

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III, Administrative Law Judge

Appellate Case No. 2026-000221
Docket No. 24-ALJ-07-0232-CC

South Carolina Department of Environmental Services and
South Carolina Coastal Conservation League, Respondents-Appellants,
v.

Rom Reddy, Appellant-Respondent.

INITIAL BRIEF OF APPELLANT-RESPONDENT

E. Brandon Gaskins (SC Bar No. 73274)
Moore & Van Allen PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, SC 29413-2828
Telephone: (843) 579-7000
Email: brandongaskins@mvalaw.com

Jeremy Talcott (*Pro Hac Vice*)
(Cal. Bar No. 311490)
Christopher M. Kieser (*Pro Hac Vice*)
(Cal. Bar No. 298486)
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, CA 95814
Telephone: (916) 419-7111
Email: jtalcott@pacificlegal.org
Email: ckieser@pacificlegal.org

*Attorneys for Appellant-Respondent
Rom Reddy*

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STATEMENT OF ISSUES ON APPEAL

I. Whether the Administrative Law Court erred in ordering removal of Appellant's erosion control structure under S.C. Code Ann. § 48-39-120(B)–(C)—provisions that by their express terms govern permits for construction and removal of erosion control structures “on or upon the tidelands and coastal waters of this State”—when the structure is located on private property landward of the statutory setback line established under S.C. Code Ann. § 48-39-280.

II. Whether the Administrative Law Court erred in declining to determine whether the Department of Environmental Services has permitting jurisdiction landward of the setback line, while simultaneously ordering removal of Appellant's structure, where the court's own findings established that the Department's evidence of “beaches critical area” jurisdiction was “dubious” and of “de minimis” probative value.

III. Whether the Administrative Law Court's finding that Appellant's structure has an “adverse effect on the public interest” is supported by substantial evidence where the court relied principally on general legislative policy declarations rather than case-specific evidence.

IV. Whether the Administrative Law Court's reliance on § 48-39-120(C) as an independent basis for the removal order—a theory not advanced by the Department in its Administrative Order and not the basis on which the case was tried—denied Appellant due process.

STATEMENT OF THE CASE

On July 1, 2024, the South Carolina Department of Environmental Services (“DES” or the “Department”) issued Administrative Order AF-0000960 to Appellant Rom Reddy (“Reddy”), finding violations of the South Carolina Coastal Zone Management Act (the “Act”), S.C. Code Ann. § 48-39-10 *et seq.*, and associated regulations, arising from the construction of erosion control structures at 118 Ocean Boulevard, Isle of Palms, Charleston County. (Administrative Order, July 1, 2024 (Jt. Ex. 11).) The Department assessed a civil penalty of \$289,000.00 and ordered Reddy to submit a Corrective Action Plan for removal and restoration. (*Id.*)

Reddy filed a timely request for a contested case hearing on July 18, 2024, pursuant to S.C. Code Ann. § 1-23-600(A) and S.C. Code Ann. § 44-1-60. (Reddy Request Contested Case.) The South Carolina Coastal Conservation League (“SCCCL”) intervened as a co-respondent. (SCCCL Consent Mot. Intervene, Aug. 1, 2024.)

On March 3, 2025, Reddy filed a Motion for Summary Judgment, which the Administrative Law Court (“ALC”) denied on April 24, 2025. (Reddy Mot. Summ. J., Mar. 3, 2025; Order Den. Mot. Summ. J., Apr. 24, 2025.)

The ALC conducted a contested case hearing on the merits on May 6–8 and May 19–20, 2025, in Columbia, South Carolina. (Tr. pp. 1-1512.) The hearing proceeded *de novo*. The amount at issue on appeal was the \$289,000.00 civil penalty and the order requiring removal of the erosion control structure.

