

OPINION NO. 88-053**Syllabus:**

1. When an applicant has received a permit under R.C. Chapter 3734 for the installation and operation of a hazardous waste facility on a site in a township at which such use is not permitted by existing zoning, the township is prohibited by R.C. 3734.05(D)(3) from enforcing its existing zoning provisions.
2. Because polychlorinated biphenyl's (PCB's) are not hazardous wastes for purposes of R.C. Chapter 3745, a facility for the disposal of PCB's is not required to have a hazardous waste facility installation and operation permit issued pursuant to R.C. Chapter 3745 and is not exempted from township zoning provisions by R.C. 3734.05(D)(3).
3. A facility for the disposal of PCB's that is in compliance with requirements imposed by the Toxic Substances Control Act, 15

U.S.C. §§2601-2629, and rules adopted thereunder, is not exempted from township zoning provisions by 15 U.S.C. §2617, where such zoning provisions relate to general categories of land use, are not addressed to PCB's or other chemical substances or mixtures, and are not designed to protect against a risk of injury to health or the environment associated with any such substance or mixture.

4. A facility for the disposal of PCB's that is in compliance with state law governing air pollution control, solid waste disposal (other than the disposal of hazardous wastes), and water pollution control is not exempted from township zoning provisions by R.C. Chapter 3704, R.C. Chapter 3734, or R.C. Chapter 6111.
5. A facility for the disposal of PCB's that is not a public utility is not exempted from township zoning provisions by R.C. 519.211.
6. To the extent that a hazardous waste facility that is installed and operating pursuant to a hazardous waste facility installation and operation permit issued under R.C. Chapter 3745 performs functions, such as PCB disposal activities, that exceed the scope of its permit, R.C. 3734.05(D)(3) does not operate to exclude the facility from township zoning provisions.
7. A township may enforce its zoning provisions against aspects of a hazardous waste facility that exceed the scope of the hazardous waste facility's installation and operation permit, but it may not enforce such provisions in a manner that in any way alters, impairs, or limits the authority granted in the permit.

To: Robert P. DeSanto, Ashland County Prosecuting Attorney, Ashland, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 6, 1988

I have before me your request for an opinion concerning the siting of a facility for the disposal of hazardous wastes or polychlorinated biphenyls (PCB's) in a township within the State of Ohio. You have raised the following questions:

1. Assume a hazardous waste facility installation and operation permit has been granted to an applicant for a site planned for an area, of a township, where such use is not permitted by existing zoning. Can a township enforce its existing zoning ordinance so as to prohibit said facility until or unless it is granted a variance from the operation of the zoning law or the zoning plan is amended so as to permit the use?
2. Assume a facility, which is planned for the disposal of polychlorinated biphenyls (PCB's), has all federal and state permits for the disposal of PCB's. Is such a facility exempt from the existing local zoning laws if the enforcement of said zoning laws would impair or prohibit the facility from being built or operated? Assume the local zoning laws do not directly address or mention PCB's nor do they attempt to regulate PCB disposal.
3. Assume a hazardous waste facility installation and operation permit is issued to an applicant and that applicant intends to dispose of PCB's at the same facility for which the permit was granted. Does the fact that the PCB's will be disposed of at said facility subject the entire facility to local existing zoning even if the enforcement of that existing zoning law would impair or limit that part of the facility's operation that disposes of hazardous waste?

Since the situation with which you are concerned involves township zoning provisions, I am addressing only such provisions and am not considering zoning provisions of other political subdivisions.

Your first question involves a situation in which an applicant has received a permit for the installation and operation of a hazardous waste facility on a site in a township at which such use is not permitted by existing zoning. Your question is whether the township may enforce its existing zoning provisions to prohibit the installation or operation of the facility until or unless a variance is granted or the zoning plan is amended.

R.C. 3734.05(C) creates the Hazardous Waste Facility Board and authorizes it to approve or disapprove applications for hazardous waste facility installation and operation permits. R.C. 3734.05(E) provides that, with limited exceptions, "no person shall establish or operate a hazardous waste facility, or use a solid waste facility for the storage, treatment, or disposal of any hazardous waste, without a hazardous waste facility installation and operation permit from the hazardous waste facility board" issued in accordance with R.C. 3734.05 and subject to the payment of the appropriate application fee. R.C. 3734.05(B) governs the applications for such permits. R.C. 3734.05(C) establishes procedures that the Board must follow in considering an application for a hazardous waste facility installation and operation permit, including the holding of a public hearing and an adjudication hearing, and also sets forth findings that the Board must make before an application may be approved. In particular, the Board must find that the facility complies with hazardous waste standards adopted by the Director of Environmental Protection pursuant to R.C. 3734.12, *see* R.C. 3734.05(C)(6)(b); that the facility complies with rules and standards adopted under R.C. Chapter 3704 (air pollution control), R.C. Chapter 3734 (solid and hazardous wastes), and R.C. Chapter 6111 (water pollution control), *see* R.C. 3734.05(C)(6)(e); and that "the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives, and other pertinent considerations," *see* R.C. 3734.05(C)(6)(c).

The issue that you have raised is addressed by R.C. 3734.05(D)(3), as follows:

No political subdivision of this state shall require any additional zoning or other approval, consent, permit, certificate, or other condition for the construction or operation of a hazardous waste facility authorized by a hazardous waste facility installation and operation permit issued pursuant to this chapter, nor shall any political subdivision adopt or enforce any law, ordinance, or regulation that in any way alters, impairs, or limits the authority granted in the permit.

The plain language of R.C. 3734.05(D)(3) prohibits a political subdivision from requiring local approval for the construction or operation of a hazardous waste facility authorized by a hazardous waste facility installation and operation permit issued pursuant to R.C. Chapter 3734, or from adopting or enforcing any provision that alters, impairs, or limits the authority granted in the permit. *See generally Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948); *Swetland v. Miles*, 101 Ohio St. 501, 130 N.E. 22 (1920) (syllabus, paragraph 1) ("[w]here there is no real room for doubt as to the meaning of a statute, there is no right to construe such statute"). The word "additional" is used to mean *any* "zoning or other approval, consent, permit, certificate, or other condition" *in addition to* a hazardous waste facility installation and operation permit issued pursuant to R.C. Chapter 3734. R.C. 3734.05(D)(3) thus prohibits any political subdivision, including a township, from requiring zoning approval for the construction or operation of a hazardous waste facility authorized by a hazardous waste facility installation and operation permit issued pursuant to R.C. Chapter 3734, or from enforcing any provisions, including zoning provisions, that in any way alter, impair, or limit the authority granted in the permit.

