

1984 S.C. Op. Atty. Gen. 301 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-130, 1984 WL 159936

Office of the Attorney General

State of South Carolina
Opinion No. 84-130
November 7, 1984

*1 Frank B. Sanders

Director
Office of Executive Policy and Programs
Office of the Governor
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Mr. Sanders:

In your letter of September 25, 1984 to this Office you described a situation wherein the South Carolina Law Enforcement Division (SLED) was recently faced with the disposal of a fifty-five gallon drum of highly flammable, explosive ether, apparently used as part of an illicit drug manufacturing process. You have expressed concern that such a situation may recur at any time. You have asked this Office whether such hazardous material, in excess of that seized and confiscated for use as evidence, may

... be defined as 'uncontrolled hazardous waste' under the provisions of [§ 44-56-20\(13\), Code of Laws, 1976](#) as amended, for the purpose of utilizing the hazardous waste contingency fund for the disposal of this hazardous waste?

It is our opinion that in the specific circumstances you describe, such material is properly defined as 'uncontrolled hazardous waste' for such purpose.

The South Carolina Hazardous Waste Management Act, Section 44-56-10 *et seq.* of the Code of Laws of South Carolina, was initially enacted by Act No. 436, 1978 Acts and Joint Resolutions, and has been subsequently amended several times. In interpreting such a statute, the primary objective is to ascertain and give effect to the Legislature's intent. [Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E. 2d 424 \(1980\)](#). While the Act does not contain legislative findings, its purpose as well as intent can be gleaned from the succinct summary contained in the title of the Act. *See, University of South Carolina v. Elliott, 248 S.C. 218, 149 S.E. 2d 433 (1966)*. The title reads as follows:

An Act to Enact the South Carolina Hazardous Waste Management Act So As To Provide for the Regulation Of The Storage, Transportation, Treatment, And Disposal Of Hazardous Wastes; To Assure The Safe And Adequate Management Of Hazardous Wastes Within The State; And To Provide Penalties For Violations.

It is evident from the foregoing title, as well as the text of the Act itself, that the purpose of the General Assembly was to deal effectively and comprehensively with the dangers posed by the presence of hazardous wastes. See especially, Sections 44-56-30, 44-56-50, 44-56-130 and 44-56-140. Such intent is consistent with the following statement contained in the legislative history of the Federal Resource Conservation and Recovery Act of 1976 [[42 U.S.C.A. § 6973 et seq.](#)] which also addresses the problem of hazardous waste from the federal perspective and preceded the enactment of South Carolina's Hazardous Waste Management Act:

Unless neutralized or otherwise properly managed in their disposal, hazardous wastes present a clear danger to the health and safety of the population and to the quality of the environment.

*2 1976 U.S. Code and Congressional News at 6241. And where such a statute as Section 44–56–10 et seq. seeks to protect the public health, courts deem such statutes as remedial in nature and thus entitled to broad construction for the accomplishment of their obvious beneficent purpose or objective. [City of Rome v. N.Y. State Health Dept.](#), 411 N.Y.S. 2d 61 (1978); [Lam-Ran Corp. v. Dept. of Env. Protection](#), (N.J.), 394 A. 2d 1233 (1978); [U.S. v. Reilly Tar and Chem. Corp.](#), 546 F. Supp. 1100 (D. Minn. 1982). See also, [South Carolina Dept. of Mental Health v. Hanna](#), 270 S.C. 210, 241 S.E. 2d 563 (1978); 3 [Sutherland Statutory Construction](#), § 71.02. In other words, statutes regulating the disposition of hazardous waste are considered to be strongly in the public interest, [App. of Borough of Saddle River](#), (N.J.), 362 A. 2d 552 (1976) and thus are to be liberally interpreted. [Peabody Coal Co. v. Ill. E.P.A.](#), 7 Ill. Dec. 638, 364 N.E. 2d 929 (1977); [U.S. v. Reilly Tar and Chem. Corp.](#), supra.

A brief review of South Carolina's Hazardous Waste Management Act is now in order. [Section 44–56–20\(6\)](#) defines 'hazardous waste' broadly, to include:

any waste, or combination of wastes, of a solid, liquid, contained gaseous, or semisolid form which because of its quantity, concentration, or physical, chemical, or infectious characteristics may in the judgment of the Department [of Health and Environmental Control].

(b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed . . .

Within these broad guidelines, it can be seen that the General Assembly has given wide discretion to DHEC to define or classify hazardous waste in particular instances. And [Section 44–56–20\(13\)](#) defines an 'uncontrolled hazardous waste site' as any site where hazardous waste or other hazardous substances have been released, abandoned, or otherwise improperly managed so that governmental response action is deemed necessary to remedy actual or potential damages to public health or welfare of the environment.

This same subsection specifically exempts 'petroleum, including crude oil or fraction thereof; natural gas; natural gas liquids; liquified natural; synthetic gas usable for fuel; or mixtures of natural gas and such synthetic gas.'

Section 44–56–30 authorizes the South Carolina Board of Health and Environmental Control to promulgate regulations necessary to protect the health and safety of the public. Pursuant to Section 44–56–40, DHEC is authorized to enter into agreements, contracts or cooperative arrangements for the disposition of hazardous waste. Moreover, Section 44–56–50 provides additional, even broader, authority to the DHEC Commissioner as follows:

Notwithstanding any other provision of this chapter, the Commissioner, upon receipt of information that the storage, transportation, treatment or disposal of any waste may present an imminent and substantial hazard to the health of persons or to the environment, may take such action as he determines is necessary to protect the health of such persons or the environment.

*3 The Commissioner, pursuant to this section, is authorized to take action including, but not limited to, the issuance of an order directing the operator of the hazardous waste site (or the custodian of the waste) 'to take such steps as are necessary to prevent the act or eliminate the practice which constitutes such hazard; the Commissioner may also request that the Attorney General commence an action enjoining such acts or practices (as a nuisance) Other provisions of the Act deal with the licensing of hazardous waste facilities or sites by DHEC (Section 44–56–60) and the prescribing of various penalties.

In addition, the Act establishes the Hazardous Waste Contingency Fund. The purpose of the Fund is 'to ensure the availability of funds for contingencies arising from permitted hazardous waste landfills and to defray the costs of governmental response actions at uncontrolled hazardous waste sites.' As noted above, the term 'uncontrolled hazardous waste sites' as used in the Act expressly includes any site where hazardous wastes or other hazardous substances 'have been released, abandoned, or otherwise improperly managed so that governmental response action is deemed necessary to remedy actual or potential damages to public health or welfare of the environment.' [Section 44-56-20\(13\)](#).

Ethyl ether is described as a light, volatile, mobile, highly flammable liquid, with a boiling point of 94.3 degrees F., which will 'boil on a hot summer day and readily burn if near a fire or flame.' [Magic Foam Sales Corp. v. Mystic Foam Corp.](#), 98 N.C. 2d 439, 441 (Ohio, 1950). Accordingly, DHEC has, pursuant to its broad authority under [Section 44-56-20\(6\)](#), classified this substance as hazardous waste. [See](#), R61-79.1. Thus, it must now be determined whether a 55 gallon drum of ether in the circumstances you describe could be deemed to have been found at an 'uncontrolled hazardous waste site' in accordance with the definition contained in [Section 44-56-20\(13\)](#). Depending upon the particular circumstances, it would appear readily conceivable that such substance had been 'abandoned' by its owner, a fact in itself sufficient to meet the statutory definition of an uncontrolled hazardous waste site. For an abandonment to occur, there must have been an intention to abandon and 'an external act by which the intention is carried into effect.' [Holly Hill Lumber Co., Inc. v. Grooms](#), 198 S.C. 118, 130, 16 S.E. 2d 816 (1941). As the Court further noted in the [Holly Hill](#) case,

It is generally held that an abandonment may arise from a single act or from a series of acts and that time is not an essential element of abandonment, and is of no importance except as indicative of intention.

Id. Thus, while each case would have to be examined on its own, it is entirely possible that a barrel of ether which is part of a drug laboratory has been 'abandoned' for purposes of deeming it an 'uncontrolled hazardous waste site' within the meaning of the Act.

