

**TITLE 49. WATERS, WATER RESOURCES AND DRAINAGE
CHAPTER 23. SOUTH CAROLINA DROUGHT RESPONSE ACT**

Contents

SECTION 49-23-10. Short title. 1

SECTION 49-23-20. Definitions. 1

SECTION 49-23-30. Duties and authority of department. 2

SECTION 49-23-40. Applicability of chapter. 3

SECTION 49-23-50. Functions of department. 3

SECTION 49-23-60. Coordination of drought response; establishment of local drought response committees. 4

SECTION 49-23-70. Dissemination of information and promulgation of regulations regarding nonessential water use; declaration of drought management areas. 5

SECTION 49-23-80. Emergency action by Governor. 6

SECTION 49-23-90. Authority for local and agency drought response ordinances. 7

SECTION 49-23-100. Penalties. 7

SECTION 49-23-10. Short title. [SC ST SEC 49-23-10]

This chapter may be cited as the South Carolina Drought Response Act.

HISTORY: 1985 Act No. 63, § 3; 1993 Act No. 181, § 1250; 2000 Act No. 366, § 3.

SECTION 49-23-20. Definitions. [SC ST SEC 49-23-20]

As used in this chapter:

- (a) "**Department**" means the Department of Natural Resources.
- (b) "**Conservation**" means, to minimize or prevent depletion or waste of the water resource.
- (c) "**Drought Response Committee**" means the committee created under Section 49-23-60 to be convened to address drought related problems and responses.
- (d) "**Office of primary responsibility**" means the Department of Natural Resources.
- (e) "**Person**" means all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this State or another state or country.
- (f) "**Drought**" means a period of diminished precipitation which results in negative impacts upon the hydrology, agriculture, biota, energy, and economy of the State.

(g) "**Water resources**" means water on or beneath the surface of the ground, including natural and artificial water courses, lakes or ponds, and water percolating, standing, or flowing beneath the surface of the ground.

(h) "**Diffused surface water**" means waters of a casual or vagrant character, lying or running on the surface of the earth but not in definite courses, streams, or waterbodies.

(i) "**Drought indices**" means topical and quantitative indicators of drought including, but not limited to, sustained decline in water levels of natural flowing streams and other natural bodies of water, decline in water tables above and below ground, forest fire indices, sustained decline in potable drinking water supplies, agricultural stress, low soil moisture, and low precipitation. The department must, through regulation, establish specific numerical values for the indices that define each level of drought.

(j) "**Incipient drought**" means that there is a threat of a drought as demonstrated by drought indices. The incipient drought phase shall initiate in-house mobilization by department personnel and the Drought Response Committee. The department shall routinely monitor the climatic variables, streamflow, and water levels in potable drinking water supplies and water levels in the above and below ground water tables and lakes, and shall notify the Drought Response Committee and relevant federal, state, and local agencies that a portion of the State is experiencing an incipient drought condition. The department must increase monitoring activities to identify a change in existing conditions.

(k) "**Moderate drought**" means that there is an increasing threat of a drought as demonstrated by drought indices. Statements must be released to the news media by the department, and appropriate agencies must accelerate monitoring activities.

(l) "**Severe drought**" means that the drought has increased to severe levels as demonstrated by drought indices. This phase must be verified utilizing data, forecasts, and outlooks from various agencies. A drought of this severity normally requires an official declaration by the department and water withdrawals and use restrictions.

(m) "**Extreme drought**" means that the drought has increased to extreme levels as demonstrated by drought indices. The department shall continue to evaluate information from various sources. Upon confirmation of an Extreme Drought Alert Phase, the Drought Response Committee may recommend that the Governor issue a public statement that an extreme drought situation exists and that appropriate water-use and withdrawal restrictions be imposed.

(n) "**Board**" means the governing authority of the Department of Natural Resources.

HISTORY: 1985 Act No. 63, § 3; 1993 Act No. 181, § 1250; 2000 Act No. 366, § 3.

SECTION 49-23-30. Duties and authority of department. [SC ST SEC 49-23-30]

The department shall formulate, coordinate, and execute a drought mitigation plan. The plan must be developed consistent with the South Carolina Water Resources Planning and Coordination Act, as provided in Chapter 3 of Title 49, to the extent that the plan is compatible with the comprehensive state water plan. In carrying out these responsibilities, the department shall seek and utilize to the extent

possible the input, resources, and expertise of other agencies in assisting in drought mitigation planning and response.

HISTORY: 1985 Act No. 63, § 3; 1993 Act No. 181, § 1250; 2000 Act No. 366, § 3.

SECTION 49-23-40. Applicability of chapter. [SC ST SEC 49-23-40]

This chapter applies to all of the water resources in streams, lakes, and potable drinking water supplies and water levels in the above and below ground water tables of the State, but this chapter does not authorize any restriction in use of water during an incipient, moderate, and severe drought declaration injected into aquifer storage and recovery facilities, water stored in managed watershed impoundments or water from any pond completely situated on private property and fed only by diffused surface water. During a drought declaration, the use of water from a managed watershed impoundment shall not be restricted as long as minimum streamflow or flow equal to the 7Q10 is maintained, whichever is less. For the purposes of this chapter, the waters of the State shall include all groundwater and all surface water within the State as defined in Section 49-23-20. The drought response plan applies to every person using water in this State.

