



STATE OF NEW YORK  
DEPARTMENT OF LAW  
ALBANY 12224  
(212) 488-3320

ROBERT ABRAMS  
ATTORNEY GENERAL

April 23, 1979

Hon. Hugh L. Carey  
Governor  
Executive Chamber  
The Capitol  
Albany, New York 12224

Dear Governor Carey

This letter is in response to your request that I review the entire issue of chemical waste disposal in New York State and take whatever legal action may be appropriate to protect our residents from the hazards of toxic chemical wastes.

I share your personal concern over the grave threat to the public health posed by chemical waste sites and disposal practices throughout the State. On April 7, I met with citizens groups in the Buffalo area representing numerous families that have suffered illness, mental distress, financial loss and dislocation of their private lives, because of horrendous conditions related to the improper disposal of hazardous wastes. I feel very deeply for these families that have suffered such great personal tragedies.

My staff, working at my direction, gave this matter the highest priority and reviewed the draft report of the Inter Agency Task Force on Hazardous Wastes, released on April 5, 1979, as well as numerous other technical reports and documents. They have also

completed a preliminary assessment of legal remedies available to the State against the owners and operators of dump sites that serve as repositories for large quantities of hazardous wastes. In sum, we have found that the dangers to the public health may be of immense proportions and that legal action by the State against wrongdoers is available as a weapon to obtain proper remedial measures.

While the outcome of litigation can not be guaranteed, particularly in view of the complex factual and legal issues involved, it is our opinion that several legal grounds exist for proceeding against those who have, wittingly or not, created enormous hazards to the health and safety of our population.

The Attorney General's well-established common law power to institute actions to abate public nuisances can be invoked. Orders can be sought directing wrongdoers to correct, at their own expense, the conditions that jeopardize the community's well being, and thereafter, to monitor sites for an indefinite period, under public supervision, to prevent any recurrence. In addition, while it is novel to apply for restitution in a nuisance abatement action, we shall do so to recover all monies expended by the State to alleviate problems caused by improper disposal practices.

Other possible remedies include: actions for damages predicated on strict liability for an abnormally dangerous activity; special proceedings under Executive Law, Section 63(12), for injunctive relief, restitution and damages, available upon a showing of persistent violations of federal, state or local law; actions for injunctions and penalties based on violations of the Water Pollution Control Law; actions for injunctions and penalties for violation of Article 27 of the Environmental Conservation Law, governing the operation of waste disposal areas; and actions for injunctions and penalties for violation of the State Air Pollution Control Law, based on noxious odors emanating from certain sites.

I should also inform you that my staff has been in close contact with the Justice Department

in Washington regarding these legal issues, and the possibility of coordinated legal action exists.

We are ready to go forward, but special resources are imperative. As you know, the Department of Law's personal service budget was cut, and my small staff devoted to environmental concerns, which already is overburdened, is unable to take on this enormous additional work load. Hence, additional specialized personnel are required for the massive undertaking you have requested.

I have given careful consideration to the most expeditious way to mobilize the appropriate powers and adequate resources for this effort. I strongly urge you to make available immediate funding so that the hiring of personnel to develop our litigation effort can begin at once.

A proposed budget of \$947,490 for the balance of this fiscal year is enclosed. This represents a realistic projection of the State's capability to begin necessary legal proceedings this year; the project unquestionably will continue for years.

The proposed budget is based on a plan of organization involving a core group of legal and technical specialists at a central location with field teams engaged at priority sites.

This is a serious matter concerning the "public safety", as you recognized in your letter, and it is therefore directly within the intent of Executive Law, Section 63(8). I, therefore, request your approval pursuant to that section to launch an official investigation into this statewide problem, providing needed subpoena power as well as additional funding.

I know you will want my office to undertake the vigorous and complete effort I have proposed. Frankly, the peril is so great that we cannot do less.

I look forward to your early reply.

Sincerely,



ROBERT ABRAMS  
Attorney General

DEPARTMENT OF LAW

PROPOSED BUDGET (fiscal year 1979-80)

SPECIAL HAZARDOUS WASTES PROJECT

PERSONAL SERVICE

11 Assistant Attorneys General	\$317,500
5 Engineers/Scientists	\$116,666
13 Investigators/Paralegals/Clerical	<u>\$163,333</u>
Sub-Total	\$597,500
Temporary Service	
Non-Employees (Hearing Reporters)	\$ 20,000
<u>TOTAL PERSONAL SERVICE</u>	\$617,500

NON-PERSONAL SERVICE

Supplies and Materials	\$ 8,000
Travel	\$ 25,000
Contractual Services	\$ 64,000
Equipment	\$ 32,990
Special Contractual Services	\$200,000
Data Development	\$100,000
Expert Witnesses	\$100,000

<u>TOTAL NON-PERSONAL SERVICE</u>	\$329,990
<u>TOTAL PERSONAL AND NON-PERSONAL SERVICE</u>	\$947,490

FROM: ATTORNEY GENERAL ROBERT ABRAMS  
THE STATE CAPITOL  
ALBANY, N.Y. 12224

FOR FURTHER INFORMATION CONTACT:  
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FOR RELEASE: MONDAY, APRIL 23, 1979  
AFTER 11:00 A.M.

ABRAMS SAYS "GROUNDS EXIST" FOR LAWSUITS ON TOXIC WASTE SITES;  
ASKS CAREY FOR SUBPOENA POWER AND SPECIAL STAFF

Attorney General Robert Abrams today announced that "legal grounds exist" for bringing lawsuits against the operators of toxic waste dump sites which are creating health and safety hazards to the public.

The Attorney General also released the text of a letter to Governor Carey, which said he was "ready to go forward" with legal action if he is granted subpoena power by the Governor and if the hiring of special staff is approved.

At an 11:00 A.M. news conference in his office in Albany, Mr. Abrams stated:

"There is growing evidence that the hazards associated with toxic chemical waste sites may constitute the gravest public health threat this nation has faced in decades. In New York State alone, there are hundreds of sites where toxic chemicals have been dumped and dozens of instances where those chemicals have spilled onto the soil, leached into the groundwater or been carried by streams and rivers for unknown distances.

"The shocking disclosures of Love Canal are sure to be followed in coming years by similarly appalling revelations at other sites of birth defects, disease and death.

"Although the human suffering can never be recompensed, our legal system might provide the opportunity to recover monies expended by the state and to force those who were responsible for creating the hazardous situation to take responsibility for cleaning it up.

"For the last several weeks, my staff has been intensely reviewing the possibility of pursuing such a legal remedy, and I am now able to announce that, in our opinion, the grounds do exist for legal action against the operators of toxic dump sites. We are prepared to pursue six different legal theories in litigation, including the Attorney General's historic power to go to court to abate public nuisances.

"In order to proceed with what promises to be a massive undertaking, I have today sent a letter to Governor Carey requesting his authorization pursuant to Section 63(8) of the Executive Law to issue subpoenas in connection with this investigation. I have also asked the Governor for funding in the amount of \$950,000 to hire the special legal and technical staff which will be necessary."

The Attorney General explained that it was not yet possible to say when lawsuits would be commenced or what defendants would be named, both because there is still ongoing investigation and legal research and because it is not good legal practice to announce the targets of lawsuits in advance of their filing.