

1983 S.C. Op. Atty. Gen. 87 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-56, 1983 WL 142727

Office of the Attorney General

State of South Carolina

Opinion No. 83-56

August 9, 1983

\*1 Dennis N. Cannon, Jr.

Staff Counsel

South Carolina Department of Health and Environmental Control

2600 Bull Street

Columbia, South Carolina 29201

Dear Mr. Cannon:

In your recent letter you requested an opinion of this Office as to whether the South Carolina Department of Highways and Public Transportation may qualify under R. 61-79.5 for a Hazardous Waste Transporter Permit as required by law or whether it is exempt.

You advise that from time to time the South Carolina Department of Highways and Public Transportation has occasion to transport certain hazardous waste to an approved hazardous waste facility for proper disposal. You further advise that the Department has not been issued a permit by the South Carolina Department of Health and Environmental Control (DHEC) to transport hazardous waste in this State pursuant to R. 61-79.9 of DHEC's Hazardous Waste Management Regulations, promulgated pursuant to the South Carolina Hazardous Waste Management Act (Section 44-56-10, *et seq.*, of the 1976 amended CODE) nor has it provided proof of financial responsibility in the manner required by R. 61-79.5(B)(1).

The South Carolina Hazardous Waste Management Act requires, among other things, that a Hazardous Waste Transporter Permit be obtained from DHEC before transporting hazardous waste in this State. Section 44-56-60(A). It further requires that before such a permit may be issued DHEC may require the applicant, among other things, to provide evidence of liability insurance in such amounts as DHEC may determine to be necessary for the protection of the public health and safety of the environment. Section 44-56-60(C)(1). Pursuant to those statutory provisions and Section 44-56-30, DHEC adopted R. 61-79.5 concerning methods of compliance with the financial responsibility requirements of the Act and Regulations for the issuance of such a permit. Specifically, R. 61-79.5(B)(1) provides:

A transporter of hazardous waste granted a Hazardous Waste Transporter Permit under R. 61-79.9 shall have and shall maintain financial responsibility for sudden and accidental occurrences in a minimum amount of One Hundred Thousand Dollars (\$100,000.00) each occurrence, Three Hundred Thousand Dollars (\$300,000.00) each occurrence, Bodily Injury; and Three Hundred Thousand Dollars (\$300,000.00) Property Damage each occurrence for claims arising out of injury to persons, property, or the environment including the costs of cleaning up the spill. Such financial responsibility must be maintained at all times while the permit is in force.

R. 61-79.5(B)(3) further provides, among other things, that the required financial responsibility may be established by any one or a combination of the following:

. . . (a) evidence of liability coverage, either on a 'claims made' or an 'occurrence' basis, with or without a deductible, with the deductible, if any, to be on a per occurrence or per accident basis and not to exceed ten (10) percent of the equity of the permittee; (b) self insurance, the level of which shall not exceed ten (10) percent of equity of the permittee; or (c) other evidence of financial responsibility approved by [DHEC]. (Emphasis added.)

\*2 Our examination of applicable statutes and regulations reveals no exception for the Department.<sup>1</sup> Therefore, as required by law, if the Department wishes to obtain a Hazardous Waste Transporter Permit and engage in the activity of transporting its hazardous waste to an approved hazardous waste site, then it must first comply with, among other things, the subject financial responsibility requirements in order to obtain the necessary transporter permit. It appears that such compliance may be made by the Department through self-insurance as provided by R. 61-79.5(B)(3) above, assuming the existence of sufficient authorizing legislation.

Therefore, it is the opinion of this Office that the South Carolina Department of Highways and Public Transportation is not exempt from the financial responsibility requirements of R. 61-79.5(B)(1) of the Hazardous Waste Management Act and that it must meet those financial responsibility requirements in order to obtain a Hazardous Waste Transporter Permit as required by law.

Sincerely,

T. Travis Medlock  
Attorney General

Footnotes

- 1 R. 61-79(A)(63) defines 'person' as meaning any individual, federal agency, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or any other legal entity whatsoever.' Since the Department is included by definition in the coverage of the regulations, a specific exception would be required to relieve the Department from the duties imposed on all 'persons' conducting such activities in this State.

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