

U.S. Environmental Protection Agency Endangerment Finding and Cause or Contribute Finding (40 C.F.R. Chapter 1) (2009)

In its Endangerment Finding (40 C.F.R. Chapter 1), the Administrator of the EPA found that GHGs in the atmosphere threaten the public health and welfare of current and future generations. The Administrator also found that the combined emissions of these well-mixed GHGs from new motor vehicles and new motor vehicle engines contribute to the GHG pollution that threatens public health and welfare. Although the Endangerment Finding does not place requirements on industry, it is an important step in the EPA's process to develop regulations. This action was a prerequisite to finalizing the EPA's proposed GHG emission standards for light-duty vehicles, which were finalized in May 2010. In the EPA's Cause or Contribute Finding the Administrator found that the combined emissions of these well-mixed GHG from new motor vehicles and new motor vehicle engines contribute to the GHG pollution that threatens public health and welfare.

Railroad Noise Emission Compliance Regulations (49 C.F.R. Part 210)

These regulations prescribe the minimum compliance for enforcement of the Railroad Noise Emission Standards established by the Environmental Protection Agency in 40 C.F.R. part 201. The FRA is the lead agency to ensure these regulations are followed. The Proposed Project would result in railroad noise emissions (see Section 4.12 – Noise and Vibration).

8.2 STATE LAWS AND REGULATIONS

Coastal Tidelands and Wetlands Act (SC Code of Laws Ann. Section 48-39-10 et seq.), South Carolina Coastal Zone Management Program (1976, as amended), and SCDHEC/OCRM Rules and Regulations for Permitting in the Critical Areas of the Coastal Zone, R. 30-1, et seq., 1976 SC Code Ann., as amended

The Coastal Tidelands and Wetlands Act (SC Code of Laws Ann. Section 48-39-10 et seq.) was established to direct the proper management of natural, recreational, commercial, and industrial resources of the state's coastal zone. The Act established the South Carolina Coastal Council and directs the implementation of a comprehensive management plan for use of coastal resources and gives permitting authority over "critical areas." The Act also authorized the South Carolina Coastal Zone Management Program. The South Carolina Coastal Zone Management Act provides for the protection and enhancement of the state's coastal resources. These regulations can be found in SCDHEC-OCRM's Critical Area Permitting Regulations, published April 25, 2008. In critical areas of the coastal zone, it is OCRM policy that, in determining whether a permit application is approved or denied, OCRM "shall base its determination on the individual merits of each application, the policies specified in Sections 48-39-20 and 48-39-30 (of the Act)." The OCRM administers the South Carolina Coastal Zone Management Act and has direct permitting authority over the "critical areas" of the coast. OCRM must balance the public's desire to utilize South Carolina's natural resources while

protecting environmental quality. OCRM's responsibility, as implemented under the Regulations, is to ensure that impacts to coastal resources are minimized.

Also, to ensure that stormwater runoff during construction of projects and following project completion do not have a negative effect on rivers, streams, marshes and other sensitive areas of the coast, OCRM regulates permitting for high- ground land disturbance. A stormwater management and sediment control plan is required for any construction/land disturbance activities in the coastal region (see Section 4.3 – Water Quality).

OCRM is required to review all state and federal permit applications for consistency with the South Carolina Coastal Zone Management Plan. Because the Proposed Project falls within the critical area, a permit would be required. A Construction in Navigable Waters Permit would not be required because the Proposed Project is in tidal areas (also known as critical areas) that are under the direct permitting jurisdiction of the OCRM.

When reviewing permit applications, OCRM considers:

- (a) In the planning of major transportation routes and airports, these projects should be sited for location inland from the critical areas;
- (b) The location and design of public and private transportation projects must avoid the critical areas to the maximum extent feasible. Where coastal waters and tidelands cannot be avoided, bridging rather than filling of these areas will be required to the maximum extent feasible;
- (c) Where wetlands will be destroyed, their value as wetlands will be assessed by the Department and weighed against public need for their destruction;
- (d) To the maximum extent feasible, transportation structures must be designed so as not to alter the natural water flow and circulation regimes or create excessive shoaling or erosion. Where applicable, adequate clearance for commercial and pleasure craft must be provided;
- (e) Where feasible, maximum care shall be taken to prevent the direct drainage of runoff water from transportation routes and associated facilities from entering adjacent water bodies;
- (f) Where appropriate, bridges and approaches should be designed to provide for the enhancement of public access by the utilization of fishermen, catwalks, boat launching ramps, bike lanes and other structural features;
- (g) During the planning of a multi-lane widening or improvement project, it is preferable to follow the existing alignment in wetland areas. Existing causeway and fill areas must be utilized wherever possible. The degree to which any existing causeway through wetlands can be widened must be reasonably proportionate to the expected traffic load of the causeway in the near future and the size and use of the area being provided access. The width of medians of divided highways must be reduced as much as possible wherever they cross wetland areas;
- (h) Roadway embankments and fill areas shall be stabilized by utilizing appropriate erosion devices and/or techniques in order to minimize erosion and water quality degradation

