**South Carolina General Assembly**

118th Session, 2009-2010

**S. 275**

**STATUS INFORMATION**

General Bill

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Introduced in the Senate on January 14, 2009

Currently residing in the Senate Committee on **Agriculture and Natural Resources**

Summary: Water withdrawal

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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1/14/2009 Senate Referred to Committee on **Agriculture and Natural Resources** [SJ](file:///h:\SJ%20Archive\2009\01-14-09.docx)‑7

**VERSIONS OF THIS BILL**

[1/14/2009](file:///p:\pprever\2009-10\275_20090114.docx)

**A** **BILL**

TO AMEND CHAPTER 4, TITLE 49, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY REDESIGNATING THE CHAPTER AS THE “SOUTH CAROLINA WATER WITHDRAWAL, PERMITTING, USE, AND REPORTING ACT”, SO AS TO MAKE CERTAIN DECLARATIONS REGARDING THE STATE’S REGULATION OF RIPARIAN RIGHTS, TO PROVIDE CERTAIN DEFINITIONS, TO SPECIFY SPECIFIC EXEMPTIONS FROM THE CHAPTER, TO PROVIDE THAT USE OF THE WATERS OF THE STATE ON NONRIPARIAN LAND IS LAWFUL AND REQUIRES EQUAL CONSIDERATION WITH A USE ON A RIPARIAN LAND IN AN ADMINISTRATIVE OR JUDICIAL PROCEEDING RELATING TO AN ALLOCATION, WITHDRAWAL, OR USE OF WATER, OR TO A MODIFICATION OF A WATER RIGHT, AND VARIOUS PROVISIONS REGARDING THE PERMITTING AND REGULATION OF SURFACE WATER WITHDRAWERS; AND TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL SHALL PROMULGATE A REGULATION PURSUANT TO CHAPTER 4, TITLE 49, RELATING TO SURFACE WATER WITHDRAWAL, PERMITTING, USE, AND REPORTING, TO ESTABLISH A FEE NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS CHAPTER.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 4, Title 49 of the 1976 Code is amended to read:

“CHAPTER 4

SOUTH CAROLINA SURFACE WATER WITHDRAWAL, PERMITTING, USE, AND REPORTING ACT

Section 49‑4‑10. This chapter may be cited as the South Carolina Surface Water Withdrawal, Permitting, Use, and Reporting Act.

Section 49‑4‑20. 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) ‘Affected area’ means that portion of a county or counties, including downstream areas and basins, within a river basin that, under the circumstances, are determined by the department to likely be affected by a proposed surface water withdrawal.

(3) ‘Agriculture facility’ means any land, building, structure, pond, impoundment appurtenance, machinery, or equipment which is used for the commercial production or processing of crops, trees, livestock, animals, poultry, honeybees, honeybee products, livestock products, poultry products, or used in commercial aquaculture.

(4) ‘Agricultural use’ means:

(a) plowing, tilling, or preparing the soil at an agricultural facility;

(b) planting, growing, fertilizing, or harvesting crops, ornamental horticulture, floriculture, and turf grasses;

(c) application of pesticides, herbicides, or other chemicals, compounds, or substances to crops, weeds, or soil in connection with the production of crops, livestock, animals, or poultry;

(d) breeding, hatching, raising, producing, feeding, keeping, slaughtering, or processing livestock, hogs, aquatic animals, equines, chickens, turkeys, poultry, or other fowl normally raised for food, mules, cattle, sheep, goats, rabbits, or similar farm animals for commercial purposes;

(e) producing and keeping honeybees, producing honeybee products, and honeybee processing facilities;

(f) producing, processing, or packaging eggs or egg products;

(g) manufacturing feed for poultry or livestock;

(h) rotation of crops;

(i) commercial aquaculture;

(j) application of existing, changed, or new technology, practices, processes, or procedures to an agricultural use;

(k) the operation of a roadside market; and

(l) silviculture.

~~(1)~~ ~~‘Board’ means the Board of the Department of Health and Environmental Control.~~

(5) ‘Consumptive use’ means any use of water which is not a nonconsumptive use.

