

**RECEIVED**

**Dec 05 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Deborah Brooks Durden  
Administrative Law Judge

---

Appellate Case No.: 2025-000379

---

South Carolina Coastal Conservation League,

Appellant,

v.

South Carolina Department of Environmental Services and  
Pulte Homes, LLC.

Respondents.

---

**INITIAL BRIEF OF RESPONDENT  
SOUTH CAROLINA DEPARTMENT OF  
ENVIRONMENTAL SERVICES**

---

Joseph A. Giordano, SC Bar No. 104500  
Christopher P. Whitehead, SC Bar No. 100264  
Bradley D. Churdar, SC Bar No. 12829  
South Carolina Department of  
Environmental Services  
2600 Bull Street  
Columbia, South Carolina 29201  
Tel.: (803) 898-7286  
Joseph.Giordano@des.sc.gov  
Christopher.Whitehead@des.sc.gov  
Bradley.Churdar@des.sc.gov  
*Attorneys for Respondent SCDES*

**TABLE OF CONTENT**

Table of Authorities..... ii

Statement of Issues on Appeal .....1

Statement of the Case.....2

Standard of Review.....4

Statement of Facts.....5

Legal Framework ..... 11

Arguments

    I. The ALC Properly Held that the Coastal Zone Management Program Document’s (“CMP”) Limitation on the Department’s Exercise of Its CZC Certification Authority Based on the Capacity of the Wastewater System Is Consistent with the Directive in S.C. Code Ann. § 48-39-80(B)(11) that the Department “Develop A System” Giving the Department the Power to Review Coastal Zone Permits. ....13

    II. Appellant’s Argument for Public Notice of Individual Septic Tank Permit Applications and Permits as a General Matter is Moot Because the Department Provides the Public with Free, Timely, and Accessible Information about Individual Septic Tanks.....16

    III. The ALC Properly Found that the Absence of Any Public Notice of Individual Septic Tank Systems Less than 1,500 Gpd Challenged Permits Did Not Violate Due Process. ....22

        A. No statute or regulation requires the department to issue public notice for permits for individual septic systems of less than 1,500 gpd.....22

            I. *Specific statutory public notice mandates for the Department contradict Appellant’s interpretation of S.C. Code § 44-1-60(B) (Supp. 2023).* .....23

        B. No due process violation results when permits for individual septic tank systems less than 1,500 gpd are not publicly noticed.....24

Conclusion .....30

## TABLE OF AUTHORITIES

### Cases

<u>Be Mi, Inc. v. S.C. Dep't of Revenue</u> , 408 S.C. 290, 758 S.E.2d 737 (Ct. App. 2014).....	4
<u>City of Rock Hill v. Harris</u> , 391 S.C. 149, 705 S.E.2d 53 (S.C. 2011).....	24
<u>Engaging &amp; Guarding Laurens Cty.'s Env't (EAGLE) v. S.C. Dep't of Health &amp; Env't Control</u> , 407 S.C. 334, 755 S.E.2d 444 (2014) .....	25
<u>Heyward v. S.C. Tax Comm'n</u> , 240 S.C. 347, 126 S.E.2d 15 (1962).....	16
<u>Key Corp. Cap., Inc. v. Cnty. of Beaufort</u> , 373 S.C. 55, 644 S.E.2d 675 (2007) .....	16
<u>Keyserling v. Beasley</u> , 322 S.C. 83, 470 S.E.2d 100 (1996).....	16
<u>Kiawah Dev. Partners, II v. S.C. Dep't of Health &amp; Env't Control</u> , 411 S.C. 168, 766 S.E.2d 707 (2014).....	4, 25
<u>McNickel's Inc. v. S.C. Dep't of Revenue</u> , 331 S.C. 629, 503 S.E.2d 723 (1998) .....	16
<u>N. Beaufort Cnty. Committee v. S.C. Dep't of Health &amp; Env't Control</u> , No. 96-ALJ-07-0117-CC (S.C. Admin. L. Ct., Oct. 28, 1996) (Kittrell, J.) .....	13
<u>Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles</u> , 380 S.C. 600, 670 S.E.2d 674 (Ct. App. 2008) .....	4
<u>Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n</u> , 298 S.C. 179, 379 S.E.2d 119 (1998) ...	16
<u>S.C. Ambulatory Surgery Center Ass'n</u> , 389 S.C. at 392, 699 S.E.2d 153 (2010).....	27
<u>Sloan v. Greenville Cnty.</u> , 380 S.C. 528, 670 S.E.2d 663 (Ct. App. 2009).....	21
<u>Spectre, LLC v. S.C. Dep't of Health &amp; Env't Control</u> , 386 S.C. 357, 688 S.E.2d 844 (2010).....	12, 15, 16
<u>State v. Corey D.</u> , 339 S.C. 107, 529 S.E.2d 20 (2000).....	16
<u>Toussaint v. State Bd. of Medical Examiners</u> , 303 S.C. 316, 400 S.E.2d 488 (1991) .....	28
<u>Walterboro Cmty. Hosp., Inc. v. S.C. Dep't of Health &amp; Env't Control</u> , 442 S.C. 154, 898 S.E.2d 123 (2024).....	26

### Statutes

S.C. Code Ann. § 1-23-610.....4, 28

S.C. Code §1-30-140.....2

S.C. Code Ann. § 44-1-60..... passim

S.C. Code Ann. § 44-96-470.....23, 24

S.C. Code Ann. §§ 48-1-10.....17

S.C. Code Ann. § 48-1-115.....24

S.C. Code Ann. § 48-6-30..... passim

S.C. Code Ann. § 48-20-70.....24

S.C. Code Ann. §§ 48-39-10.....12

S.C. Code Ann. § 48-39-80.....13, 14, 15

S.C. Code Ann. §§ 44-1-60.....24

**Other Authorities**

16 C.J.S. Constitutional Law § 1516 (2010).....27

Administrative Procedure Act.....25

Coastal Tidelands and Wetlands Act.....12

Coastal Zone Management Plan .....14

Freedom of Information Act .....6

<https://epermitting.des.sc.gov/ext/ncore/external/subscriptions/signup> .....7

<https://epermitting.des.sc.gov/ext/nsite/default/map/help> .....9

S.C. Const. Art. I Sec. 22 .....26

S.C. Pollution Control Act .....	11, 17, 23
South Carolina Act No. 60 (2023) .....	2
South Carolina Constitution, Article 1 .....	28
South Carolina Mining Act .....	23
South Carolina Solid Waste Policy and Management Act .....	23

**Regulations**

S.C. Code Ann. Regs. 61-56 .....	11, 15, 17
S. C. Regulation 61-67 .....	23
S.C. Code Ann. Sec. 48-39-80 .....	12, 14
South Carolina Code § 48-39-90 .....	14

### **STATEMENT OF ISSUES ON APPEAL**

1. Whether the Administrative Law Court correctly determined that the South Carolina Coastal Tidelands and Wetlands Act does not impose a requirement for the Department to review permits for the construction and installation of individual septic tank systems with peak flow less than 1,500 gallons per day in the coastal zone for consistency with the policies of its Coastal Management program?
2. Whether the Administrative Law Court correctly determined that the Department's issuance of forty-four (44) permits for the construction and installation of individual septic tank systems with peak flow less than 1,500 gallons per day without public notice upheld the Appellant's constitutional rights and did not deny Appellant due process?

