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BAD BOY ENVIRONMENTAL LEGISLATION: A NECESSARY REGULATORY TOOL FOR SOUTH CAROLINA

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I. INTRODUCTION

In 1991 a citizens' group requested an Adjudicatory Hearing before the South Carolina Department of Health and Environmental Control (DHEC) to oppose the permitting of a waste facility in its community.[1] The group alleged that principals of the proposed facility had an extensive history of environmental violations, thereby casting dispersions upon their fitness to operate a new facility in compliance with appropriate rules and regulations. DHEC's Position was that no legal authority in this state existed that would allow consideration of such history in the permitting process.

The above case is not an isolated one. Many permit applicants have track records that government agencies should consider. When a proposed facility has the potential to damage the health or environment, the agency making the permitting decision should consider past crimes, violations, and noncompliance.

This Article will discuss procurement statutes, which were the earliest attempt to exclude unfit parties; a review of existing state bad boy statutes; and a proposal for South Carolina.

II. DEBARMENT IN PROCUREMENT STATUTES

The forerunners of environmental bad boy permitting statutes are procurement statutes that prohibit certain parties from bidding and contracting with government

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[1] Soil Purification of Carolina, Inc., v. South Carolina Dept. of Health and Envtl. Control, *permit denied on other grounds, appeal filed*, C/A No. 91-CP-40-4884 (1991).

agencies. Currently, at least twenty-eight jurisdictions[2] and the United States Government have such "debarment" provisions. The more recent environmental permitting statutes authorizing debarment borrow much from the procurement laws.

A. Debarment in Federal Procurement

In the 1940s some federal agencies began to incorporate various debarment language in their procurement regulations. Courts have consistently upheld the use of debarment in the procurement process. In the 1964 the District of Columbia Circuit, in *Gonzales v. Freeman*,[3] stated that debarment is constitutional if procedural regulations are promulgated and due process is provided. In *Gonzales* the Plaintiffs had been debarred from participating in contracts with the Commodity Credit Corporation, a government agency, for prior misuse of official inspection certificates.

Subsequent cases have followed *Gonzales*, approving debarment with procedural safeguards. In *Horne Brothers v. Laird*[4] the court upheld and strengthened the concept of debarment. The Plaintiff contractor had been suspended as a bidder on Department of Defense contracts and shortly thereafter was denied a repair contract on a naval vessel. Although the court again confirmed the need for procedural due process, it approved the government's rejection of the bid after the suspension, even though the contractor had not yet had the opportunity to rebut the "adequate evidence" against it.

In 1987 the U. S. Office of Management and Budget (OMB) established Guidelines for Government-wide Debarment and Suspension (Non-Procurement).[5] The Executive Order[6] directs Federal executive branch departments and agencies to participate in a system for non-procurement debarment and suspension and to issue regulations to implement the system. The Guidelines establish the General Services Administration as lead agency to maintain a list of excluded participants to ensure government-wide effect of each agency's debarment and suspension. The OMB Guidelines are suggestions to federal agencies for facilitating the preparation of regulations. Grounds for debarment under the guidelines include:

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[2] Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, the District of Columbia, and Puerto Rico.

[3] 334 F.2d 570 (D.C. Cir. 1964).

[4] 463 F.2d 1268 (D.C. Cir. 1972).

[5] 52 Fed. Reg. 20,360 (1987).

[6] Exec. Order No. 12,549, 3 C.F.R. 189 (1987), *reprinted in* 1986 U.S.C.C.A.N. B13 (1986).

> [a] Conviction of or civil judgment for any offense indicating a lack of business integrity or honesty which affects the present responsibility of a participant . . . ,[7] [b] Violation of the terms of a public agreement so serious as to affect the present responsibility of a participant. . . ,[8] [c] Doing business with a debarred . . . person in connection with covered transaction . . . ,[9] [d] conduct indicating a lack of business integrity or honesty . . . ,[10] [e] failure to pay a debt . . . owed to any federal agency . . . ,[11] and [f] any other cause of so serious or compelling a nature that it affects the present responsibility of a participant. [12]

The Guidelines prohibit debarred or suspended "persons"[13] from participating in covered transactions in any managerial capacity.[14] Thus, the Federal Government recognized the propensity of individuals and entities to relocate or become involved in other businesses, and attempted to exclude those persons in their various subsequent capacities.

