

CHAPTER 5
Groundwater Use and Reporting Act

Editor's Note

2000 Act No. 366, Section 2, amended the Chapter title. The former title was: "Groundwater Use Act".

SECTION 49-5-10. Short title.

This chapter may be cited as the Groundwater Use and Reporting Act.

HISTORY: 1962 Code Section 70-31; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-20. Legislative declaration of policy.

The General Assembly declares that the general welfare and public interest require that the groundwater resources of the State be put to beneficial use to the fullest extent to which they are capable, subject to reasonable regulation, in order to conserve and protect these resources, prevent waste, and to provide and maintain conditions which are conducive to the development and use of water resources.

HISTORY: 1962 Code Section 70-32; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-30. Definitions.

Unless the context otherwise requires, as used in this chapter:

(1) "Aquifer" means a geologic formation, group of these formations, or part of a formation that is water bearing.

(2) "Aquifer storage and recovery" or "ASR" means a process by which water is injected into an aquifer for storage and then subsequently withdrawn from the same aquifer from the same well or other nearby wells.

(3) "Board" means the Board of the Department of Health and Environmental Control.

(4) "Coastal Plain" means:

(a) all of Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Jasper, Lee, Marion, Marlboro, Orangeburg, Sumter, and Williamsburg counties; and

(b) those portions of Chesterfield, Edgefield, Kershaw, Lexington, Richland, and Saluda counties east or southeast of the fall line as identified on the best available geologic map.

(5) "Department" means the Department of Health and Environmental Control.

(6) "Dewatering operation" means an operation that is withdrawing groundwater from an aquifer for the purpose of draining an excavation or preventing or retarding groundwater flow into an excavation. This operation includes, but is not limited to, mining, water and sewer line construction, and excavating for a building foundation.

(7) "Emergency withdrawal" means the withdrawal of groundwater, for a period not exceeding thirty calendar days, for the purpose of fire fighting, hazardous substance or waste spill response, or both, or other emergency withdrawal of groundwater as determined by the department.

(8) "Existing groundwater withdrawer" means a groundwater withdrawer withdrawing groundwater or a proposed groundwater user with its wells under construction before January 1, 2000.

(9) "Flowing well" means a well releasing groundwater under such pressure that pumping is not necessary to bring it above the ground surface.

(10) "Groundwater" means water in the void spaces of geologic materials within the zone of saturation.

(11) "Groundwater withdrawal permit" means a permit issued by the department to groundwater withdrawers in a designated capacity use area for the withdrawal of groundwater.

(12) "Groundwater withdrawer" means a person withdrawing groundwater in excess of three million gallons during any one month from a single well or from multiple wells under common ownership within a one-mile radius from any one existing or proposed well.

(13) "New groundwater withdrawer" means a person who becomes a groundwater withdrawer after December 31, 1999, except for a proposed groundwater withdrawer with its wells under construction before January 1, 2000.

(14) "Nonconsumptive use" means the use of water from an aquifer that is returned to the aquifer from which it was withdrawn, at or near the point from which it was withdrawn, without diminishing the quantity any more than three million gallons in any one month or without substantial impairment in quality.

(15) "Permit to construct" means a permit issued by the department after consideration of proposed well location, depth, rated capacity, and withdrawal rate.

(16) "Permittee" means a person having obtained a permit to construct or a groundwater withdrawal permit issued in accordance with Sections 49-5-60 and 49-5-110.

(17) "Person" means an individual, firm, partnership, association, public or private institution, municipality or political subdivision, governmental agency, public water system, or a private or public corporation organized under the laws of this State or any other state or county.

(18) "Public water system" means a water system as defined in Section 44-55-20 of the State Safe Drinking Water Act.

(19) "Rated capacity" means the amount, in gallons per minute (gpm), of groundwater that is capable of being withdrawn from the completed well with the pump installed.

