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Strikeout – delete from current Act
Underline – imported from IBT Act
Dash Underline – new language
Dotted Underline – from Groundwater Use Reporting Act
Italics – changes made as a result of public comment

CHAPTER 4.

SOUTH CAROLINA SURFACE WATER WITHDRAWAL AND REPORTING ACT

SECTION 49-4-10. Short title.

This chapter may be cited as the South Carolina Surface Water Withdrawal and Reporting Act.

SECTION 49-4-11. Repeal 49-21.10 et.seq. This Act replaces Section 49-21.10 et.seq.

SECTION 49-4-16. Legislative declaration of policy.

The General Assembly declares that the water resources of the State are subject to regulation by the State of South Carolina. Further, the general welfare and public interest require that the water resources of the State be put to beneficial use to the fullest extent to which they are capable, subject to reasonable regulation, in order to conserve and protect these resources, prevent waste of the resource, ensure navigability, and to provide and maintain conditions which are conducive to the development and reasonable use of the state's water resources. To carry out this policy, the General Assembly finds that the department must establish and implement an effective statewide water permitting and reporting program. To implement this program, surface water withdrawers shall be permitted by the department and report their water use to the department.

The surface waters of South Carolina require integrated planning and management. South Carolina's rivers and streams flow long distances and support natural aquatic ecosystems, while providing many communities economic, social, and environmental benefits. South Carolina's current system of management of surface waters embodies its common-law tradition of riparian rights, whereby South Carolina's landowners are entitled to reasonable use of water flowing over and adjacent to their property. It is, therefore, hereby declared to be the policy of the State of South Carolina that the water in South Carolina is to be managed for the public benefit in a way that respects the quality of natural river systems and preserves the state's water resources for future generations and makes clear that South Carolina does not view its water resources as a commodity but rather manages water as a resource shared equally by the people of South Carolina. This policy does not in itself create any new legal right or status not already in force immediately prior to the effective date of this Code section. The state is responsible for maintaining these water resources for the maximum physical and economic benefit of the people while sustaining a safe yield and a respect for natural systems, including all waters of the state.

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SECTION 49-4-20. Definitions.

As used in this chapter:

- (1) “7Q10” means the annual minimum seven day average flow rate that occurs with an average frequency of once in ten years as published or verified by the United States Geological Survey (USGS) or an estimate extrapolated from published or verified USGS data.
- (2) “Board” means the Board of the Department of Health and Environmental Control.
- (3) “Department” means the Department of Health and Environmental Control.
- (4) “Dewatering operations” means an operation that is withdrawing surface water for the purpose of draining an excavation or preventing or retarding flow into an excavation. Such an operation would include, but is not limited to, water and sewer line construction and excavating for a building foundation.
- (5) “Diffuse surface water” means water on the surface of the earth not located in defined courses, streams, or water bodies.
- (6) “Emergency withdrawal” means the withdrawal of water, for a period not exceeding thirty days, for the purpose of firefighting, hazardous substance waste spill response, ~~or both~~, or other emergency withdrawal of water as determined by the department.
- (7) “Existing surface water withdrawer” means a surface water withdrawer withdrawing surface water or a proposed surface water withdrawer with its intakes under construction before ~~January~~ July 1, 2003.
- (8) “Losing surface water” means a surface water that sustains a decrease in water as the result of withdrawal or diversion or a transfer of water.
- (9) “New surface water withdrawer” means a person who becomes a surface water withdrawer after July 1, 2003.
- (10) “Permittee” means a person issued a surface water withdrawal permit in accordance with this Chapter.
- (11) “Person” means an individual, firm, partnership, association, public or private institution, municipality, or political subdivision, governmental agency, public water system, trust, estate, any other legal entity whatsoever, or an agent or employee thereof, or a private or public corporation organized under the laws of this State or any other state or county.
- (12) “Public water system” means a water system as defined in Section 44-55-20 of the State Safe Drinking Water Act.
- (13) “Receiving surface water” means a surface water which is the recipient of an increase in water, over and above that occurring naturally, as the result of a diversion or transfer of water.
- (14) “Surface water or surface waters of the state” means all water which is open to the atmosphere and subject to surface runoff which includes lakes, streams, ponds, and reservoirs.
- (15) “Surface water withdrawer” means a public water system withdrawing surface water ~~in excess of~~ totaling three million gallons or more during any one month through all intakes and any other person withdrawing surface water ~~in excess of~~ totaling three million gallons or more during any one month from a single intake or multiple intakes under common ownership within a one-mile radius from any one existing or proposed intake.
- (16) “Surface Water Withdrawal Permit” means a permit issued by the department to withdraw surface water.

