

The State of South Carolina



T. Travis Medlock
Attorney General

803-734-3970
Columbia 29211

Attorney General

May 3, 1994

The Honorable C. Alex Harvin, III
The Majority Leader Emeritus
House of Representatives
304 C Blatt Building
Columbia, South Carolina 29211

Dear Representative Harvin:

You have asked our opinion as to the following: "[A]s part of their duties, can DHEC examine and consider past environmental compliance histories and records of industries and companies when they apply for permits or must they ignore a prior history of non-compliance?" You make specific reference to the South Carolina Pollution Control Act (S.C. Ann. §48-1-10, et seq.). As set forth below, it is our opinion that DHEC can.

As you realize, DHEC licenses or permits many types of facilities and operations, everything from ambulances (S.C. Code Ann. §44-61-50) to water supply construction permits (S.C. Code Ann. §44-55-40). Though the Pollution Control Act makes no specific mention of the Department's right to examine and consider past environmental compliance histories, two separate environmental statutes do specifically address this matter.

The South Carolina Infectious Waste Management Act (S.C. Code Ann. §44-93-10, et seq.) at §44-93-130 specifically states that DHEC may refuse to issue or renew a registration to transport infectious waste or a permit to operate a facility if it finds that within five years of the application for registration or permit that the applicant has been:

- (1) convicted of a crime involving moral turpitude by a court of law and all appeals have been exhausted;
- (2) convicted pursuant to a violation of this chapter or any other laws of this State pertaining to solid or hazardous waste punishable as a felony;
or

W. Travis Medlock

The Honorable C. Alex Harvin, III
Page 2
May 3, 1994

- (3) adjudicated in contempt of a court order pertaining to the enforcement of a provision of this chapter or any other state or federal laws governing hazardous waste.

Thus it is apparent that as regarding infectious waste, DHEC can examine and consider whether the applicant has previously been convicted of a crime of moral turpitude, a felony crime pertaining to solid or hazardous waste, or found to be in contempt of a court order pertaining to hazardous waste.

The South Carolina Solid Waste Policy and Management Act (S.C. Code Ann. §44-96-10, et seq.) specifically provides at §44-96-300 (B) that the Department shall deny a permit for operation of a solid waste management facility if it finds by a preponderance of the evidence that:

- (1) the applicant is not financially and technically qualified to carry out the activity for which the permit is sought;
- (2) the applicant has knowingly misrepresented or concealed any material fact in the permit application or disclosure statement, or in any other report or certification required under this article or under regulations promulgated pursuant to this article;
- (3) the applicant has obtained or attempted to obtain the permit by misrepresentation or fraud; or
- (4) the applicant has a documented and continuing history of criminal convictions or a documented history of violation of state or federal environmental laws such that the applicant's ability to operate within the law is questionable.

In making a determination of whether a preponderance of the evidence exists under subsection (B), the Department shall consider:

- (1) the nature and details of the act attributed to the applicant;
- (2) the degree of culpability of the applicant;

The Honorable C. Alex Harvin, III
Page 3
May 3, 1994

- (3) the applicant's policy or history of discipline, or both, of a responsible party convicted of acts describe in subsection (A);
- (4) whether the applicant has substantially complied with this state's statutes, rules, regulations, permits, and orders applicable to the applicant in this State relative to the activity for which the permit is sought;
- (5) whether the applicant, if the applicant has no prior history within this State, has substantially complied with other jurisdictions' statutes, rules, regulations, permits, and orders applicable to the applicant relative to the activity for which the subject permit is sought;
- (6) whether the applicant has in place and observes formal management controls to minimize and prevent the occurrence of violations or other unlawful activities relative to the activity for which the subject permit is sought;
- (7) mitigation based upon any demonstration of good citizenship by the applicant including, without limitation, prompt payment of damages, cooperation with investigations, termination of employment or other relationship with responsible parties or other persons responsible for the activity described in subsection (A) or other demonstration of good citizenship by the applicant that the Department finds acceptable; and
- (8) whether the best interests of the public will be served by denial of the permit.

Section 44-96-300 (C). Section 44-96-300 (A) specifically allows the Department to obtain a disclosure statement from the applicant containing the following information with regard to the applicant and his responsible parties:

- (1) the full name, business address, and social security number of all responsible parties;

The Honorable C. Alex Harvin, III

Page 4

May 3, 1994

- (2) a description of the experience and credentials, including any past or present permits or licenses for the collection, transportation, treatment, storage, or disposal of solid waste, issued to or held by the applicant within the past five years;
- (3) a listing and explanation of all convictions by final judgment of a responsible party in a state or federal court, whether under appeal or not, of a crime of moral turpitude punishable by a fine of \$5,000 or more or imprisonment for one year or more, or both, within five years immediately preceding the date of the submission of the permit application;
- (4) a listing and explanation of all convictions by final judgment of a responsible party in a state or federal court, whether under appeal or not, of a criminal or civil offense involving a violation of an environmental law punishable by a fine of five thousand dollars or more or imprisonment for one year or more, or both, in a state or federal court within five years of the date of submission of the permit application;
- (5) a listing and explanation of the instances in which a disposal facility permit held by the applicant was revoked by final judgment in a state or federal court, whether under appeal or not, within five years of the date of submission of the permit application; and
- (6) a listing and explanation of all of adjudications of the applicant for having been in contempt of any valid court order enforcing any federal environmental law or any state environmental law relative to the activity for which the permit is being sought, within five years of the date of submission of the permit application.

Further, in addition to the applicant's disclosure statement, DHEC may request specific information or a background investigation of an applicant by SLED or by the Attorney General. Thus, with regard to the Solid Waste Policy and Management Act, DHEC has considerable authority to examine and consider past environmental compliance histories and records of applicants when they apply for permits.

The Honorable C. Alex Harvin, III
Page 5
May 3, 1994

In addition to those statutes cited above, two additional major state laws address the issue of environmental permitting. The State Safe Drinking Water Act (S.C. Code Ann. §44-55-10, et seq.) requires that DHEC approve permits to construct, expand or modify a public water supply. While engineering, chemical, physical, radiological and bacteriological data may be required by the Department along with the application, there is no requirement for the disclosure of information concerning past criminal or environmental compliance history as is found in the Solid Waste Policy and Management Act, nor is DHEC specifically authorized to consider such issues in the permitting process.

Likewise, the South Carolina Hazardous Waste Management Act (S.C. Code Ann. §44-56-10, et seq.) requires the Department to issue a permit for the construction, alteration, or operation of a hazardous waste treatment, storage, or disposal facility. §44-56-60 (a) (2). While there is the requirement of evidence of liability coverage and financial assurances before a permit may be issued (§§44-56-60 (c) and 44-56-220), there is no requirement for the disclosure of criminal convictions or environmental compliance history as required by the Solid Waste Policy and Management Act, nor is DHEC specifically authorized to consider such issues in the permitting process.

CONCLUSION

Managing solid waste or infectious waste is risky business. Thus, the State does not want either convicted polluters or convicted criminals connected with waste management.

While the Pollution Control Act contains no specific authority for DHEC to consider environmental compliance histories and records, the Infectious Waste Management Act allows DHEC to consider prior criminal convictions or contempt of court adjudications. Similarly, the Solid Waste Policy and Management Act allows DHEC to consider a continuing history of criminal convictions or violations of environmental laws.

With kindest regards, I am

Sincerely yours,



T. Travis Medlock
Attorney General