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## Greater Lawrence Sanitary Dist. v. Town of N. Andover, 785 N.E.2d 337 (Mass. 2003)

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Greater Lawrence Sanitary Dist. v. Town of N. Andover, 785 N.E.2d 337 (Mass. 2003)

circuit court, with instructions to enter a judgment in favor of Dwyer's counterclaim, awarding Dwyer exclusive rights to the Quarry.

In 1925, LaSalle National Bank acquired title to the abandoned, water-filled limestone Quarry in South Elgin, Illinois. Dwyer is the sole beneficiary of the trust that includes title to the Quarry. Until a 1997 drowning, Dwyer permitted adjacent landowners to use the Quarry for swimming. Following the drowning, Dwyer prohibited further recreational use of the Quarry, and requested that adjacent landowners erect fences around the Quarry to prevent unauthorized access. Dwyer also erected his own fences where adjacent landowners had not.

In Illinois, if a body of water rises onto a landowner's property enough to denude it of vegetation, that portion of land is considered part of the lakebed. If a landowner owns a portion of a lakebed, the landowner is given the right to make reasonable use and enjoyment of the surface waters of the entire lake. The circuit court held that the Quarry constituted a lake, and because a portion of it rested on the Nottolinis' property, denuding it of vegetation, the Nottolinis were entitled to a right of reasonable use and enjoyment of the entire surface of the Quarry.

Prior to this case, no court in Illinois had addressed the question of whether a water-filled Quarry could be defined as a lake, nor had any Illinois court ever defined the term "lake." The appellate court examined the definitions of "lake" utilized by other jurisdictions, and adopted the definition of a lake as a reasonably permanent body of water at rest in a depression of the earth, if both depression and body of water are of natural origin.

The appellate court then applied this definition to the facts of the case. The Quarry was a man-made body of water, and was therefore not of natural origin. The court could not define the Quarry as a lake, and as a result, the Nottolinis' ownership of a portion of its bed did not provide them with any right to use the entirety of the Quarry's surface water.

*Steven J. Rypma*

## MASSACHUSETTS

**Greater Lawrence Sanitary Dist. v. Town of N. Andover, 785 N.E.2d 337 (Mass. 2003)** (holding the doctrines of preemption and essential government function do not prohibit a municipality from regulating an inter-municipal sanitation district to the extent the regulations do not interfere with the sanitation district's essential functions or the state regulatory regime).

The Greater Lawrence Sanitation District ("GLSD") sued the Town of North Andover, its Board of health and its Board of selectmen

("Town") in the Essex Superior Court for an injunction to prevent the Town from exerting control over or interfering with GLSD, and for the return of \$200,000 GLSD paid the Town for a building permit. At trial both parties filed motions for summary judgment. The trial court granted GLSD's motion, broadly ruling the Town had no authority to impose conditions on the facilities' development. The trial court reasoned "GLSD is a legislatively created body performing an essential government function and therefore is immune from municipal regulation." The trial court also reasoned the Massachusetts Department of Environmental Protection ("Department") had plenary authority to regulate the facilities, preempting municipal regulation. The trial court further ordered the Town to grant a new building permit without conditions or charge, and ruled all other issues regarding the permit moot. Both parties appealed and the Supreme Judicial Court of Massachusetts granted application for direct appellate review.

In 1997, the Massachusetts Legislature authorized GLSD to build an "on site biosolids processing Facility" and to contract for the "disposal and beneficial use of sludge related thereto." By 1998, GLSD had a plan for such a facility ("Facility I") and also for a facility to turn waste sludge into commercially viable fertilizer pellets ("Facility II"). GLSD sought and gained approval from the Department, the Town's conservation commission and the FAA (this was necessary because of a smokestack at Facility II) for both facilities.

The Town requested, and GLSD paid, a \$200,000 building permit application fee during planning and development of the facilities. In March of 2000, the parties executed a memorandum of understanding ("Initial MOU") to alleviate disagreements over the Town's authority to regulate the facilities' development. The Initial MOU recognized the disagreements but provided process for the Town's Board of health ("Board") to review environmental, health and safety impacts of the development. On June 18, 2000, the Town issued building permits for both facilities, but stated in the permits that the Board might still disapprove of or impose conditions on the facilities' development. The next day, the Board approved Facility I but not Facility II. GLSD commenced this action in July 2000. In September, the Board rescinded its disapproval of Facility II and in November issued a final memorandum of understanding ("Final MOU") imposing numerous conditions on Facility II.

The court began its analysis with the Town's authority to impose conditions on the facilities' development. The court recognized that, absent a statutory "municipal veto," the doctrine of essential government function proscribes municipalities from interfering with the legislatively mandated purpose of legislatively created agencies or entities. The court further recognized the trial court's ruling that GLSD was such an agency performing an essential government function. The court noted this did not grant GLSD immunity from all municipal regulation. Rather, GLSD "remains subject to regulations . . . that do not interfere with its ability to fulfill its essential

governmental purposes and have only a negligible effect on its operations.” The court ruled that whether the conditions the Town imposed passed this test was a factual issue to be resolved on remand.

The court then turned to whether the Department’s regulatory authority preempted the Town from imposing conditions on water and air quality. The Department has broad authority to regulate water and air quality, particularly that of the facilities. The court concluded the Department’s regulatory authority did not preempt but restricted municipal regulation. Specifically, the Town may impose conditions consistent with the Department’s regulations. The court held the question of whether the conditions were inconsistent with the Department’s regulations was a factual issue to be resolved on remand.

The court then addressed the Town’s claim that it had statutory authority to issue the conditions. The court noted the Town issued the conditions as part of the Final MOU based on contractual authority from the Initial MOU. The court further noted that the Town relied on this contractual authority at trial and held the record was incomplete to resolve the question of whether the Town had such statutory authority. The court held this question to be an issue for resolution upon remand.

The court finally turned to the issue of the building permit fee. GLSD claimed that because the trial court found the Department preempted the Town from regulating GLSD, the Town should refund the full \$200,000 fee. The court noted the premise of GLSD’s claim—preemption—was incorrect. The court further noted state statutes specifically charged the local building inspector with enforcement of the state building code as to any “building or structure within the city or Town . . . including any building or structure owned by any authority established by the legislature but not owned by the Commonwealth.” The court noted GLSD was such an authority, that nothing in its enabling statute or the building code exempted GLSD from local inspection, and that local inspection did not interfere with GLSD’s essential government function. The court held, therefore, that GLSD must “obtain a building permit, in compliance with the State Building Code, as enforced by the local inspector.” The court held the issue of the Town’s contractual obligation to refund the fee under the initial MOU was an issue for resolution on remand.

*James Parrot*

## MICHIGAN

**Eberhard Lake Ass’n v. Walters, No. 234586, 2002 Mich. App. LEXIS 2256 (Mich. Ct. App. Dec. 20, 2002)** (holding that to survive a motion for summary judgment, the party opposing the motion must present evidence that the riparian owner’s use of water is unreasonable).