

SHAIMOS BURIALS: WHY RELIGION SHOULD YIELD
TO THE STATE'S COMPELLING INTEREST IN
ENVIRONMENTAL REGULATION AND THE
PROTECTION OF HUMAN HEALTH

Allison N. Zsamba

INTRODUCTION

Today we have a great understanding of how our actions can negatively affect the environment. With recycling and Go Green Initiatives throughout the country, the Garden State is no stranger to our society's ever increasing awareness and concern as to the proper disposal of solid waste. However, tension arises between environmentalism and the traditional Orthodox Jewish practice of shaimos burials.

The halachos of shaimos is the Jewish religious law which instructs followers to place certain holy objects in 'Geniza' or storage. While widely unknown to the general public, this law requires members of the Jewish faith to refrain from erasing or disgracing the name of G-d in most forms and from disgracing holy objects. When holy objects such as Torah or clothing used for ceremonial purposes are no longer fit for use they must be discarded by burial because they remain sacred. Certain common objects, such as book covers, may become so associated with a book of Torah as to become holy in their own right; and thus are required to be placed in shaimos.¹ Traditionally, the Rabbi would bestow a great honor on a decedent and include the community's shaimos, which had been gathered and stored at the synagogue, in the decedent's coffin to be properly buried.²

As the population boomed in the United States, so too did the Jewish community's output of shaimos, presenting an issue of where to bury the shaimos in accordance with Jewish law. Today, many businesses exist for the sole purpose of collecting, transport-

1. Rabbi Moshe Heinemann, *Shaimos Guidelines*, STAR-K ONLINE, <http://www.star-k.org/kashrus/kk-mitzvos-shaimos.htm> (last visited Dec. 29, 2011).

2. Zach Patberg, *Shaimos Burial Practice In Lakewood Under Attack*, ASBURY PARK PRESS, Apr. 01, 2010 [hereinafter *Shaimos Burial Practice*], available at <http://www.thelakewoodscoop.com/news/2010/04/shaimos-burial-practice-under-attack.html>.

ing and burying these holy objects for a fee. Failedmessiah.com the Jewish Press, a New York City weekly publication, reported on a company who uses semitrailers to haul Brooklyn's shaimos to Lakewood, New Jersey for burial.³ In addition to religious concerns, the need for places of burial presents secular environmental concerns. One of these concerns is a modern adaptation which instructs followers to wrap these shaimos objects in plastic before burial.⁴ Further, there is speculation as to whether the bags in fact contain shaimos or any other number of potentially harmful and worrisome items. In Lakewood and Jackson, New Jersey, this seemingly obscure practice has become a widely known concern for residents.

Lakewood, New Jersey has one of the largest populations of Orthodox Jews in the area with limited open land to accommodate the large output of shaimos. Generally these objects are buried every year in backyards, with coffins, under foundations and in open lots during Passover when members of the Jewish faith clean their homes.⁵ Recently, however, citizens are up in arms because of a forty-by-sixty foot pit in the woods off of Vermont Avenue.⁶ Rabbi Abadi ("Abadi"), of the Congregation Minyan Shelanu, instructed a number of youths to dig the unlined pit and collect the community's shaimos in order for it to be buried in the pit.⁷ The site is un-

3. Zach Patberg, *DEP Treading Lightly on Mandating Cleanup of 'Sacred' Lakewood Site*, ASBURY PARK PRESS, Apr. 8, 2010 [hereinafter *DEP Treading Lightly*], available at http://failedmessiah.typepad.com/failed_messiahcom/2010/04/shaimos-burial-sparks-kerfuffle-in-lakewood-567.html.

4. *The Halachos of Shaimos*, SHAIMOS.ORG, <http://www.shaimos.org/Desposing%20of%20Shaimos%20by%20the%20KOF-K.pdf> (last visited Dec. 29, 2010).

5. See Patberg, *Shaimos Burial Practice*, *supra* note 2, at 1. One of many environmental concerns, discussed later in this paper, is the modern adaptation of wrapping the shaimos in plastic bags. Trash bags were first invented in the 1950s and widely available in the 1960s. See, *B.Y.O.B.-Bring Your Own Bag Save Money & Our Environment*, CITIZENS CAMPAIGN FOR THE ENVIRONMENT, <http://www.citizenscampaign.org/PDFs/BYOB%20FOUR%20PAGER%202.pdf> (last visited Dec. 31, 2011). See also Tara Lohan, *The Great Plastic Bag Plague*, ALERTNET (Sept. 5, 2007), <http://www.alternet.org/environment/61607/>. Thus, this recent adaptation has greatly increased the risks to human health and the environment.

6. Patberg, *Shaimos Burial Practice*, *supra* note 2, at 1.

7. *Id.* While the Jewish community claims the site only contains shaimos, witnesses have photographed other items such as old mattresses and discarded kitchen cabinets. Margaret F. Bonafide, *Rabbi Strikes New Deal with DEP: Third*

lined, close in proximity to well water and protected wetlands, with no fencing, no treatment of the ‘waste’ prior to burial, and there is no one to sort through the individual bags to ensure that the contents are, in fact, shaimos. By April 2010, citizens began protesting and voicing their concerns to the New Jersey Department of Environmental Protection (the “NJDEP”), seeking to stop the unpermitted dumping.

On April 1, 2010, the NJDEP issued a warning to Abadi, citing him for operation of an illegal solid waste facility in violation of the Solid Waste Management Act (the “SWMA”). As a short-term solution, the NJDEP permitted the burial of some 2,000 plastic bags to be completed until a long-term solution could be established.⁸ The NJDEP wanted Lakewood’s Jewish community to obtain the proper permitting and create a sustainable legal landfill for the burial of its shaimos.⁹ However, by September 2010, permits had yet to be obtained and the site had yet to be cleaned up, forcing the NJDEP to file suit against numerous entities, including Abadi, Hard Maple Realty LLC, Vincenzo W. Mettee, Champion Subcontracting, and Congregation Minyan Shelanu Inc.¹⁰ Reports suggested a trial regarding the fate of the Lakewood and Jackson shaimos dumps would be set for February 2011, however a decision has yet to be rendered.¹¹

I. NEW JERSEY SOLID WASTE MANAGEMENT ACT

The New Jersey SWMA is enforced by the Solid and Hazardous Management “to ensure that solid waste, hazardous waste, regu-

Shaimos Storage Site Reveled in Pact, ASBURY PARK PRESS, Sept. 28, 2012, available at <http://www.app.com/article/20120928/NJNEWS/309280116/>.

8. Patberg, *DEP Treading Lightly*, *supra* note 3, at 1. The NJDEP sought to be sensitive to the religious aspects of this dump because it was the first time the NJDEP had been alerted to a burial outside of a Jewish cemetery.

9. *Id.* The Environmental Protection Agency defines a municipal solid waste landfill as “a discrete area of land or an excavation that receives household waste.” *Technical Approaches to Characterizing and Redeveloping Brownfields Sites: Municipal Landfills and Illegal Dumps*, ENVIRONMENTAL PROTECTION AGENCY 4 (Jan. 2012) [hereinafter E.P.A., *Municipal Landfills and Illegal Dumps*]. The difference between a solid waste landfill and an illegal dump, like the shaimos burial dump, is there is little or no regard given to pollution control measures or aesthetics. *Id.*

10. Patberg, *DEP Treading Lightly*, *supra* note 3, at 1.

11. Zach Patberg, *Lawsuit Over ‘Shaimos’ Dumping Heads to Trial*, ASBURY PARK PRESS, Oct. 16, 2010 [hereinafter *Lawsuit Over Shaimos Dumping*], available at <http://www.vosizneias.com/66238/2010/10/16/lakewood-nj-lawsuit-over-shaimos-dumping-heads-to-trial/>.

lated medical waste, and used oils are collected, stored, transported, recycled, and disposed of in an environmentally acceptable manner.”¹² The goals of the SWMA and other environmental laws in the State are “both remedial and preventative.”¹³ The “Legislature [has found] that the collection, disposal and utilization of solid waste is a matter of grave concern to all citizens and is an activity thoroughly affected with the public interest; that the health, safety and welfare of the people of this State require efficient and reasonable solid waste collection and disposal service.”¹⁴

Solid waste is defined as:

[A]ny garbage..., or any other waste material...including but not limited to spent material from community activities or any other material which has served or can no longer serve its original intended use which is discarded, or intended to be discarded, or is applied to the land or placed on the land...in a manner constituting disposal; deposited...dumped...into or on any land or water so that such material...may enter the environment or be emitted into the air or discharged into ground or surface waters.¹⁵

Shaimos consists of holy objects and writings. These writings can be handwritten, printed publications, compact discs, tapes or even computer generated copies. So long as the writing contains one of several names of G-d, Torah, or kedusha (holiness) which has the purpose of teaching of or praising G-d.¹⁶ Holy objects can be mezuzah (includes the covers as well), tefillin bags (used to hold holy texts), or even objects that are so associated with a holy object as to become holy in its own right (examples include bookmarks and the strings which bind a book of Torah).¹⁷ By their very nature, items which are buried as shaimos are “spent materials from the community...which has served or can no longer serve its original intended use.”¹⁸ Further, Jewish law dictates that proper

12. OFFICE OF MGMT. & BUDGET, DEPT. OF THE TREASURY, BUDGET OF THE STATE OF NEW JERSEY, FISCAL YEAR 2011, at D-129 (2010), available at <http://www.nj.gov/treasury/omb/publications/11approp/pdf/fedfds.pdf>.

