

CHAPTER 1  
General Provisions

**SECTION 49-1-10.** Navigable streams considered common highways; obstruction as nuisance.

All streams which have been rendered or can be rendered capable of being navigated by rafts of lumber or timber by the removal of accidental obstructions and all navigable watercourses and cuts are hereby declared navigable streams and such streams shall be common highways and forever free, as well to the inhabitants of this State as to citizens of the United States, without any tax or impost therefor, unless such tax or impost be expressly provided for by the General Assembly. If any person shall obstruct any such stream, otherwise than as in Chapters 1 to 9 of this Title provided, such person shall be guilty of a nuisance and such obstruction may be abated as other public nuisances are by law.

HISTORY: 1962 Code Section 70-1; 1952 Code Section 70-1; 1942 Code Section 5807; 1932 Code Section 5807; Civ. C. '22 Section 2901; Civ. C. '12 Section 1928; Civ. C. '02 Section 1335; G. S. 1062; R. S. 1159; G. S. 1104; 1853 (12) 305; SC Const, Art 14, Section 1.

Editor's Note

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

**SECTION 49-1-15.** Permits for hydroelectric projects involving impoundment or diversion of waters of navigable streams.

(A) Except as otherwise provided herein, no person may erect, construct, or build any structure or works in order to dam or impound the waters of a navigable stream or any waters which are tributary to a navigable stream for the purpose of generating hydroelectricity without securing a permit from the Department of Health and Environmental Control. Any projects that are subject to Chapter 33 of Title 58 of the Utility Facility Siting and Environmental Protection Act are exempted from this section. Further exempted are projects where the project developer without exercising condemnation authority is the existing owner of the property upon which the project is to be constructed and projects which do not exceed sixty acres including in both cases inundated land.

(B) The Department of Health and Environmental Control may issue a permit for the projects in this subsection after a thorough review of the proposed project and a finding that it meets any regulations of the board and the following standards:

(1) The proposed project does not halt or prevent navigation by watercraft of the type ordinarily frequenting the reach of the watercourse in question.

(2) The projects proposed for shoaled areas of the watercourse provide a means of portage or bypass of the project structure.

(3) The need for the proposed project far outweighs the historical and current uses of the stream in question.

(4) The impact of the proposed project will not threaten or endanger plant or animal life.

(5) The recreational and aesthetic benefits or detriments caused by the proposed project do not alter the watercourse or damage riparian lands.

(C) The Attorney General shall represent before any federal agency the department, if so requested by the department, respecting the same application.

HISTORY: 1986 Act No. 489, Section 1; 1993 Act No. 181, Section 1241.

Editor's Note

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

**SECTION 49-1-16.** Fees for permits.

The Department of Health and Environmental Control may charge a fee to an applicant for a permit for any construction, alteration, dredging, filling, or other activity in navigable waters of the State. If the project is commercial or industrial and is in support of operations that charge for the production, distribution, or sale of goods or services, a fee of five hundred dollars must be charged, except if the aerial crossing of navigable waters by conductors or other wires supported solely by structures outside the navigable waters the fee shall be one hundred dollars. If the work is noncommercial in nature and provides personal benefits that have no connection with a commercial enterprise the fee must be fifty dollars. The department shall remit the fees to the State Treasurer and shall be issued a credit for any portion of the fees necessary to offset its costs in processing, investigating and taking final action on each permit application. Any remaining portion shall be credited to the general fund of the State.

HISTORY: 1993 Act No. 181, Section 1242.