Congress further developed debarment in the procurement process when it enacted the Office of Federal Procurement Policy Act Amendments of 1988.[15] The amendments require applicants to provide extensive information concerning past activities in the contracting process and, in order to become qualified, a statement that the applicant has no violations or possible violations known.[16] At the contracting

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[7] 52 Fed. Reg. 20,360, at 20,366 § 305 (a) (1987).

[8] *Id.* § 305(b).

[9] *Id.* § 305(c)(2).

[10] *Id.* § 305(b)(3).

[11] *Id.* § 305(e)(5).

[12] *Id.* § 305(d).

[13] The OMB Guidelines define "person" as "[a]ny individual, corporation, partnership, association, unit of government or legal entity however organized, including any subsidiary of any of the foregoing." 52 Fed. Reg. 20,360, at 20,365 § 120 (1987).

[14] *Id.* § 200(b). The Guidelines provide:

> [p]ersons who are debarred or suspended are excluded from participation in or under any covered transaction in any of the following capacities: as an owner or partner holding a controlling interest, director, or officer of the participant; as a principal investigator, project director, or other position involved in management of the covered transaction . . . ."

Id.

[15] 41 U.S.C. §§ 402 to 423 (1988).

[16] *Id.* § 423.

agency's discretion, post-qualification violations could result in termination of the contract, recovery by the contracting agency of the contractor's profits, or "any other appropriate penalty" (presumably including suspension or debarment).[17]

B. Debarment in State Procurement

A number of states, including South Carolina, have enacted procurement statutes that include debarment for violators. Enacted in 1981, the South Carolina Consolidated Procurement Code[18] sets forth criteria for contracting with the State to provide goods and services. The Consolidated Procurement Code defines "debarment" as "the disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract by the State, for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance."[19] This concept of determining the adequacy of prior performance is most analogous to the realm of environmental permitting, wherein prior performance is considered in the process.

The Code authorizes South Carolina to adopt and enforce more restrictive requirements than federal provisions.[20] Additionally, by granting authority to the appropriate chief procurement officer to debar for cause, the standard of "best interest of the [s]tate" is established.[21] A person can be excluded from consideration for award of contracts if debarment is in the best interest of the state.

The Code provides that reasons for debarment or suspension "shall include, but not be limited to " a specific list of convictions, violations, failures, and causes, set forth therein.[22] The General Assembly clearly granted authority to consider not only the specified list but also additional similar factors and causes "in the best interest of the state."[23] In addition to conviction for a number of specified criminal offenses, the list includes conviction for "any other offense indicating a lack of business integrity or professional honesty which currently, seriously and directly affects

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[17] *Id.* § 423(g).

[18] S.C. CODE ANN. § 11-35-10 to 5270 (Law. Co-op. 1976 & Supp. 1991).

[19] *Id.* §11-24-310 (14) (Law. Co-op. 1976).

[20] *Id.* § 11-35-40(3).

[21] *Id.* § 11-35-4220(2).

[22] *Id.* § 11-35-4220(3).

[23] *Id.* § 11-35-4220(2).

responsibility as a state contractor."[24]

In addition to the Consolidated Procurement Code, South Carolina further provides for debarment from public contracts against non-public employees or officials for breach of the State's ethics laws, [25] and for debarment from contracts or grants under the Drug-Free Work Place Act[26] for violations of that Act.[27]

Most states have procurement statutes providing for debarment from the contract process because of various specified convictions, violations, or failures of performance. Although the causes for debarment vary from state to state, many states grant discretionary authority to a procurement officer to consider other non-specified causes, such as "any other cause the appropriate chief procurement officer determines to be so serious and compelling as to affect responsibility as a state contractor."[28] A number of states such as Florida debar on the basis of conviction of a "public entity crime," which is defined to include violation of any state or federal law with respect to and directly related to the transaction of business with any public entity.[29]

