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March 24, 1994

FILE NO. 94-006

COUNTIES:

Authority of County to Implement  
and Enforce Solid Waste Recycling Program

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Gentlemen:

I have your letters wherein you have inquired whether a county may, pursuant to a recycling program adopted in accordance with the provisions of the Solid Waste Planning and Recycling Act (Ill. Rev. Stat. 1991, ch. 85, par. 5951 et seq.; 415 ILCS 15/1 et seq. (West 1992)), require all waste generators, including units of local government and school districts, to send recyclable waste to a county owned or approved facility. Mr. Lyons has also inquired whether a county may: (1) require waste haulers and operators to report the amounts of waste generated and

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recycled; (2) charge a volume based fee or penalty to those who do not recycle to create an incentive for recycling, and use the proceeds to support a materials recycling center and related programs; and (3) charge a volume based fee at landfills operated within the county to fund a material recycling facility and other waste management programs. For the reasons hereinafter stated, it is my opinion that a county is authorized to impose each of the requirements and charges concerning which you have inquired.

The Solid Waste Planning and Recycling Act was enacted to reduce the environmental burden created by the disposal of waste, and to diminish the flow of certain materials into landfills (Ill. Rev. Stat. 1991, ch. 85, par. 5952; 415 ILCS 15/2 (West 1992)). Subsection 2(a) of the Act (Ill. Rev. Stat. 1991, ch. 85, par. 5952(a); 415 ILCS 15/2(a) (West 1992)) provides, in part:

" \* \* \*

(2) \* \* \* counties should have the primary responsibility to plan for the management of municipal waste within their boundaries to insure the timely development of needed waste management facilities and programs;

\* \* \*

"

(Emphasis added.)

For purposes of the Act, the term "municipal waste" is defined as follows:

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" \* \* \*

'Municipal waste' means garbage, general household, institutional and commercial waste[,] industrial lunchroom or office waste, landscape waste, and construction and demolition debris.

\* \* \* " (Ill. Rev. Stat. 1991, ch. 85, par. 5953; 415 ILCS 15/3 (West 1992).)

In addition, each county (as well as each municipality with a population exceeding 1,000,000) is expressly required to adopt and submit to the State a detailed plan for the management of municipal waste produced within its territory. (Ill. Rev. Stat. 1991, ch. 85, par. 5954; 415 ILCS 15/4 (West 1992).) An integral component of each of the county waste management plans is a recycling program. (Ill. Rev. Stat. 1991, ch. 85, par. 5956; 415 ILCS 15/6 (West 1992).)

Under subsection 2(a) of the Act, counties bear the primary responsibility for developing plans to manage recyclable materials and other municipal waste generated within their boundaries. Section 6 of the Act (Ill. Rev. Stat. 1991, ch. 85, par. 5956; 415 ILCS 15/6 (West 1992)) provides, in pertinent part:

"Each county waste management plan adopted under Section 4 shall include a recycling program. Such recycling program:

(1) shall be implemented throughout the county and include a time schedule for implementation of the program.

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\* \* \*

(3) shall be designed to recycle, by the end of the third and fifth years of the program, respectively 15% and 25% of the municipal waste generated in the county, subject to the existence of a viable market for the recycled material, based on measurements of recycling and waste generated in terms of weight. \* \* \*

(4) may provide for the construction and operation of one or more recycling centers by a unit of local government, or for contracting with other public or private entities for the operation of recycling centers.

(5) may require residents of the county to separate recyclable materials at the time of disposal or trash pickup.

(6) may make special provision for commercial and institutional establishments that implement their own specialized recycling programs, provided that such establishments annually provide written documentation to the county of the total number of tons of material recycled.

\* \* \*

(9) shall include provisions for compliance, including incentives and penalties.

\* \* \*

"

(Emphasis added.)

Based upon the purpose and language of the Act, I have previously concluded, in opinion No. 91-034, issued November 20, 1991, that a county's authority to implement a recycling program "throughout the county" included the authority to implement its program within incorporated areas of the county. In my opinion,

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the construction accorded to section 6 of the Act in opinion No. 91-034 and the authorities cited therein also require the conclusion that the recycling program will be applicable to other units of local government and school districts.