On October 23, 2025, the ALC issued a Final Order. (Final Order, Oct. 23, 2025.) The Department, SCCCL, and Reddy each filed motions for reconsideration on November 3, 2025. (DES Mot. Recons., Nov. 3, 2025; SCCL Mot. Recons., Nov. 3, 2025; Reddy Mot. Recons., Nov. 3, 2025.) The ALC rescinded the Final Order on November 10, 2025, to address the parties' cross-motions for reconsideration. (Order Rescinding Final Order, Nov. 10, 2025.) Thereafter, each of the parties filed responses and replies with respect to the various motions for reconsideration. (SCCCL Resp. Reddy Mot. Recons., Nov. 13, 2025; Reddy Resp. Opp'n SCCCL Mot. Recons., Nov. 13, 2025; Reddy Resp. Opp'n DES Mot. Recons., Nov. 13, 2025; DES Return Opp'n Reddy Mot. Recons., Nov. 13, 2025; SCCCL Reply Supp. Mot. Recons., Nov. 20, 2025; DES Reply Reddy Return DES Mot. Recons., Nov. 20, 2025.)

On December 30, 2025, the ALC issued the Amended Final Order and a separate Order on Motions for Reconsideration, which together constitute the decision on appeal. (Am. Final Order, Dec. 30, 2025; Order Mots. Recons., Dec. 30, 2025.) The Amended Final Order (a) eliminated the \$289,000 civil penalty, finding it "not appropriate under the facts of this case," (b) ordered removal of Reddy's structure under S.C. Code Ann. § 48-39-120(C), finding the structure had "an adverse effect on the public interest;" and (c) declined to determine whether Reddy's structure was located in the statutorily defined "beaches." (Am. Final Order, pp. 18, 30-33, 37.) The Order on Motions for Reconsideration likewise declined to resolve whether the Department has jurisdiction landward of the setback line. (Order Mots. Recons., pp. 2-5.)

DES and SCCCL filed second Motions for Reconsideration on January 9, 2026. (DES Mot. Recons., Jan. 9, 2026; SCCL Mot. Recons., Jan. 9, 2026.) Reddy filed Responses in Opposition on January 20, 2026, and SCCCL filed a reply to Reddy's opposition on January 26, 2026. (Reddy Resp. Opp'n DES Mot. Recons., Jan. 20, 2026; Reddy Resp. Opp'n SCCCL Mot. Recons., Jan. 20, 2026; SCCCL Reply Supp. Mot. Recons., Jan. 26, 2026.)

On January 27, 2026, the ALC denied DES and SCCL's Motions for Reconsideration. (Order Den. Mots. Recons., Jan. 27, 2026.) Reddy served the Notice of Appeal on January 28, 2026. (Reddy Not. App.) DES and SCCCL filed their Notices of Appeal a day later on January 29, 2026. (DES Not. App., Jan. 29, 2026; SCCCL Not. App., Jan. 29, 2026.) No changes in the parties have occurred.

RELEVANT FACTS

Reddy purchased 118 Ocean Boulevard, Isle of Palms, on September 24, 2014. (Tr. pp. 164, 1174.) The property is in an unstabilized inlet zone on the south end of Isle of Palms. (Tr. p. 80.) It is undisputed that Reddy's structure was constructed entirely landward of the setback line. (Am. Final Order, p. 5.)

DES's Guidance to Reddy. After severe erosion in 2023, DES informed Reddy by email that “[h]ard erosion control structures such as seawalls, bulkheads, or revetments have been prohibited ***seaward*** of the [DES] OCRM setback line since 1988 with the passage of the S.C. Beachfront Management Act.” (Tr. pp. 1187-1192; Jt. Ex. 222; Am. Final Order, p. 7) (emphasis in original). DES directed Reddy to its

“jurisdictional line website,” stating the lines “do not change in between line review cycles.” (Jt. Ex. 222.)

