

1983 WL 181792 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 14, 1983

**\*1 SUBJECT: Oil and Gas Wells, Pollution State Agencies, Statutory Construction**

(1) For wells governed by Act 179 of 1977 (oil and gas production), DHEC is specifically authorized to adopt regulations as developed with the Water Resources Commission.

(2) DHEC and Water Resources Commission have concurrent authority over the disposal of brine and oil-field wastes by underground injection. In even of subsequent conflict, lawfully enacted DHEC regulations must prevail.

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Executive Director  
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QUESTIONS:

1. Under what authority and in what manner may the Department of Health and Environmental Control (DHEC) adopt regulations concerning the disposal of brine and oil-field wastes by underground injection?
2. What is the effect of Section 48-43-70 upon the respective regulatory authority of the Water Resources Commission and DHEC concerning disposal of brine and oil-field wastes by underground injection?

AUTHORITIES:

Act No. 179 of 1977 (Oil & Gas Act) (Codified as [Section 48-43-10, et seq., of the 1976 CODE OF LAWS OF SOUTH CAROLINA](#), as amended); Act No. 459 of 1982; Section 44-55-10, [et seq.](#), of the amended CODE (State Drinking Water Act); Section 48-1-10, [et seq.](#), of the amended CODE (South Carolina Pollution Control Act); Sutherland Statutory Construction (4th Ed. 1973), Sections 31.02, 51.03, 51.05; Opinion of Attorney General dated December 18, 1981, to Walton J. McLeod.

DISCUSSION:

1. The South Carolina Pollution Control Act ([Section 48-1-10, et seq., of the 1976 CODE OF LAWS OF SOUTH CAROLINA](#), as amended) provides that the Department of Health and Environmental Control (DHEC) has regulatory responsibility for permitting discharges into the environment of the State of any organic or inorganic matter. Section 48-1-90(a). Section 48-1-110, as amended, makes it unlawful to construct, install, or operate a waste disposal system without a written permit from DHEC. Such broad general delegations of regulatory authority would normally be sufficient to require a permit from the Department for the construction, installation, or operation of an underground injection well and for the promulgation of appropriate regulations. Op. Atty. Gen. dated 12/18/81, to Walton J. McLeod.

However, by Act 459 of 1982, the General Assembly amended Section 44-55-40(m) of the amended CODE, known as the State Safe Drinking Water Act, and provided a specific procedure for DHEC:

to promulgate regulations as developed by the Advisory Committee established pursuant to Section 44-55-45, setting standards for the constructions, maintenance, operation, and abandonment of any well except for wells where well construction,

maintenance and abandonment are regulated by, [inter alia,] Act 179 of 1977 (oil and gas production). . . For such excepted wells, [DHEC] is authorized to adopt regulations as developed with the Water Resources Commission. . . (Emphasis added.) Section 44-55-40(m).

\*2 Therefore, although the general delegation of authority contained in the Pollution Control Act, enacted in pertinent part in 1950, would be sufficient in the absence of a more specific provision, the fact that DHEC has not exercised that authority and that a specific procedure has subsequently been provided by the Legislature in Section 44-55-40(m) now requires that DHEC follow the specific procedures involving the Advisory Committee, except that DHEC may develop regulations with the Water Resources Commission if it wishes to regulate underground injection wells in the area of oil-field waste disposal. 1A Sutherland Statutory Construction (4th Ed.), § 31.02, p. 354; 2A Sutherland, § 51.03 p. 300; Id., § 51.05, p. 315. Of course, any well regulations promulgated by DHEC which do not comply with Section 44-55-40(m) would be invalid.

2. Act 179 of 1977 (Oil & Gas Act) (codified as [Section 48-43-10, et seq.](#), of the amended CODE) provides that the Water Resources Commission may regulate, among other things, the disposal of salt water and oil-field wastes. Section 48-43-30(B)(2) (d). Therefore, the Commission has been delegated specific authority over the disposal of salt water (brine) and oil-field wastes.

Section 48-43-70 of the same Act, however, further provides that:

Nothing contained in this chapter shall be construed to supercede or take precedence over any of the power, authority or responsibilities conferred upon the Department of Health and Environmental Control by Chapter 1 of Title 48 [the Pollution Control Act].

Such a provision appears to be consistent with the general delegation to DHEC of responsibility for protecting the health and environment of the State against the affects of pollution generally. Any regulatory conflict between DHEC and the Commission would appear to arise only where it is proposed to dispose of brine or oil-field wastes by use of an underground injection well. The Commission has specific regulatory responsibility over oil and gas well drilling and production. Section 48-43-30. DHEC has both general and specific responsibility for regulating waste disposal including disposal by underground injection. Sections 48-1-90; 44-55-40(m). Therefore, areas in which their respective regulatory responsibilities overlap may result in concurrent regulatory authority over such activities so long as they can be harmonized. 2A Sutherland, § 51.05, p. 315. However, if a subsequent act is in irreconcilable conflict with the act under consideration, the subsequent act must prevail. 2A Sutherland, § 51.03, p. 300.

As discussed above, the General Assembly in 1982 enacted Section 44-55-40(m) authorizing DHEC to adopt regulations as developed with the Commission, which in 1977 had been previously delegated similar authority over the same activity by the Oil and Gas Act (Act 179 of 1977). However, there can be no conflict until the lawful adoption of appropriate DHEC regulations developed with the Commission pursuant to Section 44-55-40(m). Therefore, the Commission's regulations now in effect (R.121-8.0, et seq.) continue to apply until such time, if ever, as lawfully adopted DHEC regulations concerning the disposal of brine and oil-field wastes by underground injection become effective. Any subsequently enacted DHEC regulations which irreconcilably conflict with existing Commission regulations accordingly must prevail.

#### CONCLUSION:

\*3 (1) For wells governed by Act 179 of 1977 (oil and gas production), DHEC is specifically authorized to adopt regulations as developed with the Water Resources Commission.

(2) DHEC and Water Resources Commission have concurrent authority over the disposal of brine and oil-field wastes by underground injection. Where those respective authorities come into irreconcilable conflict, the subsequent specific authorization to DHEC must prevail.

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