Some state statutes take interesting approaches to the definitions of "person" or "entity" subject to debarment. Florida's comprehensive debarment statute defines "person" as any natural person or any legal entity and includes "those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity."[30] The statute defines the term "affiliate" to include a predecessor or successor of a "person" convicted of a public entity crime, or "an entity under the control of any natural person who is active in the management of the entity" and includes "those officers, directors, executives, partners, shareholders, employees, members and agents who are active in the management of an affiliate."[31] Florida debars such "persons" or their "affiliates," if convicted of a public entity

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[24] *Id.* § 11-35-4220(3)(b). The list also includes violations of various contract provisions, *id.* § 11-35-4220(3)(d), and "any other cause the appropriate chief procurement officer determines to be so serious and compelling as to affect responsibility as a state contractor." *Id.* § 11-35-4220(3)(e).

[25] *Id.* § 8-13-520(2)(b).

[26] *See id.* § 44-107-10 to 90 (Law. Co-op. Supp. 1991).

[27] *Id.* § 44-107-60.

[28] *See* S.C. CODE ANN. § 11-35-4220(3)(e) (Law Co-op. 1976); LA. REV. STAT. ANN. § 39:1672(c)(5) (West 1989).

[29] *See* FLA. STAT. ANN. ch. 287.133(1)(g) (Harrison Supp. 1990); *see also* David Powell, *Rights and Duties of Vendors and Government Agencies Under Florida's New Public Contract Law*, 17 FLA. STATE U. L. R. 481, 489 (1990).

[30] *Id.* 287.133(1)(e).

[31] *Id.* ch. 287.133(1)(a).

crime.[32] New Jersey debars "persons" convicted of specified crimes "and any business, including any corporation, partnership, association or proprietorship in which such individual is a principal, or with respect to which such individual owns, directly or indirectly, or controls five percent or more of the stock or other equity interest of such business."[33]

III. CONSIDERATION OF PRIOR CONDUCT IN ENVIRONMENTAL PERMITTING STATUTES

Following the concept of debarment developed in the procurement statutes, a growing number of states have enacted environmental permitting statutes that allow or mandate consideration of an applicant's prior conduct as part of the permitting process. The more comprehensive statutes include provisions for a disclosure statement and investigation, a listing of crimes and offenses to be considered, the conditions for issuance of a permit, and definitions of relevant "persons" and "applicants."

A. Disclosure Statement and Investigation

Ohio has enacted extensive requirements for disclosure statements and investigative reports to be filed in conjunction with environmental permit applications.[34] The attorney general is required to submit an investigative report on the applicant within one hundred eighty days of receipt of the disclosure statement and may request and receive information from any law enforcement agency.[35] Applicants and permittees are required to provide any assistance or information requested and must fully cooperate in any inquiry or investigation.[36] The attorney general is authorized to charge and collect fees from applicants and permittees "as are necessary to cover the costs of administering and enforcing the investigative procedures . . . ."[37] Additionally, the attorney general has specific authority to require production of documentary materials, responses to written interrogatories, and appearance and testimony of any individual or business concern.[38]

Similarly, Kansas requires a background investigation of the applicant that considers

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[32] *Id.* ch. 287.133(2)(a).

[33] N.J. STAT. ANN. § 2C:51-2(2)(e) (West Supp. 1990).

[34] OHIO REV. CODE ANN. § 3734.42 (Anderson 1988 & Supp. 1990).

[35] *Id.* § 3734.42(A)(3).

[36] *Id.* § 3734.42(B).

[37] *Id.* § 3734.42(C).

[38] *Id.* § 3734.43(B).

"the financial, technical and management capabilities of the applicant . . . ."[39] The cost of this review is also to be borne by the applicant,[40] and a final decision is due within two hundred forty days of receipt of the application, unless time has been extended.[41]

Illinois stresses investigation, requiring "an evaluation of the prospective operator's prior experience in waste management operations"[42] prior to the issuance of a permit. Indiana requires a detailed listing of information for the disclosure statement, including a description of prior experience in managing waste; all civil and administrative complaints for violation of certain state or federal environmental protection laws or that allege an act or omission that constitutes a material violation of environmental protection law and that presented a substantial endangerment to the public health or environment; pending criminal complaints alleging violation of environmental protection law; criminal convictions of environmental protection law; and criminal convictions of felonies constituting crimes of moral turpitude under laws of any state or the United States.[43]

