

# Regulation 19-450

## Permits for Construction in Navigable Waters

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SC DEPARTMENT of  
**ENVIRONMENTAL  
SERVICES**

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### **19-450.1. Scope of Duties.**

A. Scope. Unless expressly exempted, a permit issued by the Department of Health and Environmental Control is required for any dredging, filling or construction or alteration activity in, on, or over a navigable water, or in, or on the bed under navigable waters, or in, or on lands or waters subject to a public navigational servitude under Article 14 Section 4 of the South Carolina Constitution and 49-1-10 of the 1976 S.C. Code of Laws including submerged lands under the navigable waters of the state, or for any activity significantly affecting the flow of any navigable water.

B. General Duties of the Department of Health and Environmental Control. For purposes of administering these procedures, the Department of Health and Environmental Control shall serve as the permitting agency, responsible for obtaining and evaluating the views of all relevant agencies and persons, and taking such administrative actions as are appropriate to advise agencies, applicants and others concerning the procedures. The Department shall determine whether the permit should be granted or denied or made subject to any particular condition not provided in these regulations.

#### C. General Responsibilities of Applicant

1. An applicant who seeks a permit from the Department under these regulations is responsible for establishing that the proposed activity is consistent with these regulations, and for providing to the commenting agencies and the Department the information that may be required to make that determination with reasonable certainty. Failure to respond or provide requested information may result in the denial of the permit.

2. Applicants contemplating major projects are encouraged to contact the Department prior to submitting a formal application for a permit. The Department will advise the applicant of the procedures, requirements, and areas of regulatory concern, and in appropriate cases may convene an interagency meeting to assist and guide the applicant in the preparation of the permit application.

### **19-450.2. Definitions.**

A. Board means the Board of Health and Environmental Control.

B. Department means the South Carolina Department of Health and Environmental Control.

C. Navigable waters means those waters which are now navigable, or have been navigable at any time, or are capable of being rendered navigable by the removal of accidental obstructions, by rafts of lumber or timber or by small pleasure or sport fishing boats. Navigability shall be determined by the Department.

D. Lands and waters subject to a public navigational servitude means those lands below the mean high water line in tidally influenced areas, or below the ordinary high water mark of any nontidal navigable waterway of the state.

E. Mean high water line means that line which intersects with the shore representing the average height of high waters over an 18.5 year tidal cycle. Benchmarks purporting to have established mean high or low water values must be verified by the Department as meeting State and National Ocean Survey Standards.

F. Ordinary high water mark means the natural or clear line impressed on the shore or bank in nontidal waters representing the ordinary height of water therein. It may be determined by bank shelving, changes in the character of the soil, destruction or absence of terrestrial vegetation, the presence of litter or debris, or a combination of the above or other appropriate criteria that consider the characteristics of the surrounding area.

G. Feasible (feasibility) is determined by the Department and is based upon the best available information,

including but not limited to technical input from the agencies, and consideration of economic, environmental, social and legal factors bearing on the suitability of the proposed activity and its alternatives. It includes the concepts of reasonableness and likelihood of success of achieving the purpose. "Feasible alternatives" applies to both locations or sites and to methods of design or construction and includes a "no action" alternative.

H. Person means any individual, organization, association, partnership, business trust, estate trust, corporation, public or municipal corporation, county, local government unit, public or private authority and shall include the federal government and its agencies and political subdivisions, the State of South Carolina, its political subdivision, and all its departments, boards, bureaus or other agencies.

### **19-450.3 Exemptions.**

A. No permit is required by the Department for any activity or construction on private highlands above the mean high water line or ordinary high water mark which does not affect directly and significantly any navigable water or water or land subject to a public navigational servitude.

B. No permit is required by the Department for any activity subject to the exclusive permitting authority of the Department under § 48-39-140 et. seq. and the applicable regulations thereunder.