The constitutionality of R.C. 3734.05(D)(3) was upheld by the Ohio Supreme Court in *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d 44, 442 N.E.2d 1278 (1982). The court considered the statutory scheme contained in R.C. Chapter 3734 and found that it "is a comprehensive one enacted to insure that [hazardous waste] facilities are designed, sited, and operated in the manner which

best serves the statewide public interest," and that the "prohibit[ion]" against regulation of hazardous waste facilities by political subdivisions is part of this comprehensive scheme. 2 Ohio St. 3d at 48, 442 N.E.2d at 1282. The *Clermont* court referred to R.C. 3734.05(D)(3) as a "preemption provision." 2 Ohio St. 3d at 49, 442 N.E.2d at 1282. The syllabus of the *Clermont* case states:

1. R.C. 3734.05(D)(3), which prohibits any political subdivision of the state from requiring any additional zoning or other approval for the construction and operation of a hazardous waste facility authorized by a hazardous waste facility permit issued pursuant to R.C. Chapter 3734, is a "law, of a general nature" of the state having uniform operation throughout the state and, as such, is not violative of Section 26, Article II of the Ohio Constitution, and is therefore constitutional.
2. R.C. 3734.05(D)(3) was enacted by the General Assembly for the protection of the environment of the state and for the health and safety of its citizens as a reasonable exercise of the state's general police power. Such law being a "general law" to carry out these statewide legislative goals, municipalities are subject to its provisions notwithstanding the provisions of Section 3, Article XVIII of the Ohio Constitution.

In *Clermont*, the court struck down a township zoning resolution that prohibited privately owned and operated landfills within the township. Application of the resolution would have closed down a hazardous waste facility that had been constructed and was operating under R.C. Chapter 3734.

The Ohio Supreme Court again considered R.C. 3734.05(D)(3) in *Fondessy Enterprises, Inc. v. City of Oregon*, 23 Ohio St. 3d 213, 492 N.E.2d 797 (1986). The *Fondessy* case concerns the interaction between R.C. 3734.05(D)(3) and Ohio Const. art. XVIII, §3, which grants municipal corporations home rule powers. In *Fondessy*, the court considered "whether the legislature in enacting R.C. Chapter 3734 has completely foreclosed and precluded a 'home rule' municipality from any and all monitoring of hazardous waste facilities located within its borders." 23 Ohio St. 3d at 215, 492 N.E.2d at 799. The court rejected the analysis that R.C. 3734.05(D)(3) expressly preempts municipal regulation of hazardous waste facilities and concluded, instead, that a municipal provision is permissible provided that it does not conflict with state law. The court stated: "R.C. 3734.05(D)(3) may be utilized only to limit the legislative power of municipalities by the precise terms it sets forth. R.C. 3734.05(D)(3) provides a conflict standard by which to judge ensuing legislation in the instant arena of environmental regulation." 23 Ohio St. 3d at 217, 492 N.E.2d at 801. The *Fondessy* court did not modify the first paragraph of the syllabus of the *Clermont* case, but did consider the portion of the *Clermont* decision regarding conflicts between state and municipal law and reached the following conclusions:

3. A municipal police power ordinance which does not alter, impair, or limit the operation of a state-licensed hazardous waste facility may be found not to be in conflict with R.C. Chapter 3734. (*Clermont Environmental Reclamation Co. v. Wiederhold* [1982], 2 Ohio St. 3d 44, construed.)
4. Where state laws and municipal ordinances concerning the monitoring of hazardous waste landfill facilities located within the corporate limits of the city do *not* conflict, the state and municipality have concurrent authority under their respective police powers to enforce their respective directives within the corporate limits of the city.
5. The authority of the Environmental Protection Agency to license, supervise, inspect, and regulate hazardous waste facilities does not preclude municipalities from enacting police power ordinances which do not conflict with that authority.

Fondessy Enterprises, Inc. v. City of Oregon (syllabus, paragraphs 3, 4, 5).¹ The *Fondessy* case upheld a city ordinance imposing a monthly permit fee and record-keeping requirements upon all hazardous waste landfills located within the city. The case involved application of that ordinance to a facility that had a permit under R.C. Chapter 3734 and was in existence prior to the adoption of the ordinance.

Both *Clermont* and *Fondessy* support the proposition that R.C. 3734.05 prevents a political subdivision from requiring zoning approval for the construction or operation of a hazardous waste facility authorized by a hazardous waste facility installation and operation permit issued under R.C. Chapter 3734, or from adopting or enforcing any provision that alters, impairs or limits the authority granted in the permit. In conversations concerning your request, you have suggested that the situation with which you are concerned may be distinguished from those at issue in the *Clermont* and *Fondessy* cases because the township involved in your situation had adopted the relevant zoning regulations before the hazardous waste facility installation and operation permit was granted. This factor does not, however, remove the situation from the provisions of R.C. 3734.05(D)(3). R.C. 3734.05(D)(3) expressly prohibits a political subdivision from requiring any zoning or other approval in addition to that required under R.C. Chapter 3734, and also from adopting or enforcing any law, ordinance, or regulation that alters, impairs, or limits the authority granted in a hazardous waste facility installation and operation permit issued pursuant to R.C. Chapter 3734. No statutory language limits the application of R.C. 3734.05(D)(3) to requirements or provisions that were adopted at a particular time. Further, use of the phrase "adopt or enforce" indicates that R.C. 3734.05(D)(3) not only limits the adoption of new provisions that have the effect that it prohibits, but also limits the enforcement of existing provisions. R.C. 3734.05 thus effectively prohibits the application of any township zoning requirements to a hazardous waste facility that has a permit under R.C. Chapter 3734, regardless of when such requirements are adopted. I conclude, accordingly, that when an applicant has received a permit under R.C. Chapter 3734 for the installation and operation of a hazardous waste facility on a site in a township at which such use is not permitted by existing zoning, the township is prohibited by R.C. 3734.05(D)(3) from enforcing its existing zoning provisions.

Your second question concerns a facility that is intended for the disposal of polychlorinated biphenyls (PCB's) and that has all federal and state permits required for such disposal. You have asked whether such a facility is exempt from township zoning provisions that permit only agricultural and residential uses in the area in which the facility is to be located.

