

ORIGINAL

In the  
Supreme Court of Ohio

OSNABURG TOWNSHIP ZONING  
INSPECTOR,

Plaintiff-Appellant,

v.

ESLICH ENVIRONMENTAL, INC.,

Defendant/Third-Party  
Plaintiff-Appellee,

v.

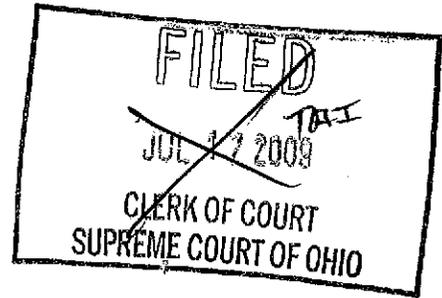
OSNABURG TOWNSHIP, et al.,

Third-Party Defendant-  
Appellant.

Case No. 2009-0228

On Appeal from the  
Stark County  
Court of Appeals,  
Fifth Appellate District

Court of Appeals Case  
No. 2008-CA-00026



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**MERIT BRIEF OF *AMICUS CURIAE* STATE OF OHIO IN SUPPORT OF  
APPELLANTS OSNABURG TOWNSHIP ZONING INSPECTOR, OSNABURG  
TOWNSHIP BOARD OF TRUSTEES, AND OSNABURG TOWNSHIP**

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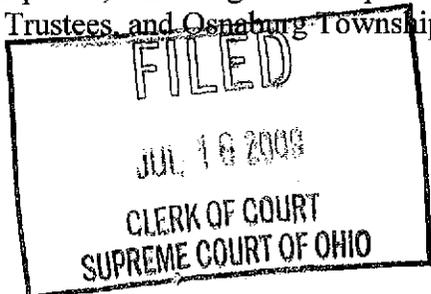
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**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES .....	ii
INTRODUCTION .....	1
STATEMENT OF AMICUS INTEREST .....	2
STATEMENT OF THE CASE AND FACTS .....	2
ARGUMENT .....	4
<b><u>Amicus Curiae State of Ohio’s Proposition of Law:</u></b>	
<i>R.C. Chapter 3714 does not preempt a local ordinance that restricts the location of a landfill to certain zoning districts.</i> .....	4
CONCLUSION.....	7
CERTIFICATE OF SERVICE .....	unnumbered

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page(s)</b>
<i>Center Twp. Bd. of Twp. Trustees v. Valentine</i> (6th Dist.), No. WD-99-65, 2000 Ohio App. Lexis 5177 .....	6
<i>Clarke v. Bd. of County Comm'rs of Warren County</i> (12th Dist.), 2006 Ohio App. Lexis 1161, 2006-Ohio-1271 .....	6
<i>Fondessy Enters., Inc. v. Oregon</i> (1986), 23 Ohio St. 3d 213 .....	5
<i>Osnaburg Twp. Zoning Inspector v. Eslich Envtl. Inc.</i> (5th Dist.), No. 2008-CA-26, 2008-Ohio-6671 .....	<i>passim</i>
<i>Vill. of Sheffield v. Rowland</i> , 87 Ohio St. 3d 9, 10, 1999-Ohio-217 .....	<i>passim</i>
<b>Statutes and Other Authorities</b>	
R.C. Chapter 519.....	4
R.C. Chapter 3714.....	<i>passim</i>
R.C. 3714.02 .....	4
R.C. 3714.03 .....	4
R.C. 3714.06 .....	4
R.C. 3714.08 .....	4
R.C. 3714.11 .....	4
R.C. 3714.12 .....	4
R.C. 3714.99 .....	4
R.C. Chapter 3734.....	6
2007 Op. Att'y Gen. No. 38.....	5, 6

## INTRODUCTION

Since 1961, Osnaburg Township has prohibited the operation of landfills—specifically, construction and demolition debris (“C&DD”) facilities—in its R-1 Single Family Residential Districts. The Township limits the operation of such facilities to its General Industrial District. Nevertheless, in 1990, the Osnaburg Township Board of Zoning Appeals granted the Appellee, Eslich Environmental Inc., the right to operate its C&DD landfill in an R-1 residential zone. At that time, the landfill occupied two acres of land.

Over the past two decades, the landfill has expanded. It now has an active disposal area of 20.2 acres and an inactive disposal area of 8.5 acres. Eslich has also sought to expand the operations further. Displeased with those plans, the Osnaburg Township zoning inspector filed a complaint for injunctive relief. She argued that, absent further permission from the Board of Zoning Appeals, Eslich’s landfill operations were confined to its 1990 boundaries—specifically, the original two acres. And, she said, the Board had never given Eslich such permission.

