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CHAPTER 14

The Stormwater Management and Sediment Reduction Act

**SECTION 48‑14‑10.** Short title.

 This chapter may be cited as the “Stormwater Management and Sediment Reduction Act”.

HISTORY: 1991 Act No. 51, Section 2.

**SECTION 48‑14‑20.** Definitions.

 As used in this chapter:

 (1) “Department” means the South Carolina Department of Health and Environmental Control.

 (2) “District” means any soil and water conservation district created pursuant to Chapter 9 of this title.

 (3) “Local government” means any county, municipality, or any combination of counties or municipalities, acting through a joint program pursuant to the provisions of this chapter.

 (4) “Implementing agency” means the department, local government, or conservation district with the responsibility for receiving stormwater management and sediment control plans for review and approval, reviewing plans, issuing permits for land disturbing activities, and conducting inspections and enforcement actions in a specified jurisdiction.

 (5) “Responsible personnel” means any foreman, superintendent, or similar individual who is the on‑site person in charge of land disturbing activities.

 (6) “Designated Watershed” means a watershed designated by a local government and approved by the Department of Health and Environmental Control and identified as having an existing or potential stormwater, sediment control, or nonpoint source pollution problem.

 (7) “Erosion” means the wearing away of land surface by the action of wind, water, gravity, ice, or any combination of those forces.

 (8) “Land disturbing activity” means any use of the land by any person that results in a change in the natural cover or topography that may cause erosion and contribute to sediment and alter the quality and quantity of stormwater runoff.

 (9) “Person” means an individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, electric supplier, municipality, interstate body, the federal government, or other legal entity.

 (10) “Sediment” means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, ice, or gravity from its site of origin.

 (11) “Stormwater management” means, for:

 (a) quantitative control, a system of vegetative or structural measures, or both, that control the increased volume and rate of stormwater runoff caused by manmade changes to the land;

 (b) qualitative control, a system of vegetative, structural, or other measures that reduce or eliminate pollutants that might otherwise be carried by stormwater runoff.

 (12) “Stormwater Management and Sediment Control Plan” means a set of drawings, other documents, and supporting calculations submitted by a person as a prerequisite to obtaining a permit to undertake a land disturbing activity, which contains all of the information and specifications required by an implementing agency.

 (13) “Stormwater runoff” means direct response of a watershed to precipitation and includes the surface and subsurface runoff that enters a ditch, stream, storm sewer, or other concentrated flow during and following the precipitation.

 (14) “Stormwater utility” means an administrative organization that has been created for the purposes of planning, designing, constructing, and maintaining stormwater management, sediment control, and flood control programs and projects.

 (15) “Watershed master plan” means a plan for a designated watershed that analyzes the impact of existing and future land uses and land disturbing activities in the entire watershed and includes strategies to reduce nonpoint source pollution, to manage stormwater runoff and control flooding. The plan must be developed for the entire watershed, regardless of political boundaries, and must include appropriate physical, institutional, economic, and administrative data needed to justify the plan.

 (16) “Subdivision”, unless otherwise defined in an ordinance adopted by a local government pursuant to Section 6‑7‑1010, means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions, or parcels less than five acres, for the purpose, whether immediate or future, of sale, legacy, or building development, or includes all division of land involving a new street or a change in existing streets, and includes resubdivision and, where appropriate, in the context, shall relate to the process of subdividing or to the land or area subdivided;

 (17) “Person responsible for the land disturbing activity” means:

 (a) the person who has or represents having financial or operational control over the land disturbing activity; and/or

 (b) the landowner or person in possession or control of the land who directly or indirectly allowed the land disturbing activity or has benefited from it or who has failed to comply with any provision of the act, these regulations, or any order or local ordinance adopted pursuant to this chapter as imposes a duty upon him.

 (18) “Nonpoint source pollution” means pollution contained in stormwater runoff from ill‑defined diffuse sources.

