

[J-35-2003]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

HYDROPRESS ENVIRONMENTAL SERVICES, INC.,	:	No. 112 MAP 2002
	:	
Appellee,	:	Appeal from the Order of the
	:	Commonwealth Court, entered March 7,
	:	2002 at No. 1436 CD 2001, affirming the
	:	Order of the Court of Common Pleas of
v.	:	Northampton County, entered May 30,
	:	2001 at No. C0048-CV-2000-009008.
	:	
TOWNSHIP OF UPPER MOUNT BETHEL, COUNTY OF NORTHAMPTON,	:	
	:	
Appellant.	:	ARGUED: April 8, 2003
	:	
	:	
	:	

CONCURRING AND DISSENTING OPINION

MR. JUSTICE CASTILLE

Decided: November 25, 2003

I join the Lead Opinion insofar as it concludes that appellee had standing to pursue the declaratory judgment action. On the merits, however, I find myself in partial dissent, as I would affirm the order below outright on grounds of preemption.

After careful consideration of the matter, including the briefs of the various amici, it is my view that the courts below correctly recognized that the pervasive state regulation in this specialized area, embodied in and authorized by the Solid Waste Management Act (SWMA), 35 P.S. § 6018.101 *et seq.*, indicates a clear legislative intention to preempt the field from local regulation. As the lead opinion correctly recognizes in its discussion of the Township's police power, the Township has only those powers delegated to it by the

General Assembly. While I agree with the lead opinion that the statement of purpose accompanying the SWMA encourages cooperative efforts on the part of state and local authorities, that statement of purpose is not an implied delegation of power to units of local government to add levels of regulation beyond that which is specifically authorized in the SWMA. Rather, it is the Pennsylvania Department of Environmental Protection (PADEP), as the expert in this area, which alone is delegated the comprehensive regulatory authority. Absent a similar or reserve delegation of power to local authorities within the SWMA, I do not view this legislation as remotely contemplating some reserved or implied regulatory role for local government. Indeed, the notion that the General Assembly contemplated that a subject such as this should be subject to the inevitable balkanization that would follow from permitting onerous regulations propounded by the myriad of local governmental entities, unskilled in this area, which exist in this Commonwealth, is implausible.

As this Court noted in Western Pennsylvania Restaurant Ass'n v. Pittsburgh, 77 A.2d 616 (Pa. 1951), when “the general tenor of [a] statute indicates an intention on the part of the legislature that it should not be supplemented by municipal bodies, that intention must be given effect and the attempted legislation held invalid.” Id. at 620 (citations omitted). In my view, even absent an express statement from the General Assembly, the pervasive state regulation of the specialized field here, and the absence of any delegated authority to local government to co-occupy the field, makes plain a legislative intent not to permit supplemental municipal regulation.¹

I should also note that I do not disagree with the lead opinion’s analysis of the alternative question of whether the Ordinance exceeds the general police authority

¹ It is a separate question, not raised here, whether the allocation of the cost of road improvements to the prospective users of those roads -- such as required by Section 4(c) of the Ordinance -- could exist within the context of a more general ordinance which did not specifically target vehicles carrying biosolids or other waste materials.

reserved to Townships of the Second Class. But, in my mind, this is the inevitable reverse side of the preemption argument: *i.e.*, had any such power been delegated to such a unit of local government, the preemption argument necessarily would fail. The important question presented here is one which I would resolve on a state-wide basis, without inviting a municipality-by-municipality inquiry into the otherwise-delegated powers reserved to the various forms of local government recognized in this Commonwealth. I would hold that the SWMA preempts **any** local regulation of the land application of waste material such as biosolids, septage or sewage sludge. Therefore, I would not reach the additional and alternate question of whether the Ordinance exceeds the Township's police power.

As I would affirm the order below outright, I join only in that portion of the mandate which affirms.

Messrs. Justice Saylor and Eakin join this concurring and dissenting opinion.