



South Carolina Department of Health and Environmental Control

Surface Water Law and Regulation



Overview of SC Water Resources Law

- **SC Water Resources Planning and Coordination Act**
 - SC Water Plan
 - Planning Process Advisory Committee (PPAC)
 - SC State Water Planning Framework
 - River Basin Councils
- **SC Surface Water Withdrawal, Permitting Use, and Reporting Act**
 - Regulation 61-119
- **SC Groundwater Use and Reporting Act**
 - Regulation 61-113

Water Quantity Programs

- **Surface Water Withdrawal Program**
 - Since June 2012 – R.61-119
 - Issue permits statewide if over 3 million gallons in any month
- **Capacity Use Program**
 - Since the 1970s – R.61-113
 - Issue permits in designated areas of the coastal plain over 3 million gallons in any month (100,000 gallons per day)
- **Water Use Reporting**
 - All registered and permitted groundwater and surface water withdrawers report their annual water use to the department
 - DHEC compiles this information and produces water use reports, which are available on our website for public use

Surface Water Withdrawals

- **Statewide:**
 - Active Permits: 199 with 257 intakes
 - Active Agricultural Registrations: 114 with 216 intakes
- **Upper Savannah Specific:**
 - Active Permits: 30 with 33 intakes
 - Active Agricultural Registrations: 5 with 8 intakes

Surface Water Regulation: R.61-119

Types of Surface Water Withdrawers

Existing Surface
Water
Withdrawer

New Surface
Water
Withdrawer

Agricultural
Withdrawer

Existing or “Grandfathered” Permit Criteria

- Existing on January 1, 2011
- Permits were required to be issued for the **largest of**
 - documented historical use, current permitted treatment capacity
 - **designed capacity of intake structure.**
- Required to submit Operation and Contingency Plan based on industry standards for conditions when flow is below the minimum in stream flows

New or Expanding Surface Water Withdrawer Permit Criteria

1. Evaluated for reasonableness
2. Subject to minimum instream flow (20, 30, 40 percent of mean annual daily flow)
3. Safe Yield will be calculated at the point of withdrawal
4. Safe Yield shall be considered one factor, should withdrawals more than the safe yield be permitted, additional contingency planning shall be required
5. Public Noticed for 30 days (mandatory Public Hearing for Inter Basin Transfers)



Agricultural Registration Criteria

1. Existing withdrawers were registered at the highest reported level of withdrawal.
2. New or expanding withdrawer must request its anticipated withdrawal quantity or increase on a form to the Department
3. Safe Yield will be determined at the point of withdrawal, if the withdrawal is within the safe yield, it will be considered registered
4. If the withdrawal is not within the safe yield, the registrant may modify its request to a reduced withdrawal quantity that is within the Safe Yield



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Criteria	Existing Surface Water Withdrawer	Agricultural Withdrawer	New or Expanding Surface Water Withdrawer
Permit Duration	Minimum 30 years not to exceed 50	Registrations never expire	Minimum 20 years not to exceed 50
Registered or Permitted Withdrawal Amount	Based on Greater of Historical Use or Intake Capacity	Based on Historical Use or Requested Use	Based on Reasonable Use Criteria
Public Notice	No	No	Yes 30-day Public Notice
Minimum Instream Flow Requirements	Subject only to Operation and Contingency Plan	Not subject to Minimum Instream Flow	Must meet Minimum Instream Flow (20, 30, 40)
Reasonableness Criteria for withdrawal	No	No	Yes



Criteria	Existing Surface Water Withdrawer	Agricultural Withdrawer	New or Expanding Surface Water Withdrawer
Operation and Contingency Plan	Only address appropriate industry standards for water Conservation	Not subject to operation and contingency plans	Contingency plan must discontinue water withdrawals from surface water that results in a decrease in flow
Operation and Contingency Plan for Public Water System	Public Water Systems must follow their Drought Plan	Not applicable	Public Water Systems must follow their Drought Plan
Transferability	Yes, for same use	No	Yes, for same use



New or Expanding Surface Water Withdrawals		
Agricultural Registration	Withdrawal on River	Withdrawal on Reservoir (FERC) or ACOE
Conduct Safe Yield Analysis	Conduct Safe Yield Analysis	Request for FERC or ACOE approval
If within Safe Yield and Adjusted Safe Yield , it is deemed registered	If within Safe Yield and Adjusted Safe Yield, conduct Minimum Instream Flow	Public Notice Permit
	Use Flow model to analyze historical 20,30,40 flow	Issue Permit
	Review type and size of supplemental water source or contingency plan (Water Supply uses Drought Plan)	
	Determine if withdrawal will adversely impact current withdrawers	
	Public Notice Permit	
	Issue Permit	

Exemptions

Users exempt from surface water withdrawal regulations:

- Those withdrawing less than 3 mgm
- Ponds that are completely contained with no inflow/outflow to tributaries (surficial or runoff fed)
- Dewatering operations
- Wildlife management
- Hydro power (must only comply with being registered and reporting use)
- Emergency withdrawals

Conceptual Statutory Changes

- During February 2, 2023, PPAC round table meeting the group discussed ideas and concepts for potential changes to the Surface Water Law
- The group requested that DHEC draft statutory language to guide further comments and discussion
- On March 17, 2023, DHEC circulated draft language to the PPAC

Conceptual Statutory Changes

Substantial Changes

- Drafted language of legislative intent utilizing guiding principals outlined in the SC State Water Planning Framework (2019)
- Resource-centered approach to surface water management
- Permit for all withdrawers
 - All withdrawers re-evaluated for reasonableness and subject to safe yield and minimum instream flow (MIF)
 - If approaching MIF – reduce use in a step-wise way vs. completely discontinue use



Conceptual Statutory Changes

- 30 year permits with 10-year reviews
 - Permits are evaluated on reasonable use, future need, and process capacity **for length of permit**

Minor Changes

- 15 to 8 basins for permitting and review
- Public Notice through online platform vs. newspaper
- Removed “turf grass” from agricultural use definition



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CONTACT US

Leigh Anne R. Monroe
Water Quantity Permitting
803-898-2415
monroela@dhec.sc.gov

Joseph M. Koon
Water Monitoring, Assessment, & Protection
803-898-4210
koonjm@dhec.sc.gov

