CHAPTER 56

South Carolina Hazardous Waste Management Act

ARTICLE 1

General Provisions

**SECTION 44‑56‑10.** Short title.

 This chapter shall be cited as the “South Carolina Hazardous Waste Management Act”.

HISTORY: 1978 Act No. 436 Section 1.

CROSS REFERENCES

Environmental electronic reporting requirements, see S.C. Code of Regulations R. 61‑115.

Financing of Environmental Scholars Endowment Fund through deposit of fines and penalties collected pursuant to this chapter, see Section 59‑111‑720.

Hazardous Substances Act, see Sections 23‑39‑10 et seq.

Hazardous Waste Contingency Fund, see Sections 44‑56‑160 et seq.

Hazardous waste management regulations, see S.C. Code of Regulations R. 61‑79.124 et seq.

Inapplicability of the South Carolina Solid Waste Policy and Management Act to hazardous waste regulated by this act, see Section 44‑96‑30.

Infectious Waste Management, see Sections 44‑93‑10 et seq.

Pollution Control Act, see Sections 48‑1‑10 et seq.

Radioactive Waste Transportation and Disposal Act, see Sections 13‑7‑110 et seq.

Solid waste collection and disposal by counties, see Sections 44‑55‑1210 et seq.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

LAW REVIEW AND JOURNAL COMMENTARIES

The Suffolk syndrome: A case study in public nuisance law. 40 S.C. L. Rev. 379 (Winter 1989).

Attorney General’s Opinions

While the Pollution Control Act contains no specific authority for DHEC to consider environmental compliance histories and records of applicants when they apply for permits, the Infectious Waste Management Act allows DHEC to consider prior criminal convictions or contempt of court adjudications. Similarly, the Solid Waste Policy and Management Act allows DHEC to consider a continuing history of criminal convictions or violations of environmental laws. S.C. Op.Atty.Gen. (May 3, 1994) 1994 WL 267892.

The responsibility for cleaning up chemical and petroleum spills occurring within the state rests upon the polluter. S.C. Op.Atty.Gen. (October 8, 1981) 1981 WL 96609.

Discussion of the validity of a local ban on the transportation of hazardous wastes. S.C. Op.Atty.Gen. (March 11, 1980) 1980 WL 81913.

NOTES OF DECISIONS

In general 1

1. In general

The South Carolina Hazardous Waste Management Act does not preempt South Carolina common law nuisance actions. Neal v. Darby (S.C.App. 1984) 282 S.C. 277, 318 S.E.2d 18.

**SECTION 44‑56‑20.** Definitions.

 Definitions as used in this chapter:

 (1) “Board” means the South Carolina Board of Health and Environmental Control which is charged with responsibility for implementation of the Hazardous Waste Management Act.

 (2) “Director” means the director of the department or his authorized agent.

 (3) “Department” means the Department of Health and Environmental Control, including personnel thereof authorized by the board to act on behalf of the department or board.

 (4) “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

 (5) “Generation” means the act or process of producing waste materials.

 (6) “Hazardous waste” means any waste, or combination of wastes, of a solid, liquid, contained gaseous, or semisolid form which because of its quantity, concentration, or physical, chemical, or infectious characteristics may in the judgment of the department:

 a. cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or

 b. pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Such wastes may include, but are not limited to, those which are toxic, corrosive, flammable, irritants, strong sensitizers, persistent in nature, assimilated, or concentrated in tissue, or which generate pressure through decomposition, heat, or other means. The term does not include solid or dissolved materials in domestic sewage, or solid dissolved materials in irrigation return flows, or industrial discharges which are point sources subject to NPDES permits under the Federal Water Pollution Control Act or the Pollution Control Act of South Carolina or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954.

 (7) “Hazardous waste management” means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

 (8) “Manifest” means the form used for identifying the quantity, composition, or origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

 (9) “Permit” means the process by which the department can ensure cognizance of, as well as control over the management of hazardous wastes.

 (10) “Storage” means the actual or intended containment of wastes, either on a temporary basis or for a period of years, in such manner as not to constitute disposal of such hazardous wastes.

 (11) “Transport” means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate treatment, storage or disposal.

 (12) “Treatment” means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste, so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, reduced in volume, or suitable for final disposal.

 (13) “Uncontrolled hazardous waste site” means any site where hazardous wastes or other hazardous substances have been released, abandoned, or otherwise improperly managed so that governmental response action is deemed necessary to remedy actual or potential damages to public health, the public welfare, or the environment.

 For the purpose of this item the term “hazardous waste” does not include petroleum, including crude oil or fraction thereof; natural gas; natural gas liquids; liquified natural gas; synthetic gas usable for fuel; or mixtures of natural gas and such synthetic gas.

 (14) “Response action” is any cleanup, containment, inspection, or closure of a site ordered by the director as necessary to remedy actual or potential damages to public health, the public welfare, or the environment.

HISTORY: 1978 Act No. 436 Section 2; 1983 Act No. 151 Part II Section 31A, B; 1984 Act No. 512, Part II, Section 74; 1985 Act No. 140, Sections 2, 3; 1993 Act No. 181, Section 1133.

CROSS REFERENCES

Administrative hearings and procedures, see Section 1‑23‑600.

Definition of “hazardous waste” set forth in this section as applicable to Solid Waste Policy and Management Act, see Section 44‑96‑40.

Definitions, standards applicable to generators of hazardous waste, see S.C. Code of Regulations R. 61‑79.262.200.

Definitions under Hazardous Substances Act, see Section 23‑39‑20.

Definitions under Pollution Control Act, see Section 48‑1‑10.

Definitions under Radioactive Waste Transportation and Disposal Act, see Section 13‑7‑120.

Department of Health and Environmental Control, generally, see Sections 44‑1‑20 et seq.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

Attorney General’s Opinions

Under South Carolina Hazardous Waste Management Act, confiscated 55 gallon drum of ether, apparently used as part of illicit drug manufacturing process, is defined as “uncontrolled hazardous waste”. Under such circumstances, Contingency Fund may be utilized for disposal of such waste. S.C. Op.Atty.Gen. (November 7, 1984) 1984 WL 159936.

The responsibility for cleaning up chemical and petroleum spills occurring in the state rests upon the polluter. S.C. Op.Atty.Gen. (October 8, 1981) 1981 WL 96609.

NOTES OF DECISIONS

Petroleum 1

1. Petroleum

Complaint, by referring to transport of waste oil and residue, and not petroleum, stated cause of action, where there was no evidence in record to support claim that petroleum had been transported; argument that since rented tankers were used to transport naval ship petroleum and not waste oil, complaint failed to state cause of action was rejected. South Carolina Dept. of Health and Environmental Control v. Fed‑Serv Industries, Inc. (S.C.App. 1987) 294 S.C. 33, 362 S.E.2d 311.

**SECTION 44‑56‑30.** Promulgation of rules and regulations.

 The board shall promulgate such regulations, procedures or standards as may be necessary to protect the health and safety of the public, the health of living organisms and the environment from the effects of improper, inadequate, or unsound management of hazardous wastes. Such regulations may prescribe contingency plans; the criteria for the determination of whether any waste or combination of wastes is hazardous; the requirements for the issuance of permits required by this chapter; standards for the transportation, containerization, and labeling of hazardous wastes consistent with those issued by the United States Department of Transportation; operation and maintenance standards; reporting and record keeping requirements; and other appropriate regulations.

HISTORY: 1978 Act No. 436 Section 3.

CROSS REFERENCES

Alternative requirements for hazardous waste determination and accumulation of unwanted material for laboratories owned by eligible academic entities, see S.C. Code of Regulations R. 61‑79.262.200 et seq.

Approval by General Assembly of rules and regulations of board, see Section 44‑1‑70.

Conditional exclusion for used, broken Cathode Ray Tubes (CRTS) and processed CRT glass undergoing recycling, see S.C. Code of Regulations R. 61‑79.261.39.

Environmental electronic reporting requirements, see S.C. Code of Regulations R. 61‑115.

Notification and recordkeeping for used, intact Cathode Ray Tubes (CRTs) exported for reuse, see S.C. Code of Regulations R. 61‑79.261.41.

Powers and duties of board generally, see Section 44‑1‑50.

Promulgation of regulations under Hazardous Substances Act, see Sections 23‑39‑30, 23‑39‑90.

Promulgation of rules and regulations under Pollution Control Act, see Section 48‑1‑30.

Regulations pertaining to hazardous waste management, see S.C. Code of Regulations R. 61‑79.123.1 et seq.

Regulations under Radioactive Waste Transportation and Disposal Act, see Section 13‑7‑160.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

Attorney General’s Opinions

DHEC Regulation Numbers 1090 and 1091, which establish a demonstration of need as one of the criteria for licensure of a hazardous waste facility, appear to be authorized by Sections 44‑56‑30 and 48‑1‑30 of the Code. S.C. Op.Atty.Gen. (May 17, 1989) 1989 WL 406151.

Under South Carolina Hazardous Waste Management Act, confiscated 55 gallon drum of ether, apparently used as part of illicit drug manufacturing process, is defined as “uncontrolled hazardous waste”. Under such circumstances, Contingency Fund may be utilized for disposal of such waste. S.C. Op.Atty.Gen. (November 7, 1984) 1984 WL 159936.

A ban by a local authority on the transportation of hazardous wastes within its jurisdiction would be inconsistent with state and federal law and therefore is preempted. S.C. Op.Atty.Gen. (March 11, 1980) 1980 WL 81913.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Challenged aspects of executive orders and statutes were, in proceedings for preliminary injunction, likely to be found violative of commerce clause. Neither federal Resource Conservation and Recovery Act nor Comprehensive Environmental Response, Compensation and Liability Act authorize otherwise invalid legislation. States may not engage in economic protectionism and RCRA appears to contain no clear statement or indication of legislative intent to permit states to override constitution. EPA may change its interpretation of its own regulation but not commands of constitution or Congress. Hazardous Waste Treatment Council v. State of S.C. (C.A.4 (S.C.) 1991) 945 F.2d 781, on remand 901 F.Supp. 1026.

**SECTION 44‑56‑35.** Regulations establishing standards for location of hazardous waste treatment, storage, and disposal facilities.

 The department shall promulgate regulations establishing standards for the location of hazardous waste treatment, storage, and disposal facilities to more effectively ensure long‑term protection of human health and the environment. These standards shall be based solely upon the protection of human health and the environment.

 The department shall have site suitability criteria promulgated and established no later than June 1, 1990.

 Upon promulgation of these standards, any new facility shall comply with these standards prior to issuance of a Part B permit. For any existing facility, these new standards shall be incorporated and become a condition of any Part B permit. Failure to meet the site suitability standard regulations shall be deemed to be a failure to meet the conditions of the permit.

HISTORY: 1989 Act No. 196, Section 2.

CROSS REFERENCES

Labeling and management standards for containers of unwanted material in the laboratory, see S.C. Code of Regulations R. 61‑79.262.206.

Laboratory management plans, see S.C. Code of Regulations R. 61‑79.262.214.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

ATTORNEY GENERAL’S OPINIONS—

Placing limits on the flow of hazardous waste into the state is constitutionally valid in light of the state’s overriding interest in protecting its environment and the health and safety of its citizens. 1989 Op.Atty.Gen. No. 89‑85, p. 225 (August 23, 1989) 1989 WL 406175.

NOTES OF DECISIONS

In general 1

1. In general

The Department of Health and Environmental Control (DHEC) Board properly deemed landfill owned by corporation as an “existing unit” that was allowed to establish compliance with DHEC location standards for hazardous waste disposal facilities within 180 days after final hazardous waste disposal permit was effective, rather than requiring evidence of compliance with location standards as prerequisite to permit issuance, where landfill was issued a final permit prior to effective date of location standard regulations. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Environmental Law 432

**SECTION 44‑56‑40.** Powers of department.

 To carry out the provisions and purposes of this chapter, the department is authorized to:

 1. Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as it deems appropriate, with other state, federal or interstate agencies, municipalities, educational institutions, local health departments, or other organizations or individuals;

 2. Receive financial and technical assistance from the federal government and private agencies;

 3. Participate in related programs of the federal government, other states, interstate agencies or other public or private agencies or organizations and collect and file such reports, surveys, inventories, data and information which may be required by the Federal Resource Conservation and Recovery Act of 1976;

 4. Establish and collect fees for collecting samples and conducting laboratory analyses as may be necessary upon request of affected persons.

HISTORY: 1978 Act No. 436 Section 13.

CROSS REFERENCES

Alternative requirements for hazardous waste determination and accumulation of unwanted material for laboratories owned by eligible academic entities, see S.C. Code of Regulations R. 61‑79.262.200 et seq.

Powers of department of health and environmental control under pollution control act, see Section 48‑1‑50.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

Attorney General’s Opinions

Under South Carolina Hazardous Waste Management Act, confiscated 55 gallon drum of ether, apparently used as part of illicit drug manufacturing process, is defined as “uncontrolled hazardous waste”. Under such circumstances, Contingency Fund may be utilized for disposal of such waste. 1984 Op.Atty.Gen. No. 84‑130, p. 301 (November 7, 1984) 1984 WL 159936.

**SECTION 44‑56‑50.** Powers of commissioner.

 Notwithstanding any other provision of this chapter, the director, upon receipt of information that the storage, transportation, treatment, or disposal of any waste may present an imminent and substantial hazard to the health of persons or to the environment, may take such action as he determines to be necessary to protect the health of persons or the environment. The action the director may take may include, but is not limited to:

 1. Issuing an order directing the operator of the treatment, storage or disposal facility or site, or the custodian of the waste, which constitutes the hazard, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes the hazard. Such action may include, with respect to a facility or site, permanent or temporary cessation of operation;

 2. Requesting that the Attorney General commence an action enjoining such acts or practices. Upon a showing by the department that a person has engaged in such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted;

 3. Issuing an order directing a response action by the department to eliminate the hazard and protect the public from exposure to the hazard; and

 4. Requesting the Attorney General to commence an action to recover the costs of the response action from all parties liable under state or federal law.

HISTORY: 1978 Act No. 436 Section 10; 1985 Act No. 140, Section 4; 1993 Act No. 181, Section 1134.

CROSS REFERENCES

Injunction proceedings under Hazardous Substances Act, see Section 23‑39‑60.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

Attorney General’s Opinions

Under South Carolina Hazardous Waste Management Act, confiscated 55 gallon drum of ether, apparently used as part of illicit drug manufacturing process, is defined as “uncontrolled hazardous waste”. Under such circumstances, Contingency Fund may be utilized for disposal of such waste. 1984 Op.Atty.Gen. No. 84‑130, p. 301 (November 7, 1984) 1984 WL 159936.

**SECTION 44‑56‑59.** Findings; conclusions.

 (A) The General Assembly finds:

 (1) The existing commercial land disposal facility in South Carolina and available capacity in this State generally are limited resources;

 (2) It is essential that the limited waste treatment and disposal capacity of the existing commercial facility and the State in general be preserved, ready and available to ensure that the needs of South Carolina are met first;

 (3) The existing commercial land disposal facility as well as other hazardous waste treatment and disposal facilities must give preference to hazardous waste generators within the State for treatment and disposal of hazardous materials at licensed facilities in the State;

 (4) The General Assembly and the Executive Branch have mandated restrictions on the importation of out‑of‑state wastes and on the capacity of existing hazardous waste landfills; and

 (5) Reducing the amount of hazardous waste shipped to South Carolina commercial facilities will send a message to all states that South Carolina intends to reduce to the greatest extent possible the amount of hazardous waste treated and disposed of in this State.

 (B) Based upon these findings, the General Assembly declares that:

 (1) Landfilling is the least desirable method of managing hazardous waste and, in order to reduce potential risks to human health and the environment, reliance on landfilling must be reduced or eliminated when alternative disposal methods which are technologically and economically feasible are reasonably available within the State, through regional agreements between states, or through other means; and

 (2) As this State reduces its reliance on landfilling through its waste minimization practices and other means, the amount of hazardous waste being shipped into this State for landfilling from locations outside of the State should be reduced and eliminated also.

HISTORY: 1990 Act No. 590, Section 1.

**SECTION 44‑56‑60.** Annual evaluation; permit requirements; disposal limits; preference for in‑state generated waste.

 (a)(1) In order to provide the General Assembly with the information it needs to accomplish the above goals, the Department of Health and Environmental Control shall evaluate annually the effects of new and existing waste management technologies, alternate methods of storage or disposal, recycling, incineration, waste minimization laws and practices, and other factors that tend to reduce the volume of hazardous waste. The results of the department’s evaluation must be reported to the General Assembly not later than February first of each year, beginning in 1991, in a form that will permit the General Assembly to determine whether or not hazardous waste landfill capacity in this State should be reduced.