## STATEMENT OF THE CASE

In September 2023, the South Carolina Department of Health and Environmental Control<sup>1</sup> (“SCDHEC”) received the applications, plans, and supporting documentation (“Applications”) from Respondent Pulte Homes, LLC (“Pulte Homes”) for the construction and installation of individual septic tank systems with peak flow less than 1,500 gallons per day (“gpd”) to serve residences to be located on lots located in the Town of Awendaw in Charleston County, South Carolina. (R. \_\_\_ (Staff Resp. to Requests for Final Review p. 1)).

On December 21, 2023, and January 2, 2024, SCDHEC issued forty-four (44) permits to construct and install individual septic tank systems with peak flow of less than 1,500 gpd on the aforementioned parcel (“Permits”) to Pulte Homes. (R. \_\_\_ (Staff Resp. to Requests for Final Review p. 2)). Also on January 2, 2024, SCDHEC provided notice of the permit issuances to Appellant South Carolina Coastal Conservation League (“Appellant”). (R. \_\_\_ (App. Requests for Final Review p. 14)); (R. \_\_\_ (Staff Resp. to Requests for Final Review p. 2)). On January 17, 2024, Appellant submitted forty-four (44) Requests for Final Review to the Board of Health and Environmental Control, which it denied conducting a Final Review Conference on March 6, 2024. (R. \_\_\_ (Staff Resp. to Requests for Final Review p. 2)).

On April 5, 2024, Appellant filed forty-four (44) Requests for Contested Case Hearings with the South Carolina Administrative Law Court (“ALC”), contesting the Permits issued by SCDHEC to Pulte Homes. (R. \_\_\_ (Order Granting Respondents’ Motion for Summary Judgment and Denying Pet’r’s Motion for Summary Judgment p. 1)). The ALC consolidated all 44 cases for a hearing on May 7, 2024. (R. \_\_\_ (Order for Consolidation p. 1)). Subsequently, the South Carolina

---

<sup>1</sup> Pursuant to South Carolina Act No. 60 of 2023 and South Carolina Code §1-30-140, all functions, powers, and duties of the environmental divisions, offices, and programs of the South Carolina Department of Health and Environmental Control were transferred to, incorporated in, and shall be administered as part of the Department of Environmental Services as of July 1, 2024.

Department of Environmental Services (“Department” or “SCDES”) and Pulte Homes (collectively “Respondents”) filed a Motion for Summary Judgment. (R. \_\_ (Respondents’ Joint Motion for Summary Judgment and Incorporated Memorandum p. 1)). Following a November 4, 2024, motions hearing, the ALC granted Respondents’ Joint Motion for Summary Judgment and rejected Petitioner’s Motion for Summary Judgment on December 18, 2024. (R. \_\_ (Order Granting Respondents’ Motion for Summary Judgment and Denying Pet’r’s Motion for Summary Judgment p. 1)). On December 30, 2024, Appellant submitted a Motion for Reconsideration to the ALC, which was denied on January 21, 2025 (R. \_\_ (Order Denying Pet’r’s Motion for Reconsideration p. 3)). Appellant filed a Notice of Appeal on February 20, 2025.

## STANDARD OF REVIEW

This Court's review is governed by the Administrative Procedures Act ("APA"). When reviewing decisions of the ALC, this Court may only reverse or modify the ALC's decision where a petitioner's substantive rights have been prejudiced because a finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B)(a)-(f).

This Court's review of the ALC's factual findings "must be confined to the record," and "the [C]ourt may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-610(B). To the extent facts are in question, the requisite standard is one of substantial evidence, meaning that "the Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion as the ALC." Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014). "When the evidence conflicts on an issue, the court's substantial evidence standard of review defers to the findings of the fact-finder." Be Mi, Inc. v. S.C. Dep't of Revenue, 408 S.C. 290, 297, 758 S.E.2d 737, 740 (Ct. App. 2014).

A decision of the ALC "should not be overturned unless it is unsupported by substantial evidence or is controlled by some other error of law." Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008).

## STATEMENT OF FACTS

In September 2023, SCDHEC received the Applications for the construction and installation of individual septic tank systems with peak flow less than 1,500 gpd to serve residences to be located on lots located in the subdivision known as White Tract Phase 1 within the Town of Awendaw in Charleston County, South Carolina, Tax Map # 644-00-00-023 & 644-00-00-025 (“Parcels”). (R. \_\_\_ (Staff Resp. to Requests for Final Review p. 1)). The designs, certifications, and other supporting documentation for the Applications were supplied by a licensed professional engineer with CPR Engineering Solutions, LLC, and a licensed professional soil classifier. (R. \_\_\_ (Staff Resp. to Requests for Final Review p. 1)). Pulte Homes’ development plans for White Tract involve several phases and aim to construct single-family homes, each utilizing separate septic tank systems with peak flow less than 1,500 gpd. (R. \_\_\_ (Staff Resp. to Requests for Final Review p. 1)).

From September 2023 through December 2023, following receipt of Pulte Homes’ Applications, SCDHEC thoroughly evaluated the Applications to determine whether they comply with all regulatory and statutory requirements based on the consulting professional engineer’s system design, certification, and supporting documentation. (R. \_\_\_ (Staff Resp. to Requests for Final Review p. 1)). SCDHEC did not conduct a coastal zone (“CZC”) review of any of the Applications because SCDHEC was not required to review individual septic applications for systems that generate less than 1,500 gpd of domestic wastewater for consistency with the current Coastal Zone Management Program. (R. \_\_\_ (Staff Resp. to Requests for Final Review p. 1)). On December 21, 2023, and January 2, 2024, SCDHEC issued the Permits to Pulte Homes. (R. \_\_\_ (Staff Resp. to Requests for Final Review p. 2)).