C. No permit is required by the Department for any normal and otherwise lawful use of the navigable waters of the state which does not involve construction, filling, dredging or alteration activity in navigable waters, or any activity significantly affecting the flow of navigable waters.

D. No permit is required for any state or federal navigational markers.

E. No permit is required for the normal maintenance and repair of any existing permitted structure, or any structure completed prior to the adoption of the Construction in Navigable Waters permitting regulation on December 31, 1976 that is currently serviceable, intact and has been maintained in good working order since that date, provided that the normal maintenance and repairs on these structures does not alter significantly the dimensions nor change the purpose, scope or use of the structure nor do the repairs and maintenance activities create a hazard to navigation nor otherwise adversely affect the navigable waters of the state, water quality or wildlife. Any activity that is intended to restore a water control structure involving impoundment that has not been continually maintained and is not currently serviceable and intact and is now in disrepair and disuse shall require a permit.

F. Any activity undertaken prior to the commencement of the Construction in Navigable Waters permitting program under regulation 19-450 promulgated on December 31, 1976, which involves a structure which has been continually maintained in good working order since then and is intact and functional on the effective date of this regulation, and which subsequently does not adversely affect water quality, navigability, or other natural resource conditions existing on the effective date shall be exempt from the permitting process, provided, however, that the Department may require the owner or other person responsible for the structure to report the existence and condition of the structure.

G. No permit is required for any activity which requires another Department permit or certification, including but not limited to 401 Water Quality Certifications, water supply permits, National Pollutant Discharge Elimination System permits, wastewater construction permits, and mining permits. These permitting/certification areas will be required to coordinate with the Construction in Navigable Waters Permitting staff to insure the provisions of this regulation are adhered to.

H. No permit may be required for the following activities provided that the applicant or permittee, in all except emergency situations, obtains from the Department a written exemption from the permitting procedure prior to commencing work:

1. Any activity on a permitted structure that does not significantly alter the dimensions, changes the purpose, scope or use of the structure, or may create a hazard to navigation or otherwise adversely affect the navigable waters of the state, the flow of navigable waters, water quality, or wildlife. Any request to perform an activity which significantly affects the navigable waters of the state, the flow of navigable waters, water quality, or wildlife shall be processed as an amendment to the permit under section 450.14. Any activity on an unpermitted structure, or that is intended to restore a water control structure involving impoundment that has not been continually maintained and is not currently serviceable and intact and is now in disrepair and disuse, shall require a permit.

2. Any emergency construction when the construction is ordered by a duly constituted official of county, municipality or the state acting to protect the public safety from a sudden and unanticipated threat to the health or public safety. The Department must be notified promptly by telephone and not later than seventy-two hours after construction has commenced, and within thirty days of the commencement of construction, written application must be made to the Department for permission or a permit for the activity undertaken under emergency conditions.

3. Any emergency repair or replacement of a recently damaged permitted structure, or any structure completed prior to the adoption of the Construction in Navigable Waters permitting regulation on December 31, 1976 provided that it has been continually maintained in an intact and currently serviceable condition and that the repairs are essential to prevent property damage from sudden and unanticipated events which make it impossible to notify the Department prior to undertaking the activity, providing that the Department must be notified not later than seventy-two hours after construction has commenced, and written application made within thirty (30) days for permission or a permit for the activity undertaken under emergency conditions.

4. Any installation of utility lines to be attached to an existing permitted structure provided that the utility lines do not alter or reduce significantly the vertical or horizontal clearance provided by the structure.

5. Any drilling for soil borings for construction foundation testing.

#### **19-450.4. Permit Conditions.**

A. Any permit issued pursuant to these regulations is subject to the following conditions as well as any specifically mentioned in the individual permit.

1. The authorization for activities or structures granted by the permit shall constitute a revocable license to use the lands and waters within the jurisdiction of the state. Permits for activities which require continuous operation, such as marinas, will be issued for a term of ten (10) years or for such longer period as the Department may grant. These permits are renewable provided that there has been no material adverse change in circumstances.