~~(2)~~(6) ‘Department’ means the Department of Health and Environmental Control.

~~(3)~~ ~~‘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.~~

~~(4)~~(7) ‘Diffuse surface water’ means water on the surface of the earth not located in defined courses, streams, or water bodies.

~~(~~~~5)~~(8) ‘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.

~~(~~~~6)~~(9) ‘Existing surface water withdrawer’ means a surface water withdrawer withdrawing surface water as of the effective date of this chapter or a proposed surface water withdrawer with its intakes under construction before ~~January 1, 2000~~ the effective date of this chapter.

(10) ‘Farm pond’ means a pond completely situated on private property that is used for providing water for agricultural uses that is supplied by diffuse surface water, a well or wells, springs completely situated on the private property that does not in its natural state discharge off the property.

(11) ‘Impoundment’ means a dam, dike, natural structure, or any combination of these that is designed to hold an accumulation of surface water or impede the flow of surface water.

(12) ‘Minimum instream flow’ means the minimum continuous flow at or immediately downstream from a point of the withdrawal, transfer, or impoundment necessary to maintain the biological, chemical, and physical integrity of the stream, taking into account downstream uses, navigability, and normal seasonal variations in flow and need.

(13) ‘Minimum water level’ means the water level in an impoundment necessary to maintain the biological, chemical, and physical integrity of the surface water in the impoundment, taking into account downstream uses, navigability, and normal seasonal variations in flow and need.

~~(7)~~ ~~‘New surface water withdrawer’ means a person who becomes a surface water withdrawer after December 31, 1999.~~

(14) ‘Nonconsumptive use’ means a use of surface water withdrawn in such a manner that it is returned to its waters of origin at or near its point of withdrawal with no or minimal changes in water quantity.

(15) ‘Permit’ or ‘surface water withdrawal permit’ means a written authorization issued to a person by the department that allows the person to withdraw surface water pursuant to the terms of the permit and this chapter.

(16) ‘Permitted surface water withdrawer’ means a person withdrawing surface water pursuant to a surface water withdrawal permit.

(17) ‘Permittee’ means a person authorized to make withdrawals of surface water pursuant to a surface water withdrawal permit issued by the department.

~~(8)~~(18) ‘Person’ means an individual, firm, partnership, trust, estate, association, public or private institution, municipality, or political subdivision, governmental agency, public water system, or a private or public corporation or other legal entity organized under the laws of this State or any other state or county.

(19) ‘Proposed registered surface water withdrawer’ means a proposed surface water withdrawer whose planned operations would result in his withdrawals being subject to the reporting but not the permitting requirements of this chapter.

~~(9)~~(20) ‘Public water system’ means a water system as defined in Section 44‑55‑20 of the State Safe Drinking Water Act.

(21) ‘Registered surface water withdrawer’ means a person who makes surface water withdrawals for agricultural uses, at an agricultural facility, that is filing a report pursuant to Section 49‑4‑50.

(22) ‘River basin’ means the area drained by a river and its tributaries or through a specified point on a river, as determined in Section 49‑4‑80(D)(2).

(23) ‘Safe yield’ means the amount of water available for withdrawal from a particular surface water in excess of the minimum instream flow or minimum water level for that surface water.

~~(10)~~(24) ‘Surface water’ means all water that is wholly or partially within or bordering the State or within its jurisdiction, which is open to the atmosphere and subject to surface runoff, ~~which includes~~ including, but not limited to, lakes, streams, ponds, rivers, creeks, runs, springs, and reservoirs.

~~(11)~~(25) ‘Surface water withdrawer’ means a ~~public water system withdrawing surface water in excess of three million gallons during any one month and any other~~ person withdrawing surface water for any purpose, other than an interbasin transfer as defined by Section 49‑21‑20, in excess of three million gallons 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.

(26) ‘Withdrawal’ means to remove or divert surface water from its natural course or location regardless of whether the water is returned to its waters of origin, consumed, or discharged elsewhere but does not include interbasin transfers.

