



SC DEPARTMENT *of*
**ENVIRONMENTAL
SERVICES**

South Carolina's 401 Water Quality and Coastal Zone Consistency Certification Programs

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Agenda

- Overview
 - What is 401 Water Quality Certification?
 - What is Coastal Zone Consistency Certification?
 - Questions
-

401 Water Quality Certification



401 Water Quality Certification Overview

- What is 401 Water Quality Certification?
 - What activities require a 401 Water Quality Certification
 - What is the scope of our review?
- How do we coordinate with other agencies?
- Final 2023 CWA Section 401 Water Quality Certification Improvement Rule
 - What is required by the new Rule
 - How to submit these requirements to SCDES



What is a 401 Water Quality Certification?

Section 401 of the Clean Water Act states that, "Any applicant for a Federal license or permit to conduct any activity...which may result in any discharge into the navigable waters (i.e. waters of the US), shall provide the licensing or permitting agency with a certification from the State in which the discharge originates."

- Certification of federal licenses and permits.



Section 404 Permits

Section 404 of the Clean Water Act requires a permit for the discharge of dredge or fill materials into waters of the U.S.

- 404 Permit cannot be issued unless the state issues a 401



Scope of Review

R. 61-101, provides very broad authority to review applications for 401 Water Quality Certifications

- R. 61-101.F.3(b) requires the Department to consider whether there are feasible alternative to the activity
- R. 61-101.F.3(c) requires the Department to consider all potential water quality impacts, both direct and indirect over the life of the project including:
 - Impact on existing and classified uses;
 - Physical, chemical, and biological impacts including cumulative impacts;
 - The effect on circulation patterns and water movement;
 - The cumulative impacts of the proposed activity and reasonably foreseeable similar activities of the applicant and others



Scope of Review, continued

R. 61-101.F.5 requires the Department to deny certification if:

- Proposed activity permanently alters aquatic ecosystems in vicinity of the project such that its functions and values are eliminated;
- There is a feasible alternative which reduces impacts on water quality and classified uses;
- Proposed activity adversely impacts waters containing rare, threatened, or endangered species;
- Proposed activity adversely impacts special or unique habitats.

401 Certification Process

- Joint permit with Corps
- No separate application to SCDES
- Corps issues the public notice which serves as application to SCDES
- Outside of the coastal zone only an SCDES 401 Certification is required
- 401 Certifications are coordinated with BCM in the coastal counties



Coordination

During public notice, reviews are coordinated with state and federal resource agencies, including;

- SCDNR
- US FWS
- NOAA NMFS
- SCDAH

Information needs and responses are coordinated between 401 and CZC staff

Reviews are processed according to Regulation

- Outside CA – CZC to 401
- Inside CA – 401 to CAP/CZC



Final 2023 Clean Water Act Section 401 Water Quality Certification Improvement Rule

U.S. Environmental Protection Agency (EPA) published Final 2023 Rule on September 27, 2023

- Federal Rule requires that all project proponents submit a Prefiling Request to the certifying authority prior to submitting a Section 401 Water Quality Certification request (Certification Request)
- Rule also requires a Certification Request be sent concurrently to SCDES and the Federal Agency

How to submit a Prefiling Meeting Request

Project proponent sends email to the Water Quality Certification and Wetland Section at wqcwetlands@des.sc.gov

Information to be included in email;

- Project name and brief description
- Applicant/agent contact information
- Project Location
- Waterbody
- Total acreage of wetland impact
- Total LF of stream impact
- Total cubic yards of excavation

Staff will determine if a prefiling meeting is needed and will notify the applicant/agent

How to submit a Certification Request

To comply with the new EPA rule as well as SCDES regulation that following items need to be included with the Certification Request;

- Copy of Federal Permit or License application
- Copy of the Joint Public Notice (for Corps project only)
- Documentation that a Prefiling Meeting Request was submitted

Submit these items using same address noted previously (wqcwetlands@des.sc.gov)

Where the Federal Agency is the U.S. Army Corps of Engineers, Certification Requests should be sent concurrently to the Corps

Coastal Zone Consistency Certification



Bureau of Coastal Management

- SCDES BCM is the designated state agency responsible for implementing the S.C. Coastal Management Program
- Legal authorities:
 - S.C. Coastal Tidelands and Wetlands Act
 - S.C. Coastal Program Document (enforceable policies)
 - Policies and Procedures of the South Carolina Coastal Management Program (Excerpt of Coastal Program with Refinements; 1995)



