disposal of waste.

<sup>13</sup> Harris v. County of Hennepin, 679 N.W.2d 728, 732 (Minn. 2004); In re Commission Investigation of Issues Governed by Minnesota Statutes, Section 216A.036, 724 N.W.2d 743, 746 (Minn. Ct. App. 2006).

we use, however, the term “waste management services” is preceded by the term “mixed municipal solid waste” in the statute. Since the preceding words limit the subsequent general terms, <sup>14</sup> whatever services qualify as “waste management services” must be directly related to “mixed municipal solid waste.”

We now consider whether the Gas System is used directly for mixed municipal solid waste management services so as to satisfy the exemption statute. To be used directly for mixed municipal solid waste management services, the equipment in question must have a close nexus to the solid waste and must be essential or necessary to the integrated process of solid waste collection, transportation, processing and disposal.<sup>15</sup> Here, the Gas System involves the burning of methane gas disposed of as a byproduct of mixed municipal solid waste.

Appellant contends that methane gas is solid waste. This is contradicted by the definition of solid waste, which excludes hazardous wastes.<sup>16</sup> Inasmuch as hazardous wastes include flammable gases,<sup>17</sup> methane gas is hazardous waste. If methane gas was not flammable, the Gas System would fail to operate because its sole purpose is to burn the methane gas. Therefore, methane is hazardous, rather than solid, waste. Because the Gas System concerns only the processing and disposal of methane gas, which does not qualify as mixed municipal solid waste, it is not used directly for mixed municipal solid waste management services and does not qualify for the exemption.<sup>18</sup>

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<sup>14</sup>Minn. Stat. § 645.08.

<sup>15</sup>See *Arizona Dept. of Rev. v. Capitol Casting, Inc.*, 88 P.3d 159, 165 (Ariz. 2004) (establishing the “ultimate function test” for whether an item is used directly in a qualifying operation.)

<sup>16</sup>Minn. Stat. § 116.06, subd. 32.

<sup>17</sup>Minn. Stat. § 116.06, subd. 11.

Further, Appellant argues that since the entire landfill system is integrated, the Gas System should be exempt. The Commissioner claims that the three systems—Liner, Leachate, and Gas—are separate, and Appellant has failed to meet the burden of showing that the Gas System is eligible for sales tax exemption under Minn. Stat. § 297.70, subd. 3(a)(2). We agree. Appellant’s witness testified that the systems are separate.<sup>19</sup> Identifying them as separate systems is consistent with Appellant’s exemption claims, which were filed as three separate claims.

### **Conclusion**

Minnesota Statute Section 297A.70, subd. 3(a)(2) expressly limits the sales tax exemption at issue to machinery and equipment that is directly involved in mixed municipal solid waste management services and does not extend the exemption to ancillary equipment. Here, the Gas System disposes only of the methane gas released from the decomposition of the solid waste and not the solid waste itself. Since the Gas System is not equipment directly involved in mixed municipal solid waste management services, it is ineligible for the sales tax exemption. Therefore, the Commissioner’s Order is affirmed. S. A. R.

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<sup>18</sup> Although there are no Minnesota cases interpreting the scope of the statute at issue, pollution control equipment used in manufacturing provides an analogous situation. Pollution control equipment is typically ineligible for sales tax exemptions which apply to equipment used directly in manufacturing processes because it involves the processing and disposal of the byproducts of the manufacturing process rather than the actual manufacturing process. See Capitol Casting, 88 P.3d at 165 (finding that pollution control was ancillary to the manufacturing process and therefore was not “used directly” in qualifying operations); Commissioner of Revenue v. V.H. Blackinton & Co., Inc., 420 Mass. 259, 262 (1995) (holding that, although legally necessary, pollution control equipment must effect a physical change on the raw material in the qualifying operation to be exempt).

<sup>19</sup> When Mr. Richard Morris, who has operated the landfill for over 15 years and holds the position of Solid Waste Management Coordinator for Crow Wing County, was asked if each of the three systems is separate, he responded “Correct.” He then proceeded to identify the three systems as the Gas System, the Liner, and the Leachete. Tr. at 33-4.

S. A. R.