

Appendix H. Stormwater Statutes and Regulations

This appendix is not legal advice and is provided for informational purposes only. Anyone interested in which, if any, statutes and/or regulations apply to a particular project should consult an attorney licensed in South Carolina. (Information provided by Andrew Wurley, Esq., Charleston Waterkeeper)

H.1 FEDERAL:

Clean Water Act

In General - All point source discharges are illegal, unless authorized by and in compliance with an NPDES permit

✧ *National Pollutant Discharge Elimination System (NPDES)*

- In general - Many stormwater discharges are considered point sources and operators are required to receive an NPDES permit before they can discharge stormwater.
- NPDES permits - Contain numerical or narrative effluent limitations on the types and amounts of pollutants and require the use of Best Management Practices (BMPs) and/or stormwater treatment.
- Note - Permits are either general (issued to a class of discharges) or individual (issued to a single discharger)

✧ *CWA Section 402(p)* - Provides a phased approach for regulating stormwater discharges under NPDES program

- Phase I (1990) - NPDES permits required for:
 - ◆ Construction activity disturbing 5 acres or more
 - ◆ Industrial activity in the 11 categories listed here: <http://www.scdhec.gov/Environment/WaterQuality/NPDES/Classifications/>
 - ◆ Large and Medium Municipal Separate Stormwater Sewer Systems (population equal to or greater than 100,000)
- Phase II (2003) - NPDES permit required for:
 - ◆ Construction activity disturbing between 1 and 5 acres
 - ◆ Industrial activity (added 1 category to list of 11)
 - ◆ Small MS4s (population between 10,000 and 100,000)

✧ *CWA Section 401* - Requires that the DHEC issue a certification for any activity which requires a Federal permit and may result in a discharge to State waters. This certification must state that applicable effluent limits and water quality standards will not be violated. See R.61-101 Water Quality Certification available at <http://www.scstatehouse.gov/coderegs/c061e.php>

Endangered Species Act (ESA)

In general - May affect stormwater management designs when dealing with downstream habitats of endangered species or habitats of endangered species currently residing onsite.

Note - The Fact sheet to the Industrial Stormwater General Permit SCR000000 indicates DHEC removed and reserved the ESA requirement from the permit. DHEC considers this a Federal program and believes it should be administrated as such. See SCR000000 Fact Sheet (page 5) available at http://www.scdhec.gov/Environment/docs/sw_PNFSIGP.pdf

National Environmental Policy Act (NEPA)

In general - If a new or expanded industrial discharge is established, environmental impact reviews must be conducted and approved before an NPDES permit is granted.

Note - A New Source Determination (NSD) determines whether the proposed source is subject to environmental assessment under NEPA.

National Historic Preservation Act (NHPA)

In general - May affect stormwater management design when historical places are located onsite.

Note - The Fact sheet to the Industrial Stormwater General Permit SCR000000 indicates DHEC removed and reserved the NHPA requirement from the permit. DHEC considers this a Federal program and believes it should be administrated as such. See SCR000000 Fact Sheet (page 5), available at http://www.scdhec.gov/Environment/docs/sw_PNFSIGP.pdf

Coastal Zone Management Act (CZMA)

In general - Prohibits the issuance of NPDES permits for activities affecting land or water use in the coastal zone unless the permit applicant certifies that the proposed activity complies with the State CZM Program.

H.2 STATE:

Pollution Control Act (PCA)

In general - "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 [DHEC]." See *S.C. Code Ann 48-1-90(A)(1)* available at <http://www.scstatehouse.gov/code/t48c001.php>

Note - The PCA grants DHEC authority to promulgate regulations to implement the requirements of the PCA

- ✧ *Water Pollution Control Permits* - R.61-9 122.26 Storm water discharges implement South Carolina's stormwater NPDES permit program. The program is implemented via general and individual permits that require the use of stormwater controls. Information is available at <http://www.scdhec.gov/environment/water/regs/r61-9.pdf>

◇ General Permits

- SCR00000 - Industrial Stormwater General Permit
 - ◇ <http://www.scdhec.gov/Environment/docs/scr000000.pdf>
- SCR10000 - Construction General Permit
 - ◇ <http://www.scdhec.gov/Environment/docs/CGP-permit.pdf>
- SCR03000 - Small Municipal Separate Stormwater Sewer Systems
 - ◇ http://www.scdhec.gov/Environment/docs/Final_SMS4_Permit.pdf

◇ Individual Permits

- Large & Medium MS4s - SC Department of Transportation, City of Columbia, Greenville County, Lexington County, and Richland County
- Some Industrial Sites
- Some Construction Activities

Erosion and Sediment Reduction and Stormwater Management

In general - Sets forth requirements for erosion and sediment control and stormwater management measures to be used on land owned by the state of South Carolina to prevent damage to land, water, and property from erosion, sediment and stormwater.

Note - R.72-106(E) provides a set of minimum standards and specifications that must be used to control erosion and stormwater for projects on state property. More information available at <http://www.scdhec.gov/environment/water/regs/r72-101.pdf>

Standards of Stormwater Management and Sediment Reduction Act (SMSRA)

In general - The SMSRA contains a set of design criteria and minimum standards and specifications based upon the number of acres to be disturbed.

Categorical Exceptions - many activities are excepted from the SMSRA. These include land disturbing for agriculture, timber harvesting, and improvement of a single family residence. Full list of exceptions and variances available at:

- ◇ R.72-302: <http://www.scdhec.gov/environment/water/regs/r72-300.pdf>
- ◇ S.C. Code Ann 48-14-40: <http://www.scstatehouse.gov/code/t48c014.php>

Note 1 - SMSRA requirements based on acres disturbed:

Table H.2-1. SMSRA Requirements	
Acres	Minimum Standards*
Less than 2 acres (not part of a larger common plan)	<u>R.72-307(H)</u>
Between 2 and 5 acres (not part of a larger common plan)	<u>R.72-307(I)</u>
More than 5 acres	<u>R.72-305(H) and (I)</u>
*Available online at http://www.scdhec.gov/environment/water/regs/r72-300.pdf	

Note 2 - Land disturbing activities on land owned by the South Carolina Department of Transportation are regulated under R.72-405: <http://www.scdhec.gov/environment/water/regs/r72-405.pdf>

Coastal Zone Consistency Permits

In general - Activities affecting land and water in the coastal zone may require a DHEC-OCRM Consistency Determination before coverage is granted under an NPDES permit. A consistency determination establishes that all land and water uses within the coastal zone are consistent with both the State's Coastal Zone Management Plan and the South Carolina Coastal Zone Management Act.

In the eight coastal counties - Consistency Determinations are required as a precondition to NPDES permit coverage if:

- ✧ The project will disturb more than 0.5 acre in one of the eight coastal counties (Charleston, Berkeley, Dorchester, Georgetown, Horry, Jasper, Beaufort, and Colleton), or
- ✧ (1) hazardous chemicals are stored, (2) the project is a residential subdivision directly adjacent to saltwater, or (3) the project impacts a Geographic Area of Particular Concern as defined in R.30-1(D)(24), available at <http://www.scstatehouse.gov/coderegs/c030.php>

Note - these are general rules, DHEC provides helpful guidance which is available at <http://www.scdhec.gov/environment/WaterQuality/Stormwater/ConstructionActivities/>

Federal permits - Some federal permits (CWA Section 404 dredge and fill) may require both a 401 Water Quality Certification and a Consistency Determination. In this case the 401 Certification serves as the Consistency Determination.