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Document No. 4615

**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 previous two decades of experiences under the South Carolina Beachfront Management Act (1976 Code Section 48‑39‑250 et seq*.*). The Committee examined current conditions, considered outcomes of an ad hoc technical committee on shoreline change, and recommended improvements in the management of the State’s beachfront jurisdictional area. These amendments are based on the Blue Ribbon Committee’s final recommendations.

 These regulatory changes will 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 amendments will provide more clarification to the regulations, enabling Department staff to administer more effectively the regulatory program of the Coastal Division.

 Amendments will also modify specific procedures under R.30‑13 and R.30‑15 for issuance of emergency orders for golf courses to comply with Act No. 147 that took effect April 7, 2014 and was codified as 1976 Code Section 48‑39‑135.

 A Notice of Drafting for these amendments was published in the *State Register* on February 27, 2015.

**Discussion of Changes requested by the Senate Agriculture and Natural Resources Committee requested by letter dated February 25, 2016**

R.30‑1.D(20)

Modify the definition of “emergency order” to retain language specifying state authorities responsible for the issuance of emergency orders.

R.30‑5.A(1)

Modify to retain language specifying state authorities responsible for the issuance of emergency orders.

R.30‑5.B(1)

Add language to specify state authorities allowed to issue emergency orders.

R.30‑5.B(1)(b)

Add language to clarify the conditions that must apply for authorities allowed to issue emergency orders.

R.30‑5.B(2)

Add language to specify state authorities allowed to issue emergency orders.

R.30‑9.B

Delete amendments to the section regarding bonding requirements for emergency orders.

R.30‑15.H

Modify language specifying authorities responsible for the issuance of emergency orders. Add language to clarify the requirements to notify the U.S. Army Corps of Engineers of the issuance of emergency orders. Add language to clarify that the recipient of an emergency orders may be required to obtain additional permits and agency reviews from other local, state or federal agencies.

R.30‑15.H(1)

Add language to specify state authorities allowed to issue emergency orders.

R.30‑15.H(2)(a)

Add language to specify state authorities allowed to issue emergency orders.

R.30‑15.H(2)(b)

Delete item regarding bonding requirements for emergency orders.

R.30‑15.H(2)(c)

Delete subitem (i) referring to a plan for relocation or removal of a structure. Renumber to (b) for proper codification and modify language regarding options to provide a plan for renourishment as a mean to extend the time allowed to use sandbags for temporary protection.

R.30‑15.H(2)(d)

Renumber item to (c) for proper codification. Delete language referring to a plan for removal or relocation of a structure.

R.30‑15.H(2)(e)

Renumber item to (d) for proper codification.

R.30‑15.H(2)(f)

Delete item referring to the relocation or removal of a structure as a mean to extend the time allowed to use sandbags for temporary protection.

R.30‑15.H(3)(c)

Modify language to clarify when sandbags may be used to retard normal shoreline movement.

R.30‑15.H(3)(f)

Add new item (f) to specify an additional consideration when evaluating the effectiveness of sandbag placement.

R.30‑15.H(3)(f)

Renumber item to (g) for proper codification.

R.30‑15.H(3)(g)

Renumber item to (h) for proper codification.

R.30‑15.H(3)(h)

Renumber item to (i) for proper codification.

R.30‑15.H(4)

Add language to specify state authorities allowed to issue emergency orders.

R.30‑15.H(5)

Add language to specify state authorities allowed to issue emergency orders.

**Section‑by‑Section Discussion of Revisions of Coastal Division Regulations**

**submitted originally to the General Assembly for review by the**

**Department of Health and Environmental Control on January 21, 2016:**

R.30‑1.D(20)

The definition of “emergency order” is revised 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)

Language is added to clarify the authorities responsible for the issuance of emergency orders.

R.30‑5.B

The title of this section is revised to provide clarity and new subsection B(1) is added to specify the authorities allowed to issue emergency orders and the conditions that must apply. Existing B(1) is renumbered to B(2) and language is modified to specify which emergency order activities require notification to the Department. Existing B(2) is renumbered to B(3) and language is 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) is renumbered to B(4).

R.30‑9.B

The title of this section is revised to provide clarity. Language is 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 is added to provide additional emergency options as temporary protection for golf courses to comply with Act No. 147 of 2014, and add reference to the subsections regarding emergency order provisions.

R.30‑15.F(4)

Language is added to specify an additional condition to consider when evaluating a request for a special permit. Stylistic changes are made to the serial order of conditions to correspond with other sections of the regulation.

R.30‑15.H

This section is revised to amend the definition of imminent danger, clarify the authorities allowed to issue emergency orders, and clarify that all activities authorized under emergency orders need review prior to performance during turtle nesting season. Language is added to specify that requirements of the section can be applied to new technologies.