 (2) No person may construct, substantially alter, or operate a hazardous waste treatment, storage, or disposal facility or site, nor may a person transport, store, treat, or dispose of hazardous waste without first obtaining a permit from the department for the facility, site, or activity. Beginning July 1, 1990, permitted hazardous waste disposal sites are restricted to a rate of land disposal by burial not to exceed one hundred twenty thousand tons of hazardous waste for the twelve‑month period ending July 1, 1991. On July 1, 1991, permitted hazardous waste disposal sites are restricted to a rate of land disposal by burial not to exceed one hundred ten thousand tons of hazardous waste for each twelve‑month period thereafter within the permitted area of the site.

 (3) During a twelve‑month period, the commissioner may allow land disposal by burial in excess of the limitation upon certification of the department that:

 (A) disposal by land burial from a particular site in South Carolina is necessary to protect the health and safety of the people of this State; or

 (B) at least one hundred ten thousand tons of hazardous waste disposed of by land burial in this State during the twelve‑month period was generated in South Carolina.

 During each twelve‑month period, a person operating a hazardous waste disposal facility or site shall reserve at least the same capacity to dispose of hazardous waste generated in South Carolina that was disposed of by burial at that facility or site during the previous year excluding capacity that was used to dispose of hazardous waste pursuant to subitem (A). No more hazardous waste from out of state shall be buried in South Carolina than was buried in the previous twelve‑month period.

 Certification must be issued to the party seeking to use land disposal of the waste, and the certification must be presented to the operator of the facility at the time of disposal. The facility shall submit this certification with its regular report to the department of permitted activity at the disposal site.

 (b) Any person who:

 1. Owns or operates a facility required to have a permit under this section which facility is in existence on the effective date of this section;

 2. Has complied with the requirements of Section 44‑56‑120; and

 3. Has made an application for a permit under this section is deemed to have been issued the permit until such time as final administrative disposition of each application is made by the department, unless final administrative disposition of each application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

 (c) Before issuance of a permit, the Department shall require:

 1. Evidence of liability coverage for sudden and nonsudden accidental occurrences in an amount the Department may determine necessary for the protection of the public health and safety, and the environment;

 2. Evidence of financial assurance in the form and amount as the Department may determine to be necessary to ensure that, upon abandonment, cessation, or interruption of the operation of a facility or site, all appropriate measures are taken to prevent present and future damage to the public health and safety and to the environment. The Department shall assume continuing responsibility for environmental monitoring and for any response actions necessary to ensure the health and safety of the state’s citizens for any hazardous waste disposal or treatment sites permitted under this chapter when the facilities, sites, or activities close and all responsibilities required of any other party by any state or federal law or regulation cease. The Department’s responsibility for monitoring and response action is neither a limitation nor a termination of the liability of generators, transporters, or the operators of the facility under any provision of law or at common law.

 3. Evidence of other financial assurance in such forms and amounts as the department determines to be necessary to ensure the adequate availability of funds for clean‑up costs and restoration of environmental impairment arising from the facility.

HISTORY: 1978 Act No. 436 Section 4; 1983 Act No. 151 Part II Section 31C; 1984 Act No. 397, Section 4; 1985 Act No. 140, Section 5; 1989 Act No. 196, Section 6; 1990 Act No. 590, Section 2.

CROSS REFERENCES

How an eligible academic entity indicates it will be subject to the requirements of this subpart, see S.C. Code of Regulations R. 61‑79.262.203.

Information requirements of entities providing financial assurance for a hazardous waste treatment or disposal facility or site, see Section 44‑56‑220.

Laboratory clean‑outs, see S.C. Code of Regulations R. 61‑79.262.213.

Laboratory management plans, see S.C. Code of Regulations R. 61‑79.262.214.

Making the hazardous waste determination at an on‑site central accumulation area, see S.C. Code of Regulations R. 61‑79.262.211.

Making the hazardous waste determination at an on‑site interim status or permitted treatment, storage or disposal facility, see S.C. Code of Regulations R. 61‑79.262.212.

Making the hazardous waste determination in the laboratory before the unwanted material is removed from the laboratory, see S.C. Code of Regulations R. 61‑79.262.210.

Permits under Pollution Control Act, see Section 48‑1‑110.

Permits under Radioactive Waste Transportation and Disposal Act, see Section 13‑7‑140.

Requirement that treatment and disposal facilities give preference to hazardous waste generators within the State, see Section 44‑56‑205.

Where and when to make the hazardous waste determination and where to send containers of unwanted material upon removal from the laboratory, see S.C. Code of Regulations R. 61‑79.262.209.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

LAW REVIEW AND JOURNAL COMMENTARIES

The Suffolk syndrome: A case study in public nuisance law. 40 S.C. L. Rev. 379 (Winter 1989).

Attorney General’s Opinions

Under South Carolina Hazardous Waste Management Act, confiscated 55 gallon drum of ether, apparently used as part of illicit drug manufacturing process, is defined as “uncontrolled hazardous waste”. Under such circumstances, Contingency Fund may be utilized for disposal of such waste. S.C. Op.Atty.Gen. (November 7, 1984) 1984 WL 159936.

South Carolina Department of Highways and Public Transportation must meet financial responsibility requirements in order to obtain a Hazardous Waste Transporter Permit. S.C. Op.Atty.Gen. (August 9, 1983) 1983 WL 142727.

Passage of a prohibition or ban on land filling hazardous waste in another state would trigger Section 44‑56‑60(d), which prohibits disposal of hazardous waste from such a state in South Carolina. S.C. Op.Atty.Gen. (July 11, 1983) 1983 WL 142707.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Insurance 3

Revocation of permit 4

1. In general

Hazardous waste management statutes and regulations applied to landfill as a whole, not just to hazardous waste disposed of at landfill, and, thus, the Department of Health and Environmental Control (DHEC) properly counted both hazardous and nonhazardous waste disposed of at landfill towards 2250 acre‑foot capacity limit contained in landfill’s hazardous waste disposal permit. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Environmental Law 432

2. Constitutional issues

Plaintiff, association of hazardous waste handlers, showed likelihood of success on merits of its claim that statutes, regulations, and executive orders limiting disposal in South Carolina of hazardous waste generated outside of state was in violation of federal commerce clause. Hazardous Waste Treatment Council v. State of S.C. (C.A.4 (S.C.) 1991) 945 F.2d 781, on remand 901 F.Supp. 1026. Environmental Law 701

Challenged aspects of executive orders and statutes were, in proceedings for preliminary injunction, likely to be found violative of commerce clause. Neither federal Resource Conservation and Recovery Act nor Comprehensive Environmental Response, Compensation and Liability Act authorize otherwise invalid legislation. States may not engage in economic protectionism and RCRA appears to contain no clear statement or indication of legislative intent to permit states to override constitution. EPA may change its interpretation of its own regulation but not commands of constitution or Congress. Hazardous Waste Treatment Council v. State of S.C. (C.A.4 (S.C.) 1991) 945 F.2d 781, on remand 901 F.Supp. 1026.

Application of 2250 acre‑foot capacity limit contained in final hazardous waste disposal permit to landfill as a whole, as opposed to only hazardous waste disposed of at landfill, did not revoke landfill’s industrial waste permit without due process, where the Department of Health and Environmental Control (DHEC) subjected landfill and its industrial waste permit to future statutes and regulations governing hazardous waste and corporation that owned landfill complied with regulations once they became effective by submitting application under new regulatory scheme. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Constitutional Law 4327; Environmental Law 432

Interpretation of Department of Health and Environmental Control (DHEC) mixture rule by DHEC Board to deem solid nonhazardous waste disposed of at landfill as hazardous when mixed with listed hazardous waste, regardless of proportion, was reasonable, in challenge to conditions imposed on landfill’s hazardous waste disposal permit, where there was evidence that waste disposed of at landfill became mixed, that leaks within landfill cells might still cause mixing, and that excavating landfill’s waste would require treating waste as hazardous. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Environmental Law 427

Board of the Department of Health and Environmental Control (DHEC) acted arbitrarily and capriciously in excluding nonhazardous waste disposed of prior to its order limiting landfill’s hazardous waste disposal permit to 2250 acre‑feet from capacity limit, as exclusion of previously disposed of nonhazardous waste was inconsistent with Board’s application of capacity limit to both hazardous and nonhazardous waste. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Environmental Law 432

3. Insurance

Insurance coverage required by South Carolina law governing financial assurance requirements for hazardous waste facilities subject to Resource Conservation Recovery Act (RCRA) was limited to claims for present and future damage to public health and environment, and did not extend to claims for costs incurred in remediating past environmental harms, such as cost‑recovery and contribution claims under CERCLA. South Carolina Dept. Of Health And Environmental Control v. Commerce and Industry Ins. Co. (C.A.4 (S.C.) 2004) 372 F.3d 245. Environmental Law 435

Thirty million dollar claims made policy for accidental occurrence liability purchased by corporation seeking hazardous waste disposal permit for landfill from the Department of Health and Environmental Control (DHEC) complied with statutory and regulatory liability coverage requirements for issuance of permit and comported with industry standard. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Environmental Law 435

4. Revocation of permit

A corporation’s permit to operate a waste disposal system was properly revoked by the South Carolina Department of Health and Environmental Control under Section 48‑1‑50(5) where the corporation’s president had twice been convicted of bypassing the corporation’s waste disposal system and unlawfully discharging wastes into the environment in violation of Section 48‑1‑90, the corporation was operating without a certified waste treatment plant operator in violation of Section 48‑1‑110(c), and the corporation was storing hazardous wastes without a permit from the Department in violation of Section 44‑56‑60(a), despite the fact that there had been a change in management of the corporation, as its former president had transferred ownership to his wife subsequent to the initiation of proceedings by the Department. Barker Industries, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1985) 287 S.C. 424, 339 S.E.2d 136.

**SECTION 44‑56‑70.** Utilization of approved manifest systems.

 All generators, transporters, and operators of hazardous waste storage, treatment, and disposal facilities shall utilize a manifest system as prescribed by the department to insure that all such hazardous waste generated is designated for storage, treatment, or disposal in storage, treatment, or disposal facilities, other than facilities on the premises where the waste is generated, which have been properly permitted for such purposes.

HISTORY: 1978 Act No. 436 Section 5; 1981 Act No. 96, Section 1.

CROSS REFERENCES

Contents of transportation manifest for radioactive waste, see Section 13‑7‑150.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

**SECTION 44‑56‑80.** Requirements of department; disclosure of information obtained by department.

 A. The department shall require:

 1. the establishment and maintenance of such records;

 2. the making of such reports;

 3. the taking of such samples, and the performing of such tests or analyses;

 4. the installing, calibrating, using, and maintaining of such monitoring equipment or methods;

 5. the providing of such other information; as may be necessary to achieve the purposes of this chapter.

 B. Information obtained by the department under this chapter shall be available to the public, unless the department certifies such information as being proprietary. The department may make such certification where any person shows, to the satisfaction of the department, that the information, or parts thereof, if made public, would divulge methods, production rates, processes, or other confidential information entitled to protection. Nothing in this subsection shall be construed as limiting the disclosure of information by the department to any officer, employee, or authorized representative of the State concerned with effecting this chapter, providing such person respects the proprietary nature of the information.

HISTORY: 1978 Act No. 436 Section 6.

CROSS REFERENCES

Availability of information under Pollution Control Act, see Section 48‑1‑270.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

**SECTION 44‑56‑90.** Inspections; obtaining samples.

 (a) For the purpose of enforcing this chapter and Sections 44‑56‑160 through 44‑56‑190, or any regulations authorized pursuant thereto, any authorized representative or employee of the department may, upon presentation of appropriate credentials, at any reasonable time:

 1. Enter any place where hazardous wastes are generated, stored, treated, or disposed of;

 2. Inspect and copy any records, reports, information, or test results relating to the purpose of this chapter and Sections 44‑56‑160 through 44‑56‑190; and

 3. Inspect and obtain samples from any person of any wastes including samples from any vehicles in which wastes are being transported, as well as samples of any containers or labels. The Department shall provide a sample of equal volume or weight to the owner, operator or agent in charge upon request. The Department shall also provide the owner, operator, or agent in charge a copy of the results of any analyses of such samples.

 (b) For the purpose of implementing necessary governmental response actions as provided in Section 44‑56‑180, the Department or its authorized representative may, at any time, enter the premises of any publicly or privately owned property which it has determined to be an uncontrolled hazardous waste site. The owner or operator of such site shall cooperate fully with the department when such governmental response actions are taken.

HISTORY: 1978 Act No. 436 Section 7; 1983 Act No. 151 Part II Section 31D.

CROSS REFERENCES

Examinations and investigations under Hazardous Substances Act, see Section 23‑39‑100.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

**SECTION 44‑56‑100.** Modification or revocation of orders to prevent violations of chapter.

 The board may issue, modify or revoke any order to prevent any violation of this chapter.

HISTORY: 1978 Act No. 436 Section 8.

CROSS REFERENCES

Alternative requirements for hazardous waste determination and accumulation of unwanted material for laboratories owned by eligible academic entities, see S.C. Code of Regulations R. 61‑79.262.200 et seq.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

**SECTION 44‑56‑110.** Hearings.

 The department may hold public hearings and compel the attendance of witnesses; conduct studies, investigations, and research with respect to the operation and maintenance of any hazardous waste treatment or disposal facilities or sites and issue, deny, revoke, suspend or modify permits under such conditions as it may prescribe for the operation of hazardous waste treatment or disposal facilities or sites; provided, however, that no permit shall be revoked without first providing an opportunity for a hearing.

HISTORY: 1978 Act No. 436 Section 9.

CROSS REFERENCES

Hearings under Pollution Control Act, see Sections 48‑1‑150 et seq.

Hearings under Radioactive Waste Transportation and Disposal Act, see Section 13‑7‑180.

Notice and hearing before reporting violation under Hazardous Substances Act, see Section 23‑39‑80.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

**SECTION 44‑56‑120.** Notification of department of identification and activity relating to hazardous wastes.

 Not later than ninety days after final promulgation or revision of regulations under Section 44‑56‑30 identifying by its characteristics or listing any substance as hazardous waste subject to this chapter, any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the department a notification stating the location and general description of such activity and the identified or listed hazardous waste handled by such person. Not more than one such notification shall be required to be filed with respect to the same substance. No identified or listed hazardous waste subject to this chapter may be transported, treated, stored, or disposed of unless notification has been given as required under this section.

HISTORY: 1978 Act No. 436 Section 14.

CROSS REFERENCES

Laboratory clean‑outs, see S.C. Code of Regulations R. 61‑79.262.213.

Making the hazardous waste determination at an on‑site central accumulation area, see S.C. Code of Regulations R. 61‑79.262.211.

Making the hazardous waste determination at an on‑site interim status or permitted treatment, storage or disposal facility, see S.C. Code of Regulations R. 61‑79.262.212.

Making the hazardous waste determination in the laboratory before the unwanted material is removed from the laboratory, see S.C. Code of Regulations R. 61‑79.262.210.

Notification and recordkeeping for used, intact Cathode Ray Tubes (CRTs) exported for reuse, see S.C. Code of Regulations R. 61‑79.261.41.

Person who has complied with the requirements of this section, in addition to certain other requirements, deemed to have been issued a permit for a hazardous waste facility, see Section 44‑56‑60.

Removing containers of unwanted material from the laboratory, see S.C. Code of Regulations R. 61‑79.262.208.

Standards applicable to generators of hazardous waste, applicability of subpart, see S.C. Code of Regulations R. 61‑79.262.201.

Standards applicable to generators of hazardous waste, subpart optional, see S.C. Code of Regulations R. 61‑79.262.202.

Where and when to make the hazardous waste determination and where to send containers of unwanted material upon removal from the laboratory, see S.C. Code of Regulations R. 61‑79.262.209.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

**SECTION 44‑56‑130.** Unlawful acts.

 After the promulgation of the regulations required under Section 44‑56‑30:

 (1) It shall be unlawful for any person to generate, store, transport, treat, or dispose of hazardous wastes in this State without reporting such activity to the department as required by such regulations.

