

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF ROMULUS,

Plaintiff-Counter-Defendant-Appellee,

v

ENVIRONMENTAL DISPOSAL SYSTEMS,
INC.,

Defendant-Counter-Plaintiff-
Appellant.

UNPUBLISHED
October 15, 1999

No. 207850
Wayne Circuit Court
LC No. 93-330171 CE

Before: Bandstra, C.J., and Markey and Talbot, JJ.

BANDSTRA, C.J. (*concurring*).

I agree with the majority that this matter should be reversed and summary disposition granted in favor of defendant. However, I think the majority needlessly determines that DNR rules promulgated under Section 26(3) exempted defendant only from the operating license requirements of the HWMA, but not the other requirements of the statute. I disagree with the apparent assumption of this analysis, i.e., that defendant can be denied the benefits of the statute if DNR rules provide too broad an exemption from the statute's requirements. Section 21 of this statute clearly prohibits local requirements from preventing the construction of the disposal facility at issue here and that protection for defendant would survive regardless of any rules promulgated by the DNR under Section 26(3). That Section, by its terms, only provides for rules which may "exempt certain hazardous wastes and certain treatment, storage or disposal facilities from all or portions of *the requirements of this act*." (Emphasis supplied). Section 26(3) does not, therefore, authorize rules that would totally exempt a facility from the HWMA. Section 21 does not impose any requirement on a hazardous waste facility; to the contrary, it confers a benefit - the preemption of local requirements. While Section 26(3) clearly authorizes rules that provide *exemptions from statutory requirements*, it does not authorize rules that would *deny benefits* provided by the statute.

/s/ Richard A. Bandstra