R.30‑15.H(1)

This subsection is revised to clarify the authorities allowed to issue emergency orders and the conditions that must apply, define ‘critical infrastructure’, and delete items (a) through (g).

R.30‑15.H(2)

New subsection is added to specify the process for issuing emergency orders for sandbags and the requirements of the property owner for securing an emergency order.

R.30‑15.H(3)

New subsection is added to specify criteria to be used when issuing emergency orders for sandbags.

R.30‑15.H(4)

Existing H(2) is renumbered to H(4) and language is added to specify the authorities allowed to issue emergency orders for sand scraping and the conditions that must apply. New item (b) is added to allow sand scraping as an emergency option for temporary protection of golf courses to comply with Act No. 147 of 2014, and remaining items are renumbered. New item (h) is added to specify what funding is available for sand scraping.

R.30‑15.H(5)

Existing subsection H(3) is renumbered to H(5) and language is added to specify the authorities allowed to issue emergency orders for renourishment and the conditions that must apply. Language is added to item (a) to specify standards for compatible sand. Correction is made in item (c) to the section referenced for permit requirements for sand fencing and beach vegetation. Language is added to (d) to provide clarity. New item (e) is added to clarify that renourishment may be used as temporary protection for golf courses to comply with Act No. 147 of 2014. New item (f) is added to 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.

**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 the Department or upon written notification to the Department by an appointed official of a county or municipality or of the state acting to protect the public health and safety. With regard to the beach/dune critical area, only the use of sandbags, sand scraping, 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):**

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

**Replace R.30‑5.B to read:**

 B. Notification of Emergency Orders to the Department:

 (1) As required in R.30‑5.A(1) and R.30‑15.H, emergency orders for sandbags, sand scraping or renourishment may be issued by an appointed official of a county or municipality or of the state provided:

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

 (b) the order is issued to protect health, safety or resources of the residents of the State as provided in Section 48‑39‑10(U); and

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

 (2) The Department must be notified of the issuance of an emergency order by an appointed official of a county or municipality or of the state. 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.

 (3) The Department shall be notified within seventy‑two hours of the issuance of the emergency order. 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 issuance of the emergency order, the official ordering the emergency action shall put the elements under R.30‑5.B(2)(a)‑(f) in writing and file them with the Department.

 (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.30‑13.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. The use of sandbags is allowed as temporary protection for golf courses located seaward of the baseline if the golf course existed prior to May 24, 1991 and if the emergency condition conforms with the definition of emergency in Section 48‑39‑10(U), in accordance with 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;

 (b) the erosion rate at the site;

 (c) how soon the structure will be located on the active beach;

 (d) whether or not the proposed structure meets American National Standards Institute building standards; and/or

 (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 the Department, or an appointed official of a county or municipality or of the state to issue emergency 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 twenty feet of that structure. In an effort to protect Loggerhead turtle nesting sites, emergency orders issued between April 15th and November 1st must be reviewed by the Department prior to actual performance of the activity authorized by the emergency order. The U.S. Army Corps of Engineers must be notified within seventy‑two hours of the issuance of an emergency order by the Department if the Department issued the emergency order. If the emergency order is issued by an appointed official such notification must be accomplished by the issuing official. The property owner or other recipient of the emergency order must obtain any additional permit(s) and agency review(s) that may be required by other local, state or federal agencies. All required permits and reviews must be obtained prior to the commencement of work pursuant to the issued emergency order. Unless otherwise approved by the Department, emergency sandbagging, sand scraping and renourishment shall be performed using the criteria established in this section. The Department may apply any requirements under this section to any Department‑approved technology that is authorized under an emergency order.

 (1) Emergency orders for sandbags may be issued by the Department, or upon written notification to the Department by an appointed official of a county or municipality or of the state acting to protect public health and safety. Sandbags shall only be used to construct temporary protection for existing habitable structures and critical infrastructure if the Department or appointed official determines a structure to be in imminent danger and emergency conditions conform with the definition of emergency in Section 48‑39‑10(U), or as allowed in R.30‑13.Q(1). In this section, “critical infrastructure” shall mean utilities, roadways and associated infrastructure necessary to provide for public health and safety, communication, and transportation.

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

 (a) The Department or an appointed official of a county or municipality or of the state may issue emergency orders for areas specifically included under a state emergency declaration or at the request of a local government or property owner.

 (b) Within one hundred twenty days of the issuance of an emergency order for sandbags, the property owner may provide the Department with 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.

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

 (d) If the property owner’s plan is acceptable and calls for renourishment, then a renourishment permit application shall be submitted to the Department within eighteen months of the issuance of the 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 placement of renourishment sand at the property, 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 emergency order, the emergency order shall expire at the end of the eighteenth month, and the sandbags shall be removed at the property owner’s expense.

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

 (a) The bags shall be commercially manufactured for the purpose of holding sand. Biodegradable bags may be required if deemed appropriate by the Department.

