

# Regulation 61-119

## Surface Water Withdrawal, Permitting, Use and Reporting

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SC DEPARTMENT *of*  
**ENVIRONMENTAL**  
**SERVICES**

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**Table of Contents**

<b>A. PURPOSE AND SCOPE.....</b>	<b>1</b>
1. Implementation Provision.....	1
2. Right to Withdraw.....	1
3. South Carolina Drought Act Provision.....	1
<b>B. DEFINITIONS.....</b>	<b>1</b>
<b>C. EXEMPTIONS.....</b>	<b>5</b>
1. Exempt Surface Water Withdrawals.....	5
2. Hydropower Reporting Requirements.....	5
3. Provision Allowing Permitting of Exempt Withdrawals.....	5
<b>D. PERMITS FOR EXISTING SURFACE WATER WITHDRAWERS AS OF JANUARY 1, 2011. ...</b>	<b>6</b>
1. Application Requirements.....	6
2. Requests for Additional Flow.....	7
3. Operations and Contingency Plan Requirements.....	7
4. Information to be Included in Permit.....	7
<b>E. PERMITS FOR NEW OR EXPANDING SURFACE WATER WITHDRAWERS AFTER JANUARY 1, 2011.....</b>	<b>8</b>
1. Requirement to Obtain Permit to Withdraw.....	8
2. Application Requirements.....	8
3. Evaluation Criteria.....	9
4. Operations and Contingency Plan Requirements.....	13
5. Information to be Included in Permit.....	15
<b>F. PUBLIC NOTICE REQUIREMENTS FOR NEW OR EXPANDING SURFACE WATER WITHDRAWALS AFTER JANUARY 1, 2011.....</b>	<b>16</b>
1. Public Notice of New Permits Not Considered Interbasin Transfers or Expanding Surface Water Withdrawals After January 1, 2011.....	16

2. Public Notice of New Surface Water Withdrawals After January 1, 2011 Considered Interbasin Transfers. ....	19
<b>G. NONCONSUMPTIVE USE SURFACE WATER WITHDRAWAL PERMITS. ....</b>	<b>21</b>
1. Requirements to be Considered a Nonconsumptive Use Withdrawer. ....	21
2. Additional Application Requirements for Nonconsumptive Use Permits.....	21
3. Reconsideration of Nonconsumptive Use Status.....	21
4. Information to be Included in Permit.....	22
<b>H. PERMIT DURATION. ....</b>	<b>22</b>
1. Permit Duration for Existing Surface Water Withdrawers as of January 1, 2011. ....	22
2. Permit Duration for a New or Expanding Surface Water Withdrawer After January 1, 2011. ....	22
<b>I. RENEWAL PROCESS FOR SURFACE WATER WITHDRAWAL PERMITS. ....</b>	<b>22</b>
1. Permits Issued to Existing Surface Water Withdrawers. ....	22
2. Permits Issued to Surface Water Withdrawers Considered New or Expanding After January 1, 2011. ....	23
<b>J. ACTIONS ON PERMIT APPLICATIONS MODIFICATIONS, REVOCATIONS AND DENIALS. ....</b>	<b>23</b>
1. Authority to Take Action on Permits. ....	23
2. Transferability of Permits.....	24
<b>K. EXISTING INTERBASIN TRANSFER PERMITS AND REGISTRATIONS. ....</b>	<b>24</b>
<b>L. REGISTRATION OF AGRICULTURAL WITHDRAWALS. ....</b>	<b>24</b>
1. Requirement to Register. ....	24
2. Existing Agricultural Withdrawals. ....	25
3. New or Expanding Agricultural Withdrawals After January 1, 2011. ....	25
4. Application Requirements.....	26
5. Regulatory Authority.....	26
<b>M. TEMPORARY PERMITS AND EMERGENCY WITHDRAWALS. ....</b>	<b>26</b>
1. Temporary Permits.....	26
2. Emergency Withdrawals.....	27
<b>N. REPORTING. ....</b>	<b>27</b>
1. Requirement to Report.....	27
2. Methods of Measuring Withdrawal Quantity. ....	27
3. Reporting Exemption.....	28

<b>O. ENFORCEMENT.</b>	<b>28</b>
1. Violations.	28
2. Penalties.	28
<b>P. OTHER DEPARTMENT AUTHORITY.</b>	<b>28</b>
1. Department Authority.	28
<b>Q. SURFACE WATER PERMITTING AND WITHDRAWAL FEES.</b>	<b>29</b>
1. Fee Structure.	29
2. Application Processing Requirements.	29
3. Annual Operating Fees.	31
4. General Fee Provisions.	32
<b>R. COMPLIANCE WITH OTHER STATUTES AND REGULATIONS.</b>	<b>32</b>
<b>S. SEVERABILITY CLAUSE.</b>	<b>32</b>

## **A.PURPOSE AND SCOPE.**

### 1. Implementation Provision.

This regulation implements The South Carolina Surface Water Withdrawal, Permitting, Use, and Reporting Act, Section 49-4-10 et seq., S.C. Code of Laws, 1976, as amended. It establishes a system and rules for permitting and registering the withdrawal and use of surface water from within the state of South Carolina and those surface waters shared with adjacent states. The permitting, registration, use, and reporting requirements for the regulated surface water withdrawals are outline in this regulation. This regulation applies to any person withdrawing surface water in excess of three million (3,000,000) gallons during any one (1) month.

### 2. Right to Withdraw.

A permit issued under this regulation confers upon a permittee a right to withdraw and use surface water pursuant to the terms and conditions of the permit. The permit does not convey a property right to the permittee nor does it relieve the permittee from being required to obtain and comply with any other permits or approvals that may be required under other existing laws. Nothing in this regulation shall be construed to diminish the Department’s authority to regulate facilities under any other applicable laws.

### 3. South Carolina Drought Act Provision.

Nothing in this regulation limits or precludes any action authorized by the South Carolina Drought Response Act, Section 49-23-10 et seq., S.C. Code of Laws, 1976, as amended, hereafter referred to as the S.C. Drought Response Act. In the event that an action authorized by the S.C. Drought Response Act conflicts with requirements of this regulation or a permitted use, the action taken pursuant to the S.C. Drought Response Act supersedes any actions taken pursuant to this regulation or the permit.

## **B.DEFINITIONS.**

Definitions as used in this regulation are as follows:

1. ‘Administratively complete’ means a determination by the Department that all elements of an application, as specified in the applicable regulation and including but not limited to all required signatures and tender of the application fee, where required, have been received.

2. ‘Affected area’ means that portion of a county or counties within a river basin that, under the circumstances, are determined by the Department to likely be affected by a proposed surface water withdrawal.

### 3. ‘Agricultural use’ means:

a. plowing, tilling, or preparing the soil at an agricultural facility;

b. planting, growing, fertilizing, or harvesting crops, ornamental horticulture, floriculture, and turf grasses;

c. application of pesticides, herbicides, or other chemicals, compounds, or substances to crops, weeds, or soil in connection with the production of crops, livestock, animals, or poultry;

d. breeding, hatching, raising, producing, feeding, keeping, slaughtering, or processing livestock, hogs, aquatic animals, equines, chickens, turkeys, poultry, or other fowl normally raised for food, mules, cattle, sheep, goats, rabbits, or similar farm animals for commercial purposes;

e. producing and keeping honeybees, producing honeybee products, and honeybee processing facilities;

f. producing, processing, or packaging eggs or egg products;

g. manufacturing feed for poultry or livestock;

h. rotation of crops;

i. commercial aquaculture;

j. application of existing, changed, or new technology, practices, processes, or procedures to an agricultural use;

k. the operation of a roadside market; and

l. silviculture.

4. 'Agriculture facility' means any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment which is used for the commercial production or processing of crops, trees, livestock, animals, poultry, honeybees, honeybee products, livestock products, poultry products, or products which are used in commercial aquaculture.

5. 'Consumptive use' means any use of water which is not a nonconsumptive use.

6. 'Department' means the Department of Environmental Services.

7. 'Diffuse surface water' means water on the surface of the earth not located in defined courses, streams, or water bodies.

8. 'Drought contingency pond' means a pond or lake designated solely as a supplemental water source in a surface water withdrawer's operational and contingency plan.

9. 'Emergency withdrawal' means the withdrawal of water, for a period not exceeding thirty days, for the purpose of firefighting, hazardous substance waste spill response, or both, or other emergency withdrawal of water as determined by the Department.

10. 'Existing surface water withdrawer' means a surface water withdrawer withdrawing surface water as of January 1, 2011, or a proposed surface water withdrawer with its intakes under construction before January 1, 2011, or with all necessary applications for its intake permits deemed administratively complete before January 1, 2011.

11. 'Farm pond' means a pond completely situated on private property that is only used for providing water for agricultural uses.

12. 'Gaging station' means a site on a stream, canal, lake or reservoir where systematic observations of stage, discharge, or other hydrologic data are obtained. Gaging stations may be part of the United States

Geological Survey (USGS) monitoring network or other Department approved measuring devices established by or at the direction of or approved by the Department, after consultation with the South Carolina Department of Natural Resources (SCDNR), utilizing appropriate, Department approved measuring devices.

13. ‘Impoundment’ means a dam, dike, natural structure, or any combination thereof that is designed to hold an accumulation of surface water or impede the flow of surface water.

14. ‘Interbasin transfer’ means the withdrawal of surface water from a river basin and the movement of that water to a river basin different from the source of the withdrawal.

15. ‘Licensed or otherwise flow controlled impoundment’ means an impoundment or waterbody for which approval to construct and/or operate has been given by an appropriate governmental authority or agency with said approval including regulated releases with required flows from the impoundment. Licensing agencies include, but are not limited to, the United States Army Corps of Engineers and the Federal Energy Regulatory Commission, which incorporate in such federal licensing and permitting decisions the State of South Carolina water quality certification under Section 401 of the Clean Water Act.

