

401 Water Quality Certification and Construction in State Navigable Waters Permit

FOLKS Forum

April 20, 2006

Laws & Regulations

Clean Water Act (1972)

State Pollution Control Act



South Carolina State Regulation 19-450, Permits for
Construction in Navigable Waters,
and

South Carolina State Regulation 61-101, Water Quality
Certification

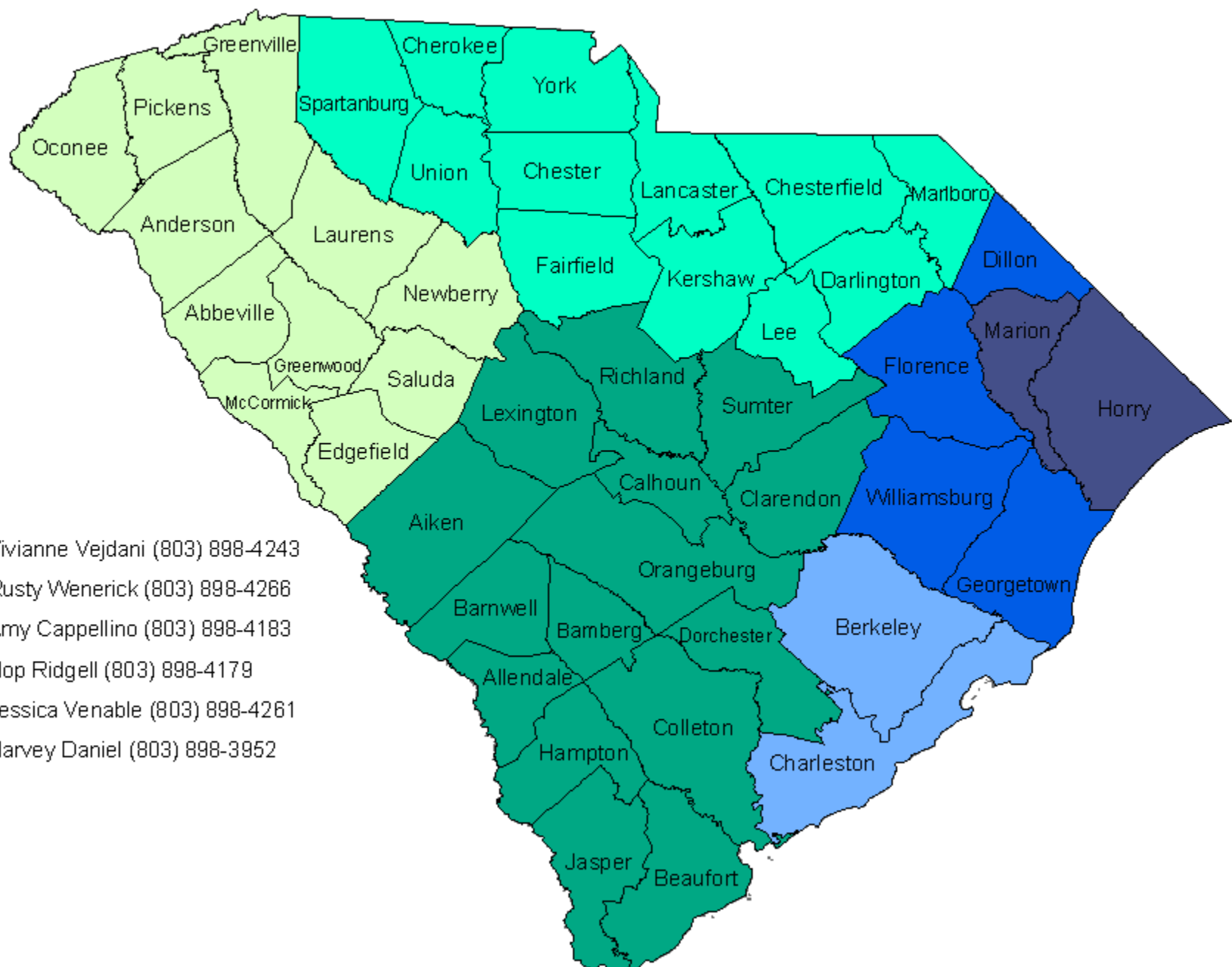
401 Water Quality Certification

- A State Certification to a Federal Permit
- Issued for Federal 404 permits (Army Corps of Engineers)
- Federal Energy Regulatory Commission (FERC) Licenses
- Other Pertinent Federal Permits

Construction in State Navigable Waters Permit

Required for any dredging, filling, or construction **in, on, or over a state navigable water.**

401 Section Project Manager County Assignments



- Vivianne Vejdani (803) 898-4243
- Rusty Wenerick (803) 898-4266
- Amy Cappellino (803) 898-4183
- Hop Ridgell (803) 898-4179
- Jessica Venable (803) 898-4261
- Harvey Daniel (803) 898-3952

Examples of Activities Requiring a State Navigable Waters Permit:

Bulkheads

Docks

Excavation/Dredging

Marinas

Electrical Transmission Lines

Piers

Riprap

Underground Utilities

401 Water Quality Certification

South Carolina issues state certification for any activity which requires a Federal permit and may result in a discharge to State waters. This certification must state that applicable effluent limits and water quality standards will not be violated.

Examples of Activities Requiring a 401 State Water Quality Certification:

- Fill or excavation in federal jurisdictional wetlands and/or federal navigational waters (subdivisions, ponds, commercial construction, utility lines, etc.)
- Hydrodynamic projects (Duke Energy)

Permitting/Certification Process:

- Applicant submits application (or Corps sends Joint Public Notice)
- Assigned to project manager for that county
- Public notification of project (30 days)
- Work with applicant to obtain needed information
- Draft staff assessment submitted for supervisory review
- Notice of Proposed Decision (NOPD) (30 days)
- Final permit is issued (after clearance by Administrative Law Court)