¹ The construction of R.C. 3734.05(D)(3) adopted in *Fondessy Enterprises, Inc. v. City of Oregon*, 23 Ohio St. 3d 213, 492 N.E.2d 797 (1986), is phrased in terms of application of Ohio Const. art. XVIII, §3, which grants municipal corporations home rule powers. The *Fondessy* case involves a municipal corporation, and it is not clear to what extent it is applicable to townships, which are creatures of statute having no constitutional home rule powers. The *Fondessy* case does, however, state that R.C. 3734.05(D)(3) does not constitute express preemption of the regulation of hazardous waste facilities, but "may be utilized only to limit the legislative power of municipalities by the precise terms it sets forth." 23 Ohio St. 3d at 217, 492 N.E.2d at 801. To the extent that this conclusion involves a matter of interpretation of the language of R.C. 3734.05(D)(3), it appears to be applicable to all political subdivisions to which R.C. 3734.05(D)(3) applies. That is, notwithstanding that a political subdivision other than a municipal corporation does not have home rule powers, that political subdivision may adopt or enforce a provision that does not alter, impair, or limit the operation of a state-licensed hazardous waste facility, provided that the political subdivision has statutory authority to adopt or enforce such a provision. *But see Fondessy Enterprises, Inc. v. City of Oregon*, 23 Ohio St. 3d at 221, 492 N.E.2d at 804 (C. Brown, J., dissenting) (R.C. 3734.05(D)(3) "in clear and comprehensive language, expressly prohibits the imposition of any additional condition for the operation of state-authorized hazardous waste facilities").

Central to your question is the fact that, under existing law, PCB's are not hazardous wastes for purposes of R.C. Chapter 3745 and, thus, a facility for the disposal of PCB's is not required to obtain a hazardous waste facility installation and operation permit pursuant to R.C. 3734.05 and related provisions. "Hazardous waste" is defined, for purposes of R.C. Chapter 3734, as follows:

"Hazardous waste" means any waste or combination of wastes in solid, liquid, semisolid, or contained gaseous form that in the determination of the director, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(2) Pose a substantial present or potential hazard to human health or safety or to the environment when improperly stored, treated, transported, disposed of, or otherwise managed.

Hazardous waste includes any substance identified by regulation as hazardous waste under the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C. 6921, as amended, and does not include any substance that is subject to the "Atomic Energy Act of 1954," 68 Stat. 919, 42 U.S.C. 2011.

R.C. 3734.01(J). R.C. 3734.12 requires the Director of Environmental Protection to prepare a list of hazardous substances, as follows:

The director of environmental protection shall adopt and may modify, suspend, or repeal rules in accordance with Chapter 119. of the Revised Code, which shall be consistent with and equivalent to the regulations promulgated under the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C. 6921, as amended, except as otherwise provided in this chapter:

(A) Adopting the criteria and procedures established under the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C. 6921, as amended, for identifying hazardous waste. The director shall prepare, revise when appropriate, and publish a list of substances or categories of substances identified to be hazardous using the criteria specified in 40 C.F.R. 261, as amended, which shall be composed of at least those substances identified as hazardous pursuant to section 3001(B) of that act. The director shall not list any waste that the administrator of the United States environmental protection agency delisted or excluded by an amendment to the federal regulations, any waste that the administrator declined to list by publishing a denial of a rulemaking petition or by withdrawal of a proposed listing in the United States federal register after May 18, 1980, or any waste oil or polychlorinated biphenyl not listed by the administrator.

The list adopted by the Director must, thus, include at least those substances identified as hazardous under Section 3001(B) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6921, and may not include any polychlorinated biphenyl not listed by the Administrator of the United States Environmental Protection Agency.

The substances listed as hazardous by the Director of Environmental Protection are identified in 4 Ohio Admin. Code Chapter 3745-51. Included among the substances so identified are the hazardous wastes identified by the Administrator of the United States Environmental Protection Agency pursuant to 42 U.S.C. §6921, which are listed in 40 C.F.R. §§261.31-33. See 4 Ohio Admin. Code 3745-51-03(A)(2)(b). Neither the state nor the federal list of hazardous wastes includes any PCB's. It follows that PCB's are not hazardous wastes for purposes of R.C. Chapter 3734. But see R.C. 3734.122(D) (permitting the Director of Environmental Protection to expend moneys credited to the hazardous waste clean-up fund created under R.C. 3734.28 "for the payment of the cost of measures necessary for the proper cleanup of sites where polychlorinated biphenyls and substances, equipment, and devices containing or contaminated with polychlorinated biphenyls have been stored or disposed of"). As a result, a facility for the disposal of

PCB's does not need a hazardous waste facility installation and operation permit issued pursuant to R.C. 3734.05.

The provisions of R.C. 3734.05(D)(3) restricting local regulation of waste facilities apply only to hazardous waste facilities authorized by hazardous waste facility installation and operation permits issued pursuant to R.C. Chapter 3734. Since a facility for the disposal of PCB's is not required to have such a permit, the provisions of R.C. 3734.05(D)(3) are not applicable to such a facility. Accordingly, a facility for the disposal of PCB's is not exempted from township zoning provisions by R.C. 3734.05(D)(3).

In considering whether a facility for the disposal of PCB's is exempt from township zoning provisions, it is, therefore, necessary to examine the provisions that are applicable to such facilities to determine whether they contain such an exemption. As indicated in your request, I am assuming that the facility in question has all federal and state permits required for the disposal of PCB's.

The manufacturing, processing, distribution, use, and disposal of PCB's are regulated on the federal level under the Toxic Substances Control Act (TSCA), 15 U.S.C. §§2601-2629. 15 U.S.C. §2605(e) contains provisions relating specifically to PCB's. 15 U.S.C. §2605(e)(1) directs the Administrator of the Environmental Protection Agency to promulgate rules governing the disposal and marking of PCB's. 15 U.S.C. §2605(e)(2)(A) states that, with certain exceptions, "no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in any manner other than in a totally enclosed manner," and 15 U.S.C. §2605(e)(2)(C) defines "totally enclosed manner" to mean "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule." Rules governing PCB's appear in 40 C.F.R. Part 761. The rules establish "prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items." 40 C.F.R. §761.1(a).

