CHAPTER 1

Pollution Control Act

**SECTION 48‑1‑10.** Short title; definitions.

 This chapter may be cited as the “Pollution Control Act” and, when used herein, unless the context otherwise requires:

 (1) “Person” means any individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever;

 (2) “Waters” means lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction;

 (3) “Marine district” means the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the State;

 (4) “Sewage” means the water‑carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present and the admixture with sewage of industrial wastes or other wastes shall also be considered “sewage”;

 (5) “Industrial waste” means any liquid, gaseous, solid or other waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business or from the development of any natural resources;

 (6) “Other wastes” means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, clay, lime, cinders, ashes, offal, oil, gasoline, other petroleum products or by‑products, tar, dye stuffs, acids, chemicals, dead animals, heated substances and all other products, by‑products or substances not sewage or industrial waste;

 (7) “Pollution” means (1) the presence in the environment of any substance, including, but not limited to, sewage, industrial waste, other waste, air contaminant, or any combination thereof in such quantity and of such characteristics and duration as may cause, or tend to cause the environment of the State to be contaminated, unclean, noxious, odorous, impure or degraded, or which is, or tends to be injurious to human health or welfare; or which damages property, plant, animal or marine life or use of property; or (2) the man‑made or man‑induced alteration of the chemical, physical, biological and radiological integrity of water;

 (8) “Standard” or “standards” means such measure of purity or quality for any waters in relation to their reasonable and necessary use as may after hearing be established;

 (9) “Department” means the Department of Health and Environmental Control;

 (10) “Sewage system” or “sewerage system” means pipelines and conductors, pumping stations, force mains and all other construction, devices and appliances appurtenant thereto used for conducting sewage, industrial waste or other wastes to a point of ultimate discharge;

 (11) “Treatment works” means any plant, disposal field, lagoon, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other wastes;

 (12) “Disposal system” means a system for disposing of sewage, industrial waste or other wastes, including sewerage systems and treatment works;

 (13) “Outlet” means the terminus of a sewer system or the point of emergence of any water‑borne sewage, industrial waste or other wastes, or the effluent therefrom, into the waters of the State;

 (14) “Shellfish” means oysters, scallops, clams, mussels and other aquatic mollusks and lobsters, shrimp, crawfish, crabs and other aquatic crustaceans;

 (15) “Ambient air” means that portion of the atmosphere outside of buildings and other enclosures, stacks, or ducts which surrounds human, plant, or animal life, water or property;

 (16) “Air contaminant” means particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof produced by processes other than natural;

 (17) “Source” means any and all points of origin of air contaminants whether privately or publicly owned or operated;

 (18) “Undesirable level” means the presence in the outdoor atmosphere of one or more air contaminants or any combination thereof in sufficient quantity and of such characteristics and duration as to be injurious to human health or welfare, or to damage plant, animal or marine life, to property or which unreasonably interfere with enjoyment of life or use of property;

 (19) “Emission” means a release into the outdoor atmosphere of air contaminants;

 (20) “Environment” means the waters, ambient air, soil and/or land;

 (21) “Effluent” means the discharge from a waste disposal system;

 (22) “Effluent limitations” means restrictions or prohibitions of chemical, physical, biological, and other constituents which are discharged from point sources into State waters, including schedules of compliance;

 (23) “Point source” means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel, or other floating craft, from which pollutants are or may be discharged.

HISTORY: 1962 Code Section 63‑195; 1952 Code Section 70‑101; 1950 (45) 2153; 1965 (54) 687; 1970 (56) 2512; 1973 (58) 788; 1975 (59) 241.

Editor’s Note

2012 Act No. 198, Sections 4 and 5, provide as follows:

“SECTION 4. (A) There is created the ‘Isolated Wetlands and Carolina Bays Task Force’ to review, study, and make recommendations concerning issues related to isolated wetlands and Carolina Bays in South Carolina. The task force shall be comprised of the following members:

“(1) the Chairman of the Senate Agriculture and Natural Resources Committee, ex officio, or his designee, who shall serve as chairman;

“(2) the Chairman of the House of Representatives Agriculture, Natural Resources and Environmental Affairs Committee, ex officio, or his designee, who shall serve as vice chairman;

“(3) one member representing the South Carolina Chamber of Commerce;

“(4) one member representing the Coastal Conservation League;

“(5) one member representing the Conservation Voters of South Carolina;

“(6) one member representing the South Carolina Association of Realtors;

“(7) one member representing the South Carolina Association of Homebuilders, upon consultation with the South Carolina Association of General Contractors;

“(8) one member representing the South Carolina Farm Bureau;

“(9) one member representing the South Carolina Manufacturer’s Alliance;

“(10) one member representing the South Carolina Chapter of the Sierra Club;

“(11) one member representing the South Carolina Wildlife Federation;

“(12) one member representing the Environmental Law Project; and

“(13) one member representing the utilities industry.

“(B) The task force shall meet as soon as practicable after the effective date of this act for organizational purposes.

“(C) The members of the task force shall serve without compensation and may not receive mileage or per diem.

“(D) Vacancies on the task force shall be filled in the same manner as the original appointment.

“(E) The task force shall compile a comprehensive inventory of existing data and information regarding Carolina Bays and isolated wetlands in South Carolina. The inventory, as far as possible, must identify the number, distribution, size, description, and characteristics of the Carolina Bays and isolated wetlands throughout the State. The task force also must compile a glossary of standard terms and definitions used when describing Carolina Bays and isolated wetlands, their various types, and characteristics.

“(F) During its review and study of Carolina Bays and isolated wetlands, and in its findings and recommendations, the task force shall consider at least:

“(1) the biological, hydrological, ecological, and economic values and services of Carolina Bays and isolated wetlands;

“(2) prior disturbances of Carolina Bays and isolated wetlands and the cumulative impacts of disturbances to isolated wetlands and their functions;

“(3) methods to avoid adverse impact on Carolina Bays and isolated wetlands;

“(4) methods to minimize adverse impact on Carolina Bays and isolated wetland functions that can be avoided;

“(5) manners of compensation for any loss of Carolina Bays and isolated wetland functions that cannot be avoided or minimized;

“(6) methods to provide public notice of wetlands permitting applications;

“(7) the utility of using a general permitting program for Carolina Bays and isolated wetlands disturbance, where practical;

“(8) the proper balance between the economic development value of a proposed permitted activity and the impact on Carolina Bays and isolated wetlands;

“(9) achieving a goal of ‘no net loss’ wetlands;

“(10) concerning proposals to impact Carolina Bays and isolated wetlands, including those appearing to be geographically isolated, the aggregate benefits and services of similarly situated wetlands in the watershed should be considered;

“(11) concerning mitigation for Carolina Bays and isolated wetland impacts, whether a watershed based approach should be followed in order to replace wetland functions and services where they are most needed in the impacted watershed; and

“(12) whether, and the extent to which, the standards used by the Department of Health and Environmental Control in evaluating discharges to federal wetlands can and should be used for non‑federal wetlands.

“(G) The task force shall make a report of its findings and recommendations related to Carolina Bays to the General Assembly on or before January 1, 2013. The task force shall make a report of its findings and recommendations related to isolated wetlands on or before July 1, 2013, at which time the study committee terminates.

“(H) The staffing for the task force must be provided by the appropriate committees or offices of the Senate and House of Representatives. The task force may utilize staff of other government agencies with relevant issue area expertise upon request.

“SECTION 5. The term ‘permit’ as used in the Pollution Control Act is inclusive and intended to mean all permits, certifications, determinations, or other approvals required by law issued by the department, consistent with the definition of ‘license’ as found in Chapter 23, Title 1 of the Administrative Procedures Act.”

CROSS REFERENCES

Applicability of this section to provisions regarding civil penalties for violations of permit conditions and regulations of public entities which operate water treatment, water distribution, and wastewater treatment systems, see Section 6‑11‑285.

Causing or permitting pollution of environment prohibited, remedies, see Section 48‑1‑90.

Financing of Environmental Scholars Endowment Fund through deposit of fines and penalties collected pursuant to this chapter, see Section 59‑111‑720.

Hazardous Waste Contingency Fund, see Sections 44‑56‑160 et seq.

Hazardous Waste Management Act, see Sections 44‑56‑10 et seq.

Individual residential well and irrigation well permitting, see S.C. Code of Regulations R. 61‑44.

Solid waste management regulations, see S.C. Code of Regulations R. 61‑107 et seq.

Regulations pertaining to the Title V operating permit program, see S.C. Code of Regulations R. 61‑62.70.1 et seq.

Power of counties and incorporated municipalities to enter into agreements to construct and operate pollution control facilities and to make loan agreements, issue bonds and accept grants for such facilities, see Sections 48‑3‑10 et seq.

Development of subdivision water supply and sewer treatment/disposal systems, see S.C. Code of Regulations R. 61‑57.

Licensing of onsite wastewater system master contractors, see S.C. Code of Regulations R. 61‑56.2.100 et seq.

Environmental electronic reporting requirements, see S.C. Code of Regulations R. 61‑115.

Library References

Environmental Law 13, 161, 241.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 101, 106, 130 to 132, 163 to 164, 172 to 173.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 83, Argument in the Briefs.

S.C. Jur. Banks and Banking Section 179, Environmental Regulations.

S.C. Jur. Poisons Section 12, Environmental Regulation.

S.C. Jur. Public Nuisance Section 6, Acts Authorized by Law as Not Constituting Public Nuisance.

Forms

Am. Jur. Pl. & Pr. Forms Waters Section 121 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

Actions For Damages For Air Pollution Injury. 23 S.C. L. Rev. 818.

Advice from environmental consultants: How to achieve competent, comprehensive and understandable results from environmental audits. 41 S.C. L. Rev. 887 (Summer 1990).

Air Pollution: Causes, Effects, and Control. 25 S.C. L. Rev. 737.

Insurance coverage for superfund claims: Are response costs recoverable damages? 41 S.C. L. Rev. 871 (Summer 1990).

Lender liability under the Comprehensive Environmental Response, Compensation and Liability Act. 41 S.C. L. Rev. 705 (Summer 1990).

Lender limbo: The perils of environmental lender liability. 41 S.C. L. Rev. 855 (Summer 1990).

Liabilities of landlords and tenants under CERCLA. 41 S.C. L. Rev. 815 (Summer 1990).

Pollution Control Practice in South Carolina—An Overview. 23 S.C. L. Rev. 723.

Pollution of the Marine Environment From Outer Continental Shelf Oil Corporations. 22 S.C. L. Rev. 228.

The private plaintiff’s prima facie case under CERCLA section 107. 41 S.C. L. Rev. 833 (Summer 1990).

Private property rights yield to the environmental crisis: Perspectives on the public trust doctrine. 41 S.C. L. Rev. 897 (Summer 1990).

Reducing the environmental impact of CERCLA. 41 S.C. L. Rev. 765 (Summer 1990).

The Role of the Court in Protecting the Environment—A Jurisprudential Analysis. 23 S.C. L. Rev. 93.

The Suffolk syndrome: A case study in public nuisance law. 40 S.C. L. Rev. 379 (Winter 1989).

Understanding the new era in environmental law. 41 S.C. L. Rev. 733 (Summer 1990).

Attorney General’s Opinions

While the Pollution Control Act contains no specific authority for DHEC to consider environmental compliance histories and records of applicants when they apply for permits, the Infectious Waste Management Act allows DHEC to consider prior criminal convictions or contempt of court adjudications. Similarly, the Solid Waste Policy and Management Act allows DHEC to consider a continuing history of criminal convictions or violations of environmental laws. 1994 Op. Atty Gen, No. 94‑29, p. 71.

Title to marshlands is presumed to be in the State; payment of taxes on marshlands, the title to which is in the State, constitutes a voluntary payment with no attendant rights; marshlands may be fresh, brackish, or salt water; the boundary to a marshland is the high water mark. 1974‑75 Op. Atty Gen, No. 4099, p 178.

NOTES OF DECISIONS

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1. In general

Nowhere in the Soil Conservation Act are the supervisors of Cherokee County Soil Conservation District given any jurisdiction over pollution of streams or other waters of the State. Their classification and the regulation of the purity and quality of the water have been committed solely to the Pollution Control Authority, a division of the State Health Department. Camp v. Board of Public Works of City of Gaffney (S.C. 1961) 238 S.C. 461, 120 S.E.2d 681.

2. Construction with tort Claims Act

The Pollution Control Act, rather than the Tort Claims Act, was the controlling chapter in a case involving a city’s wrongful discharge of wastewater into a river. Although the Tort Claims Act was enacted subsequent to the Pollution Control Act, the latter was the more specific statute under the facts of the case and would take precedence over the more general statute, the Tort Claims Act. Furthermore, there is no language in the Tort Claims Act which either expressly or implicitly negates any of the provisions of the Pollution Control Act. City of Rock Hill v. South Carolina Dept. of Health and Environmental Control (S.C. 1990) 302 S.C. 161, 394 S.E.2d 327.

