

May 14, 2024

The Honorable Eric C. Stewart  
Logan County Prosecuting Attorney  
117 E. Columbus Avenue  
Bellefontaine, OH 43311

SYLLABUS: 2024-004

1. Whether a composting facility is considered “agriculture” under R.C. 519.01 and exempt from township zoning resolutions under R.C. 519.21(A) is a question of fact to be determined by the township.
2. A township may only regulate a non-agriculture composting facility as a conditional use if the township zoning resolutions include composting or solid waste facilities as permitted conditional uses.
3. If there is a dispute over the applicability of the township zoning resolutions to a composting facility, a township may address this via the procedures outlined in R.C. 519.23-.24.
4. If a composting facility, located in a township, receives a permit from the Ohio Environmental Protection Agency, the facility must also comply with the township zoning resolutions unless it is considered “agriculture.”



# DAVE YOST

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OPINION NO. 2024-004

The Honorable Eric C. Stewart  
Logan County Prosecuting Attorney  
117 E. Columbus Avenue  
Bellefontaine, OH 43311

Dear Prosecutor Stewart:

You have requested an opinion regarding the applicability of township zoning ordinances to composting facilities. I have framed your questions as follows:

1. If the majority of feedstock for a compost facility is produced entirely off-site and trucked into the township, does that composting constitute “agriculture” if there is minimal farming activity on the property as defined or described by R.C. 519.01?
2. Can township zoning resolutions regulate all four classes of composting facilities as solid waste facilities under R.C. 3734.40 and Ohio Administrative Code 3745-560-02 by considering such as “conditional use” if the zoning resolutions do not explicitly address composting as a permitted or conditional use?
3. What recourse does a township have if a composting facility operator claims to be

exempt from the township zoning resolutions as an “agricultural use” pursuant to R.C. 519.21, even though composting is not specified in that statute?

4. Does a township have any recourse if the Ohio Environmental Protection Agency (Ohio EPA) issues a permit for a composting facility when a property owner fails to secure a zoning permit, conditional use, or variance?

## I

To properly address your questions, some background information regarding township zoning authority and an overview of composting will be useful.

## A

“Zoning regulations are a result of the exercise of governmental police power.” *Am. Aggregates Corp. v. Warren Cty. Commrs.*, 39 Ohio App.3d 5, 6, (12th Dist. 1987); *see also Negin v. Bd. of Bldg. & Zoning Appeals*, 69 Ohio St.2d 492, 495, (1982) (“It is virtually axiomatic that the enactment of zoning laws by a municipality is an exercise of the police power to provide for the public health, safety, morals, or general welfare”).

The police power of Ohio is almost exclusively vested in the General Assembly by Article II, Section 1 of the Ohio Constitution. However, the Home Rule provision in Article XVIII, Section 3, of the Ohio

Constitution gives municipalities (cities and villages) direct authority to enact their own regulations under their police powers—including those related to zoning—that are not in conflict with general state laws. A county’s zoning authority comes from a statutory grant from the General Assembly (and though rarely used—only two in Ohio at the time of writing—it is worth noting that Article X, Sections 3-4, of the Ohio Constitution give county voters the ability to frame a charter for their county with limited police powers). *E.g., Am. Aggregates Corp. v. Warren Cty. Commrs.*, 39 Ohio App.3d 5, 6, fn. 1 (12th Dist. 1987) ; *Schellhardt v. Mercer Cty. Commrs.*, 2008-Ohio-2116, ¶ 17 (3d Dist.) (“a county ... like townships, derives their [sic] authority to enact zoning regulations from the State via the General Assembly”).

Townships have no constitutional authority and their ability to enact police power laws and zoning resolutions is derived solely by legislative enactments. *See, e.g., Yorkavitz v. Bd. of Twp. Trustees*, 166 Ohio St. 349, 351, (1957); *Ketchel v. Bainbridge Twp.*, 52 Ohio St.3d 239, 241, (1990), *cert. denied*, 498 U.S. 1120 (1991) (“townships only have the zoning power delegated to them by the General Assembly”); *see also* R.C. Chapter 504 (limited home rule townships). Regardless of the origination of their authority, all zoning codes, resolutions, and ordinances enacted by these political subdivisions must be consistent with “constitutional limits on the exercise of the police power” and “may not ... conflict with provisions of state or federal law.”