Eslich responded, and the Fifth District agreed, that R.C. Chapter 3714 (the code chapter governing the disposal of construction and demolition debris in Ohio) preempts Osnaburg’s R-1 residential zoning ordinance. Eslich had received the requisite license under state law to operate its landfill. Therefore, the Township could not stop it.

In reaching this conclusion, the Fifth District misapplied this Court’s clear guidance in *Village of Sheffield v. Rowland*, 87 Ohio St. 3d 9, 10, 1999-Ohio-217: R.C. Chapter 3714 preempts a local zoning ordinance restricting the location of landfills only when the two “are in conflict.” *Id.* at 12. And to be in conflict, the Court observed, the ordinance must “completely prohibit the facility” from operating within the locality’s borders. *Id.* at 12. The Court emphasized that cities and townships can still “restrict” the landfills “to certain districts with appropriate zoning” without violating R.C. Chapter 3714. *Id.*

Osnaburg Township has done that here. The zoning ordinances do not prohibit landfills from operating within the Township's borders; they simply confine the landfills to the industrial district. Thus, the zoning ordinances and R.C. Chapter 3714 do not conflict, and the Fifth District's contrary decision should be reversed.

#### **STATEMENT OF AMICUS INTEREST**

The court below held that a state environmental law conflicted with, and therefore preempted, a local zoning ordinance. The State of Ohio has an interest in ensuring that its laws are correctly interpreted and enforced, and that local ordinances are preempted only to the extent that they conflict with state law. Where there is no conflict, the State has an interest in preserving the legislative authority and police power of its political subdivisions.

#### **STATEMENT OF THE CASE AND FACTS**

In 1961, a C&DD landfill began operating in Osnaburg Township. See *Osnaburg Twp. Zoning Inspector v. Eslich Env'tl. Inc.* (5th Dist.), No. 2008-CA-26, 2008-Ohio-6671 ("Slip Op"), ¶ 2. In 1989, Eslich purchased a 175-acre parcel of property in the Township, which included the landfill. *Id.* ¶¶ 4-5. The company then assumed operations at the landfill. *Id.* ¶ 12.

The landfill is in an R-1 Single Family Residential District. *Id.* ¶ 7. Osnaburg Township zoning regulations prohibit the operation of landfills in these districts. *Id.* ¶ 8. Rather, such activities are confined to the Township's general industrial districts. *Id.* ¶ 9. Nevertheless, the Osnaburg Township Board of Zoning Appeals issued a certificate of non-conforming use to Eslich in 1990, giving it permission to operate the landfill. *Id.* ¶ 11. At that time, the Stark County Health Department had licensed the facility for two acres of operation. *Id.* ¶ 50.

In 1996, Eslich leased the property to Stark C&D Disposal, Inc., which took over operations at the landfill. *Id.* ¶ 13. The Health Department then issued a license to Stark C&D, authorizing 20.2 acres of active disposal area and an additional 8.5 acres of inactive disposal

area. *Id.* ¶¶ 15-16. In 2006, Stark C&D requested an increase of the inactive disposal area to 95.5 acres. *Id.* ¶ 17. The Health Department denied the application. *Id.*

On May 30, 2007, the Osnaburg Township zoning inspector filed a complaint for injunctive relief against Eslich. *Id.* ¶ 19. The inspector “alleged that the landfill has greatly expanded from its original 2-acre nonconforming size to 20.2 acres, with the possibly [sic] an additional 8.5 acres and/or 95 acres of active disposal area if approved by the Stark County Health Department.” *Id.* She reported that the Osnaburg Township Board of Zoning Appeals never approved any expansion beyond the original two acres of nonconforming use. *Id.* Among its several defenses, Eslich claimed “that the R-1 zoning regulation adopted by Osnaburg Township are [sic] preempted by Ohio law applicable to the licensing of C&DD disposal facilities.” *Id.* ¶ 21.

The trial court granted summary judgment to Eslich, holding that R.C. Chapter 3714 preempted Osnaburg’s zoning ordinances. *Id.* ¶ 28.

The Fifth District affirmed in part. The court held that Osnaburg’s R-1 residential zoning ordinance “is preempted by state law” as to “the acreage of the Property that is currently licensed by the Stark County Health Department pursuant to R.C. Chapter 3714 for active or inactive disposal.” *Id.* ¶ 57. Therefore, Osnaburg Township cannot apply its zoning regulations to the landfill—specifically, to the 20.2 acres of active disposal area and 8.5 acres of inactive disposal area that have been blessed by the Health Department. The court did say that the Township could enforce its zoning regulations with respect to any “acreage of the Property that is not currently licensed by the Stark County Health Department” for C&DD operations. *Id.* ¶ 58.

