

The State of South Carolina



Office of the Attorney General

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April 10, 1991

The Honorable Candy Y. Waites
Member, House of Representatives
310-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Waites:

You have requested the advice of our Office concerning a proposed amendment to S.388, a bill providing for the regulation of solid waste. The proposed amendment would be made a part of proposed § 44-96-290(E) and would state: "In the case of a new municipal solid waste landfill, 1/ the county governing body in which such landfill will be located must request that the department [of Health and Environmental Control] issue a permit to the new facility." You have asked whether this provision can legally be enforced.

As we read this provision, its intent is to state that the Department of Health and Environmental Control (DHEC) cannot issue a permit without having first received a request from the county governing body. We view the required request of the county governing body to be a condition precedent to DHEC's issuance of the required permit rather than a mandate placed on the county governing body to be simply a conduit from the applicant to DHEC without the county exercising any discretion as to a particular municipal solid waste landfill permit application. The provision appears to leave to the county governing body the discretion to make the request when such is

1/ In proposed § 44-96-40(26), the term "municipal solid waste landfill" is defined as "any sanitary landfill or landfill unit, publicly or privately owned, that receives household waste. Such landfill may also receive other types of solid waste, such as commercial waste, nonhazardous sludge, and industrial solid waste."

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sought by a potential permittee. 2/ Without the request of the county governing body, the municipal solid waste landfill in question could not be permitted by DHEC. Read in this manner, we see no reason why this requirement, which has many similar counterparts in state law, would not be as valid as any lawful act of the General Assembly would be.

With kindest regards, I am

Sincerely,

Kenneth P. Woodington /ao

Kenneth P. Woodington
Senior Assistant Attorney General

KPW/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

2/ While the provision could arguably be read to require a county to request the permit on behalf of the municipal solid waste landfill, we believe that the better reading, which leaves discretion to the county governing body, is that as expressed above.