3. Wetlands

Landowner failed to comply with all of its legal obligations prior to filling in isolated wetlands by discharging “orange sand” into the wetlands located on its lot without first obtaining a Department of Health and Environmental Control (DHEC) permit. Georgetown County League of Women Voters v. Smith Land Co., Inc. (S.C. 2011) 393 S.C. 350, 713 S.E.2d 287. Environmental Law 136

Department of Health and Environmental Control’s (DHEC) authority under the coastal management program included isolated wetlands. Georgetown County League of Women Voters v. Smith Land Co., Inc. (S.C. 2011) 393 S.C. 350, 713 S.E.2d 287. Environmental Law 135

**SECTION 48‑1‑20.** Declaration of public policy.

 It is declared to be the public policy of the State to maintain reasonable standards of purity of the air and water resources of the State, consistent with the public health, safety and welfare of its citizens, maximum employment, the industrial development of the State, the propagation and protection of terrestrial and marine flora and fauna, and the protection of physical property and other resources. It is further declared that to secure these purposes and the enforcement of the provisions of this chapter, the Department of Health and Environmental Control shall have authority to abate, control and prevent pollution.

HISTORY: 1962 Code Section 63‑195.1; 1952 Code Section 70‑102; 1950 (46) 2153; 1970 (56) 2512.

CROSS REFERENCES

Pollution and poisoning of waters to injure or catch fish, see Sections 50‑13‑1410 et seq.

Library References

Environmental Law 13, 161, 241.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 101, 106, 130 to 132, 163 to 164, 172 to 173.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, environmental law. 42 S.C. L. Rev. 103 (Autumn 1990).

Attorney General’s Opinions

Discussion of Section 1 of 2015‑2016 S. 229, which proposes that there be no private right of action under the Pollution Control Act. S.C. Op.Atty.Gen. (May 19, 2016) 2016 WL 3097464.

NOTES OF DECISIONS

In general 1

1. In general

State’s regulation of use by restaurant owner of his property was legitimate exercise of its police power, rather than unreasonable taking of property. State has substantial interest in maintaining reasonable standards of purity of air and water resources, and agency charged with administering Pollution Control Act is authorized to take action to abate, control, and prevent pollution of air and water resources of state consistent with public health, safety, and welfare of its citizens. South Carolina Dept. of Health and Environmental Control v. Armstrong (S.C.App. 1987) 293 S.C. 209, 359 S.E.2d 302.

Board of Health and Environmental Control has authority to order municipality to acquire, by condemnation or negotiation, 2 private sewer systems or in alternative to allow owners of private sewer systems to connect to municipalities’ sewer system. City of Columbia v. Board of Health and Environmental Control (S.C. 1987) 292 S.C. 199, 355 S.E.2d 536.

**SECTION 48‑1‑30.** Promulgation of regulations; approval of alternatives.

 The Department shall promulgate regulations to implement this chapter to govern the procedure of the Department with respect to meetings, hearings, filing of reports, the issuance of permits and all other matters relating to procedure. The regulations for preventing contamination of the air may not specify any particular method to be used to reduce undesirable levels, nor the type, design, or method of installation or type of construction of any manufacturing processes or other kinds of equipment. Except where the Department determines that it is not feasible to prescribe or enforce an emission standard or standard of performance, it may, by regulation, specify equipment, operational practice, or emission control method, or combination thereof. The Department may grant approval for alternate equipment, operational practice, or emission control method, or combination thereof, where the owner or operator of a source can demonstrate to the Department that such alternative is substantially equivalent to that specified.

HISTORY: 1962 Code Section 63‑195.6; 1952 Code Section 70‑108; 1950 (46) 2153; 1965 (54) 687; 1970 (56) 2512; 1978 Act No. 557, Section 1.

CROSS REFERENCES

Environmental electronic reporting requirements, see S.C. Code of Regulations R. 61‑115.

Conditions applicable to all land application permits and state permits, see S.C. Code of Regulations R. 61‑9.505.41.

Chemical accident prevention provisions, see S.C. Code of Regulations R. 61‑62.68.

National Emission Standards for Hazardous Air Pollutants (NESHAP) for source categories, see S.C. Code of Regulations R. 61‑62.63.

National Pollutant Discharge Elimination System, conditions applicable to all permits, see S.C. Code of Regulations R. 61‑9.122.41.

Regulations pertaining to acid rain, see S.C. Code of Regulations R. 61‑62.72.

Standards for wastewater facility construction, see S.C. Code of Regulations R. 61‑67.100 et seq.

Operation and maintenance of satellite sewer systems, see S.C. Code of Regulations R. 61‑9.610.1 et seq.

Library References

Environmental Law 13, 16, 217, 291.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 101, 105 to 106, 109, 130 to 133, 135, 163 to 164, 172 to 173.

United States Supreme Court Annotations

Environmental law, clean water provision mandating use of best technology available, cost‑benefit analysis in promulgating regulations for water intake structures, see Entergy Corp. v. Riverkeeper, Inc., 2009, 129 S.Ct. 1498, 556 U.S. 208, 173 L.Ed.2d 369.

Attorney General’s Opinions

A Cherokee County ordinance which would prohibit the disposal of industrial solid waste in a disposal site previously permitted by the South Carolina Department of Health and Environmental Control would be construed as void if challenged in the Courts of the State of South Carolina. 1975‑76 Op. Atty Gen, No 4520, p 381.

Notes of Decisions

In general 1

1. In general

As part of a National Pollutant Discharge Elimination System (NPDES) permitting decision, Department of Health and Environmental Control (DHEC) applies regulations it administers pursuant to the NPDES Program, regulations controlling stormwater runoff, and regulations encompassing Water Classification and Standards. Deerfield Plantation Phase II B Property Owners Ass’n v. South Carolina Dept. of Health and Environmental Control (S.C. 2015) 414 S.C. 170, 777 S.E.2d 817. Environmental Law 196

**SECTION 48‑1‑40.** Adoption of standards for water and air.

 The Department, after public hearing as herein provided, shall adopt standards and determine what qualities and properties of water and air shall indicate a polluted condition and these standards shall be promulgated and made a part of the rules and regulations of the Department. The Department, in determining standards and designing the use of streams shall be guided by the provisions of this chapter.

HISTORY: 1962 Code Section 63‑195.7; 1952 Code Section 70‑109; 1950 (46) 2153; 1970 (56) 2512.

CROSS REFERENCES

Department of Health and Environmental Control regulations pertaining to the National Pollutant Discharge Elimination System, see S.C. Code of Regulations R. 61‑9.122.1 et seq.

Department of Health and Environmental Control regulations pertaining to land application permits and state permits, see S.C. Code of Regulations R. 61‑9.505.1 et seq.

Library References

Environmental Law 187, 217, 256, 291.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 130, 133, 163 to 164, 172.

NOTES OF DECISIONS

In general 1

1. In general

The Pollution Control Authority is authorized after public hearings to adopt standards and to determine what qualities and properties of water and air shall indicate a polluted condition. Harper v. Schooler (S.C. 1972) 258 S.C. 486, 189 S.E.2d 284.

**SECTION 48‑1‑50.** Powers of department.

 The Department may:

 (1) Hold public hearings, compel attendance of witnesses, make findings of fact and determinations and assess such penalties as are herein prescribed;

 (2) Hold hearings upon complaints or upon petitions in accordance with Section 48‑1‑140 or as otherwise provided in this chapter;

 (3) Make, revoke or modify orders requiring the discontinuance of the discharge of sewage, industrial waste or other wastes into any waters of the State, or the discharge of air contaminants into the ambient air so as to create an undesirable level, resulting in pollution in excess of the applicable standards established. Such orders shall specify the conditions and time within which such discontinuance must be accomplished;

 (4) Institute or cause to be instituted, in a court of competent jurisdiction, legal proceedings, including an injunction, to compel compliance with the provisions of this chapter or the determinations, permits and permit conditions and orders of the Department. An injunction granted by any court shall be issued without bond;

 (5) Issue, deny, revoke, suspend or modify permits, under such conditions as it may prescribe for the discharge of sewage, industrial waste or other waste or air contaminants or for the installation or operation of disposal systems or sources or parts thereof; provided, however, that no permit shall be revoked without first providing an opportunity for a hearing;

 (6) Conduct studies, investigations and research with respect to pollution abatement, control or prevention. Such studies shall include but not be limited to, air control, sources, disposal systems and treatment of sewage, industrial waste or other wastes, by all scientific methods and, if necessary, of the use of mobile laboratories;

 (7) Settle or compromise any action or cause of action for the recovery of a penalty or damages under this chapter as it may deem advantageous to the State;

 (8) Cooperate with the governments of the United States or other states or State agencies or organizations, official or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements;

 (9) Prepare and develop a general comprehensive program for the abatement, control and prevention of air and water pollution;

 (10) Require to be submitted to it and consider for approval plans for disposal systems or sources or any parts thereof and inspect the construction thereof for compliance with the approved plans;

 (11) Administer penalties as otherwise provided herein for violations of this chapter, including any order, permit, regulation or standards;

 (12) Accept, receive and administer grants or other funds or gifts for the purpose of carrying out any of the purposes of this chapter; accept, receive and receipt for Federal money given by the Federal government under any Federal law to the State of South Carolina for air or water control activities, surveys or programs;

 (13) Encourage voluntary cooperation by persons, or affected groups in restoration and preservation of a reasonable degree of purity of air and water;

 (14) Collect and disseminate information on air or water control;

 (15) Approve projects for which applications for loans or grants under the Federal Water Pollution Control Act or the Federal Air Quality Act are made by any municipality (including any city, town, district, or other public body created by or pursuant to the laws of this State and having jurisdiction over disposal of sewage, industrial wastes or other wastes) or agency of this State or by an interstate agency;

 (16) Participate through its authorized representatives in proceedings under the Federal Water Pollution Control Act or the Federal Air Quality Act to recommend measures for abatement of water pollution originating in this State;

 (17) Take all action necessary or appropriate to secure to this State the benefits of the Federal Water Pollution Control Act or the Federal Air Quality Act and any and all other Federal and State acts concerning air and water pollution control;

 (18) Consent on behalf of the State to request by the Federal Security Administrator to the Attorney General of the United States for the bringing of suit for abatement of such pollution;

 (19) Consent to the joinder as a defendant to such suit of any person who is alleged to be discharging matter contributing to the pollution, abatement of which is sought in such suit;

 (20) Conduct investigations of conditions in the air or waters of the State to determine whether or not standards are being contravened and the origin of materials which are causing the polluted condition;

 (21) Establish the cause, extent and origin of damages from waste including damages to the fish, waterfowl, and other aquatic animals and public property which result from the discharge of wastes to the waters of the State;

 (22) Require the owner or operator of any source or disposal system to establish and maintain such operational records; make reports; install, use, and maintain monitoring equipment or methods; sample and analyze emissions or discharges in accordance with prescribed methods, at locations, intervals, and procedures as the Department shall prescribe; and provide such other information as the Department reasonably may require;

 (23) Adopt emission and effluent control regulations, standards and limitations that are applicable to the entire State, that are applicable only within specified areas or zones of the State, or that are applicable only when a specified class of pollutant is present;

 (24) Enter at all times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to pollution or the possible pollution of the environment of the State. Its authorized agents may examine and copy any records or memoranda pertaining to the operation of a disposal system or source that may be necessary to determine that the operation thereof is in compliance with the performance as specified in the application for a permit to construct; provided, however, that if such entry or inspection is denied or not consented to, and no emergency exists, the Department is empowered to and shall obtain from the magistrate from the jurisdiction in which such property, premise or place is located, a warrant to enter and inspect any such property, premise or place prior to entry and inspection. The magistrate of such jurisdiction is empowered to issue such warrants upon a proper showing of the needs for such entry and inspection. The results of any such inspection and investigation conducted by the Department shall be reduced to writing and a copy shall be furnished to the owner or operator of the source or disposal system; and

 (25) Issue orders prohibiting any political entity having the authority to issue building permits from issuing such permits when the political entity has been ordered to correct a condition which has caused or is causing pollution. Provided, that no such order shall be issued until the State is capable of participating in Federal, State and local cost‑sharing arrangements for municipal waste treatment facilities as set forth in the Clean Water Restoration Act of 1966.

HISTORY: 1962 Code Section 63‑195.8; 1952 Code Sections 70‑110, 70‑111; 1950 (46) 2153; 1965 (54) 687; 1969 (56) 764; 1970 (56) 2512; 1973 (58) 788; 1974 (58) 2334; 1975 (59) 241.

CROSS REFERENCES

Total maximum daily loads for pollutants in water, see S.C. Code of Regulations R. 61‑110.

Regulations governing the National Pollutant Discharge Elimination System, see S.C. Code of Regulations R. 61‑9.122.1 et seq.

