



South Carolina Department of Health
and Environmental Control

Bureau of Water
2600 Bull St
Columbia SC 29201

Public Notice # 2010-SHEP

Public Notice Date: December 30, 2010

**DEPARTMENT DECISION
NOTICE OF DEPARTMENT DECISION
WATER QUALITY CERTIFICATION AND
CONSTRUCTION IN NAVIGABLE WATERS PERMIT**

The South Carolina Department of Health and Environmental Control (Department), acting on an application for Water Quality Certification pursuant to Section 401 of the Federal Clean Water Act, and Construction in Navigable Waters Permit pursuant to R. 19-450. et. Seq., 1976 SC Code of Laws has reached a proposed decision for the project described below:

US Army Corps of Engineers, Savannah District
Savannah Harbor Expansion Project
Savannah River
Jasper County
P/N 2010 SHEP

Section 401 of the Clean Water Act allows the State a reasonable period of time not to exceed one year to act upon an application for a 401 Water Quality Certification. The Savannah District of the US Army Corps of Engineers (Corps) has notified the Department that the Water Quality Certification for this project must be received by the end of the public comment period in late January 2011. This time period is not adequate to conduct the necessary review to fulfill the regulatory obligations pursuant to Section 401 of the Clean Water Act; Department Regulation 61-101, Water Quality Certification; and Department Regulation 19-450, Permits for Construction in Navigable Waters.

The proposed project includes extensive environmental impacts that must be thoroughly reviewed by the Department. The public notice that was issued by the Corps on November 15, 2010, notes that the project violates water quality standards and the applicant proposes to mitigate for these impacts through a mechanical oxygenation system. The project could also potentially cause direct and indirect impacts to over 1,000 acres of wetlands. These impacts and the extensive mitigation proposal that is included in the draft EIS must also be reviewed by the Department. The Department must also determine if there are feasible alternatives that reduce the adverse consequences on water quality and classified uses. The timeframe imposed by the Corps prevents the Department from reviewing comments from the public and the resource agencies prior to noticing a decision on the project. Coordination with the resource agencies is necessary for the Department to determine if the project has the potential to impact waters containing Federally recognized rare, threatened, or endangered species. Because the Savannah District did not allow adequate time to acquire and consider all of the information necessary to conduct a thorough review of the project, the Department has not been able to determine if the project is consistent with the certification requirements of Section 401 of the Clean Water Act, and does not have a reasonable assurance that the proposed project will be conducted in a manner consistent with the certification

requirements of Section 401 of the Clean Water Act. Accordingly, the Department proposes to deny Water Quality Certification for the proposed project without prejudice.

A copy of the plans submitted by the applicant is available for review in the office of the Division of Water Quality, Bureau of Water.

Additional information about the technical aspects of this application is available from Chris Beckham, the project manager, at 803-898-4261.

The issuance of this Notice of Department Decision represents a final staff decision that may be appealed. Please see the attached page titled "Notice of Appeal Procedure" for details.

A handwritten signature in black ink, appearing to read "Chuck Hightower", is written over a horizontal line.

Chuck Hightower, Section Manager
Water Quality Certification and
Wetland Program Section

cc: US Army Corps of Engineers,
Charleston District Office
SCDHEC, Region 8 Offices
SCDHEC-OCRM, Charleston Office

Notice of Appeal Procedure
Pursuant to S.C. Code Section 44-1-60

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 calendar days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a timely written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393. A filing fee in the amount of \$100 made payable to SC DHEC must also be received by the Clerk within the time allowed for filing a request for final review. However, if a request for final review is filed by facsimile, the filing fee may be mailed to the Clerk of the Board if the envelope is postmarked within the time allowed for filing a request for final review.

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 calendar days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due. A request for final review will be returned to the requestor if the filing fee is not received on time as described above.
4. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding whether to conduct a final review conference
 - c. a copy of the Department's decision for which review is requested
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures. 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 30 calendar days after notice is mailed that the Board declined to hold a final review conference.

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