



STATE OF DELAWARE
THE JUSTICE OF THE PEACE COURT


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ALAN G. DAVIS
CHIEF MAGISTRATE

LEGAL MEMORANDUM 15-298

TO: ALL JUSTICES OF THE PEACE

FROM: ALAN G. DAVIS
CHIEF MAGISTRATE 

DATED: NOVEMBER 25, 2015

RE: REMOVAL OF IMPROPERLY DISPOSED SOLID WASTE

7 Del.C. §6025 makes it an offense for a person to cause or contribute to the disposal or discharge of solid waste anywhere in the state of Delaware. This prohibition includes several enumerated exceptions including disposal through municipal or private solid waste collection systems, solid waste disposal facilities or containers specially provided for solid waste collection. Sentencing requirements for this offense are provided in 7 Del.C. §6025(c), which states:

“Any person charged with violation of subsection (b) of this section, upon conviction, shall be fined not less than \$500 nor more than \$1500 for each violation and there shall be no suspension of the fine. Each day of continued violation or part thereof shall be considered as a separate offense. The court shall, in addition to levying the fine, order the person convicted to remove or cause to be removed any improperly disposed solid waste [Emphasis added.] In addition to the fine, the sentencing judge may order community service directed to the removal of solid waste illegally disposed of in the State, and may order restitution for costs incurred in remediation of the solid waste illegally disposed of in the State. The Courts of the Justices of the Peace shall have jurisdiction of offenses under this section.”

Of particular note is the provision that, “...the sentencing judge may order community service directed to the removal of solid waste...” In order for this provision to be enforced, it must be specifically ordered by a judge and should be included in the sentencing order. When clean-up has not yet occurred at the time of sentencing, a representative from the Department of

Natural Resources and Environmental Control (DNREC) should bring to the court's attention the need for this provision in its order. A judge may also inquire as to whether the inclusion of this provision is needed for clean-up to occur.

With the inclusion of language to mandate clean-up and community service for the purpose of clean up, the matter may be referred to DOC for the purpose of ensuring compliance with the sentence. In order for DOC/Probation and Parole to have access to all comments in the sentencing order, court staff shall forward both the Order for Community Service and the Sentencing Order itself to DOC/P&P. Failure to comply would then be brought to the Court's attention for further action as appropriate.

As an alternative, the Court could order the person to "cause to be removed" the solid waste. This, too, should be specifically noted in the sentencing order and is subject to monitoring for compliance. The DNREC representative, again, should bring this option to the Court's attention.

A final sentencing option is to order restitution for clean-up of the waste by another, such as if DNREC undertakes the clean-up.

If you have any questions or concerns, please do not hesitate to contact me.

cc: Honorable Leo E. Strine, Jr.
Honorable Andre Bouchard
Honorable Jan Jurden
Honorable Alex J. Smalls
Honorable Michael K. Newell
Patricia Griffin, State Court Administrator
Patrick Emory, DNREC
All Justice of the Peace Criminal Courts
Marianne Kennedy
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Jody Huber
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