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STATE OF NEW YORK  
DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION  
ALBANY, NEW YORK 12233

September 29, 1989

MARC S. GERSTMAN

DEPUTY COMMISSIONER AND GENERAL COUNSEL

Pinsky & Skandalis  
Attn: Neil M. Gingold, Esq.  
State Tower Bldg., Suite 1020  
109 South Warren Street  
Syracuse, NY 13202-1872

Re: Declaratory Ruling 27-24  
Jack Gray Transport, Inc.

Dear Mr. Gingold:

This is in response to your petition made by letter of August 15, 1989, with respect to the recent amendment of Environmental Conservation Law §27-0305(2).

That amendment, abolishing the "hardship" exemption except with respect to the transportation of low-level radioactive waste, was made by Chapter 739 of the Laws of 1989, which became law on July 22, 1989. Pursuant to §4, it is effective 180 days thereafter, i.e., on January 18, 1990.

Specifically, your petition seeks the construction which this Department places on §3 with respect to the effect of the amendment on an existing "hardship" exemption. It appears from the petition that your client, Jack Gray Transport, Inc., presently has such an exemption which expires according to its terms on March 31, 1990.

I acknowledge the interest on the part of your client, and other affected persons, in obtaining a construction of the statutory provisions at issue. Accordingly, I have decided to issue a Declaratory Ruling on the construction of those provisions.

As your petition correctly indicates, the ambiguity arises from the concluding proviso clause of §3. After stating that

Any exemption from the permit requirements of title 3 of article 27 of the environmental conservation law granted by the commissioner of environmental conservation prior to the effective date of this act in accordance with the provisions of subdivision 2 of section 27-0305 of the environmental conservation law, and the regulations

promulgated thereunder, shall continue in full force and effect until such time as any such exemption shall expire or be reviewed and modified or revoked by such commissioner pursuant to the provisions of subdivision 2 of section 27-0305 of the environmental conservation law or the regulations promulgated thereunder....,

§3 concludes by stating that,

...provided, however, any hardship exemption heretofore granted by such commissioner under subdivision 2 of section 27-0305 of the environmental conservation law to a person engaged in the transportation of waste other than low level radioactive waste shall not be continued.

The proviso clause is susceptible to two constructions. One alternative is to construe it as though it read that an existing exemption "shall not be continued after the effective date of this act". The other alternative is to construe it as though it read that an existing exemption "shall not be continued after the date upon which it shall have expired". I note that in the case of your client, this means that the hardship exemption will either expire on January 18, 1990, under the first alternative, or on March 31, 1990, under the second alternative.

The former alternative fails because it requires a reading of the statute which makes it internally inconsistent. It is a fundamental rule of construction that a statute should be read so as to harmonize its various provisions and avert the nullification of one provision by another provision. Albano v. Kirby, 36 N.Y.2d 526, 369 N.Y.S.2d 655 (1975); Levine v. Bornstein, 4 N.Y.2d 241, 173 N.Y.S.2d 599 (1958). Accordingly, this Department selects the latter alternative, and construes §3 of chapter 739 as meaning that an existing "hardship" exemption continues to be valid until it expires according to its terms (unless modified or revoked) and, upon its expiration following the effective date of the amendment, the exemption cannot be further continued.

Therefore, your client's exemption continues in full force and effect until March 31, 1990, unless sooner modified or revoked.

Very truly yours,

  
Marc S. Gerstman  
Deputy Commissioner and  
General Counsel