The Township and its zoning inspector appealed the Fifth District’s decision, and this Court accepted review on May 6, 2009.

## ARGUMENT

### *Amicus Curiae* State of Ohio's Proposition of Law:

*R.C. Chapter 3714 does not preempt a local ordinance that restricts the location of a landfill to certain zoning districts.*

Consistent with its authority under R.C. Chapter 519, Osnaburg Township enacted a comprehensive zoning plan in 1961, including the R-1 residential zoning ordinance at issue in this case. See Slip Op. ¶¶ 6-7. As an exercise of police power, “[z]oning ordinances are subject to the constitutional provision that they not be in conflict with general law” of the State. *Vill. of Sheffield v. Rowland*, 87 Ohio St. 3d 9, 10, 1999-Ohio-217 (internal quotation marks omitted). The Fifth District held that the Township’s zoning ordinance was in conflict with R.C. Chapter 3714. The appellate court, however, misapplied clear precedent from this Court.

It is “beyond dispute that R.C. Chapter 3714 is a general law.” *Id.* at 11. This code section prescribes a comprehensive scheme for regulating the disposal of construction and demolition debris. For instance, the Director of Ohio EPA is charged with adopting administrative rules to “ensure that the facilities will not create a nuisance, fire hazard, or health hazard or cause or contribute to air or water pollution.” R.C. 3714.02. The law also prohibits the operation of disposal facilities in certain locations, such as near flood plains, water sources, parks, and occupied dwellings. R.C. 3714.03. Facilities must obtain an annual license from either the county board of health or the Ohio EPA, R.C. 3714.06, and they must submit to an annual inspection, R.C. 3714.08. And upon finding a violation, the Ohio EPA or the county board of health can seek injunctive relief, issue an abatement order, or request the filing of criminal charges. R.C. 3714.11; R.C. 3714.12; R.C. 3714.99.

To pass constitutional muster, the Osnaburg Township zoning ordinances must not conflict with R.C. Chapter 3714. “The test to determine when a conflict exists between a municipal

ordinance and a general law of the state is ‘whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.’” *Sheffield*, 87 Ohio St. 3d at 11 (citation omitted); accord *Fondessy Enters., Inc. v. Oregon* (1986), 23 Ohio St. 3d 213, 217 (“The authority of the Environmental Protection Agency to license, supervise, inspect, and regulate hazardous waste facilities does not preclude municipalities from enacting police power ordinances which do not conflict with that authority.”).

This Court applied the conflict test in *Sheffield* to strike down a set of local zoning laws. An operator sought to build a C&DD facility in an industrial district, but the Sheffield Village zoning laws prevented the storage, sorting, or baling of garbage, junk, scrap metal, and paper in those areas. 87 Ohio St. 3d at 11-12. In other words, the ordinances “completely prohibit[ed] the facility” from operating anywhere in the Village. *Id.* at 12. This total prohibition, the Court said, conflicted with R.C. Chapter 3714 because “the ordinances prohibit[ed] what the statute permits.” *Id.* Therefore, the state law preempted the ordinances.

The Court in *Sheffield* emphasized the limited scope of its holding: “Nothing in this decision should be construed to suggest that Sheffield cannot restrict state-authorized facilities to certain districts with appropriate zoning.” *Id.* In other words, municipalities, townships, and counties cannot exclude landfills from within their borders, but they can impose restrictions on where such facilities can operate. See generally 2007 Op. Att’y Gen. No. 38, at 7 n.6 (attached as Exhibit A) (“The comprehensive zoning plan of a county may divide the unincorporated territory of the county into zones and restrict landfills that are licensed as construction and demolition debris facilities or solid waste facilities . . . to certain zones.”) (citing *Sheffield*).

Two courts of appeals have understood this distinction. In *Center Township Board of Township Trustees v. Valentine* (6th Dist.), No. WD-99-65, 2000 Ohio App. Lexis 5177, the

Sixth District invalidated an ordinance that prohibited construction and demolition landfills from operating within the township. *Id.* at \*5. The court held that, “[w]hile the Township could have controlled the location of the landfill, it could not prohibit its presence in the township.” *Id.* at \*6; see also 2007 Op. Att’y Gen. No. 38, at 7 (“[A] local zoning resolution that completely prohibits such landfills conflicts with the general laws of the state, and, as such, is invalid.”).

