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Document No. 4386

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 30

Statutory Authority: 1976 Code Sections 48-39-10 et seq.

30-1. Statement of Policy

30-5. Exceptions

30-9. Other Provisions

30-13. Specific Project Standards for Beaches and the Beach/Dune System

30-15. Activities Allowed Seaward of Baseline

**Synopsis:**

 These regulatory changes will amend certain Coastal Division regulations related to permitting in the beaches and beach/dune critical areas of the coastal zone. In 2010, the Board of Health and Environmental Control appointed a Blue Ribbon Committee on Shoreline Management and charged the Committee with developing specific recommendations to guide the stewardship of South Carolina’s beachfront shorelines. Comprised of representative stakeholders, elected officials, and leading legal and academic experts, the Committee worked over two years to evaluate the past two decades of experiences under the South Carolina Beachfront Management Act (Section 48-39-250 et seq*.*). The Committee examined current conditions, considered outcomes of an ad hoc technical committee on shoreline change, and made recommendations for improvements in management of the state’s beachfront jurisdictional area. These changes are based on the Blue Ribbon Committee’s final recommendations as supported by the Department’s Board.

 These revisions amend definitions, provide clarity and specific standards to be utilized in the evaluation of beachfront permit applications and notifications, and provide specific standards, conditions and administrative procedures for issuance of emergency orders within the state’s beachfront jurisdiction. The changes will provide more clarification to the regulations, enabling Department staff to administer more effectively the regulatory program of the Coastal Division.

 A Notice of Drafting for these amendments was published in the *State Register* on June 28, 2013.

Section-by-Section Discussion of Revisions:

SECTION AND EXPLANATION OF CHANGE

R.30-1.D(20)

The definition of “emergency order” was revised to add language to clarify that emergency orders are issued in response to an emergency, and add reference to the section regarding notification requirements of emergency orders.

R.30-5.A(1)

This subsection was revised to add reference to the subsection to clarify emergency order exceptions. Items A(1)(a) and (b) were added to identify the authorities responsible for issuance of emergency orders.

R.30-5.B

The title of this section was revised to provide clarity and new subsection B(1) was added to specify the authority to issue emergency orders and the conditions that must apply. Existing B(1) was renumbered to B(2) and language was modified to specify which emergency order activities require notification to the Department. Existing B(2) was renumbered to B(3) and language was added to clarify the timeframe for notifying the Department of issued emergency orders, and add reference to the items required within the notification. Existing B(3) was renumbered to B(4).

R.30-9.B

Language was added to include emergency orders as activities for which the Department may require a bond or proof of financial responsibility.

R.30-13.Q(1)

Language was added to provide additional emergency option as temporary protection for golf courses and add reference to the subsections regarding emergency order provisions.

R.30-15.F(4)

Language was added to specify additional conditions to consider when evaluating a request for a special permit.

R.30-15.H

This section was revised to amend definition of imminent danger, and clarify that the Department may also issue emergency orders. Subsection H(1) was revised to specify the authority to issue emergency orders for sandbags is vested in the Department and the conditions that must apply, define ‘critical public infrastructure’, and delete items (a) through (g). New subsection H(2) was added to specify the process for issuing emergency orders for sandbags and the requirements of the petitioner for securing an order. New subsection H(3) was added to specify standards required for sandbag use. Existing H(2) was renumbered to H(4) and language was modified to specify the authorities responsible for issuing emergency orders for sand scraping and the conditions that must apply. New item H(4)(b) was added to allow sand scraping as an emergency option for temporary protection of golf courses and remaining items were renumbered. New item H(4)(h) was added to specify what funding is available for sand scraping. Existing subsection H(3) was renumbered to H(5) and language was modified to specify the authorities responsible for issuing emergency orders for renourishment and the conditions that must apply. New items H(5)(e) and (f) were added to clarify that renourishment may be used as temporary protection for golf courses and specify what funding is available for emergency renourishment.

**Instructions:**

Amend Coastal Regulations 30-1, Statement of Policy; 30-5, Exceptions; 30-9, Other Provisions; 30-13, Specific Project Standards for Beaches and the Beach/Dune System; and 30-15, Activities Allowed Seaward of Baseline, pursuant to each individual instruction provided with the text below.

