



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
February 14, 2011

Litigation Section
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Via Email and First Class Mail

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RE: COP, OAG v. Locust Twp, et al., No. 358 MD 2006 (Pa. Cmwlth.)

Dear Tony:

This letter will detail the legal problems with Ordinance Number 4-2001, discuss the proposed ordinance amendments submitted by Locust Township in August 2006, and propose changes to the Ordinance that would be acceptable to the Office of Attorney General to resolve this matter by agreement.

I. NUTRIENT AND ODOR MANAGEMENT ACT AND REGULATIONS

As the Township is aware, the State Conservation Commission (SCC), pursuant to its authority under the Nutrient and Odor Management Act (NOMA), 3. P.S. § 501 *et seq.*, and accompanying regulations, 25 Pa. Code § 83.201, *et seq.*, comprehensively regulates nutrient and odor management on Concentrated Animal Operations (CAOs) and Concentrated Animal Feeding Operations (CAFOs). In addition to requiring an approved site-specific nutrient management plan, the SCC's regulations include mandatory requirements for the "design, construction, location, operation, maintenance, and removal from service of manure storage facilities." 25 Pa. Code § 83.351; *see also* 25 Pa. Code § 91.36. The SCC's regulations also require CAOs and CAFOs to develop and implement site-specific odor management plans when building new animal housing or manure management facilities. The odor management regulations specify the criteria and requirements for the "construction, location and operation of animal housing facilities and animal manure management facilities, and the expansion of

existing facilities.” 25 Pa. Code § 83.702(3); Commonwealth v. Richmond Township, 2 A.3d 678, 684-686 (Pa. Cmwlth. 2010) (holding that the Nutrient and Odor Management Act regulations preempted ordinance provisions attempting to regulate “intensive agricultural operations” that exceeded and conflicted with the requirements under the Act’s regulatory scheme); Burkholder v. Zoning Hearing Board of Richmond Township, 902 A.2d 1006 (Pa. Cmwlth. 2006) (same).

II. CLEAN STREAMS LAW AND REGULATIONS

Pursuant to its authority under the Clean Streams Law, 35 P.S. § 691.1, *et seq.*, the Department of Environmental Protection’s (DEP) regulations require that all manure storage facilities be designed, constructed, operated, and maintained to ensure that the facility is structurally sound, water-tight, and located and sized properly to prevent pollution of surface and groundwater for events up to at least a 25-year/24-hour storm. 25 Pa. Code § 91.36(a)(1). These requirements are met by complying with the National Resource Conservation Service’s Pennsylvania Technical Guide (PaTG) and DEP’s Manure Management Manual (MMM). 25 Pa. Code § 91.36(a)(1)(i). DEP requires CAFOs to obtain various permits depending on the CAFO’s size. All CAFOs must obtain a National Pollutant Discharge Elimination System (NPDES) permit, 25 Pa. Code § 92.5a, the requirements for which are based on the Clean Streams Law and various requirements of the federal Clean Water Act. Large CAFOs and manure storage facilities with large storage capacities are required to obtain a separate water quality management permit. 25 Pa. Code § 91.36(a)(2)-(4).

Animal operations that are not a CAO or CAFO are not subject to NOMA regulations, including the requirement for certified nutrient and odor management plans or the setbacks for manure storage facilities. Such operations, however, are not unregulated, as DEP regulates all agricultural operations that use or produce manure, 25 Pa. Code § 91.36, whether or not such operations are a CAO or CAFO. Section 91.36 sets forth requirements for the construction of manure storage facilities and for land application of manure.

III. ADDITIONAL STATE LAWS PROHIBITING CERTAIN LOCAL REGULATION OF AGRICULTURAL OPERATIONS

In addition to the SCC’s and DEP’s regulatory programs, the Right to Farm Act (RTFA) precludes a municipality from regulating normal agricultural operations as a nuisance. 3 P.S. § 953. The Air Pollution Control Act excludes operations engaged in the “production of agricultural commodities” from State air contaminant and air pollution regulations. 35 P.S. § 4004.1. The “production of agricultural commodities” includes “the commercial propagation . . . [of] livestock and livestock products.” *Id.* § 4004.1(b)(1)(v). The Agricultural Area Security Law (AASL) precludes a municipality from enacting ordinances which would unreasonably restrict farm structures or farm practices within the area. 3 P.S. § 911. The Municipalities Planning Code (MPC) precludes a municipality from enacting a zoning ordinance that regulates

