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County Biosolids Ban Halted

In 2006, the voters of Kern County adopted "Measure E," an initiative which sought to prohibit the use of agricultural fertilizer made from recycled municipal sewage sludge. Land application of this material, referred to in the industry as "biosolids," is a widespread and comprehensively regulated form of recycling. Many local waste management systems depend on this practice, instead of disposing of biosolids in landfills. The target of Kern County's biosolids ban was Green Acres Farm, a 4,700-acre farm in an unincorporated area of the county owned by the City of Los Angeles. As part of the city's program to recycle all of the biosolids produced by its wastewater treatment plants, the city began land applying biosolids at Green Acres in 1994 for the growth of crops to feed dairy cows. After buying the farm in 1999, the city upgraded its treatment plants to satisfy Kern County regulations imposing strict treatment standards on biosolids used for land application. Kern County voters then enacted a total ban on the land application of biosolids. The city, along with a coalition of other plaintiffs, obtained a preliminary injunction followed by a judgment setting aside the ban, finding it violated both federal and California law. After the federal law claim was dismissed by the court of appeals, the case ultimately landed in state court for a decision on the state law claims. In a recently-published opinion, the court of appeal upheld a preliminary injunction the superior court had issued to prohibit the county from enforcing the measure. [City of Los Angeles v. County of Kern \(5th Appellate District No. F063381\)](#). The court first ruled that the plaintiffs were likely to prevail on their claim the ban is preempted by the California Integrated Waste Management Act. The IWMA requires local agencies to promote and maximize recycling, in order to divert otherwise useful materials from being disposed of in landfills. The court readily found a fatal conflict: "Kern County asks us to adopt a position that would authorize all local governments to say 'not here.' That principle would not be consistent with a statute that requires all local governments to adhere to waste management plans in which recycling is maximized." The court also found that the plaintiffs were likely to prevail on their claim the ban runs afoul of the "regional welfare" doctrine. Under this doctrine, when a local jurisdiction enacts a land use ordinance that affects surrounding communities, it must consider the regional welfare and take account of competing interests. Here, there was no evidence that Kern County voters considered the welfare of surrounding communities in adopting the biosolids ban. The court quoted the superior court to highlight the overarching principle in the case: California does not consist in "separate fiefdoms," "all insular from each other." "Localities cannot retreat into isolationism.... We all live here, and what any state actor does elsewhere may affect us all."