16. ‘Mean annual daily flow’ means the arithmetic mean of individual daily mean discharges (stream flow) for a period representative of the historic stream flow records, using flow measurements published by USGS or as determined by other Department approved, hydrologically valid data.

17. ‘Minimal changes in water quantity’ means that greater than ninety (90) percent of the water withdrawn by a surface water withdrawer, based upon the previous twenty-four (24) months of historical data, is returned to the waters of origin; provided, that either the amount of water not returned to the water source does not:

- a. exceed three million (3,000,000) gallons during any one (1) month; or
- b. significantly reduce the safe yield at the withdrawal point.

18. ‘Minimum instream flow’ means the flow that provides an adequate supply of water at the surface water withdrawal point to maintain the biological, chemical, and physical integrity of the stream taking into account the needs of downstream users, recreation, and navigation and that flow is set at forty (40) percent of the mean annual daily flow for the months of January, February, March, and April; thirty (30) percent of the mean annual daily flow for the months of May, June, and December; and twenty (20) percent of the mean annual daily flow for the months of July through November for surface water withdrawers as described in Section 49-4-150(A)(1). For surface water withdrawal points located on a surface water segment downstream of and influenced by a licensed or otherwise flow controlled impoundment, ‘minimum instream flow’ means the flow that provides an adequate supply of water at the surface water withdrawal point to maintain the biological, chemical, and physical integrity of the stream taking into account the needs of downstream users, recreation, and navigation and that flow is set in Section 49-4-150(A)(3).

19. ‘Minimum water level’ means the water level in an impoundment necessary to maintain the biological, chemical, and physical integrity of the surface water in the impoundment taking into account downstream uses, withdrawals from the impoundment, and recreational and navigational needs as established by an existing federal regulatory process or established through consultation between the Department and the operator of the impoundment.

20. ‘Nonconsumptive use’ means a use of surface water withdrawn in such a manner that it is returned to its waters of origin within the boundaries of contiguous property owned by the surface water withdrawer with no or minimal changes in water quantity.

21. ‘Permit’ or ‘surface water withdrawal permit’ means a written authorization issued to a person by the Department that allows the person to hold and exercise a water right to withdraw surface water pursuant to the terms of the permit and this regulation.

22. ‘Permitted surface water withdrawer’ means a person withdrawing surface water pursuant to a surface water withdrawal permit.

23. ‘Permittee’ means a person authorized to make withdrawals of surface water pursuant to a surface water withdrawal permit issued by the Department.

24. ‘Person’ means an individual, firm, partnership, trust, estate, association, public or private institution, municipality, or political subdivision, governmental agency, public water system, or a private or public corporation or other legal entity organized under the laws of this State or any other state or county.

25. ‘Proposed registered surface water withdrawer’ means a proposed surface water withdrawer whose planned operations would result in his withdrawals being subject to the reporting but not the permitting requirements of this regulation.

26. ‘Public water system’ means a water system as defined in Section 44-55-20 of the State Safe Drinking Water Act, Section 44-55-10 et seq., S.C. Code of Laws, 1976 as amended.

27. ‘Registered surface water withdrawer’ means a person who makes surface water withdrawals for agricultural uses at an agricultural facility that is filing a report pursuant to Section 49-4-50.

28. ‘River basin’ means the area drained by a river and its tributaries or through a specified point on a river, as determined in Section 49-4-80(K)(2).

29. ‘Safe yield’ means the amount of water available for withdrawal from a particular surface water source in excess of the minimum instream flow or minimum water level for that surface water source. Safe yield is determined by comparing the natural and artificial replenishment of the surface water to the existing or planned consumptive and nonconsumptive uses.

30. ‘Supplemental water source’ means a source of water different from the source of permitted withdrawal that will be used when an adequate amount of water is unavailable for withdrawal from the permitted source, including, but not limited to, ground water wells, aquifer storage and recovery projects, water storage facilities, drought contingency ponds, and connections to other water providers.

31. ‘Surface water’ means all water that is wholly or partially within the State, including the Savannah River, or within its jurisdiction, which is open to the atmosphere and subject to surface runoff, including, but not limited to, lakes, streams, ponds, rivers, creeks, runs, springs, and reservoirs, but not including water and wastewater treatment impoundments, off-stream supplemental operations related impoundments, or water storage structures constructed by the surface water withdrawer to provide adequate supplies of surface water during low flow conditions.

32. ‘Surface water withdrawer’ means a person withdrawing surface water in excess of three million (3,000,000) gallons during any one (1) month from a single intake or multiple intakes under common ownership within a one (1) mile radius from any one (1) existing or proposed intake.

33. ‘Water Supply Only Reservoir’ means a reservoir from which no permitted or registered consumptive withdrawals other than for public drinking water supply are allowed.

34. ‘Withdrawal’ means to remove surface water from its natural course or location, or exercising physical control over surface water in its natural course or location, regardless of whether the water is returned to its waters of origin, consumed, transferred to another river basin, or discharged elsewhere.

### **C.EXEMPTIONS.**

#### 1. Exempt Surface Water Withdrawals.

Surface water withdrawals for the following purposes are exempt from the permitting, registering, and reporting requirements provided for in this regulation:

a. withdrawals associated with active instream dredging or sand mining operations or other nonconsumptive instream mining operations undertaken pursuant to the South Carolina Mining Act, Section 48-20-10 et seq., S.C. Code of Laws, 1976, as amended;

b. emergency withdrawals;

c. withdrawals from farm ponds that are only used for providing water for agricultural purposes:

i. owned or leased by the person making the withdrawal; or

ii. situated on two or more separately owned parcels of private property if each property owner agrees to the withdrawal;

d. a person withdrawing surface water from any pond completely situated on private property and which is supplied only by diffuse surface water, or supplied by springs completely situated on the private property, or supplied by groundwater withdrawals;

e. naturally occurring evaporation from impoundments;

f. a person withdrawing, using, or discharging surface water for the purpose of wildlife habitat management; and

g. a special purpose district withdrawing surface water from any pond completely situated on property owned by a special purpose district and which is supplied only by diffuse surface water or springs completely situated on the special purpose district’s property.

#### 2. Hydropower Reporting Requirements.

Hydropower generation, including pumped storage, is exempt from the permitting requirements of this regulation but not the reporting requirements in Section 49-4-50.

#### 3. Provision Allowing Permitting of Exempt Withdrawals.

Nothing in this regulation prohibits an exempt surface water withdrawer from applying for and receiving a surface water withdrawal permit, consistent with applicable provisions of this regulation. Nothing in this regulation prohibits an exempt surface water withdrawer from registering a withdrawal, consistent with

applicable provisions of this regulation. An exempt surface water withdrawer that obtains a permit or registers its use is entitled to all of the rights conferred upon by a permit or a registration, as the case may be.

#### **D.PERMITS FOR EXISTING SURFACE WATER WITHDRAWERS AS OF JANUARY 1, 2011.**

##### 1. Application Requirements.

An existing surface water withdrawer must submit a permit application on a form to be provided by the Department within one hundred and eighty (180) days of the effective date of this regulation. Any existing surface water withdrawer submitting an application more than one hundred and eighty (180) days after the effective date of this regulation will be considered a new surface water withdrawer. At a minimum, the application must contain the following information:

- a. the name, address, phone number(s), principal place of business of the person applying for the permit and, if applicable, the name and address of the agent for the applicant;
- b. the location of each of the applicant's intakes, including:
  - i. name of source waterbody;
  - ii. latitude and longitude of intake;
  - iii. a map showing the withdrawal point(s) on a 1:24,000 scale USGS quadrangle or equivalent;
  - iv. the county in which the intake is located;
  - v. type of source waterbody, such as a stream, lake or estuary;
- c. the place and nature of the proposed use of the surface water withdrawn;
- d. the quantity of surface water requested for withdrawal, in million gallons per month, at each relevant withdrawal point, with supporting documentation, based on whichever of the following options is greatest as identified by the person applying for the permit:
  - i. documented historical water use;
  - ii. current permitted treatment capacity;
  - iii. design capacity of the intake structure as of January 1, 2011;
  - iv. design capacity of a pending intake structure permit application deemed administratively complete as of January 1, 2011;
  - v. an amount necessary to recover, through the sale of water, indebtedness from an outstanding bond or revenue certificate issued prior to January 1, 2011;
  - vi. for a publicly owned water utility, the safe yield of the utility's existing or permitted water supply only reservoir;
- e. the method that will be used to measure the quantity of water that is withdrawn;

f. the location(s) where water withdrawn pursuant to the requested permit is returned to any surface water, including latitude and longitude and notation on a 1:24,000 USGS topographic map or equivalent, and the anticipated percent of water returned at each location;

g. any information necessary for the Department to assess a request for a permit length greater than the thirty (30) year period specified in item H.1.a. of this regulation (not to exceed a total of forty (40) years) or to assess the need for an additional period (not to exceed a total of fifty (50) years) for a municipality or other governmental body to retire a bond it issued to finance the construction of waterworks as specified in item H.1.b.; and

h. the estimated ratio between water withdrawn and consumptive use of water withdrawn.

## 2. Requests for Additional Flow.

If an applicant requests additional withdrawal quantity over and above the quantity documented in item D.1.d above, pursuant to Section 49-4-70 B(3), the Department will evaluate the additional quantity using criteria specified in section E. below with the exception of withdrawers to be permitted pursuant to Sections 49-4-40 and 49-4-45 which will be subject to only the requirements contained in those sections. For withdrawers with multiple withdrawal points, the application must specify the additional quantity requested at each intake. The additional quantity will be specified on the permit for the specific intake. If additional quantity is approved, the withdrawer will continue to be considered an existing surface water withdrawer and permitted as such under Section 49-4-70 (B)(1) with subsequent renewals not subject to the permitting criteria in Section 49-4-80 and not subject to Section 49-4-150.