With respect to the effect of the federal provisions on regulation by states and their political subdivisions, 15 U.S.C. §2617 states:

(a) Effect on State law

(1) Except as provided in paragraph (2), nothing in this chapter shall affect the authority of any State or political subdivision of a State to establish or continue in effect regulation of any chemical substance, mixture, or article containing a chemical substance or mixture.

(2) Except as provided in subsection (b) of this section—

(A) if the Administrator requires by a rule promulgated under section 2603 of this title the testing of a chemical substance or mixture, no State or political subdivision may, after the effective date of such rule, establish or continue in effect a requirement for the testing of such substance or mixture for purposes similar to those for which testing is required under such rule; and

(B) if the Administrator prescribes a rule or order under section 2604 or 2605 of this title (other than a rule imposing a requirement described in subsection (a)(6) of section 2605 of this title) which is applicable to a chemical substance or mixture, and which is designed to protect against a risk of injury to health or the environment associated with such substance or mixture, no State or political subdivision of a State may, after the effective date of such requirement, establish or continue in effect, any requirement which is applicable to such substance or mixture, or an article containing such substance or mixture, and which is designed to protect against such risk unless such requirement (i) is identical to the requirement prescribed by the Administrator, (ii) is adopted under the authority of the Clean Air Act [42 U.S.C. 7401 et seq.] or any other Federal law, or (iii) prohibits the use of such substance or mixture in such State or political subdivision (other than its use in the manufacture or processing of other substances or mixtures).

(b) Exemption

Upon application of a State or political subdivision of a State the

Administrator may by rule exempt from subsection (a)(2) of this section, under such conditions as may be prescribed in such rule, a requirement of such State or political subdivision designed to protect against a risk of injury to health or the environment associated with a chemical substance, mixture, or article containing a chemical substance or mixture if—

(1) compliance with the requirement would not cause the manufacturing, processing, distribution in commerce, or use of the substance, mixture, or article to be in violation of the applicable requirement under this chapter described in subsection (a)(2) of this section, and

(2) the State or political subdivision requirement (A) provides a significantly higher degree of protection from such risk than the requirement under this chapter described in subsection (a)(2) of this section and (B) does not, through difficulties in marketing, distribution, or other factors, unduly burden interstate commerce. (Emphasis added.)

15 U.S.C. §2605(a)(6), referenced in §2617(a)(2)(B), sets forth one of seven requirements that may be applied to a hazardous chemical substance. 15 U.S.C. §2605(a)(6) authorizes the Administrator to adopt:

(6)(A) A requirement prohibiting or otherwise regulating any manner or method of disposal of such substance or mixture, or of any article containing such substance or mixture, by its manufacturer or processor or by any other person who uses, or disposes of it, for commercial purposes.

(B) A requirement under subparagraph (A) may not require any person to take any action which would be in violation of any law or requirement of, or in effect for, a State or political subdivision, and shall require each person subject to it to notify each State and political subdivision in which a required disposal may occur of such disposal.

The fact that the Administrator has, under 15 U.S.C. §2605, prescribed rules (other than rules regulating disposal) that are applicable to PCB's and that are designed to protect against a risk of injury to health or the environment associated with PCB's thus brings into effect the federal preemption of state and local laws, with certain exemptions specified by statute. Various local provisions have been found to come within the statutory exemptions to federal preemption. For example, in *SED, Inc. v. City of Dayton*, 519 F. Supp. 979 (S.D. Ohio 1981), challenges to the constitutionality of TSCA's preemption provisions were rejected, but city ordinances regulating, restricting, or prohibiting the storage of PCB's within the city limits were found to be excepted from preemption because they constituted a proper exercise of local authority under the Clean Water Act. See also *Potomac Electric Power Co. v. Sachs*, 639 F.Supp. 856, 859 (D. Md. 1986), *rev'd on other grounds*, 802 F.2d 1527 (4th Cir. 1986) ("[Congress] determined that federal regulations under TOSCA should preempt certain areas of state regulation, but not in situations specifically excepted in the statute"); *Chappell v. SCA Services, Inc.*, 540 F. Supp. 1087 (C.D. Ill. 1982); *People v. Todd Shipyards Corp.*, 192 Cal. App. 3d Supp. 20, 238 Cal. Rptr. 761 (Los Angeles County 1987). But see *Warren County v. State of North Carolina*, 528 F. Supp. 276 (E.D. N.C. 1981) (finding that TSCA did not confer upon counties and other local governments the authority to totally frustrate the PCB disposal program through the implementation of total disposal bans, and striking down a county ordinance that prohibited the storage, dumping or other disposal of PCB's within the county).

Your second question raises the issue of whether certain township zoning provisions are preempted by TSCA. Township zoning provisions in Ohio are adopted pursuant to R.C. Chapter 519. R.C. 519.02 defines the powers of the township in this regard:

For the purpose of promoting the public health, safety, and morals, the board of township trustees may in accordance with a comprehensive plan regulate by resolution the location, height, bulk, number of stories, and size of buildings and other structures, including

tents, cabins, and trailer coaches, percentages of lot areas which may be occupied, set back building lines, sizes of yards, courts, and other open spaces, the density of population, the uses of buildings and other structures including tents, cabins, and trailer coaches, and *the uses of land for trade, industry, residence, recreation, or other purposes* in the unincorporated territory of such township, and for such purposes may divide all or any part of the unincorporated territory of the township into districts or zones of such number, shape, and area as the board determines. All such regulations shall be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones. (Emphasis added.)

Township zoning power is a police power delegated to township trustees by the General Assembly. See *Yorkavitz v. Board of Township Trustees*, 166 Ohio St. 349, 142 N.E.2d 655 (1957). R.C. 519.02 expressly authorizes the township trustees, "[f]or the purpose of promoting the public health, safety, and morals" to regulate by resolution, in accordance with a comprehensive plan, "the uses of land for trade, industry, residence, recreation, or other purposes." As was stated in *Samsa v. Heck*, 13 Ohio App. 2d 94, 97, 234 N.E.2d 312, 315 (Summit County 1967):

This theory of zoning legislation, calling for the restriction of the use of land and buildings in specified districts of a township to residential purposes, finds support in the fact that, in the judgment of the township's legislative body, the restriction is designed to promote the public health, safety and general welfare of the community.