Bureau of Coastal Management

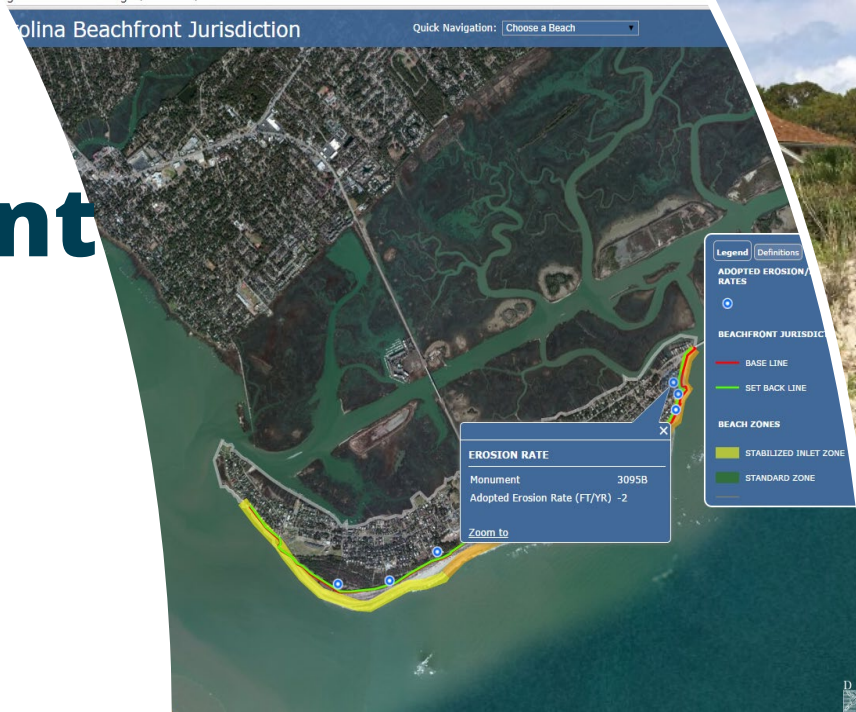
Regulatory Sections

- Critical Area Permitting
- Beachfront Management
- Federal & State Consistency Certification
- Compliance & Enforcement

Non-Regulatory Section

- Coastal Services
- Find your BCM Project Manager

[SCDES-BCM Staff App](#)



Coastal Zone Consistency

Indirect authority for federal and state permits within the 8-county coastal zone

Projects reviews are policy-based:

- Project-specific policies
 - Residential, Commercial, Industrial, Mines, Parks, Recreation, Docks, Dredging, Stormwater
- Coastal resource specific policies
 - Potential impacts to coastal resources
 - T&E species, wetlands, cultural, shellfish



[Coastal Zone Consistency Certification | South Carolina Department of Environmental Services](#)

CZC Reviews

Federal Actions

- Federal Agency Activity: NOAA, USACOE, JBC, MCAS, USFS, USFWS
- Federal Permit/License: CWA 404, Section 10
- Federal Funding Assistance: USHUD
- Outer Continental Shelf Plans

State Actions

- BOW Coastal Stormwater-NPDES, Water Supply/Construction, Navigable Waters
- BLWM Mining, Landfills, USTs
- BAQ Air



[Coastal Zone Consistency Frequently Asked Questions](#) | [South Carolina Department of Environmental Services](#)

CZC Process

- Pre-applications encouraged via Microsoft Teams
- Submit via ePermitting: Federal and/or State Service Request
- Application Administrative Review-Coordinator
- State: 10-day public notice
- Application Policy Review: Project Manager
- Non-Jurisdictional/Jurisdictional Wetlands: DC/PJD/AJD/NPR "PWC"
- State T&E Species: SCDNR
- NR-listed/eligible/further evaluation Cultural: SCDAH SHPO
- Shellfish beds within 1000' -DNR/BOW
- Residential Dock Master Plans - CAP

[ePermitting | South Carolina Department of Environmental Services](#)

CZC Review of Wetland Impacts

Jurisdiction vs Activity

2023 Sackett

May Require Mitigation

- 1) Disposal of fill material.
- 2) Dredging or excavation of wetlands.
- 3) Clearing of wetlands.
- 4) Ditching of wetlands.



CZC Wetland Impact Pathways

Wetland Master Planning Policy

Under one-acre small isolated/excluded/non-jurisdictional wetlands, not extending offsite,

1. The wetlands contain no endangered species or critical habitat, and;
2. The wetland losses are adequately *mitigated*.

Wetland Master Plans- Federal Nationwide Permits

Jurisdictional wetlands, typically less than 0.5 acres of impacts

- 1) Recertification Issue/Denials
- 2) Regional Conditions
- 3) 2022 General Certification – Conditional

Preservation of remaining Wetlands under Restrictive covenants

Non-Wetland Master Planning & Federal Individual Permits

Over one acre large isolated/excluded/non-jurisdictional wetlands, extending offsite.

Jurisdictional wetlands over 0.5 acres of impacts

No feasible alternative exists or an overriding public interest can be demonstrated, and any substantial environmental impact can be minimized. *See Resource policies*

CZC Wetland Mitigation

1) Mitigation Banking

Required Mitigation Credit Worksheet

Existing Condition- Fully Functional

2) Onsite Preservation and Buffering

Required Mitigation Credit Worksheet

Proposed Mitigation Worksheet

CZC Avg. Width Buffers: 35' Residential, 50' Commercial

75' Industrial, 10' Reduction allowance

3) Restoration, Enhancement, Creation...

Case by Case



Charleston District Regulatory Program – Compensatory Mitigation

Questions?





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Get in touch

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