1994 Op. Att’y Gen. No. 94-040, at 2-207; 1994 Op. Att’y Gen. No. 94-098, at 2-492.

Pursuant to R.C. 519.02, the board of township trustees is authorized, “in the interest of the public health and safety, to adopt resolutions limiting the size and location of buildings and other structures and the uses of land for trade, industry, residence, recreation, or other purposes” subject to the limitations in R.C. 519.21. *Terry v. Sperry*, 2011-Ohio-3364, ¶ 20. The process by which a township enacts its zoning resolutions is set forth in R.C. 519.03-.11. *See, e.g.*, 2003 Op. Att’y Gen. No. 2003-022, at 2-170 to 2-171 (summarizing this process). To amend the resolutions, the procedure is outlined in R.C. 519.12. *See generally*, 1972 Op. Att’y Gen. No. 72-118.

“Each board of township trustees is given discretion to determine whether such a provision is reasonable and appropriate as applied to its township, and whether it serves the purposes of township zoning as set forth in R.C. 519.02.” 1994 Op. Att’y Gen. No. 94-040, at 2-208; *accord Willot v. Village of Beachwood*, 175 Ohio St. 557, 560, (1964). The township zoning resolutions “must be based on ‘legitimate health and safety concerns,’ rather than ‘an attempt to prohibit, in the guise of health and safety regulation, that which the state encourages.” 1997 Op. Att’y Gen. No. 97-002, at 2-10, quoting *Newbury Twp. Bd. of Twp. Trustees v. Lomak Petroleum, Inc.*, 62 Ohio St.3d 387, 391, (1992); *see also*

1994 Op. Att’y Gen. No. 94-098, at 2-492 and 2-495; 2002 Op. Att’y Gen. No. 2002-022, at 2-149 (“any zoning resolution or ordinance will be deemed to be unconstitutional if it is clearly arbitrary or unreasonable, with no substantial relation to the public health, safety, morals, or general welfare”); accord *E. Fairfield Coal Co. v. Booth*, 166 Ohio St. 379, 382, (1957).

## B

“Composting” is “the process of biological decomposition of solid wastes under controlled conditions resulting in compost. Controlled conditions include but are not limited to grinding, shredding, chipping, mixing feedstocks, bulking agents and additives, piling, physical turning, aerating, adding moisture, performing procedures to achieve human pathogen reduction, or other processing of solid wastes.” Ohio Adm.Code 3745-560-02(C)(11). The input for a composting facility is “feedstock,” defined as “a solid waste that will readily decompose during the composting process including but not limited to yard waste, agricultural waste, animal waste, food scraps, animal carcasses, raw rendering material, and mixed solid waste.” Ohio Adm.Code 3745-500-02(F)(1). To “provide structural support, improve aeration, or absorb moisture” during the composting process, bulking agents such as “wood chips, straw, clean untreated wood, shredded newspaper, shredded cardboard, sawdust, shredded brush, shredded yard waste, compostable containers, and stover”

may be added. Ohio Adm.Code 3745-560-02(B)(2). The output of a composting facility is “compost,” “a humus-like organic material resulting from the biological decomposition of solid waste.” Ohio Adm.Code 3745-560-02(C)(7).