Prior to the issuance of the Permits, in 2022 Appellant submitted a Freedom of Information Act (“FOIA”) request to the SCDHEC’s Freedom of Information office for the issuance of any and all septic tank applications and permits issued the properties associated with TMS No. 681000028, TMS No. 6440000023, TMS No.6440000026, and TMS No. 6440000030, as well as request for notification of the issuance of any and all septic tank permits issued for the aforementioned properties; thus, on January 2, 2024, in accordance with S.C. Code Ann. § 44-1-60(E)(1),<sup>2</sup> SCDHEC provided notice of its issuances of the Permits to Appellant. (R. \_\_\_ (Staff Resp. to Requests for Final Review p. 2)); (App. Requests for Final Review p. 14)); (R. \_\_\_ (Order Granting Respondents’ Motion for Summary Judgment and Denying Pet’r’s Motion for Summary Judgment p. 5)). SCDHEC did not publicly notice the Applications, as there is no statutory or regulatory requirement for the Department to publicly notice applications or permits for the construction and installation of individual septic tank systems with peak flow less than 1,500 gpd. (R. \_\_\_ (Staff Resp. to Requests for Final Review p. 4)).

Since 2020, SCDHEC and the Department has received on average per year over 17,000 applications for the construction and installation of individual septic tank systems with peak flow less than 1,500 gpd of domestic wastewater. Also since 2020, SCDHEC and the Department has issued on average per year over 14,500 Permits to Construct such systems. Specifically, in fiscal year 2020-2021, SCDHEC received 17,256 applications for septic systems and issued 14,443 Permits to Construct individual septic systems; in fiscal year 2021-2022, SCDHEC received 18,105 applications for septic systems and issued 14,760 Permits to Construct individual septic

---

<sup>2</sup> “Notice of a department decision must be sent by certified mail, returned receipt requested to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified. Affected persons may request in writing to be notified by regular mail or electronic mail in lieu of certified mail. Notice of decisions for which a department decision is not required pursuant to subsection (D) must be provided by mail, delivery, or other appropriate means to the applicant, permittee, licensee, affected persons who have requested in writing to be notified.” S.C. Code Ann. § 44-1-60(E)(1).

systems; in fiscal year 2022-2023, SCDHEC received 16,026 applications for septic systems and issued 14,511 Permits to Construct individual septic systems; and in fiscal year 2023-2024, SCDHEC and the Department received 17,336 applications for septic systems and issued 13,981 Permits to Construct individual septic systems.<sup>3</sup>

In September 2025, the Department began to publicly post the information of applications and permits for the construction and installation of individual septic tank systems with peak flow less than 1,500 gpd of domestic wastewater by utilizing the Department’s ePermitting program, which is the Department’s online platform for environmental permitting, licensing, registration, projects, reporting, monitoring, complaints, compliance, and enforcement. Specifically, the Department electronically posted the information of applications and permits for individual septic tank systems less than 1,500 gpd through ePermitting’s Event Alerts feature (“Event Alerts”).<sup>4</sup> Event Alerts allows any member of the public to create a free subscription with the Department to sign up to receive notifications whenever the Department receives permit applications, whenever the Department issues and/or denies permits, or whenever the Department posts public notices. To sign up for such notifications and updates or modify which types of events an individual wants to subscribe to, a public user will need to enter in their e-mail address in the “E-mail Address” on the main page for Event Alerts and click the “Submit” button. After the user submits their e-mail address, the user will be informed that a confirmation e-mail will be sent to the e-mail address the user provided, and the user is instructed to follow the link contained inside the confirmation e-mail in order to manage their subscription.

---

<sup>3</sup> This data within this paragraph is available for public access, and this Court may take judicial notice of it.

<sup>4</sup> <https://epermitting.des.sc.gov/ext/ncore/external/subscriptions/signup>. Event Alerts is available for public access, and the summarized information herein about Event Alerts and how it can be access and used is subject to judicial notice.

After submitting an e-mail address in the previous step, the public user will receive a confirmation e-mail from the Department’s ePermitting program, and a link is provided within the e-mail to manage a user’s subscription choices. When this link is clicked on or pasted into a browser, the user is brought to a “Manage ePermitting Subscriptions” page with three filters the user can choose from. First, the user can decide what type of alerts they want to receive and have the option to select any or all of the following types: public notices going into effect; permits the Department has issued/denied; and applications the Department has received. Second, the user can click on a drop-down menu, allowing them to select as many counties within South Carolina for which they wish to receive alerts. Third, the user can click select from another drop-down menu, allowing them to select as many Department programs for which they want to receive alerts. These filters allow any user from the public to stay informed of matters in a manner is tailored to their interests. Once the user has selected their preferences in all three filters pertaining to their interests, the last step is to click “Save” at the bottom of the screen, which will then activate the subscription within Event Alerts.

The user will then receive e-mails from ePermitting every time the Department receives applications, issues and/or denies permits, or when public notices go into effect in the requested county or counties—depending on which of the three filters the user opted into. After saving the user’s subscription preferences in Event Alerts, the user will now receive e-mail alerts containing the following information: the form type, the submission reference number of the application, the date and time the Department received the application, the facility name or Site name, the county where the application is located, the applicant’s name, and the applicant’s organization.

The Department also developed a second ePermitting feature allowing the public to view application and permit information—the SCDES Map Explorer (“Map Explorer”).<sup>5</sup> Accessible on the same Department web page for ePermitting<sup>6</sup> as the Event Alerts feature, the Map Explorer public feature allows any user to view a map of South Carolina with site information pertaining to applications submitted to the Department and permits issued or denied by the Department. On the main page of Map Explorer, users are provided instructions on how to use the feature. Specifically, the instructions explain that the public may use the “Search Bar” to enter any identifying information for a site and yield a map and a “Results” list. Additionally, the instructions inform users that they can manipulate the map, allowing them to focus on a specific location using a mouse and the Map Explorer zoom tools, or users can click on a bubble, and the map will zoom to the location of the bubble. The instructions also inform users of the Filter and Criteria features in Map Explorer; specifically, users can click on the “Filtering Options” button beside the Search Bar that will open up a menu, allowing the users to limit search results to a myriad of selected items, such as address, city, county, the Environmental Project Category, the Environmental Project Program, the Environmental Project Status, the Environmental Project Type, the start/end permit issue dates, permit number, permit program, permit status, site name, site number, the name of the submission form, the type of submission form, the submission program, start/end submission received date, the status of the submission, when submissions were received by the Department, and zip codes. Users are not required to use each of these filter options, but they may choose from any or all of them to help limit their searches in Map Explorer.