13. St. Dept. of Env'tl. Protection v. Lewis, 215 N.J. Super. 564, 575 (1987).

14. N.J. STAT. ANN. § 13:1E-2(a) (West 1976).

15. N.J. ADMIN. CODE §§ 7:26-1.6(a)-(b) (2002).

16. *The Halachos of Shaimos*, *supra* note 4. Holy writings include items such as religious books, rough drafts of sermons, sheet music, newspapers, invitations and advertisements. *Id.*

17. Heinemann, *supra* note 1.

18. N.J. ADMIN. CODE §§ 7:26-1.6(a)-(b) (2002).

means of disposal is by being “applied to the land...in a manner constituting disposal.”¹⁹

Unlike most persons who dispose of similar used paper products by recycling, those who follow the Jewish practice of shaimos are barred from mixing these holy items with non-shaimos because that in and of itself would degrade or disgrace the true shaimos.²⁰ Secular recycling is a risky endeavor with regards to shaimos. While it is permissible to recycle seforim (holy book) if it is to be used to write a new seforim; it is not permissible for a recycled seforim to be used for something that would cause disgrace, for example toilet paper, to G-d.²¹ While some objects are universally required to be buried, others may be disposed of by other means depending upon the strictness of the sect. For example, some less strict sects would allow a goy, or child, to wrap rough drafts in a plastic bag and place the bundle in the secular trash or allow the drafts to be burned.²² However, at the end of the day many Jewish persons are prohibited from secular waste disposal of certain objects.

The SWMA exempts several items, which would otherwise be classified as solid waste. These exceptions include:

Source separated food waste collected by livestock producers, approved by the State Department of Agriculture, who collect, prepare and feed such wastes to livestock on their own farms; [r]ecyclable materials that are exempted from regulation pursuant to N.J.A.C. 7:26A; [m]aterials approved for beneficial use or categorically approved for beneficial use pursuant to N.J.A.C. 7:26-1.7(g); [s]pent sulfuric acid which is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated is recycled in one year; or dredged material, from New Jersey’s coastal or tidal waters, which is regulated under the provisions of the following statutes: New Jersey Water Pollution Control Act, Waterfront Development Law, Riparian Interests, Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of 1977, and Federal Coastal Zone Management Act and/or other relevant statutes and implementing regulations.²³

19. *Id.* at (b)(4).

20. Heinemann, *supra* note 1.

21. *Id.*

22. *Id.*

23. N.J. ADMIN. CODE § 7:26-1.6(a) (2002).

Additional exceptions include materials that are reused by incorporation into a new raw material, without being detrimental to the environment or human health, provided that the materials have been approved for a beneficial use permit pursuant to N.J. ADMIN. Code section 7:26-1.7.²⁴ However, the SWMA does not have a religious exception. In April of 2010, the NJDEP temporarily allowed the burial to continue until a proper landfill permit could be obtained and included in the county plans.²⁵ Thus, the question becomes whether Abadi was operating an unpermitted solid waste facility.

The SWMA defines a solid waste facility as:

[A]ny system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste but shall not include a recycling center, a regulated medical waste collection facility authorized pursuant to N.J.A.C. 7:26-3A.39, or an intermodal container facility authorized by the Department pursuant to N.J.A.C. 7:26-3.6.²⁶

While it may not appear to be much, the pit dug off of Vermont Avenue in Lakewood would qualify as a solid waste facility because it is a “site...which is utilized for the storage, collection, or disposal of solid waste.”²⁷ More specifically, the Lakewood and Jackson sites constitute stationary landfills. A stationary landfill is defined as “a solid waste facility, at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that it shall not include any waste facility approved for disposal of hazardous waste.”²⁸

24. N.J. ADMIN. CODE §§ 7:26-1.1(a)(1)(i)-(ii) (2002). Beneficial use “means the use or reuse of a material, which would otherwise become solid waste under this chapter, as landfill cover, aggregate substitute, fuel substitute or fill material or the use or reuse in a manufacturing process to make a product or as an effective substitute for a commercial product. Beneficial use of a material shall not constitute recycling or disposal of that material.” N.J. ADMIN. CODE § 7:26-1.4 (2006). Shaimos has no commercial use, nor is it a fuel, fill material, nor intended for reuse. Thus, shaimos does not fall within this or any other of the SWMA exceptions to solid waste classification.

25. Patberg, *DEP Treading Lightly*, *supra* note 3.

26. N.J. ADMIN. CODE § 7:26-1.4 (2006).

27. *Id.*

28. *Id.* Note that stationary landfills are further broken down into three subcategories as defined by what types of solid waste may be accepted on the site. *See id.*

Currently, there is controversy as to the identity of the title owner of the property on which the Lakewood site is located, but this does not absolve Abadi and the other named defendants from liability under the SWMA. Under New Jersey law, even if the illegal operator is not the title owner of the land, he is still liable because he is exercising control over the operation.²⁹ Further, the SWMA is a strict liability statute requiring no showing of intent to violate in order to give rise to imposition of civil penalties and remedies before the SWMA remedies may be invoked.³⁰ Thus, the question is not whether Abadi intended to construct or operate a solid waste facility, but rather whether solid waste was stored on the property without a permit to do so.³¹

Here, it is clear that whether or not a NJDEP representative was present at the sites during the burials, Abadi did not have a permit nor had he even submitted an application.³² The Asbury Park Press quoted Abadi as saying, “It doesn’t hurt anyone and it’s a holy thing[.]” implying that he was burying the shaimos with a good faith belief that it was either legal or benign.³³ However, “[a] belief, even a good faith belief, that one is performing these services in a reasonable or otherwise sound manner is not a defense.”³⁴ “As a matter of law, entities wishing to engage in a highly regulated business which directly impacts upon the safety and welfare of the public...are constructively on notice of the existence of legal requirements governing its practice and operations.”³⁵ Further, evidence indicates that Abadi was operating an illegal solid waste facility because he charged customers from numerous Jewish communities in New York and New Jersey a fifteen dollar fee to dispose of these artifacts.³⁶

29. Dep’t of Env’tl. Protection, Bureau of Solid Waste Compliance & Enforcement v. Circle Carting, Inc., No. PEA 0300002, 2006 WL 264051, at *3 (N.J. Admin. Jan. 6, 2006).

30. *Lewis*, 215 N.J. Super. at 572.

31. *Circle Carting*, 2006 WL 264051, at *3.

32. N.J. ADMIN. CODE § 7:26-1.7(b)(2) (2002) (“In no way shall the granting of a temporary certificate of authority to operate be interpreted as entitling the holder to final registration and engineering design approval.”).

33. Patberg, *Shaimos Burial Practice*, *supra* note 2.

34. *Material Damage Adjustment Corp. v. Open MRI of Fairview*, 352 N.J. Super. 216, 227 (2002). *See also* Dep’t of Env’tl. Protection, Bureau of Solid Waste Compliance & Enforcement v. Magic Disposal, Inc., No. PEA0500004-135866, 2011 WL 1642046, at *9 (N.J. Super. Ct. App. Div. May 3, 2011).

35. *Material Damage Adjustment Corp.*, 352 N.J. Super. at 227.

36. Zach Patberg, *Lakewood, NJ - DEP Sues Rabbi to Clean Up Shaimos Grave*, ASBURY PARK PRESS, Sept. 21, 2010 [hereinafter *Lakewood, NJ-DEP Sues*

While the purpose of the legislation is to protect the environment, the regulation has a blanket prohibition against operation of an unpermitted solid waste facility.³⁷ The NJDEP is given exclusive jurisdiction over the registration, operation, maintenance, and closure of sanitary landfills and other solid waste facilities in New Jersey with only very narrow exceptions.³⁸ “[T]here is a well-recognized *compelling state interest* in the NJDEP’s enforcement of its own environmental laws especially as to the uniquely vexing problem of solid waste facilities in a densely populated state that has suffered the scourge of unregulated solid waste facilities for decades.”³⁹ The SWMA “prohibits construction or operation of a solid waste facility without first obtaining a Solid Waste Facility Permit unless exempted pursuant to” the above quoted solid waste exceptions.⁴⁰ Specifically, not exempt from regulation are sites in which solid waste is stored for an excess of six months.⁴¹ The shaimos in these illegal dumps have been known as active sites for roughly three years and were intended to be permanent. Further, at no point has there been any remediation and restoration, nor any indication of plans to do so.

Additionally, Abadi may be liable for the operation of waste removal vehicles without proper permitting in connection with an illegal solid waste facility.⁴² “No person shall engage in the business of solid waste collection or solid waste disposal...unless such person is the holder of a certificate of public convenience and necessity issued by [the NJDEP].”⁴³ “Solid waste collection means the activity related to pick up and transportation of solid waste from its source or location to a transfer station or other authorized solid

Rabbi], available at <http://www.vosizneias.com/64775/2010/09/21/lakewood-nj-dep-sues-rabbi-to-clean-up-shaimos-grave>.

37. *Circle Carting*, 2006 WL 264051, at *3.

