
Table of Contents

Purpose.....	1
State Navigable Waters Defined	1
When a Permit is Required	2
Applications and Public Notices	2
Required Information	2
Public Review	3
Projects within the Coastal Zone	3
Time Frames, Objections to the Application, Reconciliation	4
Replacement/Compensation	4
Notice of Proposed Decision	4
Where to Direct Questions	4
Permitting Process	5
Agency Listing	5

Purpose

Any regulatory program can seem complicated or confusing if one is not familiar with its basic format and required procedures. The purpose of this guide is to provide a concise outline of the major steps involved in the processing of applications for a Construction in Navigable Waters Permit. This format is used to process all applications, whether large or small, complex or simple in nature and results in a permit decision that is deemed in the State’s best interest consistent with the needs and welfare of the public.

State Navigable Waters Defined

State 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 South Carolina Department of Health and Environmental Control (DHEC). All navigable waters of South Carolina are considered as public trust properties either by virtue of State ownership of the streambed or by navigational servitude or both. The State of South Carolina is the custodian of these lands and/or waters, and it is within the interest of the State to protect the public interest in which these lands are held. The Construction in Navigable Waters Permit program is designed to insure that the varied interests and uses of South Carolina navigable waters by the general public are fully considered by a comprehensive review of proposed activities subject to this authority.

When a Permit is Required

Pursuant to State Regulation 19-450, Permits for Construction in Navigable Waters, a permit is required from DHEC for any construction, dredging, filling or alteration activity in, over or under South Carolina Navigable Waters when such activity involves the use of areas below the mean high water line in tidally affected waters or any area below the ordinary high water mark of any nontidal navigable waterway within the State. This permit requirement excludes any tidal area under the direct permitting jurisdiction of DHEC's Office of Ocean and Coastal Resources Management. A DHEC Construction in Navigable Waters Permit may be required even when a U.S. Army Corps of Engineers permit is not required.

Examples of Activities Requiring a Permit

Docks	Underground Utilities
Bulkheads	Aerial Transmission
Excavation	
Marinas	

Applications and Public Notices

R. 19-450 requires that all applications for a Construction in Navigable Waters Permit be described in a public notice. When a Federal permit through the U.S. Army Corps of Engineers (Corps) is also required the permit application is submitted to the Corps and the public notice issued by the Corps serves as a joint notice, providing the necessary information for review purposes. When no Federal permit is required, the permit application is submitted to DHEC and the public notice is issued by DHEC. The applicant may request and receive a preliminary application review by DHEC indicating problem areas and possible solutions. In addition to this public notice, DHEC requires each applicant to provide a brief newspaper advertisement (not to be confused with the above explained public notice) as described under Required Information.

Required Information

In addition to a complete application form, the following items must be provided by the applicant before a Construction in Navigable Waters Permit will be issued:

- a. A complete set of drawings which show the location and character of the proposed activity. All drawings should be on 8.5"x 11" white paper and be in black ink. This set of drawings must include a) a general location map, b) a specific vicinity map (names/numbers of roads to get to the project site), c) a plan view of all proposed work, d) a cross section view of all proposed work.

b) Evidence of ownership or the consent of the owner of the adjacent highland on which any part of the projected activity will be located.

c. An application processing fee. If the work is non-commercial in nature and provides personal benefits that have no connection with a commercial enterprise the fee is \$50.00. If the project is commercial or industrial and is in support of operations that charge for the production, distribution or sale of goods or services, a fee of \$500.00 is charged. Aerial crossings by conductors or other wires supported solely by structures placed outside the navigable waters shall require a fee of \$100.00.

d. A newspaper advertisement is required. Proof of publication of a description of the application in a newspaper of general circulation in the county where the encroachment is sought must be forwarded to DHEC either in the form of a dated newspaper clipping or by an Affidavit of Publication from the newspaper. The permit review process will not be completed until this proof of publication is submitted. The public notice previously referred to on page 2 does not satisfy the requirement.

Public Review

Several State and Federal agencies and the general public review the application and are given the opportunity to make comments on the work or manner of work proposed in the application. All comments are submitted to DHEC for evaluation and are considered when formulating a permit decision. The review agencies, according to their various fields of responsibility and expertise, review each permit application upon receipt of the public notice. The proposed activity as described in the public notice is evaluated in terms of the involvement and uses of State or public trust property and the environmental, navigational or other impacts associated with such involvement.

Involved Agencies

- US Army Corps of Engineers
- SCDHEC - EQC
- SCDHEC - OCRM
- US Fish & Wildlife Service
- US EPA
- National Marine Fisheries Service
- SC Dept. of Natural Resources
- SC Dept. of Archives & History

Projects within the Coastal Zone

DHEC's Office of Ocean and Coastal Resource Management (OCRM) involvement in the permitting process is triggered if the proposed activity takes place in the coastal zone. The **Coastal Zone** is the area represented by South Carolina's eight coastal counties, Horry, Georgetown, Charleston, Berkeley, Dorchester, Colleton, Beaufort, and Jasper. OCRM will review the proposed activities for consistency with the Coastal Zone Management Program. In general, OCRM will not approve a project proposal unless:

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- ▶ no feasible alternatives exist or an overriding public interest can be demonstrated
 - ▶ any substantial environmental impacts can be minimized

