CHAPTER 35

Neglected or Abandoned Orchards

**SECTION 46‑35‑10.** When trees constitute public nuisances.

 Neglected or abandoned apple, grape, kiwi, nectarine, peach, pear, or plum orchards which, because of their infestation with pests, or because of other conditions, constitute a menace to the fruitgrowing industry of the State, or which are host plants of or provide a favorable and likely harbor for pests, are public nuisances and it is unlawful to maintain them. All remedies which are or may be given for the prevention or abatement of nuisances apply to the orchards. Whenever the State Crop Pest Commission determines by inspection that there exists a condition which constitutes a nuisance on any property within its jurisdiction, it shall report the property to the circuit solicitor, naming the pests or other conditions which in its opinion are dangerous to the fruitgrowing industry and if its findings justify it, state in the report that the removal or destruction of the neglected or abandoned orchard trees are the best means for elimination of the menace.

 The State Crop Pest Commission through its designee, the Division of Regulatory and Public Service Programs, may promulgate regulations to implement the provisions of this chapter.

HISTORY: 1962 Code Section 3‑141; 1952 Code Section 3‑141; 1947 (45) 246; 1985 Act No. 48 Section 1; 1989 Act No. 80, Section 1, eff May 15, 1989.

**SECTION 46‑35‑15.** Definitions.

 For the purposes of this chapter:

 (1) "Orchard" means an area that has five or more fruit trees, wild or cultivated, for commercial purposes. Only those areas that have actual abandoned or neglected trees, as defined below, within one‑half mile of an active tree of the fruitgrowing industry will be considered an orchard under this chapter.

 (2) "Active tree" means a tree being cultivated by the fruitgrowing industry for the commercial production of fruit, whether or not that tree has reached the fruit‑bearing age. It does not include those trees too old to be productive economically.

 (3) "Fruitgrowing industry" means an area or tree dedicated by the owner to the active production of fruit to be sold commercially. This definition does not apply to fruit produced for casual roadside sales unless the activity is an integral part of a business, part‑time or full‑time, of the grower nor does it include a person who sells his homegrown surplus fruit whenever his production outperforms his personal use.

 (4) "Neglected" or "abandoned" refers to orchards where two or more conditions of standard orchard management practices as described in state and regional publications are not being met and one or more pests, pathogens, diseases, conditions of economic consequence to the particular crop being grown.

 (5) "Commission" means the South Carolina State Crop Pest Commission or its designee, the Division of Regulatory and Public Service Programs.

HISTORY: 1989 Act No. 80, Section 2, eff May 15, 1989.

**SECTION 46‑35‑20.** Petition for removal or destruction of trees.

 Within twenty days from the time the circuit solicitor receives from the Commission a report, he shall prepare from the report and from the findings in it a petition to the circuit court of the county where the orchard is located for an order for the removal or destruction of the neglected or abandoned orchard trees. The petition shall set forth a description of the property, the name of the owner or person in charge or possession of the property and the name of the pest or other conditions which constitute a menace to the fruit growing industry of the State.

HISTORY: 1962 Code Section 3‑142; 1952 Code Section 3‑142; 1947 (45) 246; 1985 Act No. 48 Section 2.

**SECTION 46‑35‑30.** Citation to show cause against removal or destruction.

 Upon the filing of such petition, a citation shall be issued by the court, requiring the owner or person in charge or possession of the property to appear at a time and place specified to show cause why such neglected or abandoned apple or peach trees should not be removed or destroyed.

HISTORY: 1962 Code Section 3‑143; 1952 Code Section 3‑143; 1947 (45) 246.

**SECTION 46‑35‑40.** Service of citation.

 A copy of the citation, together with a copy of the petition, shall be served upon the record owner or upon the person in charge or in possession of the property, or upon an agent of either, not less than ten days before the date specified in the citation. A copy of the citation, together with a copy of the petition, may also be served upon any person who appears of record to be the owner of any encumbrance upon or interest in the property. The service may be personal, by delivery to the party on whom service is required to be made, or it may be made as follows:

 If the party resides within the county, service may be made by leaving a copy of the citation, together with a copy of the petition, at the residence of the party between the hours of eight in the morning and six in the evening with some person not less than eighteen years of age. If at the time of attempted service between said hours no such person can be found at the residence of the party, service may be made by mail. If the party does not reside within the county, service may be made by mail, if he resides or has his office at a place where there is a delivery service by mail and, if not or if his residence is not known, service may be made by posting a copy of the citation, together with a copy of the petition, in a conspicuous place on the property at least twenty days before the date specified in the citation.

HISTORY: 1962 Code Section 3‑144; 1952 Code Section 3‑144; 1947 (45) 246.

**SECTION 46‑35‑50.** Order for removal or destruction of trees; service.

 On the day the citation is returnable the case shall have precedence of all matters except injunctions, older matters over the same character, and matters otherwise given precedence by law. The court shall decide whether or not the neglected or abandoned orchard trees must be destroyed or removed. If the court finds that the removal or destruction of the neglected or abandoned orchard trees is necessary for the welfare of the fruitgrowing industry of the State, it shall order the removal or destruction of the neglected or abandoned orchard trees within thirty days. The order must be served by the Commission, or by any person deputized by it, upon the owner, if he can be found or upon the person in charge or possession of the property. If the owner or person in charge or possession of the property cannot be found the order must be served by posting it in a conspicuous place upon the property. Upon petition by the owner and a showing that the owner has commenced the removal or destruction process and is proceeding in good faith, the circuit judge may allow a reasonable extension of time for the owner to complete the removal or destruction process.

HISTORY: 1962 Code Section 3‑145; 1952 Code Section 3‑145; 1947 (45) 246; 1985 Act No. 48 Section 3.

**SECTION 46‑35‑60.** Destruction or removal of trees when owner fails to do so.

 If the owner fails to remove and destroy the condemned orchard trees within the time limit prescribed by the circuit court, the court shall designate an appropriate agency of the State to remove and destroy the trees. The costs of the action by the State must be charged to the owner of the property and the State shall have a lien upon the real estate to secure the payment.

HISTORY: 1962 Code Section 3‑146; 1952 Code Section 3‑146; 1947 (45) 246; 1985 Act No. 48 Section 4.

**SECTION 46‑35‑70.** Enforcement.

 The Commission and the law enforcement officers of the State and all counties thereof are charged with the carrying out of the true enforcement of this chapter.

HISTORY: 1962 Code Section 3‑147; 1952 Code Section 3‑147; 1947 (45) 246.

**SECTION 46‑35‑80.** Disclosure requirements relative to sale of orchards.

 If a property owner sells a portion or all of an orchard he must disclose to the buyer in writing on or before the completion of the sale of the property that a nuisance exists or may exist regarding the orchard or such portion of the orchard, that the property is subject to the provisions of this chapter, and that the buyer may be required to take or pay for certain corrective actions in connection with the orchard or such portion of the orchard, if it is abandoned or becomes neglected, pursuant to the provisions of this chapter. The seller must also notify the commission of the sale of the orchard, and the buyer's acknowledgement of receipt of the written notice must be affixed to the notice.

HISTORY: 1989 Act No. 80, Section 3, eff May 15, 1989.