38. N.J. ADMIN. CODE § 7:26-1.1(a) (2002).

39. *Hi Tech Trans., LLC v. New Jersey*, 382 F.3d 295, 309 (3d Cir. 2004) (emphasis added).

40. *Id.* at 298. See N.J. ADMIN. CODE §§ 7:26-1.1(a)(1)(i)-(ii), 7:26-1.6(a) (2002); See also *supra* text accompanying notes 23-24. The SWMA expressly states, “No person shall engage or continue to engage...in the disposal of solid waste in this State without first having filed a completed application for and received approval of a [Solid Waste Facility] Permit; [n]o person shall begin construction of a solid waste facility without obtaining a [Solid Waste Facility] Permit; [n]o person shall continue to operate a solid waste facility...without obtaining a [Solid Waste Facility] Permit.” N.J. ADMIN. CODE §§ 7:26-2.8(e)-(g) (1996).

41. N.J. ADMIN. CODE § 7:26-1.1(a)(6) (2002).

42. N.J. ADMIN. CODE § 7:26-3.4(h) (2002).

43. N.J. ADMIN. CODE § 7:26H-1.6(a) (2004).

waste facility.”⁴⁴ Clearly, Abadi’s actions and the actions of his agents constitute solid waste collection without the use of properly certified vehicles. Abadi instructed a number of community youths to dig the Vermont Avenue pit; moreover, he then had them collect the community’s shaimos in several rented U-Haul trucks, as evident by Asbury Park Press’s staff photographs.⁴⁵ Approximately fifteen truck-loads were dumped at the Lakewood site by Abadi’s youths from the many Jewish communities serviced by Abadi’s illegal solid waste facility in New York and New Jersey.⁴⁶

Having violated the SWMA by operating a solid waste facility without a permit and transporting solid waste without a certificate of public convenience and necessity, Abadi and the other defendants are strictly liable under N.J. STAT. ANN. section 13:1E-9. Under this statute, the NJDEP may subject Abadi to permanent injunctions, civil penalties of no more than \$50,000 per violation and \$2,500 for every day the violation continues, and criminal liability.⁴⁷ Further, Abadi may be disqualified from applying for and commencing operation of a shaimos solid waste facility in the future.⁴⁸

Abadi and the other co-defendants will be held jointly and severally liable for not only damages, but also the remediation and restoration of the property.⁴⁹ The courts have stated, “[V]iolators

44. N.J. STAT. ANN. § 48:13A-3 (West 1991).

45. Patberg, *Lawsuit Over Shaimos Dumping*, *supra* note 11 (staff photograph taken by Tim McCarthy with caption reading, “This is a view from the Vermont Ave. in Lakewood where observers of a long time religious tradition properly dispose of religious items by burying them. This wooded area is owned by members of this community.”).

46. Patberg, *Lakewood, NJ-DEP Sues Rabbi*, *supra* note 36.

47. N.J. STAT. ANN. § 13:1E-9(e) (West 1998).

48. N.J. ADMIN. CODE § 7:26-16.8(a) (2002) (“No license shall be approved by the Department unless the Department finds that the applicant or permittee, in any prior performance record in the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste, has exhibited sufficient integrity, reliability, expertise, and competency to engage in the collection or transportation of solid waste or hazardous waste, or to operate the solid waste facility or hazardous waste facility, given the potential economic consequences for affected counties, municipalities and ratepayers or significant adverse impacts upon human health and the environment which could result from the irresponsible participation therein or operation thereof...”).

Id.

49. N.J. STAT. ANN. § 13:1E-103 (West 1981) (“Every owner or operator of a sanitary landfill facility shall be jointly and severally liable for the proper operation and closure of the facility, as required by law, and for any damages, no matter by whom sustained, proximately resulting from the operations or closure.”).

can neither profit by such actions nor escape responsibility for such acts, regardless of their financial condition, particularly in view of the strong legislative policy to deter the dumping of toxic wastes.”⁵⁰ Thus, whatever penalties are issued must effectively deter Abadi from future actions and also take away his profit from the fifteen dollar fee he charged his customers. The New Jersey Supreme Court has “specifically recognized that those who pollute the land must pay for its cure regardless of whether or not their acts were intentional.”⁵¹

Having established Abadi’s legal liability under the SWMA, the question arises whether the state’s “well-recognized compelling state interest” should yield to Abadi and his customers’ rights to freely exercise their religion.⁵² Under the Religious Land Use and Institutionalized Persons Act (the “RLUIPA”), the United States Congress has established a cause of action or defense in a judicial proceeding for governmental acts which substantially burden a person’s ability to freely practice their religion.⁵³

II. RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT: NO DEFENSE TO THE STATE’S COMPELLING INTEREST IN ENVIRONMENTAL STABILITY

The Religious Land Use and Institutionalized Persons Act (the “RLUIPA” or the “Act”) is the second attempt by Congress to provide heightened protection to religious exercise following the Supreme Court’s holding that this Act’s predecessor, the Religious Freedom Restoration Act of 1993 (the “RFRA”), was unconstitutional.⁵⁴ The Supreme Court declared that:

The guarantee of free exercise of religion grants citizens the right to believe and profess whatever religious doctrine they choose, and thus forbids government regulations of religious beliefs. The Clause further prohibits government from imposing special disabilities on the

50. *Lewis*, 215 N.J. Super. at 576.

51. *Id.*

52. U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”). *See also Hi Tech Trans., LLC*, 382 F.3d at 309.

53. *Sossamon v. Texas*, 131 S. Ct. 1651, 1656 (2011).

54. *See City of Boerne v. Flores*, 521 U.S. 507, 534-36 (1997) (“This is a considerable congressional intrusion into the State’s traditional prerogatives and general authority to regulate for the health and welfare of their citizens...Broad as the power of Congress is under the Enforcement Clause of the Fourteenth Amendment, RFRA contradicts vital principles necessary to maintain separation of power and the federal balance.”).

basis of religious views or status or otherwise interfering with the practice of religious beliefs.⁵⁵

Further, “the Clause forbids, not just facially discriminatory laws or official practices, but subtle departures from neutrally and covert suppression of particular religious beliefs.”⁵⁶

Congress enacted the RLUIPA pursuant to its Spending Clause and Commerce Clause powers in order to target state and local action regarding land use regulation and restrictions on the religious exercise of institutionalized persons. The scope of the RLUIPA specifically applies to cases where “the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability.”⁵⁷ In the 2011 fiscal year, which embraces the incidents in question, the state of New Jersey received \$4,535,000 in federal funding for activities related to solid waste management.⁵⁸ Thus, the SWMA is swept within the scope of the RLUIPA through the federal funding provision.

Further, the scope of the RLUIPA applies to cases in which the “substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes or has in place formal or informal procedures or practices that permit the government to make, individual assessments of the proposed uses for the property involved.”⁵⁹ The

55. *Id.* (internal quotations omitted) (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 500 U.S. 520, 534 (1993)).

56. *Id.* (internal quotations omitted) (citing *City of Hialeah*, 500 U.S. at 534).

57. 42 U.S.C.A. § 2000cc-(a)(2)(A) (West 2000).

58. OFFICE OF MGMT. & BUDGET, DEPT. OF THE TREASURY, BUDGET OF THE STATE OF NEW JERSEY, FISCAL YEAR 2011, at D-5 (2010), available at <http://www.nj.gov/treasury/omb/publications/11approp/pdf/fedfds.pdf>. Specifically, the state of New Jersey receives \$2,035,000 for site remediation and waste management and \$2,500,000 for compliance and enforcement for solid and hazardous waste management. *Id.* While acceptance of Federal funds subjects the state to the RLUIPA, it does not constitute an implied waiver of sovereign immunity. In order for a state to waive immunity, there must be a “clear declaration” so it is in fact “certain that the State in fact consents to suit.” *Sossamon v. Texas*, 131 S. Ct. 1651, 1658 (2011) (quoting *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 680 (1999)). The “RLUIPA’s authorization of appropriate relief against a government, [section] 2000cc-2(a), is not the unequivocal expression of state consent...require[d].” *Id.* (internal quotations omitted). Thus, by accepting Federal aid, the State does not automatically relieve defendants from meeting their prima facie case before the burden will shift to the Government.

59. 42 U.S.C.A. § 2000cc-(a)(2)(C) (West 2000).

RLUIPA defines 'land use regulation' as "a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land, if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest."⁶⁰ The SWMA is a zoning law because it effectively preempts local zoning and planning ordinances in the areas of solid waste disposal and management.⁶¹ Further, the SWMA requires

60. 42 U.S.C.A § 2000cc-5(5) (West 2000). For the purposes of this discussion, we will ignore the ownership aspect of the definition of land use regulation. According to the Asbury Park Press, Abadi "secured a 100-by-150-foot piece of undeveloped land," thus indicating an ownership right in the effected location. See Patberg, *Shaimos Burial Practice*, *supra* note 2. However, it appears that there is a dispute as to whether Abadi has a true ownership right in the land or whether he is an illegal trespasser.