By contrast, in *Clarke v. Board of County Commissioners of Warren County* (12th Dist.), 2006 Ohio App. Lexis 1161, 2006-Ohio-1271, the Twelfth District affirmed a county zoning code that prohibited solid-waste landfills from operating within certain transitional zoning districts. A landfill operator had argued that the regulation conflicted with R.C. Chapter 3734, which governs the construction and licensing of solid-waste landfills in Ohio. *Id.* ¶ 26. Applying *Sheffield*, the court observed that “the Warren County Zoning Code [did] not prohibit” the operation of solid-waste landfills in the county. *Id.* ¶ 29. Rather, the Code “permit[ted] the use of property for the storage of solid waste, but restrict[ed] such use to property that is subject to [Solid Waste Disposal] zoning.” *Id.* And the Twelfth District recognized that, because the zoning code “merely restrict[ed] where solid waste may be stored in Warren County,” it was not in conflict with R.C. Chapter 3734. *Id.*

The Fifth District erred in this case by focusing its conflict inquiry on Osnaburg Township’s residential zoning districts. See Slip Op. ¶ 57. The question is not whether Osnaburg Township prohibits landfills in *some* of its zoning districts (*i.e.*, its residential districts), but whether Osnaburg Township prohibits landfills in *all* of its zoning districts. Or in the words of *Sheffield*, has Osnaburg Township “completely prohibit[ed]” landfills from within its borders, or has it simply “restrict[ed]” those facilities “to certain districts with appropriate

zoning?" 87 Ohio St. 3d at 12. If it is the latter, the zoning ordinances do not conflict with R.C. Chapter 3714.

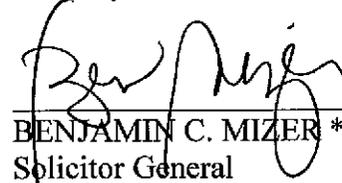
The disputed zoning ordinances fall into the latter category. Osnaburg Township has not prohibited landfills from operating within its borders; it has simply restricted their operation to industrial districts. See Slip Op. ¶ 9. As such, there is no conflict between the Township's zoning ordinances and state law, and the Fifth District was wrong to say otherwise.

### CONCLUSION

For these reasons, the Court should reverse the judgment below.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of *Amicus Curiae* State of Ohio in Support of Appellants Osnaburg Township Zoning Inspector, Osnaburg Township Board of Trustees, and Osnaburg Township was served by U.S. mail this 16<sup>th</sup> day of July 2009, upon the following counsel:

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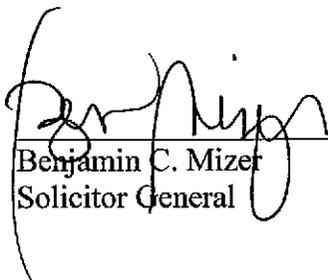
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# **EXHIBIT A**



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November 5, 2007

OPINION NO. 2007-038

The Honorable Charles S. Howland  
Morrow County Prosecuting Attorney  
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Dear Prosecutor Howland:

You have requested an opinion whether a county zoning resolution may be amended to prohibit the installation and operation of landfills that are licensed as construction and demolition debris facilities or solid waste facilities under R.C. 3714.06(A) or R.C. 3734.05(A), respectively, throughout the entire unincorporated territory of the county. Based on the following analysis, such an amendment to a county zoning resolution is not permitted.

**Authority to Amend a County Zoning Resolution**

Provisions governing county zoning are set forth in R.C. 303.01-.25. Under these provisions, a county is authorized, for the purpose of promoting the public health and safety, and when acting in accordance with a comprehensive plan, to enact and enforce certain types of zoning regulations in all or any part of the unincorporated territory of the county. R.C. 303.02. Before availing itself of the zoning powers conferred in R.C. 303.01-.25, a board of county commissioners must pass a resolution declaring its intention to proceed with county zoning under R.C. 303.01-.25, R.C. 303.03, and the electors residing in the unincorporated area of the county included in the proposed plan for zoning must approve the county zoning resolution, R.C. 303.11.<sup>1</sup>

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<sup>1</sup> Detailed procedures for adopting a county zoning resolution are set out in R.C. 303.03-.11.

