

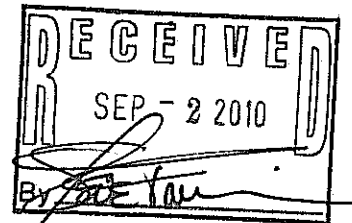


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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August 30, 2010

Stephen R. Fournier, Town Administrator
Town of North Hampton, New Hampshire
Municipal Offices
233 Atlantic Avenue
North Hampton, NH 03862



Dear Mr. Fournier,

By letter dated July 6, 2010 addressed to Carl Dierker, Regional Counsel, you asked for EPA's opinion regarding a Town of North Hampton ordinance entitled "An Ordinance Regulating the Noise Levels of Motorcycles." Your letter presented advice your office had received suggesting that New Hampshire state law does not authorize the Town to enforce such an ordinance. You asked whether EPA regulations provide the authority for the Town to enforce labeling requirements against individual users of motorcycles regardless of whatever limits apply to the Town under state law.

Mr. Dierker has asked me to respond to your inquiry. The Office of Regional Counsel has reviewed the relevant statutory provisions and the implementing regulations in 40 C.F.R. Part 205 Subparts D and E, and has found no such grant of authority.

The Noise Control Act (NCA), which authorizes EPA to enact noise control regulations, states that "nothing in this section *precludes* or *denies* the *right* of any State or political subdivision thereof to establish and enforce controls on environmental noise ... through the licensing, regulation, or restriction of the use, operation, or movement of any product or combination of products." 42 U.S.C. § 4905(e)(2) (emphases added). This savings clause emphasizes that the NCA does not divest states or localities of their authority to control environmental noise. However, neither does it grant localities any additional authority to control environmental noise beyond that available to them under state and local law.

EPA regulations at 40 C.F.R. Part 205 contain a similar savings clause. See 40 C.F.R. § 205.162-2(d). This clause does not explicitly grant any new authorities to localities, but rather only notes that EPA's regulations are not "intended to preclude" localities from adopting or enforcing certain provisions of their own, *if* they have such authority under applicable state law. Again, this provision serves only to disclaim

preemption of state or local authority, and confers no additional authority upon local governments. Thus, neither the NCA nor the regulations in Part 205 grant municipalities the authority to enact or enforce ordinances that supersede any limitations on their authority under state law.

The Office of Regional Counsel does not opine whether New Hampshire state law in fact authorizes municipalities to enact or enforce an ordinance such as North Hampton's. Please feel free to contact me if you have any questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy L. Williamson', with a long horizontal flourish extending to the right.

Timothy L. Williamson
Senior Assistant Regional Counsel