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~~(17) “Transfer” means the withdrawal of surface water and the inter-basin or intra-basin movement of that water to either a surface water different from the source of the withdrawal or movement to another location within the same surface water as the source of the withdrawal.~~

~~(18) “Use” means how the withdrawn surface water is utilized, including, but not limited to, aquaculture, agriculture, golf course irrigation, hydroelectric, industrial, thermoelectric, and water supply.~~

~~(19) “Withdrawal or Withdrawing” means to withdraw, remove, divert, transfer, or pump surface water.~~

SECTION 49-4-30. Exemptions.

The following are exempt from this chapter:

- (1) dewatering operations;
- (2) emergency withdrawals;
- ~~(3) a person withdrawing surface water for environmental remediation purposes;~~
- (3) a person withdrawing surface water from any pond completely situated in private property and which is supplied only by diffuse surface water;
- ~~(5) a person required to obtain a permit under the Interbasin Transfer of Water Act, Section 49-21-10, et seq.;~~
- (4) a person withdrawing, using, or discharging surface water for the purpose of wildlife habitat management.

SECTION 49-4-40. Registration.

~~(A) An existing surface water withdrawer in the State shall register its surface water use with the department on forms provided by the department no later than January 1, 2001.~~

~~(B) An existing surface water withdrawer already registered with the department is exempt from subsection (A).~~

~~(C) A surface water withdrawer shall submit a registration form to the department within thirty days after completing construction of its surface water intake.~~

SECTION 49-4-35. Existing surface water withdrawers.

~~Existing surface water withdrawers that do not have an Interbasin Transfer Permit or Interbasin Registration under 49-21-10 et seq. shall submit an application for a surface water withdrawal permit to the Department within 120 days of the effective date of this Act. Existing surface withdrawers may request a reasonable withdrawal based on their *existing water* use and shall receive a permitted amount to be at least equal to their *documented existing water use or permitted treatment capacity*. Existing surface water withdrawers may also request additional reasonable withdrawals based on the criteria in this Chapter.~~

SECTION 49-4-50. Reports of quantity of water withdrawn; methods for determining quantity.

A. A surface water ~~user~~ withdrawer in the State shall file annually on or before January ~~thirty~~ ~~thirtieth~~ with the department a report, on forms furnished or approved by the department, of the quantity and use of water withdrawn.

B. The quantity of surface water withdrawn must be determined by one of the following:

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- (1) flow meters accurate to within ten percent of calibration;
- (2) the rated capacity of the pump in conjunction with the use of an hour meter, electric meter, or log;
- (3) the rated capacity of the cooling systems;
- (4) any standard or method employed by the United States Geological Survey in determining these quantities;
- (5) any other method found to provide reliable water withdrawal data approved by the department.

C. The surface water withdrawer is not required to submit the surface water withdrawal report required by subsection (A) if the monthly quantity withdrawn from each intake is being reported to the department as a result of another environmental program reporting requirement, permit condition, or consent agreement.

SECTION 49-4-55. Permits; temporary permits; revocation; process for public participation in permitting process to be developed; contested case hearing.

A. Before a surface water withdrawer or proposed surface water withdrawer can construct a new intake or increase the withdrawal rate through an existing intake, an application for a permit to construct must be made to, and a permit to construct obtained from, the department.

B. After completion of construction of a new or modified intake, but before a person may become a surface water withdrawer, an application for a surface water withdrawal permit must be made to, and a surface water withdrawal permit obtained from, the department.

C. The department may grant a temporary surface water withdrawal permit for up to one hundred eighty days or until a final decision is made on the application if an imminent hazard to public health exists or if an applicant demonstrates that physical or financial damage has occurred, or will occur, if a temporary permit is not granted. The issuance of a temporary permit does not guarantee the issuance of a surface water withdrawal permit.

D. The department may revoke a surface water withdrawal permit if it determines information in the permit application is false or the permittee fails to comply with the conditions of the permit.

E. The department may revoke a temporary surface water withdrawal permit if the permittee fails to adhere to the conditions of the temporary permit or provide timely response to requests for actions for information made pursuant to the application review.