R.C. 303.12, which establishes procedures for amending a county zoning resolution, provides that amendments to a county zoning resolution must be initiated by motion of the county rural zoning commission, by the passage of a resolution by the board of county commissioners, or by the filing of an application by one or more owners or lessees of property with the county rural zoning commission. Upon the adoption of such motion, certification of such resolution, or filing of such application, the county rural zoning commission must schedule a public hearing and “transmit a copy of [the motion, resolution, or application] together with text and map pertaining to it to the county or regional planning commission, if there is such a commission.” R.C. 303.12. At the public hearing, the county rural zoning commission shall consider the planning commission’s recommendation to approve or deny the proposed amendment. *Id.* Following the public hearing, the county rural zoning commission must recommend the approval, denial, or modification of the proposed amendment and submit to the board of county commissioners such recommendation together with such motion, application, or resolution involved, the text and map pertaining to the proposed amendment, and the recommendation of the planning commission. *Id.*

The board of county commissioners must, upon receipt of the county rural zoning commission’s recommendation on the proposed amendment, schedule a public hearing. *Id.* Following the hearing, the board must adopt or deny the recommendations of the county rural zoning commission, or adopt a modification of the recommendations. *Id.*

An amendment to a county zoning resolution adopted by a board of county commissioners becomes effective in thirty days unless a petition for a zoning referendum is submitted. *Id.* A referendum petition is valid when it is signed by a specific percentage of “qualified voters residing in the unincorporated area of the township or part of that unincorporated area included in the zoning plan.” *Id.* An amendment to a county zoning resolution that is submitted for referendum takes effect when “a majority of the vote cast on the issue is in favor of the amendment.” *Id.* “Upon certification by the board of elections that the amendment has been approved by the voters, it shall take immediate effect.” *Id.*

### **Limitations on County Zoning Authority**

The authority of a county to amend the text of its zoning resolution is not unlimited, however. It is well established that a county or other political subdivision may not “adopt zoning resolutions which are in contravention of general laws previously enacted by the General Assembly.” *Yorkavitz v. Columbia Bd. of Twp. Trustees*, 166 Ohio St. 349, 351, 142 N.E.2d 655 (1957); see *Village of Sheffield v. Rowland*, 87 Ohio St. 3d 9, 716 N.E.2d 1121 (1999); *Clarke v. Bd. of County Comm’rs of Warren County*, CA2005-04-048, 2006-Ohio-1271, 2006 Ohio App. LEXIS 1161 (Warren County Mar. 20, 2006); *Aluminum Smelting & Refining Co., Inc. v. Denmark Twp. Zoning Bd. of Zoning Appeals*, Case No. 2001-A-0050, 2002-Ohio-6690, 2002 Ohio App. LEXIS 6462 (Ashtabula County Dec. 6, 2002); *Center Twp. Bd. of Twp. Trustees v. Valentine*, Case No. WD-99-065, 2000 Ohio App. LEXIS 5177 (Wood County Nov. 9, 2000); *Families Against Reily/Morgan Sites v. Butler County Bd. of Zoning Appeals*, 56 Ohio App. 3d 90, 564 N.E.2d 1113 (Butler County 1989); 1985 Op. Att’y Gen. No. 85-053 at 2-199 and 2-200;

1981 Op. Att’y Gen. No. 81-065. See generally *Fox v. Johnson*, 28 Ohio App. 2d 175, 275 N.E.2d 637 (Mahoning County 1971) (if a conflict exists between a township zoning ordinance and a state statute, the state statute controls).

The test for determining when a conflict exists between a local zoning resolution and the general laws of the state is “whether the ordinance permits or licenses that which the state forbids and prohibits, and vice versa.” *Clarke v. Bd. of County Comm’rs of Warren County*, at ¶24 (quoting *Village of Sheffield v. Rowland*, at 11); accord *Aluminum Smelting & Refining Co., Inc. v. Denmark Twp. Zoning Bd. of Zoning Appeals*, at ¶24; *Center Twp. Bd. of Twp. Trustees v. Valentine*, at \*5; see *Families Against Reily/Morgan Sites v. Butler County Bd. of Zoning Appeals*, at 94. This means that a county’s zoning resolution cannot prohibit what the general laws of the state permit and license. See *Village of Sheffield v. Rowland*; *Aluminum Smelting & Refining Co., Inc. v. Denmark Twp. Zoning Bd. of Zoning Appeals*; *Center Twp. Bd. of Twp. Trustees v. Valentine*; see also *Clarke v. Bd. of County Comm’rs of Warren County*, at ¶26-29 (“[a]fter reviewing the record, including the applicable statutes, we find no conflict between the Warren County Zoning Code and R.C. Chapters 3734 and 3745 ... [insofar as] the Warren County Zoning Code does not prohibit what is permitted by the general laws of this state”). See generally *Yorkavitz v. Columbia Bd. of Twp. Trustees*, at 352-53 (because “the General Assembly has indicated in its general laws that airports are beneficial to the public of Ohio and are to be promoted and encouraged, it follows that in delegating to township trustees the power to zone it did not include in that delegation the power to circumvent the general law by completely prohibiting airports, throughout the unincorporated territory of a township, as being nuisances per se”); *Clermont Envtl. Reclamation Co. v. Wiederhold*, Case No. 1057, 1981 Ohio App. LEXIS 14476, at \*8-9 (Clermont County Dec. 23, 1981) (“[i]f every political subdivision of the state prevented the disposal of these hazardous wastes within its territorial confines, as Jackson Township, Clermont County, is attempting to do, a goodly portion of the state’s industries would come to a halt. The state thus not only has a duty to provide a place for their disposal, but also a duty to safeguard the public from the dangers of their indiscriminate disposal. This is the problem the state is meeting with its enactment of R.C. 3734.05, in the exercise of its state-wide police powers. Under these circumstances, local governmental units cannot be permitted to interfere by means of their own ordinances or resolutions”), *aff’d*, 2 Ohio St. 3d 44, 442 N.E.2d 1278 (1982); 1988 Op. Att’y Gen. No. 88-053 (syllabus, paragraph one) (“[w]hen an applicant has received a permit under R.C. Chapter 3734 for the installation and operation of a hazardous waste facility on a site in a township at which such use is not permitted by existing zoning, the township is prohibited by R.C. 3734.05(D)(3) from enforcing its existing zoning provisions”); 1981 Op. Att’y Gen. No. 81-065 (syllabus, paragraph one) (“[p]ursuant to R.C. Chapter 519, a township may enact resolutions to regulate surface mining, so long as its resolutions do not come into direct conflict with R.C. Chapter 1514, by which the General Assembly regulates the method of surface mining or other laws of the state”).