*4 Moreover, again depending upon the factual setting, such substances may also be found to be 'otherwise improperly managed' for purposes of the Act when found or discovered by law enforcement officers who are carrying out drug enforcement operations. It is true that the phrase 'otherwise improperly managed' is not defined by the Act; however, in such instances, words used in a statute must be given their plain and ordinary meanings, absent ambiguity. [Worthington v. Belcher](#), 274 S.C. 366, 264 S.E. 2d 148 (1980). The term manage normally connotes direction, control, administration, or oversight, and has been declared to be synonymous with control; [Youngworth v. Jewell](#), 15 Nev. 45 (1909); [Ure v. Ure](#), 185 Ill. 216, 56 N.E. 1087 (1900); [Begay v. Livingston](#), 99 N.M. 359, 658 P. 2d 434 (1981); Webster's Third New World International Dictionary 1372 (1976). If certain hazardous substances are in the control of one who is operating an illegal drug manufacturing plant, as in the situation you have described, those persons could certainly be said to be managing the substances in question. In a situation where an individual is operating an illegal drug manufacturing plant, typically, it could be expected that such individual would not have complied with certain provisions of the Hazardous Waste Management Act, such as requiring a permit from DHEC. [See](#) [Section 44-56-60](#). Such non-compliance with the permit requirement would be an example of a situation where hazardous waste is 'otherwise improperly managed.'

In summary, then, since ethyl ether is deemed hazardous waste by DHEC, and is extremely dangerous in an uncontrolled or unmanaged setting, it would certainly be in keeping and consistent with the Act's broad purpose to construe the situation you describe as an 'uncontrolled hazardous waste site' within the meaning of the Hazardous Waste Management Act. In such circumstances, the Contingency Fund could therefore be utilized.

This does not end our inquiry, however, for we must determine what applicability, if any, the drug forfeiture laws might have to this situation. At first glance, it would appear that [Section 44-53-520](#) is applicable; that provision reads in pertinent part:

(a) The following are subject to forfeiture: (2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this article; * * *.

Subsection (b) further provides in part that

Any item subject to forfeiture under this article may be seized by the department having authority upon process issued by any court having jurisdiction over the item. Seizure without process may be made if * * * (3) the department has probable cause to believe that the item is directly or indirectly dangerous to health or safety * * *.

Thus, as you indicate, if the drug forfeiture law is indeed applicable to the situation you describe, it is evident, based upon the nature of ether, that such substance would fall within Section 44–53–520(a)(2) and (b)(3) and would thus be subject to summary seizure by law enforcement officers.

*5 However, applying several well recognized principles of statutory construction, we believe the Hazardous Waste Management Act, rather than the drug forfeiture law, would govern the situation which you describe. First of all, forfeiture laws are generally speaking, strictly or narrowly construed. 36 Am.Jur.2d, Forfeitures and Penalties, § 8; on the other hand, as noted earlier, the Hazardous Waste Management Act is remedial in nature and is to be broadly construed. As we understand it, the purpose to be served in the situation you describe is simply the removal and disposition of a substance which has been classified by DHEC as hazardous waste, and which is being improperly managed, and not the forfeiture to the State of property, such as a drum of ether. In such a situation, the contrasting legislative purposes of the two acts must be harmonized and precedence given to the more specifically applicable procedure, in this instance, the Hazardous Waste Management Act. 2A Sutherland Statutory Construction, § 51.05; see also, Culbreth v. Prudence Life Insurance Co., 241 S.C. 46, 127 S.E. 2d 132 (1962) and Criterion Insurance Co. v. Hoffmann, 258 S.C. 282, 188 S.E. 2d 459 (1972). This rule would, we believe, particularly govern where, as here, the Hazardous Waste Management Act was enacted after the above referenced provisions of the drug forfeiture statute; the General Assembly was thus cognizant of the drug forfeiture law when it enacted the more specific Hazardous Waste Management Act and therefore in instances where the control of hazardous waste is involved the latter Act should govern. See, 2A Sutherland Statutory Construction, § 51.02.

In addition, it is evident that the Legislature did not intend the drug forfeiture enactment to be mandatory in every instance of possible applicability. The Act is written in permissive terms, notably, Section 44–53–520(a) which states that ‘[t]he following are subject to forfeiture . . .’. (emphasis added). Such wording usually indicates applicability, but not automatic or mandatory governance. Lapica v. Eighth Judicial Dist. Ct. In and For York Co., 97 Nev. 86, 624 P. 2d 1003, 1004 (1981); Compare. United States v. L’Hoste, 609 F. 2d 796 (Cir. 1980). Under such circumstances, we believe, that it is most consistent with legislative intent that the Hazardous Waste Management Act govern the situation which you describe. Accordingly, it is our opinion that the procedures of the Hazardous Waste Management Act should control those instances which are factually similar to the one you set forth.¹

Sincerely,

Robert D. Cook
Executive Assistant for Opinions

Footnotes

¹ With respect to seizures of the substance for evidence, the usual procedures followed by law enforcement should be followed in this instance in conformity with state and federal law.

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