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The State of South Carolina



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February 23, 1990

Representative Charles R. Sharpe  
House District No. 86-Aiken-  
Lexington Counties  
310-C. Blatt Building  
Columbia, South Carolina 29211

Dear Representative Sharpe:

Thank you for your letter of February 21, 1990, and your conversation with Senior Assistant Attorney General Ken Woodington requesting an opinion of this Office on the existence of any state law or regulation requiring a "needs assessment" before an operating permit can be issued to an infectious waste incinerator facility. It is my understanding that you are particularly concerned about the importation of out-of-state waste to a proposed facility in the Batesburg-Leesville area.

Last year the General Assembly passed the South Carolina Infectious Waste Management Act. Among the various provisions of the Act are sections defining infectious waste 1/, mandating the Department of Health and Environmental Control (DHEC) to promulgate regulations, procedures or standards necessary to carry out the provisions of this Chapter and to protect the health and safety of the public, the health of living organisms, and the environment 2/; and delineating the powers of the Department of Health and Environmental Control and of its Commissioner. 3/

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1/ Section 44-93-20

2/ Section 44-93-30

3/ Sections 44-93-40 and 44-93-50, respectively.

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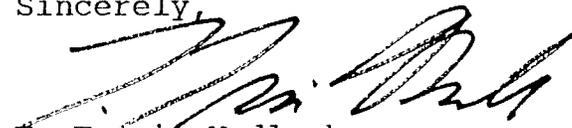
Section 44-93-125 specifically provides that no person may expand an existing infectious waste facility or construct a new facility without demonstrating the need for the expansion or new facility. The statute further states that in determining if there is a need, infectious waste generated out-of-state may not be considered without the approval of the Department of Health and Environmental Control. This requirement of demonstrating need does not apply to facilities currently operating if there is no expansion of capacity, nor does it apply to publicly owned facilities or facilities owned or operated by the generator of the waste, provided they accept only waste generated in this State. Additionally, "generator facilities" need not demonstrate need. Section 44-93-20(J) defines a generator facility as:

"a facility that treats infectious waste that is owned or operated by a combination or association of generators, a nonprofit professional association representing generators or a nonprofit corporation controlled by generators, nonprofit foundation of hospitals, or nonprofit corporations wholly owned by hospitals, if the waste is generated in this State and treatment is provided on a nonprofit basis."

Therefore, in answer to your question, there is legislation that requires a demonstration of need before a presently operating facility can be expanded or a new facility constructed. Additionally, infectious waste generated out-of-state may not be considered in determining this need without DHEC approval.

Please keep me apprised of developments with regard to this proposed facility as this Office stands ready to intervene in any appropriate administrative or judicial action on behalf of the State to ensure that laws providing for the safety of the public and the protection of our environment are aggressively enforced.

Sincerely,



T. Travis Medlock  
Attorney General

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