

1975 WL 29006 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 14, 1975

*1 Waste treatment controls are proper elements of the control program envisioned by the Pollution Control Act. Moreover, agricultural operations are subject to the application of the Pollution Control Act and to Rules and Regulations lawfully promulgated thereunder, including the waste treatment provisions.

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QUESTIONS PRESENTED:

1. Whether, in light of the purposes and language of the Pollution Control Act, requirements for waste treatment are lawful.
2. Whether the Pollution Control Act in general and waste treatment provisions in particular are applicable to agricultural operations.

STATUTES INVOLVED:

Pollution Control Act of 1970, as presently amended (Section 63-195 et seq. of the 1962 Code, as amended).

DISCUSSION OF ISSUES:

1. Waste Treatment under the PCA—

Within South Carolina's Pollution Control Act, 'pollution' is defined as follows:

(1) the presence in the environment of any substance, including, but not limited to, sewage, industrial waste, other waste, air contaminant, or any combination thereof in such quantity and of such characteristics and duration as may cause, or tend to cause the environment of the State to be contaminated, unclean, noxious, odorous, impure, or degraded, or which is, or tends to be injurious to human health or welfare; or which damages property, plant, animal or marine life or use of property; or (2) the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water. [Section 63-195(7), as amended, 1975]

The language '. . . as may cause, or tend to cause . . . or which is, or tends to be injurious . . .' focuses on a legislative intent to control pollution prior to critical levels. That is, when the sewage [63-195(4)], industrial wastes [63-195(5)], and other wastes [63-195(6), as amended, 1975] have reached levels tending to cause contamination or injury, then pollution has occurred. The relevance of the statutory definitions to agricultural operations is apparent.

Section 63-195.1 of the 1962 Code grants to the Authority (now, the Department of Health and Environmental Control) the ‘. . . authority to abate, control and prevent pollution.’ The Department, pursuant to Section 63-195.6, also promulgates Rules and Regulations to implement the Act. Finally, Section 63-195.9, directs the Department to . . . adopt [S]tandards and determine what qualities and property to water and air shall indicate a polluted condition and these [S]tandards shall be promulgated and made a part of the rules and regulations of the [Department].

Obviously no one Standard can apply to all the varied conditions of the State. As a result, the Department is mandated to develop rules and regulations and classification standards which will take into consideration certain variables. See Section 63-195.9. The scope of the Standards and the nature of the variables are set forth in Sections 63-195.10 and 63-195.11.

*2 Under the responsibility to abate and prevent pollution or discharges which would tend to cause pollution and the above statutes, the Water Classification Standards System was first promulgated in 1971. Section IV of the Water Classification Standards System establishes classes and quality (purity) levels for fresh surface waters. The requirement that water quality may not be less than provided in Section IV necessarily presupposes that waste treatment may, in some instances, be appropriate.

More importantly, however, the Standards include a provision enabling the control, abatement, or prevention of discharges which tend to cause pollution. Specifically, Section III(3), entitled ‘Rules Applicable to All Classes and Standards,’ reads:

No wastes amenable to treatment or control shall be discharged into any State waters without treatment or control. All bio-degradable waste, prior to discharge into any State waters, shall receive a minimum of secondary treatment and all other wastes an equivalent degree of treatment, unless it can be demonstrated that a lesser degree of treatment or control will provide for water quality improvement consistent with present and anticipated future water uses.

In reading Section III(3), reference should be made to the provisions of Section 63-195.10 which set forth that permissible concentrations of various substances in the water are proper subjects for the standards.

Consequently, pursuant to the dictates of the Pollution Control Act, the Department's Water Classification Standards System in part provides for waste treatment. In this manner, the Department is able to abate, control or limit those substances which would tend to cause pollution before excessive conditions arise. Allowance of the unfettered discharge of these potential pollutants could produce serious violations of the Pollution Control Act and would ignore the Department's responsibility to ‘prevent’ pollution. See Section 63-195.1. To the extent that agricultural wastes fall within the PCA (and other applicable law) and that such wastes are ‘. . . amenable to treatment or control . . .’, those wastes and the operations which produce them are subject to regulation.

Note should be taken that Section 63-195.35 of the 1962 Code, as amended in 1975, makes a violation of any rule or regulation a misdemeanor punishable, upon conviction, by a fine of not less than five hundred dollars (\$500) nor more than twenty-five thousand dollars (\$25,000) for each day's violation. A sentence of up to two years may be imposed conjunctively or separately. Section 63-195.35.1 also raises the possibility of a substantial civil penalty.

Finally, Section 63-195.12, as amended in 1975, provides that it is:

. . . unlawful for any person, directly or indirectly, to throw, drain, run, allow to seep or otherwise discharge into the environment of the State organic or inorganic matter, including sewage, industrial wastes and other wastes, except as in compliance with a permit issued by the Department.

*3 Section 63-195.14 enumerates those activities which require construction and operation permits as conditions precedent. Discharge, etc., in contravention of the former section exposes the person to the penalty provisions discussed above.

2. Agricultural Operations and Waste Treatment under the PCA—

Keeping in mind that the Act and the promulgations thereunder do provide for waste treatment and for substantial penalties for violations, it should be noted that no exclusion is provided for agricultural operations. For instance, the definition of ‘pollution’ includes the presence of any substance which causes or tends to cause contamination. See Section 63-195(7), as amended, 1975. Notably absent is any exclusion on the basis of the nature of the operation which produces the substance. Even the definitions of ‘persons’ and ‘waters’ would apply, for example, to individual farmers and to reservoirs. See Section 63-195(1-2). Similarly, the definitions of ‘sewage,’ ‘industrial wastes,’ and ‘other wastes’ clearly encompass aspects of agricultural production. See Section 63-195(4-6), as amended, 1975. The phrase ‘point source’ applies, as well, to ‘. . . concentrated animal feeding operations . . .’ See Section 63-195(23) as amended, 1975. Finally, Section 63-195.12(A) renders unlawful the discharge into the ‘environment’ of organic or inorganic matter, except in compliance with a permit. A glance at the definition of ‘environment’ 63-195(20), as amended reveals that not only discharges into water or emissions into air but also discharges into ‘. . . soil and/or land . . .’ could fall within the strict language of the Act.

Certainly the legislature could have exempted agricultural operations from the PCA. The General Assembly did not do so, however, and in light of the high public interest in preserving the environment such an exemption should not lightly be inferred. Pursuant to this approach, Section III(3), mentioned earlier, states that no wastes amenable to treatment or control may be discharged without treatment or control. No exemption is made for any mode of production and the rule applies to all wastes which are subject to treatment or control.

CONCLUSION:

In sum, the Pollution Control Act is replete with directions for the Department of Health and Environmental Control to abate, control and prevent pollution. ‘Pollution’ includes the presence of any substance which tends to be contaminating or injurious. Pursuant to the authority to issue rules, regulations and standards, to the purposes of the Act, and to the definition of pollution, the Department may lawfully require waste treatment in agricultural as well as other waste producing operations.

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