 (19) “Stop work order” means an order directing the person responsible for the land disturbing activity to cease and desist all or any portion of the work which violates the provisions of this chapter.

HISTORY: 1991 Act No. 51, Section 2; 1993 Act No. 181, Section 1205.

**SECTION 48‑14‑30.** Restriction of land‑disturbing activities generally.

 (A) 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.

 (B) Each person responsible for the land disturbing activity shall certify, on the stormwater management and sediment control plan submitted, that all land disturbing activities will be done according to the approved plan.

 (C) All approved land disturbing activities must have associated therein at least one individual who functions as responsible personnel.

HISTORY: 1991 Act No. 51, Section 2.

**SECTION 48‑14‑40.** Certain land‑disturbing activities exempt from provisions of chapter.

 The provisions of this chapter do not apply to the following land disturbing activities:

 (A) Land disturbing activities on agricultural land for production of plants and animals useful to man, including but not limited to: forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats, including the breeding and grazing of these animals; bees and dairy products; fur animals and aquaculture, except that the construction of an agricultural structure of one or more acres, such as broiler houses, machine sheds, repair shops, and other major buildings and which require the issuance of a building permit shall require the submittal and approval of a stormwater management and sediment control plan prior to the start of the land disturbing activity.

 (B) Land disturbing activities undertaken on forest land for the production and harvesting of timber and timber products.

 (C) Activities undertaken by persons who are otherwise regulated by the provisions of Chapter 20 of this title, the South Carolina Mining Act.

 (D) Construction or improvement of single family residences or their accessory buildings which are separately built and not part of multiple construction in a subdivision development.

 (E) Land disturbing activities, other than activities identified in subsection (F) of this section, that are conducted under another state or federal environmental permitting, licensing, or certification program where the state or federal environmental permit, license, or certification is conditioned on compliance with the minimum standards and criteria developed under this chapter.

 (F) Any of the following land disturbing activities undertaken by any person who provides gas, electrification, or communications services, subject to the jurisdiction of the South Carolina Public Service Commission, or corporations organized and operating pursuant to Section 33‑49‑10 et seq.:

 (1) land disturbing activities conducted pursuant to a certificate of environmental compatibility and public convenience and necessity issued pursuant to Title 58, Chapter 33 or land disturbing activities conducted pursuant to any other certification or authorization issued by the Public Service Commission;

 (2) land disturbing activities conducted pursuant to a federal environmental permit, including Section 404 of the Federal Clean Water Act, and including permits issued by the Federal Energy Regulatory Commission;

 (3) land disturbing activities associated with emergency maintenance or construction of electric, gas, or communications facilities, when necessary to restore service or when the Governor declares the area to have sustained a disaster and the actions are undertaken to protect the public from a threat to health or safety;

 (4) land disturbing activities associated with routine maintenance and/or repair of electric, gas, or communications lines;

 (5) land disturbing activities associated with the placement of poles for overhead distribution or transmission of electric energy or of communications services;

 (6) land disturbing activities associated with placement of underground lines for distribution or transmission of electric energy or of gas or communications services; or

 (7) land disturbing activities conducted by a person filing environmental reports, assessments, or impact statements with the United States Department of Agriculture, Rural Electrification Administration in regard to a project.

 Any person, other than a person identified in subparagraph (7), who undertakes land disturbing activities described in subparagraphs (4), (5), and (6) of this subsection must file with the South Carolina Public Service Commission, in a Policy and Procedures Manual, the procedures it will follow in conducting such activities. Any person, other than a person identified in subparagraph (7), who conducts land disturbing activities described in subparagraph (2) of this subsection, must address the procedures it will follow in conducting the activities in the Policy and Procedures Manual filed with the South Carolina Public Service Commission to the extent that the land disturbing activities are not specifically addressed in the federal permit or permitting process. If any person, other than a person identified in subparagraph (7), does not have a Policy and Procedures Manual on file with the Public Service Commission, such manual must be filed with the Public Service Commission not later than six months after May 27, 1992.

