

Regulation 30-4

Decisions on a Permit

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Statutory Authority:

S.C. Code Sections 48-39-10 et seq.

Regulation History as Published in State Register			
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A. Permit Approval:

(1) The Department is allowed, under, Section 48-39-150(B) to issue a conditional permit approval. Under this provision, the Department may direct the applicant to amend his proposal to take specific measures necessary to protect the public interest. The Department, at its discretion, may seek additional public comment on major modifications to a permit application.

(2) If the Department has approved an application, Section 48-39-150(B) also allows the Department, at its discretion, to support the applicant in a Federal permitting process for the same activity.

B. Permit Denial: A Permit denial shall cite facts upon which the denial was based and the reasons for denial.

C. Action Upon a Permit: The Department according to Section 48-39-150.C shall act upon an application for a permit within ninety days. This ninety-day period shall begin when the application is administratively complete and filed in approved form. The file is administratively complete when all required information, including fees, newspaper notices, proof of ownership and certifications have been received. Exceptions of the 90-day deadline are applications for minor development activities on which action must be taken in thirty days. Permits are deemed issued after signature by applicant and appropriate OCRM staff. See R.61-30 for further descriptions of the administrative processes governing action on a permit.

D. Completion of Work: Section 48-39-150(F) requires a permit holder to complete work within five years from the date of permit issuance. The Department may extend this five-year period upon showing of good cause indicating that due diligence toward completion of the work has been made, evidenced by significant work progress. The permit holder must request an extension in writing prior to the permit's expiration date. Permits which have expired may not be extended. Work shall be continuous and expeditious whenever possible.

E. Property Rights Not Affected; No State Liability; Other Permit Requirements: No permit shall convey, nor be interpreted to convey, a property right in the land or water in which the permitted activity is located. No permit shall be construed as alienating public property for private use or as alienating private property for public use. In no way shall the State be liable for any damage as a result of the erection of permitted works. A SCDHEC-OCRM permit in no way relieves the holder from responsibility for compliance with other applicable Federal, State, or local permit requirements.

F. Legally Commenced Use: Section 48-39-130(C) reads as follows, "Ninety days after the effective date of this act no person shall fill, remove, dredge, drain or erect any structure on or in any way alter any critical area without first obtaining a permit from the Department. Provided, however, that a person who has legally commenced a use such as those evidenced by a state permit, as issued by the Budget and Control Board, or a project loan approved by the rural electrification administration or a local building permit or has received a United States Corps of Engineers or Coast Guard permit, where applicable, may continue such use without obtaining a permit. Any person may request the Department to review any project or activity to determine if he is exempt under this section from the provisions of this act. The Department shall make such determinations within forty-five days from the receipt of any such request."

G. Mitigation Criteria:

(1) The avoidance of tidelands is preferable to mitigation. The mitigation of tideland impacts is considered only after the policies, law, and rules and regulations of the Department have been addressed and the tideland impacts are unavoidable and are allowed by law. Mitigation may be required for any projects impacting tidelands at the discretion of the Department.

(2) Mitigation shall take the form of wetland creation and/or wetland enhancement and restoration. Wetland creation shall be performed at a ratio of 2:1, wetland created to wetland altered, for private projects and 1:1, wetland created to wetland altered, for projects deemed in the public interest. Enhancement and restoration projects should normally be coupled with some wetland creation and must clearly be an improvement ecologically over the existing system. Approved mitigation work must be performed and completed concurrently with permitted work unless otherwise authorized by the Department.

H. Amendment to a Permit: An amendment to a permit can be made without the requirements of a new permit if the proposed change on the amendment does not significantly increase the size or change the use of the permitted project. Otherwise, the amendment proposal will require a fee, a newspaper notice and will be placed on public notice by DHEC-OCRM.

I. After-the-Fact Permits: The staff does not have authority to consider an after-the-fact application unless:

- (1) All fines are paid before application;
- (2) The permit would legitimize an activity that in the opinion of the Department appears to be a routine permitting matter that would meet all rules and regulations;
- (3) Any portion of the activity or structure that is in violation of the Act or rules and regulations is corrected prior to the application;
- (4) An after-the-fact application can not be made until conclusion of the administrative appeal, if taken.