## 3. Operations and Contingency Plan Requirements.

Each permittee must prepare and maintain on site, available for inspection, an operational and contingency plan to promote an adequate water supply from the surface water during times when the actual flow of the surface water is less than the minimum instream flow for that particular surface water segment. The existence of a plan is deemed to be an enforceable part of the permit under which the permittee is withdrawing surface water and shall be deemed to control a permitted surface water withdrawal in situations where the actual flow of the surface water is less than the minimum instream flow for that particular stream segment. For an existing surface water withdrawer, the operational and contingency plan will only address appropriate industry standards for water conservation. If initial permits issued under this section are expanded, contingency plans for existing surface water withdrawers must meet the requirements of section E.4 for the volume permitted over and above that of the initial permit.

## 4. Information to be Included in Permit.

Upon receipt of a complete application and specified fee, the Department must issue to an existing water withdrawer a permit based upon the information contained in the application and specifying the following:

a. the location of the permittee's intake facility or facilities used or constructed to make withdrawals pursuant to the permit;

b. the amount of water that may be withdrawn at each intake, based on the appropriate criteria of item D.1.d above, if appropriate, as documented by the applicant and approved by the Department;

c. the expiration date of the permit, including the period in years of the permit (not to exceed fifty (50) years) as specified in Section 49-4-100 (B);

d. the amount of water to be discharged back into the surface water body and location of the discharge;  
and

e. the requirement for the applicant to submit an operational and contingency plan to address applicable industry standards for water conservation.

## **E. PERMITS FOR NEW OR EXPANDING SURFACE WATER WITHDRAWERS AFTER JANUARY 1, 2011.**

### 1. Requirement to Obtain Permit to Withdraw.

After the effective date of this regulation, a new surface water withdrawer must apply for and obtain a surface water withdrawal permit pursuant to this regulation before making a surface water withdrawal. A permitted surface water withdrawer that would like to increase its permitted withdrawal amount must apply to the Department for the additional amount and receive a permit modification prior to increasing the withdrawal; however, for a withdrawer seeking to increase its permitted withdrawal amount, only the proposed increase, over and above a prior permitted amount, will be evaluated under the appropriate criteria of this section, section E.

### 2. Application Requirements.

Applications for new permits and modification of existing permits must be made on forms to be provided by the Department. The application must contain the following information:

a. the name, address, phone number(s), principal place of business of the person applying for the permit or permit modification and, if applicable, the name and address of the agent for the applicant;

b. the location of the proposed intake(s) or the existing intake(s) to be expanded, including:

i. name of source waterbody;

ii. latitude and longitude of intake;

iii. a map showing the withdrawal point(s) on a 1:24,000 scale USGS quadrangle or equivalent;

iv. the county in which the intake is located;

v. type of source waterbody, such as stream, lake, or estuary;

c. the place and nature of the proposed use of the surface water withdrawn;

d. a declaration as to whether any portion of the water to be withdrawn pursuant to the requested permit will cross a basin boundary as defined in item F.2.d of this regulation. If water is to be transferred across basin lines, the application must include:

i. the basin, as defined in item F.2.d, to receive the transferred flow, the specific location of the transfer, the entity to which the water is being transferred and the means by which it is being transferred;

ii. the maximum quantity of water, in million gallons per month, the applicant is requesting authority to transfer during the life of the permit;

e. for a proposed new surface water withdrawal, the quantity of surface water requested for withdrawal at each relevant withdrawal point in million gallons per month, with a justification of the quantity requested;

f. for a proposed expansion of an existing surface water withdrawal, the existing permitted capacity at the specified withdrawal point and the proposed additional amount to be withdrawn in million gallons per month, along with a justification of the quantity requested;

g. the estimated ratio between water withdrawn and consumptive use of water withdrawn;

h. for a proposed new or expanding surface water withdrawal whose contingency plan will require use of a supplemental water source, the capacity of the pump(s) that will be used to refill any required supplemental water source or other drought contingency water supply vessels;

i. the method that will be used to measure the quantity of water that is withdrawn;

j. anticipated future water needs over and above the quantity being requested in the current permit application;

k. the location(s) where water withdrawn pursuant to the requested permit will be returned to any surface water, including latitude and longitude and notation on a 1:24,000 USGS topographic map or equivalent, and the anticipated percent of withdrawn water to be returned at each location;

l. a description of how applicable industry standards on the efficient use of water, if any, have been considered in determining the quantity of water being requested;

m. where applicable, a draft of the proposed withdrawer's contingency plan addressing operations during time when the actual flow of the surface water is less than or equal to the minimum instream flow plus any flow necessary to protect downstream permitted and registered withdrawals; and

n. where applicable, any information necessary for the Department to assess a request for a permit length greater than the twenty (20) year period specified in item H.2.a. (not to exceed a total of forty (40) years) or to assess the need for an additional period (not to exceed a total of fifty (50) years) for a municipality or other governmental body to retire a bond it issued to finance the construction of waterworks as specified in item H.2.b.

### 3. Evaluation Criteria.

a. The Department will evaluate each proposed activity requiring a new or modified surface water withdrawal permit to evaluate the reasonableness of the proposed activity, excepting those projects permitted under Section 49-4-40 or Section 49-4-45(A)(1) which will be subject to only the requirements contained in those sections. This evaluation shall address the impacts of the withdrawal on the surface water body and will make determinations in compliance with the requirements of Section 49-4-10 et seq. and this regulation. If a proposed new or expanding project is determined to be reasonable based on these criteria, a permit must be issued. Surface water withdrawals made by permitted or registered withdrawers shall be presumed to be reasonable. In assessing the reasonableness of the proposed withdrawal, the Department will address and consider the following factors.

i. The minimum instream flow or minimum water level for the surface water source at the location of the proposed surface water withdrawal will be evaluated as follows.

(A) The minimum instream flow for stream segments that are not downstream of a licensed or otherwise flow controlled impoundment or that are no longer materially influenced by a licensed or otherwise flow controlled impoundment is forty (40) percent of the mean annual daily flow for the months of January, February, March, and April; thirty (30) percent of the mean annual daily flow for the months of May, June, and December; and twenty (20) percent of the mean annual daily flow for the months of July through November. The minimum instream flow for stream segments that are not downstream of and influenced by a licensed or otherwise flow controlled impoundment or that are no longer materially influenced by a licensed or otherwise flow controlled impoundment will be calculated as follows:

(1) an appropriate USGS or Department approved gaging station (or stations as appropriate), known as an index station, for determining the flow at the withdrawal point will be determined, considering factors such as but not limited to drainage area, flow characteristics, physiographic province, period of record, and land use;

(2) the mean annual daily flow coefficient (CFS/square mile) at the index station will be determined with adjustments as needed to address the impact of any withdrawals or discharges upstream of the gaging station;

(3) the mean annual daily flow at the proposed withdrawal site will be determined based on the appropriate gage information and the drainage area at the proposed withdrawal site; and

(4) the three seasonal minimum instream flows will be developed based on twenty (20) percent, thirty (30) percent and forty (40) percent of the calculated mean annual daily flow.

(B) The minimum instream flow for surface water withdrawal points located on a surface water segment downstream of and materially influenced by a licensed or otherwise flow controlled impoundment shall be the flow specified in the license, by the appropriate governmental agency with regulatory authority for the flow controlled impoundment, as protective of downstream uses. A withdrawal point is considered to be materially influenced by a licensed or otherwise flow controlled impoundment to the point in the stream where the Department demonstrates through flow modeling or analysis of flow data that the stream segment is no longer materially influenced by the licensed or otherwise flow controlled impoundments. The minimum instream flow below this point will be as determined in item E.3.a.i(A) above.

(C) Minimum water level for impoundments will be determined as follows.

(1) For licensed or otherwise flow controlled impoundments, the minimum water level will be the level established by an existing federal regulatory process. When a surface water withdrawal point is located on a licensed or otherwise flow controlled impoundment, a withdrawal permit may not authorize the withdrawal of surface water in an amount that would cause a reservoir:

(a) water level to drop below its minimum water level; or

(b) to be unable to release the lowest minimum flow specified in the license for that impoundment as issued by the appropriate government agency.

(2) For impoundments for which a minimum water level has not been established by an existing federal regulatory process, an appropriate minimum water level will be established through consultation between the Department and the operator of the impoundment.

(3) The requirements of E.3.a.i(A) and (B) do not apply to withdrawals from a licensed or otherwise flow controlled impoundment.

ii. The safe yield at the point of withdrawal will be evaluated as follows.

(A) For withdrawals in a stream segment not influenced by a licensed or otherwise flow controlled impoundment, the safe yield is calculated as the difference between the mean annual daily flow and twenty (20) percent of mean annual daily flow at the withdrawal point, taking into consideration natural and artificial replenishment of the surface water and affected downstream withdrawals.

(B) For withdrawals located on a stream segment materially influenced by a licensed or otherwise flow controlled impoundment, the safe yield is calculated as the difference between mean annual daily flow and the lowest designated flow in the license specified for normal conditions (non- drought), taking into consideration natural and artificial replenishment of the surface water and affected downstream withdrawals and natural attenuation of the stream flow between the licensed or otherwise flow controlled impoundment and the surface water withdrawal point.

(C) For withdrawals from a licensed or otherwise flow controlled impoundment, safe yield is calculated as the maximum amount that would not cause a reservoir water level to drop below its minimum water level or to be able to release the lowest minimum flow specified in the license for that impoundment as issued by the appropriate governmental agency.

(D) For withdrawals from an impoundment that is not considered a licensed or otherwise flow controlled impoundment under this regulation, the safe yield is calculated as the maximum amount that would not cause the impoundment water level to drop below its minimum water level as established by the Department with input from the applicant and the owner(s) and operator(s) of the impoundment consistent with E.3.i(C)(2) above.

