

SOUTH CAROLINA

Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

The state has a broad general pollution prohibition, applicable to nonpoint sources as well as point sources.

- "It shall be unlawful for any person, directly or indirectly, to throw, drain, run, allow to seep or otherwise discharge into the environment of the State organic or inorganic matter, including sewage, industrial wastes and other wastes, except as in compliance with a permit issued by the Department [of Health and Environmental Control]."¹ Enforcement includes administrative "orders requiring the discontinuance of the discharge of sewage, industrial waste, or other wastes into any waters of the state," injunctive relief, civil penalties of up to \$10,000 per day, and criminal penalties for willful or negligent violation of \$500 to \$25,000 per day and/or imprisonment for up to two years.²

Other Discharge Limitations

- Common law and statutory nuisance remedies for water pollution are preserved by the state's Pollution Control Act.³

- Some nuisance-related provisions related to navigable waterways may have limited utility with respect to some forms of nonpoint source water pollution. Cutting trees, tree tops, brush or logs or "throwing any refuse material whatever into any navigable river or harbor" is a misdemeanor punishable by fine of up to \$250 or imprisonment for up to two years.⁴ "Any person who shall fell, cut, or throw or cause to be felled, cut, or thrown across or into any of such streams any tree, log or other timber or any trash, brush, debris or obstruction of any kind whatsoever will be guilty of a misdemeanor" and is punishable by fine of up to \$50 or imprisonment for up to 30 days.⁵ Obstruction of a navigable stream without a permit or authorization is a nuisance.⁶

Fish/Fisheries Laws

- "Any person who discharges organic or inorganic matter into the waters of this State ... to the extent that the fish, shellfish, aquatic animals, wildlife or plant life indigenous to or dependent upon the receiving waters or any property are damaged or destroyed shall be liable to the State for such damages as may be proved [in court]... The civil remedy herein provided shall not be exclusive and any agency, commission, department or political subdivision of the State with appropriate authority may undertake in its own name an action to recover such damages as it may deem advisable independent of this subsection."⁷

OPERATIONAL REQUIREMENTS

Forestry Requirements

- State law requires registration of foresters and licensing, but does not directly regulate forest practices on private lands. Violation of registration requirements is punishable as a misdemeanor.⁸
- The "Erosion and Sediment Reduction Act,"⁹ discussed at greater length under "built environment" below, applies to forestry and other land-disturbing activities on State-owned lands. "The Department [of Health and Environmental Control] must promulgate regulations for erosion and sediment reduction and stormwater management only on land either owned by the State, a State agency, or a quasi-state agency or land under the management or control of such an entity..."¹⁰ A state agency found by DHEC in noncompliance must take steps to correct the problem. In addition, the State Engineer must ensure that the regulations are followed on all land and land disturbing activities within the State Engineer's jurisdiction. However, the DHEC regulations do not apply to lands controlled by the State Forestry Commission,¹¹ which applies its own "Erosion, Sediment and Stormwater Management Plan" on state forest lands.¹² The State Forestry Commission must develop this "plan" in consultation with DHEC to reduce erosion, sediment on forest land owned or managed by the Forestry Commission, and must implement these regulations.¹³

Agriculture Requirements

- "The commissioners of any [soil and water conservation] district may formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion."¹⁴ The process may include a public hearing, but must be approved by a referendum by landowners and garner at least 2/3 support; however, commissioners are not obliged to adopt regulations even if the 2/3 vote approves them.¹⁵ A court may order the landowner to perform the work necessary to comply, or may authorize the commissioners to enter upon the land and do so and recover their costs from the landowner.¹⁶
- The state's chemigation law provides that any irrigation system which is designed or used for the application of fertilizer, pesticide, or chemicals must be equipped with an anti-syphon device adequate to protect against contamination of the water supply. Violations are punishable by a civil penalty of up to \$500 per day.¹⁷
- South Carolina law provides for registration of pesticides, licensing of dealers, and certifying applicators, but has no specific water pollution provisions. Enforcement is via license actions, civil penalties, and misdemeanor prosecutions.¹⁸

Development and Other Earth-Disturbing Activities

- The Stormwater Management and Sediment Reduction Act applies throughout the state on lands not owned by the state.¹⁹ It is administered by DHEC in coastal counties, elsewhere by local government - as a delegated program subject to DHEC

oversight.²⁰ Unless exempted, no person may engage in a land disturbing activity without first submitting a stormwater management and sediment control plan to the appropriate implementing agency and obtaining a permit to proceed."²¹ The law further provides for development of watershed master plans in designated watersheds, and all projects must be consistent with these plans.²² Under the regulations, projects less than 2 acres must submit a simplified plan (no permit, but inspection and enforcement); projects 2-5 acres require a permit, meeting design and performance standards; projects 5 acres or greater require a permit (integrated with NPDES stormwater program); and projects 10 acres or greater must have sediment basin or other practice meeting an 80 % removal efficiency standard. The regulations also specify maintenance requirements and correction of offsite damage.²³ The law exempts: agricultural activities (except buildings larger than 1 acre); forestry activities; mining activities; single family residences not part of a common development; activities otherwise licensed or permitted where conditioned on compliance, public service corporation activities otherwise regulated, railroad activities, and state-owned or managed lands where the activities are regulated by the Erosion and Sediment Reduction Act, discussed below.²⁴ Enforcement includes issuance of stop work orders, required submission of plans, and correction of violations,²⁵ and civil actions for civil penalties of up to \$1,000 per day, and injunctive relief.²⁶ This law also provides for designation of special protection areas. "In addition to the other regulatory requirements in this chapter, designated watersheds shall have the regulatory requirements for land disturbing activities within the watershed clearly specified through a watershed management plan which includes nonpoint source pollution control, stormwater management, and flood control components..."²⁷

