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FEB 25 2009

February 23, 2009

Honorable Christopher J. Connors
Honorable Brian E. Rumpf
Honorable Daniel M. Van Pelt
620 West Lacey Road
Forked River, New Jersey 08731

Dear Senator Connors and Assemblymen Rumpf and Van Pelt:

The purpose of this letter is to respond to your inquiry regarding the approval process for permits to construct and operate solid waste facilities. Specifically, your inquiry addressed the matter of permits approved by the Department of Environmental Protection (DEP) over the objections of local governing bodies or township residents, as may be anticipated by a constituent of yours in Little Egg Harbor Township.

As you may know, the "Solid Waste Management Act," N.J.S.A. 13:1E-1 et seq., was enacted in 1970 to provide a comprehensive plan for managing the collection, disposal and utilization of solid waste in the State. Prior to the implementation of the act, solid waste management was controlled at the local level in what the Legislature deemed to be a largely piecemeal and uncoordinated manner because the local governments lacked the financial resources, scope of alternatives and expertise to develop efficient plans for solid waste management. See N.J.S.A.13:1E-2. The authority to manage solid waste on a Statewide basis is vested with the DEP through the act. Each county and the Hackensack Meadowlands District have been designated as solid waste management districts and each must have in place a solid waste management plan, adopted by the board of freeholders or the New Jersey Meadowlands Commission and approved by the DEP.

Because the act creates a comprehensive Statewide scheme for solid waste management, including site and construction matters, it preempts conflicting local ordinances as they pertain to solid waste management facilities. Twp. of Little Falls v. Bardin, 173 N.J. Super. 397, 412-418

(App. Div. 1979); Twp. of Chester v. DEP, 181 N.J. Super. 445, 453 (App. Div. 1981). Notwithstanding the act's preemption of local ordinances, the DEP is required to give due consideration to local input into solid waste management decisions. See N.J.S.A.13:1E-21b.(3); Twp. of Chester, 181 N.J. Super. at 453; see also Garden State Farms, Inc. v. Bay, 77 N.J. 439, 455-56 (1978).

The DEP has set forth by regulation specific requirements for the application for solid waste facility permits. N.J.A.C.7:26-1.1 et seq. In the case of a transfer station such as the one proposed in Little Egg Harbor Township, the general process begins with the filing of an application with the DEP. N.J.A.C.7:26-2.4(b). The application comprises the payment of all required fees in addition to information including, but not limited to, documentation of the proposed facility's inclusion in the applicable district solid waste management plan, disclosure of the applicant's character and criminal history, and a registration statement. Ibid.

It is important to note that if the proposed facility is not included in the relevant district solid waste management plan (and no amendment to include the facility in the plan has been formally proposed), the application is unlikely to be approved by the DEP. While preemption of local ordinances is permitted, as noted above, preemption of a district solid waste management plan will not occur in most cases. A district has the ability to modify its management plan at any time, however, through a vote of the relevant board of freeholders (or the New Jersey Meadowlands Commission, as the case may be) in order to include the proposed facility to support an application. See N.J.S.A.13:1E-20. Thus, though each management plan must be approved by the DEP, the districts have considerable authority to regulate solid waste management within the district.

Upon the determination by the DEP that the application is complete, a notification of the same must be sent to interested parties, including, but not limited to, the mayor, planning board, environmental commission and health officer of any municipality in which any portion of the facility is proposed to be located, and the implementing agency for the solid waste management plan of any district in which any portion of the facility is proposed to be located. N.J.A.C.7:26-2.4(g)6. Copies of the application materials are submitted to the relevant municipal clerk, County Solid Waste Coordinator, and any other governmental agencies that the DEP deems appropriate. N.J.A.C.7:26-2.4(g)7. Additionally, the application materials are available for review by any interested persons at the DEP offices during normal working hours (copies may be obtained for a duplication fee). N.J.A.C.7:26-2.4(g)8. Finally, notice of the application completion (and every significant DEP action in connection thereto) is published in the DEP Bulletin. N.J.A.C.7:26-2.4(g)10. Comments may be submitted to the DEP concerning the pending permit by any interested parties until the end of the public comment period. Ibid.; See also N.J.A.C.7:26-2.4(g)17.

Within six months of determining that the application is complete, the DEP must deny or grant tentative approval of the application (though the DEP has discretion to extend any deadlines). N.J.A.C.7:26-2.4(g)11. Within 45 days of a tentative approval, the DEP must hold a public hearing, a notice of which is published in the newspaper and distributed to the relevant

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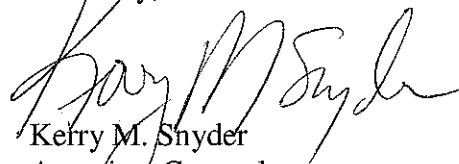
municipality, other public agencies and persons who have requested such notice, accompanied by a fact sheet concerning the proposed facility prepared by DEP. N.J.A.C.7:26-2.4(g)13-16. The public comment period generally ends 15 days after the date of the last public hearing. N.J.A.C.7:26-2.4(g)17. Any extension of that time must be published in the same manner as the notice of public hearing. Ibid.

Thereafter, the DEP makes a final permit decision based on the administrative record, which includes the application, any addenda thereto, all written comments received during the public comment period, the transcript of the public hearing, the hearing officer's report, which must contain the DEP's response to comments made during the comment period, the fact sheet prepared by the DEP for the public hearing and any material available to the DEP or published material generally available. N.J.A.C.7:26-2.4(g)19. The DEP notifies the applicant and other interested parties of its decision. N.J.A.C.7:26-2.4(g)21.

If the DEP denies the permit, the applicant has an opportunity to request an adjudicatory hearing on the matter, to be heard by an administrative law judge within 20 calendar days of the notice thereof. N.J.A.C.7:26-2.4(g)22. If the DEP approves the permit, and an interested party, such as the municipality in which the facility will be located, wishes to appeal the decision, an appeal may be filed with the Law Division of the New Jersey Superior Court within 45 days from the date the DEP publishes notice of the permit approval. See R. 2:4-1, New Jersey Rules of Court.

I hope that this information is helpful. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Kerry M. Snyder
Associate Counsel