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January 20, 1987

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ATTORNEY GENERAL OPINION NO. 87- 12

Barbara J. Sabol
Secretary
Department of Health and Environment
Forbes Field, Building 740
Topeka, Kansas 66620

Re: Public Health -- Solid and Hazardous Waste;
Regulation of PCB Disposal Facilities --
Applicability of K.S.A. 1986 Supp. 65-3480 et
seq.

Synopsis: A person operating a PCB facility which is in
operation or which is under construction on or
before May 8, 1986 does not need a permit to modify
the facility after May 8, 1986. K.S.A. 1986 Supp.
65-3480 et seq. does not apply to these
facilities. Cited herein: K.S.A. 1986 Supp.
65-3482; 65-3489; 77-201; L. 1986, ch. 226; L.
1986, ch. 226.

* * *

Dear Secretary Sabol:

As Secretary of the Department of Health and Environment for
the State of Kansas, you request our opinion regarding K.S.A.
1986 Supp. 65-3480 et seq. Specifically, your request
states:

"We would like to request an opinion
whether an existing PCB facility which
has been exempted by [K.S.A. 1986 Supp.
65-3489] is subject to this act and the
requirement to obtain a permit should they

modify their facility after the effective date of the act."

K.S.A. 1986 Supp. 65-3482(a) states in part:

"After the effective date of this act, no person shall modify or construct a PCB disposal facility without a permit issued by the secretary under this act."

Section 12 of L. 1986, ch. 226 (the enabling legislation for K.S.A. 1986 Supp. 65-3480 et seq.) states:

"This act shall take effect and be in force from and after its publication in the Kansas register."

The act was published in the Kansas Register on May 8, 1986. See L. 1986, ch. 226.

K.S.A. 1986 Supp. 65-3489 states:

"The provisions of this act shall not apply to a PCB disposal facility in operation or under construction on the effective date of this act or to any mobile PCB treatment process, excluding incineration, which is designed to change the physical or chemical character or composition of any PCB."

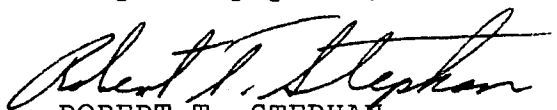
As your request indicated, K.S.A. 1986 Supp. 65-3482(a) and 65-3489 appear to contradict each other. In order to give both sections effect, as required by the rules of statutory construction, they must be read together in the light of legislative intent. K.S.A. 1986 Supp. 77-201; see also Easom v. Farmers Ins. Co., Inc., 221 Kan. 415 (1977). When read in pari materia, these two sections provide that modification of a PCB disposal facility may not be done without a permit unless the facility was in operation or under construction on or before May 8, 1986. K.S.A. 1986 Supp. 65-3489 is an exception to K.S.A. 1986 Supp. 65-3482(a).

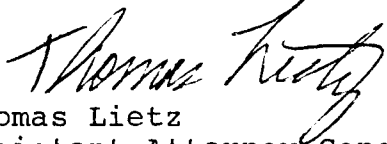
This conclusion is consistent with the proponent's recollection of the legislation's intent. We have learned through conversations with this proponent that the legislature intended K.S.A. 1986 Supp. 65-3480 et seq. to regulate only new PCB facilities. The provisions of K.S.A. 1986

Supp. 65-3480 et seq. were not intended to apply to PCB facilities in operation or under construction on or before May 8, 1986. Telephone interview with State Representative Edwin Bideau III (December 30, 1986).

In our opinion, therefore, a person operating a facility which was in operation or under construction on or before May 8, 1986 does not need a permit to modify the facility after May 8, 1986. The act does not apply to such facilities.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Thomas Lietz
Assistant Attorney General

RTS:JLM:TL:crw