

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3680

August 20, 1986

Walton J. McLeod, III, General Counsel
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

RE: Equivalency of State and Federal Law

Dear Mr. McLeod:

Your recent letter to the Attorney General has been referred to me for handling and reply. Please address any future correspondence in this matter directly to me.

In your letter, you have requested an opinion of this Office as to whether the definition of hazardous waste contained in the South Carolina Hazardous Waste Management Act and the federal Resource Conservation and Recovery Act are substantially equivalent.

You advise that the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 3251 et seq., creates a comprehensive federal statutory scheme for regulation of waste materials. South Carolina has received authorization from the Environmental Protection Agency (EPA), which administers RCRA, to conduct a state regulatory program under the South Carolina Hazardous Waste Management Act (HWMA), Section 44-56-10 et seq., of the 1976 CODE OF LAWS OF SOUTH CAROLINA, as amended. The grant of authorization is not plenary and EPA retained jurisdiction over certain aspects of waste regulation, specifically in this instance, "mixed wastes."

Mixed wastes, you further advise, are those materials which have physical or chemical characteristics which render them "hazardous" under RCRA Section 1004(5), and which are also radioactive. Radioactive materials per se are not within the ambit of RCRA, Section 1004(28), but mixed wastes are those materials which, although radioactive, would be treated as hazardous materials were they not radioactive. EPA has heretofore taken the position that no state has been authorized to regulate mixed waste. 51 F.R. 24504, July 3, 1986. EPA has

Walton J. McLeod, III, General Counsel
August 20, 1986
Page Two

now determined that states with satisfactory regulatory programs and adequate statutory language may receive authorization from EPA to regulate mixed wastes. Id. This is significant because the Department is in the process of permitting RCRA activities at the Savannah River Plant, and there are additional facilities there which probably contain mixed wastes. In order to have a comprehensive and coordinated regulatory program at the Savannah River Plant facilities you relate that it is necessary for South Carolina to receive this authorization from EPA to regulate mixed wastes.

In order to receive such authorization, you advise that we must show that the State has enabling legislation which covers hazardous waste whether or not radioactive material is commingled. This language must be substantially equivalent to that contained in RCRA. EPA reportedly has determined that the definitions contained in RCRA, as interpreted by the decision in Legal Environmental Assistance Fund v. Hodel, 586 Fed. Supp. 1163 (MD Tenn. 1984), are sufficient for this purpose. You accordingly inquire whether the respective state and federal definitions are substantially equivalent. Upon review, it is our opinion that they are.

"Hazardous waste" is defined in RCRA as

a solid waste ... which may (A) cause or significantly contribute to an increase in mortality or an increase in serious incapacitating, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment (RCRA Section 1004(5))

"Solid waste" is defined in RCRA as

any ... discarded material ... but does not include ... source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 ... (RCRA Section 1004(27))

Walton J. McLeod, III, General Counsel
August 20, 1986
Page Three

State law, in pertinent part, defines "hazardous waste" as

any waste, or combination of wastes, ... which ... may ... a. cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or b. pose a substantial present or potential hazard to human health or the environment The term does not include ...source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954. (HWMA, Section 44-56-20(6))

Accordingly, our review of the relevant federal and state provisions reveals no material differences in their definitions of "hazardous waste". It is clear that the HWMA vests the Department with the requisite authority to regulate hazardous waste. It is equally clear upon comparison of the HWMA with the relevant federal provisions, as discussed above, that those authorities are substantially equivalent.

Therefore, it is the opinion of this Office that the definition of "hazardous waste" contained in the South Carolina Hazardous Waste Management Act is substantially equivalent to that contained in the federal Resource Conservation and Recovery Act.

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.

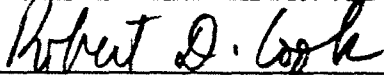
Very truly yours,



Richard P. Wilson
Assistant Attorney General

RPW:bvc

REVIEWED AND APPROVED BY:



ROBERT D. COOK
Executive Assistant for Opinions