2. The Department may require the permittee to modify or remove activities or structures authorized herein if it is determined by the Department that such modification or removal is consistent with the requirements of 450.9(A). Modification or removal after the permit has been granted or refusal to renew a permit shall be ordered only after reasonable notice stating the reasons therefore and providing the permittee an opportunity to be heard.

3. All activities authorized by the permit shall be consistent with and limited by the terms and conditions of the permit; any unauthorized work or activity different from or inconsistent with the permit may result in the modification, suspension, or revocation of the permit in whole or in part, and the institution of such legal proceeding as the State of South Carolina may consider appropriate.

4. The construction authorized by this permit must be completed within three years of the date of issuance

or such other time as the Department may set for good cause shown. Extensions of time may be granted provided that the requests are submitted to the Department in writing prior to the expiration of the original time period, state whether there has been any change in the circumstances since the permit was approved and the reason for the extension of time.

5. No permit shall convey nor be interpreted as conveying expressly or implicitly, any property right in the land or water in which the permitted activity is located. No permit shall be construed or interpreted as alienating public property for private use, nor does it authorize the permittee to alienate, diminish, infringe upon or other-wise restrict the property rights of other persons or the public.

6. The grant, denial, modification, suspension, revocation of a permit or removal of a structure authorized under these regulations, shall not be the basis for any claim for damages against the State of South Carolina. In no way shall the State be liable for any damage as the result of the erection of permitted works.

7. The permitted activities shall not block or obstruct navigation or the flow of any waters unless specifically authorized herein; no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the work authorized by the permits; and that no spoil, dredged material, or any other fill material be placed below the mean high water or ordinary high water elevation, unless specifically authorized herein.

8. The permittee shall make every reasonable effort to perform the authorized work in a manner to minimize adverse impact on fish, wildlife, or water quality and shall maintain any authorized structure in good condition in accordance with approved plans and specifications.

9. The permittee shall allow the Department or its authorized agents or representatives to make periodic inspections at any time deemed necessary to assure that the activity being performed is in accordance with the terms and conditions of the permit.

10. Permits are issued in the name of the applicant and may not be assigned to another without the written permission of the Department and the written agreement of the transferee to abide by all the terms and conditions of the permit.

#### **19-450.5. Application Procedure to Obtain Permit.**

A. Preliminary Interagency Meeting. The Department may convene at any time a meeting of commenting agencies and the applicant to provide assistance to the applicant, to explain the statutory requirements and areas of agency concern, to provide a preliminary review of the proposal, or to otherwise expedite the administrative aspects of filing an application for a permit.

B. Proposed Activity Requiring Only State Construction in Navigable Waters Permits. Except for applications filed with federal agencies described below, applications for a state permit shall be made to the Department on forms provided by the Department containing, but not limited to:

1. the name and address of the applicant;
2. the location of the proposed activity, including the navigable stream where the construction or activity is contemplated. An appropriate map of the area should be included;
3. a brief description of the proposed activity, its purpose and intended use, including a drawing of the type of structures and method of construction including a drawing of the type of structures and method of construction including size specifications;
4. a plan and elevation drawing showing the general and specific site locations and character of all

proposed activities including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area and the distance of encroachment of the activity into the water. A handdrawn sketch showing the size and shape of the structure and a location map will be considered sufficient detail for docks, piers, boardwalks or bulkheads without fill and extending no more than fifty (50) feet from the shoreline;

5. evidence of ownership or the consent of the owners of the adjacent high land on which any part of the projected activity will be located;

6. certification that the applicant has or will publish a notice describing the application in a newspaper of general or local circulation in the county where the encroachment is sought one time. Proof of the publication shall be furnished promptly, and the notice by the applicant shall be in the substantially the following form:

#### PUBLIC NOTICE

*(Applicant)* has applied to the South Carolina Department of Health and Environmental Control for a Construction in Navigable Waters Permit to *(brief description of work)* for *(public/private)* use in *(name and location of waterbody)*. Comments will be received by South Carolina Department of Health and Environmental Control at 2600 Bull St., Columbia, SC, 29201, ATTN: Division of Water Quality and Shellfish Sanitation, until *(insert date – 15 days from date of this notice)*.