(E) Safe yield shall be considered as one factor in issuing a withdrawal permit as outlined in Section 49-4-80(B). Should withdrawals in excess of the safe yield be permitted, additional contingency planning shall be required of the permittee.

iii. The anticipated effect of the applicant's proposed use on existing users of the same surface water source, including, but not limited to, present agricultural, municipal, industrial, electrical generation, and instream users, will be considered by accounting for existing withdrawals from, and natural and artificial replenishment of, the waterbody in determining the safe yield of the stream and when determining operations and contingency plan requirements of section E.4 of this regulation.

iv. The reasonable foreseeable future need for the surface water including, but not limited to, agricultural, municipal, industrial, electrical generation and instream uses will be considered. Prior to issuing a permit for a new or expanding withdrawal, the Department will consider any relevant comments made during the public comment period and any other complete applications for a withdrawal from the same waterbody when considering the reasonable future needs for the surface water.

v. Whether it is reasonably foreseeable that the applicant's proposed withdrawal(s) would result in a significant, detrimental impact on navigation, fish and wildlife habitat, or recreation will be considered. As part of the review of any proposed new or expanding surface water withdrawal, the Department will solicit input from and consider any comments provided by appropriate state and federal agencies responsible for recreation, navigation, and fish and wildlife habitat, as well as the general public.

vi. The applicant's reasonably foreseeable future water needs from the surface water will be considered. As part of the application for a new or expanding surface water permit, the applicant will be

asked to provide information considering future water needs over and above the amount being requested in the permit application.

vii. The impact of applicable industry standards on the efficient use of water, if adhered to by the applicant, will be considered. As part of the application for a new or expanding surface water permit for an industrial withdrawal, the applicant will be required to provide information on how applicable industry standards for the efficient use of water have been used in determining the amount of water being requested and the Department can take this information into account when determining the withdrawal for the proposed project.

viii. The Department shall notify the public of the Department's determination when the safe yield in a river or stream has been fully allocated.

b. An applicant for a new or expanding surface water withdrawal from an existing, licensed or otherwise flow controlled impoundment shall obtain a surface water withdrawal permit pursuant to the criteria below. Nothing in this regulation precludes the requirement for the owner and operator of a proposed new or expanding water withdrawal facility that will be constructed within the boundaries of a reservoir operated by a different entity from obtaining the reservoir operator's approval before construction of the proposed new or expanded surface water withdrawal facility.

i. Where the applicant is the owner of a licensed or otherwise flow controlled impoundment that utilizes water from the impoundment and the withdrawal is subject to review and approval of applicable state and federal laws and regulations, including its impoundment licensing authority, the Department shall issue a permit for the withdrawal upon submittal of a proper permit application to provide information needed for the Department to issue a permit consistent with the Act.

ii. Where the applicant is not the owner of the licensed impoundment that will be the source of the withdrawal, a permit will be issued upon proper application in accordance with the criteria contained in E.3.a of this regulation. Where the owner or federally authorized agency managing the licensed impoundment or where the licensing agency requires review and approval subject to applicable state and federal laws and regulations, the Department will consider all information provided by the applicant as part of the process necessary to gain approval of the withdrawal. The Department reserves the right to require any additional information, over and above that required by the managing entity, deemed necessary to adequately review the proposed withdrawal, consistent with E.3.a above. Upon completion of the review process and determination of an acceptable withdrawal quantity that is within the safe yield and in compliance with the minimum water level of the impoundment, and submittal of a complete application, the Department will issue an appropriate permit for the withdrawal.

iii. Where the applicant is not the owner of the impoundment that is to be the source of the withdrawal and said impoundment is not licensed or the license does not include a flow prescription or minimum lake level, the Department will work with the impoundment owner and the applicant to determine the minimum water level and safe yield of the impoundment. The Department may require the applicant to supply information necessary to determine the safe yield of the impoundment. Upon completion of the review process and submittal of a complete application, the Department may issue an appropriate permit for the withdrawal, consistent with the provisions of this regulation.

iv. When a surface water withdrawal point is located on an impoundment that serves as a water supply for a federally licensed facility that is also an existing surface water withdrawer, a withdrawal permit may not authorize any new surface water withdrawer to withdraw surface water in an amount that would negatively impact the continued operation of the federally licensed facility. These requirements do not apply to an expansion or addition of units at a federally licensed facility.

#### 4. Operations and Contingency Plan Requirements.

Anytime the flow at the point of the permitted withdrawal is less than or equal to the minimum instream flow and taking into consideration natural and artificial replenishment of the surface water and existing or planned consumptive and nonconsumptive uses affected by the withdrawal downstream, the permitted surface water withdrawer must implement applicable portions of its water contingency plan and, excepting public water systems addressed in Section 49-4-150(A)(6), will discontinue facility consumptive water uses from the surface water source such that continued withdrawals will result in no net decrease in flow below the facility's discharge.

a. Each permittee must prepare and maintain on site, available for inspection, an operational and contingency plan to promote an adequate water supply from the surface water during times when the actual flow of the surface water is less than the minimum instream flow, plus any flow necessary to protect downstream permitted and registered withdrawals, taking into account natural and artificial replenishment of the surface water, for that particular surface water segment. The existence of a plan is deemed to be an enforceable part of the permit under which the permittee is withdrawing surface water and shall be deemed to control a permitted surface water withdrawal in situations where the actual flow of the surface water is less than the minimum instream flow for that particular stream segment.

b. For applicable new or expanding surface water withdrawers, the plan must identify actions to be taken to address low flow conditions, including: water conservation, use of supplemental water supplies, use of off-stream water storage, operational changes, seasonal water flow fluctuation withdrawals, or hydroelectric operations in controlled surface waters. For expansion of permits initially issued under section D above, the requirements of this section only apply to the permitted amount over and above the permitted quantity of the initial permit.

c. Public water systems must develop operational and contingency plans consistent with E.4.b. above and implement their plan, applicable to their service territory, commensurate with the drought level declared by the State Drought Response Committee and in accordance with any drought response plan required by the owner of a licensed impoundment that they use as a water source.

d. Non-public water withdrawers must develop operational and contingency plans consistent with E.4.b. above and implement them consistent with the requirements of this section and act in accordance with any drought response plan required by the owner of a licensed impoundment that they use as a water source.

e. For surface water withdrawers with an operational and contingency plan requiring one or more supplemental sources of water to be used for continued facility operations during minimum instream flow conditions, the supplemental water supply needed will be addressed as follows.

i. For a surface water withdrawer proposing to use surface water as all or a portion of the supplemental water supply:

(A) Where only surface water will be used as a supplemental supply, the volume of water required to be stored is set forth in Section 49-4-150(A)(2)(c), and the following used as an aid to such determinations.

(1) Using an appropriate USGS or Department approved gaging station, historical flow at the withdrawal point will be determined. Factors to be considered in determining an appropriate index station

include but are not limited to drainage area, flow characteristics, physiographic province, period of record, and land use.

(2) Using the flow record at the appropriate index station, a daily flow record for the longest period of record feasible will be determined at the proposed withdrawal point. All years experiencing periods of flow below the minimum instream flow for the months July through November will be determined and evaluated, up to and including the drought of record. For the purposes of this section, the drought of record will be considered the July through November period, within the period of record, having the largest number of days with flows equal to or less than the minimum instream flow.

(3) Using the flow records of July through November periods experiencing flows equal to or less than the minimum instream flow, including but not limited to the drought of record, the Department will determine a supplemental water volume for inclusion in any permit to be issued for the withdrawal. The supplemental water volume is not required to be any larger than the quantity that allows for facility operations during twenty percent mean annual daily flow conditions, based upon a review of historical low flow data and projected facility consumptive water uses during low flow periods. Facility consumptive water uses means the amount of water that is lost and not returned to the source waterbody during normal operations.

(4) If an appropriate index station with an appropriate period of record is not available, the Department, in consultation with the applicant, will determine an appropriate storage volume using the best information available. The USGS and/or SCDNR may be consulted as needed.

(B) For a surface water withdrawer proposing to utilize surface water in conjunction with other supplemental sources to satisfy contingency plan requirements, the volume of supplemental supply needed will be determined as in item E.4.e.i(A) above with due consideration given to the volume of water to be supplied by sources other than surface water when determining drought contingency pond size.

(C) A permitted surface water withdrawer utilizing a drought contingency pond as all or some of its supplemental water source may withdraw the entire volume of water from the pond during low flow periods requiring supplemental water source usage. Water withdrawn from drought contingency ponds is not subject to environmental and permitting restrictions unless or until it is discharged to state waters. The Department will designate drought contingency ponds, a type of supplemental water source, as part of an approved operational and contingency plan.

(D) For withdrawals where the withdrawal point is not located on a licensed or otherwise flow controlled impoundment, a permitted surface water withdrawer may withdraw water from the permitted surface withdrawal point in order to refill its supplemental water source, or other drought contingency water supply vessels, anytime the river flow exceeds the minimum instream flow, provided the total amount withdrawn for daily operations and for refilling the supplemental water source or other drought contingency water supply vessel does not cause the flow downstream of the withdrawal point to go below the minimum instream flow plus any flow necessary to protect downstream permitted and registered withdrawals.