B. Crimes and Offenses

Although states that have enacted statutes have a specified list of crimes or offenses, some states allow a broader scope of determination. Florida, for example, may refuse a permit if the applicant "has repeatedly violated pertinent statutes, rules or orders or permit terms or conditions relating to any solid waste management facility . . . ."[44] Ohio lists twenty-one specific criminal offenses, including such non-environmental crimes as kidnapping, gambling, burglary, and alteration of motor vehicle identification numbers.[45] Rhode Island includes nineteen similar crimes.[46] In both Ohio and Rhode Island, an environmental permit will be denied to an applicant convicted of any specified crime, unless he has affirmatively demonstrated rehabilitation.[47] Rhode Island also denies permits upon the much broader offense of pursuing "economic gain in an occupational manner or context which is in violation of the criminal or civil public

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[39] KAN. STAT. ANN. § 65-3437(c) (1985 & Supp. 1991).

[40] *Id.* 65-3437(b).

[41] *Id.* 65-3438.

[42] ILL. REV. STAT. ch. 111 1/2, para. 1039(i) (Smith-Hurd 1988 & Supp. 1991).

[43] IND. CODE ANN. § 13-7-10.2-3(b)(2)-(6) (Burns 1990).

[44] FLA. STAT. ANN ch. 403.707 (Harrison 1990).

[45] OHIO REV. CODE ANN. § 3734.44(B) (Anderson 1988).

[46] R.I. GEN. LAWS § 23-19.1-10(b)(2) (Supp. 1991).

[47] OHIO REV. CODE ANN. § 3734.44(C) (Anderson 1988); R.I. GEN. LAWS § 23-19.1-10(b)(3) (Supp. 1991).

policies of [the] state."[48]

Some states require permit denial upon conviction of specified crimes, while others allow discretion. For example, Missouri must deny a permit to a person with three or more convictions in a court of the United States or any state other than Missouri, or two convictions within a Missouri court, "for any crimes or criminal acts, an element of that involves restraint of trade, price-fixing, intimidation of the customers of any person or for engaging in any other acts which may have the effect of restraining or limiting competition concerning activities regulated under this chapter or similar laws of other states or the federal government."[49] On the other hand, the commissioner in Indiana may, but need not, deny a permit if the applicant has a conviction for violations of any state or federal environmental protection law or a conviction or for a felony constituting a crime of moral turpitude.[50]

Although the states appear to be divided on whether criminal offenses "may" or "shall" result in permit denial, Connecticut takes the somewhat different approach of denying a permit to any applicant who was convicted of violation of any state or federal environmental law, upon a showing of good cause for denial.[51]

C. Conditions for Permit Issuance

In addition to consideration of specified crimes or offenses, most states with these statutes include history that may be considered or that shall be considered. Some states require findings of sufficiency, and others deny issuance upon a finding of insufficiency.

Illinois, for example, states that the agency "*shall* conduct an evaluation of the prospective operator's prior experience" but *may* deny a permit if there is a history of repeated violations of environmental laws, regulations, standards or ordinances; conviction of felony crime; or proof of gross carelessness or incompetence in handling, storing, processing, transporting or disposing of any hazardous waste.[52] Similarly, Indiana requires significant information to be furnished in the applicant's disclosure statement and provides that the department may investigate and verify that information.[53] Thereafter, a permit may be denied if the commissioner finds that certain civil or administrative complaints, criminal complaints, criminal convictions, or knowing and

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[48] R.I. GEN. LAWS § 23-19.1-10(b)(6) (Supp. 1991).

[49] MO. ANN. STAT. § 260.379 (Vernon Supp. 1990).

[50] IND. CODE ANN. § 13-7-10.2-3(b) (Burns 1990).

[51] CONN. GEN. STAT. § 22a-454(a) (West Supp. 1991).

[52] Ill. REV. STAT. ch. 111 1/2, para. 1039(i) (Smith-Hurd 1988 & Supp. 1991) (emphasis added).