Composting is considered a method of processing solid wastes, and therefore a facility that performs this function is considered a solid waste facility for the purposes of R.C. Chapter 3734. 2015 Op. Att’y Gen. No. 2015-029, paragraph two of the syllabus; *see also* R.C. 3734.01(N) (the definition of a “facility” includes a site used for composting). Class I composting facilities therefore must be licensed by the board of health of the health district where the facility is located or the Ohio EPA if the health district is not on the approved list pursuant to R.C. 3734.08 *and* must be permitted by the Ohio EPA. R.C. 3734.05(A)(1); R.C. 3734.05(B); Ohio Adm.Code 3745-560-100; *but see* R.C. 3734.05(A)(6) (exceptions to R.C. 3734.05(A)(1) and 3734.05(A)(2)(a)). A Class II composting facility must be licensed by the board of health of the health district where the facility is located or the Ohio EPA if the health district is not on the approved list pursuant to R.C. 3734.08 *and* must be registered with the Ohio EPA. Ohio Adm.Code 3745-560-200. A Class III or IV composting facility must be registered with the Ohio EPA. *See* Ohio Adm.Code 3745-560-300; Ohio Adm.Code 3745-560-400. More comprehensive guidance for

composting is provided on the Ohio EPA’s website. *Composting Guidance*, Ohio EPA (<https://epa.ohio.gov/divisions-and-offices/materials-and-waste-management/guides-and-manuals/composting-resources-and-guidance>)(last accessed May 10, 2024). All facilities must operate in accordance with rules promulgated by the Ohio EPA. R.C. 3734.01(N); R.C. 3734.02(A); R.C. 3734.02(C); R.C. 3734.02(N)(3); R.C. 3734.05; *see also* 2015 Op. Att’y Gen. No. 2015-029, Slip Op. at 4; 2-288. Standards for the resulting compost products are developed by the Ohio EPA and the Director of the Ohio Department of Agriculture (ODA) to ensure that they “[do] not pose a threat to public health or safety or the environment.” R.C. 3734.028(A).

## C

You have indicated that a composting facility possessing an Ohio EPA permit is located in a township in your county. This composting facility receives its feedstock from off-site providers, sends the resulting compost for use off-site, and performs minimal or no agricultural activities on the premises.

## II

Your first question asks whether a composting facility is considered “agriculture” for purposes of R.C. 519.01



and therefore exempted from township zoning resolutions under R.C. 519.21(A) as being used for “agricultural purposes.” If a composting facility is *not* considered “agriculture,” as defined in R.C. 519.01, or is not being used for “agricultural purposes,” then it would be subject to the township zoning resolutions.

“A determination of whether land is used for an agricultural purpose so as to be exempt from township zoning pursuant to Section 519.21, Revised Code, must be made upon a consideration of the facts relating to the use of the land,” which is beyond the scope of an opinion of the Attorney General. 1962 Op. Att’y Gen. No. 3440, p. 949, paragraph two of the syllabus; *accord State v. Huffman*, 20 Ohio App.2d 263, 270, (3d Dist. 1969). Instead, this determination is made by township zoning officials, who “may consider any factor they deem necessary and relevant in order to exercise their judgment in a reasonable manner,” including “the nature and character of all the other activities conducted on the land and the type and extent of any activities that are not conducted on the land to prepare the agricultural products.” 2002 Op. Att’y Gen. No. 2002-029, at 2-197 to 2-198; *see also* 1997 Op. Att’y Gen. No. 97-002 at 2-10 (“this determination will of necessity require an exercise of judgment in each particular instance”). Despite the fact-bound nature of this determination, I can provide you with the relevant principles used to make this determination. *See, e.g.*, 2009 Op. Att’y Gen. No. 2009-037, at 2-280.

A

Two statutes are involved in this analysis: R.C. 519.01, which defines “agriculture”; and R.C. 519.21(A), which exempts from township zoning resolutions agriculture and “buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located.”

R.C. 519.01 states that “agriculture” for the purposes of R.C. 519.02-.25:

includes farming; ranching; algaculture meaning the farming of algae; aquaculture; apiculture; horticulture; viticulture; animal husbandry, including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; and *the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production.*

(Emphasis added.)

In determining what this emphasized phrase means, 2002 Op. Att’y Gen. No. 2002-029, at 2-196 reasoned:

Neither the word “conjunction” nor “secondary” has been defined for purposes of R.C. 519.01. These words thus should be construed according to their common, ordinary meaning. R.C. 1.42; *see* 1997 Op. Att’y Gen. No. 97-002 at 2-10. A common meaning for the word “conjunction” is “occurrence together: concurrence esp. of events or routes.” *Webster’s Third New International Dictionary* at 480. The word “secondary,” when used as an adjective, commonly denotes “of second rank, importance, or value: next below the first in grade or class... : of less than first value or importance: inferior, subordinate.” *Webster’s Third New International Dictionary* at 2050.