(E) For withdrawals where the withdrawal point is located on a licensed or otherwise flow controlled impoundment, the permitted withdrawer may withdraw water to refill his supplemental water source or other drought contingency water supply vessel anytime the total amount withdrawn for daily operations and for refilling the supplemental water source does not cause the reservoir water level to drop below its minimum water level or to be unable to release the lowest minimum flow specified in the license for the impoundment as issued by the appropriate government agency.

ii. For a surface water withdrawer proposing to utilize groundwater obtained on its site as a supplemental source, the applicant must document the availability of groundwater of sufficient quantity to provide for the withdrawer's daily needs for a period of time at least equal to the period of time the surface water will be unavailable as determined in item E.4.e.i(A) above. Any permits or approvals required to extract groundwater for use as a supplemental source must be obtained prior to issuance of a surface water withdrawal permit.

iii. For a surface water withdrawer proposing to utilize as their supplemental source water purchased from: another surface water withdrawer; a permitted discharger; a supplier using groundwater as its source; or other source approved by the Department, the withdrawer must demonstrate via contract or other legally binding commitment the availability of a sufficient quantity of water to provide for the withdrawer's daily needs for a period of time at least equal to the period of time the surface water will be unavailable as determined in item E.4.e.i(A) above.

iv. New surface water withdrawers are not required to engineer the supplemental water source identified in their contingency plan any larger than the quantity that allows for facility operations during twenty percent mean annual daily flow conditions, based upon a review of historical low flow data and projected facility consumptive water uses during low flow periods.

v. A new surface water withdrawer may not return to the withdrawal source when its supplemental water source is exhausted unless the supplemental water source has been engineered to meet the specifications of this section.

vi. If after all reasonable contingency plans have been implemented, and the surface water withdrawer is within fifteen (15) days of exhausting the usable water supply from its supplemental water source, a new surface water withdrawer may give notice to the Department that he is exhausting his supplemental water sources and that he intends to return to the withdrawal source in amounts up to his permitted amount. Notification must be made in writing as expeditiously as possible, to include electronic communication, to the address provided in the permit. Upon receiving notice, the Department must determine whether all or any portion of the withdrawal for facility consumptive water uses will result in a significant negative impact to an existing user or the environment if the permitted withdrawal is resumed. If the Department does not make its determination within ten (10) days of receipt of notice, the permittee may make withdrawals up to the permitted amount and do so until notified by the Department whether all or any portion of the withdrawal for facility consumptive water uses will result in a significant negative impact to an existing user or the environment during this low flow period. Upon notification by the Department, the permittee will cease withdrawals for facility consumptive water uses that will result in any significant negative impact.

f. The Department must consult with the SCDNR to determine which, if any, existing stream gaging station should be utilized to quantify the stream flow at the point of the proposed withdrawal. The Department may also seek the input of the applicant in determining a suitable means to measure or extrapolate the stream flow at the point of the proposed withdrawal. If no existing stream gage is suitable for measuring or extrapolating the flow at which the applicant's water withdrawal must be reduced due to inadequate stream flow, the SCDNR will recommend the location of a new stream gage.

g. The Department must consult with the SCDNR to quantify the stream flow measured at the specified measuring device that will require a reduction in the applicant's water withdrawal because of inadequate stream flow at the point of withdrawal.

#### 5. Information to be Included in Permit.

Upon review of an application for a new surface water withdrawal permit, the Department will: issue the permit for the volume requested in the application; issue the permit for a lesser volume; or, deny the permit. If the Department intends to issue the permit for a lesser volume, or to deny the permit, the applicant will be notified prior to issuance of a final decision. A new surface water withdrawal permit issued by the Department shall include, at a minimum:

- a. the location of the permittee's intake facility or facilities used or constructed to make withdrawals pursuant to the permit;
- b. the amount of water that may be withdrawn;
- c. the expiration date of the permit and the permit duration in years;
- d. a copy of the final operational and contingency plan developed by the applicant, in conjunction with the Department, addressing operations during times when the actual flow of the surface water is less than or equal to the minimum instream flow plus any flow necessary to protect downstream permitted and registered withdrawals;
- e. the amount of water to be discharged back into the surface water body and location of the discharge;
- f. the volume of supplemental water supply, if needed;
- g. the minimum instream flow at the point of withdrawal, if applicable;
- h. the minimum instream flow triggers that will determine if the permittee's withdrawal must be reduced, if appropriate;
- i. the stream flow that will be used to notify the applicant of starting the reduction of withdrawal as appropriate;
- j. the minimum water level of an impoundment, if appropriate;
- k. a clear statement that the terms and conditions of the permit are subject to the provisions of the S.C. Drought Response Act; and
- l. the address to which a surface water withdrawer must mail notice of intent to return to withdrawing a consumptive amount of surface water.

#### **F. PUBLIC NOTICE REQUIREMENTS FOR NEW OR EXPANDING SURFACE WATER WITHDRAWALS AFTER JANUARY 1, 2011.**

Applications for new permits or to significantly increase the amount of water that may be withdrawn under an existing permit must be placed on public notice as required by this regulation to inform the public of the proposed activity and provide the public with the opportunity to comment on the proposed project and request that a public hearing be held. The applicant shall provide to the Department all appropriate information necessary to conduct public notice except that already on file with the Department.

1. Public Notice of New Permits Not Considered Interbasin Transfers or Expanding Surface Water Withdrawals After January 1, 2011.

Upon receipt of a complete application and filing fee for a new surface water withdrawal permit not considered an interbasin transfer under this regulation or a proposal to significantly increase the amount of water that may be withdrawn under an existing permit, the Department must, within thirty (30) days, provide the public with notice of the application.

a. The Department will publish notice of the proposed withdrawal or increased withdrawal:

i. in accordance with the Department's usual public notice procedures;

ii. in a newspaper of statewide circulation and in the local newspaper with the greatest general circulation in the affected area; and

iii. on the Department's website.

b. The public notice must contain:

i. the location of the proposed withdrawal or increased withdrawal;

ii. the amount of the proposed withdrawal;

iii. the use for which the water will be withdrawn;

iv. a description of the procedure that a person must follow to submit a comment concerning the proposed withdrawal or increase; and

v. the process for requesting a public hearing concerning the application.

c. If within thirty (30) days of the publication of the public notice the Department receives a request to hold a public hearing from at least twenty (20) citizens or residents of the affected area, the Department must conduct a hearing. A hearing may also be held whenever the Department staff determines that it may be useful in reaching a decision on an application. The hearing must be held within ninety (90) days of the close of the initial public notice period at an appropriate time and in an appropriate location near the specific site of the proposed surface water withdrawal. The hearing may not be held until after at least thirty (30) days' notice is given to the public. Notice shall be provided as in F.1.a above and shall include the provisions of F.1.b plus the date, time and location of the hearing.

d. If a public hearing is held, the public comment period on an application will automatically be extended to fifteen (15) days past the date of the hearing. Further extensions may be granted at the discretion of the Department.

e. The following fifteen (15) river basins are to be used when determining the affected area for a particular surface water withdrawal application. 'Affected area' is defined in section B as that portion of a county or counties within a river basin that, under the circumstances, are determined by the Department to likely be affected by a proposed surface water withdrawal.

i. The Upper Savannah River Basin drains the area from the headwaters of the Savannah River at the border with North Carolina and Georgia to Stevens Creek Dam and encompasses McCormick and Oconee Counties and portions of Abbeville, Aiken, Anderson, Edgefield, Greenwood, Pickens and Saluda Counties.

ii. The Lower Savannah River Basin drains the area from Stevens Creek Dam to the mouth of the Savannah River at the Atlantic Ocean and encompasses portions of Aiken, Allendale, Barnwell, Edgefield, Hampton and Jasper Counties.

iii. The Saluda River Basin drains the area from the headwaters of the North and South Saluda Rivers at the border with North Carolina to the confluence of the Saluda River with the Broad River and encompasses portions of Abbeville, Aiken, Anderson, Edgefield, Greenville, Greenwood, Laurens, Lexington, Newberry, Pickens, Richland and Saluda Counties.

iv. The Broad River Basin drains the area from the headwaters of the Tyger River in Greenville County, the Enoree and Pacolet Rivers in Spartanburg and Greenville Counties and the Broad River at the border with North Carolina to the confluence of the Broad River with the Saluda River and encompasses Cherokee, Spartanburg and Union Counties and portions of Chester, Fairfield, Greenville, Laurens, Lexington, Newberry, Richland and York Counties.

v. The Congaree River Basin drains the area from the confluence of the Broad and Saluda Rivers to the confluence of the Congaree River with the Wateree River and encompasses portions of Calhoun, Lexington and Richland Counties.

vi. The Catawba-Wateree River Basin drains the area from Lake Wylie at the North Carolina border to the confluence of the Wateree River with the Congaree River and encompasses portions of Chester, Fairfield, Kershaw, Lancaster, Lee, Richland, Sumter and York Counties.

vii. The Lynches River Basin drains the area from the Lynches River at the North Carolina border to the confluence of the Lynches River with the Pee Dee River and encompasses portions of Chesterfield, Darlington, Florence, Kershaw, Lancaster, Lee, Sumter and Williamsburg Counties.

viii. The Pee Dee River Basin drains the area from the Pee Dee River at the North Carolina border to the confluence of the Pee Dee River with the Waccamaw River at Winyah Bay and encompasses portions of Chesterfield, Darlington, Dillon, Florence, Georgetown, Horry, Marion, Marlboro and Williamsburg Counties.

ix. The Little Pee Dee River Basin drains the area from the Little Pee Dee River and Lumber River at the North Carolina border to the confluence of the Little Pee Dee River with the Pee Dee River and encompasses portions of Dillon, Horry, Marion and Marlboro Counties.

x. The Black River Basin drains the area from the headwaters of the Black River in Kershaw County to the confluence of the Black River with the Pee Dee River and encompasses portions of Clarendon, Florence, Georgetown, Kershaw, Lee, Sumter and Williamsburg Counties.

xi. The Waccamaw River Basin drains the area from the Waccamaw River at the North Carolina border to the mouth of Winyah Bay at the Atlantic Ocean, the area drained by Bull Creek, the area drained by the Sampit River as well as the coastal areas north to Little River Inlet and the North Carolina border and south to South Island and encompasses portions of Georgetown, Horry and Williamsburg Counties.

xii. The Lower Santee River Basin drains the area from the confluence of the Congaree and Wateree Rivers to the mouth of the Santee River at the Atlantic Ocean and encompasses portions of Berkeley, Calhoun, Charleston, Clarendon, Georgetown, Orangeburg, Sumter and Williamsburg Counties.

xiii. The Edisto River Basin drains the area from the headwaters of the North Fork and South Fork Edisto Rivers in Edgefield, Lexington and Saluda Counties to the mouth of the South Edisto River at St.