Federal Aspects

Federal Water Pollution Control Act, see 33 U.S.C.A. Sections 1251 et seq.

Federal Air Quality Act, see 42 U.S.C.A. Sections 7401 et seq.

Library References

Environmental Law 2, 14, 162, 215, 242, 289.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 101, 105 to 106, 109, 130 to 133, 135 to 140, 150, 163 to 164, 172 to 173.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, environmental law. 40 S.C. L. Rev. 125 (Autumn 1988).

Attorney General’s Opinions

Administrative inspection warrants issued pursuant to Sections 44‑53‑1390, 44‑53‑500, and 48‑1‑50(24) are distinguishable from search warrants, and, therefore, are not required to conform to search warrant forms as approved by the State Attorney General’s Office pursuant to Section 17‑13‑160 of the Code. 1987 Op. Atty Gen, No. 87‑29, p 87.

The Pollution Control Authority of South Carolina is authorized to form a technical advisory committee to aid and assist the Authority in all matters necessary to properly administer the provisions of the Pollution Control Act. 1965‑66 Op. Atty Gen, No. 2007, p 68.

NOTES OF DECISIONS

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1. In general

Board of Health and Environmental Control has authority to order municipality to acquire, by condemnation or negotiation, 2 private sewer systems or in alternative to allow owners of private sewer systems to connect to municipalities’ sewer system. City of Columbia v. Board of Health and Environmental Control (S.C. 1987) 292 S.C. 199, 355 S.E.2d 536.

The Pollution Control Authority is authorized to abate, control and prevent pollution as defined therein so as to maintain reasonable standards of purity of the air and water resources of the State consistent with the public health, safety and welfare of its citizens, maximum employment, the industrial development and protection of terrestrial and marine flora and fauna, and the protection of physical property and other resources. It is given authority after public hearings to adopt standards and to determine what qualities and properties of water and air shall indicate a polluted condition. Harper v. Schooler (S.C. 1972) 258 S.C. 486, 189 S.E.2d 284.

2. Construction with other statutes

There is no conflict between the Pollution Control Act and the Uniform Act Regulating Traffic such as to imply that the Pollution Control Act repealed the “no parking” provisions of the Uniform Act Regulating Traffic. Helfrich v. Brasington Sand & Gravel Co. (S.C. 1977) 268 S.C. 236, 233 S.E.2d 291.

Provisions of Pollution Control Act, Code 1962 Section 63‑195.8 [Code 1976 Section 48‑1‑50], which enable testers employed by the Pollution Control Authority to sample and test waters, do not justify the employee’s parking his testing van on a bridge near the sample site, in violation of Code 1962 Section 46‑483 [Code 1976 Section 56‑5‑2530]. Helfrich v. Brasington Sand & Gravel Co. (S.C. 1977) 268 S.C. 236, 233 S.E.2d 291.

3. Issuance of permit

Developer had an effective certification from the Department of Health and Environmental Control (DHEC) under the Clean Water Act that any discharge into navigable waters from its property, which contained some jurisdictional wetlands that it intended to fill when it constructed apartment complex, would be consistent with federal and state water quality standards; Army Corps of Engineers determined that the project still met the conditions of nationwide wetlands permit after developer subsequently informed the Corps that it intended to dredge and excavate a pond, there was no contention that the dredging and excavation would result in a discharge into a navigable water, and the certification that DHEC issued for the nationwide wetlands permit satisfied the water quality certification for a wetlands permit. Town of Arcadia Lakes v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2013) 404 S.C. 515, 745 S.E.2d 385. Environmental Law 136

The general conditions for water quality certification under the Clean Water Act require the Department of Health and Environmental Control (DHEC) to review the overall project proposed by a single owner/developer, includes all land within the project bound under single ownership, and is not confined to the land area directly impacted by each nationwide permit request. Town of Arcadia Lakes v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2013) 404 S.C. 515, 745 S.E.2d 385. Environmental Law 195

The Department of Health and Environmental Control (DHEC) was not required to issue to a utility a permit to construct a sewer line connecting a subdivision to a city’s waste water treatment plant where the utility’s plans were not consistent with the areawide waste water treatment management plan, even though the utility claimed that conformance with the areawide plan was not required because discharge from the project would be directed solely to the city and a DHEC regulation provides that no discharge permit is necessary if the discharge is directed solely to a publicly‑owned treatment work. The fact that a discharge permit is unnecessary is irrelevant to the question of whether DHEC is required to issue a construction permit which will conflict with an areawide waste water treatment management plan. Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 1989) 301 S.C. 224, 391 S.E.2d 535.

4. Suspension or revocation of permit

Department of Health and Environmental Control does not have statutory, regulatory or federal authority to suspend or revoke 401 Water Quality Certification after it has been granted by agency and appeals process expired. Triska v. Department of Health and Environmental Control (S.C. 1987) 292 S.C. 190, 355 S.E.2d 531.

A corporation’s permit to operate a waste disposal system was properly revoked by the South Carolina Department of Health and Environmental Control under Section 48‑1‑50(5) where the corporation’s president had twice been convicted of bypassing the corporation’s waste disposal system and unlawfully discharging wastes into the environment in violation of Section 48‑1‑90, the corporation was operating without a certified waste treatment plant operator in violation of Section 48‑1‑110(c), and the corporation was storing hazardous wastes without a permit from the Department in violation of Section 44‑56‑60(a), despite the fact that there had been a change in management of the corporation, as its former president had transferred ownership to his wife subsequent to the initiation of proceedings by the Department. Barker Industries, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1985) 287 S.C. 424, 339 S.E.2d 136.

5. Assessment of damages

The Department of Health and Environmental Control has the authority to determine and assess damages against a violator of the Pollution Control Act and has the jurisdiction to assess, decree, and collect damages from a governmental entity. City of Rock Hill v. South Carolina Dept. of Health and Environmental Control (S.C. 1990) 302 S.C. 161, 394 S.E.2d 327. Environmental Law 457

6. Injunctions

It was not error for a trial judge to refuse to issue an injunction ordering a utility to comply with preexisting obligations, to cease unauthorized discharges and unpermitted construction, to achieve compliance with its permit’s effluent limitations, and to be enjoined from adding more waste water flows to its disposal system until compliance was achieved, since the utility was already obligated under its permits and the applicable statutes to do everything the injunction would have encompassed. Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 1989) 301 S.C. 224, 391 S.E.2d 535. Environmental Law 700

7. Promise of prospective compliance

A change in management with a promise of prospective compliance does not prohibit the South Carolina Department of Health and Environmental Control from exercising its discretion to revoke a permit under Section 48‑1‑50. Barker Industries, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1985) 287 S.C. 424, 339 S.E.2d 136.

8. Review

Town and residents, challenging decision by Department of Health and Environmental Control (DHEC) to grant developer coverage under a state general permit for stormwater discharges associated with construction of apartment complex, did not preserve for appellate review the issue of whether developer’s use of pond on its property for a water control structure required a nationwide wetlands permit from the Army Corps of Engineers, where the Administrative Law Court (ALC) did not address the issue in its ruling, and town and residents did not request a ruling on the issue from the ALC in their motion to reconsider. Town of Arcadia Lakes v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2013) 404 S.C. 515, 745 S.E.2d 385. Environmental Law 665

**SECTION 48‑1‑55.** Use of local personnel to monitor water quality in county where oyster factory located.

 On any navigable river in this State where an oyster factory is located, the Department of Health and Environmental Control may utilize qualified personnel of the county or municipality in whose jurisdiction the factory operates to assist with the monitoring of water quality and other environmental standards the department is required to enforce. The assistance may be provided at the request of the department and upon the consent of the county or municipality concerned.

HISTORY: 2009 Act No. 22, Section 1, eff May 19, 2009.

**SECTION 48‑1‑60.** Classification and standards of quality and purity of the environment authorized after notice and hearing.

 It is recognized that, due to variable factors, no single standard of quality and purity of the environment is applicable to all ambient air, land or waters of the State. In order to attain the objectives of this chapter, the Department, after proper study and after conducting a public hearing upon due notice, shall adopt rules and regulations and classification standards. The classification and the standards of quality and purity of the environment shall be adopted by the Department in relation to the public use or benefit to which such air, land or waters are or may, in the future, be put. Such classification and standards may from time to time be altered or modified by the Department.

 The adoption of a classification of the waters and the standards of quality and purity of the environment shall be made by the Department only after public hearing on due notice as provided by this chapter.

HISTORY: 1962 Code Section 63‑195.9; 1952 Code Section 70‑112; 1950 (46) 2153; 1970 (56) 2512; 1973 (58) 788.

CROSS REFERENCES

Department of Health and Environmental Control regulation pertaining to acid rain, see S.C. Code of Regulations R. 61‑62.72.

National Emission Standards for Hazardous Pollutants (NESHAP) for source categories, see S.C. Code of Regulations R. 61‑62.63.

Water classifications and standards, see S.C. Code of Regulations R. 61‑68.

Regulation pertaining to classified waters see S.C. Code of Regulations R. 61‑69.

Library References

Environmental Law 187, 215, 256, 289.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 130, 133, 136, 140, 150, 163 to 164, 172.

**SECTION 48‑1‑70.** Matters which standards for water may prescribe.

 The standards for water adopted pursuant to this chapter may prescribe:

 (1) The extent, if any, to which floating solids may be permitted in the water;

 (2) The extent to which suspended solids, colloids or a combination of solids with other substances suspended in water may be permitted;

 (3) The extent to which organisms of the coliform group (intestinal bacilli) or any other bacteriological organisms may be permitted in the water;

 (4) The extent of the oxygen which may be required in receiving waters; and

 (5) Such other physical, chemical or biological properties as may be necessary for the attainment of the objectives of this chapter.

HISTORY: 1962 Code Section 63‑195.10; 1952 Code Section 70‑113; 1950 (46) 2153; 1970 (56) 2512.

Library References

Environmental Law 187.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 172.

**SECTION 48‑1‑80.** Considerations in formulating classification and standards for water.

 In adopting the classification of waters and the standards of purity and quality, consideration shall be given to:

 (1) The size, depth, surface area covered, volume, direction, rate of flow, stream gradient and temperature of the water;

 (2) The character of the district bordering such water and its peculiar suitability for the particular uses and with a view to conserving it and encouraging the most appropriate use of the lands bordering on such water for residential, agricultural, industrial or recreational purposes;

 (3) The uses which have been made, are being made or may be made of such waters for transportation, domestic and industrial consumption, irrigation, bathing, fishing and fish culture, fire prevention, sewage disposal or otherwise; and

 (4) The extent of present defilement or fouling of such waters which has already occurred or resulted from past discharges therein.

HISTORY: 1962 Code Section 63‑195.11; 1952 Code Section 70‑114; 1950 (46) 2153; 1970 (56) 2512.

Library References

Environmental Law 187.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 172.

**SECTION 48‑1‑83.** Dissolved oxygen concentration depression; procedures to obtain site‑specific effluent limit.

 (A) The department shall not allow a depression in dissolved oxygen concentration greater than 0.1 mg/l in a naturally low dissolved oxygen waterbody unless the requirements of this section are all satisfied by demonstrating that resident aquatic species shall not be adversely affected. The provisions of this section apply in addition to any standards for a dissolved oxygen depression in a naturally low dissolved oxygen waterbody promulgated by the department by regulation.

 (B) A party seeking a site‑specific effluent limit related to dissolved oxygen pursuant to this section must notify the department in writing of its intent to obtain the depression. Upon receipt of the written notice of this intent, the department shall within thirty days publish a public notice indicating the party seeking the dissolved oxygen depression and the specific site for which the dissolved oxygen depression is sought in addition to the department’s usual public notice procedures. The notice shall be in the form of an advertisement in a newspaper of statewide circulation and in the local newspaper with the greatest general circulation in the affected area. 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 county or counties affected, the department shall conduct such a hearing. The hearing must be conducted at an appropriate location near the specific site for which the dissolved oxygen depression is sought and must be held within ninety days of the publication of the initial public notice by the department.

 (C) The department, in consultation with the Department of Natural Resources and the Environmental Protection Agency, shall provide a general methodology to be used for consideration of a site‑specific effluent limit related to dissolved oxygen.

 (D) The party seeking a site‑specific effluent limit related to dissolved oxygen must conduct a study:

 (1) to determine natural dissolved oxygen conditions at the specific site for which the depression is sought. The study must use an appropriate reference site. The reference site is not restricted to the State but must have similar geography, environmental setting, and climatic conditions. However, if an appropriate reference site cannot be located, the party may use a site‑specific dynamic water quality model or, if available, a site‑specific multidimensional dynamic water quality model.

 (2) to assess the ability of aquatic resources at the specific site for which the dissolved oxygen depression is sought to tolerate the proposed dissolved oxygen depression.

