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CHAPTER 21.

 INTERBASIN TRANSFER OF WATER

**SECTION 49‑21‑10.** Definitions.

For purposes of this chapter:

(1) “Department” or “DHEC” means the South Carolina Department of Health and Environmental Control;

(2) “River basin” means the area drained by a river and its tributaries or through a specified point on a river, as determined in subsection (7) of Section 49‑21‑60;

(3) “Receiving river basin” means a river basin which is the recipient of an increase in water, over and above that occurring naturally, as the result of a diversion or transfer of water from a different river basin;

(4) “Losing river basin” means a river basin which sustains a decrease in water as the result of a diversion or transfer of water to a different river basin and there is no significant return of the water to the river basin of origin;

(5) “Person” means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, federal or state governmental agencies, or private or public corporations organized under the laws of this State or any other state or country.

(6) “Board” means the board of the department.

**SECTION 49‑21‑20.** Permit required for certain transfers.

Following the effective date of this chapter, no person shall withdraw, divert, pump, or cause directly the transfer of either five percent of the seven‑day, ten‑year low flow, or one million gallons or more of water a day on any day, whichever is less, from one river basin and use or discharge all or any part of the water in a different river basin unless the person shall first obtain a permit from the department.

**SECTION 49‑21‑30.** Application procedure; criteria; permit specifications; actions for loss of water rights.

A. The department may grant, deny, or issue with conditions as to quantity or qualities of water, a permit to any person for any interbasin transfer of water upon application for a permit, opportunity for public comment, and a hearing before the department, if the department finds the criteria in subsections B, C, D, and E are met.

B. The applicant shall specify the location of all collection, withdrawal, and transportation facilities and additional information as the department may require. The department shall publish notice of the permit application once a week for four consecutive weeks in a newspaper of general circulation in each river basin area to be affected by the transfer; the department shall publish the notice in the State Register; and the department shall provide notice to each holder of an interbasin water transfer permit within the proposed losing river basin by mailing a notice by registered or certified mail, return receipt requested.

C. In making its determination whether transfer may be permitted, the department shall:

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

(2) Protect water quality of the losing river basin.

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

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

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

(6) Consider the nature of the permittee’s use of the water, to determine whether the use is reasonable and beneficial.

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

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

(9) Consider impact on interstate water use.

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

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

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

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

D. (a) In addition to the requirements in subsection C. of this section, the department shall not issue a transfer permit except upon certification by the department that the proposed interbasin transfer of water shall neither:

(1) Violate the water classification standard system regulation or the stream classification regulation, nor

(2) Adversely affect the public health and welfare. Through its certification DHEC shall insure the protection of the water quality and health of the losing river basin and shall insure the protection of the present and permitted assimilative needs of the losing river basin. DHEC shall use data from stream modeling and instream sampling in making its certification. DHEC may issue a certification with conditions which must be made part of any permit issued pursuant to this chapter.

(b) The department may not deny an interbasin transfer permit on the basis of water quality when it has certified that the water quality of the losing basin or the receiving basin is not adversely affected.

E. In order to protect the water uses of the losing river basin, the department, in determining the amount of water to be approved, may conduct or have conducted instream sampling and stream modeling to predict the volumes of water which may be transferred. Transferable amounts may vary to accommodate seasonal water conditions in the losing river basin. No transfer of water may be permitted at any time which shall cause the remaining flow in the losing river basin to be less than the statistical low flow that occurs for seven consecutive days, once every ten years as established prior to the interbasin transfer.

F. The permit shall specify the location of all collection, withdrawal, transmission, and discharge facilities to be used or constructed to effect the interbasin transfer and shall specify the amount or amounts which can be withdrawn. The permit shall require that the interbasin transfer shall cease or decrease when the actual flow of the losing basin is less than a specified minimum required to protect against adverse effects to the basin. The permit shall further require that the permittee comply with other requirements as may be advisable to promote an adequate water supply for the State and to mitigate any adverse conditions or effects which the department finds exist, but are not sufficient to require denial of the permit.

G. Any riparian landowner or person legally exercising rights to use water, suffering material injury for the loss of water rights as a consequence of an interbasin transfer shall have a cause of action against the water transferor in the court of common pleas of the county in which the water transfer originates to recover all provable damages for loss of riparian rights including increases in operating costs, lost production, or other damages directly caused him by the interbasin transfer; provided, however, this subsection G does not apply to transfers authorized under item (2) of subsection A of Section 49‑21‑50; provided, further, the immediately preceding proviso may not be construed to abridge or alter causes of actions in the civil courts under the common law or statutory laws existing prior to the effective date of this chapter and any such cause of action against the water transferor must be brought in the court of common pleas of the county in which the transfer originates. The burden of proof is on the person alleging damages.

**SECTION 49‑21‑40.** Duration of permits; modification, suspension, or revocation; renewal; transfer.

A. No permit under Section 49‑21‑20 may be issued for a longer period than the longest of the following, unless the applicant requests a shorter period:

(1) twenty years; or

(2) a period found by the department to be reasonable based upon review of all relevant facts and circumstances pertaining to the proposed water transfer but for a period no longer than forty years.

