

1981 S.C. Op. Atty. Gen. 107 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-83, 1981 WL 96609

Office of the Attorney General

State of South Carolina

Opinion No. 81-83

October 8, 1981

***1 SUBJECT: Liability, Oil and Gas, Pollution**

The responsibility for cleaning up chemical and petroleum spills which occur in this State rests upon the polluter.

TO: General George R. Wise
Director
Emergency Preparedness Division

QUESTION:

Who is responsible under State law for cleaning up chemical and petroleum spills which occur in this State?

STATUTES AND CASES:

South Carolina Hazardous Waste Management Act ([§ 44-56-10 et seq. of the 1976 Code of Laws of South Carolina](#), as amended); [§ 44-56-20\(4\) of the 1976 Code](#); Regulation 61-79.4 of the 1976 Code; [§ 44-56-140 of the 1976 Code](#); South Carolina Oil and Gas Act ([§ 48-43-10 et seq. of the 1976 Code](#), as amended); [§ 48-43-560 of the 1976 Code](#); [§ 48-43-550\(e\) of the 1976 Code](#); [§ 48-43-530\(3\) of the 1976 Code](#).

DISCUSSION:

Regarding chemical or hazardous waste spills, the South Carolina Hazardous Waste Management Act ([§ 44-56-10 et seq. of the 1976 Code of Laws of South Carolina](#), as amended) delegates regulatory authority over the 'disposal' of hazardous wastes to the Department of Health and Environmental Control. 'Disposal' is defined as including, among other things, spilling, leaking, or dumping of hazardous waste into the environment. [§ 44-56-20\(4\)](#). Regulation 61-70.4, duly promulgated pursuant to the aforementioned Act, specifically addresses such spills and clearly states that the 'person having control over or physical possession of such waste shall clean up all the spilled hazardous waste and take such action as may be required by the Department so that the spilled hazardous waste no longer presents a hazard to the organisms or the environment.' Should a responsible polluter refuse to comply with the provisions of the Act, authority to enforce such requirements through appropriate legal action is also delegated to the Department of Health and Environmental Control with the assistance of the Attorney General. [§ 44-56-140](#). Nevertheless, the ultimate responsibility for actually cleaning up such spills rests squarely upon the polluter.

Regarding petroleum spills, the South Carolina Oil and Gas Act ([§ 48-43-10 et seq. of the amended Code](#)) in Article 3 delegates to the Department of Health and Environmental Control responsibility for pollution control from oil and gas activities. In specific regard to spills and their control, [§ 48-43-560](#) provides in pertinent part:

(1) Any person discharging pollutants in violation of this article shall immediately undertake to contain, remove, and abate the discharge to the Department's satisfaction. Notwithstanding the above requirement, the Department may undertake the removal of the discharge and may contract and retain agents who shall operate under the direction of the Department.

In the event that the polluter is unknown or refuses to comply with Department orders to clean up a spill, the Department is authorized to do so through certain methods specified in the Act, including, for instance, contracting with qualified private persons or creating a state response team as provided by § 48-43-550(e) and § 48-43-560. The ultimate responsibility for cleaning up such spills again rests squarely upon the polluter. However, under the provisions of the Act the Department is further authorized to do any necessary work or have it done by others. All costs and expenses incurred may be recovered from the responsible persons. § 48-43-530(3).

CONCLUSION:

*2 Therefore, it is the opinion of this Office that the responsibility for cleaning up chemical and petroleum spills which occur in this State rests upon the polluter.

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