Editor's Note

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

**SECTION 49-1-18.** Control authority over certain Savannah River matters suspended.

The General Assembly, pursuant to Section 7, Article I of the South Carolina Constitution, suspends the authority of the South Carolina Department of Health and Environmental Control, hereinafter the department, for all decisions subsequent to 2007 related to all matters pertaining to the navigability, depth, dredging, wastewater and sludge disposal, and related collateral issues in regard to the use of the Savannah River as a waterway for ocean-going container or commerce vessels, in particular the approval by the department of the application of the United States Army Corps of Engineers for a Construction in Navigable Waters Permit for the dredging of the South Carolina portion of the Savannah River, because the authority of the Savannah River Maritime Commission, hereinafter the Maritime Commission, superseded the responsibilities of the department for such approval, as established by Act 56 of 2007, and the approval by the department could present imminent and irreversible public health and environmental concerns for the South Carolina portion of the Savannah River. The Department of Health and Environmental Control retains authority for all matters pertaining to the Savannah River unrelated to the navigability, depth, dredging, wastewater and sludge disposal, and related collateral issues in regard to the use of the Savannah River as a waterway for ocean-going container or commerce vessels.

HISTORY: 2012 Act No. 125, Section 1, eff March 1, 2012.

Code Commissioner's Note

At the direction of the Code Commissioner, this section was codified in 2012.

Editor's Note

2012 Act No. 125, provides as follows:

“Whereas, the South Carolina Department of Health and Environmental Control, hereinafter the department, was granted the authority to maintain reasonable standards of purity of air and water quality by enactment of the South Carolina Pollution Control Act; and

“Whereas, the Savannah River Maritime Commission, hereinafter the Maritime Commission, by enactment of Act 56 in 2007, effective May 1, 2007, was granted the authority to represent this State in all matters pertaining to the navigability, depth, dredging, wastewater and sludge disposal, and related collateral issues in regard to the use of the Savannah River as a waterway for ocean-going container or commerce vessels; and

“Whereas, the General Assembly granted to the Maritime Commission by statute the oversight and permitting responsibilities for the State as to the navigability or depth of the South Carolina portion of the Savannah River, superseding any other concurrent responsibilities of a particular state agency or department; and

“Whereas, by enactment of Act 56 in 2007, the General Assembly also bifurcated the permitting process for construction in the South Carolina portion of the Savannah River, such that all matters pertaining to the navigability, depth, dredging, wastewater and sludge disposal, and related collateral issues, including navigable waters permitting criteria, in regard to the use of the Savannah River as a waterway for ocean-going container or commerce vessels fell within the purview of the Maritime Commission; and

“Whereas, the South Carolina General Assembly has learned that, contrary to its legislative enactment of 2007, the authority of the Maritime Commission was unlawfully usurped by the department in its approval of an application from the Savannah District Office of the United States Corps of Engineers for Water Quality Certification pursuant to Section 401 of the Clean Water Act and Construction in Navigable Waters Permit to dredge a portion of the Savannah River in South Carolina as part of the Savannah River Expansion Project; and

“Whereas, the South Carolina General Assembly has learned that the approval of the above-referenced application could present imminent and irreversible public health and environmental concerns; and

“Whereas, Section 7, Article I of the South Carolina Constitution provides that the power to suspend the laws shall be exercised only by the General Assembly. Now, therefore, [text of section appears].”

**SECTION 49-1-20.** Permitting logs and the like to obstruct or interfere with navigation of rivers or harbors.

Any person who shall be found guilty of cutting any trees or tree tops, brush or logs, or throwing any refuse material whatever into any navigable river or harbor or who shall float logs singly or in rafts in any manner whatsoever without being properly or plainly lighted at night and attended by day with a sufficient number of men to prevent such rafts and logs from negligently damaging property along the river banks, from catching on snags, sinking and forming obstructions or in any manner whatsoever interfering with the navigation of or obstructing such rivers or harbors shall be guilty of a misdemeanor and punished by fine not exceeding two hundred and fifty dollars or by imprisonment not exceeding two years. All such trees, logs, rafts, floating booms or pens of timber dangerous to navigation in any such river may be captured, secured, properly rafted to market and sold, one half of the net proceeds over the expense of capturing and marketing to be paid to the county treasurer of the county in which such timber may be captured and the other half to the person capturing it. But this section shall not apply to logs or timber accidentally drifting loose from a raft or from any stationary boom where timber is kept for proper use or for proper rafting or to any logs floated off from the owner by a sudden freshet before he shall have had an opportunity to raft them.