Section 49‑4‑25. (A) This chapter relates to surface water withdrawals made solely within this State. This chapter does not apply to a person withdrawing water in such a manner or for purposes that require the person to obtain a permit under the Interbasin Transfer of Water Act, Section 42‑21‑10, et seq.

(B) Except as provided in Sections 49‑4‑30, 49‑4‑35, 49‑4‑40, and 49‑4‑80 all surface water withdrawals by a surface water withdrawer are unlawful unless made pursuant to a surface water withdrawal permit issued pursuant to Section 49‑4‑90. The department may not issue a permit to a new applicant unless the department determines that the applicant’s proposed use is reasonable.

Section 49‑4‑30. (A) ~~The~~ Surface water withdrawals for the following purposes are exempt from the permitting and reporting requirements provided for in this chapter:

(1) ~~dewatering operations~~ withdrawals for active instream dredging or sand mining operations or other nonconsumptive instream mining operations undertaken pursuant to the South Carolina Mining Act;

(2) emergency withdrawals;

(3) ~~a person withdrawing surface water for environmental remediation purposes;~~ agricultural uses from farm ponds:

(a) owned by the person making the withdrawal; or

(b) situated on two or more separately owned parcels of private property if each property owner agrees to the withdrawal.

(4) a person withdrawing surface water from any pond completely situated ~~in~~ on private property and ~~which~~ that is supplied only by diffuse surface water or springs completely situated on the private property and that do not in their natural state discharge off the property; and

~~(5)~~ ~~a person required to obtain a permit under the Interbasin Transfer of Water Act, Section 49‑21‑10, et seq.~~

~~(6)~~(5) a person withdrawing, using, or discharging surface water solely for the purpose of wildlife habitat management on land owned by that person.

(B) A withdrawal for nonconsumptive, flow through hydropower generation is exempt from the permitting requirements of this chapter but not the reporting requirements in Section 49‑4‑50.

Section 49‑4‑35. (A) Registered surface water withdrawers must register their surface water use with the department on forms provided by the department and are subject only to the reporting requirements of Section 49‑4‑50. Registered surface water withdrawers are authorized to withdraw surface water up to their registered amount.

(B) An existing registered surface water withdrawer already reporting its withdrawals to the department as of the effective date of this section may maintain its withdrawals at its reported level and is deemed to be registered with the department.

(C) Prior to constructing or installing a water intake, a proposed registered surface water withdrawer must report its anticipated withdrawal quantity to the department for determination as to whether that quantity is within the safe yield for that water source. Upon making a determination, at a minimum the department must send a detailed description of its determination to the proposed registered surface water withdrawer by registered mail. A proposed registered surface water withdrawer may not begin his proposed withdrawals until he notifies the department of his anticipated withdrawals and the department provides written notification to the proposed registered surface water withdrawer that authorizes him to proceed, if the anticipated withdrawals are within the safe yield. If the department provides a proposed registered surface water withdrawer with written notification that the anticipated withdrawals are not within the safe yield, then the proposed registered surface water withdrawer may not proceed with the construction or installation of a water intake. Proposed registered surface water withdrawers are authorized to make withdrawals up to the department approved anticipated withdrawal amounts.

(D) Registered surface water withdrawers that begin surface water withdrawal operations after the effective date of this section shall submit a registration form to the department within thirty days after completing construction of its surface water intake.

(E) An existing registered surface water withdrawer that would like to increase the amount of surface water for which he is registered to withdraw, must submit the anticipated amount of the increase for consideration by the department in the manner provided for in subsection (C).

(F) The department may reduce the amount a registered surface water withdrawer may withdraw, or suspend or revoke a registered surface water withdrawer’s authority to withdraw water, if the registered surface water withdrawer withdraws substantially more surface water than he is registered for or anticipates withdrawing.

(G) Nothing in this chapter prohibits registered user from applying for and obtaining a surface water withdrawal permit.

Section 49‑4‑40. (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.~~ The department shall issue a permit for surface water withdrawals for nonconsumptive uses upon a determination by the department that the proposed withdrawals will result in no or minimal changes in water quantity at or near the point of withdrawal.

