



Gregory J. Swain, County Attorney

MEMORANDUM

To: Council Members, Anne Arundel County Council

Through: Gregory J. Swain, County Attorney /s/

From: Kelly Phillips Kenney, Supervising County Attorney /s/

Date: April 5, 2021

Subject: Bill No. 29-21 – 2021 Amendments to the Solid Waste Management Plan

Legislative Summary

This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 29-21. The summary is intended to explain the purposes and legal effects of the bill.

Purpose.

Purpose and Background. The primary purpose of Bill No. ___-21 is to amend the County's Solid Waste Management Plan ("SWMP") to include a reference to the Veteran Compost facility, which is a facility proposed to begin operation in Lothian.

The SWMP is the document that plans for waste management within the County for a period of ten years. State law requires that counties adopt certain plans, including the SWMP. MD. CODE ANN., ENVIR., § 9-505. In the County's role of planning for solid waste management, the County does so within very narrow parameters, and under close supervision by Maryland Department of the Environment ("MDE"). Private solid waste acceptance facilities are regulated by MDE, and applicants are required to obtain a Refuse Disposal Permit in accordance with § 9-204, *et. seq.* of the Environment Article of the Annotated Code of Maryland prior to beginning an operation. Only MDE is authorized to approve such facilities, and the inclusion of a private facility in the SWMP is nothing more than recognition that the facility is either operating or proposed for operation within the County.

Note: This Legislative Summary provides a synopsis of the bill as introduced. It does not address subsequent amendments to the bill.

It is important to start with the understanding that inclusion of any private facility in the SWMP is not an approval of the facility. It is just a step in a larger process. The County's role with regard to private solid waste facilities is limited, and the County is largely preempted from the approval process by State law. Beyond the County's exercise of its zoning power,¹ the County's role with regard to private solid waste facilities is to advise MDE whether a proposed facility meets all applicable zoning and land use laws and is in conformity with the SWMP. MD. CODE ANN., ENVIR., § 9-210(a)(3).

State law also requires that a SWMP include a reference to private facilities. (COMAR 26.03.03.03.D(1)(5)). COMAR 26.03.03.05.A(1) indicates that a county SWMP shall be revised if deemed necessary by MDE. Facilities are required to be included in the SWMP before a permit can be issued by MDE. (COMAR 26.03.03.05.A(3) (a county plan shall be revised to include a facility before the issuance of a permit by MDE)). Inclusion in the plan "[i]s a final step in the [State] permitting process, i.e., an assurance that all operating landfills are properly designated in the County's [SWMP]." *Holmes v. Maryland Reclamation Assocs.*, 90 Md. App. 120, 132 (1992).

The State law gives the County no discretion in this regard, regardless of whether the facility is needed or is situated in a desirable location. *Holmes*, 90 Md. App. at 131-32; *Queen Anne's County v. Days Cove Reclamation Co.*, 122 Md. App. 505, 523-25 (1998). The County has no veto power over private solid waste facilities and is preempted by State law from making site specific decisions on private facilities. The County's role is ministerial and amounts to nothing more than a clerical function. No matter how legitimate a county's concerns for not having a private waste facility in any location, the approval of a site is solely within the province of MDE, and reference to the facility in the SWMP is required. *Holmes*, 90 Md. App. at 137. That is not to say that the public or the County itself does not have an avenue to voice any concerns about a proposed facility – such an opportunity arises both during hearings before MDE and any zoning hearings that may be required under County law.² After it is established that a private waste facility meets zoning and land use laws and conforms with the SWMP,³ the next step is to go before the County Council to have the SWMP revised (at the request of MDE) to identify the proposed facility.⁴

Ordinance provisions.

¹ The County is authorized to allow certain uses in certain zones, or to place conditions or other zoning restrictions on such uses, subject to certain constraints not relevant to the current bill.

² Additionally, if a use is only allowed under the zoning code as special exception (as most are), there would be an opportunity to be heard at any special exception hearings as well.

³ In determining whether a site conforms to the SWMP, there is very little inquiry on the part of DPW, because the current SWMP does not contain any restrictions on private facilities such as siting locations, type of waste, or other specific factors. To the extent any such provisions exist in the SWMP, DPW would have to confirm the proposed site conforms to the same.

⁴ As far as the question of whether this Council can refuse to amend the SWMP to include reference to a specific private facility, such a refusal conflicts with State law and is not recommended. MDE is authorized by State law to require a County to amend its SWMP. If a County refuses to make a required revision to a SWMP, MDE may withhold water, sewer, or solid waste permits in the County. MD. CODE ANN., ENVIR., § 9-506(c). MDE may also issue a county written notice of the SWMP inadequacy, which gives a county a right to go through an administrative appeal process. *Id.* Additionally, refusal to include a private facility in the SWMP could open the County up to a claim for damages from the facility owners, as well as possible injunctive actions to compel the County to include the facilities in the SWMP.

Item 1 of the Bill sets forth the change to be made in the Proposed Private Waste Processing Facilities Section of the SWMP to include a reference to the Veteran Compost facility.

The Office of Law is available to answer any additional questions regarding this Bill. Thank you very much.

cc: Honorable Steuart Pittman, County Executive
Dr. Kai Boggess-de Bruin, Chief of Staff
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