(20) "Surface water" means all water which is open to the atmosphere and subject to surface runoff which includes lakes, streams, ponds, and reservoirs.

(21) "Type I well" means a well constructed with an open hole in a bedrock aquifer.

(22) "Well" means an excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed for the purpose of locating, testing, or withdrawing groundwater or for evaluating, testing, developing, draining, or recharging a groundwater reservoir or aquifer or that may control, divert, or otherwise cause the movement of groundwater from or into an aquifer.

HISTORY: 1962 Code Section 70-33; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-40. Department to establish groundwater management program; withdrawers to register sources and report use.

In order to carry out the policy as stated in Section 49-5-20, the General Assembly finds that the department must establish and implement an effective statewide groundwater management program. To implement this program, all groundwater withdrawers shall register their groundwater sources with, and report their groundwater use to, the department.

HISTORY: 1962 Code Section 70-34; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-50. Department to monitor groundwater withdrawals; notice of construction of new well or increase in capacity of existing well; public notice.

(A) The department shall assess, notice, and monitor groundwater withdrawals in this State pursuant to this chapter.

(B) A groundwater withdrawer or proposed groundwater withdrawer outside of a designated capacity use area in the Coastal Plain shall notify the department of its intent to construct a new well, or increase the rated capacity of an existing well, at least thirty days before initiating the action. This notification must be made on forms provided by the department.

(C) The department shall develop a process for notifying potentially affected existing withdrawers and the public of all notices received pursuant to subsection (B).

HISTORY: 1962 Code Section 70-35; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-60. Capacity use area designation; notice and public hearing; development of groundwater management plan; groundwater withdrawal permits; appeals; grounds for reversal or modification.

(A) In the State where excessive groundwater withdrawal presents potential adverse effects to the natural resources or poses a threat to public health, safety, or economic welfare or where conditions pose a significant threat to the long-term integrity of a groundwater source, including salt water intrusion, the board, after notice and public hearing, in accordance with the Administrative Procedures Act, shall designate a capacity use area. The department, local government authorities, other government agencies, or groundwater withdrawers may initiate the capacity use area designation process. The notice and public hearing must be conducted such that local government authorities, groundwater withdrawers, or the general public may provide comments concerning the capacity use area designation process. A capacity use area must be designated by the board based on scientific studies and evaluation of groundwater resources and may or may not conform to political boundaries.

(B) After notice and public hearing, the department shall coordinate the affected governing bodies and groundwater withdrawers to develop a groundwater management plan to achieve goals and objectives stated in Section 49-5-20. In those areas where the affected governing bodies and withdrawers are unable to develop a plan, the department shall take action to develop the plan. The plan must be approved by the board before the department may issue groundwater withdrawal permits for the area.

(C) Once the board approves the groundwater management plan for a designated capacity use area, each groundwater withdrawer shall make application for a groundwater withdrawal permit. The department shall issue groundwater withdrawal permits in accordance with the approved plan.

(D) A person or entity affected may appeal a decision of the board on a capacity use area designation within thirty days after the filing of the decision to the court of common pleas of any county which is included in whole or in part within the disputed capacity use area. The department shall certify to the court the record in the hearing. The court shall review the record and the regularity and the justification for the decision. The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the statutory authority of the agency;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the record; or
- (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

HISTORY: 1962 Code Section 70-36; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-70. Exemptions.

- (A) The following are exempt from this chapter:
- (1) emergency withdrawals of groundwater;
 - (2) any person withdrawing groundwater for nonconsumptive uses;
 - (3) a person withdrawing groundwater for the purpose of wildlife habitat management;
 - (4) A person withdrawing groundwater at a single family residence or household for noncommercial use.

(B) The following are exempt from the permitting requirements of Section 49-5-100 and the public notification requirements of Section 49-5-50:

- (1) dewatering operations at mines;
- (2) all other dewatering operations;
- (3) Type I wells installed into crystalline bedrock in the Coastal Plain Groundwater Management Area;
- (4) groundwater withdrawer constructing a new well to replace an existing well.

