

N.D.A.G. Letter to Wentz (April 8, 1992)

April 8, 1992

Robert M. Wentz, M.D.
State Health Officer
North Dakota State
Department of Health and
Consolidated Laboratories
1200 Missouri Avenue
P.O. Box 5520
Bismarck, ND 58502-5520

RE: Municipal Services Corporation

Dear Dr. Wentz:

Thank you for your letter of March 27, 1992, regarding your Department's review of the Municipal Services Corporation's (MSC) proposal to dispose of municipal solid waste incinerator ash at a landfill facility near Sawyer.

Since the receipt of your letter, I have had the opportunity to review the supreme court decision in this matter filed on March 31, 1992. That decision, in essence, requires your Department to reopen the hearing on MSC's permit application to allow MSC to present evidence addressing the concerns you expressed in your letter to Governor Sinner.

The passage of Senate Bill 2090 (1991 N.D. Sess. Laws ch. 283), which establishes a moratorium on permit applications for disposal of municipal solid waste ash, affects the normal departmental permit review process. One of the exceptions to Senate Bill 2090 is a court-ordered reapplication. The supreme court decision does not constitute a court-ordered reapplication but rather directs the Department's continuing review of a pending permit application. Through the moratorium, the Legislature established a point in time after which decisions could not be made on new applications and only existing applications could be further reviewed. The Legislature even chose to limit the scope of review in the case of a court-ordered reapplication. Based on the wording and legislative history of Senate Bill 2090, the Legislature intended review of pending applications to be within the context of the original application.

As mentioned, the supreme court has ordered that you allow MSC to present additional evidence. Only evidence relating to MSC's original application is appropriate. Any change, other than a de minimis change, from the original permit application is a new permit application and within the confines of the moratorium imposed by Senate Bill 2090. The movement of the disposal site from that defined in the original industrial-waste permitted site is a substantial change from the original permit application. Among other factors, a

new location involves different geological and subsurface considerations, new drainage and surface effects, and may have differing impacts on adjacent landowners.

Outside the parameters of this original application review process, MSC has the right to present information to the Department regarding substantial changes to its original permit. However, the Department must view these proposals in the context of a new application and cannot make a final decision regarding them until the completion of the moratorium. At that time, the Department's decision must also consider any statutes or rules which were adopted during the interim period and which apply to the disposal of municipal solid waste incinerator ash.

Sincerely,

Nicholas J. Spaeth

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