7. When considered appropriate by the Department, additional information may be required.

C. The Department shall promptly issue a notice to affected state agencies and make such other notice as it deems appropriate no later than fifteen (15) days after receipt of all information necessary to process the application.

#### D. Activity Requiring Construction in Navigable Waters and Federal Permits

1. When the applicant must obtain authorization from Corps of Engineers or the Coast Guard pursuant to federal law, he is directed to make application to those agencies in the style and on the forms provided by them. By agreement the above applications to federal agencies may be jointly used by the federal agencies and the State and no separate application may be required for the State permit.

2. The federal permitting agency shall publish and provide to interested agencies, groups and persons a joint public notice or public notice letter containing the permit application and clearly stating the requirement of a State permit and if required, certification that the permitted activity does not contravene the Coastal Zone Management Plan. Note: The federal permitting agency may require a certificate of water quality or waiver thereof from the Department of Health and Environmental Control.

E. Upon receipt of the joint public notice the Department shall notify the applicant that a state permit may or may not be required, and if, on the face of the joint public notice or application therein, it appears to the Department that insufficient or inaccurate information is presented, the Department shall notify the applicant and request such additional or corrected information as may be necessary, and that in addition to the joint public notice or public notice letter provided by government agencies, the applicant must publish a notice describing the application in a newspaper of general or local circulation in the county where the encroachment is sought one time. Proof of the publication shall be furnished promptly, and the notice by the applicant shall be in the substantially the following form:

#### PUBLIC NOTICE

*(Applicant)* has applied to the South Carolina Department of Health and Environmental Control for a

Construction in Navigable Waters Permit to *(brief description of work)* for *(public/private)* use in *(name and location of waterbody)*. Comments will be received by South Carolina Department of Health and Environmental Control at 2600 Bull St., Columbia, SC, 29201, ATTN: Division of Water Quality until *(insert date - 15 days from date of this notice)*.

F. Processing of the State permit application by the Department shall commence upon receipt of the joint public notice and shall be processed concurrently but separately from any federal authorization.

#### **19-450.6. Review of Permit Application and Comment by State Agencies.**

##### **A. Review by Agencies**

1. State agencies commenting on permit applications are collectively responsible for providing to the Department a total assessment of the impact of any proposed work affecting navigable waters, stream beds, submerged lands or other lands or waters within the state's jurisdiction. Each agency is individually responsible for a specific area or field of review based on that agency's statutory responsibilities or primary interests as they relate to the protection or development of the State's natural resources. Within its area of statutory responsibility or primary interest, each agency is to identify the advantages and disadvantages of the project on the lands and waters of the state and to provide an assessment of the relative merits of the proposed activity whether environmentally harmless or not.

2. An agency which comments on a proposed activity that requires a permit under these regulations is responsible for presenting and supporting the comments and objections, if any, made by that agency during any administrative or judicial proceedings growing out of the permitting process.

B. Time for Response. All State agencies receiving public notice of permit applications from the Corps of Engineers, Coast Guard or the Department must submit their comments directly to the Department within thirty (30) days of the receipt of the public notice. Requests by State agencies for extensions of time shall be submitted to the Department in writing before the expiration of the original comment period. A failure to comment, or to request an extension of time during that period shall be treated as no objection to the application. The Department may consider untimely comments for good cause shown.