 Any person who undertakes land disturbing activities described in subparagraph (7) of this subsection shall give the same written notice to the department as given to agencies whose permits are required for project approval by the regulations of the United States Department of Agriculture, Rural Electrification Administration.

 (G) Activities relating to the routine maintenance and/or repair or rebuilding of the tracks, rights‑of‑way, bridges, communication facilities and other related structures and facilities of a railroad company.

 (H) Activities undertaken on state‑owned or managed lands that are otherwise regulated by the provisions of Chapter 18 of this title, the Erosion and Sediment Reduction Act.

 (I) Activities undertaken by local governments or special purpose or public service districts relating to the repair and maintenance of existing facilities and structures.

HISTORY: 1991 Act No. 51, Section 2; 1993 Act No. 181, Section 1206.

**SECTION 48‑14‑50.** Stormwater Management and Sediment Reduction Program; development and general provisions; regulations.

 (A) The department shall develop a State Stormwater Management and Sediment Reduction Program.

 (B) In carrying out this chapter, the department shall:

 (1) provide technical and other assistance to local governments and others in implementing this chapter;

 (2) require that appropriate stormwater management and sediment control provisions be included in all stormwater management and sediment control plans developed pursuant to this chapter;

 (3) cooperate with appropriate agencies of this State, the United States, other states, or any interstate agency with respect to stormwater management and sediment control;

 (4) conduct studies and research regarding the causes, effects, and hazards of stormwater and sediment and methods to control stormwater runoff and sediment;

 (5) conduct and supervise educational programs with respect to stormwater management and sediment control;

 (6) require the submission to the department of records and periodic reports by implementing agencies as may be necessary to carry out this chapter;

 (7) establish a means of communications, such as a newsletter, so that information regarding program development and implementation can be distributed to interested individuals;

 (8) assist conservation districts and local governments involved in the local stormwater management and sediment control program; and

 (9) develop a schedule for implementing this chapter in the counties and municipalities of this State.

 (C) The department shall promulgate regulations, minimum standards, guidelines, and criteria necessary to carry out the provisions of this chapter with input from the South Carolina Erosion and Sediment Reduction Advisory Council, appointed by the Governor, in consultation with the South Carolina Association of Special Purpose Districts, and the South Carolina Municipal Association, and a task force of technical experts appointed by the department. The regulations must include, but are not limited to:

 (1) criteria for the delegation of program elements and review and revocation of delegated program elements;

 (2) appeal procedures for local governments requesting delegation of program elements;

 (3) types of activities that require a stormwater management and sediment control permit;

 (4) waivers, exemptions, variances, and appeals;

 (5) stormwater management and sediment control plan application or inspection fees;

 (6) criteria for distribution of funds collected by sediment and stormwater plan approval and inspection fees;

 (7) criteria for implementation of a stormwater management utility;

 (8) specific design criteria and minimum standards and specifications;

 (9) permit application and approval requirements;

 (10) specific enforcement options;

 (11) criteria for approval of designated watersheds;

 (12) criteria regarding correction of off‑site damages resulting from the land disturbing activity;

 (13) construction inspections;

 (14) maintenance requirements for sediment control during construction and stormwater management structures after construction is completed;

 (15) procedures to accept and respond to citizen complaints on delegated program components and individual site problems; and

 (16) a schedule for implementing this chapter considering such factors as demographics, growth and development, and state and local resources.

 (D) These regulations promulgated for carrying out the stormwater management and sediment control program must:

 (1) be based upon relevant physical and developmental information concerning the watershed and drainage basins of the State, including but not limited to, data relating to land use, soils, hydrology, geology, grading, ground cover, size of land area being disturbed; and

 (2) contain conservation standards for various types of soils and land uses, which standards must include criteria and alternative techniques and methods for the control of erosion, sediment, and stormwater runoff resulting from land disturbing activities.