(B) ~~An existing surface water withdrawer already registered with the department is exempt from subsection (A).~~ Permits issued pursuant to this section must identify the surface water withdrawer, the point of withdrawal, and the maximum withdrawal amounts.

(C) ~~A surface water withdrawer shall submit a registration form to the department within thirty days after completing construction of its surface water intake.~~ Except as otherwise provided in this section, nonconsumptive use permit holders are subject only to the reporting requirements of Section 49‑4‑50.

Section 49‑4‑50. (A) ~~A~~ Each registered and permitted surface water ~~user~~ withdrawer ~~in the State shall~~ must file a report with the department of the quantity of water withdrawn by that surface water withdrawer annually before ~~January thirty~~ February first ~~with the department a report,~~ on forms furnished by the department~~, of the quantity of water withdrawn~~.

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

(1) flow meters accurate to within ~~ten~~ one 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~~ a standard or method employed by the United States Geological Survey in determining these quantities;

(5) ~~any other~~ another method found to provide reliable water withdrawal data approved by the department.

(C) ~~The~~  Registered and permitted surface water ~~withdrawer is~~ withdrawers who are required to file a surface water withdrawal report with the department pursuant to subsection (A) are 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~~ department program reporting requirement, permit condition, or consent agreement.

Section 49‑4‑60. ~~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; and~~

~~(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.~~ The use of surface water on nonriparian land authorized pursuant to this chapter is lawful and is entitled to equal consideration with uses on riparian land in any administrative or judicial proceeding relating to the allocation, withdrawal, or use of water or to the modification of a water right. Nothing in this chapter may be construed to authorize access to waters of the State by a person seeking to make a nonriparian use apart from access otherwise lawfully available to that person.

Section 49‑4‑70. ~~A registered surface water withdrawer shall notify the department in writing within thirty days of constructing a new intake changing the method of measuring the withdrawal, ceasing to withdraw surface water, abandoning an intake, or a change in ownership.~~ (A) New surface water withdrawers must obtain a surface water withdrawal permit from the department before making surface water withdrawals. A permitted surface water withdrawer that would like to increase its permitted withdrawal amount must apply to the department for the quantity requested in excess of the permitted amount.

(B)(1) An existing surface water withdrawer that applies for a permit pursuant to this chapter must be issued an initial permit that is not subject to the permitting criteria in Section 49‑4‑90(B) and (C). The initial permit must authorize the existing surface water withdrawer to withdraw surface water in an amount equal to its documented historical water use, current permitted treatment capacity as of the effective date of this chapter, capacity of a pending intake permit application, or, for a publicly owned water utility, the safe yield of the utility’s existing or permitted water supply only reservoir, or an amount necessary to recover indebtedness from outstanding bonds or revenue certificates secured by the effective date of this chapter, all or in part, through the pledge of revenue derived from the sale of surface water. An existing surface water withdrawer that applies for an initial permit may continue to withdraw surface water at its documented levels from the effective date of this act until its initial permit is issued pursuant to this section.

(2) For an existing surface water withdrawer, the operational and contingency plan required under Section 49‑4‑170 (A) must address industry best practices using existing installed technology for water conservation.

(3) An existing surface water withdrawer may request that its initial permit allow the surface water withdrawer to withdraw a reasonable amount in excess of the amount provided for in subitem (1). The department must use the criteria established in Section 49‑4‑90 to make its determination concerning approval of the quantity requested in excess of the quantity provided for in subitem (1).

Section 49‑4‑80. (A) ~~A person wilfully violating a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars a day for each violation.~~ An applicant’s compliance with licenses, permits, or certifications, including, but not limited to, water quality certifications issued by the department pursuant to Section 401 of the Clean Water Act, issued by a South Carolina regulatory agency that require the applicant to meet criteria that are substantially similar to the permit issuance criteria contained in this chapter constitutes compliance with the substantially similar permit criteria required to obtain a surface water withdrawal permit. Any criteria required to obtain a surface water withdrawal permit that are not substantially similar to the criteria contained in licenses, permits, or certifications held by an applicant must be considered by the department in the manner provided in this chapter before the permit may be issued.