 (E) The department shall provide the following agencies sixty days in which to review and provide comments on the design of the scientific study required in subsection (D):

 (1) the United States Fish & Wildlife Service of the United States Department of the Interior;

 (2) the United States Geological Survey of the United States Department of the Interior;

 (3) the National Ocean Service of the United States Department of Commerce and the National Marine Fisheries Service of the United States Department of Commerce; and

 (4) The Department of Natural Resources.

 The department and the Department of Natural Resources shall select and convene a science peer review committee to review the design of the study as required by subsection (D). The department and the Environmental Protection Agency must concur on the final design before a study is initiated. Justification of any objection to the study design must be based solely on scientific considerations. Objections to the study design must be provided in writing by the department to the party seeking a site‑specific effluent limit related to dissolved oxygen.

 (F) The department shall provide the following agencies sixty days to review and comment on the results of the studies required in subsection (D):

 (1) the United States Fish and Wildlife Service of the United States Department of the Interior;

 (2) the United States Geological Survey of the United States Department of the Interior; and

 (3) the National Ocean Service of the United States Department of Commerce and the National Marine Fisheries Service of the United States Department of Commerce.

 In order for a site‑specific effluent limit related to dissolved oxygen to be implemented pursuant to this section, the department, the Department of Natural Resources and the Environmental Protection Agency must concur that the results of the study required in subsection (D) justify its implementation. In reaching a decision on the study results, the department and the Department of Natural Resources must base their decision upon the entire record, taking into account whatever in the record 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. Objections to the acceptance of the results of the study must be provided in writing by the department to the party seeking a site‑specific effluent limit related to dissolved oxygen.

HISTORY: 1999 Act No. 106, Section 1; 2010 Act No. 134, Section 1, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “0.1” for “0.10” in the first sentence of subsection (A).

Library References

Environmental Law 182.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 172.

Notes of Decisions

Construction and application 1

1. Construction and application

Regulation which prohibits the quality of surface water from being cumulatively lowered more than 0.1 mg/l for dissolved oxygen from point sources and other activities when natural conditions cause a depression of dissolved oxygen could be applied year‑round when natural conditions caused a depression of dissolved oxygen in a waterbody at some point during the year, not just during the months in which the depression is demonstrated. Commissioners of Public Works v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2007) 372 S.C. 351, 641 S.E.2d 763, rehearing denied, certiorari denied. Environmental Law 190

**SECTION 48‑1‑85.** Requirements for houseboats with marine toilets.

 (A) It is unlawful for a person to operate or float a houseboat on the waters of this State unless it has a marine toilet that discharges only into a holding tank.

 (B) As used in this section:

 (1) “Holding tank” means a container designed to receive and hold sewage and other wastes discharged from a marine toilet and constructed and installed in a manner so that it may be emptied only by pumping out its contents.

 (2) “Houseboat” means watercraft primarily used as habitation and not used primarily as a means of transportation.

 (3) “Marine toilet” includes equipment for installation on board a houseboat designed to receive, retain, treat, or discharge sewage. A marine toilet must be equipped with a holding tank.

 (C) When an owner of a houseboat having a marine toilet applies to the Department of Natural Resources for a certificate of title pursuant to Section 50‑23‑20, he shall certify in the application that the toilet discharges only into a holding tank.

 (D) Houseboat holding tanks may be emptied only by a pump‑out system permitted by the South Carolina Department of Health and Environmental Control.

 (E) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars for each day’s violation or imprisoned not more than thirty days, or both.

HISTORY: 1992 Act No. 334, Section 1; 1993 Act No. 181, Section 1172; 2007 Act No. 33, Section 2, eff upon approval (became law without the Governor’s signature on May 24, 2007).

Effect of Amendment

The 2007 amendment, in subsection (A), substituted “waters of this State unless it has a marine toilet that discharges” for “freshwaters of this State having a marine toilet unless it discharges”; and, in paragraph (B)(2), substituted “watercraft primarily used as habitation” for “a vessel which is used primarily as a residence”.

CROSS REFERENCES

Permits issued by Department of Health and Environmental Control for discharge of wastes into water, see Section 48‑1‑100.

Library References

Environmental Law 175, 182.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 172.

**SECTION 48‑1‑87.** Aquatic Life Protection Act.

 (A) In order to provide for the survival and propagation of a balanced community of aquatic flora and fauna as set forth in Regulation 61‑68 in a manner consistent with Section 48‑1‑20, the department shall, where necessary to protect aquatic life, impose NPDES permit limitations for whole effluent toxicity (WET) based on the mixing zone authorized in subsection (C), where the department determines that a discharge causes or has the reasonable potential to cause or contribute to an excursion of a water quality criterion in Regulation 61‑68, other than numeric criteria for specific pollutants, that apply to the protection of aquatic organisms.

 (B) As directed by this section, the department may promulgate regulations to implement WET tests that calibrate EPA’s standard toxicity testing species and methods to the natural water chemistry representative of the lakes, streams, groundwater, and stormwater runoff of this State. In developing these regulations the department may use the findings of any scientifically defensible study it may conduct and may use other pertinent peer reviewed studies or conclusions. In the interim, this section shall not be construed to limit the department’s authority to impose WET limits.

 (C) For purposes of performing WET reasonable potential determinations for a specific discharge and, where justified, setting WET permit limitations for that discharge, the department, notwithstanding any other provision of law shall:

 (1) develop procedures to allow up to one hundred percent dilution in waterbodies, based on the 7Q10 flow as defined by Regulation 61‑68, where justified by the permittee or permit applicant and approved by the department;

 (2) use stream flow conditions other than those described in item (1) where justified by hydrological controls that are capable of ensuring critical flow conditions higher than the respective ten‑year flows identified in item (1), to evaluate acute and chronic exposure;

 (3) use, for stormwater discharges, a representative flow greater than 7Q10 flow, as demonstrated on a site‑specific basis, with any resulting WET permit limitations comprising only those expressed in terms of acute survival endpoints;

 (4) consider such mixing calculations as described in items (1), (2), and (3) to be consistent with its policy set forth in Regulation 61‑68 for minimizing mixing zones;

 (5) give consideration to compliance with numeric criteria and actual instream biological conditions, in the absence of a valid scientific correlation between sublethal WET test results and the biological integrity of representative lakes, streams, and estuaries in this State, wherein biological integrity includes the richness, abundance, and balanced community structure of indigenous aquatic organisms;

 (6) allow, at the request of the permittee, the use of ambient receiving waters as control and dilution waters in WET tests;

 (7) exempt once‑through, noncontact cooling water, which contains no additives, from toxicity requirements; and

 (8) allow dischargers to use WET testing protocols that utilize alternative species in accordance with applicable EPA regulations and guidance.

 (D) No part of this section shall be construed to limit the department’s authority to adopt water quality criteria, to impose permit limits for specific chemical pollutants, to obligate the department to revalidate existing water quality criteria, or to establish additional water quality criteria for specific chemical pollutants. The department, whenever appropriate, shall utilize the flexibility of interpretation concerning WET testing and the use of WET test results provided by EPA.

 (E) For the purpose of implementing Section 48‑1‑20 and Regulation 61‑68:

 (1) “propagation” is defined in Regulation 61‑68;

 (2) “biological integrity” means a measure of the health of an aquatic or marine ecosystem using the richness and abundance of species as the primary indicator, and “biological integrity” is a key component of an “instream bioassessment”;

 (3) “sublethal toxicity tests” means laboratory experiments that measure the nonlethal biological effects, including, but not limited to, growth or reproduction, of effluents or receiving waters on aquatic organisms;

 (4) “calibrate” means a process to establish the baseline control condition based on the normal range of biological responses likely to occur when standard test organisms are exposed to various nontoxic waters sampled from streams and lakes throughout the State.

 (F) For any NPDES permit that was taken over by EPA due to provisions of Act 258 of 2004 from July 1, 2004, through the effective date of this subsection as revised by the provisions of this 2005 act, the department shall convey to EPA, through the certification process (40 C.F.R. Part 124.53), any additional requirements mandated under state law. Moreover, notwithstanding any other provision of law or regulation, the requirement for a counterpart state permit for any such discharge is waived. Alternatively, at the request of the permittee, the department may waive the certification process and issue a state permit. However, affected permittees shall submit applications for reissuance to the department in accordance with Regulation 61‑9, at least one hundred eighty days in advance of the expiration of the federal permits. At the discretion of the department, the annual fees for NPDES permits in Regulation 61‑30 may continue to be charged, when certifying a federal permit, if the department waives the certification fee.

 (G) The department shall reduce or eliminate WET monitoring requirements, as appropriate, in accordance with permit modification processes contained in Regulation 61‑9, where dischargers demonstrate that their effluents do not demonstrate reasonable potential.

HISTORY: 2004 Act No. 258, Section 2; 2005 Act No. 25, Section 1.

Library References

Environmental Law 182.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 172.

**SECTION 48‑1‑90.** Causing or permitting pollution of environment prohibited; remedies.

 (A)(1) It is unlawful for a person, directly or indirectly, to throw, drain, run, allow to seep, or otherwise discharge into the environment of the State organic or inorganic matter, including sewage, industrial wastes, and other wastes, except in compliance with a permit issued by the department.

 (2) The permit requirements of subsection (A)(1), Section 48‑1‑100, and Section 48‑1‑110 do not apply to:

 (a) discharges in a quantity below applicable threshold permitting requirements established by the department;

 (b) discharges for which the department has no regulatory permitting program;

 (c) discharges exempted by the department from permitting requirements; or

 (d) normal farming, silviculture, aquaculture, ranching, and wildlife habitat management activities that are not prohibited by or otherwise subject to regulation.

 (3) Subsection (A)(2) must not be construed to:

 (a) impair or affect common law rights;

 (b) repeal prohibitions or requirements of other statutory law or common law; or

 (c) diminish the department’s authority to abate public nuisances or hazards to public health or the environment, to abate pollution as defined in Section 48‑1‑10(7), or to respond to accidental discharges or spills.

 (4) A person must first petition the department in writing for a declaratory ruling as to the applicability of a specific, existing regulatory program to a proposed or existing discharge into the environment, provided that the proposed or existing discharge is not exempt or excluded from permitting as is set forth in subsection (A)(2). The person proposing to emit or emitting such discharge must be named on and served with the petition. The department must, within sixty days after receipt of such petition, issue a declaratory ruling as to the applicability of such program to such discharge. If the department determines a permit is required under such program and that no exception or exclusion exists, including, but not limited to, the exceptions set forth in subsection (A)(2), the department must issue a declaration requiring the submission of an application to permit such discharge pursuant to the applicable permitting program. If the department further determines that immediate action is necessary to protect the public health or property due to such unpermitted discharge, the department may further declare the existence of an emergency and order such action as the department deems necessary to address the emergency. Any person to whom such emergency order is directed may apply directly to the Administrative Law Court for relief and must be afforded a hearing within forty‑eight hours. Regardless of whether a hearing is held, the department must revoke all emergency orders as soon as conditions or operations change to the extent that an emergency no longer exists. A party contesting any department decision on a petition may request a contested case hearing in the Administrative Law Court. Notwithstanding the administrative remedy provided for in this section, no private cause of action is created by or exists under this chapter.

 (B)(1) A person who discharges organic or inorganic matter into the waters of this State as described in subsection (A) to the extent that the fish, shellfish, aquatic animals, wildlife, or plant life indigenous to or dependent upon the receiving waters or property is damaged or destroyed is liable to the State for the damages. The action must be brought by the State in its own name or in the name of the department.

 (2) The amount of a judgment for damages recovered by the State, less costs, must be remitted to the agency, commission, department, or political subdivision of the State that has jurisdiction over the fish, shellfish, aquatic animals, wildlife, or plant life or property damaged or destroyed.

 (3) The civil remedy provided in subsection (B)(2) is not exclusive, and an agency, commission, department, or political subdivision of the State with appropriate authority may undertake in its own name an action to recover damages independent of this subsection.

HISTORY: 1962 Code Section 63‑195.12; 1952 Code Section 70‑116; 1950 (46) 2153; 1969 (56) 764; 1970 (56) 2512; 1975 (59) 241; 2012 Act No. 198, Section 1, eff June 6, 2012.

Effect of Amendment

The 2012 amendment rewrote the section.

Library References

Environmental Law 175, 182, 214.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 172.

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The Suffolk syndrome: A case study in public nuisance law. 40 S.C. L. Rev. 379 (Winter 1989).

NOTES OF DECISIONS

In general 1

Cleanup costs 4

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Reasonable use of stream 2

Soil and groundwater contamination 3

1. In general

Former Code 1962 Section 63‑195.12 outlawed the discharge into streams of anything that might “cause or tend to cause a condition of pollution.” Control of this kind by the State is unassailable. The common law of South Carolina provides a downstream owner with equivalent civil protection. U. S. v. 531.13 Acres of Land, More or Less, in Oconee County, State of S. C. (C.A.4 (S.C.) 1966) 366 F.2d 915.