~~Indicates Matter Stricken~~

Indicates New Matter

**Text:**

**Revise R.30-1.D(20) definition of ‘Emergency Orders’:**

 (20) Emergency Orders ‑ orders issued in response to an emergency as defined in Section 48-39-10(U), by an appointed official of a county or municipality or of the state acting to protect the public health and safety, upon written notification to the Department. ~~However, w~~ With regard to the beach/dune critical area, only the use of sand bags, sand scraping, or renourishment, or a combination of them, in accordance with R.30-5 and R.30-15.H, is allowed pursuant to emergency orders.

**Revise R.30-5.A(1) and add R.30-5.A(1)(a) and (b) to read:**

 (1) The accomplishment of emergency orders of an appointed official of a county or municipality or of the state acting to protect the public health and safety, upon written notification to the Department. ~~However, w~~ With regard to the beach/dune critical area, only the use of sandbags, sand scraping, or renourishment, or a combination of them is allowed, in accordance with R.30‑5.B and R.30‑15.H~~.~~, and the following:

 (a) Sandbags - Emergency orders for sandbags shall be issued only by the Department to protect public health and safety and as required under R.30-15.H.

 (b) Sand scraping or renourishment – Emergency orders for sand scraping or renourishment may be issued by an appointed official of a county or municipality or of the state acting to protect public health and safety, upon written notification to the Department and as required under R.30-5.B and R.30-15.H.

**Replace R.30-5.B to read:**

 B. Notification of Emergency Orders to the Department ~~of Emergency Orders~~:

 (1) As required in R.30-5.A(1)(a) and R.30-15.H, emergency orders for sandbags shall be issued by the Department only. Any requests for sandbags must be made to the Department. The Department may issue an emergency order for sandbags provided:

 (a) the emergency conditions conform with the definition of emergency in Section 48-39-10(U);

 (b) the order is issued to protect public health and safety; and

 (c) the order is issued in accordance with R.30-15.H.

 ~~(1)~~(2) As specified in R.30-5.A(1) above, the Department must be notified of emergency orders for sand scraping or renourishment ~~that normally would require a Department permit~~. Notification to the Department must be made in writing prior to commencement of the activity if possible and must state the following:

 (a) the nature of the emergency;

 (b) the substance of the emergency order;

 (c) the time the order will be issued, or if circumstances preclude prior notice, when the order was issued;

 (d) the name of the local official executing the order and the authority under which that person is acting;

 (e) the location of the activity ordered;

 (f) the estimate of when such order shall be withdrawn.

 ~~(2)~~(3) ~~If t~~The Department ~~is not~~ shall be notified within seventy‑two hours of the issuance of the emergency action taken. If the Department is not notified, the official issuing such order or ordering such emergency action shall be in violation of the Act and these rules and regulations. Within seventy‑two hours after the emergency order, the official ordering the emergency action shall put the above six elements (R.30-5.B(2)(a)-(f)) in writing and file them with the Department.

 ~~(3)~~(4) The official issuing the emergency order shall be deemed in violation of the Act if the emergency conditions do not conform with the definition of emergency in Section 48‑39‑10(U).

**Replace R.30-9.B to read:**

 B. Bonding by the Department: To insure that the holder complies with all limitations and conditions of the permit or emergency order, the Department may, at its discretion, require a secured bond before issuance of the permit or emergency order. The Department may also require the applicant to submit proof of financial responsibility.

**Replace R.30-13.Q(1) to read:**

 (1) Golf Courses are allowed seaward of the baseline because they can adjust to a changing shoreline more readily than other types of land uses. ~~Sandscraping or sandbagging~~ The use of sandbags is not allowed as protection for golf courses (R.30-15.H(1)). Sand scraping or renourishment may be used as temporary protection for golf courses in accordance with R.30-15.H(4) and (5).

**Replace R.30-15.F(4) to read:**

 (4) In determining whether or not a permit is contrary to the public health, safety or welfare, the Department shall consider (a) whether or not the proposed structure would be constructed on renourished beach, ~~(a)~~(b) the erosion rate at the site, ~~(b)~~(c) how soon the structure will be located on the active beach,  ~~(c)~~(d) whether or not the proposed structure meets American National Standards Institute building standards, and~~/or (d)~~ (e) the potential cumulative effect that similar structures will have upon the beach/dune system.