Further evidence that the county's recycling program, as part of a solid waste management plan, is applicable to units of local government is found in section 5-15010 of the Counties Code (Ill. Rev. Stat. 1991, ch. 34, par. 5-15010; 55 ILCS 5/5-15010 (West 1992)), which provides, in part:

"Disposal of sewage, refuse and wastes; service contracts. The county board shall have authority to control and regulate the disposal of sewage, refuse and any other wastes from any premises within the borders of the county, except with respect to waste management in a municipality that has severed itself from county jurisdiction under Section 5-15006, and to this end may adopt suitable ordinances.

\* \* \*

For the purpose of controlling and regulating the disposal of wastes throughout the county, the county board may appoint a county solid waste committee to develop and implement a solid waste management plan. The committee shall be composed of members of the county board and representatives of the municipalities throughout the county. The county solid waste committee shall adopt by-laws, by a majority vote of the county and municipal members, to govern the functions of the committee and its subcommittees. Any resolution establishing a county solid waste committee, or any amendment to that resolution, shall be adopted by 2/3 of the county board members present and voting at the ses-

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sion in which the resolution is considered. This Section shall apply to any resolution establishing a solid waste committee approved any time after March 1, 1987.

The county is authorized to prepare a solid waste management plan, as that term is described by the Local Solid Waste Disposal Act. After the preparation of the plan, the county board shall hold hearings on the plan and shall afford interested persons an opportunity to be heard. The hearing shall be held in the county seat. Notice of any hearing shall be published at least 15 days in advance of the hearing in a newspaper of general circulation published in the county. The notice shall state the time and place of the hearing and the place where copies of the proposed plan will be accessible for examination by interested parties. Within 30 days after the hearing the county board may approve the plan.

The county board is further authorized to adopt any procedures necessary to implement the plan and provide by ordinance, license, contract or other means that the methods of disposal of solid waste shall be the exclusive methods of disposal to be allowed anywhere within the borders of the county, notwithstanding the fact that competition may be displaced or that the ordinance, license, contract or other measure may have an anti-competitive effect. Notwithstanding the granted authority the county shall not have the authority to control or regulate the collection of waste within the corporate boundaries of any municipality.

\* \* \*

"

The final paragraph of section 5-15006 of the Counties Code (Ill. Rev. Stat. 1991, ch. 34, par. 5-15006; 55 ILCS 5/5-15006 (West 1992)) provides:

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" \* \* \*

Any county exercising the powers granted by this Division relative to waste management, shall do so only after adopting a solid waste management plan as that term is described in the Local Solid Waste Disposal Act, as now or hereafter amended. All powers, other than those relative to water works systems and sewerage systems granted by this Division, may be exercised throughout the county, without exception; provided that a municipality which is located in 2 or more counties, one of which is a home rule county, may, by ordinance, sever itself from county jurisdiction relative to waste management if the municipality is a member of a Municipal Joint Action Agency formed prior to June 15, 1988 pursuant to Section 3.2 of the Intergovernmental Cooperation Act."

These sections plainly and unambiguously authorize a county to regulate the disposal of waste from any premises within the county, subject only to a very narrow exception granted to certain municipalities. It is well established that where a statute contains an expressed exception, all other possible exceptions which are not expressed are thereby excluded.

(Howlett v. Doglio (1949), 402 Ill. 311.) Thus, sections 5-15006 and 5-15010 of the Counties Code support the conclusion that the county's recycling program is to be applicable to other units of local government.

I would note that section 7 of the Solid Waste Planning and Recycling Act (Ill. Rev. Stat. 1991, ch. 85, par. 5957; 415 ILCS 15/7 (West 1992)) provides that a township which operates a

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recycling program which conforms to or exceeds the county plan may continue to operate its program after the county plan is implemented. Further, that section also permits counties to enter into written agreements with others, including municipalities, for joint responsibility for implementation of programs. Section 5 of the Act (Ill. Rev. Stat. 1991, ch. 85, par. 5955; 415 ILCS 15/5 (West 1992)) requires that municipalities and other entities be involved in the designing of a plan. Thus, the statute is not intended to grant to a county absolute authority over recycling efforts, but to give the county overall responsibility for implementing a county-wide plan.