**County Zoning May Not Be Used to Prohibit the Installation and Operation of Landfills Throughout the Entire Unincorporated Territory of the County**

In light of the foregoing legal principles, we must now determine whether a county zoning resolution that prohibits the installation and operation of landfills that are licensed as construction and demolition debris facilities or solid waste facilities under R.C. 3714.06(A) or R.C. 3734.05(A), respectively, throughout the entire unincorporated territory of the county prohibits what the general laws of the state permit and license.

Under R.C. Chapters 3714 and 3734, the General Assembly has established comprehensive schemes for regulating the disposal of construction and demolition debris<sup>2</sup> and solid wastes,<sup>3</sup> respectively, in Ohio. As part of these schemes, the General Assembly requires

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<sup>2</sup> As used in R.C. Chapter 3714, "construction and demolition debris" means

those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any physical structure that is built by humans, including, without limitation, houses, buildings, industrial or commercial facilities, or roadways. "Construction and demolition debris" includes particles and dust created during demolition activities. "Construction and demolition debris" does not include materials identified or listed as solid wastes or hazardous waste pursuant to [R.C. Chapter 3734] and rules adopted under it; materials from mining operations, nontoxic fly ash, spent nontoxic foundry sand, and slag; or reinforced or nonreinforced concrete, asphalt, building or paving brick, or building or paving stone that is stored for a period of less than two years for recycling into a usable construction material.

R.C. 3714.01(C).

<sup>3</sup> R.C. 3734.01(E) defines "solid wastes," for purposes of R.C. Chapter 3734, as follows:

"Solid wastes" means such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than fifty per cent of heat input in any month, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. "Solid wastes" does not include any material that is an infectious waste or a hazardous waste.

that a person be licensed before operating or maintaining a landfill used as a construction and demolition debris facility or solid waste facility.<sup>4</sup>

R.C. 3714.06(A) states:

No person shall operate or maintain a construction and demolition debris facility without an annual construction and demolition debris facility operation license issued by the board of health of the health district in which the facility is located or, if the facility is located in a health district that is not on the approved list under [R.C. 3714.09], from the director of environmental protection. Any such license may be issued with such terms and conditions as the board or the director, as appropriate, finds necessary to ensure that the facility will comply with this chapter and the rules adopted under it and to protect the public health and safety and the environment. Licenses issued under this section expire annually on the thirty-first day of December.

R.C. 3734.05(A)(1) similarly requires a person to be licensed before operating or maintaining a landfill used as a solid waste facility:

Except as provided in divisions (A)(4), (8), and (9) of this section, no person shall operate or maintain a solid waste facility without a license issued under this division by the board of health of the health district in which the facility is located or by the director of environmental protection when the health district in which the facility is located is not on the approved list under [R.C. 3734.08].