Construction. In October 2023, Reddy constructed an erosion control structure (“ERC-1”) landward of the setback line. (Am. Final Order, pp. 8–9; Tr. pp. 1216-1218; Jt. Exs. 49-50, 65.) When further storms damaged ERC-1, Reddy contracted for a reinforcing structure landward of ERC-1. (Am. Final Order, pp. 10–11; Tr. pp. 1240-1247, Jt. Ex. 202.) The ALC found the combined structures formed a single hard erosion control structure. (Am. Final Order, p. 11.)

Enforcement History. DES “did not produce any credible evidence that it has historically required a permit for the construction of an erosion control structure landward of the setback line nor could it confirm whether it has assessed a civil penalty for activity landward of the setback line.” (Am. Final Order, p. 20; Tr. 1181-1182; Resp.’s Ex. 61.) In a prior matter, DES staff acknowledged that “no Department approval was required for the construction of a seawall landward of the setback line.” (Am. Final Order, p. 20; Tr. pp. 172-173, Resp.’s Ex. 71.) DES’s own reports to the Legislature and stakeholders “imply that the extent of the Department’s direct permitting authority over beachfront activity is established by the location of baseline and setback lines.” (Am. Final Order, p. 20.)

The ALC’s Findings on DES’s Jurisdictional Evidence. The ALC found DES’s vegetation line assessment—the basis for its “beaches critical area” claim—was “subjective” and “dubious.” (Am. Final Order, pp. 12–13.) DES’s feature analysis had “de minimis” probative value. (*Id.* at p. 14.) DES’s expert “was unable to state

with a reasonable degree of certainty the extent to which [Reddy]’s hard structure encroaches into the beaches critical area” and acknowledged the area “could change day-by-day.” (*Id.* at pp. 14–15.) In 2024, DES amended Regulation 30-13(N)(3)(a), replacing the prior reference to structures “seaward of the setback line” with “within the beaches and/or beach/dune system critical areas.” (Order Den. Mot. Summ. J., p. 10.) This amendment occurred after the conduct at issue in this case.

STANDARD OF REVIEW

This Court reviews the ALC’s decision, not the agency’s decision. *Kiawah Dev. Partners, II v. S.C. Dep’t of Health & Env’t Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014). The ALC’s factual findings may be reversed if “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” S.C. Code Ann. § 1-23-610(B)(e).

Questions of statutory interpretation are reviewed de novo. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Whether an administrative agency acted within its statutory authority is a question of law reviewed de novo. *Trident Med. Ctr., LLC v. S.C. Dep’t of Health & Env’t Control*, 438 S.C. 391, 397, 882 S.E.2d 878, 882 (Ct. App. 2022). Questions of due process are also reviewed de novo. *Kurschner v. City of Camden Plan. Comm’n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008).

ARGUMENT

I. The ALC Erred in Ordering Removal Under § 48-39-120(C) Because That Provision Does Not Authorize Removal of Structures on Private Property Landward of the Setback Line.

The Amended Final Order rests on the legal conclusion that S.C. Code Ann. § 48-39-120(C) grants DES “the authority to remove all erosion control structures which have an adverse effect on the public interest,” and that this authority extends throughout the coastal zone without geographic limitation. (Am. Final Order, p. 30.) This conclusion is erroneous. Section 48-39-120 governs tidelands and coastal waters, while the Beachfront Management Act (the “BMA”) governs the beachfront. The ALC’s reading renders the BMA’s detailed regulatory scheme superfluous.

A. Section 48-39-120 Governs Tidelands and Coastal Waters, Not the Beachfront.

Section 48-39-120 must be read as a whole, not in isolated fragments. Subsection (B) confers the Department’s permitting authority under this section: “[t]he department for and on behalf of the State may issue permits for erosion control structures . . . *on or upon the tidelands and coastal waters of this State* as it may deem most advantageous.” S.C. Code Ann. § 48-39-120(B) (emphasis added). Subsection (F) addresses public health and safety in areas “below the mean high-water mark.” S.C. Code Ann. § 48-39-120(F). The entire section is directed at the first two of the Act’s four critical areas—coastal waters and tidelands—which are seaward of the mean high-water mark.