Open Public Comment Periods

- Public Notification Period (30 days)
- Notice of Public Decision (30 days)
(during NOPD period, the decision is also open to the formal appeals process)

Coordination with other Natural Resource Agencies and Entities

- United States Fish & Wildlife Service (USFWS)
- South Carolina Department of Natural Resources (SCDNR)
- Duke Energy (Shoreline Management Plan)

Will conduct a site visit/environmental analysis and submit comments to SCDHEC. SCDHEC will consider these comments during review of the application.

The Department will consider those concerns that are within the purview of the 401 Water Quality Certification and Construction in State Navigable Waters regulations.

Some concerns, although important, are not within the scope of these regulations. May be under the purview/jurisdiction of local ordinances or other state or federal regulations.

Examples of Issues within Regulatory Scope of Review

- Compliance with Water Quality Standards, and protection of Classified Uses (e.g., navigability, recreation), impacts to water quality
- Is proposed activity water dependent?
- Are there feasible alternatives to the proposed activity (avoided and/or minimized)?
- Permanently remove or impair functions and values of aquatic ecosystem
- State or Federal Threatened, Rare, Endangered species
- Navigability (no more than 1/3 the waterway)
- Water circulation and movement patterns

Avoidance, Minimization, and Compensation

- Applicants are required to avoid impacts to wetlands and waters to the greatest extent practicable
- To minimize impacts to the greatest extent practicable, and
- To compensate for unavoidable impacts

Compensation

- Only after impacts have been avoided and/or minimized to the greatest extent practicable.
- Mitigation plan submitted to Department for review and approval
- Army Corps of Engineers, Charleston District Standard Operation Procedure (SOP) for guidance on calculating impacts and developing appropriate mitigation plans.

Much, much more to the process!

For more information, contact us at 803-898-4173 and ask Brenda for the project manager for your county.