activities related to commercial agricultural production if it exceeds the requirements imposed under the NOMA, RTFA or AASL, “**regardless of whether any agricultural operation within the area to be affected by the ordinance would be a concentrated animal operation as defined by the [NOMA].**” 53 P.S. § 10603(b) (emphasis added). The MPC also provides that no public health or safety issues shall require a municipality to adopt a zoning ordinance that violates or exceeds the provisions of the NOMA, AASL, or RTFA. 53 P.S. § 10603(h); Richmond Township, 2 A.3d at 687 & n.11 (explaining that section 603(h) of the MPC “indicates that, as a matter of law, an agricultural operation complying with the NMA, AASL and the RFL does not constitute an operation that has a direct adverse affect on the public health and safety”). The Water Resources Planning Act (WRPA) prohibits political subdivisions from regulating the allocation of water resources and the conditions of water withdraw. 27 Pa. C.S. § 3136(b). The DEP’s Water Resources Planning regulations establish the framework for water withdrawal and use registration, monitoring, record-keeping and reporting requirements. 25 Pa. Code § 110. The Storm Water Management Act directs the DEP to coordinate stormwater management in the State. 32 P.S. § 680.1, *et seq.*; 25 Pa. Code § 102. A municipality’s stormwater management ordinance must be consistent with the DEP’s stormwater management regulatory scheme and its respective County’s DEP-approved stormwater management plan. 53 P.S. § 67704. The Second Class Township Code provides that the “board of supervisors may make and adopt ordinances, bylaws, rules, and regulations not inconsistent with or restrained by the Constitution and the laws of this Commonwealth.” 53 P.S. § 66506.

Against this background, we turn to the legal problems with the ordinance and to a suggested compromise that would correct those problems. The starting point is the ACRE law, which prohibits a municipality from adopting or enforcing a local ordinance prohibited or preempted by State law. 3 Pa. C.S. §§ 312, 313. The State laws implicated under our ACRE analysis are set forth above.

IV. LOCUST TOWNSHIP’S ORDINANCE NUMBER 4-2001 AND 2006 PROPOSED AMENDMENTS

Locust Township provided us with proposed amendments to Ordinance Number 4-2001 on August 1, 2006. These “2006” proposed amendments included modifications to Sections 503(f), 503(g), and 3(b)(iii)(d), as well as the repeal of Sections 503(h) and 503(j). Accordingly, our discussion of these sections below will be based on the “2006” proposal and not the sections in the original Ordinance.

A. Section 302 — Definitions

The definition for “Intensive Animal Agriculture” under Section 302 presents three legal problems. First, Section 302 identifies an “Intensive Animal Agriculture” operation by the following method: “when, on an annualized basis, there exists more than 150 Animal Equivalent Units (A.E.U.’s) on the agricultural operation, regardless of the actual acreage owned, used, or

otherwise available to the agricultural operation.” The SCC has advised that the arbitrary threshold of 150 AEUs and exclusion of available acreage will result in identifying animal agricultural operations that are too small to be a CAO or CAFO as “Intensive Animal Agriculture.” For example, a farmer could have 150 AEUs, but also have at least 75 acres suitable for the land application of manure, thus the operation would not rise to the level of a CAO or be subject to the NOMA. Also, with respect to a CAFO calculation, 150 AEUs is approximately 110 cows or 1000 pigs and a CAFO by number of animals would require at least 700 cows or 2500 pigs (over 55 lbs) or 10,000 pigs (under 55lbs). Animal agriculture operations that are too small to be a CAO or CAFO are not subject to the NOMA. 25 Pa. Code § 83.202; 53 P.S. § 10603(b). As detailed further below, most, if not all, of the Ordinance provisions duplicate, exceed, or conflict with, and are therefore preempted by, the NOMA regulations. Consequently, imposing the Ordinance on animal operations too small to be CAOs/CAFOs is precluded by the NOMA and the MPC. 53 P.S. § 603(b), (h).

Second, Section 302 defines CAOs as: “agricultural operations having an animal density of more than two (2) Animal Equivalent Units (AEU’s) per acre of cropland or acre of land suitable for application of animal manure on an annualized basis.” This conflicts with the SCC’s definition for concentrated animal operation as “an agricultural operation with eight or more animal equivalent units [AEUs] where the animal density exceeds two AEUs per acre on an annualized basis.” 25 Pa. Code §§ 83.201, .262. The SCC has advised that excluding the phrase “eight or more AEUs” from the ordinance definition results in including agricultural operations that are too small to be subject to the NOMA, thus it conflicts with and is more stringent than the NOMA.