- The Erosion and Sediment Reduction Act applies only to state lands, and is administered by DHEC with the cooperation of various affected state agencies and land managers.²⁸ "The Department must promulgate regulations for erosion and sediment reduction and stormwater management only on land either owned by the State, a State agency, or a quasi-state agency or land under the management or control of such an entity..."²⁹ The DHEC and Dept. of Transportation are to promulgate regulations together for transportation related matters.³⁰ Regulations provide that there can be no land disturbing activity without an "erosion and sediment control and stormwater management plan approved by the State Engineer or the former Land Resource Conservation Commission."³¹ Furthermore, all erosion, sediment, and stormwater problems not addressed by the plans must be corrected.³² A state agency found by DHEC in noncompliance must take steps to correct the problem. In addition, the State Engineer must ensure that the regulations are followed on all land and land disturbing activities within the State Engineer's jurisdiction. No sanctions are specified in the law.³³

- State law establishes a comprehensive regulatory scheme for South Carolina's 8 coastal counties.³⁴ The law provides for a management plan by DHEC's Coastal Division,³⁵ and that zoning ordinances in critical areas are adopted as part of the plan if they meet its provisions.³⁶ The law provides for a permit required for uses in the critical area,³⁷ gives DHEC exclusive regulatory authority,³⁸ and provides the criteria for permit approval or denial - including effects on marine life, erosion, etc.³⁹ Enforcement is via injunction, administrative order, permit revocation, civil penalties of up to \$1,000 per day, or misdemeanor prosecutions.⁴⁰

- Scenic river regulations and prohibitions apply only to lands and easements that have been acquired by the state.⁴¹

- A permit is required to obstruct navigable waters, and enforcement is via permit actions, abatement, and misdemeanor sanctions.⁴²

Endnotes

- ¹ S.C. Code Ann. § 48-1-90.
- ² S.C. Code Ann. §§ 48-1-50(3), 48-1-50(4), 48-1-50(110), 48-1-330, 48-1-320.
- ³ S.C. Code Ann. § 48-1-240.
- ⁴ S.C. Code Ann. § 49-1-20.
- ⁵ S.C. Code Ann. § 49-1-40.
- ⁶ S.C. Code Ann. § 49-1-10.
- ⁷ S.C. Code Ann. § 48-1-90(b).
- ⁸ S.C. Code Ann. §§ 48-27-100, 48-27-120, 48-27-250.
- ⁹ S.C. Code Ann. § 48-18-10.
- ¹⁰ S.C. Code Ann. § 48-18-40(5), repeated in § 48-18-70.
- ¹¹ R. 72-104.
- ¹² S.C. Code Ann. § 48-18-70(5).
- ¹³ S.C. Code Ann. § 48-18-70.
- ¹⁴ S.C. Code Ann. § 48-9-1510.
- ¹⁵ S.C. Code Ann. §§ 48-9-1520, -1530, -1540.
- ¹⁶ S.C. Code Ann. § 48-9-1610.
- ¹⁷ S.C. Code Ann. § 46-1-140.
- ¹⁸ S.C. Code Ann. § 46-13-10 et seq.
- ¹⁹ S.C. Code Ann. § 48-14-10 et seq.
- ²⁰ S.C. Code Ann. § 48-14-60.
- ²¹ S.C. Code Ann. § 48-14-30(A).
- ²² S.C. Code Ann. § 48-14-130.
- ²³ R. 72-305, 72-307, 72-308.
- ²⁴ S.C. Code Ann. § 48-14-40.
- ²⁵ S.C. Code Ann. § 48-14-95.
- ²⁶ S.C. Code Ann. §§ 48-14-140, -150.
- ²⁷ S.C. Code Ann. § 48-14-130.
- ²⁸ S.C. Code Ann. § 48-18-10 et seq.
- ²⁹ S.C. Code Ann. § 48-18-40(5), repeated in § 48-18-70.
- ³⁰ S.C. Code Ann. § 48-18-70.
- ³¹ R. 72-06, R. 72-01.
- ³² R. 72-108.
- ³³ S.C. Code Ann. § 48-18-70.
- ³⁴ S.C. Code Ann. § 48-39-10 et seq.
- ³⁵ S. C. Code Ann. § 48-39-80.
- ³⁶ S.C. Code Ann. § 48-39-100.
- ³⁷ S.C. Code Ann. § 48-39-130.
- ³⁸ S.C. Code Ann. § 48-39-210.
- ³⁹ S.C. Code Ann. § 48-39-150.
- ⁴⁰ S.C. Code Ann. § 48-39-160, -170, -180.
- ⁴¹ S.C. Code Ann. § 49-29-150.
- ⁴² S.C. Code Ann. § 49-1-10.