(C) Aquifer storage and recovery wells are exempt from the requirements of this chapter if:

- (1) a permit in accordance with the Underground Injection Control Regulations, Regulation 61-87, S. Code of Regulations, is obtained from the department; and
- (2) the amount of water withdrawn does not exceed the amount of water injected.

(D) The department may exempt wells of diminutive yield from the requirements of this chapter if these wells are used for purposes other than the wells which result in a person being considered a groundwater user.

HISTORY: 1962 Code Section 70-37; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-80. Registration of groundwater withdrawers; new wells.

(A) An existing groundwater withdrawer in the State shall register its groundwater withdrawal and subsequent use with the department on forms provided by the department no later than January 1, 2000.

(B) A new groundwater withdrawer in the State shall register its groundwater withdrawal and subsequent use with the department on forms provided by the department before becoming a groundwater withdrawer.

(C) A groundwater withdrawer shall register any additional wells within thirty days after initiating use of the wells.

HISTORY: 1962 Code Section 70-39; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-90. Reports of quantity of water withdrawn; methods for determining quantity.

(A) Every permitted and registered groundwater withdrawer in the State shall annually before January thirty file with the department a report on forms furnished by the department of the quantities of groundwater withdrawn.

(B) The quantity of groundwater withdrawn must be determined by one of the following:

- (1) flow meters accurate to within ten percent of calibration;
- (2) the rated capacity of the pump in conjunction with the use of an hour meter, electric meter, or log;
- (3) the rated capacity of a cooling system;
- (4) any standard or method employed by the United States Geological Survey in determining such quantities; or

(5) any other method approved by the department which will provide reliable groundwater withdrawal data.

(C) The groundwater withdrawer is not required to submit the groundwater withdrawal report required by subsection (A) if the monthly quantity withdrawn from each well is being reported to the department as a result of another environmental program reporting requirement, permit condition, or consent agreement.

HISTORY: 1962 Code Section 70-40; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-100. Permits; temporary permits; revocation; process for public participation in permitting process to be developed; contested case hearing.

(A) Before a groundwater withdrawer or proposed groundwater withdrawer in a designated capacity use area can construct a new well or increase the rated capacity of an existing well, an application for a permit

to construct must be made to, and a permit to construct obtained from, the department unless exempt pursuant to Section 49-5-70.

(B) Before a person may become a groundwater withdrawer in a designated capacity use area, an application for a groundwater withdrawal permit must be made to, and a groundwater withdrawal permit obtained from, the department.

(C) The department may grant a temporary groundwater withdrawal permit for up to one hundred eighty days or until a final decision is made on the application if an imminent hazard to public health exists or if an applicant demonstrates that physical or financial damage has occurred, or will occur, if a temporary permit is not granted. The issuance of a temporary permit does not guarantee the issuance of a groundwater withdrawal permit.

(D) The department may revoke a permit to construct or a groundwater withdrawal permit if it determines information in the permit application is false or the permittee fails to comply with the conditions of the permit.

(E) The department may revoke a temporary groundwater withdrawal permit if the permittee fails to adhere to the conditions of the temporary permit or provide timely response to requests for actions for information made pursuant to the application review.

(F) The department shall develop a public participation process for the permitting of new wells or for an increase in the rated capacity of a well and for groundwater withdrawal.

(G) The department is authorized to develop a "General Permit" for groundwater withdrawal activities.

(H) A person or entity aggrieved by the department's decision on any permit application or revocation pursuant to this section may request a contested case hearing. The contested case must proceed in accordance with Articles 3 and 5, Chapter 23 of Title 1.

HISTORY: 1962 Code Section 70-41; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-110. Powers of department.