Third, Section 302 defines a CAFO as: “agricultural operations with either more than 1,000 A.E.U.’s or agricultural operations with 301 to 1,000 A.E.U.’s, which have the potential to discharge to surface waters.” This conflicts with the DEP’s definition of a CAFO as: “a CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, or any agricultural operation defined as a large CAFO under 40 CFR § 122.23. 25 Pa. Code § 92.1.

These definitional problems would be corrected if Section 302 were amended to delete the portion referencing 150 AEUs and exclusion of available acreage, to correct the definitions for CAO and CAFO to the State law definitions, and to define “Intensive Animal Agriculture” by incorporating only the State law definitions for CAO and CAFO. A better approach, however, would be to amend the ordinance to delete the term “Intensive Animal Agriculture” and simply use the terms CAO and CAFO with the State law definitions.

B. Section 503 — Special Exception Criteria

Section 503(a) states that an applicant for a special exception to engage in intensive animal agriculture “shall comply with all applicable federal, state, and local laws and regulations, specifically including, but not limited to” those of the DEP and SCC. This language is vague

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and ambiguous as it can be interpreted to require animal agricultural operations too small to be a CAO or CAFO to comply with regulations that they are not subject to in violation of the NOMA, MPC, and DEP's regulatory scheme. Section 503(a) is also preempted to the extent it attempts to adopt State law and enforce it at the local level through Sections 4, 6, and 7. Richmond Township, 2 A.3d at 684-686; Range Resources-Appalachia, LLC v. Salem Township, 600 Pa. 231, 244, 964 A.2d 869, 877 (2009) (holding that "not only does the Ordinance purport to police many of the same aspects of oil and gas extraction activities that are addressed by the [Oil and Gas] Act, but the comprehensive and restrictive nature of its regulatory scheme represents an obstacle to the legislative purposes underlying the Act, thus implicating principles of conflict preemption."); Commonwealth v. East Brunswick Township, 980 A.2d 720, 734 (Pa. Cmwlth. 2009) (holding that a "township cannot establish a comprehensive scheme of sewage sludge regulation to replicate the one set forth in the SWMA and the Department's regulations"). Locust Township should repeal Section 503(a) in its entirety and replace it to require only, and simply, that: An owner or operator of a proposed CAO or CAFO shall obtain a special exception to operate a CAO or CAFO, which the Township shall grant to the owner or operator upon the Township's receipt of proof that the owner or operator has approved nutrient and odor management plans and has obtained all required DEP permits and plans.

Section 503(d) requires a "Site Plan" to be submitted illustrating such things as the features of the land, prevailing winds, and buildings of an agricultural operation. This Section duplicates, and is therefore preempted by, the NOMA regulations which require CAOs and CAFOs to submit site-specific information, maps, and photographs. 25 Pa. Code §§ 83.281-.282; 83.761, .771, .781; Richmond Township, 2 A.3d at 684-686; East Brunswick Township, 980 A.2d at 733 ("Requirements that are redundant of or stricter than those in the SWMA are preempted."). Locust Township may require an applicant for a CAO or CAFO to provide copies of the site-specific information submitted to the SCC and/or DEP, but it cannot impose its own "Site Plan" requirements.

Section 503(e) imposes post-construction stormwater management requirements and requires the applicant to provide stormwater calculations from "an individual registered in the Commonwealth of Pennsylvania." This Section duplicates and is more stringent than, thus is preempted by, the NOMA regulations which require CAOs and CAFOs to identify stormwater control best management practices (BMPs) according to the PaTG in a nutrient management plan that is prepared by a certified nutrient management specialist. 25 Pa. Code §§ 83.261(8), .321. Moreover, the Second Class Township Code provides authority to a municipality to enact stormwater management ordinances, but they must be consistent with the county's DEP-approved stormwater management plan, the Storm Water Management Act, and DEP's stormwater management regulations. 53 P.S. § 67701; 32 P.S. §§ 680.11, .14(a)(1), (3) (DEP "shall have the power and its duty shall be to: (1) coordinate the management of storm water in the Commonwealth."). On November 2010, the DEP's amended Erosion and Sediment Control regulations went into effect to codify post-construction stormwater management BMP requirements for earth disturbance activities, including long-term operation and maintenance