Since the substantive liability created by Section 48‑1‑90 is different from liability under the common law and prior statutes, the statute will not be given a retroactive application. Carolina Chemicals, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1986) 290 S.C. 498, 351 S.E.2d 575.

2. Reasonable use of stream

Owners of land on the banks of a stream are entitled to the reasonable use of the stream; they can use the stream for their own purposes to a reasonable extent; while it is true that a stream must not be polluted, still this does not mean that nothing can be put in the stream; but that nothing can be put therein that will deprive the landowners below of the reasonable use of the stream. U. S. v. 531.13 Acres of Land, More or Less, in Oconee County, State of S. C. (C.A.4 (S.C.) 1966) 366 F.2d 915.

Continued indulgence to defile a stream is not a legal right. U. S. v. 531.13 Acres of Land, More or Less, in Oconee County, State of S. C. (C.A.4 (S.C.) 1966) 366 F.2d 915.

3. Soil and groundwater contamination

In action by landowners against chemical reclamation contractor and manufacturer to recover for contamination of ground water from spill of chemicals on property adjoining reclamation plants, there was sufficient evidence upon which jury could base verdict for plaintiffs on theory of negligence for allowing hazardous chemicals to escape into environment causing or tending to cause condition of pollution in violation of various sections of Pollution Control Act, where testimony indicated that defendant stored hundreds of aging, rusty, and leaking barrels of hazardous chemicals on its property and subsequently delivered them to chemical reclamation site. Shockley v. Hoechst Celanese Corp., 1992, 793 F.Supp. 670, affirmed in part, reversed in part 996 F.2d 1212.

Pesticide manufacturer was under no affirmative duty to prevent residues remaining in deteriorating chemical containers from leaching into the soil and ground water of airport authority’s disposal site, where the manufacturer had ceased all waste disposal activity at the site before the Pollution Control Act became effective, the manufacturer had complied with laws and regulations in force at the time and disposed of the containers, manufacturer intended to abandon all interest in the containers when discarded, and the manufacturer had acquired no interest under its contract with the airport authority in the real property used for waste disposal. Carolina Chemicals, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1986) 290 S.C. 498, 351 S.E.2d 575.

Airport authority, which had contracted to permit a pesticide manufacturer to abandon chemical containers in its disposal site was under an affirmative duty to prevent residues remaining in the deteriorating containers from leaching into the soil and ground water of the disposal site, without regard to whether Section 48‑1‑90 applied to the manufacturer, since, by virtue of its ownership of the disposal site, the authority, rather than the manufacturer, had control over and responsibility for the abandoned containers. Carolina Chemicals, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1986) 290 S.C. 498, 351 S.E.2d 575.

4. Cleanup costs

Any public policy exception to economic loss doctrine did not apply under state law to permit tort recovery for cleanup costs and litigation expenses. Fact that state statutes required buyer to clean up spill did not operate to impose liability on seller who manufactured failed part. Myrtle Beach Pipeline Corp. v. Emerson Elec. Co., 1993, 843 F.Supp. 1027, affirmed 46 F.3d 1125. Products Liability 156; Products Liability 235

5. Damages

The Department of Health and Environmental Control has the authority to determine and assess damages against a violator of the Pollution Control Act and has the jurisdiction to assess, decree, and collect damages from a governmental entity. City of Rock Hill v. South Carolina Dept. of Health and Environmental Control (S.C. 1990) 302 S.C. 161, 394 S.E.2d 327. Environmental Law 457

**SECTION 48‑1‑95.** Wastewater utilities; procedures for significant spills.

 (A) As used in this section:

 (1) “Action plan” or “plan” means a schedule for implementing and completing repairs, upgrades, and improvements needed to minimize future repetitive significant spills of untreated or partially treated domestic sewage.

 (2) “Capacity, Management, Operation, and Maintenance or ‘CMOM’ plan” means a comprehensive, dynamic framework for wastewater utilities to identify and incorporate widely accepted wastewater industry practices to:

 (a) better manage, operate, and maintain collection systems;

 (b) investigate capacity constrained areas of the collection system; and

 (c) respond to sanitary sewer overflow events.

 (3) “Comprehensive review” or “review” means a complete technical assessment of the components and operation of a sewage system or its treatment works that are contributing to, or may be contributing to, repetitive significant spills of untreated or partially treated domestic sewage.

 (4) “Department” means the Department of Health and Environmental Control.

 (5) “Significant spill” means a net discharge from a wastewater utility of at least five thousand gallons of untreated or partially treated domestic sewage that could cause a serious adverse impact on the environment or public health. “Significant spill” does not include spills caused by a natural disaster, direct act of a third party, or other act of God.

 (6) “Wastewater utility” or “utility” means the operator or owner of a sewage collection system or its treatment works providing sewer service to the public. “Wastewater utility” does not include manufacturers, electric utilities, agricultural operations, and wastewater treatment systems located on property owned by the federal government.

 (B) Utilities must verbally notify the department of any significant spill within twenty‑four hours and by written submission within five days.

 (C) Upon receiving notice of a significant spill from a wastewater utility, the department must determine whether the responsible wastewater utility has had more than two significant spills per one hundred miles of its sewage collection system, in the aggregate and excluding private service laterals, during the twelve‑month period up to and including the date of the significant spill.

 (D)(1) If the wastewater utility has had more than two significant spills per one hundred miles of its aggregate collection system miles during a twelve‑month period, the department shall issue an order directing the utility to complete a comprehensive review of the sewage system and treatment works facility identified pursuant to subsection (C), or if the wastewater utility has a Capacity, Management, Operations, and Maintenance plan in place directing the utility to update this plan, the order must include, but is not limited to:

 (a) the submission of the findings of the comprehensive review or CMOM update; and

 (b) the required implementation of any plans to minimize the recurrence of such significant spills.

 (2) The comprehensive review, pursuant to item (1), must be performed by a licensed South Carolina professional engineer.

 (3) Unless the department’s order is being appealed, the comprehensive review or CMOM update must be initiated by the wastewater utility’s owner within two months of receiving an order from the department or, in the case of an appeal, within two months from the date the order becomes final and nonappealable.

 (E) The department shall require that all wastewater utilities provide public notice of any significant spill of five thousand gallons or more within twenty‑four hours of the discovery. Where the responsible wastewater utility does not provide this notice, in addition to any enforcement response, the department shall provide public notice of the significant spill.

 (F) Nothing in this section contravenes the department’s ability to undertake enforcement action under the Pollution Control Act, Chapter 1, Title 48, or any other state or federal law.

HISTORY: 2012 Act No. 109, Section 1, eff February 1, 2012.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Poisons Section 12, Environmental Regulation.

**SECTION 48‑1‑100.** Permits for discharge of wastes or air contaminants; jurisdiction of department.

 (A) A person affected by the provisions of this chapter or the rules and regulations adopted by the department desiring to make a new outlet or source, or to increase the quantity of discharge from existing outlets or sources, for the discharge of sewage, industrial waste or other wastes, or the effluent therefrom, or air contaminants, into the waters or ambient air of the State, first shall make an application to the department for a permit to construct and a permit to discharge from the outlet or source. If, after appropriate public comment procedures, as defined by department regulations, the department finds that the discharge from the proposed outlet or source will not be in contravention of provisions of this chapter, a permit to construct and a permit to discharge must be issued to the applicant. The department, if sufficient hydrologic and environmental information is not available for it to make a determination of the effect of the discharge, may require the person proposing to make the discharge to conduct studies that will enable the department to determine that its quality standards will not be violated.

 (B) The Department of Health and Environmental Control is the agency of state government having jurisdiction over the quality of the air and waters of the State of South Carolina. It shall develop and enforce standards as may be necessary governing emissions or discharges into the air, streams, lakes, or coastal waters of the State, including waste water discharges.

 (C) The Department of Health and Environmental Control is the agency of state government having jurisdiction over those matters involving real or potential threats to the health of the people of South Carolina, including the handling and disposal of garbage and refuse; septic tanks; and individual or privately‑owned systems for the disposal of offal and human or animal wastes.

HISTORY: 1962 Code Section 63‑195.13; 1952 Code Section 70‑117; 1950 (46) 2153; 1964 (53) 2393; 1970 (56) 2512; 1971 (57) 709; 1973 (58) 788; 1992 Act No. 294, Section 1.

CROSS REFERENCES

Causing or permitting pollution of environment prohibited, remedies, see Section 48‑1‑90.

Library References

Environmental Law 194, 265.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 131, 163 to 164, 172.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 14, Permits to Construct On‑Site Septic Systems.

S.C. Jur. Public Health Section 16, Approval for Development of Subdivision Water Supply and Sewage Treatment/Disposal Systems.

United States Supreme Court Annotations

Environmental law, clean water, discharge of slurry water into lake, Army Corp of Engineers permitting authority, EPA source performance standard, see Coeur Alaska, Inc. v. Southeast Alaska Conservation Council, 2009, 129 S.Ct. 2458, 557 U.S. 261, 174 L.Ed.2d 193, on remand 580 F.3d 873.

Attorney General’s Opinions

The jurisdiction of the South Carolina Pollution Control Authority or a local pollution control authority established pursuant to this chapter is controlling and paramount in matters relating to pollution of the ambient air. 1971‑72 Op. Atty Gen, No. 3405, p 273.

**SECTION 48‑1‑110.** Permits required for construction or alteration of disposal systems; classification; unlawful operations or discharges.

 (a) It shall be unlawful for any person, until plans therefor have been submitted to and approved by the department and a written permit therefor shall have been granted to:

 (1) Construct or install a disposal system or source;

 (2) Make any change in, addition to or extension of any existing disposal system or part thereof that would materially alter the method or the effect of treating or disposing of the sewage, industrial waste or other wastes;

 (3) Operate such new disposal systems or new source, or any existing disposal system or source;

 (4) Increase the load through existing outlets of sewage, industrial waste or other wastes into the waters of the State.

 (b) The director of Health and Environmental Control shall classify all public wastewater treatment plants, giving due regard to size, types of work, character, and volume of waste to be treated, and the use and nature of the water resources receiving the plant effluent. Plants may be classified in a group higher than indicated at the discretion of the classifying officer by reason of the incorporation in the plant of complex features which cause the plant to be more difficult to operate than usual or by reason of a waste unusually difficult to treat, or by reason of conditions of flow or use of the receiving waters requiring an unusually high degree of plant operation control or for combinations of such conditions or circumstances. The classification is based on the following groups:

 (1) For biological wastewater treatment plants: Group I‑B. All wastewater treatment plants which include one or more of the following units: primary settling, chlorination, sludge removal, imhoff tanks, sand filters, sludge drying beds, land spraying, grinding, screening, oxidation, and stabilization ponds. Group II‑B. All wastewater treatment plants which include one or more of the units listed in Group I‑B and, in addition, one or more of the following units: sludge digestion, aerated lagoon, and sludge thickeners. Group III‑B. All wastewater treatment plants which include one or more of the units listed in Groups I‑B and II‑B and, in addition, one or more of the following: trickling filters, secondary settling, chemical treatment, vacuum filters, sludge elutriation, sludge incinerator, wet oxidation process, contact aeration, and activated sludge (either conventional, modified, or high rate processes). Group IV‑B. All wastewater treatment plants which include one or more of the units listed in Groups I‑B, II‑B, and III‑B and, in addition, treat waste having a raw five‑day biochemical oxygen demand of five thousand pounds a day or more.

 (2) Effective July 1, 1987, for physical‑chemical wastewater treatment plants: Group I‑P/C. All wastewater treatment plants which include one or more of the following units: primary settling, equalization, pH control, and oil skimming. Group II‑P/C. All wastewater treatment plants which include one or more of the units listed in Group I‑P/C and, in addition, one or more of the following units: sludge storage, dissolved air flotation, and clarification. Group III‑P/C. All wastewater treatment plants which include one or more of the units listed in Groups I‑P/C and II‑P/C and, in addition, one or more of the following: oxidation/reduction reactions, cyanide destruction, metals precipitation, sludge dewatering, and air stripping. Group IV‑P/C. All wastewater treatment plants which include one or more of the units listed in Groups I‑P/C, II‑P/C, and III‑P/C and, in addition, one or more of the following: membrane technology, ion exchange, tertiary chemicals, and electrochemistry.

 (c) It shall be unlawful for any person or municipal corporation to operate a public wastewater treatment plant unless the operator‑in‑charge holds a valid certificate of registration issued by the Board of Certification of Environmental Systems Operators in a grade corresponding to the classification of the public wastewater treatment plant supervised by him, except as hereinafter provided.

 (d) It shall be unlawful for any person to operate an approved waste disposal facility in violation of the conditions of the permit to construct or the permit to discharge.

 (e) It shall be unlawful for any person, directly or indirectly, negligently or willfully, to discharge any air contaminant or other substance in the ambient air that shall cause an undesirable level.