Regarding the limitations of township zoning authority, R.C. 519.21(A) states that:

[e]xcept as otherwise provided in divisions (B) and (D) of this section, sections 519.02 to 519.25 of the Revised Code *confer no power on any township zoning*

*commission, board of township trustees, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture, and no zoning certificate shall be required for any such building or structure.*

(Emphasis added.)

“In other words, R.C. 519.21(A) provides two circumstances under which the use of a property is exempt from township zoning regulations: (1) the property is used for agricultural purposes or (2) the construction or use of buildings or structures on the property is incident to an agricultural use of the land.” *Terry v. Sperry*, 2011-Ohio-3364, ¶ 21. And “[t]he word ‘incident,’ when used in connection with the use of property, is generally said to mean anything which is usually connected with the principal use, something which is necessary, appertaining to, or depending on the principal use.” *Samsa v. Heck*, 13 Ohio App.2d 94, 101, (9th Dist. 1967). Statutes like this, which create exemptions from restrictive zoning

provisions, are to be liberally construed. *Litchfield Twp. Bd. of Trustees v. Forever Blueberry Barn, L.L.C.*, 2020-Ohio-1508, ¶ 7.

Put simply, R.C. 519.01 and R.C. 519.21(A) require that land on which the secondary activity occurs or the building/structure in question is located be primarily used for an agricultural purpose to qualify for an exemption from the township zoning resolutions. *E.g.*, 2009 Op. Att’y Gen. No. 2009-041, paragraph one of the syllabus; 1961 Op. Att’y Gen. No. 2280, p. 307, syllabus. This is based upon “the well-recognized legal principle that “a zoning regulation which restricts the use of land to certain purposes nonetheless allows accessory use of the land in a manner which is customarily incidental to its primary use.” 1988 Op. Att’y Gen. No. 88-051, at 2-227, citing *Samsa v. Heck*, 13 Ohio App. 2d 94, (9th Dist. 1967), paragraph two of the syllabus.

If, conversely, the principal use of the land is for business and the agricultural activities “were merely an accommodation to the ... business,” then it would not be considered “agriculture” under R.C. 519.01 or exempted under R.C. 519.21(A). *State ex rel. Fox v. Orwig*, 1995 Ohio App. LEXIS 4022, \*11 (11th Dist. Sept. 15, 1995); 1988 Op. Att’y Gen. No. 88-051, paragraph one of the syllabus; *see also Keynes Bros., Inc. v. Pickaway Twp. Trustees*, 1988 Ohio App. LEXIS 1028 (4th Dist. Mar. 25, 1988). Instead, this use of land would be deemed a commercial enterprise, regulated by the

township zoning resolutions. *E.g.*, 1961 Op. Att’y Gen. No. 2280, p. 309, 310; *accord Columbia Twp. Trustees v. French*, 1994 Ohio App. LEXIS 1497 (9th Dist. Apr. 6, 1994).

## B

“Composting” is not expressly listed as an agricultural activity in R.C. 519.01. Thus, for a composting facility to be considered “agriculture,” it must fall in the catchall provision of R.C. 519.01 and be done “in conjunction with, and secondary to, the production of the agricultural products” used for the composting. 2009 Op. Att’y Gen. No. 2009-041, at 2-304; *accord* 2002 Op. Att’y Gen. No. 2002-029, at 2-196. If the composting facility is located on land that does not engage in agricultural activity, composts agricultural products that are *not* produced on its premises, or does not use the compost on its premises, then the composting facility is likely not “agriculture” pursuant to R.C. 519.01. *See* 1961 Op. Att’y Gen. No. 2280, p. 307, 310; *see also Marik v. KB Compost Servs.*, 2000 Ohio App. LEXIS 157, \*16 (9th Dist. Jan. 26, 2000) (when the feedstock was not produced on the same premises where the composting occurred, and the compost produced was also not used on the premises, it was not “agriculture”). And if not “agriculture,” then it is subject to the township zoning resolutions. R.C. 519.21(A).