Helena Sound and the North Edisto River at the Atlantic Ocean and encompasses portions of Aiken, Bamberg, Barnwell, Berkeley, Calhoun, Charleston, Colleton, Dorchester, Edgefield, Lexington, Orangeburg and Saluda Counties.

xiv. The Ashley-Cooper River Basin drains the area from the headwaters of Cypress Swamp and Wadboo Swamp in Berkeley County and the Diversion Canal between Lakes Moultrie and Marion to the mouths of the Ashley and Cooper Rivers at Charleston Harbor and the Atlantic Ocean as well as the coastal areas north to Murphy Island and south to Seabrook Island and encompasses portions of Berkeley, Charleston and Dorchester Counties.

xv. The Combahee-Coosawhatchie River Basin drains the area from the headwaters of the Salkehatchie River in Barnwell County to the confluence of the Combahee River with St. Helena Sound and the Atlantic Ocean and the headwaters of the Coosawhatchie River in Allendale County to the confluence of the Broad River with Port Royal Sound and the Atlantic Ocean as well as the coastal areas south to the Georgia border and encompasses Beaufort County and portions of Aiken, Allendale, Bamberg, Barnwell, Colleton, Hampton and Jasper Counties.

## 2. Public Notice of New Surface Water Withdrawals After January 1, 2011 Considered Interbasin Transfers.

Upon receipt of a complete application and filing fee for a new surface water withdrawal permit that will be considered an interbasin transfer under this regulation, the Department must, within thirty (30) days, provide notice of the proposed withdrawal and transfer, including notice of the mandatory public hearing for interbasin transfer projects.

a. Notice of the proposed new interbasin transfer permit will be made in the following manner:

- i. in accordance with the Department's usual public notice procedures;
- ii. by submittal for publication in the South Carolina State Register;
- iii. by publication in a newspaper of statewide circulation and in a local newspaper of general circulation in the affected area of the river basin downstream from the point of withdrawal;
- iv. by publication on the Department's website; and
- v. through standard United States mail to:

(A) any person holding a permit issued by the Department authorizing surface water withdrawals, including interbasin transfers, from the river basin from which the water for the proposed transfer would be withdrawn;

(B) any person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit authorizing wastewater discharge into the river basin where the proposed withdrawal point of the proposed interbasin transfer is located;

(C) any city or county governing body whose jurisdiction is located entirely or partially within the river basin that is the source of the proposed transfer;

(D) the governing body of a public water supply system that withdraws water from the same river basin where the proposed withdrawal point of the proposed transfer is located;

(E) any agency from another state where an interstate water basin is the source of the proposed transfer;

(F) the South Carolina Department of Natural Resources; and

(G) the owner of any licensed or otherwise flow controlled impoundment that would be impacted by the withdrawal.

b. The notice must include:

i. the location of the proposed withdrawal;

ii. the name of the losing basin and the gaining basin;

iii. the amount of the proposed withdrawal and the amount to be transferred from the losing basin;

iv. a non-technical description of the applicant's request;

v. the use for which the water will be withdrawn;

vi. a conspicuous statement in bold type describing the effects of the interbasin transfer on the river basin from which the water will be withdrawn and the river basin into which the withdrawn water will be transferred;

vii. a description of the procedure that a person must follow to submit a comment concerning the proposed interbasin transfer; and

viii. the location, date, and time of the mandatory hearing for the project which is to be held at an appropriate time and appropriate location near the withdrawal point of the interbasin transfer. The hearing may not be held until at least thirty (30) days after publication of the notice in the State Register.

c. The public comment period on an interbasin transfer application will automatically extend to fifteen (15) days past the date of the hearing. Further extensions may be granted at the discretion of the Department.

d. For the purposes of this regulation, an interbasin transfer is considered the transfer of three million (3,000,000) gallons or more of water in any one month from one of the following USGS defined basins to a different basin such that the water is permanently lost from the basin of origin. The transfer of water from one basin to another is not considered an interbasin transfer if transferred water is returned or discharged to the basin of origin such that the quantity of water permanently lost to the basin of origin is less than three million (3,000,000) gallons in any one month.

i. Savannah River Basin, Hydrologic Unit Codes: 03060101, 03060102, 03060103, 03060106, 03060107, 03060109, 03060110;

ii. Saluda River Basin, Hydrologic Unit Codes: 03050109, 03050110;

iii. Santee River Basin, Hydrologic Unit Codes: 03050111, 03050112, 03050201, 03050202, 03050209;

iv. Edisto River Basin, Hydrologic Unit Codes: 03050203, 03050204, 03050205, 03050206;

v. Salkehatchie River Basin, Hydrologic Unit Codes: 03050207, 03050208, 03050210;

vi. Pee Dee River Basin, Hydrologic Unit Codes, 03040104, 03040105, 03040201, 03040202, 03040203, 03040204, 03040205, 03040206, 03040207, 03040208;

vii. Catawba River Basin, Hydrologic Unit Codes: 03050101, 03050103, 03050104; or

viii. Broad River Basin, Hydrologic Unit Codes: 03050105, 03050106, 03050107, 03050108.

## **G. NONCONSUMPTIVE USE SURFACE WATER WITHDRAWAL PERMITS.**

### **1. Requirements to be Considered a Nonconsumptive Use Withdrawer.**

Upon proper application and submittal of appropriate fees, the Department shall issue permits for surface water withdrawals that are considered nonconsumptive uses. A nonconsumptive user is one that uses surface water in such a manner that more than ninety (90) percent of the water withdrawn is returned to its waters of origin within the boundaries of contiguous property owned by the surface water withdrawer; provided:

a. the amount of water not returned to the water source does not exceed three million (3,000,000) gallons during any one month; or

b. the amount of water not returned to the water source does not significantly reduce the safe yield at the point of withdrawal.

### **2. Additional Application Requirements for Nonconsumptive Use Permits.**

For any person requesting a permit pursuant to Section 49-4-40 (non-consumptive use permit), the application must include, in addition to the other information required in subsection D.1 or E.2 of this regulation, as appropriate, the following:

a. a tax map showing intake and discharge points and property boundaries;

b. a discussion of the timing of the discharge of the water, e.g. is any form of hydrograph control release being considered;

c. for an existing surface water withdrawer as of January 1, 2011, who would like to be considered a nonconsumptive user, an analysis of withdrawal and discharge data for the previous twenty four (24) months showing that the provisions of subsection G.1 above will be met; and

d. for a proposed new or expanding surface water withdrawer who would like to be considered a nonconsumptive user, an engineering analysis demonstrating that the provisions of subsection G.1 above will be met.

### **3. Reconsideration of Nonconsumptive Use Status.**

If, after twenty-four (24) months of operation, a nonconsumptive permittee is shown not to meet the criteria of a non-consumptive user, the original permit application will be reevaluated. For an existing surface water withdrawer, a permit will be issued under section D of this regulation. For a non-consumptive

use permit issued under section E of this regulation, a full review under section E will be conducted and an appropriately conditioned permit issued if the project is found to be reasonable under the Act.

#### 4. Information to be Included in Permit.

A permit for a nonconsumptive use must identify the surface water withdrawer, the point of withdrawal, the maximum withdrawal amount, and the point of return. Such permits are subject only to the reporting requirements of section N.

### **H. PERMIT DURATION.**

Permits issued by the Department, unless revoked or suspended pursuant to statute or this regulation, shall be valid for a period to represent the economic life of any capital investments made by the permittee necessary to carry out the permittee's use of the withdrawn water.

#### 1. Permit Duration for Existing Surface Water Withdrawers as of January 1, 2011.

Permits for existing surface water withdrawers as of January 1, 2011 must be issued for:

a. thirty (30) years for a permittee entitled to an initial permit pursuant to Section 49-4-70(B), or a greater period the Department considers reasonable based upon its review of all the facts and circumstances relevant to the proposed withdrawal not to exceed an additional ten (10) years; or

b. any additional period necessary, not to exceed a total of fifty (50) years, for a municipality or other governmental body to retire a bond it issued to finance the construction of waterworks.

#### 2. Permit Duration for a New or Expanding Surface Water Withdrawer After January 1, 2011.

For applicants for new or expanding surface water withdrawers after January 1, 2011 whose use is found to be reasonable under the provisions of the Act and this regulation, permits must be issued for:

a. twenty (20) years, or a greater period the Department considers reasonable based upon its review of all the facts and circumstances relevant to a proposed withdrawal not to exceed an additional twenty (20) years; or

b. any additional period necessary, not to exceed a total of fifty (50) years, for a municipality or other governmental body to retire a bond it issued to finance the construction of waterworks.

### **I. RENEWAL PROCESS FOR SURFACE WATER WITHDRAWAL PERMITS.**

#### 1. Permits Issued to Existing Surface Water Withdrawers.

a. An existing surface water withdrawer as defined by this regulation may renew its surface water withdrawal permit by making application no more than six (6) months prior to the expiration date, on a form to be supplied by the Department, pursuant to the criteria of section D of this regulation. Renewals of permits held by existing surface water withdrawers are not subject to the permitting criteria in section E. of this regulation, minimum flow requirements, or additional supplemental water contingency planning requirements, and are not subject to the requirements of subsection I.2 of this regulation. A permit shall remain valid during the Department's consideration of a renewal application if the permittee files a complete renewal application prior to the expiration date of the permit. Renewal applications take priority over permit applications for new withdrawals. Renewal of a permit issued to an existing surface water

withdrawer shall be for the quantity of water specified in the current permit unless the Department demonstrates that the quantity above the maximum withdrawals during the permit term are not necessary to meet the permittee's future needs.

b. An existing surface water withdrawer as defined by this regulation may, while renewing its surface water withdrawal permit, simultaneously apply for a modification to increase the amount of withdrawal. While the Department will review and approve the initially authorized amount consistent with section D. of this regulation, the proposed expansion will be evaluated based on the criteria of section E. of this regulation. If a modification is granted allowing additional withdrawal flow, subsequent permit renewals will evaluate the amount authorized in the initial permit under item I.1.a of this regulation while any additional amount authorized after issuance of the initial permit will be evaluated under item I.2.a. of this regulation. However, an application to modify an existing permit for a significant increase in the quantity of the withdrawal for surface water withdrawals authorized pursuant to Section 49-4-40 or Section 49-4-45 shall be subject only to the requirements set forth in that section.