---

<sup>5</sup><https://epermitting.des.sc.gov/ext/nsite/default/map/help>. Map Explorer is available for public access, and the summarized information herein about Map Explorer and how it can be access and used is subject to judicial notice.

<sup>6</sup> <https://des.sc.gov/permits-regulations/permit-central/epermitting>.

If the user is interested or concerned about a particular application or permit in the search results, they may click on the search result on the Results list or on the map, and it will open up a profile containing the application's information, such as the full address of the Site, county, applicant's name, type of application, submission number, and whether the application has resulted in a permit and the permit information. The profile also will also zoom in to the exact location of the site address on the map. Additionally, users can also use the Search Bar feature to use any information from an e-mail alert they have received from Event Alerts to find the site of the application in the map within Map Explorer. For example, a user can take the Facility/Site Name information in an Event Alert e-mail alert and type or paste it into the Map Explorer Search Bar, and the search results will yield that site application information.

Through these free features of ePermitting—Event Alerts and Map Explorer—the Department has provided the public the ability to electronically receive and timely access to information regarding applications and permits for the construction and installation of individual septic tank systems with peak flow less than 1,500 gpd of domestic wastewater and has shared these features with members of the public since its launch in September 2025.

## **LEGAL FRAMEWORK**

The S.C. Pollution Control Act, S.C. Code Ann. §§ 48-1-10 et seq. charges the Department with overseeing the permitting, construction, and operation of onsite wastewater systems. S.C. Code Ann. Regs. 61-56, Onsite Wastewater Systems (“R. 61-56”) sets forth the applicable onsite wastewater permitting requirements, which ensure wastewater can be rendered ecologically safe and public health can be protected. The Department’s onsite wastewater program permits the construction and operation of onsite wastewater systems in accordance with R. 61-56. This regulation establishes a comprehensive framework of system standards, permit procedures, minimum conditions, and other requirements. R. 61-56 includes a range of size and material specifications, minimum site conditions, setbacks, and other provisions, which are designed to protect the environment and public health from potential wastewater discharges.

R. 61-56 defines a “small onsite wastewater system” as “[a]n individual system serving an individually deeded dwelling or business that generates less than fifteen hundred GPD of domestic wastewater. Management and maintenance of each system is the responsibility of the individual property owner.” S.C. Code Ann. Regs. 61-56, Section 101.1. Additionally, R. 61-56 defines a “septic tank” as “a watertight, covered receptacle designed and constructed to receive the discharge of domestic wastewater from a building, sewer, separate solids from the liquid, digest organic matter, store digested solids through a period of detention and biological conditions of liquid waste, and allow the effluent to discharge for final treatment and disposal.” Id. R. 61-56 contains extensive detail on determining sufficient area for a successful drain field, requiring setbacks between the drain field and sensitive areas, and site evaluations necessary to determine if groundwater conditions and soil structure are sufficient to support a septic tank.

The Coastal Tidelands and Wetlands Act, S.C. Code Ann. §§ 48-39-10 et seq. directs the Department to develop a comprehensive coastal management program and to establish regulations and policies for reviewing projects within the coastal zone. Section 48-39-80(B)(11) specifically states, “the Department shall have the authority to review all state and federal permit applications in the coastal zone and to certify that these do not contravene the management plan.” (emphasis added). Of note, the statute does not expressly require the Department to review all permits. Chapter V of the S.C. Coastal Zone Management Program (“CZMP”) document identifies specific state agency permits that are subject to review and certification pursuant to Section 48-39-80(B)(11). Regarding Department onsite wastewater permitting, the CZMP document requires a coastal zone consistency review of permits for wastewater treatment systems and septic tanks that handle more than 1,500 gallons per day or handle waste other than domestic waste; a coastal zone consistency review is not required for an onsite wastewater system that handles less than 1,500 gpd and handles domestic waste only.<sup>7</sup>

The CZMP was enacted in accordance with statutory procedures, and the South Carolina Supreme Court has held that it is “valid and enforceable” as written. Spectre, LLC v. S.C. Dep’t of Health & Env’t Control, 386 S.C. 357, 688 S.E.2d 844 (2010). The exemption from review for septic systems handling less than 1,500 gpd of domestic waste only has long been in place and has previously been upheld as properly accounting for factors including the Department’s lack of direct control or authority over sewage treatment and disposal, the sheer number of septic tank permits issued within the coastal zone, and the design of R. 61-56 “to ensure that state water quality standards in adjacent water bodies must be maintained.” N. Beaufort Cnty. Committee v. S.C.

---

<sup>7</sup> See Table 1 at CMP V-5.

Dep't of Health & Env't Control, No. 96-ALJ-07-0117-CC (S.C. Admin. L. Ct., Oct. 28, 1996)  
(Kittrell, J.).

### ARGUMENTS

**I. The ALC Properly Held that the Coastal Zone Management Program Document's ("CMP") Limitation on the Department's Exercise of Its CZC Certification Authority Based on the Capacity of the Wastewater System Is Consistent with the Directive in S.C. Code Ann. § 48-39-80(B)(11) that the Department "Develop A System" Giving the Department the Power to Review Coastal Zone Permits.**

S.C. Code Ann. § 48-39-80(B)(11) says that "[i]n devising the management program the department shall consider all lands and waters in the coastal zone for planning purposes. In addition, the department shall ... [d]evelop a system whereby the department shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan." (Emphasis added).<sup>8</sup>

Appellant asserts that S.C. Code Ann. § 48-39-80(B)(11) "is clear and unambiguous and the Department's rogue decision to unilaterally exempt certain permits, specifically small onsite wastewater permits, from coastal zone consistency review exceeds its statutory authority." App. Br. at 11. According to the Appellant, this statutory clarity presumably imposes on the Bureau of Coastal Management a mandatory duty to conduct a CZC review for every septic tank permit issued, regardless of whether the septic tank flow rate is 1 gallon per day or 1,500 gallons per day<sup>9</sup> or higher. Such an interpretation and application of S.C. Code Ann. § 48-39-80(B)(11) is flawed and is not in accord with the plain meaning of the words of the statute.

The Appellant focuses on the use of the word "shall" in S.C. Code Ann. § 48-39-80(B) without convincingly explaining how the ALC's Order Granting Respondents' Motion for

---

<sup>8</sup>Appellant argues that because S.C. Code Ann. § 48-39-80(B)(11) uses the word "shall" three times, this "emphasiz[es] the General Assembly's directive that the agency must undertake coastal zone consistency review." (App. B. at 13).

<sup>9</sup> See Table 1 at CMP V-5.