B. The department may modify, suspend, or revoke any water transfer permit, including authority to transfer water pursuant to Section 49‑21‑50, for good cause consistent with the following procedures:

(1) Before any permit may be modified, suspended, or revoked the department shall give the permittee notice of the proposed action and afford the permittee an opportunity for a hearing before the board. Any hearing must be conducted pursuant to the South Carolina Administrative Procedures Act (Act 176 of 1977).

(2) All hearings under this section must be before an Administrative Law Judge.

(3) A full and complete record of all proceedings at any hearing under this chapter must be taken by a reporter appointed by the by an Administrative Law Judge or by other method approved by the Attorney General. Any party to a proceeding is entitled to a copy of the record upon the payment of the reasonable cost as determined by the Administrative Law Judge.

(4) The burden of proof at any hearing under this subsection B is upon the moving party.

(5) Any appeal of the decision by the Administrative Law Judge shall be made to the board pursuant to the provisions of the Administrative Procedures Act.

(6) Judicial review and stays of enforcement of the decision of the board must be pursuant to the South Carolina Administrative Procedures Act, but any petition for judicial review or stay of the decision of the board must be filed in the circuit court in the county in which the subject permitted water transfer originates.

C. Permits may be renewed following their expiration upon a full review of all factors considered issuing a permit for the first time.

D. Permits may not be transferred except with the approval of the department.

**SECTION 49‑21‑50.** Pre‑existing transfer operations; relation of chapter to other regulatory provisions.

A. Any person diverting or transferring or having substantially under construction facilities to divert or transfer five percent of the seven‑day, ten‑year low flow or one million gallons or more of water a day from one river basin and using or discharging all or any part of the water in a different river basin on the effective date of this chapter may continue the transfer subject to the following conditions:

(1) The transfer must be registered with the department within six months of the effective date of this chapter.

(2) The total amount of the transfer daily shall not exceed the larger of (i) the capacity of the facilities used to transfer water on December 1, 1984, or (ii) facilities to transfer water substantially under construction on December 1, 1984, or (iii) any water withdrawal project under contract approved by the Federal Energy Regulatory Commission prior to December 1, 1984.

(3) Any increase in water transferred over the amount authorized in item (2) of this section must be reviewed and permitted in accordance with Section 49‑21‑20.

(4) In any event, a transfer authorized under this section must be reviewed under the criteria of Section 49‑21‑30 upon the occurrence of any of the following conditions:

(i) the cessation of the transfer for any reason for a continuous period of three years;

(ii) following a period from the effective date of this chapter no longer than the longest of the following:

(a) twenty years, or

(b) a period found by the department to be reasonable based upon review of all relevant facts and circumstances pertaining to the existing water transfer, but the period may be not longer than forty years, or

(c) for existing transfers pursuant to item (2) of subsection A of Section 49‑21‑50, upon conclusion of the maximum useful life of the transfer facilities or water withdrawal project under contract not to exceed forty years from December 1, 1984.

B. The provisions of this chapter shall take precedence over any other state regulatory provision pertaining to the subject of this chapter.

**SECTION 49‑21‑60.** Promulgation of regulations; designation of river basins.

A. The department may promulgate regulations to carry out the intent of this chapter including, but not limited to, the following:

(1) Development of applications.

(2) The conduct of public hearings to be conducted at the discretion of the department.

(3) Provisions to ensure public notice of applications and submission of comments from the public.

(4) Coordination of comments from interested state agencies.

(5) Provisions to identify persons who may be adversely affected by a water transfer and allowing any of the persons to be heard by the department prior to final action on a permit application.

(6) Provisions requiring special conditions on any permit necessary to protect the health, safety, or welfare of losing or receiving river basins.

(7) The department shall by regulation delineate and designate river basins. In undertaking this task, the department shall initially establish fifteen river basins, including the watershed of each of the following fifteen rivers or river systems:

(a) Upper Savannah;

(b) Lower Savannah;

(c) Saluda;

(d) Broad;

(e) Congaree;

(f) Catawba‑Wateree;

(g) Lynches;

(h) Pee Dee;

(i) Little Pee Dee;

(j) Black;

(k) Waccamaw;

(l) Lower Santee;

(m) Edisto;

(n) Ashley‑Cooper;

(o) Combahee‑Coosawhatchie.

Prior to any designation or delineation of any additional river basins, they must first be approved by act of the General Assembly.

**SECTION 49‑21‑70.** Criminal penalties; injunctive relief.

A. Any person violating any provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars nor more than ten thousand dollars for each violation. In addition, if any person is adjudged to have committed a violation of this chapter wilfully, the court may determine that each day during which the violation continued constitutes a separate offense.

B. Upon violation of any of the provisions of this chapter, or the regulations of the department, the director may, either before or after the institution of criminal proceedings, institute a civil action in the circuit court in the name of the State for injunctive relief. Neither the institution of the actions nor any of the proceedings relating to them shall relieve any party to the proceedings from the penalty prescribed by this chapter for any violation of the provisions of this chapter.

**SECTION 49‑21‑80.** Negotiation of agreements; representation of State.

The board is empowered to 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 those waters. Any interstate compacts made by the board by authority of this chapter are subject to approval by concurrent resolution of the General Assembly. The board is further empowered to represent this State in connection with water withdrawals, diversions, or transfers occurring in other states which may affect this State.