## 2. Permits Issued to Surface Water Withdrawers Considered New or Expanding After January 1, 2011.

a. Any person considered a new surface water withdrawer permitted after January 1, 2011, or an existing surface water withdrawer issued a modification to their initial permit under section E may request renewal of its permit by making application no more than six (6) months prior to the expiration date, on a form to be supplied by the Department. A permit shall remain valid during the Department's consideration of a renewal application if the permittee files a complete renewal application prior to the expiration date of the permit. The renewal application for a new surface water withdrawer will be evaluated based on the criteria of section E of this regulation. The renewal application for an existing surface water withdrawer as defined by this regulation who has received an expanded surface water permit under section E will be evaluated under the appropriate criteria of sections D and E. Unless a modification is requested, permits must be renewed for a quantity equal to the expired permit unless the Department demonstrates that the quantity above maximum withdrawals during the permit term is not necessary to meet the permittee's future needs. Renewal applications take priority over permit applications for new withdrawals.

b. A surface water withdrawer may, while renewing its permit, simultaneously apply for a modification to increase the amount of withdrawal. Any proposed expansion quantity will be evaluated based on the criteria of section E. of this regulation; however, any significant increase in surface water withdrawals authorized pursuant to Section 49-4-40 or Section 49-4-45 shall be subject only to the requirements set forth in that section.

## **J. ACTIONS ON PERMIT APPLICATIONS MODIFICATIONS, REVOCATIONS AND DENIALS.**

### 1. Authority to Take Action on Permits.

The Department may modify, suspend, or revoke a permit under the following conditions:

a. the permit holder withdraws water not authorized by its permit or fails to comply with the terms and conditions of its permit;

b. the permit holder obtains a permit by misrepresentation or fails to disclose a material fact in its application;

c. the permit holder ceases to withdraw water for a period of at least thirty-six (36) consecutive months;

d. a permanent change in natural conditions results in a permitted activity endangering human health or the environment; or

e. if a permit holder requests a significant increase in surface withdrawal quantity, a significant change in use, such as a new or increased interbasin transfer, or a change in consumptive use.

## 2. Transferability of Permits.

a. Surface water permits are transferable with the prior written consent of the Department provided:

i. the current permittee notifies the Department at least sixty (60) days in advance of the proposed transfer date; and

ii. the activities and uses of the new permittee are consistent with the activities of the original permittee.

b. In determining whether to allow the transferring of a permit, the Department will consider:

i. whether the use to be made of the water by the new permittee is consistent with the previous use;

ii. the quantity of water to be used by the new permittee as compared to permitted amount and previous use;

iii. if consumptive use under the new permittee is consistent with the previous permittee; and

iv. the location of water use under the new permittee.

c. Depending on the specifics of the proposed transfer, the Department may transfer the permit as originally issued, transfer the permit at a decreased flow or deny the transfer.

## **K. EXISTING INTERBASIN TRANSFER PERMITS AND REGISTRATIONS.**

The expiration date of an interbasin transfer permit or interbasin registration, including any water withdrawal right or authority contained in the permit or registration, in existence on January 1, 2011, remains effective. For the purposes of this chapter, existing interbasin transfer permit or interbasin registration holders are deemed to be existing surface water withdrawers. A renewal of an interbasin transfer permit or registration must be made pursuant to the criteria established in Section 49-4-10 et seq. for existing surface water withdrawers, except that permits or registrations renewed within three (3) years after the effective date of this chapter must be renewed for a quantity at least equal to the permitted quantity in the expired permit. All other renewals must be issued in accordance with the criterion applicable to existing surface water withdrawers and for a quantity equal to the permitted quantity in the expired permit, unless the Department demonstrates by a preponderance of the evidence that the quantity above maximum withdrawals during the permit term are not necessary to meet the permittee's future need.

## **L. REGISTRATION OF AGRICULTURAL WITHDRAWALS.**

### 1. Requirement to Register.

a. Persons withdrawing water in excess of three million (3,000,000) gallons during any one (1) month for agricultural purposes must register their use with the Department on forms provided by the Department.

b. Registered surface water withdrawers are subject to the reporting requirements but not the permitting requirements of this regulation.

c. A registered surface water withdrawer may, at any time, request an increase in its registered amount; however, withdrawals that are not substantially greater than the registered amount do not necessarily require a modification to the registration.

d. Nothing in this regulation prohibits a registered surface water withdrawer from applying for and receiving a surface water withdrawal permit, consistent with applicable provisions of this regulation. A registered surface water withdrawer that obtains a permit is entitled to all of the rights conferred upon by a permit.

## 2. Existing Agricultural Withdrawals.

a. An existing agricultural withdrawer already reporting its withdrawal to the Department as of January 1, 2011, may maintain its withdrawal(s) at its highest reported level or at the design capacity of the intake structure(s) existing as of January 1, 2011, and is deemed to be registered with the Department.

b. The Department will notify the withdrawer of the registration and the allowed level of withdrawal based on the highest reported level of withdrawal. The notification will stipulate that the withdrawer may, no later than sixty (60) days from the date of notification, provide to the Department appropriate documentation showing the permanent intake capacity as of January 1, 2011 to be greater than the highest reported level of withdrawal and be registered for the higher amount.

## 3. New or Expanding Agricultural Withdrawals After January 1, 2011.

a. A person proposing to withdraw water for agricultural purposes in a quantity anticipated to meet the criteria of a surface withdrawer or an existing registered withdrawer seeking to increase its registered amount must report, on a form to be supplied by the Department, its anticipated withdrawal quantity or increase to the Department for determination as to whether that quantity is within the safe yield for that water source at the time of the request. The safe yield will be determined consistent with item E.3.a.ii of this regulation.

b. Upon making a safe yield determination, the Department must send a description of its determination to the proposed registered surface water withdrawer by registered mail.

i. If the anticipated withdrawal quantity or increase is determined to be within the safe yield of the source waterbody, the withdrawal will be considered registered with the Department for the anticipated quantity and the notification will constitute authorization to proceed with construction and operation of the withdrawal at the specified amount.

ii. If the anticipated withdrawal quantity or increase is determined not to be within the safe yield of the source waterbody, then the proposed new registered surface water withdrawer may not proceed with the construction or installation of a new water intake pursuant to this regulation nor can an existing registrant increase withdrawals above their current registered amount. However, the registrant may modify its request to reflect a reduced withdrawal quantity or increase that is within the safe yield.

c. A person receiving authorization to construct and operate a withdrawal or expand an existing withdrawal under this section must notify the Department of completion of the intake or expansion within thirty (30) days after completing construction. If notification of completion of construction is not received by the Department within one (1) year of the date of authorization provided under item L.3.b.i above,

authorization to construct or expand and operate a surface water withdrawal is revoked unless the Department extends the time period.

#### 4. Application Requirements.

a. At a minimum, the form for reporting an anticipated withdrawal quantity, for registering a withdrawal, or for requesting an increase in the amount of surface water withdrawn must include the following information:

i. the name, address, phone number(s), principal place of business of the person applying for the registration or registration modification and, if applicable, the name and address of the agent for the applicant;

ii. the location of the proposed intake(s) or the existing intake(s) to be expanded, including:

(A) name of source waterbody;

(B) latitude and longitude of intake; and

(C) a map showing the withdrawal point(s) on a 1:24,000 scale USGS quadrangle or equivalent;

iii. the quantity of water for which the registration is being requested;

iv. the capacity of the intake; and

v. the type of intake, either permanent or mobile.

b. [Reserved]

#### 5. Regulatory Authority.

The Department may modify the amount an existing registered surface water withdrawer may withdraw, or suspend or revoke a registered surface water withdrawer's authority to withdraw water, if the registered surface water withdrawer withdraws substantially more surface water than he is registered for and the withdrawals result in detrimental effects to the environment or human health.

### **M. TEMPORARY PERMITS AND EMERGENCY WITHDRAWALS.**

#### 1. Temporary Permits.

a. The Department may issue a temporary surface water withdrawal permit to a new applicant while its application is pending, if:

i. a complete application has been submitted pursuant to section E. of this regulation; and

ii. the temporary permit is necessary to address an imminent hazard to public health; or,

iii. the applicant demonstrates that without a temporary permit he will suffer physical or financial damage.

b. A temporary permit must contain an expiration date, which must not be more than one hundred eighty (180) days after it was issued.

c. A temporary permit for a new surface water withdrawal cannot be issued for a quantity of water greater than the quantity specified in the complete application.

d. A temporary permit must specify the minimum instream flow at the point of the proposed withdrawal and include a provision that the withdrawal cannot cause the instream flow below the withdrawal to fall below the minimum instream flow.

e. It shall be the responsibility of any new surface water withdrawer issued a temporary permit to document instream flow for the duration of the temporary permit.

f. A person may request a temporary permit through submittal of the initial permit application or at any time during the agency review of the initial permit application.

## 2. Emergency Withdrawals.

a. The following withdrawals are exempt from the permitting, registering, and reporting requirements:

i. firefighting;

ii. hazardous substance or waste-spill response; and

iii. other emergency withdrawal of water determined necessary by the Department to protect public health and safety.

b. An emergency withdrawal of water shall not exceed thirty (30) consecutive days.

c. It is the intent of this section to allow emergency withdrawals only in cases necessary to protect public health and safety. Economic duress is not considered an emergency under this regulation.

## **N. REPORTING.**

### 1. Requirement to Report.

Each permitted or registered surface water withdrawer must file a report with the Department of the quantity of water withdrawn by that surface water withdrawer annually before February first, on forms furnished by the Department.