Subsection (C), which the ALC invoked, provides that the Department “shall have the authority to remove all erosion control structures which have an adverse

effect on the public interest.” S.C. Code Ann. § 48-39-120(C). Read in context, this removal authority is the corollary of the permitting authority in subsection (B). The Department may permit structures on tidelands and coastal waters and may remove those structures if they prove adverse to the public interest. It is not a roving commission to demolish structures anywhere in the coastal zone. “[W]ords used in a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” *Gilstrap v. S.C. Budget & Control Bd.*, 310 S.C. 210, 214, 423 S.E.2d 101, 103 (1992).

Critically, the ALC itself found that Reddy never obtained a permit: “I have not found that Respondent is in direct violation of any permit[.]” (Am. Final Order, p. 37.) The Department cannot invoke a removal authority designed for permitted structures on public trust lands to order the demolition of an unpermitted structure on private property.

B. The Beachfront Management Act Established a Comprehensive Regulatory Scheme That Governs Beachfront Erosion Control Structures.

The Legislature enacted the BMA in 1988 because the Act “did not provide adequate jurisdiction to the [Department] to enable it to effectively protect the integrity of the beach/dune system.” S.C. Code Ann. § 48-39-250(4). The BMA created an entirely new framework for the beachfront: baseline and setback lines (§ 48-39-280), construction restrictions (§ 48-39-290), disclosure requirements (§ 48-39-330), and periodic review (§ 48-39-280(C)). Its treatment of erosion control structures is comprehensive: it severely restricts hard erosion control devices (§ 48-39-260(3)), prohibits new structures seaward of the setback line except in specified

circumstances (§ 48-39-290(B)(2)), and addresses the fate of structures that come to be situated on the active beach (§ 48-39-290(D)(1)).

Where one statute addresses an issue in general terms and another deals with the identical issue more specifically, the specific statute controls. *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010) (“Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.”) (quoting *Spectre, LLC v. Dep’t of Health & Env’t Control*, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010)). The BMA is the specific statute governing beachfront erosion control structures; § 48-39-120 is the general provision for tidelands and coastal waters. The BMA controls.

Applying § 48-39-120(C) to override the BMA’s detailed scheme would “render the provision meaningless and futile.” *Bruning v. SCDHEC*, 418 S.C. 537, 546, 795 S.E.2d 290, 295 (Ct. App. 2016). In *Bruning*, this Court rejected the Department’s argument that a general catch-all provision could justify departure from specific regulatory criteria, holding that a general provision “cannot give unfettered discretion to permit a method” that does not otherwise meet established criteria. *Id.* The same principle applies here: the general public-interest provision of § 48-39-120(C) cannot give DES unfettered authority to order removal of beachfront structures outside the detailed framework the Legislature established in the BMA.

Similarly, in *State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010), this Court emphasized that statutes must be read in harmony and that “[t]he legislature is presumed to intend that its statutes accomplish something.” The Court rejected the government’s attempt to apply a general weight statute over specific statutes applicable to the vehicles at issue, because doing so would render the specific provisions meaningless. *Id.* at 382–83, 665 S.E.2d at 654–55. Reading § 48-39-120(C) as a plenary removal authority for beachfront structures would render the BMA’s detailed construction and removal provisions equally meaningless.

C. Section 48-39-290(B)(2)(d) Does Not Extend § 48-39-120(C) to the Beachfront.

The ALC relied on § 48-39-290(B)(2)(d), which provides that “[t]he provisions of this section do not affect or modify the provisions of Section 48-39-120(C).” The ALC read this as extending § 48-39-120(C)’s authority to the beachfront. (Am. Final Order, pp. 30–31.) The more natural reading is that this savings clause preserves the preexisting tidelands/coastal waters removal authority. The BMA imposed new restrictions on beachfront construction; the savings clause ensures those restrictions do not inadvertently limit DES’s existing authority over structures on tidelands and coastal waters. It does not affirmatively expand § 48-39-120(C) beyond its own terms.

Reading the clause as the ALC did would create unlimited power to order removal of any erosion control structure anywhere in the coastal zone. If DES could bypass the BMA’s detailed regulatory framework by simply invoking “public interest,” there would be no need for the standards in § 48-39-290. *Florence Cnty.*

Democratic Party v. Florence Cnty. Republican Party, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (courts should “seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless”).

D. DES’s Failure to Exercise This Claimed Power for Decades Confirms It Was Never Conferred.

DES has never before invoked § 48-39-120(C) to order removal of a beachfront erosion control structure. DES could not identify a single instance in the last twenty-five years where it imposed a civil penalty or exercised permitting authority landward of the setback line. (Am. Final Order, p. 18.) This is telling. As the Supreme Court recognized in *Gilstrap*, “[t]he failure of an administrative agency to exercise a power it claims to possess is a significant factor in determining whether the power was actually conferred.” 310 S.C. at 214–15, 423 S.E.2d at 104. In *Gilstrap*, the Budget and Control Board’s failure to exercise a claimed power since 1933 was significant evidence that the power had never existed. *Id.* DES’s half-century of inaction here is equally probative.

E. The 2024 Regulatory Amendment Confirms the Prior Regulatory Limit.

In May 2024—after the conduct at issue in this case—DES amended Regulation 30-13(N)(3)(a), replacing a reference to structures “seaward of the setback line” with structures “within the beaches and/or beach/dune system critical areas.” (Order Den. Mot. Summ. J., p. 10.) This amendment confirms that, under the prior regulation in effect at the time of Reddy’s conduct, DES’s regulatory prohibition on erosion control structures was limited to areas seaward of the setback line. Where a

regulation purports to expand the operation of a statute, the terms of the statute control. *Davis v. S.C. Dep't of Corr.*, 444 S.C. 138, 160, 906 S.E.2d 569, 581 (2024). A fortiori, the prior regulation—which conformed to the statute’s jurisdictional limits—controls over DES’s post-hoc attempt to expand its reach.

II. The ALC Erred in Declining to Resolve the Jurisdictional Question While Ordering Removal.

If § 48-39-120(C) does not apply, the entire case depends on whether DES has permitting jurisdiction over the area where Reddy constructed his structure. The ALC declined to resolve this question, calling it “moot.” (Order Den. Mots. Recons., p. 5.) But a question upon which the outcome of the litigation depends cannot be moot. *See Jones v. Dillon-Marion Hum. Res. Dev. Comm’n*, 277 S.C. 533, 536, 291 S.E.2d 195, 196 (1982) (courts will not pass on moot questions or render advisory opinions). The jurisdictional question is the opposite of moot—it is the necessary predicate for any relief.

A. The Setback Line Is the Statutory Limit of DES’s Beachfront Jurisdiction.

The Act defines the “beach/dune system” critical area as “the area from the mean high-water mark to the setback line as determined in Section 48-39-280.” S.C. Code Ann. § 48-39-10(J). This is the only beachfront critical area with a defined geographic boundary. The BMA replaced “primary oceanfront sand dunes” with “beach/dune system”—incorporating beaches and dunes into a single managed area bounded by the setback line.

Reddy’s interpretation preserves “beaches” for areas where no baseline or setback line has been established. S.C. Code Ann. § 48-39-280(E)(3). DES’s

interpretation renders the setback line superfluous as a jurisdictional boundary. The Legislature “is presumed to intend that its statutes accomplish something.” *State v. Sweat*, 379 S.C. at 377, 665 S.E.2d at 651.

The BMA’s property-transfer disclosure requirement further confirms this reading. The Act requires disclosure of the setback line and baseline in property transfers, S.C. Code Ann. § 48-39-330, but does not require disclosure that property may be subject to a “beaches critical area” determination. The ALC itself recognized that “[t]he fact that the General Assembly did not require such a disclosure could reflect that it did not intend for the Department’s jurisdiction to extend landward of the setback line.” (Am. Final Order, p. 29.)

B. The ALC’s Own Findings Compel the Conclusion It Declined to Reach.

The ALC’s extensive analysis of the jurisdictional question produced findings uniformly favorable to Reddy:

DES’s vegetation line assessment was “subjective” and “dubious.” (Am. Final Order, p. 12.)

DES’s feature analysis had “de minimis” probative value. (*Id.* at p. 14.)

DES’s expert could not identify with reasonable certainty where the “beaches critical area” was located. (*Id.* at pp. 14–15.)

Under DES’s interpretation, “neither the Court nor a landowner could consistently determine, with a reasonable degree of certainty, whether a permit is required.” (*Id.* at p. 15.)

The setback line interpretation “would logically achieve” the legislative purpose of consistency. (*Id.* at p. 28.)

DES’s own regulation states that its “permitting jurisdiction on beaches is determined by the location of the setback line.” S.C. Code Ann. Regs. 30-21(H)(3).

These findings, taken together, compel the conclusion the ALC avoided: the setback line marks the landward limit of DES’s beachfront jurisdiction, and DES lacked authority to issue the Administrative Order for activity occurring entirely landward of that line.

III. The ALC’s “Adverse Effect on Public Interest” Finding Is Not Supported by Substantial Evidence.

Even assuming § 48-39-120(C) could apply to beachfront structures, the ALC’s adverse-effect finding rests on general legislative policy declarations rather than case-specific evidence. The ALC’s analysis quotes at length from S.C. Code Ann. § 48-39-250(5)–(6), (8), stating legislative findings about the harms of erosion control structures generally. (Am. Final Order, pp. 30–32.) But legislative findings are not evidence that *this* structure, at *this* site, has an adverse effect. A court cannot bypass the evidentiary requirement by invoking legislative generalizations. *See Bauer v. S.C. State Hous. Auth.*, 271 S.C. 219, 229, 246 S.E.2d 869, 875 (1978) (“legislative findings and declarations have no magical quality to make valid that which is invalid”) (quoting *Velishka v. City of Nashua*, 99 N.H. 161, 165, 106 A.2d 571, 573 (1954)).

DES’s expert testified generally that hard erosion control structures restrict natural processes as they impede sediment flow and produce scour, but never visited the property, and could not state with reasonable certainty the extent to which

Reddy's structure affects the critical area. (Tr. pp. 839, 853-854, 905-906, 910, 999-1001; Am. Final Order, p. 14; Order Den. Mots. Recons., p. 9.) The beaches adjacent to Reddy's property "have recently started to accrete." (Am. Final Order, p. 6.) The ALC also failed to balance the private harm removal would cause—including the potential collapse of Reddy's yard and home—against the speculative future public harm the structure might cause. The ALC itself found that DES's decision to prohibit sand placement in front of the structure "appears to have further exposed 118 and 122 Ocean Boulevard to additional erosional forces." (*Id.* at 10.)

IV. The ALC's Reliance on § 48-39-120(C) as the Dispositive Legal Basis Denied Reddy Due Process.

DES's Administrative Order cited S.C. Code Ann. § 48-39-130(A), (C), (D)(6) and specific regulations as the basis for its findings—all predicated on the theory that Reddy's activity occurred in the "beaches critical area" without a permit. The case was tried on that theory. DES bore the burden of proving the structure was in the beaches critical area. The ALC ultimately found it "unnecessary" to resolve that question. (Am. Final Order, p. 18.)