 (2) It shall be unlawful for any person to generate, store, transport, treat, or dispose of hazardous wastes in this State without complying with the procedures described in such regulations.

 (3) It shall be unlawful for any person to fail to comply with this chapter and rules and regulations promulgated pursuant to this chapter; to fail to comply with any permit issued under this chapter; or to fail to comply with any order issued by the board, director, or department.

 (4) It is unlawful for any person who owns or operates a waste treatment facility within this State to accept any hazardous waste generated in any jurisdiction which prohibits by law the treatment of that hazardous waste within that jurisdiction or which has not entered into an interstate or regional agreement for the safe treatment of hazardous waste pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act. Written documentation demonstrating compliance with this item must be submitted to the department before the transportation of any hazardous waste into the State for treatment.

 (5) It is unlawful for any person who owns or operates a waste storage facility within this State to accept any hazardous waste generated in any jurisdiction which prohibits by law the storage of that hazardous waste within that jurisdiction or which has not entered into an interstate or regional agreement for the safe storage of hazardous waste pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act. Written documentation demonstrating compliance with this item must be submitted to the department before the transportation of any hazardous waste into the State for storage.

 (6) It is unlawful for any person who owns or operates a waste disposal facility within this State to accept any hazardous waste generated in any jurisdiction which prohibits by law the disposal of that hazardous waste within that jurisdiction or which has not entered into an interstate or regional agreement for the safe disposal of hazardous waste pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act. Written documentation demonstrating compliance with this item must be submitted to the department before the transportation of any hazardous waste into the State for disposal.

HISTORY: 1978 Act No. 436 Section 11; 1989 Act No. 196, Section 9; 1993 Act No. 181, Section 1135.

CROSS REFERENCES

Use of fees imposed under section 44‑56‑170 to enforce bans set forth in this section, see Section 44‑56‑165.

Wrongful acts under Hazardous Substances Act, see Section 23‑39‑40.

Library References

Environmental Law 747.

Westlaw Topic No. 149E.

Attorney General’s Opinions

Placing limits on the flow of hazardous waste into the state is constitutionally valid in light of the state’s overriding interest in protecting its environment and the health and safety of its citizens. S.C. Op.Atty.Gen. (August 23, 1989) 1989 WL 406175.

Under South Carolina Hazardous Waste Management Act, confiscated 55 gallon drum of ether, apparently used as part of illicit drug manufacturing process, is defined as “uncontrolled hazardous waste”. Under such circumstances, Contingency Fund may be utilized for disposal of such waste. S.C. Op.Atty.Gen. (November 7, 1984) 1984 WL 159936.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Plaintiff, association of hazardous waste handlers, showed likelihood of success on merits of its claim that statutes, regulations, and executive orders limiting disposal in South Carolina of hazardous waste generated outside of state was in violation of federal commerce clause. Hazardous Waste Treatment Council v. State of S.C. (C.A.4 (S.C.) 1991) 945 F.2d 781, on remand 901 F.Supp. 1026. Environmental Law 701

**SECTION 44‑56‑140.** Violations; penalties.

 A. Whenever the department finds that any person is in violation of any permit, regulation, standard, or requirement under this Chapter, the department may issue an order requiring such person to comply with such permit, regulation, standard, or requirement, or the department may request that the Attorney General bring civil action for injunctive relief in the appropriate court; or, the department may request that the Attorney General bring civil enforcement action under subsection B of this section. Violation of any court order issued pursuant to this section shall be deemed contempt of the issuing court and punishable therefor as provided by law. The department may also invoke civil penalties as provided in this section for violations of the provisions of this chapter, including any order, permit, regulation or standard. Any person against whom a civil penalty is invoked by the department may appeal the decision of the department to the Court of Common Pleas in Richland County.

 B. Any person who violates any provision of Section 44‑56‑130 shall be liable for a civil penalty not to exceed twenty‑five thousand dollars per day of violation.

 C. Any person who willfully violates any provision of Section 44‑56‑130 shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than twenty‑five thousand dollars per day of violation or imprisoned for not more than one year or both, if the conviction is for a second or subsequent offense; the punishment shall be by a fine not to exceed fifty thousand dollars per day of violation, or imprisonment not to exceed two years, or both.

 D. Each day of noncompliance with any order issued pursuant to this chapter, or noncompliance with any permit, regulation, standard or requirement pursuant to Section 44‑56‑130 shall constitute a separate offense.

 E. The violations referred to in this section shall be reported by the department to the governing body of the county or municipality concerned within twenty‑four hours.

HISTORY: 1978 Act No. 436 Section 12; 1981 Act No. 96, Section 2.

CROSS REFERENCES

Penalties under Hazardous Substances Act, see Section 23‑39‑50.

Penalties under Pollution Control Act, see Sections 48‑1‑320, 48‑1‑330.

Penalties under Radioactive Waste Transportation and Disposal Act, see Section 13‑7‑180.

Penalty for violating rules of Department of Health and Environmental Control, see Section 44‑1‑150.

Library References

Environmental Law 747.

Westlaw Topic No. 149E.

Attorney General’s Opinions

Under South Carolina Hazardous Waste Management Act, confiscated 55 gallon drum of ether, apparently used as part of illicit drug manufacturing process, is defined as “uncontrolled hazardous waste”. Under such circumstances, Contingency Fund may be utilized for disposal of such waste. S.C. Op.Atty.Gen. (November 7, 1984) 1984 WL 159936.

The responsibility for cleaning up chemical and petroleum spills occurring in the state rests upon the polluter. S.C. Op.Atty.Gen. (October 8, 1981) 1981 WL 96609.

**SECTION 44‑56‑160.** Hazardous Waste Contingency Fund; disposition of fees collected and earnings and interest.

 (A) The Department of Health and Environmental Control is directed to establish a Hazardous Waste Contingency Fund to ensure the availability of funds for response actions necessary at permitted hazardous waste landfills and necessary from accidents in the transportation of hazardous materials and to defray the costs of governmental response actions at uncontrolled hazardous waste sites. The contingency fund must be financed through the imposition of fees provided in Sections 44‑56‑170 and 44‑56‑510 and annual appropriations which must be provided by the General Assembly.

 (B) Of the fees collected pursuant to Section 44‑56‑170(C), (D), and (E), and credited to the contingency fund pursuant to Section 44‑56‑175:

 (1) thirteen percent must be held separate and distinct within the fund in a permitted site fund for the purpose of response actions arising from the operation of the permitted land disposal facilities in this State;

 (2) sixty‑two percent must be held separate and distinct within the fund to defray the costs of governmental response actions at uncontrolled hazardous waste sites and for the purpose of response actions arising from accidents occurring within the State in the transportation of hazardous materials;

 (3) five percent must be used to fund hazardous waste reduction and minimization activities of the department pursuant to Section 44‑56‑165;

 (4) eighteen percent must be remitted to and expended by the Hazardous Waste Management Research Fund in accordance with Section 44‑56‑810;

 (5) two percent must be returned to the governing body of a county in which a permitted commercial land disposal facility is located.

 (C) From the fees imposed by Section 44‑56‑170(C) and (E) and credited to permitted sites pursuant to subsection (B), twenty‑seven percent must be held separate and distinct within the fund for the purpose of being returned to the governing body of a county in which a permitted commercial land disposal facility is located. The funds returned to a county pursuant to this subsection or subsection (B) must be used by the local law enforcement, fire, health care, and emergency units to provide protection, assistance, and emergency preparedness for any contingency which might arise from the transportation and disposal site within the county. The county governing body, shall distribute the funds in an equitable manner to the involved local units including, but not limited to, municipalities and special purpose districts, as well as county entities. The State Treasurer shall disburse the funds quarterly to counties which contain commercial hazardous waste land disposal sites.

 (D) From the fees imposed by Section 44‑56‑170(C) and (E) and credited to uncontrolled sites and transportation accidents pursuant to subsection (B), five percent must be returned to and used by the governing body of the Town of Pinewood to fund the Pinewood Hazardous Waste Contingency Fund as established in Section 44‑56‑163.

 (E) All fees collected pursuant to Section 44‑56‑170(D) must be credited to the fund for uncontrolled sites and transportation accidents.

 (F) Of the fees collected pursuant to Section 44‑56‑510 and credited to the contingency fund pursuant to Section 44‑56‑175:

 (1) twenty‑six percent must be credited to the fund for permitted sites; and

 (2) seventy‑four percent must be credited to the fund for uncontrolled sites and transportation accidents.

 (G) Any interest accruing from the management of the funds held pursuant to this section must be credited to the Hazardous Waste Contingency Fund and is authorized for expenditure by the department to defray costs of governmental response actions at uncontrolled hazardous waste sites and for the purpose of response actions incidental to the transportation of hazardous materials, except earnings on the permitted site fund which must be credited to that fund, and earnings on the Pinewood Hazardous Waste Contingency Fund must be credited to that fund.

HISTORY: 1980 Act No. 517 Part II, Section 15A; 1983 Act No. 151 Part II Section 31E; 1985 Act No. 140, Section 6; 1987 Act No. 170, Part II, Section 29; 1989 Act No. 196, Section 7; 1992 Act No. 501, Part II Section 18A; 2008 Act No. 353, Section 2, Pt 5D, eff July 1, 2009.

CROSS REFERENCES

Department of Health and Environmental Control, generally, see Sections 44‑1‑20 et seq.

Hazardous Substances Act, see Sections 23‑39‑10 et seq.

Hazardous Waste Management Research Fund to be financed in accordance with this section, see Section 44‑56‑810.

Pollution Control Act, see Sections 48‑1‑10 et seq.

Portion of funds generated from fees on commercial treatment of infectious waste to be remitted to Hazardous Waste Contingency Fund, see Section 44‑93‑170.

Solid waste collection and disposal by counties, see Sections 44‑55‑1210 et seq.

South Carolina Hazardous Waste Management Act, see Sections 44‑56‑10 et seq.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

LAW REVIEW AND JOURNAL COMMENTARIES

Hazardous Waste: Third Party Compensation for Contingencies Arising from Inactive and Abandoned Hazardous Waste Disposal Sites. 33 S.C. L. Rev. 543 (March 1982).

Attorney General’s Opinions

The funds disbursed by the State Treasurer to the Pinewood Hazardous Waste Contingency may be used to purchase an ambulance for the Town of Pinewood, but the decision to purchase it must be left to the discretion of the governing body of the Town of Pinewood. S.C. Op.Atty.Gen. (December 9, 1991) 1991 WL 633085.

**SECTION 44‑56‑163.** Pinewood Hazardous Waste Contingency Fund; Pinewood Development Fund.

 (A) There is created a Pinewood Hazardous Waste Contingency Fund to ensure the availability of funds for response actions necessary at the hazardous waste landfill located adjacent to the Town of Pinewood. This contingency fund is financed pursuant to Section 44‑56‑160(D). The monies from this fund must be returned to the governing body of the Town of Pinewood which must be used by its law enforcement, fire, health care, and emergency units to provide protection, assistance, and emergency preparedness for any contingency which might arise from the transportation and disposal site within the municipality. The State Treasurer shall disburse the funds quarterly to the governing body of the Town of Pinewood. Any interest accruing from the management of the funds held pursuant to Section 44‑56‑160 or this section must be credited to this contingency fund.

 (B) There is created the Pinewood Development Fund in the Office of the State Treasurer. This fund must be financed through fees provided in Sections 44‑56‑170 and 44‑56‑510 and credited to this fund pursuant to Section 44‑56‑175. This fund must be used for economic development in the Pinewood area in Sumter or Clarendon County within a five‑mile radius of the Pinewood Hazardous Waste Landfill. All funds in the Pinewood Development Fund, including interest earned on the fund, must be remitted quarterly by the State Treasurer to the City of Pinewood and expended pursuant to this subsection.

HISTORY: 1992 Act No. 501, Part II Section 18B; 1993 Act No. 164, Part II, Section 96B.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑56‑164.** Pinewood Development Authority; creation; composition; purpose; powers.

 (A) There is created the Pinewood Development Authority a body politic and corporate. The authority shall consist of these ex officio members:

 (1) the chairman of the Sumter County Council or a council member designated by the chairman;

 (2) the chairman of the Clarendon County Council or a council member designated by the chairman;

 (3) one member of the Sumter County Council who represents the geographical area within which this fund may be used for economic development;

 (4) one member of the Clarendon County Council who represents the geographical area within which this fund may be used for economic development.

 (B) The authority shall approve, by a majority vote, the expenditure of funds from the Pinewood Development Fund, as created in Section 44‑56‑164(B) and may acquire and develop real and personal property and exercise all powers incidental to developing the Pinewood area pursuant to Section 44‑56‑164(B).

HISTORY: 1993 Act No. 164, Part II, Section 96A.

Library References

Environmental Law 413.

Westlaw Topic No. 149E.

**SECTION 44‑56‑165.** Use of fees imposed under Section 44‑56‑170; hazardous waste reduction and minimization activities; enforcement of bans on certain acts.

 The fees imposed under Section 44‑56‑170(C) and (E), and distributed in accordance with Section 44‑56‑160(B)(3) must be used to fund hazardous waste reduction and minimization activities of the department. Funding for this activity is not limited to the amount collected annually and may be supported by general appropriation of the General Assembly. Aqueous wastes which are hazardous only because of pH are exempt from this fee if they are generated and treated on site in a permitted wastewater treatment plant. In addition to funding hazardous waste reduction and minimization activities, the fees also must be used to enforce the bans set forth in Section 44‑56‑130(4), (5), and (6).

HISTORY: 1989 Act No. 196, Section 4; 1992 Act No. 501, Part II Section 18C.

Library References

Environmental Law 413.

Westlaw Topic No. 149E.

Attorney General’s Opinions

Placing limits on the flow of hazardous waste into the state is constitutionally valid in light of the state’s overriding interest in protecting its environment and the health and safety of its citizens. 1989 Op.Atty.Gen. No. 89‑85, p. 225 (August 23, 1989) 1989 WL 406175.

**SECTION 44‑56‑170.** Hazardous Waste Contingency Fund: reports, fees, and administration of fund.

 (A) Each generator shall, no later than thirty days after the end of each calendar quarter, submit a written report to the Department including, but not limited to, the following information:

 1. Effective October 1, 1985, certification that he has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable;

 2. Effective October 1, 1985, certification that the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment;

 3. the types and quantities of hazardous wastes generated;

 4. the types and quantities of these wastes shipped for treatment and disposal by landfilling or other means of land disposal;

 5. the types and quantities of these wastes remaining in storage at the end of the reporting period; and

 6. a check made payable to the Department for the amount of fee imposed on these wastes by the provisions of paragraph (C.)

 (B) Each owner/operator of a hazardous waste facility shall, no later than thirty days after the end of each calendar quarter, submit a written report to the Department including, but not limited to, the following information:

 1. the types and quantities of hazardous wastes generated;

 2. the types and quantities of hazardous wastes received at the facility during the reporting period;

 3. the types and quantities of hazardous wastes treated, disposed of, and otherwise handled during the reporting period; and

 4. a check made payable to the Department for the amount of fees imposed by paragraph (C) for any wastes generated by the facility and handled in such manner as prescribed by its provisions; by paragraph (D) and by paragraph (E.)

 Each owner/operator of a hazardous waste facility is, no later than thirty days after the end of each calendar quarter, required to submit to the Department certification from any out‑of‑state generator that effective October 1, 1985:

 (1) The generator has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

 (2) The proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment;

 (C) There is imposed a fee of thirty‑four dollars a ton of hazardous wastes generated and disposed of in this State by landfilling or other means of land disposal.

 (D) There is hereby imposed a fee of one dollar per ton of hazardous wastes in excess of fifty tons remaining in storage at the end of the reporting period.

 (E) For all hazardous wastes generated outside of the State and received at a facility during the quarter each owner/operator of a hazardous waste land disposal facility shall remit to the department an amount equal to the per ton fee imposed on out‑of‑state waste by the state from which the hazardous waste originated but in any event no less than thirty‑four dollars a ton.

 (F)(1) There is imposed a fee of ten dollars a ton on the incineration of hazardous waste in this State whether the waste was generated within or outside of this State. Fees imposed by this subsection must be based on the amount of hazardous waste collected by the facility for incineration and must not include any nonhazardous materials added to the hazardous waste at the incineration facility for purposes of fuel blending. These fees must be collected by the facility at which it is incinerated and remitted to the State Treasurer to be placed into a fund separate and distinct from the state general fund entitled “Hazardous Waste Fund County Account”.

