

PPC 9521.1986(03)

AWARD OF PERMITS FOR NEW HAZARDOUS WASTE  
LAND DISPOSAL FACILITIES, PROCESS

April 8, 1986

Honorable William M. Thomas  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Thomas:

Thank you for your letter of February 4 in which you raised questions concerning the permitting process in the State of California. Specifically, you inquired about the processes which govern the award of permits for new hazardous waste land disposal facilities and the use of local government permits to prevent out-of-county wastes from being accepted for disposal.

States can be authorized under the Resource Conservation and Recovery Act (RCRA) to operate their State hazardous waste programs in lieu of the Federal program. In States that are not authorized, hazardous waste disposal facilities are subject to Federal requirements if the wastes they handle meet the Federal definition of hazardous waste in 40 CFR Part 261. In those States, EPA is responsible for reviewing and processing permit applications in accordance with Federal regulations. In addition, disposal facilities in unauthorized States must meet any State requirement.

Generally, counties and municipalities may also separately regulate or issue permits for hazardous waste facilities. Under RCRA, political subdivisions of States are expressly authorized to impose requirements, including those for site selection, which are more stringent than those imposed by EPA regulations. However, they may not impose less stringent requirements. State law may also restrict the ability of localities to regulate hazardous waste facilities and the intrastate transportation of wastes. Questions concerning State law should be directed to the State of California.

In your second question you solicited EPA's views on a possible prohibition by Kern County, California on the importation of hazardous wastes generated outside the county. RCRA provides that States and localities may impose more stringent requirements on hazardous waste facilities than those imposed by EPA regulations. However, not all more stringent State or local requirements are valid. Courts have found that certain more stringent requirements which significantly affect out-of-state persons and threaten important Federal interests are inappropriate for State or local resolution. For example, under the Clean Air Act and Clean Water Act, courts have held that

State laws which control pollution which moves interstate can significantly affect persons in other States. In some cases, these restrictions have been held to be precluded by Federal statute under the Supremacy Clause of the United States Constitution. In addition, courts have held that State waste import bans violate the commerce clause of the Constitution and, therefore, are illegal. Local requirements on transporters that unreasonably burden or discriminate against waste generated in other localities have been declared invalid for the same reason. Also, where it is physically impossible to comply with both Federal and State or local rules, the courts have held that Federal rules prevail.

In addition, local regulation of hazardous materials transportation may be preempted by the Hazardous Materials Transportation Act administered by the U.S. Department of Transportation (DOT). The Act provides a procedure whereby States and localities may seek an advisory opinion on whether a requirement is preempted. Your constituents may wish to contact DOT for further information.

EPA opposes unreasonable restrictions on the free movement of hazardous waste which are not related to legitimate health and safety concerns. The Agency is concerned that barriers will prevent shipment of hazardous wastes to the most appropriate facility for treatment or disposal. Therefore, EPA discourages the enactment of restrictions on the free movement of wastes, and will not grant authorization to a State that bans the transportation of wastes into or through the State.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Lee M. Thomas

bcc: Deputy Administrator  
Assistant Administrator, OSWER  
General Counsel  
Enforcement and Compliance Monitoring  
Region IX  
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