61. See *Township of Chester v. Dep't of Env'tl. Prot. of St. of N.J.*, 181 N.J. Super. 445, 452 (1981) (holding that a "zoning ordinance which precludes the operation of a sanitary landfill within the geographic boundaries of a township was preempted by the [SWMA]."). See also *In re Certain Amendments to Adopted & Approved Solid Waste Mgmt. Plan of Hackensack Meadowlands Dev. Comm'n*, 275 N.J. Super. 375, 384 (1994) ("One of the fundamental principles underlying the SWMA is that solid waste management plans adopted by districts and approved by the Commissioner preempt municipal zoning ordinances which prohibit the siting of solid waste facilities or require compliance with local regulations."). The New Jersey Supreme Court has stated: "The Constitution expressly states that the municipalities have not only the powers granted in express terms but also those of necessary or fair implication or incident to powers expressly conferred or essential thereto, but it concludes with the following limitation: that none of these powers, whether they are express or by implication inconsistent with or prohibited by the Constitution or state statute, shall be inferred as going from the State. Attached to every ordinance there is an implied condition that it must yield to the predominant power of the State." *Ringlieb v. Township of Parsippany-Troy Hills*, 59 N.J. 348, 352 (1971) (paraphrasing N.J. CONST. art. 4, § 7, ¶11). "There is no statutory power granted to a municipality directly which permits it to control the solid waste as the State seeks to control." *Id.* at 353. The court concluded that the "Legislature by Chapter 39...and Chapter 40...preempted the field of solid waste collection and disposal and [management] under both statutes." *Id.* at 354. "[F]actors to be considered in determining the preemption issue [include]...[(1)] Matters which reflect a need for uniformity, i.e., those inherently in need of statewide treatment, are not proper subjects for local regulation; [(2)] where the legislative enactment, either expressly or impliedly, is intended to be exclusive in the field, it will be deemed preempted. However, because of a policy favoring a liberal construction of statutes in favor of local authority, the intent to occupy the field must clearly appear. A third consideration is whether the state scheme is so pervasive or comprehensive that it effectively precludes co-existence of the municipal regulation. In addition, a legislative intent to preempt will be found where the local regulation conflicts with the state statute or where it stands as an obstacle to the accomplishment of the objectives of the Legislature." *Township of Little Falls v. Bd. of Pub. Util. Comm'rs*, 173 N.J.

facilities to maintain the appropriate permits in accordance with the rules just the same as any other conditional use permit.⁶² Additionally, the SWMA requires the NJDEP to make individualized assessments of whether to issue a permit for the operation of a solid waste facility.⁶³ Thus, the SWMA is within the scope of application of the RLUIPA.

The Defendants in this case may assert the RLUIPA as an independent claim or defense in the SWMA judicial proceedings.⁶⁴ The RLUIPA provides, “[N]o government shall impose a substantial burden on the religious exercise...even if the burden results from a rule of general applicability[.]”⁶⁵ Under the RLUIPA, if a claimant:

Super. 397, 413 (1979) (citations omitted). Under this standard, the court found the SWMA “preempted local regulation in the field of solid waste disposal [and] with respect to zoning...” *Id.* at 415.

62. N.J. ADMIN. CODE § 7:26-1.4 (2006). “Permit means the approval issued by the Department to construct and operate a solid waste facility and means the approved registration statement and engineering design approval described in the [SWMA].” *Id.* (internal quotations omitted). A conditional-use permit, also termed special use permit or special permit, is defined as “[a] zoning board’s authorization to use property in a way that is identified as a special exception in a zoning ordinance. Unlike a variance, which is an authorized violation of a zoning ordinance, a special-use permit is a permitted exception.” BLACK’S LAW DICTIONARY 336, 1527 (9th ed. 2009). While the SWMA preempts all local zoning regulation, this is essentially an exception to local zoning laws as opposed to a variance because it does not permit an authorized violation of any zoning law. Even if the SWMA were to be considered a variance, as opposed to a uniform statewide preemptive zoning regulation, it would still be embraced by the RLUIPA. In *Bikur Cholim, Inc. v. Village of Suffern*, the court found the Claimants met their prima facie case in evidencing that the denial of the local variance substantially burdened their religious exercise under land use regulation section, 42 U.S.C.A. § 2000cc-(a)(2)(C), of the RLUIPA. 664 F. Supp. 2d 267 (S.D.N.Y. 2009) (challenging the Village of Suffern’s denial of a zoning variance that would permit the Claimants to use the property for housing of observant Orthodox Jewish visitors to the area’s three major hospitals).

63. N.J. STAT. ANN. 13:1E-5(a) (West 2004) (“A person seeking to engage in solid waste disposal shall file a separate application for a registration statement and an engineering design approval for each particular solid waste facility.”).

64. 42 U.S.C.A. § 2000cc-2(a) (West 2000) (“A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.”).

65. 42 U.S.C.A. § 2000cc-1(a) (West 2000). For the purposes of this Act, ‘Government’ is defined as “a State, county, municipality, or other governmental entity created under the authority of a State; any branch, *department*, agency, instrumentality or official...; and persons acting under color of state law[.]” 42 U.S.C.A. §§ 2000cc-5(4)(A)(i)-(iii) (West 2000) (emphasis added). Clearly, the NJDEP is a Department of the state of New Jersey and thus, can be held liable under the RLUIPA. “The ripeness doctrine’s basic rationale is to prevent the

produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 200[0]cc of this title, the government shall bear the burden of persuasion on any element of the claim, *except* [the claimant] shall bear the burden of persuasion on whether the law (including a regulation) or the government practice that is challenged by the claim substantially burdens [the claimant's] exercise of religion.⁶⁶

courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements..." *Congregation Anshei Roosevelt v. Plan. & Zoning Bd. of Roosevelt*, 338 F. App'x 214, 216 (3d Cir. 2011) (quoting, *Abbott Labs v. Gardner*, 387 U.S. 136, 148 (1967) (internal quotations omitted). To determine whether a land use case is ripe and therefore maintains a cognizant RLUIPA claim or defense, New Jersey follows the reasoning developed by the Second Circuit: "The finality requirement of the ripeness inquiry: (1) aids in the development of a full record; (2) provides the court with knowledge as to how a regulation will be applied to a particular property; (3) may obviate the need for the court to decide constitutional disputes if a local authority provides the relief sought; and (4) shows 'the judiciary's appreciation that land use disputes are uniquely matters of local concern more aptly suited for local resolution.'" *Congregation Anshei Roosevelt*, 338 F. App'x at 217 (quoting *Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342, 348. (2d Cir. 2005)). It appears that under the *Murphy* considerations, the Defendants' potential claim is ripe because unlike *Congregation Anshei Roosevelt*, the Defendants need not apply for a Solid Waste Permit to have final action taken.

66. 42 U.S.C.A. § 2000cc-2(b) (West 2000). "In order to establish a prima facie case that RLUIPA has been violated, a plaintiff must present evidence that the land use regulation in question: (1) imposes a substantial burden; (2) on the religious exercise; (3) of a person, institution, or assembly." *Grace United Methodist Church v. City of Cheyenne*, 234 F. Supp. 2d 1186, 1193-94 (D. Wyo. 2002) (internal quotations omitted). *See also Bikur Cholim*, 664 F. Supp. 2d at 288; *Westchester Day Sch. v. Village of Mamaroneck*, 379 F. Supp. 2d 550, 555 (S.D.N.Y. 2009). As stated above, the Defendant's case falls within the scope of the RLUIPA under the Federal funds provision, 42 U.S.C.A. § 2000cc-(a)(2)(A), and land use regulation, U.S.C.A. § 2000cc-(a)(2)(C); *Supra* notes 57-63 and accompanying text. Alternatively, Defendants may have a Free Exercise claim; however, this claim is substantially weaker because the government must only meet rational basis review. *See Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 273 (3d Cir. 2007) ("Even if Lighthouse had alleged a constitutionally cognizable burden on its religious exercise, the Plan is a neutral regulation of general applicability subject only to rational basis review."). "[U]nlike RLUIPA...the Free Exercise Clause does not define land use as a religious exercise...when the [claimant] does not show that locating its premises in a particular location is important in some way to its religion and the area from which [claimant's] building [physical structure or not] is excluded is not large, there is no constitutionally cognizable burden on free exercise." *Id.* at 274. The Third Circuit has joined several sister circuits (Tenth and Sixth Circuits) in holding that, "When a religious [claimant] makes a Free Exercise challenge to a zon-