 (b) The bags, when filled, shall be a maximum size of one cubic yard.

 (c) The bags may be placed no farther seaward than is necessary to protect the existing habitable structure, critical infrastructure or golf course qualified under R.30‑13.Q(1). In no case may sandbags be used to protect a dune. Sandbags may not retard normal shoreline movement unless used to protect an existing habitable structure, critical infrastructure or golf course qualified under R.30‑13.Q(1).

 (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. At no time shall the sandbags be buried or covered with sand.

 (e) Sandbags shall generally be limited to a maximum height of six feet above the beach. The sandbags shall be stacked at an angle no steeper than forty‑five degrees.

 (f) The Department may consider site specific engineering reports which will improve the effectiveness of sandbag placement for site specific situations.

 (g) Sandbag fill material must be from an upland source and compatible in grain size and color with the native beach sand and should contain no more than a minimal amount of organic material. Only clean sand may be placed in the bags.

 (h) The property owner is responsible for the day‑to‑day maintenance of the sandbags to ensure that they remain in the location authorized by the emergency order, above grade and in good repair. Failure to maintain the sandbags may result in the Department requiring the removal of the sandbags at the property owner’s expense.

 (i) A copy of the issued emergency order shall be in the possession of anyone performing the placement of sandbags.

 (4) Emergency orders for sand scraping may be issued by the Department, or upon written notification to the Department by an appointed official of a county or municipality or of the state acting to protect public health and safety. Sand scraping may be used to construct temporary protection if the Department or 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 shall be used when issuing emergency orders for sand scraping:

 (a) Sand scraping may only be ordered and performed to protect existing structures. Sand scraping shall 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 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.

 (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.

 (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 feet above grade or twenty feet in width as measured from dune toe to dune toe.

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

 (f) Sand scraping may be performed one time only per property for each emergency order issued by the local official without prior approval by the Department.

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

 (h) Sand scraping activities shall generally be accomplished through private or local funding unless a state of emergency is declared, then state funding is not precluded.

 (5) Emergency orders for renourishment may be issued by the Department, or upon written notification to the Department by an appointed official of a county or municipality or of the state acting to protect public health and safety. Renourishment may be used to construct temporary protection if the Department or 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 shall be used when issuing emergency orders for renourishment:

 (a) Renourishment sand must originate from an upland source and be approved by the Department as compatible in grain size and color with the native beach sand and should contain no more than a minimal amount of organic material.

 (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 R.30‑13.L.

 (d) A copy of the issued emergency order shall be in the possession of anyone performing authorized renourishment activities.

 (e) Renourishment activities conducted under an emergency order 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 generally be accomplished through private or local funding unless a state of emergency is declared, 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 promulgation, approval, and 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 would 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. Amendments will also modify specific procedures for the issuance of emergency orders for golf courses to comply with Act No. 147 of 2014, codified as 1976 Code Section 48‑39‑135. These amendments will provide more clarification to the regulations, enabling Department staff to administer more effectively the regulatory program of the Coastal Division.

 Legal Authority: 1976 Code Section 48‑39‑10 et seq.

 Plan for Implementation: These regulatory changes will amend the Coastal Division regulations upon approval of the General Assembly, and publication in the State Register. These 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 based on the Blue Ribbon Committee on Shoreline Management’s final recommendations and to comply with Act No. 147 of 2014, codified as 1976 Code Section 48‑39‑135. They are reasonable and necessary to manage the long‑term health and sustainability of the State’s beaches and beach/dune systems. These amendments clarify existing regulations that enables Department staff to more effectively (1) implement 1976 Code Section 48‑39‑130, which addresses the permitting of activities in the critical area; and (2) implement the stated policies of the South Carolina Beachfront Management Act (1976 Code Section 48‑39‑260).

DETERMINATION OF COSTS AND BENEFITS:

 1) Promulgation and administration of these amendments are 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) Promulgation and administration of these amendments are estimated to have no significant economic impacts to entities regulated or result in cost increases to 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 Fiscal Impact Statement.

UNCERTAINTIES OF ESTIMATES:

 Minimal.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

 These amendments will refine the Department’s ability to manage public usage of the State’s beaches and beach/dune system 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:

 There is no anticipated detrimental effect on the environment and/or public health associated with these amendments. Implementation of the regulations seek to benefit the environment by providing more clarity to the Department’s Coastal Division statutory directives to manage the State’s beaches and beach/dune critical areas for its citizens.

**Statement of Rationale:**

 These revisions will 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 two broad‑based stakeholder committees, the Blue Ribbon Committee on Shoreline Management and the Shoreline Change Advisory Committee. Amendments related to the issuance of emergency orders for golf courses are necessary to comply with Act No. 147 of 2014, codified as 1976 Code Section 48‑39‑135. The development of the revisions relied on the experience and professional judgment of the Department’s staff, as well as the suggestions of the stakeholder committees.