



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Solid and Hazardous Waste Management Program

P.O. Box 414

Trenton, New Jersey 08625-0414

Tel: 609-984-3438

Fax: 609-633-1112

www.state.nj.us/recyclenj

JON S. CORZINE
Governor

LISA P. JACKSON
Commissioner

SEP 8 2008

Richard Hills, Head
County of Middlesex - Division of Solid Waste Management
100 Bayard Street, 2nd Floor
New Brunswick, NJ 08901

Dear Mr. Hills:

The Department of Environmental Protection's (Department) Solid and Hazardous Waste Management Program is in receipt of your letter dated August 15, 2008 regarding the Department's preemption of municipal planning and/or zoning ordinances in regards to solid waste facilities and recycling centers.

Your assessment, that the Department preempts municipal zoning and planning ordinances with regards to solid waste facilities and recycling centers, is accurate. The legality of the Department's preemption power in regards to solid waste facilities has been firmly established in case law subsequent to the adoption of the Solid Waste Management Act (SWMA)(N.J.S.A. 13:1E-1 et seq.) and any and all pertinent amendments and supplements.

To date, we are not aware of published court opinions that speak specifically to the issue of municipal jurisdiction over the siting and operation of Class A recycling centers; however, given the extensive case law that has occurred relative to municipal jurisdiction over solid waste and recycling centers generally, it is the Department's position that our preemption generally carries over to this type of recycling center as well. In a July 29, 1996 decision of the NJ Supreme Court, [see Holgate Property Associates v. Township of Howell, et al.], the Court held that even though the distribution of sludge-derived product was conducted under an exemption from the New Jersey Pollution Discharge Elimination System Permit process, the area (sludge management generally) is subject to state preemption, and for a municipality to attempt to regulate this activity (distribution of sludge-derived product), the effect would be a de facto regulation of those facilities which produce this product, and therefore infringe on the Department's jurisdiction. By this argument, even though the Legislature, through the amendatory and supplementary Mandatory Statewide Source Separation and Recycling Act (Recycling Act), specifically carved out certain recycling centers from the need to obtain approval from the Department for their activities (understanding that those activities are narrowed by specific language in the Recycling Act), it does not follow that local jurisdiction is therefore granted.

In summary, it is clear by the SWMA, that a unified, statewide policy regarding solid waste management and recycling is the law, and more specifically, that the Legislature, in enacting the Recycling Act, intended to promote the growth of the recycling industry. It is a tenet of New Jersey law that municipalities can not prohibit, through the local site plan and variance approval process what the Legislature has expressly allowed, i.e., the operation of Class A recycling centers. Therefore, all local attempts to regulate the siting or operations of Class A recycling centers that interfere with the goals of the Recycling Act and/or duplicate or contradict the siting process contained in the SWMA and relevant regulations of the New Jersey Administrative Code are preempted by the Department.

However, as you also note in the subject letter, municipal construction and fire officials with jurisdiction over a structure do have the authority to inspect solid waste facilities and recycling centers to ensure compliance with both the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and Uniform Fire Safety Act (N.J.S.A. 52:27D-192 et seq.).

If you have any questions relative to this matter, please contact Ross M. Hull of my staff at (609) 984-5936 or ross.hull@dep.state.nj.us.

Sincerely,



Guy J. Watson, Chief
Bureau of Recycling and Planning