

The State of South Carolina



Office of the Attorney General

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July 30, 1987

Walton J. McLeod, III, 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 as to the status and interpretation of legislation establishing a Water Pollution Control Revolving Fund to provide grants for wastewater treatment and disposal projects. The legislation was adopted as Section 45 of Part II, Permanent Provisions, of the 1987 Appropriations Act.

The U.S. Environmental Protection Agency, which will provide capitalization grants to establish the funds, has asked the following two questions:

1. Is the statute, as part of the Appropriations Act, a part of the permanent laws of South Carolina?
2. Does the legislation meet the requirements of Section 603(c) of P.L. 100-4, which provides that the fund must be established, maintained and credited with repayments, and that the fund balance be available in perpetuity for providing financial assistance for wastewater projects?

1. The legislation establishing the Water Pollution Control Revolving Fund was expressly made part of the permanent statutes of the State by Part II, Section I of the Act, which states that the sections of that Part, including Section 45, "constitute a part of the permanent laws of the State of South Carolina." Section 1 also directs the Code Commissioner to include the subsequent sections in the South Carolina Code as permanent general laws of the State, and in Section 45, the subsections are assigned Code section numbers in the Act itself.

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The inclusion of permanent provisions in the annual Appropriations Act is a practice of long standing in South Carolina. Thus, for instance, the South Carolina Supreme Court noted in Crouch v. Benet, 198 S.C. 185, 194, 17 S.E.2d 320 (1941) that some parts of an appropriations act may be temporary and others permanent. Therefore, based on the language of the act and the recognition by the Court that such provisions may be permanent, there can be no question that Sec. 45 is a valid permanent provision of the statutes of South Carolina.

2. The other question is whether the state legislation conforms to § 603(c) of the Federal Water Pollution Control Act; that section was added by § 212 of P.L. 100-4, enacted in 1987. Section 603(c) requires that the funds made available to each State revolving fund shall provide financial assistance only as follows:

- (1) To any municipality or intermunicipal, interstate or State agency for construction of publicly owned treatment works.
- (2) For implementation of a management program established under Section 319 of the Act.
- (3) For development and implementation of a conservation and management plan under Section 320 of the Act.

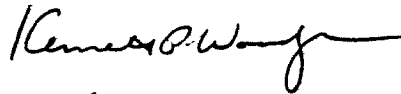
Section 48-6-10(9) of the state legislation defines a "project" eligible for funding as a wastewater treatment undertaking as defined under the [federal] Clean Water Act and approved by EPA. There is thus no question that only those projects defined in the federal act will be funded under the state act.

Section 603(c) also requires state water pollution control revolving funds be "established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance." Section 48-6-20(A), creating the fund, provides that the fund must be used only for the specific purposes set forth thereunder. Section 48-6-20(B) provides that DHEC and the Budget and Control Board shall deposit in the fund all federal money allocated for the fund, all State matching money and all monies from repayment of loans. Section 48-4-30 provides that earning on balances in the fund must be credited to the fund; money remaining in the fund at each of any fiscal year accrues only to the credit of the fund; and the fund balance must be used for grant awards in perpetuity.

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It is therefore the opinion of this Office that the state legislation is permanent legislation and that it conforms to all provisions of Sec. 603(c).

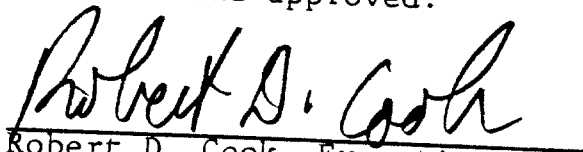
Sincerely yours,



Kenneth P. Woodington
Senior Assistant Attorney General

KPW:jca

Reviewed and approved:



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