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requirements of post-construction stormwater management BMPs. 25 Pa. Code §§ 102.2, 102.8. Furthermore, the DEP requires CAFOs to obtain “a separate NPDES permit for stormwater discharges associated with a construction activity meeting the requirements of Chapter 102.” 25 Pa. Code § 92.5a(f)(2). The DEP’s regulations require stormwater calculations in preparing erosion and sediment and post-construction stormwater management plans. 25 Pa. Code §§ 102.4(b)(5)(viii), 102.8(b)(1)-(8), 102.8(f)-(g). Locust Township should amend this section to require only that the applicant for a CAO or CAFO provide the township with proof of any required erosion and sediment and stormwater management plans for the proposed earth disturbance activities, including an approved nutrient management plan, any required DEP permits, and a post-construction stormwater management plan.

Section 503(f) requires an applicant to submit an emergency contingency plan and sets forth specific items that the plan must address, such as “inadequate manure management practices, manure leaks and spills, disease and other manure handling emergencies.” In 2006, Locust Township proposed to amend this section to clarify that Section 503(f) only applies to NOMA operations; however, this section duplicates, and is therefore preempted by, the NOMA regulations which require CAOs and CAFOs to submit site-specific emergency response plans and set forth the necessary elements for such plans. 25 Pa. Code § 83.312; Richmond Township, 2 A.3d at 684-686; East Brunswick Township, 980 A.2d at 733. Thus, we reject the 2006 amendment submitted by Locust Township. Instead, Locust Township may require the applicant for a CAO or CAFO to provide the Township with a copy of the site-specific emergency response plan approved by the SCC, but it cannot impose its own “emergency contingency plan” requirements.

In 2006, Locust Township submitted a revised Section 503(g) that attempts to regulate consumptive water use, well construction, and groundwater contamination. We reject the 2006 amendment submitted by Locust Township for the following reasons. With respect to consumptive water use, the MPC states that a municipality’s comprehensive plan should contain a statement recognizing that “[c]ommercial agriculture production may impact water supply sources.” 53 P.S. § 10301(b)(2). The WRPA precludes municipalities from allocating water resources and regulating “the location, amount, timing, terms or conditions of any water withdrawal by any person.” 27 Pa. C.S. § 3136(b). The DEP regulates consumptive water use pursuant to the WRPA and accompanying Water Resources Planning regulations. 27 Pa. C.S. §§ 3118, 3131, 3133-34; 25 Pa. Code § 110, *et seq.* The DEP’s Water Resources Planning regulations establish the framework for water withdrawal and use registration, monitoring, record-keeping and reporting requirements. 25 Pa. Code § 110.2. A person “whose total withdrawal from a point of withdrawal . . . within a watershed [which] exceeds an average rate of 10,000 gallon per day in any 30-day period” is required to register with the DEP and provide the information specified under Section 110.203 of the regulations. 25 Pa. Code § 110.201(3). DEP also requires registrants to submit annual reports regarding water withdrawal and use. 25 Pa. Code § 110.301-.305. In addition to DEP’s regulations, agricultural operations that use water in excess of 20,000 gallons per day over a 30-day average are subject to the Susquehanna River

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Basin Commission's (SRBC) consumptive use regulations and are required to submit an application to the SRBC. The SRBC is working with Pennsylvania to develop compliance compensation programs for the estimated 785 agricultural operations that are likely to be subject to the SRBC's consumptive use regulations. See www.srbc.net (Susquehanna River Basin Commission Information Sheet – Pennsylvania Agricultural Consumptive Water Use). Accordingly, Locust Township's requirement that intensive agriculture operations "expected to consume ten thousand (10,000) gallons or more of water per day shall be registered with the Susquehanna River Basin Commission (SRBC) as a consumptive water use" conflicts with and exceeds, and is therefore preempted by, the DEP's and SRBC's regulatory schemes. Richmond Township, 2 A.3d at 684-686; East Brunswick Township, 980 A.2d at 733-34. Locust Township may require only that an applicant for a CAO or CAFO provide the Township with proof of whether or not the applicant is required to register with the DEP and SRBC, and, if so, to also provide copies of registration papers and any reports submitted to the DEP or SRBC.