Whether a composting facility's activity is or is not "agriculture," as defined in R.C. Chapter 519, is a question of fact, and discretion to make this determination is vested with the township subject to judicial review. 1993 Op. Att'y Gen. No. 93-034, at 2-173 to 2-174. Accordingly, this opinion cannot provide a definitive answer to your first question. 2001 Op. Att'y Gen. No. 2001-032 at 2-193 ("[t]he Attorney General is not empowered, in rendering opinions, to exercise discretion on behalf of other public officials"); *accord* 2005 Op. Att'y Gen. No. 2005-002, at 2-12 (an Attorney General opinion cannot answer questions of fact).

### III

For the remaining three questions, I will presume that the township, exercising its discretion, has determined that the composting facility is *not* considered "agriculture" under R.C. 519.01, thereby subjecting it to the township zoning resolutions. R.C. 519.21(A); *see also* 2002 Op. Att'y Gen. 2002-029, paragraph one of the syllabus.

### A

Your second question is whether the township can regulate the four classes of composting facilities as solid waste facilities under R.C. 3734.40 and Ohio Adm.Code 3745-560-02 by granting a conditional use, even if the township zoning resolutions do not

expressly list “composting” as an approved conditional use.

The answer to this question depends upon what is contained in the township zoning resolutions. It is beyond the scope of this opinion to interpret particular zoning ordinances, so I cannot opine regarding any specific conditional uses that may be authorized by the township zoning resolutions or determine whether the language of any enumerated conditional uses would include composting. *See, e.g.*, 2000 Op. Att’y Gen. No. 2000-022, at 2-148, fn. 16 (“It is beyond the scope of this opinion to interpret a particular ordinance or determine its constitutionality”). However, as above, I can provide general guidance.

The township is authorized under R.C. 519.02, “for the purpose of promoting the public health, safety, or morals, to adopt regulations limiting the size and location of buildings and other structures and the uses of land for trade, industry, residence, recreation, or other purposes. *Permits for conditional uses permitted by a regulation may be granted by a township board of zoning appeals.*” (Emphasis added.) *Meerland Dairy LLC v. Ross Twp.*, 2008-Ohio-2243, ¶ 8 (2d Dist.). The board of zoning appeals “has no power, with respect to conditional use permits independent of that granted by the zoning regulations enacted by the township trustees.” 1997 Op. Att’y Gen. No. 1997-002, at 2-11, citing



*Gerzeny v. Richfield Township*, 62 Ohio St.2d 339, 342, (1980); *see generally* R.C. 519.13-.14.

Accordingly, a conditional use permit may only be granted if the “specific uses are provided for in the zoning resolution.” R.C. 519.14(C); *accord Community Concerned Citizens, Inc. v. Union Twp. Bd. of Zoning Appeals*, 66 Ohio St.3d 452, 455, (1993); *see also Rumpke Waste, Inc. v. Henderson*, 591 F.Supp. 521, 526 (S.D. Ohio 1984) (“a person seeking to use land in a particular fashion may apply to the board of zoning appeals for a conditional use permit, but only if the zoning resolution specifies that the proposed use is permitted in that district or zone pursuant to a conditional use permit”). Appeals from the board of zoning appeals are handled by the court of common pleas in the county wherein the township is located pursuant to R.C. Chapter 2506. *See, e.g., Karches v. City of Cincinnati*, 38 Ohio St.3d 12, (1988), paragraph one of the syllabus.

As such, a conditional use authorization may be issued only for a composting facility if either composting or a solid waste facility are expressly permitted as conditional uses in the zoning resolutions. 2015 Op. Att’y Gen. No. 2015-029, paragraph two of the syllabus (a composting facility is considered a “solid waste facility” for purposes of R.C. Chapter 3734).