(B) ~~A violation of a provision of this chapter or a regulation promulgated under the authority of this chapter, renders the violator liable to the State for a civil penalty of not more than one thousand dollars a day for each violation.~~ The department shall issue, upon proper application, a surface water withdrawal permit to an applicant when the:

(1) applicant is in compliance with a valid license, permit, or certification, including, but not limited to, a certification issued pursuant to Section 401 of the Clean Water Act, issued by a regulatory authority that requires the consideration of criteria during the licensing process that are substantially similar to all of the permit criteria contained in this chapter;

(2) license, permit, or certification was issued pursuant to a public process;

(3) department had the opportunity to or did actively participate in aspects of the licensing, permitting, or certification process related to the permit criteria contained in this chapter;

(4) applicant’s proposed withdrawals are within the safe yield of that withdrawal point or impoundment; and

(5) provided that when the permit, license, or certification used in lieu of a permit under this chapter becomes invalid or ineffective in requiring compliance with its terms, the withdrawer must seek authorization or approval under this chapter.

(C) ~~The department may administer penalties as otherwise provided herein for a violation of this chapter, an order, regulation, or standard or may request the Attorney General to commence an action under this subsection in an appropriate court of the State to secure a penalty.~~ The department must develop and use a permit application procedure to issue surface water withdrawal permits to applicants that meet the requirements of this section.

~~(D)~~ ~~The department may cause to be instituted a civil action in any court of applicable jurisdiction 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.~~

Section 49‑4‑90. (A) An application for a surface water withdrawal permit must contain at least the following information:

(1) the name and address of the applicant;

(2) the location of the applicant’s intake facilities;

(3) the place, nature, and purpose of the proposed use of the surface water withdrawn; and

(4) the quantity of surface water requested for the applicant’s proposed use.

(B) To determine whether an applicant’s proposed use is reasonable, the department must first make a determination as to the minimum instream flow or minimum water level for the water source and then consider the following criteria:

(1) the minimum instream flow or minimum water level and the safe yield for the surface water at the location of the proposed surface water withdrawal;

(2) the anticipated effect of the applicant’s proposed use on existing users of the same surface water, including, but not limited to present agricultural, municipal, industrial, electrical generation, and instream users;

(3) the reasonably foreseeable future need for the surface water, including, but not limited to reasonably foreseeable agricultural, municipal, industrial, electrical generation, and instream uses;

(4) the applicant’s reasonably foreseeable future water needs from that surface water;

(5) the beneficial impact on the State and its political subdivisions from a proposed withdrawal;

(6) the impact of industry best practices, including modern technology, on the efficient use of water;

(7) the anticipated effect of the applicant’s proposed use on:

(a) interstate and intrastate water use if the permit is granted;

(b) the detrimental impact of a proposed withdrawal on navigation, fish and wildlife habitat, and recreation;

(c) public health and welfare; and

(d) economic development and the economy of the State;

(8) applicable federal laws and interstate agreements and compacts;

(9) a requirement or recommendation of another state or federal agency with authority relating to water resources; and

(10) other reasonable criteria that the department promulgates by regulation that it considers necessary to make a final determination.

(C) The department may conduct or may require an applicant to conduct appropriate stream modeling to predict the safe yield that may be withdrawn from the surface water.

(D) The department may take action on more than one application at a time that seeks to withdraw water from the same stream segment. However, the final decision for those applications must be rendered in the order that they were received.

(E) Upon a determination by the department that, based upon its examination of the criteria in subsection (B), the applicant’s use is reasonable and within the safe yield, and the proposed withdrawal will not cause water levels to fall below the minimum flow or lake level, the department shall issue a permit to the applicant.