[53] IND. CODE ANN. § 13-7-10.2-3 (Burns 1990).

repeated violations of environmental protection laws.[54]

In Kansas, a background investigation must be conducted and the financial, technical and management capabilities of the applicant must be considered. However, discretion is allowed to reject the application without conducting an investigation into the merits of the application if the secretary finds that certain previous permit violations have occurred, that a prior permit was revoked, that the applicant failed or continues to fail to comply with environmental protection or public health laws, or that the applicant has shown a lack of ability or intention to comply as indicated by past and continuing violations.[55] Providing for broader discretion, Florida states that the department may refuse to issue a permit to an applicant who has repeatedly violated.[56] Among the states requiring findings, Ohio and Rhode Island will not issue a permit without a finding that "the applicant, in any prior performance record in the transportation, transfer, treatment, storage or disposal of solid wastes, infectious wastes, or hazardous waste, has exhibited sufficient reliability, expertise, and competency to operate the . . . facility, given the potential for harm to human health and the environment that could result from the irresponsible operation thereof, or, if no prior record exists, that the applicant is likely to exhibit that reliability, expertise, and competence."[57] Ohio further requires a finding that the applicant has a history of compliance with environmental laws and is presently in substantial compliance with environmental laws, or on a legally enforceable schedule that will result in compliance.[58] Rhode Island further requires denial if there is a determination that the applicant "does not possess a reputation for good character, honesty, and integrity, and that person or the applicant fails by clear and convincing evidence, to establish his or her reputation for good character, honesty and integrity."[59] Similarly, Connecticut will not grant a permit unless the commissioner "is satisfied that the activities of the permittee will not result in pollution, contamination, emergency or a violation" of certain regulations. Nor will a permit be issued if the applicant was convicted of an environmental law violation and "the commissioner finds, after hearing, that there is good cause to deny such permit."[60]

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[54] *Id.* § 13-7-10.2-4. If a decision to deny a permit is made, the statute further requires consideration of mitigating factors. *Id.*

[55] KAN. STAT. ANN. 65-3437(c)(1985 & Supp. 1991).

[56] FLA. STAT. ANN. ch. 403.707(9) (Harrison 1990).

[57] OHIO REV. CODE ANN. § 3734.44(A) (Anderson 1988); R.I. GEN. LAWS § 23-19.1-10(b)(1) (Supp. 1991).

[58] OHIO REV. CODE ANN. § 3734.44(D) (Anderson 1988).

[59] R.I. GEN. LAWS § 23-19.1-10(b)(4) (Supp. 1991).

[60] CONN. GEN. STAT. ANN. § 22a-454(a) (West Supp. 1991).

D. Definitions of "Persons" and "Applicants"

Because individuals and various types of business entities by nature are prone to change employment, merge, acquire or become acquired, or engage in similar changes, and because the purpose of bad boy legislation is to exclude from the permitting process persons or entities with a poor history, each state has had to determine which individuals or entities should be subject to the statutes. Indiana takes a good approach that defines "applicant" as "an individual, a corporation, a partnership, or a business association" that applies for a permit,[61] and defines "responsible party" as "(1) [an] officer, a corporation director, or a senior management official of a corporation, partnership, or business association that is an applicant; or (2) [a]n individual, a corporation, a partnership, or a business association that owns, directly or indirectly, at least a twenty percent interest in the applicant."[62] The history of both the "applicant" and the "responsible party" are scrutinized,[63] so that all appropriate history of all relevant involved persons and entities is included. Florida defines "applicant" to include "the owner or operator of the facility, or if the owner or operator is a business entity, a parent of a subsidiary corporation, a partner, a corporate officer or director, or a stockholder holding more than fifty percent of the stock of the corporation."[64] New Jersey, in its procurement statute, includes individuals owning five percent of the stock or equity interest of the business.[65]

Kansas includes a provision that can cause permit denial if "the applicant or any person who holds an interest in, or exercises total or partial control of or does business with the applicant or a principal of the corporation was a principal of another corporation which would not be eligible to receive a permit."[66] Rhode Island will deny a permit if there is "a reasonable suspicion to believe that a person shown to have a beneficial interest in the business of the applicant or permittee other than an equity interest or debt liability " has committed certain violations.[67]

Regardless of the approach, such a statute must include sufficient language to deny permits to persons or entities with bad records if such persons or entities have significant influence or involvement with the applicant.