Upon the issuance of a license under R.C. 3714.06(A) or R.C. 3734.05(A) and compliance with the requirements of R.C. Chapter 3714 or 3734 and the rules adopted under those chapters, *see* R.C. 3714.02; R.C. 3734.02, a person is authorized to operate or maintain a construction and demolition debris facility or solid waste facility, respectively.<sup>5</sup> *See Village of*

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<sup>4</sup> A landfill may qualify as a construction and demolition debris facility under R.C. Chapter 3714 or solid waste facility under R.C. Chapter 3734. *See* R.C. 3714.01(E) (as used in R.C. Chapter 3714, a “facility” is “any site, location, tract of land, installation, or building used for the disposal of construction and demolition debris”); R.C. 3734.01(N) (as used in R.C. Chapter 3734, a “facility” is “any site, location, tract of land, installation, or building used for incineration, composting, sanitary landfilling, or other methods of disposal of solid wastes or, if the solid wastes consist of scrap tires, for the collection, storage, or processing of the solid wastes; for the transfer of solid wastes; for the treatment of infectious wastes; or for the storage, treatment, or disposal of hazardous waste”).

<sup>5</sup> Once a permit for a construction and demolition debris facility or solid waste facility has been issued, the “permit is subject to those local zoning provisions which do not conflict with the

*Sheffield v. Rowland*, at 11-12; *Clarke v. Bd. of County Comm'rs of Warren County*, at ¶27-28; *Center Twp. Bd. of Twp. Trustees v. Valentine*, at \*5-6; *Families Against Reily/Morgan Sites v. Butler County Bd. of Zoning Appeals*, at 94. R.C. Chapters 3714 and 3734 thus govern the licensing and regulation of construction and demolition debris facilities and solid waste facilities throughout the state. *Village of Sheffield v. Rowland*, at 11; *Clarke v. Bd. of County Comm'rs of Warren County*, at ¶25; *Center Twp. Bd. of Twp. Trustees v. Valentine*, at \*4; see *Families Against Reily/Morgan Sites v. Butler County Bd. of Zoning Appeals*, at 94; see also *Rumpke Waste, Inc. v. Henderson*, 591 F. Supp. 521, 531 (S.D. Ohio 1984) (“the Ohio legislature specifically authorizes sanitary landfills and that such land uses are strictly regulated by the Ohio [Environmental Protection Agency]”).

When a chapter of the Ohio Revised Code operates uniformly to prescribe a rule of conduct upon citizens and with general uniform application throughout the state under the same circumstances and conditions, the chapter is a general law. *Village of Sheffield v. Rowland*, at 11; *Garcia v. Siffrin Residential Ass'n*, 63 Ohio St. 2d 259, 271, 407 N.E.2d 1369 (1980); *Aluminum Smelting & Refining Co., Inc. v. Denmark Twp. Zoning Bd. of Zoning Appeals*, at ¶24. Using this definition of a general law, courts have concluded that R.C. Chapters 3714 and 3734 constitute general laws of the state. *Village of Sheffield v. Rowland*, at 11; *Clarke v. Bd. of County Comm'rs of Warren County*, at ¶25; *Center Twp. Bd. of Twp. Trustees v. Valentine*, at \*4; see also *Clermont Envtl. Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d 44, 442 N.E.2d 1278 (1982) (syllabus, paragraph one) (“R.C. 3734.05(D)(3), which prohibits any political subdivision of the state from requiring any additional zoning or other approval for the construction and operation of a hazardous waste facility authorized by a hazardous waste facility permit issued pursuant to R.C. Chapter 3734, is a ‘law, of a general nature’ of the state having uniform operation throughout the state”).

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environmental laws and regulations approved by the state.” *Families Against Reily/Morgan Sites v. Butler County Bd. of Zoning Appeals*, 56 Ohio App. 3d 90, 94, 564 N.E.2d 1113 (Butler County 1989); see *Village of Sheffield v. Rowland*, 87 Ohio St. 3d 9, 12, 716 N.E.2d 1121 (1999); *Clarke v. Bd. of County Comm'rs of Warren County*, CA2005-04-048, 2006-Ohio-1271, 2006 Ohio App. LEXIS 1161, at ¶27-28 (Warren County Mar. 20, 2006); *Center Twp. Bd. of Twp. Trustees v. Valentine*, Case No. WD-99-065, 2000 Ohio App. LEXIS 5177, at \*5-6 (Wood County Nov. 9, 2000); *Hulligan v. Columbia Twp. Bd. of Zoning Appeals*, 59 Ohio App. 2d 105, 107-08, 392 N.E.2d 1272 (Lorain County 1978). See generally *Rumpke Waste, Inc. v. Henderson*, 591 F. Supp. 521 (S.D. Ohio 1984) (a township zoning resolution may be enforced when it does not act as an absolute bar to the installation of a sanitary landfill); *Fondessy Enter's, Inc. v. City of Oregon*, 23 Ohio St. 3d 213, 492 N.E.2d 797 (1986) (syllabus, paragraph five) (“[t]he authority of the Environmental Protection Agency to license, supervise, inspect, and regulate hazardous waste facilities does not preclude municipalities from enacting police power ordinances which do not conflict with that authority”).