C. Form and Scope of Comments. Comments and their supporting materials are used to review the proposed activity, as the basis for discussing the terms and conditions of the proposed activity, for conciliating objections, if any, by the Department in making its decision. Therefore, comments by an agency should be objective, and state specifically its conclusions concerning the permit application and include in summary form the information that supports the conclusion of the agency. Objections shall be specifically stated and contain supporting material. Comments which are without support, or are limited solely to use of adjacent private highlands, or are without a comparative assessment of the beneficial and detrimental impacts of the projected activity on lands and waters subject to the jurisdiction of the Department, may, in the discretion of the Department, be disregarded as non-responsive, or returned to the agency for reconsideration or reformulation. All comments of agencies shall be public records available to the public and applicant at the Department.

#### **19-450.7. Procedure if Agency Objects to Activity Requiring State Permit.**

##### **A. Conciliation of Agency Objections**

1. Within thirty (30) days of notification of a permit application, or any extension thereof, an agency objecting to or intending to object to a projected activity shall notify the Department and the applicant of the specific objection(s) of the agency, the reasons for the objection and the supporting grounds for the objection. When the permit application raises complex issues or more than one agency objects, the Department shall coordinate the conciliation process. If only one agency objects, the Department shall inform the applicant that



he is responsible for meeting with the agency and considering how the objection might be reconciled. The applicant and the objecting agency are primarily responsible for the conciliation process, but the Department may support and assist their efforts to conciliate and resolve their differences.

2. In the reconciliation process, the agency and the applicant shall consider how the objections might be reconciled by: (a) avoiding the adverse impact by not taking a certain action or parts thereof; (b) minimizing the adverse impact by limiting the degree or magnitude of the action or its implementation; (c) rectifying the objection by repairing, rehabilitating or restoring the affected area; and (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the permitted activity. The applicant shall provide any additional information reasonably necessary to resolve the objections.

B. Notice of failure of Conciliation; Joint Statement of Objections. The Department will not take action on a permit application upon which an objection has been made until it has received notice that the objection has been resolved, or that in the opinion of either the applicant or agency that all efforts to resolve the objection have failed and that further negotiation will be of no benefit. Within fifteen days after notice that reconciliation efforts have failed, the applicant and each agency with an unreconcilable objection shall submit to the Department a short and plain statement of the matter in dispute, the position of the agency, the position of the applicant, supported by such facts and information as are relevant. The parties should identify and clarify those issues that prevented reconciliation. If possible the parties should prepare a joint statement so as to expedite the permitting process.

C. Objections that the Proposed Activity Violates The Coastal Zone Management Plan or Water Classifications and Standards System

1. In those applications involving activity within the Coastal Zone where the Office of Ocean and Coastal Resource Management has determined, after efforts to conciliate the objection have failed, that the projected activity contravenes the Coastal Management Plan, a Notice of Proposed Decision proposing to deny the project will be issued. This Notice of Proposed Decision will allow fifteen (15) days for appeal of the decision.

2. In those applications where the Department has determined that the projected activity violates Water Classifications and Standards or endangers the public health, and all efforts to resolve the objection have failed, a Notice of Proposed Decision proposing to deny the project will be issued. This Notice of Proposed Decision will allow fifteen (15) days for appeal of the decision.

#### **19-450.8. Comments by Public on Permit Application.**

A. Comments From Interested Persons. Any person who may be affected by the grant or denial of the permit, or the conditions under which a permit may be granted, may submit, in writing, comments or objections to the proposed activity to the Department. These comments will be received by the Department for 15 days after a public notice is published in a newspaper by the applicant or within thirty (30) days after public notice of the proposed activity is distributed by federal or state agencies, whichever is later. The comments may include a request that the commentator be notified of the initial decision. The comments of interested persons shall be public records available to the applicant and all interested persons and the applicant may respond to them.

B. Public Informational Hearings. The Department may hold public hearings if such hearing are deemed necessary to receive information from the public or obtain local public comment and whenever twenty (20) or more individual written requests are received during the public comment period. The hearings shall be held after at least fifteen (15) days notice and whenever possible, in the county where the project is to be located. Besides an oral presentation, a copy of the comments and the supporting material should be submitted in writing, or if not in writing a summary of the comments received be prepared by the Department for inclusion in the record. Written comments on the matters raised at the Public Informational Hearing may be made within 15 days of that hearing.

