

Angela Curry

4/16/03

Staff Attorney
KPSC,

Dear Ms. Curry,

I have read the PSC announcement regarding the KPE Trapp facility posted today on the PSC website. I'd like to begin by thanking you for your assiduous diligence, it is clear that you (and the rest of the PSC staff) have thought long and hard about the permit.

My interest lies in advocating the planning process in the rural counties of Kentucky, where it is generally ill received. My question,

and I am not a lawyer, lies in the assertions starting on page 5, in the paragraph that reads: "The provisions contained in KRS 278.700-278.716 ('siting statute' or 'statute') govern the siting of merchant electric generation facilities in Kentucky. This statute creates the Board and establishes certain guidelines and requirements that must be met before the Board can approve a proposed site. Before a final decision is rendered on a proposed facility, the statute directs the Board to consider whether the proposed facility will meet all local planning and zoning requirements."

Do you see a meaningful difference in the planning and zoning process you've cited as the basis to deny the KPE permit, and the extant, valid

and active county solid waste planning being done throughout the Commonwealth? Does "...all planning and zoning requirements." include the statutory requirement under "SB2" (rendered, I think, in KRS 224) that imposes solid waste planning for all counties in the state? Or is there language in the statutes you've cited legally distinct from the SB2 solid waste planning requirements? In other words, assuming that the requisite language is present and clear in a county solid waste management plan, are County Solid Waste Plans good enough planning processes to enjoy the same legal applications you've assigned to KPE?

I see how you've derived the interpretation that permits are different than plans. Most counties solid waste plans have both components: language regarding the intent and attributes of the solid waste management process, and language requiring permits. I would note that many of the points you've raised re: KPE are common to the SB2 plans: both are a product of a legislative initiative, Governor Wilkenson's moratoriums and emergency orders are cut of the same cloth as Governor Patton's, SB2 constructed a specific subset of law refining the prior statues (109 boards, local planning boards, etc).

Am I right in my reading that the PSC found it's basis in the planning

language, not the permit requirements? Solid waste planning is the only planning going on in many counties. This may be the significant difference between Clark and some other counties: the presence of county planning authority with a broader agenda than the county solid waste planning authority (usually the Fiscal Court).

Whether additional procedures or authorities are needed to bring the legal protections now visited on Clark County to others is an important

question. Fiscal Courts will need to augment their planning efforts unless they are already protected. Any advice you might like to offer on model language that assures protection would be appreciated. For example, Letcher, Lee and Wolfe Counties are considering changes to the

local ordinances that underpin their solid waste plans, and those fiscal courts are trying to acquire (among other things) the protections you've found for Clark County. All three counties lack formal planning commissions.

Any comments you are willing to offer are very much appreciated. I thank you for your time and your manifest professionalism.

Sincerely,

Will Herrick
4859 Flat-Mary Rd
Campton, KY 41301