**Replace R.30-15.H to read:**

 H. Emergency Orders: Emergency situations before or after a storm event may prompt local governments or the Department to issue ~~E~~emergency ~~O~~orders under ~~(~~R.30‑5,~~)~~ allowing property owners to construct temporary barriers against wave uprush. A structure is determined to be in imminent danger when the erosion comes within ~~ten~~ twenty feet of a structure. In an effort to protect Loggerhead turtle nesting sites, ~~E~~emergency ~~O~~orders issued between April 15th and November 1st must be reviewed by the Department prior to actual performance of renourishment. Unless otherwise approved by the Department, emergency sandbagging, sand scraping and renourishment shall be performed using the ~~following~~ criteria established in this section.~~:~~

 (1) Emergency orders for ~~S~~sandbags shall only ~~may~~ be ~~used~~ issued by the Department. Sandbags shall only be used to construct temporary protection for ~~coastal structures~~ existing habitable structures and critical public infrastructure if the ~~local official~~ Department determines a structure to be in imminent danger and emergency conditions conform with the definition of emergency in Section 48-39-10(U). The use of sandbags for the protection of golf courses is prohibited under R.30-13.Q. ~~The following criteria will be used by the local governments when issuing Emergency Orders.~~ In this section, “critical public infrastructure” shall mean publicly owned and maintained utilities, roadways and associated infrastructure necessary to provide for public safety, communication and transportation.

 ~~(a) The bags shall be biodegradable and be commercially manufactured for the purpose of holding sand.~~

 ~~(b) The bags, when filled, shall be a maximum size of 5 (five) gallons or 0.66 cubic feet and must be filled and installed by hand.~~

 ~~(c) The bags may be placed no farther seaward than is necessary to protect the structure or to repair an erosion control structure. In no case may sandbags protect a dune or be used to retard normal shoreline movement.~~

 ~~(d) The bags shall be stacked at an angle not steeper than 45 degrees.~~

 ~~(e) Only clean sand may be placed in the bags. Beach sand may be used to fill the bags provided the sand is returned to the beach when the bags are removed.~~

 ~~(f) The property owner is responsible for the day to day maintenance of the sandbags to insure that they remain in place and in good repair. The property owner is responsible for the complete removal of the bags when so ordered by the Department.~~

 ~~(g) A copy of the issued Emergency Order shall be in the possession of anyone performing sandbagging.~~

 (2) Emergency orders for sandbags shall be subject to the following process:

 (a) The Department may issue emergency orders for those communities or petitioners within the area specifically included under a state emergency declaration or at the request of a local government or property owner. The emergency order shall establish allowable emergency measures, including the temporary use of sandbags.

 (b) The property owner acting under a Department emergency order for sandbags shall provide a financially binding commitment, such as a performance bond or letter of credit that is reasonably estimated to cover the cost of removing the sandbags pursuant to subsection R.30-9.B.

 (c) Within one hundred twenty days of the issuance of a Department emergency order for sandbags, the petitioner must provide the Department with an acceptable plan in writing, for:

 (i) the removal or relocation of the threatened structure; or

 (ii) evidence that their community has a feasible and financially viable renourishment plan for the affected area that is consistent with their approved Local Comprehensive Beachfront Management Plan.

 (d) If the petitioner has not provided the Department with an acceptable plan for removal, relocation, or renourishment within one hundred twenty days of the issuance of an emergency order for sandbags, then the emergency order is expired at the end of the one hundred twentieth day, and the sandbags shall be removed at the property owner’s expense.

 (e) If the petitioner’s plan is approved and calls for renourishment, then a renourishment permit application shall be submitted to the Department within eighteen months of the issuance of the original emergency order.

 (i) If the Department approves the renourishment permit, sandbags shall be allowed to remain in place for up to twelve months after the permit is issued to allow sufficient time for the project to be completed, but must be removed at the property owner’s expense prior to the commencement of renourishment activities or at the end of the twelve month period, whichever occurs first.

 (ii) If the Department denies the renourishment permit application, the sandbags shall be removed within ninety days of the final agency decision, including all appeals, at the property owner’s expense.

 (iii) If a renourishment permit application is not submitted to the Department within eighteen months of the issuance of the original emergency order, the emergency order is expired at the end of the last day of the eighteenth month, and the sandbags shall be removed at the property owner’s expense.