HISTORY: 1962 Code Section 63‑195.14; 1952 Code Section 70‑118; 1950 (46) 2153; 1969 (56) 764; 1970 (56) 2512; 1974 (58) 2334; 1980 Act No. 319, Section 4; 1985 Act No. 172, Section 1; 1993 Act No. 181, Section 1173.

CROSS REFERENCES

Additional provisions regarding classification by the Commissioner of Health and Environmental Control, see Section 44‑55‑40.

Causing or permitting pollution of environment prohibited, remedies, see Section 48‑1‑90.

Regulations governing the National Pollutant Discharge Elimination System, see S.C. Code of Regulations R.61‑9.

Library References

Environmental Law 194.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 131, 172.

NOTES OF DECISIONS

In general 1

Injunction 3

Revocation of permit 2

1. In general

The Department of Health and Environmental Control (DHEC) was not required to issue to a utility a permit to construct a sewer line connecting a subdivision to a city’s waste water treatment plant where the utility’s plans were not consistent with the areawide waste water treatment management plan, even though the utility claimed that conformance with the areawide plan was not required because discharge from the project would be directed solely to the city and a DHEC regulation provides that no discharge permit is necessary if the discharge is directed solely to a publicly‑owned treatment work. The fact that a discharge permit is unnecessary is irrelevant to the question of whether DHEC is required to issue a construction permit which will conflict with an areawide waste water treatment management plan. Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 1989) 301 S.C. 224, 391 S.E.2d 535.

2. Revocation of permit

A corporation’s permit to operate a waste disposal system was properly revoked by the South Carolina Department of Health and Environmental Control under Section 48‑1‑50(5) where the corporation’s president had twice been convicted of bypassing the corporation’s waste disposal system and unlawfully discharging wastes into the environment in violation of Section 48‑1‑90, the corporation was operating without a certified waste treatment plant operator in violation of Section 48‑1‑110, and the corporation was storing hazardous wastes without a permit from the Department in violation of Section 44‑56‑60(a), despite the fact that there had been a change in management of the corporation, as its former president had transferred ownership to his wife subsequent to the initiation of proceedings by the Department. Barker Industries, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1985) 287 S.C. 424, 339 S.E.2d 136.

3. Injunction

It was not error for a trial judge to refuse to issue an injunction ordering a utility to comply with preexisting obligations, to cease unauthorized discharges and unpermitted construction, to achieve compliance with its permit’s effluent limitations, and to be enjoined from adding more waste water flows to its disposal system until compliance was achieved, since the utility was already obligated under its permits and the applicable statutes to do everything the injunction would have encompassed. Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 1989) 301 S.C. 224, 391 S.E.2d 535. Environmental Law 700

**SECTION 48‑1‑115.** Public notice of sludge storage facility construction permit.

 The department shall provide public notice before issuing a construction permit pursuant to Regulation 61‑67 for a facility that stores sludge or other residuals, or any combination of these, that is not located at the site of a wastewater or sludge treatment facility permitted pursuant to Regulation 61‑67. Public notice must be provided in accordance with Regulation 61‑9.

HISTORY: 2006 Act No. 329, Section 1.

Library References

Environmental Law 194.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 131, 172.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 14, Permits to Construct On‑Site Septic Systems.

**SECTION 48‑1‑120.** Determination and correction of undesirable level.

 If the Department shall determine that an undesirable level exists, it shall take such action as necessary to control such condition.

 The Department shall grant such time as is reasonable for the owner or operator of a source to correct the undesirable level, after taking all factors into consideration that are pertinent to the issue.

 In making its order and determinations, the Department shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions involved including, but not limited to:

 (a) The character and degree of injury to, or interference with, the health and physical property of the people;

 (b) The social and economic value of the source of the undesirable levels;

 (c) The question of priority of location in the area involved; and

 (d) The technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from such source.

 If the undesirable level is not corrected within the required time, then the Department shall issue an order to cease and desist from causing such emissions.

HISTORY: 1962 Code Section 63‑195.15; 1965 (54) 687; 1970 (56) 2512.

Library References

Environmental Law 187, 204, 256, 295.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 150, 163 to 164, 172.

**SECTION 48‑1‑130.** Order for discontinuance of discharge of wastes or air contaminants.

 A person discharging sewage, industrial waste, or other waste or air contaminant into the environment of the State, in such manner or quantity as to cause pollution, without regard to the time that the discharge began or whether or not the continued discharge has been by virtue of a permit issued by the department, shall discontinue the discharge upon receipt of an order of the department. An order is subject to review pursuant to Section 44‑1‑60 and the Administrative Procedures Act. This section does not abrogate any of the department’s emergency powers.

HISTORY: 1962 Code Section 63‑195.16; 1952 Code Section 70‑120; 1950 (46) 2153; 1970 (56) 2512; 2012 Act No. 198, Section 2, eff June 6, 2012.

Effect of Amendment

The 2012 amendment rewrote the section.

Library References

Environmental Law 204, 295.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 150, 163 to 164, 172.

**SECTION 48‑1‑140.** Revision or modification of national pollutant discharge elimination system or final compliance date for stationary source or class or sources of air pollution.

 (a) The Department may, after notice and opportunity for a public hearing, revise or modify a national pollutant discharge elimination system permit in accordance with the procedures and criteria set out in Sections 301(c), 302 and 316(a) of the Federal Water Pollution Control Act Amendments of 1972.

 (b) The Department may, after notice and opportunity for a public hearing, revise or modify a final compliance date for any stationary source or class or sources of air pollution whether contained in regulations or a compliance order, if the Department determines that

 (1) good faith efforts have been made to comply with such requirement before such date;

 (2) such source (or class) is unable to comply with such requirement because the necessary technology or other alternative methods of control are not reasonably available or have not been available for a sufficient period of time;

 (3) any available alternative operating procedures and interim control measures have reduced or will reduce the impact of such source on public health;

 (4) the continued operation of such source is essential to national security or to the public health or welfare.

 Provided, however, that where the compliance date is one prescribed in the State Implementation Plan, the findings and recommendations of the Department shall be submitted to the Governor for transmittal to the Administrator of the Federal Environmental Protection Agency or his designated representative for his concurrence or rejection. Rejection by the administrator may constitute grounds for rejection of a request for modification or revisions of such compliance requirement.

 (c) Any determination under items (a) or (b) of this section shall (1) be made on the record after notice to interested persons and opportunity for hearing, (2) be based upon a fair evaluation of the entire record at such hearing, and (3) include a statement setting forth in detail the findings and conclusions upon which the determination is based.

HISTORY: 1962 Code Section 63‑195.17; 1965 (54) 687; 1970 (56) 2512; 1973 (58) 788; 1975 (59) 241; 1978 Act No. 463.

CROSS REFERENCES

Power of Department to hold hearings upon complaints or upon petitions in accordance with this section, see Section 48‑1‑50.

Federal Aspects

Sections 301(c), 302 and 316(a) of the Federal Water Pollution Control Act Amendments of 1972, see 33 U.S.C.A. Sections 1311, 1312, 1326.

Library References

Environmental Law 204, 295.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 150, 163 to 164, 172.

United States Supreme Court Annotations

Clean air, EPA reasonably interpreted “good neighbor” provision of Clean Air Act in implementing Transport Rule, see E.P.A. v. EME Homer City Generation, L.P., 2014, 134 S.Ct. 1584, 188 L.Ed.2d 775, on remand 795 F.3d 118, 417 U.S.App.D.C. 381. Environmental Law 261

Notes of Decisions

Clean Air Act 1

1. Clean Air Act

Clean Air Act’s (CAA) good neighbor provision did not require Environmental Protection Agency (EPA), after issuing Transport Rule promulgating each state’s emission budget quantifying the state’s good‑neighbor obligations, to give the states a reasonable period of time to propose state implementation plans (SIPs) implementing the budget before issuing a federal implementation plan (FIP); nothing in the statute placed EPA under an obligation to provide specific metrics to states before they undertook to fulfill their good neighbor obligations. E.P.A. v. EME Homer City Generation, L.P., 2014, 134 S.Ct. 1584, 188 L.Ed.2d 775, on remand 795 F.3d 118, 417 U.S.App.D.C. 381. Environmental Law 261

Once Environmental Protection Agency (EPA) has found a state implementation plan (SIP) inadequate under the Clean Air Act (CAA), it has a statutory duty to issue a federal implementation plan (FIP) at any time within two years, unless the state first corrects the deficiency. E.P.A. v. EME Homer City Generation, L.P., 2014, 134 S.Ct. 1584, 188 L.Ed.2d 775, on remand 795 F.3d 118, 417 U.S.App.D.C. 381. Environmental Law 261

A state implementation plan’s (SIP) failure to satisfy the good neighbor provision of the Clean Air Act (CAA), without more, triggers Environmental Protection Agency’s (EPA) obligation to issue a federal implementation plan (FIP) within two years. E.P.A. v. EME Homer City Generation, L.P., 2014, 134 S.Ct. 1584, 188 L.Ed.2d 775, on remand 795 F.3d 118, 417 U.S.App.D.C. 381. Environmental Law 261

After Environmental Protection Agency (EPA) has disapproved a state implementation plan (SIP) under the Clean Air Act (CAA), it can wait up to two years to issue a federal implementation plan (FIP), during which time the state can correct the deficiency on its own; but EPA is not obliged to wait two years or postpone its action even a single day, as the CAA empowers the Agency to promulgate a FIP “at any time” within the two‑year limit. E.P.A. v. EME Homer City Generation, L.P., 2014, 134 S.Ct. 1584, 188 L.Ed.2d 775, on remand 795 F.3d 118, 417 U.S.App.D.C. 381. Environmental Law 261

Environmental Protection Agency (EPA) provided a reasonable explanation for altering its pattern of quantifying emission reductions required of upwind states under the Clean Air Act’s (CAA) good neighbor provision before the window to propose a state implementation plan (SIP) closed, in issuing federal implementation plans (FIPs) contemporaneously with its Transport Rule quantifying states’ good‑neighbor obligations in emission budgets; given prior decision of the Court of Appeals admonishing EPA to act with dispatch in amending or replacing the Transport Rule’s predecessor, the EPA thought it inappropriate to establish the lengthy transition period entailed in allowing states time to propose new or amended SIPs implementing the Transport Rule’s emission budgets. E.P.A. v. EME Homer City Generation, L.P., 2014, 134 S.Ct. 1584, 188 L.Ed.2d 775, on remand 795 F.3d 118, 417 U.S.App.D.C. 381. Environmental Law 293

Whatever pattern the Environmental Protection Agency (EPA) followed in its previous attempts to quantify the emission reductions required of upwind states under the Clean Air Act’s (CAA) good neighbor provision, EPA retained discretion to alter its course provided it gave a reasonable explanation for doing so. E.P.A. v. EME Homer City Generation, L.P., 2014, 134 S.Ct. 1584, 188 L.Ed.2d 775, on remand 795 F.3d 118, 417 U.S.App.D.C. 381. Environmental Law 261

Clean Air Act’s (CAA) good neighbor provision did not require Environmental Protection Agency (EPA) to disregard costs and allocate responsibility among multiple contributing upwind states for reducing emissions in a downwind state in a manner proportional to each state’s contribution to the problems. E.P.A. v. EME Homer City Generation, L.P., 2014, 134 S.Ct. 1584, 188 L.Ed.2d 775, on remand 795 F.3d 118, 417 U.S.App.D.C. 381. Environmental Law 261

Environmental Protection Agency’s (EPA) Transport Rule, which called for a cost‑effective allocation of emission reductions among upwind states to improve air quality in polluted downwind areas, was a permissible construction of Clean Air Act’s (CAA) good neighbor provision; eliminating amounts of pollution that could cost‑effectively be reduced was an efficient and equitable solution to the allocation problem the good neighbor provision required the EPA to address. E.P.A. v. EME Homer City Generation, L.P., 2014, 134 S.Ct. 1584, 188 L.Ed.2d 775, on remand 795 F.3d 118, 417 U.S.App.D.C. 381. Environmental Law 261

Environmental Protection Agency (EPA) could not demand emission reductions that would drive an upwind state’s contribution to every downwind state to which it was linked below one percent of the relevant national ambient air quality standards (NAAQS), as doing so would have been counter to step one of EPA’s interpretation of the Clean Air Act’s (CAA) good neighbor provision, as outlined in the EPA’s Transport Rule. E.P.A. v. EME Homer City Generation, L.P., 2014, 134 S.Ct. 1584, 188 L.Ed.2d 775, on remand 795 F.3d 118, 417 U.S.App.D.C. 381. Environmental Law 261

Possibility that Environmental Protection Agency’s (EPA) Transport Rule, which called for a cost‑effective allocation of emission reductions among upwind states to improve air quality in polluted downwind areas, in uncommon particular applications, might have exceeded EPA’s statutory authority under the Clean Air Act’s (CAA) good neighbor provision did not warrant judicial condemnation of the Rule in its entirety; any upwind state could bring a particularized, as‑applied challenge to the Rule. E.P.A. v. EME Homer City Generation, L.P., 2014, 134 S.Ct. 1584, 188 L.Ed.2d 775, on remand 795 F.3d 118, 417 U.S.App.D.C. 381. Environmental Law 261

Environmental Protection Agency (EPA) could not require an upwind state to reduce its output of pollution by more than necessary to achieve attainment in every downwind state; if EPA required an upwind state to reduce emissions by more than the amount necessary to achieve attainment in every downwind State to which it was linked, EPA would have overstepped its authority, under the Clean Air Act’s (CAA) good neighbor provision, to eliminate those amounts that contributed to nonattainment. E.P.A. v. EME Homer City Generation, L.P., 2014, 134 S.Ct. 1584, 188 L.Ed.2d 775, on remand 795 F.3d 118, 417 U.S.App.D.C. 381. Environmental Law 263

**SECTION 48‑1‑150.** Situations in which public hearing is required or authorized.

 Public hearings shall be conducted by the Department prior to action by the Department in the classification of the waters or the adoption of standards of purity and quality thereof as provided by this chapter. The Department may conduct public hearings prior to action in the following cases, either of its own volition or upon the request of affected persons, (a) an order of determination of the Department requiring the discontinuance of discharge of sewage, industrial waste or other wastes into the waters of the State or air contaminant into the ambient air, (b) an order issuing, denying, revoking, suspending or modifying a permit, (c) a determination that a discharge constitutes pollution of waters of a marine district and (d) any other proceeding resulting in a finding of fact or determination that a discharge of air contaminants into the ambient air or sewage, industrial waste or other wastes into the waters of the State contravenes the standards established for such air and waters.

