

1979 WL 42988 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 9, 1979

**\*1 Re: South Carolina Environmental Systems Operators Act (Section 40-23-10, et seq. of the 1976 Code of Laws of South Carolina)**

Mr. Jack A. McKenzie  
Director  
202 J. Marion Sims Building  
2600 Bull Street  
Columbia, S.C. 29201

Dear Mr. McKenzie:

Your recent letter to the Attorney General has been referred to me. Thank you for your patience in awaiting our reply.

You have presented two questions regarding the South Carolina Environmental Systems Operators Act (Section 40-23-10, et seq., of the 1976 Code of Laws of South Carolina). First, an explanation is sought of the respective enforcement roles assigned by the Act to the Board of Certification of Environmental Systems Operators (hereafter the Board) and the Department of Health and Environmental Control (hereafter DHEC).

A review of the Act reveals that the Board is vested with the responsibility for, among other things, certifying the qualifications and appropriate grades of all persons who practice in this State as public water or wastewater plant operators. Generally, all such persons are required by the Act to possess a current certificate of registration issued by the Board following proper application and determination regarding their qualifications to practice in that the Board may invalidate a certificate of registration upon a finding by it that the holder has failed to use reasonable care, judgment, and application of his knowledge in the performance of his duties, or if the operator becomes incompetent or unable to discharge his responsibilities. Section 40-23-120.

DHEC, on the other hand, is vested by the Act with responsibility for classifying all public water or wastewater treatment plants in the State according to the characteristics contained in the Act and those of each individual plant. Section 40-23-150. The operation of each such plant may lawfully be conducted only by persons issued valid certificates of registration by the Board in a grade corresponding to the grade, as determined by DHEC, of the public water or wastewater treatment plant which is supervised by the individual operator. Sections 40-23-160, 40-23-140.

Since the Act, in pertinent part, purports on its face to vest the Board only with responsibility for certifying the qualifications and appropriate grades of plant operators and regulating their conduct as such, it is apparent that the Board's responsibility is limited to the administrative regulation of such persons and does not involve plant operations at all. Responsibility for the proper operation of all public water or wastewater treatment plants in the State, although not addressed in this Act, is elsewhere vested in DHEC by the Safe Drinking Water Act (Section 44-55-10, et seq., of the 1976 Code, as amended) and the Pollution Control Act (Section 48-1-10, et seq. of the 1976 Code). Accordingly, the classification responsibility vested in DHEC by the Act is entirely consistent with the enforcement responsibilities assigned to the Department by other provisions of law regulating the safe operation of such public water or wastewater treatment systems, as noted above. Therefore, the Board is not responsible for requiring that such plants be operated by certified operators with appropriate grades of certification since the Act, in our opinion, clearly intends only that the

Board be responsible for certifying the qualifications and appropriate grades of operators and not for assuring the actual operation of such plants in accordance with law.

\*2 Your second question concerns the effects of a bill which you advise is under study by the House Medical, Military, Public and Municipal Affairs Commission. That bill appears to be an attempt to resolve any ambiguity in the present Act as to the respective enforcement responsibilities of the Board and DHEC as evidenced by the statement of legislative intent contained in Section 1 thereof, which declares:

It is the intent of the Legislature to place the duties of classification and operation requirements of drinking water supply and wastewater treatment plants upon the Department of Health and Environmental Control. It is the further intent of the General Assembly to retain in the Board of Certification of Environmental Systems Operators, the responsibility for certifying each individual plant operator evidencing that operator's capabilities for the proper maintenance and operation of drinking water supply and wastewater treatment plants which are to be classified by the Department of Health and Environmental Control.

A review of the entire bill reinforces the conclusions already reached in this opinion. Therefore, it appears to be an attempt to clarify the present ambiguities in the operation of the Act. By deleting and amending Section 40-23-150 and deleting Section 40-23-160 and placing the provisions under the authority of DHEC, the legislative intent that DHEC exercise enforcement jurisdiction over the operation of such plants becomes manifestly certain. In all other respects, however, the bill appears to have no effect upon the powers and regulations of the Board.

I trust the preceding discussion adequately answers your questions, however, if any further explanation is required, please do not hesitate to contact me.

Very truly yours,

Richard P. Wilson  
Assistant Attorney General

1979 WL 42988 (S.C.A.G.)