 (f) If the petitioner’s plan is approved and calls for removal or relocation of a threatened structure, this shall occur within eighteen months of the original emergency order issuance. All sandbags shall be removed at the property owner’s expense at that time of removal or relocation of the structure or at the end of the eighteen month period, whichever occurs first.

 (3) To maintain the temporary nature that is intended for the use of sandbags, the Department shall apply the following criteria when issuing emergency orders for sandbags:

 (a)The bags shall be biodegradable, if available, and be commercially manufactured for the purpose of holding sand.

 (b) The bags, when filled, shall be a maximum size of fifty gallons.

 (c) The bags may be placed no farther seaward than is necessary to protect the habitable structure or critical public infrastructure. In no case may sandbags be used to protect a dune or be used to retard normal shoreline movement.

 (d) All sandbags are to be placed parallel to the shoreline. Excavation shall not be allowed below existing beach grade. The toe of the sandbags shall not be buried, and filter cloth shall not be used. At no time shall the bags be buried or covered with sand.

 (e) To promote removal, sandbags shall generally be limited to a maximum base width of twenty feet and a height of six feet. The bags shall be stacked at an angle not steeper than forty-five degrees.

 (f) Bag fill material must be from an upland source and compatible in size and grain color with the sand or natural beach material located at the specific site where sandbags are authorized, unless supported by site-specific engineering considerations. Only clean sand may be placed in the bags.

 (g) The property owner is responsible for the day to day maintenance of the sandbags to insure that they remain in the location authorized by the emergency order and in good repair. The property owner is responsible for the complete removal of the bags when so ordered by the Department.

 (h) A copy of the issued emergency order shall be in the possession of anyone performing sandbagging.

 ~~(2)~~(4) Emergency orders for sand scraping may be issued by the Department, or an appointed official of a county or municipality acting to protect public health and safety, and upon written notification to the Department. Sand scraping may be used to construct temporary protection for coastal structures if the local official determines a structure to be in imminent danger and emergency conditions conform with the definition of emergency in Section 48-39-10(U). The following criteria ~~will~~ shall be used by the local governments or the state when issuing ~~E~~emergency ~~O~~orders for sand scraping:~~;~~

 (a) Sand scraping may only be ordered and performed to protect existing structures. Sand scraping may not be allowed in front of erosion control structures unless it can be proven that the erosion control structure is itself in danger of collapsing and is within ~~10~~ ten feet of the habitable structure.

 (b) Sand scraping may be used to provide temporary protection for golf courses pursuant to the requirements of this subsection.

 ~~(b)~~(c) Sand may only be scraped from the intertidal beach and only between extended property lines of the structure receiving the sand. The depth of scraping may not exceed one foot below the existing beach level.

 ~~(c)~~(d) Sand may be placed against an eroded scarp or to replace an eroded dune that is seaward of a threatened structure. The dune shall not exceed six ~~(6)~~ feet above grade or twenty ~~(20)~~ feet in width as measured from dune toe to dune toe.

 ~~(d)~~(e) No sand may be placed landward of an existing, functional erosion control device.

 ~~(e)~~(f) Additional ~~S~~sand scraping activities may be performed ~~one time~~ ~~only~~ per property for each ~~E~~emergency ~~O~~order issued ~~by the local official without~~ provided prior approval is received by the Department and pursuant to the requirements of this subsection. The Department may consider in its analysis of such requests the impacts to important habitats and ecological resources at the location; and the characteristics of the beach profile including, but not limited to, volumetric changes, contour changes, and accelerated erosion.

 ~~(f)~~(g) A copy of the issued ~~E~~emergency ~~O~~order shall be in the possession of anyone performing sand scraping.

 (h) Sand scraping activities shall be accomplished through private or local funding unless an emergency order is executive or state issued, then state funding is not precluded.

 ~~(3)~~(5) Emergency orders for renourishment may be issued by the Department, or an appointed official of a county or municipality acting to protect public health and safety, and upon written notification to the Department. Renourishment may be used to construct temporary protection for coastal structures if the local official determines a structure to be in imminent danger and emergency conditions conform with the definition of emergency in Section 48-39-10(U). The following criteria ~~will~~ shall be used by the local governments or the state when issuing ~~E~~emergency ~~O~~orders for renourishment:~~;~~

 (a) Renourishment sand must originate from an upland source and be approved by Department staff as ~~beach~~ compatible in size and grain color.

 (b) Sand placed on the beach must be located between the extended property lines of the property receiving the sand.