HISTORY: 1962 Code Section 63‑195.18; 1952 Code, Section 70‑125; 1950 (46) 2153; 1970 (56) 2512.

Library References

Environmental Law 187, 256.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 163 to 164, 172.

NOTES OF DECISIONS

In general 1

1. In general

Although Department of Health and Environmental Control has authority under Section 48‑1‑150 to conduct public hearing prior to granting 401 Water Quality Certification, department does not have authority to grant adjudicatory hearing after granting of certification, as there is no requirement that there be opportunity for hearing, and 401 Certification is not “contested” case as defined by department regulations. Triska v. Department of Health and Environmental Control (S.C. 1987) 292 S.C. 190, 355 S.E.2d 531.

**SECTION 48‑1‑160.** Conduct of hearing; decision of department.

 The hearings herein provided for may be conducted by the Department at a regular or special meeting or it may delegate to any member, to the executive director or to any employee or agent of the Department, the authority to conduct such hearings in the name of the Department at any time and place. But the Department shall make all necessary decisions as to the matter under consideration. Such decision may be based solely upon the record of any hearing conducted by the Department or by its duly authorized representative.

HISTORY: 1962 Code Section 63‑195.19; 1952 Code Section 70‑126; 1950 (46) 2153; 1970 (56) 2512.

Library References

Environmental Law 187, 215, 256, 289.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 130, 133, 136, 140, 150, 163 to 164, 172.

**SECTION 48‑1‑170.** Records of hearings and decisions.

 In any hearing held by the Department in which a quasi‑judicial decision is rendered, the Department shall make a record of the decision and secure its prompt publication. The decision shall include a statement of the facts in controversy, the decision of the Department, the law or regulation upon which the decision is based and any other information deemed necessary.

 To serve as a guide and precedent of the policy of the Department, the decisions shall be chronologically numbered according to date and compiled in an annual report similar in style to the reports of the Supreme Court. The reports of these decisions shall be made available to the public.

 If any person concerned with such hearing requests it, a complete transcript of the testimony presented shall be made and filed.

HISTORY: 1962 Code Section 63‑195.20; 1952 Code Section 70‑127; 1950 (46) 2153; 1970 (56) 2512.

Library References

Environmental Law 215, 289.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 130, 133, 136, 140, 150, 163 to 164, 172.

**SECTION 48‑1‑180.** Oaths; examination of witnesses; subpoenas.

 In any such hearing, any member of the Department, the executive director or any employee or agent thereof authorized by the Department may administer oaths, examine witnesses and issue in the name of the Department notices of hearings and subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any such hearing. Witnesses shall receive the same fees and mileage as in civil actions.

HISTORY: 1962 Code Section 63‑195.21; 1952 Code Section 70‑128; 1950 (46) 2153; 1970 (56) 2512.

CROSS REFERENCES

Per diem and mileage for witnesses under South Carolina Rules of Civil Procedure, see Rule 45, SCRCP.

Library References

Environmental Law 219, 293.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 130, 136, 163 to 164, 172.

**SECTION 48‑1‑190.** Refusal to obey notice of hearing or subpoena.

 In case of refusal to obey a notice of hearing or subpoena, the court of common pleas shall have jurisdiction, upon application of the Department, to issue an order requiring such person to appear and testify or produce evidence, as the case may require, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

HISTORY: 1962 Code Section 63‑195.22; 1952 Code Section 70‑129; 1950 (46) 2153; 1970 (56) 2512.

CROSS REFERENCES

Power of the Circuit Courts to punish for contempt, generally, see Section 14‑5‑320.

Library References

Environmental Law 219, 293.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 130, 136, 163 to 164, 172.

**SECTION 48‑1‑200.** Appeals.

 Any person may appeal from any order of the Department within thirty days after the filing of the order, to the court of common pleas of any county in which the pollution occurs. The Department shall thereupon certify to the court the record in the hearing. The court shall review the record and the regularity and the justification for the order, on the merits, and render judgment thereon as in ordinary appeals in equity. The court may order or permit further testimony on the merits of the case, in its discretion such testimony to be given either before the judge or referee by him appointed. From such judgment of the court an appeal may be taken as in other civil actions.

HISTORY: 1962 Code Section 63‑195.23; 1952 Code Section 70‑131; 1950 (46) 2153; 1970 (56) 2512.

CROSS REFERENCES

Appeals in civil actions, generally, see Title 18.

Library References

Environmental Law 621 to 723.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 141 to 159.

LAW REVIEW AND JOURNAL COMMENTARIES

The Role of the Court in Protecting the Environment—A Jurisprudential Analysis. 23 S.C. L. Rev. 93.

**SECTION 48‑1‑210.** Duties of Attorney General and solicitors.

 The Attorney General shall be the legal adviser of the Department and shall upon request of the Department institute injunction proceedings or any other court action to accomplish the purpose of this chapter. In the prosecution of any criminal action by the Attorney General and in any proceeding before a grand jury in connection therewith the Attorney General may exercise all the powers and perform all the duties which the solicitor would otherwise be authorized or required to exercise or perform and in such a proceeding the solicitor shall exercise such powers and perform such duties as are requested of him by the Attorney General.

HISTORY: 1962 Code Section 63‑195.24; 1952 Code Section 70‑132; 1950 (46) 2153; 1970 (56) 2512.

Library References

Attorney General 7.

Westlaw Topic No. 46.

C.J.S. Aliens Sections 409 to 411.

C.J.S. Attorney General Sections 26 to 78.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney General Section 17, Criminal Prosecutions.

NOTES OF DECISIONS

In general 1

1. In general

Language in pollution control act that “prosecutions for the violation of a final determination or order shall be instituted only by [environmental control agency] or as otherwise provided for in this chapter” did not grant agency sole authority to determine whether to pursue a criminal prosecution for violation of act, rather, the Attorney General retained sole discretion to prosecute; other sections of act provided that, while agency retained authority to prosecute civil matters, Attorney General, or solicitor acting pursuant to Attorney General’s instructions, was to bring any criminal charges, and granting an agency authority to bring criminal prosecutions would have violated state constitutional provision vesting sole discretion to prosecute criminal matters in hands of Attorney General. State v. Peake (S.C. 2003) 353 S.C. 499, 579 S.E.2d 297, rehearing denied. Attorney General 7

Fact that the Attorney General deputized an attorney employed by environmental control agency to act as an Attorney General for purposes of prosecuting a criminal case against an owner of water treatment plant did not convert agency’s representative, a non‑attorney, who negotiated a settlement with property owner in a civil matter, or the agency itself, into an Attorney General, and thus, representative or agency did not have authority to decide whether to subsequently prosecute owner in a criminal case, where deputization occurred after the civil settlement, and the agency attorney so deputized played no part in the civil settlement. State v. Peake (S.C. 2003) 353 S.C. 499, 579 S.E.2d 297, rehearing denied. Attorney General 2

State could not be estopped from prosecuting criminal case against owner of a water treatment plant for alleged violations of pollution control act on basis that a representative of environmental control agency settled the civil suit against owner and owner “reasonably assumed” that representative was settling both civil and criminal liability issues, where representative lacked actual authority to grant criminal immunity. State v. Peake (S.C. 2003) 353 S.C. 499, 579 S.E.2d 297, rehearing denied. Criminal Law 36.6

Although it may have been unfair for environmental control agency representative who settled a civil liability complaint against owner of a water treatment plant for alleged violations of pollution control act not to reveal fact that she had referred matter for criminal consideration, her conduct did not rise to level that implicated constitutionality of the criminal prosecution of owner. State v. Peake (S.C. 2003) 353 S.C. 499, 579 S.E.2d 297, rehearing denied. Environmental Law 751

**SECTION 48‑1‑220.** Institution of prosecutions.

 Prosecutions for the violation of a final determination or order shall be instituted only by the Department or as otherwise provided for in this chapter.

HISTORY: 1962 Code Section 63‑195.25; 1952 Code Sections 70‑134, 70‑135; 1950 (46) 2153; 1970 (56) 2512; 1975 (59) 241.

Library References

Environmental Law 751.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 161.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney General Section 17, Criminal Prosecutions.

LAW REVIEW AND JOURNAL COMMENTARIES

The Suffolk syndrome: A case study in public nuisance law. 40 S.C. L. Rev. 379 (Winter 1989).

NOTES OF DECISIONS

In general 1

1. In general

Language in pollution control act that “prosecutions for the violation of a final determination or order shall be instituted only by [environmental control agency] or as otherwise provided for in this chapter” did not grant agency sole authority to determine whether to pursue a criminal prosecution for violation of act, rather, the Attorney General retained sole discretion to prosecute; other sections of act provided that, while agency retained authority to prosecute civil matters, Attorney General, or solicitor acting pursuant to Attorney General’s instructions, was to bring any criminal charges, and granting an agency authority to bring criminal prosecutions would have violated state constitutional provision vesting sole discretion to prosecute criminal matters in hands of Attorney General. State v. Peake (S.C. 2003) 353 S.C. 499, 579 S.E.2d 297, rehearing denied. Attorney General 7

Any agreement by official of Department of Health and Environmental Control (DHEC) to forgo prosecuting developer, for abandoning wastewater treatment system, in return for transfer of facility to State did not estop State from prosecuting developer for abandoning wastewater treatment plant in violation of Pollution Control Act, since Department official had no authority to enter into such an agreement. State v. Peake (S.C.App. 2001) 345 S.C. 72, 545 S.E.2d 840, rehearing denied, certiorari granted, affirmed 353 S.C. 499, 579 S.E.2d 297. Environmental Law 751

**SECTION 48‑1‑230.** Disposition of funds.

 Any funds appropriated to or received by the Department shall be deposited in the State Treasury as provided by law. Such funds shall be paid out on warrants issued by the State as prescribed by law, but only on order of the authorized representatives of the Department and in accordance with an annual budget or amendments thereto approved by the Department at an official meeting, such order being the authority of the proper fiscal officials of the State for making payment.

HISTORY: 1962 Code Section 63‑195.26; 1952 Code Section 70‑136; 1950 (46) 2153; 1970 (56) 2512.

Library References

Environmental Law 15.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 105, 109, 130 to 132, 135, 173.

**SECTION 48‑1‑240.** Chapter remedies are cumulative; estoppel.

 It is the purpose of this chapter to provide additional and cumulative remedies to abate the pollution of the air and waters of the State and nothing herein contained shall abridge or alter rights of action in the civil courts or remedies existing in equity or under the common law or statutory law, nor shall any provision in this chapter or any act done by virtue of this chapter be construed as estopping the State, persons or municipalities, as riparian owners or otherwise, in the exercise of their rights under the common law, statutory law or in equity to suppress nuisances or to abate any pollution.

HISTORY: 1962 Code Section 63‑195.27; 1952 Code Section 70‑137; 1950 (46) 2153; 1970 (56) 2512.

Library References

Environmental Law 161, 241.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 163 to 164, 172.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Nuisance Section 6, Acts Authorized by Law as Not Constituting Public Nuisance.