problems. Culverts shall be required, where appropriate, in order to maintain normal tidal influence and minimize disruption of drainage patterns;

- (i) The Department will require applicants for transportation project permits to consider the accommodation of other public utilities in facility design, thus avoiding unnecessary future alteration such as that caused by the laying of cables or transmission lines in wetlands adjacent to an existing roadway;
- (j) New road or bridge projects involving the expenditure of public funds to provide access to previously undeveloped barrier islands will not be approved unless an overriding public interest can be demonstrated.

SCDHEC 401 Water Quality Certification Regulations, R. 61-101, 1976 SC Code Ann., as amended

Section 401 of the CWA dictates that applicants for federal permits that result in discharges to navigable waters must obtain a certification from SCDHEC that the proposed activity will not violate state water quality standards. This includes individual or general federal permits issued pursuant to Section 404 of the CWA (33 U.S.C. 1344), Sections 9 and 10 of the Federal Rivers and Harbors Act of 1899 (33 U.S.C. 401-403), and permits or licenses issued by the Federal Energy Regulatory Commission (16 U.S.C. 1791, et seq.). The Corps Section 404 permit applications cannot be issued without a state-issued Section 401 Water Quality Certification. SCDHEC's Regulation 61-101, entitled Water Quality Certification, directs the processing of applications for certification.

The SCDHEC administers the Water Quality Certification program pursuant to Section 401 of the CWA. Since activities requiring a 404 permit (a Corps permit for the discharge of dredged or fill material) result in a discharge to waters or wetlands, SCDHEC must take certification action on all 404 permit applications. USCG permits also require states to take Water Quality Certification action; however, the USCG confirmed in letters dated November 7, 2017, that a USCG bridge permit would not be required for the Noisette Creek bridge and the Shipyard Creek bridges. Because the Proposed Project would include discharges to navigable waters (see Section 4.3 – Water Quality) and would require a 404 permit, a SCDHEC Water Quality Certification will also be required for the Proposed Project.

SCDHEC considers other factors to determine whether to issue a Section 401 Water Quality Certification, including:

- whether the activity is water dependent;
- the intended purpose of the activity;
- whether there are feasible alternatives to the activity; and
- all potential water quality impacts associated with the Project, both direct and indirect, over the life of the Project, including impacts on existing and classified uses; physical, chemical, and biological impacts, including cumulative impacts; the effect on circulation patterns and

water movement; and the cumulative impacts of the proposed activity and reasonably foreseen similar activities of the applicant and others.

This Water Quality Certification must state that applicable effluent limits and water quality standards will not be violated and the certification must be denied if SCDHEC does not have a reasonable assurance that the proposed activity will not cause or contribute to a violation of water quality standards.

SCDHEC Water Classifications and Standards, R. 61-68, 1976 SC Code Ann., as amended and SCDHEC Classified Waters, R. 61-69, 1976 SC Code Ann., as amended.

Pursuant to South Carolina Code Sections 48-1-10, et seq. of the 1976 South Carolina Code of Laws, the Department of Health and Environmental Control promulgated regulations to implement the South Carolina Pollution Control Act. R. 61-68, Water Classifications and Standards, establish appropriate classified water uses to be achieved and protected, establish general rules and specific water quality criteria to protect classified and existing water uses, establish antidegradation rules, protect the public health and welfare, and maintain and enhance water quality. The water quality standards also serve as a basis for decision making in other water quality program areas. NPDES permit limitations for waste discharges are based upon the classifications and water quality standards of the receiving waters. This regulation also governs the control of toxic substances, thermal discharges, stormwater discharges, dredge and fill activities, and other water related activities.

R. 61-69, Classified Waters, is the only repository of the state's site-specific water quality standards and provides a listing of all named waterbodies, some specific unnamed waterbodies, their classifications, and locations. R. 61-69 identifies the water quality standards that apply to the tidal saltwaters in the study area. These applicable standards are enforceable by NPDES permits or other regulatory mechanism. The Proposed Project discharges either directly or indirectly into water bodies and discharge must meet water quality standards. Structural or non-structural BMPs would need to be employed to reduce pollutant loads (see Section 4.2 – Hydrology and Section 4.3 – Water Quality). SCDHEC would be the agency responsible for assuring that the aforementioned laws and regulations were followed.

South Carolina Pollution Control Act, § 48-39-10, et seq.

The South Carolina Pollution Control Act defines the public policy of the state to maintain reasonable standards of purity of the air and water resources, consistent with the public health, safety and welfare of its citizens, maximum employment, the industrial development of the state, the propagation and protection of terrestrial and marine flora and fauna, and the protection of physical property and other resources. The SCDHEC was delegated the rulemaking and enforcement authority to abate, control and prevent pollution. Because construction and operation of the Proposed Project

could result in water and air pollution, this Act would apply (see Section 4.3 – Water Quality, Section 4.13 – Air Quality, and Section 4.15 – Hazardous, Toxic, and Radioactive Waste).

South Carolina Stormwater Management and Sediment Reduction Act, § 48-14-10, et seq.

This act allows the SCDHEC Bureau of Water to implement standards for managing stormwater runoff and controlling sediment loading to surface waters. These regulations, revised in June 2002, are provided in the *Standards for Stormwater Management and Sediment Reduction Regulations* 72-300 through 72-316. These regulations detail permit requirements and outline specific design criteria and specifications for stormwater facilities. Activities are deemed exempt if land-disturbing activities are conducted pursuant to a federal environmental permit, including Section 404 of the CWA. The Proposed Project will be required to obtain a Section 404 permit (see Section 4.2 – Hydrology, Section 4.5 – Waters of the U.S., and Section 4.3 – Water Quality).

Water Pollution Control Permits, R. 61-9, et seq.

The South Carolina NPDES and Land Application Permits Regulation regulates stormwater point source discharges for municipal separate storm sewer systems (MS4s), construction activities, and industrial activities. The *BMP Handbook* (SCDHEC 2005b) is a guide for stormwater management and erosion and sediment reduction BMPs and details procedures to control and limit sediment discharge, in addition to designs for installation and maintenance of various stormwater and erosion control systems. Stormwater runoff from industrial activities cannot discharge without an NPDES discharge permit. This permit requires the development of a Stormwater Pollution Prevention Plan (SWPPP), which includes BMPs to minimize pollution to receiving water bodies. SCDHEC Regulation 72-101, Erosion and Sediment Reduction and Stormwater Management, is the regulation that would apply to this site and activity because these regulations apply to land-disturbing activities on state-owned lands (land either owned by the state, a state agency, or a quasi-state agency under the management or control of such entities through right-of-way easements or other agreements between the entities and private landowners, except as exempted by these regulations). However, since the study area is located in one of the eight coastal counties that require the Coastal Zone Consistency Certification or other state permits, conditions may be added to address stormwater and sediment control issues for this activity. The SC OCRM must review the Proposed Project through a process called “Coastal Zone Consistency Certification” to make sure that it is consistent with the state coastal management policies before any state or federal permit can be issued for a project in the coastal zone (see Section 4.2 – Hydrology and Section 4.3 – Water Quality).

Total Maximum Daily Loads for Pollutants in Water. R. 61-110, 1976 SC Code.

Section 303(d) of the Federal Water Pollution Control Act (33 U.S.C. Section 1313(d)) requires States to establish the total loading that a water can receive without violating state water quality standards for waters that do not meet them. This regulation defines the term “Total Maximum Daily Load”

(TMDL) and defines the administrative appeal process for TMDLs. In addition, the regulation provides for public notice, public hearing, and notice of proposed decision, and addresses revisions to approved TMDLs.

State waters that do not attain their designated uses are included in the state's Section 303(d) list of impaired waters. Several waters are on the 2012 list of impaired waters (see Section 3.3 – Water Quality). The Proposed Project discharges either directly or indirectly into these impaired water bodies. Consequently, a reduction in pollutant loads would be necessary to meet water quality standards. Structural or non-structural BMPs would need to be employed to reduce pollutant loads or prevent further impairment (see Section 4.2 – Hydrology and Section 4.3 – Water Quality). SCDHEC would be the agency responsible for assuring that the aforementioned laws and regulations were followed.

Air Pollution Control Regulations and Standards – Regulation 61-62 (Statutory Authority: Section 48-1-10 et seq., S.C. Code of Laws, 1976, as amended.)

The State of South Carolina has established ambient air quality standards (SCAAQS) for the state that also applies to the study area (see Section 4.13 – Air Quality). The SCAAQS include the same pollutants and criteria as the NAAQS, and in addition include Gaseous Fluorides (as hydrogen fluorides). A State Implementation Plan (SIP) is developed and used to determine ways the NAAQS and State Ambient Air Quality Standards will be achieved or maintained. The SIP for South Carolina identifies the ways in which NAAQS will be achieved or maintained within the state, including the Proposed Project. SCDHEC would be the agency responsible for assuring that the aforementioned laws and regulations were followed.

Protection of Game – Section 50-11-10 et seq., S.C. Code of Laws

This law formally adopted the Federal Migratory Bird Treaty Act and codified prohibitions concerning hunting of waterfowl and leveling penalties. The board of SCDNR annually may set seasons, bag limits, and methods for hunting and taking migratory birds consistent with federal law. A violation of the Migratory Bird Treaty Act or its implementing regulations or a violation of regulations set by the board is a misdemeanor. Migratory birds have been documented within the Vegetation and Wildlife study area (see Section 4.4 – Vegetation and Wildlife), therefore the law applies. SCDNR would be the agency responsible for assuring that the aforementioned laws and regulations were followed.

Nongame and Endangered Species Act – Section 50-15-10 et seq., S.C. Code of Laws

This law gave authority to the SCDNR to issue regulations and develop management programs designed to ensure the continued ability of nongame wildlife to perpetuate themselves successfully. Regulations outline species or subspecies of nongame wildlife which the department deems in need

of management, giving their common and scientific names by species or subspecies. The department also established proposed limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment as may be deemed necessary to manage such nongame wildlife.

It is unlawful for any person to take, possess, transport, export, process, sell, or offer for sale or ship nongame wildlife deemed by the department to be in need of management under this law. Subject to the same exception, it shall further be unlawful for any common or contract carrier knowingly to transport or receive for shipment nongame wildlife deemed by the department to be in need of management pursuant to this law. Nongame wildlife subject to this law have been documented within the Vegetation and Wildlife study area (see Section 4.4 –Vegetation and Wildlife, and Section 4.6 – Protected Species), therefore the law applies. SCDNR would be the agency responsible for assuring that the aforementioned laws and regulations were followed.

State Underground Petroleum Environmental Response Bank Act – Section 44-2-10 et seq., S.C. Code of Laws

This Act directed the SCDHEC to develop regulations relating to permitting, release detection, prevention, and correction applicable to all owners and operators of underground storage tanks (USTs) as may be necessary to protect human health and the environment. These regulations for USTs include requirements for submitting a permit application and obtaining permits before the installation and operation of an UST; requirements for taking corrective action in response to a release from an UST; and requirements for the closure of tanks to prevent future releases of regulated substances into the environment. The study area may currently have USTs and there is the potential for use of new USTs for petroleum and other substances of concern (see Section 4.15 – Hazardous Waste and Materials). SCDHEC would be the agency responsible for assuring that the aforementioned laws and regulations were followed.

Hazardous Waste Management Act – Section 44-56-10 et seq., S.C. Code of Laws

This Act directed the SCDHEC to develop regulations relating to procedures or standards as may be necessary to protect the health and safety of the public, the health of living organisms and the environment from the effects of improper, inadequate, or unsound management of hazardous wastes. Such regulations prescribe contingency plans; the criteria for the determination of whether any waste or combination of wastes is hazardous; the requirements for the issuance of permits required; standards for the transportation, containerization, and labeling of hazardous wastes consistent with those issued by the United States Department of Transportation; operation and maintenance standards; reporting and record keeping requirements; and other appropriate regulations. Construction of the Proposed Project will involve excavation activities that may result in involvement with contaminated soils and storage and use of hazardous materials such as solvents

may be required. Also, it is anticipated that a relatively low number of containers coming into the ICTF will contain hazardous materials (see Section 4.15 – Hazardous, Toxic, and Radioactive Waste). SCDHEC would be the agency responsible for assuring that the aforementioned laws and regulations were followed.

South Carolina Solid Waste Policy and Management Act – Section 44-96-10 et seq., S.C. Code of Laws.

