



## Client Alert

MACDONALD, ILLIG, JONES AND BRITTON LLP

MARCH 2010

### Ohio Supreme Court Recognizes Limit on Scope of Ohio EPA's Authority/Appeals Court Thereafter Invalidates Local Solid Waste District Rule

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In *National Solid Wastes Management Association v. Stark-Tuscarawas-Wayne Joint Solid Waste Management District*, 124 Ohio St.3d 197, 2009-Ohio-6755, the Ohio Supreme Court held that the Director of the Ohio Environmental Protection Agency ("Ohio EPA") was not a necessary party to an action brought by the Plaintiff that challenged local waste management rules adopted by the Stark-Tuscarawas-Wayne Joint Solid Waste Management District ("STW District"). The Court based its decision on the conclusion that the Ohio EPA did not have the authority to enforce local rules adopted by solid waste management districts. Ohio EPA only has the authority to enforce "rules having uniform application throughout the state governing solid waste facilities." R.C. 3734.02. Local rules are not rules that have uniform application throughout the state, and therefore Ohio EPA does not have the authority to enforce them. Under R.C. 343.01(G), the power to enforce local rules rests with the board of county commissioners of a county district or board of directors of a joint district.

The implication for those located in solid waste management districts that have local rules, or those affected by those local rules, is that any issue you have with such local rules is a dispute only between yourself and the local entity, not the state.

An interesting aspect of this case that has yet to be resolved by the Ohio Supreme Court is the underlying local rule that was being challenged. The local rule prohibited landfill located within the STW District from receiving waste from outside the district unless the originating district could establish that it met the STW District's recycling standards. The Ohio Supreme Court did not reach the substantive challenge of this rule because the Court of Appeals had not decided the issue. So, the Ohio Supreme Court sent the case back to the Appeals Court.

On January 25, 2010, the 5th District Court of Appeals held that the STW District's local rules had to be contained in its Ohio EPA-approved district plan and since the STW District plan did not allow for the adoption of local rules, the local rules adopted by the STW District were not valid. An appeal to the Ohio Supreme Court is expected.

For more information, please contact the author of this article, any member of MacDonald Illig's Environmental Group, or the MacDonald Illig attorney with whom you've worked.

#### For more information:

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