Paragraph two of Section 503(g) requires grouting and sealing of water wells on the intensive agricultural operation to prevent contamination of groundwater. This requirement is preempted by the NOMA regulations, which specifically regulate CAOs and CAFOs for the purpose of protecting "the quality of surface water and groundwater," and do not require grouting and sealing of water wells. 25 Pa. Code § 83.203(3). It is also preempted by the DEP's regulation of CAOs and CAFOs to protect water quality. 25 Pa. Code §§ 91.36; 92.5a. Moreover, the Water Well Drillers License Act requires all water wells to be constructed by a licensed driller, but specifically exempts "[a]ny farmer performing any function on any land owned or leased by him for farming purposes" from this requirement. 32 P.S. § 645.4. Locust Township should repeal this Ordinance provision.

The third paragraph of Section 503(g) requires a "water impact study to demonstrate that its operation shall not contaminate the groundwater." For the same reasons stated above, this requirement is preempted by the NOMA and DEP regulations, which do not require water impact studies, but instead regulate CAOs and CAFOs with requirements to ensure the protection of surface water and groundwater resources. 25 Pa. Code §§ 83.203(3); 91.36; 92.5a. Locust Township should repeal this Ordinance provision.

Locust Township agreed to delete Sections 503(h) and (j) in their entirety in the 2006 proposed amendments. We accept the Township's offer to repeal these sections because they are preempted by the NOMA regulations, which comprehensively regulate odor management on CAOs and CAFOs. 25 Pa. Code § 83.701, *et seq.*

Section 503(k) requires an applicant for a CAO or CAFO to submit an environmental impact study. This requirement exceeds, and is therefore preempted by, the NOMA regulations which evaluate an operation's impact on air, land, and water sources through approved nutrient and odor management plans. 25 Pa. Code § 83.201, *et seq.* It is also preempted by the DEP's regulation of CAOs and CAFOs, which protects water sources and requires implementation of

erosion and sediment control. 25 Pa. Code §§ 91.36, 92.5a, 102.2. Locust Township should amend this Section to require only that the applicant for a CAO or CAFO provide the Township with copies of an approved nutrient and odor management plan and all required DEP permits and plans.

C. Section 3 — Minimum Lot Size and Setback Requirements

The requirement of Section 3(a) for a sixty-acre minimum lot area for an “intensive animal agriculture operation” is more stringent than, and therefore preempted by, the NOMA regulations, which require no minimum lot area for a CAO or CAFO. The sixty-acre minimum lot area also violates the Right to Farm Act, 3 P.S. § 952, which requires only a ten-acre minimum lot area for normal agricultural operations. The problem would be corrected if Part 3(a) were amended to remove the minimum lot area requirement or to conform it to the Right to Farm Act.

The 500 foot setbacks from property lines and water sources under Sections 3(b)(i)-(ii) are more stringent than, and therefore preempted by, the NOMA regulations. The nutrient management regulations require only 100 to 300 foot setbacks from property lines and water sources for manure storage facilities on CAOs/CAFOs. 25 Pa. Code § 83.351. The odor management regulations approve the siting of new manure storage and animal housing facilities on CAOs and CAFOs in coordination with imposing the required Odor Best Management Practices under a site-specific OMP. 25 Pa. Code §§ 83.771(c), .781. In a nutshell, the appropriate location for manure storage and animal housing facilities on CAOs and CAFOs is determined through approved nutrient and odor management plans. 25 Pa. Code §§ 83.205, 272(a), .281-82, .351, .703, .705, .761, .771, .781; Richmond Township, 2 A.3d at 684-686 (“We now hold that the 1500 foot setback is preempted by the NMA regulations to the extent that the Township applies the 1500-foot setback to **any facility** covered by the regulations.” (emphasis added)); Burkholder, 902 A.2d at 1016. The setback problems would be corrected if Sections 3(b)(i)-(ii) were repealed and replaced with a provision requiring the applicant for a CAO or CAFO provide the Township with proof of compliance with the siting requirements for CAOs/CAFOs under the NOMA regulations, including approved nutrient and odor management plans and any required DEP permits and plans.

Section 3(b)(iii)(a)-(d) is largely vague and ambiguous and, in any event, not necessary with the suggested amendment for an applicant to provide proof of compliance with the NOMA regulatory siting requirements. The same is true for the 2006 proposal to delete the three paragraphs following Section 3(b)(iii)(d) and replace it with a paragraph regarding exempted structures because the special exception only applies to CAOs/CAFOs. We also note, with respect to Section 3(b)(iii)(c), that the NOMA regulates animal grazing systems on CAOs and CAFOs. 25 Pa. Code § 83.294(j)(1)-(4). Locust Township should repeal these Ordinance provisions.

