



STATE OF KANSAS

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April 10, 1991

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ATTORNEY GENERAL OPINION NO. 91- 38

The Honorable Gayle Mollenkamp
State Representative, 118th District
State Capitol, Room 174-W
Topeka, Kansas 66612

The Honorable Robin Jennison
State Representative, 117th District
State Capitol, Room 155-E
Topeka, Kansas 66612

The Honorable Jerry Moran
State Senator, 37th District
State Capitol, Room 143-N
Topeka, Kansas 66612

Re: Public Health -- Solid and Hazardous Waste; Solid
Waste -- Construction, Alteration or Operation of
Solid Waste Processing Facility or Disposal Area
Without Permit; Oil Reclamation Facility

Synopsis: A solid waste processing facility is required to
obtain a permit from the Kansas department of
health and environment. Whether an oil reclamation
facility falls within the definition of a solid
waste processing facility depends on whether the
materials consolidated, temporarily stored or
salvaged are solid wastes. Cited herein: K.S.A.
65-3401; 65-3402; 65-3407; K.A.R. 28-29-3.

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Dear Representative Mollenkamp, Representative Jennison, and
Senator Moran:

You ask our opinion whether a particular type of facility is a solid waste processing facility within the meaning of K.S.A. 65-3402(c) and thus required to obtain a permit from the Kansas department of health and environment pursuant to the solid and hazardous waste act, K.S.A. 65-3401 et seq. You inform us that the facility in question, an oil reclamation facility, processes sludge from the bottom of oil collection tanks in the field and that the results of this processing are oil, brine and another type of sludge that is used as road oil.

K.S.A. 65-3402(c) provides:

"'Solid waster processing facility' means incinerator, compost plant, transfer station or any other location where solid wastes are consolidated, temporarily stored or salvaged prior to being transported to a final disposal site."

Clearly, if the materials involved are not "solid wastes," the permit requirement of K.S.A. 65-3407 is not applicable.

"Solid waste" is defined by K.S.A. 65-3401(a) as:

"Garbage, refuse and other discarded materials and including, but not limited to, solid, semi-solid, sludges, liquid and contained gaseous waste materials resulting from industrial, commercial, agricultural and domestic activities. Such terms shall not include hazardous wastes."

Two of the three categories of solid waste, garbage and discarded material, are further defined by regulation.

"'Garbage' means the animal and vegetable waste resulting from the handling, processing, storage, packaging, preparation, sale, cooking and serving of meat, produce and other foods and shall include unclean containers." K.A.R. 28-29-3 (1).

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The materials here involved - oil, brine, and sludge - clearly are not "garbage."

"'Discarded material' means any material which is:

"(1) abandoned or disposed; or

"(2) a by-product or residual when it is either in treatment or in storage, or when it is used in a manner which constitutes disposal."

"'By-product' means a material produced without separate commercial intent during the manufacture or processing of other materials or mixtures." K.A.R. 28-29-3.

The oil and the sludge used as road oil are materials produced with a separate commercial intent and therefore do not fall within the definition of "discarded materials." As we have not been provided any information regarding the brine which results from the processing, we are unable to state whether the brine is a "by-product or residual" and therefore within the meaning of a "discarded material." If the brine is a "residual" or a material produced without separate commercial intent during the processing of collected bottom sludge and either held in treatment or storage or used in a manner which constitutes disposal, then the brine is a discarded material. It then would fall within the definition of solid waste and the facility which temporarily stores the brine should be permitted as a solid waste processing facility.


The third category of solid waste, "refuse," is not defined within the solid and hazardous waste act nor in regulations promulgated thereunder. However, as used in the context of the definition of "solid waste," the term "refuse" appears to be used as a type or example of a "discarded material." This discussion herein regarding discarded materials is therefore considered applicable.


In conclusion, in the absence of factual information regarding the disposition or use of the brine which results from the collected bottom sludge, we are unable to state as a matter of

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law whether an oil reclamation processing facility is a solid waste processing facility within the meaning of K.S.A. 65-3402(c).

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Camille Nohe
Assistant Attorney General

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