Time Frames, Objections To the Application, Reconciliation

Unless the proposed work is complex or involves major environmental or legal issues resulting in an objection, most applications can be processed within 45-70 days. If no objections are issued or if the objections have been resolved, DHEC may issue the applicant a Construction in Navigable Waters Permit. If an objection is issued by a State agency, the applicant is informed of the objection and requested to meet with representatives of the objecting agency in an attempt to reconcile the objection. DHEC may support and assist efforts to conciliate and resolve objections. A permit may not be issued over a valid State agency objection if the applicant has made no effort to reconcile the objection. If the applicant and objecting agency reach an acceptable reconciliation, DHEC may then issue a Notice of Proposed Decision indicating its intention to issue the applicant a permit.

Replacement/Compensation

If it is determined by DHEC that the proposed activity will provide a public benefit but is also likely to produce an adverse impact on navigable waters or associated natural resources and that the applicant has already taken all feasible measures to prevent the detriment and certain other criteria have been met, the applicant may be requested to submit a proposal that provides or creates natural resource benefits to replace or compensate for those lost by the proposed activity. These compensatory benefits must result in a net gain of natural resource benefits to the State.

Notice of Proposed Decision

Upon receipt of all comments to the proposed activity, including an offer of replacement/compensation by the applicant if appropriate, DHEC shall review all comments and supporting information submitted by the applicant and make its preliminary decision in the form of a Notice of Proposed Decision. The Notice of Proposed Decision provides the opportunity to appeal DHEC's initial permit decision by anyone with legal standing to contest the decision. Prior to the actual issuance or denial of a permit, this Notice of Proposed Decision must be issued with a mandatory 15 day opportunity to appeal. If no appeal is received, then the Department may take final action on the proposed activity.

Where to Direct Questions

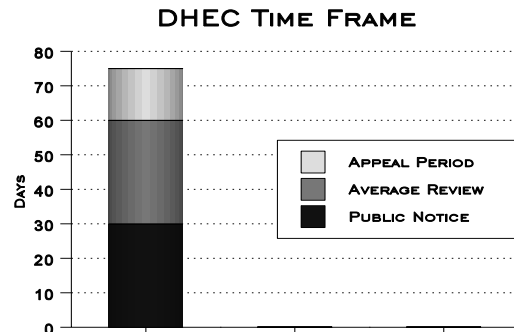
Unless the applicant has been instructed by DHEC to respond directly to a particular agency, all questions, comments, information, proof of newspaper publication and the required fee

should be submitted to DHEC’s Division of Water Quality, Water Quality Certification, Standards and Wetlands Programs Section, 2600 Bull Street, Columbia, South Carolina 29201.

If the party is in doubt as to whether a Construction in Navigable Waters Permit will be required, he may submit a letter to DHEC indicating the location and description of the proposed activity. If no permit is required, the applicant will be issued a letter to that effect.

Permitting Process

1. Applicant obtains and completes application form.
2. Applicant submits original application to the US Army Corps of Engineers (Corps), Charleston District, or DHEC.
3. The application is reviewed for completeness and is distributed to appropriate individuals and agencies through a public notice.
4. DHEC sends applicant copy of fee (\$50 or \$500) and public notice requirements.
5. DHEC evaluates the information provided and determines if additional information needed. If so, applicant is contacted.
6. DHEC waits for: 30 day comment period to end, receipt of fee, affidavit of public notice and any requested information.
7. If DHEC receives a State agency objection to the application, the applicant is so informed and directed to contact the objecting agency in an attempt to develop a reconciliation.
8. DHEC prepares staff assessment of impacts.
9. DHEC-EQC mails Notice of Proposed Decision (NOPD) to applicant, adjacent property owners, agencies, and commentors.
10. DHEC-EQC waits 15 day appeal period.
11. If no appeals received, DHEC mails appropriate final permit to the applicant and the Corps, if necessary.



Agency Listing

Agency Name	Office	Address	Phone Number
U.S. Army Corps of Engineers	Regulatory Branch	PO Box 919 Charleston, SC 29402-0919	(843) 727-4330 1-800-208-2054
SC Department of Health and Environmental Control	Office of Environmental Quality Control	2600 Bull Street Columbia, SC 29201	(803) 898-4300

SC Department of Health and Environmental Control	Office of Ocean and Coastal Resource Management	1362 McMillan Avenue, Suite 400 Charleston, SC 29405	(843) 744-5838
US Fish and Wildlife Service	Fish and Wildlife Enhancement	PO Box 12559 Charleston, SC 29422-2559	(843) 724-4707
US Environmental Protection Agency	Wetland Unit Wetlands & Coastal Program Section	Atlanta Federal Center 61 Forsythe Street Atlanta, GA 30303	(404) 347-2126
US National Marine Fisheries Service	Habitat Conservation District	219 Fort Johnson Road Charleston, SC 29412-9110	(843) 762-8591
SC Department of Natural Resources	Environmental Affairs Coordinator	PO Box 12559 Charleston, SC 29422-2559	(843) 795-6350
SC Department of Archives & History	State Historic Preservation Office	PO Box 11669 Columbia, SC 29211	(803) 734-8609