D. Sections 4, 6, and 7 — Adopting NOMA, Imposing Penalties, Inspections, and Enforcement

Section 4 states that Locust Township is adopting the NOMA and Sections 6 and 7 establish a penalty, inspection, and enforcement scheme to regulate “intensive animal agriculture operations.” Locust Township has no authority to adopt State law and enforce it at the local level through Sections 4, 6, and 7. Richmond Township, 2 A.3d at 684-686; Range Resources-Appalachia, LLC, 600 Pa. at 244, 964 A.2d at 877; East Brunswick Township, 980 A.2d at 733 (“Liverpool and Synagro teach that a township cannot duplicate the regulatory regime established in the SWMA.”). Locust Township has remedies available to address violations of the NOMA or the Clean Streams Law. It can intervene in the site approval process and also report suspected violations to the DEP, SCC, or county conservation district so that they may inspect and take any appropriate enforcement action pursuant to the regulations. The Township can also bring action at law or in equity to restrain violations of the NOMA or Clean Streams Law as provided for in Section 514 of the NOMA and Section 691.601 of the Clean Streams Law. 3 Pa. C.S.A. §§ 514(c), (d); 35 P.S. § 691.601. The other statutes discussed above have similar remedies available to the Township. East Brunswick Township, 980 A.2d at 734 (“The remedies provided by the legislature in the SWMA preclude other forms of ‘self-help’ by the Township.”). The problems with these provisions can be resolved by repealing Sections 4, 6, and 7 and replacing them with a section stating only that the Township will report suspected violations of the SCC’s or DEP’s regulations to the SCC, DEP, or county conservation district for appropriate enforcement action, bring an action to restrain violations of the NOMA or Clean Streams Law as permitted under those statutes, or pursue remedies available under other applicable State statutes.

E. Section 5 — Bonding and Insurance Requirements

Section 5 requires a special exception applicant for a CAO or CAFO to post a surety bond or purchase liability insurance. This Section is preempted by the SCC’s and DEP’s regulatory schemes for several reasons. The stated purpose for the bond or insurance is to “provide coverage for water contamination, soil contamination, [and] environmental damage;” however, the NOMA and Clean Water Law regulate CAOs and CAFOs for the specific purpose of protecting these resources. Neither the SCC, nor the DEP requires CAOs or CAFOs to post a bond or purchase liability insurance, thus these requirements under Section 5 conflict with and exceed the requirements of State law. The SCC and DEP are charged with enforcing their respective regulatory schemes through the imposition of fines and penalties. 3 Pa. C.S.A. § 516; 25 Pa. Code § 83.207(c); 35 P.S. § 691.610; 25 Pa. Code § 91.36(c)(1)-(3); Range Resources-Appalachia, LLC, 600 Pa. at 241, 964 A.2d at 875 (holding that “[t]he Ordinance’s permitting and bonding procedures constitute a regulatory apparatus parallel to the one established by the Act and implemented by the Department,” and are thus preempted). As explained above, the extent of a municipality’s authority to pursue a violation of the NOMA or Clean Streams Law is

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limited to either reporting the violation for appropriate action by the agency or to bring an action at law or equity to restrain violations. Locust Township should repeal this Ordinance provision.

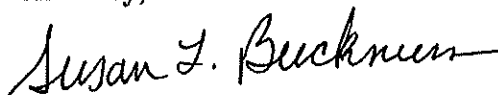
V. CONCLUSION

As evident from the discussion above, local ordinances that attempt to regulate the how, when, and where of activities already subject to State uniform regulatory schemes "have not fared well under preemption challenges." East Brunswick Township, 680 A.2d at 730. Locust Township does not have authority to establish its own regulatory scheme for CAOs or CAFOs that duplicates, exceeds, or conflicts with the SCC's and DEP's regulatory schemes.

In light of the comprehensive regulation of CAOs and CAFOs by the SCC and DEP, and in place of the ordinance revisions that we've recommended above to the Township, we suggest that the Township amend its ordinance to require only, and simply, that: *An owner or operator of a proposed CAO or CAFO shall obtain a Township permit to operate a CAO or CAFO, which the Township shall issue to the owner or operator upon the Township's receipt of proof that the owner or operator has approved nutrient and odor management plans and has obtained all required DEP permits and plans.*

I look forward to Locust Township's prompt response to our proposal to resolve this matter through amending the ordinance.

Sincerely,



SUSAN L. BUCKNUM
Senior Deputy Attorney General

SLB/lls

cc: 