C. Application and Related Documents Available to Public. The application for a permit, any amendments thereto, any official comments on the application by agencies or comments by the public including joint or individual statements of objections, any notice of failure of conciliation, any proposal for replacement or compensation for unavoidable detriments, and any comments thereto, all records and statements from the public informational hearing and comments thereon and all extensions of time and other scheduling matters and the decision by the Department, and all similar documents filed with the Department shall be available to the public as provided by law.

#### **19-450.9. Review of Comments and Action by the Department.**

A. Review by the Department. The Department is responsible for assessing the total impact of the projected activity on the navigable waters and lands subject to the jurisdiction of this regulation, as well as the impact on the economy and natural resources of the state. The Department shall be concerned with the utilization and protection of important state resources and balance the extent and permanence of reasonably foreseeable benefits and detriments of the projected activity including its impact on conservation, economics, aesthetics, general environmental concerns, cultural values, fish and wildlife, navigation, erosion and accretion, recreation, water quality, water supply and conservation, and determine whether the projected activity is consistent with the needs and welfare of the public. In particular the Department shall consider the comments and objections of the affected agencies as well as the public, and the extent to which:

1. the activity requires construction in, on or over a navigable waterway, and the economic benefits to the state and public from such location;
2. the activity would harmfully obstruct navigability or the natural flow of navigable waters or cause erosion, shoaling of navigable channels, or the creation of stagnant waters;
3. the activity would impact fish and wildlife, water quality and other natural resource values or could affect the habitats or rare and endangered species of wildlife and irreplaceable historic and archaeological sites associated with public lands and waters;
4. the activity could affect public access to and use of public lands;
5. the economic benefits to the state and public from the authorized use of lands and waters meets or exceeds the benefits from preservation of the area in its unaltered state;
6. there is any adverse environmental impact which cannot be avoided by reasonable safeguards;
7. all feasible alternatives are taken to avoid adverse environmental impact resulting from the project;  
and,
8. the long range, cumulative effects of the project, including the cumulative effects of similar projects, may affect navigable waters.

#### **B. Request For Proposal For Replacement or Compensation For Unavoidable Detriments.**

1. If the Department tentatively determines: (1) that the proposed activity is likely to produce an adverse impact on navigable waters or other associated natural resources; (2) that the applicant has already agreed to or taken all reasonable and feasible measures to prevent the detriment; and (3) the adverse impact relative to the benefit is not so great as to automatically require a recommendation of disapproval of the proposed activity on that or other grounds; and (4) that the proposed activity otherwise meets the standards in 450.9(A), the Department may request the applicant to submit a proposal that provides or creates natural resource benefits that replace or compensate for the economic, environmental and natural resource benefits lost by the proposed

activity so that even considering the detriment or negative impacts of the project, the proposal, including the compensation/replacement, results in a net gain of natural resource benefits to the state.

2. Provided, however, that no compensation or replacement (1) may be made for a project that produces no benefits to the public or state; (2) may be made where the proposed activity amounts to a taking of public land for private purposes; (3) when there is a reasonable, and feasible alternative, step, effort or activity is available that prevents or corrects a detriment created by the proposed activity. A feasible and reasonable alternative, step, effort or activity shall not be deemed unreasonable or infeasible because it would require the applicant to expend more time, effort or expense than the proposed replacement or compensation offered by the applicant.

3. The applicant shall inform the Department within fifteen (15) days whether it intends to submit a proposal for replacement or compensation. If no proposal is submitted the application shall be processed under 450.9(C).