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[61] IND. CODE ANN. § 13-7-10.2-1 (Burns 1990).

[62] *Id.* § 13-7-10.2-2.

[63] *Id.* § 13-7-10.2-3 (Burns 1991).

[64] FLA. STAT. ANN. ch. 403.707(9) (Harrison 1990).

[65] N.J. STAT. ANN. § 2C:51-2(2)(e) (West Supp. 1991).

[66] KAN. STAT. ANN. § 65-3437(c)(3) (Supp. 1991).

[67] R.I. GEN. LAWS § 23-19.1-10(b)(4) (Supp. 1991).

IV. Conclusion

South Carolina must have in its regulatory scheme provisions for excluding from environmental permits those persons and entities with violations and poor compliance histories. The advisability and feasibility for these provisions are well established by those states who have heretofore enacted such legislation.

A proposal for South Carolina is provided herein. For definitions of "applicant" and "responsible party" I have borrowed primarily from the Indiana statute, and others. I have incorporated aspects of the disclosure statement provisions of Indiana and Ohio. Crimes and offenses and conditions for permit issuance are derived from a number of states, including Illinois, Indiana, Rhode Island, and Ohio. The resulting proposal is an attempt to balance the regulatory needs of the state with fairness to the applicants.

A BILL

To Amend the Code of Laws of South Carolina so as to Empower the South Carolina Department of Health and Environmental Control to Deny Permits to Applicants with a History of Environmental Noncompliance, and to Establish Procedures for Determination of Qualification

Section 1. For purposes of this chapter:

(1) "Applicant" means an individual, a corporation, a partnership, or a business association that applies for the issuance, renewal, transfer, or modification of a permit.

(2) "Responsible party" means:

(a) An officer, a corporation director, or a senior management official of a corporation, partnership or business association that is an applicant; or,

(b) An individual, a corporation, a partnership, or a business association that owns, directly or indirectly, at least a twenty percent (20%) interest in the applicant; or,

(c) A business organization or entity, successor corporation, partnership or subsidiary of any business organization or entity, and the officers thereof, of the applicant.

(3) "Department" means the South Carolina Department of Health and Environmental Control.

(4) "Permit" means any permit, license, certification, authority, registration, or entitlement.

Section 2. Application Requirements - Disclosure Statement

(1) Before an application for the issuance, renewal, transfer, or modification of a permit may be considered, the applicant and each responsible party with respect to the applicant must submit to the Department a disclosure statement which includes the following information:

(a) Full names, business addresses and Social Security numbers of the applicant and all responsible parties of the applicant.

(b) A complete listing of all responsible parties of the applicant and a full description of their relationship to the applicant.

(c) The location(s) of the proposed facility.

(d) A full and complete description of the nature of functions of the proposed facility.

(e) A full and complete description of the applicant and responsible parties' experience in managing the type of activity that will be managed under the permit.

(f) A description of all civil and administrative complaints against the applicant and responsible parties for the violation of any state or federal environmental protection law.

(g) A description of all civil and administrative complaints against the applicant and responsible parties that allege an act or omission that presented a substantial endangerment to the public health or the environment.

(h) A description of all pending criminal complaints alleging the violation of any state or federal environmental protection law that have been filed against the applicant and responsible parties within ten (10) years before the date of submission of the application.

(i) A description of all criminal convictions entered against the applicant and responsible party within ten (10) years before the date of submission of the application for the violation of any state or federal environmental protection law.

(j) A description of all criminal convictions of a felony constituting a crime of moral turpitude under the laws of any state or the United States that are entered against the applicant and responsible parties within ten (10) years before the date of submission of the application.

(k) A description of all criminal convictions, an element of which involves restraint of trade, price-fixing, intimidation of the customers of any person, engaging in any other acts which may have the effect of restraining or limiting competition, or any fraudulent practices entered against the applicant and responsible parties within ten (10) years before the date of submission of the

application.
(l) A description of all administrative notices of violations, notices of deficiencies, and enforcement actions against the applicant and responsible parties alleging any violation of state or federal environmental protection law.
(m) A complete statement of all prior locations of facilities of the applicant and responsible parties.

