

CHAPTER 30  
Public Waters Nuisance Abatement Act

**SECTION 49-30-10.** Citation of act.

This chapter may be referred to and cited as the “Public Waters Nuisance Abatement Act”.

HISTORY: 2007 Act No. 33, Section 1, eff upon approval (became law without the Governor’s signature on May 24, 2007).

**SECTION 49-30-20.** Legislative intent.

The General Assembly finds and declares that structures located upon the public waters of the State which are used as places of temporary or permanent habitation, dwelling, sojournment, or residence interfere with the state’s proprietary interest or the public trust, or both, and must be removed to ensure the rights of the State and the people of South Carolina to use and enjoy the public waters of the State. It is declared to be the policy of this State and the intent of this chapter to protect the public waters of the State by authorizing the removal of nuisance structures from the public waters of the State in accordance with the procedures and within the timetable set forth in this chapter.

HISTORY: 2007 Act No. 33, Section 1, eff upon approval (became law without the Governor’s signature on May 24, 2007).

**SECTION 49-30-30.** Definitions.

As used in this chapter, the term:

- (1) “Department” means the South Carolina Department of Natural Resources.
- (2) “FERC licensee” means an entity that possesses a Federal Energy Regulatory Commission’s (FERC) license to operate a licensed lake.
- (3) “Fund” means the Public Waters Nuisance Abatement Fund.
- (4) “Licensed lake” means a public water of the State consisting of an impoundment and its associated hydropower facility that is licensed by the Federal Energy Regulatory Commission (FERC).
- (5) “Navigation” means the ability of a registered or documented self-propelled watercraft equipped with motor and rudder controls located at a point on the watercraft from which there is forward visibility over at least a one hundred eighty degree range to navigate to a department approved marine pump-out station. This definition is in addition to and not exclusive of any other departmental standards for navigation.
- (6) “Removal” means to completely extricate the entire structure from the public waters of this State.
- (7) “Structure” means a structure located upon any public waters of this State, whether the structure is floating upon the waters and is made fast by the use of lines, cables, anchors, or pilings, or a combination of these, or is built upon pilings embedded in the beds of the public waters of the State when the structure is being used, has been used, or is capable of being used as a place of habitation, dwelling, sojournment, or residence for any length of time; is not being used or is not capable of being used primarily as a means of transportation upon these public waters; and is not owned, occupied, or possessed pursuant to a permit issued by the department. This definition includes, but is not limited to, watercraft not being used in navigation; provided, however, that this definition does not include registered or documented watercraft that are capable of navigation and are legally anchored or legally moored to a dock or marina. Also specifically excluded from this definition are fishing camps, bait shops, restaurants, or other commercial establishments, marinas, or docks permitted under applicable South Carolina or federal law, which do not discharge sewage into the public waters of the State and are operated in conformance with the zoning ordinances, if any, of the municipality or county in which they are located.
- (8) “Unpermitted structure” means a structure whose owner did not obtain a permit pursuant to this chapter or a structure remaining after the expiration or revocation of its permit.
- (9) “Waters of the State” has the same meaning as in Section 50-21-10.

HISTORY: 2007 Act No. 33, Section 1, eff upon approval (became law without the Governor's signature on May 24, 2007).

Code Commissioner's Note

At the direction of the Code Commissioner, the reference to Section 50-21-10(28) in item (9) was changed to Section 50-21-10.

**SECTION 49-30-40.** Public Waters Nuisance Abatement Fund.

The Public Waters Nuisance Abatement Fund is created solely to pay for costs incurred by the State associated with removing unpermitted structures pursuant to this chapter. The fund may receive appropriations from the general fund, federal funds, donations, gifts, the proceeds of permit fees, and other monetary instruments of value. The proceeds contained in the fund may be carried forward from year to year and do not revert to the general fund of the State. The department must maintain and administer the fund. Proceeds from the fund may not be used to pay for costs associated with the removal of an unpermitted structure from licensed lakes.

HISTORY: 2007 Act No. 33, Section 1, eff upon approval (became law without the Governor's signature on May 24, 2007).

**SECTION 49-30-50.** Permit to maintain existing structure.

An owner of a structure existing on March 21, 2007, may apply for a permit from the department authorizing the owner to maintain his structure in its permitted location for five years. A permit may not be renewed, extended, or transferred.

HISTORY: 2007 Act No. 33, Section 1, eff upon approval (became law without the Governor's signature on May 24, 2007).

**SECTION 49-30-60.** Permit application; fee; conditions; time for filing; grounds for revocation.

(A) For the privilege of maintaining a structure in its current location, the owner of the structure must obtain a permit for a fee of fifty dollars. The permit fee must be credited to the fund.