The department may:

- (1) adopt and modify regulations to implement the provisions of this chapter;
- (2) issue, modify, revoke, or deny construction and groundwater withdrawal permits;
- (3) perform acts and issue orders as necessary to carry out the purposes and requirements of this chapter;
- (4) administer and enforce this chapter and regulations promulgated and orders issued or effective under this chapter;
- (5) present proper identification and then enter upon any land or water for the purpose of conducting an investigation, examination, or survey contemplated by this chapter;
- (6) subpoena and require the attendance of witnesses and the production of books and papers by witnesses pertinent to investigations and inquiries the department is authorized to conduct under this chapter, and examine witnesses and those public records as necessary;
- (7) enter into agreements, contracts, memoranda of understanding, or cooperative arrangements under terms and conditions as the department considers appropriate with any person necessary to carry out the intent of this chapter;
- (8) distribute to, and receive financial and technical assistance from, public or private agencies, institutions of higher education, and the federal government;
- (9) participate in programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations;
- (10) evaluate and conduct, or have conducted, investigations regarding aquifer sampling, aquifer characteristics, hydrogeologic modeling, and other engineering, scientific, and economic analysis, including the establishment of minimum aquifer levels to carry out the provisions of this chapter. In conducting such investigations, the department will consider and utilize, as appropriate, reports, research, and studies of federal, state, or local agencies and departments of government. The results of these

investigations shall serve as the basis for the evaluation of applications and the determination of applicable permit conditions.

The department shall negotiate agreements, accords, or compacts on behalf of and in the name of the State and with other states or the United States, or both, with an agency, department, or of either, or both, relating to withdrawal or diversion of groundwater that impacts the groundwater of this State, or are connected to those waters. In negotiating such agreements, the department will consider, as appropriate, information provided by potentially affected federal, state, or local agencies and departments of government and will advise such entities of the final department action. An interstate compact made by the department by authority of this chapter is subject to approval by joint resolution of the General Assembly. The department shall represent this State in connection with groundwater withdrawals, diversions, or transfers occurring in other states which may affect this State.

HISTORY: 1962 Code Section 70-38; 1969 (56) 640; 1989 Act No. 133, Section 1; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-120. Violations of chapter or regulation; civil and criminal penalties.

(A) A person wilfully violating a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars a day for each violation.

(B) A violation of a provision of this chapter or a regulation promulgated under the authority of this chapter renders the violator liable to the State for a civil penalty of not more than one thousand dollars a day for each violation.

(C) The department may administer penalties as otherwise provided herein for a violation of this chapter, an order, regulation, standard, permit, or permit condition or may request the Attorney General to commence an action under this subsection in an appropriate court of the State to secure a penalty.

(D) The department may cause to be instituted a civil action in a court of applicable jurisdiction for injunctive relief to prevent violation of this chapter or an order issued pursuant to this chapter.

(E) Civil penalties collected pursuant to this section must be deposited in the general fund of the State.

HISTORY: 1962 Code Section 70-42; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-130. Wells not requiring pumps; restriction of flow; promulgation of regulations.

Wells that are flowing by releasing groundwater under such pressure that pumping is not necessary to bring it above the ground surface at a rate of greater than five thousand gallons a day at any time are an unreasonable use of groundwater constituting waste and are prohibited, except that the water from these wells may be utilized to the extent actually necessary for a specific use. These wells must be fitted with a mechanism to restrict the flow of water if the flow is in excess of that necessary for the specific use. The department may promulgate regulations to govern use of these wells in this State.

HISTORY: 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-140. Effect of chapter on rights of use of surface water.

Nothing contained in this chapter changes or modifies existing common or statutory law with respect to the rights of the use of surface water in this State.

HISTORY: 2000 Act No. 366, Section 2.

SECTION 49-5-150. Existing capacity use areas.

Existing capacity use areas and requirements as specified in Regulations 121-1 and 121-2, S. C. Code of Regulations, remain in effect until the department promulgates regulations under the authority of this chapter.

HISTORY: 2000 Act No. 366, Section 2.