F. The department is authorized to develop a public participation process for the permitting of new surface water withdrawals or for an increase in the amount of a permitted surface water withdrawal.

G. The department is authorized to develop a “General Permit” for surface water withdrawal activities.

H. The issuance of a surface water withdrawal permit does not convey property rights of any kind to the permittee with regard to water withdrawal amounts. The Department expressly reserves the right to increase or decrease the permitted surface water withdrawal based upon prevailing conditions.

SECTION 49-4-56. Permitting criteria and reasonable use.

A. In recognition of riparian rights and in accordance with the Legislative Policy in Section 49-4-16, the permitting of surface water withdrawals shall be subject to the principle of reasonable

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and beneficial use. The Department shall issue permits to ensure surface water withdrawals do not have potential or real adverse effects to the natural resources; do not pose a threat to public health, safety, or economic welfare; and do not pose a significant threat to the long-term integrity of a surface water source. Permits shall not be issued without proposed best management practices to reasonably ensure water is appropriately conserved and that the amount of water permitted to be withdrawn is reasonable for the intended purpose.

B. The department may grant, deny, or issue with conditions as to quantity or quality of water, a permit to any person for any withdrawal of surface water upon application for a permit and opportunity for public comment, if the department finds the criteria in subsections C, D, E, and F are met.

C. The applicant shall specify the location of all collection, withdrawal, and transportation facilities, the quantity of water requested for the use, and additional information as the department may require.

D. In making its determination whether a surface water withdrawal may be permitted, and that the proposed withdrawal is reasonable and beneficial, the department shall:

(1) Protect present, and consider projected stream uses of the losing surface water generally and of the losing surface water specifically including, but not limited to, present agricultural, municipal, industrial and instream uses, and assimilative needs.

(2) Protect water quality of the losing surface water and ensure no violation of the water quality standards of the losing surface water.

(3) Consider reasonably foreseeable future water needs of the losing surface water.

(4) Consider the reasonably foreseeable future water needs of the applicant for the water to be withdrawn, including methods of water use, conservation, and efficiency of use.

(5) Consider beneficial impact on the State and its local subdivisions of any proposed withdrawal, and the capability of the applicant to implement effectively its responsibilities under the requested permit.

(6) Consider the nature of the permittee's use of the water, *and if the water use is largely consumptive or non-consumptive*, to determine whether the use is reasonable and beneficial.

(7) Consider whether the proposed project shall promote conservation of water.

(8) Consider the feasibility of alternative sources of supply and their comparative costs.

(9) Consider impact on interstate water use.

(10) Consider requirements of other state or federal agencies with authority relating to water resources.

(11) Consider availability of water in the losing surface water to respond to emergencies, including drought.

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(12) Consider whether the project shall have any beneficial or detrimental impact on navigation, hydropower generation, fish and wildlife habitat, aesthetics, or recreation.

(13) Consider such other facts and circumstances as are reasonably necessary to carry out the purposes of this chapter.

(14) Consider affects on the public health and welfare.

E.

(1) To protect the water uses of the losing surface water, the department, in determining the amount of water to be approved, may conduct or have conducted by the applicant instream sampling and stream modeling to predict the volumes of water which may be withdrawn.

(2) Amounts that can be withdrawn may vary to accommodate seasonal water conditions in the losing surface water.

(3) No withdrawal permit shall authorize withdrawal of surface water in amounts that would cause or contribute to:

a) the remaining instream flow at or immediately downstream of the point of withdrawal in the losing surface water to be less than the 7Q10 flow as established prior to the withdrawal, and;

b) insufficient instream flow to maintain the 7Q10 flow plus additional flow to ensure the availability of water to downstream surface water withdrawers, and;

c) less than the minimum water level being available in lakes to protect classified and existing uses.

(4) Where necessary to ensure water quality standards, classified and existing uses, public health, and fish and wildlife are adequately protected, a stream flow greater than the flow determined in 49-4-56(E)(3) may be established by the department on a case-by-case basis for specific surface waters.

(5) Minimum stream flows greater than the 7Q10 flow and minimum water levels in lakes may be established by regulation pursuant to this Chapter.