## B

In your third question, you ask what recourse a township has if a composting facility claims pursuant to R.C. 519.21(A) to be exempt from the township zoning resolutions by virtue of it being “agriculture” as defined in R.C. 519.01, even if the word “composting” does not appear in either provision.

When a question arises regarding the application or interpretation of township zoning resolutions, R.C. 519.23-.24 outlines the causes of action that a township may pursue. R.C. 519.23 provides for a criminal cause of action if a building is erected or land is used in violation of R.C. 519.02-.25 or any resolutions adopted by the board of township trustees under this authority. Meanwhile, “R.C. 519.24 creates a cause of action to enjoin or abate violations of zoning regulations against landowners who use or propose to use their property in violation of R.C. 519.01 through 519.99” or in violation of any regulation or provision of the board of township trustees under this authority. *Rauch v. Jefferson Twp. Bd. of Zoning Appeals*, 2018-Ohio-4233, ¶ 39 (2d Dist.); *see also* R.C. 519.99 (a violation of R.C. 519.01-.25 results in a fine of no more than five-hundred dollar per offense). An action may be brought under R.C. 519.24 by the board of township trustees, “the prosecuting attorney of the county, the township zoning inspector, or any adjacent or neighboring property owner who would be especially damaged by such violation.”

The decision of whether to pursue a cause of action requires the exercise of discretion, and that is a decision for the parties involved. The Attorney General “will not exercise discretion that the General Assembly has conferred upon another public official,” “determine the reasonableness or lawfulness of actions either taken or contemplated by a public body,” or advise whether a civil action should be filed. 2001 Op. Att’y Gen. No. 2001-032, at 1-193; 2011 Op. Att’y Gen. No. 2011-042, at 2-345; 2016 Op. Att’y Gen. No. 2016-009, Slip Op. at 12; 2-102; *see also* 1986 Op. Att’y Gen. No. 86-076, at 2-422 (“it is inappropriate for me to use the opinion-rendering function to make findings of fact or determinations as to the rights of particular individuals”).

## C

Your final question asks what options a township has if a composting facility has received an Ohio EPA permit, license, and/or registration to operate, but the composting facility owner has not obtained a township zoning permit or been granted either a conditional use or variance by the township.

“[W]hen two authorities have the power to regulate an activity or use of land, there must be compliance with the regulations of both.” 1988 Op. Att’y Gen. No. 88-051, at 2-228. As stated in the background, the township is vested with authority to enact township zoning resolutions. *Litchfield Twp. Bd. of Trustees v. Forever*

*Blueberry Barn, L.L.C.*, 2020-Ohio-1508, ¶ 7. And as a solid waste facility, a composting facility is subject to regulation by Ohio EPA (with its products regulated by Ohio EPA in consultation with ODA) pursuant to R.C. Chapter 3734. R.C. 3734.01(N); R.C. 3734.02(A); R.C. 3734.02(C); R.C. 3734.02(N)(3); R.C. 3734.05; *see also* 2015 Op. Att’y Gen. No. 2015-029, Slip Op. at 4; 2-288; R.C. 3734.028(A). R.C. Chapter 3734 has been held to be a comprehensive statutory scheme “enacted to insure that such facilities are designed, sited, and operated in the manner which best serves the statewide public interest.” *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 48, (1982); *see also Franklin Cty., Regional Solid Waste Mgt. Auth. v. Schregardus*, 84 Ohio App.3d 591, 601, (10th Dist. 1992) (“The public policy of the state mandates strict licensing requirements for prospective owners and permittees of solid waste facilities”). There is no language in R.C. Chapter 3734 indicating that the regulations regarding composting facilities “supersede the authority of a township to enact zoning regulations.” 1995 Op. Att’y Gen. No. 95-038, at 2-205; *compare with* R.C. 3734.05(E) (prohibiting local zoning regulations of hazardous waste facilities), R.C. 3734.058(A) (prohibiting local zoning regulations of byproduct disposal facilities, which accept only coal combustion wastes), and R.C. 3734.80(A) (prohibiting a political subdivision from requiring additional permits, etc., for scrap tire monocell or monofill facilities).

