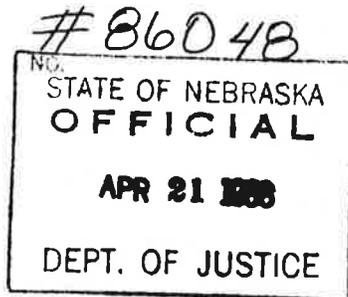


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

April 15, 1986

SUBJECT: Exemptions of second class cities and village under Neb.Rev.Stat. §81-1528(6) of the Environmental Protection Act.

REQUESTED BY: Clarence E. Mock, Burt County Attorney.

OPINION BY: Robert M. Spire, Attorney General,
Laura L. Freppel, Assistant Attorney General.

QUESTION: Under what conditions may a person owning or operating a solid waste disposal site claim the exemption set forth in Neb.Rev.Stat. §81-1528(6) of the Environmental Protection Act.

Neb.Rev.Stat. §81-1516 (Cum.Supp. 1984) provides in relevant part as follows:

No person shall dispose of any refuse, garbage or rubbish at any place, except a disposal area licensed as provided by §§81-1501 to 81-1532.

However, the Legislature has exempted cities of the second class and villages from the operation of the Environmental Protection Act so long as such cities and villages accept only nonhazardous waste and so long as their solid waste disposal sites do not pollute state waters. Neb.Rev.Stat. §81-1528(6) (Cum.Supp. 1984).

The plain language of §81-1528(6) is intended to solely benefit second class cities and villages in their efforts to dispose of nonhazardous solid waste. A person, as is defined by §81-1501(10), is exempt from the licensing requirements of §81-1516 if that person owns or operates a site for the sole purpose of disposing of nonhazardous solid waste generated within the jurisdictional boundaries of an exempt city or village.

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However, if a site accepts any solid waste which is generated outside the jurisdictional boundaries of an exempt city or village, the licensure requirements of §81-1516 apply.

Thus, the test for claiming the exemption set forth in §81-1528(6) does not necessarily depend on who owns or operates the site or on whether the solid waste is domestic or commercial. The test is whether the disposal site accepts solid waste solely from the exempt cities or villages. If so, no license is required. If solid waste is accepted from nonexempt generators in addition to the solid waste of the exempt cities or villages, then the disposal site must be licensed by the Department of Environmental Control.

Sincerely,

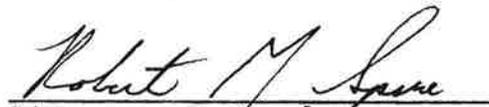
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APPROVED:


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