HISTORY: 1962 Code Section 70-2; 1952 Code Section 70-2; 1942 Code Section 1188; 1932 Code Section 1188; Cr. C. '22 Section 79; Cr. C. '12 Section 235; Cr. C. '02 Section 181; G. S. 2505; R. S. 175; 1894 (21) 715; 1897 (22) 426.

Editor's Note

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

**SECTION 49-1-30.** Duty of landowners to clean out their streams.

All landowners shall clean out all streams upon and adjacent to their lands at least twice in each year, at such particular times as the respective governing bodies of the several counties of the State may appoint and according to the directions of such governing bodies, and shall keep them clear of all obstruction to a free and uninterrupted flow of sand and water through the channels thereof. This section shall not be construed to prevent the erection and maintenance of any dam across any of such streams for any useful purpose but such governing bodies may require the owner of any such dam to build and maintain therein suitable and sufficient floodgates and waterways to afford free passage through them of the sand and water, so that the streams above may be properly cleaned out and the lands adjacent thereto properly drained and for such purpose they may require the owner of any such dam to open the floodgates or waterways therein and keep them open for such reasonable time as they may deem to be necessary. Any person violating any

of the provisions of this section shall be guilty of maintaining a nuisance and, upon conviction, shall be fined not more than fifty dollars or imprisoned not more than thirty days if ten days' notice to abate such nuisance shall have been given.

**HISTORY:** 1962 Code Section 70-3; 1952 Code Section 70-3; 1942 Code Section 1215; 1932 Code Section 1215; Cr. C. '22 Section 103; Cr. C. '12 Section 237; Cr. C. '02 Section 183; 1900 (23) 399.

**Editor's Note**

Early litigation pertaining to this section and similar sections in prior codes developed around the question of constitutionality. In several early cases the effect of the Constitution of 1895 on the subject was considered. In one case it was decided that the legislation was special, but that, as the constitutional restriction was not retroactive, it did not apply. *State v Tucker*, 54 SC 251, 32 SE 361 (1899). This decision controlled until the sections were incorporated in the Code of 1902, whereupon it was held that this in effect constituted the passage of a new act, and, as the Code excepted certain other counties, it was within the constitutional provision (formerly held not applicable because retroactive), was special legislation, and was null and void. *State v Hammond*, 66 SC 300, 44 SE 933 (1903). Finally, in *Pierce v Marion County Lumber Co.*, 108 SC 387, 94 SE 865 (1918), it was held constitutional, because under the act and amendment, which was added thereto on February 18, 1905 (24 Stats 830), the General Assembly could pass local and special laws concerning drainage, and this was a matter of drainage. This act was reenacted in Code of 1912, after the creation of Dillon County, and Dillon County was not excepted. *State v Tucker*, 54 SC 251, 32 SE 361 (1899). *State v Hammond*, 66 SC 300, 44 SE 933 (1903). *Pierce v Marion County Lumber Co.*, 108 SC 387, 94 SE 865 (1918).

2010 Act No. 247, Section 4.B, provides:

"Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act."

**SECTION 49-1-40.** Obstructing streams generally.

Any person who shall fell, cut or throw or cause to be felled, cut or thrown across or into any of such streams any tree, log or other timber or any trash, brush, debris or obstruction of any kind whatsoever shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than fifty dollars or imprisonment for not more than thirty days.

**HISTORY:** 1962 Code Section 70-4; 1952 Code Section 70-4; 1942 Code Section 1216; 1932 Code Section 1216; Cr. C. '22 Section 104; Cr. C. '12 Section 238; Cr. C. '02 Section 184; 1900 (23) 399.

**Editor's Note**

2010 Act No. 247, Section 4.B, provides:

"Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act."

**SECTION 49-1-50.** Sale or purchase of drifted lumber or timber; penalties.

(A) No person may sell any drifted lumber or timber, not the property of the person, without first advertising the sale of it at public auction at least three times and at least three days before the date of the sale in the newspaper having the greatest circulation in the county in which the drifted lumber or timber is found and taken, giving an accurate description of any and all marks by which the lumber or timber may be identified.