HISTORY: 1985 Act No. 63, § 3; 1993 Act No. 181, § 1250; 2000 Act No. 366, § 3.

SECTION 49-23-50. Functions of department. [SC ST SEC 49-23-50]

Consistent with the South Carolina Water Resources Planning and Coordination Act, as provided in Chapter 3 of Title 49, the department, without limiting its general authority, shall:

- (a) routinely monitor and record data necessary for the determination of drought conditions;
- (b) make investigations it considers proper to determine whether action by the department in discharging its duties is necessary;
- (c) determine levels of drought after consultation with the Drought Response Committee based upon data collected;
- (d) establish drought management areas within the State in order to:
 - (1) enable drought mitigation to be accomplished within defined geographical areas;
 - (2) prevent overly broad response to drought. Statewide action usually should not be taken in instances in which action in a particular area experiencing drought is more appropriate. Establishment of drought management areas by the department in no way limits the department's or the Drought Response Committee's authority to act in an area smaller than a drought management area, such as a county or watershed.
- (e) establish drought alert phases based upon drought levels and at each drought alert phase:
 - (1) notify public water suppliers, special purpose districts, and municipal and county governments in the affected drought management area, persons designated on notification lists, and other appropriate agencies and individuals;

(2) The department shall publish notice of each drought alert phase at least once in a newspaper of general circulation in the areas affected and provide notice to the media in each drought management area at each drought alert phase;

(3) take any other action appropriate to announce a drought alert;

(f) coordinate and implement responses to announced drought alert phases after required notification;

(g) execute the regulations promulgated by the department reasonably necessary to collect and distribute information, convene committees, promote water conservation, govern practice and procedure before the department, and fulfill its duties and the purposes of this chapter.

HISTORY: 1985 Act No. 63, § 3; 1993 Act No. 181, § 1250; 2000 Act No. 366, § 3.

SECTION 49-23-60. Coordination of drought response; establishment of local drought response committees. [SC ST SEC 49-23-60]

(A) The department shall coordinate appropriate drought response upon consultation with the Drought Response Committee composed of two parts:

(1) a statewide committee composed of the following state agencies: South Carolina Emergency Management Division of the Office of the Adjutant General, South Carolina Department of Health and Environmental Control, Department of Agriculture, South Carolina Forestry Commission, and South Carolina Department of Natural Resources;

(2) a local committee within each drought management area. The local committees shall consist of the following members to be appointed by the Governor to represent the following interests: counties, municipalities, public service districts, private water suppliers, agriculture, industry, domestic users, regional councils of government, commissions of public works, power generation facilities, special purpose districts and Soil and Water Conservation Districts; however, there may not be more than two members on a local committee from each county within the drought management area. The Governor may appoint additional members as necessary to ensure broad based input on the committee and may make interim appointments when the General Assembly is not in session. The statewide committee shall coordinate planning and response only upon consultation with the appropriate local committee in the impacted drought management area during moderate, severe, and extreme drought declarations. The Governor shall appoint the chair of the Drought Response Committee. The department shall provide administrative support.

(B) The Drought Response Committee shall convene as necessary upon call by the chair. In carrying out its responsibilities, the Drought Response Committee shall consult with and invite participation by notifying representatives of municipalities, counties, public and private water suppliers, public service districts, power generation facilities, industries, special purpose districts, private citizens, and commissions of public works in affected drought management areas and by providing notice to the media in each drought management area of the date, time, and location of the Drought Response Committee meetings and subsequent notice of actions taken by the committee.

(C) The department may consult and cooperate with federal agencies and agencies of the states of Georgia and North Carolina in carrying out its responsibilities under this chapter.

HISTORY: 1985 Act No. 63, § 3; 1993 Act No. 181, § 1250; 2000 Act No. 366, § 3; 2002 Act No. 190, § 9; 2008 Act No. 273, § 10, eff June 4, 2008.

SECTION 49-23-70. Dissemination of information and promulgation of regulations regarding nonessential water use; declaration of drought management areas. [SC ST SEC 49-23-70]

(A) Upon the inception of a drought alert phase, the department is responsible for disseminating public information concerning all aspects of the drought. The initial action in responding to drought must be public education, providing information as to existing and potential conditions and water conservation measures necessary to meet the demand presented at each drought alert phase.

(B) The department shall provide available information on water demands and use to any significant water user, public or private, in order to promote voluntary water conservation.