4. The applicant shall submit the proposal for compensation/replacement to the Department which shall be a public record available to the public, and submit it to all commenting agencies which shall make its response to the Department within fifteen (15) days, or such other time as may be set. The Department may use the general procedures in the conciliation process under 450.7 when, in its opinion, it will expedite review of the proposal. In addition to the factors mentioned above, the commenting agencies shall consider:

(a) whether the replacement/compensation proposal provides resources of the same type, quality and extent as those destroyed or burdened by the proposed activity and replaces the same type of natural resource or benefit adversely affected by the projected activity so that the proposal, if accepted, results in compensation in kind rather than the substitution of poorer or more common natural resources for more valuable lands and waters or more rare resources;

(b) whether the replacement/compensation proposal will provide the public with comparable access as previously available to the lands or waters burdened by the projected activity;

(c) whether the replacement/compensation is located on or near the same area as the lands or waters burdened by the proposed activity;

(d) whether the replacement/compensation produces specific benefits to the state and public beyond those produced by compliance with existing state or federal regulation of the resources included in the proposal;

(e) whether the replacement/compensation proposal presently provides specific benefits without further effort or expense by the applicant or the state;

(f) whether the replacement/compensation proposal will require the state to incur costs in obtaining, maintaining or preserving the resources, land or waters in the proposal in appropriate condition;

(g) whether the replacement/compensation proposal is comparable to the lands and waters of the projected activity, when the areas surrounding the respective locations are considered.

(h) whether the replacement/compensation proposal provides permanent benefits.

(i) the likelihood that the benefits in the replacement/compensation proposal will occur, the person responsibility for monitoring the replacement/compensation to see that it does occur as proposed, and modifications or alternatives if the benefits do not occur.

(j) the necessity for obtaining financial guarantees including secured bonds to insure that the applicant

complies with all of the terms and conditions of the replacement/compensation proposal.

(k) such other factors, conditions or requirements that may be necessary to insure that specific and permanent benefits accrue to the public or the state from the proposal that compensate or replace the resources burdened by the proposed permitted activity. After the agencies have reviewed the replacement/compensation proposal, and after any efforts to resolve objections have occurred if in the opinion of the Department such efforts would be useful, the applicant shall submit to the Department the proposal for replacement/compensation and the commenting agencies shall submit to the Department their comments or objections, if any to that proposal.

### C. Notice of Proposed Decision

1. Promptly after the receipt of all written agency comments and objections to the proposed activity including an offer of replacement or compensation under 450.9(B), if any, the Department shall review all comments and supporting information and, the materials submitted by the applicant, and, in light of the standards listed above make its preliminary decision in the form of a Notice of Proposed Decision.

2. The preliminary decision shall be supported by findings on the relevant issues, including those raised by the comments and objections, if any. The findings shall be supported by materials in the record.

3. Whenever the preliminary decision is inconsistent with the written objection of the agency or other person to the application, the Department shall state the facts found by the Department and the reasons supporting its conclusions. For purposes of this section, the same or similar objections may be treated as one subject. If an objection by an agency or other person, or a response thereto by the applicant is without adequate support, Department shall so state, and may refuse to consider the objection or response and render decision accordingly.

4. The Department may conclude that the permit be granted, or denied, or conditionally granted or denied unless the applicant does or does not do certain activities in connection with the permitted activities.

5. The Notice of Proposed Decision shall advise of availability of related file information and shall be mailed to the following:

- (a) the applicant;
- (b) the authorized agent, if any;
- (c) agencies having jurisdiction or interest over the activity site;
- (d) owners or residents of property adjoining the area of the proposed activity; and
- (e) those persons providing comment in response to the initial notice of application.

### **19-450.10. Appeal of the Notice of Proposed Decision.**

A. Persons Who May Appeal. Any person with legal standing to contest the decision of the Notice of Proposed Decision to grant or deny a permit under this regulation may appeal that decision to the Board. One objecting only to the highland use of the property, or on grounds other than the impact the proposed activity will have on navigable waters or the economy or natural resources of the state, or who has not submitted written comments on the project including any proposal for replacement/compensation shall not be deemed to have legal standing to contest the decision.