(F)(1) Upon receipt of a new surface water withdrawal permit application or an application to significantly increase the amount of water that may be withdrawn under an existing permit and the appropriate filing fee, the department, within thirty days, must provide the public with notice of the application. In addition to the department’s usual public notice procedures, the department must conspicuously post notice of the application on its website and the applicant must publish notice of the application in a newspaper of statewide circulation and in the local newspaper with the greatest general circulation in the affected area. The public notice must contain the location and amount of the proposed withdrawal, the use for which the water will be withdrawn, and the process for requesting a public hearing concerning the application. If within thirty days of the publication of the public notice the department receives a request to hold a public hearing from at least twenty citizens or residents of the affected area, the department must conduct a hearing. The hearing must be held within ninety days at an appropriate time and in an appropriate location near the specific site from which surface water withdrawals are proposed to be made.

(2) The department shall by regulation delineate and designate river basins to be used when determining the affected area for a particular surface water withdrawal application.

Section 49‑4‑100. (A) Surface water withdrawal permits issued by the department must:

(1) identify the location of the permittee’s intake facility used or constructed to make withdrawals pursuant to the permit;

(2) specify the amount of water that may be withdrawn;

(3) clearly state the permit’s expiration date;

(~~4~~) clearly state that the terms and conditions of the permit are subject to the provisions of the South Carolina Drought Response Act; and

(5) include any other reasonable information the department considers necessary.

(B) Permits issued by the department, unless revoked or suspended pursuant to this chapter, may be issued for:

(1) a period the department considers reasonable based upon its review of all the facts and circumstances relevant to a proposed withdrawal, not to exceed ten years;

(2) a period not to exceed ten years for a permittee entitled to an initial permit pursuant to Section 49‑4‑70(B); or

(3) a period necessary, not to exceed thirty years, for a municipality or other governmental body to recover indebtedness from outstanding bonds or revenue certificates issued to finance the construction of waterworks that were secured all or in part through the pledge of revenue derived from the sale of surface water.

Section 49‑4‑110. (A) A surface water withdrawal permit confers upon the permittee a license to withdraw and use surface water pursuant to the terms and conditions of the permit and this chapter. The permit does not convey a property right in the water to the permittee.

(B) Surface water withdrawals made by permitted surface water withdrawers in compliance with the terms and conditions of their permits and registered users within their registered amounts shall be presumed to be reasonable.

Section 49‑4‑120. (A) The department may modify, suspend, or revoke a permit or registration under the following conditions:

(1) the permit or registration holder withdraws an amount of water not authorized by his permit or registration or fails to comply with the terms and conditions of his permit or registration;

(2) the permit or registration holder obtains a permit or registration by misrepresentation or fails to disclose a material fact in his application;

(3) the permit or registration holder ceases to withdraw water for a period of at least thirty‑six consecutive months; or

(4) when necessary to protect public health or the environment.

(B) Surface water permits are nontransferable except with the prior written consent of the department. The department may only consent to a permit transfer if the transferee uses the permitted withdrawal for the same purpose and the quantity of water to be withdrawn by the transferee is no greater than the transferor’s permitted withdrawal levels.

(C)(1) A permittee may apply for a renewal of his permit no sooner than six months before his permit expires. A permit shall remain valid during the department’s consideration of a renewal application if the permittee files a renewal application prior to the expiration date of his permit.

(2) An application to modify an existing permit for a significant increase in the quantity of the withdrawal must be evaluated using the criteria provided in Section 49‑4‑90(B).

Section 49‑4‑130. A surface water withdrawer must provide the department with prior written notice of the construction of a new surface water intake that changes the method of measuring the water the permittee is withdrawing, cessation of its surface water withdrawals, a proposed change in ownership, or the abandonment of a surface water intake.

Section 49‑4‑140. The department may issue a single temporary surface water withdrawal permit to a applicant while his application is pending if the temporary permit is necessary to address an imminent hazard to public health or the applicant demonstrates that without a temporary permit he will suffer physical or financial damage. A temporary permit must contain an expiration date, which must not be more than one hundred eighty days after the date upon which it was issued. The issuance of a temporary permit does not guarantee that the department will issue a permanent permit to the applicant.