As previously stated, the Defendants' case falls within the scope of the RLUIPA under the Federal funds provision, section 2000cc-(a)(2)(A), and land use regulation, section 2000cc-(a)(2)(C). The RLUIPA defines religious exercise as "any exercise of religion" and "[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose."⁶⁷ Further, the RLUIPA does not limit "religious exercise" to religious activities that are "fundamental or central to

ing regulation, it must explain in what way the inability to locate in the specific area affects its religious exercise." *Id.* Inability to locate at a property or within a specific zoning district would not negatively affect a sincerely held religious belief. *Id.* Just as in *Lighthouse Inst. for Evangelism, Inc.*, where the Institute could relocate to an equally accessible location, the Claimants here are equally unburdened. Here, simply obtaining a permit and operating a solid waste facility poses no burden on a sincerely held belief. The community is not being asked to completely cease and desist from practicing an essential tenet of their religion. Rather, the NJDEP is requesting that they continue their practice in a manner that will not cause irreparable harm to the environment and human health. Further, there is nothing to indicate that this plot of land specifically contributes to their belief and thus could not be located in a more suitable location under the parameters of a Solid Waste Facility Permit pursuant to N.J. ADMIN. CODE section 7:26-1.4. For a religious practice to be protected under the Free Exercise Clause it must be "(1) sincerely held, and (2) religious in nature, in the claimant's scheme of things." *Id.* at 275. "[W]e do not assume...that obtaining use of the particular property at issue here has any religious significance." *Id.* There, this was, in and of itself, ground for a grant of summary judgment for the city of Long Branch. Here, shaimos was traditionally buried in Jewish cemeteries and this property is not of any particular significance. Thus, the Claimants would be unable to survive a motion for summary judgment. Here, Claimants would fail under a Free Exercise claim because zoning laws are considered "generally applicable if they are motivated by secular purposes and equally impact all land owners in the city[.]" *Id.* at 276. A zoning law is a law of general applicability, which receives rational basis review, "where (1) there was no evidence that the ordinance was passed due to religious animus, (2) there was no evidence that the regulation was discriminatorily enforced against religious institutions and (3) there was no evidence that the ordinance devalued religious reasons by judging them to be of lesser import than nonreligious reasons." *Id.* at 277 (internal quotations omitted). "If a zoning law only incidentally burdens the free exercise of religion, with the law being both neutral and generally applicable, it passes constitutional muster." *Id.* Here, there is no evidence either externally or in the legislative findings to indicate the SWMA was promulgated for any reason outside the scope of effectuating uniformity and prevention of corruption. See N.J. STAT. ANN. § 13:1E-2 (West 1976). Thus, because the SWMA is neither arbitrary nor tenuously related to its objective, it would likely pass constitutional muster.

67. 42 U.S.C.A. §§ 2000cc-5(7)(A)-(B) (West 2000).

a system of religious belief.”⁶⁸ In the context of First Amendment jurisprudence, the Supreme Court has stated, “Religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit...protection.”⁶⁹ Here, it is clear that the RLUIPA’s broad definition of “exercise of religion” embraces the shaimos practice.⁷⁰

The RLUIPA itself does not define “substantial burden,” but the New Jersey Superior Court has adopted the Seventh Circuit’s interpretation that a substantial burden is “one that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise—including the use of real property for the purpose thereof within the regulated jurisdiction generally—effectively impracticable.”⁷¹ In the context of the Free Exercise Clause, the Supreme Court has concluded that for RLUIPA purposes, “a substantial burden on religious exercise occurs when a state or local government, through act or omission, puts substantial pressure on an adherent to modify his behavior or to violate his beliefs.”⁷²

If the claimant cannot establish a substantial burden, the claim or defense must be dismissed. In *Grace Church of Roaring*

68. *Grace Church of Roaring Fork Valley v. Bd. of County. Comm’rs*, 742 F. Supp. 2d 1156, 1163 (D. Colo. 2010).

69. *Thomas v. Review Bd. of the Ind. Emp’t Sec. Div.*, 450 U.S. 707, 714 (1981).

70. See *supra* note 19 and accompanying text.

71. *Civ. Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003). See also *Muslim Ctr. of Somerset County v. Zoning Bd. of Adjustment*, 2006 WL 1344323, at *7 (N.J. Sup. Ct. May 16, 2006). Several other circuits have articulated generally consistent definitions for “substantial burden” under the RLUIPA. See *Grace Church*, 742 F. Supp. 2d at 1163 (citing 146 Cong. Rec. 7774-01, 7776) (“RLUIPA’s legislative history reveals that ‘substantial burden’ is to be interpreted by reference to [the RFRA]...‘substantial burden’ as used in this Act is not intended to be given any broader interpretation than the Supreme Court’s articulation of the concept of substantial burden or religious exercise.”); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004) (a substantial burden, “must place more than an inconvenience on religious exercise...[it] is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly. Thus, a substantial burden can result from pressure that tends to force adherents to forego religious precepts or from pressure that mandates religious conduct.”); *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004) (to be a substantial burden it “must impose a significantly great restriction or onus upon such exercise.”); *Adkins v. Kaspar*, 393 F.3d 559, 570 (5th Cir. 2004) (a burden is substantial “if it truly pressures the adherent to significantly modify his religious behavior and significantly violate his religious beliefs.”).

72. *Thomas*, 450 U.S. at 718.

Fork Valley, the court was not persuaded that the County Board's decision to deny the church a special use permit was a substantial burden.⁷³ In that case, the court held that "[t]he plaintiffs were not pressured to abandon their beliefs or forego religious conduct."⁷⁴ They reasoned that the denial did not prevent the practitioners from fulfilling their religious tenets; but rather, the denial merely forbid the use of the property in controversy.⁷⁵ Similarly, the NJDEP is not declaring a categorical denial of any shaimos burials anywhere, rather they are requiring that burial sites be confined to proper cemetery burials or conform to SWMA regulation.⁷⁶ Finally, it has been established that the "RLUIPA does not excuse a landowner from local land use regulations;" thus, the mere existence of a religious use does not categorically exempt the believer from their community obligations.⁷⁷

Here, under the New Jersey standard for substantial burden it is unlikely that the NJDEP's enforcement of the SWMA would be considered a substantial burden.⁷⁸ The NJDEP did not render shaimos impractical because it did not restrain the Defendants from continuing to perform this practice as it traditionally has within Jewish cemeteries. The NJDEP merely seeks to have this illegal landfill become properly permitted and maintained for the benefit of the Jewish community's future burials and for the

73. *Grace Church of Roaring Fork Valley*, 742 F. Supp. 2d at 1163.

74. *Id.*

75. *Id.*

76. Further, members of the community may alternatively have children dispose of shaimos by wrapping the items and disposing them in the secular manner. *See supra* Introduction.

77. *Bikur Cholim, Inc.*, 664 F. Supp. 2d at 285. Here, the Jewish community's obligation is to refrain from abusive uses of private lands which endanger the health, safety, and welfare of the current and future residents. "In the first instance, it is the duty of the party who has generated the garbage to see to it, by proper diligence, that no nuisance arises therefrom which endangers the public health." *Berk Cohen Associates at Rustic Village, LLC v. Borough of Clayton*, 199 N.J. 432, 440 (2009). *See also* *Pleasure Bay Apartments v. City of Long Branch*, 66 N.J. 79, 84 (1974) (quoting *California Reduction Co. v. Sanitary Reduction Works*, 199 U.S. 306, 321 (1905) ("[I]t is the duty, primarily, of a person on whose premises are garbage and refuse material, to see to it, by proper diligence, that no nuisance arises therefrom which endangers the public health. He may be required, at his own expense, to make, from time to time, such disposition of obnoxious substances originating on premises occupied by him as is necessary in order to guard the public health.")).

78. *See supra* note 71 and accompanying text (describing the substantial burden standard).

health and safety of the community at large.⁷⁹ Further, it is questionable whether the community would really be modifying their religious practice in a novel way. Rather, the community would be conforming to traditional norms, i.e., bestowing honors on a decedent by burying the community's shaimos in Jewish cemeteries.⁸⁰

Under the *Thomas* standard, the Defendants may be able to support a claim of substantial burden because permitting may be seen as substantial pressure on the adherent to modify his belief.⁸¹ At first, the NJDEP allowed the Defendants to continue their burials in the Lakewood property, so as to not violate their immediate religious needs.⁸² However, having failed to come to a long term compromise, Defendants could argue, the NJDEP applied *substantial* pressure by filing suit for violation of the SWMA.⁸³ If the NJDEP is successful they will be forcing the Jewish community to modify their religious practice. No longer would the community look to the Rabbi's approval of a shaimos burial site, rather, the Jewish community will be forced to adjust their beliefs to conform to the secular NJDEP regulations.

However, the NJDEP is not applying substantial pressure in order to force the Defendants to violate their beliefs. There has been no requirement placed on the Jewish community to only dispose of shaimos by secular waste disposal. It is my belief anything short of this would be considered a mere inconvenience.

For example, in *Williams Island Synagogue, Inc.*, the City's denial of an Orthodox Jewish synagogue's conditional-use application to operate in a proposed new location did not substantially burden synagogue members' ability to worship according to their beliefs, and thus did not, under the RLUIPA, have to be justified by compelling governmental interest.⁸⁴ In that case, worship distractions caused by the physical limitations of the synagogue's current location, i.e., lack of separate space for movement of late-

79. *Shaimos Burial Sparks Lakewood Kerfuffle*, FAILEDMESSIAH.COM (Apr. 8, 2010), http://failedmessiah.typepad.com/failed_messiahcom/2010/04/shaimos-burial-sparks-kerfuffle-in-lakewood-567.html (commenting on Patberg, *DEP Treading Lightly*, *supra* note 3).

80. *See supra* Introduction.

81. *Thomas*, 450 U.S. at 718 ("A substantial burden on religious exercise occurs when a state or local government, through act or omission, puts substantial pressure on an adherent to modify his behavior or to violate his beliefs.").