On the basis of this conclusion, the courts have concluded, further, that, while local governmental entities may use their zoning powers to control the location of landfills that are licensed as construction and demolition debris facilities or solid waste facilities under R.C. 3714.06(A) or 3734.05(A), respectively,<sup>6</sup> *see note five, supra*, local governmental entities may not use their zoning powers to prohibit that which R.C. Chapters 3714 and 3734 permit or license. *Village of Sheffield v. Rowland; Clarke v. Bd. of County Comm'rs of Warren County; Center Twp. Bd. of Twp. Trustees v. Valentine*. Thus, since R.C. Chapters 3714 and 3734 permit and license the installation and operation of landfills that are used as construction and demolition debris facilities and solid waste facilities, respectively, a local zoning resolution that completely prohibits such landfills conflicts with the general laws of the state, and, as such, is invalid. *See Village of Sheffield v. Rowland; Clarke v. Bd. of County Comm'rs of Warren County; Center Twp. Bd. of Twp. Trustees v. Valentine*. *See generally* Peter C. Krier, Comment, *Ohio's Sanitary Landfills: State and Local Regulation of Solid Waste Disposal Facilities*, 63 U. Cin. L. Rev. 817, 846-47 (1995) (“[a] complete ban on solid waste disposal facilities, however, would probably fail judicial scrutiny because the Revised Code authorizes a regulatory scheme for solid waste disposal, thus making a complete prohibition by local authorities contradictory to the implied legislative intent to increase state landfill capacity”). Accordingly, a county zoning

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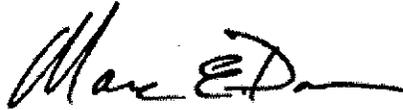
<sup>6</sup> The comprehensive zoning plan of a county may divide the unincorporated territory of the county into zones and restrict landfills that are licensed as construction and demolition debris facilities or solid waste facilities under R.C. 3714.06(A) or 3734.05(A), respectively, to certain zones. *See generally Village of Sheffield v. Rowland*, at 12 (indicating that nothing prevents a local governmental entity from restricting “state-authorized [construction and demolition debris] facilities to certain districts with appropriate zoning”); *Clarke v. Bd. of County Comm'rs of Warren County*, at ¶29 (“unlike the zoning ordinance in *Sheffield*, the Warren County Zoning Code does not prohibit what is permitted by the general laws of this state. The amended Warren County Zoning Code does permit the use of property for the storage of solid waste, but restricts such use to property that is subject to SD zoning. The addition of SDT zoning to the Warren County Zoning Code merely restricts *where* solid waste may be stored in Warren County, which is a proper exercise of the county’s police power”); *City of Garfield Heights v. Rockside Reclamation, Inc.*, Case No. 39790, 1979 Ohio App. LEXIS 11260 (Cuyahoga County Dec. 20, 1979) (upholding the validity of a city zoning ordinance that prohibited sanitary landfills in residential zones); Peter C. Krier, Comment, *Ohio's Sanitary Landfills: State and Local Regulation of Solid Waste Disposal Facilities*, 63 U. Cin. L. Rev. 817, 847 (1995) (“[u]nlike a complete ban on solid waste disposal, a more common zoning scheme divides all of the land within a jurisdiction into higher use areas, such as commercial, industrial, or residential districts. In effect, the comprehensive plan zones out solid waste disposal operations without banning them directly, thereby forcing a prospective landfill owner to apply for either an amendment or a variance to the existing regulation. Ohio courts have upheld such a zoning scheme as rationally related to the exercise of the police power” (footnotes omitted)). *See generally also Center Twp. Bd. of Twp. Trustees v. Valentine*, at \*6 (“[w]hile the Township could have controlled the location of the landfill, it could not prohibit its presence in the township”).

resolution may not be amended to prohibit the installation and operation of landfills that are licensed as construction and demolition debris facilities or solid waste facilities under R.C. 3714.06(A) or R.C. 3734.05(A), respectively, throughout the entire unincorporated territory of the county.

**Conclusion**

In sum, it is my opinion, and you are hereby advised that a county zoning resolution may not be amended to prohibit the installation and operation of landfills that are licensed as construction and demolition debris facilities or solid waste facilities under R.C. 3714.06(A) or R.C. 3734.05(A), respectively, throughout the entire unincorporated territory of the county.

Respectfully,

A handwritten signature in black ink, appearing to read "Marc Dann", with a stylized flourish at the end.

MARC DANN  
Attorney General