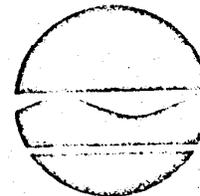


New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233



Robert F. Flacke
Commissioner

May 28, 1981

Mr. G. W. Wiegand
General Manager
Harrison Radiator Division
General Motors Corporation
Lockport, New York 14094

Re: Declaratory Ruling - 27-06
In the Matter of GENERAL MOTORS
CORPORATION, HARRISON RADIATOR
DIVISION, LOCKPORT, NEW YORK 14094

Dear Mr. Wiegand:

This letter is to serve as the Declaratory Ruling in response to your Petition pursuant to 6NYCRR Part 619 concerning the completeness of an application submitted by General Motors Corporation, Harrison Radiator Division (hereinafter "Harrison") to construct and operate a solid waste management facility and the applicability of Title 11 of Article 27 of the Environmental Conservation Law ("ECL").

Upon review of all relevant documents submitted, it is the Department's conclusion that a complete application by Harrison must include an application for a certificate of environmental safety and public necessity (hereinafter "a certificate") pursuant to Title 11 of Article 27 of the Environmental Conservation Law (hereinafter referred to as the "Siting Act"). This conclusion is based upon the Department's interpretation of the Siting Act and not on the proposed implementing regulations (6NYCRR Part 361) which are not in effect at the date of this Ruling. However, it should be noted that this Ruling is consistent with Part 361 as currently being proposed.

The certificate requirement of the Siting Act applies to "new industrial hazardous waste facilities" [ECL §27-1105(1)]. Harrison proposes to construct a secure land burial facility at the site of its existing storage lagoons. The question raised is whether the proposed facility is properly characterized as a modification to the existing facility or as a new facility. For purposes of this Ruling, we will accept Petitioner's conclusion that the existing facility consisting of storage lagoons is not subject to the provisions of the Siting Act.

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The purpose of the siting board is to provide a level of review for proposed industrial hazardous waste facilities which focuses on siting criteria set forth in ECL §27-1103. The siting board determines the amenability, or lack thereof, for siting a particular type of facility in a given location. Approval by the siting board in no way implies that a facility adequately meets the technical standards for any environmental permit. Questions relating to the detailed construction plans and operating standards must be resolved in a separate, though possibly concurrent, permit review.

Under the circumstances of this case, two fundamental considerations have led to the conclusion as above stated.

First, the proposed facility offers a fundamentally different mode of waste management, i.e., secure land burial, than to current operations consisting of storage lagoons. The existing facility constitutes only a temporary storage site for hazardous wastes while the proposed secure land burial facility must be engineered to accomplish ultimate disposal. (See Petition, Exhibit I, letter of Lawrence J. Nadler, DEC, to L. E. Chamberlain of Harrison Radiator Division).

Although Petitioner maintains it intends to remove the wastes from the secure land burial facility when recovery becomes economically and technologically feasible, such removal is not a certainty and therefore the siting board and this Department will be constrained to review this application as one for a facility designed for ultimate disposal.

Secondly, the acceptance of off-site wastes by the proposed facility introduces a transportation factor heretofore absent from consideration. ECL §27-1103(2)(a), (b) specifies certain transportation related concerns as factors to be taken into account by siting criteria to be promulgated by the Department. In its draft regulations, two transportation related siting considerations each encompassing several criteria are proposed. Since the existing facility stores only on-site wastes, there never was an opportunity during the approval process for the existing facility to evaluate these siting considerations and criteria. This is also further evidence of the fundamentally different mode of waste management between the storage lagoon operation and the proposed secure land burial facility. The proper forum for this type of review under current law is the siting board. Whenever review of a proposed new facility involves the evaluation of siting considerations and criteria which were inapplicable to an existing facility located at the same site, the site must be evaluated by the siting board.

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We note for the record that a factual dispute concerning the similarity of the materials currently being stored in the lagoons and those identified for disposal at the proposed secure land burial facility exists. Based on the above determinations, resolution of this factual disagreement need not be reached. However, under different circumstances, types of waste to be disposed may be dispositive of an inquiry concerning siting board exemptions.

Sincerely,

Laurens M. Vernon, for
Richard A. Persico
General Counsel/
Deputy Commissioner

cc: Danielle DeGolier, President
Citizens Against Pollution In Niagara County

Kinsey Berlin
Union Sun

Steven J. Doleski
DEC, Region 9

Peter Burke, Esq.

bcc: N. Nosenchuck
L. Vernon
R. Feller ✓
T. Ulasewicz