 (E) The department may amend, modify, or repeal these regulations in accordance with the provisions of the Administrative Procedures Act.

HISTORY: 1991 Act No. 51, Section 2; 1993 Act No. 181, Section 1207.

**SECTION 48‑14‑60.** Delegation of stormwater management and sediment control to local governments; programs for land‑disturbing activities conducted by federal or local governments or for cross‑jurisdictional activities.

 (A) The department may delegate any or all components of stormwater management and sediment control programs to a local government or conservation district pursuant to regulations promulgated by the department.

 (B) Requests for delegation of program elements must be submitted within six months of the promulgation of the applicable state regulation, and by January first of subsequent years if delegation is desired at a future date. The department shall approve, approve with modification, or deny such a request on or before April first of the year for which delegation is sought.

 (C) Delegation, once applied for, becomes effective on July first and may not exceed three years, at which time delegation renewal is required.

 (D) A local government may develop the program in cooperation with conservation districts.

 (E) In the event a local government does not adopt and request approval of a stormwater management and sediment control program within its jurisdiction, the local conservation district may adopt a program in conjunction with subdivision regulations, if applicable, and submit it to the department for approval.

 (F) The department has jurisdiction, to the exclusion of other implementing agencies, for the purpose of adopting the components of a sediment control and stormwater management program for land disturbing activities that are:

 (1) conducted by the United States;

 (2) conducted by persons having the power of eminent domain for land disturbing activities which cross jurisdictional boundaries;

 (3) conducted by local governments.

HISTORY: 1991 Act No. 51, Section 2; 1993 Act No. 181, Section 1208.

**SECTION 48‑14‑70.** Review of local government programs; approval, modification, disapproval.

 (A) Any local government that has adopted a stormwater management and/or sediment control program before May 27, 1992 may request approval of any or all components of its existing program within its jurisdiction. This request must be submitted within six months of the promulgation of the applicable state regulation. The review and approval, approval with modification, or disapproval of these existing programs must be given priority by the department. The local government shall continue to administer its existing programs during the review process by the department. The review must include consideration of the efficiency and effectiveness of the existing program in meeting the intent of this chapter.

 (B) The department shall approve a program upon determining that its standards equal or exceed those of this chapter. The department shall only modify the portions of a program which do not meet the minimum standards of this chapter.

 (C) If a local government’s request for approval of one or more components of an existing stormwater management or sediment control is not approved by the department, the local government may appeal the department’s action following the procedures detailed in the Administrative Procedures Act.

HISTORY: 1991 Act No. 51, Section 2; 1993 Act No. 181, Section 1209.

**SECTION 48‑14‑80.** Conduct of regulated activity by federal agency; requirement of approval by commission.

 One year after May 27, 1992, a federal agency may not undertake any regulated activity unless the agency has submitted a stormwater management and sediment control plan to the department and received its approval. The only variation to this requirement is when program elements are delegated by the department to a federal agency.

HISTORY: 1991 Act No. 51, Section 2; 1993 Act No. 181, Section 1210.

**SECTION 48‑14‑85.** Conduct of regulated activity by local government or special purpose or public service district; permit and approval by commission.

 After May 27, 1992, a local government or special purpose or public service district may not undertake any regulated activity unless the local government or special purpose or public service district has submitted a request for a general permit to the department and received its approval.

HISTORY: 1991 Act No. 51, Section 2; 1993 Act No. 181, Section 1211.

**SECTION 48‑14‑90.** Oversight by commission; inspection; compliance, enforcement, and penalties.

 (A) With respect to approved stormwater management and sediment control plans, the implementing agency shall ensure that periodic reviews are undertaken, implementation is accomplished in accordance with the approved plans, and the required measures are functioning in an effective manner. Notice of right of entry must be included in the stormwater management and sediment control plan certification. The implementing agency may request assistance from the department.

