

1979 WL 42836 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 2, 1979

*1 Representative Archie Hardy
Chairman
Subcommittee on Natural Resources
Environmental Affairs and State Parks
P. O. Box 11867
Columbia, South Carolina 29211

Dear Representative Hardy:

Your letter dated February 14, 1979, regarding the recent United States Supreme Court decision in The City of Philadelphia v. The State of New Jersey, 430 US 141, 98 S.Ct. 2531, (1978), has been referred to me for reply. Specifically, you have asked whether the Supreme Court's decision has application to hazardous wastes as defined in south Carolina law.

In Philadelphia the Supreme Court examined a New Jersey statute which effectively placed an importation ban on a general category of substances broadly described as 'solid or liquid wastes.' After determining that the subject waste materials were articles of interstate commerce and, as such, protected by the Commerce Clause, the Court held that a ban on the importation of waste materials solely because they were created or collected out-of-state was discriminatory and violative of the protections afforded interstate commerce in Article 1, Section 8 of the U. S. Constitution.

The principles which apparently controlled the Supreme Court's decision in Philadelphia have recently been applied by the 10th Circuit Court of Appeals in concurrently deciding two cases involving an Oklahoma ban on the importation of 'controlled industrial waste.' [see Hardage v. Atkins, 582 F.2d 1264 (10th Cir. 1978); Oklahoma State Department of Health v. Lamberton, 582 F.2d 1267 (10th Cir. 1978)]. Under the Oklahoma statute, 'controlled industrial waste' included toxic 'refuse products, either solid or liquid.' Without discussing the question of whether controlled industrial waste fits within the definition of waste as used in Philadelphia, the Circuit Court ruled that regardless of their particular characteristics, the substances were nonetheless protected articles of interstate commerce. Accordingly, the Oklahoma statute was unconstitutional as a violation of the Commerce Clause, as in Philadelphia.

Therefore, a review of the pertinent cases indicates, in my opinion, that regardless of any definitional distinctions which may be drawn regarding the particular characteristics of the waste material sought to be regulated, any statute restricting the movement of articles of interstate commerce will be carefully scrutinized in light of the constitutional principles discussed above. Clearly, hazardous waste as defined by Section 44-56-20 of the 1976 Code of Laws of South Carolina, as amended, will be entitled to that constitutional protection upon a determination of its interstate character.

I trust the preceding discussion adequately answers your question, however, if any further explanation or assistance is required, please do not hesitate to contact me.

With best regards, I am
Very truly yours,

Richard P. Wilson
Assistant Attorney General

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