NOTES OF DECISIONS

In general 1

1. In general

“Savings clause” in S Car Code Section 48‑1‑240, which specifically preserves state common‑law remedies for water pollution, is broader and stronger than parallel provision in Clean Water Act, 33 USCA Section 1365(e), which replaces federal common‑law remedies for water pollution but specifically provides that state law that satisfies federal act controls, and thus, award of damages under state common law was proper, where Western Carolina Regional Sewer Authority violated its National Pollutant Discharge Elimination System permit to operate sewage treatment plant, granted by state department of health and environmental control, under Clean Water Act (33 USCA Sections 1251 et seq.) and South Carolina Pollution Control Act (S Car Code Sections 48‑1‑10 et seq.). Stoddard v. Western Carolina Regional Sewer Auth. (C.A.4 (S.C.) 1986) 784 F.2d 1200.

**SECTION 48‑1‑250.** No private cause of action created.

 No private cause of action is created by or exists pursuant to this chapter. A determination by the department that pollution exists or a violation of a prohibition contained in this chapter has occurred, whether or not actionable by the State, creates no presumption of law or fact inuring to or for the benefit of a person other than the State.

HISTORY: 1962 Code Section 63‑195.28; 1952 Code Section 70‑138; 1950 (46) 2153; 1970 (56) 2512; 2012 Act No. 198, Section 3, eff June 6, 2012.

Effect of Amendment

The 2012 amendment rewrote the section.

Library References

Environmental Law 20, 226, 297.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 142, 150 to 152, 163 to 164, 172 to 173.

LAW REVIEW AND JOURNAL COMMENTARIES

A guide to the common law of nuisance in South Carolina. 45 S.C. L. Rev. 337 (Winter 1994).

Attorney General’s Opinions

The Legislature can repeal a previously enacted savings clause, as proposed by 2013 H. 3925, which included an amendment to the savings clause contained in Section 6 of 2012 Act No. 198. S.C. Op.Atty.Gen. (September 16, 2014) 2014 WL 4787522.

Notes of Decisions

Voters association 1

1. Voters association

Voters association alleged damages sufficient to maintain a private cause of action under the South Carolina Pollution Control Act (Act), where it alleged its members had been harmed by landowner’s unlawful filling of wetlands, in that the filling destroyed bird and wildlife habitats, impacting association members’ ability to enjoy their recreational and aesthetic interests. Georgetown County League of Women Voters v. Smith Land Co., Inc. (S.C. 2011) 393 S.C. 350, 713 S.E.2d 287. Action 3; Environmental Law 146

**SECTION 48‑1‑260.** Conditions within industrial plants and employer‑employee relations not affected.

 Nothing contained in this chapter shall be deemed to grant to the Department any authority to make any rule, regulation or determination or to enter any order with respect to air conditions existing solely within the industrial boundaries of commercial and industrial plants, works or shops or to affect the relations between employers and employees with respect to or arising out of any air pollution within such boundaries.

HISTORY: 1962 Code Section 63‑195.29; 1965 (54) 687; 1970 (56) 2512.

Library References

Environmental Law 242.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 163 to 164.

**SECTION 48‑1‑270.** Availability of records, reports, and information to the public; confidentiality of trade secrets.

 Any records, reports or information obtained under any provision of this chapter shall be available to the public. Upon a showing satisfactory to the Department by any person that records, reports or information, or particular parts thereof, other than effluent or emission data, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Department shall consider such record, report or information or particular portion thereof confidential in the administration of this chapter.

HISTORY: 1962 Code Section 63‑195.30; 1965 (54) 687; 1970 (56) 2512; 1973 (58) 788; 1975 (59) 241.

CROSS REFERENCES

Applicability to Legislative Audit Council staff members of provisions relative to confidentiality of agency records, see Section 2‑15‑62.

Library References

Records 30, 59.

Westlaw Topic No. 326.

C.J.S. Records Sections 60, 62 to 63, 65, 93, 95, 99 to 100, 106.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Intellectual Property Section 72, Definition of a Trade Secret.

Attorney General’s Opinions

Any records, reports or information obtained by the South Carolina Department of Health and Environmental Control under the provisions of the Pollution Control Act may be kept confidential only if the person desiring confidentiality makes a satisfactory showing to the Department that such records, reports, or information constitute a particular secret of a person and not a general secret of a trade; are known only to certain individuals who have a confidential or contractual relationship with the applicant; are of commercial value and peculiar to applicant’s business; and disclosure or use of the information must be shown to have the effect of causing irreparable injury to the applicant. 1975‑76 Op. Atty Gen, No 4349, p 176.

**SECTION 48‑1‑280.** Health laws not affected.

 Nothing herein contained shall be construed to postpone, stay or abrogate the enforcement of the provisions of the public health laws of this State and rules and regulations promulgated hereunder in respect to discharges causing actual or potential hazards to public health nor to prevent the Department of Health and Environmental Control from exercising its right to prevent or abate nuisances.

HISTORY: 1962 Code Section 63‑195.31; 1952 Code Section 70‑139; 1950 (46) 2153; 1970 (56) 2512.

Library References

Environmental Law 13.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 101, 106, 130 to 132, 173.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Nuisance Section 6, Acts Authorized by Law as Not Constituting Public Nuisance.

S.C. Jur. Public Nuisance Section 19, Power of Scdhec to Abate Nuisance.

LAW REVIEW AND JOURNAL COMMENTARIES

A guide to the common law of nuisance in South Carolina. 45 S.C. L. Rev. 337 (Winter 1994).

**SECTION 48‑1‑290.** Emergency orders.

 Whenever the Department finds that an emergency exists requiring immediate action to protect the public health or property, the Department, with concurrent notice to the Governor, may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as the Department deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but on application to the Department or by direction of the Governor shall be afforded a hearing within forty‑eight hours. On the basis of such hearing the Department shall continue such order in effect, revoke it or modify it. Regardless of whether a hearing is held, the Department shall revoke all emergency orders as soon as conditions or operations change to the extent that an emergency no longer exists.

HISTORY: 1962 Code Section 63‑195.32; 1970 (56) 2512; 1975 (59) 241.

Library References

Environmental Law 13, 14.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 101, 105 to 106, 109, 130 to 133, 135 to 140, 173.

**SECTION 48‑1‑300.** Certain violations excused.

 The civil and criminal liabilities herein imposed upon persons violating the provisions hereof shall not be construed to include any violation which was caused by an act of God, war, strike, riot or other catastrophe as to which negligence on the part of such person was not the proximate cause.

HISTORY: 1962 Code Section 63‑195.33; 1952 Code Section 70‑122; 1950 (46) 2153; 1970 (56) 2512.

Library References

Environmental Law 19, 204, 295.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 134, 150, 156, 163 to 164, 172 to 173.

**SECTION 48‑1‑310.** Local air pollution control programs.

 The governing body of any county is hereby authorized to establish, administer and enforce a local air pollution control program, subject to the approval of the Department. Such programs shall be formulated in accordance with standards and procedures adopted by the Department, and shall be subject to periodic review by the Department, which shall have the power to invalidate such programs if found to be unsatisfactory. County pollution control authorities, when constituted under this section, are hereby authorized to exercise in the geographic area involved all of the powers specified in this chapter, including the authority to adopt rules, regulations and procedures for the control of air pollution.

HISTORY: 1962 Code Section 63‑195.34; 1970 (56) 2512.

Library References

Environmental Law 242, 256.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 163 to 164.

**SECTION 48‑1‑320.** Penalties for violation of Pollution Control Act.

 A person who wilfully or with gross negligence or recklessness violates a provision of this chapter or a regulation, permit, permit condition, or final determination or order of the department is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than twenty‑five thousand dollars for each day’s violation or be imprisoned for not more than two years, or both.

HISTORY: 1962 Code Section 63‑195.35; 1952 Code Section 70‑133; 1950 (46) 2153; 1964 (53) 2393; 1969 (56) 764; 1970 (56) 2512; 1973 (58) 788; 1975 (59) 241; 2001 Act No. 95, Section 1.

CROSS REFERENCES

Application of this section to penalty for violation of regulation governing subdivision water supply and sewage disposal, see S.C. Code of Regulations R. 61‑57.

Criminal penalties collected pursuant to this section must be collected and distributed pursuant to Section 14‑1‑205, see Section 48‑1‑350.

Individual residential residential well and irrigation well permitting, see S.C. Code of Regulations R. 61‑44.

Violation of regulation governing license to construct or clean onsite sewage treatment and disposal system and self‑contained toilets shall be punishable in accordance with this section, see S.C. Code of Regulations R. 61‑56.1.

Library References

Environmental Law 738.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 160.

**SECTION 48‑1‑330.** Civil penalties.

 Any person violating any of the provisions of this chapter, or any rule or regulation, permit or permit condition, final determination or order of the Department, shall be subject to a civil penalty not to exceed ten thousand dollars per day of such violation.

HISTORY: 1962 Code Section 63‑195.35:1; 1973 (58) 788; 1975 (59) 241.

CROSS REFERENCES

Application of this section to penalty for violation of regulation governing subdivision water supply and sewage disposal, see S.C. Code of Regulations R. 61‑57.

Individual residential well and irrigation well permitting, see S.C. Code of Regulations R. 61‑33.

Violation of regulation governing license to construct or clean onsite sewage treatment and disposal system and self‑contained toilets shall be punishable in accordance with this section, see S.C. Code of Regulations R. 61‑56.1.

Library References

Environmental Law 19, 223, 296.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 134, 150, 156, 163 to 164, 172 to 173.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law: Environmental law. 43 S.C. L. Rev. 85 (Autumn 1991).

NOTES OF DECISIONS

In general 1

Injunction 3

Purpose of penalty 2

1. In general

The circuit court abused its discretion by assessing certain fines against the defendant where the cause of the discharges giving rise to the violations was the failure of the city to follow a court order directing it to either connect or buy the sewer systems from which the discharges occurred. Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1993) 313 S.C. 210, 437 S.E.2d 120.

The reasons cited by a circuit judge for not imposing penalties for violations of a permit’s effluent limitations, for violations of Department of Health and Environmental Control (DHEC) operation and maintenance regulations, and for unpermitted construction and unpermitted operation of waste disposal systems, were insufficient to warrant the imposition of no penalty where the judge declined to impose penalties for the effluent limitation violations because the severity of the violations was not established and because DHEC had not previously taken any action to enforce the limitations, no penalties were assessed for the operation and maintenance violations because the problems were corrected as soon as possible under the circumstances, and no penalties were imposed for the unpermitted construction and operation because in all but one instance a construction permit was eventually obtained and because the utility was willing to seek variances which would allow it to obtain operating permits. Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 1989) 301 S.C. 224, 391 S.E.2d 535.

Section 48‑1‑330 does not require a showing of harm to the environment as a prerequisite to liability. Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 1989) 298 S.C. 66, 378 S.E.2d 256.

2. Purpose of penalty

The assessment of civil penalties for violation of an environmental statute is committed to the informed discretion of the circuit court; in exercising this discretion, the court should give effect to the major purpose of the civil penalty—deterrence. Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1993) 313 S.C. 210, 437 S.E.2d 120. Environmental Law 19

3. Injunction

It was not error for a trial judge to refuse to issue an injunction ordering a utility to comply with preexisting obligations, to cease unauthorized discharges and unpermitted construction, to achieve compliance with its permit’s effluent limitations, and to be enjoined from adding more waste water flows to its disposal system until compliance was achieved, since the utility was already obligated under its permits and the applicable statutes to do everything the injunction would have encompassed. Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 1989) 301 S.C. 224, 391 S.E.2d 535. Environmental Law 700

**SECTION 48‑1‑340.** False statements, representations or certifications; falsifying, tampering with, or rendering inaccurate monitoring devices or methods.

 Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be subject to the civil or criminal provisions contained in this chapter. For the purposes of this section the term “person” shall mean, in addition to the definition contained in Section 48‑1‑10, any responsible corporate officer.

HISTORY: 1975 (59) 241.

Library References

Environmental Law 19, 738.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 134, 150, 156, 160, 173.

**SECTION 48‑1‑350.** Penalties constitute debts to State; liens; disposition of moneys collected.

 All penalties assessed under this chapter are held as a debt payable to the State by the person against whom they have been charged and constitute a lien against the property of the person. One‑half of the civil penalties collected inure to the benefit of the county. The criminal penalties collected pursuant to Section 48‑1‑320 must be collected and distributed pursuant to Section 14‑1‑205.

HISTORY: 1962 Code Section 63‑195.36; 1970 (56) 2512; 1994 Act No. 497, Part II, Section 36O.

CROSS REFERENCES

Portion of Pollution Control Act fines distributed to counties not to be placed into the Environmental Scholars Endowment Fund, see Section 59‑111‑720.

Library References

Environmental Law 19, 223, 225, 296.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 134, 150, 156, 163 to 164, 172 to 173.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 83, Argument in the Briefs.

S.C. Jur. Banks and Banking Section 179, Environmental Regulations.

S.C. Jur. Poisons Section 12, Environmental Regulation.