Section 49‑4‑150. (A) For each surface water withdrawal permit application, the department shall establish the minimum instream flow in the surface water segment or the minimum water level in the impoundment from which the withdrawal is to be made. The minimum instream flow for surface water withdrawal points located in the Coastal Plain is presumed to be twenty percent of the mean annual flow for the months of July through November, sixty percent for the months of January through April, and forty percent for the months of May, June, and December for that stream segment. For surface water withdrawal points located in the Piedmont, the minimum instream flow is presumed to be twenty percent of the mean annual flow for the months of July through November, forty percent for the months of January through April, and thirty percent for the months of May, June, and December for that stream segment. For surface water withdrawal points located on a surface water segment immediately downstream of and significantly influenced by a flow controlled impoundment, the minimum instream flow must be no less than the lowest flow specified for normal flow conditions by the appropriate department-certified regulatory authority pursuant to the controlling law in effect at the time of the permit application, as may be amended or superseded. If a withdrawal point located downstream from an impoundment is determined to be outside the influence of the impoundment, minimum instream flow is presumed to be the level or flow outlined for withdrawal points not influenced by an impoundment.

(B) An affected person or a department of the State may seek to have the minimum instream flow or minimum water level set at a site‑specific flow or level different than the flow established for a surface water segment or water level for an impoundment pursuant to subitem (A)(1). The party seeking to set a site‑specific minimum instream flow or water level must provide written notice of its intent to the department and to all parties that have filed comments concerning the proposed water withdrawal permit.

(1) The parties seeking to set a site‑specific minimum instream flow or minimum water level must prepare and present a written scientific rationale to justify the minimum instream flow or minimum water level sought. The parties opposing the proposed site‑specific amount also must prepare and present a justification supporting its position. A party’s justification for its position may be comprised of existing studies, reports, analyses, or other existing scientific data or a new site‑specific study, or both.

(a) In the case of a party seeking a site‑specific minimum instream flow or minimum water level lower than the amount set pursuant to subitem (A)(1), the department must determine whether the lower amount sought is sufficient to maintain the biological, chemical, and physical integrity of the surface water, taking into account downstream uses, navigability, and normal seasonal variations in flow and need.

(b) In the case of a party seeking a minimum flow or minimum water level higher than the amount set pursuant to subitem (A)(1) for that stream segment or water level for that impoundment, the department must determine whether the higher minimum flow or level sought is necessary to maintain the biological, chemical and physical integrity of the surface water, taking into account downstream uses, navigability, and normal seasonal variations in flow and need.

(2) In reaching a decision, the department must base its decision upon the entire record, taking into account anything in the record that detracts from the weight of the decision, and must be supported by evidence that a reasonable mind might accept as adequate to support the decision. The department must provide all affected persons who submit written comments notice by registered mail providing a detailed written explanation of the department decision, and ensure that notice is promptly posted on the department’s website and be available upon demand at the department’s main office.

(3) If the department concurs with the justification presented by the applicant, then the minimum instream flow or minimum water level will be set at the requested site‑specific level.

(C) When performing mass balance calculations to determine the amount of water available to be withdrawn by future surface water withdrawers in a particular stream segment, the department shall determine the inflow at the beginning of the stream segment, as well as, the inflow from tributaries, based upon the historical flow in the segment. Also, the department shall account for all returns of water to the stream segment from all sources, including, but not limited to, municipalities, utilities, and industry.

Section 49‑4‑160.(A) A permittee must prepare and maintain on site, available for inspection, an operational and contingency plan to promote an adequate water supply from the surface water during times when the actual flow of the surface water is less than the minimum instream flow for that particular surface water. The plan must provide an implementation strategy of selected alternatives to address low flow conditions, including water conservation, alternative water supplies, off‑stream water storage, seasonal water flow fluctuation withdrawals, and hydroelectric operations in controlled surface waters. The existence of a plan is considered an enforceable part of the permit under which the permittee is withdrawing surface water and is considered to control a permitted surface water withdrawal in situations where the actual flow of the surface water is less than the minimum instream flow for that particular stream segment.

(B) Nothing in this section limits or precludes an action authorized by the South Carolina Drought Response Act. In the event that an action authorized by the South Carolina Drought Response Act conflicts with this subsection or a permitted use, the action taken pursuant to the South Carolina Drought Response Act supersedes an action taken pursuant to this subsection or the permit.