“[T]ownship zoning and EPA regulation may coexist because they serve different purposes.” 1985 Op. Att’y Gen. No. 85-053, at 2-199; *accord Benton Twp. v. Rocky Ridge Dev., LLC*, 2020-Ohio-4162, ¶ 57 (6th Dist.). While the Ohio EPA is solely responsible for permitting and registering solid waste disposal facilities (and licensing, if the local board of health is not on the registered list), “its permit is subject to those local zoning provisions which do not conflict with the environmental laws and regulations approved by the state.” *Families Against Reily/Morgan Sites v. Butler Cty. Bd. of Zoning Appeals*, 56 Ohio App.3d 90, 94, (12th Dist. 1989); *see also* 1985 Op. Att’y Gen. No. 85-053, at 2-199 (“the fact that a state agency has authority to regulate a certain activity does not ... mean that a township may not enact zoning regulations which affect that activity”). Specifically, “R.C. 519.02 states that the purpose of the board of township trustees in adopting a comprehensive zoning plan is to protect the public health, safety and morals; whereas, R.C. 3734.02 prescribes that the Director of EPA regulate such sites for solid waste disposal to eliminate the possibility of nuisance, water pollution or a health hazard.” 1988 Op. Att’y Gen. No. 88-053, at 2-241; *accord Hülligan v. Columbia Twp. Bd. of Zoning Appeals*, 59 Ohio App.2d 105, 108, (9th Dist. 1978); *see also Families Against Reily/Morgan Sites v. Butler Cty. Bd. of Zoning Appeals*, 56 Ohio App.3d 90, 93, (12th Dist. 1989) (“Ohio EPA regulations and local zoning acts are deemed harmonious for the purpose of protecting the health,

safety, welfare and property of the citizens of the state of Ohio”).

In sum, a composting facility that is not considered “agriculture” under R.C. 519.01 is subject to both the township zoning resolutions and the applicable Ohio EPA licensing, permitting, and/or registration requirements, and “[t]he final and complete approval of the operation stems from the endorsement by both the state and local authorities.” *Set Prods. v. Bainbridge Twp. Bd. of Zoning Appeals*, 31 Ohio St.3d 260, 265, (1987). Accordingly, if the Ohio EPA permits a composting facility, this “does not mean that a particular smaller governmental entity must permit” it as well: “[i]t is for the zoning body itself to make the determinations as to the most appropriate land uses.” *Rumpke Waste Inc. v. Henderson*, 591 F.Supp. 521, 531 (S.D. Ohio 1984); *see also e.g., Mentor Lagoons, Inc. v. Zoning Bd. of Appeals*, 168 Ohio St. 113, 118, (1958) (“the question of whether a variance should or should not be authorized in a specific case is a matter within the sound discretion of the board of zoning appeals” and the court of common pleas is authorized to reverse any such decision if it is deemed unreasonable).

Therefore, if a property owner possesses a permit from the Ohio EPA to operate a composting facility but such land use is violative of township zoning resolutions, then the recourse provided in R.C. 519.23-.24 and

outlined in question three is available to the township and to others who may have standing.

### Conclusions

Accordingly, it is my opinion, and you are hereby advised that:

1. Whether a composting facility is considered “agriculture” under R.C. 519.01 and exempt from township zoning resolutions under R.C. 519.21(A) is a question of fact to be determined by the township.
2. A township may only regulate a non-agriculture composting facility as a conditional use if the township zoning resolutions include composting or solid waste facilities as permitted conditional uses.
3. If there is a dispute over the applicability of the township zoning resolutions to a composting facility, a township may address this via the procedures outlined in R.C. 519.23-.24.

4. If a composting facility, located in a township, receives a permit from the Ohio Environmental Protection Agency, the facility must also comply with the township zoning resolutions unless it is considered "agriculture."

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping initial "D" and a long, sweeping tail on the "y".

DAVE YOST  
Ohio Attorney General