The Constitution of South Carolina enshrines due process protections before administrative tribunals. S.C. Const. art. I, § 22 ("No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard[.]"). Due process requires, at minimum, adequate notice and a meaningful opportunity to be heard on the specific issues involved. *Ogburn-Matthews v. Loblolly Partners (Ricefields Subdivision)*, 332 S.C. 551, 562, 505 S.E.2d 598, 603 (Ct. App. 1998), *overruled on*

other grounds by *Brown v. S.C. Dep't of Health & Env't Control*, 348 S.C. 507, 560 S.E.2d 410 (2002). And notice is insufficient if it does not adequately inform the parties of the specific issues to be considered. *Stono River Env't Prot. Ass'n v. S.C. Dep't of Health & Env't Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991).

Reddy acknowledges that § 48-39-120(C) was referenced in DES's May 22, 2024, Notice of Alleged Violation/Admission Letter as one of many statutory provisions listed for the parties' awareness. (Jt. Ex. 10.) But including a provision in a preliminary document is not the same as trying the case on that theory. The Department's Administrative Order did not invoke § 48-39-120(C) as a basis for the penalty or removal. (Jt. Ex. 11.) DES's case at hearing was built around proving "beaches critical area" jurisdiction.

Under S.C. Code Ann. § 1-23-320, parties in a contested case must receive notice of the hearing that includes a statement of the legal authority and jurisdiction under which a hearing is to be held and "reference to the particular sections of the statutes and rules involved." S.C. Code Ann. § 1-23-320(B)(1), (3). In this case, there were two notices of hearings issued; yet none referenced § 48-39-120(C). (Notice Hr., Aug. 7, 2024; Am. Notice Hr., Dec. 5, 2024.) Instead, the ALC's first application of § 48-39-120(C) as the *dispositive* legal basis appeared in the October 2025 Final Order, after the evidentiary record closed. Procedural due process requires "adequate notice" and "adequate opportunity for a hearing." *Adams v. H.R. Allen, Inc.*, 397 S.C. 652, 657, 726 S.E.2d 9, 12 (Ct. App. 2012) (quoting *In re Dickey*, 395 S.C. 336, 360, 718 S.E.2d 739, 751 (2011)). Where a case is tried on one theory and decided on another,

the losing party has been denied the opportunity to meet the theory actually applied. Reddy was denied the opportunity to present evidence specifically addressing whether § 48-39-120(C) applies outside the tidelands and coastal waters and what procedures must precede a removal order under that provision.

CONCLUSION

For the reasons set forth above, Appellant respectfully requests that this Court reverse in part the Amended Final Order of the Administrative Law Court. This Court should hold that:

1. Section 48-39-120(C) does not authorize removal of erosion control structures on private property landward of the setback line;
2. The statutory setback line established under § 48-39-280 marks the landward limit of DES's beachfront permitting jurisdiction;
3. Because Reddy's structure is located entirely landward of the setback line, DES lacked jurisdiction to issue Administrative Order AF-0000960; and
4. The Administrative Order should be vacated in its entirety.

In the alternative, this Court should remand for proceedings under the correct statutory framework, with a determination of whether DES has jurisdiction landward of the setback line.

Respectfully submitted,

s/ E. Brandon Gaskins

E. Brandon Gaskins (SC Bar No. 73274)

Moore & Van Allen PLLC

78 Wentworth Street

P.O. Box 22828

Charleston, SC 29413-2828

Telephone: (843) 579-7000

Email: brandongaskins@mvalaw.com

Jeremy Talcott (*Pro Hac Vice*)

(Cal. Bar No. 311490)

Christopher M. Kieser (*Pro Hac Vice*)

(Cal. Bar No. 298486)

Pacific Legal Foundation

555 Capitol Mall, Suite 1290

Sacramento, CA 95814

Telephone: (916) 419-7111

Email: jtalcott@pacificlegal.org

Email: ckieser@pacificlegal.org

Attorneys for Appellant-Respondent

Rom Reddy

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Charleston, South Carolina