 (2)(a) This fee must be credited to the benefit of the county where the incineration of the hazardous waste generating the fee occurred. If the amount of funds credited to a particular county exceeds five hundred thousand dollars annually, the excess over five hundred thousand dollars must be credited to the general fund of the State.

 (b) Effective July 1, 2000, the provisions of subitem (a) are no longer effective and the fee must be allocated in the following manner: fifty percent to the county where the incineration of the hazardous waste generating the fee occurred and fifty percent to the general fund of the State.

 (3) Funds in each county’s account must be released by the State Treasurer upon the written request of a majority of the county’s legislative delegation and used for infrastructure within the economically depressed area of that county.

 (4)(a) For purposes of this subsection, “county legislative delegation” includes only those members who represent the economically depressed areas of the county.

 (b) For purposes of this subsection, “incineration” includes hazardous waste incinerators, boilers, and industrial furnaces.

 (c) For the purpose of this subsection “infrastructure” means improvements for water, sewer, gas, steam, electric energy, and communication services made to a building or land which are considered necessary, suitable, or useful to an eligible project. These improvements include, but are not limited to:

 (i) improvements to both public water and sewer systems;

 (ii) improvements to public electric, natural gas, and telecommunication systems; and

 (iii) fixed transportation facilities including highway, road, rail, water, and air.

HISTORY: 1980 Act No. 517 Part II, Section 15B; 1983 Act No. 151 Part II Section 31F; 1985 Act No. 140, Section 7; 1989 Act No. 196, Section 8; 1992 Act No. 501, Part II Section 18D‑18F; 1999 Act No. 100, Part II, Section 63; 2000 Act No; 384, Section 6; 2000 Act No. 387, Part II, Section 80A; 2004 Act No. 257, Section 2, eff June 15, 2004.

Editor’s Note

1999 Act No. 100, Part II, Section 63BSection provides as follows:

“For purposes of Section 44‑56‑170(F), the phrase ‘economically depressed area of that county’ means:

“(1) within Orangeburg County, the entire area of the county;

“(2) within Dorchester County, the area comprising School District 4; and

“(3) for any other county, an area designated by the county governing body.”

CROSS REFERENCES

Application of this section to penalties imposed on weighmasters for violations of their duties, see Section 39‑11‑170.

Assessment of fees for waste disposal where no fees are assessed under this article, see Section 44‑56‑510.

Crediting of fees imposed pursuant to this section to particular funds, see Section 44‑56‑175.

Use of fees imposed under this section to fund hazardous waste reduction and minimization activities, see Section 44‑56‑165.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

LAW REVIEW AND JOURNAL COMMENTARIES

Hazardous Waste: Third Party Compensation for Contingencies Arising from Inactive and Abandoned Hazardous Waste Disposal Sites. 33 S.C. L. Rev. 543 (March 1982).

**SECTION 44‑56‑175.** Crediting of fees imposed pursuant to Sections 44‑56‑170(C), (E), and (F) and 44‑56‑510.

 (A) Of the fees imposed pursuant to Section 44‑56‑170(C) and (E):

 (1) eighty‑three percent must be credited to the Hazardous Waste Contingency Fund;

 (2) two percent must be credited to the Pinewood Development Fund; and

 (3) fifteen percent must be credited to the general fund.

 (B) Of the fees imposed pursuant to Section 44‑56‑510:

 (1) fifty‑three percent must be credited to the Hazardous Waste Contingency Fund;

 (2) twenty percent must be credited to the Pinewood Development Fund; and

 (3) twenty‑seven percent must be credited to the general fund.

 (C) All fees imposed pursuant to Section 44‑56‑170(F) must be credited to the general fund.

HISTORY: 1992 Act No. 501, Part II Section 18G.

Library References

Environmental Law 413.

Westlaw Topic No. 149E.

**SECTION 44‑56‑180.** Hazardous Waste Contingency Fund; suspension or reduction of fees on accumulation of fund.

 (a) In determining the use of the fund for a particular governmental response action, the department shall consider the relative risk of danger to public health or welfare or the environment and the hazard potential of the substances involved including potential for fire, explosions, release of harmful air contaminants, direct human contact, contamination of surface water or groundwater including those used for drinking water supplies, and damages to sensitive ecosystems. With approval of the Hazardous Waste Management Select Oversight Committee, as established under Section 44‑56‑840, funds specified for governmental response actions must be available to the department for personnel and operating costs to implement its program for conducting these response actions. The department must, concurrent with taking a governmental response action, initiate the appropriate administrative action to exhaust any applicable liability insurance or other financial assurance mechanisms which have been provided by the responsible party and, where appropriate, funds available through P.L. 96‑510. Use of the Fund for a response action is not stayed by any action for recovery. The department must initiate any legal actions which reasonably may result in recovery from the parties liable for the conditions necessitating the response action. Any funds recovered in relation to a response action from whatever source are to be placed in the Fund.

 (b) The Department shall annually make a report to the General Assembly on the activities and response actions that have been carried out under the auspices of the Contingency Fund. The Department shall annually provide a report to the committees of each House with oversight of industry and natural resources on its program to identify and clean up uncontrolled hazardous waste sites. The appropriate committees shall have the authority to study the transportation and disposal of hazardous waste in South Carolina.

HISTORY: 1980 Act No. 517 Part II, Section 15C; 1983 Act No. 151 Part II Section 31G; 1985 Act No. 140, Section 8; 1993 Act No. 164, Part II, Section 61A.

Federal Aspects

As to provisions of P.L. 96‑510, see 42 U.S.C.A. Sections 9601 et seq.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

LAW REVIEW AND JOURNAL COMMENTARIES

Hazardous Waste: Third Party Compensation for Contingencies Arising from Inactive and Abandoned Hazardous Waste Disposal Sites. 33 S.C. L. Rev. 543 (March 1982).

**SECTION 44‑56‑190.** Hazardous Waste Contingency Fund; inconsistent regulations to be revised.

 The Department is directed to revise and amend the necessary provisions of R. 61‑79 (DHED) which are contrary or inconsistent with the provisions of Sections 44‑56‑160 through 44‑56‑190.

HISTORY: 1980 Act No. 517 Part II, Section 15D; 1983 Act No. 151 Part II Section 31H.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

LAW REVIEW AND JOURNAL COMMENTARIES

Hazardous Waste: Third Party Compensation for Contingencies Arising from Inactive and Abandoned Hazardous Waste Disposal Sites. 33 S.C. L. Rev. 543 (March 1982).

**SECTION 44‑56‑200.** Department of Health and Environmental Control may implement and enforce Public Law 96‑510 relating to hazardous waste cleanup; owner defined.

 (A) The Department of Health and Environmental Control is empowered to implement and enforce the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Public Law 96‑510), and subsequent amendments to Public Law 96‑510 as of the effective date of the amendments.

 (B)(1) Subject to the provisions of Section 107 of Public Law 96‑510 and its subsequent amendments which pursuant to this section are incorporated and adopted as the law of this State, the department is empowered to recover on behalf of the State all response costs expended from the Hazardous Waste Contingency Fund or from other sources, including specifically punitive damages in an amount at least equal to and not more than three times the amount of costs incurred by the State whether before or after the enactment of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and its subsequent amendments.

 (2) For purposes of this section, “owner” does not include:

 (a) a unit of state or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign, including acquisitions made by a forfeited land commission pursuant to Chapter 59, Title 12. The exclusion provided under this paragraph shall not apply to any state or local government which voluntarily acquires a facility or has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a state or local government shall be subject to the provisions of this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity.

 (b) a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by:

 (i) an act of God;

 (ii) an act of war;

 (iii) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (A) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (B) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions.

 (3) For purposes of this chapter, the provisions of the Superfund Recycling Equity Act, 42 U.S.C. Section 9627, shall apply.

HISTORY: 1981 Act No. 178 Part II Section 11; 1992 Act No. 267, Section 1; 2000 Act No. 258, Section 3; 2017 Act No. 16 (S.181), Section 1, eff May 9, 2017.

Effect of Amendment

2017 Act No. 16, Section 1, added (B)(3), making the Federal Superfund Recycling Equity Act applicable to the South Carolina Hazardous Waste Management Act.

Federal Aspects

Comprehensive Environmental Response, Compensation and Liability Act of 1980 (PL 96‑510), see 42 U.S.C.A. 9601 et seq.

Superfund Recycling Equity, Pub. L. 106‑113, Nov. 29, 1999, 113 Stat 1501, Title VI, see 17 U.S.C.A. Section 101 note.

Library References

Environmental Law 413.

Westlaw Topic No. 149E.

RESEARCH REFERENCES

Encyclopedias

57 Am. Jur. Trials 1, Private Cost Recovery Actions Under Cercla.

LAW REVIEW AND JOURNAL COMMENTARIES

The Suffolk syndrome: A case study in public nuisance law. 40 S.C. L. Rev. 379 (Winter 1989).

United States Supreme Court Annotations

Environmental cleanup costs, hazardous waste, arranger liability, manufacturer that sold chemical to storage and distribution facility on site where contamination occurred, see Burlington Northern and Santa Fe Ry. Co. v. U.S., 2009, 129 S.Ct. 1870, 556 U.S. 599, 173 L.Ed.2d 812.

**SECTION 44‑56‑205.** Facilities to give preference to waste generators within the State.

 All hazardous waste treatment and disposal facilities in South Carolina shall give preference to hazardous waste generators within the State of South Carolina for treatment and disposal of hazardous materials at licensed facilities in the State.

HISTORY: 1989 Act No. 196, Section 5.

Library References

Environmental Law 413.

Westlaw Topic No. 149E.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Provisions of state solid waste management statute prohibiting any person from accepting for disposal solid waste not generated in county in which disposal area was located, unless explicitly authorized in county’s approved solid waste management plant, violated commerce clause of federal constitution, where state had not identified reason apart from origin why solid waste from outside county should be treated differently from waste coming from within county; restrictions are appropriately characterized as protectionist measures which cannot withstand commerce clause scrutiny since they authorize each county to isolate itself from national economy and afford waste producers complete protection from competition from out‑of‑state producers seeking to use local disposal areas unless county acts affirmatively to authorize such use. Ft. Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources, U.S.Mich.1992, 112 S.Ct. 2019, 504 U.S. 353, 119 L.Ed.2d 139.

Statute imposing fee upon operator of hazardous waste disposal sites and imposing additional fee per ton for waste generated outside of state and disposed of at in‑state site violated commerce clause of federal constitution because (1) state may not attempt to isolate self from problem common to several states by raising barriers to free flow of interstate trade, (2) additional fee facially discriminated against waste from outside state, (3) statute plainly discouraged full operation of landfill facility, (4) only basis for additional fee was origin of waste, (5) fee’s ultimate purpose could not permissibly be accomplished by discriminating between articles of commerce from inside and outside state unless there was some reason apart from origin of articles to treat them differently, and (6) state had not shown that discrimination was demonstrably justified by valid factor unrelated to economic protectionism. Chemical Waste Management, Inc. v. Hunt, 1992, 112 S.Ct. 2009, 504 U.S. 334, 119 L.Ed.2d 121.

**SECTION 44‑56‑210.** Appointment of full‑time health inspectors.

 The Department of Health and Environmental Control, in its discretion, shall assign not more than two full‑time health inspectors to serve at each commercial hazardous waste treatment, storage, and disposal facility located in South Carolina for the purpose of assuring the protection of the health and safety of the public by monitoring the receipt and handling of hazardous waste at these sites. For any facilities to which a full‑time inspector is not assigned, there must be one or more inspectors who shall monitor these facilities on a rotating basis.

 The department shall implement a fee schedule to cover the costs of implementing this inspection program and the fees must be collected by the facilities from the hazardous waste generators utilizing these sites.

HISTORY: 1983 Act No. 64; 1990 Act No. 612, Part II, Section 73; 1991 Act No. 171, Part II, Section 42A.

Library References

Environmental Law 413.

Westlaw Topic No. 149E.

ARTICLE 2

Information Requirements

**SECTION 44‑56‑215.** Assessment of fees against companies generating hazardous waste.

 The department is authorized to assess each company generating hazardous waste a fee based on the amount of hazardous waste generated. A large quantity generator, as determined by Regulation 61‑79.262, producing more than one hundred tons of hazardous waste per year shall be assessed an annual base fee of one thousand dollars per facility and a one dollar and fifty cents per ton fee for all hazardous waste the company generates. A large quantity generator producing one hundred tons or less of hazardous waste shall be assessed an annual fee of one thousand dollars. A small quantity generator shall be assessed an annual fee of five hundred dollars. Fees collected pursuant to this section shall not exceed an annual cost of fifteen thousand dollars per generator. Companies subject to fees required by Section 44‑56‑170(F)(1) are exempt from fees established by this section. The fees collected pursuant to this section shall be deposited to the Hazardous Waste Contingency Fund for response actions at uncontrolled hazardous waste sites.

HISTORY: 2008 Act No. 353, Section 2, Pt 5F.1, eff July 1, 2008.

Library References

Environmental Law 413.

Westlaw Topic No. 149E.

**SECTION 44‑56‑220.** Information requirements of entity providing financial assurance for hazardous waste treatment or disposal facility or site.

 (A) Upon written request of the department, the entity providing financial assurance for a hazardous waste treatment or disposal facility or site regulated under this chapter shall furnish to the department information concerning its financial integrity, as shall be specified in the department’s request to permit the department to review the nature, degree, and sufficiency of the financial assurances submitted by such entity. Information pertaining to the financial integrity of any parent, subsidiary, or affiliated corporations may also be required, in the event such parent, subsidiary, or affiliated corporation provides, in whole or in part, the financial assurances required by the department. The information required by this subsection may include, but not be limited to, a certified audited financial statement, a balance sheet, and a profit and loss statement.

 (B) If, in the judgment of the department, the information referred to in subsection (A) is not furnished within a reasonable time or if so furnished is not satisfactory to the department, the department shall give by written notice to such entity the particulars in which such information is insufficient to permit the department to review the nature, extent, and sufficiency of the required financial assurance and such entity shall have a reasonable time in which to comply with the requirements of such notice in the particulars therein mentioned.

 (C) If it is desired for any reason to verify the information furnished under subsection (A) or (B), the department in person or by its agents shall make such examination of the records of and such inspections of the properties of the entities referred to in subsection (A) as shall be necessary to procure the information required. Upon sufficient notice, the department may require the production of the desired writings and records and the attendance and testimony under oath of the officers, accountants, or other agents of the parties having knowledge thereof at such place as the department may designate. The expense of the necessary examination or inspection for the procuring of the information must be paid by the party so examined or inspected. The expenses may be collected by suit or action, if necessary, except that if the examination and inspection and reports thereof disclose that a sufficient response had previously been made pursuant to the requirements of the department in regard thereto the expense of making the examination and inspection must be paid out of the funds of the department.

HISTORY: 1989 Act No. 196, Section 1.

CROSS REFERENCES

Requirement of evidence of financial assurance before issuance of a permit, see Section 44‑56‑60.

Library References

Environmental Law 430.

Westlaw Topic No. 149E.

ARTICLE 3

Immunity From Civil Damages

**SECTION 44‑56‑310.** Definitions.

 As used in this article:

 (A) “Discharge” means leakage, seepage, or other release.

 (B) “Hazardous materials” means all materials and substances defined as hazardous by any state or federal law or regulation.

 (C) “Person” means any individual, partnership, corporation, association, or other entity.

HISTORY: 1984 Act No. 397, Section 1.

**SECTION 44‑56‑320.** Attempts to mitigate effects of discharge; immunity.

 Any person who in good faith gratuitously provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous materials, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up, or dispose of any such discharge, is not subject to civil damages unless an injury or damages result from the gross negligence, recklessness, or intentional misconduct of such person.

HISTORY: 1984 Act No. 397, Section 2.

Library References

Environmental Law 458.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 132, 142.

**SECTION 44‑56‑330.** Applicability.

 The immunities provided in Section 44‑56‑320 apply only to any person:

 (A) Whose act or omission did not cause the actual or threatened discharge and who would not otherwise be liable therefor, or

 (B) Who renders such assistance or advice voluntarily and without compensation, or who is an employee of an industry, corporation, or group which renders such advice or assistance without compensation.

HISTORY: 1984 Act No. 397, Section 3.

Library References

Environmental Law 458.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 132, 142.