(B) It is unlawful for a person to:

- (1) sell any drifted lumber or timber without having first advertised the sale;
- (2) fail to pay the proceeds of the sale to the owner on application, after deducting the expenses; or
- (3) advertise a sale and then refuse to deliver any drifted lumber or timber claimed by the rightful

owner, before the date of the sale after the owner has offered to pay reasonable salvage expenses.

(C) A person who violates the provisions of this section is guilty of a:

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the value of the lumber or timber is ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the value of the lumber or timber is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the lumber or timber is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.

(D) A person who purchases drifted lumber or timber that has not been advertised as provided may be indicted as a receiver of stolen goods and must be fined or imprisoned as provided in Section 16-13-180.

**HISTORY:** 1962 Code Section 70-7; 1952 Code Section 70-7; 1942 Code Section 1206; 1932 Code Section 1206; Cr. C. '22 Section 94; Cr. C. '12 Section 256; Cr. C. '02 Section 196; G. S. 1622; R. S. 183; 1853 Act No. 4154; 1907 Act No. 251; 1989 Act No. 190, Section 20; 1993 Act No. 184, Section 126; 2010 Act No. 273, Section 16.G.G, eff June 2, 2010.

**Editor's Note**

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

**Effect of Amendment**

The 2010 amendment in subsection (C), in item (1) substituted “ten thousand” for “five thousand”, in item (2) substituted “two thousand” for “one thousand” and “ten thousand” for “five thousand”, and rewrote item (3).

**SECTION 49-1-60.** Tolls allowed owner of shores or wharves.

The owner of the shores or any wharf erected on the shores or in or over the waters of any navigable stream may charge reasonable tolls for the use thereof.

**HISTORY:** 1962 Code Section 70-163; 1952 Code Section 70-163; 1942 Code Section 6025; 1932 Code Section 6025; Civ. C. '22 Section 3090; Civ. C. '12 Section 2145; 1911 (27) 25.

**Editor's Note**

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

**SECTION 49-1-80.** International Paper Company may use water from Great Pee Dee River.

The State hereby grants permission to the International Paper Company to divert from the Great Pee Dee River, for use in the course of operation of its plant located at Georgetown in Georgetown County, one hundred cubic feet of water per second each day. The point of diversion shall be at a point twelve and eight-tenths miles above the Yauhanna Bridge on Route U. S. No. 701, and the main works for the diversion shall be located on the south side of the river. Provided, that the International Paper Company shall obtain all necessary rights of way from the landowners concerned, from and including the point of diversion to the point of use at the plant in Georgetown. Provided, further, that the total amount of water taken out of the Great Pee Dee River pursuant to the terms of this section and Section 49-1-90 shall not exceed eight per cent of the flow of the stream at the point of diversion. Provided, further, that this section and Section 49-1-90 shall not affect the right of any person to recover, in a court of competent jurisdiction, damages sustained as a result of the diversion of water permitted by this section and Section 49-1-90. Provided, further, that the International Paper Company shall take the water authorized herein as is, and shall have no legal or equitable recourse against any present or future user on said river or tributary thereof unless such user is violating the laws, rules or regulations regulating the pollution or control of rivers and streams

of this State. Provided, further, that nothing in this section and Section 49-1-90 contained shall prevent any riparian owner of lands, either above or below the point of diversion, to use the waters of the Pee Dee River for irrigation and for other agricultural purposes.

HISTORY: 1962 Code Section 70-481; 1955 (49) 100.

Editor's Note

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

**SECTION 49-1-90.** Right of others to diversions from Great Pee Dee River.

Any person, firm, corporation, municipality or county which may acquire rights of way for canals, pipelines or ditches, shall have to the same extent the same rights of diversion granted in Section 49-1-80 to International Paper Company, to be exercised in the same manner.

HISTORY: 1962 Code Section 70-482; 1955 (49) 100.

Editor's Note

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”