### 2. Methods of Measuring Withdrawal Quantity.

The quantity of surface water withdrawn must be determined by one of the following:

a. flow meters accurate to within ten percent of calibration;

b. the rated capacity of the pump in conjunction with the use of an hour meter, electric meter, or log;

c. the rated capacity of the cooling systems;

d. any standard or method employed by the USGS in determining these quantities; or

e. any other method found to provide reliable water withdrawal data approved by the Department.

### 3. Reporting Exemption.

Permitted and registered surface water withdrawers who are required to file a surface water withdrawal report pursuant to regulation are not required to submit the report if the monthly quantity withdrawn from each intake is being reported to the Department as a result of another environmental program reporting requirement, permit condition, or consent agreement.

## **O. ENFORCEMENT.**

### 1. Violations.

A surface water withdrawer who commits a violation of this regulation:

a. is subject to a civil penalty of not more than ten thousand (10,000) dollars for each day that the violation occurred; or

b. is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand (10,000) dollars for each day that the violation occurred, if the violation is willful.

### 2. Penalties.

All penalties and fines collected pursuant to this section must be deposited in the general fund of the State of South Carolina.

## **P. OTHER DEPARTMENT AUTHORITY.**

### 1. Department Authority.

a. The Department may, in consultation with the SCDNR, negotiate agreements, accords, or compacts on behalf of and in the name of the State of South Carolina with other states or the United States, or both, with any agency, department, or commission of either, or both, relating to transfers of water that impact waters of this State, or are connected to or flowing into waters of this State. Any agreements, accords, or compacts made by the Department pursuant to this section must be approved by concurrent resolution of the General Assembly prior to being implemented.

b. The Department may represent the State in connection with water withdrawals, diversions, or transfers occurring in other states that may affect this State.

c. The Department must notify the Chairman of the Senate Agriculture and Natural Resources Committee and the Chairman of the House Agriculture, Natural Resources, and Environmental Affairs Committee when the Department enters into negotiations or otherwise represents the State as provided in this section. The Department must periodically report, as necessary or upon request, to the chairmen concerning the progress of the negotiations or representation.

d. Department representatives may enter upon any land or water for the purpose of conducting investigations, examinations, or surveys necessary to carry out its duties and responsibilities provided in this regulation. The Department will adhere to security and safety requirements that may apply at the site and/or facility.

e. The Department may receive financial and technical assistance from private entities, the federal government, or another state agency.

f. The Department may take any action reasonable and necessary to enforce the provisions of this regulation.

2. [Reserved]

## **Q. SURFACE WATER PERMITTING AND WITHDRAWAL FEES.**

1. Fee Structure.

The Department is authorized to collect a fee for each permit application and an annual operating fee for each permitted intake. The fee collected must be returned to the Department for the purposes of implementing the Surface Water Permitting and Withdrawal regulatory program including permit application review, compliance inspections, and enforcement; and for providing technical assistance and monitoring. The fee(s) shall be as follows:

Existing surface water withdrawal permit application processing fee	\$1,000
New surface water withdrawal permit application processing fee	\$7,500
Modification of surface water withdrawal permit application processing fee	\$2,000
Renewal of surface water withdrawal permit with modifications application processing fee	\$1,000
Surface water withdrawal annual operating fee per permitted intake	\$1,000

2. Application Processing Requirements.

a. Application fees shall be due when the application is submitted. The Department will not process an application until the application fee is received. If the applicant withdraws the permit application anytime before the application has been deemed administratively complete, the Department shall refund the entire application fee to the applicant.

b. Upon receipt of an application and appropriate fee, the Department must within ninety (90) days make a decision on the completeness of the application. If notice that the application is administratively complete or notice that the application is not Administratively Complete, together with notice of the specific items deemed to be lacking, is not mailed to an applicant within ninety (90) working days of receipt of an application, the application is deemed complete and the allowed processing time period will begin.

c. Once an applicant has been notified that the application is administratively complete or has been deemed complete according to item 2.b above, the Department shall issue or deny the permit within three hundred sixty five (365) days of that date. If no permit decision has been rendered by the end of the relevant time period, the application fee shall be refunded. If an application fee is refunded due to the Department exceeding the relevant time period, the application remains active.

d. The time period shall be tolled in the following instances.

i. The time period shall be tolled when the Department makes a written request for additional information and shall resume when the Department receives all requested information from the applicant. If an applicant fails to respond to or satisfy such a request within one-hundred eighty (180) days, the Department shall consider the application withdrawn and the application fee will be forfeited. The Department shall notify the applicant no later than ten (10) days prior to expiration of the 180-day period.

ii. The time period shall be tolled if the applicant requests that the permit review be suspended or if the applicant requests in writing that additional time be provided and the Department agrees to the request in writing and specifies an additional period.

iii. The time period shall be tolled if the Department, at least ten (10) days prior to the expiration date, requests a delay in the review process to which the applicant agrees.

iv. The time period shall be tolled if the Department holds a public hearing, in which case the time schedule will be tolled for no more than sixty (60) days.

v. The Department shall notify the applicant when the time period is being tolled and untolled.

e. All times given in days are given in calendar days unless otherwise noted. The last day of the period is to be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. The day notice is mailed to the applicant that the application is deemed administratively complete shall be counted.

f. The Department may determine that the applicant has filed a new application whenever additional information provided by the applicant during any Departmental review period, in response to any statement identifying deficiencies in the application or supporting materials, or during any period allowed for public comment, either:

i. results in a change in the category in which the permit application is classified; or

ii. significantly increases or changes the nature of the potential effects of the proposed project or activity on public health and safety or the environment.

iii. Upon making a determination that the applicant has filed a new application, the Department shall promptly notify the applicant in writing. The notice shall indicate the basis for the determination and summarize the provisions relative to such determinations.

(A) Immediately upon issuance of the notification, the schedule for timely action shall be suspended.

(B) If the determination resulted from a proposed change in design or operation of the proposed project or activity the applicant may, within thirty (30) days, withdraw the change and return to its previous proposal by so notifying the Department in writing. If the applicant so notifies the Department, the schedule for timely action shall resume at the point at which it was suspended.

(C) If the determination resulted from any other cause, or if the applicant does not elect to withdraw the change, the Department shall begin a review of the new application pursuant to the relevant schedule for timely action.

(D) Unless the applicant elects to proceed with the previous application, the original application shall be deemed withdrawn after the start of technical review, and the fee shall be forfeited. Appropriate fees as defined in this section shall be due for the modified application.

(E) The determination that a project has changed shall not be grounds for a request for adjudicatory hearing; however, an applicant aggrieved by such a determination may seek review of the determination as an issue in any appeal of the permit decision.

iv. This provision does not apply to initial permits issued pursuant to section D of this regulation.

g. The time periods for the Department to take any action shall be extended whenever:

i. action by another federal, state, or municipal governmental agency is required before the Department may act; or

ii. judicial proceedings then underway affect the ability of the Department or the applicant to proceed with the application; or

iii. when the Department has commenced enforcement proceedings that could result in revocation of an existing permit for that facility or activity and denial of the application; or

iv. a check or other form of payment of an application fee is returned for insufficient funds, or if payment in full is in any other manner prevented.

h. The applicant shall promptly notify the Department in writing whenever it believes that action by another governmental agency is required, or that judicial proceedings affect the ability of the Department or the applicant to proceed with the application.

i. The Department shall provide written notice to the permit applicant within fifteen (15) days of making a determination that an extension is necessary. Such notice shall contain a statement of the reasons for which the schedule must be extended.

j. When the Department determines that the reason for such extension is no longer applicable, the Department shall so notify the applicant in writing within fifteen (15) days of making such determination. The time period for the Department to complete a timely review shall begin on the day the notice is mailed.

### 3. Annual Operating Fees.

a. Annual operating fees per permitted intake are assessed on the State fiscal year of July 1 through June 30 of the following year. The holder of any valid permit on July 1 of each year will be assessed appropriate fees for the entire following fiscal period. Assessment of annual operating fees will begin July 1 following initial permit issuance.

b. Annual operating fees are due within thirty (30) days of billing. Unpaid fees, late fees, and returned checks are subject to the provisions of item Q.3.d below.

c. Unless the permittee seeks an extension of the time for making payment, the permittee shall make payment in full on or before the due date, and in the manner and form, specified in the invoice. Except to the extent authorized by the Department, late payment, nonpayment, partial payment, or failure to make payment in the specified manner and form shall constitute a failure by the permittee to pay the fee when due.

d. Annual operating fees remaining unpaid thirty (30) days after billing will be issued a late notice with no penalty due; however, it will contain advisement of penalty for non-payment after sixty (60) days. Fees remaining unpaid after sixty (60) days will be assessed a ten (10) percent penalty. Persons delinquent will be issued a notice of the ten (10) percent penalty due the Department as well as advisement of further penalties should fees remain unpaid. Fees remaining unpaid at the end of ninety (90) days will be assessed a twenty-five (25) percent penalty in addition to the ten (10) percent sixty (60) day penalty. The sum of both penalties may not exceed five thousand (5,000) dollars. Persons delinquent at the end of ninety (90) days under this paragraph will be notified by the Department by certified mail at their last known address.

#### 4. General Fee Provisions.

a. The Department will not issue new permits, modifications, revisions, or reissue a surface water withdrawal permit for a facility that is in default of fees due under this regulation.

b. All returned checks will be subject to a returned check fee as outlined in the Department's Administrative Policy and Procedures Manual. This penalty will be in addition to those outlined in item Q.3.d above.

c. Failure to pay fees may result in the revocation of an existing permit.

d. All fees shall be payable to the Department of Environmental Services.

### **R. COMPLIANCE WITH OTHER STATUTES AND REGULATIONS.**

Nothing in this regulation shall relieve any person regulated herein of the duty to comply with all other applicable statutes and regulations.

### **S. SEVERABILITY CLAUSE.**

If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this regulation is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this regulation.