ARTICLE 4

Drycleaning Facility Restoration Trust Fund

CROSS REFERENCES

For regulations pertaining to drycleaning facility restoration, see S.C. Code of Regulations R. 61‑33.

**SECTION 44‑56‑405.** Purpose.

 The purpose of the South Carolina Drycleaning Facility Restoration Trust Fund is to collect and manage funds for the investigation and remediation of environmental contamination arising from the operation of eligible drycleaning facilities and eligible wholesale supply facilities. The Department of Revenue shall collect, and enforce the payment of surcharges and fees, which constitute the fund, as required by this article. The Department of Health and Environmental Control shall administer the fund to ensure that the sites that pose the greatest threat to human health and the environment are remediated first and that the remediation is accomplished in compliance with this article.

HISTORY: 2013 Act No. 30, Section 1, eff May 21, 2013.

**SECTION 44‑56‑410.** Definitions.

 As used in this article:

 (1) “Contaminated site” means any drycleaning facility or wholesale supply facility and surrounding area where drycleaning solvent has been deposited, stored, disposed of, released, placed, or otherwise come to be located; but does not include any consumer product in consumer use or any container. In order for a site to be a contaminated site it must have documented evidence of contamination from drycleaning solvent.

 (2) “Department” means the Department of Health and Environmental Control.

 (3) “Drycleaning facility” means a professional commercial establishment located in this State for the purpose of cleaning clothing and other fabrics utilizing a process that involves the use of drycleaning solvent. In the case of a retail establishment, the establishment is one that operates or has at sometime in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for members of the public, other drycleaning facilities, and dry drop‑off facilities. In the case of a wholesale establishment, the establishment is one that operates or has at sometime in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for other drycleaning facilities or dry drop‑off facilities. “Drycleaning facility” includes laundry facilities that are using or have used drycleaning solvent as part of their cleaning process but does not include textile mills, uniform rental and linen supply facilities, or drycleaning facilities owned or operated by a local, state, or federal government.

 (4) “Drycleaning solvent” means nonaqueous solvents used in the cleaning of clothing and other fabrics and includes halogenated drycleaning fluids and nonhalogenated drycleaning fluids, and their breakdown products. “Drycleaning solvent” includes solvent that has been recycled for use at a drycleaning facility and applies only to those solvents used at a drycleaning facility or handled by a wholesale supply facility.

 (5) “Dry drop‑off facility” means a commercial retail business (including routes) that receives clothing and other fabrics, from customers, for drycleaning or laundering at an off‑site drycleaning facility.

 (6) “Employee” means a natural person employed and paid by the owner of a drycleaning facility for thirty‑five or more hours a week for forty‑five or more weeks a year and on whose behalf the owner contributes payments to the South Carolina Department of Employment and Workforce or Department of Revenue as required by law. Excluded from the meaning of the term “employee” are owners of drycleaning facilities and family members of owners, regardless of the level of consanguinity, if the family members are not employed and not compensated pursuant to the definition of the term “employee” contained in this item. Part‑time employees who are employed and paid for fewer than thirty‑five hours a week for fewer than forty‑five weeks a year must not be deemed to be employees unless their hours and weeks of employment, when combined with the hours and weeks of employment of another or other part‑time employee or employees, total thirty‑five or more hours a week for forty‑five or more weeks a year.

 (7) “Existing drycleaning facility” means a drycleaning facility that started operation before November 24, 2004.

 (8) “Former drycleaning facility” means a drycleaning facility that ceased to be operated as a drycleaning facility before July 1, 1995.

 (9) “Fund” means Drycleaning Facility Restoration Trust Fund.

 (10) “Halogenated drycleaning fluid” means any nonaqueous solvent formulated, in whole or in part, with ten percent or more by volume of any of the halogenated compounds including, but not limited to, chlorine, bromine, fluorine, or iodine. Halogenated drycleaning fluids include, but are not limited to, the known solvents perchloroethylene (also known as tetrachloroethylene or perc), n‑propyl bromide, and any breakdown components of them.

 (11) “New drycleaning facility” means a drycleaning facility that started operation on or after November 24, 2004.

 (12) “Nonaqueous solvent” means any cleaning formulation designed to minimize swelling of fabric fibers and containing less than fifty‑one percent of water by volume.

 (13) “Nonhalogenated drycleaning fluid” means any nonaqueous solvent used in a drycleaning facility that contains less than ten percent by volume of any halogenated drycleaning fluid. Nonhalogenated drycleaning fluid includes petroleum based drycleaning solvents and any breakdown components of them.

 (14) “Person” means an individual, partnership, corporation, association, trust, estate, receiver, company, limited liability company, or another entity or group.

 (15) “Property owner” means a person who is vested with ownership, dominion, or legal or rightful title to the real property or who has a ground lease interest in the real property on which a drycleaning or wholesale supply facility is or has ever been located.

 (16) “Release” means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of drycleaning solvent.

 (17) “Route” means a commercial business that receives by mobile means clothing and other fabrics, from customers, for drycleaning or laundering at an off‑site drycleaning facility.

 (18) “Wholesale supply facility” means a commercial establishment that supplies drycleaning solvent to drycleaning facilities.

HISTORY: 1995 Act No. 119, Section 1; 2004 Act No. 237, Section 2, eff May 24, 2004; 2009 Act No. 14, Section 1, eff May 6, 2009; 2013 Act No. 30, Section 1, eff May 21, 2013.

Editor’s Note

2004 Act No. 237, Section 11, provides in part as follows:

“The repeal or amendment of a code section by this act does not release or extinguish any tax, fee, interest, penalty, forfeiture, or liability for any period prior to the repeal or amendment. The repealed or amended code section or act must be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the tax, fee, interest, penalty, forfeiture, or liability.”

Attorney General’s Opinions

The allowance for the exemption from the Drycleaning Facility Restoration Trust Fund is applicable only to facilities that were in existence at particular locations on specified dates, so that any facility that has relocated is no longer exempt and must make payments to the Trust Fund. S.C. Op.Atty.Gen. (October 4, 2006) 2006 WL 3199985.

There is no basis or provision by which an owner or operator of a drycleaning facility may elect not to participate in the drycleaning trust fund after the 1995 dates specified by statute. S.C. Op.Atty.Gen. (December 1, 2005) 2005 WL 3352841.

**SECTION 44‑56‑420.** Drycleaning Facility Restoration Trust Fund.

 (A) There is created in the state treasury a separate and distinct account called the “Drycleaning Facility Restoration Trust Fund”, revenue for which must be collected and enforced by the Department of Revenue, and the fund must be administered by the department and expended for the purposes of this article. However, the department may contract for the administration of the fund or any part of the administration of the fund. Judgments, recoveries, reimbursements, loans, surcharges and fees imposed and collected pursuant to this article except for administrative costs retained by the Department of Revenue, and other fees and charges related to the implementation of this article must be credited to the fund. Payments made out of the fund must be made in accordance with the provisions of this article. The State accepts no financial responsibility as a result of the creation of the fund. The creation of the fund creates no burden upon the State to provide monies for the fund by any mechanisms other than as provided in this article. The State may recover to the fund any disbursements from the fund which were not utilized in accordance with this article.

 (B) The board of the Department of Health and Environmental Control shall establish a moratorium on administrative and judicial actions by the department concerning drycleaning facilities and wholesale supply facilities resulting from the release of drycleaning solvent to soil or waters of the State. This moratorium applies only to those sites deemed eligible as defined in Section 44‑56‑470. The board may review and determine the appropriateness of the moratorium as needed. The review by the board must include, but is not limited to, consideration of these factors:

 (1) the solvency of the fund as described in this article;

 (2) prioritization of the sites;

 (3) public health concerns related to the sites;

 (4) eligibility of the sites; and

 (5) corrective action plans submitted to the department. After review, the board may suspend all or a portion of the moratorium if necessary.

 (C) If incidents of contamination by drycleaning solvent related to the operation of an eligible contaminated site pose a threat to the environment or the public health, safety, or welfare, the department may expend monies available in the fund to provide for:

 (1) the prompt investigation and assessment of the contaminated sites; however, the owner or operator of a drycleaning facility or wholesale supply facility or a property owner shall pay for the cost of the investigation and assessment up to the amount of the owner’s, operator’s, or property owner’s deductible, and the department only shall provide monies that exceed the owner’s, operator’s, or property owner’s deductible;

 (2) the expeditious treatment, restoration, or replacement of potable water supplies;

 (3) the remediation including the operation maintenance and monitoring of eligible contaminated sites, which consist of remediation of affected soil, groundwater, and surface waters, using the most cost‑effective alternative that is reliable and feasible technologically and that provides adequate protection of the public health, safety, and welfare and minimizes environmental damage in accordance with the site selection;

 (4) the expenses of administering the fund by the department including the employment of department staff to carry out the department’s duties described in this article; however, the department may exclude five percent of the average annual collections of the fund or the amount required to fund four employees and the administrative costs associated with these employees, whichever is greater.

 (D) The fund may not be used to:

 (1) pay for activities in subsection (C) if the activities at a site are or were not related to the operation of a drycleaning facility or wholesale supply facility;

 (2) pay for activities in subsection (C) if the activities are for a contaminated site that is proposed for listing or is listed on the State Priority List or on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, or any site that is required to obtain a permit pursuant to the Resource Conservation and Recovery Act, as amended;

 (3) pay any costs associated with a fine, penalty, or action brought against the owner or operator of a drycleaning facility or wholesale supply facility or a property owner under local, state, or federal law;

 (4) pay for activities in subsection (C) if the costs were incurred before July 1, 1995;

 (5) pay any costs to landscape or otherwise artificially improve a contaminated site;

 (6) pay for activities in subsection (C) where the costs were incurred before the actual date of the first payment of registration fees for the site pursuant to Section 44‑56‑440(B);

 (7) pay any costs for work not approved by the department in accordance with this article or regulations promulgated pursuant to this article;

 (8) pay for activities in subsection (C) at sites that are uniform rental and linen supply facilities unless the site was operated on or after July 1, 1995, as a drycleaning facility for garments or fabrics belonging to the public and has participated in the fund;

 (9) pay for activities in subsection (C) at sites that are no longer operated as drycleaning facilities or coin‑operated drycleaning facilities unless they qualify pursuant to Section 44‑56‑470(C);

 (10) pay any costs that may be associated with, but are not integral to, site assessment and/or remediation; and

 (11) pay for activities in subsection (C) at a drycleaning facility that has been contaminated as a result of a release by a wholesale supplier during the delivery of drycleaning solvent until it has first been remediated by the full amount of the wholesale supplier’s insurance.

HISTORY: 1995 Act No. 119, Section 1; 2004 Act No. 237, Section 3, eff May 24, 2004; 2009 Act No. 14, Section 1, eff May 6, 2009; 2013 Act No. 30, Section 1, eff May 21, 2013.

Editor’s Note

2004 Act No. 237, Section 11, provides in part as follows:

“The repeal or amendment of a code section by this act does not release or extinguish any tax, fee, interest, penalty, forfeiture, or liability for any period prior to the repeal or amendment. The repealed or amended code section or act must be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the tax, fee, interest, penalty, forfeiture, or liability.”

CROSS REFERENCES

Containment structures, see Section 44‑56‑480.

Eligibility for funds, see Section 44‑56‑470.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑56‑425.** Applicability of article; Drycleaning Facility Exemption certificates.

 (A) Notwithstanding another provision of this article, this article does not apply to a drycleaning facility that possesses a drycleaning facility exemption certificate issued by the Department of Revenue on or after July 1, 2009. A drycleaning facility exemption certificate may be issued by the Department of Revenue only if the drycleaning facility meets all of the following requirements:

 (1) the drycleaning facility was in existence on July 1, 1995;

 (2)(a) the drycleaning facility has only drycleaned with nonhalogenated drycleaning fluids; or

 (b) the drycleaning facility drycleaned with halogenated drycleaning fluids and nonhalogenated drycleaning fluids and elected to remove the site from the requirements of this article by notification made to the Department of Revenue before October 1, 1995;

 (3)(a) the drycleaning facility never participated in the fund through payment of any surcharges or fees imposed pursuant to this article; or

 (b) paid an initial registration fee in 1995 and operated as an exempt drycleaning facility the following year and subsequent years up until 2009. A drycleaning facility described pursuant to subsection (A)(3)(b) of this section shall have any payments made after July 1, 2009, refunded by the Department of Revenue;

 (4) the drycleaning facility requested a drycleaning facility exemption certificate from the Department of Revenue by December 31, 2009; and

 (5) the department has verified that the drycleaning facility has met the requirements contained in items (1) through (4) for the issuance of the drycleaning facility exemption certificate to the drycleaning facility.

 (B) If the ownership or operation of a drycleaning facility that possesses a drycleaning facility exemption certificate is transferred to another person after December 31, 2009, the new owner or operator shall request and must be provided an updated drycleaning facility exemption certificate from the Department of Revenue; otherwise the certificate remains current.

 (C) The drycleaning facility exemption certificate authorized pursuant to this section only applies to the physical location at which the drycleaning took place and is not transferable to any other physical location.

 (D)(1) This article does not apply to dry drop‑off facilities where the clothing or other fabrics are cleaned only by a drycleaning facility that meets all of the following conditions:

 (a) the drycleaning facility is owned or operated by the same person that owns or operates the dry drop‑off facility and the drycleaning facility has been issued a drycleaning facility exemption certificate pursuant to this section;

 (b) the owner or operator of the drycleaning facility, or related entity, does not own or operate a drycleaning facility that is required to participate in the fund through payment of surcharges or fees imposed pursuant to this article; and

 (c) the owner or operator of the drycleaning facility, or related entity, does not own any property on which a drycleaning facility is protected by the moratorium pursuant to Section 44‑56‑420(B).

 (2) This article does not apply to dry drop‑off facilities where the clothing or other fabrics are cleaned only by a drycleaning facility that complies with subsection (D)(1), and the dry drop‑off facility is not being operated at a property on which a drycleaning facility is protected by the moratorium pursuant to Section 44‑56‑420(B).

 (3) If an owner or operator of a drycleaning facility, or related entity, who complies with subsection (D)(1), purchases the business of a drycleaning facility that participates in the fund, and the owner or operator uses that location only as a dry drop‑off facility, this article will not apply to that dry drop‑off facility if the drycleaning business was closed and not operating when it was purchased.

 (E) A drycleaning facility that is in possession of a drycleaning facility exemption certificate is permanently barred from receiving monies from the fund, and the moratorium provided for in Section 44‑56‑420(B) does not apply.

 (F) The department may direct the Department of Revenue in writing to allow a property owner to register if the property owner can demonstrate to the department that they have not been notified pursuant to Section 44‑56‑435(A) and did not have reason to know of this article for more than ninety days prior to requesting registration. The property owner registering pursuant to this subsection is liable for payment of all taxes or fees, including interest, from the later of July 1, 1995, or the date the drycleaning facility began operating; however, the registering property owner is not liable for penalties.

HISTORY: 1995 Act No. 119, Section 1; 2004 Act No. 237, Section 9, eff May 24, 2004; 2009 Act No. 14, Section 1, eff May 6, 2009; 1976 Code Section 44‑56‑485; 2013 Act No. 30, Section 1, eff May 21, 2013.

Editor’s Note

2004 Act No. 237, Section 11, provides in part as follows:

“The repeal or amendment of a code section by this act does not release or extinguish any tax, fee, interest, penalty, forfeiture, or liability for any period prior to the repeal or amendment. The repealed or amended code section or act must be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the tax, fee, interest, penalty, forfeiture, or liability.”

CROSS REFERENCES

Environmental surcharge, see Section 44‑56‑450.

Registration, fees, certificate of registration, purchase of solvent, see Section 44‑56‑440.

Surcharge on drycleaning solvent and halogenated drycleaning fluid, see Section 44‑56‑460.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑56‑430.** Fund management.

 (A) The department is required to report each January fifteenth the current financial position of the fund to the General Assembly. In addition, the department shall include projected information that would enable the General Assembly to determine the solvency of the fund. At a minimum this must include a five‑year budget projection. This report also must review and comment on the adequacy of the current program in resolving contamination problems at both operating and closed drycleaning facilities and wholesale supply facilities in this State.

 (B) The department shall promulgate regulations to establish priorities for assessment and remediation at eligible contaminated sites. The department shall provide for the assessment and remediation of eligible contaminated sites consistent with these regulations and other provisions of this article.