The zoning provisions that you have described are addressed to general categories of land use (*i.e.*, agricultural and residential) and seek to exclude from a certain area all industrial uses, without specifically mentioning PCB's, or, indeed, any types of chemicals or dangerous substances. It does not appear that such zoning provisions are preempted by TSCA. 15 U.S.C. §2617(a)(2)(B) prohibits states and their political subdivisions from establishing or continuing in effect only requirements that are applicable to regulated chemical substances or mixtures and that are designed to protect against a risk of injury to health or the environment associated with such regulated substances or mixtures. The zoning provisions with which you are concerned are not directed to PCB's or other chemicals and are not intended to address particular health risks or environmental concerns. They are, instead, general zoning provisions directed to regulation of land use and, thus, do not appear to come within the class of provisions prohibited by 15 U.S.C. §2617(a)(2)(B).

I am aware of no cases that have considered whether zoning ordinances of the sort with which you are concerned are preempted by federal provisions governing PCB's. The question of federal preemption of a local ordinance that was not, by its terms, addressed to PCB's was, however, considered in *Rollins Environmental Services (FS), Inc. v. Parish of St. James*, 775 F.2d 627 (5th Cir. 1985). That case concerned a company that established a PCB disposal facility, in compliance with federal requirements, at a site approximately one-quarter mile from an elementary school. The political subdivision in which the facility was located subsequently enacted an ordinance prohibiting the treatment, storage, and disposal of PCB's within its boundaries and requiring a permit for the transportation of PCB's through its territory. After the company brought a court action challenging the ordinance, the subdivision repealed that ordinance and replaced it with one regulating commercial solvent cleaning businesses. The second ordinance had the practical effect of prohibiting the activities of the PCB disposal company. The court found that the ordinance regulating commercial solvent cleaning businesses constituted "an impermissible intrusion into territory preempted under TOSCA and that enforcement of it would violate the Supremacy Clause of the federal Constitution." 775 F.2d at 637. The political subdivision argued that its ordinance was not preempted by TSCA because it did not regulate the same field of activity preempted by Congress. The court rejected this argument, finding that the ordinance was a subterfuge and that it "amounted to an impermissible ban or prohibition" of the company's PCB disposal business. 775 F.2d at 636.

The situation described in your request is very different from that involved in the *Rollins* case. You have indicated that the zoning provisions in question were

in effect before there was any indication of an interest in using the site for PCB disposal. Further, the zoning provisions are not directed to PCB's or any other type of dangerous substances, nor is there any indication that they were intended to serve the purpose of protection from risks of injury to health or the environment. Cf. *Rollins Environmental Services (FS), Inc. v. Parish of St. James*, 775 F.2d at 634-35 (in arguing that its ordinance does not regulate the same field of activity preempted by TSCA, the political subdivision "has to be saying that its Ordinance is not 'applicable to' the same 'chemical substance or mixture' that Congress had in mind, and that it is not 'designed to protect against a risk of injury to health or the environment associated with such substance or mixture.' 15 U.S.C. §2617").

On the facts that you have presented, it must be concluded that the township zoning provisions in question are not applicable to a chemical substance or mixture, or an article containing such substance or mixture, and that they are not designed to protect against a risk of injury to health or the environment associated with such substance or mixture. They are, accordingly, not preempted by the provisions of TSCA, and a facility that is in compliance with requirements imposed by TSCA and rules adopted thereunder is not exempted from such township zoning provisions by 15 U.S.C. §2617. I conclude, therefore, that a facility for the disposal of PCB's that is in compliance with requirements imposed by TSCA and rules adopted thereunder is not exempted from township zoning provisions by 15 U.S.C. §2617, where such zoning provisions relate to general categories of land use, are not addressed to PCB's or other chemical substances or mixtures, and are not designed to protect against a risk of injury to health or the environment associated with any such substance or mixture.

Your opinion request assumes that the facility in question has all the state permits required for the disposal of PCB's. As discussed above, such a facility will not need a hazardous waste facility installation and operation permit issued pursuant to R.C. 3734.05 and, thus, will not be exempted from local zoning by R.C. 3734.05(D)(3). Depending upon the nature of its operations, the facility might be regulated by state law governing air pollution control (R.C. Chapter 3704), solid waste disposal, other than the disposal of hazardous wastes (R.C. Chapter 3734), or water pollution control (R.C. Chapter 6111).² None of these statutory schemes contains a provision analogous to R.C. 3734.05(D)(3) that would exempt the holder of a permit from local zoning provisions. To the contrary, it has been held that, where statutory provisions do not expressly prohibit local regulation, local zoning may coexist with state environmental regulation. In such circumstances, compliance with both sets of provisions is required. A discussion of the relationship between township zoning and state regulation of solid (not hazardous) waste disposal appears in *Hulligan v. Columbia Township Board of Zoning Appeals*, 59 Ohio App. 2d 105, 107-08, 392 N.E.2d 1272, 1273-74 (Lorain County 1978), as follows:

² R.C. 3734.122 authorizes the Director of Environmental Protection to adopt rules relating to PCB's, as follows:

(A) As used in this section, "commercial facility" means a facility of a business engaged for profit in the storage and disposal of polychlorinated biphenyls, substances, equipment, and devices containing or contaminated with polychlorinated biphenyls, or both.

(B) The director of environmental protection, in accordance with Chapter 119. of the Revised Code, may adopt, amend, suspend, or rescind rules with respect to all of the following subjects:

(1) Notification of the existence or proposed establishment of any commercial facility;

(2) Required inspections of commercial facilities, including, without limitation, a requirement that any such commercial facility be inspected before commencing its activities;

(3) Establishing standards for the storage and disposal of polychlorinated biphenyls and substances, equipment, and devices containing or contaminated with polychlorinated biphenyls at commercial facilities;

(4) Establishing standards and criteria for defining

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. With these aims in mind, the court in *Columbia Township [Trustees] v. Williams*, [11 Ohio Op. 3d 233, 238 (Ct. App. Franklin County 1976)], held that the purpose of township zoning is inherently different than that of the EPA.

"Pursuant to Chapter 519, local zoning authority has been extended to townships in Ohio. Such is a grant of police power for local determinations concerned with land use and planning, and the systematic and orderly development of specific areas, or zones, for various uses and utility, such as residential, commercial or industrial uses. All such exercise of this police power is for the purpose of insuring the health, welfare and safety of the local communities.

