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April 22, 1987

The Honorable Phil P. Leventis
Member, South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Leventis:

You have requested the opinion of this Office as to whether certain provisions of S.340 would be constitutional. That bill would prohibit the burial of hazardous waste in commercial landfills after December 31, 1992, and in the preceding years would impose increasingly greater limits on the amount of hazardous waste which can be buried.

The U.S. Supreme Court in Philadelphia v. New Jersey, 437 U.S. 617, 626, while not directly presented with this question, stated that "it may be assumed...that New Jersey may...slow the flow of all waste into the State's remaining landfills, even though interstate commerce may incidentally be affected." In that case, of course, New Jersey had not sought to limit the flow of all waste, but only of out-of-state waste. Since the proposed bill would slow the flow of all waste, the above language indicates that the bill would be held constitutional.

Aside from interstate commerce, the bill could also conceivably be attacked on the ground that it is inconsistent with federal law allowing the burial of such wastes. However, 42 U.S.C. § 6929, a part of the federal solid waste act (RCRA), provides that "Nothing in this chapter shall be construed to prohibit any State...from imposing any requirements...which are more stringent than those imposed by [federal] regulations." It is conceivable that EPA would argue that the State's hazardous program should be terminated for inconsistency in spite of this statute. However, the chances of EPA's succeeding in such a suit would appear doubtful, and the risk, in our opinion, is not sufficient enough to cause the State to decline to enact S.340.

The Honorable Phil P. Leventis

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Needless to say, the above predictions of what the courts might do could be erroneous. However, it is our judgment that S.340 would most probably be held constitutional.

If I can provide further assistance, please let me know.

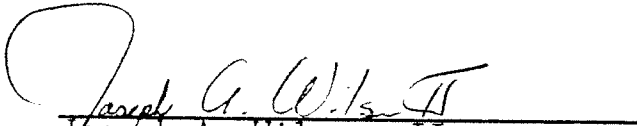
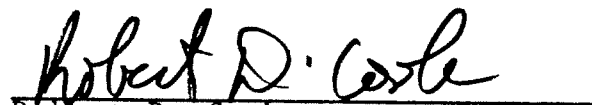
Sincerely yours,



Kenneth P. Woodington
Senior Assistant Attorney General

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