 (C) The department shall administer the assessment and remediation portions of the program through direct payments to contractors actually accomplishing the site assessment and remediation and not through reimbursement to drycleaning or wholesale supply facility owners, operators, or property owners. All services related to site assessment and remediation must be preapproved by the department before performance in order to receive payment for services rendered.

 (D) The department may not expend more than five hundred fifty thousand dollars from the fund annually to pay for the costs at any one contaminated site for the activities described in Section 44‑56‑420(C).

 (E) The department in its sole discretion may use other funds to pay the cost of a cleanup if the department declares a contaminated site is an emergency and if the committed money in the fund exceeds the current balance or the amount committed to a contaminated site has reached the maximum allowable expenditure as required in subsection (D). However, once the fund has an available uncommitted balance, the department’s other sources of money that paid for the approved emergency cleanup may be reimbursed for the costs incurred through annual payments that may not exceed five percent of the total fund’s average annual balance. The fund may not obligate itself for more than it is estimated to generate through surcharges and fees.

 (F) Nothing in this article subjects the department to liability for any action that may be required of the owner, operator, or person by a private party or a local, state, or federal governmental entity.

 (G) Nothing in this article may restrict the department from temporarily postponing rehabilitation work on a site in order to make funds available to perform work on another contaminated site with a higher priority.

HISTORY: 2013 Act No. 30, Section 1, eff May 21, 2013.

Editor’s Note

Prior Laws: Former Section 44‑56‑430 was titled Environmental surcharge, and had the following history: 1995 Act No. 119, Section 1; 2004 Act No. 237, Section 4, eff May 24, 2004; 2009 Act No. 14, Section 1, eff May 6, 2009.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑56‑435.** Duties of Department of Revenue.

 (A) The Department of Revenue shall distribute registration forms to owners and operators of drycleaning and wholesale supply facilities and to property owners. The Department of Revenue shall use reasonable efforts to identify and notify owners, operators, and property owners of drycleaning and wholesale supply facilities of the registration requirements by certified mail, return receipt requested. The Department of Revenue shall provide to the department a copy of each applicant’s registration materials within thirty working days of the receipt of the materials.

 (B) The Department of Revenue shall administer, collect, and enforce the surcharges and fees in Sections 44‑56‑440, 44‑56‑450, and 44‑56‑460 in the manner that the sales and use taxes are administered, collected, and enforced under Chapter 36, Title 12, except that no timely payment discount or exemptions or exclusions are allowed. The provisions of Title 12 apply to the collection and enforcement of the surcharges and fees by the Department of Revenue.

 (C) The Department of Revenue shall retain funds for the costs incurred to collect and enforce the fund that may include a part‑time employee with the related expenses for audit purposes. The funds withheld must not exceed the actual costs to administer, collect, and enforce the fund. The proceeds of the registration fee and surcharges, after deducting the costs incurred by the Department of Revenue in auditing, collecting, distributing, and enforcing payment of the registration fee and the surcharges, must be remitted to the State Treasurer and credited to the fund. For the purposes of this article, the proceeds of the registration fee and the surcharges include all funds collected and received by the Department of Revenue, including interest and penalties on delinquent fees and surcharges.

 (D) The Department of Revenue may establish audit procedures and assess delinquent registration fees and surcharges.

 (E) The Department of Revenue, in addition to all other penalties authorized by this article and in addition to the provisions of Section 12‑54‑90, may revoke one or more certificates of registration of any owner or operator of a drycleaning facility for failure to remit any taxes, surcharges, or fees due by the owner or operator pursuant to this article or Title 12 or when the owner or operator fails, neglects, violates, or refuses to comply with the provisions of Section 44‑56‑440.

 (F) The Department of Revenue shall create and update an annual report of all drycleaning facilities in the State. This report must identify those that have a drycleaning facility exemption certificate and must provide the status of the annual certificates of registration for those in the fund. The Department of Revenue shall publicize the report and distribute it as widely as practical on October thirtieth of each year to interested parties including, but not limited to, wholesale suppliers, dry cleaners, the department, and other interested parties.

HISTORY: 2013 Act No. 30, Section 1, eff May 21, 2013.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑56‑440.** Registration; fees; certificate of registration; purchase of solvent.

 (A)(1) The owner or operator of a drycleaning facility shall register with and pay initial registration fees to the Department of Revenue for each drycleaning facility in operation, and pay annual or quarterly renewal registration fees as established by the Department of Revenue. The fee must be accompanied by a notarized certification from the owner or operator of the drycleaning facility, on a form provided by the Department of Revenue, certifying the number of employees employed by the owner or operator of the drycleaning facility for the twelve‑month period preceding payment of the fee.

 (2)(a) The property owner of the drycleaning facility may register the site if the owner or operator of the drycleaning facility does not register a site under the provisions of this section. Upon registration by the property owner, the owner or operator of the drycleaning facility must be notified by the Department of Revenue of the registration, and the owner or operator of the drycleaning facility shall comply with all applicable provisions of this article, including the payment of subsequent renewal fees imposed under subsection (B).

 (b) The property owner shall obtain a notarized certification from the owner or operator of the drycleaning facility, on a form provided by the Department of Revenue, certifying the number of employees employed by the owner or operator of the drycleaning facility and his dry drop‑off facilities for the twelve‑month period preceding payment of the fee and shall remit the fee imposed pursuant to subsection (B). If the property owner is unable to obtain information as to the number of employees at the site, the property owner shall remit the fee imposed pursuant to subsection (B)(3) in order to register the site.

 (B) An initial and annual registration fee for each drycleaning facility with:

 (1) up to four employees is seven hundred fifty dollars;

 (2) five to ten employees is one thousand five hundred dollars;

 (3) eleven or more employees is two thousand two hundred fifty dollars.

 A drycleaning facility that possesses a drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425 is exempt from the fee imposed pursuant to this section.

 (C) Each drycleaning facility registered in accordance with this section must be issued an annual drycleaner’s certificate of registration by the Department of Revenue. The certificate of registration authorized pursuant to this section is valid beginning the first day of October following the registration and ending on the last day of the following September. In the case of a new drycleaning facility registered in accordance with this section, the certificate of registration authorized pursuant to this section is valid beginning on the day it is issued and ending on the last day of the following September.

 (D) In order to purchase or receive drycleaning solvent from a wholesale supply facility or another drycleaning facility, a drycleaning facility shall provide the supplier of drycleaning solvent a copy of its current certificate of registration or drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425, whichever is applicable.

 (E) Drycleaning solvent only must be purchased from a solvent supplier who is registered pursuant to Section 44‑56‑460(B).

 (1) A wholesale supply facility is prohibited from selling or transferring drycleaning solvent to any drycleaning facility not in possession of a current certificate of registration or a drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425.

 (2) A drycleaning facility is prohibited from selling or transferring drycleaning solvent to any other drycleaning facility not in possession of a current certificate of registration or a drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425. This prohibition applies even if the same person owns or operates both drycleaning facilities.

 (3) A drycleaning facility not in possession of a current certificate of registration or a drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425, is prohibited from purchasing or receiving drycleaning solvent.

HISTORY: 2013 Act No. 30, Section 1, eff May 21, 2013.

Editor’s Note

Prior Laws: Former Section 44‑56‑440 was titled Moratorium established on administrative and judicial actions by department, and had the following history: 1995 Act No. 119, Section 1; 2000 Act No. 317, Section 2; 2004 Act No. 237, Section 5, eff May 24, 2004; 2009 Act No. 14, Section 1, eff May 6, 2009.

CROSS REFERENCES

Drycleaning Facility Restoration Trust Fund, duties of Department of Revenue, see Section 44‑56‑435.

Duties of Department of Revenue, see Section 44‑56‑435.

Violations, see Section 44‑56‑490.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑56‑450.** Environmental surcharge.

 (A)(1) An environmental surcharge equal to one percent of the gross proceeds of sales of laundering and drycleaning services is imposed upon every owner or operator of a retail drycleaning facility or a dry drop‑off facility.

Exempt from the environmental surcharge imposed in this section are:

 (a) drycleaning facilities that possess a drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425;

 (b) dry drop‑off facilities exempt pursuant to Section 44‑56‑425(D); and

 (c) wholesale sales of drycleaning services provided to another drycleaning facility or a dry drop‑off facility.

 (2) At any time the uncommitted balance of the fund account exceeds five million dollars, the one percent of the gross proceeds of sales of drycleaning surcharge is suspended until that time the uncommitted balance of the trust fund account becomes less than one million dollars. The department is responsible for notifying the Department of Revenue when these amounts have been reached. The suspension of the environmental surcharge occurs at the end of the month in which the Department of Revenue is notified by the department. The lifting of the suspension occurs on the first day of the month following the month in which the Department of Revenue is notified by the department.

 (B) The surcharge imposed by this section is due and payable on the twentieth day of each month for the preceding month. The Department of Revenue may authorize the quarterly, semiannual, or annual payment of this surcharge. The surcharge must be reported on forms and in the manner determined by the Department of Revenue.

HISTORY: 1995 Act No. 119, Section 1; 2004 Act No. 237, Section 4, eff May 24, 2004; 2009 Act No. 14, Section 1, eff May 6, 2009; 1976 Code Section 44‑56‑430; 2013 Act No. 30, Section 1, eff May 21, 2013.

Editor’s Note

2004 Act No. 237, Section 11, provides in part as follows:

“The repeal or amendment of a code section by this act does not release or extinguish any tax, fee, interest, penalty, forfeiture, or liability for any period prior to the repeal or amendment. The repealed or amended code section or act must be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the tax, fee, interest, penalty, forfeiture, or liability.”

2009 Act No. 14 Section 2, provides as follows:

“This act takes effect upon approval by the Governor; however, the amendments to the impositions of the surcharges and fees imposed pursuant to Sections 44‑56‑430(A), 44‑56‑470(A), 44‑56‑480(A), and 44‑56‑480(D) of the 1976 Code, as amended in Section 1 of this act, take effect March 1, 2010.”

Prior Laws: Former Section 44‑56‑450 was titled Reporting of discharged drycleaning solvent causing contamination, and had the following history: 1995 Act No. 119, Section 1; 2004 Act No. 237, Section 6, eff May 24, 2004; 2009 Act No. 14, Section 1, eff May 6, 2009.

CROSS REFERENCES

Drycleaning Advisory Council, Department of Revenue participation on matters involving surcharges and fees, see Section 44‑56‑495.

Duties of Department of Revenue, see Section 44‑56‑435.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑56‑460.** Surcharge on drycleaning solvent and halogenated drycleaning fluid.

 (A) Beginning July 1, 1995, an environmental surcharge is assessed on the privilege of producing in, importing into, or causing to be imported into the State drycleaning solvent. A surcharge of ten dollars per gallon on halogenated drycleaning fluid and two dollars per gallon on nonhalogenated drycleaning fluid is levied on each gallon to be used for drycleaning purposes when imported into or produced in the State. Nonhalogenated drycleaning fluids purchased, produced, or transported in a nonliquid physical state must be assessed a surcharge of twenty cents per pound. Exempt from the surcharge imposed pursuant to this section are sales or distributions to, or purchases or receipts by, drycleaning facilities that possess a drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425.

 (B) A person producing in, importing into, or causing to be imported into this State drycleaning solvent for sale, use, or otherwise shall register with the Department of Revenue and become licensed for the purposes of remitting the surcharge pursuant to this section. The person shall register as a producer or importer of drycleaning solvent. Persons operating as a producer or importer of drycleaning solvent at more than one location only are required to have a single registration. The fee for registration is thirty dollars.

 (C) The surcharge imposed by this section is due and payable on or before the twentieth day of the month succeeding the month of production, importation, or removal from a storage site. The surcharge must be reported on forms and in the manner determined by the Department of Revenue. The surcharge report must include the name, address, and quantity of solvent sold to each drycleaning facility during the month. This information is not subject to the Freedom of Information Act and is not available for distribution to the Drycleaning Advisory Council.

 (D) All drycleaning solvent to be used for drycleaning purposes which are imported, produced, or sold in this State are presumed to be subject to the surcharge imposed by this section. An owner or operator of a drycleaning facility participating in the fund who has purchased drycleaning solvent for use, consumption, resale, or distribution in this State shall document that the surcharge imposed by this section has been paid or shall pay the surcharge directly to the Department of Revenue in accordance with subsection (C). The solvent dealer may pass the costs of the surcharge to any owner or operator of a drycleaning facility who has purchased drycleaning solvent for use, consumption, resale, or distribution in this State, except no surcharge may be imposed on drycleaning solvent supplied to a drycleaning facility that possesses a drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425.

 (E) The surcharge imposed by this section must be remitted to the Department of Revenue. The payment must be accompanied by the forms prescribed by the Department of Revenue.

 (F) Drycleaning solvent exported out of State from the storage site at which the producer or importer holds it in this State is exempt from the surcharge authorized pursuant to this section. Anyone exporting drycleaning solvent on which the surcharge has been paid may apply for a refund or credit. A person who sells drycleaning solvent that is exempt from the collection of the surcharge pursuant to subsection (D) may apply for a credit or refund. The Department of Revenue may require information it considers necessary in order to approve the refund or credit.

 (G) The Department of Revenue may authorize:

 (1) a quarterly return and payment when the surcharge remitted by the licensee for the preceding quarter did not exceed one hundred dollars;

 (2) a semiannual return and payment when the surcharge remitted by the licensee for the preceding six months did not exceed two hundred dollars;

 (3) an annual return and payment when the surcharge remitted by the licensee for the preceding twelve months did not exceed four hundred dollars.

HISTORY: 1995 Act No. 119, Section 1; 2004 Act No. 237, Section 8, eff May 24, 2004; 2009 Act No. 14, Section 1, eff May 6, 2009; 1976 Code Section 44‑56‑480; 2013 Act No. 30, Section 1, eff May 21, 2013.

Editor’s Note

2004 Act No. 237, Section 11, provides in part as follows:

“The repeal or amendment of a code section by this act does not release or extinguish any tax, fee, interest, penalty, forfeiture, or liability for any period prior to the repeal or amendment. The repealed or amended code section or act must be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the tax, fee, interest, penalty, forfeiture, or liability.”

2009 Act No. 14 Section 2, provides as follows:

“This act takes effect upon approval by the Governor; however, the amendments to the impositions of the surcharges and fees imposed pursuant to Sections 44‑56‑430(A), 44‑56‑470(A), 44‑56‑480(A), and 44‑56‑480(D) of the 1976 Code, as amended in Section 1 of this act, take effect March 1, 2010.”

Prior Laws: Former Section 44‑56‑460 was titled Priorities for rehabilitation at contaminated facilities, and had the following history: 1995 Act No. 119, Section 1; 1998 Act No. 419, Part II, Section 64A; 2009 Act No. 14, Section 1, eff May 6, 2009.

CROSS REFERENCES

Duties of Department of Revenue, see Section 44‑56‑435.

Registration, fees, certificate of registration, purchase of solvent, see Section 44‑56‑440.

Violations, see Section 44‑56‑490.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑56‑470.** Eligibility for funds.

 (A) In order for the department to expend fund money, a wholesale supply facility or drycleaning facility must be deemed eligible under this section and stay in compliance with this article and regulations promulgated pursuant to this section to remain eligible. In order for the department to determine eligibility, the owner, operator, or the property owner shall submit a timely application on forms developed by the department for this purpose.

 (B) A wholesale supply facility, new drycleaning facility, or existing drycleaning facility is deemed eligible under this section only if:

 (1) the owner, operator, or property owner of the drycleaning facility, has registered with and has paid all annual fees, surcharges, and solvent fees as required by the Department of Revenue;

 (2) the wholesale supply facility or drycleaning facility, is determined by the department to be in compliance with this article and department regulations governing drycleaning facilities or wholesale supply facilities;

 (3) the drycleaning facility is covered by third‑party liability insurance when and if the insurance becomes available at a reasonable cost, as determined by the Department of Insurance, and if the insurance covers liability for contamination that occurred both before and after the effective date of the policy;

 (4) the owner, operator, or property owner of the wholesale supply facility or drycleaning facility submitted an application for determination of eligibility;

 (5) the wholesale supply facility or drycleaning facility has not been operated in a grossly negligent manner at any time after November 18, 1980; and

 (6) the owner, operator, or property owner of the wholesale supply facility or drycleaning facility submits documented evidence of contamination to the department within six months of discovery if discovery was after November 24, 2004.