82. Patberg, *DEP Treading Lightly*, *supra* note 3.

83. Patberg, *Lakewood, NJ - DEP Sues Rabbi*, *supra* note 36.

84. *Williams Island Synagogue, Inc. v. City of Aventura*, 358 F. Supp. 2d 1207 (S.D.F.L. 2005).

arriving congregants or for Kiddush preparation and necessity for congregants to turn in order to face Jerusalem, did not amount to substantial burdens.⁸⁵ This is substantially similar to the case here, where the NJDEP is not outright refusing to allow burials, but rather allowing the Defendants to continue their practice in a normal manner (i.e., in Jewish cemeteries).

Further, even if the community was required to build a modern landfill for their shaimos, this would be a mere inconvenience. “Modern landfills offer a safe disposal method, are inexpensive to construct, and easy to operate.”⁸⁶ Thus, shaimos burials have not been rendered “generally—effectively impracticable” resulting in a substantial burden on religion.⁸⁷

Assuming that the Defendants in this case could prove a substantial burden, the burden of persuasion shifts to the government. In the context of the RLUIPA, the government is prohibited from imposing a substantial burden on religion, “unless the government demonstrates that imposition of the burden on that person is in furtherance of a compelling government interest; and is the least restrictive means of furthering that compelling governmental interest.”⁸⁸

III. CAN ENVIRONMENTAL REGULATION BE A COMPELLING GOVERNMENT INTEREST?

Though at times it is hard to imagine because of the modern global output of industrial, household, and electronic waste, environmentalism has its roots in Ancient Rome.⁸⁹ Around 80 A.D., the Roman Empire passed legislation aimed at the protection of Rome’s drinking and bathing waters.⁹⁰ Environmentalism began in

85. *Id.*

86. John Nicholson & Nick Coulthard, *The Modern Landfill*, 2007 WLNR 9533108 (West Feb. 2007).

87. *Civ. Liberties for Urban Believers*, 342 F.3d at 761.

88. 42 U.S.C.A. §§ 2000cc-(a)(1)(A)-(B) (West 2000).

89. 42 U.S.C.A. § 6901(a)(1) (West 1984). Congressional findings, the continuing technological progress and improvement in methods of manufacturing, packaging, and marketing of consumer products has resulted in an ever-mounting increase, and in a change in the characteristics, of the mass material discarded by the purchaser of such products. *See id.*

90. *Environmental Law*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/765435/environmental-law> (last visited Jan. 9, 2012). Environmentalism is defined as the “advocacy of the preservation, restoration, or improvement of the natural environment; *especially*: the movement to control pollution.” *Environmentalism*, MERRIAM-WEBSTER.COM,

the United States as early as 1681, when William Penn “ordered that one acre of forest be preserved for every five acres cleared for settlement.”⁹¹ This tradition continued with Benjamin Franklin who led various campaigns to prevent the dumping of waste.⁹² Most notably, the United States’ commitment to environmentalism can be seen in Theodore Roosevelt’s creation of the national parks system and pure food and drug legislation, and Richard Nixon’s establishment of the Environmental Protection Agency (the “EPA”).⁹³

When considering the United States’ commitment to the environment and other zoning ordinances which have been deemed to further compelling interests, it is hard to comprehend how protection of the environment is not a compelling state interest. In *Covenant Christian Ministries, Inc.*, the Eleventh Circuit deemed a city’s interest in preserving residential neighborhoods and protecting those areas from traffic, crowds, and disruption to be compelling.⁹⁴ Further, there is a substantial difference between cases such as this, where there is potentially toxic dumping in a residential neighborhood, and a case where a city refused to allow a

<http://www.merriam-webster.com/dictionary/environmentalism> (last visited Jan. 9, 2013).

91. *Environmental Law*, *supra* note 90.

92. *Id.*

93. *Theodore Roosevelt*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/509347/Theodore-Roosevelt> (last visited Mar. 15, 2012); *Environmental Protection Agency*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/189191/Environmental-Protection-Agency-EPA/> (last visited Mar. 15, 2012). Initially, the EPA was responsible for the administration of the Clean Air Act and Clean Water Act. *Id.* Today, the EPA’s responsibilities are primarily stated in the Comprehensive Environmental Response, Compensation, and Liability Act (the “CERCLA”). *Id.* This Act is primarily referred to as the Superfund. *Id.* Superfund is the trust fund that provides for the cleanup of significant hazardous substances released into the environment regardless of fault and also references cleanup programs designed and conducted under the CERCLA and its subsequent amendments. E.P.A., *Municipal Landfills and Illegal Dumps*, *supra* note 9, at 44 app. B.

94. *Covenant Christian Ministries, Inc. v. City of Marietta*, 654 F.3d 1231, 1246 (11th Cir. 2011) (finding that a city zoning ordinance that completely prohibited religious assemblies in residential zones, but allowed private parks, playgrounds, and neighborhood recreational centers in those zones, was deemed not narrowly tailored as a means of achieving the city’s compelling interest in preserving residential neighborhoods and protecting those areas from traffic, crowds, and disruption, and thus did not survive strict scrutiny. While the State interest was deemed to be compelling, the ordinance was invalidated on the equal terms provision of the RLUIPA).

church to be built in a mixed-use neighborhood.⁹⁵ In the latter circumstance, there is nothing inconsistent between the religious uses and the surrounding neighborhood. In the former circumstance, the use is not only inconsistent with the neighborhood, but also poses significant risks to human health, safety and environmental sustainability.⁹⁶

“Garbage collection is a subject that is intimately associated with the public health...because ‘the collection and disposal of garbage are so intimately associated with the public health [it is also recognized] that stringent control thereof is indispensable.’”⁹⁷ Thus, “[t]he government may enact such laws and regulations as are necessary to protect the public health and welfare from the ills of solid waste disposal.”⁹⁸ The New Jersey Legislature has found:

The State needs to ensure that the public health and safety and the environment are protected from the risks posed by contaminated sites and that strict standards coupled with a risk based and flexible regulatory system will result in more cleanups and thus the elimination of the public’s exposure to these hazardous substances and the environmental degradation that contamination causes.⁹⁹

95. *Fortress Bible Church v. Feiner*, 734 F. Supp. 2d 409 (S.D.N.Y. 2010) (finding that the city failed to demonstrate any compelling governmental interests sufficient under the RLUIPA to justify the denial of church’s application to construct a new church facility in a mixed use neighborhood). Also distinguishable is *Grace Church*, where a city did not have a compelling interest in preserving industrial lands in the industrial park where a church had secured its property, so as to justify the granting of a conditional use permit for only half the duration sought by the church. *Grace Church v. City of San Diego*, 555 F. Supp. 2d 1126, 1142 (S.D. Cal. 2008). *See also* *Guru Nanak Sikh Soc’y v. County of Sutter*, 326 F. Supp. 2d 1140 (E.D. Cal. 2003) (finding that a board violated the RLUIPA when they rejected an application to build a Sikh temple on a tract within the city and then rejected a second application to build on a tract outside the city zoned for agricultural use). There, the board conceded that they maintained no compelling interest. *Id.* However, the court seems to suggest that although the burden imposed by the RLUIPA is stringent, consistency with agricultural use may have sufficed. *See id.*

96. *See* 42 U.S.C.A. § 6901(b)(2) (West 2012) (“[D]isposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and the environment.”).

97. *Berk Cohen Associates at Rustic Village, LLC*, 199 N.J. at 440.

98. 61C AM. JUR. 2D *Pollution Control* § 1038 (2012) (paraphrasing *Berk Cohen Associates at Rustic Village, LLC*, 199 N.J. 432). *See also* 42 U.S.C.A. § 6901(a)(4) (West 2012) (“[T]he collection and disposal of solid wastes should continue to be primarily the function of [the] State.”).

99. N.J. STAT. ANN. § 58:10B-1.2 (West 2009).

Further, the United States Congress has found:

[I]nadequate and environmentally unsound practices for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health; open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land; the placement of inadequate controls on hazardous waste management will result in substantial risks to human health and the environment.¹⁰⁰

These state legislative and federal congressional findings are well founded. Illegal dumping occurs in an unpermitted area and only begets more dumping. In this case, it is truly unknown what is contained in the trash bags due to the lack of oversight. Further, “illegal dumps often attract more waste, potentially including hazardous wastes such as asbestos, household chemicals and paints, automotive fluids, and commercial or industrial wastes.”¹⁰¹

The risk to human health is vast. Areas used for illegal dumping may be easily accessible to people, especially children, and invite rodents, insects, and other vermin attracted to dump sites.¹⁰² Like discarded tires, depressions in plastic bags can collect water providing the standing water necessary for mosquito breeding grounds. Severe illnesses have been attributed to mosquitos including encephalitis, dengue fever, and West Nile virus.¹⁰³ Particularly worrisome, in July 2010, merely months after the shaimos burial controversy exploded, six birds tested positive for West Nile Virus in Ocean County, New Jersey.¹⁰⁴ Lakewood and Jackson townships are located in Ocean County; residents understandably should be worried about the spread of such diseases. Symptoms of

100. 42 U.S.C.A §§ 6901 (b)(3)-(5) (West 2012).

101. *Illegal Dumping Prevention Guidebook*, ENVIRONMENTAL PROTECTION AGENCY 2 (Mar. 1998) [hereinafter E.P.A., *Guidebook*], available at <http://permanent.access.gpo.gov/websites/epagov/www.epa.gov/epaoswer/non-hw/payt/pdf/illegal.pdf>.