 (c) Sand may be stabilized with sand fencing and beach vegetation pursuant to the permitting requirements in ~~Section~~ R.30‑17.

 (d) A copy of the issued ~~E~~emergency ~~O~~order shall be in the possession of anyone performing emergency renourishment.

 (e) Renourishment may be used to provide temporary protection for golf courses pursuant to the requirements of this subsection.

 (f) Renourishment activities conducted under an emergency order shall be accomplished through private or local funding unless an emergency order is executive or state issued, then state funding is not precluded.

**Fiscal Impact Statement:**

 The Department estimates minimal additional cost will be incurred by the state or its political subdivisions as a result of the implementation of these amendments; therefore, no additional state funding is being requested. Existing staff and resources have been utilized in preparation of these amendments and will further be utilized in the regulatory administration resulting from the amendments.

**Statement of Need and Reasonableness:**

The Statement of Need and Reasonableness was determined by staff analysis pursuant to 1976 Code Section 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION:

R.30-1. Statement of Policy

R.30-5. Exceptions

R.30-9. Other Provisions

R.30-13. Specific Project Standards for Beaches and the Beach/Dune System

R.30-15. Activities Allowed Seaward of Baseline

 Purpose: These regulatory changes will amend the Department’s Coastal Division regulations related to permitting in the beaches and beach/dune critical areas of the coastal zone. These changes are based on the Blue Ribbon Committee on Shoreline Management’s final recommendations as supported by the Department’s Board and amend definitions, provide clarity and specific standards to be utilized in the evaluation of beachfront permit applications and notifications, and provide specific standards, conditions, and administrative procedures for issuance of emergency orders within the state’s beachfront jurisdiction. The changes will provide more clarification to the regulations, enabling Department staff to administer more effectively the regulatory program of the Coastal Division.

 Legal Authority: S.C. Code Section 48-39-10 et seq., Coastal Tidelands and Wetlands Act, 1976.

 Plan for Implementation: These amendments to the Coastal Division regulations take effect upon approval by the General Assembly and publication of the final regulations in the State Register. The amendments will be implemented, administered, and enforced by existing staff and resources.

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

 These amendments are necessary to (1) implement S.C. Code Section 48-39-130, which addresses the permitting of activities in the critical area; (2) implement the stated policies of the South Carolina Beachfront Management Act (S.C. Code Section 48-39-260); (3) add clarity to existing regulations; and (4) enable Department staff to administer more effectively the regulatory program of the Coastal Division.

DETERMINATION OF COSTS AND BENEFITS:

 1) Administration of this amendment is estimated to have minimal economic impacts to the state. Benefits to the state will include improved management of coastal resources through increased clarity of the regulations and better protection of important habitats.

 2) Administration of this amendment is estimated to have no significant economic impacts to entities regulated or result in cost increases to the general public. Those regulated may be required to provide a financially binding commitment to ensure compliance with conditions for the temporary protection measures afforded under the amendments. This commitment will ensure that the cost of compliance is not transferred to the state, its political subdivisions, or the general public. Public benefits will be evident in improved management of coastal resources through increased clarity of the regulations and better management of public trust lands.

See Final Fiscal Impact Statement.

UNCERTAINTIES OF ESTIMATES:

 Minimal.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

 The amendments will refine the Department’s ability to manage public usage of coastal resources, and will enable the Department to provide a more effective response to those seeking to utilize the public trust areas of the coastal zone.

Detrimental Effects on the Environment and Public Health if the Regulations are not Implemented:

 Non-implementation of the regulations will hinder the Department’s Coastal Division statutory directives to manage the state’s coastal environment for its citizens.

**Statement of Rationale:**

 These revisions are necessary to ensure effective management of the beaches and beach/dune system critical areas of the coastal zone. They provide additional clarity and specificity to the existing regulations that address the management of the state’s beaches and beach/dune system, evaluation of beachfront permit applications and notifications, and administrative procedures for issuance of emergency orders within the state’s beachfront jurisdiction. The revisions are based on the recommendations of the Blue Ribbon Committee on Shoreline Management as supported by the Department’s Board. The Committee considered technical outcomes of the ad hoc Shoreline Change Advisory Committee when establishing final recommendations. The development of these regulatory changes relied on the experience and professional judgment of the Department’s staff, as well as the suggestions of the stakeholder committees.