Section 49‑4‑170. (A) In addition to other powers and duties, the department may:

(1) promulgate regulations necessary to implement the policies and purposes of this chapter;

(2) enter upon any land or water of an applicant, a permittee, or a registered user for the purpose of conducting investigations, examinations, or surveys necessary to carry out its duties and responsibilities provided in this chapter;

(3) receive financial and technical assistance from private entities, the federal government, or another state agency; and

(4) take any action reasonable and necessary to enforce the provisions of this chapter.

(B) The appropriate state agencies must carry out ongoing data collection, surveys, research, and investigations into the availability and quantity of surface water and report their findings to the General Assembly on an annual basis.

(C)(1) The department may negotiate agreements, accords, or compacts on behalf of and in the name of the State with other states or the United States, or both, with any agency, department, or commission of either, or both, relating to transfers of water that impact waters of this State, or are connected to or flowing into waters of this State, unless the Governor selects another representative to negotiate for the State. The department may also represent the State in connection with water withdrawals, diversions, or transfers occurring in other states which may affect this State, unless the Governor selects another representative for the State. Any agreements, accords, or compacts made pursuant to this section must be approved by concurrent resolution of the General Assembly prior to being implemented. The provisions in this section do not apply to the Office of Attorney General or any pending or future criminal or civil actions, lawsuits, or causes in which the State is a party or interested.

(2) The department must notify the Chairman of the Senate Agriculture and Natural Resources Committee and the Chairman of the House Agriculture, Natural Resources, and Environmental Affairs Committee when the department enters into negotiations or otherwise represents the State as provided in subsection (1). The department must also periodically report, as necessary or upon request, to the chairmen concerning the progress of the negotiations or representation.

Section 49‑4‑180. (A) A surface water withdrawer who commits a violation of this chapter:

(1) is subject to a civil penalty of not more than ten thousand dollars for each day that the violation occurred; or

(2) is guilty of a misdemeanor, and upon conviction, must be fined not more than three thousand dollars for each day that the violation occurred, if the violation is willful.

(B) All penalties and fines assessed and collected pursuant to this chapter must be deposited in the South Carolina general fund.”

SECTION 2. Section 48‑2‑30(B) of the 1976 Code is amended by adding an appropriately numbered subitem to read:

“( ) Surface Water Withdrawal, Permitting, Use, and Reporting Act.”

SECTION 3. Section 48‑2‑50(H) of the 1976 Code is amended by adding:

“(8) Surface Water Withdrawals

(a) Section 49‑4‑70 surface water withdrawal permit application processing fee $5,000.00

(b) Section 49‑4‑40 surface water withdrawal permit application processing fee $2,500.00”

SECTION 4. Chapter 1, Title 49 is not affected and supersedes Chapter 4, Title 49 as amended by Section 1 of this act.

SECTION 5. The General Assembly finds this act does not supersede, modify, amend, or otherwise effect the public trust doctrine in the context of surface water resources within the borders of this State as recognized and applied by the courts of this State.

SECTION 6. (A) The repeal or amendment by this act of any law, whether temporary or permanent, does not affect pending actions, rights, duties, or liabilities founded on it, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision expressly provides it. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws. Any state agency, board, commission, or council to which are transferred the powers, duties, and functions of any state agency, board, commission, or council relating to the pending proceeding must be substituted as a party in interest.

(B) Any statute enacted and any rule or regulation made in respect to any state agency, board, commission, or council or function transferred to, or consolidated, coordinated, or combined with any other state agency, board, commission, or council or function under the provisions of this act before the effective date of the transfer, consolidation, coordination, or combination, except to the extent repealed, modified, superseded, or made inapplicable by or under the authority of law, shall have the same effect as if the transfer, consolidation, coordination, or combination had not been made. But when any such statute, rule, or regulation has vested functions in the state agency, board, commission, or council from which the transfer is made under the act, the functions, insofar as they are to be exercised after the transfer, must be considered as vested in the state agency, board, commission, or council to which the transfer is made under the act.

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 8. This act takes effect January 1, 2010.

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