Summary Judgment erred in its statutory construction analysis of that same word and how it is used in the statute. The Appellant argues that because “the General Assembly repeatedly uses mandatory language in its directive to create the CMP and to provide for a review process” App. Br. at 12, when S.C. Code Ann. § 48-39-80(B)(11) states that the Department “shall develop a system,” the only acceptable system is one that includes a CZC Certification analysis for every septic permit application regardless of the septic tank flow rate. Any other interpretation of S.C. Code Ann. § 48-39-80(B)(11), according to the Appellant’s slippery slope argument, would allow the Department to “simply refuse to review any and all permits in the coastal zone without legal consequence.” App. Br. at 14. This is patently untrue. The Department cannot ignore the Coastal Zone Management Plan (including the 1,500-gpd minimum threshold) after it was approved by the General Assembly and the Governor.

Judge Durden correctly opined that when “Section 48-39-80(B) states the Department shall create a system whereby the Department ‘shall have the authority to review’ all permit applications in the coastal zone ... the plain meaning of ‘authority’ does not impose a requirement to exercise power, but the right to.” (R. \_\_\_ (Order Granting Respondents’ Motion for Summary Judgment p. 4)). (Emphasis added). Accordingly, “the intention of the General Assembly as conveyed by the plain language of section 48-39-80(B) is that the Department must create a system whereby it has the right to exercise power over permit applications in the coastal zone.” (R. \_\_\_ (Order Granting Respondents’ Motion for Summary Judgment p. 4)). The Department created such a system with the Coastal Zone Management Program Document, which after approval by the General Assembly and the Governor, became “the final management plan for the State’s coastal zone.” S.C. Code Ann. Sec. 48-39-90(D).

“[S]hall develop a system” per the statute is not synonymous with “shall conduct a CZC review for every septic tank permit application, regardless of the daily flow rate.” In complying with the requirement of S.C. Code Ann. § 48-39-80(B)(11) to “develop a system,” the Department did in fact “consider all lands and waters in the coastal zone for planning purposes” and determined that only septic tank permit applications above the 1,500 gpd minimum threshold required a CZC Certification decision to establish adequate environmental protections.<sup>10</sup> Contrary to Appellant’s argument, the Department’s minimum threshold is not an illegitimate exercise of authority that produces “rogue” decisions. App. Br. at 11. In fact, had the Department exercised CZC certification authority below the minimum threshold, that would have been an illegitimate exercise of authority. In Spectre, the Supreme Court held that the Coastal Zone Management Program Document, inclusive of Table 1, is “enforceable” as adopted. Id., 386 S.C. 357, 370, 688 S.E.2d 844, 850 (2010). The Department’s establishment of this minimum threshold takes into account the comprehensive framework of system standards, permit procedures, minimum conditions, and other requirements designed to safeguard the environment and public health from potential wastewater discharges. See S.C. Code Ann. R. 61-56. Stated another way, the Coastal Zone Management Program Document is simply “filling up the details” of the statutory mandate. The Supreme Court said that “[w]hile the Legislature may not delegate its power to make laws, in enacting a law complete in itself, it may authorize an administrative agency or board ‘to fill up the details’ by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose.” McNickel's Inc. v. S.C. Dep't of Revenue, 331 S.C. 629,

---

<sup>10</sup> See Table 1 at CMP V-5.

634, 503 S.E.2d 723, 725 (1998) (citing Heyward v. S.C. Tax Comm'n, 240 S.C. 347, 126 S.E.2d 15 (1962)).<sup>11</sup>

The Appellant asks this Court to exercise authority that the Supreme Court held is beyond its power to do; namely “to effect a change in the statutes enacted by the Legislature.” Key Corp. Cap., Inc. v. Cnty. of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007) (quoting State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); see also Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does “not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly”)). “[A] court’s equitable powers must yield in the face of an unambiguously worded statute.” Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm’n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1998).

Judge Durden correctly found that “[t]he CMP’s limitation on the Department’s exercise of its power to review based on the capacity of the wastewater system is not inconsistent with the General Assembly’s intent that the Department create a streamlined system giving the Department the power to review coastal zone permits.” (R. \_\_\_ (Order Granting Respondents’ Motion for Summary Judgment p. 5)).

## **II. Appellant’s Argument for Public Notice of Individual Septic Tank Permit Applications and Permits as a General Matter is Moot Because the Department Provides the Public with Free, Timely, and Accessible Information about Individual Septic Tanks.**

Mandates for South Carolina state agencies to provide public notice are enacted by our General Assembly within various statutes. SCDHEC’s authorizing statute, as in effect at the time of the Permits’ issuance, S.C. Code Ann. § 44-1-60, outlines the general procedure for review of permits in concert with other applicable statutes and regulations: “[t]he department staff shall

---

<sup>11</sup> In Spectre, the Supreme Court confirmed that the Coastal Zone Management Program Document was approved by the General Assembly and the Governor and has the force of law just as the statutes and regulations. Id. at 369-370.

comply with all requirements for public notice, receipt of public comments, and public hearings before making a department decision. To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment, and public hearings.” S.C. Code Ann. § 44-1-60(B); see also S.C. Code Ann. § 48-6-30(B) (stating likewise within the Department’s authorizing statute). However, the General Assembly has not enacted any statutes, nor have regulations been promulgated, requiring SCDHEC or the Department to provide public notice for applications and permits for the construction and installation of individual septic tank systems with peak flow less than 1,500 gpd of domestic wastewater. While the S.C. Pollution Control Act, S.C. Code Ann. §§ 48-1-10 et seq. charges the Department with overseeing the permitting, construction, and operation of onsite wastewater systems, and R. 61-56 sets forth the applicable onsite wastewater permitting requirements, neither contains any requirements of public notice for applications and permits for the construction and installation of individual septic tank systems with peak flow less than 1,500 gpd of domestic wastewater.

Pertinently, as of September 2025, the Department has provided the public access to information about applications and permits for the construction and installation of individual septic tank systems less than 1,500 gpd. In fact, any member of the public can, through the Department’s ePermitting feature of Event Alerts, receive notifications for any individual septic permit application that the Department receives and receive notification of any Department issuances and denials of individual septic permits. This free online feature provides statewide public access to this information. Additionally, any public user of the application can view a geographic information system (“GIS”) map through the Department’s free ePermitting feature of Map Explorer, containing site information for all applications submitted to the Department and for permits issued, denied, or revoked by the Department.

For example, if a member of the public wants to be made aware whenever the Department receives applications and/or issues permits for the construction of individual septic tank systems less than 1,500 gpd in all coastal counties of South Carolina, they can utilize the Event Alerts feature to subscribe to e-mail notifications for those types of filings. Specifically, the user would use the first filter of “I want to get alerts pertaining to...” and select “Permits issued/denied” and “Applications received.” Second, the user would use the second filter of “I am interested in permits, Applications and Public Notices for these counties...” and select all eight coastal counties in South Carolina. In the last filter, the user would select the Department’s program area titled “BEHS – Onsite Wastewater.” After the interested user saves their filtered subscription, they will receive e-mail alerts, with each e-mail pertaining to a single application and/or permit to construct individual septic tank systems less than 1,500 gpd.

If the user signed up for e-mail alerts for applications for the construction of individual septic tank systems less than 1,500 gpd that the Department has received, the e-mail alerts will contain the following information: the application form type (e.g., “OSWW (Septic Tank) - Application to Construct an Individual Sewage Treatment and Disposal System”); the submission reference number (e.g., “ABC-123-DEFGH”); the date and time the Department received the application (e.g., “12/05/2025 07:51 PM”); the facility, site name, or address (e.g., “123 Elm Avenue, Johns Island, SC 29455”); the county that the application is requesting to construct an individual septic tank system less than 1,500 gpd (e.g., “Charleston”); the applicant’s name (e.g., “John Doe”); and applicant’s organization, if available (e.g., “Custom Homes LLC”). Additionally, if the user also subscribed for alerts of permits for the construction of individual septic tank systems less than 1,500 gpd that the Department has issued or denied, the e-mail alerts will contain the following information: the subscription alert type (e.g., “Subscription Alert – Permit in effect”);

the permit number (e.g., “OSWW123456”); the category of the permit (e.g., “BEHS – OSWW Permit”); the type of permit (e.g., “OSWW Construction Permit”); the date the Department issued the permit (e.g., “01/23/2026”); the effective date of the permit (e.g., “01/23/2026”); the expiration date of the permit (e.g., “01/01/2030”); and the permittee’s name (e.g., “Jane Doe”). These permit-issuance e-mails will also contain information regarding the application that was submitted for the permit, including the submission reference number, the date the Department received the application, the facility and/or site name, and the county.

In addition to using the free Event Alerts feature, any member of the public may use ePermitting’s free Map Explorer to identify any applications or permits to construct individual septic tank systems less than 1,500 gpd. Continuing with the example above, a user interested in septic applications received by the Department would click on the “Filtering Options” button, and under the Submission Form Name category, they can select “OSWW (Septic Tank) – Application to Construct an Individual Sewage Treatment and Disposal System (D-1740),” then select “Application” under the Submission Form Type category, and input the county they are interested in viewing. Similarly, if the user wishes to identify septic tank permits the Department has issued or denied, the user would click on the “Filtering Options” button, and under the “Permit Program” category, they can select “BEHS – Onsite Wastewater,” then click on the “Permit Status” category and select any of the options of permit stages, such as “Expired”, “In Effect”, “Revoked”, and so forth, to narrow their search. Results, filtered by the user whether they are searching for septic tank applications or permits, will appear in a list as well as on the map. For example, Map Explorer can populate search results of all applications and/or permits for construction of individual septic tank systems less than 1,500 gpd in Charleston County (or any other County) that the Department has received and has not yet approved or denied.

If the user has interest in any particular result they have filtered for, they may click on the search result on the Results list or on the map, and a profile window will open up, containing who made the application, the site address, the type of application, submission number, and whether the application has resulted in a permit. If the user selects a search result pertaining to a permit, a profile will open, containing the permit information, such as the permit number, the effective date of the permit, the expiration date of the permit, the permittee's name, as well as information of the original application. The profile also will also zoom in to the exact location of the site address on the map. Additionally, the Search Bar feature gives users the option to input information or search the map feature for any Event Alerts e-mail alert they have received. For example, a user can take the Facility/Site Name information in an Event Alert e-mail alert and type or paste it into the Map Explorer Search Bar. This search will yield that site application information.

If a member of public learns of a septic tank application through the Event Alerts feature or Map Explorer feature, they can request in writing to be notified of the Department's decision regarding the application pursuant S.C. Code Ann. § 48-6-30(D)(1). If a user receives an Event Alert e-mail regarding a septic tank application or permit and wishes to obtain additional information, clarification, or documentation of the application or permit alert, the user can submit a FOIA request to the Department's Freedom of Information office, using any information contained within the Event Alert e-mail of the application or permit, such as the reference number.

Appellant argues that the Department does not place applications for individual septic tanks of less than 1,500 gpd on public notice, nor does the Department publicly notice issued permits for the same. However, Appellant's argument is moot because the Department provides the public with free, timely, and accessible information of such septic tank applications and permits. "A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing

controversy.” Sloan v. Greenville Cnty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). Moreover, “[m]ootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.” Id. In light of the Department’s implementation of the ePermitting features available to the public, it has rendered Appellant’s public notice arguments moot. The comprehensive access provided to the public through Event Alerts and Map Explorer means that any interested user can easily and timely obtain information about permit applications and issued permits for individual septic tank systems less than 1,500 gpd. As such, any judgment rendered by the Court on the public notice issue would have no practical legal effect upon the existing controversy.

Furthermore, the availability of these tools makes it impossible for the Court to grant Appellant relief since the Department’s proactive measures have addressed their concerns. Because the Department’s ePermitting free program features—Event Alerts and Map Explorer—provide the public timely access to applications and permit information of applications and permits for the construction and installation of septic tank applications with peak flow less than 1,500 gpd, the Department now effectively provides public notice of such applications and permits, and Appellant’s claims regarding public notice for onsite wastewater permits as a general matter are rendered moot, and the appeal should be dismissed as to this issue.<sup>12</sup>

---

<sup>12</sup> On July 14, 2025, a final order in the County of Charleston in the Court of Common Pleas (Case No. 2022-CP-10-05192)—concerning issues nearly identical to this matter before the Court—required the Department to publicly notice applications for individual septic tank systems less than 1,500 gpd. The court’s ruling was based on an affidavit the Department provided that stated it was feasible for the Department to electronically post such application information. The court’s determination is based on the Department’s feasibility to electronically post such application information online. In a modified final order issued by the same court on October 27, 2025, the final order clarified that while the Department must publicly notice such applications, the Department is not required to provide an opportunity to comment: “[t]o the extent [Appellant] desire[s] to comment on any septic tank applications of which they may become aware, [Appellant] may avail themselves of existing procedures, and the Order should not be read as granting [Appellant] a right, independent of applicable statutory law, regulation, or procedural rule, to comment on any such application.” Lastly, the final order acknowledged that Appellant’s constitutional arguments are “unnecessary to the court’s ruling.”

