

1975 WL 29277 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
September 19, 1975

*1 Mr. John E. Jenkins
Deputy Commissioner
Environmental Quality Control
Department of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Dear Mr. Jenkins:

On October 27, 1971, this office issued an opinion as to the legal authority required for implementation of the federal Clean Air Act, as amended. This opinion cited several deficiencies in Act 1157, the 1970 South Carolina Pollution Control Act, with respect to the requirements of 40 CFR 51.10 and 51.11. Act 1157 has been amended since this opinion was issued.

In the following presentation, Act No. 1157 of the Acts and Joint Resolutions of the 1970 South Carolina General Assembly and subsequent amendments thereto shall be hereinafter recited as the '1970 Pollution Control Act' or the 'Act', and the administrative agency formally created to administer the provisions of this Act, normally designated as The Board of Health and Environmental Control, shall be referred to as the 'Board'.

I.

40 CFR Article 51.10(e) states: Each Plan shall provide for public availability of emission data reported by source owners or operators or otherwise obtained by a State or local agency . . .

Section 30 of the Act declares it to be the public policy of the State of South Carolina to make emission data available to the public.

Any records, reports or information obtained under any provision of this Act shall be available to the public. Upon a showing satisfactory to the Department by any person that records, reports or information, or particular parts thereof, other than effluent or emission data, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Department shall consider such record, report or information or particular portion thereof confidential in the administration of this act.

II.

40 CFR 51.11(a)(5) states that the plan must show legal authority to: Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources. The Act deals explicitly with this requirement in Section 9, paragraphs 10, 20, 22, and 23.1. The Board may:

(10) Require to be submitted to it and consider for approval plans for disposal systems or sources or any parts thereof and inspect the construction thereto for compliance with approved plans;

(20) Conduct investigations of conditions in the air or waters of the State to determine whether or not standards are being contravened and the origin of materials which are causing the polluted conditions;

(22) Require the owner or operator of any source or disposal system to establish and maintain such operational records; make reports; install, use, and maintain monitoring equipment or methods; sample and analyze emissions or discharges in accordance with prescribed methods, at locations, intervals, and procedures as the Board shall prescribe; and provide such other information as the Board reasonably may require;

*2 (23.1) Enter at all times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to pollution or the possible pollution of the environment of the State . . .

III.

40 CFR Article 51.11(a)(6) states the plans show legal authority to: Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emission from such stationary sources; also authority for the State to make such data available to the public as reported and as correlated with any applicable emissions standards or limitations. The Act deals explicitly with this requirement in Section 9, paragraph 20, and Section 30 as previously stated in Parts I and II of this presentation.

SUMMATION

It is the opinion of this office that the State of South Carolina now has the necessary legal framework to enforce in their entirety all criteria expressed in 40 CFR Article 51.11(a). In view of this, I recommend that previously delegated federal authority be withdrawn.

Very truly yours,

Daniel R. McLeod
Attorney General

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