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Regulation 30-8 enforcement

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Regulation 30-8

Enforcement

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Statutory Authority:

S.C. Code Sections 48-39-10 et seq.

Regulation History as Published in State Register			
Date	Document Number	Volume	Issue
June 7, 1978	-	2	15
June 26, 1981	-	5	13
May 25, 1990	1183	14	6
May 28, 1993	1468	17	5, Part 1
May 27, 1994	1701	18	5
June 23, 1995	1826	19	6
June 25, 1999	2341	23	6
June 27, 2003	2760	27	6, Part 1
June 23, 2006	3006	30	6
April 25, 2008	3111	32	4

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A. Permit Revocation Process: All permits issued by the Department are revocable licenses. Section 48-39-50(H) provides that the Department can revoke or suspend permits of persons "who fail or refuse to carry out or comply with the terms or conditions of the permit." Additionally, the Department is charged with the responsibility in Section 48-39-50(M) to implement the state policies and in Section 48-39-50(O) to exercise all incidental powers necessary to carry out the provisions of this chapter. The Department has the right to revoke any permits where materially erroneous or fraudulent information has been provided by either the permit applicant, or resource agencies charged with the responsibility of providing background information for the permitting process. The Department may also revoke any permit where the permittee is violating the terms and/or conditions of the permit, has changed the use of the structure so as to violate the policies or rules and regulations promulgated under the Act, and for inappropriate violations of law. If a determination is made by the Department that there are sufficient grounds for revocation of the permit, the Department shall follow the following procedure:

(1) The permittee shall be notified by the Department of the grounds for revocation of the permit by certified letter or personal service.

(2) The permittee must respond in writing to the written allegations of the Department within 20 days of receipt of the Notice of Intent to Revoke. Failure to timely respond shall result in a Default Order being issued by the Department. In the event that the permittee agrees that there are grounds for revocation then the Department shall have the authority to issue an order revoking the permit, and take such other action as may be made legally authorized pursuant to the Act.

(3) Pending resolution of revocation action, the Department may suspend work on, and/or use of, the affected project.

B. Cease and Desist Directive: When any person is found altering a critical area without a permit and such activity is not exempted by Section 48-39-130(D), or is in violation of the terms and/or conditions of a permit, the Department may issue a cease and desist directive. This directive shall inform the person that he is in violation of the Act and shall cease the unauthorized activity. The Department may then order the person to restore the area to its original condition. If the person responsible for the unauthorized activity refuses to comply with the Department directive, the Department may then file suit in the appropriate circuit court as outlined in Section 48-39-160.

C. Arrest Warrants: When a person is found altering a critical area without a permit and such activity is not exempted by Section 48-39-130(D), has not been authorized by a permit, or is in violation of the terms and/or conditions of a Department permit, the Department may cause to be issued a warrant for the arrest of the violator.

D. Penalties: As stated in Section 48-39-170 any person found guilty of violation of the Act shall be punished by imprisonment of not more than six months or by a fine of not more than five thousand dollars, or both for the first offense; and by imprisonment of not more than one year or by a fine of not more than ten thousand dollars, or both, for each subsequent offense. In lieu of or in addition to any civil fine, the Department may employ other means of enforcement resolution, including but not limited to mitigation or supplemental restoration/enhancement activities.

E. Judicial Enforcement: Section 48-39-160 provides the Department, the Attorney General or any person adversely affected with a remedy to restrain violations of the Act.

F. Enforcement Orders and Enforcement Process: Pursuant to Section 48-39-170, the Department may issue administrative orders requiring persons to comply with any permit, regulation, standard, or requirement

under the Act and to restore the environment when deemed appropriate. Prior to issuance of an enforcement order and appeal, the Department shall initiate the following process:

(1) If no acceptable resolution of a violation is reached, the Department shall send an Admission Letter setting forth all facts and grounds for violation.

(2) Within 15 days from receipt of the Admission Letter the responsible party must either admit the contents to be true or send the Department their version of the facts setting forth why the Department's facts are incorrect. Failure to respond shall result in a conclusion by the Department that the contents of letter are true.

(3) If no response is timely made to the Admission Letter, or if the response fails to resolve the Department's concerns, an Enforcement Order shall be issued based on the facts as stated by the Department in the Admission letter.

(4) Any persons to whom an order is issued may appeal it pursuant to applicable law, including S.C. Code Title 44, Chapter 1; Title 1, Chapter 23; and Title 48, Chapter 39.