Mr. Lyons' first additional inquiry concerns whether a county can require all waste haulers and waste operators within the county to report the amounts of waste generated and recycled. It is my opinion that subsections 6(3) and 6(9) of the Act, which are quoted above, necessarily imply that the county has such authority. Subsection 6(3) requires that the recycling program be designed to recycle specified percentages of waste within three and five years of implementation. Subsection 6(9) requires that the program include provisions for compliance, including incentives and penalties. In order for the county to determine whether a plan will or does result in a specific percentage of waste being recycled, it is necessary that the county collect information concerning the amount of waste generated and the



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amount recycled. Without such information, measuring compliance would be impossible. Because such information is necessary to carry out the purpose of the statute, but no specific means for collecting the information is provided, it is my opinion that the county may exercise its discretion with respect to the means of collection, including requiring that waste handlers report amounts of waste which they handle or process.

Mr. Lyons has also inquired whether a county may charge a volume based penalty or fee to waste sources which do not recycle, as an incentive for recycling, the proceeds of which would be used to support programs pursuant to the Solid Waste Management Plan. It is my opinion that subsection 6(9) of the Act authorizes the county to include such penalties as part of its provisions for compliance with the recycling program. As quoted above, subsection 6(9) specifically authorizes the promulgation of incentives to recycle and penalties for noncompliance with a recycling program. The ordinary meaning of the term "penalties" includes fees and fines. (Webster's Third New International Dictionary (1981), p. 1668.) Where the language of a statute is clear, its meaning should be given effect without resort to supplementary principles of statutory construction. Sunderland v. Tri-City Com. Unit School Dist. (1990), 193 Ill. App. 3d 266.

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Lastly, Mr. Lyons has inquired whether a county may charge a volume based fee at all landfills operated within the county to fund a materials-recycling facility and other solid waste management programs. While the Solid Waste Planning and Recycling Act does not specifically authorize the imposition of such fees, other statutes do. Section 5-1047 of the Counties Code (Ill. Rev. Stat. 1991, ch. 34, par. 5-1047; 55 ILCS 5/5-1047 (West 1992)) specifically authorizes a county to charge fees at grounds or facilities furnished by the county, and subsection 22.15(j) of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1022.15(j); 415 ILCS 5/22.15(j) (West 1992)) specifically authorizes the county to impose a tipping fee upon solid waste disposal facilities located within the county with regard to the permanent disposal of solid waste. The proceeds of the tipping fee must be used for solid waste management purposes, which would, I believe, include implementation of a plan adopted pursuant to the Solid Waste Planning and Recycling Act. The section sets forth limits upon the fee, based upon a combination of factors which must be considered in each county individually.

In view of the detailed tipping fee structure set out in the Environmental Protection Act, and the lack of any reference to such fees in the Solid Waste Planning and Recycling Act, it is my opinion that, with respect to non-county owned facili-

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ties, any such fee must be imposed, if at all, in accordance with the former Act. Acts regarding the same subject matter should be read as in pari materia, and should be consistently construed. (People v. Maya (1985), 105 Ill. 2d 281.) If the Solid Waste Planning and Recycling Act was construed so as to permit the imposition of fees greater than those which are permitted by the Environmental Protection Act, the detailed provisions of the latter would be rendered superfluous. Such a construction must be avoided. Williams v. Ill. State Scholarship Comm'n (1990), 139 Ill. 2d 24.

In summary, it is my opinion that a county may require all waste generators within the county, including other units of local government, to send recyclable waste to a county approved facility. Further, it is my opinion that a county may: (1) require waste handlers to report the amounts of waste generated and recycled for compliance purposes; (2) charge a volume based penalty to encourage recycling; and, (3) charge a tipping fee at landfills in conformity with the provisions of the Environmental Protection Act.

Respectfully yours,



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