102. *Id.* at 3.

103. *Id.*

104. Matthew McGrath, *6 birds in Ocean County have tested positive for West Nile Virus*, ASBURY PARK PRESS, July 24, 2010, available at <http://www.app.com/article/20100724/NEWS/7240319/West-Nile-virus-found-6-birds-from-Ocean-County-including-2-grackles>. The threat of disease is very real in the tri-state area. In August of 2010, New York reported three confirmed cases of West Nile virus, amounting to a total of four confirmed cases that year. Associated Press, *3 cases of West Nile Virus Are Confirmed in City*, N.Y. TIMES, Aug. 6, 2010, available at http://www.nytimes.com/2010/08/07/nyregion/07nile.html?_r=0.

the West Nile virus according to the New Jersey Department of Agriculture generally include: “[M]ild and flu-like, with fever, headache and body aches, [w]eakness, malaise, anorexia, lymphadenopathy, nausea and vomiting may also be seen.”¹⁰⁵ However, in severe cases, “signs of encephalitis, meningoencephalitis or meningitis; the symptoms may include a high fever, headache, neck stiffness, stupor, disorientation, tremors, convulsions, severe muscle weakness, flaccid paralysis and coma. Ataxia, cranial nerve abnormalities, myelitis, eye pain, polyradiculitis, and seizures have also been seen.”¹⁰⁶

In the United States, “countless neighborhoods have been evacuated and property damage has been significant because of dump sites that caught fire, either by spontaneous combustion or more commonly, by arson.”¹⁰⁷ One such example is the August 1989 fire under interstate seventy-eight in New Jersey. In that case, an unlicensed garbage dump mound twenty-five feet tall caught fire, burning at such a height and heat that it warped steel girders and buckled the concrete on the busy ten-lane highway.¹⁰⁸ In this case, the risk is far greater than the closure of a highway and divergence of traffic; it is the risk of destroying lives, homes, and the protected niche ecosystem of the Pinelands.¹⁰⁹

Another concern is the potential decrease in property values. This decrease leads to communities becoming unattractive to commercial businesses and residential developers.¹¹⁰ “Concerns about liability, cost, and potential health risks associated with brownfields sites may prompt businesses to migrate to ‘green-fields’ outside the city. Left behind are communities burdened with

105. *West Nile Fever*, N.J. DEPT. OF AGRICULTURE, <http://www.state.nj.us/agriculture/divisions/ah/diseases/westnile.html> (last visited Jan. 10, 2013).

106. *Id.*

107. E.P.A., *Guidebook*, *supra* note 101, at 3.

108. Anthony DePalma, *Fire in Unlicensed Newark Dump Closes Highway*, N.Y. TIMES, Aug. 8, 1989, available at <http://www.nytimes.com/1989/08/08/nyregion/fire-in-unlicensed-newark-dump-closes-highway.html?pagewanted=all&src=pm>; *Owners of Illegal New Jersey Dump Convicted in '89 Fire that Buckled I-78*, N.Y. TIMES, Oct. 24, 1992, available at <http://www.nytimes.com/1992/10/24/nyregion/owners-of-illegal-new-jersey-dump-convicted-in-89-fire-that-buckled-i-78.html>.

109. See generally *Pinelands Municipalities*, N.J. PINELANDS COMMISSION, <http://www.state.nj.us/pinelands/munico/munis/> (last visited Jan. 10, 2013) (listing of Pinelands municipalities encompassed in the New Jersey Pinelands Commission protected reserve).

110. E.P.A., *Guidebook*, *supra* note 101, at 3.

environmental contamination, declining property values, and increased unemployment.”¹¹¹ For example, in the 1950s, Exxon caused an underground oil spill in Greenpoint Brooklyn, estimated by the EPA to amount to approximately thirty-million gallons; three times the size of the 1989 Exxon Valdez disaster.¹¹² Members of the Greenpoint community have not only experienced illness, but they have sought compensation for property damages and decreased land value.¹¹³

The two major risk factors associated with illegal dump sites are leachate and methane gases.¹¹⁴ “Taken together, they can affect the soils ground and surface waters, and air in and around the sites of the [dump site], many times years after the landfill has been closed.”¹¹⁵ “Leachate is the liquid that results from rain, snow, dew, and natural moisture which percolates through the waste in a landfill or dump. While migrating through the waste, the liquid dissolves salts, picks up organic constituents, and leaches heavy metals...and inks.”¹¹⁶ Materials such as natural fibers

111. E.P.A., *Municipal Landfills and Illegal Dumps*, *supra* note 9, at 1. The EPA defines ‘brownfields’ as “sites [that] are abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.” *Id.* at 37 App. B. New Jersey defines ‘brownfields’ as “any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.” N.J. STAT. ANN. § 58:10B-1 (West 2009).

112. Adam Klasfeld, *Greenpoint spill 3 times larger than the Exxon Valdez!*, THE BROOKLYN PAPER, Sept. 22, 2007, available at http://www.brooklynpaper.com/stories/30/37/30_37oilspill.html. See also Nicholas Confessore, *An Old Oil Spill Divides a Brooklyn Neighborhood*, N.Y. TIMES, Nov. 1, 2005, <http://www.nytimes.com/2005/11/01/nyregion/01spill.html>. As a result of these lawsuits, nearly sixty years later, Exxon settled with New York and the Federal Government for \$25 million and was required to remediate the area within a specific time period. David B. Caruso, *Exxon to Pay \$25M in Settlement over NYC Oil Spill*, THE BOSTON GLOBE, Nov. 17, 2010, http://www.boston.com/business/articles/2010/11/17/exxon_to_pay_25m_in_settlement_over_nyc_oil_spill/. The Exxon Valdez was an oil tanker, which, in 1989, struck a reef off the coast of Alaska spilling eleven million gallons of crude oil. For more information see *Exxon Valdez*, ENVIRONMENTAL PROTECTION AGENCY, <http://www.epa.gov/osweroe1/content/learning/exxon.htm> (last visited Jan. 10, 2013).

113. Klasfeld, *supra* note 112. See also Confessore, *supra* note 112.

114. E.P.A., *Municipal Landfills and Illegal Dumps*, *supra* note 9, at 5.

115. *Id.*

116. *Id.* While it may seem beneficial that the Orthodox community do not use synthetic fabrics, organic chemical compounds can be extremely harmful to the environment because they alter the natural balance resulting in over-nitration of soil and water. An organic chemical or compound is defined as “a

found in kosher clothing, Torah parchment and inks, and commercial inks and paper, break down and contaminate the soil.¹¹⁷

Like the dump in this case, most “open dumps and old sanitary landfills do not have liners or proper drainage systems to divert the leachate.”¹¹⁸ Unlike dumps, sanitary landfills are “carefully planned and engineered facilities designed to control leachate and methane and minimize the risk of land pollution from solid-waste disposal.”¹¹⁹ When leachate is not collected via drainage systems and liners it can be absorbed into soil and into groundwater, surface water, or aquifer systems.¹²⁰ In 1997, the EPA conducted a study and found that the ground water near disposal facilities changed chemical composition showing elevated levels of nitrate, organic carbon, and cyanide.¹²¹ The potential for ground and surface water contamination is strong because of the unlined shaimos dumps. The dumps are only a short distance away from New Jersey American Water wells, which provide drinking water to the local communities, and Lakewood’s Lake Carasaljo.

Methane is the principle gas produced from the decomposition of organic landfill materials such as household garbage and paper.¹²² While methane is generally categorized as a ‘nonpoisonous’ gas—even though respiratory and developmental risks have not

substance produced by animals or plants that contains mainly carbon, hydrogen, and oxygen.” *Id.* at 41 App. B. For example, as a result of excessive organic compound, algae can begin to over-develop killing off other life forms in the environment.

117. Torah parchment found in temple scrolls and mezuzahs is composed of the skin of kosher animals. The inks used on Torah parchment consist of boiled oils, tar and wax, which is later combined with tree sap and honey. Kosher clothing is generally comprised of cloth that has natural fibers and specifically does not combine wool and linen in the same garment. Examples of Kosher cloths that Jewish law dictates must be buried include, the Tallit (prayer shawl) and Kippah (hat). Commercial papers are often laminated or coated in a plastic type substance. Additionally, synthetic inks consist of any number of combinations of metals and chemicals which may or may not be water soluble. Of great concern, as with any community which passes items from one generation to the next, is the makeup of items such as mezuzahs. Mezuzahs are boxes used to bless a home and individuals as they enter. These boxes can be made out of a metal or wood; however, today they are also produced from plastic. Of great concern are the chemicals in plastic and the possibility of heavy metals.

118. E.P.A., *Municipal Landfills and Illegal Dumps*, *supra* note 9, at 5.

119. *Land Pollution*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/329175/land-pollution> (last visited Jan. 10, 2013).

