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HENRY MCMASTER
ATTORNEY GENERAL

February 14, 2006

The Honorable Mike Fair
Senator, District No. 6
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Fair:

In a letter to this office you asked that we review a prior opinion of this office relating to the Drycleaning Facility Restoration Trust Fund. That opinion concluded in part that a dry cleaning establishment may discontinue participation in the trust fund if the election to do so was made by October 1, 1995. The opinion further stated that we were unaware of any basis by which an owner or operator of a drycleaning facility could elect not to participate in the trust fund after the referenced 1995 date as there were no provisions for opting out of participation after such date.

In your letter reference was made to the 1995 act which originally established the trust fund, Act No. 119 of 1995. Contrary to the statement in your letter that there was no provision in the original legislation which specifically prohibited a participant from leaving the fund after joining, by the provision codified as Section 44-56-485, in subsection (B) it was stated that "(a) drycleaning facility in existence on July 1, 1995 that uses perchloroethylene and Stoddard solvent or their breakdown products may elect to remove the facility from the requirements of this article if the election is made before October 1, 1995." (emphasis added). Such language was repeated in a provision in the most recent legislation, Act No. 237 of 2004, also codified as Section 44-56-485, which similarly states that "(a) drycleaning establishment in existence on July 1, 1995, that uses halogenated fluids and nonhalogenated cleaners may elect to remove the facility from the requirements of this article if the election is made before October 1, 1995." (emphasis added). Both provisions further stated that "(f)ailure to pay the required annual fee by October 1, 1995, constitutes electing to remove a facility from the requirements of this article." As to the use of the terms "halogenated fluids" and "nonhalogenated cleaners" in the 2004 legislation, by that same act it was stated that "(h)alogenated drycleaning fluids include perchloroethylene (also known as tetrachloroethylent), trichloroethylene, and any breakdown components of them." See: S.C. Code Ann. § 44-56-410(10). Therefore, both statutes appear to refer to the use of the same fluids. Reference in the 2004 legislation to a facility removing itself from the trust fund is also set forth in Section 44-56-480 where it is stated that "(a) drycleaning establishment that has made an election

Assistant Attorney

not to be under the provisions of this article pursuant to Section 44-56-485(A) or (B)...." While subsection (B) provides for the removal of a facility from the requirements of the article, as set forth above, subsection (A) allows for the election of not placing a facility under the trust fund provisions if such election took place before October 1, 1995.

As to the claims that the earlier Act No. 119 of 1995 still controls, in my opinion, such legislation, and particularly Section 44-56-485 has been amended by Act No. 237 of 2004. The general rule is that the more recent and specific legislation controls if there is a conflict between two statutes. See Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000); Unisys Corp. v. South Carolina Budget and Control Bd. Div. of General Services Information Technology Management Office, 346 S.C. 158, 167, 551 S.E.2d 263, 268 (2001); Ops. Atty. Gen. dated April 6, 1993 and June 11, 1985. Therefore, those provisions enacted by Act No. 237 of 2004, codified as S.C. Code Ann. §§ 44-56-410 would control.

If there is anything further, please advise.

Sincerely,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General