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SPRINGFIELD

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COUNTIES:

Authority to Adopt Regula-
tions Concerning Digested and
Non-Digested Sludge Sites

Honorable Thomas J. Homer
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Fulton County
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Dear Mr. Homer:

I have your letter wherein you ask the following
questions:

1. May the Fulton County Board adopt regula-
tions governing digested and non-digested
sludge sites which are different from and
more stringent than the rules and regula-
tions of the Illinois Pollution Control
Board?
2. May the Fulton County Board delegate its
authority to adopt regulations regarding
sludge to the Fulton County Board of Health?

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3. May a person convicted of violating a county regulation regarding sludge be sentenced to a fine, or imprisonment, or both a fine and imprisonment?

In Carlson v. Village of Worth (1975), 62 Ill. 2d 406, the Illinois Supreme Court ruled that the regulation of sanitary landfill by a non-home rule municipality was preempted by the Environmental Protection Act; the court thus held that the Village of Worth could not impose the requirements of its own environmental protection ordinance or local zoning ordinance upon the holder of a permit for a sanitary landfill issued by the State Environmental Protection Agency. It is my opinion that local regulation of digested sludge sites by non-home rule counties has been similarly preempted. As a result, a non-home rule county may not impose its sludge regulations on a person who holds an Environmental Protection Agency permit for a digested sludge site.

The legislature has not preempted the regulation of non-digested sludge sites by non-home rule counties. The Wastewater Land Treatment Site Regulation Act (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 581 et seq.) authorizes non-home

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rule counties to regulate non-digested sludge sites; the Act specifically provides that non-home rule counties may regulate non-digested sludge sites concurrently with the State.

The Wastewater Land Treatment Site Regulation Act draws a distinction between digested and non-digested sludge. The term "wastewater" does not mean digested sludge. (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 582.03.) Section 2.04 of the Act (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 582.04) defines "wastewater land treatment site" as follows:

"§ 2.04. 'Wastewater land treatment site' means any sewage lagoon, storage lagoon, sludge drying lagoon, irrigation field, however such lagoon or field is denominated, used for storing, draining, treating or purifying wastewater through bacterial action and natural soil filters, but does not mean a digested sludge utilization site." (Emphasis added.)

Sections 2.05 and 2.06 (Ill. Rev. Stat. 1975, ch. 111 1/2, pars. 582.05 and 582.06) define the terms "digested sludge" and "digested sludge utilization site" as follows:

"§ 2.05. 'Digested sludge' means the biologically stabilized product resulting from the aerobic or heated anaerobic digestion of solids generated in wastewater treatment processes.

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§ 2.06. 'Digested sludge utilization site' means any storage basin or lagoon; drying field or bed; irrigation or application field; nutrient barriers; environmental transition zones; application field runoff storage reservoir; or any other area or facility related to the application of digested sludge to land."

Section 3.05 of the Act (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 583.05) provides that a person must obtain a permit from the Illinois Environmental Protection Agency before he may establish, operate, manage or maintain a wastewater land treatment site or a digested sludge utilization site. Section 4 (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 584) states that before he may establish, operate, manage or maintain a wastewater land treatment site a person must also obtain a certificate of authority from the county board of the non-home rule county in which the wastewater land treatment site is to be established. Sections 5, 6 and 7 of the Act (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 585; Ill. Rev. Stat. 1976 Supp., ch. 111 1/2, pars. 586 and 587) authorize the county board of a non-home rule county to adopt regulations regarding non-digested sludge sites and explain how these regulations are to be enforced.

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The county board's authority does not extend to the regulation of digested sludge sites. Section 8 of the Wastewater Land Treatment Site Regulation Act (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 588) provides as follows:

"§ 8. The provisions of Sections 4 through 7 of this Act are not applicable to the establishment, operation, management or maintenance of digested sludge utilization sites."

This limitation on the county board's authority coupled with the Environmental Protection Agency's specific authority to issue permits for digested sludge sites expresses the legislature's intention to preempt the regulation of digested sludge sites by non-home rule counties.

Other sections of the Act demonstrate the legislature's intent to authorize non-home rule counties to regulate non-digested sludge sites concurrently with the State. In exercising this authority the county is not restricted by the State regulations. Section 6 of the Act states that the "county board shall adopt by ordinance or resolution all necessary standards, rules and regulations for the management or establishment of a wastewater land treatment site".

(Emphasis added.) Thus, non-home rule counties may adopt

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non-digested sludge site regulations that are different from and more stringent than the rules and regulations of the Pollution Control Board.

Therefore, my answer to your first question is that Fulton County has no authority to adopt regulations regarding digested sludge sites. Fulton County may, in accordance with the Wastewater Land Treatment Site Regulation Act, adopt regulations governing non-digested sludge sites that are different from and more stringent than the rules and regulations of the Pollution Control Board.

In answer to your second question, it is my opinion that the Fulton County Board may not validly delegate its authority to adopt regulations governing non-digested sludge sites to the Fulton County Board of Health. Section 6 of the Wastewater Land Treatment Site Regulation Act specifies that it is the county board that shall adopt ordinances relating to the regulation of non-digested sludge sites. A county health department is a county agency. (1973 Ill. Att'y. Gen. Op. 108.) The board of health of the county health department may recommend to the county board the adop-

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tion of public health regulations. (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 20cl3.) However, the board of health has no statutory authority to adopt regulations; and there is no statute providing that the county board may delegate its authority to adopt sludge regulations to the board of health. In opinion No. S-107 (1969 Ill. Att'y. Gen. Op. 165) I advised that the county board could delegate purely ministerial functions and duties to an agent, but that the performance of functions and duties requiring the exercise of judgment or discretion could not be delegated unless a statute expressly so provided. Because the authority to adopt county regulations regarding non-digested sludge sites is reserved for the county board by statute, the Fulton County Board may not delegate such authority to the Fulton County Board of Health.

In answer to your third question, section 5 of the Wastewater Land Treatment Site Regulation Act provides a person who violates a county regulation concerning non-digested sludge sites "shall upon conviction be guilty of a business offense and subject to a fine not to exceed \$10,000". A person convicted of a business offense may be sentenced to

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a period of conditional discharge, a fine, or both conditional discharge and a fine. (Ill. Rev. Stat. 1976 Supp., ch. 38, par. 1005-5-3.) A person convicted of a business offense is not subject to imprisonment. Therefore, it is my opinion that a person who is convicted of violating a county regulation adopted pursuant to the Wastewater Land Treatment Site Regulation Act may be fined but may not be imprisoned.

Very truly yours,

A T T O R N E Y G E N E R A L