 (B) The request for assistance from the department may initiate an inspection to verify site conditions. That inspection may result in the following actions:

 (1) notification by the implementing agency to the person responsible for the land disturbing activity to comply with the approved plan within a specified time;

 (2) notification by the implementing agency that the required measures are not functioning in an effective manner with a schedule for the person responsible for the disturbing activity to maintain the required measures or install additional measures which will be effective in controlling stormwater runoff and off‑site sediment movement.

 (C) Failure of the person responsible for the land disturbing activity to comply with department requirements may result in the following actions in addition to other penalties as provided in this chapter:

 (1) The department may request that the appropriate implementing agency issue a stop work order until the violations have been remedied.

 (2) The department may request that the appropriate implementing agency refrain from issuing any further building or grading permits to the person having outstanding violations until those violations have been remedied.

 (3) The department may recommend fines to be levied by the implementing agency.

HISTORY: 1991 Act No. 51, Section 2; 1993 Act No. 181, Section 1212.

**SECTION 48‑14‑95.** Right of entry for inspection; issuance of stop work order and notification of chapter requirements in event of noncompliance.

 (A) The implementing agency shall have the right of entry for the purpose of determining if a land disturbing activity is being conducted without an approved stormwater management and sediment control plan, conducting inspections and taking enforcement actions.

 (B) Upon inspection, if the implementing agency determines that a land disturbing activity is taking place without an approved stormwater management and sediment control plan, the implementing agency shall post a stop work order at the site of the land disturbing activity and shall notify the person responsible for the land disturbing activity of the requirements to submit a stormwater management and sediment control plan to the implementing agency and receive approval prior to resuming the land disturbing activity and the requirement to correct all violations.

HISTORY: 1991 Act No. 51, Section 2.

**SECTION 48‑14‑100.** Protection of already disturbed areas; notice to comply.

 (A) All disturbed areas which exist on May 27, 1992 as a result of land disturbing activity and which result in off‑site damage from sediment and stormwater runoff, must be provided with ground cover or other protective measures, structures, or devices sufficient to control offsite sediment and nonpoint source pollution.

 (B) The implementing agency shall serve a notice to comply upon the landowner or other person in possession or control of the land by depositing in the mail a certified letter. The notice must state the measures needed and the time allowed for compliance. The implementing agency shall consider the economic feasibility, technological expertise, and quality of work required, and shall establish reasonable time limits.

HISTORY: 1991 Act No. 51, Section 2.

**SECTION 48‑14‑110.** Educational programs.

 The department, in conjunction with local governments and districts and other appropriate state and federal agencies, shall conduct educational programs in stormwater management and sediment control for state and local government officials, persons engaged in land disturbing activities, interested citizen groups, and others.

HISTORY: 1991 Act No. 51, Section 2; 1993 Act No. 181, Section 1213.

**SECTION 48‑14‑120.** Authority of implementing agencies to accept assistance; fee system to fund programs; establishment of stormwater utilities.

 (A) The implementing agencies are authorized to receive from federal, state, or other public or private sources financial, technical, or other assistance for use in accomplishing the purposes of this chapter.

 (B) The implementing agency has authority to adopt a fee system to help fund program administration. A fee system may be adopted by the implementing agency to help to fund overall program management, plan review, construction review, enforcement actions, and maintenance responsibilities. In those situations where the department becomes the implementing agency, the department may assess a plan review and inspection fee. Fees must be based upon the costs to the implementing agency to implement and administer the program. The implementing agency is granted authority to expend the funds it collects from the fee system to administer the provisions of this chapter. The department shall not assess a local government a plan review and inspection fee.

 (C) Authority is granted to local governments to establish a stormwater utility. The stormwater utility may fund such activities as watershed master planning, facility retrofitting, and facility maintenance. This funding shall occur through the establishment of a fee system or tax assessment that must be reasonable and equitable. Criteria for the implementation of the stormwater utility must be established in regulations promulgated under this chapter. The implementation of a stormwater utility will necessitate the adoption of a local utility ordinance prior to its implementation.