 (C) A former drycleaning facility is deemed eligible under this section when:

 (1) the owner or operator submitting an application for determination of eligibility has an operating drycleaning facility in the fund and every drycleaning facility under their control since July 1, 1995, meets the requirements of subsection (B); and

 (2) the owner or operator submits documented evidence of contamination to the department within six months of discovery.

 (D) Deductibles will be set as follows:

 (1) When an owner, operator, or property owner of a wholesale supply facility, existing drycleaning facility, or former drycleaning facility submits an application for determination of eligibility:

 (a) by November 24, 2005, the deductible is one thousand dollars;

 (b) after November 24, 2005 and before December 31, 2014, the deductible is twenty‑five thousand dollars; and

 (c) on or after December 31, 2014, no applications will be accepted.

 (2) When an owner, operator, or property owner of a new drycleaning facility submits an application for determination of eligibility, the deductible is twenty‑five thousand dollars.

 (E) The department shall review the application for determination of eligibility and request any additional information within ninety days of the date of receipt of the application. The department shall notify the applicant regarding the department’s determination of eligibility status within one hundred eighty days of the date the department deems the application complete.

 (F) Eligibility under this section applies to the site where the drycleaning facility or wholesale supply facility is located. Eligibility is not affected by the subsequent conveyance of the ownership of the business or the property on which the business is located. The new owner or operator shall remain in compliance with this article and department regulations governing drycleaning facilities or wholesale supply facilities to maintain eligibility.

 (G) A drycleaning facility or wholesale supply facility is permanently barred from receiving monies from the fund, and the moratorium described in Section 44‑56‑420(B) does not apply if:

 (1) the owner, operator, or the property owner does not submit an application for determination of eligibility in accordance with subsection (B) or subsection (C);

 (2) the owner, operator, or the property owner does not provide documented evidence of contamination to the department within six months of discovery if the discovery was after November 24, 2004;

 (3) the owner, operator, or the property owner of a drycleaning facility or wholesale supply facility denies the department access to the property; or

 (4) the owner, operator, or the property owner of a drycleaning facility misrepresents the number of employees upon which the registration fee described in Section 44‑56‑440 is based.

 (H) A report of drycleaning solvent contamination at a drycleaning facility made to the department by a person in accordance with this article or department regulations governing drycleaning facilities may not be used directly as evidence of liability for the release in a civil or criminal trial arising out of the release.

HISTORY: 2013 Act No. 30, Section 1, eff May 21, 2013.

Editor’s Note

Prior Laws: Former Section 44‑56‑470 was titled Annual registration and fees for drycleaning facilities, and had the following history: 1995 Act No. 119, Section 1; 1998 Act No. 419, Part II, Section 64B; 2000 Act No. 317, Section 1; 2004 Act No. 237, Section 7, eff May 24, 2004; 2009 Act No. 14, Section 1, eff May 6, 2009.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑56‑480.** Containment structures.

 (A) Owners or operators of existing drycleaning facilities shall install dikes or other containment structures around each machine or item of equipment in which drycleaning solvent is used and around an area in which solvents or waste containing solvents are stored. Owners or operators of new drycleaning facilities shall install containment structures before the commencement of operations and before delivery of any drycleaning solvent to the drycleaning facility. Owners or operators of operating drycleaning facilities shall maintain all containment structures while the drycleaning facility remains in operation and shall certify every five years, that the conditions at their drycleaning facility meet the requirements of subsection (A) by completing a certification form as required by the department. The containment must meet the following criteria:

 (1) dikes or containment structures around machines:

 (a) for existing drycleaning facilities the dikes or containment structures must be capable of containing one‑third of the total tank capacity of each machine that does not have a rigid and impermeable containment vessel capable of containing one hundred percent of the volume of the largest single tank in the machine or piece of equipment or one‑third of the total tank capacity of each machine, whichever is greater;

 (b) for new drycleaning facilities, the owners or operators shall install beneath each machine or item of equipment in which drycleaning solvent is used a rigid and impermeable containment vessel capable of containing one hundred percent of the volume of the largest single tank in the machine or piece of equipment or one‑third of the total tank capacity of each machine, whichever is greater;

 (2) dikes or containment structures around areas used for storage of solvents or waste containing solvents must be capable of containing one hundred percent of the volume of the largest container stored or retained in the containment structure;

 (3) all diked containment areas must be sealed or otherwise made impervious to the drycleaning solvent in use at the drycleaning facility, including floor surfaces, floor drains, floor joints, and inner dike walls;

 (4) to the extent practicable, an owner or operator of a drycleaning facility or property owner shall seal or otherwise render impervious those portions of all floor surfaces upon which any drycleaning solvent may leak, spill, or otherwise be released;

 (5) containment devices must provide for the temporary containment of accidental spills or leaks until appropriate response actions are taken by the owner/operator to abate the source of the spill and remove the product from all areas on which the product has accumulated; and

 (6) materials used in constructing the containment structure or sealing the floors must be capable of withstanding permeation by drycleaning solvent in use at the drycleaning facility for not less than seventy‑two hours.

 (B) The property owner or the owner or operator of a drycleaning facility or wholesale supply facility at which there is a spill of more than the federally mandated reportable quantity of drycleaning solvent outside of a containment structure, after July 1, 1995, shall report the spill to the department immediately upon the discovery of the spill and comply with existing emergency response regulations.

 (C) Effective January 1, 2010, all halogenated solvents must be delivered by a closed‑loop delivery system.

 (D) Failure to comply with the requirements of this section constitutes gross negligence that may permanently bar the drycleaning facility from receiving monies from the fund, and the moratorium provided for in Section 44‑56‑420(B) does not apply to this drycleaning facility.

HISTORY: 2013 Act No. 30, Section 1, eff May 21, 2013.

Editor’s Note

Prior Laws: Former Section 44‑56‑480 was titled Surcharge on drycleaning solvent and halogenated drycleaning fluid, and had the following history: 1995 Act No. 119, Section 1; 2004 Act No. 237, Section 8, eff May 24, 2004; 2009 Act No. 14, Section 1, eff May 6, 2009.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑56‑485.** Regulations.

 The department may promulgate regulations to carry out the provisions of this article.

HISTORY: 2013 Act No. 30, Section 1, eff May 21, 2013.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑56‑490.** Violations.

 (A) If the department finds that a person is in violation of a provision of this article or a regulation promulgated pursuant to this article, the department may issue an order requiring the person to comply with this article or regulation promulgated pursuant to this article or the department may bring civil action for injunctive relief in an appropriate court of competent jurisdiction.

 (B) A person who violates a provision of this article, a regulation promulgated pursuant to this article, or an order of the department issued pursuant to this article or regulation promulgated pursuant to this article is subject to a civil penalty not to exceed ten thousand dollars for each day of violation.

 (C) A person who wilfully violates a provision of this article, a regulation promulgated pursuant to this article, or an order of the department issued pursuant to this article is guilty of a misdemeanor and, upon conviction, may be fined not more than twenty‑five thousand dollars for each day of violation or imprisoned for not more than one year, or both.

 (D) A wholesale supply facility selling or providing drycleaning solvent in violation of the provisions of Section 44‑56‑440 is subject to a civil penalty of up to ten thousand dollars for each violation. Each sale or transfer constitutes a separate violation.

 (E) A drycleaning facility selling or providing solvent to another drycleaning facility in violation of the provisions of Section 44‑56‑440 is subject to a civil penalty of up to ten thousand dollars for each violation. Each sale or transfer constitutes a separate violation.

 (F) A drycleaning facility purchasing or receiving drycleaning solvent in violation of the provisions of Section 44‑56‑440 is subject to a civil penalty of up to ten thousand dollars for each violation. Each purchase or receipt constitutes a separate violation.

 (G) Failure to register as a producer or importer of drycleaning solvent pursuant to Section 44‑56‑460(B) before importing or producing drycleaning solvent into this State is a misdemeanor and, upon conviction, the person may be fined up to twenty‑five thousand dollars or imprisoned up to thirty days.

HISTORY: 1995 Act No. 119, Section 1; 2009 Act No. 14, Section 1, eff May 6, 2009; 2013 Act No. 30, Section 1, eff May 21, 2013.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑56‑495.** Drycleaning Advisory Council; Department of Revenue participation on matters involving surcharges and fees.

 (A) There is created the Drycleaning Advisory Council to advise the department on matters relating to regulations and standards that affect drycleaning and related industries.

 (B) The council is composed of the following members:

 (1) eight owners or operators of drycleaning facilities who are participating in this article;

 (2) one representative of a wholesale supply facility;

 (3) one representative of the drycleaners who have a Drycleaning Exemption Certificate issued by the Department of Revenue; and

 (4) one representative from the department, who is an administrator.

 (C) Members enumerated in subsections (B)(1) through (B)(3) are appointed by the board of the Department of Health and Environmental Control and shall serve terms of two years and until their successors are appointed. The chairman of the council is elected by the members of the council at the first meeting of each new term.

 (D) An employee of the Department of Revenue shall attend meetings of the council to provide the council informal assistance as to matters involving the surcharges and fees that are imposed pursuant to this article and which are administered and collected by the Department of Revenue.

 (E) The Department of Revenue may disclose to the department information on a return filed with the Department of Revenue pursuant to the provisions of Section 44‑56‑450.

 The Department of Revenue and the department may not disclose to the members enumerated in subsections (B)(1) through (B)(3) or to the public specific information on a return filed with the Department of Revenue pursuant to the provisions of Section 44‑56‑450; however, the Department of Revenue and the department may provide these members available statistical information concerning the surcharge imposed pursuant to Section 44‑56‑450.

HISTORY: 1995 Act No. 119, Section 1; 2009 Act No. 14, Section 1, eff May 6, 2009; 2013 Act No. 30, Section 1, eff May 21, 2013.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

ARTICLE 5

Waste Assessments

**SECTION 44‑56‑510.** General provisions.

 Any waste disposed of in a land disposal site permitted to receive hazardous waste for disposal and not assessed a fee under the provisions of Article 1 of this chapter must be assessed as follows:

 (1) a fee of thirteen dollars and seventy cents a ton of wastes generated and disposed of in this State by landfilling or other means of land disposal;

 (2) for all wastes generated outside of the State and received at a facility during the quarter, each owner/operator of a hazardous waste land disposal facility shall remit to the department a fee of thirteen dollars and seventy cents a ton.

HISTORY: 1985 Act No. 140, Section 9; 1992 Act No. 501, Part II Section 18H.

CROSS REFERENCES

Crediting of fees imposed pursuant to this section to particular funds, see Section 44‑56‑175.

Fees provided in this section to be used for funding Pinewood Development Fund, see Section 44‑56‑163.

Use of fees imposed by this section to finance the Hazardous Waste Contingency Fund, see Section 44‑56‑160.

Library References

Environmental Law 434.

Westlaw Topic No. 149E.

ARTICLE 7

Brownfields/Voluntary Cleanup Program

**SECTION 44‑56‑710.** Purpose.

 The purpose of the voluntary cleanup program is to:

 (1) enable the expansion, redevelopment or return to use of industrial and commercial sites whose redevelopment is complicated by real or perceived environmental contamination;

 (2) provide an incentive to conduct response actions at a site by providing nonresponsible parties a covenant not to sue, contribution protection, and third party liability protection, or by providing responsible parties with a covenant not to sue for the work done in completing the response actions specifically covered in the contract and completed in accordance with the approved work plans and reports; and

 (3) provide reimbursement to the department for oversight costs.

HISTORY: 2000 Act No. 258, Section 2; 2008 Act No. 342, Section 1, eff June 11, 2008.

**SECTION 44‑56‑720.** Definitions.

 As used in this article:

 (1) “CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act and its amendments, 42 U.S.C. 9601, et seq.

 (2) “Contaminant” includes, but is not limited to, any element, substance, compound, or mixture, including disease‑causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; “contaminant” does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA, Section 101, 42 U.S.C. Section 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.

 (3) “Contamination” means impact by a contaminant, petroleum, or petroleum product.

 (4) “Department” means the South Carolina Department of Health and Environmental Control.

 (5) “Nonresponsible party” means any party which is neither:

 (i) a responsible party at the time the voluntary cleanup contract is signed, including lenders, economic development agencies, fiduciaries, trustees, executors, administrators, custodians, subsequent holders of a security interest; nor

 (ii) a parent, subsidiary of, or successor to a responsible party.

 (6) “Oversight costs” means those costs, both direct and indirect, incurred by the department in implementing the voluntary cleanup program.

 (7) “Petroleum” and “petroleum product” means crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds for each square inch absolute), including any liquid which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel.

 (8) “Property” means that portion of the site which is subject to the ownership, prospective ownership, or possessory or contractual interest of a responsible party or a nonresponsible party.

 (9) “Response action” means any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.

 (10) “Responsible party” means:

 (a) the owner and operator of a vessel or a facility, as these terms are defined in CERCLA;

 (b) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, as these terms are defined in CERCLA;

 (c) any person who by contract, settlement, or otherwise arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, as these terms are defined in CERCLA; and

 (d) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, or sites selected by such person, from which there is a release or a threatened release which causes the incurrence of response costs of a hazardous substance, as such terms are defined in CERCLA; and

 (e) any person who owns or operates or who owned or operated an above ground or underground storage tank from which petroleum or petroleum products have been released or who owns and operates or who owned or operated a property on which a petroleum release has occurred; however, the exemptions of Section 44‑2‑80(B) and (C) apply.

 (11) “Site” means all areas where a contaminant, petroleum, or petroleum product has been released, deposited, stored, disposed of, or placed or otherwise comes to be located; “site” does not include any consumer product in consumer use or any vessel.

 (12) “Voluntary cleanup” means a response action taken under and in compliance with this article.

 (13) “Voluntary cleanup contract” means a contract entered into between the department and a responsible or nonresponsible party to conduct a voluntary cleanup.

HISTORY: 2000 Act No. 258, Section 2; 2008 Act No. 342, Section 1, eff June 11, 2008.

**SECTION 44‑56‑730.** Site and participant eligibility.

 (A) A site known or perceived to be impacted by a contaminant, petroleum, or a petroleum product is eligible for participation in the voluntary cleanup program unless the site is listed or proposed to be listed on the National Priorities List pursuant to CERCLA Section 105.

 (B) A responsible party who is not subject to a department order or permit for assessment and remediation for a site is eligible to participate in the voluntary cleanup program for that site.

 (C) All nonresponsible parties who demonstrate financial viability to meet their obligations under the contract and who will undertake or whose nonresponsible party lenders, signatories, parents, subsidiaries, and successors will undertake the expansion, redevelopment, or return to use of the property are eligible to participate in the voluntary cleanup program.

HISTORY: 2000 Act No. 258, Section 2; 2008 Act No. 342, Section 1, eff June 11, 2008.

Library References

Environmental Law 439.

Westlaw Topic No. 149E.

**SECTION 44‑56‑740.** Requirements for contracts entered into by or on behalf of responsible parties.

 (A)(1) A voluntary cleanup contract entered into by or on behalf of a responsible party shall contain at a minimum:

 (a) submission of a work plan, health and safety plan, and provisions for written progress reports;

 (b) a grant of access to perform and oversee response actions; and

 (c) a legal description of the property.

 (2) A voluntary cleanup contract shall stipulate that:

 (a) the contract is not a release or covenant not to sue for any claim or cause of action against a responsible party who is not a signatory to the contract;

 (b) the contract does not limit the right of the department to undertake future response actions;

 (c) the contract becomes null and void if the responsible party submits information that is false or incomplete and that is inconsistent with the intent of the contract;

 (d) the contract is not a release or covenant not to sue for claims against a responsible party for matters not expressly included in the contract; and

 (e) the contract’s covenant not to sue must be revoked for a responsible party, or its successors, for conducting activities at the site that are inconsistent with the terms and conditions of the voluntary cleanup contract, and these activities constitute cause to terminate the contract.

 (3) After signing a voluntary cleanup contract, the responsible party shall prepare and submit the appropriate work plans and reports to the department. The department shall review and evaluate the work plans and reports for accuracy, quality, and completeness. If a work plan or report is not approved, the department shall notify the party concerning additional information or commitments needed to obtain approval.

 (4) A voluntary cleanup contract executed on behalf of a responsible party inures to the benefit of the responsible party’s signatories, parents, successors, assigns, and subsidiaries.

 (5) A voluntary cleanup contract must give the responsible party the department’s covenant not to sue for the work done in completing the response actions specifically covered in the contract and completed in accordance with the approved work plans and reports. The covenant not to sue must be contingent upon the department’s determination that the responsible party successfully and completely complied with the contract.