(B) To be issued a permit pursuant to this section an owner must:

(1) make a written request for a permit from the department containing:

(a) a sworn statement from all of the owners of the structure acknowledging ownership;

(b) the names and addresses of all owners;

(c) a detailed description of the structure;

(d) the structure's location. To identify the structure's location, the owner must use latitude and longitude or mark it on a United States Geological Survey topographic map; and

(2) establish to the satisfaction of the department that the structure does not present a hazard to navigation nor encroach upon private property or a wildlife management area.

(C) Upon the verification of the information contained in the written request and the department's satisfaction that the structure does not present a hazard to navigation nor encroach upon private property or a wildlife management area, the department shall issue a permit to the owner that must be prominently displayed on or about the structure. The permit must be conditioned expressly upon the owner being responsible for removal and all costs associated with removal. The department may not issue permits to applications postmarked or received later than ninety days after the effective date of this chapter.

(D) A permit may be revoked by the department if the:

(1) structure is moved from its permitted location for use in another location;

(2) owner fails to abide by any conditions upon which the permit was issued;

(3) structure becomes a hazard to navigation or encroaches on private property or a wildlife management area;

(4) structure is abandoned or becomes unusable; or

(5) owner transfers or attempts to transfer his permit, title, or any interest in the structure to another person.

HISTORY: 2007 Act No. 33, Section 1, eff upon approval (became law without the Governor's signature on May 24, 2007).

**SECTION 49-30-70.** Identification and removal of unpermitted structures; notice of proceeding.

(A) An unpermitted structure is declared to be a public nuisance and shall be enjoined and abated as provided in this chapter. FERC licensees must survey their licensed lakes and the department must survey all other navigable waters of this State to determine the location of any unpermitted structures. A report promptly must be made to the Attorney General providing notice that an unpermitted structure exists and a reasonable description of where the unpermitted structure is located.

(B) Upon receiving notice of the existence of an unpermitted structure, the Attorney General may maintain an action to enjoin the use of the unpermitted structure and seek an order from the court that the unpermitted structure be removed. If the Attorney General does not commence an action within ninety days after receiving notice pursuant to this chapter, a citizen of this State may bring an action to enjoin the unpermitted structure's use and seek an order from the court requiring its removal. The prevailing party may recover the cost of the action, including attorney's fees. All costs associated with removing unpermitted structures must be borne by the owner.

(C) No proceeding against the owner of an unpermitted structure shall be commenced unless ten days' written notice is given by the party instituting the action to the owner or his agent. If the party bringing the action cannot determine who owns the unpermitted structure, he may give notice of his intention to bring an action by forwarding a notice of his intention to a newspaper of general circulation in the county where the unpermitted structure is located with a request that it be published at least once a week for four consecutive weeks and by posting notice in at least three public places within the county where the unpermitted structure is located during the same four-week period. A notice by publication must describe the unpermitted structure, its location, and the intention of the party maintaining the action to enjoin the use of the unpermitted structure and obtain a court order to have it removed.

HISTORY: 2007 Act No. 33, Section 1, eff upon approval (became law without the Governor's signature on May 24, 2007).

**SECTION 49-30-80.** Removal of unpermitted structures; FERC licensees; recovery of costs.

(A) The department must contract to remove unpermitted structures pursuant to a court order and to the extent that the fund contains sufficient funds to cover the cost of removal.

(B) FERC licensees are authorized to remove unpermitted structures located on licensed lakes pursuant to a court order.

(1) A FERC licensee may recover from the owner of an unpermitted structure all costs associated with its removal. The department must provide the FERC licensee with any information in the department's possession that may be used to identify and locate an owner from whom the FERC permittee is seeking to recover its costs.

(2) The provisions of this subsection do not create a new duty of care for FERC licensees.

HISTORY: 2007 Act No. 33, Section 1, eff upon approval (became law without the Governor's signature on May 24, 2007).

**SECTION 49-30-90.** Magistrate court jurisdiction; offenses and penalties.

(A) Notwithstanding Chapter 3, Title 22, magistrates court shall have jurisdiction over actions arising under this section.

(B) A permit holder that fails to remove his structure at the expiration of his permit, who violates a condition upon which the permit was granted, or abandons the structure is guilty of a misdemeanor and,

upon conviction, must be fined up to five thousand dollars or imprisoned for up to thirty days, or both. The court also must require the permit holder to pay for all costs associated with the removal of the structure.

(C) Construction, placement, operation, occupation, or use of an unpermitted structure in, on, or about the waters of this State or on a licensed lake is a misdemeanor and, upon conviction, the offender must be fined up to five thousand dollars or imprisoned for up to thirty days, or both. The court also must require the offender to pay for all costs associated with the removal of the unpermitted structure.

**HISTORY:** 2007 Act No. 33, Section 1, eff upon approval (became law without the Governor's signature on May 24, 2007).