

# The State of South Carolina



## Office of the Attorney General

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July 21, 1988

Walton J. McLeod, General Counsel  
South Carolina Department of Health  
and Environmental Control  
2600 Bull Street  
Columbia, South Carolina 29201

Dear Mr. McLeod:

You have requested an opinion from this office concerning capitalization grants to States by the Environmental Protection Agency (EPA) for deposit in State Water Pollution Control Revolving Funds, as authorized by Title VI of the Federal Water Pollution Act, Public Law 92-500, as amended (also known as the Clean Water Act).

The EPA, which will provide the grants to establish South Carolina's revolving fund has asked whether the State has the authority to carry out the following:

1. Require an Environmental Review (a NEPA-like assessment on all projects as a prerequisite to receiving a loan.
  2. Require a loan recipient (project sponsor) to comply with Title II requirements.
  3. Require a loan recipient (project sponsor) to comply with all Federal crosscutting issues associated with this program.
1. Under the Water Pollution Revolving Fund Act of 1987, Section 48-6-10 et seq., Code of Laws of South Carolina, the Department of Health and Environmental Control (DHEC) has the authority to promulgate regulations to effectuate the provisions of the Act and develop criteria for loans that shall include

Mr. McLeod  
Page 2  
July 21, 1988

relevant provisions of federal and state law and regulations. 48-6-40(1) and 48-6-70(A). Also, under the Federal law, the State must manage its revolving fund program (and make loans to project sponsors) in conformity with the requirements of the Clean Water Act.

On June 24, 1988, DHEC Regulation 61-67.1 was promulgated. (See State Register, Vol. 12, Document No. 935). This regulation effectuates the provisions of the Water Pollution Revolving Fund Act.

Title VI, Section 602(b)(6) of the Clean Water Act requires that the State apply the Environmental Impact Statement Requirement of the National Environmental Policy Act (or comparable NEPA-like environmental review) to all projects constructed in whole or in part with monies provided from the Fund. See Title II, Section 511(c)(1) of the Clean Water Act. South Carolina must assure the federal government (EPA) that all publicly owned treatment works constructed with monies from the Fund that is capitalized by grants under Title VI will be subject to NEPA-like review to evaluate possible environmental impacts including secondary impacts, associated with project construction.

Chapter II, Section A(12) of DHEC Regulation 61-67.1 provides that this federal requirement must be met for all project loan applicants and loan recipients. Further, the Regulation states that DHEC "will use the NEPA environmental review process until such time as its procedures have been developed and approved by EPA."

Therefore, based on the language of the Regulation, the State of South Carolina (through DHEC) has the authority to, and will require, an environmental review (a NEPA-like assessment) on all projects as a prerequisite to receiving a loan.

2. EPA also has determined that a prerequisite to awarding a capitalization grant to a State under Title VI is that the State must have the authority to require a loan recipient (project sponsor) to comply with Title II requirements. Title II of the Clean Water Act applies to the construction grants program of the Act but several specific statutory requirements attach to loan applications and loan recipients for projects constructed in whole or in part with monies made available by Federal Capitalization grants to State Revolving Funds.

Chapter II A of DHEC Regulation 61-67.1 discusses these Federal Programmatic Requirements. The Regulation states that "the federal requirements [under Title II] must be met for all

Mr. McLeod  
Page 3  
July 21, 1988

loan applications and recipients pursuant to the provisions of the [Clean Water] Act." As noted above, Section 48-6-70(A) states that criteria for loans shall include relevant provisions of federal law.

Therefore, based on the language of the Regulation and the Water Pollution Revolving Fund Act, the State of South Carolina (through DHEC) has the authority to, and will require that, a loan recipient (project sponsor) will comply with Title II requirements in order to receive and utilize monies from the Federally capitalized revolving fund.

3. Finally, EPA has determined that another prerequisite to awarding a capitalization grant to a State under Title VI is that the State must require a loan recipient (project sponsor) to comply with all Federal crosscutting laws and authorities associated with this program. These other Federal laws and authorities have applied to traditional construction grants projects but are not included among the authorities listed in section 602(b) (6) as discussed above. These laws apply to activities supported with funds directly made available by capitalization grants and the State use of such funds in the administration of the program.

These cross-cutting issues include such matters as the Civil Rights Act of 1984, the Equal Employment Law, the Age Discrimination Act, Endangered Species Act, Safe Drinking Water Act and other wide range laws, executive orders and federal policies.

Again, Chapter II A of DHEC Regulation 61-67.1 states that Federal Regulations applicable to all loan recipients are presented in the state regulation and section A(15) states that cross-cutting federal laws and directives mandated by the Agency (EPA) may impact the loan project. Examples that are not exhaustive of the entire list are stated in subsection 15.

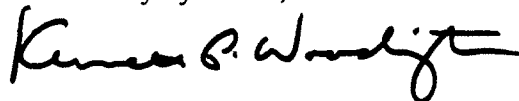
Based on the language of the Regulation and the intent of the Water Pollution Revolving Fund Act, the State of South Carolina has the authority to, and will require that, a loan recipient (project sponsor) will comply with all Federal cross-cutting issues associated with this program as determined by EPA.

It is therefore the opinion of this office that the State (through DHEC) has the authority to require an environmental review (a NEPA-like assessment) on all projects as a prerequisite to receiving a loan; require a loan recipient (project sponsor) to comply with Title II requirements; and, require a

Mr. McLeod  
Page 4  
July 21, 1988

loan recipient (project sponsor) to comply with all Federal cross-cutting issues associated with this program. These prerequisites to awarding a capitalization grant to a State by EPA under the Clean Water Act have been satisfied as discussed herein.

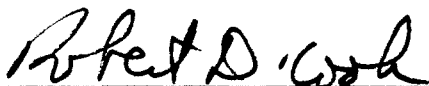
Sincerely yours,



Kenneth P. Woodington  
Senior Assistant Attorney General

KPW/an

REVIEWED AND APPROVED BY:



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