"Such zoning laws do not have inherently within them provisions or guidelines for the establishment of clean air or water quality standards, or standards for the treatment of our waste waters, or standards for the disposal and the handling of our solid wastes. In contrast, the goals of the EPA, and the determinations as made by the director thereof toward the accomplishments of such goals, are to conserve, protect and enhance the environmental quality of the state in all respects including air and water quality, waste treatment procedures and standards, and solid waste handling and disposal."

In an additional discussion of this same matter, the Tenth District Court of Appeals in *City of Garfield Heights v. Williams*, unreported, Nos. 77AP 449 through 484, decided September 29, 1977 held, at pages 12 and 13:

****the Environmental Protection Agency does not have jurisdiction to change or affect local zoning by the issuance of a permit. Instead the permitted use continues to be subject to local zoning. However, the director has the prerogative of granting a permit that is final so far as environmental considerations within his purview are concerned, even though the activity is not permitted by local zoning. Even if not expressly stated in the director's order, the permit issued is subject to local zoning and remains subject thereto.****

****The fact that there is authority under Chapter 3734. through the Environmental Protection Agency to regulate landfill operations or to issue permits therefor does not preempt the field so far as local zoning is concerned.****

We agree with and adopt these propositions of law. The intents of local zoning approval and EPA regulations are distinct but harmonious. The jurisdictional line between the two is drawn by the particular protection each desires to achieve. Only the final result to be reached is different; the final and complete approval of a sanitary landfill stems from the endorsement by both authorities.

See generally R.C. 3704.11(A) (R.C. 3704.01-11 "do not limit the authority a political subdivision of the state has to adopt and enforce ordinances or regulations relative to the prevention, control, and abatement of air pollution, except that every such local ordinance or regulation shall be consistent with Chapter 3704. of the

substances, equipment, and devices containing or contaminated with polychlorinated biphenyls for the purposes of this section.

Rules adopted under divisions (B)(3) and (4) of this section shall be identical to federal laws and regulations governing the storage and disposal of polychlorinated biphenyls and substances, devices, and equipment containing or contaminated with polychlorinated biphenyls.

No person shall violate a rule adopted under this section.

No such rules are currently in effect.

Revised Code"); *Rumpke Waste, Inc. v. Henderson*, 591 F. Supp. 521, 531 (S.D. Ohio 1984) ("that Ohio permits landfills does not mean that a particular smaller governmental entity must permit landfills....It is for the zoning body itself to make the determinations as to the most appropriate land uses"); *SED, Inc. v. City of Dayton*, 519 F. Supp. at 989 ("[i]t is difficult to conceive of any local regulation of hazardous substances which would not somehow serve the purpose of water pollution abatement or prevention, and thus could not be termed an exercise of local government power 'under authority of' the Clean Water Act"); *City of Independence v. Maynard*, 25 Ohio App. 3d 20, 25, 495 N.E.2d 444, 452 (Franklin County 1985), *motion to certify overruled*, No. 85-1223 (Ohio Sup. Ct. Sept. 25, 1985) (quoting *Little Miami, Inc. v. Williams*, Nos. 77AP-292 and -285, slip op. at 11 (Ct. App. Franklin County Dec. 23, 1976) (unreported)) ("[i]t remains the responsibility of local zoning officials, commissions, boards of appeals, and courts to regulate the various social and economic concerns within the jurisdiction of particular subdivisions....Zoning and pollution control are separate and distinct governmental interests, independently enforced and administered by different governmental units"); *North Sanitary Landfill, Inc. v. Board of County Commissioners*, 52 Ohio App. 2d 167, 369 N.E.2d 17 (Montgomery County 1976), *motion to certify overruled* (Ohio Sup. Ct. Apr. 29, 1977) (syllabus, paragraph 2) ("[t]he authority of the Environmental Protection Agency to license, supervise and inspect disposal systems does not restrict or preempt and is not inconsistent with the authority of a board of county commissioners operating a disposal system to approve or disapprove another disposal facility within its district"); *Columbia Township Trustees v. Williams*, 11 Ohio Op. 3d 233, 238 (Ct. App. Franklin County 1976) ("[b]oth areas of the law, one relating to the protection of the environment, and the other controlling the patterns of land use and development, are extremely important and oftentimes interrelated and interdependent. It is our view that these activities are not incompatible within the spectrum of governmental functions"); 1985 Op. Att'y Gen. No. 85-053 at 2-199 (stating that "the fact that a state agency has authority to regulate a certain activity does not, in itself, mean that a township may not enact zoning regulations which affect that activity" and concluding that township zoning and DNR regulation of urban sediment pollution may coexist). I conclude, therefore, that a facility for the disposal of PCB's that is in compliance with state law governing air pollution control, solid waste disposal (other than the disposal of hazardous wastes), and water pollution control is not exempted from township zoning provisions by R.C. Chapter 3704, R.C. Chapter 3734, or R.C. Chapter 6111.

It should be noted that R.C. Chapter 519, which grants townships their zoning powers, contains certain restrictions upon that power. R.C. 519.21 limits the capacity of township zoning to interfere with agricultural activities. R.C. 519.211 limits the capacity of township zoning to interfere with sales of alcoholic beverages or with drilling for oil or natural gas for the use of the industrial firm that does the drilling. R.C. 519.211³ also restricts township zoning of public utilities, as follows:

Sections 519.02 to 519.25 of the Revised Code confer no power on any board of township trustees or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad, for the operation of its business. (Emphasis added.)

No clear definition of "public utility" has been established for purposes of R.C. 519.211. As was stated in *Board of Township Trustees v. WDBN, Inc.*, 10 Ohio App. 3d 284, 284, 461 N.E.2d 1345, 1346 (Medina County 1983) (citations omitted):

³ R.C. 519.211 became effective on March 5, 1987. See 1985-1986 Ohio Laws, Part III, 5165, 5169-70 (Am. Sub. H.B. No. 582, eff. March 5, 1987). Prior to the enactment of R.C. 519.211, the provisions currently appearing in R.C. 519.211, including those prohibiting township zoning of public utilities, appeared in R.C. 519.21.

The pertinent statutes do not define what is meant by a "public utility." Most authorities when attempting a definition first acknowledge that there is no definition which fits all cases; list characteristics of a public utility; caution that the presence or absence of any particular characteristic is not controlling; and conclude it is a mixed question of law and fact.

