



Catherine B. Templeton, Director

*Promoting and protecting the health of the public and the environment*

May 31, 2013

City of Isle of Palms  
C/o Ms. Linda Tucker  
P.O. Box 508  
Isle of Palms, SC 29451

Re: P/N# 2010-1041-2IG; City of Isle of Palms

Dear Ms. Tucker:

The above referenced permit has been amended to authorize increasing the number of sand scraping events from two to four over the life of the permit provided the sand is only taken from the attaching shoal area (the initial borrow area identified in the previous authorization), and the area identified as "Potential Borrow Area A" in your amendment request dated January 25, 2013.

Additionally the request to change the expiration date of the permit to coincide with the expiration date of the Department of the Army permit (March 31, 2017), has been rendered null and void by H4445. H4445 is a new law that grants automatic extensions on the life of permits that were issued by state agencies and local governments that were active and valid at any point between January 1, 2008 and January 1, 2013. This permit is captured under H4445. This new law extends this permit an additional five years beyond the original expiration date. The actual expiration date for the City of Isle of Palms permit, (Permit # 2010-1041-2IG) is **August 31, 2021**.

The beach area along the Dewees Inlet shoreline (Potential Borrow Area B), experienced severe erosion during the last major shoal attachment event in 2007. There is concern that taking a large amount of sand from an area that has only recently accreted could exacerbate erosion especially when there is an expectation in the near future that the same area will once again experience severe erosion. Additionally, removal of sand in this area can have a detrimental effect on existing vegetated dune systems that have formed landward of this borrow area.

The Department relied upon Sections 48-39-30 (A) and (B)(1) (B)(2), which are the policies for permitting structures in the critical area. The Department determined that the proposed removal of sand from "Potential Borrow Area B" is not consistent with Regulation 30-11.B(5) because the potential impacts of this project could adversely affect existing public access to navigable waters and beaches, or other recreational coastal resources. Additionally, the Department also determined that this part of the proposed amendment is not consistent with Regulation 30-11.B(10) in that the potential impacts could adversely affect the value and enjoyment of adjacent owners. Lastly, the Department determined that the proposed removal of sand from "Potential Borrow Area B" is not consistent with the overall purpose of the project, which is to maintain beach habitat, recreation area, and storm protection by redistributing incoming sand from inlet shoal-bypass events.

In light of the above, the request to increase the number of sand scraping events from two to four events over the life of the permit is authorized. However, the removal of sand from the area identified in your request as "Potential Borrow Area B" is not authorized.

This amendment is made a part of your permit and is subject to the full terms of the permit as issued on August 31, 2011.

This action does not relieve you of the responsibility of acquiring any other applicable federal or local permits that may be required. Any person adversely affected by this action has the right to appeal as outlined in the enclosed "Notice of Appeal Procedure."

**The construction placard must be posted conspicuously on site during authorized activities. If you do not possess a current placard, a new one must be obtained prior to start of construction.**

Please sign the attached copy of this letter indicating your acceptance of these terms and return the signed copy to this office. If this amendment letter is not signed and returned within thirty (30) days of issuance, OR appealed as described on the enclosed "Notice of Appeal Procedure", the Department reserves the right to cancel this permit amendment. Please carefully review the enclosed "Notice of Appeal Procedure" for information and deadlines for appealing this permit amendment.

Sincerely,

*Rheta G. DiNovo*  
Rheta G. DiNovo  
Director, Regulatory  
Programs Division  
*for Steve Brooks*

\_\_\_\_\_  
Permittee

\_\_\_\_\_  
Date

Enclosure

- Cc: Mr. Blair Williams, Wetland Section Manager
- Ms. Mary Hope Green, USACOE
- Mr. Steven Traynum, Coastal Science and Engineering

**South Carolina Board of Health and Environmental Control**  
**Guide to Board Review**  
**Pursuant to S.C. Code Ann. § 44-1-60**  
**Effective April 1, 2013**

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference.

**I. Filing of Request for Final Review**

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15<sup>th</sup> day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
  - The grounds for amending, modifying, or rescinding the staff decision;
  - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
  - the relief requested; and
  - a copy of the decision for which review is requested.
3. RFRs should be filed in person or by mail at the following address:

South Carolina Board of Health and Environmental Control  
Attention: Clerk of the Board  
2600 Bull Street  
Columbia, South Carolina 29201

Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail ([boardclerk@dhec.sc.gov](mailto:boardclerk@dhec.sc.gov)).

4. The filing fee may be paid by cash, certified check or credit card. If a RFR is filed by facsimile or electronic mail, the filing fee may be mailed to the Clerk of the Board and the envelope must be postmarked within the time allowed for filing a RFR.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor.
7. The Clerk will email the RFR to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. A copy of the Notice of Appeal Procedure will be included with the letter.

*NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.*

8. If the RFR is to be considered by the RFR Committee, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response to the RFR should be provided by Department staff to the Clerk within eight (8) working days after the RFR is forwarded.

## II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
  - include the place, date and time of the Conference;
  - state the presentation times allowed in the Conference;
  - state evidence may be presented at the Conference;
  - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
  - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

## III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
  - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
    - Type of decision (permit, enforcement, etc.) and description of the program.
    - Parties
    - Description of facility/site
    - Applicable statutes and regulations
    - Decision and materials relied upon in the administrative record to support the staff decision.
  - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
  - Rebuttal by Department staff [15 minutes]
  - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

**The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.**