

Document No. \_\_\_\_\_  
**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
**CHAPTER 19**

Statutory Authority: 1976 Code Sections 49-1-10, 48-6-10 et seq., and 2023 Act No. 60, effective July 1, 2024

R.19-450. Permits for Construction in Navigable Waters.

**Preamble:**

On May 19, 2023, Governor McMaster signed 2023 S.C. Act 60 (Act), restructuring the South Carolina Department of Health and Environmental Control (DHEC). Pursuant to that legislation, DHEC and the DHEC Board were abolished, and South Carolina Department of Environmental Services (SCDES) was created, effective July 1, 2024. Pursuant to S.C. Code Ann. Section 48-6-20(A) and Section 14(B) of the Act, SCDES is vested with all the functions, powers, and duties of the environmental divisions, offices, and programs of DHEC including the power and duty to promulgate associated regulations.

SCDES proposes amending R.19-450. Permits for Construction in Navigable Waters, to reflect the restructuring of DHEC pursuant to the Act, to revise related references, and to make non-substantive, grammatical changes.

These amendments will require legislative review pursuant to S.C. Code Ann. Section 1-23-120(A) (Supp. 2023).

SCDES had a Notice of Drafting published in the August 23, 2024, *South Carolina State Register*.

**Section-by-Section Discussion of Proposed Amendments:**

<b>Section</b>	<b>Type of Change</b>	<b>Purpose</b>
R.19-450		
19-450.1(A)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
19-450.1(B)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
19-450.2	Revision	Updated to reflect the abolishment of the DHEC Board. Updated to reflect the abolishment of DHEC and creation of SCDES. Definition list re-lettered to reflect above changes.
19-450.5(B)(6)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
19-450.5(D)(2)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
19-450.5(E)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
19-450.7(C)(1)	Revision	Updated to reflect newly promulgated S.C. Code of Laws Section 48-6-30 language.
19-450.7(C)(2)	Revision	Updated to reflect newly promulgated S.C. Code of Laws Section 48-6-30 language.

19-450.9(C)	Revision	Updated to reflect newly promulgated S.C. Code of Laws Section 48-6-30 language.
19-450.10 section heading	Revision	Updated to reflect newly promulgated S.C. Code of Laws Section 48-6-30 language.
19-450.10(A)	Revision	Updated to reflect newly promulgated S.C. Code of Laws Section 48-6-30 language.
19-450.10(B)	Revision	Updated to reflect newly promulgated S.C. Code of Laws Section 48-6-30 language.
19-450.11	Revision	Updated to reflect the abolishment of the DHEC Board.

**Notice of Public Hearing and Opportunity for Public Comment:**

Interested persons may submit comment(s) on the proposed amendments to Mary Peyton Wall of the South Carolina Department of Environmental Services at 2600 Bull Street, Columbia, S.C. 29201; or via email at [marypeyton.wall@des.sc.gov](mailto:marypeyton.wall@des.sc.gov). To be considered, SCDES must receive the comment(s) no later than 5:00 p.m. on November 25, 2024, the close of the comment period.

Should a public hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, the South Carolina Administrative Law Court will conduct a public hearing on Monday, December 9, 2024, beginning at 10:00 a.m. at the South Carolina Administrative Law Court, Edgar Brown Building, Second Floor, 1205 Pendleton Street, Columbia, S.C. 29201. If a qualifying request pursuant to Section 1-23-110(A)(3) is not received by 5:00 p.m. on November 25, 2024, the hearing will be cancelled. Should the public hearing be cancelled, SCDES will post the notice of cancellation at <https://des.sc.gov/permits-regulations/laws-regulations-regulatory-updates/regulation-development-update>.

SCDES publishes a Regulation Development Update tracking the status of its proposed new regulations, amendments, and repeals and providing links to associated *State Register* documents at <https://des.sc.gov/permits-regulations/laws-regulations-regulatory-updates/regulation-development-update>.

**Preliminary Fiscal Impact Statement**

There is no anticipated increase in costs to the state or its political subdivisions resulting from these proposed revisions. The proposed amendments comply with and implement 2023 Act No. 60. These amendments will benefit the regulated community by clarifying and updating the preexisting DHEC regulations now implemented by SCDES and improving their ease of use.

**Statement of Need and Reasonableness**

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: R.19-450. Permits for Construction in Navigable Waters.

Purpose: On May 19, 2023, Governor McMaster signed 2023 S.C. Act 60 (Act), restructuring the South Carolina Department of Health and Environmental Control (DHEC). Pursuant to that legislation, DHEC and the DHEC Board were abolished, and South Carolina Department of Environmental Services (SCDES) was created, effective July 1, 2024. Pursuant to S.C. Code Ann. Section 48-6-20(A) and Section 14(B) of the Act, SCDES is vested with all the functions, powers, and duties of the environmental divisions, offices,

and programs of DHEC including the power and duty to promulgate associated regulations. SCDES proposes amending R.19-450. Permits for Construction in Navigable Waters, to reflect the restructuring of DHEC pursuant to the Act, to revise related references, and to make non-substantive, grammatical changes.

Legal Authority: 1976 Code Sections 49-1-10, 48-6-10 et seq., and 2023 Act No. 60, effective July 1, 2024.