F. The permit shall specify the location of all collection, withdrawal, transmission, and discharge facilities to be used or constructed to effect the withdrawal and shall specify the amount or amounts which can be withdrawn. The applicant shall submit as part of the application an operational and contingency plan for when the actual flow of the surface water is less than the specified minimum in Section E to promote an adequate water supply for the State and to mitigate any adverse conditions or effects which the department finds exist, but are not sufficient to require denial of the permit. The plan shall provide an implementation strategy of selected alternatives to address low flow conditions such as water conservation, alternative water supplies, off-stream water storage, seasonal water flow fluctuations, hydroelectric operations in controlled surface waters, and compliance with the South Carolina Drought Response Act. The operational and contingency plan shall be an enforceable part of the permit.

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G. For transfers, in addition to the requirements of this Chapter, the department shall protect water quality of the receiving surface water by ensuring the permitted transfer would cause no violation of the water quality standards of the receiving surface water.

SECTION 49-4-60. Powers of department.

In addition to the powers granted by Section 48-1-50, the department may:

- (1) adopt and modify regulations to implement the provisions of this chapter;
- (2) perform acts and issue orders as necessary to carry out the purposes and requirements of this chapter;
- (3) administer and enforce this chapter and regulations promulgated and orders issued or effective under this chapter;
- (4) present proper identification and then enter upon any land or water for the purpose of conducting an investigation, examination, or survey contemplated by this chapter;
- (5) issue, modify, revoke, or deny construction and surface water withdrawal permits;
- (6) evaluate and conduct, or have conducted, investigations regarding surface water characteristics, modeling, and other engineering, scientific, and economic analysis, including the establishment of minimum surface water levels to carry out the provisions of this chapter. In conducting such investigations, the department will consider and utilize, as appropriate, reports, research, and studies of federal, state, or local agencies and departments of government. The results of these investigations shall serve as the basis for the evaluation of applications and the determination of applicable permit conditions;
- (7) negotiate agreements, accords, or compacts on behalf of and in the name of the State and with other states or the United States, or both, with an agency, department, or of either, or both, relating to withdrawal or diversion of surface water that impacts the surface water of this State, or are connected to those waters. In negotiating such agreements, the department will consider, as appropriate, information provided by potentially affected federal, state, or local agencies and departments of government and will advise such entities of the final department action. An interstate compact made by the department by authority of this chapter is subject to approval by joint resolution of the General Assembly. The department shall represent this State in connection with surface water withdrawals, diversions, or transfers occurring in other states which may affect this State;
- (8) receive financial and technical assistance from the federal government and other public or private agencies;
- (9) establish and collect fees for permitting, technical studies, monitoring, and other actions necessary to carry out the provisions of this Chapter;
- (10) establish, in coordination with local governments and water users, surface water management plans.

SECTION 49-4-70. Notification of change.

A registered surface water withdrawer shall notify the department in writing within thirty days of prior to constructing a new intake, changing the method of measuring the withdrawal, ceasing to withdraw surface water, abandoning an intake, or a change in ownership.

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SECTION 49-4-71. Duration of permits; modification, suspension, or revocation; renewal; transfer.

- A. No permit under this Chapter may be issued for a period longer than twenty years.
- B. The department may modify, suspend, or revoke any withdrawal permit for good cause as determined by the department.
- C. Upon timely application and upon meeting the applicable requirements, a permit may be reissued for another permit period.
- D. Permits may not be transferred except with the prior approval of the department.
- E. The provisions of this chapter shall take precedence over any other state regulatory provision pertaining to the subject of this chapter.

SECTION 49-4-80. Violations of chapter or regulation; civil and criminal penalties.

- A. A person willfully violating a provision of this chapter is guilty of a misdemeanor and, upon conviction, ~~must be fined shall be punished by a fine of not more than one ten thousand dollars a day for each violation.~~
- B. A person violating a provision of this chapter or a regulation promulgated under the authority of this chapter, ~~renders the violator liable to the State for~~ shall be subject to a civil penalty of not more than ~~one ten thousand dollars a day for each violation.~~
- C. The department may administer penalties as otherwise provided herein for a violation of this chapter, an order, regulation, or standard and may cause to be instituted a civil action in any court of competent jurisdiction to enforce such penalties, or may request the Attorney General to commence an action under this subsection in an appropriate court of the State to secure a penalty.
- D. The department may cause to be instituted ~~a civil action~~ in any court of ~~applicable~~ competent jurisdiction a civil action for injunctive relief to prevent violation of this chapter or an order issued pursuant to this chapter.
- E. Civil penalties collected pursuant to this section must be deposited in the general fund of the State.