(C) The department may promulgate regulations to specify categories of nonessential water use and other terms necessary to implement this section. Water used strictly for firefighting purposes, health and medical purposes, agricultural operations for food production, minimum stream flow requirements, minimum water levels in the potable drinking water supplies and the above and below ground water tables, and the use of water to satisfy federal, state, or local public health and safety requirements are considered essential water use. Water used to maintain minimum water levels in the potable drinking water supply and water used for public safety purposes have the highest priority in the essential water category. The department by regulation may provide for the mandatory curtailment of nonessential water uses during periods of severe or extreme drought in drought management areas. Agricultural operations for nonfood production, and nonessential water users that may suffer a critical economic loss as a result of mandatory curtailment, have priority over other nonessential water users. Agricultural operations for nonfood production and nonessential water users that may suffer a critical economic loss as a result of mandatory curtailment must certify to the Drought Response Committee the nature of the loss in order to qualify for the higher priority nonessential use. Mandatory curtailment of nonessential water use shall become effective only after the Drought Response Committee determines the action to be reasonably necessary to ensure supplies of water in drought management areas. Upon such a finding, the Drought Response Committee shall determine which categories of nonessential water must be curtailed after reviewing each category by the following standards:

(1) the purpose of the use;

(2) the suitability of the use to the watercourse, lake, or aquifer;

(3) the economic value of the use;

(4) the social value of the use;

- (5) the extent and amount of the harm it causes;
- (6) the practicality of avoiding the harm by adjusting the use or method of use of one proprietor or the other;
- (7) the practicality of adjusting the quantity of water used by each proprietor;
- (8) the protection of existing values of water uses, land, investments, and enterprises;
- (9) the consumptive or nonconsumptive nature of the use.

Following the determination, the department shall issue a declaration specifying the drought management areas affected and identifying the categories of nonessential water use to be curtailed. The declaration must be widely distributed to news media and must be published at least once a week in a newspaper of general circulation in each county affected. Any person adversely affected by mitigation or mandatory curtailment may, within ten days after such curtailment becomes effective, submit appropriate information to the department and obtain relief therefrom as is appropriate. Any declaration shall continue in effect only so long as conditions in a drought management area reasonably require it, and the declaration must be terminated by action of either the Drought Response Committee or the department, and notice of termination of the declaration must be given as when originally issued. If a declaration issued pursuant to this section conflicts with any ordinance or plan adopted pursuant to Section 49-23-80, the declaration shall supersede any ordinance or plan.

- (D) During any drought alert phase, the department may offer its services to mediate any dispute arising from competing demands for water. The mediation may be undertaken only upon the request of the parties involved and may not be binding. A mediation shall not stop or preclude the department and the Drought Response Committee from taking any other action authorized by this chapter. A party affected by a declaration of the Drought Response Committee has the right to appeal that action to the Administrative Law Court. The appeal must be filed within five days of the declaration. The filing of an appeal operates as an immediate stay of the declaration of the Drought Response Committee as it affects the appellant. A review of the immediate stay must be heard by the Administrative Law Court within five days of the filing of the notice of appeal with the Administrative Law Court. All issues under appeal must be heard as a contested case pursuant to the provisions of the Administrative Procedures Act and the rules of the Administrative Law Court.

HISTORY: 1985 Act No. 63, § 3; 1993 Act No. 181, § 1250; 2000 Act No. 366, § 3; 2005 Act No. 99, § 1.

SECTION 49-23-80. Emergency action by Governor. [SC ST SEC 49-23-80]

If the Drought Response Committee determines that the severity of the conditions in a drought management area have progressed to the extent that the safety, health, of the citizens of the area are threatened, the committee shall expeditiously report the conditions to the Governor. The committee shall also present the Governor with a priority list of recommended actions designed to alleviate the effects of drought conditions in affected drought management areas. Pursuant to the authority in Section 21 of Part II of Act 199 of 1979, the Governor may declare a drought emergency. In addition to

exercising existing authority pursuant to Section 21 of Part II of Act 199 of 1979, the Governor may issue emergency proclamations and emergency regulations to require curtailment of water withdrawals or to allocate water on an equitable basis. Notwithstanding any provisions of Section 21 of Part II of Act 199 of 1979, emergency action ordered by the Governor in response to a drought emergency may continue so long as conditions giving rise to the declaration of the emergency continue to threaten safety, health.

HISTORY: 1985 Act No. 63, § 3; 1993 Act No. 181, § 1250; 2000 Act No. 366, § 3.

SECTION 49-23-90. Authority for local and agency drought response ordinances. [SC ST SEC 49-23-90]

(A) Municipalities, counties, public service districts, special purpose districts, and commissions of public works engaged in the business or activity of supplying water for any purpose shall develop and implement drought response ordinances or plans where authority to enact ordinances does not exist. The ordinances or plans must be consistent with the State Drought Response Plan, implemented through the regulations adopted pursuant to this chapter. The department shall prepare and distribute a model drought response ordinance or plan.

(B) A proposed ordinance or plan or a change to an ordinance or plan first must be submitted to the department for review to determine consistency with the State Drought Response Plan.

HISTORY: 1985 Act No. 63, § 3; 1993 Act No. 181, § 1250; 2000 Act No. 366, § 3.

SECTION 49-23-100. Penalties. [SC ST SEC 49-23-100]

(A) A person violating a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not less than fifty dollars and not more than one thousand dollars for each violation. In addition, if a person is adjudged to have committed the violation willfully, the court may determine that each day during which the violation continued constitutes a separate offense.

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

HISTORY: 1985 Act No. 63, § 3; 1993 Act No. 181, § 1250; 2000 Act No. 366, § 3.