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ATTORNEY GENERAL
STATE OF ILLINOIS

March 24, 1994

FILE NO. 94-004

ENVIRONMENTAL PROTECTION:
Wastewater Land Treatment Regulation

Honorable David R. Akemann
State's Attorney, Kane County
Post Office Box 294
Geneva, Illinois 60134

Dear Mr. Akemann:

I have your letter wherein you inquire whether a proposed sewage treatment facility which will treat waste produced only within the county in which it is located is a "wastewater treatment site" which must comply with the review procedures of the Wastewater Land Treatment Site Regulation Act. (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 581 et seq.; 415 ILCS 50/1 et seq. (West 1992).) For the reasons hereinafter stated, it is my opinion that such facilities are subject only to the review procedures set out in section 3 thereof (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 583; 415 ILCS 50/3 (West 1992)).

You have stated that the Otter Creek Water Reclamation District (OCWRD) was incorporated under the provisions of the

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Sanitary District Act of 1936 (Ill. Rev. Stat. 1991, ch. 42, par. 411.99 et seq.; 70 ILCS 2805/0.1 et seq. (West 1992)) for the purpose of serving a planned community known as Thornwood, to be located in unincorporated Kane County. OCWRD will operate a land-based sewage treatment facility which will collect sewage only from the Thornwood area and treat it entirely within Kane County. The Illinois Environmental Protection Agency (IEPA) has issued a letter approving the preliminary engineering plan for the facility, and Kane County has given zoning approval.

Section 2.04 of the Wastewater Land Treatment Site Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 582.04; 415 ILCS 50/2.04 (West 1992)) provides:

"'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 if such site is located outside of the county in which the waste was produced, but does not mean a digested sludge utilization site." (Emphasis added.)

Section 3 of the Act, however, provides:

"An applicant for a wastewater land treatment site located inside of the county in which the waste was produced shall submit its engineering report for concept approval, including proof of financial capability to operate and maintain such a system on a continuing basis, concurrently to the Illinois Environmental Protection Agency and any designated management agency in the facility planning area within which the system is located, and to any designated area-wide

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water quality planning agency within which the system is located. A designated management agency may review and comment to the Illinois Environmental Protection Agency regarding such engineering report. Such review and comment must be submitted to the Illinois Environmental Protection Agency within 45 days of submission of the engineering report. The Illinois Environmental Protection Agency shall consider such review and comment in its permit issuance process."
(Emphasis added.)

Lastly, section 3.05 of the Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 583.05; 415 ILCS 50/3.05 (West 1992)) provides:

"No person may establish, operate, manage or maintain any wastewater land treatment site or any digested sludge utilization site without first obtaining a permit from the Illinois Environmental Protection Agency. Any person who has both obtained such permit and obtained zoning approval of the project to be served by the site from the municipality or county having jurisdiction over the property on which the site is located, shall be exempt from all other requirements of this Act with respect to the site for which such permit and zoning approval were obtained."
(Emphasis added.)

The language of sections 2.04 and 3 of the Act is contradictory, in that section 2.04 defines the term "wastewater land treatment site" to include only sites which are located outside of the county in which the waste treated was produced, while section 3 of the Act specifically refers to in-county sites using the term which was defined, in section 2.04, to exclude them. It is, therefore, necessary to look beyond the language of the statute to determine its meaning. In construing a statute,

the history and course of the legislation, and the previous condition of the law on the subject, are matters which may properly be considered. People ex rel. Cason v. Ring (1968), 41 Ill. 2d 305.

The language in sections 2.04 and 3.05 which is emphasized in the above quotations, together with the language of section 3, was added to the Act by Public Act 85-1041, effective July 13, 1988. Also added at that time was section 2.08 (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 582.08; 415 ILCS 50/2.08 (West 1992)), which defines certain terms used in section 3. Although there was little debate on these provisions prior to passage, the explanations given by sponsors of the legislation are helpful in determining their meaning:

"* * * It [Senate Amendment 1] provides that an applicant for a waste water land treatment site designed to accept waste water produced inside the county shall submit to the county and the...IEPA its engineering report and proof of financial capability. All out-of-county provisions remain fully intact. The county will then have forty-five days to come in and the...Illinois EPA must consider such review and comment when issuing a permit. * * *" (Remarks of Sen. Macdonald, June 22, 1988, Senate Debate on House Bill 3425, at 238-39.)

"* * * Senate Amendment 1 amends the Waste Water Land Treatment Site Regulation Act to exempt waste water produced and treated in the same county from current county approval processing and in addition treatment projects for waste water brought in from

outside the county remains still subject to county review. * * * (Remarks of Rep. Peterson, June 27, 1988, House Debate on House Bill 3425, at 49.)

These remarks clearly demonstrate a legislative intent to provide a different method for approval of a facility designed to accept waste produced only within the county in which it is located, while continuing the established procedures for sites which treat waste produced outside of the county.

Viewed from this perspective, the procedure set out in section 3 is to be applied to facilities which treat only local waste. The last sentence of section 3.05, read in this context, exempts from the other siting requirements of the Act a facility which (1) complies with the requisites of section 3; (2) obtains IEPA permits; and (3) obtains county zoning approval.

Therefore, it is my opinion that a facility which will treat only waste produced within the county in which it is located is required to submit its engineering report to the IEPA and any designated management agency for approval pursuant to section 3, but is not required to submit its program to the steering committee created by section 3.01 of the Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 583.01; 415 ILCS 50/3.01 (West 1992)). Further, if it obtains zoning approval, it need not also seek a certificate of authorization from the county board which would otherwise be required by section 4 of the Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 584; 415 ILCS 50/4 (West 1992)),

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with respect to that site. County control in such instances is to be exercised through the zoning process and the review procedure in section 3, rather than by the means otherwise provided in the Act.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL