STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Environmental Services and South Carolina Coastal Conservation League, Petitioners, v. Rom Reddy, Respondent.	Docket No. 24-ALJ-07-0232-CC **ORDER ON MOTIONS FOR RECONSIDERATION**

This case is before the South Carolina Administrative Law Court (Court or ALC) pursuant to Motions for Reconsideration (Motions) filed by Respondent Rom Reddy and Petitioners South Carolina Department of Environmental Services (Department) and South Carolina Coastal Conservation League (SCCCL) on November 3, 2025. Each of the parties move this Court pursuant to Rule 29(D) of the Rules of Procedures for the Administrative Law Court (SCALC Rules) and Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP) to reconsider and amend the Final Order dated October 23, 2025. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004) ("A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule."). On November 10, 2025, the Court rescinded its Final Order to allow the Court further time to review the parties' pending Motions.[1] Then, on November 13, 2025, the parties each filed Responses to the Motions (Responses). Petitioners then filed replies to Respondent's Response on November 20, 2025.

After reviewing the Motions, I issue this Order. Furthermore, although this Order addresses the arguments set forth in the parties' Motions, I also amended my reasoning in the Final Decision and issued an Amended Final Order in an effort to better explain the application of the facts and the law in this case. *See* CHARLES ALAN WRIGHT & ARTHUR R. MILLER, 11 FEDERAL

[1] *See* Rule 29(D)(2), SCALCR (providing that "[i]f no action is taken by the administrative law judge within the applicable period [thirty days from the filing of a motion for reconsideration or following responses to such motion], the inaction shall be deemed a denial of the relief sought in the motion."); *see also* Rule 3(B), SCALCR ("For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law.").

PRACTICE AND PROCEDURE § 2810.1 (3d ed. 2025) (observing that Rule 59(e) motions may be appropriate to preserve an issue raised in a contested case for appellate review or to ask the court to decide an issue which has been raised but not ruled upon, but they "may not be used to relitigate old matters"). Nevertheless, while review of the parties' Motions caused me to reassess my reasoning on some issues in this case, I ultimately arrived at the same conclusion.

DISCUSSION

Respondent's Arguments

Notice that the Court Could Order the Removal of His Structure

Respondent argues he was denied due process because he lacked adequate notice that the removal of the hard structure which he constructed was a potential action based upon subsection 48-39-120(C) of the South Carolina Code. Specifically, Respondent contends the Department's July 1, 2024 Administrative Order contains no reference to subsection 49-38-120(C) of the South Carolina Code nor were prehearing statements issued setting forth with particularity the issues to be considered by the Court. Respondent therefore argues he was deprived of the opportunity to argue and present evidence regarding the applicability of that statutory provision outside of the critical area as well as whether the hard structure presented an adverse effect on the public interest.

Despite Respondent's assertions to the contrary, I find Respondent's due process rights have not been violated.

"Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (citing *Mathews v. Eldridge,* 424 U.S. 319, 332, 96 S.Ct. 893, 901, 47 L.Ed.2d 18 (1976)). At a minimum procedural due process requires: (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." *Adams v. H.R. Allen, Inc*., 397 S.C. 652, 657, 726 S.E.2d 9, 12 (Ct. App. 2012) (citing *In re Dickey,* 395 S.C. 336, 360, 718 S.E.2d 739, 751 (2011) (quoting *In re Vora,* 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003)).

"The purpose of administrative notice requirements is to allow parties to prepare intelligently for the hearing." 73A C.J.S. Public Administrative Law and Procedure, Notice and hearing requirements in administrative proceedings, § 307 (May 2025 Update). "The Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties

of the pendency of the action and afford them an opportunity to present their objections." *Blanton v. Stathos*, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (Ct. App. 2002) (citing *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950)); *Kurschner*, 376 S.C. at 171, 656 S.E.2d at 350 ("Procedural due process mandates that a litigant be placed on notice of the issues which the court is to consider."). "In determining the process due, courts must consider: (1) the private interest affected by the proceeding; (2) the risk of erroneous deprivation of that interest as a result of the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the State's interest, including the burden of additional or substitute procedural requirements." *McIntyre v. Sec. Comm'r of S.C.*, 425 S.C. 439, 449, 823 S.E.2d 193, 198 (Ct. App. 2018).

In this instance, Respondent has failed to show that he was denied due process. In fact, Respondent was clearly given notice that the Department was seeking to remove the hard structure pursuant to its authority. Indeed, the Department's October 20, 2023 Notice to Comply and the subsequent three Cease and Desist Orders repeatedly informed Respondent that the Department was seeking to remove the hard structure. S.C. Code §§ 48-39-10, *et seq*, (2008 & Supp. 2025) (Act). Later, on February 9, 2024, the Department moved this Court for a Temporary Restraining Order and Preliminary Injunction (TRO) on the specific ground that "[i]f an injunction is not issued, **the public will suffer immediate and irreparable harm by the blockade created by the Reddy's unauthorized wall in the critical area and the threat of harm due to the unsafe, dangerous conditions**." (emphasis added). The Department's May 22, 2024 Notice of Alleged Violation/Admission Letter, which Respondent's counsel acknowledged and responded to, also expressly set forth the Department's authority under subsection 48-39-120(C) of the South Carolina Code and the Department's July 1, 2024 Administrative Order also cited Respondent as in violation of the Act.[2] Moreover, even if the Department's notice was insufficient, the *de novo* hearing before this Court, renders harmless any procedural due process violations before the lower administrative body. *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 551 S.E.2d 263 (2001); *see also Engaging & Guarding Laurens Cnty's*

[2] The Department later filed an Agency Information Sheet (AIS) with this Court. While the AIS included all of the statutory provisions cited in the Administrative Order, it also set forth the additional designation that the controversy was not limited to those set forth therein.

Env't (EAGLE) v. S.C. Dep't of Health & Env't Control, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014) (recognizing contested case proceedings before the ALC are *de novo*).

Yet still, Respondent argues that he was deprived of the opportunity to argue and present evidence regarding whether subsection 48-39-120(C) of the South Carolina Code applied outside of the critical area since he was unaware of this Court's consideration of the statutory provision. He specifically contends that he lacked sufficient notice because Prehearing Statements were not ordered to delineate with specificity the issues before the Court. However, the use of Prehearing Statements is discretionary. Indeed, Rule 14, SCALCR, provides that the Court "**may** order each party to prepare and return a pre-hearing statement…." (emphasis added). Obviously, "[t]he use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary unless it appears to require that it be given any other meaning." *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 352–53, 549 S.E.2d 243, 250 (2001). Thus, the Court was not required to order Prehearing Statements. In fact, Prehearing Statements were not ordered in this case as the as the issues were apparent considering that the parties had been disputing the Department's authority to order the removal of Respondent's hard structure since February 9, 2024. *See* SCDHEC's Petition for Injunctive Relief and Motion for Temporary Injunction, *South Carolina Department of Environmental Services and South Carolina Coastal Conservation League v. Rom Reddy*, Docket No. 24-ALJ-007-0032-IJ (Feb. 9, 2024). Additionally, after this case was filed, Respondent neither moved this Court for an order for Prehearing Statements nor an order for a more definite statement of the statutory provisions at issue in the case.

Furthermore, subsection 48-39-120(C) of the South Carolina Code was specifically referenced in the Court's April 14, 2025 Order on Respondent's Motion for Summary Judgement. Indeed, on page four of the Order, the Court stated "[f]urther, the Department has the authority to remove all erosion control structures that have an adverse effect on the public interest.[3] S.C. Code Ann. § 48-39-120 (2008)." Moreover, at the commencement of the contested case hearing, the Court set forth its understanding of the issues in the case. The Department clarified, without objection from Respondent, that one of the issues was whether the Department had the authority to enforce its July 1, 2024 Administrative Order, which specifically ordered the removal of the

[3] Similarly, the Department's Reply to Respondent's Motion for Summary Judgement expressly sets forth its position that public access was of great importance and that the hard structure was affecting public access and detrimentally impacting the public.

unauthorized materials (including the two structures), in the area where the critical area of the beach has eroded landward of the beach/dune system. Significantly, the issue was not limited to the Department's authority to require a permit pursuant to section 48-39-130 of the South Carolina Code nor the grounds set forth in the Department's July 1, 2024 Administrative Order. The Department also further clarified that another issue was if the penalty was appropriate, including the "removal of the hard erosion control structure off the beach" and counsel for the Department specifically stated it wished for the Court "to order the removal of the wall…." Notably, Respondent never objected. In addition, Respondent himself addressed public access issues, thus showing that he was clearly on notice that the effects of the hard structure on the public were at issue. *See Hill v. York Cnty. Natural Gas Auth.*, 384 S.C. 483, 491, 682 S.E.2d 809, 813 (2009) (holding that no party was prejudiced by statutory references when all parties were well aware of the central dispute).

In addition, Rule 15, SCALCR, only requires the Court issue notice of "the date, time, place, purpose of the hearing, the administrative law judge who will conduct the hearing, and any other matters necessary for the prompt resolution of the matter." The Court timely issued notice on January 17, 2025, which complied with this rule. Rule 15, SCALCR; *see also* S.C. Code Ann. § 1-23-600(B) ("Notice of the contested case hearing must be issued in accordance with the rules of procedure of the Administrative Law Court.").

Finally, Respondent failed to show that he was substantially prejudiced by the process. *Leventis v. S.C. Dep't of Health and Env't Control,* 340 S.C. 118, 132, 530 S.E.2d 643, 650 (S.C. Ct. App. 2000) (citing, *Ogburn–Matthews,* 332 S.C. 551, 561, 505 S.E.2d 598, 603 (citing *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n,* 282 S.C. 430, 319 S.E.2d 695 (1984)) ("[t]o prove the denial of due process in an administrative proceeding, a party must show that it was substantially prejudiced by the administrative process."), *overruled on other grounds by, Brown v. S.C. Dep't of Health & Env't Control*, 348 S.C. 507, 521, 560 S.E.2d 410, 418 (2002). Respondent contends that he was prejudiced because he did not have an opportunity to create a factual record regarding "the lack of adverse effects on the public interest" and thus, he argues the record is insufficient for an appellate court to determine whether the Court's factual findings are supported by the evidence. However, a full hearing was held before this Court over the course of five days during which Respondent actively participated. Indeed, Respondent had the opportunity to elicit testimony, present favorable evidence, cross-examine adverse witnesses and present favorable

ones. *See Leventis*, v. *S.C. Dep't of Health and Env't Control*, 340 S.C. at 131, 530 S.E.2d at 650. In fact, Respondent even crossed the Department's witnesses regarding the impact of the hard structure he constructed on the public. Respondent's failure to present evidence to disprove evidence of the adverse effects of his hard structure cannot now be recast as a due process violation. Lastly, to the extent Respondent argues he was deprived of an opportunity to argue whether the provision is applicable outside of the critical area, Respondent's briefing of this issue in his Motion for Reconsideration satisfies the bare minimum requirements of procedural due process.

Notice of the Issue of the Adverse Effects of the Hard Structure

Respondent contends the topics listed in the Department's expert disclosure for Mr. Jones neither generally nor specifically related to the adverse effects of the hard structure. Accordingly, he argues that he had no prior knowledge that Mr. Jones would testify about adverse effects of the hard structure and thus was deprived of the opportunity to conduct a meaningful cross-examination of Mr. Jones or present his own witnesses to rebut Mr. Jones's testimony.

At the outset, this Court's finding of adverse effects in the Final Order was not solely based on the testimony of Christopher P. Jones. Indeed, Mr. Jones's testimony was cumulative to other testimony and evidence regarding the adverse effects of the hard structure on the public's interest, including the testimony of Morgan Flake and Matt Slagel and photographic evidence in the Record. Moreover, the Department's disclosure set forth that Mr. Jones's testimony was expected to include "[c]oastal processes affecting the [s]ite and surrounding area" and "[p]rinciples of coastal processes and coastal morphology as applied to the facts of this case." Certainly, this would seem to include testimony regarding sediment transport, beach erosion and the use of erosion control structures. Additionally, even if the Department's expert disclosure for Mr. Jones did not expressly state that the Department intended to show the adverse effect of the hard structure through Mr. Jones's testimony, Respondent should have expected that Mr. Jones's testimony would be used to support the Department's case which, as explained above, included the Department's authority to order the "…removal of erosion control structures which have an adverse effect on the public interest." S.C. Code Ann. § 48-39-120(C).

Respondent was also clearly placed on notice of this issue during the presentation of the evidence. For instance, without objection from Respondent, Mr. Jones was offered as an expert in "coastal engineering, coastal processes, … **including consideration of storm impacts and erosion control structures**." (emphasis added). Respondent had an opportunity to cross-examine

Mr. Jones and, significantly, he did not object when the Department elicited testimony from Mr. Jones regarding the adverse effects of the hard structure. Thus, Respondent was clearly on notice of this issue in the case. *See also Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) ("A party cannot use a motion for reconsideration to raise for the first time an issue the party could have raised prior to judgment but did not, nor bring before the court theories or arguments that were not advanced earlier.").

In conclusion, the record shows Respondent received extensive notice that the Department was seeking to enforce the provision of the Act, including subsection 48-39-120(C) of the South Carolina Code, and removal of the hard structure. Respondent had an opportunity to, and did, conduct extensive discovery, and was afforded a full evidentiary hearing and opportunity to create a full, factual record with regard to the adverse effects on the public interest. Certainly, Respondent could have presented favorable witness and evidence to refute the adverse effects of the hard structure on the public interest, if he wished. Accordingly, Respondent has failed to show a violation of his due process rights.

Application of Subsection 48-39-120(C)

Respondent argues subsection 48-39-120(C) of the South Carolina Code does not give the Department jurisdiction to remove erosion control structures outside of the critical area because when interpreted within the broader context of the Act, there is nothing to suggest that the General Assembly intended to expand the Department's jurisdiction beyond the critical areas. Respondent also submits that the Court erred in relying on *South Carolina Coastal Conservation League v. South Carolina Department of Health & Environmental Control*, 434 S.C. 1, 862 S.E.2d 72 (2011) since that case arose from a non-critical area permit for which the Department's jurisdiction was not in dispute.

The Court respectfully does not find that it misinterpreted or misapplied subsection 48-39-120(C). "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing *Charleston Cnty. Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *In re Vincent J.,* 333 S.C. 233, 509 S.E.2d 261 (1998). "If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.

Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995) (citing *Miller v. Doe*, 312 S.C. 444, 441 S.E.2d 319 (1994)).

The Legislature has declared that it is the policy of this state "to protect the quality of the coastal environment and to promote the economic and social improvement of the **coastal zone** …" and "[t]o protect and, where possible, to restore or enhance the resources of the **State's coastal zone** for this and succeeding generations." S.C. Code Ann. § 48-39-30(A), (B)(2) (2008) (emphasis added). Importantly, the coastal zone is not confined to the critical areas but rather includes "**all lands** and waters in the counties of the State which contain any one or more of the critical areas." S.C. Code Ann. § 48-39-10(B) (Supp. 2025). Certainly, the Legislature could have chosen to limit the Department's authority under subsection 48-39-120(C) to the critical area, yet it chose not to.

Here, there is no dispute that Respondent's hard structure lies in the coastal zone and therefore falls within the Department's jurisdiction by operation of law. Respondent nonetheless argues in his Motion for Reconsideration that through the enactment of the BMA the Legislature "comprehensively amended the Department's prior authority over erosion control structures … creating specific provisions addressing removal and repair of erosion control structures." However, subsection 48-39-290(B)(2)(d) of the South Carolina Code clearly provides that "[t]he provisions of this section **do not affect or modify** the provisions of Section 48-39-120(C)." (emphasis added).

Yet, Respondent further assets that considering the Department's inaction in enforcing this provision it can be inferred from the "statutory context" that it was intended to regulate what is now obsolete or hazardous groins, jetties, or seawalls located in tidal waters or public trust land. In addition, he argues that before the Court can order removal under this statutory provision the Department must promulgate regulations in accordance with the Administrative Procedure Act (APA) which set forth procedures, factors, and standards to be applied. However, Respondent did not cite any authority or explain how the "statutory context" support his contention. Moreover, this Court has simply applied the facts to the law as enacted.

Lastly, Respondent claims the Court's citation to *South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control*, 434 S.C. 1, 862 S.E.2d 72 (2011), does not support the conclusion that the Department has jurisdiction outside of the critical area because the Department's jurisdiction was not in dispute in that case.

Contrariwise, *South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control* illustrates that jurisdictional authorities under the Act extends beyond the critical area. Furthermore, *South Carolina Coastal Conservation League* emphasizes that the policies undergirding the Act must remain front and center of this Court's analysis. It is those statutory enumerated policies that directed the Court's determination.[4]

Adverse Effect of Respondent's Structure on the Public Interest

Respondent argues substantial evidence does not support the Court's finding that Respondent's hard structure has an adverse effect on the public interest. Respondent contends the Court overlooked the fact that Mr. Jones's testimony was about the "principal effects of hard erosion control structures" and not based on the specific circumstances surrounding Respondent's hard structure. In addition, Respondent avers Mr. Jones's opinion is speculative and that the Department failed to meet its burden to show that the structure is presently having an adverse effect on the public interest.

I do not find the Court erred in this regard. Mr. Jones's discussion regarding the "principal effects of hard erosion control structures" was the basis for which Mr. Jones concluded Respondent's hard structure would have a "further detrimental impact if a substantial storm hits." Notably, Mr. Jones's opinion is consistent with the Legislative recognition that hard structures contribute to the deterioration and loss of the dry sand beach. *See* S.C. Code Ann. S.C. Code Ann. § 48-39-250(5). Lastly, while I acknowledge that the degree of the future impact of Respondent's hard structure on the adjacent beach is still unknown, the evidence establishes that the hard structure is affecting and will continue to affect the public's interest as further clarified in the Court's subsequent discussion of the adverse effects.

Application of Subsection 48-39-290(D)(1)

Respondent argues that the Court erred in relying on subsection 48-39-290(D)(1) to buttress its conclusion under subsection 48-39-120(C) of the South Carolina Code since subsection 48-39-290(D)(1) only applies to special permits to build structures "other than an erosion control structure or device."

[4] I also again note that the Supreme Court determined that this Court must consider the effect of a structure upon the critical area, even if that structure is not in the critical area.

I do not find the Court erred in this regard. Respondent's focus on the phrase "other than an erosion control structure or device" ignores that the provision only excludes "erosion control structure or device **seaward of the baseline**". S.C. Code Ann. § 48-39-290(D)(1) (emphasis added). Certainly, this makes sense when considering the Legislative findings regarding hard erosion control devices and the general prohibition against new construction or reconstruction seaward of the baseline. *See* S.C. Code Ann. 48-39-290(A) (Supp. 2025). Therefore, I do not find that the Court erred in its consideration of the statutory provision.

Determination of Whether the Department Has Jurisdiction Landward of the Setback Line.

Respondent as well as the Department request that this Court conclusively determine whether the Department has jurisdiction landward of the setback line. However, that determination is not necessary to resolve the principal issue before this Court. Therefore, it is not necessary to reconsider my Final Order in this regard.

This matter arose from Respondent's request for a contested case hearing to review the Department's July 1, 2024 Administrative Order in which the Department found Respondent unlawfully constructed a hard structure in violation of certain South Carolina statutes, regulations, and cease and desist directives and orders. The initial decision resulted in the Department ordering removal of Respondent's hard structure, thus giving rise to a justiciable controversy. *Graham v. State Farm Mut. Auto. Ins. Co*., 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) ("A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.").

As stated in my Final Order, the policies and law support the actions of the Department, a conclusion which ends the litigation on the merits of the challenged action. *See also Doe v. Howe*, 362 S.C. 212, 216, 607 S.E.2d 354, 356 (Ct. App. 2004) (citing *Link v. Sch. Dist. of Pickens County*, 302 S.C. 1, n. 3, 393 S.E.2d 176, n. 3 (1990). Therefore, although the Department conclusion that Respondent's hard structure was in "beaches critical area" was a component of its decision, that decision was not a necessary determination for purpose of this Court's *de novo* review of the contested case on appeal. *See Brown v. S.C. Dep't of Health and Env't Control*, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2022) (noting that when reviewing a **contested case** on appeal, the ALJ conducts a *de novo* hearing with the presentation of evidence and testimony.); *Blizzard v. Miller,* 306 S.C. 373, 375, 412 S.E.2d 406, 407 (1991) (trial *de novo* is one in which "the whole

case is tried as if no trial whatsoever had been had in the first instance."). With the litigation on the merits concluded, there is no need to consider whether the Act and implementing regulations grant the Department jurisdiction to require Respondent to obtain a permit for construction and reconstruction landward of the setback line.

Furthermore, neither Respondent nor the Department have invoked a declaratory judgment action. Therefore, although there is a reasonable question whether the General Assembly intended to grant the Department permitting authority in area landward of the setback line as "beach critical area," in light of this Court's *de novo* determination, any determination on this issue would be merely advisory since there is no longer a justiciable controversy. *E.g., Jones v. Dillon-Marion Hum. Res. Dev. Comm'n*, 277 S.C. 533, 536, 291 S.E.2d 195, 196 (1982) ("Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy."); *see Power v. McNair*, 255 S.C. 150, 155, 177 S.E.2d 551, 553 (1970) (Courts refuse to enter the field of advisory opinion").

Interpretation of the Term "Periodic" in Subsection 48-39-10(H)

Respondent contends the Court failed to apply the applicable canons of statutory construction in construing "periodic," including the principles of construing land use statutes strictly, the rule of lenity, and the canon of constitutional avoidance which require a strict construction of the definition of "beaches" and "periodic" in favor of Respondent.

I disagree and do not find that the Court misconstrued or misinterpreted the term, "periodic." At the outset, Respondent's arguments are not supported by any reference to citations of legal authority. *Cf. Equivest Fin., LLC v. Ravenel*, 422 S.C. 499, 506, 812 S.E.2d 438, 441 (Ct. App. 2018) ("When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue."). Furthermore, this case is not a criminal case and thus the rule of lenity is inapplicable. *See State v. Miles*, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017), *reh'g denied* (Oct. 19, 2017) ("This rule of lenity applies when a criminal statute is ambiguous, and requires any doubt about a statute's scope be resolved in the defendant's favor.").

Likewise, the avoidance canon only comes into play where an otherwise acceptable construction of a statute raises serious constitutional problems. *See* 16 C.J.S. *Constitutional Law* § 248. Here, Respondent argues the Court's interpretation of "periodic" is so vague and ambiguous that it required him to guess as to what constitutes "beaches" critical area and also

increases the likelihood that the Department's jurisdiction may expand by a singular storm event. Importantly, "[a] law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application." *Curtis v. State*, 345 S.C. 557, 572, 549 S.E.2d 591, 598 (2001). However, "[a] statute is not unconstitutionally vague simply because it 'uses undefined terms or could have been drafted more precisely.'" *Whitehurst v. Town of Sullivan's Island*, 446 S.C. 137, 150, 919 S.E.2d 402, 410 (2025) (*quoting in part State v. Lewis*, 434 S.C. 158, 863 S.E.2d 1 (2021)). In fact, the requirement that a statute reasonably convey its obligations is satisfied by its use of ordinary terms or terms whose meaning can be determine by reference to "other definable sources." *Id*. Furthermore, "[w]here a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning." *Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 91–92, 572 S.E.2d 298, 303 (Ct. App. 2002).

Here, although "periodic" is not specifically defined under the Act, it has a clear ordinary meaning. Specifically, "periodic" is defined as "appearing or occurring from time to time." *Periodic*, Merriam-Webster, https://www.merriam-webster.com/thesaurus/periodic (last visited Nov. 12, 2025). Furthermore, the inclusion of the language limiting "periodic inundation" to lands in which "no nonlittoral vegetation is established," provides a benchmark by which to discern whether inundation which has occurred from time to time, renders the area beaches.

Turning to the application of the statute in this case, the Court did not determine whether Respondent's hard structure should be removed based on its location in the statutorily defined beaches. Thus, whether the structure was subject only to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established was not specially decided by the Court. *See* S.C. Code Ann. § 48-39-10(H) (defining "beaches" as "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established."). Rather, the Court considered whether removal of Respondent's hard structure was warranted based upon the adverse effects to the public beach due to inundation interacting with Respondent's hard structure. Certainly this would include waves and tidal action as well as storms and king tides which are episodic in nature, as each are a part of the natural coastal environment and, as the evidence in this case displayed, they occur from time to time.

The Rulemaking Process under the Administrative Procedures Act

Respondent argues the Court erred in failing to rule on whether the Department failed to comply with the rulemaking process required under the APA when it abandoned its long-standing policy of not asserting jurisdiction landward of the setback line. He contends this issue applies equally to any attempt by the Department to order the removal of an erosion control structure under subsection 49-38-120(C). As stated in the Final Order, the Department's actions fell within statutory authorities under subsection 48-39-120(C) of the South Carolina Code. Furthermore, the Court's determination was not based upon the regulations promulgated by the Department but rather the statutes enacted by the General Assembly. As such, any procedural irregularities by the agency are moot. *Sloan v. Friends of Hunley, Inc*., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (moot case exists where judgment will have no practical legal effect upon existing controversy); *v. Dillon-Marion Hum. Res. Dev. Comm'n ,* 277 S.C. at 535, 291 S.E.2d at 196.

SCCCL's Arguments

Implication of the Court's Statement that It "Need Not Consider" Further Jurisdictional Arguments under the CTWA

SCCCL appears to seek clarification as to whether this Court's April 24, 2025 Summary Judgment Order constitutes a final and enforceable finding that the beaches critical area encompasses the active beach and adjacent beach/dune system extending from the mean high-water mark landward to the setback line. Significantly, the Court's April 24, 2025 Order denied Respondent's Motion for Summary Judgment. Importantly, the denial of a motion for summary judgment decides nothing about the merits of the case but simply decides if the case should proceed to trial. *E.g*., *Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994).

Reliance on the Department's Past Enforcement Practices to Mitigate Penalties

SCCCL contends the Court erred in relying on the Department's past enforcement practices to mitigate or eliminate penalties. The Court has addressed this issue in its Amended Final Order to the extent the arguments in this section changed or informed this Court's reasoning.

Consideration of Willfulness Under Subsection 48-39-130(C)

SCCCL argues the Court erred in considering willfulness when it rejected the civil penalty imposed under subsection 48-39-130(C) of the South Carolina Code. However, I do not find that the Court erred. In fact, the Court's discussion of the willful nature of Respondent's actions was

merely responsive to the basis for which the Department argued the civil penalty was appropriate.[5] Nevertheless, the Court has addressed this issue in its Amended Final Order to further clarify its reasoning.

Implication of Respondent's Belief that the Department Lacked Authority

SCCCL contends the Court erred in relying on Respondent's good faith belief that the Department lacked authority. However, SCCCL misinterpreted the Court's analysis of the issue. Nevertheless, the Court has clarified its reasoning in its Amended Final Order to avoid any misinterpretation.

Status of the Department's July 1, 2024 Administrative Order.

SCCCL avers that the Court's Final Order creates uncertainty since it neither "affirms nor vacates" the Department's July 1st Administrative Order—an ambiguity which SCCCL argues to be inconsistent with "the statute's mandatory structure." The Court is uncertain from where this "mandatory structure" SCCCL speaks of derives. Even so, the Court sits as the adjudicatory body in all contested cases involving the Department. *See* S.C. Code Ann. § 1-23-600(A) (Supp. 2025); S.C. Code Ann. § 44-1-60(G) (2018) (allowing applicants, permittees, licensees, or affected persons to file a request for a contested case hearing with the ALC in accordance with the statute); *see also Marlboro Park Hosp. v. S.C. Dep't of Health & Env't Control*, 358 S.C. 573, 579, 595 S.E.2d 851, 854 (Ct. App. 2004). A contested case hearing is distinguishable from judicial review in that this Court conducts a *de novo* hearing complete with the presentation of evidence and testimony." *Engaging & Guarding Laurens Cnty.'s Env't ("EAGLE") v. S.C. Dep't of Health & Env't. Control*, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014). Indeed, as the sole finder of fact, this Court considers the matter anew, freely substituting its own judgment as if no trial whatsoever had been had in the first instance. *S.C. Dep't of Revenue v. Sandalwood Soc. Club*, 399 S.C. 267, 731 S.E.2d 330 (Ct. App. 2012). The Court is thus bemused why SCCCL believes it is necessary for the Court to either vacate or affirm the Department's July 1st Administrative Order considering that the Legislature designated this Court to preside over contested cases of this kind.

To the extent SCCCL's Motion reiterates its argument that the Department's Administrative Order and the $289,000 penalty should remain in effect, the Court has given the

[5] While it does not carry the force of law, OCRM's Civil Penalty Assessment Guidelines nevertheless considers the "degree of willfulness or negligence" when calculating the appropriate upward adjustment factor.

weight the evidence deserves, made finding of facts thereupon and applied those facts to the law. *S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co*., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992) ("As the trier of fact, it is the role of this Court, among other things, to determine the probative force to be given to testimony and evidence and to draw conclusions of law based upon the evidence before it.").

Effect the Final Order on Mrs. Renee Reddy

SCCCL maintains that because Mrs. Reddy did not file a request for a contested case hearing regarding the Department's July 1, 2024 Administrative Order it became final and enforceable as to her. Nonetheless, as referenced in this Court's Final Order, the Court lacks personal jurisdiction over Ms. Renee Reddy. *See Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011) (finding an administrative agency is deprived of *procedural* jurisdiction if the appeal request is defective, stating "the question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction"). Since the Court is wanting of jurisdiction over Mrs. Renee Reddy, it lacks the authority to pass judgment on the effect of the status of the July 1 Administrative Order on Mrs. Reddy.

Consideration of the Agency's Specialized Knowledge

SCCCL argues that the Court's Final Order "minimized DES's technical analyses while simultaneously relying on them to establish jurisdiction, producing internal inconsistency." SCCCL thus requested that the Court confirm that the appropriate weight was accorded to the agency's expertise in evaluating the evidence.

Subsection 48-6-30(D)(2) of the South Carolina Code (Supp. 2025) establishes that when reviewing a decision of the Department in a contested case this Court "shall give consideration to the provisions of Section 1-23-330 regarding the department's specialized knowledge." Importantly, subsection 1-23-330(4) of the South Carolina Code (2005) provides that in contested cases, "notice **may be taken** of generally recognized technical or scientific facts within the agency's specialized knowledge." (emphasis added).

At the outset, the Court did not take notice of any cognizable facts. Moreover, the term "may" in subsection 1-23-330(4) of the South Carolina Code implies that the Court's consideration of the Department's specialized knowledge is discretionary when considering the evidence presented to the Court. *Kennedy v. S.C. Ret. Sys.*, 345 S.C. at 352–53, 549 S.E.2d at 250. Nonetheless, the Court considered the Department's testimony in light of its specialized

knowledge and gave the testimony of the Department's witnesses, the weight it deserves. *Florence Cnty. Dep't of Soc. Servs. v. Ward*, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992); *Dunton v. S.C. Bd. of Exam'rs in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987). Indeed, "[t]he judging of the credibility of witnesses and the weighing of evidence in a law case are uniquely functions of the trial court." *Bivens v. Watkins*, 313 S.C. 228, 235, 437 S.E.2d 132, 136 (Ct. App. 1993). Further, the Court is "in a superior position to judge the witnesses' demeanor and veracity and, therefore, his findings should be given broad discretion." *Woodall v. Woodall*, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996).

Department's Arguments

Application of Subsection 48-39-210(C)

The Department contends subsection 48-39-210(C) of the South Carolina Code only applies for critical area delineations of the **coastal waters and tidelands** critical areas and not for the beach/dune system critical area which are governed by subsection 48-39-280(C) of the South Carolina Code. The Court has addressed this issue in its Amended Final Order to the extent the arguments in this section changed or informed this Court's reasoning.

Evidence Regarding the Location of the Original Hard Erosion Control Structure and the Active Beach.

The Department's Motion reiterates its argument that activities related to the construction of the original erosion control structure constructed in October 2023, the strengthening and fortification to that structure in late January and February of 2024, and the construction of the second hard erosion control structure in February 2024, each occurred on active beach.

To the contrary, Respondent argues that the location of the hard structure relative to the "active beach" is irrelevant to the issues in this case. In addition, Respondent contends the "active beach" should not be construed as a separate jurisdictional area but rather a term to guide the establishment of the baseline for the beach/dune system and permitting decisions related to "structures other than erosion control structures within the beach/dune system."

As asserted in the Department's reply, the active beach is a subset of the beaches and therefore is relevant to this case. To the extent the Department argues the Court should have relied on certain evidence, I reiterate that this Court reviews this matter *de novo*. The Court is thus charged with weighing the evidence based upon a preponderance of the evidence. *E.g.*, *Corely v. Rowe,* 312 S.C. 338, 340, 312 S.E.2d 720, 722 (Ct. App. 1984); *Bivens v. Watkins*, 313 S.C. at

235, 437 S.E.2d at 136 ("[t]he judging of the credibility of witnesses and the weighing of evidence in a law case are uniquely functions of the trial court."). Nevertheless, I have addressed this issue in the Amended Final Order to the extent the arguments in this section changed or informed the Court's reasoning.

Jurisdictional Lines on the Isle of Palms

The Department contends there are no exhibits or testimony to support the findings regarding the location of the 1999 and 2008 setback lines and baselines and that the Court should reconsider its findings since the 2008 lines moved landward at the northern half of the Reddy's property. However, the Department has failed to meet its burden to show that the probative evidence supports its proposed findings. Notably, this Court cannot make a finding that the 2008 lines move landward because there is not sufficient evidence of the location of the 2008 setback and baselines.

Beach Critical Area Determination

The Department's Motion seems to interpret footnote five of the Final Order as a finding that the beaches lie entirely within the beach/dune system and thus requests that the Court reconsider the Final Order to clarify that the beaches is a critical area distinct from the beach/dune system critical area. To support its argument, the Department asserts that a portion of the beaches is always outside of the beach/dune system since the beach/dune system starts at the high-water mark whereas the beaches critical area begins at the low-tide mark since it is subject to periodic inundation. The Department contends that the Coastal Zone Management Program Document carries the force of law and further supports that the beaches does not lie entirely within the beach/dune system since the beaches includes "that area of sand between mean low and spring high water, in other words, the foreshore and the dry sand beach up to the line of vegetation. Beaches are included in the management program as 'critical areas,' subject to OCRM's direct permitting authority." The Department further avers that by having "three separate critical areas on the beachfront that overlap by definition, the General Assembly has provided the Department with broad authority to comprehensively manage the beach."

In response, Respondent argues that contrary to the Department's claim, the area between the low-tide mark and high-tide mark is not "beaches" as defined by the Act. In addition, Respondent contends that the Department's reliance on the Coastal Zone Management Program

Document is improper since it was neither presented as evidence at the hearing nor discussed during any testimony.

The Court recognized in the Final Order that the Act sets forth separate definitions of "beaches" and the "beach/dune system". Indeed, the Court did not find that the beaches lies entirely within the beach/dune system nor did the Court rule that the beaches and beach/dune system constitute one discrete critical area. Rather, the Court merely observed ambiguity in the Act regarding whether the Department has the authority to require a permit in the beaches even though the beaches may lie within an area for which a baseline and setback line has been established to designate a regulatory process for permitting for construction and reconstruction.

Nevertheless, I have addressed this issue in the Amended Final Order to the extent the arguments in this section changed or informed this Court's reasoning.

Clerical Errors

The Department requests that the Court reconsider and/or clarify some clerical errors. The Court has addressed this issue in its Amended Final Order.

The Department's Jurisdiction in the Beaches Critical Area

The Department asserts that the Act clearly defines the beaches critical area and expressly and unambiguously gives the Department jurisdiction over this area. The Department invites the Court's attention to testimony of the Department's witnesses, which it contends is consistent with the statutory grant of jurisdiction in the beaches critical area. In addition, the Department requests the Court conclude that the Department's jurisdiction over the beaches critical area is distinct from its jurisdiction in the beach/dune system Critical Area. I do not find it necessary to reconsider my Final Order in this regard. *Jones v. Dillon-Marion Hum. Res. Dev. Comm'n*, 277 S.C. at 536, 291 S.E.2d at 196 (1982) ("Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.").

Appropriateness of the Assessed Penalties

The Department's Motion reiterates arguments advanced during the contested case regarding the appropriate sanction in this case. The Department contends there were multiple violations of the Act including construction of two walls, repair work, and the placement of other non-beach compatible materials including rip rap in the beaches critical area and active beach and

therefore requests that the Court reconsider whether a violation of the Act occurred and the appropriate penalty.

The Court considered the evidence and assigned the weight to it that it deserved. *Bivens v. Watkins*, 313 S.C. at 235, 437 S.E.2d at 136; *Woodall v. Woodall*, 322 S.C. at 10, 471 S.E.2d at 157. Furthermore, the Department failed to establish any error in the Court's decision or identify any point that was overlooked or misapprehended by the Court.

Scope of the Corrective Action Plan

The Department and SCCCL request that the Court amend its Final Order and include a Corrective Action Plan (CAP) which provides additional guidance including timelines for the remove of the hard erosion control structures and other non-beach compatible materials at the Site.

The Department's Motion sets forth a schedule which Respondent argues is not warranted under subsection 48-39-120(C) of the South Carolina Code because the statute was improperly invoked and since the Department has not promulgated regulations "outlining the contours of § 48-39-120(C)'s scope, including how it could apply to the so-called 'beaches critical area or beyond.'" In addition, Respondent contends the Department "goes even farther" by also seeking removal of all "unauthorized non-beach compatible materials," when the Court made no findings that the hard structure was either within the beach/dune system or "beaches critical area" or that non-beach compatible materials were installed in an area subject to the Department's jurisdiction. As such, Respondent requests the Court reject the Department's proposal to modify the CAP because it is not a "respectful" exercise of its authority.

As stated in the Final Order, the Department's request for Respondent's hard structure to be removed falls within statutory authorities arising under subsection 48-39-120(C) of the South Carolina Code. Additionally, the Department "is not required to enact a companion or explanatory regulation in order to enforce a statute." *Sloan v. S.C. Bd. of Physical Therapy Examiners*, 370 S.C. 452, 476, 636 S.E.2d 598, 611 (2006), *overruled on other grounds by Joseph v. S.C. Dep't of Lab., Licensing & Reg.*, 417 S.C. 436, 790 S.E. 2d 763 (2016). Furthermore, the authority to "exercise all incidental powers necessary to carry out the provisions of this chapter" which certainly extends to establishing timelines necessary to effectuate not only this Court's Final Order but more importantly timelines and standards necessary to reduce the impact of the hard structure on the public. *See* S.C. Code Ann. § 48-39-50(O) (2008). While Respondent may disagree with

the legal basis for the removal of his hard structure, he did not present any specific arguments in opposition to the deadlines or restoration standards set forth in the proposed CAP.

In sum, the Court has clarified the scope of the CAP in its Amended Final Order, including the materials which must be removed and the timelines which the Court deems reasonable for compliance.

ORDER

IT IS THEREFORE ORDERED that the relief requested in the Motions for Reconsideration is determined, in part, as set forth above and the remaining issues are addressed in the Amended Final Decision.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

December 30, 2025
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Stephanie Perez
Judicial Law Clerk

December 30, 2025
Columbia, South Carolina