



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

January 31, 2006

TOM CORBETT
ATTORNEY GENERAL

15th Fl. Strawberry Square
Harrisburg, PA 17120



Amy C. Rothermel, Esquire
Law Office of Edward A. Skypala
224 King Street
Pottstown, PA 19464-5597

Dear Ms. Rothermel:

Pursuant to your request, the following summarizes the position of the Office of Attorney General, as discussed at our meeting on January 23, 2006, with respect to the composting operation undertaken by [REDACTED] at Two Particular Acres in Upper Providence Township.

Act 38 prohibits a local government from adopting or enforcing a local ordinance that prohibits or limits a normal agricultural operation as defined by the Right to Farm Act. 3 P.S. §§ 951-957. A normal agricultural operation is defined as:

"The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities and is: (1) not less than ten contiguous acres in area; or (2) less than ten contiguous acres in area but has anticipated yearly gross income of at least \$10,000. The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. Use of equipment shall include machinery designed and used for agricultural operations, including, but not limited to, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment, bins and related equipment used to store or prepare crops for marketing and those items of agricultural equipment and machinery defined by the act of December 1, 1955 (P.L. 944, No. 134) now a the Farm Safety and Occupational Health Act. Custom work shall be considered a normal farming practice." 3 P.S. § 952.

Amy C. Rothermel, Esquire
January 31, 2006
Page 2

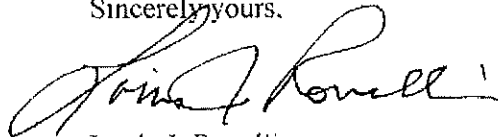
According to the experts we consulted at the Penn State School of Agricultural Sciences and the Department of Agriculture, on-farm composting such as that undertaken by [REDACTED] fits the definition of a normal agricultural operation. Composting is encouraged by the State to increase sustainable farming and to provide an environmentally safe and economical way to deal with farm waste such as manure, used bedding and crop residue, and yard waste. The Department of Agriculture and the Department of Environmental Protection provide a permitting process for on-farm composting, and [REDACTED] has obtained the appropriate permits. We recognize that a composting operation could assume proportions in relation to total business operations that would render it a commercial composting operation rather than a normal agricultural operation. Our experts, however, are of the view that [REDACTED] operation is not close to such proportions at this time.

This Office is required by Act 38 to bring action against a local government unit that violates Act 38. Accordingly, we are prepared to file suit in Commonwealth Court to enjoin Upper Providence Township from enforcing its zoning ordinance against [REDACTED] composting operation. We would prefer, however, that the Township and [REDACTED] reach an agreement that would allow [REDACTED] to continue his non-commercial composting operation, and thus avert costly and time-consuming litigation. To that end, we ask the Township to engage [REDACTED] in discussion aimed at defining the scope of composting operation in which [REDACTED] may engage without concern that he will be cited for a zoning violation. That scope of operation, of course, must embrace [REDACTED] current composting operation.

If the Township initiates such discussion with [REDACTED] by March 1, 2006, we will refrain from legal action while such discussion proceeds. If the Township does not initiate such discussion by March 1, or if such discussion proves not to be productive, we will file suit.

We appreciate your efforts to resolve this matter amicably. Please call if you have questions.

Sincerely yours,



Louis J. Rovelli
Executive Deputy Attorney General

cc:

[REDACTED]
Linda Lloyd, Esquire ✓