



STATE OF WEST VIRGINIA
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October 19, 1989

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Glenn R. Donohoe, Vice-Chairman
Roane County Solid Waste Authority
Post Office Box 713
Spencer, West Virginia 25276

Dear Mr. Donohoe:

By letter dated September 26, 1989, you requested the opinion of this Office on a question regarding the scope of the zoning authority of the Roane County Solid Waste Authority (SWA). Specifically, in the context of a proposed medical waste incinerator, you asked:

"Does the Roane County SWA have the authority to zone the county preventing the construction of incinerators provided the Roane County SWA has legitimate reasons, according to the Code, for making these zoning recommendations?"

W. Va. Code 20-9-12a(a) requires that the SWA prepare a "siting plan [which] identif[ies] zones within each county" where siting of "commercial solid waste landfills," "commercial solid waste transfer stations," and "commercial facilities for the processing or recycling of solid waste" is "authorized or prohibited." Since "zones within each county" allows for the possibility that such zones may comprise the entire county, and since a solid waste incinerator is a "commercial facilit[y] for the processing . . . of solid waste," the SWA has the authority to zone solid waste incinerators out of the county.

The zoning plan must, of course, be based on the criteria of Code 20-9-12a(b); must be prepared in final form only after public notice and comment, see Code 20-9-12a(c); and takes effect only upon approval by the West Virginia State Solid Waste Management Board, see Code 20-9-12a(d).

However, such a zoning plan would apparently not prevent the construction of incinerators. W. Va. Code 20-9-12a(e) only provides that:

"it shall be unlawful for any person to establish, construct, install or operate a commercial solid waste landfill or transfer station at a site not authorized by the siting plan. . . ."

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Although under Code 20-9-12a(a) the SWA can zone sites for commercial solid waste landfills, commercial solid waste transfer stations, and commercial facilities for the processing or recycling of solid waste, it is only the establishment, construction, installation or operation of an unauthorized landfill or transfer station, and not of a processing facility, that is unlawful under Code 20-9-12a(e). See also Code 20-9-12b(a).

With regard to your immediate, specific concern, viz., a medical waste incinerator, the SWA has no zoning authority. Medical waste is hazardous waste as defined by Code 20-5E-3(7), not solid waste within the meaning of Code 20-9-2(g), and therefore cannot be regulated by the SWA.

Sincerely,

ROGER W. TOMPKINS
ATTORNEY GENERAL

By:


LEONARD KAPLAN
ASSISTANT ATTORNEY GENERAL
ENVIRONMENT & ENERGY DIVISION

RWT:LK:kc