B. Time for Appeal; Contents; Notification of Appeal to Others. A person with legal standing to contest a decision must submit a written request for an adjudicatory hearing before the Department within fifteen (15) days of notification of proposed permit. Such request must set forth the manner in which the person is adversely affected and the grounds for the request. If no appeal of the proposed decision is received, the proposed permit decision shall become the Department's final decision.

C. Hearing Officer; Date of Hearing. Requests for hearing shall be processed in accordance with the South Carolina Administrative Procedures Act and any applicable procedural rules and regulations. Determinations of whether a person has legal standing to contest a determination shall be made in the course of the contested case procedures.

D. Appeals of a permit which include coastal zone consistency certification will be heard according to the above procedures unless the appeal is based exclusively on a coastal zone management issue. In that case the appeal will be heard according to the procedures for appeals of coastal zone consistency certifications.

#### **19-450.11. Final Decision of the Board and Judicial Review.**

Board review and any subsequent judicial review of the order of the Administrative Law Judge shall be allowed according to law and applicable procedures, rules and regulations.

#### **19-450.12. Unpermitted Activity; Review of Previously Permitted Activity.**

A. Any activity undertaken after the commencement of the Construction in Navigable Waters permitting program under regulation 19-450 promulgated on December 31, 1976 for which a permit is required but was not obtained is in violation of these regulations. Such activity may be permitted providing that it is consistent with these regulations, and the applicant promptly complies with the permitting process. Unless specifically authorized by the Department, an applicant may not complete any structure or continue any activity until the permit is issued.

B. Any person who has received a Construction in Navigable Waters permit that has an expiration date shall notify the Department every ten years after the permit was granted and report the status or condition of the permitted structure or activity, any repairs or alterations, and any material changes in the navigable waters or lands of the state. The Department shall review the report, make such investigation as it deems appropriate, and either renew the permit or revoke or modify the permit, giving the holder due notice and opportunity to be heard. If the Department determines that there have been significant changes since the permit was originally granted, or that a structure that originally was exempt from the permitting process adversely affected water quality, navigability, or natural resources or other conditions as they existed on or about the effective date of this regulation, it may require the applicant to comply with the provisions of Reg. 450.5 through 450.11.

#### **19-450.13. Amendments to Permits or Applications for Permits.**

A person who has been issued a permit by the Department may petition for an amendment to the permit. If the amendment reduces the size of the permitted structure, or the permitted activity, and results in less intrusive impact on the navigable waters and lands of the State, the Department may grant the amendment without requiring additional agency and public notice and comment. Any request for an amendment which enlarges the proposed structure or activity or, in the opinion of the Department, may produce a greater impact on the navigable waters and lands of the State shall be given new public and agency notice and comment under Reg. 450.5 through 450.11.

#### **19-450.14. Minor Projects.**

The Department may expedite the processing of an application for permits for projects under this regulation, including reducing the time for public or agency comment, if the projects by their nature, size, location or use

have a negligible impact on navigable streams, and do not involve proposals for replacement/compensation under 450.9(B), and do not require a permit by any other federal or state agency. Provided, however, that the expedited procedures shall require at least one public notice of the application, permit public comment for at least fifteen (15) days, and provide for comment by the affected agencies.

**19-450.15. General or Block Permits.**

The Department, using the procedures under this regulation, may issue general or block permits to an agency, political subdivision or public service corporation for certain clearly described categories of work or substantially similar structures in a particular areas. Once the general or block permit is issued, individual Department permits for structures within the categories are not required. The agency, political subdivision or public service corporation as permit administrator shall report to the Department when structures or activities are authorized under the block permit.

**19-450.16. Saving Clause.**

If any provision of these regulations is adjudged invalid or unconstitutional, the remainder, and the application of their provisions to other persons shall not be affected thereby.