Plan for Implementation: Upon taking legal effect, SCDES personnel will take appropriate steps to inform the regulated community of the amendments and any associated information. The SCDES Regulation Development Update (accessible at <https://des.sc.gov/permits-regulations/laws-regulations-regulatory-updates/regulation-development-update>) provides a summary of and link to these proposed amendments. Additionally, printed copies are available for a fee from the Freedom of Information Office within SCDES.

#### DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

On May 19, 2023, Governor McMaster signed the Act, restructuring DHEC. Pursuant to that legislation, DHEC and the DHEC Board were abolished, and SCDES was created, effective July 1, 2024. Pursuant to S.C. Code Ann. Section 48-6-20(A) and Section 14(B) of the Act, SCDES is vested with all the functions, powers, and duties of the environmental divisions, offices, and programs of DHEC including the power and duty to promulgate associated regulations. SCDES proposes these amendments to reflect the restructuring of DHEC pursuant to the Act, to revise related references, and to make non-substantive, grammatical changes. These amendments are necessary and reasonable to implement the agency restructuring.

#### DETERMINATION OF COSTS AND BENEFITS:

There is no anticipated increase in costs to the state or its political subdivisions resulting from these proposed revisions. The proposed amendments are consistent with the Act, and these amendments will benefit the regulated community by clarifying and updating the regulations and improving their ease of use.

#### UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the state or its political subdivisions.

#### EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Adoption of the proposed amendments will provide continued protection of the environment and public health.

#### DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The state's regulations must be amended to reflect the restructuring of DHEC and the creation of SCDES. These regulations are beneficial to the public health and environment, and their clarity would be compromised if these amendments were not adopted.

#### **Statement of Rationale:**

On May 19, 2023, Governor McMaster signed 2023 S.C. Act 60 (Act), restructuring the South Carolina Department of Health and Environmental Control (DHEC). Pursuant to that legislation, DHEC and the DHEC Board were abolished, and South Carolina Department of Environmental Services (SCDES) was created, effective July 1, 2024. Pursuant to S.C. Code Ann. Section 48-6-20(A) and Section 14(B) of the

Act, SCDES is vested with all the functions, powers, and duties of the environmental divisions, offices, and programs of DHEC including the power and duty to promulgate associated regulations. SCDES proposes these amendments to reflect the restructuring of DHEC pursuant to the Act, to revise related references, and to make non-substantive, grammatical changes.

**Text:**

~~Indicates Matter Stricken~~

Indicates New Matter

**19-450. Permits for Construction in Navigable Waters.**

**Statutory Authority: S.C. Code Section 49-1-10, 48-6-10 et seq., and 2023 Act No.60, effective July 1, 2024.**

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

**Regulation 19-450.1(A) shall be revised as follows:**

A. Scope. Unless expressly exempted, a permit issued by the Department of ~~Health and Environmental Control~~ Services 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.

**Regulation 19-450.1(B) shall be revised as follows:**

B. General Duties of the Department of ~~Health and Environmental Control~~ Services. For purposes of administering these procedures, the Department of ~~Health and Environmental Control~~ Services 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.

**19-450.2 Definitions**

**Regulation 19-450.2 shall be revised as follows:**

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

BA. Department means the South Carolina Department of ~~Health and Environmental Control~~ Services.

CB. 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.

DC. 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.

~~ED~~. 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.

~~FE~~. 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.

~~GF~~. 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.

~~HG~~. 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.

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

#### **Regulation 19-450.5(B)(6) shall be revised as follows:**

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~~ Services 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~~ Services 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)*.

#### **Regulation 19-450.5(D)(2) shall be revised as follows:**

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~~ Services.

#### **Regulation 19-450.5(E) shall be revised as follows:**

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~~ Services 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~~ Services at 2600 Bull St., Columbia, SC, 29201, ATTN: Division of Water Quality until (*insert date - 15 days from date of this notice*).

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

##### **Regulation 19-450.7(C) shall be revised as follows:**

###### C. Notice of Proposed Decision

##### **Regulation 19-450.7(C)(1) shall be revised as follows:**

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 in accordance with S.C. Code of Laws Section 48-6-30. This Notice of ~~Proposed Decision~~ will allow ~~fifteen (15)~~thirty (30) days for appeal of the decision.

##### **Regulation 19-450.7(C)(2) shall be revised as follows:**

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 in accordance with S.C. Code of Laws Section 48-6-30. This Notice of ~~Proposed Decision~~ will allow ~~fifteen (15)~~thirty (30) days for appeal of the decision.

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

##### **Regulation 19-450.9(C) shall be revised as follows:**

###### 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.**

**Regulation 19-450.10 section heading shall be revised as follows:**

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

**Regulation 19-450.10(A) shall be revised as follows:**

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 in~~ accordance with S.C. Code of Laws Section 48-6-30. 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.

**Regulation 19-450.10(B) shall be revised as follows:**

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~~ do so within thirty (30) days in accordance with S.C. Code of Laws Section 48-6-30. 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.~~

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

**Regulation 19-450.11 shall be revised as follows:**

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

~~Board~~Department 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.