 (B)(1) Upon completion of the contract, the responsible party must submit a request to the department for a certificate of completion. If the department determines that a responsible party has successfully and completely complied with the contract and has successfully completed the voluntary cleanup approved under this article, the department shall certify that the action has been completed by issuing the party a certificate of completion. The certificate of completion shall:

 (a) provide a covenant not to sue for the benefit of the responsible party, its signatories, parents, successors, and subsidiaries;

 (b) indicate the proposed future land use and if a restrictive covenant is necessary for protection of health, safety, and welfare of the public, include a copy of the restrictive covenant entered into between the department and the responsible party and filed with the Register of Deeds or Mesne Conveyances in the appropriate county. A restrictive covenant remains in effect until a complete remediation is accomplished for unrestricted use; and

 (c) include a legal description of the property and the name of the property’s owner.

 (2) If the department determines that the responsible party has not completed the contract satisfactorily, the department shall notify in writing the responsible party and the current owner of the property, if different from the responsible party who signed the contract, that the contract has not been satisfied and shall identify any deficiencies.

 (3) The covenant not to sue is revoked for a party or successor who changes the land use from the use specified in the certificate of completion to one which requires a more comprehensive cleanup.

 (C) The department shall charge for and retain all monies collected as oversight costs. The South Carolina Hazardous Waste Contingency Fund must be reimbursed for any funds expended from this fund pursuant to Section 44‑56‑200.

 (D) Public participation procedures for a voluntary cleanup contract entered into by a responsible party shall follow the same guidelines for public participation as those for the State CERCLA program and not inconsistent with the National Contingency Plan.

 (E)(1) The department or the responsible party may terminate a voluntary cleanup contract by giving thirty days advanced written notice to the other. The department may not terminate the contract without cause.

 (2) The covenant not to sue must be revoked for a party or its successors, or both, for conducting activities at the site that are inconsistent with the terms and conditions of the voluntary cleanup contract, and these activities constitute cause to terminate the contract.

 (3) If, after receiving notice that costs are due and owing, the responsible party does not pay the department oversight costs associated with the voluntary cleanup in a timely manner, the department may bring an action to recover the amount owed and all costs incurred by the department in bringing the action including, but not limited to, attorney’s fees, department personnel costs, witness costs, court costs, and deposition costs.

 (4) Termination of the contract does not affect any right the department has under any law to require additional response actions or recover costs.

 (F) The department’s decision to enter or not to enter into a contract is final and is not a contested case within the meaning of the South Carolina Administrative Procedures Act, Section 1‑23‑10, et seq.

HISTORY: 2000 Act No. 258, Section 2; 2008 Act No. 342, Section 1, eff June 11, 2008.

Library References

Environmental Law 439.

Westlaw Topic No. 149E.

**SECTION 44‑56‑750.** Prerequisites to and provisions of contract entered into by or on behalf of nonresponsible party.

 (A)(1) Before entering into a voluntary cleanup contract, the nonresponsible party must:

 (a) submit a Phase One Environmental Site Assessment conducted in accordance with all appropriate inquiry standards of CERCLA, or other evidence of conducting all appropriate inquiry in accordance with CERCLA;

 (b) identify a contact person, whose name, address, and telephone number must be updated throughout the term of the contract;

 (c) provide a legal description of the property; and

 (d) describe the plan for the expansion, redevelopment, and return to use of the property.

 (2) Before entering into a voluntary cleanup contract, the nonresponsible party must certify to the department that:

 (a) it is not a responsible party at the site;

 (b) it is not a parent, successor, or subsidiary of a responsible party at the site;

 (c) its activities will not aggravate or contribute to existing contamination on the site or pose significant human health or environmental risks; and

 (d) it is financially viable to meet the obligations under the contract.

 (B)(1) A voluntary cleanup contract entered into by or on behalf of a nonresponsible party shall contain at a minimum:

 (a) an agreement to conduct the scope of work provided for in the contract and submission of a work plan prepared in accordance with the scope of work required by the department, health and safety plan, and provisions for written progress reports;

 (b) a grant of access to perform and oversee response actions;

 (c) a legal description of the property;

 (d) a provision for the department to have the opportunity to inspect and to copy any and all documents or records in the nonresponsible party’s custody, possession, or control which identifies or potentially identifies a responsible or potentially responsible party; and

 (e) a provision that the department has an irrevocable right of access to the property once the property is acquired by the nonresponsible party. The right of access remains until a complete remediation is accomplished for unrestricted use.

 (2) A voluntary cleanup contract shall stipulate that it:

 (a) is not a release or covenant not to sue for any claim or cause of action against a party who is not a signatory to the contract;

 (b) does not limit the right of the department to undertake future response actions;

 (c) is not a release or covenant not to sue for claims against a party for matters not expressly included in the contract;

 (d) does not release the nonresponsible party from liability for any contamination that the nonresponsible party causes or contributes to the site; and

 (e) becomes null and void if the nonresponsible party submits information that is false or incomplete and that is inconsistent with the intent of the contract.

 (3) After signing a voluntary cleanup contract, the nonresponsible party shall prepare and submit the appropriate work plans, health and safety plan, and reports to the department. The department shall review and evaluate the work plans and reports for accuracy, quality, and completeness. If a work plan or report is not approved, the department shall notify the party concerning additional information or commitments needed to obtain approval.

 (4) A voluntary cleanup contract executed on behalf of a nonresponsible party must, in the department’s sole discretion, provide a measurable benefit to the State, the community, or the department.

 (5) After considering existing and future use or uses of the property, the department may approve submitted work plans or reports that do not require removal or remedy of all discharges, releases, and threatened releases at a site as long as the response action:

 (a) is consistent and compatible with the proposed future use of the property;

 (b) will not contribute to or exacerbate discharges, releases, or threatened releases;

 (c) will not interfere with or substantially increase the cost of response actions to address the remaining discharges, releases, or threatened releases; and

 (d) requires deed notices or restrictions, or both, determined appropriate by the department, to be placed on the property after completion of the work plan.

 (6) A voluntary cleanup contract executed on behalf of a nonresponsible party inures to the benefit of the nonresponsible party’s lenders, signatories, parents, subsidiaries, and successors. A voluntary cleanup contract executed on behalf of a nonresponsible party does not inure to the benefit of a responsible party.

 (7) The voluntary cleanup contract may provide the nonresponsible party protection from claims for contribution under CERCLA Section 113, 42 U.S.C. Section 9613 and Section 44‑56‑200, et seq. of the 1976 Code regarding environmental conditions at the site before the signing of the contract. This protection may be granted at the conclusion of the period allowed for comment from the site’s potentially responsible parties as identified through a reasonable search.

 (C)(1) Upon completion of the contract, the nonresponsible party must submit a request to the department for a certificate of completion. If the department determines that a nonresponsible party has successfully and completely complied with the contract and has completed the voluntary cleanup approved under this article, the department shall certify that the action has been completed by issuing the party a certificate of completion. The certificate of completion shall:

 (a) provide the department’s covenant not to sue the nonresponsible party for liability for existing contamination, except for releases and consequences that the nonresponsible party causes. This liability protection must not be granted or must be revoked if a contract or letter of completion is acquired by fraud, misrepresentation, knowing failure to disclose material information, or failure to satisfactorily complete the approved work plan;

 (b) indicate the proposed future land use and if a restrictive covenant is required, include a copy of the restrictive covenant to be entered into between the department and the nonresponsible party and record the restrictive covenant with the Register of Deeds or Mesne Conveyances in the appropriate county. A restrictive covenant remains in effect until a complete remediation is accomplished for unrestricted use; and

 (c) include a legal description of the property and the name of the property’s owner.

 (2) If the department determines that the nonresponsible party has not completed the contract satisfactorily, the department shall notify in writing the nonresponsible party and the current owner of the property, if different from the nonresponsible party who signed the contract, that the contract has not been satisfied and shall identify any deficiencies.

 (3) The covenant not to sue, liability protection, and contribution protection provided in this section shall be revoked, after reasonable notice and opportunity to cure as provided for by subsections (C)(2) and (F)(1) of this section, for a party or successor who changes the land use from the use specified in the certificate of completion to one which requires a more comprehensive cleanup.

 (4) The covenant not to sue, liability protection, and contribution protection provided in this section may be revoked, after reasonable notice and opportunity to cure as provided for by subsections (C)(2) and (F)(1) of this section, for a party who fails to make material progress toward the expansion, redevelopment, or reuse of the property as provided for in the contract. These activities shall constitute cause to terminate the contract.

 (D) The department shall charge for and retain all monies collected as oversight costs. The South Carolina Hazardous Waste Contingency Fund must be reimbursed for any funds expended from the fund pursuant to Section 44‑56‑200.

 (E)(1) Upon signature of a voluntary cleanup contract by a nonresponsible party, the department shall provide notice and opportunity for public participation. Notification of the proposed contract must be placed in a newspaper in general circulation within the affected community. A comment period must be provided for thirty days from the date of newspaper publication. The public notice period must precede the department’s scheduled date for execution of the contract. A public meeting must be conducted upon request to the department’s Bureau of Land and Waste Management by twelve residents of South Carolina or an organization representing twelve or more residents of South Carolina. Under any other circumstances, a public meeting may be conducted at the department’s discretion.

 (2) Beginning with the thirty‑day notice period and continuing through completion of the terms of the contract, the nonresponsible party must post a sign, in clear view from the main entrance to the property, stating the name, address, and telephone number of a contact person for information describing the property’s response actions and reuse.

 (F)(1) The department or nonresponsible party may terminate a voluntary cleanup contract by giving thirty days’ advance written notice to the other. The department may not terminate the contract without cause.

 (2) The covenant not to sue, liability protection, and contribution protection must be revoked for a party, or its successors, for conducting activities at the property that are inconsistent with the terms and conditions of the voluntary cleanup contract, and these activities constitute cause to terminate the contract.

 (3) If, after receiving notice that costs are due and owing, the nonresponsible party does not pay to the department oversight costs associated with the voluntary cleanup contract in a timely manner, the department may bring an action to recover the amount owed and all costs incurred by the department in bringing the action including, but not limited to, attorney’s fees, department personnel costs, witness costs, court costs, and deposition costs.

 (4) Termination of the contract does not affect any right the department has under any law to require additional response actions or recover costs.

 (G) The department’s decision to enter or not to enter into a contract is final and is not a contested case within the meaning of the South Carolina Administrative Procedures Act, Section 1‑23‑10, et seq.

 (H)(1) A nonresponsible party is not liable to any third party for contribution, equitable relief, or claims for damages arising from a release of contaminants, petroleum, or petroleum products that is the subject of a response action included in the nonresponsible party voluntary cleanup contract provided for in this section.

 (2) This limitation of liability commences on the date of execution of the nonresponsible party voluntary cleanup contract by the department; however, this limitation must be withdrawn automatically if the nonresponsible party voluntary cleanup contract is lawfully terminated by any party. This limitation of liability applies only to:

 (a) the parties to the nonresponsible party voluntary cleanup contract and to the nonresponsible party’s lenders, signatories, parents, subsidiaries, and successors; and

 (b) “existing contamination”, as defined in the nonresponsible party voluntary cleanup contract.

 This limitation of liability does not apply to any release caused by or attributable to the nonresponsible party or its lenders, signatories, parents, subsidiaries, or successors.

HISTORY: 2000 Act No. 258, Section 2; 2005 Act No. 123, Section 1, eff June 3, 2005; 2008 Act No. 342, Section 1, eff June 11, 2008.

Editor’s Note

2008 Act No. 342, Section 3, provides as follows:

“This act takes effect upon approval by the Governor and applies to party voluntary cleanup contracts entered into pursuant to Section 44‑56‑750 on or after this act’s effective date.”

Library References

Environmental Law 439.

Westlaw Topic No. 149E.

**SECTION 44‑56‑760.** Review of program.

 Beginning in the year 2010, the department shall review the voluntary cleanup program established pursuant to this article and report to the General Assembly on the activities of the program and, where applicable, make recommendations for any needed changes or improvements.

HISTORY: 2000 Act No. 258, Section 2; 2008 Act No. 342, Section 1, eff June 11, 2008.

Library References

Environmental Law 439.

Westlaw Topic No. 149E.

ARTICLE 9

Hazardous Waste Management Research Fund

**SECTION 44‑56‑810.** Creation of fund; purpose; financing and expenditures.

 There is created within the State Treasury the Hazardous Waste Management Research Fund, separate and distinct from the general fund of the State, to ensure the availability of funds for the conduct of research related to waste minimization and reduction and for the development of more effective and efficient methods of conducting governmental response actions at uncontrolled hazardous waste sites. The fund must be financed in accordance with Section 44‑56‑160(B) and expended only in accordance with the provisions of this article.

HISTORY: 1989 Act No. 196, Section 3; 1992 Act No. 501, Part II Section 18I.

CROSS REFERENCES

Requirement to remit fees collected under Hazardous Waste Contingency Fund to the Hazardous Waste Management Research Fund, see Section 44‑56‑160.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 179, Environmental Regulations.

**SECTION 44‑56‑820.** Universities Research and Education Foundation authorized to expend monies from fund; purposes.

 The South Carolina Universities Research and Education Foundation is authorized to expend monies in the Hazardous Waste Management Research Fund only as provided in this article. The foundation shall establish a comprehensive research program with a primary emphasis on improving current hazardous waste management practices including, but not limited to, waste minimization and reduction and the development of more effective and efficient methods of conducting governmental response actions at abandoned or uncontrolled hazardous waste sites. The fund must be used for research that will:

 (1) have a direct and positive impact on waste minimization and reduction in this State;

 (2) recommend strategies to deal effectively with major existing hazardous waste management problems in this State and to improve current hazardous waste management practices;

 (3) provide research and recommendations on cost‑effective hazardous waste management techniques and new or emerging technologies for use in the public and private sectors including, but not limited to, the development of more efficient and effective methods of cleaning up abandoned or uncontrolled hazardous waste sites;

 (4) provide hazardous waste management education, training, and public information;

 (5) assess the impact of existing and emerging hazardous waste management practices on the public health and environment;

 (6) provide research and recommendations on other waste management practices that may be identified through research conducted pursuant to this section.

HISTORY: 1989 Act No. 196, Section 3; 1993 Act No. 164, Part II, Section 62A.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑56‑830.** Foundation to submit annual report to Select Oversight Committee.

 The foundation shall submit an annual report to the Hazardous Waste Management Select Oversight Committee created pursuant to Section 44‑56‑840 fully accounting for the expenditures of the fund and the results realized from the research program.

HISTORY: 1989 Act No. 196, Section 3.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑56‑840.** Hazardous Waste Management Select Oversight Committee.

 (A) There is created a Hazardous Waste Management Select Oversight Committee to monitor funds generated from the fees imposed under Section 44‑56‑170(C) and (E) and designated for the fund under Section 44‑56‑810. The committee shall oversee the research efforts and projects approved for funding by the foundation. Notwithstanding any other provision of law, the committee is composed of:

 (1) the Governor or his designee;

 (2) the chairman of the House Agriculture and Natural Resources Committee or his designee;

 (3) the chairman of the Senate Agriculture and Natural Resources Committee or his designee;

 (4) the chairman of the House Labor, Commerce and Industry Committee or his designee;

 (5) the chairman of the Senate Labor, Commerce and Industry Committee or his designee;

 (6) the Director of the Department of Health and Environmental Control or his designee;

 (7) one member representing business and industry appointed by the Governor;

 (8) one public member appointed by the Governor;

 (9) one member representing environmental interests appointed by the Governor;

 (10) the Lieutenant Governor or his designee.

 (B) The chairman of the Select Oversight Committee must be elected from the membership of the committee.

 (C) The committee shall meet quarterly and shall submit annually a report to the General Assembly on all funds monitored under the provisions of this section before March fifteenth. Staff support must come from existing staff assigned by the committee.

 (D) Members of the committee shall receive the usual per diem, subsistence, and mileage that is provided by law for members of state boards, committees, and commissions. Per diem, subsistence, and mileage must be paid from the Hazardous Waste Management Research Fund.

HISTORY: 1989 Act No. 196, Section 3; 1993 Act No. 164, Part II, Section 62B; 1993 Act No. 181, Section 1136.

CROSS REFERENCES

Hazardous Waste Management Select Oversight Committee to approve funding for governmental response actions, see Section 44‑56‑180.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 179, Environmental Regulations.