See also McGinnis v. Quest Microwave VII, Inc., 24 Ohio App. 3d 220, 494 N.E.2d 1150 (Wayne County 1985); 1985 Op. Att'y Gen. No. 85-079. Factors to be considered include the nature of the business, its availability to the general public, and the public regulation of its operations. *See generally, e.g., Ohio Power Co. v. Village of Attica*, 23 Ohio St. 2d 37, 261 N.E.2d 123 (1970); *Industrial Gas Co. v. PUCO*, 135 Ohio St. 408, 413, 21 N.E.2d 166, 168 (1939) ("[a] public utility to the extent of its capacity is bound to serve those of the public who need the service and are within the field of its operations, at reasonable rates and without discrimination....Yet it is not a controlling factor that the corporation supplying service does not hold itself out to serve the public generally. It has been held that a business may be so far affected with a public interest that it is subject to regulation as to rates and charges even though the public does not have the right to demand and receive service" (citations omitted)); *Southern Ohio Power Co. v. PUCO*, 110 Ohio St. 246, 143 N.E. 700 (1924) (syllabus, paragraph 2) ("[t]o constitute a 'public utility,' the devotion to public use must be of such character that the product and service is available to the public generally and indiscriminately, or there must be the acceptance by the utility of public franchises or calling to its aid the police power of the state"); *Freight, Inc. v. Board of Township Trustees*, 107 Ohio App. 288, 158 N.E.2d 537 (Summit County 1958); *Motor Cargo, Inc. v. Board of Township Trustees*, 52 Ohio Op. 257, 258, 117 N.E.2d 224, 226 (C.P. Summit County 1953) ("the term 'public utility' implies a public use and service to the public, and indeed the principal determinative characteristic of a public utility is that of service to, or readiness to serve an indefinite public (or portion of the public as such), which has a legal right to demand and receive its services or commodities"); Op. No. 85-079.

In 1982 Op. Att'y Gen. No. 82-052, my predecessor found that a solid waste disposal facility was a public utility for purposes of R.C. Chapter 519 and, accordingly, was exempt from township zoning. *See* note 3, *supra*. *But see Hulligan v. Board of Zoning Appeals* (holding that a sanitary landfill was subject both to regulation by the Ohio Environmental Protection Agency and to regulation by township zoning provisions, but not considering whether the landfill in question was a public utility). Op. No. 82-052 involved a privately owned and operated landfill that made its services available to all the residents of the township in which it was located, without restriction.

It does not appear that the same conclusion would be reached with respect to the facility with which you are concerned, since that facility does not appear to be a public utility. In discussions with my staff you have indicated that the facility is privately owned and that its services will be available to a limited number of clients selected by the owners and operators of the facility. Because of the nature of its proposed operation, it will not be available to, or needed by, the general public or even a limited class of the general public. Further, while the nature of its operations are regulated so as to minimize any negative impact upon the environment, the rates, charges, and scheduling of the facility are not regulated as a public utility. I conclude, accordingly, on the basis of the facts before me, that the facility described in your second question is not a public utility and, therefore, is not exempted from township zoning provisions by R.C. 519.211.

Your third question concerns a facility that plans to carry on both the activities described in your first question and the activities described in your second question - that is, the facility is a hazardous waste facility, installed and operating pursuant to a hazardous waste facility installation and operation permit issued under R.C. Chapter 3745, and the facility also intends to carry out PCB disposal activities. As discussed above, a hazardous waste facility operating pursuant to a state permit issued under R.C. Chapter 3745 is, by R.C. 3734.05(D)(3), exempted from township zoning provisions. A PCB disposal facility is required to comply with specific federal provisions and may also be subject to various state and local provisions, but it is not exempt from township zoning provisions. Your question is whether a facility that performs both functions is exempt from township zoning

provisions, or whether the fact that PCB's will be disposed of at the facility subjects the entire facility to township zoning, even if enforcement of the zoning provisions would impair or limit the disposal of hazardous waste at the facility.

I am aware of no authority that directly addresses this question. R.C. 3734.05(D)(3) prohibits a political subdivision from requiring zoning or other approval for the construction or operation of a hazardous waste facility authorized by a hazardous waste facility installation and operation permit issued pursuant to R.C. Chapter 3734; R.C. 3734.05(D)(3) does not prohibit the requirement of zoning approval for a PCB disposal facility. Similarly, R.C. 3734.05(D)(3) prohibits a political subdivision from adopting or enforcing a law or rule that in any way alters, impairs, or limits the authority granted in a hazardous waste facility installation and operation permit; R.C. 3734.05(D)(3) does not prohibit the adoption or enforcement of provisions that alter, impair, or limit the installation or operation of a PCB disposal facility.

The exemption from local zoning granted by R.C. 3734.05(D)(3) extends, by the terms of R.C. 3734.05(D)(3), to "the construction or operation of a hazardous waste facility authorized by a hazardous waste facility installation and operation permit issued pursuant to [R.C. Chapter 3734]." R.C. 3734.05(D)(3) prohibits the adoption or enforcement of only such laws, ordinances, or regulations as alter, impair, or limit "the authority granted in the permit." A hazardous waste facility installation and operation permit issued pursuant to R.C. Chapter 3734 authorizes the installation and operation of a particular hazardous waste facility, *see* R.C. 3734.05, or in certain circumstances, "two or more adjoining facilities where hazardous waste is stored, treated, or disposed of if the application includes detail plans, specifications, and information on all facilities," *see* R.C. 3734.05(E). Such a permit applies only to the facility or facilities included in the application. The statute does not authorize application of such a permit to a facility that is not a hazardous waste facility. *See, e.g.*, R.C. 3734.05(B) ("a person who proposes to establish or operate a hazardous waste facility shall submit an application for a hazardous waste facility installation and operation permit and accompanying detail plans, specifications, and such information as the director may require"); R.C. 3734.05(D)(1) ("[u]pon receipt of a completed application, the board shall issue a hazardous waste facility installation and operation permit for a hazardous waste facility" if certain criteria are satisfied). To the extent that the facility is used for the performance of functions other than those authorized by its hazardous waste facility installation and operation permit issued pursuant to R.C. Chapter 3734, the facility is not exercising the authority granted in the permit and, accordingly, is not entitled to the exemption from local zoning granted by R.C. 3734.05(D)(3).