This law's intent is to protect the public health and safety, protect and preserve the environment of the state, and recover resources which have the potential for further usefulness by providing for, in the most environmentally safe, economically feasible and cost-effective manner, the storage, collection, transport, separation, treatment, processing, recycling, and disposal of solid waste. The Proposed Project will generate solid waste from construction and operation (see Section 4.15 – Hazardous, Toxic, and Radioactive Waste). SCDHEC would be the agency responsible for assuring that the aforementioned laws and regulations were followed.

Occupational Health and Safety Act – Section 41-15-10 et seq., S.C. Code of Laws

This Law governs occupational health and safety. Employers are required to provide employment and a place of employment that are “free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees . . .” The Department of Labor, Licensing, and Regulation was directed by this Act to issue regulations requiring employers to monitor and measure an employee's exposure to potentially toxic materials or harmful physical agents and to maintain accurate records of such employee exposure.

The Proposed Project will require demolition/renovation of buildings where asbestos-containing materials and metals-based paints have been detected above their regulatory thresholds. Also, contaminated soil may be encountered during construction. Proper worker protection will be required during construction (see Section 4.15 – Hazardous, Toxic, and Radioactive Waste). The SC Department of Labor, Licensing, and Regulation would be the agency responsible for assuring that the aforementioned laws and regulations were followed.

Standards of Performance for Asbestos Projects – Regulation 61-86.1 (Statutory Authority: Sections 44-1-140; 48-1-30; 44-87-10 et seq. S.C. Code of Laws, 1976, as amended.)

This regulation applies to: any owner/operator, asbestos abatement entity, building inspector, management planner, project designer, contractor, asbestos abatement entity, air sampler, commercial labor provider, supervisor, worker, non-industrial facility owner and/or operator, demolition contractor involved in the inspection, in-place management, design, removal, renovation, encapsulation, enclosure, repair, clean-up, demolition activity, or any other disturbance of regulated

asbestos-containing material (RACM); and any asbestos training course provider or asbestos training course instructor who conducts mandatory asbestos training courses.

The Proposed Project will require demolition/renovation of buildings where asbestos-containing materials have been detected above their regulatory thresholds (see Section 4.13 – Air Quality, Section 4.15 – Hazardous, Toxic, and Radioactive Waste, Section 4.17 – Human Health and Safety). The SCDHEC’s Asbestos Section would be the agency responsible for assuring that the aforementioned laws and regulations were followed.

8.3 LOCAL LAWS AND REGULATIONS

The Zoning Ordinance of the City of North Charleston, South Carolina – (North Charleston, South Carolina Code of Ordinances, Appendix A)

City of North Charleston has enacted and ordained the zoning ordinance of the city for the purposes of guiding development in accordance with existing and future needs, preserving and enhancing the present advantages of the city and the community, overcoming present handicaps and preventing or minimizing such future problems as may be foreseen, promoting efficiency and economy in the process of development or redevelopment of the city, protecting, promoting, and improving the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare, lessening congestion in the streets and making adequate provision for traffic, promoting safety from fire, panic and other dangers, promoting health and general welfare, providing adequate light and air, preventing the overcrowding of land, avoiding undue concentration of population and promoting the healthful and convenient distribution of population, protecting scenic areas, promoting good civic design, appearance and arrangement, and promoting wise, adequate and efficient expenditure of public funds and resources and the adequate provision of public utilities, transportation, water, sewage, schools, parks and other public requirements. The city council of North Charleston is authorized to regulate the height, bulk, number of stories and size of buildings and other structures, the percentage of lot which may be occupied, the size of yards, courts, and other open spaces, the density and distribution of population, and the location and use of buildings, structures and land for trade, industry, residence, recreation, agriculture, forestry, conservation, airports and approaches thereto, water supply, sanitation, protection against floods, public activities, and other purposes, the erection, construction, reconstruction, alteration, repair, or use of buildings, structures or land, including requirements of off-street parking and loading, landscaping and protection and regulation of trees in consideration of their value from an environmental, agricultural, aesthetic, scenic or preservation standpoint, taking into account, among other items, the character of the area in which the property is located and its peculiar suitability for particular uses, the conservation of value of land and buildings and the encouragement of the most appropriate use of land, buildings and structures, the promotion of desirable living conditions and the sustained stability of neighborhoods, the protection of property against blight and depreciation, the securing of economy in governmental expenditures, and the encouragement of the most appropriate use of land throughout the city.