HISTORY: 1991 Act No. 51, Section 2; 1993 Act No. 181, Section 1214.

**SECTION 48‑14‑130.** Watershed master plan.

 (A) 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 master plan which includes nonpoint source pollution control, stormwater management, and flood control components. The watershed master plan for the designated watershed must contain the following information:

 (1) stormwater quantity or quality problem identification;

 (2) the overall condition and needs of the watershed, not just the additional impacts of new development activities;

 (3) alternative approaches to address the existing and future problems;

 (4) a defined approach which includes the overall costs and benefits;

 (5) a schedule for implementation;

 (6) funding sources and amounts; and

 (7) a public involvement process which includes the establishment of a local watershed advisory committee and public hearing prior to approval by the department.

 (B) Upon approval of the watershed master plan, all projects undertaken in the designated watershed must have stormwater management and nonpoint source pollution control requirements placed upon them that are consistent with the designated watershed master plan.

HISTORY: 1991 Act No. 51, Section 2; 1993 Act No. 181, Section 1215.

**SECTION 48‑14‑140.** Civil penalties for violations.

 (A) Any person who violates any provision of this chapter or any ordinance or regulation promulgated, enacted, adopted, or issued pursuant to this chapter by the department or other implementing agency, or who initiates or continues a land disturbing activity for which a stormwater management and sediment control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty of not more than one thousand dollars. No penalty may be assessed until the person alleged to be in violation has been notified of the violation. Each day of a violation constitutes a separate violation.

 (B) The implementing agency shall determine the amount of the civil penalty to be assessed under this section for violations under its jurisdiction. It shall make written demand for payment upon the person responsible for the violation and set forth in detail the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within thirty days after demand for payment is made, a civil action may be filed in the circuit court in the county in which the violation is alleged to have occurred to recover the amount of the penalty. If the implementing agency is the department, the action must be brought in the name of the State. Local governments shall refer the matters under their jurisdiction to their respective attorneys for the institution of a civil action in the name of the local government in the circuit court in the county in which the violation is alleged to have occurred for recovery of the penalty.

HISTORY: 1991 Act No. 51, Section 2; 1993 Act No. 181, Section 1216.

**SECTION 48‑14‑150.** Injunctive relief.

 (A) When the implementing agency has reasonable cause to believe that any person is violating or is threatening to violate the requirements of this chapter, it may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action for injunctive relief to restrain the violation or threatened violation. The action must be brought in the circuit court of the county in which the violation or threatened violation is occurring or about to occur.

 (B) Upon determination by the court that an alleged violation is occurring or is threatened, it shall enter the order necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under subsection (A) of this section does not relieve any party to the proceeding from any civil penalty prescribed for violations of this chapter.

HISTORY: 1991 Act No. 51, Section 2.

**SECTION 48‑14‑160.** No liability for damages on part of governmental body or employee; no relief from obligations and liabilities arising from land‑disturbing activity.

 Nothing contained in this chapter and no action or failure to act under this chapter may be construed:

 (1) to impose any liability on the State, department, districts, local governments, or other agencies, officers, or employees thereof for the recovery of damages caused by such action or failure to act; or

 (2) to relieve the person engaged in the land disturbing activity of the duties, obligations, responsibilities, or liabilities arising from or incident to the operations associated with the land disturbing activity.

HISTORY: 1991 Act No. 51, Section 2; 1993 Act No. 181, Section 1217.

**SECTION 48‑14‑170.** Department to promulgate regulations.

 The department shall promulgate regulations necessary to implement Chapter 14, Title 48 of the 1976 Code added by this act.

HISTORY: 1991 Act No. 51, Section 4; 1993 Act No. 181, Section 1218.