I considered a similar concept recently in 1987 Op. Att'y Gen. No. 87-080. That opinion concerned several questions relating to the regulatory authority of the Ohio Department of Human Services in instances in which an institution or association that receives, cares for, or places children is subject to regulation by another governmental body. R.C. 5103.02 excludes from regulation by the Department entities that are "licensed, regulated, approved, operated under the direction of, or otherwise certified by" various other governmental bodies. Op. No. 87-080 concludes that the exclusion set forth in R.C. 5103.02 applies only to activities that come within the licensing, regulation, approval, direction, or certification of another governmental body. Op. No. 87-080 states, at 2-525: "The exception contained in R.C. 5103.02 for an entity that is approved by [a particular state department] cannot reasonably be read as extending to activities that are not regulated [by that state department]." Op. No. 87-080 states more fully, at 2-528:

R.C. 5103.02 excludes from regulation by the Department of Human Services facilities that are regulated by certain other governmental bodies. The evident intention is to prevent a situation in which those facilities are subject to dual regulation....Implicit in the statutory scheme is a recognition of the expertise of the named governmental bodies...in regulating facilities that serve their particular purposes. The goal of assuring adequate regulation of any facility that houses children is, however, not satisfied if the exclusionary provisions of R.C. 5103.02 extend to facilities that are not fully regulated by the governmental bodies named therein....

...[W]here only certain aspects of the activities of a particular

facility are regulated by one of the governmental bodies named in R.C. 5103.02, it cannot reasonably be concluded that the entire facility is excluded from regulation by the Department of Human Services....Rather, the facility remains subject to the jurisdiction of the Department of Human Services and must comply with applicable rules and certification requirements. (Citation and footnote omitted.)

A similar analysis is applicable in this instance. The evident intent behind the hazardous waste provisions of R.C. Chapter 3734 was to provide a statewide scheme for the siting of hazardous waste facilities by establishing a single body to consider relevant factors and determine whether proposed facilities satisfy various environmental concerns. *See, e.g., Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d at 48, 442 N.E.2d at 1282 ("the statutory scheme contained in [R.C. Chapter 3734] is a comprehensive one enacted to insure that such facilities are designed, sited, and operated in the manner which best serves the statewide public interest"). The purpose of R.C. 3734.05(D)(3) was to prevent political subdivisions from taking actions that would interfere with the statewide scheme. *See, e.g., Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d at 46, 442 N.E.2d at 1280 (R.C. 3734.05(D)(3) was enacted "[i]n furtherance of carrying out the comprehensive purposes of this new legislation concerned with the growing statewide problem of the proper disposal of hazardous waste materials"); *cf. Fondessy Enterprises, Inc. v. City of Oregon* (syllabus, paragraph 4) ("[w]here state laws and municipal ordinances concerning the monitoring of hazardous waste landfill facilities located within the corporate limits of the city do not conflict, the state and municipality have concurrent authority under their respective police powers to enforce their respective directives within the corporate limits of the city"). The exemption from local regulation granted by R.C. 3734.05(D)(3) thus presupposes that the facility so exempted has been fully regulated as a hazardous waste facility under other provisions of R.C. Chapter 3734. It cannot reasonably be concluded that R.C. 3734.05(D)(3) excludes from local regulation a facility or a portion thereof that is not properly and completely regulated as a hazardous waste facility. I conclude, accordingly, that to the extent that a hazardous waste facility that is installed and operating pursuant to a hazardous waste facility installation and operation permit issued under R.C. Chapter 3745 performs functions, such as PCB disposal activities, that exceed the scope of its permit, R.C. 3734.05(D)(3) does not operate to exclude the facility from township zoning provisions.

You have also asked whether, in a situation in which a single facility operates as both a hazardous waste disposal facility and a PCB disposal facility, township zoning laws may be enforced even if that enforcement would impair or limit the part of the facility's operation that disposes of hazardous waste. In light of the plain language of R.C. 3734.05(D)(3), this question must be answered in the negative. R.C. 3734.05(D)(3) expressly prohibits a political subdivision from adopting or enforcing any law, ordinance, or regulation "that in any way alters, impairs, or limits the authority granted" in a hazardous waste facility installation and operation permit issued pursuant to R.C. Chapter 3734. A township may not, under the guise of regulating an aspect of a facility other than hazardous waste disposal, take action that in any way prevents the facility from carrying out the functions that it is authorized by permit to perform. A township may, accordingly, enforce its zoning provisions against aspects of a hazardous waste facility that exceed the scope of the hazardous waste facility's installation and operation permit, but it may not enforce such provisions in a manner that in any way alters, impairs, or limits the authority granted in the permit.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. When an applicant has received a permit under R.C. Chapter 3734 for the installation and operation of a hazardous waste facility on a site in a township at which such use is not permitted by existing zoning, the township is prohibited by R.C. 3734.05(D)(3) from enforcing its existing zoning provisions.
2. Because polychlorinated biphenyl's (PCB's) are not hazardous wastes for purposes of R.C. Chapter 3745, a facility for the disposal of PCB's is not required to have a hazardous waste facility installation and operation permit issued pursuant to R.C.

Chapter 3745 and is not exempted from township zoning provisions by R.C. 3734.05(D)(3).

- 3. A facility for the disposal of PCB's that is in compliance with requirements imposed by the Toxic Substances Control Act, 15 U.S.C. §§2601-2629, and rules adopted thereunder, is not exempted from township zoning provisions by 15 U.S.C. §2617, where such zoning provisions relate to general categories of land use, are not addressed to PCB's or other chemical substances or mixtures, and are not designed to protect against a risk of injury to health or the environment associated with any such substance or mixture.**
- 4. A facility for the disposal of PCB's that is in compliance with state law governing air pollution control, solid waste disposal (other than the disposal of hazardous wastes), and water pollution control is not exempted from township zoning provisions by R.C. Chapter 3704, R.C. Chapter 3734, or R.C. Chapter 6111.**
- 5. A facility for the disposal of PCB's that is not a public utility is not exempted from township zoning provisions by R.C. 519.211.**
- 6. To the extent that a hazardous waste facility that is installed and operating pursuant to a hazardous waste facility installation and operation permit issued under R.C. Chapter 3745 performs functions, such as PCB disposal activities, that exceed the scope of its permit, R.C. 3734.05(D)(3) does not operate to exclude the facility from township zoning provisions.**
- 7. A township may enforce its zoning provisions against aspects of a hazardous waste facility that exceed the scope of the hazardous waste facility's installation and operation permit, but it may not enforce such provisions in a manner that in any way alters, impairs, or limits the authority granted in the permit.**