**III. The ALC Properly Found that the Absence of Any Public Notice of Individual Septic Tank Systems Less than 1,500 Gpd Challenged Permits Did Not Violate Due Process.**

While the Department is currently providing the public the ability to access information regarding applications and permits for individual septic tank systems less than 1,500 gpd, the ALC was correct in its ruling that the absence of public notice for such permits did not result in a constitutional due process violation.

**A. No statute or regulation requires the department to issue public notice for permits for individual septic systems of less than 1,500 gpd.**

No statute or regulation required SCDHEC to issue public notice for permits for individual septic systems of less than 1,500 gpd. This material fact was central to the ALC's analysis and ruling: "[t]here is no requirement for the Department to provide public notice of wastewater system permits. Since the Department was not required to provide public notice of wastewater system permits and due process rights are met in this proceeding, SCCCL was not prejudiced by the Department's lack of public notice." (Order, December 18, 2024).

Despite the absence of any statutory or regulatory mandate requiring SCDHEC or the Department to put individual septic tank system permits on public notice, Appellant, citing only half of S.C. Code Ann. § 44-1-60(B), contends SCDHEC's and the Department's procedures for individual septic permitting violated the statute. Appellant erroneously relies upon this statute to invent a requirement for public notice that does not exist, specifically citing the following language: "[t]o the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings." S.C. Code Ann. § 44-1-60(B). However, Appellant neglects to cite the sub-section's only other and preceding sentence: "[t]he department staff shall comply with all requirements for public notice, receipt of

public comments, and public hearings before making a department decision.” Id. (Emphasis Added).

Looking at the entirety of S.C. Code Ann. § 44-1-60(B) and § 48-6-30(B), the intent of the General Assembly is clear: public notice is not required for all permits; rather, where “requirements for public notice” exist (*i.e.*, by virtue of another applicable statute or regulation), the Department (and SCHDEC before it) must comply with them, and shall, to the maximum extent possible, use a uniform system of providing such notice. Appellant’s alternative interpretation of just half of S.C. Code Ann. § 44-1-60(B), read in a vacuum, would impose an obligation onto SCDHEC and the Department that disregards the statute as a whole. Had the General Assembly intended to require public notice for all issued permits, it could have done so. The absence of a clear statutory mandate for public notice of permits for individual septic systems of less than 1,500 gpd demonstrates that Appellant’s interpretation is inconsistent with the statute.

*I. Specific statutory public notice mandates for the Department contradict Appellant’s interpretation of S.C. Code § 44-1-60(B) (Supp. 2023).*

As detailed above, S.C. Code Ann. § 44-1-60(B) and § 48-6-30(B) did not create a general requirement for public notice of every permit that SCDHEC (previously) or the Department (presently) issues across its labyrinth of program areas. As a highlight, the General Assembly enacted three Acts that contain requirements for the Department to provide public notice for certain permits: the Pollution Control Act, the South Carolina Mining Act, and the South Carolina Solid Waste Policy and Management Act.<sup>13</sup> The General Assembly would not have purposely carved out

---

<sup>13</sup> Per S.C. Code Ann. § 48-1-115, the Department must provide public notice before issuing a construction permit for a facility that stores sludge or other residuals, that is not located at the site of a wastewater or sludge treatment facility permitted pursuant to Regulation 61-67; per S.C. Code Ann. § 48-20-70, the Department must provide public notice for an individual operating permits or a substantial modification of an operating permit; and, per S.C. Code Ann. § 44-96-470, the Department must adhere to a thorough public notice process when deciding on permit applications for a municipal solid waste disposal facility.

these specific mandates for proposed construction permits pursuant to S.C. Code Ann. § 48-1-115, mining permit applications pursuant to S.C. Code Ann. § 48-20-70, and solid waste disposal facility permit applications pursuant to S.C. Code Ann. § 44-96-470 if the legislative intent of S.C. Code Ann. §§ 44-1-60-(B) and 48-6-30(B) was to require the Department to publicly notice all applications. In City of Rock Hill v. Harris, the Supreme Court stated that “when determining the effect of statutory language, ‘the canon of construction *expressio unius est exclusio alterius* or *inclusio unius exclusio alterius* holds that ‘to express or include one thing implies the exclusion of another, or the alternative.’” City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (S.C. 2011).

Nothing should be added to the statute besides what is stated or reasonably implied. Essentially, words must have meaning. If Appellant’s interpretation of S.C. Code Ann. §§ 44-1-60(B) and 48-6-30(B) would require the Department to publicly notice permits for individual septic systems of less than 1,500 gpd—even in the absence of any specific statutory mandates—it would effectively render the language from other statutes and regulations where public notice is mandated as mere surplusage and without meaning. Unlike other program areas within the Department, the General Assembly has not legislated that public notice is required for permits for individual septic systems of less than 1,500 gpd. By omitting a specific public notice mandate for permits for individual septic systems of less than 1,500 gpd, the General Assembly made it evident no public notice is required for such permits.

B. No due process violation results when permits for individual septic tank systems less than 1,500 gpd are not publicly noticed.

In addition to the fact that there are no statutory or regulatory requirements for the Department to place permits for individual septic systems of less than 1,500 gpd on public notice,

the lack of public notice did not violate Appellant's due process rights. Appellant has manufactured a perceived deficiency in the FOIA process; however, they have failed to show that the absence of public notice of permits for individual septic tank systems resulted in any prejudice in them obtaining access to and challenging issuance of the Permits.

On this point, procedural due process protections are already provided to Appellant and other South Carolina residents through the ALC. While Appellant asserts that public notice is necessary to satisfy these requirements under the South Carolina Constitution, specifically Article 1, Section 22, this contention has no basis in the constitutional text or case law. Indeed, the S.C. Supreme Court has firmly recognized that the ALC already provides a robust mechanism for due process: "Our state's constitution provides that '[n]o 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[']'." To that end, the ALC conducts a de novo hearing in contested cases, complete with the presentation of evidence and testimony." Engaging & Guarding Laurens Cty.'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).

Significantly, this means that the ALC is an impartial fact-finder not constrained by the Department's prior determinations, thus ensuring a sufficient platform for those who wish to contest these types of permits. As noted in the EAGLE case, "[b]ecause an ALC is not bound to an agency's factual findings or permitting decision, the ALC [can conduct] a full contested hearing, de novo, and made its own findings of fact." Id. at 344. Justice Toal's dissent in Kiawah in fact affirms the General Assembly's intent in creating the ALC: "the General Assembly established the ALC, creating the functional separation contemplated by Article 1, Section 22." Id. at 54, 766 S.E.2d at 728. (Toal, J., dissenting). Additionally, the Administrative Procedure Act, enacted by

the General Assembly, “codifies these constitutional protections” and emphasizes the ALC’s role in providing “a neutral forum for fair, prompt, and objective administrative hearings” *Id.* at 53-54, 766 S.E.2d at 728. The General Assembly designed the ALC to be an objective forum where citizens can challenge agency decisions, thus fulfilling the due process requirements of notice and the opportunity to be heard. The ALC’s processes empower South Carolina citizens to effectively challenge administrative decisions made by the Department. The existing procedures through the ALC sufficiently ensure the rights of citizens to contest agency decisions without imposing additional public notice requirements. This framework assures that any citizen who disagrees with the Department’s decisions regarding permits for individual septic tank systems of less than 1,500 gpd has the right to request a contested case hearing, fulfilling due process protections.

Additionally, although Appellant claims violations of due process because of a lack of public notice of permits for individual septic tank systems of less than 1,500 gpd, Appellant has no constitutional right to receive public notice of the Permits because they cannot claim any private right or property interest in relation to the forty-four (44) lots at issue. The State Constitution views due process in the context of individual property rights. “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.” S.C. Const. Art. I Sec. 22. This state’s jurisprudence distinguishes between a permit applicant “seeking review of the denial of a right to which it claims to be entitled” and “statutory affected persons,” who “are not the type of litigants bound by an agency decision that article I, section 22 of the South Carolina Constitution was intended to protect.” Walterboro Cmty. Hosp., Inc. v. S.C. Dep’t of Health & Env’t Control, 442 S.C. 154, 159, 898 S.E.2d 123, 126 (2024).

Constitutional due process protections do not exist solely by virtue of the Constitution; any entitlement to a due process must be established by law through some independent source: “[A]n interest in property which is protected by due process arises only when there is a legitimate claim of entitlement, as created and defined by independent sources, and a person clearly must have more than an abstract need or desire for it, and the person must have more than a unilateral expectation of it.” S.C. Ambulatory Surgery Center Ass’n, 389 S.C. at 392, 699 S.E.2d at 153 (quoting 16C C.J.S. Constitutional Law § 1516 (2010)). Appellant has not identified any statutory or regulatory source where public notice of permits for the construction and installation of an individual septic tank system of less than 1,500 gpd is required. Neither the APA, nor any statute or regulation, confers upon Appellant any protected right with respect to public notice of the Permits, and Appellant has identified no other independent source that would meaningfully support one. The South Carolina Constitution does not confer upon Appellant a protected right to public notice of such permits.

Appellant claims, in this specific instance, substantial prejudice as a result of the FOIA process, asserting that the FOIA process places an “impossible burden” on affected persons and is not a practical substitute for public notice of all permits for individual septic systems of less than 1,500 gpd. App. Br. at 26. However, Appellant has failed to demonstrate any actual harm because once the Department issued the Permits on January 2, 2024, it provided notice to Appellant of the Permits on that very same day pursuant to S.C. Code Ann. § 44-1-60(E)(1). (R. \_\_\_ (App. Requests for Final Review p. 14). Appellant was subsequently able to review the Permits. As a result of Appellant being provided notice of the permit decisions pursuant to S.C. Code Ann. § 44-1-60(E)(1), Appellant was able to timely file a Request for a Contested Case with the ALC. Thus, the ALC’s ruling should be upheld as Appellant has not demonstrated any prejudice, and the

absence of public notice of permits for individual septic tank systems of less than 1,500 gpd did not result in a due process violation in this specific instance. S.C. Code Ann. § 1-23-610(B)(a)-(f).

Although Appellant bases their argument to require the Department to publicly notice permits for individual septic tank systems of less than 1,500 gpd on the due process rights afforded in Article 1, Section 22, the procedural due rights of the Plaintiffs and all South Carolina citizens are sufficiently protected through the existing ALC processes for challenging agency decisions. This process meets “practical criterion of fair notice to those to whom the law applies.” Toussaint v. State Bd. of Medical Examiners, 303 S.C. 316, 400 S.E.2d 488 (1991). As Justice Toal stated, “this perspective of agency review comports perfectly with [...] the constitutional safeguards contained in Article 1, Section 22 of the South Carolina Constitution.” Id. at 55, 766 S.E.2d at 728. The existing frameworks provided by the ALC ensure that due process rights are upheld through appropriate channels, rendering the need for additional public notice unnecessary. The ALC did not err in ruling that there was no genuine issue of material fact supporting a finding Appellant was denied due process.

With the public’s ability to timely access information of applications and permits for individual septic tank systems of less than 1,500 gpd through the Department’s ePermitting program’s free Event Alerts and Map Explorer features, the Department provides the public a further opportunity to be heard within the forum of the ALC. A concerned member of the public could learn of an application submitted to the Department for the construction and installation of an individual septic tank system of less than 1,500 gpd in their county through an e-mail alert in Event Alerts, or they may visually see a nearby residential location of an application submitted to the Department on Map Explorer. After learning of a septic tank application in either ePermitting feature, this member of the public could contact the Department and, pursuant to S.C. Code Ann.

§ 48-6-30(D)(1), request that the Department notify them when the Department issues its permitting decision of the application. These paths allow an individual to timely receive notice of a permit decision, and if they disagree with the Department's decision, they can file a request for a contested case hearing in the ALC to contest the issuance of the permit.

Consequently, with these avenues for the public to timely learn of applications or permits for the construction and installation of an individual septic tank system of less than 1,500 gpd that can result in timely requests for contested cases within the ALC, Appellant's argument to require public notice as a general matter is moot. Likewise, as Appellant submitted a timely FOIA request resulting in a timely request for a contested case hearing in the ALC, Appellant's claims to a due process violation in this case are without merit.

**CONCLUSION**

For the foregoing reasons, Respondent South Carolina Department of Environmental Services respectfully requests that the Court affirm the decision of the ALC granting Respondents' Motion for Summary Judgment and denying Appellant's Motion for Summary Judgment.

Respectfully submitted,

*s/ Joseph A. Giordano* \_\_\_\_\_

Joseph A. Giordano, S.C. Bar No. 104500  
Assistant General Counsel  
Christopher P. Whitehead, S.C. Bar No. 100264  
Assistant General Counsel  
South Carolina Department of  
Environmental Services  
2600 Bull Street  
Columbia, South Carolina 29201  
Tel: (803) 898-1309  
Emails: Joseph.Giordano@des.sc.gov  
Christopher.Whitehead@des.sc.gov  
Bradley.Churdar@des.sc.gov

*Attorneys for Respondent SCDES*

December 5, 2025  
Columbia, South Carolina