120. E.P.A., *Municipal Landfills and Illegal Dumps*, *supra* note 9, at 5.

121. *Id.*

122. *Id.*

been determined nor does the term account for suffocation—it is colorless, odorless, and highly flammable.¹²³ “Methane production typically begins one or two years after waste placement in a landfill and may last from ten to sixty years. Explosions and fires...often result [from] methane build-up at a building on or adjacent to the landfill.”¹²⁴ In addition to methane, “[e]missions of potentially carcinogenic organic chemicals have been detected from landfill gases. Benzene and vinyl chloride have been detected at landfills in California, Wisconsin, and New Jersey.”¹²⁵

The EPA has stated, “Landfills and illegal dump sites pose a significant risk to human and environmental health. Simply based on the number of sites throughout the country, landfills are one of the largest sources of potential pollution in communities of all types.”¹²⁶ With the risks associated with illegal dumps and old landfills, it is hard to imagine the state not having a compelling interest to protect the health, safety, and welfare for humans and the environment alike.

Beyond the health and property risks associated with dumping, there is great cost associated with the remediation of such pollution. The United States Congress has recognized that “if hazardous waste management is improperly performed in the first instance, corrective action is likely to be expensive, complex, and time consuming.”¹²⁷ The New Jersey Legislature has similarly stated, “[O]ften there are legal, financial, technical, and institutional impediments to the efficient and cost-effective cleanup of brownfield sites as well as all other contaminated sites wherever they may be.”¹²⁸ The EPA has found:

123. *Id.* at 41 App. B. *See also Methane*, WISCONSIN DEPARTMENT OF HEALTH SERVICES, <http://www.dhs.wisconsin.gov/eh/chemfs/fs/Methane.htm> (last visited Jan. 10, 2013) (“[T]he reproductive and developmental effects of methane are unknown.”). Breathing methane at certain concentrations can cause suffocation or other adverse health effects from lack of oxygen. *Environmental Health Fact Sheet: Landfill Gas*, ILLINOIS DEPARTMENT OF PUBLIC HEALTH, <http://www.idph.state.il.us/envhealth/factsheets/landfillgas.htm> (last visited Jan. 10, 2013). *See also* Associated Press, *Two kids among five killed by methane gas: Mennonite family succumbs to poison from dairy farm’s manure pit*, NBCNEWS.COM (July 3, 2007), available at http://www.msnbc.msn.com/id/19580177/ns/us_news-life/t/two-kids-among-five-killed-methane-gas/#.T2PEafUg-Cc.

124. E.P.A., *Municipal Landfills and Illegal Dumps*, *supra* note 9, at 5.

125. *Id.* at 6.

126. *Id.* at 7.

127. 42 U.S.C.A § 6901(b)(6) (West 1984).

128. N.J. STAT. ANN. § 58:10B-1.2 (West 2009).

[C]osts to local government and industry associated with continuous clearing of illegally dumped waste materials are significant. Some urban areas have reported spending several million dollars per year on cleanup, hauling, and disposal activities associated with illegal dump sites. These costs may be passed along to residents in the form of higher service fees or property taxes.¹²⁹

Not only has Exxon paid millions in legal fees, but also due to the Greenpoint Brooklyn incident alone, they have paid \$25 million in settlement moneys to the State.¹³⁰ This settlement does not even account for lawsuits still open that are related to health problems associated with the brownfield it created. “No other brownfield has as much TOTAL contamination as a former landfill [or dump] does, whether measured by volume or area...site contamination is almost always spread throughout the entire site and cannot be remediated economically with most treatment technologies.”¹³¹ As previously stated, modern landfills are inexpensive to construct.¹³² Had the shaimos dump been properly lined, remediation could simply consist of a landfill cap. A landfill cap is designed to cover the landfill “so that contaminants contained within are not released into the environment.”¹³³

As a matter of public policy, no matter whom the polluter is, the cost associated with human health risks and remediation should fall upon the responsible party as opposed to the innocent tax payers. This policy has been encompassed in the Superfund under the CERCLA.¹³⁴ CERCLA establishes a fund, financed jointly by industry and the federal government, to compensate state governments and the federal government if responsible parties cannot be identified.¹³⁵ Further, the Act holds polluters strictly liable for the cost of cleanup with regards to past, non-negligent, and off-site generators.¹³⁶

In *Covenant Christian Ministries, Inc.*, the court deemed a city’s interest in preserving residential neighborhoods and protecting those areas from traffic, crowds, and disruption to be a compel-

129. E.P.A., *Guidebook*, *supra* note 101, at 4.

130. *See* sources cited *supra* note 112.

131. E.P.A., *Municipal Landfills and Illegal Dumps*, *supra* note 9, at 6.

132. *See* Nicholson & Coulthard, *supra* note 86.

133. E.P.A., *Municipal Landfills and Illegal Dumps*, *supra* note 9, at 7.

134. 42 U.S.C. §§ 9601-57 (2006).

135. *United States v. Reilly Tar & Chem. Corp.*, 546 F. Supp. 1100, 1111 (D. Minn. 1982).

136. *United States v. Bestfoods*, 524 U.S. 51, 55-6 (1998). *See also* *United States v. Prince*, 577 F. Supp. 1103, 1112 (D.N.J. 1983).

ling interest.¹³⁷ Here, the NJDEP would not only be pursuing a similar compelling interest, preserving their residential neighborhoods from traffic and disruption, but they would be furthering a more compelling aspect of the State's sovereign authority. In exercising their police power, the state of New Jersey, acting through the NJDEP, is protecting children, adults, and animals alike from risks of injury, infection, and the depletion of natural resources. In this case, the risk of misuse of the shaimos burial site by the general public or even congregation members is far too great. As the EPA has recognized, dumping begets dumping which leads to all the aforementioned health and safety risks enunciated.¹³⁸ Thus, no matter whether the State's compelling interest is derived from, the risks to human health, the environment, or public policy it is clear that the State has a compelling interest.

In *Lighthouse Inst. for Evangelism, Inc.*, an ordinance prohibiting the establishment of churches within the city's redevelopment zone did not violate the RLUIPA because the organization could freely disseminate its religious message in the redevelopment zone and the organization could operate a church in 90% of the city that permitted such a facility.¹³⁹ Here, the community is not prevented from continuing the shaimos burials within Jewish cemeteries, nor are they prohibited from establishing proper burial grounds. Preventing illegal dumping through the SWMA's comprehensive legislation is the only way to accomplish regulation of an industry that has been plagued with corruption. In this case, the State has no other means of protecting its constituents against abuses and contamination. Thus, the law is narrowly tailored to advance the State's compelling interest.

IV. CONCLUSION

This case highlights the ever-present issue in the United States; simply put, the ebb and flow of tradition and modern realizations. Our nation was founded on religious tolerance and the freedom to practice one's religion without interference from the sovereign. We have made exceptions for religious practices, such as the Amish practice of refraining from educating their children past the eighth grade. However, the facts in the case of the Amish merely affect the autonomous individual, rather than innocent by-

137. *Covenant Christian Ministries, Inc.*, *supra* note 94.

138. E.P.A., *Guidebook*, *supra* note 101, at 3.

139. *Lighthouse Inst. for Evangelism, Inc.*, 406 F. Supp. 2d at 522.

standers. As in *Smith* (the peyote case) and here, the government premised to regulate the outward physical acts of religion.

Tradition has its time and place but we cannot turn a blind eye to the realities of modern life on our environment. Global warming is no longer a liberal fantasy used to strike fear into a capitalist society, rather it is our daily reality. Further, the scarcity of clean drinking water is a well-established global concern. The Jewish religion allows the disposal of shaimos in a secular manner when disposal is performed by a child. Further, shaimos is traditionally and currently buried in Jewish cemeteries with little to no interference from the government. Therefore, there is little need to illegally dump these items. Modern landfills are inexpensive to construct and easy to maintain; thus no excuse can be asserted which would allow the endangerment of lives, property, and the wellbeing of future generations by illegally dumping discarded items (sacred or not).

In this case, religion is not paralyzed by regulation, rather it is merely inconvenienced. Lakewood is a less affluent township and densely populated; thus a methane fire or well water contamination could be catastrophic. This township has continued to struggle since the days of Rockefeller to obtain industrial business, as evidenced by the 3.5% sales tax. The long-term costs and liabilities associated with brownfield remediation is enough to cripple that township. Jackson, though more affluent, is encompassed in the protected Pinelands of New Jersey. It is a niche ecosystem rich with history and tradition that must be preserved for future generations. In this and other similar cases, religion must yield to the state's compelling interest in protecting citizens against the substantial risks to human health and the environment.

**At the time this article went to print, Abadi's company, Hard Maple Realty, applied to the Lakewood Zoning Board to make the dump site a cemetery; however, it is now reported that the Rabbi plans to withdraw the application. In Jackson, Abadi proposed a housing development around the Frank Applegate Drive dump site; however, this application is currently on hold. Abadi was initially ordered to move the items in Lakewood and Jackson to an appropriate new site on Ridge Avenue in Lakewood. Little to no work has been completed on these sites. Finally, a third dump site has been discovered near the Lakewood and Jackson sites in Farmingdale, New Jersey. As of September 28, 2012, Abadi and the NJDEP have*

*negotiated a May 21, 2013 deadline for cleanup and remediation of all dump sites in Lakewood, Jackson and Farmingdale.*¹⁴⁰

140. Margaret F. Bonafide, *Rabbi Strikes New Deal with DEP: Third shaimos storage site reveled in pact*, ASBURY PARK PRESS, Sept. 28, 2012, available at http://www.app.com/article/20120928/NJNEWS/309280116/Rabbi-strikes-new-deal-DEP?nclck_check=1.