(2) The disclosure statement must be executed under oath or affirmation and be subject to the penalty for perjury.

Section 3. Background investigation.

(1) The Department shall conduct a background investigation of the applicant and responsible parties in regard to all items referred to in the disclosure statement. The Department shall request that the State Law Enforcement Division perform a criminal record search and a search for other information on each applicant and responsible party from any state and the United States, and may receive such information from the Federal Bureau of Investigation. All such information shall be included in the Department's investigative report, which shall be prepared within one hundred eighty (180) days after receipt of the disclosure statement; except that this deadline may be extended for a reasonable period of time, for good cause, by the Department. The Department shall have the applicant and responsible parties to produce any further information pertinent to the items referred to in the disclosure statement, and may require production of documents, responses to written interrogatories, and the taking of testimony under oath, from an applicant, responsible party, or any other person or entity possessing such information, upon appropriate notice.

(2) The Department shall charge and collect such fees from applicants and permittees as are necessary to fully cover the costs of administering and enforcing the investigative procedures established herein, including all costs of the State Law Enforcement Division. In the event that an insufficient fee has been initially charged for the investigative search and report, the Department shall require the applicant to pay an additional amount sufficient to cover all costs.

Section 4. Findings of the Department

(1) Upon completion of the investigative report, the Department shall render specific findings as set forth in this Section.

(2) No permit shall be issued, renewed, transferred or modified unless the Department finds as a fact:

(a) That the activities of the permittee will not result in pollution, contamination, or significant violation of environmental law.

(b) That the applicant and responsible parties, in any prior environmental performance record, have exhibited sufficient reliability, expertise and competency to manage the proposed facility or activity, given the potential for harm to human health and the environment which could result from the irresponsible operation thereof, or if no prior record exists, that the applicant is likely to exhibit that reliability, expertise and competence.

(c) That the applicant and responsible parties possess a reputation for good character, honesty and integrity.

(d) That the applicant and responsible parties have a history of compliance with environmental laws in this state and other jurisdictions and are presently in substantial compliance with such.

(e) That the applicant and responsible parties do not have a significant history of violations of state or federal environmental laws.

(f) That the applicant and responsible parties have not been convicted of serious crimes of moral turpitude.

(g) That the applicant and responsible parties have not been convicted of crimes or criminal acts, an element of which involves restraint of trade, price-fixing, intimidation of the customers of any person or for engaging in any other acts which may have the effect of restraining or limiting competition, or for fraudulent acts.

(h) That the applicant and responsible parties do not have a history of repeated enforcement actions, notices of violations, notices of deficiency, warnings, fines or sanctions related to environmental laws.

(i) That it is in the best interests of health and the environment for the permit to be issued, renewed, transferred or modified.

(3) Review of Findings

Unless the Department makes all of the findings set forth in this Section, the permit shall not be issued, renewed, transferred or modified. In such case the applicant or permittee may, within thirty (30) days of the rendering of the findings and notice thereof, apply for an adjudicatory hearing before the Department. In the event that the Department has made all of the specified findings, other interested parties having standing may, within thirty days of

the rendering of sufficient and appropriate public notice, apply for an adjudicatory hearing before the Department. Such hearing shall consider any additional evidence or mitigating factors related to the information in the disclosure statement and the investigative report.

Section 5. Periodic Permit Review

At a minimum, all permits hereunder shall be subject to review every five years. If the permit provides for a more frequent review or a shorter term, then review shall be held at such more frequent times. At the time of review or any renewal of the permit, a new disclosure statement shall be filed, a new investigative report shall be prepared, and the Department shall render appropriate findings.

Section 6. Revocation

Any permit issued hereunder may be revoked, amended or suspended upon significant violations or convictions of the permittee, or upon the permittee's inability or unwillingness to operate the facility or activity in a lawful and safe manner, or for material misrepresentations or omissions in the disclosure statement and as submitted in the investigative reports.

Section 7. Regulations

The Department may promulgate regulations necessary to carry out the provisions of this chapter.